

Draft as at 30 June 2009

THIS AGREEMENT is dated

2009

PARTIES:

NEXUS POINT SOLUTIONS PTY LTD (ABN 11 094 296 429) of Level 2, 486 Pacific Highway, St Leonards NSW 2065 (**Nexus**) and

CUSTOMER with the details set out in the Project Order Form

Background

- A.** Nexus operates the online application platform for the construction and asset-based industries known as incite keystone™ which facilitates the exchange of information in those industries.
- B.** In order for the Customer to use the services offered by incite keystone™ in relation to a Project, Nexus must provide Personnel of the Customer, together with Personnel of any Project Companies, access to the services offered by incite keystone™.
- C.** The Customer requests Nexus provide access to the services offered by incite keystone™, and related Support Services, and will ensure all Users use incite keystone™ and related Support Services in accordance with the terms of this agreement and any other Relevant Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In **this agreement**, unless the context clearly indicates otherwise:

Address for Service means, in the case of Nexus: Level 2, 486 Pacific Highway, St Leonards NSW 2065 and, in the case of the Customer, means the address which appears in this agreement or any new address notified by any party to all other parties as its new Address for Service;

Administrator means the Personnel of the Customer and/or any Project Company nominated for that role by the Customer to Nexus from time to time who is authorised by the Customer to register Users and otherwise perform the functions specified in **clause 9.3**.

Archive Agreement means an agreement by that name entered into by Nexus with the Customer;

Archive Mode means when a Project, including User Content, is stored by Nexus pursuant to any of the archiving procedures set out in an Archive Agreement;

Authorisation Code means the code provided by Nexus to a Customer's Project Contact under clause 2.1 (c)

Available means accessible and usable by Customers;

Business Day means any day between Monday to Friday (inclusive) excluding public holidays in New South Wales, Australia;

Claim means any claim, demand or proceeding arising out of any cause of action (including breach of contract, tort (including negligence) and any other common law, equitable or statutory cause of action);

Commencement Date means the date on which Nexus despatches and Authorisation Code to the Customer's Project Contact.

Consequential Loss means any loss recoverable at law (other than a loss arising in the usual course of things) which is consequential upon other loss, including loss of profits, loss of revenue, loss of value of any equipment, loss of anticipated savings, pure economic loss, loss of opportunity, expectation loss, any special, punitive or exemplary loss or damage, and any costs or expenses incurred in connection with the foregoing.

Fees means the fees payable for User as specified in the Plan selected by the Customer.

Force Majeure Event means a circumstance beyond the reasonable control of the parties which results in a Party being unable to observe or perform an obligation under this agreement. Such circumstances include but are not limited to acts of God, lightning strikes, storms, floods, earthquakes or any natural disasters, explosions, war, invasion, rebellion, sabotage, epidemic and labour disputes;

GST means has the meaning given to it in the A New Tax System (Goods and Services) Tax Act 1999 (Cth);

incite keystone™ means the online project collaboration and document management service for the construction and asset based industries operated by Nexus at the URLs www.incite.com.au and www.incite.com;

Incite Keystone Properties means computer programs made available to Customers, Project Companies and Users as part of the services offered by incite keystone™ which can be [*assembled*] by Users into forms for use as templates where data can be compiled then stored, analysed and retrieved.

Intellectual Property means any intellectual and industrial property rights throughout the world including copyright (including future copyright), domain names, inventions (including patents), trade marks, service marks, designs, and circuit layouts whether or not now existing and whether or not registered or registrable and includes any right to apply for the registration of such rights and

includes all renewals and extensions but excludes non-assignable moral rights and confidential information;

Know How means the knowledge, techniques and methodologies developed and acquired by the Personnel of Nexus in respect of incite keystone™ and its configuration, including its use of Incite Keystone Properties, as a result of work performed for the Customer and other entities which use incite keystone™ and any embodiment such knowledge, techniques and methodologies;

Liability means any liability or obligation (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the liability occurred;

Loss means any loss, cost, damage and expense (including legal costs and expenses of any nature or description);

Network means any network used by Nexus to supply incite keystone™;

Personal Information has the meaning ascribed to it in the Privacy Act 1988 (Cth);

Personnel of a person, means the officers, employees, agents and individual contractors of that person;

Privacy Policy means the policy Nexus follows in relation to the use of Personal Information it collects or is provided with by a third party as set out at www.incite.com;

Project(s) means the construction project or projects nominated by the Customer during the sign-up process for this agreement and for which the Customer requires incite keystone™ and the Support Services;

Project Company means any company invited by the Customer to use (and have its Personnel use) incite keystone™ in relation to any Project.

Project Order Form means the form at (link)

Related Company of a party, means a related body corporate of that party (as that term is defined in the *Corporations Act 2001 (Cth)*);

Relevant Agreement means any other agreement between Nexus and the Customer providing for Nexus to deliver services to the Customer in respect of the Project;

Support Services means (need set out services - ie look at services set out on Monthly Charges document)

Technical Services Agreement means an agreement by that name between Nexus and the Customer;

Term means the period commencing on the Commencement Date and ending when this agreement is terminated in accordance with **clause 14**:

Trade Marks means the trade marks, logos, trade names and service marks on or in relation to incite keystone™ (excluding any marks of any Customer or Project Company).

User means any Personnel of the Customer or a Project Company who has:

- (a) been nominated to use incite keystone™ in relation to a Project by an Administrator;
- (b) agreed to use incite keystone™ in accordance with the User Terms; and
- (c) as a result of (a) and (b), has been granted the right by Nexus to use incite keystone™.

Project Content means all content, including text, graphics, pictures, applications and designs uploaded or published onto or into incite keystone™ by a User on behalf of a Customer or Project Company and all Intellectual Property associated with this content;

Plan: means the Plan selected by the Customer in the Project Order Form (click-through link to plans?)

User Terms means the set of terms which are acknowledged by Users before they can log on to incite keystone™ and acceptable at userterms@incite.com.

1.2 Interpretation

In this agreement unless the context clearly indicates otherwise:

- (a) a reference to **this agreement** or another document means this agreement or that other document and any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;

- (d) the linked material referred to in this agreement form part of this agreement;
- (e) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (f) an obligation or warranty on the part of 2 or more persons binds them jointly *and severally* and an obligation or warranty in favour of 2 or more persons benefits them *jointly and severally*;
- (g) a reference to a **breach of warranty** includes that warranty not being complete, true or accurate;
- (h) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (i) a reference to a time is to that time in New South Wales;
- (j) **monetary amounts** are expressed in Australian dollars;
- (k) a reference to a thing includes each part of that thing.

2. NATURE OF CONTRACT

2.1 Project Order

- (a) To use incite keystone™ for a Project a Customer must submit to Nexus a completed Project Order Form to which this agreement is attached. The Project Order Form must be signed by a director or company secretary of the Customer who is recorded at the Australian Securities Investment Commission (or equivalent in the place of the Customer's incorporation). If the Customer is not a company the signatory must be authorised by the Customer's constituent documents or the relevant law, to bind the Customer.
- (b) The Project Contact nominated on the Project Order Form has the Customer's authority to initiate the Project online in incite keystone™
- (c) Nexus will provide the Project Contact with an Authorisation Code to enable the Project Contact to establish the Project online in incite keystone™

2.2 Master Contract

- (a) This agreement, together with [the User Terms and] any other Relevant Agreements, governs the provision by Nexus of:

- (i) incite keystone™ to the Customer in respect of a Project; and
 - (ii) Support Services to the Customer in respect of a Project.
- (b) In the event there is any inconsistency between any of the terms of this agreement and the User Terms, priority will be accorded to the terms as follows:
- (iii) **clause 11** (liability) of this agreement;
 - (iv) the remaining provisions of this agreement;
 - (v) any other Relevant Agreement; and
 - (vi) the User Terms.

2.3 **Technical Services Agreement**

Nexus and the Customer may enter into the Technical Services Agreement in respect of any modifications, services or other work in respect of the Project which falls outside the scope of this agreement for access to incite keystone™ and the Support Services.

3. **INCITE KEYSTONE™ AND PROVISION OF SUPPORT SERVICES**

3.1 **Access**

In consideration of the Customer paying to Nexus the Fees, Nexus will during the Term:

- (a) allow Users to access and use the services offered by incite keystone™; and
- (b) provide the Support Services.

4. **INTELLECTUAL PROPERTY**

4.1 **No Use**

Neither party may use the other party's Intellectual Property except in accordance with this **clause 4**.

4.2 **Trade marks**

The Trade Marks are owned or licensed by Nexus. The Customer must not copy or use those Trade Marks, logos, trade names and service marks without the prior written consent of Nexus and warrants that no Project Company or User will copy or use those Trade Marks, without the prior written consent of Nexus

4.3 **Forms made using Incite Keystone Properties**

- (a) Nexus grants to the Customer, with the right to sub-licence to the Project Companies and Users, a non-exclusive limited licence to use Incite Keystone Properties in relation to or in connection with the Project and/or the the use of incite keystone™ only;
- (b) Users causing a form to be assembled using Incite Keystone Properties under the licence or sub-licence in clause 4.3(a) may create intellectual property rights in that form, and those rights are by this agreement assigned to and will vest in Nexus but will be licensed to the Customer on the terms of the licence for Incite Keystone Properties in clause 4.3(a); and
- (c) The Customer warrants that any form created using the licence in clause 4.3(a) will not infringe the intellectual property rights of a third party.

4.4 **Rights of Customer**

The Customer acknowledges that other than as set out in this **clause 4**, Nexus does not grant the Customer, Project Companies or Users any rights in relation to:

- (a) any Intellectual Property or Know How of Nexus; or
- (b) the Trade Marks.

4.5 **Customer's Marks**

The Customer:

- (a) grants to Nexus a royalty fee, non-exclusive, irrevocable, worldwide licence, in perpetuity (with the right to sub-licence), to use, reproduce and distribute any of the Customer's trade marks, logos, trade names and service marks solely in connection with and for the purposes of the Project and the use of incite keystone™; and
- (b) will procure from each Project Company a royalty fee, non-exclusive, irrevocable, worldwide licence, in perpetuity (with the right to sub-licence), for Nexus to use, reproduce and distribute any of the Project Company's trade marks, logos, trade names and service marks solely in connection with and for the purposes of the Project and the use of incite keystone™.

4.6 **Project Content**

The Customer:

- (a) automatically grants to Nexus a royalty free, non-exclusive, irrevocable, worldwide licence, in perpetuity (with the right to

sublicence to any person the Customer authorises to access the Project Content) to use, reproduce, modify and distribute any or all of the Project Content in relation to or in connection with the Project, the use of incite keystone™ according to this agreement, and to archive or store the Project Content at the conclusion of the Project and provide a copy to the Customer and/or a Project Company at the absolute discretion of Nexus;

- (b) represents and warrants to Nexus that it owns the User Content or otherwise has the right to grant the licence referred to in **clause 4.6(a)** above;
- (c) represents and warrants to Nexus that it has obtained all necessary consents and waivers from the creators of the Project Content to allow Nexus (including Nexus' successors and assigns) from doing or omitting from doing anything, for any purpose, which may infringe any or all moral rights which may exist in relation to the Project Content; and
- (d) represents and warrants to Nexus that the Customer, Users and Project Companies will comply with any and all restrictions regarding the use of Project Content set out in this agreement and the User Terms.

4.7 **Indemnity**

The Customer indemnifies Nexus against all liabilities, losses, damages, costs and expenses suffered or incurred by Nexus in connection with a claim that use of:

- (a) the Customer's trade marks, logos, trade names, service marks;
- (b) any Project Company's trade marks, logos, trade names, service marks;
- (c) any Project Content; and/or
- (d) any form created using the licence in clause 4.3(a).

by Nexus, or anyone Nexus is entitled to licence in accordance with this agreement, infringes the Intellectual Property, contractual rights, rights in a relationship of confidence or the moral rights of any person.

4.8 **Know How**

The Customer agrees that Know How acquired or developed by Personnel of Nexus is exclusively owned and controlled by Nexus and may be used by the Personnel of Nexus without restriction even in circumstances where the Know How was acquired or developed in the course of or as a consequence of providing incite keystone™, or the Support Services, to the Customer, a Project Company, or any User.

5. INCITE SECURITY

The Customer acknowledges that while incite keystone™ has been designed to include superior security measures, no security measures are fail-safe or immune from unauthorised intrusion.

6. ARCHIVE MODE

- (a) A Customer can choose to archive a Project, including all Project Content, pursuant to the terms of the Archive Agreement.
- (b) If the Customer chooses not to put a Project into Archive Mode, it agrees and accepts that upon the expiry or termination of this agreement, it is solely responsible at its own cost and expense for creating backup copies and storing the Project Content it has access to (using the means set out in 12.7(g))
- (c) In the event that the Customer chooses not to put a Project into Archive Mode, or fails to comply with an Archive Agreement in respect of a Project, Nexus reserves the right to remove and permanently delete all material associated with the Project (including all Project Content) from incite keystone™ within 30 days of termination of this agreement, or upon termination of any subsequent Archive Agreement (whichever is later) without further notice.
- (d) If an Customer chooses to archive a Project pursuant to an Archive Agreement, it agrees that it will accept, and comply with any licence conditions associated with any Nexus or third party software as set out in the Archive Agreement.

7. FEES AND PAYMENT

7.1 Fees

- (a) The Customer will pay to Nexus the Fees for the Plan nominated by the Customer on the Project Order Form. Nexus will invoice the Customer for the Fees on or about the 11th day of each month for the preceding month or part month.
- (b) No fees are incurred during the first 30 days including the Commencement Date.

7.2 Calculation of Fees

For the purposes of calculating Fees payable by the Customer to Nexus in respect of a Project, the number of paid Users for any month will be the

maximum number of Users and storage consumed on the Project at any time in the previous month.

7.3 **Payment of Invoices**

The Customer must pay each invoice from Nexus in full within 30 days after the date of invoice by Nexus.

7.4 **Non-payment**

If the Customer does not pay an invoice by the due date, Nexus may charge interest on the unpaid amount at the rate of 2% above the current 90-day bill rate published by the Reserve Bank of Australia from time to time.

7.5 **No set-off**

The Customer may not set off any amounts that it claims are payable to it by Nexus against any amounts payable by it to Nexus under this agreement.

7.6 **Fee changes**

Nexus retains the right to vary or change the Fees at any time upon 90 days' notice to the Customer.

8. **GST**

8.1 **Consideration is GST-exclusive**

Unless otherwise specified, all amounts payable under this agreement are exclusive of GST and must be calculated without regard to GST.

8.2 **GST payable on taxable supply**

- (a) If a supply made under this agreement is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST in respect of the supply.
- (b) The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.
- (c) The amount of a party's entitlement under this agreement to recovery or compensation for any of its costs, expenses or liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or liabilities.

9. CUSTOMER OBLIGATIONS

9.1 Access to incite keystone™

Unless Nexus' written consent is obtained in advance, the Customer, including any Administrator, shall not provide any person with access to incite keystone™ or the Support Services other than Personnel of the Customer or Project Companies.

9.2 Compliance with User Terms

The Customer will ensure that all Users comply with the User Terms, and represents and warrants that all Users, including from Project Companies, will comply with the User Terms.

9.3 Appointment of Administrators

The Customer must designate one or more Administrators (being Personnel of either the Customer or a Project Company) who the Customer authorises to:

- (a) invite Personnel of the Customer and any Project Company to use incite keystone™ in respect of a Project pursuant to the User Terms;
- (b) make any necessary arrangements for intended Users to receive introductory training as approved by Nexus; and
- (c) promptly deregister any User (by removing the User's access to incite keystone™ and Support Services) if:
 - (i) the User ceases to be Personnel employed by or contracted (directly or indirectly) to the Customer or a Project Company; or
 - (ii) the User breaches the User Terms;

9.4 Responsibility for Administrators and Users

The Customer agrees that it is responsible and liable for all acts and omissions of Administrators and Users as if those acts and omissions are its own.

9.5 Ensure User Compliance with User Terms

- (a) The Customer must ensure that Users only use incite keystone™ and Support Services for the purposes of the Project and in accordance with this agreement and the User Terms.
- (b) If Nexus notifies the Customer that an User is using incite keystone™ in a way which breaches the User Terms, the Customer must immediately take all steps necessary (including removing access to incite keystone™) to prevent any further breach by the User of the User Terms.

- (c) The Customer will indemnify Nexus in respect of any Liability arising, directly or indirectly, from a failure by the Customer to observe its obligations under this **clause 9**.

9.6 **Installation of third party software**

- (a) The Customer agrees on its own behalf, and will procure agreement from all Project Companies:
 - (i) to allow Nexus to install on the Customer's computer equipment and the Project Companies' computer equipment, any third party software deemed by Nexus to be necessary for the proper operation of incite keystone™ and the provision by Nexus of the Support Services;
 - (ii) to accept, and comply with, any third party licence provisions associated with third party software installed by Nexus onto the Customer's computer equipment and any Project Company's computer equipment; and
 - (iii) will indemnify Nexus against any Claim by any person as a result of the Customer's breach of this clause or any third party licence, and in respect of any breach by a Project Company of a third party licence.

9.7 **Recommended Technical Specifications**

The Customer acknowledges that although incite keystone™ has been engineered to be compatible with a range of different software types (including Internet browsers), Nexus does not and cannot represent that all functionality will be available when using all types of software (including Internet Browsers).

The software (including Internet browsers) which Nexus has tested for compatibility with incite keystone™ is set out and kept updated at "Is my browser supported@incite.com" and "What other software does my computer need@incite.com".

10. SERVICE SUSPENSION

10.1 **Service Suspension**

Nexus may suspend or limit access to and/or use of incite keystone™ (or any specific functionality of incite keystone™) or the supply of any Support Services where:

- (a) there is an emergency or Nexus is required to repair, maintain or service any part of the Network or Equipment (or an interconnected supplier needs to undertake this work on its network);

- (b) the Customer itself or by the actions of a Project Company or User breaches this agreement;
- (c) Nexus is required to comply with an order, instruction or request of government, regulator, emergency services organisation or other competent authority;
- (d) problems are experienced interconnecting the Network with any network of another supplier; or
- (e) Nexus is otherwise entitled to do so under this agreement.

10.2 Notice of suspension

Nexus will make reasonable endeavours to give the Customer reasonable notice before suspending or limiting access to incite keystone™ or the supply of Support Services under **clause 10.1**.

10.3 Consequences Of Suspension

Despite any other provision of this agreement, Nexus will not be Liable to the Customer, any Project Company, or any third party claiming through the Customer for any Claim made, in connection with Nexus suspending or limiting access to, or use of, incite keystone™ or the supply of any Support Services (or failing to do so) in accordance with this **clause 10**.

11. LIABILITY

11.1 Limitation of Nexus' liability

Except where to do so would contravene any law or cause any part of this **clause 11** to be void or unenforceable, Nexus:

- (a) excludes all conditions and warranties implied into this agreement; and
- (b) limits its Liability for breach of any condition or warranty that it cannot exclude at its election to either of the following in relation to services:
 - (i) resupplying the services; or
 - (ii) paying the cost of having the services resupplied;
- (c) excludes Liability to the Customer and any third party, including any Project Company:
 - (iii) in connection with the supply, failure to supply or the use of goods or services it buys or sells through incite keystone™;
 - (iv) except in relation to liability for personal injury, in respect of any Loss or Consequential Loss which may be suffered or

incurred or which may arise directly or indirectly in respect of a failure or omission on the part of Nexus to comply with its obligations under this agreement; and

- (v) for any Consequential Loss arising from a Claim made in connection with this agreement or the provision or failure of incite keystone™ or any Support Service;
- (d) subject to **clause 11.1(b)**, limits its aggregate Liability to the Customer in relation to all Claims arising out of or in connection with this agreement to the Fees paid to Nexus in the calendar year in which the Liability arises, calculated, as applicable, from the Commencement Date or the anniversary of that date immediately prior to the Liability arising.

11.2 Unavailability of the Services

Nexus excludes its Liability in the event that incite keystone™ or any Support Services are unavailable to the Customer, Project Companies or Users due to downtime attributable to an emergency, third party network unavailability, malfunction, upgrades or preventative or remedial maintenance activities in respect of incite keystone™ or the Network.

11.3 Apportionment

Subject to the limitations and exclusions of Liability in this **clause 11**, each party's Liability under this agreement will be reduced proportionately to the extent that any act or omission of the other party, and in the case of the Customer, the act or omission of any Project Company or User, caused or contributed to the Liability.

11.4 Priority

This **clause 11** prevails over all other clauses in this agreement.

11.5 Risk

Any material downloaded from incite keystone™ by the Customer, a Project Company or a User is downloaded at the Customer's risk. The dealings between the Customer and any third party, including any Project Company, using or having access to incite keystone™ are solely between the Customer and that third party. Nexus will not be Liable for any Loss the Customer suffers as a result of any dealing with such third party including a Project Company.

11.6 Indemnity

The Customer will indemnify Nexus and keep Nexus indemnified against any Liability suffered or incurred by Nexus, which arises from or is connected with:

- (a) any breach of this agreement by the Customer;

- (b) Any breach of the User Terms by a User ;
- (c) any wilful, unlawful or negligent act or omission of the Customer, a Project Company or an User;
- (d) any Claim against Nexus in connection with Nexus' supply to the Customer, a Project Company or any User of:
 - (i) incite keystone™;
 - (ii) the Support Services; and/or
 - (iii) any ancillary service and/or any service or communication which uses or relies on incite keystone™;
- (e) the use of incite keystone™ or the Support Services by the Customer, any Project Company or any User, and/or
- (f) any damage which the Customer or its Personnel, any Project Company or any User causes to any Nexus property.

12. TERM AND TERMINATION

12.1 Term

This agreement will commence on the Commencement Date and continue until termination by either party in accordance with this **clause 12**.

12.2 Either party may terminate

A party may terminate this agreement immediately, by giving written notice to the other party:

- (a) if the other party breaches any material provision of this agreement that is not capable of being remedied;
- (b) if the other party breaches any material provision of this agreement that is capable of being remedied and fails to remedy the breach within 30 days after receiving notice requiring it to do so;
- (c) if any event referred to in **clauses 12.6(a) to 12.6(g)** happens to the other party;
- (d) if, for any reason Nexus ceases to operate incite keystone™.

12.3 Additional Situations in which Nexus may terminate

Nexus may terminate this agreement if any User breaches the User Terms and the Customer (or an Administrator) does not terminate access to incite keystone™ by the individual User within 14 days' of Nexus notifying the Customer of such breach.

12.4 Termination on Notice

Either party may terminate all or any part of this agreement (which may mean only in respect of certain Projects or services) by giving the other party 30 days notice in writing of its intention to terminate.

12.5 Termination Notice

A notice given by a party under **clauses 12.2 or 12.3** must specify:

- (a) the basis of the termination including, if there has been a breach of this agreement, full details of the breach; and
- (b) if there has been a breach of this agreement that is capable of being remedied, the intention of the party giving the notice to terminate if that breach is not remedied.

12.6 Notification Events

Each party must notify the other party immediately if:

- (a) it disposes of the whole or any part of its assets, operations or business other than in the normal course of business;
- (b) any step is taken to enter into any arrangement between it and its creditors;
- (c) it ceases to be able to pay its debts as they become due;
- (d) it ceases to carry on business;
- (e) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of its assets or business; or
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of its assets or business.
- (g) the Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
- (h) a Force Majeure event causes it to be unable to perform its obligations under the agreement for more than 60 days.

12.7 Consequences of Termination or Expiration

On termination or expiration of this agreement:

- (a) the Customer, Project Companies and Users must cease to use incite keystone™ for the purposes of the Project;

- (b) Nexus may block or remove access to incite keystone™ by the Customer, Project Companies and Users in accordance with this **clause 12.7**;
- (c) the Customer must return to Nexus all copies the Nexus Content and any Confidential Information in its possession or control;
- (d) the Customer must pay all amounts that are owing to Nexus under this agreement as at the date of termination or expiration;
- (e) accrued rights and remedies of the parties will not be affected;
- (f) the following clauses continue to apply:
 - (i) this **clause 12.7** (Consequences of Termination or Expiration);
 - (ii) **clause 4.6** (User Content)
 - (iii) **clause 4.7** (Indemnity)
 - (iv) **clause 7** (Fees and Payment);
 - (v) **clause 11** (Liability);
 - (vi) **clause 17** (General); and
 - (vii) (see if any other need adding - add once remainder of agreement finalised)
- (g) subject to the Customer paying to Nexus all outstanding amounts payable to Nexus and complying with **clause 4.3 (keeping copyright notices etc)** of this agreement , Nexus will allow the Customer 30 days of read-only access to to allow the Customer to retrieve all User Content by way of:
 - (i) Printing from incite keystone™ documents and forms containing User Content;
 - (ii) Downloading from incite™ any attachments or other documents uploaded onto incite keystone™ by Users; and/or
 - (iii) Any other method of retrieval as allowed by existing functionality of incite keystone™.

13. FORCE MAJEURE EVENTS

- (a) Neither party is liable for any failure to fulfil any term or obligation in this agreement (other than an obligation to pay money) if such fulfilment is delayed, prevented, restricted or interfered with for any reason due to a Force Majeure Event.

- (b) If failure of a party is caused or anticipated due to a Force Majeure Event, the performances of that party's obligations will be suspended.
- (c) The party unable to perform its obligations must:
 - (i) promptly notify the other party in writing of any Force Majeure Event; and
 - (ii) use its best efforts to resume performance in accordance with this agreement as soon as possible.
- (d) If a failure by a party to perform its obligations due to Force Majeure exceeds 60 days, the non-effected party may terminate the agreement immediately on providing notice in writing to the other party.

14. PERSONAL INFORMATION

- (a) The Customer will give each Project Company and User written notice of the matters specified in National Privacy Principle 1.3 of Schedule 3 to the *Privacy Act 1998* (Cth) which among other things notifies Users that Personal Information of the Users is to be provided to and collected by Nexus for the purposes of providing incite keystone™ and the Support Services to the Customer, Project Companies and Users under this agreement and for related (or secondary) purposes including billing, accounts, management, business planning and development and the Support Services.
- (b) The Customer authorises Nexus to collect, use, store and disclose Personal Information about the Users that the Customer, Administrators and/or Users have provided to Nexus for the primary purpose of the supply or proposed supply to the Customer, Project Companies and Users of and the Support Services.
- (c) The Customer authorises Nexus to collect, use, store and disclose Personal Information about the Users that the Customer has provided to Nexus for related (or secondary) purposes including billing and account management, business planning and development of Services.
- (d) Nexus may disclose Personal Information about the Customer, Project Companies and Users for the primary purpose or any related purpose, of providing incite keystone™, and the Support Services, under this agreement, to:
 - (i) any Related Company of Nexus;
 - (ii) Nexus' Personnel, agents and contractors;

- (iii) suppliers who need access to the Personal Information to provide Nexus with services, enabling Nexus to supply the Customer with the Service; and
 - (iv) any joint venture partners, or potential joint venture partners of Nexus.
- (e) The Customer warrants that it has obtained the consent from each of the Users for the collection, storage, use and disclosure of their Personal Information by Nexus (and any third party who may subsequently receive the Personal Information) in accordance with this **clause 14** and the Privacy Policy.

15. NEXUS' RIGHTS

Nexus may, at any time, and in its absolute discretion, intercept any Project Content or other data being transmitted over incite keystone™, for the purposes of complying with its obligations at law.

16. DISPUTE RESOLUTION

16.1 Informal Resolution of Dispute over Fee Rates

- (a) Before a party (**Notifying Party**) seeks any external dispute resolution in relation to Services Rates, it must follow the escalation procedure set out in **clause 17.1(b)**.
- (b) The escalation procedure is as follows:
 - (i) the Notifying Party must notify the other party (**Responding Party**) in writing advising of:
 - (A) its reasons for its dissatisfaction(**Issue**);
 - (B) its available dates to meet and discuss the Issue; and
 - (C) the representative it has authorised (**Authorised Representative**) to discuss the Issue with the Responding Party (**Notice**).
 - (ii) Within 7 days of receiving the Notice, the Responding Party must notify the Notifying Party, in writing, advising of;
 - (A) its available dates to meet and discuss the Issue; and
 - (B) its Authorised Representative.
 - (iii) the Authorised Representatives must meet and discuss the Issue;

- (iv) if the Authorised Representatives cannot resolve the Issue within 7 days of meeting to discuss the Issue, each Authorised Representative must notify the respective parties' Chief Operating Officer (or his or her nominee); and
- (v) each party's Chief Operating Officer must meet within 7 days of being notified and attempt to resolve the Issue within 7 days of this meeting.

16.2 Continuation of obligations

Despite the existence of an Issue between the parties, the Customer must otherwise comply with its obligations under this agreement.

16.3 Interlocutory Proceedings

Nothing in this **clause 16** prevents a party from commencing proceedings for interlocutory relief.

16.4 Survive Termination

This **clause 16** will survive termination of this agreement.

17. GENERAL

17.1 Variations

This agreement may only be varied by:

- (a) Nexus providing the Customer with 7 days' notice of an amendment (other than an amendment in respect of the Fees; Query enforceability under new rules for Standard Contracts under TPA)
- (b) Nexus providing the Customer with 90 days' notice of an amendment to Fees under **clause 7.5**; or
- (c) agreement between the parties in writing at any time.

17.2 Sub-contracting

The Customer must not sub-contract the performance of any of its obligations under this agreement, without first having obtained Nexus' written consent (which will not be unreasonably withheld). Nexus may sub-contract all or any part of its obligations under this agreement.

17.3 Assignment

Nexus may assign the benefits of all or any of its rights under this agreement without the prior written consent of the Customer. The Customer may not assign any of its rights under this agreement without the prior written consent of Nexus

(which may be given or withheld, with or without conditions, in Nexus' absolute discretion).

17.4 **Novation**

The Customer consents to the novation of this agreement at any time during the Term by replacing Nexus with a third party. Any such novation will be effective from the date Nexus gives notice to the Customer. If requested by Nexus, the Customer will execute a deed of novation in a form reasonably required by Nexus.

Nexus may consent to the novation of the agreement by the Customer subject to such conditions as it chooses to impose.

17.5 **Waiver**

A party waives its rights under this agreement only if it does so expressly in writing. Any such waiver does not constitute a waiver of any subsequent right.

17.6 **Public Statement**

The Customer may not make any public statement about this agreement unless it has first obtained written consent from Nexus.

17.7 **Severability**

If any provision of the agreement is held invalid, unenforceable or illegal for any reason, the agreement shall remain in full force apart from such provisions which shall be deemed deleted.

17.8 **Nexus' rights**

Any express statement of the right of Nexus under this agreement is without prejudice to any other right of Nexus expressly stated in the agreement or existing at law.

17.9 **Survival of agreement**

(a) Subject to any provision to the contrary, this agreement is binding upon the party's successors, trustees, permitted assigns or receivers, but not any other persons.

(b) The covenants, conditions and provisions of the agreement which are capable of having effect after the expiration of the agreement shall remain in full force and effect following the expiration of the agreement.

17.10 **Notices**

(a) A party notifying or giving notice under this agreement must give notice:

- (i) in writing;
 - (ii) addressed to provided Address for Service;
 - (iii) either left at, sent by prepaid post or faxed to that address;
and
 - (iv) if sent by email, by sending a confirming copy by delivery, post
or fax.
- (b) A notice given in accordance with this **clause 17** is received:
- (v) if left at the recipient's address, on the date of delivery;
 - (ii) if sent by prepaid post, 2 days after the date of posting;
 - (iii) if sent by facsimile, the date of receipt of transmission if
received prior to 5pm on any Business Day, otherwise the
notice is deemed to be received on the following Business
Day; and
 - (iv) If sent by email, when the confirming copy is received
according to the preceding paragraphs (i) -(iii).

17.11 Variation to Address for Service

Each party must advise the other in writing of any variation of its Address for Service.

17.12 Relationship of parties

Nothing in this agreement or any circumstances associated with it or its performance give rise to any relationship of agency, partnership or employer and employee between Nexus and the Customer or between the Customer and any Personnel of Nexus.

17.13 Applicable law

This agreement is governed by the laws applicable in the State of New South Wales, Australia. and each party submits to the jurisdiction of the courts of that State.