

# OBJECTIVE CLOUD SERVICE TERMS OF SERVICE

Last updated: 8 December 2020

**IMPORTANT NOTE:** This is Objective's Cloud Services contract ("Agreement"). Please read this Agreement carefully before using any Objective Cloud Service because use of Objective Cloud Services means acceptance of these terms and conditions as referred to in the Customer's Buying Record. For those Customers who subscribe to a Cloud Service by completing an online subscription this Agreement is the contract on which that transaction is based when the Customer clicks acceptance to complete the online transaction. For those Customers who become subscribers by signing an Objective Buying Record document this Agreement is the contract on which that Buying Record is based when the Customer signs that document.

The definitions of all capitalised terms used throughout this Agreement can be found in clause 27.

## THANK YOU FOR CHOOSING OBJECTIVE

**IN CONSIDERATION** of the covenants in this Agreement Objective and the Customer agree as below.

### 1 SCOPE OF THIS AGREEMENT

- 1.1 This Agreement sets out Objective's terms and conditions for the Customer's subscription to the Cloud Service identified in the Customer's Buying Record.
- 1.2 This Agreement does not apply to Objective's subscription licensed software solutions, access to which will require a licensed software contract with Objective.
- 1.3 This Agreement does not apply to Objective's consultancy or professional services, access to which will require a separate professional services-based contract with Objective or a professional services addendum to the Customer's Buying Record.

### 2 RIGHT OF ACCESS

- 2.1 In consideration of the timely payment of all Charges, Objective grants the Customer a time-limited, pre-paid, non-exclusive, non-transferrable, personal right to access the Cloud Service for the Customer's own business operations for the Term, subject to the terms of this Agreement.
- 2.2 All rights not expressly granted to the Customer in this Agreement are reserved by Objective.

### 3 CLOUD SERVICE AND ONBOARDING

#### Cloud Service

- 3.1 The Cloud Service is the particular Objective solution specified on the Buying Record and further detailed in the Cloud Service Documentation.
- 3.2 Objective will supply the Cloud Service identified in the Buying Record, as follows:
  - (a) **Switch On:** as soon as practicable and in any case within three (3) Business Days of the Commencement Date Objective will switch on the Cloud Service for the Customer as follows:
    - (i) provision and establish the Hosted Environment for the Customer's subscription to the Cloud Service;
    - (ii) arrange Storage Allocation;
    - (iii) enable Customer Connectivity;
    - (iv) as applicable, allocate a URL for the Website, back-up URL and initiate the Website;
    - (v) establish a Customer-specific file in the Support Portal;

- (vi) issue passwords to the Customer for Support Contacts and authorise their access to the Support Portal; and
  - (vii) as applicable, issue a password and/or verification code and/or site key to the Customer for administrator authorised access to the provisioned environments.
- (b) **Software and Hosting:** Following switch on, Objective will commence supply of the Application and the Hosting Services components of the Cloud Service throughout the Term:
- (i) provide access to the Application in the Hosted Environment for the Customer's subscription to the Cloud Service;
  - (ii) provide access to the Cloud Service Documentation;
  - (iii) ensure the continued location of the Hosted Environment within Australia, or other location as agreed in the Buying Record;
  - (iv) undertake development and roll out of New Releases at Objective's election; and
  - (v) perform technical activities included in any Cloud Service-specific terms.
- (c) **Support:** Contemporaneous with the supply of the Application and Hosting Service, Objective will supply the Support Service as detailed in the Cloud Service Support Handbook including:
- (i) online, email and telephone help desk support in the English language to the Customer's Support Contacts;
  - (ii) use reasonable endeavours to achieve the Availability Target;
  - (iii) perform Backup, Monitoring, Maintenance (Scheduled) and Maintenance (Emergency);
  - (iv) arrange access to Availability report as set out in clause 13.6;
  - (v) monthly online meetings throughout the Term with the Customer's allocated technical stakeholders to assess the Customer's Availability and Support Service experience; and
  - (vi) quarterly online meetings (unless otherwise agreed to be in person) throughout the Term with the Customer's account stakeholders to assess the Customer's experience accessing the Cloud Service.
- (d) **Exit:** When this Agreement comes to an end, however that comes about, Objective will supply the Exit Service as follows:
- (i) as applicable, decommission the Website(s) or cease web access for the Customer within five (5) Business Days following the termination date;
  - (ii) as applicable, maintain a copy of Customer Data in the Hosted Environment for the Customer Data Retention Period strictly for the purpose of it being accessible to the Customer upon reasonable request in the event the Customer's own extraction is unsuccessful; and
  - (iii) as applicable, delete the Customer Data from the Hosted Environment at the end of that Customer Data Retention Period.

#### **Onboarding Project and Subsequent Professional Services**

- 3.3 If the Cloud Service requires Objective's professional services division to perform an Onboarding Project to optimise the Customer's Cloud Service experience this will be recorded as an addendum to the Customer's Buying Record or the Customer may engage Objective under a separate contract.
- 3.4 During the Term of the Cloud Service the Customer may wish to engage Objective's professional services to perform other consulting or project engagements. In each case a separate services contract will be required.

## **4 CLOUD SERVICE PERIOD**

- 4.1 The Cloud Service starts on the Commencement Date and continues for the Term (i.e., the Initial Term plus any Extended Term(s)), subject to earlier termination in accordance with this Agreement.
- 4.2 The Initial Term will automatically extend for one (1) year periods (i.e. Extended Term(s)) unless either the Customer or Objective cancels an automatic extension within time as set out in clauses 4.3 and 4.4 respectively.
- 4.3 The Customer can prevent an Extended Term from coming into effect by giving written notice to Objective of the

election to cancel in accordance with clause 26.13 to be received at Objective at least thirty (30) days before the end of the then-current Cloud Service subscription period (i.e. Initial Term or Extended Term as the case may be).

- 4.4 Objective can prevent an Extended Term from coming into effect by giving the Customer at least six (6) months' prior notice of the election to cancel to be delivered to the Customer's representative in writing of the election to cancel.
- 4.5 If either Party does not elect to stop an Extended Term within time then the Extended Term automatically comes into effect pursuant to clause 4.2 and the Customer must pay to Objective the annual-in-advance Charges for the Extended Term in accordance with this Agreement and the Buying Record and Objective must supply the Cloud Service for that period.
- 4.6 Stopping an Extended Term means the Customer will continue to be able to use the Cloud Service for the remainder of the then-current Cloud Service subscription period but thereafter all right to use will cease. To be clear, Objective does not refund fees for early cancellation.

## 5 CLOUD SERVICE PARAMETERS

- 5.1 The Cloud Service is supplied on a subscription or time-limited basis. The subscription is based upon the Cloud Service Parameters at the Commencement Date. The Cloud Service is not supplied on a consumption basis based on Customer usage. The Cloud Service Parameters (by way of example, User Volume may be a parameter) operate as both a floor and a limit for the Cloud Service for at least the Initial Term. If at any time during the Cloud Service subscription period the Customer does not use the Cloud Service up to the Cloud Service Parameters set out in the Buying Record that does not oblige Objective to reduce its Charges.
- 5.2 At any time during the Cloud Service subscription period the Customer may request Objective to increase any or all of Cloud Service Parameters and this change, if agreed by Objective, will be documented as a change to the Buying Record.
- 5.3 Charges for increases to Cloud Service Parameters will be at Objective's then-current pricing for the Cloud Service unless otherwise agreed in the Buying Record.
- 5.4 At any time during the Cloud Service subscription period the Customer may request Objective to reduce the Customer's Cloud Service Parameters effective from the start of the next Extended Term period by seeking a documented change or variation from Objective through the Customer's allocated Objective Account Manager.
- 5.5 Objective reserves a right to conduct an audit of usage against Cloud Service Parameters at least once per annum during the Term and the Customer will cooperate reasonably with such audit.
- 5.6 The Customer acknowledges that excess usage beyond the paid Cloud Service Parameters ceiling, or other increases of any Cloud Service Parameters of the Cloud Service, is automatic acceptance of an obligation to pay Charges for the excess for the period starting when the excess began to the end of the then-current Cloud Service subscription period.

## 6 SUPPORT SERVICE

- 6.1 Objective will provide the Support Service detailed in the Buying Record.
- 6.2 The period for supply of the Support Service is the same as the Cloud Service subscription period.
- 6.3 The Charges for the subscription to the Cloud Service covers the supply of the Support Service unless otherwise provided in the Buying Record.
- 6.4 The Support Service for the Cloud Service will be as set out in the Buying Record and the Support Handbook is incorporated into and form(s) part of this Agreement.

## 7 ACCEPTABLE USE

- 7.1 The Customer may only use the Cloud Service for its internal business purposes and within the Cloud Service Parameters set out in the Buying Record.
- 7.2 The Customer agrees it will be solely responsible for connectivity and access to the Cloud Service, that is, access to the Hosted Environment, use of the Application and Cloud Service Documentation by all Users and for all Customer Data generated or filed within the Application and Support Portal.

7.2 The Customer will only use the Cloud Service in compliance with, and only as permitted by, applicable Law. If the Customer's use of the Cloud Service requires it to comply with industry-specific regulations, the Customer will be solely responsible for such compliance and agrees not to use the Cloud Service in a way that would subject Objective to any industry-specific regulations without obtaining Objective's prior written agreement.

7.3 The Customer will:

- (a) ensure that its technical environment within which Support Contacts and other Users will be utilising the Application is compliant with the Cloud Service Documentation;
- (b) ensure Customer Data is uploaded in the correct format in compliance with the Cloud Service Documentation;
- (c) ensure the suitability, accuracy and legality of Customer Data;
- (d) ensure the disclosure of personal identification information as Customer Data or otherwise, and the collection by Objective of same, is permitted under privacy and data processing legislation;
- (e) be responsible for all network and communications links from its premises to the authorised access point to the Hosted Environment;
- (f) scan Customer Data for Viruses and do all acts and things reasonably necessary to avoid introducing a Virus to the Application or its Hosted Environment;
- (g) do all acts and things reasonably necessary to avoid causing or permitting an Information Security Incident;
- (h) ensure Support Contacts are the only Users who contact the Support Centre for Support Services;
- (i) protect passwords for Users of the Application. If passwords are compromised this will remain the sole responsibility of the Customer to the extent not caused or contributed to by Objective;
- (j) ensure it has in place appropriate licences for Customer Data used as part of the Cloud Service;
- (k) comply with the Cloud Service Support Handbook and any release notes, policies and instructions supplied by Objective governing the use of the Cloud Service; and
- (l) complete its Customer Data Download activity before the end of the Customer Data Retention Period, howsoever it ends.

7.4 The Customer will not:

- (a) use the Cloud Service except in compliance with all relevant Law, including concerning copyright, defamation, discrimination, threats, indecency and obscenity, and any policies, directives and guidelines relating to information security, data transfer and privacy protection affecting the Customer;
- (b) attempt to circumvent any authentication or other security measures to access the Application;
- (c) open, break, crack, scan, read or otherwise violate the Application or any protected file relevant to the Application;
- (d) probe or scan or test the vulnerability of the Hosted Environment except with Objective's prior written consent which may be given or withheld at Objective's discretion;
- (e) copy the Application in any form or download the Application, whether in source or object code form;
- (f) manipulate or bypass or attempt to manipulate or bypass the Storage Allocation for Customer Data;
- (g) create derivative works from the Application or Cloud Service Documentation;
- (h) merge or otherwise subsume the Application or Cloud Service Documentation within or with other software or documents to form a combined work. To be clear, this is a prohibition on merger and subsuming and it does not apply to simple integration to the Customer's third party applications;
- (i) give, perform, deliver, display, distribute, licence, sub-licence, lease, rent, loan or resell the Application or Cloud Service Documentation, or any part thereof, to any third party whether associated with the Customer or not, or purport to do any of the foregoing, or otherwise encumber the Application or Cloud Service Documentation in any way;
- (j) reverse engineer, reverse compile, decompile, disassemble, or otherwise attempt to derive the source code or create derivative works from the Application;

- (k) intentionally, recklessly or negligently overload the processing capacity of the Hosted Environment in any way, including but not limited to, by introduction of a robot to flood the network or do any of the foregoing in respect of the Support Portal; or
- (l) publish the results of any benchmark tests run on the Application.

## 8 BUYING RECORD AND CHARGES

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

## 9 CONSENT TO USE ANALYTICS DATA

- 9.1 The Customer acknowledges that the Cloud Service may contain analytics functionality to enable Objective to collect, maintain, process and use technical, operational, usage, diagnostic and related information about how the Cloud Service functions (“**Analytics Data**”).
- 9.2 The Customer agrees Objective may gather and process Analytics Data in clause 9.1 strictly for the purpose of improving Objective’s software and services.

## 10 CUSTOMER DATA AND INTELLECTUAL PROPERTY

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

## 11 PRIVACY, DATA PROCESSING AND CONFIDENTIALITY

- 11.1 Each Party will comply with applicable data privacy and data processing legislation. If the Customer seeks a Data Processing Addendum clause 26.24 below will apply.
- 11.2 As each User Registers or is registered to use the Cloud Service Objective will collect personal identification information about individual Users (“**Customer Privacy Material**”) to Objective as part of Customer Data and Objective will comply with its Privacy Policy in respect of all such Customer Privacy Material.
- 11.3 Objective will only act as a data processor in respect of Customer Privacy Material and will not re-use it or disclose it outside the requirements of this Agreement.
- 11.4 Objective reserves a right to update the Privacy Policy from time to time to ensure compliance with Law and in any event on not less than thirty (30) days’ prior written notice.
- 11.5 Each Party agrees that it will use the same degree of care (not being less than reasonable care) to protect the other Party’s Confidential Information as it uses to protect its own Confidential Information, and will not disclose the other Party’s Confidential Information, except:
- (a) to employees, agents, contractors or advisors needing to know the information for the purposes of this Agreement and who have agreed to keep such information confidential;
  - (b) with the other Party’s consent;

- (c) if required to do so by Law or a stock exchange; or
- (d) as strictly required in connection with dispute resolution or legal proceedings relating to this Agreement.

## 12 INFORMATION SECURITY

- 12.1 Objective uses reasonable security technologies in providing the Cloud Service.
- 12.2 If Objective becomes aware of an actual, alleged or suspected Information Security Incident or any other unlawful access to any Customer Data stored on Objective's equipment or in Objective's facilities, or those of their subcontractors, or unauthorised access to such equipment or facilities, resulting in loss, disclosure or alteration of Customer Data or Website defacement, Objective will:
- (a) investigate the alleged or suspected breach;
  - (b) notify the Customer of the outcome of any such investigation; and
  - (c) take reasonable commercial steps to implement rectification measures if an actual breach occurred.
- 12.3 Objective confirms:
- (a) Its Customer Data information security safeguards are no less rigorous than those used by Objective for its own information security; and
  - (b) It is in and will remain in compliance with its information security program in all material respects.
  - (c) prior to permitting any subcontractor to access Customer Data, Supplier shall conduct a reasonable, documented investigation of such subcontractor to verify that it is capable of maintaining the privacy, confidentiality and security of Customer Data in compliance with this Agreement;
  - (d) Objective's commercial contact nominated on the Buying Record, or their delegate, will be the individual who will serve as Customer's ongoing point of contact for purposes of addressing issues with respect to the use and security of Customer Data during the Term and following the termination or expiration of this Agreement. Such individual will be accessible to Customer and will cooperate with Customer to address such issues.
- 12.4 Objective confirms it has implemented and will maintain the following minimum controls with respect to Customer Data:
- (a) Organisational and technical measures designed to ensure that Customer Data is not processed by Objective for any purposes other than for the performance of the Services under the Agreement;
  - (b) Customer Data is logically or physically segregated from any other of Objective's customers' data;
  - (c) Physical controls to protect information assets from environmental hazards and unauthorized access, and to manage and monitor movement of persons into and out of the Hosted Environment where Customer Data is stored, processed, or transmitted;
  - (d) Operational procedures and controls to ensure technology and information systems are configured and maintained according to prescribed internal standards;
  - (e) Application security and software development controls designed to prevent the introduction of security vulnerabilities in any software developed by Objective;
  - (f) Network security controls, including the use of firewalls and intrusion detection/prevention systems to help protect systems from intrusion and limit the scope or success of any attack or attempt at unauthorised access to Customer Data.
  - (g) Vulnerability management and regular application, operating system and other infrastructure patching procedures and technologies to identify, assess, mitigate and protect against new and existing security vulnerabilities and threats, including viruses, bots, and other malicious code.
  - (h) Encryption of Customer Data at rest and use of TLS for data transfer across public networks;
  - (i) Business resiliency/continuity and disaster recovery procedures to ensure Objective's ability to maintain service and recover from foreseeable emergency situations or disasters in a timely manner;
  - (j) Change management procedures to ensure all modifications to Objective's technology and information assets are properly tested, approved, recorded, and monitored;

- (k) Incident management procedures to allow for the proper investigation, response, mitigation and notification of events related to the confidentiality, integrity, and availability of Objective's technology and information assets;
- (l) Organisational management to ensure the proper development and maintenance of information security and technology policies, procedures and standards;
- (m) Background checks (including criminal background checks) of any personnel who may gain access to Customer Data that are repeated at adequate intervals, and administrative controls to ensure no one convicted of a crime of dishonesty, breach of trust, or money laundering is permitted to access Customer Data;
- (n) Objective shall notify Customer in advance of any changes in the controls or other safeguards that would result in a material weakness in, or have an adverse impact on, the security of Customer Data; and
- (o) On termination of this Agreement for any reason or upon request, Supplier will cease processing Customer Data, enable the Customer to extract its Customer Data, and then securely delete or destroy all Customer Data, as applicable, in Objective's possession (except as prohibited by law or other explicit data retention and/or return provisions in this Agreement). To the extent any Customer Data is retained by Objective, Objective's confidentiality and security obligations shall continue in accordance with the Agreement.

### 13 MEASURING AND REPORTING AVAILABILITY

- 13.1 Where the Cloud Service requires an Onboarding Project as contemplated in clause 3.3 then a bedding down period of sixty (60) days following completion of the Onboarding Project will apply before Objective will commence to formally measure and report on Availability.
- 13.2 Objective will measure Availability each month during Support Hours against the Availability Target.
- 13.3 Objective will measure Availability by performing automated tests for a valid response from the Application in the Hosted Environment every five (5) minutes during Support Hours. A period of non-Availability will commence at the point in time when Objective does not receive a valid response to the third of three (3) consecutive tests and Availability is resumed at the point in time Objective receives a valid response to a test.
- 13.4 If Objective identifies any interruption to Availability Objective may log a ticket to the Support Portal. If the Customer experiences any interruption to Availability the Customer may notify Objective and record the experience in accordance with the Cloud Service Support Handbook.
- 13.5 Certain periods in each month when Availability is not achieved are excusable for the purposes of calculating the Availability Target as Permissible Downtime.
- 13.6 Objective will arrange automated reports from its Hosted Environment as to the Availability achieved each month. Such automated reports are deemed to be conclusive as to the periods of Availability and non-Availability, if any, during the relevant month. The automated reports will be accessible to the Customer via the Support Portal.
- 13.7 If the Availability Target is not achieved in any month due to Permissible Downtime then the Availability Target is deemed to have been achieved in that month. The report in clause 13.6 is deemed to be conclusive as to achievement of the Availability Target in the relevant month. If the Customer has any reason to doubt the veracity of a report under this clause 14 the Customer may make a written submission to Objective setting out reasons for the doubt and Objective will act reasonably and promptly to assess that submission. Either party may submit any dispute about an Availability report to the dispute resolution process at clause 25.

### 14 UPDATING THE CLOUD SERVICES

- 14.1 Objective may, from time to time, develop New Releases of the Application and pursue changes to the Hosted Environment (subject always, in the case of the Hosted Environment to the obligation to maintain the Hosted Environment location in Australia). Objective will roll out New Releases and changes to the Hosted Environment at Objective's discretion.
- 14.2 Before rolling out New Releases or changes to the Hosted Environment Objective will conduct tests in a test environment to ensure the Customer can:
  - (a) continue to, as applicable, log in to the Website; and

- (b) continue to interface with the Application.
- 14.3 When a New Release of the Application is rolled out Objective will make release notes available detailing the change or changes. The release notes will be accessible on the Support Portal.

## 15 DISASTER RECOVERY TESTS AND PENETRATION TESTS

- 15.1 Objective may conduct a Disaster Recovery Test once per annum throughout the Term to test the processes for Disaster declaration and recovery.
- 15.2 The performance of a Disaster Recovery Test will be carried out as Maintenance (Scheduled).
- 15.3 Objective may conduct a Penetration Test once per annum as part of the Cloud Service internal processes. Objective is not obliged to but may elect at its sole discretion to share the outcome of its Penetration Test(s) with the Customer subject to the Customer executing a Confidentiality Agreement in respect of that disclosure.
- 15.4 The Customer may, upon supply of a written request to Objective, and subject to Objective's written consent which may be given or withheld at Objective's election, including consent on condition of the Customer's confidentiality as to the outcome of the testing, conduct one (1) Penetration Test per annum during the Term at the Customer's own expense. The Customer will comply with all policies and processes imposed by the Objective's data centre supplier in respect of the Customer's test. The Customer will promptly, and in a reasonable form, share with Objective the outcome of Customer's Penetration Test.

## 16 BACKUP, MONITORING & MAINTENANCE

- 16.1 Objective will perform Backup in accordance with the Backup Timetable for the purpose of Cloud Service continuity.
- 16.2 Backups are overwritten at a reasonable frequency determined by Objective up to every thirty (30) days.
- 16.3 Objective does not offer individual restoration activity for specific items of Customer Data from Backups as part of the Cloud Service. The Customer may, prior to a relevant Backup being overwritten, engage Objective's professional services division under a separate contract to perform any specific Customer Data restoration activity at Objective's then-current rates.
- 16.4 Objective will perform industry standard Monitoring throughout the Term.
- 16.5 If Monitoring reveals:
  - (a) the Customer's Storage Allocation is substantially used Objective will notify the Customer and the Parties may agree to increase the Storage Allocation as a variation to this Agreement;
  - (b) a circumstance which can reasonably be addressed through the performance of Maintenance (Scheduled), Objective will address the circumstance in the next occasion of Maintenance (Scheduled); or
  - (c) a circumstance which can only reasonably be addressed through the performance of Maintenance (Emergency) Objective may, at its sole discretion, suspend the Cloud Service in accordance with clause 19 and performing Maintenance (Emergency).
- 16.6 Issues which come to Objective's attention through the performance of Monitoring may be notified by Objective directly to Support Contacts or logged in the Support Portal at Objective's election.
- 16.7 Maintenance (Scheduled) will be performed outside of Business Hours and on not less than three (3) days' prior written notice communicated the Support Portal and, as applicable, the Application login page.
- 16.8 Objective will use reasonable endeavours to perform Maintenance (Emergency) outside of Business Hours however the Customer acknowledges and accepts that the performance of Maintenance (Emergency) during Business Hours may arise and if it does arise that will not constitute a breach of this Agreement.
- 16.9 Objective will provide the Customer with written notice of Maintenance (Emergency) as soon as reasonably practicable during, or after, it has been performed, whether advance written notice was provided or not. The written notice will be communicated to through the Support Portal and, if applicable, the Application login page.

## 17 OBJECTIVE INSPECTION

- 17.1 Objective may be required to review Customer Data to determine if it complies with the Law and this Agreement and may prevent access to, delete or refuse to display Customer Data that Objective believes violates the Law

or this Agreement, but Objective does not have any obligation to monitor or review Customer Data. Objective will notify the Customer in advance of any review and give the Customer a reasonable opportunity to respond to Objective's views about compliance with Law.

- 17.2 Provided Objective anonymises and aggregates the information, Objective may inspect and analyse Customer Data information derived from Customer's utilisation of the Cloud Service, strictly for Objective's business purposes of improving the solution, support, training, performance and security processes and identifying trends and potential developments.

## 18 REGULATOR ACCESS

- 18.1 The Parties acknowledge that in the event the Customer provides financial services to members of the public or government services to members of the public, it may be subject to requests by Regulators for access to documentation and information related to this Agreement or on-site visits to the Hosted Environment from which Objective provides the Cloud Service for the purposes of this Agreement, in which case such access will be governed by clause 18.2
- 18.2 Objective will provide reasonable assistance to the Regulator in respect of any Regulator's requests for documentation, access or assistance under this clause 18, but not to the extent of incurring unreasonable costs or putting at risk the supply of the Cloud Service to other Objective customers of the Cloud Service.

## 19 SUSPENDING SERVICE

- 19.1 Objective may suspend the Cloud Service or block Customer's access:
- (a) for Maintenance (Scheduled) and Maintenance (Emergency);
  - (b) if Objective is directed to suspend the Cloud Service by a Regulator, government, administrative, regulatory or law enforcement agency;
  - (c) if Objective reasonably believes the Customer to have undertaken any of the prohibited actions in clause 7.4;
  - (d) if the Customer fails to pay for excess usage pursuant to clause 5.6; or
  - (e) if Customer fails to pay an undisputed invoice or portion of invoice within the late payment notice period as set out in clause 8.11.
- 19.2 Objective will endeavour to give the Customer reasonable advance notice of any suspension, but there may be some situations where it may not be practicable to give advance notice. Objective will use commercially reasonable efforts to narrow the scope or duration of the suspension or limitation as is needed to resolve the issue that prompted the action.

## 20 INTELLECTUAL PROPERTY AND CUSTOMER DATA INDEMNITIES

- 20.1 Subject to clause 20.2, Objective will defend the Customer against any claim brought against the Customer by a third party alleging that the Cloud Service, when used as authorised under this Agreement, infringes the third party's Intellectual Property rights (an "IPR Claim") in breach of the warranty at clause 21.1(a)(ii). Objective will indemnify the Customer and hold it harmless against any damages and costs finally awarded by a court of competent jurisdiction, or agreed to settlement by Objective, (including reasonable lawyer's fees) arising out of an IPR Claim, provided that Objective has received from the Customer: (a) prompt written notice of the IPR Claim (but in any event notice in sufficient time for Objective to respond without prejudice); (b) reasonable assistance at Objective's expense in the defence and investigation of the IPR Claim, including providing Objective with a copy of the IPR Claim and all relevant evidence in the Customer's possession, custody or control; and (c) the exclusive right to control and direct the investigation, defence, and settlement (if any) of the IPR Claim.
- 20.2 Objective will not defend the Customer or indemnify the Customer if the IPR Claim arises due to the Customer combining the Cloud Service with another service or activity, or modifying the Cloud Service, where the IPR Claim would not have arisen but for the combination or modification.
- 20.3 In the event of an IPR Claim, Objective may, at its sole discretion:
- (a) obtain for Customer, on reasonable commercial terms, the right to continue to use the Cloud Service or obtain for Objective the right to continue to provide the Cloud Service, as applicable;

- (b) replace or modify the Cloud Service in a manner so that the infringement or alleged infringement ceases without a material decrease in functionality; or
  - (c) if Objective reasonably concludes that neither (a) nor (b) is practicable, elect to terminate this Agreement and refund to the Customer any Charges pre-paid in respect of the balance of the Term from the time of receipt of the IPR Claim.
- 20.4 The Customer will defend Objective against any claim brought against Objective by a third party alleging that the Customer has misused Customer Data or infringed third party Intellectual Property rights in the course of accessing and using the Cloud Service (a 'CD Claim'). The Customer will indemnify Objective and hold it harmless against any damages and costs finally awarded by a court of competent jurisdiction or agreed to settlement by Objective (including reasonable lawyer's fees) arising out of a CD Claim, provided that the Customer has received from Objective: (a) prompt written notice of the Claim (but in any event notice in sufficient time for the Customer to respond without prejudice); (b) reasonable assistance at the Customer's expense in the defence and investigation of the CD Claim, including providing the Customer with a copy of the CD Claim and all relevant evidence in Objective's possession, custody or control; and (c) the exclusive right to control and direct the investigation, defence, and settlement (if any) of the CD Claim.
- 20.5 This clause 20 sets out the sole, exclusive and entire liability of the Parties arising out of or in connection with third party claims asserting Intellectual Property rights infringement and misuse of data and is the sole remedy of a complaining Party.

## 21 WARRANTIES AND ACKNOWLEDGEMENTS

- 21.1 The following express warranties are made:
- (a) Objective warrants that:
    - (i) it has standing to grant the rights of access contemplated in this Agreement;
    - (ii) it owns or licences the Cloud Service and the Customer's use of the Application in accordance with this Agreement will not infringe the Intellectual Property rights of any person;
    - (iii) will use due care and skill and comply with all applicable Law in the supply of the Cloud Service; and
    - (iv) it will not materially decrease the security or the functionality of the Cloud Service over the Term.
  - (b) The Customer warrants that Customer Data at all times:
    - (i) complies with the Law;
    - (ii) does not infringe any person's Intellectual Property rights, including moral rights, or other rights; and
    - (iii) is not misleading or deceptive, defamatory or obscene.
  - (c) The Parties warrant to one another that by virtue of execution of the Buying Record this Agreement has come into binding legal effect.
- 21.2 The Parties confirm the express warranties in this Agreement, but to the maximum extent permitted by Law, the Parties expressly exclude all terms, conditions, warranties, guarantees, undertakings, inducements and representations, whether implied by legislation, the common law, equity, trade, custom or usage or otherwise, relating to this Agreement or the supply of the Cloud Service.
- 21.3 Objective does not exclude any statutory or implied guarantee, condition or warranty which cannot legally be excluded (including under the Australian *Competition & Consumer Act (2010)*). If any statutory or implied guarantee, condition or warranty applies and cannot legally be excluded, Objective's liability to the Customer under or in respect of any breach of that guarantee, condition or warranty is, to the extent permitted by Law, limited, at Objective's election, to the resupply of the Cloud Service or payment of a sum equal to the fees for the resupply of the Cloud Service at Objective's then-applicable price list.
- 21.4 Objective does not warrant, represent or guarantee that:
- (a) the Cloud Service will be error-free;
  - (b) the Hosted Environment is invulnerable to intrusion or penetration;

- (c) the Application will be compatible with the Customer's own system;
- (d) the supply of Training will result in an absence of User error;
- (e) the Customer's bandwidth and latency expectations, if any, will be met;
- (f) the Availability Target or Support Service target timeframes will be met or exceeded; or
- (g) any future functionality or features will be delivered.

21.5 The Customer acknowledges and accepts that:

- (a) Customer bandwidth is critical for use of the Application and the Customer is responsible for maintaining such bandwidth;
- (b) high demand usage can degrade performance so Objective cannot reasonably and does not guarantee performance of the Application in all circumstances;
- (c) Viruses and new forms of security breaches continue to be developed and to affect computing and telecommunications networks, so Information Security Incidents may occur despite reasonable efforts by Objective to mitigate the risk of such occurrence and Objective cannot reasonably and does not guarantee the security of the Application;
- (d) Objective will perform Upgrades to implement New Releases at Objective's discretion and on Objective's timetable and Objective will not defer or delay any Upgrade nor will Objective maintain a superseded release of the Application for the Customer; and
- (e) no rights of set-off apply in favour of the Customer under this Agreement and the only rights of refund are those expressly addressed in clause 21.3 and clause 23.2;

and the Customer agrees Objective enters into this Agreement with the Customer on the basis of the foregoing acknowledgements and acceptances.

21.6 The remedy in clause 21.3 is agreed by the Parties to be fair and reasonable having regard to the nature of the Cloud Service.

## 22 LIMITATION OF LIABILITY

22.1 Subject to clause 22.2 and 22.3, Objective's liability to the Customer arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence and breach of warranty), or pursuant to statute or in equity or otherwise, shall be limited in aggregate to a sum equal to the Charges paid for the period of one (1) year preceding the event giving rise to the liability. If the event giving rise to the liability occurs within the first year of the Initial Term the sum will be a sum equal to the Charges payable for the first year of the Initial Term shown on the Buying Record.

22.2 In no event will Objective be liable to the Customer for any consequential, indirect, exemplary, special, or incidental damages, even if Objective has been advised of, knows of, or should have known of the possibility of such loss, damage or expense, nor will Objective be liable for failure to make anticipated savings, lost opportunity (including loss of opportunity to earn additional profits or make savings), lost revenue, extra expenses incurred, extra costs of working, lost data including Customer Data, lost profit, damage to any items not provided by Objective, losses arising from business interruption or loss of goodwill, loss of use of service or equipment, loss of technology rights or services, whether arising under theory of contract, tort, strict liability or otherwise. To avoid doubt, consequential loss as a category or type of loss described in this clause are not recoverable by the Customer against Objective.

22.3 The limitations in clause 22.1 and 22.4 do not apply to:

- (a) liability to the Customer for bodily injury, including sickness, or death caused to any person;
- (b) liability to the Customer for loss of or damage caused to the tangible property of any person; and
- (c) liability to Customer under the Intellectual Property indemnity in clause 20.

22.4 The Parties agree to shorten the limitation period for claims, actions, suits or demands ("claim(s)") made by a Party against the other relating to this Agreement, whether arising in contract, tort (including negligence and breach of warranty) or pursuant to statute or in equity otherwise, to one (1) year from the date the claim arose, being the date the Party knew or should have known after reasonable investigation, of the facts giving rise to the claim.

22.5 The Parties agree that the limitation of liability arrangements in this clause are reasonable.

## 23 TERMINATION

23.1 The Customer may terminate this Agreement for convenience if a Force Majeure event occurs, as more particularly described below:

- (a) Objective will, as promptly as practicable upon becoming aware of it, and in any case within two (2) calendar days, give the Customer written notice of the event of Force Majeure and its probable duration;
- (b) Objective must use reasonable efforts to mitigate the impact of the event of Force Majeure;
- (c) Objective's obligations under this Agreement will be automatically suspended for a maximum of thirty (30) calendar days, and, if the Customer so elects, the Agreement may be terminated on the thirty-first (31st) day following the event of Force Majeure;
- (d) Objective must resume its Cloud Service when reasonably able to do so and if it does so resume within thirty (30) days of the occurrence of the event of Force Majeure, the Agreement will continue in effect with no liability arising out of the period of suspension; and
- (e) The Customer must pay Objective all Charges for all Services supplied up to the date of the event of Force Majeure and, if it elects to terminate the Agreement under this clause 23.1 the Customer must promptly make all outstanding payments with no right of refund or set-off.

23.2 Upon a valid termination for convenience under clause 23.1, Objective will pro-rate any pre-paid Charges and refund to the Customer any prepaid amount covering the Force Majeure event period and the period after the termination.

23.3 Either Party may terminate this Agreement for cause before the end of the Term if:

- (a) A Party commits a material breach of the terms of this Agreement and fails to cure the breach within thirty (30) days of receipt of the non-breaching Party's written notice detailing the nature of the breach sufficiently for the breaching Party to be able to address the matter; or
- (b) A Party commits an act of insolvency, comes under any form of insolvency administration, or assigns or purports to novate its rights otherwise than in accordance with this Agreement.

23.4 The Parties agree that a material breach within clause 23.3 includes a failure to pay any undisputed Charges within the late notice period in clause 8.11.

## 24 DISPUTE RESOLUTION

24.1 This clause 24 sets out the resolution process agreed by the Parties if a dispute arises out of or relating to this Agreement, including concerning the breach, termination, validity or subject matter thereof, the performance or non-performance of this Agreement or as to any related claim in restitution or at law, in equity or pursuant to any statute. Neither Party shall commence any court or arbitration proceedings without complying with the remainder of this clause 24.

24.2 The Parties to this Agreement and the dispute expressly agree to first endeavour to settle the dispute by cooperation of and negotiation in good faith by senior authorised representatives over a period of ten (10) Business Days, or longer period if agreed in writing. If no resolution is reached by the end of that timeframe then the dispute must, within ten (10) Business Days, be referred to a mediator in Sydney, Australia agreed by the Parties for mediation administered by the Australia Commercial Disputes Centre ('ACDC'). If the Parties have failed to agree on a mediator within five (5) Business Days then the mediator will be the mediator selected by the Director of ACDC or his or her nominee. Either Party may refer the dispute for mediation and request selection of a mediator as contemplated in this clause 24.2.

24.3 The mediation shall be conducted in accordance with the terms of the ACDC Guidelines for Commercial Mediation ('Guidelines'). The Guidelines set out the procedures to be adopted, process of selection of the mediator and the costs involved for the mediation. The Guidelines are hereby deemed incorporated into this Agreement.

24.4 In the event that the dispute has not been settled within twenty-eight (28) days after appointment of the mediator, or such other period as agreed to in writing between the Parties, the dispute shall be submitted to expert determination in Sydney, Australia, administered by the ACDC and conducted in accordance with the ACDC Rules for Expert Determination ('Rules'). The Rules set out the procedures to be adopted, process of

selection of the expert and the costs involved for the expert determination. The Rules are hereby deemed incorporated into this Agreement.

- 24.5 The expert shall not be the same person as the mediator.
- 24.6 The Parties must pay the mediator's and, if applicable, expert's remuneration in equal shares. Each Party must pay its own costs of the mediation and, if applicable, expert determination.
- 24.7 Nothing in this clause 24 shall prevent a Party from instituting legal proceedings in order to obtain urgent equitable relief from an appropriate court.

## 25 GENERAL

- 25.1 *Binding Agreement:* This Agreement becomes legally binding upon execution of the Buying Record by the Customer.
- 25.2 *Precedence:* If there is any conflict between the components to this Agreement they will be interpreted in the following order of priority: (1) Buying Record; (2) these General Terms of Service; (3) Objective Privacy Policy; and (4) Cloud Service Support Handbook.
- 25.3 *Departures:* The Parties may agree in the Buying Record to add certain additional terms to the General Terms of Service.
- 25.4 *Entire Agreement:* This Agreement contains the entire agreement between the Parties in relation to its subject matter and supersedes all prior agreements and undertakings (oral or written) and the Customer agrees it has not relied upon earlier representations and has only relied upon the materials set out herein.
- 25.5 *Assignment, Transfer and Sub-contracting:* This Agreement and the obligations formed under it are personal to Objective and the Customer. The Parties agree that neither Party may, directly or indirectly, assign, transfer or sub-contract any of its rights and/or obligations under this Agreement, without the other Party's prior written consent which shall not be unreasonably withheld.
- 25.6 *Novation:* Neither Party may novate this Agreement except with the other Party's prior written consent which may be given or withheld at that Party's sole discretion on such terms as that Party thinks fit and in any event on terms not less favourable than the then existing terms.
- 25.7 *Non-solicitation of Objective personnel:* For the duration of this Agreement and for a further twelve (12) months after expiry or termination, the Customer will not attempt to solicit, influence, induce or encourage (or engage others to do so) any Objective personnel with whom Customer has come into contact by virtue of this Agreement to leave their engagement at Objective to join the Customer or any other Party. Publicly published recruitment advertisements for open competitive hiring opportunities are excluded from the foregoing restraint.
- 25.8 *Publicity:* Subject to the Customer's prior written consent which shall not be unreasonably withheld, Objective may use the Customer's name and logo in any public news release or statement, case study and on Objective's website to publicise the fact the Customer is a client of Objective's Cloud Service. Objective may use the Customer's name in Objective's annual report and ASX notifications without the Customer's prior consent.
- 25.9 *Waiver:* Any waiver under this Agreement must be in writing. Waiver of any part of this Agreement does not constitute a waiver of any other part of this Agreement.
- 25.10 *Governing Law and Jurisdiction:* This Agreement is governed by and must be construed in accordance with the laws of New South Wales, Australia. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales for any proceeding in connection with this Agreement without regard to choice or conflicts of law rules and waives any right it might have to claim that those courts are an inconvenient forum.
- 25.11 *Export Laws:* The Customer will comply with all applicable export and import control laws, restrictions, national security controls and regulations of any country in its use of the Services and, in particular, the Customer will not export or re-export Services or the Cloud Service Documentation or any Objective Confidential if prohibited by export laws
- 25.12 *Variation:* The Parties can only vary, modify, amend or add terms to this Agreement if such variation is in writing signed by a Representative of each Party. To avoid doubt, if the Customer issues a purchase order or any similar document which contains pre-printed or other purported terms and conditions, those pre-printed (or other) terms and conditions shall not have any legal or equitable effect.
- 25.13 *Notices:* All notices related to this Agreement will be in writing and will be effective upon (1) personal delivery, (2) the third Business Day after mailing, or (3), except for notices of termination or an indemnifiable claim ('**Legal**

**Notices**'), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to the Customer will be addressed to the relevant billing contact designated by the Customer and all other notices will be addressed to the designated Representative of the Customer.

- 25.14 *Relationship*: The relationship between the parties is one of independent contractors. Nothing in this Agreement shall be regarded as giving one Party any authority to bind the other to any agreement or purport to act as the agent of the other Party. Each Party covenants and agrees that it shall not represent to any person, or act so as to cause any person to believe, that Party or any of its employees, agents, contractors or officers has or have such an authority to act as the agent of the other Party.
- 25.15 *Third-Party Beneficiaries*: There are no third-party beneficiaries under this Agreement. The Customer's Users are not third party beneficiaries to the Customer's rights under this Agreement.
- 25.16 *Severability*: If a provision of this Agreement is invalid, illegal or unenforceable, then that provision to the extent of the invalidity, illegality or unenforceability must be ignored in the interpretation of the Agreement.
- 25.17 *Time*: Time is not of the essence of this Agreement except in relation to payments of Charges, giving notice relating to automatic renewal, giving notice in relation to infringement of Intellectual Property, and the reduced liability period.
- 25.18 *Survival*: Clauses relating to Confidential Information and privacy, Intellectual Property, prohibited activities of the Customer, limitation of liability, shortened liability period, payments and dispute resolution have continuing effect and survive termination of this Agreement.
- 25.19 *Rights*: All rights not expressly granted to the Customer in this Agreement are reserved by Objective.
- 25.20 *Electronic Signatures*: Electronic signatures that comply with applicable law are deemed to be original signatures.
- 25.21 *Updating These Terms*: Objective reserves a right to update these General Terms of Service from time to time provided that any changes shall not be adverse to the Customer having regard to the Customer's rights under this Agreement and provided further that Objective gives the Customer at least thirty (30) days' prior written notice of the change.
- 25.22 *Exclusions*: Neither the United Nations Convention on Contracts for the Sale of Goods nor the United States Uniform Computer Information Transactions Act (UCITA) apply to this Agreement, regardless of where the Customer is located.
- 25.23 *Anti-Corruption and Anti-Bribery*: The Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any Objective employee or agent in connection with this Agreement. The Parties agree reasonable gifts and entertainment provided in the ordinary course of business are not illegal or improper for the purposes of this clause.
- 25.24 *Data Processing Addendum*: If the Customer is located in a country whose governing data privacy law is the European Union (EU) General Data Protection Regulation (GDPR) (as it is commonly called) or equivalent legislation, the Customer may determine that it is necessary to incorporate a Data Processing Addendum to this Agreement to comply with that law and enable Objective to process Customer Privacy Material in accordance with clause 11. If the Customer makes that determination then the Parties will enter into Objective's Data Processing Addendum for Software at [www.objective.com](http://www.objective.com).

## 26 DEFINITIONS AND INTERPRETATION

- 26.1 *Affiliate* means any entity controlled by, under common control with, or controlling a Party, where "controlled", "control" or "controlling" means the ownership, directly or indirectly, of more than fifty (50) percent of the shares, voting rights or other equity interest in the Party or an affiliated Party.
- 26.2 *Application* means the specific Objective cloud software solution(s) set out in the Buying Record including any New Releases rolled out over the Term.
- 26.3 *Cloud Service Parameters* means the Availability Target, User Volume, Environment Volume, Customer Connectivity, Disaster Recovery Service, Hosted Environment, Storage Allocation and level of Support Service.
- 26.4 *Availability* means the Application is operational in its Hosted Environment in accordance with Cloud Service Documentation, and accessible to the Customer for use by Users via Web Browser over the Internet or as otherwise required for the Cloud Service. For the purposes of this definition "operational" means that Objective tests the Application regularly in accordance with this Agreement to assess Availability by measuring valid responses to each test.

- 26.5 **Availability Target** means the target ratio of Availability calculable each month of the Term expressed as the percentage, as set out in the Buying Record. By way of example, the standard Availability Target may be ninety-nine and half (99.5%) percent.
- 26.6 **Backup** means Objective's machine operation to record a copy of the Application together with all client files, databases and Customer Data excluding cache data.
- 26.7 **Backup Success** means the machine operation of Backup confirms a successful outcome. To be clear Backup Success does not include a review exercise by Objective consultants to authenticate or otherwise investigate the outcome of the Backup.
- 26.8 **Backup Timetable** means incremental Backup occurring each Business Day and overwritten every thirty (30) days, and performed after Business Hours, unless otherwise provided in the Buying Record. By way of example, the Backup Timetable may be after 6pm and before 8am on Business Days.
- 26.9 **Business Day** means any day that is not Saturday, Sunday or a formal public holiday in Australia, the United Kingdom or New Zealand at the location of Objective's office nearest to the Customer's primary location.
- 26.10 **Business Hours** means the hours between 8 a.m. and 6 p.m on Business Days except as otherwise provided within the Cloud Service Support Handbook.
- 26.11 **Buying Record** means:
- (a) if the Customer subscribes by completing an online transaction, the Tax Invoice generated by Objective's online purchase process and any updates to the details of it made through the Online Account from time to time throughout the Cloud Service Period; and
  - (b) if the Customer subscribes by signing a Cloud Order Form, the Cloud Order Form signed by Objective and any updates to it made by written consent of the parties from time to time throughout the Licence Period.
- 26.11 **Charges** means the prices to be paid by the Customer for Objective's supply of the Cloud Service as set out in the Buying Record.
- 26.12 **Cloud Order Form** means the document called "Objective Cloud Service Order Form" forming part of this Agreement and signed by authorised signatories of the Parties.
- 26.13 **Cloud Service** means the particular Objective software-as-a-service subscription solution(s) identified in the Customer's Buying Record, including all updates and new releases, plug-ins adaptors, components, modules programs third party software, interfaces and Objective supplied data.
- 26.14 **Cloud Service Documentation** means Objective's publicly published material for Users of the Application including release notes.
- 26.15 **Cloud Service Support Handbook** means the document detailing Objective's supply of support services for the Cloud Service in effect as at the Commencement Date and as otherwise updated in accordance with this Agreement.
- 26.16 **Commencement Date** means the start date of this Agreement set out in the Buying Record or if no date is shown then the date on which the last party signs the Buying Record.
- 26.17 **Confidential Information** means all information concerning a Party's business or purpose, including information marked or otherwise designated as confidential, that the discloser treats as confidential or which the recipient knows or ought reasonably to know is confidential, and includes any trade secret, pricing list or fee formula or any information relating to the financial position of a Party. To be clear, it includes as Objective's Confidential Information the Application, including its New Releases, and the Cloud Service Documentation and the Charges and it covers, as Customer's Confidential Information, Customer Data. It does not, however, include any information which is in the public domain other than as a consequence of the breach of an obligation of confidence under this Agreement or owed to any third party.
- 26.18 **Currency** means Australian dollars unless a different currency is provided in the Buying Record.
- 26.19 **Customer** means the Party identified as the Customer under this Agreement as set out in the Buying Record.
- 26.20 **Customer Connectivity** means the connection type to the Hosted Environment from the Customer, accommodated by Objective as set out in the Buying Record. By way of example the Customer Connectivity may be site-to-site VPN.
- 26.21 **Customer Data** means the electronic material and information generated as content by the Customer's Users in

the course of accessing and using the Application, including but not limited to text, logos, diagrams, surveys, forms and all other like material.

- 26.22 **Customer Data Download** means the activity of the Customer to extract, copy or save Customer Data from the Hosted Environment at the end of the Term to information technology systems owned or arranged by the Customer, and may involve downloading .pdfs of Cloud Service outputs, exporting XML versions of Cloud Service outputs, and saving previously uploaded files (including but not limited to logos, images, Word documents and video clips).
- 26.23 **Customer Data Retention Period** means thirty (30) days following termination of the Agreement.
- 26.24 **Customer Data (Support)** means the Customer's incident notices and any follow-up and other material submitted to the Support Portal as set out in the Cloud Service Support Handbook.
- 26.25 **Disaster** means a circumstance in which all or part of the primary data centre only of the Hosted Environment is substantially adversely affected in some way with the result that the Application is reasonably unlikely, in Objective's reasonable opinion, to be Available at that location for a period of time, while the secondary site of the Hosted Environment is unaffected.
- 26.26 **Disaster Recovery** (commonly referred to by its acronym "DR"), means the processes and actions to cut-over operation of the production instance of the Application from the primary data centre of the Hosted Environment where it has experienced a Disaster, to the secondary data centre of the Hosted Environment as detailed in the Buying Record. Objective's tiers for Disaster Recovery are as follows:
- (a) Cold (DR-C) means Backups are stored at the secondary data centre for use in the event of a Disaster, along with certain infrastructure which is present but not enabled. Synchronisation between data centres is not in effect. In the event of a Disaster the infrastructure will be enabled and Backups loaded;
  - (b) Warm (DR-W) means Backups are stored at the secondary data centre along with some enabled infrastructure. Partial synchronisation between the data centres is in effect. In the event of a Disaster Backups will be loaded to augment the partial synchronisation;
  - (c) Hot (DR-H) means the primary data centre and the secondary data centre are equivalent. Complete synchronisation is in effect.
- 26.12 **Disaster Recovery Test** means Objective's planned test to determine if its processes and activities of Disaster Recovery result in successful cut-over from an affected primary data centre of the Hosted Environment to an unaffected secondary data centre.
- 26.13 **Environment Volume** means the maximum number of production and non-production instances of the Application allocated to the Customer as set out in the Buying Record at the Commencement Date, and any further such environment(s) as agreed throughout the Term in accordance with this Agreement.
- 26.14 **Exit Service** means the closing activities of the Cloud Service undertaken by Objective as detailed in clause 3.
- 26.15 **Extended Term** means an extension to the Initial Term pursuant to clause 4.2.
- 26.16 **Force Majeure** means a situation, circumstance or event beyond the control of Objective that directly or indirectly prevents it from complying with any of its obligations under this Agreement including, but not limited to: acts of God (such as, without limitation, fire, weather event, lightning strike, flood, tidal wave, earthquake, storm, cyclone or natural disaster); war hostilities (whether declared or not and including act of foreign enemies, requisition or embargo); civil commotion (including rebellion, revolution or insurrection); contamination by radioactive, toxic, chemical or biological agents; explosion; acts or threats of terrorism, malicious damage or sabotage; action or inaction by a court or government agency or authority, including denial, refusal or failure to grant any permit or authorisation, licence, approval or acknowledgement despite timely best endeavours exercised by Objective to obtain the grant; strikes or any form of civil or labour disturbance which does not solely affect the workforce of Objective; accident; unavailability of materials, utilities or infrastructure, including Internet and phone access; unforeseeable breakdown of any facilities, plant or equipment; and any other event against which Objective could not have reasonably taken precautions.
- 26.17 **General Terms of Service** means clauses 1 to 27 shown here as may be modified by a Buying Record.
- 26.18 **Hosted Environment** means, as the context requires, (a) the primary centralised location of the Application in a data centre as arranged by Objective, including the Web Servers on to which the Application has been loaded, the system components for Storage and all internal connectivity, up to and including the firewall and routers at

the perimeter of the data centre, comprised of a production environment for the Application and a non-production environment or environments, as the case may be, as set out in the Buying Record; and (b) a secondary data centre location for Disaster Recovery, up to and including the firewall and routers at its perimeter.

- 26.19 **Hosting Services** means making the processes and activities by which Objective makes the Application accessible for Customer's Users to use via a Web Browser over the Internet from the Hosted Environment.
- 26.20 **Information Security Incident** means an event or circumstance where the security of information used in the Cloud Service is compromised in any manner, including by suspicious emails with attachments or links; compromise or corruption of digital material; unauthorised access or intrusion into the Hosted Environment; intentional or accidental introduction of Viruses to the Hosted Environment; denial of service attacks; hacking of a computer, phone, tablet or other device; phishing; phone or other device tapping; suspicious network activity; lost or damaged computer, phone, tablet or other devices; data spills; and unauthorised copying of digital material.
- 26.21 **Initial Term** means the minimum period during which the Cloud Service is to be supplied under this Agreement as set out in the Buying Record.
- 26.22 **Intellectual Property** means any industrial or intellectual proprietary rights under statute or at common law or equity which now exist or may exist in the future in any country, including but not limited to copyright, design, trademarks, patents, semi-conductor or circuit layout rights, trade secrets, business names, domain names, social media, blog and other internet titles, Confidential Information, and any application for any of the rights referred to above. Intellectual Property subsists in all of Objective's documents and other materials including software code, whether source or object, application interfaces, routines and related programming and design language, instructions, methods, techniques, links and templates, manuals, document, diagrams and images including virtualised images of software, howsoever stored, including on USB stick or other portable device.
- 26.23 **Internet** means the global system of interconnected computer networks as the term is commonly understood.
- 26.24 **Law** means all local, state, federal and international laws and regulations which may apply to the Agreement or any right or obligation pursuant to it.
- 26.25 **Monitoring** means checking the functionality of the Application, checking the operation of the Hosted Environment, checking for the presence of Viruses and Information Security Incidents, checking the Customer's use of the Storage Allocation and sending tests to determine Availability.
- 26.26 **Maintenance (Scheduled)** means maintenance work undertaken by Objective according to a known timetable during which Objective takes the Application offline, to preserve and rectify: (1) part or parts of the Hosted Environment; (2) part of parts of the Application; or (3) the operation of the Application in the Hosted Environment and the operation of the Hosted Environment itself.
- 26.27 **Maintenance (Emergency)** means urgent maintenance work undertaken by Objective as required during which Objective takes the Application offline, to preserve and rectify: (1) part or parts of the Hosted Environment; (2) part of parts of the Application; or (3) the operation of the Application in the Hosted Environment and the operation of the Hosted Environment itself.
- 26.28 **New Release** means a new version of the Application or a modification to the Application.
- 26.29 **Objective Privacy Policy** means the privacy policy of Objective published at [www.objective.com/privacy](http://www.objective.com/privacy)
- 26.30 **Onboarding Project** means the initial professional services project by which Objective configures the Application for the Customer and provides training and, if applicable, data migration and integration. To be clear the Onboarding Project is separate from the Cloud Service and will be separately addressed in a professional services contract.
- 26.31 **Objective** means the Objective entity identified on the Buying Record but if no such entity is shown then Objective Corporation Limited ABN 16 050 539 350 of Level 30, 177 Pacific Highway, North Sydney, 2060, New South Wales, Australia.
- 26.32 **Party** means a party to this Agreement, being the Customer or Objective, as the context requires.

- 26.33 **Permissible Downtime**. Means any or all of the following:
- (a) Any period for Maintenance (Scheduled);
  - (b) Any period approved by the Customer in writing or mutually agreed with Objective;
  - (c) Any period arising from an event of Force Majeure.
- 26.34 **Regulator** means any government agency having regulatory or supervisory functions regarding the Customer's business or operations or in relation to the Customer's access to and use of the Cloud Service.
- 26.35 **Representative** means a director, officer, employee, agent or sub-contractor of a Party.
- 26.36 **Storage** means the disc space in the Hosted Environment allocated to the Application and multiple files and Customer Data.
- 26.37 **Storage Allocation** means the quantity of disc space in the Hosted Environment allocated to the Customer's subscription to the Cloud Service.
- 26.38 **Support Centre** means Objective's help desk staffed by skilled consultants providing email and telephone support to Support Contacts.
- 26.39 **Support Contact** means a subset of Users, being those specific Customer representatives, whether employees, contractors or agents or a third-party entity, who are authorised by the Customer to access and use the Support Service.
- 26.40 **Support Hours** means the hours of Objective consultant support for the Support Service as set out in the Cloud Service Support Handbook, unless otherwise provided in the Buying Record. By way of example, standard Support Hours are Business Hours i.e 8am to 6pm.
- 26.41 **Support Portal** means Objective's common online application and environment, accessible via the Web, into which Objective and Support Contacts may submit incident notices, and otherwise participate in incident management. The Support Portal is located separately from the Hosted Environment and does not form part of the Hosted Environment.
- 26.42 **Support Service** means the activities to support the Cloud Service as set out in the Cloud Service Support Handbook, unless otherwise agreed in the Buying Record.
- 26.43 **Tax** means any GST, VAT, sales, use, withholding, property, excise, service or other tax.
- 26.44 **Tax Invoice** has the meaning given under the Australian *A New Tax System (Goods and Services Tax) Act (1999)* or equivalent legislation in the United Kingdom or New Zealand for Customers located in either of those jurisdictions.
- 26.45 **Term** means, as the context requires, the Initial Term and any Extended Term(s) arising after the Initial Term pursuant to clause 4 or shorter period in the event of earlier termination pursuant to clause 23.
- 26.46 **Training** means the activities of Objective to teach and instruct the correct use of the Application.
- 26.47 **Upgrade** means the activity undertaken by Objective of implementing a New Release of the Application or making changes to the Hosted Environment.
- 26.48 **URL** means a Web address being a reference to digital resources located on Web Servers on pages. For the purpose of this Agreement, the URL is the address, and any alternative back-up address, of the Website.
- 26.49 **User** means an individual who is an employee, officer, agent or delegate of the Customer who the Customer has permitted to use the Application as contemplated in this Agreement. To be clear, external financial and tax advisors and external legal advisors invited by the Customer to use the Cloud Service will be "Users" of the Customer for the purpose of this Agreement.
- 26.50 **User Volume** means the maximum number of Users permitted to be allocated by Customer, as set out in the Buying Record at the Commencement Date and as otherwise agreed throughout the Term in accordance with this Agreement.
- 26.51 **Virus** means any malicious code affecting a computer, tablet or mobile telephone or other device operable over the Internet and includes but is not limited to adware, spyware, Trojan horses and worms and other malicious code, whether or not it replicates itself, which has the effect of interrupting, diminishing, altering or stopping the operation of the Application in the Hosted Environment.

- 26.52 **Web** means the World Wide Web being the collection of text, software and other digital resources comprising Websites located on Web Servers, linked by URLs and accessed by persons using Web Browsers over the Internet.
- 26.53 **Web Browser** means software for retrieving, presenting and traversing material on pages of a Website, in particular that used by the Customer to access the Website and use the Application.
- 26.54 **Web Server** means hardware and software upon which digital resources are located and accessible via a Web Browser. For the purposes of this Agreement, the Web Servers are those arranged by Objective upon which the Application is loaded in the Hosted Environment.
- 26.55 **Website** means the digital resources at the URL accessible by Customer using a Web Browser over the Internet and through which the Customer can access and use the Cloud Service.
- 26.56 In this Agreement, unless the context otherwise requires:
- (a) The singular includes the plural and vice versa;
  - (b) Headings are used for convenience only and do not affect the interpretation of this Agreement;
  - (c) A reference to a clause is a reference to a clause of this Agreement;
  - (d) a clause contains a number of sub-clauses then, unless expressly stated otherwise, each sub-clause is an independent requirement or obligation;
  - (e) the word “person” means a natural person or any other legal entity whether incorporated or not;
  - (f) the word “includes” or any form of that word must be construed as if it were followed by the words “without being limited to”;
  - (g) “month” means calendar month and “year” means calendar year;
  - (h) “day” means calendar day;
  - (i) reference to “writing” includes any mode of representing and reproducing words in tangible and permanently visible form and includes facsimile and e-mail transmission.

## 27 CUSTOMERS LOCATED OUTSIDE AUSTRALIA

- 27.1 Objective agrees that:
- (a) If the Customer is located in New Zealand and their Buying Record shows the Currency for Charges is New Zealand dollars then:
    - (i) the governing law of this Agreement under clause 25.10 will be New Zealand and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New Zealand; and
    - (ii) the dispute resolution location under clause 24 will be Wellington, New Zealand and the dispute resolution body will be Resolution Institute.
  - (b) If the Customer is located in the United Kingdom and their Buying Record shows the Currency for Charges is British Sterling, then:
    - (i) the governing law of this Agreement under clause 25.10 will be England, United Kingdom and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in England, United Kingdom; and
    - (ii) the dispute resolution location under clause 24 will be London, England, United Kingdom and the dispute resolution body will be the Centre for Effective Dispute Resolution (CEDR).
- 27.2 All other Customers located outside Australia will be bound by clauses 1 to 26 inclusive without amendment unless otherwise expressly agreed by Objective in the Buying Record.