



TERMS OF SERVICE - SOFTWARE

1. DEFINITIONS

- (a) **Affiliate** means
 - (i) any entity controlling or controlled by either Party; and
 - (ii) any entity under common control with either Party, for so long as such common control continues to exist, where "Control" means ownership either directly or indirectly of not less than 50% of the voting shares.
- (b) **Client** means the client referred to in the Service Order.
- (c) **Client Data** means data which the Client uploads, transmits or creates via the Software.
- (d) **Confidential Information** means any information: relating to the business and affairs of a party; relating to the customers, clients, employees, sub-suppliers or other persons doing business with a party; relating to these Terms; relating to the Intellectual Property Rights or Source Code of a party; which is by its nature confidential; which is designated as confidential by a party; or which the other party knows or ought to know, is confidential, and includes all trade secrets, knowhow, marketing, financial and customer information, forecasts, and strategies and any other commercially valuable information of a party.
- (e) **Cru Software** means Biarri EMI Pty Ltd (ABN 81 627 041 310) trading as Cru Software.
- (f) **Documentation** means any operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by Cru Software as part of the Software and/or the Services.
- (g) **Fees** means the charge(s) payable by the Client to Cru Software pursuant to these Terms, as specified in the Service Order.
- (h) **Improvement** means any modification, enhancement, extension, adaptation, development of, applications of, mutations, improvement or other technical advance to a technology, material, document, software, or substance in whatever form.
- (i) **Intellectual Property Rights** means all intellectual property and proprietary rights including, but not limited to all proprietary databases, algorithms, software and its related documentation and any modifications thereto and the originals and any copies thereof and all patents, trade secrets, trademarks, service marks, copyrights, design rights (including the right to apply to register such rights) and other rights in works of authorship (including rights in computer software), moral and artists' rights, trade or business names, domain names, know-how, database rights and whether any of the foregoing are registered or unregistered and all rights or forms of protection of a similar nature in any country.
- (j) **Materials** means all manuals, data, documents, and information which are prepared, written, made accessible, provided or developed by Cru Software or its licensors in connection with the Services, including help and support documentation.
- (k) **Party** means either Cru Software or the Client as the context dictates, and **Parties** means Cru Software and the Client.

- (l) **Service Order** means the applicable order form for the provision of Services, whether in physical or electronic format, relating to the provision of goods and Services by Cru Software and any similar ordering document, delivered to or made available to Cru Software through a medium or channel approved by Cru Software, by which the Parties agree the particulars of the Client's use of the Software.
- (m) **Service Order Commencement Date** has the meaning set out in the Service Order.
- (n) **Service(s)** means the Software service available via the internet more fully described in the Service Order. Client's use of the Service is expressly limited to Users up to the maximum number of units stated in a Service Order.
- (o) **Software** means code owned by or licensed to Cru Software, and Upgrades thereto released during the Term, and which is accessed and used by the Client, and regardless of whether the Software is hosted by Cru Software, the Client or a third party.
- (p) **Source Code** means software written in a form intelligible to trained programmers and capable of being translated into object code through assembly or compiling for operations on computer equipment
- (q) **Support Services** means Cru Software's technical support service available via email and phone communication as further specified in clause 2.5.
- (r) **Term** has the meaning set out in clause 2.3.
- (s) **Terms** means these Terms of Service (as amended from time to time).
- (t) **Upgrades** means any bug fixes, error corrections, modifications, updates, upgrades and new versions of the Software provided by Cru Software to the Client at no additional charge.
- (u) **User** means any individual person who accesses the Services or the Software. User includes all User Types.
- (v) **User Type** means the extent of access that determines which features and capacities are available to a User. User Types include:
 - (i) View-Only User: Users simply invited to view data in the Software, without ability to request Support Services or edit data in the Software,
 - (ii) Standard User: Users with edit access to the Software and ability to request Support Services,)
 - (iii) Admin User: full access to all software components.

2. SOFTWARE SUBSCRIPTION AND SERVICES

2.1 License.

- (a) Subject to the terms and conditions of the applicable Service Order, Cru Software grants the Client a non-exclusive, non-transferable, non-sublicensable right for the Client's Users to access and use the Services for its internal business purposes.
- (b) During the Term of the applicable Service Order, the Client may access and the Services and Software pursuant to these Terms.
- (c) Cru Software retains all right, title and interest in and to the Services, including without limitation, all Software used to provide the Service and all logos and trademarks reproduced through the Service.
- (d) Cru Software does not grant, and nothing in these terms has the effect of granting the Client any Intellectual Property Rights in the Service, Software or any of its components.

2.2 Restrictions.

- (a) Unless expressly authorized under these Terms or by Cru Software in writing, the Client is not permitted to:
 - (i) reverse engineer, adapt, modify, create derivative works of, make additional copies of, separate, or develop the Software, or facilitate or assist any such activity;
 - (ii) integrate or link the Software with other software;

- (iii) sell or otherwise earn consideration by providing access to the Software;
- (iv) permit third party access to the Software; or
- (v) use the Software to assist a competitor of Cru Software in developing competing Software.

2.3 Term of Subscription or Service.

Cru Software will provide each Service from the Service Order Commencement Date for any period specified in an agreed Service Order (the “Term”).

2.4 Client and Responsibilities.

- (a) **Confidentiality of Username and Password.** The Client is responsible for the confidentiality of the username and password used by its Users to access the Software and agrees not to give its username or password to any third party.
- (b) **Accuracy of Data.** The Client acknowledges that by transmitting Client Data within the Software, the Client is inviting any recipients to rely upon that information and that the retraction of such information may, therefore, affect the recipients. The Client is entirely responsible for the content and delivery of Client Data, including without limitation, the accuracy, usefulness, timeliness and completeness of Client Data.
- (c) **Client Obligations during Set Up and Training.** The Client, using qualified personnel, shall;
 - (i) provide the Data Requirements in a timely fashion and as required by Cru Software to complete the Services;
 - (ii) carry out agreed preparations and take other steps reasonably requested by Cru Software to allow Cru Software to perform the Services;
 - (iii) grant Cru Software access to the premises, equipment, computer bases, software and hardware necessary for Cru Software to perform the Services;
 - (iv) review information, make decisions and, on an ongoing basis, provide Cru Software with the information necessary for Cru Software to perform the Services; and
 - (v) provide Cru Software with true and relevant information regarding the Client and its business.
- (d) **Duty to Keep Informed.** The parties undertake to inform one another on an ongoing basis of any circumstances that might materially affect the ability of both parties to duly fulfil their undertakings in these Terms
- (e) **Other Obligations.** The Client is responsible for compliance with these Terms and any Service Order by its employees, contractors and agents and is liable for all their acts and omissions.
- (f) The Client understands and acknowledges that Cru Software’s ability to provide the Services is dependent on the Client undertaking these obligations (or such reasonable obligations as may be advised to the Client by Cru Software).
- (g) The Client acknowledges that failure to perform any such obligations may result in a failure to receive Services and/or additional costs being payable for the Services.

2.5 Support Services

- (a) Business Hours Support (9am - 5pm AEST, Monday - Friday) is included in the base product licence and is included at no additional cost if noted in the Service Order.
- (b) Extended Hours Support (7am - 7pm AEST, Monday - Sunday) and Premium Support Service Level (second-line support coverage is 24 hours 7 days a week) are offered by Cru Software at an additional fixed cost per year as agreed between the parties and as included in the Service Order.
- (c) Cru Software attempts to respond to email support questions within one business day; in practice, our responses are generally even faster. We do not promise or guarantee any specific response time.

- (d) We may limit or deny your access to support if we determine, in our reasonable discretion, that you are acting, or have acted, in a way that results or has resulted in misuse of support or abuse of Cru Software representatives.
- (e) Issues resulting from your use of API's may be outside the scope of support.
- (f) Cru Software only provides support for those who have an active subscription, as outlined in the Service Order.

3. FEES

3.1 Fee

- (a) Client shall pay Cru Software the Fee as provided in the applicable Service Order.
- (b) The Service is billed in advance on a monthly or annual basis and is non-refundable.
- (c) There will be no refunds or credits for partial months of service, downgrade refunds, or refunds for months unused with an open account.
- (d) For any upgrade in User Type level, Client will automatically be invoiced the new rate on the next billing cycle.

3.2 Set Up and training

- (a) Cru Software shall provide the set up and training to the Client as set out in the Service Order (if any).
- (b) Any additional training required by the Client shall be provided by Cru Software at Cru Software's standard rates then in force.

3.3 Taxes

- (a) All Fees specified on a Service Order exclude any foreign or domestic governmental taxes or charges of any kind that may be applicable to these Terms,
- (b) Except for Australian company and/or trade taxes imposed on Cru Software, the Client will be responsible for and pay all Taxes. If any payments to Cru Software under these Terms are subject to withholding tax, the Client shall pay to Cru Software such gross amount that after payment of the withholding tax, would result in the receipt by Cru Software of the full amount due under these Terms (i.e. Cru Software will receive as net payments the full amount specified in these Terms regardless of the amount of withholding taxes paid). The Client will notify Cru Software of the payment of any Taxes made in the name of Cru Software and provide Cru Software with the appropriate receipts for such tax payments. Cru Software shall be responsible for all tax administration decisions for Taxes imposed on Cru Software.
- (c) If a goods and services tax or any similar tax (GST) has application to any supply made under or in connection with these Terms (including without limitation the supply or hire of any goods, or the supply of any services, rights, benefits or any other thing to the Client), Cru Software may, in addition to any amount or consideration payable under these Terms, recover from the Client an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by the Client for the supply by the prevailing GST rate. Any additional amount on account of GST recoverable from the Client under this clause shall be calculated without any deduction or set-off of any other amount and is payable by the Client upon demand by Cru Software whether such demand is by means of an invoice or otherwise.
- (d) This clause shall survive the termination.

4. ACCEPTABLE USE OF THE SERVICES

- (a) All Users must use the Services in accordance with these Terms, the Service Order and in accordance with all applicable laws. Users must not use the Services in any fashion that would (or would assist others to):
 - (i) mislead, deceive, stalk, threaten, or harass another person or Party;
 - (ii) make available any data that is unlawful, harassing, threatening, harmful, defamatory, libellous, abusive, violent, obscene, vulgar, invasive of another's privacy, hateful or racially or ethnically offensive;

- (iii) post or transmit (i) information that infringes or violates the rights of a third party, including the rights of privacy and publicity or (ii) unsolicited messages, junk mail, spam or chain letters or material that might be considered offensive;
 - (iv) interfere with or disrupt the Services or cause or knowingly facilitate the spread of a virus, worm, Trojan horse, or other harmful object;
 - (v) collect or store personal data without permission;
 - (vi) attempt to breach or circumvent Software security;
 - (vii) violate any law; or
 - (viii) Undertake promotions or undertake commercial activity not connected with the business purposes the Services are intended to support.
- (b) In order to provide the Services effectively and in accordance with applicable law and these Terms, Cru Software may monitor and record a User's use of the Services and the User authorizes Cru Software to collect, store and use all such information in accordance with clause 5 (Confidentiality) and clause 6 (Personal Information and Client Data).

5. CONFIDENTIALITY

5.1 Obligation.

- (a) Both Parties acknowledge that the Confidential Information obtained by either Party under or in connection with these Terms may constitute valuable trade secrets of the disclosing Party.
- (b) Each Party agrees to use Confidential Information solely in accordance with the provisions of this Agreement and not to disclose, or permit to be disclosed, either directly or indirectly, Confidential Information to any third party, without the other Party's prior written consent.
- (c) Each Party shall exercise the same degree of care as it takes to preserve and safeguard its own Confidential Information, but in any event, no less than a reasonable degree of care.

5.2 Exceptions.

Notwithstanding the foregoing, neither Party will be in breach of this provision in circumstances where:

- (a) the Party is legally compelled to disclose the other Party's Confidential Information by law or any order of any court, tribunal, authority or regulatory body;
- (b) the Confidential Information is already information is in the disclosing Party's possession without a duty of confidentiality at the date of disclosure;
- (c) the disclosing Party discloses these Terms to its professional advisors, financiers, prospective financiers or partners or agents, (the "**Related Parties**") (so long as the Related Parties (a) need to know the terms to comply with its obligations, or to receive the benefit of this Agreement and (b) are under contractual or professional obligations equivalent to those contained in this clause);
- (d) Cru Software discloses the fact that the Client is a client to its potential clients;
- (e) the Confidential Information is independently developed by or for the receiving Party without any breach of the Agreement;
- (f) disclosed to a prospective purchaser of an interest in that party, but only if the disclosure is made on a confidential basis;
- (g) disclosed as part of an initial public offering, reverse takeover, or similar transaction affecting a listing of the shares of that party on a Stock Exchange to the extent disclosure of such information is necessary to complete a disclosure document or prospectus for such listing and otherwise comply with the rules of a Stock Exchange; or
- (h) disclosed to an investor of that party, but only if the disclosure is made on a confidential basis.

5.3 Injunctive Relief.

- (a) Notwithstanding the foregoing, if either Party breaches, or threatens to breach the provisions of this clause 5 or clause 8 (Intellectual Property Rights) each Party agrees that the non-breaching Party will have no adequate remedy at law and is therefore entitled to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.
- (b) This clause 5 shall survive the termination.

6. PERSONAL INFORMATION AND CLIENT DATA

6.1 Personal Information

- (a) **Use of Personal Information:** Client may disclose to Cru Software personal information in connection with the Client's employees, directors, officers, Clients or suppliers, and/or other users of the Services ("Personal Information"). Where the Client provides Personal Information to Cru Software, the Client is responsible for confirming that
 - (i) its disclosure and/or provision of Personal Information to Cru Software, and
 - (ii) Cru Software's storage and/or use of such Personal Information is permissible under relevant Privacy Legislation.
- (b) **Protection of Personal Information:** Cru Software will use commercially reasonable efforts to protect Personal Information from loss, destruction or unauthorized use or access, utilizing technical, physical and administrative security measures consistent with industry practice. Personal Information is not (i) data that is in any way created or extracted from Client Data or (ii) Client Data that the Client uploads or transmits via the Software.
- (c) **Privacy:** Cru Software may collect Personal Information of the Client's employees, agents and contractors with whom Cru Software has contact in business dealings and the Client acknowledges that Cru Software may use that information to perform Services under these Terms.
- (d) **Transfer and Storage of Personal Information.** Cru Software may transfer or store Personal Information to any country in which Cru Software operates, subject to its compliance with applicable laws and these Terms. The Client agrees to such transfer in its own right and on behalf of those individuals and entities from whom it collected such Personal Information, where such transfer is for the purposes of performing the Services.
- (e) Personal Information collected by Cru Software will be stored through electronic systems located in various jurisdictions. While some of these databases may be operated by Cru Software, some may be operated by third parties on behalf of Cru Software.
- (f) Cru Software may share Personal Information with third parties to perform business functions and services on its behalf including in connection with the use or operation of the Software (such functions may include hosting servers, providing legal, accounting, marketing, product research or other support services) or as required or permitted by law.
- (g) These third parties may be located in various countries across the globe.
- (h) Where Cru Software does make Personal Information or data available to third parties to perform business functions and services on behalf of Cru Software, all such parties will be obligated to maintain the security and confidentiality of the Personal Information and to process the data in accordance with Cru Software's instructions. Cru Software will conclude appropriate data protection contracts with all such third parties, to ensure appropriate levels of data protection is accorded to the data at all times.
- (i) Cru Software either by itself or through third party service providers, will act only as a data processor and will not re-use or re-disclose Personal Information for unrelated purposes outside the provision of the Services.

6.2 Client Data

- (a) **Ownership.** The Client retains all of its right, title and interest in and to Client Data, and ownership of Client Data is not transferred to Cru Software under these Terms.

- (b) **Right to Use.** The Client grants Cru Software a nonexclusive license, for the Term of a relevant Service Order, to use Client Data to accommodate Client's authorized use of the Software and Services. The Client further grants Cru Software a nonexclusive, worldwide, perpetual license to use usage data in an anonymized, aggregated form in order to compile data on Software for statistical purposes to use and improve the Software.
- (c) **Retention.** Upon termination or expiry of the engagement under these Terms, the Client will have three months ("**Retention Period**") in which to request an archive of the Client Data, after which the Client Data may be deleted by Cru Software without notice. Cru Software will not be liable for any damages of any kind in connection with a decision not to retain Client Data after the Retention Period.
- (d) **Warranty Regarding Client Data and Use of the Services.** The Client warrants that it has appropriate rights in Client Data and that the Client Data and the Client's use of the Client Data will not violate applicable laws, these Terms, or third party obligations. Cru Software reserves the right to screen Client Data and to remove/refuse use of Client Data without warning that it reasonably considers may breach these Terms. Cru Software will notify the Client if Cru Software removes Client Data and will repost or return Client Data provided that, in Cru Software's reasonable opinion, doing so would not place Cru Software at risk of loss or damage. Cru Software is not liable for any damage or loss caused by Cru Software's decision to remove/refusal to use Client Data.
- (e) This clause shall survive the termination.

7. USER COMMUNICATIONS

- (a) **Sharing of Your Information on the Software.** Cru Software may allow messaging and sharing of information in many ways, such as your profile, organisation and relevant project information and data as enabled from one User to another User. Information and content that is shared or posted may be seen by other Users of the Services. Where settings have been made available, Cru Software will honour the choices made by Users about who can see content or information.
- (b) **Communication with Users.** Cru Software, either through itself or through its third party partners, may communicate with Users of the Services regarding non-Project specific matters relating to system usage, modules and support provided by Cru Software. This communication may include, but is not limited to,
 - (i) providing information on products, Services, or administration;
 - (ii) marketing communications;
 - (iii) identifying product and Services preferences to personalize experience for the Client; and
 - (iv) business purposes.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 Software and Services.

- (a) The Client acknowledges and agrees that Cru Software and its licensors own all right, title, interest and Intellectual Property Rights in and to the Services, the Software and the Documentation, including all Improvements therein, including any Materials or Software that may be developed by Cru Software in the performance of the Services.
- (b) No transfer of any ownership rights in the Software, Documentation Services, or Intellectual Property Rights therein occurs under these Terms, including unique, Client specific configuration settings.
- (c) The Client shall use reasonable endeavours to prevent any infringement of Cru Software's Intellectual Property Rights in the Software and shall promptly report to Cru Software any such infringement that comes to its attention.

8.2 Feedback.

- (a) Cru Software has and retains the exclusive right to own, use and disclose, in the course of its business, all feedback provided by Client with respect to the Services and Software.
- (b) "Feedback" means commentary/review/feedback obtained by Cru Software in the course of discussions with Users for the purpose of improving the usability and feature set of the Software.

- (c) This clause shall survive the termination.

9. SUSPENSION FOR BREACH

- (a) Cru Software may suspend the Software Subscription(s) and delivery of any or all of the Services if the Client commits a material breach of these Terms and does not remedy that breach within seven days. In the case of a breach of payment obligations, Cru Software may further require all Fees to be payable in advance.
- (b) Without limiting (a), Cru Software may immediately suspend access to the Services or the Software at any time, without notice, if the Client's use exceeds any of the defined attributes of the User Type currently active. In the case where Cru Software takes such suspension action, Cru Software will explain the reasons to the Client as soon as possible and work with the Client to correct the action such that the Software's performance is not impacted in an unreasonable way.

10. LIMITED WARRANTY AND DISCLAIMERS

10.1 Limited Warranty.

- (a) Cru Software warrants that the Services will be provided using reasonable professional skill and care. Client's sole and exclusive remedy for any failure to so perform the Services will be for Cru Software to re-perform such Services.
- (b) Cru Software warrants that the Software (as updated and used in accordance with the Documentation) will operate in all material respects in conformity with the functional specifications described in the user documentation for 90 days following the initial delivery of the Software.

10.2 Disclaimers.

- (a) Client assumes all responsibilities for:
 - (i) selection of the Software to achieve Client's intended results,
 - (ii) the use of and results obtained from the Software, and
 - (iii) taking appropriate measures to prevent loss of data.
- (b) Except as expressly provided in the limited warranty above, to the maximum extent permitted by applicable law, Cru Software:
 - (i) disclaims all warranties, whether express, implied, statutory or otherwise, including without limitation, implied warranties of merchantability, fitness for a particular purpose, compatibility, accuracy or non-infringement;
 - (ii) shall have no liability for any damage caused by errors or omissions in any information or instructions provided to Cru Software by the Client in connection with the Services;
 - (iii) shall assume no liability for any actions taken by the Client or its personnel, or any other third party based (wholly or in part) on the use of the Software or the Services by the Client, including in relation to any data security breach or cyber attack; and
 - (iv) does not warrant that the Software will be error-free or that the Software will work without interruptions.

11. LIMITATION OF LIABILITY

- (a) Neither Party will be liable for any special, punitive, exemplary, indirect, consequential loss, or damages, loss of profit, interest, revenue, business, goodwill, savings or anticipated profit or any loss of, or damage to any Client Data, or loss of or interruption to business, in each case arising out of or in any way connected to the provision of the Software or the Services including, without limitation, loss or damage caused by a computer virus or other malware, and in each case regardless of whether either Party was advised of the possibility of such damages.
- (b) To the maximum extent permitted by law, subject to clause 11(c) regardless of whether a claim arises in contract, tort (including negligence) or otherwise, under no circumstances will either Party's (including its

officers, employees, contractors, Affiliates and agents) aggregate liability be greater than the Fees paid under the relevant Service Order.

- (c) Clause 11(b) will not limit or exclude the liability of either party for any claim arising from the non-payment of any Fees by the Client.
- (d) To the extent that any rights cannot be excluded (including under schedule 2 of the *Competition and Consumer Act 2010* (Cth), then our liability will be limited to, at Cru Software's election, the re-supply of the Services or the payment of the cost of having the Services supplied again.
- (e) This clause shall survive termination.

12. INDEMNITIES

12.1 Cru Software Indemnity.

Cru Software shall defend or at its option settle any third party claim, action or proceeding brought against Client alleging that the Software as delivered to Client and used as authorized in this Agreement, infringes any Intellectual Property Right of a third party.

12.2 Limit on Indemnity.

- (a) Notwithstanding the foregoing, Cru Software will have no liability for infringement claims arising from:
 - (i) combination of the Software with other software or products not provided by Cru Software;
 - (ii) the modification of the Software, in whole or in part, by anyone other than Cru Software; or
 - (iii) use by Client of any specified release of the Software after Cru Software notifies Client that continued use may subject Client to such claim of infringement, provided Cru Software provides Client with a replacement release.

12.3 Replacement Software.

- (a) If any portion of the Software is held, or in Cru Software's reasonable opinion is likely to be held, to infringe or misappropriate a third party's Intellectual Property Rights, or use of the Software is otherwise enjoined, then as Client's sole and exclusive remedy, Cru Software may at its sole option and expense, within a commercially reasonable period of time:
 - (i) procure for Client the right to continue using the Software;
 - (ii) replace the Software with non-infringing software; or
 - (iii) in the event that neither of the foregoing is reasonably practicable, terminate this Agreement and refund a reasonable portion of the Fees paid by Client with respect to the Software.

12.4 Client Indemnity.

- (a) The Client shall defend or, at its option, settle any third party claim, action or proceeding brought against Cru Software, any Cru Software Affiliate or any Cru Software related entity alleging that
 - (i) the Client has breached any law or regulation in the use of the Software or the Client Data; or
 - (ii) the Client has misused any Client Data or infringed any third party Intellectual Property Rights in the use of the Client Data.

12.5 Indemnity Requirements.

- (a) The indemnifying Party shall pay any final judgments awarded or settlements entered into for the indemnities described above (Cru Software Indemnity and Client Indemnity), provided that the indemnitee provides the indemnifying Party with:
 - (i) prompt written notice of a valid claim;
 - (ii) sole control over the defense and settlement of such claim; and

- (iii) all reasonably necessary information and assistance (at the indemnifying Party's expense) to defend and/or settle such claim.
- (b) The indemnitee may participate in the defense of a claim asserted hereunder after the indemnifying Party has assumed the defense or settlement, provided that the indemnitee shall bear any legal fees and expenses or other costs it incurs in so participating. The indemnifying Party shall not be liable for any costs or expenses incurred by the indemnitee by acting without the indemnifying Party's prior written authorization. The indemnifying Party may not settle or compromise any claim under this clause that requires the indemnitee to admit liability or pay any money without the indemnitee's prior written consent, which consent shall not be unreasonably withheld or delayed.
- (c) This clause shall survive the termination.

13. TERMINATION

13.1 Termination.

- (a) Either Party may terminate the agreement under these Terms or any Service Order in the event that:
 - (i) the other Party commits a material breach of these Terms or applicable Service Order and where such breach is capable of remedy, fails to remedy the breach within 30 days of receiving written notice from the other Party;
 - (ii) the Client's access has been suspended under clause 9 and the Client has not taken the necessary action to restore access within a total of 30 days;
 - (iii) the Client files for bankruptcy, goes into receivership, becomes insolvent, or makes an assignment for the benefit of creditors; (iv) the Client, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
 - (iv) the Client, being a natural person, dies; or
 - (v) there is a change of Control of the Client.

13.2 Payment in the Event of Termination.

Upon termination under this clause 13:

- (a) the Client must immediately pay all Fees that have accrued or are otherwise owed by Client under this Agreement. Cru Software shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Client shall pay these invoices immediately on receipt.

13.3 Effect of Termination.

- (a) Upon termination of this Agreement or any Service Order, the Client:
 - (i) immediately loses all rights for the Client and its Users to use or access the Software;
 - (ii) must stop using the Software and Services; and
 - (iii) must return any Materials to Cru Software or comply with all directions of Cru Software for the destruction or return of the Materials.
- (b) The Client must pay any and all outstanding Fees promptly following termination.
- (c) Other than as set out in these Terms, neither party shall have any further obligation to the other Party under these Terms following termination.

14. MISCELLANEOUS

14.1 Force Majeure.

- (a) Neither Party will be liable for any delay or default in performance of any obligation of these Terms (except payment obligations) by either Party, to the extent that such delay or default is caused by an event which is

beyond a Party's reasonable control including, natural disasters, strikes, accidents, government action or regulator changes, or acts of God.

- (b) Performance of each Party's obligations under these Terms will be postponed automatically if a Party is prevented from performing its obligations due to an act of or failure to act by the other Party.
- (c) If a delay or failure by a Party to perform its obligations under this Agreement exceeds 3 calendar months, either Party may immediately terminate the Agreement by providing notice in writing to the other Party.

14.2 Entire Agreement.

- (a) These Terms and each Service Order comprise the entire agreement between the Parties concerning its subject matter.
- (b) The Parties acknowledge that:
 - (i) amendments to a Service Order or these Terms which are not expressly accepted in writing by an authorized Cru Software officer; and/or
 - (ii) Client's standard terms and conditions (if any) attached to, enclosed with, or referred to in any Service Order,

shall not form part of the agreement between the Parties.

14.3 Amendments to these Terms

- (a) Cru Software may modify these Terms or any additional terms that apply to the Software with 30 days' notice to the Client. Such changes will be communicated digitally to the Client and its Users. Changes will not apply retroactively and will become effective no sooner than fourteen days after notice is given.
- (b) If there is a conflict between these Terms and the additional terms, the additional terms will apply. If the Client does not accept a proposed change, the Client has rights to terminate this agreement with 30 days' notice and no penalties or payment for termination.

14.4 No Reliance on Representations.

The Client warrants that it has not relied on any representation, undertaking, statement, or understanding which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by Cru Software.

14.5 Independent Contractor.

- (a) Cru Software is not a party to any transactions that the Client may enter into with a third party via the Software. Cru Software is engaged by the Client in the capacity as an independent contractor and is not an employee, agent or partner of a Client, and is not engaged in a joint venture with a Client.
- (b) The Clients agrees to waive to the maximum extent possible any and all rights they may have against Cru Software arising out of any transaction or dealings they conduct with another Client or third party through the Software.

14.6 Subcontracting.

Cru Software may subcontract the delivery of Services under this Agreement, provided that Cru Software shall remain liable to the Client for the provision of such Services.

14.7 Assignment.

- (a) Neither Party may assign any rights or benefits under these Terms, whether by operation of law or otherwise, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; except that Cru Software may assign all or part of these Terms to any Cru Software Affiliate on written notice to the Client. However, if the proposed assignee is a direct competitor of the Client and as jointly agreed in writing by the parties, the Client may terminate this agreement with 30 days' notice to Cru Software.
- (b) Any attempted assignment in violation of this provision will be null and void.

- (c) Subject to the foregoing, these Terms shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

14.8 Waiver.

- (a) A right may only be waived in writing, signed by the Party giving the waiver, and no other conduct of a Party (including a (i) failure to exercise the right or (ii) delay in exercising the right) operates as a waiver of the right or otherwise prevents the exercise of the right.
- (b) A waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again and the exercise of a right does not prevent any further exercise of that right or of any other right.

14.9 Severability.

If any provision or part provision of these Terms is held invalid, unenforceable or illegal by any court or tribunal for any reason, the Terms will remain otherwise in full force apart from such provisions or part provisions which will be deemed deleted or modified to the minimum extent necessary to remove the invalidity, unenforceability or illegality.

14.10 Client Reference.

- (a) Cru Software may not issue any press release regarding the Client's use of the Software without the prior written consent of the Client (not to be unreasonably withheld, delayed or conditioned).
- (b) Notwithstanding (a), Cru Software may use the Client's name and logo and refer to the fact that the Client is a client of Cru Software in its annual report, list of references or presentations to actual or potential clients without the prior Client's consent.

14.11 No Third Party Beneficiaries.

No provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity any rights, remedies or other benefits as a third party beneficiary.

14.12 Governing Law and Jurisdiction.

These Terms are governed by the laws of the state of Queensland and the Parties submits to the non-exclusive jurisdiction of that state and waives any right it might have to claim that those courts are an inconvenient forum.

14.13 Notice.

- (a) A notice, consent or other communication under these Terms is only effective if it is:
 - (i) in writing, sent by or on behalf of and at the express instruction of the person giving it;
 - (ii) sent via email or
 - (iii) addressed to the person to whom it is to be given.
- (b) For purposes of this clause, the Client's representative and email address will be as specified at registration or otherwise in writing to Cru Software. Cru Software's representative for notice will be "Cru Software Legal Team" and the email address is invoices@crusoftware.com.
- (c) This clause shall survive termination.

15. FREE TRIAL AND VIEW ONLY USE

- (a) In addition to all other applicable terms and conditions, the Software provided or accessed for (i) free trial or (ii) View-Only User Type purposes is subject to the following conditions:
 - (i) the Software may only be used for demonstration, evaluation, or viewing purposes; and
 - (ii) the Software is provided "AS IS" without any warranties or indemnities.
- (b) For free trial versions:

- (i) Client must stop using the Software upon the earlier of (i) 14 days from the date Client receives the right to access the Software, or (ii) Client's receipt of notice of termination from Cru Software; and
- (ii) an upgrade from the free plan to any paying plan will end a free trial. You will be billed for your first period of service, immediately upon upgrading.