

## **AUSTRALIA REGIONAL ANNEX**

This Annex forms part of the Agreement if the place of business of the Customer as specified in the Quote is in Australia or New Zealand.

### **1 INTERPRETATION AND DEFINITIONS**

- 1.1 In this Annex any reference to a statute, statutory provision, subordinate legislation or code of practice is a reference to that statute, statutory provision, subordinate legislation or code of practice as amended, modified or re-enacted from time to time.
- 1.2 References in this Annex to Clauses are to Clauses of this Annex unless otherwise specified.

### **2 ANNUAL CHARGE INCREASE**

- 2.1 For the purposes of clause 7.2.1 of the Service Terms, RLDatix may increase the Annual Charge no more than once in each Year, by an amount which does not exceed the greater of:

2.1.1 the percentage increase in the Consumer Price Index – All Groups – Average 8 Capital Cities (as published by the Australian Bureau of Statistics from time to time, or its successor metric) in the preceding twelve month period; and

2.1.2 five (5) percent per annum,

with the first such increase being based on the latest available figure for the percentage increase in CPI at the beginning of the last month before the first anniversary of the Commencement Date.

### **3 DEFAULT INTEREST**

- 3.1 For the purposes of clause 7.7 of the Service Terms, the rate specified is 3% per annum above the commercial overdraft rate published by the Commonwealth Bank of Australia from time to time.

### **4 GOODS AND SERVICES TAX**

- 4.1 For the purposes of clause 7 of the Service Terms, this clause governs the application of Sales Tax in Australia.

4.2 In this Clause 4:

4.2.1 'GST Act Supplier' means the entity making the Supply; and

4.2.2 other capitalised terms used that are not defined in this Clause have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

4.3 Except under this Clause, the consideration for a Supply made under or in connection with the Agreement does not include GST.

4.4 If a Supply made under or in connection with the Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:

- 4.4.1 the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under the agreement for that Supply); and
- 4.4.2 the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.
- 4.5 If either party has the right under the Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with the Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- 4.6 For clarity, the GST payable under this Clause is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the GST Act Supplier is liable, however caused.
- 4.7 Where a Supply made under or in connection with the Agreement is a Progressive or Periodic Supply, Clause 4.4 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

## **5 DATA PROTECTION**

- 5.1 For the purposes of interpreting Clause 11 (Data Protection) of the Service Terms:
  - 5.1.1 'Data Protection Laws' includes the *Privacy Act 1988* (Cth);
  - 5.1.2 'Personal Data' includes 'Personal Information' as defined in the *Privacy Act 1988* (Cth); and
  - 5.1.3 'Personal Data Breach' includes an 'eligible data breach' as defined in the *Privacy Act 1988* (Cth).
- 5.2 The following clause is added as new clause 11.5.3 of the Service Terms (with existing clauses being renumbered as appropriate):

*11.5.3 represents and warrants that it has obtained and shall maintain all necessary consents and has and shall provide all necessary notifications to ensure that RLDatix (and any permitted Sub-Processor or other sub-contractor) is lawfully able to Process the Personal Data as contemplated by the Agreement; and*
- 5.3 When Processing Personal Data received under the Agreement, RLDatix is likely to disclose Personal Data to countries in the European Economic Area, the United Kingdom, the United States of America and Canada. The Customer expressly consents to disclosures to those countries (including for the purposes of clause 11.5.3 of the Service Terms as added by Clause 5.2 of this Regional Annex). RLDatix will ensure information so disclosed will still be Processed in accordance with the Agreement.
- 5.4 Following any notification of a Personal Data Breach of Customer Personal Data under Clause 11.4.6 of the Agreement:
  - 5.4.1 unless otherwise agreed in writing, the Customer is responsible for determining whether a notification to the Office of the Australian Information Commissioner and affected individuals is required, and if it determines that a notification is required, for making such notification;

- 5.4.2 the Customer indemnifies RLDatix against any loss (including fines and penalties) suffered or incurred as a result of the Customer's decision not to notify in accordance with Clause 5.4.1 above; and
- 5.4.3 RLDatix will reasonably cooperate with the Customer in any notification made in accordance with Clause 5.4.1.

## 6 LIABILITY

- 6.1 For the purposes of clause 14 (Liability) of the Service Terms the following provisions apply.
- 6.2 The following provisions set out RLDatix's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) to the Customer.
- 6.3 Subject to clauses 6.15 and 6.16, all warranties, conditions, guarantees, rights and remedies not set out in the Agreement whether implied or imposed by any applicable statute or otherwise are excluded to the maximum extent permitted by law.
- 6.4 The Customer acknowledges that:
  - 6.4.1 it will comply with all laws, rules and regulations (including any rules, codes of conduct or regulations which apply to the Customer's particular business or industry);
  - 6.4.2 the Services have not been designed to meet the Customer's individual requirements;
  - 6.4.3 it is the Customer's responsibility to ensure that the Services are fit for the Customer's purposes;
  - 6.4.4 it is solely responsible for the content of any reports which are generated by the Services and that it is the Customer's responsibility to ensure that reports generated are adequate for the Customer's needs and purposes; and
  - 6.4.5 any data which is inputted by the Customer while using the Services shall be in accordance with any instructions given by RLDatix, and shall be inputted accurately and properly.
- 6.5 Nothing in the Agreement shall limit or exclude RLDatix's liability for:
  - 6.5.1 death or personal injury caused by the negligence of RLDatix or its officers, employees, contractors or agents;
  - 6.5.2 fraud or fraudulent misrepresentation; or
  - 6.5.3 any other liability which may not be excluded by law.
- 6.6 Subject to Clause 6.5 and 6.16, RLDatix shall have no liability to the Customer in respect of any failure or delay by it to provide the Services in accordance with the Agreement where such failure or delay is attributable to any failure or delay by the Customer to comply with its obligations under the Agreement.
- 6.7 Subject to Clause 6.5 and **Error! Reference source not found.**, RLDatix shall not be liable under or in relation to the Agreement (whether such liability arises due to negligence, breach of contract, misrepresentation or otherwise) for any:

- 6.7.1 indirect, special or consequential loss or damage;
  - 6.7.2 any form of exemplary or incidental loss or damages;
  - 6.7.3 loss of profits or anticipated profit;
  - 6.7.4 loss of sales, business, customers or revenue;
  - 6.7.5 loss of goodwill or damage to reputation;
  - 6.7.6 loss of contract;
  - 6.7.7 loss of savings or anticipated savings;
  - 6.7.8 loss of opportunity;
  - 6.7.9 loss or corruption of data;
  - 6.7.10 any loss or damage arising as a result of any loss of or corruption to data (whether temporary or permanent);
  - 6.7.11 any loss or damage arising out of an inability to restore data due to the loss of or damage to any encryption key by the Customer;
  - 6.7.12 loss or damage relating to or arising from any reliance on any report or data which is entered into or extracted out of the Services by the Customer; or
  - 6.7.13 loss or damage relating to or arising from reliance on the Services by the Customer to meet any of the Customer's legal obligations under any law or regulation (including, without limitation, health and safety law).
- 6.8 Subject to Clauses 6.5 and 6.16, RLDatix shall not be liable in respect of any breach of the Agreement or for any representation, statement or tortious act or omission:
- 6.8.1 which results from any breach of the Agreement by, or any negligent act or omission of, the Customer; and/or
  - 6.8.2 unless the Customer shall have served notice of the same upon RLDatix within six months of the date it became aware of it or, if earlier, the date when it ought reasonably to have become so aware; and/or
  - 6.8.3 to the extent RLDatix remedies any breach of the Agreement within six months after being notified by the Customer of the breach.
- 6.9 Subject to Clauses 6.5 and 6.16, neither RLDatix nor any of RLDatix's affiliates or licensors will be responsible for any compensation, reimbursement, or damages arising in connection with:
- 6.9.1 the Customer's inability to use the Services, including as a result of any (i) termination or suspension of the Customer's use of or access to the Service Offerings, (ii) RLDatix's discontinuation of any or all of the Service Offerings, or, (iii) any unanticipated or unscheduled downtime of all or a portion of the Services for any reason;
  - 6.9.2 the cost of procurement of substitute goods or services;

- 6.9.3 any investments, expenditures, or commitments by the Customer in connection with the Agreement or the Customer's use of or access to the Service Offerings; or
- 6.9.4 any unauthorised access to, alteration of, or the deletion, destruction, damage, loss or failure to store any of the Customer Content or other data.
- 6.10 Subject to Clauses 6.5 and 6.16, and without prejudice to Clause 6.7, RLDatix's liability for damage to or loss of physical property shall not exceed A\$50,000 (fifty thousand Australian dollars) in respect of any one event or series of connected events giving rise to a claim for any such damage or loss.
- 6.11 Subject to Clauses 6.5 and 6.16, and without prejudice to Clauses 6.7 and 6.10, the total aggregate liability of RLDatix to the Customer in connection with the provision of the Services or otherwise arising out of or in connection with the Services or the Agreement during each Year howsoever arising whether in contract, tort (including negligence) or otherwise shall be limited to the amount of Charges paid or payable by the Customer for the provision of the Services giving rise to the claim in question during the immediately preceding Year (or during the first Year the Charges paid and payable during that period) subject to a maximum amount of A\$2,000,000 (two million Australian dollars) if lower than the actual amount of the Charges over that Year.
- 6.12 In the event that the provision of the Services (or part thereof) is terminated prior to the expiry of the Minimum Term or without compliance with the Notice Period (as applicable) other than by reason of the Customer exercising its right to terminate pursuant to clauses 15.3 or 15.5 of the Service Terms or should the Customer purport to terminate the provision of the Services without complying with the applicable provisions of the Agreement, none of the provisions of this Clause 6 shall operate so as to exclude RLDatix's right to recover from the Customer the Charges which would have been payable by the Customer in respect of the Services up until the earliest point at which the Customer could have lawfully terminated the provision of the Services in accordance with the Agreement, provided that RLDatix shall be obliged to mitigate its loss in accordance with common law principles.
- 6.13 The Service Offerings are provided "as is." Except as expressly provided in the Agreement (including Clause 6.16), or to the extent prohibited by law, or to the extent any statutory rights apply that cannot be excluded, limited or waived, RLDatix and RLDatix's affiliates and licensors:
  - 6.13.1 make no representations or warranties of any kind, whether express, implied, statutory or otherwise regarding the Service Offerings or the Third Party content, and
  - 6.13.2 disclaim all warranties, including any implied or express warranties (i) of merchantability, satisfactory quality, fitness for a particular purpose, non-infringement, or quiet enjoyment, (ii) arising out of any course of dealing or usage of trade, (iii) that the Service Offerings or Third Party content will be uninterrupted, error free or free of harmful components, and (iv) that any content will be secure or not otherwise lost or altered.
- 6.14 None of the provisions of this Clause 6 shall operate so as to exclude or limit RLDatix's right to recover from the Customer the Charges which would have been payable by the Customer (including any element of the Charges which is profit).

## NON-EXCLUDABLE LIABILITY

- 6.15 Except as contemplated by clause 6.16, nothing in this document is intended to limit any rights of the Customer under the *Competition and Consumer Act 2010* (Cth).
- 6.16 If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to any goods or services supplied by RLDatix in connection with the Agreement and RLDatix's liability for failing to comply with that guarantee cannot be excluded but may be limited, then Clauses 6.3 to 6.14 do not apply to that liability. Instead RLDatix's liability for that failure is limited to (at its election):
- a) in the case of a supply of goods, replacing the goods or supplying equivalent goods, repairing the goods, paying the cost of replacing the goods or of acquiring equivalent goods, or paying the cost of having the goods repaired; or
  - b) in the case of a supply of services, supplying the services again or paying the cost of having the services supplied again.
- 6.17 The Customer acknowledges that the provisions of this Clause 6 are, taking into account all the circumstances and the ability of the parties to obtain insurance, reasonable in every respect.
- 6.18 The provisions of this Clause 6 shall survive any termination of the Agreement.

## 7 CONTROL OF FREEDOM OF INFORMATION REQUESTS

- 7.1 The Customer acknowledges and agrees that, where the customer receives an information request under freedom of information laws binding on the Customer (**Binding FOI Laws**), in connection with the Agreement, the Customer will immediately notify the same to RLDatix, and, where the information request refers to RLDatix's commercially sensitive information or Confidential information, the Customer will allow RLDatix sufficient time to raise an objection to the extent, type and/or nature of disclosure requested, and will work with RLDatix to agree the form of disclosure.
- 7.2 RLDatix is not itself subject to Binding FOI Laws, but shall assist and cooperate with the Customer to enable it to comply with its disclosure obligations under Binding FOI Laws.