

ASCORA LICENCE & SaaS AGREEMENT

TERMS AND CONDITIONS

RECITALS

- A. ASC owns all rights in the Product.
- B. The Client wishes to obtain a licence from ASC for the Authorised Users to use the Product and to obtain web-based access to the Product through a Server hosted by ASC.
- C. ASC has agreed to provide the Client with the following in accordance with the terms and conditions of this Agreement:
- (a) a non-transferable, non-exclusive licence to use the Product;
 - (b) web-based access to the Product located on the Server; and
 - (c) various other services incidental to the above,
- during the Licence Period and any Renewal Period.

1. AGREEMENT

- 1.1 This Agreement is made between **ASCENTECH PTY LTD** ACN 161 113 828 t/a ASC Software ('ASC') and the Client on the date on which the Client's Ascora Account is created.
- 1.2 The terms contained in the Client's Ascora Account and in these Terms and Conditions form the Agreement between ASC and the Client.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Agreement, including the Recitals, the following terms will have the following meanings unless the contrary intention appears:

'**Agreement**' means this agreement comprising the Client Ascora Account details and the Ascora Licence and SaaS Agreement Terms and Conditions.

'**Ascora Account**' means the Ascora online account for the Client containing the Client's business details.

'**ASCORA Service**' means the service provided by ASC pursuant to which access is provided to the Product via a Server hosted by ASC.

'**Authorised Users**' means the employees or contractors of the Client as nominated by the Client in their Ascora Account.

'**Business Hours**' means the hours of 9.00am to 5.00pm Monday to Friday local time in Perth, Western Australia, excluding public holidays.

'**Client**' means the party named as such in the Ascora Account.

'**Commencement Date**' means the date the Client creates its Ascora Account online.

'**Documentation**' means the documentation provided online as part of the Service.

'**Fees**' means the fees specified in the Client's Ascora Account.

'**GST**' means any goods or services tax, charge, impost or duty payable in respect of this Agreement or the supply of any goods or service made under or in respect of this Agreement.

'**Licence Period**' means one calendar month from the Commencement Date and each month thereafter until termination pursuant to these Terms and Conditions.

'**Location**' means from any computer or mobile device.

'**Maintenance Services**' means the services described in Clause 10.1.

'**party**' or '**parties**' means a party or the parties to this Agreement.

'**Product**' means Ascora online mobile web based business management system.

'**Product Updates**' means the updates described in Clause 9.1 of this Agreement.

'**Renewal Period**' means each monthly renewal.

'**Server**' means the server or servers located at ASC's premises or such other location as is nominated by ASC from time to time and includes the serving computers, hardware and operating systems necessary to operate and support the ASCORA Service.

'**Technical Support**' means the support described in Clause 11.1 of this Agreement.

2.2 Interpretation

In this Agreement unless the contrary intention appears:

- (a) clause headings have been inserted for convenience only and will not be taken into account in interpreting the Agreement;

- (b) words importing the singular will include the plural and vice versa;
- (c) words importing natural persons will include firms and corporate bodies or other legal persons and vice versa;
- (d) reference to a party to this Agreement includes reference to that party's successors and assigns; and
- (e) references to currency are references to Australian dollars (AUD\$).

3. LICENCE & ACCESS SERVICES

3.1 In consideration of the payment of the Fees and any agreed Addition Fees, ASC will provide the Client with:

- (a) a non-exclusive licence to use the Product and the Documentation;
- (b) web-based login access to the ASCORA Service;
- (c) the uploading of all Product Updates from time to time;
- (d) the Maintenance Services; and
- (e) the Technical Support,

during the Licence Period and any Renewal Period in accordance with the terms and conditions of this Agreement.

4. GRANT OF LICENCE

4.1 Subject to the payment of the Fees, ASC grants to the Client a non-transferable, non-exclusive licence for the Authorised Users to use the Product and the Documentation during the Licence Period and any Renewal Period in accordance with the terms and conditions of this Agreement.

4.2 The Client will:

- (a) only allow the Product and the Documentation to be used by the Authorised Users for the purpose of the Client's business and for no other purpose;
- (b) ensure that the Product and the Documentation are protected at all times from misuse, destruction or any forms of unauthorised use;
- (c) not allow the Product or the Documentation to be used or accessed by any third party;
- (d) not sell, sub-licence, assign or in any other

way transfer the Product or the Documentation to any third party nor provide any of the reports, labels or other output of the Product to any third party,

unless specifically authorised by ASC in writing and any such use will be subject to this Agreement and such other terms as may be specified by ASC in writing.

4.3 Where documentation is provided to the Client, the Client may make such additional copies of the Documentation as the Client reasonably requires for use by the Authorised Users at the Location, provided that such copies will be owned by ASC and bear notices of ASC's ownership of copyright.

4.5 The Client will:

- (a) follow all reasonable instructions given by ASC from time to time with regard to the use of the Product and the Documentation by the Authorised Users; and
- (b) permit ASC, or its agent, at all reasonable times and at ASC's expense, to verify that the use of the Product and the Documentation by the Client and the Authorised Users is in accordance with the terms of this Agreement.

5. ASCORA SERVICE

5.1 In consideration of the payment of the Fees, ASC will provide the ASCORA Service to the Client during the Licence Period and any Renewal Period in accordance with the terms of this Agreement.

5.2 ASC will provide the Client with the following information and assistance on the Commencement Date or at such other time as agreed between the parties in writing:

- (a) all technical specifications required for access to the ASCORA Service and use of the Product by the Authorised Users during the Licence Period and any Renewal Period including supported platforms, connectivity and security;
- (b) all technical advice and assistance as is reasonably required by the Client to enable the Client to establish its connection to the ASCORA Service; and
- (c) all usernames and passwords required by the Client to enable access to the ASCORA Service by the Authorised Users.

5.3 ASC reserves the right to make such amendments or modifications to the ASCORA Service as required by law or which ASC, in

its sole discretion, decides are in the interest of quality, efficiency and security of the ASCORA Service as a whole.

6. USE OF ASCORA SERVICE

6.1 The Client is responsible for obtaining and maintaining all equipment, computer hardware and software and all telecommunications services required by the Client to access and use the ASCORA Service and will ensure that all such equipment and services comply with the technical specifications provided by ASC.

6.2 ASC reserves the right to give such instructions or directions to the Client concerning access to, and use of, the ASCORA Service by the Authorised Users as required by law or which ASC, in its sole discretion, decides are in the interest of quality, efficient and security of the ASCORA Service as a whole.

6.3 The Client must:

- (a) comply with all reasonable directions regarding access to, and use of, the ASCORA Service provided to the Client from time to time by ASC including any procedures imposed by ASC to prevent unauthorised access to the ASCORA Service; and
- (b) permit ASC, or its agent, at all reasonable times, and at ASC's expense, to verify that the Client's use of the ASCORA Service is within the terms of this Agreement.

6.4 The Client must take all reasonable precautions to ensure the security of access to the ASCORA Service at the Location and must not, under any circumstances, allow any third party or any person other than as Authorised User to access or use the Product or the ASCORA Service for any purpose without the prior written consent of ASC.

6.5 The Client agrees to inform ASC immediately if it becomes aware of any unauthorised use of the Product or the ASCORA Service by any person.

7. AVAILABILITY OF ASCORA SERVICE

7.1 ASC will use its best endeavours to:

- (a) maintain the reliability and efficiency of the ASCORA Service subject to:
 - (i) scheduled downtime for Maintenance Services or other interruptions to service specified in Clause 8.1; and

- (ii) unscheduled interruptions to the availability of the ASCORA Service due to factors beyond the control of ASC including any actions of the Client or third parties, including telecommunications providers.

7.2 The Client will communicate any difficulties encountered with the ASCORA Service to ASC as soon as is reasonably practicable following detection.

7.3 The Client acknowledges that the speed of response from the ASCORA Service is dependant on the Client's internal connection and performance of the ASCORA Service may be affected by such external factors as speed of connection and infrastructure bandwidth from the Client's equipment to the Server and the number of users on the connection.

7.4 ASC takes no responsibility for any delay, malfunction, non-performance or other degradation of the ASCORA Service caused by or resulting from any alteration, modifications or amendments to the ASCORA Service requested by the Client.

7.5 In the event of total systems failure resulting in the disruption of service to the Internet from the Server, ASC will endeavour to repair and reinstate the ASCORA Service within twenty four (24) hours of detection depending on the severity of the failure.

8. SUSPENSION OF ACCESS

8.1 Subject to Clause 8.2, ASC may suspend access to the ASCORA Service:

- (a) to carry out the Maintenance Services;
- (b) to carry out modifications or updates to the ASCORA Service, including the uploading of Product Updates;
- (c) to preserve data and integrity;
- (d) in the event of a security breach; or
- (e) if the Server malfunctions.

8.2 ASC also reserves the right to terminate or suspend access to the ASCORA Service to the Client indefinitely and without refund or compensation in the event that the Client uses the ASCORA Service, or appears to ASC to be intending to use the ASCORA Service, in a manner reasonably deemed inappropriate by ASC or which breaches the terms of this Agreement.

8.3 Suspension of access to the ASCORA Service will continue until the Maintenance Services,

modifications or updates are carried out, the problem or breach is rectified, or until otherwise agreed in writing between the parties.

- 8.4 ASC will not be liable to the Client, its officers, employees, contractors or agents or any third party whatsoever as a result of taking the action referred to in this Clause 8 where such action is taken on a view which is formed on a reasonable basis by ASC.

9. PRODUCT UPDATES

- 9.1 ASC may, in its sole discretion, make enhancements, updates or new releases of the Product available through the ASCORA Service from time to time in order to, inter alia, enhance or improve the functionality or operation of the Product or comply with legislative requirements ('**Product Updates**').
- 9.2 ASC will upload any Product Updates onto the Server for access and use by the Client through the ASCORA Service as soon as reasonably practicable following the creation and general release of such Product Updates by ASC.
- 9.3 The Client acknowledges that additional downtime for the ASCORA Service over and above the levels specified in Clauses 7 and 8 of this Agreement may apply in the event that ASC is required to upload Product Updates.
- 9.4 The Product Updates will be provided to the Client through the ASCORA Service free of charge subject to all Fees having been fully paid by the Client for the Licence Period or current Renewal Period as the case may be.
- 9.5 Use of the Product Updates by the Client through the ASCORA Service will be subject to the same terms and conditions as use of the Product under this Agreement.

10. MAINTENANCE SERVICES

- 10.1 ASC will perform such routine maintenance services as it considers necessary to ensure the proper functioning of the ASCORA Service during the Licence Period and any Renewal Period including:
- (a) the operation and general maintenance of the Server;
 - (b) reviewing the Product and the ASCORA Service on a regular basis and applying Product Updates where appropriate; and
 - (c) performing regular security and maintenance checks for evidence of security breaches, software malfunction and resource limit warnings.

- 10.2 The Client acknowledges that it is solely responsible for the support and maintenance of any computer hardware and non-ASC software operated by the Client.

11. SUPPORT

- 11.1 ASC will provide the Authorised Users with basic technical support in relation to the Product and the ASCORA Service during the Licence Period and any Renewal Period ('**Technical Support**').
- 11.2 The Technical Support is available to the Authorised Users by:
- (a) telephoning ASC on +61 8 6258 5596 during Business Hours; or
 - (b) logging enquiries through the ASC website located at www.ascora.com.au or e-mailing support@ascora.com.au upon receipt of which, ASC will use its best endeavours to provide a response to the Client within two (2) Business Days.
- 11.3 When reporting faults to ASC, the Authorised Users must provide an accurate description of the problems encountered including error messages and an accurate impact of the problem in order to facilitate the necessary corrective action by ASC.

12. ADDITIONAL SERVICES

- 12.1 The Client may, from time to time, request in writing that ASC provide the Client with other services in relation to the Product or the ASCORA Service which may be offered by ASC including, without limitation, auditing, data entry, training in the use of the Product or general IT services in relation to the Product or the ASCORA Service ('**Additional Services**').
- 12.2 Any provision of Additional Services by ASC to the Client will be at ASC's sole discretion and subject to a separate written agreement being entered into between the parties in relation to the provision of the Additional Services and the fees payable by the Client to ASC.
- 12.3 ASC reserves the right to take payment for any Additional Services by way of the credit card details provided by the client for use with their ASCORA account.

13. PAYMENT OF FEES

- 13.1 The Client will pay the Fees and any other fees due and payable to ASC under this

Agreement in the manner specified or as otherwise invoiced to the Client by ASC from time to time.

13.2 The Client acknowledges and agrees that:

- (a) the Fees are payable in respect of the use of the Product and the ASCORA Service by the Client;
- (b) the Fees apply only in respect of the Licence Period; and
- (c) in the event that the Licence Period is renewed in accordance with Clause 19.2, ASC reserves the right to increase the Fees for any Renewal Period and will invoice the Client for payment of the new Fees prior to the commencement of each Renewal Period or as otherwise agreed between the parties in writing.

13.3 Where applicable, GST and any other taxes, duties or levies will be paid by the Client at the then prevailing rate.

13.4 Where payment of any part or the whole of the Fees is to be made before the Client may access the ASCORA Service, ASC may withhold access to the Client until such payments have been made in full.

13.5 If any sum payable under this Agreement is in arrears for more than thirty (30) days, ASC reserves the right to charge interest on such overdue sum on a daily basis from the original due date until paid in full.

14. CONFIDENTIAL INFORMATION

14.1 A party shall treat all Confidential Information disclosed by the other party as confidential and shall not, without the prior written consent of the disclosing party:

- (a) disclose or permit the same to be disclosed to any third party (except to the extent required by law, a stock exchange or in connection with legal proceedings relating to this Agreement, but only after first notifying the other party to give it an opportunity to protect the Confidential Information) and agree to take all reasonable steps to maintain the confidentiality of the Confidential Information; or
- (b) use the Confidential Information for any purpose other than that for which it is given.

14.2 It shall be the responsibility of each party to ensure that:

(a) Confidential Information is only disclosed to those of its officers, employees or contractors in their capacities as such on a strictly need to know basis and have such officers, employees and contractors comply with the obligations of confidentiality imposed upon them by this Clause 14 as if personally bound by such obligations as though parties to this Agreement; and

(b) the officers, employees or contractors referred to in Clause 14.2(a) execute such documentation as required by the owner of the Confidential Information acknowledging their obligations of confidentiality, which shall provide that the obligations of confidentiality survive notwithstanding that any of the above mentioned officers, employees or contractors cease to be employed or engaged by the respective parties.

14.3 The confidentiality obligations under this Clause 14 shall survive the expiry or termination of this Agreement.

15. INTELLECTUAL PROPERTY RIGHTS

15.1 Intellectual Property Rights means:

- (a) patents, copyright, circuit layout rights, designs, trade marks and confidential know-how; and
- (b) any application or right to apply for any of the rights referred to in paragraph 15.1(a).

15.2 ASC owns and retains, and the Client acknowledges that ASC owns and retains all Intellectual Property Rights in:

- (a) the Product, the ASCORA Service and the Product Updates and any copies thereof including, without limitation, any modifications or improvements to, or customisation of, the Product or the ASCORA Service carried out by ASC, the Client or any third party pursuant to this Agreement excluding any third party materials used in the Product; and
- (b) the Documentation and any copies thereof.

15.3 Except as otherwise permitted by the Copyright Act 1968 (Cth) or agreed to in writing by ASC, the Client must not reverse compile, disassemble, remove, release, disclose, reveal, copy, extract, modify or otherwise reverse engineer all or any part of the Product or the ASCORA Service in any way for itself or for others or permit such act to be done.

15.4 The Client warrants that it will:

(a) follow all reasonable instructions given by ASC from time to time regarding ASC's Intellectual Property Rights; and

(b) not do anything to diminish the value of, or contest in any way, ASC's Intellectual Property Rights.

15.5 The Client agrees that it will inform ASC immediately if the Client becomes aware that any Intellectual Property Rights of ASC are being infringed, or may be infringed, by any third party.

15.6 ASC need not initiate action against infringers and may settle any dispute by means it determines to be effective and in the best interests of ASC, but where ASC, in its sole discretion, determines to initiate action against an infringer, the Client will cooperate with ASC to the greatest extent possible at ASC's expense.

16. PRODUCT OPERATION

16.1 While all due care has been taken, ASC does not warrant that the operation of the Product will be uninterrupted or error free or that any third party components of the Product, will be accurate or error free or that the Product will be compatible with any application, program or software not specifically identified as compatible by ASC.

16.2 ASC's obligation and the Client's exclusive remedy during the Licence Period and any Renewal Period are limited, in ASC's absolute discretion, to:

(a) ASC, at its own expense, using all reasonable endeavours to rectify any non-conformance of the Product by repair (by way of a patch, work around, correction or otherwise) within a reasonable period of time; or

(b) a refund of the Fees paid if, in ASC's reasonable opinion, it is unable to rectify such non-conformance within a reasonable timescale or at an economic cost, whereupon this Agreement will terminate.

16.3 The Client acknowledges and accepts that it is the Client's sole responsibility to ensure that:

(a) the facilities and functions of the Product and the ASCORA Service meet the Client's requirements; and

(b) the Product accessed via the ASCORA Service is an appropriate means to assist the Client with its legislative compliance in the Client's jurisdiction,

and ASC does not purport to provide any legal, taxation or accountancy advice by providing the Service under this Agreement.

16.4 ASC will not be liable for any failure of the Product accessed via the ASCORA Service to provide any function not described in the Documentation or any failure attributable to:

(a) any modification to the Product or the Equipment other than by ASC;

(b) accident, abuse or misapplication of the Product or the ASCORA Service by the Client;

(c) use of the Product or the ASCORA Service with other software or equipment without ASC's written consent;

(d) use of other than the latest, unaltered current release of the Product as provided by ASC through the ASCORA Service; or

(e) use other than in accordance with this Agreement.

16.5 If, upon investigation, a problem with the Product or the Client's access to the ASCORA Service is determined not to be ASC's responsibility, ASC may invoice the Client immediately for all reasonable costs and expenses incurred by ASC in the course of or in consequence of such investigation.

17. IMPLIED TERMS

17.1 Subject to Clause 17.2, any condition or warranty which would otherwise be implied in this Agreement by law is hereby excluded.

17.2 Where legislation implies into this Agreement any condition or warranty which cannot be excluded at law, ASC's liability for any breach of such condition or warranty will be limited, at ASC's sole discretion to one or more of the following:

(a) if the breach relates to goods:

(i) the replacement of the goods or the supply of equivalent goods;

(ii) the repair of such goods;

(iii) the payment of the cost of replacing such goods or of acquiring equivalent goods; or

(iv) the payment of the cost of having the goods repaired, and

(b) if the breach relates to services:

(i) the supplying of the services again; or

- (ii) the payment of the cost of having the services supplied again.

18. LIMITATION OF LIABILITY

18.1 The Client acknowledges and agrees that:

- (a) the Product and the ASCORA Service do not of themselves constitute, and are no substitute for, the Client's own identification of, and compliance with, applicable laws and regulations in the Client's jurisdiction;
- (b) ASC cannot and does not provide any warranty regarding the ability of the Product or the ASCORA Service to ensure the Client's compliance with all applicable laws and regulations in the Client's jurisdiction; and
- (c) the Client is entirely responsible for:
 - (i) its access to, and use of, the Product and the ASCORA Service in accordance with the terms of this Agreement;
 - (ii) its use of the Product accessed through the ASCORA Service including:
 - (A) input of parameters, data or information into the Product;
 - (B) back-up of all data and information used in relation to the Product; and
 - (C) interpretation or use of, or reliance on, any data, information, reports, labels or any other output of the Product,
 - (iii) its identification of, and compliance with, all applicable laws and regulations in the Client's jurisdiction; and
 - (iv) the consequences of any use of the Product and the ASCORA Service by the Client.

18.2 Except in relation to liability which is not excludable at law, ASC is under no liability to the Client in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the Client's access to, or use of, the Product and the ASCORA Service or any other goods or services supplied pursuant to this Agreement including (without limitation) loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time and loss of goodwill, or in respect of a failure or omission on the part of ASC to comply with its obligations under this Agreement.

18.3 Without limiting the generality of any other provision of this Agreement, ASC will not be liable to the Client in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred by the Client or any third party or which may arise directly or indirectly in respect of:

- (a) access to, or use of, the Product and the ASCORA Service by the Client;
- (b) any defect, malfunction, error, loss, delay or breakdown in the transmission, reception, use or storage of information or records obtained by the Client from the Product and the ASCORA Service;
- (c) any suspension of access to the Product or the ASCORA Service by ASC pursuant to this Agreement;
- (d) delays in transmission, communications failures or internet access difficulties caused by third party service providers beyond ASC's control;
- (e) introduction of viruses affecting the functioning of the ASCORA Service;
- (f) malfunction of third party equipment or software; or
- (g) any other act or omission by any third party which affects the ability of the Client to access, or use, the Product or the ASCORA Service.

18.4 Subject to Clause 18.5, the Client warrants that it has not relied on any representation made by ASC which has not been expressly stated in this Agreement, or upon any descriptions or specifications contained in any document including catalogues or publicity material produced by ASC.

18.5 The Client acknowledges that to the extent that ASC has made any representation which is not otherwise expressly stated in this Agreement, the Client has been provided with an opportunity to independently verify the accuracy of that representation.

18.6 The Client will at all times indemnify and hold harmless ASC and its officers, employees and agents in respect of any third party claim for any injury, loss, damage or expense occasioned by or arising directly or arising directly or indirectly from:

- (a) a breach by the Client of its obligations under this Agreement; or
- (b) any wilful, unlawful or negligent act or omission of the Client.

19. LICENCE PERIOD

19.1 This Agreement will commence on the Commencement Date and roll over on a monthly basis until termination in accordance with this Agreement.

20. TERMINATION

20.1 Either party may terminate this Agreement with immediate effect by giving notice to the other party if:

- (a) the other party breaches any of its obligations under this Agreement capable of remedy and fails to remedy that breach within fourteen (14) days after receiving notice requiring it to do so; or
- (b) the other party breaches any of its obligations under this Agreement incapable of remedy; or
- (c) any event referred to in Clause 20.2 occurs in relation to the other party.

20.2 Each party will notify the other immediately if:

- (a) it ceases to carry on business;
- (b) it disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (c) any step is taken to enter into any arrangement between that party and its creditors;
- (d) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of its assets or business; or
- (e) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator of the whole or any part of its assets or business.

20.3 If for a continuous period of 90 days there are no active Authorised Users of the Client who can be assigned scheduled work under the Product then ASC may elect to terminate this Agreement and delete any data associated with the Client.

20.4 If the Client fails to pay its monthly Fees for two (2) months or more then ASC may terminate this Agreement forthwith.

20.5 Where custom development work has been undertaken for the Client (for avoidance of

doubt this includes any adjustments or alterations to the Ascora website or applications) and the Client cancels their Ascora contract within 12 months from the initial invoice date, a termination fee shall apply based on the total implementation time spent multiplied by the current hourly rates for development work. For example if 40 hours were spent on customisations, a termination fee of $40 \times \$185 = \$7,400$ excluding GST would apply and be due immediately on termination of this agreement.

20.2 Either party may terminate this agreement by giving at least 7 days notice to the other party. On termination of this agreement you shall be liable to pay all relevant fees incurred up to the final date determined by date of termination plus 7 days.

21. ACTION ON TERMINATION

21.1 Upon the expiry or termination of this Agreement:

(a) the non-exclusive licence granted to the Client to use the Product and the Documentation will immediately terminate;

(b) ASC will immediately terminate the Client's connection to the ASCORA Service and cease providing all services to the Client under this Agreement including without limitation the Product Updates, the Maintenance Services, the Technical Support and the Emergency Support; and

(c) the Client will immediately:

- (i) cease to access and use the Product and the ASCORA Service;
- (ii) return the Documentation and any copies of the Documentation to ASC or otherwise deal with same in the manner specified by ASC in writing;
- (iii) cease to use all Intellectual Property Rights of ASC; and
- (iv) pay all sums owing to ASC pursuant to this Agreement, including, without limitation, the total Fees owing for the current Licence Period or Renewal Period as the case may be and all Addition Fees.

(d) ASC may, at any time after 90 days from termination, delete the Client's data from the Service.

21.2 Termination of this Agreement for any reason will not affect the accrued rights or remedies of either party.

22. FORCE MAJEURE

- 22.1 Neither party will be liable to the other for delay or failure to perform its obligations under this Agreement if such delay or failure is caused by declaration of war, strikes, acts of God or the public enemy, riots, interference by military authorities, compliance with Government laws and regulations, delays in transit, inability to secure necessary governmental priorities or any fault beyond its reasonable control or without its fault or negligence.

23. DISPUTE RESOLUTION

- 23.1 In the event of a serious dispute arising between the parties out of or in connection with this Agreement (**'Dispute'**), either party may issue a 'Dispute Notice' to the other party and, if it does so then the parties must use their best endeavours to try to settle such dispute amicably by negotiation within 14 days of the issuance of the **Dispute Notice** or within any agreed extended period (**'Negotiation Period'**).
- 23.2 If the Dispute cannot be settled within the Negotiation Period, then either party may notify the other within 7 days after the end of the Negotiation Period that it requires that the parties attempt to settle the Dispute by mediation and the parties must proceed to such mediation as soon as reasonably possible. Such mediation will be conducted in Perth, Western Australia in accordance with The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules published by the Institute of Arbitrators and Mediators Australia or any replacement rules from time to time and will be conducted by a mediator independent of the parties or, failing agreement between the parties on such a mediator, by a person appointed by the Chair of LEADR or his or her nominee.
- 23.3 If the Dispute is not resolved through the procedures set out above the parties will thereafter be free to agree to arbitration within 7 days following mediation or, if they do not so agree, then either party may proceed to litigate the matter.

24. ASSIGNMENT

- 24.1 The Client may not sub-licence, transfer or assign any of its rights or obligations under this Agreement without the prior written consent of ASC.

25. SUB-CONTRACTING

- 25.1 ASC may sub-contract the performance of any or all of its obligations under this Agreement.

26. GENERAL

26.1 Severance

If any part of this Agreement is deemed unenforceable, then if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed or in any other case the provision is severed and the rest of this Agreement will continue to be legal and enforceable.

26.2 Waiver

The failure of a party at any time to insist on performance of any obligation under this Agreement of the other party is not a waiver of its right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to insist on performance of that or any other obligation of the other party under this Agreement.

26.3 Notices

- (a) Each party notifying or giving notice under this Agreement will do so:
 - (i) in writing;
 - (ii) addressed to the address of the recipient specified in the Client's Ascora Account, as altered by notice given in accordance with this clause; and
 - (iii) hand delivered or sent by prepaid post to that address or sent by email to the other party's email address as specified in the Client's Ascora Account.
- (b) A notice given in accordance with Clause 26.3(a) is deemed received:
 - (i) if hand delivered, on the date of delivery;
 - (ii) if sent by prepaid post, three (3) days after the date of posting if posted within Australia and ten (10) days after the date of posting if posted internationally;
 - (iii) if sent by facsimile transmission, on the day the transmission is sent (but only if the sender has a confirmation report specifying a facsimile number of the recipient, the number of pages sent and the date of transmission).

26.4 Variation

Except as otherwise permitted by this Agreement, no variation to its terms will be effective unless in writing and signed by both ASC and the Client.

27. ENTIRE AGREEMENT

27.1 This Agreement is the entire agreement between the parties in relation to the subject matter of this Agreement and supersedes any prior agreement, oral or written and any other communications between the parties in relation to the subject matter of this Agreement.

28. LEGAL COSTS & STAMP DUTY

28.1 ASC will pay the costs of preparation of this Agreement and stamp duty, if any, payable on this Agreement.

29. GOVERNING LAW

29.1 This Agreement shall be governed by the laws of the State of Western Australia and each party agrees to submit to the non-exclusive jurisdiction of the courts of Western Australia.