SecureWare Terms and Conditions of Supply

These SecureWare Terms and Conditions of Supply ("**Terms**") may be incorporated into one or more orders referencing these Terms (each, an "**Order**"). Each Order, together with these Terms, shall form a separate agreement (this "**Agreement**"), by and between the Person identified on the Order (The "**Customer**" or "**you**") and SecureWare Pty Ltd ("**SecureWare**" or "**us**", "**we**", "**our**," and variations thereof), applicable to the products and services identified on the Order (the "**Solution**"), as such Solution may be modified, revised and updated from time to time.

1. **Scope**. You may use the Solution in accordance with the terms on the Order, the Documentation and this Agreement. The Customer shall, subject to clause 4, be liable for any breach of the terms of this Agreement by any persons given access to the Solution by the Customer.

2. **Specified Configuration**. You are responsible, at your own expense, for procuring and maintaining the computer hardware, systems software and other items required for use of, or access to, the Solution. SecureWare shall not be responsible for any delays or additional fees and costs associated with Customer's failure to timely perform its obligations under this Section 2.

3. **Payments**.

3.1. **Fees**. The Customer shall pay to SecureWare the fees stated in the Order, in accordance with the payment terms stated on the Order. All invoices shall be sent to the Customer's address for invoices stated on the Order. Except as otherwise specified on the Order, the Customer's payments shall be due within seven (7) days after the invoice date. A late payment fee at the rate of 2% above the Commonwealth Bank Corporate Overdraft Rate per annum (or, if lower, the maximum rate permitted by applicable law) shall accrue on any amounts fourteen (14) days past due and unpaid by the Customer to SecureWare. SecureWare may increase any one or more of the fees and charges payable under this Agreement, unless otherwise stated, where agreed to in writing between the Parties. Except as provided in Section 4.2(c), all fees and other amounts paid by the Customer under this Agreement are non-refundable.

3.2. **Tax**. (a) The fees and other amounts payable by the Customer to SecureWare under this Agreement do not include any taxes, duties, levies, fees or similar charges of any jurisdiction ("**Taxes**") that may be assessed or imposed in connection with the transactions contemplated by this Agreement, excluding taxes based upon SecureWare's net income. The Customer shall directly pay any such Taxes assessed against it, and the Customer shall promptly reimburse SecureWare for any such Taxes payable or collectable by SecureWare.

(b) The fees payable under this Agreement are exclusive of GST. The Customer must pay to SecureWare in addition to the fees, the amount payable by SecureWare as GST on each Taxable Supply as such term is defined in *A New Tax System (Goods and Services) Act 1999* (Cth) ("**Taxable Supply**") made by SecureWare under this Agreement. The Customer must pay that additional amount at the same time and in the same manner as the consideration for the Taxable Supply to which the additional amount relates. SecureWare will give to Customer a tax invoice for each Taxable Supply in a form which complies with the requirements *of A New Tax System (Goods and Services) Act 1999* (Cth). "**GST**" means goods and services tax under *A New Tax System (Goods and Services) Act 1999* (Cth).

3.4. **Remedies for Non-Payment**. If the Customer fails to pay to SecureWare, within seven (7) days after SecureWare makes written demand therefor, any past-due amount payable under this Agreement (including interest thereon), in addition to all other rights and remedies which SecureWare may have, SecureWare may, in its sole discretion and with further notice to the Customer stating the suspension date, suspend performance of any or all of its obligations under this Agreement (other than Section 5).

3.5. **Fees for Services**. All prepaid Education and Professional Services must be redeemed within twelve (12) months from the date of purchase/invoice. At the end of the twelve (12) month term, any remaining pre-paid unused Education or Professional Services will expire; no refunds will be provided for any remaining pre-paid unused Education or Professional Services.

4. **Warranties, Covenants and Limitations**.

4.1. **Compliance with Laws**. SecureWare shall comply with all laws and regulations applicable to it as the provider of services under this Agreement and the Customer shall comply with all laws and regulations applicable to it as the recipient and user of services under this Agreement.

4.2. **No Infringement**. SecureWare shall indemnify for any damages finally awarded for, and defend the Customer against, any third-party claim asserting that the Solution, as and when made available to Customer by SecureWare and when properly used for the purpose and in the manner specifically authorized by this Agreement, infringes upon (i) any patent issued as of the date of this Agreement by a country that is a signatory to the Paris Convention, (ii) any copyright of any country that is a member of the Berne Convention as of the date of this Agreement, or (iii) any trade secret or other proprietary right of any Person (collectively, "**IP Rights**"). SecureWare shall have no obligation under this Section 4.2 unless the Customer promptly gives notice to SecureWare within ten (10) days after the date the Customer first receives notice of the applicable infringement claim (provided that later notice shall relieve SecureWare of its liability and obligations under this Section 4.2 only to the extent that SecureWare is prejudiced by such later notice) and allows SecureWare to have sole control of the defense or settlement of the claim. The Customer may monitor any such litigation or proceeding at its own expense. The remedies provided in this Section 4.2 are the sole remedies for a claim of infringement or misappropriation hereunder. If any applicable infringement claim is initiated, or in SecureWare's sole opinion is likely to be initiated, then if SecureWare chooses, SecureWare shall have the option, at its expense, to:
(a) modify or replace all or the allegedly infringing part of the Solution so that it is no longer allegedly infringing, provided that the functionality does not change in any material adverse respect; or
(b) procure for the Customer the right to continue using the allegedly infringing part of the Solution; or
(c) remove all or the allegedly infringing part of the Solution, and (i) if the Customer has paid a one-time upfront initial license fee for the applicable Solution, refund to the Customer the corresponding portion of the license fee paid by the Customer to SecureWare with respect to the applicable Solution or (ii) if the Customer is paying for the use of the Solution on a recurring

basis, refund to the Customer the corresponding portion of the unused recurring fee(s) paid by the Customer to SecureWare with respect to the applicable Solution, and in each such case this Agreement shall terminate with respect to the Solution or part thereof removed.

4.3. Exclusion for Unauthorized Actions. SecureWare has no liability under any provision of this Agreement with respect to any performance problem, claim of infringement or other matter to the extent attributable to any unauthorized or improper use or modification of the Solution by or on behalf of the Customer, any unauthorized combination of the Solution with other software or services, a failure to subscribe to support services if then offered for the Solution, any Third-Party Software, any wrongful act or omission by the Customer, its Affiliates or its customers or any breach of this Agreement by the Customer.

4.4. Conditions of Use. The Customer represents and warrants to SecureWare, its Third-Party Providers, agents, successors and assigns and their respective employees (collectively, the "**Indemnified Group**") that agreements between it and Third-Party Users expressly provide, and covenants that all such agreements will provide, that none of the Indemnified Group have or will have any liability in any circumstances with respect to any services offered to the Third-Party Users ("**Customer's Services**"), including with respect to the data and information provided to the Third-Party Users as part of the Customer's Services. The Customer shall indemnify and defend the Indemnified Group from and against any of the following: any and all claims, liabilities and obligations (including reasonable lawyers' fees) by any third party, including Third-Party Users, against the Indemnified Group and arising out of Customer's or Third-Party Users use of the Solution, Third-Party Data or the Documentation with respect to the Customer's Services.

4.5. Force Majeure. Neither Party shall be liable for, nor shall either Party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement (other than its payment obligations, which shall be suspended only for so long as the force majeure event renders the Customer unable by any means to transmit payments when due hereunder) as a result of a cause beyond its control, including any act of God or a public enemy or terrorist, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, theft or criminal misconduct by unrelated third parties, disruption or outage of communications (including the Internet or other networked environment), power or other utility, unavailability of supplies or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by the non-performing party with reasonable care.

4.6. Disclaimer. Except as expressly stated in sections 4, 6.5 and 9.6 of this Agreement, the Solution, Documentation and services are provided "as is," and all other representations, warranties, terms or conditions, oral or written, express or implied, arising from course of dealing, course of performance, usage of trade, quality of information, quiet enjoyment or otherwise (including implied warranties, terms or conditions of merchantability, satisfactory quality, fitness for a particular purpose, title, non-interference, or non-infringement) are, to the fullest extent permitted by applicable law, excluded from this Agreement.

4.7. Limitations Cap. SecureWare's total liability under this Agreement shall under no circumstances exceed the Liability Cap.

4.8. Consequential Damage Exclusion. Under no circumstances shall either Party (or any of its affiliates providing or receiving software or services under this Agreement) be liable to the other or any other person for losses or damages which fall into any of the following categories: (a) lost revenues, (b) lost profits, (c) loss of business, (d) trading losses, (e) inaccurate distributions or (f) any incidental, indirect, exemplary, consequential, special or punitive damages of any kind, including any of the foregoing losses or damages resulting from the Customer's use of the Solution or services provided hereunder, or arising from any breach of this Agreement or any termination of this Agreement, whether such liability is asserted on the basis of contract, tort (including negligence or strict liability) or otherwise and whether or not foreseeable, even if SecureWare has been advised or was aware of the possibility of such loss or damages. For purposes of clarification, the following shall be deemed "direct damages" as between customer and SecureWare for the purposes of this Agreement (i) any and all damages, including without limitation consequential and similar damages, awarded to a third party for which indemnification is provided by a Party under section 4.2, 4.4, or 6.7; (ii) customer's out-of-pocket costs to notify affected Parties and/or pay for credit monitoring services for such Parties for a one-year period incurred as a result of SecureWare's breach of section 5.

4.9. Exceptions. The limitations and exclusions set forth in sections 4.7 and 4.8 shall not apply to: (a) failure to pay fees when due; (b) damages caused by either Party's fraud or wilful misconduct; (c) a Party's liability for death or personal injury due to that Party's negligence; or (d) a Party's liability for damages to the extent that such limitation or exclusion is not permitted by applicable law. The limitations set forth in section 4.7 does not apply to claims for which indemnification is provided by a Party under section 4.2, 4.5 or 6.7.

4.10. Third-Party Software. SecureWare shall use reasonable efforts to provide the Customer the benefit of all indemnities and warranties granted to SecureWare by the licensor(s) of the Third-Party Software, to the extent possible without additional cost to SecureWare, as and if permitted by SecureWare's agreement with the licensor of the Third-Party Software, and to the extent such warranties and indemnities pertain to the Customer's use of the Third-Party Software hereunder. In the event of any defect in any Third-Party Software supplied by SecureWare, SecureWare will use commercially reasonable efforts to replace or correct the Third-Party Software without charge, unless it has been damaged or corrupted after supply by SecureWare (including, but not limited to, damage caused by incorrect use, incorrect voltage or attempts to modify the Solution or Third-Party Software). If such damage or corruption has occurred after supply by SecureWare, SecureWare reserves the right to refuse to replace or correct the Third-Party Software or to impose charges for so doing. Provided that SecureWare complies with this provision, it shall face no further liability with respect to any defect in any Third-Party Software.

4.11. Open Negotiation. The Customer and SecureWare have freely and openly negotiated this Agreement, including the pricing, with the knowledge that the liability of the Parties is to be limited in accordance with the provisions of this Agreement.

4.12. Installation. SecureWare shall deliver to the Customer the initial Copies of the Solution stated on the Order by supplying such initial Copies (a) by physical delivery, such as on a disc or other media, or (b) by electronic delivery, such as by posting it on SecureWare's network for downloading. Physical delivery is on FOB terms, SecureWare's shipping point and electronic

delivery is deemed effective at the time SecureWare provides the Customer with access to download the Solution.

4.13. **Back-Up.** The Customer expressly acknowledges that it is the best judge of the value and importance of the data held on Customer's computer system and that Customer shall be solely responsible for maintaining secure and complete back-up copies of all data that Customer processes using the Solution, which data will be backed-up on not less than a daily basis and which will be readily available on machines controlled by the Customer to facilitate the prompt restoration of such data in the event of any loss of or damage to it. SecureWare shall have no liability for any loss or damage caused by Customer's failure to maintain such backed-up copies.

4.14. **Other Limitations**. The warranties made by SecureWare in this Agreement, and the obligations of SecureWare under this Agreement, run only to the Customer and not to its Affiliates, its customers or any other Persons. Under no circumstances shall any Affiliate or customer of the Customer or any other Person be considered a third-party beneficiary of this Agreement or otherwise entitled to any rights or remedies under this Agreement (including any right to be consulted in connection with any variation or rescission of the Agreement agreed between SecureWare and the Customer), even if such Affiliates, customers or other Persons are provided access to the Solution or data maintained in the Solution via the Internet or other networked environment.

4.15. **Australian Consumer Law**. Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right, obligation or remedy implied or imposed by any statute or regulation which cannot lawfully be excluded, restricted or modified. *The Competition and Consumer Act 2010* (Cth) and other statutes in force from time to time in Australia may restrict any exclusion or limitation on liability or may imply warranties, representations or conditions, or impose remedies or obligations, upon SecureWare which cannot be excluded or limited (or modified) except to a limited extent. This Agreement must be read and construed subject to any such statutory provisions. If any such statutory provisions apply then, to the extent to which SecureWare is entitled to do so, SecureWare limits its liability pursuant to such provisions (at SecureWare's option) to:

(a) if the breach relates to goods: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of such goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) the payment of the cost of having the goods repaired; or

(b) if the breach relates to services: (i) the supplying of the services again; or (ii) the payment of the cost of having the services supplied again.

5. **Confidentiality, Ownership and Restrictive Covenant**.

5.1. **Confidentiality**. The party receiving Confidential Information ("**Receiving Party**") of the other ("**Disclosing Party**") shall not, and shall cause its Authorised Recipients not to, use Confidential Information for any purpose except as necessary to implement, perform or enforce this Agreement. Receiving Party will implement commercially reasonable administrative, technical and physical safeguards designed to: (a) ensure the security and confidentiality of the Confidential Information; (b) protect against anticipated threats or hazards to the security of the Confidential Information; and (c) protect against

unauthorized access to or use of the Confidential Information. Prior to disclosing the Confidential Information to its Authorised Recipients, Receiving Party shall inform them of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. Receiving Party will promptly notify Disclosing Party if Receiving Party discovers any improper use or disclosure of Confidential Information and will promptly commence all reasonable efforts to investigate and correct the causes of such improper use or disclosure. If Receiving Party believes the Confidential Information must be disclosed under applicable law, Receiving Party may do so provided that, to the extent permitted by law, the other party is given a reasonable opportunity to contest such disclosure or obtain a protective order.

5.2. **Personal Data**. If SecureWare processes or otherwise has access to any personal data or personal information on the Customer's behalf when performing SecureWare's obligations under this Agreement, then: (i) the Customer shall be the data controller (where "**data controller**" means an entity which alone or jointly with others determines purposes for which and the manner in which any personal data are, or are to be, processed) and SecureWare shall be a data processor (where "data processor" means an entity which processes the data only on behalf of the data controller and not for any purposes of its own); (ii) the Customer acknowledges and agrees that the SecureWare agrees that it shall not transfer or store personal data and/or personal information may be transferred or stored outside the country where the Customer and the Authorized Users are located unless it receives the prior written consent of the Customer. SecureWare acknowledges the Customer's obligations under the Australian Privacy Principals to safeguard personal information and the Customer has the right to refuse to allow personal information to be sent to countries with a different level of data protection to Australia; (iii) SecureWare shall process the personal data and personal information only in accordance with any lawful and reasonable instructions given by the Customer from time to time as set out in and in accordance with the terms of this Agreement; and (iv) each Party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data and personal information or its accidental loss, destruction or damage so that, having regard to the state of technological development and the cost of implementing any measures, the measures taken ensure a level of security appropriate to the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction or damage in relation to the personal data and personal information and the nature of the personal data and personal information being protected. If necessary, the Parties will cooperate to document these measures taken.

5.3. **Use Restrictions**. Except to the extent specifically authorized by this Agreement, the Customer shall not, shall not attempt to, and shall not permit any other Person under its reasonable control to: (a) use any Solution Detail for any purpose, at any location or in any manner not specifically authorized by this Agreement; (b) make or retain any Copy of any Solution Detail; (c) create or recreate the source code for the Solution, or re-engineer, reverse engineer, decompile or disassemble the Solution except to the extent specifically permitted by applicable law; (d) modify, adapt, translate or create derivative works based upon the Solution or Documentation, or combine or merge any part of the Solution or Documentation with or into any other software or documentation except to the extent specifically permitted by

applicable law; (e) refer to, disclose or otherwise use any Solution Detail as part of any effort either (i) to develop a program having any functional attributes, visual expressions or other features similar to those of the Solution or (ii) to compete with SecureWare; (f) remove, erase or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any Solution Detail, or fail to preserve all copyright and other proprietary notices in any Copy of any Solution Detail made by Customer; (g) sell, market, license, sublicense, distribute or otherwise grant to any Person, including any outsourcer, vendor, sub-contractor, consultant or partner, any right to use any Solution Detail or allow such other Person to use or have access to any Solution Detail, whether on the Customer's behalf or otherwise; or (h) use the Solution to conduct any type of application service provider, service bureau or time-sharing operation or to provide remote processing, network processing, network telecommunications or similar services to any Person, whether on a fee basis or otherwise.

5.4. **Notice and Remedy of Breaches**. Each Party shall promptly give notice to the other of any actual or suspected breach by it of any of the provisions of this Section 5, whether or not intentional, and the breaching Party shall, at its expense, take all steps reasonably requested by the other Party to prevent or remedy the breach.

5.5. **Enforcement**. Each Party acknowledges that any breach of any of the provisions of this Section 5 may result in irreparable injury to the other for which money damages would not adequately compensate. If there is a breach, then the injured party shall be entitled, in addition to all other rights and remedies which it may have, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all Persons involved from continuing the breach.

6. **Professional Services**

6.1 **Professional Services**. An Order may identify certain Professional Services. In addition, at the Customer's reasonable request and subject to the availability of SecureWare's personnel, SecureWare may provide to the Customer other Professional Services requested by the Customer.

6.2. **Professional Services Fees**. The Customer shall pay to SecureWare any professional services fees stated on the Order for the Professional Services. Where professional services fees are not specified on the Order, then the fees for such services shall be based upon SecureWare's then standard professional services fee rates. SecureWare's standard professional services fee rates in effect on the date of the execution of the Order are stated on the Order and are subject to increase in the ordinary course of business.

6.3. **Expense Reimbursements**. The Customer shall reimburse SecureWare for reasonable travel and other out-of-pocket expenses incurred by SecureWare personnel in connection with all services, including, but not limited to, Professional Services and maintenance and support rendered by SecureWare.

6.4. **Cooperation and Access to Facilities, Data and Employees**. To the extent reasonably necessary for SecureWare to perform its obligations under this Agreement, the Customer shall provide to SecureWare access to the Customer's location site, equipment, data and employees, and shall otherwise cooperate with SecureWare in its performance hereunder, all as reasonably necessary for SecureWare to perform its obligations under this Agreement.

6.5. **Remote Access of Installed Software**. Provided that SecureWare performs such services in accordance with the confidentiality provisions of this Agreement, the Customer shall permit SecureWare, at SecureWare's option, to remotely access the Solution installed by the Customer for the purpose of providing professional services to the Customer under this Section 6 and otherwise implementing the purposes of this Agreement.

7. **Termination**. Either Party may terminate this Agreement by giving notice of termination to the other Party if the other Party breaches any of its material obligations under this Agreement and does not cure the breach within thirty (30) days after receiving notice describing the breach in reasonable detail. The provisions of Sections 3, 4, 5, 7 and 9 shall survive any termination of this Agreement, whether under this Section 7 or otherwise. The Customer shall remain liable for all payments due to SecureWare with respect to the period ending on the date of termination.

8. **Terms Applicable to Software Licenses**. The Customer agrees to adhere to the terms and conditions of any software licences attached to the Third-Party Software supplied as part of the Solution. The Customer agrees to indemnify and hold harmless SecureWare against any loss or damage, or any claim made or brought against SecureWare for, or in relation to the Customer's breach of any software licences terms and conditions attached to Third-Party Software supplied as part of the Solution to the Customer.

9. **Other Provisions**.

9.1. **Notices**. All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of: (a) the date of actual receipt; (b) the third business day after being mailed by registered post or (c) the first business day after being sent by a reputable overnight delivery service. Any notice may be given by facsimile, or email if notice by one of the foregoing is provided promptly thereafter.   The Customer's and SecureWare's addresses for notices are stated on the Order. Either Party may change its address for notices by giving written notice of the new address to the other Party.

9.2. **Defined Terms**. As used in this Agreement, the terms below (and their plural forms) have the following meanings: (a) "**affiliate**" whether capitalized or not, means, with respect to a specified Person, any Person which directly or indirectly controls, is controlled by, or is under common control with the specified Person as of the date of this Agreement, for as long as such relationship remains in effect.   (b) "**Applicable Jurisdiction**" means Australia and any other jurisdiction where any Solution Details will be located or from where any Solution Details will be accessed under this Agreement. (c) "**Authorised Recipient**" means: (i) with respect to the Customer, the Customer, any Authorized User and any employee of a Customer contractor, provided that the contractor is not a competitor of SecureWare; and (ii) with respect to SecureWare, SecureWare, its Affiliates and their respective contractors. (d) "**Authorized User**" means a Customer employee. (e) "**Confidential Information**" means all business or technical information disclosed by Disclosing Party to Receiving Party in connection with this Agreement. Without limiting the generality of the foregoing, the Customer's Confidential Information shall include Customer Data and the details of the Customer's computer operations and SecureWare's Confidential Information shall include Solution Details. Confidential Information shall include the terms of this

Agreement, but not the fact that this Agreement has been signed, the identity of the Parties hereto or the identity of the products licensed under an Order. Notwithstanding the foregoing, the term Confidential Information does not include information that: (i) prior to the receipt thereof under this Agreement, had been developed independently by Receiving Party, or was lawfully known to Receiving Party, or had been lawfully received by Receiving Party from other sources, provided such other source did not receive it due to a breach of an agreement with Disclosing Party, and Receiving Party knew of such breach or ought to have reasonably known of such breach; (ii) subsequent to the receipt thereof under this Agreement, (x) is published by Disclosing Party or is disclosed generally by Disclosing Party to others without a restriction on its use and disclosure or (y) has been lawfully obtained by Receiving Party from other sources which Receiving Party reasonably believes lawfully came to possess it; or (iii) is publicly known at or after the time either party first learns of such information, or generic information or knowledge which either party would have learned in the course of its work in the trade, business or industry. (f) "**Copy**" whether capitalized or not, means any paper, disk, tape, film, memory device or other material or object on or in which any words, object code, source code or other symbols are written, recorded or encoded, whether permanent or transitory. (g) "**Customer Data**" means data stored in, or processed by, the Solution; provided however, that aggregated data that is not personally identifiable data and is also not identifiable to the Customer shall not be deemed Customer Data nor the Customer's Confidential Information. (h) "**Documentation**" means the standard user documentation SecureWare may provide with respect to the Solution, as such Documentation may be updated from time to time. (i) "**Export Laws**" means any laws, administrative regulations and executive orders of any Applicable Jurisdiction relating to the control of imports and exports of commodities and technical data, use or remote use of software and related property or services, embargo of goods or services or registration of this Agreement including the Export Administration Regulations of the U.S. Department of Commerce and the regulations and executive orders administered by the Office of Foreign Asset Control of the U.S. Department of the Treasury. (j) "**including**" whether capitalized or not, means including but not limited to. (k) "**Liability Cap**" means the amount identified on the Order as the total amount payable for such order. (l) "**person**" whether capitalized or not, means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, bank, association, cooperative, trust, estate, government, governmental agency, regulatory authority or other entity of any nature. (m) "**Release**" means a modification or update to the Solution, which SecureWare, in its sole discretion, incorporates into the Solution without requiring its then existing client base to pay a separate fee (other than support fees). (n) "**Solution Detail**" means any of the following: the Solution and Documentation, the object code and the source code for the Solution, the visual expressions, screen formats, report formats and other design features of the Solution, all ideas, methods, algorithms, formulae and concepts used in developing and/or incorporated into the Solution or Documentation, all future modifications, updates, Releases, improvements and enhancements of the Solution or Documentation, all derivative works based upon any of the foregoing and all copies of the foregoing. (o) "**Third-Party Software**" means that software specified as third party software on the Order. (p) "**Third-Party User**" means any of the Customer's customers, or their customers, to the extent it is permitted to be provided access to the Solution or Third-Party Data hereunder.

9.3. **Assignment.** This Agreement shall bind, benefit and be enforceable by and against SecureWare and the Customer and, to the extent permitted hereby, their respective successors and assigns. The Customer shall not assign this Agreement or any of its rights hereunder, nor delegate any of its obligations hereunder, without SecureWare's prior written consent, except that such consent shall not be required in the case of an assignment of this Agreement (but not of any individual rights or obligations hereunder) to (i) a purchaser of or successor to substantially all of the Customer's business (unless such purchaser or successor is a software, data processing or computer services vendor that is a competitor of SecureWare, its parent company or any of its Affiliates) or (ii) an Affiliate of Customer, provided in the case of such an assignment, the Customer guarantees the obligations of the assignee and the use of the Solution is not broadened beyond the terms of this Agreement. Any assignment by the Customer in breach of this Section shall be void. Any express assignment of this Agreement, any change in control of the Customer (or its Affiliate in the case of an assignment to that Affiliate under this Section 9.3 and any assignment by merger or otherwise by operation of law, shall constitute an assignment of this Agreement by the Customer for purposes of this Section 9.3 ("**Customer Assignment**"). In the event of a Customer Assignment, or any acquisition of additional business by Customer, whether by asset acquisition, merger or otherwise by operation of law (collectively with the Customer Assignment, "**Customer Additional Business Acquisition**"), the Customer shall give notice to SecureWare notifying SecureWare if the Customer desires to use the Solution to process any additional business related to such Customer Additional Business Acquisition ("**Acquired Business**").

9.4. **Export Laws**. The Customer acknowledges that the Solution Detail and the services provided by SecureWare hereunder and this Agreement may be subject to Export Laws. The Customer shall not violate the Export Laws or otherwise export, re-export or use, directly or indirectly (including via remote access), any part of the Solution, Confidential Information or services in a manner, or to or for any person or entity, for which a license or other authorization is required under Export Laws without first obtaining such license or authorization.

9.5. **Relationship**. The relationship between the Parties created by this Agreement is that of independent contractors and not partners, joint venturers or agents.

9.6. **Entire Understanding**. This Agreement, which includes and incorporates the Order, and any other schedules, exhibits and addenda hereto states the entire understanding between the parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations, representations (whether negligently or innocently made), agreements and other written or oral communications between the Parties with respect to the subject matter of this Agreement. In the event of a conflict between the provisions of the Terms and an Order incorporating the Terms, the terms of such Order shall prevail. Any written, printed or other materials which SecureWare provides to the Customer that are not included in the Documentation are provided on an "as is" basis, without warranty, and solely as an accommodation to the Customer. In entering into this Agreement each Party acknowledges and agrees that it has not relied on any express or implied representation, warranty, collateral contract or other assurance (whether negligently or innocently made), except those expressly set out in this Agreement. Each Party waives all rights and remedies which, but for this Section 9.6, might otherwise be available to it in respect of any such representation (whether

negligently or innocently made), warranty, collateral contract or other assurance. Nothing in this Agreement shall limit or exclude any liability for fraud or fraudulent misrepresentation.

9.7. Personal Properties Securities. (a) SecureWare may, in its sole discretion, register this Agreement under the *Personal Property Securities Act 2009* (Cth) ("**PPSA**"). (b) In this Section 9.7 '**financing statement**', '**financing change statement**', '**security agreement**' and '**security interest**' have the meanings given to those terms by the PPSA. (c) The Customer acknowledges and agrees that this Agreement:

(a) constitutes a security agreement for the purposes of the PPSA; and

(b) create a security interest in:
(i) the Solutions supplied or that will be supplied in the future by SecureWare to the Customer; and
(ii) all present and after acquired personal property of the Distributor,

to secure payment of all monies (including but not limited to the invoiced amounts and any interest) owing by the Customer to SecureWare from time to time under this Agreement and under any other agreement or arrangement between the Customer and SecureWare.

(d) The Customer undertakes to:

1. promptly sign any further documents and/or provide any further information which SecureWare may reasonably require to:
(i) register a financing statement or financing change statement in relation to a security interest on the PPS Register and otherwise do all things necessary and required by SecureWare to ensure that any security interest registered by SecureWare is a perfected security interest under the PPSA;
(ii) register any document on any register reasonably necessary to secure SecureWare's interest under this Agreement;
(iii) register any other document required to be registered under the PPSA; or

2. correct a defect in a statement referred to in section 9.71.1.11.(i), (ii) or (iii);

3. indemnify, and upon demand reimburse, SecureWare for all expenses incurred in registering a financing statement or financing change statement on the PPS Register or releasing any Solutions that are the subject of a security interest;

4. not make an amendment demand in respect of a security interest, apply to the Registrar to register a financing change statement in respect of a security interest, without the prior written consent of SecureWare; and

5. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Solutions in favour of a third party without the prior written consent of SecureWare.

6. SecureWare and the Customer agree that sections 96 and 125 of the PPSA do not apply to the security interest created by this Agreement. The Customer also waives its rights under sections 142, 143 of the PPSA.

(e) The Customer waives its rights to receive notices, information or statements (as the case may be) under sections 95, 118, 121(4), 130, 132(3)(d), 132(4) and 157 of the PPSA. (f) The Customer unconditionally ratifies any actions taken by SecureWare under Section 9.7. (g) The Customer irrevocably appoints SecureWare to be its attorney to do such acts and execute such documents as the Customer could personally do or execute (including the appointment of a substitute attorney) which in the opinion of SecureWare is necessary or expedient to give effect to any right, power or remedy conferred on SecureWare by this Agreement or the PPSA and to give effect to

the matters contemplated by this Agreement. (h) The provisions of this Section 9.7 will survive termination of this Agreement for whatever reason.

9.8. Modification and Waiver. No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the Party against whom enforcement is sought. This Agreement may not be modified or amended by electronic means without written agreement of the Parties with respect to formats and protocols. No waiver of any breach of this Agreement, and no course of dealing between the Parties, shall be construed as a waiver of any subsequent breach of this Agreement.

9.9. Severability. A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement.

9.10 Headings. Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement.

9.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

9.12. Jurisdiction and Governing Law. This Agreement is governed by, and shall be construed and enforced in accordance with, the laws of South Australia and the Parties irrevocably and unconditionally consents to the non-exclusive jurisdiction of the courts of South Australia.