GuardianERM.net®
Software Licence
and Support Agreement

(Web-based & hosted)

Parties

InConsult Pty Ltd
ABN 48 100 759 984

LICENSEE NAME

Contents

Agreement dated 1st September 2021,

Parties   **InConsult Pty Ltd** (ABN 48 100 759 984) of Level 35, One International Towers, Barangaroo Avenue, Sydney NSW 2000
(**Licensor**)

<mark>LICENSEE NAME</mark>
<mark>Address</mark>
(**Licensee**)

Introduction

A.   The Licensor owns computer software which the Licensee wishes to use.

B.   The Licensor provides Support Services in respect of the Licensed Software.

C.   The Licensor has agreed to license the software to the Licensee and provide the Licensee with Support Services in respect of the Licensed Software subject to the terms of this Agreement.

It is agreed

1.   Definitions and interpretation

1.1   **Definitions**

In this Agreement:

(1)   **Affected Party** has the meaning given to it in clause 21;

(2)   **Agreement** means this document including any schedules or annexures to it;

(3)   **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

(4)   **Change** has the meaning given to it in clause 8;

(5)   **Change Request** has the meaning given to it in clause 8;

(6)   **Client Liaison** means the person so specified in Schedule 1;

(7) **Commencement Date** means the date so specified in Schedule 1;

(8) **Confidential Information** means all business, financial and technical information of a party other than information which:

(a) is in the public domain (except as a result of a breach of this Agreement);

(b) is independently developed by the recipient; or

(c) is lawfully received by the recipient from a third party who, to the best of the recipient's knowledge, is not subject to any obligation of confidentiality to the discloser.

(9) **Customer Support Procedures** means the procedures set out in Schedule 7;

(10) **Customer Data** means data, information or material that the Licensee submits or enters into the Licensed Software.

(11) **Defaulting Party** has the meaning given to it in clause 20;

(12) **Defect** means any material non-conformance of the Licensed Software with the Documentation;

(13) **Documentation** means the operating manuals for the Licensed Software;

(14) **Fees** means the fees set out in Schedule 2 and includes Implementation Fees, Licence Fees and Maintenance Fees;

(15) **First Period** has the meaning given to it in clause 27;

(16) **Force Majeure Event** means a circumstance beyond a party's reasonable control including any:

(a) lightning strikes, earthquakes, floods, storms, explosions, fires or other acts of God; and

(b) strikes, acts of war, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;

(17) **GST** has the meaning given to it in the GST Law;

(18) **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* and any other similar or related acts, regulations or rulings;

(19) **Hire** means to hire as an employee or otherwise to engage or retain as an independent contractor or consultant;

(20) **Implementation Fees** means the fees specified in Schedule 2, payable by the Licensee to the Licensor, for the provision of the Implementation Services;

(21) **Implementation Services** means the services set out in Schedule 3;

(22) **Initial Term** means the period so specified in Schedule 1;

(23) **Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, trade marks, trade secrets, Confidential Information, designs, circuit layouts and patents;

(24) **Licene Fees** means the fees specified in Schedule 2, payable by the Licensee to the Licensor, for the use of the Licensed Software;

(25) **Licensed Software** means the software designated in Schedule 1 consisting of a set of instructions or statements in machine readable form and any Update or New Release of that software (or any part of it);

(26) **New Release** means software which has been made generally available from time to time during the term of this Agreement by the Licensor to its licensees of the Licensed Software and which is provided primarily to provide an extension, alteration, improvement or additional functionality to the Licensed Software;

(27) **Notice of Dispute** has the meaning given to it in clause 27;

(28) **Proposal** has the meaning given to it in clause 8;

(29) **Project Manager** means the person so specified in Schedule 1;

(30) **Release** means a version of the Licensed Software that is denoted by an incremental change in the number to the left of the first decimal (ie. X.n or X.n.n);

(31) **Service Levels** means the services levels set out in Schedule 5 describing the target service levels for the performance of the Support Services;

(32) **Supply** has the meaning given to it in the GST Law;

(33) **Support Services** means the services set out in Schedule 4 and includes support to administrator, correction of defects and provision of updates;

(34) **Taxable Supply** has the meaning given to it in the GST Law; and

(35) **Update** means software which has been made generally available from time to time during the term of this Agreement by the Licensor to its licensees of the Licensed Software produced primarily to overcome defects in the Licensed Software.

1.2 Interpretation

(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.

(2) "Including" and similar expressions are not words of limitation.

(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.

(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.

(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 the Agreement or the inclusion of the provision in the Agreement.

(6)   If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

2.   Software Licence

2.1   The Licensor grants to the Licensee a non-exclusive, non-transferable licence to use the Licensed Software for the term of this Agreement.

3.   Licence Conditions

3.1   The Licensed Software may only be used pursuant to this Agreement by the Licensee. The Licensor acknowledges that the Licensee provides services to its affiliates and the Licensee's use of the Licensed Software will be in connection with the provision of such services.

3.2   The Licensed Software is Internet-based; it can only be used by designated staff of the Licensee.

3.3   The Licensor will provide hosting of the Licensed Software for the duration of this Agreement and maintain access rights for users designated by the Licensee.

4.   Copying

4.1   Subject to clause 4.2, the Licensee must not copy or reproduce the Licensed Software or Documentation by any means or in any form without the Licensor's prior written consent.

4.2   The Licensee may make a reasonable number of copies of the Documentation for the purpose of training. The terms of this Agreement apply to the copies.

5.   Reverse Engineering

5.1   Except to the extent permitted by law, the Licensee must not unlawfully access, reverse assemble or reverse compile or directly or indirectly allow or cause a third party to access, reverse assemble or reverse compile the whole or any part of the Licensed Software.

6.   Security

6.1   The Licensee must use reasonable endeavours to ensure that the Licensed Software is protected at all times during this Agreement from unauthorised access or use by a third party.

7.   Implementation Services

7.1   The Licensor will perform the Implementation Services as described in, and in accordance with, Schedule 3.

7.2   The Licensor will be under no obligation to provide services or incur expenses that are outside the scope of the Implementation Services unless the Licensor has expressly agreed to do so pursuant to the change control procedures set out in clause 8.

7.3   The Licensee and the Licensor agree that during the performance of the Implementation Services:

(1)   the parties will report to each other at meetings held at regular intervals as to the progress being made by each of them in relation to the various implementation events, any delays being encountered and the action being taken to recover from such delays;

(2)   the Licensee will provide all necessary information, consents, approvals and assistance that the Licensor may reasonably request; and

(3)   the Client Liaison will serve as the Licensee's point of contact and will supervise the various implementation procedures for the Licensee and manage and schedule the Licensee's participation in the implementation of the Licensed Software. The Client Liaison will have full authority to act on the Licensee's behalf.

8.   Change Control

8.1   If either party wishes to vary the Implementation Services or any other provision of this Agreement (**Change**), then that party must send a request to the other party, specifying in as much detail as is reasonably practicable the nature of the Change sought (**Change Request**).

8.2   Neither party will be obliged to accept a Change Request made by the other party. The party receiving the Change Request must notify the other party of its decision as to whether it will accept or reject the Change within 5 Business Days from the receipt of the Change Request. If the receiving party accepts the Change Request, the Licensor must provide the Licensee with a

written proposal in relation to the relevant Change (**Proposal**) including:

(1) details of the effect of the Change on the performance of the Agreement; and

(2) any adjustment to the Fees or any fee estimates.

8.3 The Licensee will within 5 Business Days from the receipt of the Proposal advise the Licensor whether it accepts or rejects the Proposal. If the parties are unable to agree upon the terms of the Proposal, then the Licensor will continue to perform its obligations in accordance with the unvaried Agreement.

8.4 If the Licensee accepts the Proposal (either its original or amended form), the Agreement will be taken to incorporate the accepted variations from the date on which the receiving party notifies the proposing party that it accepts such Proposal.

9. Acceptance Testing

9.1 The Licensee must, via acceptance testing or otherwise, satisfy itself that the Licensed Software is suitable for its claimed purposes and suitable for the Licensee's use before this agreement is signed and executed.

10. Support Services

10.1 The Licensor will provide the Support Services to the Licensee in accordance with the terms of this Agreement.

10.2 The Licensee must ensure that:

(1) it complies with the Customer Support Procedures at all times when obtaining Support Services from the Licensor; and

(2) the Licensor's support personnel are provided with all information, facilities, consents and assistance reasonably required by the Licensor to enable it to provide the Support Services.

11. Updates and New Releases

11.1 The Licensor will supply Updates, New Releases which shall carry forward all customisations and configurations for which Licensee has paid unless waived by the Licensor and related Documentation to the Licensee at no additional charge during the term of this Agreement.

11.2   Where the Licensee accepts an Update or New Release, this Agreement applies in all respects to that Update or New Release to the extent that it is incorporated or replaces the Licensed Software.

12.   Fees

12.1   The Licensee must pay the Fees at the rate and in the manner specified in Schedule 2.

12.2   The Fees payable by the Licensee to the Licensor are exclusive of all taxes, duties or levies including any GST. If any Supply made by the Licensor to the Licensee pursuant to this Agreement is considered a Taxable Supply pursuant to the GST Law, then any GST payable on that Supply will be wholly due and payable by the Licensee at the time the Fees for that Supply are due under this Agreement, provided that the Licensor provides to the Licensee a valid tax invoice for that Supply prior to the time when the GST payment is due.

12.3   The Licensee must pay all accurate invoices on or before the due dates specified on the invoices.

12.4   If any amount payable to the Licensor remains in arrears for more than 30 days after the due date, the Licensor reserves the right without prejudice to any other right or remedy to:

(1)   charge interest on such overdue amount on a daily basis from the original due date until the date on which the amount is paid in full at a rate equal to 2% above the overdraft reference rate quoted by the Licensor's principal banker; and

(2)   suspend the provision of any or all of the Implementation Services by giving not less than 7 days' prior written notice.

13.   Warranties

13.1   The Licensor warrants that:

(1)   it is the owner of the Licensed Software;

(2)   it has the right and authority to licence the Licensed Software to the Licensee; and

(3)   there are no existing restrictions or constraints on its right and authority to supply and install the Licensed Software;

(4)   the Support Services will be performed by suitably skilled and experienced personnel;

(5)   where the Customer Data is stored on computer storage devices owned and/or controlled by the Licensor, the Licensor will backup the Customer Data as follows:

(a)   Weekly full backup;

(b)   Daily incremental backup;

(c)   Weekly offsite full backup;

(6)   it will exercise due care skill and attention in the performance of its obligations.

14.   Account Information and Data

14.1   The Licensee shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of all Customer Data.

14.2   Subject to clause 14.3, the Licensor will not be liable for loss, corruption, unauthorised modification or destruction of the Customer Data if such loss, corruption, unauthorised modification or destruction of the data is outside the reasonable control of the Licensor including, but not limiting to, computer and communications hardware failure, third party software failure, malicious attack and computer viruses.

14.3   Despite anything in clause 14.2 the Licensor will use its best endeavours to ensure that no viruses are introduced into its system and to protect the security of Customer Data. Without prejudice to the Licensee's other remedies, if a virus is introduced or the security of the system is breached, the Licensor will use its best endeavours to delete and mitigate the effects of the virus or security breach, including assisting the Licensee (provided that the Licensor will have no responsibility to virus scan Customer Data at the time of input).

15.   Excess Data Storage Fees

14.3   The maximum disk storage space provided to the licensee at no additional charge is listed in Schedule 2. If the amount of disk storage required exceeds these limits, the Licensee will be charged the then-current storage fees – currently specified in Schedule 2. The Licensor will use reasonable efforts to notify you when the average storage used per license reaches approximately 90% of the maximum. The Licensor reserves the right to establish or modify its general practices and limits relating to storage of Customer Data.

16. Confidentiality

16.1   Each party must take all reasonable steps to ensure that its employees, agents and subcontractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.

16.2   Each party must on demand promptly return to the other party or destroy any materials containing the Confidential Information of the other party.

16.3   Despite any other provision of this clause 16, the Licensor may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers or accountants, but must ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to the Licensor.

16.4   A party is not in breach of this clause 16 in circumstances where it is legally compelled to disclose the other party's Confidential Information; provided, however, that in the event a party receives a legal request, whether by subpoena, demand, or otherwise, to disclose the other party's Confidential Information, the receiving party will promptly notify the disclosing party of the demand, prior to disclosure, if permitted by law, so that the disclosing party may seek an appropriate protective order or other remedy. In the event that a protective order or other remedy is not obtained, the receiving party agrees that it will furnish only that portion of the other party's Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the demand or request, and will exercise reasonable efforts to obtain assurance that confidential treatment will be afforded to any Confidential Information disclosed.

17. Intellectual Property Rights

17.1   All title and Intellectual Property Rights in any materials which the Licensor may supply, develop or create in the course of performing its obligations under this Agreement (including in the Licensed Software) will be and remain the sole property of the Licensor and the Licensee will not acquire any title or Intellectual Property Rights therein.

17.2   In the event that, in the performance of its obligations under this Agreement, any material is created or developed jointly by the Licensor and the Licensee, all title and Intellectual Property Rights therein will vest solely in the Licensor. At the Licensor's request and expense, the Licensee must take and procure to be taken all such acts as may be necessary to vest such rights in the Licensor.

17.3 The Licensee will retain its rights, including all Intellectual Property Rights, in any proprietary materials (including Customer Data) that the Licensee may supply to the Licensor. If the Licensee provides the Licensor with materials owned or controlled by the Licensee or with the use of, or access to, such materials, the Licensee grants to the Licensor only the rights and licences that are necessary for the Licensor to perform its obligations under this Agreement.

18. Infringement of Intellectual Property Rights

18.1 The Licensor warrants that:

(1) the rights granted in this Agreement to or in relation to the Licensor's intellectual property do not infringe the Intellectual Property Rights of any third party including any Australian copyright or patent nor any copyright or patent existing as of the date hereof in the jurisdiction of a Site;

(2) no proceedings have been instituted by any third party against the Licensor for the infringement of that party's Intellectual Property Rights by the Licensor's intellectual property; and

(3) no proceedings have been instituted by any third party against the Licensor seeking to challenge the validity of the Licensor's Intellectual Property Rights.

18.2 The Licensee must notify the Licensor within a reasonable time in writing of any actual or claimed infringement of the Licensor's Intellectual Property Rights that comes to the attention of the Licensee. If requested by the Licensor, the Licensee must co-operate fully with the Licensor at Licensor's expense in stopping any infringement.

18.3 Notwithstanding Section 19 below which shall not apply, Licensor shall defend, indemnify and hold harmless Licensee from and against all liabilities, losses, expenses, damages, claims and suits arising from or related to a claim that the Licensed Software as configured and customised for Licensee's use infringes any Intellectual Property Rights including any Australian copyright or patent or any copyright or patent existing as of the date hereof in the jurisdiction of a Site.

18.4 The Licensee may not at any time bring legal proceedings for and on behalf of the Licensor with respect to any infringement of the Licensor's Intellectual Property Rights without the prior consent in writing of the Licensor. If the Licensor does consent, the costs and expenses of any litigation that may be instituted by the Licensee must be paid for entirely by the Licensor. Any recovery from infringement proceedings are the sole property of the Licensor.

19. Liability

19.1 To the extent permitted by law, the liability of a party (including liability for consequential and indirect loss) arising from a breach of this Agreement will be limited to the annual fee (excluding GST) payable by the Licensee.

19.2 The Licensor shall not be responsible or liable for unauthorised access, deletion, correction, destruction, damage, loss or failure to store any Customer Data by the Licensee.

19.3 As there are many factors affecting the online availability of the licensed system, many outside the control of the Licensor, the Licensor cannot and does not guarantee that the licensed system will be available online at any point in time. The Licensor will not be liable for any loss, directly or indirectly, arising from the unavailability of the licensed system at any time.

20. Term and Termination

20.1 This Agreement will commence on the Commencement Date and continue until the end of the Initial Term.

20.2 This Agreement will automatically renew for a further 12 month period at the end of:

(1)　the Initial Term; and

(2)　any subsequent term,

unless either party gives not less than 90 days' written notice prior to the end of the then current term of its intention not to renew the Agreement.

20.3 A party may terminate this Agreement at any time by written notice to the other party (**Defaulting Party**) if any of the following apply:

(1)　the Defaulting Party is in material breach of this Agreement and fails to remedy that breach within thirty (30) days after receiving written notice requiring the breach to be remedied;

(2)　the Defaulting Party becomes an externally-administered body corporate under the *Corporations Act 2001* or its equivalent*;*

(3)　a controller (as defined in the *Corporations Act 2001)* or its equivalent is appointed over any of the property of the Defaulting Party or any steps are taken for the appointment of such a person;

(4)   the Defaulting Party is taken to have failed to comply with a statutory demand of the *Corporations Act 2001;* or

(5)   a resolution is passed for the winding up of the Defaulting Party or a notice of intention to propose such a resolution is given.

20.4   On termination of this Agreement, each party retains the rights it had against the other party in respect of any past breach, in addition to any other rights, powers or remedies provided by law;

20.5   The Licensor will make available to the Licensee a file of the Customer Data within 30 days of termination for any reason if the Licensee so requests at the time of termination.

21.   Force Majeure

21.1   A party (**Affected Party**) is not liable for any delay or failure to perform an obligation (other than the obligation to pay the Fees) under this Agreement caused by a Force Majeure Event.

21.2   The Affected Party must notify each other party as soon as practical of any anticipated delay or failure caused by the Force Majeure Event.

21.3   The performance of the Affected Party's obligation is suspended for the period of delay caused by the Force Majeure Event.

21.4   The Affected Party must take all reasonable steps necessary to minimise the extent of any delay or failure and will provide the other party with regular reports on its progress in this regard.

21.5   If:

(1)   performance of an obligation is prevented by an Force Majeure Event; or

(2)   a delay caused by the Force Majeure Event exceeds 60 days,

either party may immediately terminate this Agreement by giving the other party written notice.

22.   Inconsistency

22.1   To the extent that there is an inconsistency between a provision in a clause in the body of this Agreement and a provision in a schedule:

      (1)   a specific provision takes precedence over a general provision; and

      (2)   otherwise, to the extent necessary to resolve the inconsistency the following order of precedence applies:

            (a)   the clauses of this Agreement; and

            (b)   the schedules.

23. Relationship

23.1 The relationship of the Licensor and the Licensee under this Agreement is that of independent contractors.

23.2 Nothing in this Agreement will create any relationship between the Licensor and the Licensee of partnership, principal and agent or employer and employee.

24. Employees

24.1 The Licensee agrees that it will not hire any of the Licensor's employees or agents who are involved with the Implementation Services during the term of this Agreement and for a period of 12 months thereafter without the Licensor's prior written consent.

25. Sub-Contracting

25.1 The Licensor may subcontract its obligations under this Agreement provided that:

      (1)   it obtains the prior written consent of the Licensee; and

      (2)   the Licensor will remain responsible and liable for the performance of any obligations that it subcontracts.

25.2 The Licensee will not unreasonably withhold its consent if:

      (1)   the subcontractor enters into a confidentiality deed with the Licensee on terms no more onerous than those imposed on the Licensor by the confidentiality deed in clause 16; and

      (2)   the subcontractor provides to the Licensee copies of all relevant qualifications and licences, and copies of certificates of insurance to the same amounts required of the Licensor under this Agreement.

26.   **Assignment and Novation**

26.1   A party must not assign or novate its rights under this Agreement without the prior written consent of the other party. A party must not withhold its consent if the proposed assignee is reasonably capable of completing the assignor's obligations under this Agreement, or, the assignment is the result of a bona fide restructure of the business of the assignor. Notwithstanding the foregoing, the Licensee may assign its rights and obligations under this Agreement to an affiliate without the need for obtaining the Licensor's prior consent.

27.   **Dispute Resolution**

27.1   If a dispute arises in connection with this Agreement, a party to the dispute must give to the other party or parties to the dispute notice specifying the dispute and requiring its resolution under this clause (**Notice of Dispute**).

27.2   If the dispute is not resolved within 7 days after the Notice of Dispute is given to the other party or parties (**First Period**), the dispute is by this clause submitted to mediation. The mediation must be conducted in Sydney, New South Wales. The Institute of Arbitrators Australia Rules for the Mediation of Commercial Disputes (Edition 2 - September 1995) as amended by this clause apply to the mediation, except where they conflict with this clause. Any party to this Agreement not having a business presence in Australia may participate in such mediation remotely.

27.3   If the parties have not agreed upon the mediator and the mediator's remuneration within 5 Business Days after the First Period:

(1)   the mediator is the person appointed by; and

(2)   the remuneration of the mediator is the amount or rate determined by,

the President of the Law Society of New South Wales or that person's nominee, acting on the request of any party to the dispute.

27.4   The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation.

27.5   Subject to clause 27.6, no party may commence court action or proceedings against any of the other parties unless the obligations under this clause have been complied with.

27.6   This clause does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court which may be urgently required.

28.   Further Assurance

28.1   Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

29.   Severability

29.1   If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

30.   Entire Understanding

30.1   This Agreement:

(1)   is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and

(2)   supersedes any prior agreement or understanding on anything connected with that subject matter.

30.2   Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.

31.   Variation

31.1   An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

32.   Waiver

32.1   A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

32.2   The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

32.3   A waiver is not effective unless it is in writing.

32.4   Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

33. Costs and Outlays

33.1 Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.

33.2 The Licensee must pay all stamp duty and other government imposts payable in connection with this Agreement and all other documents and matters referred to in this Agreement when due or earlier if requested in writing by the Licensor.

34. Notices

34.1 All notices required or permitted under this Agreement including service updates, service disruptions or data breach notification must be in writing and sent by either email, hand delivery, courier or certified mail (return receipt requested) to the other party's address set for below. Notices will be effective upon receipt. A party may change its address by giving written notice to the other party in accordance with this clause.

If to the Licensor:

Name: InConsult Pty Ltd
Attention: Tony Harb
Address: Level 35, One International Towers
              Barangaroo Avenue, Sydney 2000
Email: tonyh@inconsullt.com.au

If to the Licensee:

Name: LICENSEE Company
Attention: Person
              Address: XXX
Email: person@licensee.com

35. Execution of Counterparts

35.1 This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

35.2 This Agreement may be executed electronically or digitally and such signatures shall have the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

36. Survival

36.1 Termination of this Agreement does not relieve any party from that party's obligations under clauses 16, 17, 18, 19, 20, 23, 27, 32, 34, 36, 37.

37. Governing Law

37.1 The law of New South Wales governs this Agreement.

37.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

38. Insurances

38.1 The Licensor will hold current insurance policies for:

(1) insurance for workers compensation and all other insurances required by law for the Licensor or any person who attends the premises of the Licensee or carries out work to fulfil the Licensor's obligations under this Agreement;

(2) public liability and product insurance for an amount of at least $20,000,000 for each claim; and

(3) professional indemnity insurance for an amount of at least $10,000,000 for each claim.

38.2 The Licensor must provide a copy of a certificate of currency for each insurance policy at the Licensee's request.

39. Access to Records

39.1 The Licensor must grant:

(1) the Licensee an/or its representatives;

(2) regulators (such as DLG, APRA, ASIC, ACCC); or

(3) any other person authorised in writing by the Licensor,

at all reasonable times and during regular business hours unrestricted access to the files and books, records, accounts and other documents pertaining to the Licensor's records in GuardianERM.net®; which are in the possession, custody or control of The Licensor.

Schedule 1 – Contract Details

Item 1   **Licensed Software**

GuardianERM.net® (Web-based and hosted by InConsult)

All Modules – Unlimited User License.

Administration Module – 2 User License.

Upgrades included.

Item 2   **Documentation**

System documentation available via online help and the User and
Administration Manuals

Item 3   **Commencement Date**

DD MMMM YYYY

Item 4   **Initial Term & Renewal Option**

Initial term is 1 year

Renewal option in accordance with clause 20.2

Item 5   **Project Manager & Partnership Manager**

Tony Harb

Item 6   **Client Liaison**

TBA

Schedule 2 – Fees

Item 1   **Licence Fee**

- Annual license fee - <mark>AU$xxxx</mark> per annum payable annually in advance.

- Australian Goods and Services Tax (GST) applies to Australian domiciled businesses.

Item 2   **Implementation Fee**

- One-off set up fee - <mark>AU$xxx</mark>.

- Additional GuardianERM.net user training as available at standard rates – currently AU$1,800 for half day.

- Additional implementation support requested by licensee, our standard consulting rate of AU$350 per hour will apply.

Item 3   **Ongoing Support & Maintenance Fee**

- Hosted by InConsult - Included in license fee.

Item 4   **Upgrades and Enhancements**

- Hosted by InConsult - Priority upgrades included in license fee.

Item 5   **GuardianERM.net® Training**

- Hosted by InConsult – <mark>1 x Half-day</mark> training sessions included (on-line public training only).

Item 6   **Excess Data Storage Fee**

- The allowable data storage of 2GB (Gigabytes) refers to the total size of all attached external documents only, and not the GuardianERM.net® database size itself.

- If it is necessary to store a large amount of documents, an additional fee of AU$10 per Gigabyte per month will apply. This fee is subject to annual review.

Item 7   **Additional Support**

- Standard consulting rate of AU$350 per hour.

- Travel and accommodation expenses will be charged at cost.

- Payable in arrears after performance.

- Standard consulting rates and user licenses are subject to annual review and change.

Schedule 3 – Implementation Services

Scope of work:

- Set-up new database on server.

- Set-up work-flow service (==where applicable==).

- Set up 1 x administrator user.

- Provide administrator with access to GuardianERM.net.

- ==4 hours== user/administrator training (based in Sydney/ or webinar) included in licence.

- ==4 hours== consulting support to help project implementation.

- Additional GuardianERM.net user training as available at standard rates – currently AU$1,800 for half day.

- For additional implementation support requested by licensee, our standard rate of AU$350 per hour will apply.

- Licensee responsibilities:

  o Initial user set-up and ongoing user access, security and maintenance.

  o Initial system/work-flow configuration and ongoing maintenance.

  o Responsible for all client data.

Schedule 4 – Support Services

The Licensor will provide Licensee with the following services:

- administrator support to set up and delete users and set up access rights;

- telephone and email support in the form of consultations, assistance and advice (between the hours of 9:00am and 5.00pm (AEST) on any day except Saturday, Sunday or a public holiday in New South Wales);

- correction of defects brought to the Licensor's attention in accordance with the Customer Support Procedures, such correction to be performed taking into account the Service Levels; and

- provision of updates, new releases and related documentation to the Licensee in accordance with clause 11.

EXCLUSIONS

The Licensor will not be required to provide services in respect of any Defect that results from:

- use or operation of the Licensed Software other than in accordance with the Documentation;

- systems failure or the failure of the platform used by the Licensee to conform to the minimum system specifications recommended by the Licensor;

- work or modification by persons other than the Licensor's employees or subcontractors; or

- external causes including any failure or fluctuation the electrical supplies, hardware failure, third party software failure, accidents or natural disasters.

The following services are specifically excluded from the scope of the Support Services:

- additional, ongoing user training;

- rectification of operator errors;

- rectification of errors caused by equipment fault;

- diagnosis or rectification of faults not associated with the Licensed Software including any network, operating system and hardware issues; and

- the provision of any risk management advice.

Schedule 5 – Service Levels

Expected Service Level Agreements between InConsult and Licensee for the GuardianERM.net® product:

Hours of system availability for the GuardianERM.net® application: 24 hours/day, 7 Days a week.

Scheduled maintenance, when required for database maintenance, hardware changes, etc must be scheduled at least 7 days in advance, impacting the least number of users.

Emergency releases due to software errors may be scheduled without prior notification and the approval of Licensee, within a timeframe suitable to the nature of the emergency release.

Help desk support:
Help desk calls will be routed to the InConsult Support Team from the Licensee's Help desk if problems are reported with the GuardianERM.net® system that could be caused by an application error, or if the user has a question about the product that requires help from a GuardianERM.net® support person. GuardianERM.net® support is available by phone between 9:00am and 5:00pm Australian EST time on any day except Saturday, Sunday or a public holiday in New South Wales

High severity issues (severity level 1 & 2 per schedule 7) must have an initial response time within 24 hours. All other issues (severity level 3 to 5 per schedule 7) will be acknowledged within 24 hours and an initial response within 48 hours.

For more information refer to Schedule 4 and 7

Schedule 6 – Data Processing & Protection

The following schedule highlights the data processing and protection agreement between the Licensor and Licensee that broadly complies with the requirement of the current legal framework in relation to data processing and protection of personal data. This includes the requirements of GDPR, the Australian Privacy Policy and more.

Item 1   **Processing of Licensee Personal Data**

Licensor shall:

- comply with all applicable Data Protection Laws in the Processing of Licensee Personal Data; and

- not Process Licensee Personal Data other than on the Licensee's documented instructions.

Item 2   **Licensor Personnel**

Licensor shall take reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Licensor who may have access to the Licensee Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know/access the Licensee Personal Data, as strictly necessary for the purposes of the Principal Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Licensor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality and requiring satisfactory undertaking of state issued police background checks.

Item 3   **Security**

- Considering the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity, Licensor shall in relation to the Licensee Personal Data implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, measures against the unauthorised or unlawful processing and any loss, destruction, damage or theft of such personal data.

- In assessing the appropriate level of security, Licensor shall take account in particular the risks that are presented by Processing, in particular from a Personal Data Breach.

- Licensee understands that adequate security controls and processes must be in place, are the responsibility of the Licensee to ensure they are commensurate with the current regulatory landscape, and are not the responsibility of the Licensor to manage or validate.

Item 4   **Sub-Processing**

Licensor shall not appoint (or disclose any Licensee Personal Data to) any Sub-processor unless required to by law or authorised by the Licensee prior.

Item 5   **Data Subject Rights**

Taking into account the nature of the Processing, Licensor shall assist Licensee by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Licensee obligations, as reasonably understood by Licensee, to respond to requests to exercise Data Subject rights under Data Protection Laws.

Licensor shall:

- promptly notify Licensee if it receives a request from a Data Subject under any Data Protection Law in respect of Licensee Personal Data; and

- ensure that it does not respond to that request except on the documented instructions of Licensee or as required by Applicable Laws to which the Licensor is subject, in which case the Licensor shall to the extent permitted by Applicable Laws inform Licensee of that legal requirement before the Contracted Licensor responds to the request.

Item 6   **Licensor and Licensee Personal Data Breach**

- Licensor shall notify Licensee without undue delay upon Licensor becoming aware of a Personal Data Breach affecting Licensee Personal Data, providing Licensee with sufficient information to allow the Licensee to meet any obligations to report or inform Data Subjects of the Personal Data Breach under Data Protection Laws.

- Licensor shall co-operate with the Licensee and take reasonable commercial steps as are directed by Licensee to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

- Equally the Licensee shall notify the Licensor without undue delay upon becoming aware of a Personal Data Breach that in any way affects the access to or processing of Licensee Personal Data so that the Licensor may commence segregation of the issue and prevent any further dissemination of Personal Data or eliminate the possibility of the nature of the data breach affecting other areas of the Licensor system.

Item 7   **Impact Assessment and Prior Consultation**

Licensor shall provide reasonable assistance to the Licensee with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Licensee reasonably considers to be required by any Data Protection Laws, in each case solely in relation to Processing of Licensee Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Licensor.

Item 8   **Deletion, return or transfer of Licensee Personal Data**

- Subject to this item 8, Licensor shall promptly and in any event delete and procure the deletion of all copies of those Licensee Personal Data as soon as is practicable in relation to the date of cessation of any Services involving the Processing of Licensee Personal Data (the "**Cessation Date**").

- Licensor shall provide written certification to Licensee that it has fully complied with this item 8 within a reasonable amount of time of the Cessation Date.

- The Licensor may not transfer or authorise the transfer of Data to countries outside Australia (point of storage) without the prior written consent of the Licensee. If personal data processed under this Agreement is to be transferred from Australia to a country outside Australia, the Licensee must provide a written approval with a reasonable means for the transfer, such as a newly contracted Licensor or disaster recovery purposes. The Parties shall ensure that the personal data are adequately protected during a transfer. To achieve this, the Parties shall, unless agreed otherwise, rely on approved standard contractual clauses for the transfer of personal data.

Item 9   **Regulatory Changes**

- Both parties shall be responsible for monitoring regulatory changes that may impact on its obligations to comply with the relevant laws, and for requesting a change, or an amendment to the Agreement required for that compliance.

- Both parties shall notify the other party as soon as reasonably practicable if it becomes aware of a regulatory change or proposed regulatory change, that is likely to require a change to, or an amendment to the Agreement.

Schedule 7 - Customer Support Procedures

Item 1   **Support Team Details**

          Hotline Number: +61 2 9241 1344
          Email Address: support@inconsult.com.au

Item 2   **Support Process**

Tasks to perform prior to contacting the Support Team

1. Define the problem
2. Try and solve the problem
3. Use online help
4. Refer to documentation/training manuals
5. Contact system administrator
6. Contact InConsult

Tasks performed by the InConsult Support Team

1. Log incident
2. Assign support ticket/work item number and severity level
3. Evaluate problem
4. Identify solution(s)

Logging the support incident

The support incident can be logged with the Support Team via the telephone or email.

While logging the call the Customer Support Representative will:

1. Confirm Company Details
2. Confirm Contact Details
3. Confirm Telephone Number (for this specific incident)
4. Confirm Email address (for this specific incident)
5. Capture the details of the particular incident including the related product and version, a description of the issue and any supporting documentation
6. Communicate the support ticket/work item number and response severity level
7. Emailed incidents will have all details confirmed including the support ticket/work item number and severity level within one business day of receiving the incident

<u>Solving the incident</u>

The Support Team will, at all times, attempt to solve the service request immediately using the resources available to them.

The Support Team will:

1. Navigate to the location that the incident is occurring
2. Attempt to replicate the incident
3. Refer to the online help
4. Check the internal solutions database
5. Refer to technical support

If the issue is not resolved during the first contact with the Support Team then an agreed commit time will be communicated and the Support team will research the incident further.

> Assigning the Severity Level

When assigning a Severity Level please use the following list as a guideline.

Severity 1: Critical	When you cannot use the system and your business is seriously affected.
Severity 2: High	When a function of the system is not working correctly and no work around is possible. Your business is affected.
Severity 3: Medium	When a function is not working correctly but is not mission critical (e.g. report formatting). Often a work around will exist and your business is not affected.
Severity 4: Low	Question or request for information regarding existing system.
Severity 5: Question	Question or request for information regarding new product or functionality.

Each issue will be assigned a Severity Level to enable our Support Team to prioritise all outstanding calls/issues. The Severity Level may change during the life of an issue and if a new severity needs to be assigned you will need to phone or email the new priority clearly stating the Service Request Number and why the severity has changed.

When an issue is received, our Support Team may wish to change the level you have assigned. If this happens we will discuss this with you first to get your agreement and explain why we feel the levels need to be changed. If the agreement cannot be reached then the incident will be passed to the Customer Support Team Manager who will discuss it with you.

> Escalating Incidents within InConsult

When an issue is logged with the Support Team, it is initially reviewed to reach a solution. If a solution cannot be achieved, then the most appropriate team is contacted to achieve the most effective resolution. That person will "own" the issue until its successful conclusion. All future correspondence/communication concerning this issue should reference the Service Request number it has been assigned.

A site visit may be required if the issue cannot be resolved over the telephone. All site visits will be charged at the normal consulting rates on a time, travel and materials basis.

If the owner of the issue is unable to achieve resolution, it will be escalated depending on skills within the team and availability of consultants. The timeframe for this will be dependent upon the severity levels assigned to the issue.

> Managing the Service Request

All service requests are managed using the InConsult support system.

The status and commit times of every service request are agreed and set by the customer and the Customer Support Representative.

> Closing an Incident

It is important that when an incident is closed all parties are aware of this status. All completed incidents will be closed verbally with the customer or in writing via email. If more information has been asked of you and we have had no feedback after a second request, we will send a message to you stating that the issue will be closed unless the requested information is received.

Please note that a service request may be reopened at any time.

Item 3   **What the Support Team does not do**

Answer incidents that are not covered by InConsult agreements	Although the Support Team consultant's knowledge is wide ranging, we do not offer support on anything other than software specifically covered by our agreement.
Offer training over the telephone	Training over the phone is seldom effective; therefore we insist that only appropriately trained staff call us. While we understand the need for temporary staff, we reserve the right to refer them back to your system owner in the event they are calling for training.
Configuration	Assistance with setting up new modules is an on-site consulting service charged at normal time and materials rates.
Support installations of software on the server or on new/existing workstations	Troubleshooting the installation of software is a function performed by our Technical consulting team. Site variations do mean the attempt to resolve the issue over the telephone often wastes the valuable time of both parties.
Database specific management tasks	These services may be provided by our Technical consultants at normal time and materials rates.
Provide advice	Whilst our Support Team does understand business principles behind the software you have purchased, we are not able to provide advice.
Network, operating system or hardware issues	Support for these areas is not covered under this agreement.
Report Writing	Assisting in the creation of reports is classified as a consulting task and is therefore chargeable at the normal rates on a time and materials basis.

Item 4   **Customer Escalation Process**

In the instance that you believe an issue is not being investigated appropriately, or has not been resolved to your satisfaction, you can escalate the issue to your Partnership Manager.

Item 5   **What we require from you**

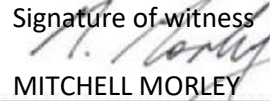|	
Appoint a 'System Owner'	This person should take overall ownership of the system and be the main point of liaison between you and InConsult. We have found that a motivated owner more than anything else determines the success of a system.
Keep staff properly trained	Proper training is important if you are to get the most from your system. Our Customer Support team is not a substitute for lack of training. We reserve the right to refer any of your staff who has not been trained back to your system owner.

Executed as an agreement.

Signed for and on behalf of InConsult Pty Ltd. ABN 48 100 759 984 by its Director in the presence of:

Signature of Director

TONY HARB
Name of authorised representative
(BLOCK LETTERS)

Signature of witness

MITCHELL MORLEY
Name of witness
(BLOCK LETTERS)

Address of witness

Level 35, One International Towers,
Barangaroo Avenue, Sydney NSW 2000

Signed for and on behalf of XXX Company as its Authorised Representative in the presence of:

Signature of Authorised Representative
of Licensee

Signature of witness

Name of authorised representative
(BLOCK LETTERS)

Name of witness
(BLOCK LETTERS)

Title of authorised representative
(BLOCK LETTERS)

Address of witness

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