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**BY SIGNING A PRODUCT SCHEDULE WITH RPM THAT INCORPORATES THESE TERMS, BY CLICKING YOU “ACCEPT” THESE TERMS AND CONDITIONS WHEN INSTALLING THE SOFTWARE OR COPYING, INSTALLING OR USING ANY PORTION OF THE SOFTWARE YOU (HEREAFTER “YOU OR THE CUSTOMER”) ARE CONSENTING TO BE BOUND BY THE TERMS OF AND ARE BECOMING A PARTY TO THIS SOFTWARE LICENSE & MAINTENANCE AGREEMENT.**

IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, PLEASE DO NOT SIGN THE PRODUCT SCHEDULE AND/OR DO NOT CLICK THAT YOU “ACCEPT” THESE TERMS AND CONDITIONS ON INSTALL AND/OR DO NOT INSTALL AND USE THE SOFTWARE AND/OR MAINTENANCE SERVICES.

THESE TERMS AND CONDITIONS CONTAIN VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE SOFTWARE AND MAINTENANCE SERVICES PROVIDED TO YOU BY **RUNGEPINCOCKMINARCO LIMITED (ACN 010 672 321) (HEREAFTER “RPM”)**, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU.

IF YOU ARE NOT AN AUTHORISED USER FOR THIS SOFTWARE, ANY USE OF THIS SOFTWARE IS PROHIBITED HOWEVER SUCH UNAUTHORISED USE IS CONDITIONAL UPON AND SUBJECT TO THESE TERMS AND CONDITIONS.

THE SOFTWARE IS LICENSED NOT SOLD, ONLY IN ACCORDANCE WITH THESE TERMS AND CONDITIONS. YOU MAY HAVE ANOTHER WRITTEN AGREEMENT DIRECTLY WITH RPM AND IF SO WHERE RPM HAS AGREED THAT WRITTEN AGREEMENT MAY SUPPLEMENT OR SUPERSEDE ALL OR PORTIONS OF THIS AGREEMENT

**1. Incorporation of Terms and Conditions.** These terms and conditions (clauses 1 to 46 (inclusive) and the attached Schedules and Annexures (if any) govern your use of the Products and provision of the Services. Where you sign a Product Schedule with RPM, these terms are incorporated into that Product Schedule and shall together form a separate agreement between the parties in respect of the Products and Maintenance Services detailed in that Product Schedule. Due to changes in technology and other factors, RPM may from time-to-time revise, update and amend the terms and conditions governing use of the Products and provision of the Maintenance Services. RPM will identify the version of the terms and conditions that will apply at the time of installation and/or at the time of executing any Product Schedule, together with making a copy of all applicable versions of its terms and conditions available on its website. The current version of these terms and conditions is **v2.1 (11-14)**.

**2. Licence.** Subject to the terms set out below RPM grants you (“you”), a non-exclusive, non-sublicensable, non-transferable licence to use the Products solely for your internal business operations, for the License Term.

**3. Usage Restriction.** The licence granted under this Agreement is for the number of Single Users, Concurrent Users or Server Licenses (as applicable) as agreed with RPM. You must not use the Products on a virtual machine or terminal server except as expressly permitted by RPM. Any use of the Products inconsistent with those usage restrictions is a material breach of this Agreement.

**4. Additional Single Users / Concurrent Users / Server Licenses.** Where you have been granted a subscription licence, additional Single Users / Concurrent Users / Server Licenses (as applicable) may be added during the License Term at the price negotiated in good faith at the time. The additional Single User / Concurrent User / Server Licenses (as applicable) subscriptions shall terminate on the same date as the pre-existing Single User / Concurrent User / Server Licenses (as applicable) subscriptions. Where you have been granted a perpetual

licence, additional Single Users / Concurrent Users / Server Licenses (as applicable) may be added during the License Term at the price negotiated in good faith at the time.

**5. Delivery and Installation.** RPM or its Authorised Distributor will deliver the Products to you or make the Products available for you to download via the Internet. Unless otherwise separately agreed with RPM, you will be solely responsible for installation and implementation of the Products. Delivery will occur via a delivery source selected by RPM, F.O.B (Incoterm) RPM’s offices or those of its Authorised Distributor. Where made available for you to download via the Internet, delivery will be deemed to have occurred on RPM providing you with the necessary link to download the Products (irrespective of the date on which you elect to download the Product).

**6. Documentation.** RPM grants you a non-exclusive, non-sublicensable, non-transferable licence to use the Documentation, solely in support of your authorised use of the Products. You may at your own expense make a reasonable number of copies of the Documentation. Any copies must include any proprietary markings or legends placed on or contained within the original Documentation. Any copies, if made, constitute Documentation subject to the terms of this Agreement.

**7. Equipment.** The Products should be used on equipment that, as a minimum, meets the Minimum Hardware Requirements.

**8. Other Restrictions.** Except to the extent expressly permitted by RPM, you must not, and you must not permit any third party including any Authorised User to:

- a. relicense, sublicense, rent, lease, sell, assign, lend or otherwise transfer the Products, or use the Products for the benefit of anyone other than yourself;
- b. separate the component parts of any Product for use on more than one computer system; or
- c. copy the Products, except that you may make one copy of each Product for backup purposes provided that you affix any proprietary markings or legends placed on or contained within the Product to the copy

- of the Product. The terms of this Agreement apply, with any necessary changes, to any copies of a Product made in accordance with the foregoing; or
- d. use the Products to provide any application service provider (ASP), hosted or bureau services or process the data of any third party not specifically authorised by RPM;
  - e. use the Product to develop a product or provide a service that is competitive with the Product or any service provided by RPM; or
  - f. directly or indirectly access or use any “non-public” application program interfaces (API’s); being any API that RPM does not expressly make available for third party interface or access as further detailed in the Documentation released for each Product.

**9. No Modifications.** Except to the extent permitted under applicable law, you shall not modify the Products or merge all or any part of the Products with any other software without RPM’s express written permission. This Agreement applies to the Products as modified.

**10.No Reverse Engineering.** You shall not reverse assemble or reverse compile, or otherwise attempt to determine Source Code, protocols or trade secrets of any part of the Products, or directly or indirectly allow or cause a third person to do any of the foregoing. You may not attempt to circumvent any security measures incorporated in any Dongle (if any) provided with the Product. All works created in violation of this clause are derivative works of the Products, and you assign all right, title and interest in and to those derivative works to RPM.

**11.Security.** You shall be solely responsible for the use, supervision, management and control of the Products (including any Dongle (if any)) and Documentation. You shall ensure that the Products (including any Dongle (if any)) and Documentation are protected at all times from misuse or unauthorised use.

**12.Licence Fee.** You must pay RPM or the Authorised Distributor (if directed by RPM) the Licence Fee on the payment terms agreed with RPM. The licences granted under this Agreement will automatically be revoked in the event that you fail to pay the Licence Fee as set out above.

**13.Maintenance Services and Maintenance Fee.** Subject to payment by you of the Maintenance Fee, RPM and/or its Authorised Distributor will provide you with Maintenance Services in accordance with and subject to the terms set out in Schedule 1 to this Agreement. Unless otherwise agreed with RPM, the Maintenance Services shall commence on delivery of the Product and continue for successive twelve (12) month maintenance period(s). Unless terminated by either party by notice in writing in accordance with clause 10 of Schedule 1, or otherwise in accordance with clause 30 of these terms and conditions, the Maintenance Services shall automatically renew for successive 12-month periods with the Maintenance Fee adjusted annually in the manner detailed in clause 9 of Schedule 1. Your right to receive Upgrades of the Products is conditional upon the payment of all Maintenance Fees. RPM may charge additional License Fees and Maintenance Fees for any Third Party Products incorporated in an Upgrade. RPM may, on twelve (12) months written notice to you (elect to cease providing Maintenance Services for a version of the Product if that version of the Product is not one of the two most recent major releases of the Product made available to customers by RPM. In the event that you have chosen to

terminate Maintenance Services and then you wish to reinstate the Maintenance Services RPM may require you to pay a reinstatement fee as detailed in clause 11 of Schedule 1.

**14.Amended Terms and Conditions with Upgrades.** As a recipient of paid Maintenance Services you are entitled to receive Upgrades of the licensed Products as and when RPM makes those Upgrades available to its customers under its product release cycle. You acknowledge that the terms and conditions governing the use of the upgraded licensed Products may be revised, updated and amended by RPM and revised terms and conditions may apply to use of any Upgrades to the licensed Products. The terms and conditions that apply to the licensed Products following any Upgrade may be materially different to the terms and conditions accepted by you at the time you originally licensed and installed the Product. RPM will identify the version of the terms and conditions that will apply to the Upgrade of the Product and will provide you with a “click-thru” version of those applicable terms and conditions that will apply to each Upgrade and the upgraded licensed Product, together with making a copy of all applicable versions of its terms and conditions available on its website. You expressly acknowledge and agree that your acceptance, installation and use of any Upgrade of the licensed Products (as and when released by RPM) and thereafter the upgraded licensed Product, will be governed by the version of the terms and conditions accepted by you at the time of installation of the Upgrade. All prior terms and conditions in respect of the Product shall be superseded and replaced at that time.

**15.IP Rights.** As between RPM and you, RPM retains all right, title and interest in and to the Products (including, to avoid doubt, all material and work product resulting from performance of Maintenance Services) and the Documentation, including without limitation, any copy or derivative work of, or modification to, any part of a Product or the Documentation. You will, if required, assign (or procure the assignment) to RPM all Intellectual Property rights in and to any derivative work of or modification to a Product or the Documentation. You must not take any action which would jeopardise or interfere with RPM’s ownership of and rights with respect to the Products.

**16.Third Party software.** You acknowledge that some Products may be provided with Third Party Products. This is third party software which RPM cannot control and for, and in respect of, which RPM bears no additional responsibility or liability beyond that disclosed. In this regard, RPM acts as licensor of those Third Party Products on terms disclosed by RPM. RPM does not grant any additional rights, assume any obligations or make any representations or warranties in respect of any such Third Party Products other than as disclosed.

**17.Verification.** RPM may request and gain access to your premises for the limited purpose of conducting an inspection to determine and verify your compliance with the terms of this Agreement including but not limited to usage of the Products within the required usage restrictions. RPM will give you at least five (5) days advance written notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with your normal operations. In the event that such inspections identify your usage of the Products exceeds the relevant

restrictions under this Agreement, then you must immediately pay to RPM (at RPM's then current list price) the additional License Fees and Maintenance Fees to reflect your actual use of the Products, together with RPM's costs of the inspection (including the fees of any professional advisers instructed by RPM to assist in the inspection). Your new license will become effective upon payment of such invoice.

**18.Taxes.** You will bear all Taxes and duties attributable to the licensing of the Products and the provision of Maintenance Services. In the event that withholding tax is payable in relation to any supply of the Products or Maintenance Services, you shall increase the amount of any payment to RPM so that the amount actually received by RPM is no less than the invoice License Fee or Maintenance Fee (as applicable).

**19.Late payments.** Invoice amounts will be considered delinquent if not received by RPM within 30 days after the invoice date. Interest will be added to delinquent amounts at the rate of 1.5% per month (being 18% per annum) or the maximum amount allowed by law, whichever is less. Failure to make payment within the time limits set out in this clause is a material breach and excuses RPM from any performance under this Agreement. RPM may suspend or terminate the licence granted under this Agreement or the Maintenance Services for your failure to make timely payments after tendering 7 days written notice to you.

**20.Confidential Information.** The Products and Documentation, including all Error Corrections, Upgrades and all other materials supplied as part of Maintenance Services, constitute confidential information of RPM and its licensors. You must not disclose or make available the Products or the Documentation to any third party, except as otherwise expressly permitted by RPM.

**21.Warranty Disclaimer.** RPM does not warrant that the Products or the Maintenance Services will be free from defects or errors. The Products and Maintenance Services are provided "as is" and RPM gives no warranty as to their use, fitness for purpose, accuracy or performance, nor as to the results generated therefrom. Whilst you are receiving Maintenance Services, with respect to any Errors that you report, you agree that RPM's sole and exclusive obligation and your sole and exclusive remedy is for RPM to use commercially reasonable efforts to correct such Errors in accordance with RPM's maintenance obligation as set out in Schedule 1 to this Agreement. The warranty in this clause is, to the extent permitted by law, in lieu of all other warranties, express, implied, or statutory, regarding the Products and Maintenance Services, including any warranties of merchantability, fitness for a particular purpose, title, and subject to clause 22 non-infringement of third party rights.

**22.Third Party infringement claims.** RPM agrees to defend and indemnify you from any successful claims from any third party that your use of the Products or receipt of the Maintenance Services infringes the copyright of that third party, provided that you promptly notify RPM of any such claim, give RPM the right to control the defence of such claim and (at RPM's cost) fully cooperate with RPM in the defence and settlement of such claim. The foregoing obligation does not apply to any claim arising out of or relating to:

- a. use of other than the then-current, unaltered version of the Product;
- b. any use other than in accordance with this Agreement or the Documentation;
- c. any use or combination of a Product with any non-RPM software, equipment or material, if such infringement would have been avoided but for such use or combination;
- d. any third party software or hardware;
- e. any modification or alteration to a Product not made by RPM; or
- f. any use of the allegedly infringing Product after RPM has supplied you non-infringing alternative.

You acknowledge and agree that the foregoing obligation constitutes RPM's sole and exclusive obligation and your sole and exclusive remedy in respect of any claims of infringement of third party rights.

**23.Indemnity.** You agree to indemnify RPM against any loss or damage RPM may suffer or incur in respect of any claim or action by any User, including any Authorised User who is not your employee, agent or subcontractor, an Approved Entity or any third party that arises as a result of:

- a. any use of any modifications made by you under clause 9;
- b. use of the Products in combination with other goods or software not specifically approved by RPM;
- c. use of the Products in a manner or for a purpose not reasonably contemplated or authorised by RPM; or
- d. any transaction entered into by you relating to the Products without RPM's consent.

**24.Indemnity – Unauthorised Users.** You agree to indemnify RPM against any loss or damages RPM may suffer or incur in respect of any claim or action by any Unauthorised User who is not your employee or any other third party that arises as a result of use of the Products.

**25.Liability - Products.** To the extent permitted by law, RPM's total aggregate liability to you in connection with the Products or the use of the Products for any damages or loss is limited to an amount equivalent to the initial Licence Fee paid under this Agreement.

**26.Liability - Maintenance Services.** To the extent permitted by law, RPM's total aggregate liability to you in connection with Maintenance Services for any damages or loss is limited to an amount equivalent to the amount of the Maintenance Fee paid under this Agreement for the annual maintenance period in which the claim arose.

**27.Exclusion.** RPM's liability to you and any Authorised User, Approved Entity or third party for any lost profits, revenues, savings, data or goodwill, or for any indirect, consequential, special, exemplary or incidental damages, is expressly excluded.

**28.Liability limitation and exclusion.** The provisions of clauses 25, 26 and 27 apply to any cause of action in respect of such liability including breach of contract, breach of statutory duty, tort (including negligence) or otherwise.

**29.Representations.** You warrant that you have not relied on any representation made by RPM which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by RPM. You acknowledge that to the extent RPM has made any representation which is not otherwise

expressly stated in this Agreement, you have been provided with an opportunity to independently verify the accuracy of that representation.

**30. Termination.** RPM may terminate this Agreement immediately by written notice if you or any Authorised User uses the Products in breach of this Agreement. Upon such termination, the licenses granted herein will automatically terminate and you must uninstall the Products, deliver to RPM (or, at RPM's option destroy) all copies of the Products and the Documentation under your, and all Authorised User's, possession or control and deliver to RPM a certificate stating that all copies of the Products have been removed and returned or destroyed.

**31. Implied terms.** RPM expressly excludes any implied terms in respect of the Products, Documentation or Maintenance Services, including, without limitation, any implied term, guarantee or warranty as to fitness for purpose. Where legislation implies into this Agreement any guarantee, condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under such guarantee, condition or warranty, the guarantee, condition or warranty shall be deemed to be included in this Agreement. However, RPM's liability for any breach of such guarantee, condition or warranty shall be limited, at RPM's option, to one or more of the following:

- a. if the breach relates to goods, the replacement or repair of the goods, the supply of equivalent goods or the payment of the cost of replacing or repairing the goods or of acquiring equivalent goods; or
- b. if the breach relates to services, the supplying or cost of having supplied the services again.

**32. Dispute resolution.** In the event of any dispute, claim, cause of action, disagreement or "pass-through" claim for indemnification and/or contribution arising from or relating to this Agreement, the parties will consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable resolution satisfactory to both parties.

If the parties do not reach a resolution of the matter within 30 days, then the parties agree to submit the matter to mediation in Brisbane, Australia in accordance with The Institute of Arbitrators & Mediators Australia Mediation Rules. If the dispute has not been settled pursuant to those Rules within 45 days following the filing of a "notice of dispute" or within such other period as the parties may agree, then to the fullest extent permitted by law:

- a. the claim will be brought and tried in the judicial jurisdiction of the courts of Queensland Australia; and
- b. the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, lawyers' fees and other claim-related expenses.

Any action, claim, lien, or legal dispute that RPM initiates relating to delinquent payments is not subject to the requirements set out in this clause 32.

This clause 32 continues in force even where this Agreement has been fully performed, terminated or rescinded or where the parties or any of them have been discharged from the obligation to further perform this Agreement for any reason.

**33. Delays.** RPM is not responsible to you or anyone else for any failure to provide the Products or any of the

Maintenance Services if the failure is due to a cause outside RPM's control. RPM will tell you if there is a delay that will affect the Products or any of the Maintenance Services and the cause of the delay.

**34. Governing law.** This Agreement is governed by the laws of the State of Queensland, Australia. The parties submit to the jurisdiction of the courts of that place. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**35. Notices.** Notices under this Agreement must be in writing and delivered to the addressee.

**36. Assignment.** You may not assign, novate or sublicense this Agreement or any of your rights or obligations under this Agreement without RPM's prior written consent. RPM may consent to the assignment or novation of this Agreement by you subject to any conditions it chooses to impose. RPM may assign this Agreement and any of its rights and obligations under this Agreement. Any change of control of the Customer shall be deemed to be an assignment requiring the consent of RPM under this clause.

**37. Entire Agreement.** This Agreement sets out the entire understanding of the parties with respect to the subject matter hereof. You agree that any terms and conditions attached to, contained within or referenced in any purchase order you may issue, regardless of when such purchase order may be issued, do not and will not apply to the subject matter of this Agreement.

**38. Severability.** If any provision of this Agreement is held to be illegal or unenforceable, then the remainder of this Agreement has full force and effect and the parties will in good faith negotiate to replace the illegal or unenforceable term with a term which carries out the parties' intentions to the greatest lawful extent.

**39. Amendment.** This Agreement may not be modified or amended except in a writing signed by both parties.

**40. No Waiver.** A provision of this Agreement or a right created under it may not be waived except in writing, signed by the party to be bound. No waiver of any breach will be construed to be a waiver of any subsequent breach of the same or any other provision.

**41. Publicity.** You consent to RPM naming your organisation, using your organisation's logo, and providing a general description of the Products used by you in any marketing material issued by RPM.

**42. Export Control.** Without limiting any other clause of this Agreement, RPM may refuse to deliver a Product, and may immediately terminate this Agreement if the Product is used or proposed to be used at any site that is illegal, sanctioned or otherwise restricted, by any regulations administered by the Commonwealth of Australia, US Department of Treasury's Office of Foreign Assets Control (OFAC), the export administration regulations (EAR) administered by the US Department of Commerce's Bureau of Industry and Security (BIS) or similar; or if you or any of your agents, officers, directors, or employees are identified as being engaged in proliferation or as a restricted party on any of the lists maintained by the Australian or US Government including but not limited to the Denied Persons List, Unverified List, Entity List, Specially Designated Nationals List, Debarred List, Non-proliferation Sanctions and General Order 3 to Part 736. You will defend, indemnify, and hold harmless

RPM from and against any violation of such laws or regulations or breach of this condition by you, your officers, directors, or employees.

**43. Open Source.** The Products licensed may include or incorporate third party source code or software which is licensed under the open source initiative licenses including but not limited to Apache, BSD, GNU General Public License (GPL), GNU Library or “lessor” General Public License (LGPL), MIT license, Mozilla Public License, Common Development & Distribution License, Eclipse Public License, Boost Software License, zlib/libpng license (Zlib) and any other similar royalty-free/open source license (collectively, the Open Source Licenses and Open Source Software). Wherever Open Source Software is provided RPM shall use reasonable endeavours to identify the Open Source Software and applicable Open Source License that applies in the Documentation provided with the Product. This Agreement does not modify or abridge any rights or obligations you may have in Open Source Software under applicable Open Source Licenses. Any use of Open Source Software outside of your licensed use of applicable Product is subject to the rights and obligations under such third party technology’s Open Source License. Open Source Software programs that are separate from RPM Products are provided as a courtesy to you and are licensed solely under the relevant Open Source License.

**44. Language.** Unless otherwise agreed with RPM, reference to any Product or Documentation refers to the non-localised English language version of that Product or Documentation.

**45. Definitions.** The following terms when used in this Agreement have the following definitions:

“**Approved Entity**” means the entities advised by you to RPM at the time of purchase of the Products.

“**Authorised Distributor**” means a third party partner authorised by RPM to distribute the Products and/or provide the Maintenance Services and or issue the Invoice for payment of the Licence Fee and Maintenance Fee to you which may include RPM, an Authorised Distributor, a related company within the RPM group of companies or any other third party approved by RPM as disclosed by RPM to you.

“**Authorised User**” means any users to use, access, display, run, or otherwise interact with the Product at any given time. The Product may be installed on any number of computers provided that maximum concurrent usage or single users purchased is not exceeded. The Users must be employees, agents or subcontractors of the Approved Entity.

“**Commencement Date**” means the commencement date as set out in any Product Schedule entered into with RPM or otherwise is the date you purchase the Product from RPM.

“**Concurrent User**” means in respect of a Concurrent User software Product means the number of authorised Users of a Product as set out in any Product Schedule entered into with RPM or otherwise as purchased by you from RPM that may access the Product at any given time.

“**Computer**” means any personal computer, workstation or server containing one or more central processing units and/or one or more graphic processing units.

“**Documentation**” means the user guides and manuals for installation and use of the Products that RPM provides to you.

“**Dongle**” means in respect of a Single User software Product a hardware device provided with the Product that is required to operate the Product.

“**Error**” means a reproducible defect in a Product that results in a failure of the Product, when used in accordance with RPM’s instructions, to function substantially in accordance with the Product’s specifications. An Error does not include any failure to achieve a particular result, target or solution.

“**Error Correction**” means either (a) a bug fix, patch, work around or other modification for a Product that corrects an Error or (b) a procedure or routine for a Product that eliminates the practical adverse effect of an Error.

“**Intellectual Property**” includes all present and future rights conferred by statute, common law or equity in or in relation to any copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, designs, circuit layouts, business and domain names and all other proprietary rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

“**Licence Fee**” means the licence fee for the Products, as set out in any Product Schedule entered into with RPM or otherwise is the fee you have agreed with RPM to pay for use of the Products.

“**License Term**” is the period as set out in any Product Schedule entered into with RPM or otherwise is in the absence of agreement otherwise with RPM shall be perpetual.

“**Maintenance Fees**” means those amounts payable by you for the provision of Maintenance Services, as set out in any Product Schedule entered into with RPM or otherwise as agreed at the time of purchase and adjusted annually in accordance with the terms of this Agreement.

“**Maintenance Services**” means the support and maintenance services for Products that RPM provides to you under this Agreement as detailed in Schedule 1 to these terms and conditions.

“**Minimum Hardware Requirements**” means the minimum requirements for equipment on which the Products are licensed to run, as notified by RPM to you from time to time.

“**Non-Error**” has the same meaning given to that term in Schedule 1 to this Agreement.

“**Products**” means the object code versions of the computer software products agreed to be licensed by RPM to you (including any Products expressly set out in any Product Schedule entered into with RPM) and may include a Dongle (if any), and the term Product includes the object code versions of any Error Corrections or Upgrades for those products supplied to you under this Agreement. The term Product excludes any Third Party Product.

“**Product Schedule**” means a schedule executed by the parties which if entered into forms the separate agreement as detailed in clause 1.

“**Schedule of Triage**” means the schedule of triage set out in Schedule 2 to this Agreement.

“**Server License**” means Authorised Users of the Customer may access the specified number of production instances of the Product installed and running on a server owned or controlled by the Customer. A separate server license is required for each production instance of the Product running on the server including any virtual machine instance.

“**Single User**” means in respect of a Single User software Product the specified number of Users of a Product specified in any Product Schedule entered into with RPM or otherwise as purchased from RPM that may access a single installation of a Product on a computer which may be accessed by a single User using the supplied Dongle.

“**Source Code**” means the human-readable version of a software Product that can be compiled into executable code.

“**Tax**” means any tax, levy, impost, deduction, charge, rate, duty or withholding which is levied or imposed by a government authority (local, State, Federal or otherwise) from time to time, including any stamp, value added, goods and services or transaction tax, duty or charge, excluding taxes on profit or capital gains.

“**Third Party Product**” means a software Product owned or licensed by a third party other than RPM.

“**Unauthorised User**” means any User that is not specifically authorised to use the Product.

“**Upgrade**” means a revision or release of a Product that RPM generally releases to its end user customers receiving Maintenance Services from RPM. An Upgrade does not include a release of another product or module that is not part of the Product licensed to you.

“**User**” means a natural person using the Products to perform activities related to their employment.

#### **46. Interpretation.**

46.1 Reference to:

- a. one gender includes the others;
- b. the singular includes the plural and the plural includes the singular;
- c. a person includes a body corporate;
- d. a party includes the party's executors, administrators, successors and permitted assigns;
- e. a statute, regulation or provision of a statute or regulation (“**Statutory Provision**”) includes:
  - i. that Statutory Provision as amended or re-enacted from time to time; and
  - ii. a statute, regulation or provision enacted in replacement of that Statutory Provision; and
- f. money is to Australian dollars, unless otherwise stated.

46.2 “Including” and similar expressions are not words of limitation.

46.3 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

46.4 Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.

46.5 A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.

46.6 If a party consists of more than one person, this Agreement binds each of them separately and any two or more of them jointly.

46.7 An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.

46.8 A party which is a trustee is bound both personally and in its capacity as a trustee.

## **Schedule 1 - Maintenance Services**

- 1. Support hours and Error reporting.** RungePincockMinarco Limited (RPM) and/or its Authorised Distributor will provide you with telephone support during normal business hours of 8:00am to 5:00pm AEST, Monday through Friday but excluding public holidays. You must report each Error you experience to RPM or its Authorised Distributor at the service centre phone number, facsimile number or e-mail address notified by RPM, or at such other number or address as RPM may designate from time to time. You must include with each such Error report sufficient information to enable RPM and/or its Authorised Distributor to reproduce and verify the Error.
- 2. Error Corrections.** RPM or its Authorised Distributor will acknowledge each Error report and will use commercially reasonable efforts to reproduce and verify reported Errors and provide Error Corrections. RPM and/or its Authorised Distributor shall endeavour to triage each reported Error in accordance with the Schedule of Triage detailed in Schedule 2.
- 3. Diagnosis of Non-Error.** The parties acknowledge that RPM and/or its Authorised Distributor may be required to conduct a diagnosis when verifying the Error under paragraphs 1 and 2 of this Schedule 1. For the purpose of this Agreement, Maintenance Services extend to include any such diagnosis. RPM and/or its Authorised Distributor is not obligated to provide any services in respect of a problem or issue that is not an Error or is a request for advice (“**Non-Error**”) under this Agreement.
- 4. Upgrades.** RPM will provide you with Upgrades if and when RPM makes any such Upgrades generally available to its end user customers receiving Maintenance Services from RPM.
- 5. Part of Products.** All Error Corrections and Upgrades constitute part of the Products, and those Error Corrections and Upgrades are subject to the terms of this Agreement. You agree to comply with these terms in respect of any Error Corrections and Upgrades.
- 6. Limitations.** RPM and/or its Authorised Distributor is not obligated to provide Maintenance Services where:
  - a. A Product has been modified, changed or damaged by any person or entity other than RPM;
  - b. You have not paid Maintenance Fees when due;
  - c. You have not used the Products on equipment with the Minimum Hardware Requirements;
  - d. You have not installed and implemented any Error Corrections or Upgrades that RPM and/or its Authorised Distributor has supplied; or
  - e. Maintenance Services are necessary due to:
    - i. failure of computer hardware, equipment or third party software;
    - ii. your negligence or the negligence of any person other than RPM;
    - iii. your failure to comply with the terms of this Agreement;
    - iv. operator errors, or use of Products by anyone who is not suitably qualified and adequately trained;
    - v. attempted maintenance by an unauthorised person,
    - vi. improper or unauthorised use of a Product,
    - vii. merging or combining a Product with any hardware or software not expressly authorised by RPM; or
    - viii. use of computer programs other than the Products.
- 7. Exclusions.** Maintenance Services do not include training of your staff, building enhancing or fixing software modules, script writing, advance configuration, specialist consulting services, equipment maintenance, rectification of faults within models or faults not associated with Products, or supply of or maintenance to accessories, supplies, consumables or associated items, whether or not manufactured or distributed by RPM.
- 8. Your responsibilities.** You are responsible for promptly implementing all Error Corrections and Upgrades. You must cooperate and assist RPM in the provision of Maintenance Services, and RPM is not liable to you for any failure to perform under this Agreement if such cooperation or assistance is not provided or is incomplete, inaccurate or untimely. RPM may discontinue the provision of Maintenance Services in the event you refuse to accept and implement any Error Correction or Upgrade.

9. **Maintenance Fees.** Maintenance Fees are paid in advance. Payment for each maintenance term is due and payable within 30 days of the date of RPM's or the Authorised Distributor's invoice. Except as otherwise agreed with RPM, and for clarity, RPM reserves the right to increase the annual Maintenance Fees for any renewed maintenance term and will give you advance notice in writing of such increase.
10. **Your right to terminate.** Unless terminated by either party by notice in writing, which notice must be received by the other party at least 90 days prior to the anniversary of the commencement date of the then current Maintenance Services term, or otherwise in accordance with clause 30 of the terms and conditions, the Maintenance Services shall automatically renew for successive 12-month periods. If you choose to terminate, you are **not** entitled to a refund of any amounts previously paid or then due and owing to RPM in connection with Maintenance Services.
11. **Re-instatement.** If you do not purchase Maintenance Services at the time you license the Product or if you terminate or fail to renew Maintenance Services, and you subsequently want to start to receive or recommence Maintenance Services, you may do so provided that you pay RPM the then-current annual Maintenance Fee and a reinstatement fee equal to the sum of Maintenance Fees for all previous annual periods since licensing the Products for which you elected to decline receipt of Maintenance Services.
12. **Discontinuance.** RPM reserves the right to discontinue the provision of Maintenance Services should RPM, in its sole discretion, determine that the continued provision of Maintenance Services for any Product is no longer economically feasible. RPM will give you at least 1 month notice of any such discontinuance and will refund any accrued Maintenance Fees that you might have pre-paid with respect to the affected Product.
13. **No Support.** RPM and/or its Authorised Distributor has no obligation to provide any support, training or modifications of any Product under this Agreement. Such obligations, if any, will be set out in a separate support services agreement between RPM and/or its Authorised Distributor and you.

## Schedule 2 - Schedule of Triage

Client Impact	Definition
1. Critical	Existing application and models are unavailable or unusable, causing a significant business planning or operational impact or effectively stopping people from working. Critical incidents may have one or more of the following characteristics. : <ul style="list-style-type: none"> <li>– Data corrupted.</li> <li>– A critical, documented function is unavailable.</li> <li>– Product hangs indefinitely.</li> <li>– Product crashes, and continues to crash repeatedly after restart attempts.</li> </ul>
2. Significant	Important features are unavailable, with no acceptable workaround. However, application users can still continue in a restricted fashion.  This category can also be used for installation assistance (if needed urgently).
3. Minor	Minor loss of functionality. The impact is an inconvenience, which may require a workaround.  This category is also to be used for most installation assistance requests.
4. Usage and documentation requests	Usage questions and clarification of documentation where there is no immediate business impact or loss of service.
5. Enhancement suggestions	Suggestions, requests for new product features and enhancements.