

# Annexure A



CONTRACT No. \_\_\_\_\_

DESCRIPTION	RECURRING CHARGES			ONE TIME CHARGES	
	Monthly RENTAL	MINIMUM PERIOD	Option Period	Multi-buy Discount	Establishment Fee
PROGRAMME SCHEDULE					
<b>TOTAL</b>					
THE MODULE SCHEDULE					
<b>TOTAL</b>					
THE SYSTEM SCHEDULE					
<b>TOTAL</b>					
THE SUPPORT SCHEDULE	<b>SUB TOTAL OF CHARGES</b>				
	<b>TOTAL MONTHLY RECURRING CHARGES</b>				
				<b>TOTAL ONE TIME CHARGES</b>	

**OFFER**

PLEASE SUPPLY THE ABOVE SYSTEM, LICENCE THE USE OF THE ABOVE PROGRAMMES, DATA AND SUPPLY THE SERVICE FOR THE ABOVE AT THE PRICE AND CHARGES SHOWN ON THE TERMS SET OUT OR REFERRED TO IN THIS CONTRACT.

THIS DOCUMENT PLUS ANY ATTACHMENTS SIGNED BY BOTH PARTIES CONSTITUTE THE SOLE AND ENTIRE BINDING CONTRACT.

WITNESS \_\_\_\_\_

THE AUTHORISED SIGNATORY DECLARES THAT HE/SHE HAS THE AUTHORITY TO EXECUTE THIS CONTRACT ON BEHALF OF THE CUSTOMER.

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_  
(AUTHORISED SIGNATORY)

FOR \_\_\_\_\_  
HEREIN CALLED THE CUSTOMER

ACN/ABN \_\_\_\_\_

ADDRESS \_\_\_\_\_

**ACCEPTANCE**

I.T. TODAY SYSTEMS hereby accept the above offer SIGNED \_\_\_\_\_ DATE \_\_\_\_\_

I.T. TODAY SYSTEMS PTY LTD  
(HEREIN CALLED THE COMPANY)

# BOSS SOFTWARE



## Licensing Agreement

for

**Date:** .....

**Licencee:** .....Pty Ltd

A.B.N. ....

A.C.N. ....



### **3A DURATION**

**3A.1** This agreement will commence upon the acceptance by the company of the offer by the customer and will continue thereafter unless terminated in accordance with clause 14 hereof.

### **3B MINIMUM RENTAL PERIOD**

**3B.1** The rental of that part of the system that is on rental will commence on the delivery date and will continue for the minimum period specified for that part of the system on Annexure A attached hereof.

**3B.2** Unless there is a breach of this agreement by either party, the rental of each part of the system on rental will continue until terminated by either party having given to the other not less than three months written notice PROVIDED HOWEVER that any such termination by the customer of that part of the system prior to the expiration of the minimum rental period for that part of the system stated as per attached Annexure A will be of no effect and the company may treat the contract as subsisting for the whole of the minimum rental period.

### **3C MINIMUM MAINTENANCE PERIOD**

**3C.1** The maintenance of that part of the system that is on maintenance will commence on the delivery date and will continue for the minimum period specified for that part of the system as per attached Annexure A.

**3C.2** Unless there is a breach of this agreement by either party, the maintenance of each part of the system on maintenance will continue until terminated by either party having given to the other not less than one month's written notice provided however that any such termination by the customer of that part of the system prior to the expiration of the minimum maintenance period for that part of the system stated as per attached Annexure A will be of no effect and the company may treat the contract as subsisting for the whole of the minimum maintenance period.

## **4 LICENCES AND SERVICES**

**4.1** The customer is hereby granted a non-exclusive non-transferable licence, under the copyright patents and other intellectual property rights of the company and/or its supplier to use:-

- (a) the equipment in the form in which it is supplied to the customer by the company and/or its suppliers for so long as no alterations or modifications are made thereto other than by the company and/or its suppliers or with the prior written consent of the company;
- (b) all programmes and data supplied by the company and/or its suppliers for the purpose described in the relevant company programmes and data specification and on processes supplied by the company and/or its suppliers detailed as per attached Annexure A. This licence extends to any corrections and updates supplied by the company and/or its suppliers for any licence, programme or data.

**4.2** Each programme and/or data is licensed for use only with that equipment and only at the particular sites listed in the premises schedule hereto. The location and other identification of that equipment is as stated as per attached Annexure A or as shall otherwise be agreed upon in writing by the parties. The customer acknowledges that the licence granted by this agreement is limited only to the site or sites listed in the premises schedule hereto and the customer agrees that it shall not disseminate or access the system from that site or sites and/or access the system from other sites not listed in the premises schedule without having first obtained written consent of the company to do so. The parties agree that the licence granted under this agreement will cease immediately upon the termination of this agreement.

**4.3** Save as aforesaid the customer is not licensed to use the equipment the programmes or the data and hereby undertakes not to do so.

**4.4** The company will provide for the system (described in Annexure A attached) a telephone service for the diagnosis and correction on intrinsic errors and the giving of related technical advice commencing on the date of the delivery (hereafter called "technical support"), in consideration of the payment by the customer of the company's hourly standard technical support charges in force at the time of the annual technical support charge specified as per attached Annexure A, the company will continue to provide such service for the system in the company's normal working hours in force from time to time excluding public holidays PROVIDED HOWEVER that:-

- (a) if the customer requires staff training in the use of the system during the currency of this contract, then such training will be paid for by the customer at the company's published training rates at the time the company provides such training.
- (b) such service does not include the provision of any service at the customer's premises nor any service necessitated by the customer's failure to make use of any information previously supplied to the customer by the company. These services are available on request on the company's standard terms and charges in force from time to time.

**4.5** (a) Where the company provides an in-house and/or on line system, the company will provide an update service for that part of the service which requires update ("the update service"). The company will post or deliver to the customer's premises the updated programmes and/or data on a regular basis, in consideration of the payment of the rental and/or recurring charges as per attached Annexure A which relate to the part of the system that requires updating. The company undertakes to post or deliver the monthly updated data within fourteen (14) working days from the date of receipt of such updated data by the company.

(b) Where the company has provided the system as a dial-in or on-line service, the company undertakes to update the system for the customer on a regular basis.

(c) The customer acknowledges that the update service is reliant on the company being supplied by its suppliers with the updated data, in no circumstances whatsoever will the company be liable for any economic or other loss brought about by the company's non supply of the update services referred to herein.

## **5 SITE PREPARATION**

- 5.1** The customer will supply all other necessary fittings not detailed in Annexure A (attached) that will be required to commission the system. The customer will house the system in suitable premises and under suitable conditions and will follow instructions on the correct operating procedures for operating the system. The customer will ensure that such preparations and provisions are effected before delivery. The customer will carry out the daily routine maintenance that is required and accepts full responsibility for the system's performance where the performance is adversely effected by the customer:-
- (a) not housing the system in suitable premises and under suitable condition; or
  - (b) not following the instructions and correct operating procedures; or
  - (c) not following the recommendations of the company and/or its suppliers; or
  - (d) not providing a clean regular power supply.

## **6 DELIVERY**

- 6.1** The company will for "the delivery charge" detailed in Annexure A (attached) suitably pack, transport and deliver the system to the customer's premises. The customer will pay the delivery charges to the company on the delivery date and the customer will be deemed to have accepted the system on the delivery date.

## **7 INSTALLATION**

- 7.1** The company will for "the installation charge" detailed as per attached Annexure A suitably install the part of the system which relates to the installation charges for the customer at the customer's premises. The customer will pay the installation charges to the company upon execution of this contract. Where there is no installation charge for any part of the system, then the customer accepts responsibility and selling of that part of the system at the customer's expense. Where the delivery date or installation is delayed through no fault of the company, then the delivery date shall be deemed to be the date the company advises in writing that the company is in a position to deliver the system to the customer's premises. The customer shall commence to pay the charges on the front hereof as though the system had been delivered and installed.

## **8 SUBSTITUTION**

- 8.1** Where a system or part of a system is supplied to the customer on a rental or recurring charge basis, the company reserves the right to substitute an alternative for any part of the whole of the system that is on rental or recurring charges PROVIDED that such an alternative shall be capable of performing the functions of the original system without affecting the over-all performance of the system.

## **9 CHARGES AND PAYMENTS**

### **9.1 ONE-TIME CHARGES**

- 9.1.1** The customer will pay the company for the one-time charges as per attached Annexure A (except for those charges that have already been paid to the company) on the delivery date.

### **9.2 RENTAL AND RECURRING CHARGES**

- 9.2.1** Rental and recurring charges will commence on the delivery date and are payable monthly in advance on the first of the month, the first such payment to be made shall represent the proportionate charge for the part month from and including the delivery date together with any additional charges then due.

### **9.3 OTHER CHARGES**

- 9.3.1** The company reserves the right to make a charge for any work done by the company and/or its suppliers which is attributable to the customer's failure to observe its obligations and/or not covered by the company's and/or its supplier's warranty and/or selected maintenance or rental options. The customer will pay to the company upon demand any Federal or State duties or taxes which may be levied on this contract or on the company as a result of this contract or its operation accepting income tax (Commonwealth) on such income as may arise therefrom.
- 9.3.2** The company shall be entitled to charge separately for all consumables supplied by the company or its suppliers for the everyday operation of the system pursuant to this contract.
- 9.3.3** If any sums payable under this contract are in arrears, then the company reserves the right to charge and the customer agrees to pay the company interest calculated on a daily basis from the original due date at the rate of twenty-five percent (25%) per annum on such arrears.

## **10 LIMITATION OF LIABILITY**

- 10.1** Subject to the preceding paragraph the total of the company's and/or its supplier's liability under or in connection with this contract, howsoever arising, is limited in respect of each event or series of connected events to the following maxima:-
- 10.1.1** In respect of physical damage to or loss of tangible property to an amount not exceeding \$10,000.
- 10.1.2** In respect of breach of any condition or warranty implied by virtue of any statute applicable to the contract or the equipment:-
- (a) in the case of the supply of services, to the supplying of service giving rise to the relevant event again or the payment of the cost of having the services supplied again;
  - (b) in the case of the supply of goods, to the replacement of the goods or the supply of goods or the supply of equipment goods or the repair of the goods.
- 10.1.3** In respect of all other events to an amount not exceeding \$5,000 notwithstanding anything on the contrary contained in any other contract between the company and the customer relating to the equipment, programmes and/or data service for use in association with equipment and/or programmes and/or data supplied under this contract PROVIDED ALWAYS that:-
- (a) the company will not be liable for the consequences of any use which the customer makes of the system;
  - (b) This clause (10.1.3) shall not apply to any liability for breach of warranty or condition implied by statute, the exclusion, restriction or modification of which would render this clause void.
- 10.2** The company does not represent or warrant that the provision of any services will result in the correction of all deficiencies or defects found by the customer. The company shall provide the service agreed to be provided under this contract, but subject hereto the company shall be under no liability to the customer in respect of any defect, which shall remain, undefined or unresolved.
- 10.3** The company will have no obligation or liability under this contract and the customer will have no claim at law or in equity in respect of the equipment and/or programmes an/or data supplied hereunder:-
- (a) In respect of any equipment, following the expiry of the warranty period (which if not otherwise stated is 90 days);
  - (b) At no time in respect of any programme or data services.

## **11 CONDITIONS**

### **11.1 PASSWORDS**

- 11.1.1** The customer shall keep any passwords supplied for his access to the system secret and shall not divulge any such passwords to any other person other than persons directly employed by the customer at the sites referred to in the premises schedule hereto. The customer further agrees with the company that for security purposes to change such passwords as directed by the company.

### **11.2 CUSTOMER EQUIPMENT**

- 11.2.1** Where equipment used in connection with this system is not supplied by the company, the customer shall provide appropriate equipment to enable him to access the system or to use the programmes and data supplied by the system, such equipment must be in accordance with the standards and specification advised to the customer by the company for access to or use of the system.

## **12 PROPERTY RIGHTS**

- 12.1** The customer acknowledges that the company and/or its suppliers are the absolute owner of all the property rights including intellectual property rights in the information supplied in the system. The customer agrees that they acquires no property rights in the data provided to them pursuant to this agreement further that any data supplied by the customer to the company for inclusion in the system becomes and remains the property of the company.
- 12.2** The company will indemnify the customer against liability under any injunction or final judgment or any settlement made by the company for infringement of third party patents, copyright and registered designs in the Commonwealth of Australia by the customer's use of the system subject to the following conditions:-
- (a) The customer promptly notifying the company in writing of any allegation or infringement;
  - (b) The customer making no admissions without the company's consent;
  - (c) The customer at the company's request allowing the company and/or its supplier to conduct and/or settle all negotiations and giving the company all reasonable assistance. The costs incurred and recovered in such negotiations and litigation will be to the account of the company and/or its supplier.
  - (d) The customer directly or indirectly causing litigation particularly through supply of data which the customer did not have any right to assign to the company.

- 12.3** The indemnity under the previous sub-clause:-
- (a) will not apply to infringement (including infringement of the company and/or its supplier patents) by use of the system or parts thereof in combination with any equipment and/or programmes not supplied by the company for use with that system; and
  - (b) states the company's entire liability in respect of patents, copyright, registered designs and intellectual property rights.

**12.4** If at any time an allegation of infringement of third part patents copyright of registered designs in the Commonwealth of Australia is made in respect of the system or the company's reasonable opinion is likely to be made, the company may at its own expense modify or replace the equipment or programmes and/or data (without detracting from overall performance).

### **13 CONTROLLED USE OF THE PROGRAMMES AND DATA**

**13.1** The customer shall restrict the use of programmes and data supplied pursuant to this agreement to the particular site where the system is installed (listed in the premises schedule on the front hereof) and shall ensure that same is not transmitted or otherwise conveyed to any other site other than the site or sites listed in the premises schedule on the front hereof.

**13.2** The customer may only make so many copies of the programmes and/or data as are necessary for operational security. The licence granted by this contract applies to such copies as it applies to the programmes. No copies may be made of the documentation without the written consent of the company. The customer agrees that in conveying or disclosing information derived from data products in the normal course of business the customer will do so on the condition that the persons receiving that information are bona fide customers of the customer and that the number of records to be disclosed to customers may be limited from time to time by the suppliers.

**13.3** The customer will not disclose or make available the programmes and/or data or any part thereof to any other person, entity and/or site other than the sites listed in the premises schedule hereof in any form whatsoever (including electronically) except in confidence and to facilitate use in accordance with this agreement. The customer shall not use the data products for the purpose of direct marketing in any form without obtaining the prior written consent of the company.

**13.4** The customer will follow all such reasonable instructions as the company and/or its suppliers give from time to time with regard to the use of the programmes and data, or trademarks and such other indications of the property and rights of the company and/or its suppliers.

The customer will permit the company and/or its suppliers at all reasonable times to check that the programmes and data are being used within the terms of this licence. The customer expressly acknowledges that the company has entered into various licensing agreements for ongoing use of data with various data suppliers and as such the company has undertaken certain contractual obligations. To assist the company in meeting these obligations the customer agrees to comply with and/or accept responsibility for all of the company's obligations expressed or implied in the suppliers' agreements. The customer also agrees to permit any duly authorised officer of the above to check on any programme and/or data in which the suppliers hold copyright and/or intellectual property rights. The customer will immediately follow all directions given by the above-authorized officers including the removal or destruction of the programmes and/or data together with any copies of programmes and any material containing data thereon.

**13.5** The company will not be held liable as a result of any removal or discontinuance of any part of the programmes and/or data for any reason whatsoever and the customer will be entitled to suspend any recurring charges on that part of the programmes and/or data that have been removed or discontinued until the company substitutes the programmes and/or data with programmes and/or data which is capable of performing the functions of the programmes and/or data stated as per attached Annexure A.

**13.6** The customer will not sell, charge for any service, provide information to or give away or deal in any way with the programmes and/or data to any other party and/or sites not listed in the premises schedule hereto not directly connected with the operation of the system by the customer in his usual business operations limited to the type of business the customer is engaged in at the date of execution hereof. The customer will advise the company in writing prior to so doing of the customer's intention to re-locate and/or access the system or any part of the system to or from sites not listed in the premises schedule as per attached Annexure A. If any unauthorised use is made of the programmes and/or data and such use is attributed to the act or default of the customer, then without prejudice to the company's other rights and remedies the customer will immediately be liable to pay to the company an amount equal to the charges which the customer and other individuals or organisations would have been obligated to pay had the company granted a licence to the unauthorised user and/or unauthorised site at the beginning of the period of the unauthorised use. The customer's obligations under this clause shall survive the termination of the agreement.

### **14 TERMINATION**

**14.1** The company will terminate this agreement immediately by written notice in the event that:-

- (a) the customer fails to pay within seven (7) days of the due date thereof any rental installment or other payment provided herein; or
- (b) the customer commits any other breach of this contract or any other contract with the company and fails to remedy it promptly on receiving written notice from the company; or
- (c) the customer being a company suffers execution or commits an act of bankruptcy or goes or is put into liquidation (otherwise than solely for amalgamation or reconstruction) or if there is any meeting, arrangement or composition with creditors or if a receiver is appointed over any part of the customer's assets or undertakings.

- 14.1A** The company may terminate this agreement at any time by giving the customer one (1) month written notice of its intention so to do. (subject to leasing or rental conditions)
- 14.1B** Subject to clauses 3A and 3B hereof, if the customer shall have duly observed and performed all of the covenants conditions and obligations on the part of the customer herein contained or implied, the customer may terminate the agreement by giving to the company one (1) month written notice of its intention so to do. A payment of all rental maintenance and other charges payable pursuant to this agreement by the customer to the company throughout the one month period of the notice of termination will be a condition precedent to the actual termination of this agreement pursuant to such a notice.
- 14.1C** The terms and conditions of this agreement shall forthwith be automatically suspended in the event that, in the reasonable opinion of the company, the customer is responsible for the copying of programmes and/or data and/or downloading and/or distributing of data in bulk contrary to the spirit of this agreement or the use of the system in a manner not envisaged by the parties at the time of execution hereof.
- 14.2** Upon termination under this clause or otherwise there shall forthwith become due and payable by the customer to the company without demand or notice, the total amount (hereinafter called "the recoverable amount") of:-
- (a) any rental installments and other moneys than accrued due but not paid; and
- (b) the aggregate of the rental installments and other recurring charges stated as per attached Annexure A not then accrued due rebated to reflect their value ascertained by applying an interest rate of 12% per annum to each such rental installments and other recurring charges over the period for which the date of payment thereof is, by virtue of this clause, brought forward, together with any amount equal to the stamp duty (if any) on such net rent and other recurring charge installments and charges.
- 14.2.1** In addition, the company may at any time retake possession of the system / or any data or other information supplied by the system and all copies thereof and/ or that part of the system that has not been paid for in full and the system or that part of the system which is on rental together with any copies of programmes and/or data and any hard copy material containing data thereon and the company shall have the right to enter any premises using such force as reasonably necessary to gain entry to the premises to recover possession of and remove the system or part of the system as described above. The exercise of rights under this clause will not prejudice any rights of the company to damages or other rights or remedies.
- 14.3** The company and/or its suppliers will not be in breach of any conditions in the contract if any sums payable under this contract are in arrears and the company and its suppliers give written notice to discontinue any services detailed in this contract. Any such discontinuing of service shall not discharge the customer's obligation to pay for the services that have been discontinued and should the customer not remedy the breach within seven (7) days from such written notice, then the company shall have the right to terminate this contract and take possession of the system or that part of the system that has not been paid for in full and that part of the system which is on rental together with any copies of programmes and any material containing data thereon.
- 14.4** Within five (5) days of termination of the licence for any programme and/or data, the customer will destroy the programmes and/or data and all copies, forms and parts thereof under his control (including modified or merged programmes and data) and will certify to the company in writing in the company form that this has been done, or at the company's option return the same to the company and allow the company full access to the customer's premises to remove the system or that part of the system that has not been paid for in full as herein provided and all copies of programmes and/or data including any hard copy materials containing data thereon. Additionally, the customer shall return to the company the system or that part of the system which has not been paid for in full and that part of the system which is on rental at the customer's expense to such place as the company may specify in good repair and condition and working order with ordinary wear and tear resulting from the proper use thereof alone exempted.
- 15 INDEMNITY**
- 15.1** The customer agrees to indemnify and keep indemnified the company from and against all actions, claims, demands and proceeding whatsoever and howsoever arising which may be brought or made against the company by any person who claims loss or damage arising out of the customer's breach of this agreement or any admission or failure to perform under the terms of this agreement. The indemnity so granted shall extend to all costs and expenses including legal cost and expenses on a solicitor and own client basis that may be incurred by the company in connection with any such action, claim, demand or proceeding.
- 15.2** The indemnity hereby given extends to and includes any actions, claims, suits or proceedings, whether contingent or otherwise, brought by any party against the company whether in the Commonwealth of Australia or elsewhere in the world as a result of any illegal or wrongful or defamatory entry, publication or circulation, electronic or otherwise, by the company on behalf of the customer or entered or published or circularised directly by the customer on, by or through any part of the system referred to in this agreement.
- 16 VARIATION**
- 16.1** No agreement or document having as its purpose or effect the variation extension or deletion of any of the terms and conditions on this contract will be binding unless annexed hereto on behalf of the company by an authorised signatory.
- 17 ASSIGNMENT**
- 17.1** The customer may not assign this contract without the company's written consent. The company may assign the contract or any part of this contract without notice to the customer.
- 18 SEVERABILITY**
- 18.1** If any provision of this contract is held invalid or unenforceable for any reason, the contract shall remain otherwise in force apart from such provision which shall be deemed to be deleted.
- 19 GOVERNING LAW**
- 19.1** This contract shall be governed and so construed in accordance with the Laws of the State of Queensland.

## **20 NOTICES**

**20.1** All notices hereunder shall be in writing addressed to the parties at the respective addresses shown as per attached Annexure A:-

**20.2** Notice will be deemed given:-

- (a) in the case of hand-delivered mail upon delivery or in the case of registered mail upon written acknowledgment or receipt by an officer or other duly authorised employee, agent or representative of the receiving party, or alternatively in the case of ordinary mail on the fourth day after the date of posting;
- (b) in the case of facsimile upon completion of transmission.

**20.3** A party may change his address for service of notices under this clause by giving written notification of the new address to the other party or parties.

## **21 WAIVER**

**21.1** No rights under this agreement shall be deemed to be waived except by notice in writing signed by each party.

## **22 MULTIPLE PARTIES**

**22.1** If the equipment is to be connected to any Telecommunications Network, the customer will obtain and produce to the company the necessary authority for such connection before delivery of the equipment. If after the date of the order any Telecommunications organisation exercising any right it has so to do, requires the company to modify or alter the equipment, the customer will allow the company to make such modification or alteration at the cost of the customer to the extent that the cost is not recoverable by the company from the Telecommunications organisation.

**22.2** Any data transmission speeds given in relation to the equipment are at all times subject to the conditions attached by the Telecommunications organisation to the use of the relevant modem at the speeds indicated and to the capability of the Telecommunications organisation equipment involved to enable such speeds to be achieved.

## **23 SAFEKEEPING AND OWNERSHIP**

**23.1** The customer is responsible for the safekeeping of the system from the date of delivery to the customer's premises and shall bear the risk of any loss, theft or damage of the system, and in the event that any part of the system requires repairs, recalibration or replacement of data as a result of customer negligence, misuse or abuse then the customer shall bear the cost of such repair, recalibration and reinstatement of the system including any freight charges there occasioned. The customer shall pay the company the full replacement cost of any non-expendable materials (including operations manuals in good order) not returned to the company upon termination of this contract.

**23.2** Where the customer is purchasing any part of the equipment as per attached Annexure A, the property in the equipment and title will pass to the customer on payment in full to the company of the amount stated as per attached Annexure A for that part of the system plus all amounts then due for that part of the system under this contract.

**23.3** Where the customer is renting and/or liable for recurring charges for any part of the system (but not including the part of the system that has been purchased and paid for in full by the customer or as per the previous sub-clause), then those parts of the system at all times will remain the absolute property of the company and/or its suppliers.

**23.4** If the company has ownership of any part of the equipment, then the burden of wear and tear shall remain with the company and the customer will not claim any statutory grant or relief from taxation or any capital allowance in respect of that part of the equipment.

**23.5** No part of the equipment (except that part of the system that has been purchased and paid for as per clause 23.2) shall without the company's written consent be sold, hired, sub-let, mortgaged, charged or parted with possession of, nor may the customer interfere with markings, plates, copyright and intellectual notice contained on or in any part of the system.

**23.6** For any purpose connected with financing the system, the property and ownership may be vested in a third party (hereinafter called "the owner") in which case the owner will have appointed the company its agent for the purpose of:-

- (a) obtaining orders;
- (b) giving notices and consents to the customer;
- (c) collecting and giving receipts for hire charges and other payments (unless and until the owner shall otherwise notify the customer in writing, the customer shall pay all charges and payments on the face thereof and annexed hereto to the company as agent for the owner and the receipt of the company shall be a good discharge to the customer.

**23.7** Between the delivery of the equipment to the customer's premises and the passing of title hereunder, the customer shall insure the equipment with a reputable insurance company in favour of the company in an amount equal to its replacement value against all risks of loss or damage due to any cause whatsoever.

## **24 WARRANTIES**

**24.1** The customer warrants that it has not relied on any representation made by the company or supplier which has not been expressly stated in this contract or upon any descriptions or allusions or specifications contained in any document including any catalogue or publicity material produced by the company and/or its suppliers.

**24.2** Subject to the terms and conditions hereof, the company shall use its best endeavours to ensure the prompt delivery of the system to the customer and to ensure that the databases available to the system are readily available for access by the customer.

**24.3** The company does not warrant that the customer's access to the system's databases shall be uninterrupted during operating hours where applicable.

- 24.4** The company does not warrant that the system and/or information will be error-free.
- 24.5** The company will not be liable for delay in performing obligations or for failure to perform obligations if the delay or failure results from circumstances beyond the control of the company (whether happening in the Commonwealth of Australia or elsewhere including but not limited to force of nature, Acts of God, refusal or licence, including refusal or revocation of any Telecommunications organisations consent in respect of the data communication equipment, or other government act, fire explosion, accident, industrial dispute, civil commotion or impossibility of obtaining material and/or data). The company will use all reasonable endeavours to minimise any such delays. Upon cessation of the event giving rise to the delay, the company shall, in so far as may be practicable under the circumstances, complete performance of the company's obligations hereunder.
- 24.6** The company warrants that upon the delivery date the system will conform to the description as per attached Annexure A and conform to the specifications provided by the company and its suppliers as annexed hereto.
- 24.7** The company will not be liable for any delay and/or damage, defect or deficiency in or to the equipment, programmes, data and/or loss of the service or use hereof or any injury caused by or on account of any of the following:-
- (a) equipment or programmes or data for which the customer has failed to follow any reasonable recommendation made by the company and/or its suppliers with respect to its care and use including but not limited to use with the equipment of appropriate media and expendables;
  - (b) equipment or programmes or data modified by or on behalf of the customer;
  - (c) equipment, programmes, data and services supplied by the customer or any third party;
  - (d) any Telecommunications organisation equipment, speeds and capabilities or any requirements of the Telecommunications Authority.

## **25 SPECIAL CONDITIONS**

### **25.1 GENERALLY**

- 25.1.1** If during the warranty period as detailed in the annexure hereto and/or in the case of rental or maintenance, the rental or maintenance period or an extension thereof that part of the system that is on rental or maintenance as detailed as per attached Annexure A any breach of the company's and/or supplier's warranty given by this clause or undertaking herein shall become apparent or if the system or part of the system fails by reason of any defects or material or workmanship then the company and/or supplier will remedy the deficiency at its own expense provided that the customer at his own expense returns that part of the system to the company or supplier nominated by the company for repair. Where the customer has a maintenance agreement attached hereto, then that agreement shall take precedence over the terms hereof to the extent of any inconsistency or conflict that may arise in relation to the maintenance of the system. Where the system fails due to the incorrect use by the customer, then the company and/or its supplier will remedy the deficiency at the customer's expense.
- 25.1.2** Where a customer is liable under this contract to pay recurring charges to the company for the system or part of the system and where a part of the system is no longer covered by warranty from the company or its suppliers, then the company shall use its best endeavours to remedy the malfunction when requested to do so by the customer but at the customer's expense.
- 25.2** EQUIPMENT (those special conditions are applicable where the customer is purchasing or renting equipment from the company). Refer Schedule A or not applicable.
- 25.3** PROGRAMMES (these special conditions are applicable where the customer is purchasing or renting a programme or programmes from the company). Refer Schedule B or not applicable.
- 25.4** DATA (those special conditions are applicable where the customer is purchasing or renting data from the company). Refer Schedule C or not applicable.
- 25.5** I.T.Today Technology or its agents shall not be responsible for backup of your data systems or software. The end user accepts this responsibility of ensuring their own backups.

**IN WITNESS WHEREOF** the parties have executed this agreement on the date first abovementioned.

The Common Seal of **IT Today Systems Pty Ltd**  
**Pty Ltd**

Was hereunto affixed in accordance  
with its articles of association  
in the presence of  
a Director and  
a Director/Secretary

.....  
Director

.....  
Director / Secretary

The Common Seal of

Was hereunto affixed in accordance  
with its articles of association  
in the presence of  
a Director and  
a Director/Secretary

.....  
Director

.....  
Director / Secretary