

Software Licence and Support Agreement - Standard Terms

1. **Agreement**
 - 1.1 Supplier agrees to supply the Software and Services, and the Customer agrees to acquire such Software and Services, on the terms of the Agreement.
 - 1.2 The Agreement is comprised of the following parts:
 - (a) this part which sets out the standard terms and conditions on which Supplier supplies the Software and Services to Customer (**Standard Terms**)
 - (b) the order form signed by both parties to which this document is attached (**Order Form**); and
 - (c) the annexures
 - 1.3 An Agreement is formed between Supplier and Customer upon the parties both signing this agreement/proposal for the supply of the Software and Service set out in the Order Form.
 - 1.4 If there is any conflict or inconsistency between any provisions or parts of the Agreement, then, for the purpose of resolving such conflict or inconsistency, the Agreement shall be interpreted and construed in the following order of priority:
 - (a) the Order Form;
 - (b) the Service Schedules; and
 - (c) clauses 1 to 23 of this Standard Terms.
2. **Commencement Date**
 - 2.1 The Commencement Date means the date in the proposal
3. **Term**
 - 3.1 The Agreement shall commence on the Commencement Date and shall continue for thirty six (36) months (Initial Term) unless extended or earlier terminated in accordance with the Agreement (Term).
 - 3.2 The Initial Term (and any extended Term) will automatically be extended for another twelve (12) months after the Initial Term or then current extended Term unless Customer gives written notice to Supplier of its intention not to extend, such notice to be given not less than twelve (12) months prior to the expiration of the Initial Term or then current extended Term.
 - 3.3 Any extension shall take effect from the end of the Initial Term or the then current extended Term.
 - 3.4 All provisions of the Agreement (including clauses 3.2 to 3.4) shall continue in full force and effect upon any extension.
4. **Customer acting on behalf of a Group**
 - 4.1 The parties acknowledge and agree that the Customer has entered into this Agreement in its own capacity and for the benefit of its owned and operated and franchised stores

- (if any), a current list of which is specified in the Order Form (Group).
- 4.2 The Customer is responsible for the allocation of the Supplier's Software and Services in respect of each individual store within the Group (including, without limitation, the allocation of the Packaged Extra Support Hours). The Customer must promptly notify the Supplier of its allocation of the Supplier's Software and Services upon the Supplier's request.
- 4.3 The Customer is permitted to re-allocate the number of Users to different stores within the Group as required during the Term. The Customer may request additional Users during the Term (whether for a new store or to increase capacity for an existing store) and if agreed by the Supplier, additional Users will be provisioned by the Supplier on the same terms and based on the same rate of Fees as agreed between the parties in the Order Form. For the avoidance of doubt, the Customer is not permitted to decrease the number of Users for the duration of the Term.
- 4.4 The Customer must procure and ensure compliance by each store within the Group of any provision of this Agreement which can, and is intended to, operate in respect of the entire Group including, without limitation, Customer's obligations under clauses 7, 11, 13 and 14 of this Standard Terms.
5. **Fees**
- 5.1 Customer shall pay to Supplier, on and from the Commencement Date, the Fees specified in the Order Form.
- 5.2 Licence Fees are on a monthly basis in advance for each month and in accordance with the invoices the Supplier issues the Customer.
- 5.3 The Monthly Licence Fee may be increased by Supplier each Adjustment Date, by written notice to Customer, by the amount of the CPI Increase as at the Adjustment Date.
- 5.4 Supplier must issue a correctly rendered tax invoice to Customer for all amounts payable under the Agreement.
- 5.5 Customer must make payment of a correctly rendered invoice within 14 (14) days of receipt of such invoice. Payment will be deducted automatically from Customers nominated account via Ezidebit on the 14th day of the month
- 5.6 Supplier may charge Customer, and Customer must reimburse Supplier, for any travel, accommodation, courier, transportation and other out-of-pocket expenses incurred by Supplier in providing the Software or any Services.
6. **Supplier's obligations**
- 6.1 Supplier must:
- (a) perform its obligations under the Agreement with due skill and care; and
 - (b) perform its obligations under the Agreement so as to meet the requirements of each applicable Service Schedule.

7. Customer's obligations

7.1 Customer must:

- (a) provide Supplier with all such reasonable assistance (including, without limitation, the provision of access to premises, personnel and facilities) as may be necessary or desirable to assist Supplier providing the Software or any Services; and
- (b) ensure Supplier is granted all reasonable and necessary access, including necessary security clearances, for the purposes of providing the Software or any Services. For the avoidance of doubt, such access may include access to monitor system operation whilst production activity is taking place, the installation of diagnostic software (including debug build versions of the Software or components) and other tools typically used for software development.

8. Warranties

8.1 Each party represents and warrants to the other that:

- (a) it has the right to enter into the Agreement; and
- (b) neither the execution of the Agreement nor the performance by Customer of its obligations will cause it to be in breach of any agreement to which it is a party or is subject.

8.2 Customer acknowledges and agrees that:

- (a) Supplier does not represent and warrant that there are no errors in the Software or that any such errors, if

present, will be corrected except as part of the Services;

- (b) subject to clause 8.3, and to the maximum extent permitted by law, Supplier is not liable for any Loss (including Consequential Loss) arising directly or indirect from and in connection with Customer's use of (or inability to use) the Software or Services, including, without limitation, failures of the Software in circumstances of power or telecommunications interruptions or failures or any other circumstance beyond the control of Supplier; and
- (c) to the maximum extent permitted by law, Supplier makes no representation nor gives any guarantee or warranty (including, without limitation, of merchantability, acceptable quality, fitness for any particular purpose or fitness for disclosed result) nor has any other liability under any warranty, condition, guarantee or other liability imposed by statute in connection with the Software or Services (Statutory Warranties).

8.3 To the extent that Supplier is liable in connection with any Statutory Warranties, and excluding or modifying the application of, or exercise of, or liability under, such Statutory Warranties would contravene any applicable law or cause this clause to be void, Supplier's liability for any breach of such Statutory Warranties or liability under such Statutory Warranties will be limited, at Supplier's option, to one or more of the following:

- (a) if the liability relates to goods:
 - (1) the replacement of the goods or the supply of equivalent goods;

- (2) the repair of such goods;
 - (3) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (4) the payment of the cost of having the goods repaired; and
- (b) if the liability relates to services:
- (1) the supplying of the services again; or
 - (2) the payment of the cost of having the services supplied again,

and Customer agrees that this limitation of liability is reasonable in the circumstances.

9. Indemnities

9.1 Customer indemnifies, and must keep indemnified, Supplier and its officers, employees, agents and contractors (each, an indemnified party) from and against any and all Loss (other than Consequential Loss) incurred or suffered by any or all of them as a result of:

- (a) any personal injury or death of any person or the loss of, damage to or loss of use of, any real or personal property arising out of or in connection with any act or omission of Customer, its officers, employees, agents and contractors; or
- (b) any breach by Customer, its officers, employees, agents and contractors of any obligation under clauses 11, 13 or 14.

10. Liability

10.1 Customer acknowledges that if it does not perform or procure the performance of a Customer Task by the due date specified for

the performance of the relevant Customer Task, Supplier may be unable to comply with those obligations of Supplier under the Agreement which are dependent on a Customer Task having been performed.

10.2 If Supplier is unable to comply with an obligation under the Agreement which is dependent on a Customer Task being performed, Supplier will not be liable for its failure to comply with that obligation to the extent that such failure was caused by the non-performance of that Customer Task. Nothing in clauses 10.1 or 10.2 requires Supplier to perform any Customer Tasks.

10.3 Each party's liability for Consequential Loss is excluded.

10.4 To the extent permitted by law, the total aggregate liability of Supplier arising under or in connection with the Agreement is limited to an amount equal to the Fees paid by Customer in the twelve (12) months immediately preceding the date that the cause of action arises.

11. Intellectual Property Rights

11.1 Customer acknowledges that:

- (a) Supplier (or its licensors) remains the sole owner of all Intellectual Property Rights in the Software (including any New Releases or Updates) and the Documentation; and
- (b) there is no transfer of title or ownership to Customer of any Intellectual Property Rights in the Software (including any New Releases or Updates) or the Documentation.

- 11.2 Customer agrees that it will not at any time:
- (a) assert any right to or over any Intellectual Property Rights in the Software (including any New Releases or Updates) or the Documentation in any manner inconsistent with its rights under the Agreement;
 - (b) take, appropriate or represent any and all such Intellectual Property Rights as its own;
 - (c) take any action which would or might invalidate, challenge, oppose or otherwise put in dispute Supplier's title to such Intellectual Property Rights; or
 - (d) cause, permit or assist any other person directly or indirectly to do any of the above acts.
- 11.3 Customer shall not alter, obscure, remove or otherwise interfere with any of the trade marks (whether registered or unregistered), trade names, markings or notices affixed to or contained in the Software or the Documentation and shall ensure that all such trade marks, trade names, markings and notices are reproduced in full on any permitted copies of the Software or Documentation made by Customer.
- 11.4 If the Software is Modified by Customer, Supplier or any third party and whether or not authorised pursuant to the Agreement:
- (a) all Intellectual Property Rights in the Software so Modified shall vest in or remain with Supplier;
 - (b) to the extent that Customer has any right or interest in the Software so Modified, Customer assigns to Supplier all Intellectual Property Rights arising out of any Modifications to the Software; and
- (c) Customer agrees to execute all such documents and perform such other acts as are necessary or desirable to give effect to this clause 11.4.
12. **Customer Data**
- 12.1 All Customer Data shall remain, at all times, the absolute and exclusive property of Customer.
13. **Confidentiality**
- 13.1 Each party agrees to ensure that the Confidential Information of the other party (Disclosing Party) is kept confidential.
- 13.2 A party who receives the Disclosing Party's Confidential Information (Receiving Party) must not:
- (a) directly or indirectly divulge or communicate or otherwise disclose the Confidential Information of the Disclosing Party, in whole or part, to any third party; or
 - (b) use any of the Confidential Information of the Disclosing Party for any purpose other than exercising its rights or fulfilling its obligations under the Agreement,
- without the express prior written consent of the Disclosing Party.
- 13.3 A Receiving Party must:
- (a) take all precautions that are reasonably necessary to prevent any unauthorised disclosure of the Disclosing Party's Confidential Information to third parties or unauthorised use of such Confidential Information; and

- (b) inform the Disclosing Party of any suspected or actual unauthorised disclosure or use of such Confidential Information.
- 13.4 A Receiving Party will not be in breach of its obligations with respect to disclosure of the Disclosing Party's Confidential Information if it discloses information that:
- (a) is, or subsequently enters, the public domain, other than through a breach by it of its obligations under this clause 13;
 - (b) is required to disclose by statute, court order or a person acting under the authority of statute or such order;
 - (c) was developed independently by it, without the use of any of the Disclosing Party's Confidential Information; or
 - (d) was provided to it by a third party who was not subject to any obligation or duty of confidentiality at the time it was provided to the Receiving Party.
14. **Security**
- 14.1 Customer shall be solely responsible for the use, supervision, management and control of the Software (including any New Releases or Updates) and the Documentation.
- 14.2 Customer must:
- (a) ensure that users of the Software comply with all obligations imposed by the Agreement;
 - (b) ensure that the Software and Documentation is protected at all times from misuse, damage, destruction or any form of unauthorised use; and
 - (c) promptly notify Supplier of any misuse, damage, destruction, copying or any form of unauthorised use of the whole or any part of the Software by any person.
- 14.3 Customer must keep accurate records of any use, copying, Modification and disclosure of the Software (including record of users who have accessed the Software) and shall:
- (a) permit Supplier (and its representatives) to inspect such records at any time during Customer's normal business hours; and
 - (b) provide to Supplier a copy of all or any part of such records.
15. **Sub-Contracting**
- 15.1 Subject to clause 15.2, Supplier may sub-contract for the performance of the Agreement or any part of the Agreement.
- 15.2 If Supplier sub-contracts the performance of any obligations under the Agreement:
- (a) Supplier shall remain principally liable to Customer for the performance of those obligations; and
 - (b) Supplier must ensure that the sub-contracted party is under binding and enforceable contractual obligations to Supplier equivalent to those provided under clauses 12 and 13 of the Agreement.
16. **GST**
- 16.1 To the extent that a party makes a taxable supply in connection with the Agreement, the consideration payable by a party under the Agreement represents the value of the

taxable supply for which payment is to be made.

16.2 Subject to clause 16.3, if a party makes a taxable supply in connection with the Agreement for a consideration which, under clause 16.1, represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

16.3 A party's right to payment under clause 16.2 is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

16.4 In this clause 16, expressions have the same meaning as they have in the GST Law.

17. Force Majeure

17.1 Each obligation of a party, other than the obligation to pay money, will be suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by Force Majeure.

17.2 Any party seeking to rely on this clause 17:

- (a) must do all things reasonably within its power to bring the circumstances giving rise to the failure or delay to an end; and
- (b) must give written notice to the other party of the reason for the failure or delay by it.

18. Suspension

18.1 Supplier may, at any time, without liability, suspend the provision of Software and/or Services if the Customer fails to pay any

amount owing to Supplier by its due date and Customer fails to pay such amount owing to Supplier within fourteen (14) days of being notified of it.

19. Termination

19.1 Either party may terminate the Agreement immediately by written notice if:

- (a) **(mutual agreement)** the other party agrees in writing to the termination;
- (b) **(Insolvency)** the other party is or becomes Insolvent;
- (c) **(irremediable breach)** the other party breaches a material term of the Agreement and the breach is not capable of being remedied; or
- (d) **(unremedied breach)** the other party breaches a material term of the Agreement and does not remedy the breach within thirty (30) days of being notified of it.

19.2 Without limitation to clause 19.1, either party may terminate the Agreement by giving six months (6) months' written notice to the other party.

19.3 Except in circumstances where Customer terminates the Agreement under clauses (b), (c) or (d), or Supplier terminates the Agreement under clause 19.2, upon termination of the Agreement, Customer must pay Supplier, in addition to any other amount payable to Supplier upon termination, an amount equal to the Monthly Licence Fees for the previous consecutive three (3) billing months multiplied by two (2). The parties acknowledge and agree that this amount is a reasonable and genuine pre-estimate of the Loss and damages likely to be suffered

by Supplier on early termination of the Agreement.

19.4 If the Agreement expires or is terminated, all Software licensed and Services provided under that Agreement are cancelled on and from the date that the Agreement so expires or terminates.

19.5 If the Agreement expires or is terminated:

- (a) the Customer must pay Supplier all amounts due under the Agreement in respect of all Software and Services, within thirty (30) days of the date that the Agreement so expires or terminates;
- (b) within ten (10) days of termination or expiration of the Agreement, Customer must:
 - (1) return (or otherwise destroy at Supplier's direction) all Confidential Information of Supplier (including all copies of the Software and Documentation) in its possession, custody or control; and
 - (2) certify that no Confidential Information of Supplier (including any part of the Software or Documentation) has been retained by Customer;
- (c) the rights and obligations of the parties under the Agreement cease except for:
 - (1) any accrued rights and obligations that have arisen prior to the date of termination or expiration; and
 - (2) any rights and obligations which are expressed, or by their nature

are intended, to continue after termination or expiration, including any such provisions within any Service Schedule, and those referred to in this Standard Terms in clauses 5.5, 5.6, 8, 9, 10, 11, 12, 13, 14.3, 15, 19.3, 19.4, 19.5, 19.6, 20, 21, 22 and 23.

19.6 At the request of Customer, Supplier may, at its sole discretion, provide Customer reasonable assistance upon termination or expiration of the Agreement to assist in the transition to an alternative service provider for an Additional Charge.

20. Interest

20.1 Supplier shall be entitled to charge Customer interest at the rate equivalent to two percent (2%) higher than the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic) on any amounts owing to Supplier under the Agreement.

20.2 Except as where expressly provided to the contrary in the Agreement, the interest payable shall be calculated from (and including) the due date of payment of the amount (and not from the date of any demand for payment of such amount) until (but excluding) the date that payment of the due amount in full (with interest) is received.

21. General Conditions

21.1 The relationship between Supplier and Customer is that of independent contractors and the Agreement does not constitute, and shall not be interpreted as,

- an agency, partnership or joint venture between Customer and Supplier.
- 21.2 Customer must not assign, novate, encumber or otherwise deal in any way with any or all of its rights and obligations under the Agreement without the prior written consent of Supplier.
- 21.3 This Agreement may only be amended by a document in writing signed by the parties.
- 21.4 A party may only waive a breach of the Agreement in writing signed by that party or its authorised representative. A waiver is limited to the instance referred to in the writing (or if no instance is referred to in the writing, to past breaches).
- 21.5 Each party must do all things necessary to carry out the Agreement, including:
- (a) executing documents; and
 - (b) ensuring its employees and agents perform their obligations.
- 21.6 The Agreement (including this Standard Terms and any Service Schedules) records the entire agreement between the parties about its subject matter and succeeds and cancels all other agreements and understandings concerning such subject matter. Neither party has given any warranty or made any representation to the other party about the subject matter of the Agreement, other than those warranties and representations appearing in this Standard Terms.
- 21.7 This Agreement is governed by the law of Victoria. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria and the division of the Federal Court of Australia in that jurisdiction, and the courts of appeal from them. No party

may object to the jurisdiction of any of those courts on the ground that it is an inconvenient forum or that it does not have jurisdiction.

22. Definitions

In the Agreement, unless the context otherwise requires:

Additional Charge means the charge so specified in the Order Form for the Service, or where no charge is specified for the particular Service, the Standard Rates specified in the Order Form.

Adjustment Date means on each anniversary of the Commencement Date during the Term.

Agreement means this agreement between Supplier and Customer for the supply of the Software and Services which comprises of the parts set out in clause 1.2 of this Standard Terms.

Anti-Virus Software means the anti-virus software supplied by Supplier under the Anti-Virus Software Service, as notified by Supplier from time to time.

Anti-Virus Software Service means the Service forming part of the Striven Support Services as specified in the Order Form.

Business Days means any day except a Saturday, a Sunday or any other public holiday in Melbourne, Victoria.

Commencement Date means the date so specified in the Order Form and / or Proposal

Computer means the hardware system with a storage device capable of running the Software under the Supported Operating Environment.

Confidential Information means the confidential information of a party which

relates to the subject matter of the Agreement and includes:

- (a) in the case of Supplier, information relating to the design, specification and content of the Software, materials provided as part of the Services (including training manuals) and Documentation;
- (b) in the case of Customer, its business operations, assets, facilities, personnel, policies, customers, suppliers, products, services, prices or business strategies; and
- (c) in the case of both parties, the terms and conditions of the Agreement.

Consequential Loss means any Loss recoverable at law which is:

- (a) indirect or consequential loss or damage;
- (b) a loss of opportunity or goodwill;
- (c) a loss of revenues;
- (d) a loss of profits;
- (e) a loss of anticipated savings or business; or
- (f) any costs or expenses incurred in connection with the foregoing,

but does not include fines, payments, penalties or administrative assessments imposed by a governmental authority or regulatory body.

CPI means the *All Groups, Consumer Price Index* for Melbourne, Victoria published by the Australian Bureau of Statistics (**ABS**) or, if the index is no longer published or if ABS ceases to exist, the published index which most closely resembles it.

CPI Increase means, in respect of a date, the percentage amount of the increase in CPI as

at the end of the immediately preceding quarter from the end of the same quarter in the previous calendar year or, if there has been no increase in CPI during that period, zero (0).

Customer means the party so specified in the proposal

Customer Data means all data and information of any kind relating to Customer, its business operations, assets, facilities, personnel, policies, customers, suppliers, products, services, prices or business strategies in whatever form and whether or not entered into, stored in, generated by or processed through the Software.

Customer Task means any task to be performed or resource to be provided by Customer under the Agreement (including under any Service Schedules).

Customer's Striven Package means the Striven Package elected by the Customer as specified in the Order Form.

Defect means any defect or error in the Software such that the Software does not operate in conformity with the Documentation.

Documentation means technical and operational documentation (if any) supplied by Supplier to Customer in respect of the Software, and as amended by Supplier from time to time.

Extra Support means the Services so specified in the Order Form.

Fees means any and all fees specified in the Order Form in respect of the provision of the Software and Service.

Force Majeure means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under the

Agreement. Such circumstances shall include but shall not be limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) strikes.

Group has the meaning given to that term in clause 4.1 of this Standard Terms.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*, or any other Act imposing a goods and services tax in Australia.

Packaged Extra Support Hours means the available hours for Extra Support under the Customer's Striven Package as specified in the Order Form.

Initial Term has the meaning given to the Term in clause 3.1 of this Standard Terms.

Insolvent means, in relation to a person, when the person:

- (a) is the subject of an event described in Sections 459C(2) (a) to (f) or Section 585 of the *Corporations Act 2001 (Cth)* (or it makes a statement from which another party to the Agreement may reasonably deduce it is so subject); or
- (b) is an insolvent under administration or suffers the appointment of a controller, administrator, liquidator or provisional liquidator as those terms are defined in Section 9 of the *Corporations Act 2001 (Cth)*; or
- (c) is dissolved; or

- (d) is otherwise unable to pay its debts as and when they become due and payable; or
- (e) being a natural person, commits or suffers an act of bankruptcy; or
- (f) takes or suffers a similar consequence in debt to those in paragraphs (a) to (e) under the law of any jurisdiction.

Notwithstanding the foregoing, paragraphs (a) – (c) do not apply when a person is carrying out an amalgamation or reconstruction whilst solvent.

Intellectual Property Rights means any and all:

- (a) current and future registered and unregistered rights in respect of copyright, designs, semiconductor or circuit layouts, trade marks, trade names, business names, trade secrets, know-how, confidential information, patents, inventions and discoveries;
- (b) applications for grant of any of the above;
- (c) other rights of a similar nature arising (or capable of arising) under statute or at common law in the Commonwealth of Australia or anywhere else in the world; and
- (d) other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation 1967.

Loss means loss or damage of any kind (including liability to a third party).

Modification means:

- (a) any modification, adaptation, alteration or enhancement to the Software; or

- (b) any merger of the whole or any part of the Software with any other software.

Modify means to make a Modification.

Monthly Licence Fee means the licence fee so specified in the Order Form.

New Release means a new release or version of the Software produced to extend, alter or improve the Software by incorporating functionality or performance enhancements.

Order Form has the meaning given to that term in clause 1(a) of this Standard Terms.

Privacy Obligations means the provisions of the *Privacy Act 1988* (Cth) and the privacy policy or privacy statement of Customer.

Release means:

- (a) the release or version of the Software as at the Commencement Date; and
- (b) each subsequent New Release and Update provided by Supplier to Customer under this Agreement.

Software Helpdesk Support means the Services forming part of the Striven Support Services so specified in the Order Form.

Software means the software so specified in the Order Form.

Standard Rates means Supplier's then current standard rates, the current copy of which is specified in the Order Form.

Standard Terms has the meaning given to that term in clause 1(a) of this Standard Terms.

Striven Packages means the packages in respect of the provision of the Software and Services so specified in the Order Form.

Striven Support Services means the Services so specified in the Order Form.

Supplier means Striven Software Pty Ltd ACN 644 610 391 of Level 1, 11 Station Street, Mitcham VIC 3132.

Support Hours means the hours so specified in the Order Form in respect of Customer's Striven Package during which Software Helpdesk Support and Extra Support is accessible by Customer.

Support Period means each period of twelve (12) months whereby the first twelve (12) month period commences on the Commencement Date and each twelve (12) month period thereafter commencing on the anniversary of the Commencement Date.

Supported Operating Environment means the Supported Operating Environment for the Software as specified in the Order Form.

Term has the meaning given to the term in clause 3.1 of this Standard Terms.

Training Services means the Services forming part of the Striven Support Services so specified in the Order Form.

Update means any maintenance releases, service releases, bug fixes, patches and other software produced to correct any Defects in, or to improve existing functionality of, the Software.

Users means the number of licences to the Striven Software required by Customer as specified in the Order Form.

23. Interpretation

In the Agreement, unless the context otherwise requires:

- (a) headings do not affect interpretation;
- (b) singular includes plural and plural includes singular;
- (c) words of one gender include any gender;

- (d) another grammatical form of a defined expression has a corresponding meaning;
- (e) use of the word **including** and similar expressions are not, nor are they to be interpreted as, words of limitation;
- (f) reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- (g) reference to a person includes a corporation, joint venture, association, government body, firm and any other entity;
- (h) reference to a party includes that party's personal representatives, successors and permitted assigns;
- (i) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (j) reference to a thing (including a right) includes a part of that thing;
- (k) a provision must not be construed against a party only because that party prepared it;
- (l) a provision must be read down to the extent necessary to be valid. If it cannot be read down to that extent, it must be severed;
- (m) if a thing is to be done on a day which is not a Business Day, it must be done on the next Business Day; and
- (n) a reference to Australian dollars, dollars, \$, A\$, \$A or AUD is a reference to the lawful currency of the Commonwealth of Australia.

Service Schedule – Software

This Service Schedule forms part of the Agreement between Supplier and Customer under the terms of the Standard Terms under that Agreement.

1. Interpretation

Capitalised terms shall have the same meaning given in the Standard Terms unless otherwise set out in this Service Schedule.

2. Software licence

2.1 Supplier grants to Customer a non-exclusive, non-transferable licence (without any right to sub-license) for the period commencing on the Commencement Date and continuing for the Term unless earlier terminated in accordance with the Agreement, to:

- (a) for each number of Users specified under the Order Form, install one (1) instance of the Striven Software on one (1) Customer Computer at any one time;
- (b) use and communicate each part of the Software and the Documentation for operational use of the Software for Customer's business;
- (c) make such number of copies of the Software only as reasonably required for backup, disaster recovery and security purposes; and
- (d) make such number of copies of the Documentation as are necessary to exercise its rights under this clause 2 of this Service Schedule or any other provision of the Agreement.

2.2 Customer acknowledges and agrees that the Software may only be used pursuant to

the provisions of the Agreement, in accordance with the normal operating procedures in the Documentation (or as notified by Supplier from time to time), under the Supported Operating Environments.

2.3 Except to the extent permitted by the Agreement, Customer must not:

- (a) transfer, distribute, hire, rent or lease the whole or any part of the Software; or
- (b) provide use of or access to the Software through any service bureau, timesharing, application service provider or other similar managed or distributed provision of software services via a network.

2.4 Except to the extent permitted by law, authorised, expressly or implicitly, by the Agreement, or otherwise as reasonably contemplated by the Agreement, Customer must not:

- (a) copy, Modify or reproduce the Software except to the extent permitted or authorised by the Agreement, or at law generally;
- (b) disassemble, decompile, reverse assemble, reverse compile or otherwise reverse engineer the whole or any part of the Software;
- (c) attempt to do any of the above acts in paragraphs (a) and (b); or
- (d) cause, permit or assist any other person directly or indirectly to do any of the above acts in paragraphs (a), (b) and (c).

2.5 In addition to any other remedies available to Supplier under the Agreement or at law, Customer acknowledges that in the event of any breach or threatened breach by Customer of the provisions of this clause 2 of this Service Schedule:

- (a) damages alone are an inadequate remedy for Supplier; and
- (b) Supplier shall be entitled to an interim, interlocutory or permanent injunction or such other equitable remedy restraining Customer without showing or proving any actual damages sustained by Supplier.

3. New Releases and Updates

3.1 Supplier shall offer to Customer, at no charge, all New Releases or Updates that Supplier generally provides, without charge, to licensees of the Software as and when they become available.

3.2 Customer must take delivery of, and install, any New Release or Update which Supplier directs Customer to take delivery of, and install, and, notwithstanding any other provision of the Agreement, if Customer fails to comply with the foregoing Supplier shall have no liability to Customer in respect of any and all Loss suffered or incurred by Customer directly or indirectly arising from or in connection with such failure.

3.3 Where any New Release or Update is provided by Supplier under clauses 3.1 or 3.2 of this Service Schedule:

- (a) Supplier will provide, at no charge, updated Documentation (if any Documentation had previously been provided to Customer) reflecting changes to the Software as a result of, and at the same time as delivering,

any New Release or Update (as the case may be);

- (b) the Agreement will continue to apply in all respects to the New Release or Update which shall be deemed to be the Software for the purpose of this Service Schedule and the Agreement; and
- (c) Customer shall return to Supplier all copies of the Software (prior to the New Release or Update) or otherwise deal with such copies in accordance with Supplier's directions.

4. Third party tools

Nothing in this Service Schedule shall be read or construed as requiring Supplier to provide to Customer any third party report writing tools or other software tools (or any related services) which Customer may require or wish to use in conjunction with the Software.

5. Fees

For the Software, Customer shall pay to Supplier the Fees specified in the applicable Order Form, as adjusted in accordance with the Agreement.

Software Licence and Support Agreement - Order Form

1. Software Details

Software

The Software consists of the Striven Software - an instore retail management software consisting of point-to-sale software and software for stock and debtor maintenance.

Supported Operating Environment

The Supported Operating Environment is as follows:

Operating system:

Windows 10 Professional (minimum)

Hard drive space:

512 Gb (minimum)

RAM:

8Gb (minimum)

Network Card:

1 Gbps

Anti-Virus:

As specified and supplied solely by Supplier, and those operating environments which Supplier may support as notified by Supplier from time to time.

2. Quantity

Stores subject to the agreement

As per proposal

Minimum Licences per store

2

Maximum licences per store

>5 will potentially require Striven to apply an upfront charge based on increased complexity. This will be discussed with CUSTOMER and Quoted

3. Price

Price per Striven License

\$130 ex GST per month unless agreed in writing
CUSTOMER stores currently on Striven as at date of contract will remain on their current monthly licence fee

Licence Fees are on a monthly basis in advance for each month and in accordance with the invoices we issue you. Payment will be deducted automatically from your nominated account via Ezidebit on the 14th day of the month.

4. Term/ Review Process/ Invoice

Minimum Term	36 Months from date of Installation
Price review date	1st July each year
Price review Increase Mechanism	Annual CPI Price Review - Bureau of Stats Annual Index issued each July for the preceding year
Up front cost per store/ Activation Fee	As per proposal
Invoice Date	1 st day of each month in advance
Billing	Monthly Invoice will be paid by CUSTOMER, using Direct Debit
Early termination	In the advent this contract is terminated early (within the initial term of 36 months) You must pay us the monthly Licence Fees each month and in accordance with the invoices we issue you until the end date nominated above. Payment will be deducted automatically from your nominated account via Ezidebit on the 14th day of the month

Striven Support Services Details

Software Helpdesk Support

Provision of Level 1, 2 and Level 3 helpdesk and technical support for the support by telephone or email for the Software during Support Hours in accordance with the support process. For clarity, a Level 2 fault – (CUSTOMER failure causing inability to prepare purchase orders to warehouse or to prepare debtor statements) will resolve within 2 business days. For a Level 3 fault – (CUSTOMER unable to trade with its customers) will resolve within 4 hours.

Training Services

Provision of training services for the Software to Customer at a prior agreed time with Supplier and at thirty (30) minute increments, limited to the general functionality and general operation of the Software unless otherwise requested by Customer. If Customer requests training services to be provided beyond general functionality and general operation of the Software, Supplier may provide, at its sole and absolute discretion, such requested training services at an Additional Charge.

Anti-Virus Software Service

Installation of the Anti-Virus Software for each number of Users specified under the Order Form, Striven will procure a licence to, and install, one (1) instance of the Anti-Virus Software on one (1) Customer Computer at any one time.

Helpdesk Details

Telephone: 03 9696 7300
Email: supportteam@striven.com.au

Support Hours

Business Days: 8.00am – 6.00pm AEST
Day other than a Business Day: 9.00am – 5.00pm AEST

Extra Support Services

Provision of helpdesk support during Support Hours in respect of general user enquires relating to the software below:

1. MYOB / Reckon / Xero / GL;
2. MS Office suite / 3rd party office suite;
3. eftpos machines;
4. printers and systems configuration;
5. system backups; and
6. virus detection and removal.

Provision of helpdesk and technical support during Support Hours, and at an Additional Charge, in accordance with clause 6 below in respect of in respect of:

7. onsite systems review;
8. onsite issue resolution;
9. general troubleshooting and
10. systems and Software enhancements.

Additional Charges of this Order Form and has the meaning given to the term under clause 22 of the Standard Terms.

Response and Resolution times

Supplier commits to the Service Levels to respond to the Customer and to resolve Defects in accordance with the Service Level Agreement.

Service Credits

Customer is entitled to Service Credits for Supplier's failure to comply with Service Levels in Clause 5 of this annexure

5. Additional Charges

Hourly Rates: \$120 per hour (exclusive of GST)
Workstation Install \$295 (exclusive of GST)