RealworksHR Software licence agreement

Parties

The Real Estate Institute of Queensland Limited

ACN	009 661 287
Notice Address and other Notice Details	Level 1, 50 Southgate Avenue CANNON HILL QLD 4170
	Facsimile: (07) 3891 5359
	Email: reception@reiq.com.au
Short name	**Supplier**

The entity set out in the RealworksHR Account Profile

ABN/ACN	As described in the RealworksHR Account Profile (if relevant)
Notice Address	As described in the RealworksHR Account Profile
Short name	**Customer**

Background

1.   The Supplier has developed computer Software designed for use by real estate agents throughout Queensland.

2.   The Supplier agrees to grant to the Customer a non-exclusive, non-transferable licence to use the Software for the Permitted Purpose on the terms set out in this agreement.

Operative provisions

1   Defined terms and interpretation

1.1   Definitions

In this agreement:

Additional Term means an additional term of 12 months commencing at the expiration of the Initial Term or any subsequent Additional term (as applicable).

Business Day means:

(a)   for receiving a notice under clause 16, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and

(b)   for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in Queensland, Australia.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Claim includes any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) arising from or in connection with this agreement, at law, under statute, in equity, in tort for negligence or otherwise.

Commencement Date means the date on which the Supplier grants access the Customer to the Software.

Consequential Loss includes:

(a)   any loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings, pure economic loss and increased operating costs; and

(b)   any consequential or indirect loss,

suffered or incurred by any person whether arising in contract or tort (including negligence) or under any statute.

Development means the any adaptation, modification or enhancement made to the Software, including by way of requiring an amendment to the Source Code Materials.

Dependant Third Party Software and Services means the software and services owned and/or supplied by third parties and necessary for the operation or functionality of, or services associated with, the Software as set out in Schedule 2.

Dispute means any controversy, Claim, difference or dispute of whatever nature between the parties arising under, out of or in connection with this agreement or any rights, benefits or interests arising under, out of or in connection with this agreement.

Initial Term means a term of 12 months from the Commencement date.

Employment Documents means any documents provided by the IP Owner for use via the Software from time to time, which may include, and as amended from time to time:

(a)   employment agreement;

(b)   confidentiality deed;

(c)   letter of offer;

(d)   working at home policy;

(e)   grievance procedure;

(f)   bullying policy and procedure;

(g)   guide to conducting workplace investigations;

(h)   WHS policy;

(i)   IT policy; and

(j)   social media policy.

End User means the Customer's Personnel authorised by the Customer to use the Software for the benefit of the Customer.

Functional Third Party Software means the software owned and supplied by third parties and required for the Customer to utilise certain functionality of the Software as set out in Schedule 2.

Intellectual Property Rights means all intellectual property rights, including:

(a)   patents, copyright, rights in circuit layouts, registered and unregistered designs, trade marks, domain names, business names and any right to have confidential information kept confidential; and

(b)   any application or right to apply for registration of any of the rights referred to in paragraph (a).

IP Owner means Carter Newell Lawyers (ABN 70 144 715 010).

Liabilities includes all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

Licence means the licence in clause 3.1.

Licence Fees mean the amounts outlined on the Website.

Permitted Purpose means use of the Software and Employment Documents in connection with the operation of a real estate agency business in a manner which complies with and is restricted to:

(a)   real estate activities for which each End User is authorised to conduct under relevant law, including the *Property Occupations Act 2014* (Qld); and

(b)   the terms and conditions of this agreement and any terms and conditions applying to the use of Dependant Third Party Software and Services and Functional Third Party Software.

Personnel means, in relation to a party, the officers, employees, agents and contractors of the party.

Account Profile means the Customer profile containing contact information about the Customer and their subscription details;

Source Code Materials means:

(a)   the compliable source code of the Software as current from time to time, including the programming logic and methods incorporated in the program files as expressed in human readable form; and

(b)   all other information, software and documents necessary to enable personnel of the Supplier to understand the program logic of, and to maintain, the Software.

Software means:

(a)   the software described in Schedule 1, plus that software's data structures, program algorithms and file structures; and

(b)   any improvements, enhancements, modifications or Developments of the Software supplied by the Supplier to the Customer under this agreement.

Software Unavailability means an outage or degradation which results in the Software not being accessible by End Users.

Support Services means technical support, provided by telephone, in relation to new End User account creation, log-in issues and errors, defects or malfunctions in the Software.

System means any electronic device which is capable of accessing the Software including personal computers, workstations, laptops, tablets, PDAs, mobile phones and similar devices.

Tax means all tax, charges, fees and other imposts payable in connection with this agreement.

Term means the Initial Term and any Additional Terms.

Website means the website operated under the domain name, realworkshr.com.au or www.realworkshr.com.au.

1.2 Interpretation

In this agreement, except where the context otherwise requires:

(a)   the singular includes the plural and vice versa and a gender includes other genders;

(b)   another grammatical form of a defined word or expression has a corresponding meaning;

(c)   a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of or schedule or annexure to this deed and a reference to this deed includes any schedule or annexure;

(d)   a reference to a document or instrument, includes the document or instrument as novated, altered, supplemented or replaced from time to time;

(e)   a reference to **A$**, **$A**, **dollar** or **$** is to Australian currency;

(f)   a reference to time is to Brisbane, Queensland time;

(g)   a reference to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;

(h)   a reference to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;

(i)   a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

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

(k)   a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;

(l)   the meaning of general words is not limited by specific examples introduced by **including**, **for example** or similar expressions;

(m)   any agreement, representation, warranty or indemnity given by two or more parties (including where two or more persons are included in the same defined term) binds them severally and not jointly nor jointly and severally;

(n)   any agreement, representation, warranty or indemnity given in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and

(o)   a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it.

1.3   Headings

Headings are for ease of reference only and do not affect interpretation.

2 Term

2.1 Term of agreement

(a) The rights and obligations of the parties under this agreement begin on the Commencement Date and, unless terminated earlier in accordance with clause 14, continue for:

    (i) the Initial Term; and

    (ii) the Additional Term (if any).

(b) If this agreement is extended for one or more Additional Terms, then subject to clause 4.1(b) and any amendments or modifications agreed in writing between the parties (including any increase to the Licence Fees), the terms and conditions of this agreement will govern such Additional Term(s).

3 Software licence

3.1 Licence

Subject to clauses 3.2 and 4.3 (if applicable), the Supplier grants the Customer an exclusive, non-transferrable limited licence to permit the Customer and the End Users access and use of the Software for the Permitted Purpose for the duration of the Term.

3.2 Limitations of licence

(a) The Customer acknowledges that certain Licence Fee structures cap the number of End Users that are permitted to access the Software and/or the number of office/premises locations from which End Users are permitted to access the Software, as specified on the Website.

(b) The Customer acknowledges that certain Licence Fee structures permit certain paid members of the Supplier ("**REIQ members**") to access the Software at reduced rates and that the Supplier reserves the right to charge a higher Licence Fee in the event the Customer ceases to be an REIQ member during the Term or if the Supplier determines the Supplier was not an REIQ member at the relevant time.

(c) If the Licence Fee payable by the Customer under this agreement is referable to a pricing structure that restricts use of the Software in the manner described in clause 3.2(a), the Customer must ensure that the Software is not accessed at other offices or premises of the Customer. The Supplier reserves the right to increase the Licence Fee payable by the Customer if it has reasonable grounds to suspect that the limitations of any Customer licence are not being complied with.

3.3 End User limitations of licence

(a) The Customer acknowledges that certain Licence Fee structures cap the number of End Users permitted to access the Software, as specified on the Website.

(b) Any login name or password combination associated with an End User is personal and confidential to that End User. The Customer must ensure that its End Users do not share or distribute login name or password details to persons who are not End Users. The Supplier reserves the right to close End User accounts if it has reasonable grounds to suspect that End User login or password details are being used by persons other than the End User to whom the details were issued.

(c)   If the Licence Fee payable by the Customer under this agreement is referable to a pricing structure that restricts the number of End Users permitted to access the Software in the manner described in clause 3.2(b), the Customer must ensure that the Software is not accessed by more than the licensed number of End Users. The Supplier reserves the right to increase the Licence Fee payable by the Customer if it has reasonable grounds to suspect that the End User limitations of any Customer licence are not being complied with or a Customer.

3.4   Customer liable for acts of End Users

The Customer must ensure that each End user who uses or accesses the Software pursuant to the licence granted under this agreement shall have been made aware of the contents of this agreement and have agreed to the terms of this agreement as if he or she were a party to it in the capacity of the Customer. The Customer will be liable for any breach of the terms of this agreement by its End Users.

4   Licence Fees

4.1   Licence Fees

(a)   In consideration for the Supplier agreeing to grant the Licence, the Customer must pay to the Supplier the Licence Fees in accordance with the terms set out on the Website and in the manner stipulated therein.

(b)   The Supplier reserves the right to amend the Licence Fee in its absolute discretion from time to time and will publish the amended Licence Fee on the Website. Any change to the Licence Fee will apply only after expiry of the then current Initial Term or Additional Term following the date that an amended Licence Fee is published on the Website.

4.2   Invoice details

The Supplier shall provide the Customer with an invoice for the Initial Term or each Additional Term and the invoice must:

(a)   identify the Software to which the invoice relates; and

(b)   be a valid tax invoice for GST purposes and comply with any other tax requirements.

4.3   Invoice dispute

If the Customer disputes the validity of an invoice the Customer must promptly give the Supplier notice of the details and the nature of the dispute.

4.4   Resolution of invoice dispute

Each party may invoke the dispute resolution procedure set out in clause 13 to attempt to resolve the dispute.

5   Conditions of use

5.1   Conditions

Unless the Supplier agrees otherwise, the Customer must not:

(a)   copy, or make copies of, the Software;

(b)   alter, modify, tamper with, decompile, disassemble, reverse engineer or attempt to reverse engineer the Software or otherwise attempt to derive the Software source code from the object code;

(c)   sell, sub-license, assign or otherwise commercialise or transfer the Software;

(d)   demonstrate the Software or its use to a person without the Supplier's written consent;

(e)   use the Software for third party training, commercial time sharing or service bureau use; or

(f)   allow anyone else (except the Supplier) to do any of the things referred to in clauses 5.1(a) to 5.1(e).

5.2   Hardware, upgrades and new releases

(a)   The Customer shall provide at its own cost all computer processors, workstations and other hardware and Systems necessary for accessing and use of the Software. The Customer shall also be responsible for making its own arrangements for the appropriate maintenance of such hardware.

(b)   The Supplier is not required to provide updates or new releases of the Software pursuant to this agreement. Any agreement by the Supplier to provide to the Customer upgrades or new releases of the Software will be subject to a separate agreement between the Supplier and the Customer.

6   Intellectual Property Rights

6.1   No transfer

This agreement does not transfer to the Customer any Intellectual Property Rights in the Software or the Employment Documents and the Customer must not represent that it owns those rights.

Title and ownership of the Intellectual Property Rights attached to the Employment Documents remains with the IP Owner.

6.2   Modifications

If the Customer modifies, or authorises the modification of, the Software (whether in breach of clause 5.1(b) or not):

(a)   the Supplier owns any Intellectual Property Rights in the contravening modifications;

(b)   the Customer assigns to the Supplier any copyright and other intellectual property rights which would, apart from this clause 6.2, have been owned by the Customer; and

(c)   if the Supplier does not terminate this agreement for breach (if any) by the Customer, those modifications are included in the licence granted under this agreement from when they were made, provided that the Customer pays the Supplier any additional Licence Fee that the Supplier requires be paid for the reminder of the term of this agreement.

7   Third Party Software

7.1   Functional Third Party Software

(a)   The Customer acknowledges and agrees that:

(i)   the Customer's ability to utilise certain Software functionality requires the Customer to obtain and maintain memberships, subscriptions or other access rights with third parties; and

(ii)   if the Customer fails to obtain and maintain the right to use or access the Functional Third Party Software, the Software (or certain elements or functions of the Software) which is dependant on Functional Third Party Software will not be available for use by the Customer.

(b)   The Customer is responsible for obtaining and maintaining the right to use or access the Functional Third Party Software and any costs or expenses related to the right to use or access the Functional Third Party Software.

7.2   Dependant Third Party Software and Services

(a)   The Customer acknowledges and accepts that:

(i)   the Supplier's ability to perform its obligations under this agreement is dependant on the Supplier having the right to use, access and/or sub-licence the Dependant Third Party Software and Services;

(ii)   the owners, licensors or suppliers of the Dependant Third Party Software and Services may revoke the Supplier's rights to use, access and/or sub-licence the Dependant Third Party Software and Services; and

(iii)   If the owners, licensors or suppliers of the Dependant Third Party Software and Services revoke the Supplier's rights to use, access and/or sub-licence the Dependant Third Party Software and Services, the Supplier may not be able to carry out its obligations under this agreement.

(b)   If the owners, licensors or suppliers of the Dependant Third Party Software and Services revoke the Supplier's rights to use, access and/or sub-licence the Dependant Third Party Software and Services, the Supplier may, in its absolute discretion and by notice in writing to the Customer:

(i)   notify the Customer that certain Software functionality or services which were dependant on the Supplier's rights to use, access and/or sub-licence the Dependant Third Party Software and Services no longer forms part of this agreement, and that the Customer is entitled to a Licence Fee rebate (determined by the Supplier, acting reasonably) for the loss of functionality or service; or

(ii)   notify the Customer that this agreement is terminated with immediate effect, and clauses 14.3 to 14.6 shall apply.

8   Software support, unavailability and outages

8.1   Software support

(a)   During the term of the agreement, the Supplier will procure that End Users are provided with Support Services at no extra cost.

(b)   The Support Services will be made available by telephone only and will generally be available between 9 a.m. and 4 p.m. during Business Days.

(c)   The Customer must ensure that providers of Support Services are given all information and assistance required to enable the Support Services to be performed.

8.2   Software unavailability

(a)   The Supplier will use reasonable efforts to ensure that incidents of Software Unavailability are minimised (other than Software Unavailability contemplated under this agreement).

(b) The Supplier will not be responsible for Software Unavailability which is due to:

(i) planned or emergency outages;

(ii) the Customer's failure to comply with the terms of this agreement or the Supplier's reasonable instructions in relation to the installation of updates or patches; or

(iii) an act or omission of the Customer or any End-User which has caused or contributed to the Software Unavailability.

8.3 Planned outages

The Supplier may schedule planned outages (including Support Services outages) that are, in its reasonable opinion, necessary to maintain the Software.

The Supplier will seek to minimise the frequency and impact of planned outages. Wherever possible, the Supplier will attempt to schedule any such outages between 7:00pm and 06:00am.

8.4 Emergency outages

The Supplier reserves the right to carry out an emergency outage (including Support Services outages) if required to repair, upgrade or modify the Software or Support Services.

8.5 Events outside Supplier control

The Supplier will not be responsible or liable for any failure or delay in the availability of the Software or of the Supplier performing its obligations under this agreement (including procuring Support Services) to the extent that the failure or delay is caused by events beyond its control (including failures/delays of sub-contractors, suppliers, hardware or infrastructure required to operate the Software or Support Services), provided that the Supplier takes all reasonable steps to mitigate the effects of the relevant event.

9 Confidential Information

9.1 Confidentiality

A party must keep the other party's Confidential Information confidential.

9.2 Use and disclosure of Confidential Information

A party may only:

(a) use the other party's Confidential Information for the purposes of this agreement; and

(b) disclose that information to its Personnel, if:

(i) they must know for the purposes of this agreement (but only to that extent);

(ii) it first directs them that the information is confidential and must be kept confidential; and

(iii) it ensures its direction is complied with and that all steps are taken to prevent or stop any actual or suspected breach of the direction.

9.3 Exceptions

Clause 9 does not apply to information that (whether before or after the date of this agreement):

(a) is independently created by a party (whether alone or with a third a person);

(b)   is public knowledge (except because of a breach of confidentiality by a party or any of its disclosees); or

(c)   is required to be disclosed by law (but only to that extent).

9.4 Disclosure required by law

If a party must disclose the other party's Confidential Information by law under clause 9.3(c), the disclosing party must first:

(a)   give the other party:

      (i)   notice of the details of the proposed disclosure;

      (ii)   reasonable opportunity to do what it thinks necessary to protect the confidentiality of the information; and

      (iii)   any help reasonably required by the other party to protect the confidentiality of the information; and

(b)   give the proposed disclosee notice that the information is Confidential Information of the other party.

10 Representations and warranties

10.1 Software warranties

The Supplier warrants that the Software:

(a)   as initially supplied to the Customer is substantially free from physical defects in material and workmanship; and

(b)   as far as the Supplier is aware, does not contain any computer program virus or other code that is harmful, destructive, disabling or which assists in or enables theft or alteration of data.

10.2 Limited warranties

Subject to clause 10.1, the Supplier does not warrant:

(a)   that the Software is error free;

(b)   the Customer's use of the Software shall be uninterrupted;

(c)   the Software shall meet the Customer's requirements;

(d)   the Software is suitable to be used in conjunction with, or merged with, any other software or computer program;

(e)   that any information which is supplied by, accessed through or fetched from any Third Party Software is true, accurate or complete or that it is up to date, suitable for the purpose for which it is used or has been independently verified; and

(f)   the Software shall provide a particular level of functionality.

10.3 Mutual representations and warranties

Each of the Supplier and the Customer represents and warrants that it has the requisite power and authority to enter into this agreement and to carry out the obligations contemplated by this agreement.

11 Indemnity

The Customer unconditionally and irrevocably undertakes to indemnify each of the Supplier, the IP Owner and each of their directors, officers and employees (**Indemnified Parties**) against, and to hold them harmless from and against all Liabilities incurred in respect of, the following (whether incurred directly or indirectly by an Indemnified Party):

(a)   (**breach**) a breach by the Customer or any End User of its obligations under this agreement, including any of the representations and warranties by the Customer contained in this agreement not being or ceasing to be true and correct;

(b)   (**non-permitted use**) use of the Software or the Employment Documents by the Customer or any End User other than in accordance with the Permitted Purpose;

(c)   (**third party terms and conditions**) breach of any third party software conditions, including the terms and conditions governing the use of Dependant Third Party Software and Functional Third Party Software;

(d)   (**third party claims**) any claims brought by third parties against the Supplier arising out of or in connection with use of the Software or the Employment Documents by the Customer or any End User; and

(e)   (**unauthorised access**) any use of or access to the Software or the Employment Documents by persons other than End Users.

11A Release

The Customer immediately and forever releases and discharges each of the IP Owner and each of their directors, officers and employees (**Released Parties**) from and against all Claims which a Customer now has, at any time had, or (but for this release) at anytime in the future may have had against a Released Party in any way related to the use or non-availability of the Employment Documents, and whether or not the Releasing Party was or could have been aware of such Claims. The Customer agrees that each of the Released Parties may enforce this clause despite not being signatories to these terms.

12 Limitation and exclusion of liability

12.1 Application of clause

In this clause 12:

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) as given effect under Part XI of the *Competition and Consumer Act 2010* (Cth), and under the same or similar provisions of the *Fair Trading Act 1989* (Qld), as amended or replaced from time to time.

Consumer means a consumer within the meaning of section 3 of the Australian Consumer Law.

12.2 No exclusions or limitations

(a)   To the extent that the Customer acquires goods or services from the Supplier as a Consumer, that person may have certain rights and remedies (including, without limitation, consumer guarantee rights) that cannot be excluded, restricted or modified by agreement.

(b)   Nothing in this clause 12 operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability, implied or conferred under the Australian Consumer Law or any other statute, the exclusion, restriction or modification of which would:

(i)   contravene that statute; or

(ii)   cause any term of this agreement to be void,

(**Non-excludable Obligation**).

12.3   Exclusion of implied obligations

Except in relation to Non-excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by statute, custom, or the general law that impose any liability or obligation on the Supplier are expressly excluded under this agreement.

12.4   Limitation of liability

(a)   Except in relation to Non-excludable Obligations, the Supplier's liability to the Customer, arising directly or indirectly under or in connection with this agreement or the performance or non-performance of this agreement (including but not limited to errors or omissions in the Software or the unavailability or interruption to access of the Software) and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity is limited as follows:

   (i)   the Supplier will have no liability whatsoever to the Customer for any loss, harm, damage, cost or expense (including legal fees) in the nature of special, indirect or Consequential Loss or damage (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data); and

   (ii)   the aggregate of the Supplier's liability to the Customer is otherwise limited to an amount not exceeding the value of the Licence Fees paid by the Customer and received by the Supplier under this agreement.

(b)   In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), the Supplier's liability to the Customer for a failure to comply with any Non-excludable Obligation is limited to the lesser of:

   (i)   the actual and direct damage suffered as a result of the Supplier's failure to comply with any Non-excludable Obligation;

   (ii)   in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and

   (iii) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

12.5   Proportionate liability

The Supplier's liability under this agreement shall be reduced proportionally to the extent that any act or omission of the Customer, a member of the Customer's Group or either of their Personnel caused or contributed to the other party's loss.

12.6   Customer use acknowledgement

The Customer acknowledges and agrees that:

(a)   it and the End Users use the Software at their own risk and that they have suitable knowledge and expertise to be able to use the Software in a manner consistent with the Permitted Purpose; and

(b)   the Supplier has not and will not independently verify the accuracy or currency of any information incorporated from, sourced by or accessed through Dependant Third Party Software or Functional Third Party Software.

13 Dispute resolution

13.1 No court proceedings unless procedure followed

A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with clause 13.

13.2 Notice of Dispute

A party claiming that a Dispute has arisen must give the other party notice of the details of the Dispute (**Dispute Notice**).

13.3 Negotiated resolution

When a Dispute Notice is given, each party's chief executive officers or similar member of senior management (or their nominee) must meet and first attempt to resolve the Dispute.

13.4 Mediation/Arbitration

If the chief executive officers or similar member of senior management (or their nominee) cannot resolve the Dispute under clause 13.3 within 30 days (or longer period agreed between the parties) (**Mediation Commencement Date**), the Dispute must be referred to mediation.

13.5 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within 7 days after the Mediation Commencement Date, the President of the Queensland Law Society (or their nominee) will appoint a mediator.

13.6 Mediation rules

(a)   The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the parties agree in writing.

(b)   Any information or documents disclosed by a party in the context of the mediation process contemplated by this clause:

(i)   must be kept confidential; and

(ii)   may only be used to attempt to resolve the Dispute.

(c)   Each party to a Dispute must pay its own costs of any mediation. The parties to the Dispute must equally pay the costs of any mediator.

13.7 Court proceedings if procedure fails

If the parties cannot resolve a Dispute in accordance with the escalation procedure in clauses 13.3 and 13.4, each party may commence court proceedings.

13.8 Obligations continue

The parties must continue to perform their respective obligations under this agreement pending the resolution of a Dispute.

13.9 Costs

Each party must pay its own costs of complying with this clause.

14 Termination

14.1 Termination for breach or insolvency

The Supplier may terminate all or part of this agreement by giving the Customer notice if the Customer:

(a)   breaches any provision of this agreement and fails to remedy the breach within 5 Business Days after receiving notice requiring it to do so;

(b)   breaches a material provision of this agreement where that breach is not capable of remedy; or

(c)   an event referred to in clause 14.2 happens.

14.2 Insolvency events

The Customer must give the Supplier notice immediately if:

(a)   it disposes of the whole or any part of its assets, operations or business except in the normal course of business;

(b)   a step is taken to enter into an arrangement between the party and its creditors;

(c)   it cannot pay its debts as they become due;

(d)   stops carrying on business;

(e)   a mortgagee takes a step to enter into possession or dispose of the whole or any part of its assets or business;

(f)   a step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of its assets or business; or

(g)   there is any change in the direct or indirect beneficial ownership or control of the party.

14.3 Supplier may terminate

The Supplier may terminate this agreement (in whole or in part) immediately:

(a)   for convenience at any time by giving written notice to the Customer; and

(b)   in the circumstances set out in clause 7.2(b)(ii).

14.4 Refund of Fees

If the Supplier terminates this agreement under clause 14.3, the Supplier must refund to the Customer that proportion of the Fees paid to the Supplier by the Customer which relate to periods of the Term (or other relevant invoiced period) following the date of termination.

14.5 Action on termination

On termination of this agreement, the Customer must:

(a)   immediately stop using the Software, and ensure that each End User stops using the Software;

(b) return to the Supplier all physical copies of the Software under the possession or control of it;

(c) ensure that all Software in the Customer's possession has been deleted or permanently removed from any computer equipment on which it is stored; and

(d) confirm in writing to the Supplier compliance with its obligations under this clause 14.5.

14.6 Accrued rights and remedies

Termination of this agreement under this clause 14 does not affect any accrued rights or remedies of either party.

15 GST

15.1 Defined terms

In clause 15, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

15.2 Consideration GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this agreement, unless specifically described in this agreement as GST inclusive, does not include an amount on account of GST.

15.3 Gross up

If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 15.3 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

15.4 Without set off, deduction or requirement for demand

The recipient of a supply made under or in connection with this agreement must pay the amount by which the GST exclusive consideration is increased:

(a) at the same time as the GST exclusive consideration is payable or to be provided; and

(b) without set off, deduction or requirement for demand.

15.5 Reimbursement

If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment is reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

16 Notices and other communications

16.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

(a) in writing, in English and signed by a person duly authorised by the sender; and

(b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.

16.2 Effective on receipt

A Notice given in accordance with clause 16.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

(a)   if hand delivered, on delivery;

(b)   if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or

(c)   if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

17 Miscellaneous

17.1 Alterations

Subject to clause 4.1(b), this agreement may be altered only in writing signed by each party.

17.2 Assignment

The Customer may only assign this agreement or a right under this agreement with the prior written consent of the Supplier.

The Supplier may assign its rights and obligations under this agreement any may subcontract the performance of any of its obligations in its absolute discretion.

17.3 Costs

Each party must pay its own costs of negotiating, preparing and executing this agreement.

17.4 Stamp duty

Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this agreement or any transaction contemplated by this agreement, must be paid by the Customer.

17.5 Survival

Any indemnity or any obligation of confidence under this agreement is independent and survives termination of this agreement. Any other term by its nature intended to survive termination of this agreement survives termination of this agreement, including clauses 6, 7, 10, 11 and 12.

17.6 Counterparts

This agreement may be executed in counterparts. All executed counterparts constitute one document.

17.7 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

17.8 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.

17.9 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the term of this agreement continue in force.

17.10 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

17.11 Relationship

Except where this agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

17.12 Announcements

A public announcement in connection with this agreement or any transaction contemplated by it must be agreed by the parties before it is made, except if required by law or a regulatory body (including a relevant stock exchange), in which case the party required to make an announcement must, to the extent practicable, first consult with and take into account the reasonable requirements of each other party.

17.13 Governing law and jurisdiction

This agreement is governed by the law of Queensland and each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of Queensland.

Schedule 1 – Software

Description

The web-based contracts and forms management tool created by the Host to host the Employment Documents and make them available to Customers.

Access

The Software is cloud based, allowing users to access the system from any computer after activation of an account and is not dependent on installation of hardware.

Functionality

The Software provides a platform for data to be entered, stored and then replicated on REIQ forms.

Information storage

Information contained within the Software is stored within an SQL database, with information tagged with meta data to allow tracking back to an agency and individual for auditing purposes. The

Software's internal database will supply unique ID for each user to allow for security and retrieval of data if necessary.

Schedule 2 – Third Party Software

Part A: Dependant Third Party Software and Services

Software licence agreement with Dynamic Methods Pty Ltd ACN 149 256 655

Telephone technical support line provided by Dynamic Methods Pty Ltd ACN 149 256 655

Part B: Functional Third Party Software

Supported operating systems:

- Microsoft Windows 7+

- Mac OSX 10.7+

- Linux (e.g. Ubuntu)

- Android 4.1+ (Jelly Bean or newer)

- iOS 6+ (iPad, iPhone)

Supported browsers:

- Google Chrome 35+

- Mozilla Firefox 30+

- Safari 6+

- Internet Explorer 10+