

Schedule 3 - Macutex Software as a Service (SaaS) - Terms and Conditions

These "**Terms and Conditions**" are related to the SaaS subscription between Macutex Pty Ltd as trustee for the Macutex Unit Trust, ABN 56 588 969 728 ("**Macutex**") and the customer identified in the letter ("**Customer**") signed by Macutex and the Customer for the provision of the Services ("**Letter**"). These Terms and Conditions, together with the Documentation and the Letter, form the "**Agreement**" between the Customer and Macutex.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Business Day: a day other than a Saturday, Sunday or public holiday when banks in Victoria, Australia, are open for business.

Change of Control: any change in the ability to control or direct, directly or indirectly, the board, executive body, decision making process or management of an entity by virtue of ownership, right of appointment, right to control election or appointment, voting rights, or the ability to control the exercise of voting rights, management agreement or any other agreement.

Commencement Date: the date set out in the Letter.

Confidential Information: any information that is proprietary or confidential by its nature or is either clearly labelled as such. Confidential Information includes details of the Services, and the results of any performance tests of the Services.

Customer Data: the data inputted by the Customer, Users, or Macutex on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Customer PI: means Personal Information contained in Customer Data.

Data Subject: an identifiable individual or individual who is reasonably identifiable.

Documentation: the Letter, the documentation made available to the Customer by Macutex online via www.macutex.com or such other web address notified by Macutex to the Customer from time to time, which sets out a description of the Services and the User Manual.

Fees: the Subscription Fees and any other fees and charges payable by the Customer to Macutex.

Initial Subscription Term: the initial term set out in the Letter.

Personal Information: has the meaning given to that term in the Privacy Laws.

Privacy Laws: all applicable privacy and data

protection laws and regulations relating to or impacting on the handling, processing and/or privacy of Personal Information, including the *Privacy Act 1988* (Cth) and *Spam Act 2003* (Cth), in each case as such laws may be amended, repealed or superseded from time to time.

Renewal Period: has the meaning given to it in clause 11.1.

Services: the subscription services provided by Macutex to the Customer, as more particularly described in the Documentation.

Software: any online software applications provided by Macutex as part of the Services.

Subscription Fees: the subscription fees payable by the Customer to Macutex for use of the Services during the Term, as set out in the Letter or as otherwise agreed between the parties.

Term: the Initial Subscription Term together with any Renewal Periods.

Users: any employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.

User Manual: the document made available by Macutex from time to time describing how the Customer may use the Services.

User Subscriptions: the user subscriptions which entitle Users to access and use the Services and the Documentation in accordance with this Agreement.

1.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2. SERVICES

2.1 Subject to the Customer paying the Subscriptions Fees, the restrictions set out in clause 3 and the other terms and conditions of this Agreement, Macutex grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicences, to permit the Users to use the Services and the Documentation during the Term solely for the Customer's internal business operations.

2.2 Macutex shall, during the Term, provide the Services to the Customer in accordance with the Documentation.

2.3 Macutex will, as part of the Services and at no additional cost to the Customer, provide the Customer with Macutex's standard support services in accordance with the Documentation.

3. USAGE RIGHTS AND LIMITATIONS

- 3.1 The Customer shall ensure that:
- 3.1.1 each individual User keeps details of his or her User Subscription confidential; and
 - 3.1.2 it will not allow or suffer any User Subscription to be used by more than one individual User.
- 3.2 The Customer shall not (and shall procure that the Users shall not) use the Services to access, store, distribute or transmit any viruses, or allows any denial of service attacks, and Macutex reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause 3.2.
- 3.3 The Customer shall not:
- 3.3.1 except as may be allowed by any applicable law:
 - 3.3.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - 3.3.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
 - 3.3.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - 3.3.3 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise make the Services and/or Documentation available to any third party except the Users.
- 3.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Macutex.
- 3.5 The Customer shall permit Macutex (or its designated representative) to audit the Customer's records in order to establish compliance with this Agreement.

4. DATA AND PROPRIETARY RIGHTS

- 4.1 The Customer shall own all right, title and interest

in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

- 4.2 Macutex owns all right, title and interest in and to the data generated by the Service (the "**Macutex Data**").
- 4.3 Macutex grants the Customer a licence to access the Macutex Data for the Term solely for the Customer's internal business purposes. The Customer's right to use the data does not include the right to sub-licence it, nor to sell or otherwise exploit it, nor to combine it with other data sources.
- 4.4 The Customer agrees that Macutex and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 4.5 Macutex confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 4.6 The Customer warrants and represents on a continuing basis that:
- 4.6.1 it complies with, has done and will continue to do all things necessary to ensure and maintain its compliance with Privacy Laws in relation to (i) the collection, use and disclosure Customer PI; and (ii) disclosure of Customer PI to Macutex for the purposes permitted by and contemplated under this Agreement; and
 - 4.6.2 it has collected Customer PI by lawful and fair means and otherwise in accordance with the Privacy Laws.
- 4.7 Macutex will take reasonable steps to protect Customer Data from unauthorised access, modification, disclosure, misuse, interference or loss.
- 4.8 Customer acknowledges that:
- 4.8.1 Macutex uses third party service providers to provide hosting services in connection with the Services;
 - 4.8.2 Customer Data (including Customer PI) will be hosted in Australia unless otherwise agreed by the Customer.

5. MACUTEX'S OBLIGATIONS

- 5.1 The Services will be provided substantially in

accordance with the Documentation, except to the extent of any non-conformance which is caused by use of the Services contrary to Macutex's instructions, or modification or alteration of the Services by any party other than Macutex (or persons duly authorised by Macutex).

5.2 If the Services do not conform with the foregoing undertaking, Macutex will, at its expense, use reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1.

5.3 Notwithstanding the foregoing, Macutex:

5.3.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

5.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer agrees that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6. CUSTOMER'S OBLIGATIONS

The Customer shall:

6.1 provide Macutex with all necessary co-operation in relation to this Agreement, and all necessary access to such information as may be required in order to provide the Services, including but not limited security access information and configuration services;

6.2 comply with all applicable laws and regulations with respect to its activities under this Agreement, including the Privacy Laws;

6.3 ensure that the Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any User's breach of this Agreement;

6.4 obtain and shall maintain all necessary licences, consents, and permissions necessary for Macutex to perform its obligations under this Agreement, including those required by Privacy Laws;

6.5 ensure that its network and systems comply with the relevant specifications provided by Macutex from time to time; and

6.6 be solely responsible for procuring and maintaining its network connections, notably the internet connection, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to its network connections or telecommunications links or caused by the internet.

7. FEES

7.1 In order to access the Services, the Customer shall pay the Fees to Macutex in accordance with this clause 7 and the Letter.

7.2 The Subscription Fees in respect of the Initial Subscription Term shall be payable in full in advance within 30 Business Days of the Commencement Date. The Subscription Fees in respect of any Renewal Period shall be payable in advance at the start of each Renewal Period.

7.3 All amounts and fees stated or referred to in this Agreement:

7.3.1 shall be payable in Australian Dollars;

7.3.2 are, subject to clause 9.2, non-cancellable and non-refundable;

7.3.3 are exclusive of GST, which shall be added to Macutex's invoice(s) at the appropriate rate.

8. CONFIDENTIALITY

8.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

8.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

8.1.2 was in the other party's lawful possession before the disclosure;

8.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or

8.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.

8.2 Subject to clause 8.3, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement. Macutex will use its reasonable endeavours to ensure that third parties take reasonable steps to ensure that the Customer's Confidential Information is protected against unauthorised access, use or disclosure.

8.3 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 8.3, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

8.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

8.5 Macutex agrees that the Customer Data is the Confidential Information of the Customer.

8.6 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties, except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

9. INDEMNITY

9.1 Macutex shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any copyright or trade mark effective as of the Commencement Date, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

9.1.1 Macutex is given prompt notice of any such claim;

9.1.2 the Customer provides all reasonable co-operation to Macutex in the defence and settlement of such claim; and

9.1.3 Macutex is given sole authority to defend or settle the claim.

9.2 In the defence or settlement of any claim, Macutex may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement immediately on notice to the Customer and refund the Customer any Subscription Fees for the unexpired Term as at the date of termination without any additional liability or costs to the Customer.

9.3 In no event shall Macutex, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

9.3.1 a modification of the Services or Documentation by anyone other than

Macutex;

9.3.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by Macutex; or

9.3.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from Macutex or any appropriate authority.

9.4 The remedies under this clause 9, constitute the Customer's sole and exclusive rights and remedies, and Macutex's (including Macutex's employees, agents and sub-contractors) entire obligations and liability, for infringement of any copyright or trade mark.

9.5 The Customer shall defend, indemnify and hold harmless Macutex against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation.

10. LIABILITY

10.1 Nothing in this Agreement excludes the liability of Macutex:

10.1.1 for death or personal injury caused by Macutex's negligence; or

10.1.2 for fraud or fraudulent misrepresentation.

10.2 Except as expressly and specifically provided in this Agreement:

10.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. Macutex shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Macutex by the Customer in connection with the Services, or any actions taken by Macutex at the Customer's direction;

10.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and

10.2.3 the Services and the Documentation are provided to the Customer on an "as is" basis.

10.3 Subject to clauses 10.1 and 10.2:

10.3.1 Macutex shall not be liable, whether in tort (including for negligence or breach of

statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

10.3.2 Macutex's total aggregate liability in contract (including in respect of the indemnity at clause 9.1), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in out of or in connection with this Agreement shall be limited to the annual Subscription Fees paid by the Customer.

11. TERM AND TERMINATION

11.1 The Term shall, unless otherwise terminated as provided in this clause 11, commence on the Commencement Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (or such other period specified in the Letter) (each a "**Renewal Period**"), unless:

11.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

11.1.2 otherwise terminated in accordance with the provisions of this Agreement.

11.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if the other party:

11.2.1 fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

11.2.2 commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

11.2.3 repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or

11.2.4 has a liquidator being appointed in respect of it or ceases, or indicates that it is about to cease, carrying on business.

11.3 On termination of this Agreement for any reason:

11.3.1 all licences granted under this Agreement shall immediately terminate and the Customer will immediately cease all use of the Services and the Documentation; and

11.3.2 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

12. SUSPENSION

Without prejudice to any other right or remedy that Macutex may have, Macutex may suspend the Services at any time immediately by giving notice to the Customer:

12.1 for any actual or alleged breach of this Agreement;

12.2 if Macutex has not received payment of any Fees within 5 days of the due date; or

12.3 if Macutex considers that suspension is reasonably required to protect the security, confidentiality or integrity of the services provided by Macutex to any of its customers or the data of Macutex or any of its customers.

13. FORCE MAJEURE

Macutex shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Macutex or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

14. MISCELLANEOUS

14.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 14.2 Except as expressly provided in this Agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14.3 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under this clause 14.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 14.4 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.
- 14.5 The Customer shall not, without the prior written consent of Macutex, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Macutex may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 14.6 This Agreement may be executed in any number of counterparts, and by the parties as separate counterparts, but will not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same agreement.
- 14.7 The following provisions will survive any termination or expiration of the Term: clauses 4, 8, 9, 10 and this clause 14.

15. NOTICES

- 15.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in the Letter, or such other address as may have been notified by that party for such purposes.
- 15.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9am on the first Business Day following delivery). A correctly addressed notice

sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

16. LAW AND JURISDICTION

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Victoria, Australia and Each party irrevocably agrees that the courts of Victoria, Australia, shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).