END USER LICENSE AGREEMENT - DATABUILD

Background

This End User Licence Agreement (**Agreement**) is entered into between ITW Australia Pty Ltd (ACN 004 235 063) of 153-187 Discovery Road, Dandenong South, Vic, 3175, Australia (**ITW**) and the customer specified in Item 1 of Schedule 1 (**Customer**). This Agreement records the terms and conditions on which ITW agrees to license the software described in Item 2 of Schedule 1 (**Software**) to the Customer.

1. Licence

1.1 Grant of Licence

ITW grants the Customer a personal, non-exclusive, non-transferable, not-for resale or sub licence (subject to clause 1.3), restricted right to use the Software and Documentation for the Permitted Purpose for the duration of this Agreement, by loading the Software into the temporary memory (such as RAM) or installing the Software on the permanent memory (such as a hard disk, CD-ROM, or other storage device) on the Permitted Servers.

1.2 Binding agreement

By signing this Agreement, the Customer accepts and is bound by the terms and conditions of this Agreement. If the Customer does not sign this Agreement, without limiting the ways in which the Customer may be bound by this Agreement, the Customer will be deemed to have accepted and will be bound by the terms and conditions of this Agreement by clicking "I accept the terms of this Licence Agreement" (or similar wording), or by otherwise installing and using the Software.

1.3 Contractors or Consultants

ITW acknowledges and agrees that the Customer may:

(a) engage a third party hosting company to host Licensed Copies for the Customer; or

(b) use Contractors or Consultants to assist the Customer in relation to the Permitted Purpose, which may necessitate the incidental access/use of the Software by such Contractors or Consultants.

ITW further agrees that the Customer may permit such Contractors or Consultants to access and use the Licensed Copies and Documentation solely on behalf of the Customer and in accordance with this Agreement, provided that:

(c) the Customer must not permit or purport to permit such Contractors or Consultants to access or use the Licensed Copies or Documentation for any purposes other than assisting the Customer in relation to the Permitted Purpose;

(d) the Customer must ensure that such Contractors or Consultants comply with the terms of this Agreement; and

(e) the Customer is responsible and shall be liable to ITW for any acts or omissions by such Contractors or Consultants which, if done or made by the Customer, would amount to a breach of this Agreement.

2. Licence Term

The Licence Term commences on the Commencement Date and terminates pursuant to clause 17.

3. Restrictions on Licence

3.1 The Licence granted to the Customer under this Agreement authorises the Customer to use the Software and Documentation solely for the Permitted Purpose and the Customer must not use the Software or the Documentation for any other purpose. Without limiting the above, the Customer must not, except as permitted under Australian Law:

(a) make any copies of any Software, Media or Documentation (except as permitted under clause 10);

(b) modify, adapt, translate, reverse engineer, de-compile, disassemble or copy all or any part of the Software;

(c) attempt to circumvent or break the Licence Key or any other encryption, decryption or other security device or technological protection measure contained in the Software or Media;

(d) distribute any part of the Software or Documentation for commercial purposes or otherwise sub-license or resell the Software or Documentation;

(e) create derivative works from all or any part of the Software or Documentation;

(f) transfer, assign, rent, lease, lend, sell or otherwise dispose of all or any part of the Software, Media or Documentation; or

(g) publish, communicate or otherwise make any part of the Software or Documentation publicly available.

3.2 The Customer acknowledges and agrees that it is a term of the Licence that, during the term of this Agreement, the Customer must, whilst the Software is in use, connect to the Internet at least once in every 28 day period, in order for ITW to verify that the Software is validly licensed. If the Customer fails to do so, ITW may deactivate the Software and the Customer will need to contact ITW in order to verify that the Customer holds a valid licence to reactivate the Software.

4. Licence Key

4.1 Provision of Licence Key

[The parties agree that:

(a) ITW will provide the Customer with full Licence Key for the Software upon the Customer entering this Agreement;

(b) the Customer must pay the Licence Fees in accordance with the payment terms specified in Item 7 of Schedule 1;

(c) if the Customer fails to comply with clause 4.1(b), the Licence Key will be suspended until such time as the Customer pays the Licence Fees in full in accordance with any terms specified by ITW, and ITW may terminate this Agreement effective immediately, by giving written notice of termination to the Customer; and

(d) if the Customer complies with clause 4.1(b), the Customer the full Licence Key provided for the software will remain active.]

OR [The parties agree that ITW will provide the Customer with a full Licence Key for the Software upon the Customer entering into this Agreement and paying the Licence Fees in accordance with the payment terms specified in Item 7 of Schedule 1.]

4.2 Suspension or cancellation of Licence Key

The Customer acknowledges that ITW may use the Licence Key to disable, suspend or cancel the Customer's access to the Software upon termination of this Agreement or in accordance with a Customer request to decrease the number of Permitted Users under clause 8.4.

5. Delivery and installation

5.1 Delivery

ITW will deliver one copy of the Media to the delivery address specified in Item 6 of Schedule 1 or will otherwise make the Software available to the Customer for download in accordance with the planned installation date specified in Item 6 of Schedule 1.

5.2 Installation

Unless ITW agrees otherwise in writing, ITW will be responsible for installing the Software on the Permitted Servers, however the Customer will be responsible for integrating the Software with the Customer's System and ITW will have no integration obligations.

Subject to clause 14, ITW excludes any liability for any loss or damage suffered by the Customer, in respect of any installation of the Software on the Permitted Servers by ITW, which occurs as a result of the Software conflicting or not being compatible with the Customer's existing or future System.

The Customer will be responsible for installing any updates to the Software, made available by ITW under clause 11.2.

The Customer represents and warrants that the System on which the Software will be installed meets the Technical Requirements specified in Item 11 of Schedule 1.

5.3 Access to premises and System

The Customer will provide ITW with access to its premises on which reside the Permitted Servers and System during ordinary business hours or at such other times as agreed between the parties to enable ITW to fulfil its obligations under this Agreement. Without limiting the generality of the foregoing, the Customer will provide ITW with, among other things, all passes and authorisations necessary to enter its premises and all passwords or other authentications required to gain access to the System and the Permitted Servers to install the Software.

6. Fees and payment

6.1 Licence Fees

The Customer must pay the Licence Fees in accordance with the payment terms specified in Item 7 of Schedule 1.

6.2 Taxes

The Licence Fees exclude all applicable sales, export or import fees or tariffs, GST, use and other taxes, and the Customer will be responsible for payment of all such taxes.

7. Additional Permitted Servers

7.1 Customer may request

If the Permitted Server(s) is the Customer's central server, then it is permitted to use the Software to operate multiple sites out of the one office or location without purchasing multiple site licenses. However, if the Customer wishes, for the Permitted Purpose, to be able to load or install the Software on more servers than the Permitted Server(s), the Customer may make a written request to ITW to purchase an additional Permitted Server licence to install and use the Software on such additional servers.

7.2 ITW's response

Upon receiving such a request, ITW may notify the Customer of any additional Licence Fees and other amounts payable by the Customer for the purchase of such licences to install and use the Software on additional servers.

7.3 Customer may accept

Within 15 days of the date of the notice from ITW under clause 7.2, the Customer may notify ITW that it wishes to purchase the relevant additional licences. Upon payment by the Customer of the additional Licence Fees or other amounts specified in the notice from ITW under clause 7.2 in accordance with any terms specified by ITW, the number of Permitted Servers specified in this Agreement will be increased by the number of additional Permitted Servers purchased by the Customer.

8. Additional Permitted Users

8.1 Users

For the avoidance of doubt, the Customer is entitled to add, remove or change Users, provided that the number of Users at any given time does not exceed the number of Permitted Users.

8.2 Change to Permitted Users

a) If the Customer wishes to increase the number of Permitted Users, the Customer may make a request to purchase an additional Permitted Users licence by contacting ITW on 1300 015 153 in Australia or 09 378 2046 in New Zealand.

b) If the Customer wishes to decrease the number of Permitted Users, the Customer may make a written request (either by email to support@databuild.com.au or by post to the address stated at the top of this Agreement) to ITW.

8.3 ITW's response

Upon receiving such a request, ITW may notify the Customer of:

a) the additional Licence Fees and other amounts payable by the Customer in respect of an increase in the number of Permitted Users; or

b) any amounts payable by the Customer to cover administration costs and/or any Licence Fees to be refunded to the Customer in respect of a decrease in the number of Permitted Users, if applicable. For the avoidance of doubt, nothing in this clause 8.3 obliges ITW to refund any sum to the Customer in respect of a permitted decrease in the number of Permitted Users but ITW may do so at its sole discretion.

8.4 Customer may accept

Within 15 days of the date of the notice from ITW under clause 8.3, the Customer may notify ITW that it wishes to proceed with the increase or decrease (as applicable) in the number of Permitted Users.

Upon payment by the Customer of any amounts specified in the notice from ITW under clause 8.3, or as soon as practicable following receipt of the Customer's notice to proceed under this clause 8.4 if no amounts are payable by the Customer, ITW will increase or decrease the Permitted Users by the number permitted by ITW. If there is to be a decrease in the number of Permitted Users, ITW will disable the existing Customer's Licence Key and will issue a replacement Licence Key which is valid for the reduced number of Permitted Users.

9. Ownership

9.1 Documentation and Media

ITW owns all right, title and interest in and to the Documentation and Media and any copies of the Documentation and Media made by the Customer. During the Licence Term, ITW will permit the Customer to possess the Documentation and Media on the terms and conditions set out in this Agreement.

9.2 Software

The Customer acknowledges that:

(a) ITW owns or licenses the Intellectual Property in the Software;

(b) it does not and will not have any ownership of or other rights in respect of the Intellectual Property in the Software; and

(c) the only rights it has or will have in respect of the Intellectual Property in the Software under or in connection with this Agreement is the Licence granted under this Agreement.

9.3 Third party licences

The Customer acknowledges that the Software may include third party software licensed to ITW which is embedded in or provided with the Software.

If ITW loses its right to exploit any third party software, ITW may at its own expense and at its sole election and discretion:

(a) remove the third party software and procure for the Customer the right to use alternative software in its place;

(b) remove the third party software and modify the Software; or

(c) immediately terminate the Licence pursuant to clause 17.2(c) and provide the Customer with a refund of the Licence Fees paid by the Customer, of such amount as ITW determines is proportionate to the length of time the Customer had been licensed to use the Software, prior to termination of the Licence ("**Proportionate Refund**").

10. Back-up copies

10.1 Back-up copy

The Customer may either:

(a) make one copy of the Software solely for purposes of having a backup copy of the Software, provided that Customer reproduces on that copy all copyright notices and any other confidentiality or proprietary legends that are on the original copy of the Software; or

(b) transfer the Software to a single hard disk for back up purposes, provided the Customer keeps, maintains and uses this copy on the relevant hard drive for back up purposes only and not for any other purpose.

10.2 Transfer of Licensed Copies

The Customer may transfer its Licensed Copies of the Software to different servers only if those other servers are owned by the Customer and the Customer removes the copy in its entirety from the Permitted Server on which the Licensed Copy was previously loaded and does not exceed the number of Permitted Servers.

11. Software Support Services

11.1 No support

The Customer acknowledges that, except as may be provided in any Software Support Agreement with the Customer, ITW will not have any obligations to provide any services to the Customer in respect of the Software including (without limitation) Software Support Services.

11.2 Updates and upgrades

Notwithstanding clause 11.1, ITW may update or upgrade the Software at any time (provided however that ITW has no obligation to provide such updates or upgrades to the Customer pursuant to this Agreement).

12. Security

Prior to the installation of the Software on any of its Permitted Servers, the Customer must install adequate firewalls and other security measures reasonably required by ITW to prevent unauthorised access to the Software. The Customer must also install any other security measure reasonably required by ITW after the date of installation of the Software.

13. Confidentiality

13.1 Duty of confidentiality

The Customer must maintain strict confidentiality and secrecy regarding the Confidential Information. Without limiting the foregoing, the Customer must:

(a) not, without the prior written consent of ITW or as expressly permitted in this Agreement, copy, write down or otherwise record any part of the Confidential Information;

(b) take all precautions necessary to prevent unauthorised persons from accessing the Confidential Information by any direct or indirect means;

(c) subject to clause 13.1(d), not disclose the Confidential Information (or any part of it) to any other person;

(d) only disclose the Confidential Information to its officers or employees where:

(i) that person has a need to know for the Permitted Purpose;

(ii) the Customer has made that person fully aware of the confidential nature of the Confidential Information; and

(iii) that person has undertaken in wiring to be bound by the terms and conditions of this clause 13 as if he or she were the Customer;

(e) immediately notify ITW of any potential, suspected or actual unauthorised access, disclosure, copying or use of the Confidential Information;

(f) use the Confidential Information solely for the Permitted Purpose and not for any other purpose including (without limitation) use for its own advantage or use to the disadvantage of ITW;

(g) be responsible and liable for the actions of its officers, employees, contractors, agents or related bodies corporate who have access to the Confidential Information;

(h) be responsible for the use of the Confidential Information by another where the Confidential Information was released by the Customer or released, improperly used or improperly obtained by any person who obtained the Confidential Information from the Customer or its Contractors or Consultants; and

(i) immediately upon termination of this Agreement, return to ITW or permanently and irretrievably delete or destroy (at the election of ITW) all documents and other material containing or recording the Confidential Information which are in the possession, power or control of the Customer.

13.2 Exceptions

The obligations of confidentiality contained in clause 13.1 will not apply to the extent that it can be established by the Customer to ITW's reasonable satisfaction that the relevant information:

(a) was already known to the Customer, other than under an obligation of confidentiality, at the time of disclosure by ITW;

(b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Customer;

(c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the Customer in breach of this Agreement;

(d) was disclosed to the Customer, other than under an obligation of confidentiality, by a third party who had no obligation not to disclose such information to others; or

(e) was developed independently by the Customer without reference to or use of the Confidential Information.

13.3 No public announcement

The Customer must not make any public announcement or communication regarding the existence or terms of this Agreement, unless it obtains the prior written consent of ITW.

14. Consumer guarantees, exclusion and limitation of liability

14.1 Consumer Guarantees

ITW hereby represents and warrants to the Customer that ITW has the right to grant to the Customer the rights set forth in this Agreement, and agrees to ensure that any services or licences acquired by the Customer from ITW are:

(a) rendered with due care and skill;

(b) fit for any disclosed purpose or being capable of achieving any disclosed result; and

(c) supplied within a reasonable time.

14.2 No exclusion of Consumer Guarantees

Nothing in this Agreement should be interpreted as attempting to exclude, restrict or modify the application of any applicable provisions of the Australian Consumer Law or the Customer's right to make a claim in respect of any consumer guarantees or under any other provision of the Australian Consumer Law.

14.3 Limitation of liability

Where the Australian Consumer Law does not apply or where the Customer makes a claim against ITW for a cause of action other than for a breach of the consumer guarantee provisions of the Australian Consumer Law, then ITW's maximum aggregate liability for any Loss suffered by the Customer in connection with this Agreement is limited to the total amount paid by the Customer to ITW for the relevant goods under this Agreement.

14.4 Exclusion of liability for Consequential Loss

(a) Subject to clause 14.2, ITW expressly excludes all liability to the Customer for Consequential Loss arising out of or in connection with this Agreement.

(b) Clause 14.4(a) applies even if ITW knew or ought to have known that it was possible or foreseeable that such Consequential Loss would be incurred.

15. Intellectual Property infringement

15.1 Infringement action

If the Customer becomes subject to, or in ITW's sole opinion there is a risk that the Customer could become subject to, a claim by a third party that the Software and/or Documentation (or the use by the Customer of the Software and/or Documentation) infringes a third party's Intellectual Property or other rights (**Action**), ITW may, at its own expense and at its sole election and discretion:

(a) procure for the Customer the right to continue using the Software and/or Documentation; or

(b) carry out modifications of the Software and/or Documentation or any part of the Software and/or Documentation to address or attempt to address the alleged infringement issue; or

(c) terminate the Licence pursuant to clause 17.2(d) and provide the Customer with a Proportionate Refund, in which case the Customer must, at ITW's written request and at ITW's cost, cease using and return to ITW such Software.

15.2 No admissions or statements

The Customer must not, except as required by law, make any admissions or statements that prejudice, or might prejudice the defence of the Action without ITW's prior written consent.

15.3 ITW's liability

Subject to clause 14, the Customer acknowledges and agrees that ITW's responsibility and liability to the Customer and the Customer's remedies against ITW in the event of any Action or if the Software or any part thereof is held to infringe the Intellectual Property rights of any third party, will be limited to liability and remedies specified in clause 15.1.

16. Indemnity

The Customer indemnifies ITW and each of its directors, officers, employees, agents, contractors and related bodies corporate (**Indemnified Parties**), and agrees to keep each of them indemnified, against any Claim made against an Indemnified Party or Loss suffered or incurred by an Indemnified Party which arises from or in respect of:

(a) any breach by the Customer of this Agreement; or

(b) any negligent, or wilful act or omission, theft, misconduct, dishonesty or fraud committed by the Customer, its officers, directors, employees, agents, representatives, delegates, Contractors or Consultants.

17. Termination

17.1 Termination without cause

At any time following payment of the Licence Fees in accordance with clause 6.1, the Customer may terminate this Agreement and the Licence effective immediately, upon providing written notice of termination to ITW. The Customer acknowledges and agrees that if it terminates this Agreement and the Licence in accordance with this clause, it shall not be entitled to a refund of any amounts paid in respect of any unused portion of the Licence Term.

17.2 Termination for cause

ITW may terminate this Agreement and the Licence effective immediately upon providing written notice of termination to the Customer if:

(a) the Customer breaches a term or condition of this Agreement and fails to remedy such breach within 30 days after being provided with written notice of the breach by ITW;

(b) the Customer breaches a term or condition of this Agreement which cannot be remedied;

(c) ITW loses its right to exploit any third party software embedded in or provided with the Software; or

(d) the Customer becomes subject to or ITW believes that there is a risk that the Customer could become subject to an Action.

17.3 Post termination obligations

Within two days of the termination of this Agreement, the Customer must:

(a) cease all use of the Software;

(b) permanently and irretrievably delete all copies of the Software from its Permitted Servers (and the Permitted Servers of any Contractors or Consultants);

(c) permanently and irretrievably delete or destroy any other copies of the Software in the possession, custody or control of the Customer;

(d) return to ITW the Media and any copies of the Media made by or on behalf of the Customer; and

(e) provide a statutory declaration signed by a director or other officer of the Customer confirming that the Customer has complied with its obligations under this clause17.3.

Upon 24 hours notice from ITW, the Customer must provide ITW or any nominee of ITW with access to the premises and System of the Customer (or its contractors or consultants) for the purpose of ITW verifying that the Customer has complied with its obligations under this clause 17.3.

17.4 Survival of certain terms

The parties' obligations under clauses 9, 13, 14, 15, 17.3, 17.4, 18 and 22(b) will survive notwithstanding any termination of this Agreement.

18. Audit, control and inspection rights

18.1 Provision of audit log

Within seven days of receipt of a request by ITW, the Customer must generate an accurate audit log file and send it to ITW. The audit log file must contain all such information reasonably required by ITW, including (without limitation) the number of servers on which the Software is run.

18.2 Inspection

Within two days of ITW making a request for access, the Customer must provide ITW (or its nominee) with access to all premises or Systems of the Customer (or its contractors or consultants) relevant to the use of the Software and must provide ITW with all assistance reasonably required by ITW in connection with ITW (or its nominee) inspecting and/or

auditing the Customer's compliance with its obligations under this Agreement.

18.3 Results of inspection or audit

If ITW finds as a result of any inspection or audit under this clause 18 that the Customer (or its contractors or consultants) has used or is using any Software other than for the Permitted Purpose or has exceeded the Permitted Servers, ITW may (at its election and without prejudice to any other rights or remedies ITW may have):

(a) if ITW considers that this is a breach of a term or condition of this Agreement which is capable of remedy, serve written notice to the Customer pursuant to clause 17.2(a) either:

(i) allowing the Customer to immediately acquire additional Licensed Copies that correspond to the extent of the use of the Software by the Customer for purposes other than the Permitted Purpose or on servers in excess of the Permitted Servers from ITW for an additional fee, which is not to exceed the fee for such use that ITW would have charged under its then standard rates over the relevant period; or

(ii) requiring the Customer to immediately cease using the Software for the non Permitted Purpose or on the non Permitted Servers and provide evidence satisfactory to ITW (acting reasonably) that the Customer has complied with its obligations under this clause 18.3(a)(ii);

or

(b) if either the Customer fails to remedy the breach within 30 days of written notice provided by ITW under clause 18.3(a), or ITW considers that this is a breach of a term or condition of this Agreement which is not capable of remedy, serve notice to terminate this Agreement pursuant to clause 17.2(b).

19. Force Majeure

19.1 Force Majeure Event

If a Force Majeure Event occurs and a party (**Affected Party**) is not able to perform its obligations under this Agreement in whole or in part then the Affected Party's obligations under this Agreement will be suspended to the extent that the Affected Party is prevented from performing its obligations, provided that a Force Majeure Event does not relieve or suspend any party's obligation to pay money.

19.2 Notice of Force Majeure Events

The Affected Party must notify the other party as soon as practicable after the Force Majeure Event arises of the Force Majeure Event, the affect of the Force Majeure event and the expected duration of the Force Majeure Event.

19.3 Overcoming a Force Majeure Event

The Affected Party must use all reasonable efforts to take steps to overcome the effects of the Force Majeure Event and to resume its obligations under this Agreement as soon as practicable.

19.4 Notice of end of Force Majeure Event

Subject to clause 19.5, the Affected Party must notify the other party as soon as practicable after the end of the Force Majeure Event that the Force Majeure Event has been remedied or ceased to exist and that the Affected Party has resumed or is in a position to resume its obligations under this Agreement.

19.5 Termination of Agreement due to a Force Majeure Event

If the Force Majeure Event continues for more than 30 days, either party may immediately terminate this Agreement by written notice to the other party.

20. Assignment

20.1 Assignment of rights by ITW

The Customer agrees that ITW may sell, sub-licence, transfer or assign its rights and novate its obligations in the Software at any time to any party without the Customer's consent. ITW (or the third party purchaser/sub-licensee/transferee/assignee) may serve notice on the Customer that this Agreement is transferred to the third party, on the same terms as this Agreement, which the Customer must accept and the Customer must enter into an agreement pursuant to which the third party agrees to be bound by the terms of this Agreement.

20.2 Assignment of rights by Customer

The Customer must not sell, rent, lease, sub-licence, transfer or assign its rights and/or obligations under this Agreement directly or indirectly, without the prior written consent of ITW, acting reasonably.

21. Special Conditions

If there is any inconsistency between the clauses of this Agreement and any special conditions in Item 10 of Schedule 1, the special conditions will prevail to the extent of the inconsistency.

22. General

The parties agree that:

(a) The relationship of ITW and the Customer established by this Agreement is that of licensor and licensee.

(b) This Agreement will be governed by and construed exclusively under the laws of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State.

(c) The United Nations Convention on the International Sale of Goods (the Vienna Convention) will not apply to this Agreement or the subject matter hereof.

(d) Any notice required or permitted to be given under this Agreement may be delivered by facsimile, electronic mail or prepaid mail postage to the delivery address specified in Item 6 of Schedule 1. A notice given under this clause 22(d) will be deemed to be received:

(i) if sent by pre paid post, three days after the date of posting or seven days after the date of posting if posted to or from a place outside Australia;

(ii) if sent by facsimile, when the sender's fax machine produces a report confirming the successful transmission of the entire notice; or

(iii) if sent by electronic message, when the sender receives an automated message confirming delivery or eight hours after the message has been sent (as recorded on the device from which the sender sent the message) (whichever is earlier), unless the sender receives an automated message that the electronic message was not delivered or the sender knows or reasonably should know that there is a network failure and accordingly knows or suspects that the electronic message was not delivered.

(e) This Agreement, associated exhibits, and the Schedules set forth the entire agreement of the parties relating to the subject matter of this Agreement. Additional or inconsistent terms of any purchase order or any other end user licence agreement entered in respect of the Software are expressly excluded.

(f) The Customer will take no action that would interfere with ITW's ownership in and to ITW's Intellectual Property, including but not limited to ITW's Intellectual Property in respect of the Software, and the derivations of and from ITW's software.

(g) No clause of this Agreement attempts to exclude or limit, or have the effect of excluding or limiting, any rights arising under the Australian Consumer Law. Any clause of this Agreement which is inconsistent with

these provisions will be read down or otherwise varied to the extent necessary to preserve the operation of the relevant clause.

(h) If any provision of this Agreement is void, voidable by a party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed from this agreement without affecting the validity or enforceability of the remaining provisions of this Agreement.

23. Definitions and interpretation

23.1 Definitions

In this Agreement:

(a) **Claim** means a claim, action, proceeding, judgment or demand made or brought by or against a party, however arising and whether present, unascertained, future or contingent.

(b) **Commencement Date** means the date on which the last party to sign this Agreement does so.

(c) **Confidential Information** means all information (regardless of form) disclosed to or acquired by the Customer regarding:

(i) ITW or ITW's business affairs including information relating to ITW's financial affairs, projections, forecasts, accounts, prospects, strategies, business processes and system functionality, business operations, assets, liabilities, suppliers, personnel, contracts, clients, products and stock and sales information;

(ii) the Software including (without limitation) information regarding the source code, object code and other code for the Software; or

(iii) the terms of this Agreement or any other agreements between the Customer and ITW.

(d) **Consequential Loss** means (without limitation), indirect Loss, Loss of revenue, Loss of reputation, Loss of profits, Loss of actual or anticipated savings, Loss of bargain, lost opportunities, including opportunities to enter into arrangements with third parties.

(e) **Contractors or Consultants** means any and all persons who perform services for the Customer under an express or implied agreement with the Customer.

(f) **Documentation** means any user guides, manuals or other similar documentation in any form of media for the Software provided to the Customer by ITW from time to time.

(g) **Force Majeure Event** means any act, event or cause, other than lack of funds, affecting a party that is outside that party's reasonable control, including, but not limited to war, acts or threats of terrorism, riots, revolutions, civil war, acts or threats of sabotage, national emergency, imposition of martial law, government requisition or any unlawful act against public order or authority, adverse weather conditions, acts of God and destruction by natural disasters including landslides, earthquakes, tsunamis, fires, storms, cyclones and floods, epidemics, quarantines, radiation and radioactive contamination, boycotts, strikes and other labour difficulties or any ongoing internet or telecommunications outage.

(h) **Intellectual Property** means all trademarks, copyright, patents, patentable inventions and designs, whether existing now or in the future and whether or not registered or registrable, and includes any rights subsisting in or relating to trade secrets, know how, inventions, discoveries, semiconductor and circuit layouts and further includes the right to apply for the registration or grant of any such intellectual property.

(i) **Licence** means the licence granted to the Customer under clause 1.1.

(j) **Licensed Copies** means a copy of the Software loaded onto a server by or on behalf of the Customer in accordance with this Agreement.

(k) **Licence Fees** means the fees specified in of Item 7 of Schedule 1.

(l) **Licence Key** means any verification, access control or other similar programs or code included in the Software from time to time.

(m) **Licence Term** means the applicable licence term specified in clause 2. .

(n) **Loss** means any damage, loss, cost, expense or liability of any kind incurred by the person concerned, however it arises and whether it is direct or indirect, present or future, fixed or unascertained, actual or contingent.

(o) **Media** means any discs or other electronic storage media containing the Software which ITW supplies to the Customer.

(p) **Permitted Purpose** means the purpose specified in Item 3 of Schedule 1.

(q) **Permitted Servers** means the number of servers on which the Software may be installed or loaded, as specified in Item 8 of Schedule 1 or as increased by ITW from time to time (whether pursuant to clause 5 or otherwise).

(r) **Permitted Users** means the number of single, individual people permitted to use the Software, as specified in Item 9 of Schedule 1 or as increased or decreased by ITW from time to time (whether pursuant to clause 8 or otherwise).

(s) **Services** means the Software, the Media and any other services purchased or otherwise acquired by the Customer pursuant to this Agreement.

(t) **Software** means the object code for the software specified in Item 2 of Schedule 1.

(u) **Software Support Agreement** means any agreement between the Customer and ITW for the performance of Software Support Services.

(v) **Software Support Services** means development or customisation services, technical support, training or maintenance services in respect of the Software, provided under the Software Support Agreement, if any.

(w) **System** means all hardware and software owned and/or operated by the Customer.

(x) **Users** means those persons who use or are to use the Software.

23.2 Interpretation

In this Agreement, headings are inserted for convenience only and do not affect the interpretation of this Agreement and unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

(c) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;

(d) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(e) a reference to a party is to a party to this Agreement and includes the party's successors and permitted transferees and assigns and if a party is an individual, includes executors and personal legal representatives; and

(f) all monetary amounts are in Australian dollars, unless otherwise stated and a reference to payment means payment in Australian dollars.

Schedule 1

<table>
<tr><th>Item number and title</th><th>Item details</th></tr>
<tr><td>Item 1 - Customer</td><td>Please refer to hard copy Schedule 1, provided with installation pack</td></tr>
<tr><td>Item 2 - Software Description</td><td>Databuild</td></tr>
<tr><td>Item 3 - Permitted Purpose</td><td>Use by the customer for Estimating, Accounting and Payroll within their business.</td></tr>
<tr><td>Item 4 - Licence Type</td><td>Databuild</td></tr>
<tr><td>Item 5 - Licence Term</td><td>The applicable licence term specified in clause 2.</td></tr>
<tr><td>Item 6 - Delivery Address and Planned Installation Date</td><td>Delivery Address: Please refer to hard copy Schedule 1, provided with installation pack
Planned Installation Date: Please refer to hard copy Schedule 1, provided with installation pack (subject to change as notified by ITW)</td></tr>
<tr><td>Item 7 - Licence Fees and Payment Terms</td><td>Please refer to hard copy Schedule 1, provided with installation pack</td></tr>
<tr><td>Item 8 - Permitted Server(s)</td><td>Please refer to hard copy Schedule 1, provided with installation pack</td></tr>
<tr><td>Item 9 – Permitted User(s)</td><td>Please refer to hard copy Schedule 1, provided with installation pack</td></tr>
<tr><td>Item 10 - Special Conditions</td><td>Please refer to hard copy Schedule 1, provided with installation pack</td></tr>
<tr><td>Item 11 – Technical Requirements</td><td>Databuild is a VB Microsoft based application but will run in a Virtual Machine on Apple Computers. Fusion , Parallels or Virtualbox

Databuild supports the following Microsoft operating systems:
<table>
<tr><th>Supported Operating System</th><th>Min Recommended CPU</th></tr>
<tr><td>Windows 7 32Bit,64Bit*</td><td>Intel Core i5, i7, i9: 1.7GHz

AMD Athlon(K10 or newer)</td></tr>
<tr><td>Windows 8.1</td><td>Intel Core i5, i7, i9

AMD Athlon(K10 or newer)</td></tr>
<tr><td>Windows 10</td><td>Intel Core i5, i7, i9

AMD Athlon(K10 or newer)</td></tr>
<tr><td>Server 2008 SP2/R2 32Bit,64Bit*</td><td>Intel Core Intel Xeon

AMD EPYC, AMD OPTERON</td></tr>
<tr><td>Server 2012/R2-2016</td><td>Intel Core, Intel Xeon

AMD EPYC, AMD OPTERON</td></tr>
</table>
Server hardware:
The Server hardware specification should be determined by the maximum expected load for the life span of the servers.
You should consult your IT support staff or contractors in relation to server hardware.
Terminal Server & Citrix
Databuild will install and run in Remote Desktop and Citrix environments. Please consult your IT support representative before installing Databuild in Remote Desktop/Citrix environments.
64Bit Operating Systems
Databuild is not a 64Bit application. However, 32-Bit applications are run as 32-bit processes under the emulation layer on 64-bit windows operating systems.

Databuild has been tested for use with the following database formats:

Microsoft Access Access .mdb database format is available out of the box. Support for Access .accdb formats is available with the Office 2007 MDAC update
Microsoft SQL 2008 R2, SQL 2012, SQL 2014, SQL 2016, SQL 2017</td></tr>
</table>