

TERMS AND CONDITIONS (22ND MAY 2018)

1 Definitions and Interpretation

1.1 Definitions

Agreement means these terms and conditions, the Statement of Work and any schedules;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria;

Change means any variation to all or part of the Services;

Change Request means a written request by a party for a Change and must include any additional information reasonably necessary to enable the other party to properly assess the request;

Confidential Information means all information belonging or relating to a party to this Agreement, whether oral, graphic, electronic, written or in any other form, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or that is in fact, or should reasonably be regarded as, confidential to the party to whom it belongs or relates;

Customer means the person or entity engaging My Integrator Service to provide the Services.

Expenses means out-of-pocket expenses incurred by My Integrator Service in connection with the provision of the Services and as invoiced in accordance with clause 8.3;

Fees means the fees specified in the Statement of Work and payable by the Customer to My Integrator Service for provision of the Services;

Force Majeure Event means any act, event or cause including:

- (a) an act of God, peril of the sea, accident of navigation, war, sabotage, riot, act of terrorism, insurrection, civil commotion, national emergency (whether in fact or Law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the party concerned), epidemic, quarantine, radiation or radioactive contamination;
- (b) an action or inaction of a government authority, including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; or
- (c) a breakdown of plant, machinery or equipment or shortages of labour, transportation, fuel, power or plant, machinery, equipment or material;

GST means Goods and Services Tax payable pursuant to the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time);

Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by statute, at common law or in equity and wherever existing, including:

- (a) patents, designs, copyright, rights in circuit layouts, plant breeder's rights, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals and extensions of these rights;

My Integrator Service means Lovett & LeaveIT Pty Ltd ATF Beelove Trust (trading as My Integrator Service) ABN: 31618985688;

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth, a State, a Territory or a Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or a Government Agency that have the force of law;

Products means any products created by My Integrator Service;

Services means services specified in the Statement of Work;

Site means a location or locations where the Services will be provided, connected or installed as agreed between the Parties or as otherwise specified in the Statement of Work;

Software means the software specified in the Statement of Work;

Statement of Work means the statement of work set out in the annexure to this Agreement;

Unavoidable Costs means:

- (a) any costs incurred by My Integrator Service, in connection with the performance of its obligations under this Agreement or any agreement with any third party in connection with this Agreement which cannot be cancelled, refunded or re-allocated to My Integrator Service' other operations or business activities;
- (b) the costs of any redeployment or termination of employment of My Integrator Service' personnel engaged for the purposes of providing the Services; and
- (c) the costs identified by My Integrator Service for any capital purchases made in connection with the Services.

1.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) the headings are used for convenience only and do not affect the interpretation of this Agreement;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (e) the word "month" means calendar month and the word "year" means 12 months;
- (f) the words "in writing" include any form of communication capable of being read by the recipient;
- (g) a reference to a thing includes a part of that thing;
- (h) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (i) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)"; and
- (j) money amounts are stated in Australian currency unless otherwise specified.

2 Commencement of the Services

This Agreement has effect on and from the date specified in the Statement of Work (Commencement Date) or from the date the Customer engages My Integrator Service to provide the Services and will continue:

- (a) for the period specified in the Statement of Work (Term);
- (b) until all Services specified in the Statement of Work have been provided to the Customer; or
- (c) unless terminated earlier in accordance with the provisions of this Agreement.

3 Services

- (a) Subject to payment of the Fees, My Integrator Service will use reasonable endeavours to provide the Services with due care and skill in accordance with the terms of this Agreement.
- (b) My Integrator Service will use reasonable endeavours to deliver and, where applicable, install or provide the Services on the dates and in the manner specified in the Statement of Work.
- (c) My Integrator Service will use reasonable endeavours to deliver and, where applicable, install or provide the Services on the dates and in the manner specified in the Services Agreement.

4 Software

- (a) Any risk in the Software passes to the Customer on delivery and title in any media embodying the Software passes when the Fees have been paid in full.

- (b) My Integrator Service may provide the Customer with Software licensed by a third party (**Third Party Material**) the Customer acknowledges that:
 - (i) its use of the Third Party Material will be subject to the third party licensor's licence agreement; and
 - (ii) all licences with respect to the Customer's use of the Third Party Material will be between the Customer and the third party developer (**Third Party Licence**).
- (a) Title in any Third Party Material remains at all times with the third party.
- (b) The Customer is solely responsible for its compliance with the Third Party Licence and My Integrator Service will not be responsible for, or have any obligation to ensure, that the Customer agrees to or complies with the Third Party Licence.

5 Warranties

- (a) Any representation, warranty, condition or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.
- (b) Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy conferred on the Customer by The Australian Consumer Law, which is a schedule to the Competition and Consumer Act 2010 (Cth) or any other applicable Law that cannot be excluded, restricted or modified by agreement.
- (c) To the fullest extent permitted by law, the liability of My Integrator Service for a breach of a non-excludable condition or warranty referred to in clause 5(b) is limited, at My Integrator Service' option, to:
 - (i) in the case of goods, any one or more of the following:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; or
 - (i) in the case of services:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (d) My Integrator Service will not provide warranty services for defects or deficiencies in Products or Services which are caused by:
 - (i) external causes including natural disaster, fire, accident, neglect, misuse, vandalism, water, lightning, power surge or spike;
 - (ii) the use of a Product for other than its intended purpose;
 - (iii) the use with or connection of a Product to items not approved by My Integrator Service;
 - (iv) the performance of maintenance or attempted repair by persons other than My Integrator Service or as authorised by My Integrator Service;
 - (v) changes made to the deliverables created by performance of the Services or to the operating environment;
 - (vi) the relocation of Products by the Customer; or
 - (vii) any configuration or reconfiguration by the Customer of the Products or other equipment with which the Products interface.

6 Customer obligations

The Customer undertakes to:

- (a) do all things necessary to enable My Integrator Service to perform its obligations under this Agreement including performing any Services, providing any Products or connecting any services as required by My Integrator Service from time to time;

- (b) provide My Integrator Service with all assistance and co-operation in the performance of this Agreement required by My Integrator Service including providing My Integrator Service with:
 - (i) access to the Site as and when required by My Integrator Service;
 - (ii) access to relevant Customer individuals, directors, officers, employees, agents, consultants, sub-contractors, specialists and other personnel (**Personnel**); and
 - (iii) all information and documentation as requested by, or as otherwise necessary for My Integrator Service to perform its obligations under this Agreement;
- (c) appoint and maintain sufficient numbers of appropriately qualified Personnel to liaise with My Integrator Service in relation to the performance of this Agreement; and
- (d) not delay performance of its obligations, including any consents, under this Agreement.

7 Delay

My Integrator Service is not responsible for any failure to perform any of its obligations under this Agreement including the provision of the Services where, in the reasonable opinion of My Integrator Service, such failure is caused or contributed to by the Customer or any third party.

8 Payment

8.1 Fees

The Customer will pay My Integrator Service the Fees in the manner and on the dates specified in the Statement of Work.

8.2 Expenses

The Parties acknowledge and agree that My Integrator Service will be reimbursed on demand at the actual cost for Expenses, provided that such expenses are documented and receipts are attached to the Expenses invoice.

8.3 Invoicing

My Integrator Service will provide the Customer with a valid invoice for all amounts due in respect of the Services in accordance with the Statement of Work:

8.4 Payment

Unless otherwise specified by My Integrator Service, the Customer will pay all validly issued invoices within 14 days from date of invoice.

8.5 Overdue amounts

If any amount payable to My Integrator Service under this Agreement has not been paid by the Customer by the due date for payment, My Integrator Service may:

- (a) suspend performance of this Agreement (in part or in full) until the amount outstanding is paid in full;
- (b) enter the Site to remove the Services (where applicable); or
- (c) terminate this Agreement.

Unless expressly stated to the contrary, all Fees, costs and charges referred to in this Agreement are exclusive of all taxes, duties and imposts.

If My Integrator Service is or will be liable for any taxes, duties or imposts on or relating to this Agreement or anything done pursuant to this Agreement then the Customer will pay My Integrator Service an amount equal to that liability at the time that it pays any fees, costs or charges to which the liability relates.

8.6 Other rights and obligations not affected

The exercise by My Integrator Service of any of its rights under clause 8.5 does not affect:

- (a) the Customer's obligation to pay any money due and payable; or
- (b) any other rights or remedies My Integrator Service may have in relation to any failure by the Customer to pay an amount due, under this Agreement or any other agreement between My Integrator Service and the Customer.

8.7 GST

- (a) The price for the Services excludes GST.

- (b) In addition to the Fees payable under clause 8.1, the Customer, upon provision of an invoice by My Integrator Service, must pay to the My Integrator Service any GST in respect of any taxable supply made by My Integrator Service under this Agreement

9 Change Requests

Either party may at any time request a Change to the Statement of Work as follows:

- (a) the party requesting the Change must, at its own cost, submit a Change Request in respect of the proposed Change and a written statement of business requirements to the other party;
- (b) at the cost of the Customer, My Integrator Service will produce a specification for the Change, an estimate of the timing for performance of the Change and its likely impact on existing milestones or delivery dates, and a quote for the likely fee for performance of the Services comprising the Change; and
- (c) if the specification, cost estimate, implementation program and terms of payment for the Change are not agreed in writing by the parties within 5 Business Days of My Integrator Service providing the material specified in clause 9(b), the Change Request will be deemed to be accepted and the relevant Fee will be amended accordingly.

10 Confidentiality

10.1 Obligations of confidentiality

Each party (**Receiving Party**) receiving, possessing or otherwise acquiring Confidential Information of any other party (**Disclosing Party**) acknowledges that the Disclosing Party's Confidential Information is the property of and confidential to or a trade secret of the Disclosing Party. Subject to clause 10.2, the Receiving Party must:

- (a) keep the Disclosing Party's Confidential Information confidential and not directly or indirectly disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any other person without the prior written approval of the Disclosing Party;
- (b) take all reasonable steps to secure and keep secure all Disclosing Party's Confidential Information coming into its possession or control; and
- (c) use, modify, reverse engineer or make copies, notes or records of the Disclosing Party's Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement.

10.2 Exceptions

The obligations of confidentiality under clause 10.1 do not apply to any information that:

- (a) is generally available to the public (other than by reason of a breach of this Agreement); or
- (b) is required to be disclosed by any applicable law.

11 Intellectual Property

- (a) The Customer acknowledges that all materials, software, methods, processes, reports, documentation or other information or material (whether in electronic or material form) (**Material**) and all existing and future Intellectual Property Rights arising from or in connection with the Services or any Material, are the property of and will at all times remain vested in My Integrator Service.
- (b) To the extent that any Intellectual Property Rights referred to in this clause 11(a) do not automatically vest in My Integrator Service, the Customer immediately assigns to My Integrator Service absolutely and beneficially the whole of its rights, title and interest in and to those Intellectual Property Rights, whether presently existing or which arise at a date after the date of this Agreement, with effect from the date the Statement of Work is signed by the Customer.
- (c) The Customer agrees to do all things necessary or desirable, and ensure its Personnel do all things necessary or desirable, to effect the assignment referred to in clause 11(b)

- (d) My Integrator Service acknowledges and agrees that the Customer retains ownership of any information, material, communication or technology (**Background Intellectual Property**) that it provides to the My Integrator Service on the commencement of this Agreement that is necessary for the My Integrator Service to perform the Services.

12 Limitations on liability

- (a) My Integrator Service is not liable to the Customer or to any other person for any indirect, incidental, indirect, special, exemplary or consequential loss or damage, loss of profits or anticipated profits, loss of revenue, economic loss, loss of business opportunity, damage to goodwill, loss of data or loss or damage resulting from wasted management time irrespective of whether:
 - (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise;
 - (ii) the possibility of such loss or damage was foreseeable; or
 - (iii) My Integrator Service or any other person was previously notified of the possibility of the loss or damage.
- (b) My Integrator Service is not liable for any loss or damage howsoever caused to any property or person of the Customer or any third party as a result of any defect in the Services.
- (c) The maximum aggregate liability of My Integrator Service for all proven losses, damages and claims arising out of this Agreement, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the Fees paid to My Integrator Service in any calendar year.
- (d) The Customer indemnifies My Integrator Service for any and all loss and damage (including legal fees) arising out of or in connection to:
 - (i) all and any claims whatsoever and howsoever arising made by any third party in connection with or arising out of the Customer's use of the Services; and
 - (ii) any failure by the Customer to obtain a consent necessary for My Integrator Service to provide the Services.

13 Prohibited Use

You acknowledge and agree that the Services are provided "as is" and you and each User will not:

- (a) use the Services in any manner that is illegal or violates any applicable law or regulation;
- (b) attempt to circumvent or disable the Software or any technology features or measures in the Services by any means or in any manner;
- (c) attempt to modify, copy, adapt or reproduce the Services except as necessary to use it for normal operation;
- (d) attempt to decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for the Software;
- (e) distribute, encumber, sell, rent, lease, sub-license, or otherwise transfer, publish or disclose the Services to any third party (except as permitted under this Agreement);
- (f) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Services or used in connection with the Services or Website;
- (g) use the Services or Website in any manner to aid in the violation of any third party Intellectual Property Rights, including but not limited to another's copyrights, trade secrets, and patents;
- (h) take any action that interferes, in any manner, with eSync's rights with respect to the Software;
- (i) attempt to undermine the security or integrity of eSync's computing systems or where the Services are hosted by a third party, that third party's computing systems and networks;
- (j) use, or misuse, the Services or Website in any way which may impair the functionality of the Services or Website,

or other systems used to deliver the Services or impair the ability of any other user to use the Services or Website;

- (k) attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the Services are accessed; and
- (l) transmit, or input into the Services or Website any files or content that defames eSync or the Services, may be offensive or inappropriate or material or Data in violation of any law (including any content protected by copyright or trade secrets which you do not have the right to use).

13.2 Title, ownership rights and Intellectual Property Rights in and to any content displayed on the Services or Website, or accessed through the Services or Website, are the property of the applicable content owner and may be protected by applicable copyright or other law. This Agreement gives you no rights to such content.

13.3 You acknowledge that any breach of this clause may lead to termination of this Agreement.

14 Force Majeure

Neither Party will be liable to the other for any Force Majeure Event. If the Force Majeure Event continues for a period of more than 40 Business Days, the party not affected by the Force Majeure Event may terminate this Agreement by written notice to the affected party.

15 Termination

15.2 Termination by Customer

A party not in breach under this Agreement (**Non-Defaulting Party**) may, by notice in writing to the party in breach under this Agreement (**Defaulting Party**), terminate this Agreement, where the Defaulting Party has breached this Agreement and has failed to remedy the breach within 30 Business Days after being notified by the Non-Defaulting Party that it requires remedy.

15.3 Termination for Convenience by the customer

- (a) The Customer may by Notice in Writing at any time terminate the Customer Contract for convenience, such termination to be effective immediately unless stated otherwise on the Notice In Writing. My Integrator Service must immediately comply with any directions given in the Notice in Writing and must do everything that is reasonably practical to mitigate its losses arising in consequence of termination of the Customer Contract under this clause 15.3
- (b) If the Customer terminates the Contract for convenience under clause 15.3(a), the following will apply:
 - 1. The customer must pay all progress payments including the next schedule payment. In the case project payments schedule is split into 50% deposit with 25% 'Go to staging' and 25% 'Go live' and the project is terminated after starting and before 'go to staging', 75% of project cost will be liable for payment.

15.4 Consequences of Termination

Upon termination of this Agreement by either party:

- (a) the Customer will pay the Fees in full in relation to all Services provided up to the date of termination;
- (b) the Customer will pay My Integrator Service' Unavoidable Costs;
- (c) subject to the Customer complying with its obligations in clauses 15.4(a) and 15.4(b), the Customer will be entitled to retain and use that part of the Services provided that My Integrator Service is paid in full by the Customer on or before the date of termination; and
- (d) the Customer must immediately cease using and return to My Integrator Service any part of the Services that is not paid for by the Customer, at the Customer's cost.

15.5 Survival of Obligations

This clause 15.5 together with clauses 5, 10, 11, 12, 15.2, 16 and 17 survive termination or expiration of this Agreement.

16 No Solicitation

- (a) During the term of this Agreement and for a period of 12 months following its termination or expiry the Customer and My Integrator Service shall not directly or indirectly:
 - (i) solicit or encourage any employee of who was involved in performing this Agreement, to leave the employment of the other party; or
 - (ii) solicit or encourage any consultant or other contractor under contract with the other party who was involved in performing this Agreement, to cease work.

17 Dispute Resolution

- (a) A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute and the parties must submit themselves to the dispute resolution procedure specified in this clause 17.
- (b) The parties agree that if a dispute arises out of or relates to this Agreement, a party may not commence any legal proceedings relating to the dispute unless it has complied with the provisions of this clause 17 except to seek urgent equitable or interlocutory relief. The procedures in this clause 17 must be completed within 40 Business Days from the giving of notice referred to in this clause 17. After expiry of this time a party may commence legal proceedings relating to the dispute.
- (c) When a dispute arises between the parties in relation to this Agreement, then:
 - (i) all amounts payable by the Customer to My Integrator Service which are not in dispute must be paid in accordance with the Statement of Work;
 - (ii) if the parties cannot resolve the dispute within 10 Business Days after notice has been given, then the dispute is to be referred to the respective chief executive officers or their nominees of each party (jointly referred to in the remainder of this clause 17 as **Chief Executive Officers**) for resolution; and
 - (iii) if the Chief Executive Officers cannot resolve the dispute within 10 Business Days after referral, then the parties must submit the Dispute to a mediator for consideration in accordance with the Mediation and Conciliation rules of the Institute of Arbitrators and Mediators Australia, which Rules are taken to be incorporated into this Agreement.
- (d) Each party must pay its own internal and legal costs in relation to complying with this clause 17. The mediator's costs are to be shared equally between the parties.

18 General

18.2 Governing Law

- (a) This Agreement is governed by and must be construed in accordance with the laws in force in Victoria.
- (b) The parties submit to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

18.3 No Assignment

A party cannot assign or otherwise transfer the benefit of this Agreement without the prior written consent of the other party.

18.4 No Variation

This Agreement cannot be amended or varied except in writing signed by the parties.

18.5 Notice

Any notice or other communication to or by a party under this Agreement:

- (a) may be given by personal service, post, facsimile or sent electronically by email
- (b) must be in writing, legible, signed by the relevant parties authorised representative and in English addressed (depending on the manner in which it is given) to the relevant contact and

address, facsimile number or email specified in the Statement of Work or to any other address facsimile number or email last notified by the party to the sender by notice given in accordance with this clause; and

(c) is deemed to be given by the sender and received by the addressee:

- (i) if delivered in person, when delivered to the addressee;
 - (ii) if posted, 2 Business Days (or 6, if addressed outside Australia) after the date of posting to the addressee whether delivered or not;
 - (iii) if sent by facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this clause; or
 - (iv) if sent electronically by email and confirmation is received from the relevant internet service provider that the transmission was successfully delivered, on the day of transmission,
- but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

18.6 Entire Understanding

- (a) This Agreement contains the entire understanding between the parties concerning the Services and, unless otherwise specified in this Agreement, supersedes all prior agreements and communications between the parties.
- (b) Each party acknowledges that, except as expressly stated in this Agreement, that party has not relied on any representation,

warranty or undertaking of any kind made by or on behalf of another party in relation to the Services.

18.7 No Waiver

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

18.8 Consents and Approvals

Where anything depends on the consent or approval of a party then, unless this Agreement provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

18.9 Severability

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from this Agreement in any other case, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

18.10 No Merger

A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the rights or remedies of the parties under this Agreement and those rights and remedies continue unchanged