

Zavanti General Terms and Conditions

February 2025



1 Terms & Conditions

1.1 Definitions

In this Agreement, the following terms have the following meanings unless otherwise expressly stated:

“Agreement” means this Agreement including any Schedule attached and related Sales Order or Statement of Work.

“Charges” means the Charges payable under this Agreement for provision of the Software Product, Service, including any Installation Charges, Consultancy Services, Recurring Charges and Usage Based Charges and any other Charges set out in the Sales Order.

“Consultancy Services” has the meaning given in clause 5.1.

“Customer” means the Customer identified in a Sales Order and shall include any and all Related Bodies Corporate as defined by the Corporations Act 2001 (Cth) or parties identified in a Schedule to this Agreement.

“Deliverable” means an agreed outcome acknowledged by both Parties which is to be delivered by Zavanti for the Customer pursuant to this Agreement, more particularly set out in a Statement of Work.

“Documentation” means documentation, whether in printed or electronic form, associated with Software Product, and published by or for Zavanti.

“Intellectual Property” means all intellectual property rights and interests (including common law rights and interests) in any jurisdiction including, but is not limited to:

- a) patents, trademarks, service marks, copyright, registered designs, trade names, domain names, symbols and logos;
- b) patent applications and applications to register trademarks, service marks and designs; and
- c) tools, techniques, computer program code, data inventions, discoveries, developments, trade secrets, information and logical sequences (whether or not reduced to writing or other machine or human readable form).

“Microsoft Solution SLA” means the Microsoft Online Services Agreement dated

1 September 2020 or any document that replaces or succeeds it.

“Modern Slavery” has the meaning given in the Modern Slavery Act 2018 (Cth).

“Moral Rights” has the meaning given in the Copyright Act 1968 (Cth).

“Sales Order” means a Sales Order submitted by Customer and accepted in writing by Zavanti.

“Sanction” means any economic or financial sanction, trade embargo or similar measures imposed, enacted, administered or enforced from time to time by a Sanctions Authority.

Sanctions Authority means each of the following:

- a) Australia;
- b) the United States of America;
- c) the United Nations;
- d) the European Union or any present or future member state thereof; and
- e) the United Kingdom.

“Sanctioned Country” means any country or territory which is subject to the target of comprehensive, country-wide or territory-wide Sanctions, which as of the date of this Agreement, comprise the Crimea region of Ukraine, Cuba, Iran, North Korea, Syria and the Russian Federation.

“Sanctioned Person” means any person or entity which is:

- a) listed on, or is owned or controlled directly or indirectly (as such terms are used in the Sanction or in any guidance in relation to the Sanction) by a person or entity listed on, a Sanctions List;
- b) located in, incorporated under the law of, or acting on behalf of a person located in or organised under the laws of a Sanctioned Country;
- c) or otherwise a target of a Sanction.

“Service” means Consultancy Services, and Support Services as appropriate.

“Service Provider” means Zavanti Australia Pty Ltd ABN 70 110 183 974 (“Zavanti”), Microsoft Corporation or its authorised resellers.

“Service Start Date” means the earlier of: (a) the date on which we first notify you that the Hosted Service is ready for use; and (b) the date on which you first use the Hosted Service.

“Software Product” means a Zavanti software product as stated in a Sales Order

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as being licensed to the Customer as specified in clause 3 or 4 of this Agreement. **“Support Services”** mean the Support Services as specified in clause 6.

1.2 Content and Effect

1.2.1 This Agreement shall represent the entire and complete agreement between the parties and supercedes all prior contemporaneous agreements or representations, written or oral, with respect to the subject matter of this Agreement. Any terms and conditions attached to any purchase order or other ordering document of the Customer shall be superceded by this Agreement.

1.2.2 By continuing to maintain the subject Services with Zavanti, the Customer is stating and acknowledging it has read and understands the terms of this Agreement and agrees to be bound by them.

1.3 GST

1.3.1 All prices specified in this Agreement and/or the Schedules or Sales Order attached to this Agreement are strictly net and exclusive of GST, VAT and other taxes.

1.4 Assignment

1.4.1 The Customer shall not assign, mortgage, charge or make over this Agreement or any part of it without the prior written consent of Zavanti, such consent not to be unreasonably withheld. Zavanti shall be entitled to sub-contract all or any part of its rights or obligations under this Agreement. Customer acknowledges that Zavanti may use third-party Service Providers to supply the Hosted Service.

1.5 Clause Headings

1.5.1 Clause Headings are for ease of reference only and do not form part of this Agreement for the purpose of interpretation.

1.6 Appropriate Law

1.6.1 This Agreement and all the terms, provisions and conditions of this Agreement and all questions of instruction, validity and performance under this Agreement shall be governed by the laws of New South Wales

and subject to the exclusive jurisdiction of the courts of Australia.

1.7 Waiver

1.7.1 The waiver by either party of a breach or default of any provision of this Agreement shall not be construed as a waiver of any succeeding breach or default of the same or other provisions.

1.8 Severance

1.8.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the said invalidity or unenforceability shall not affect the other provisions of this Agreement and all other provisions shall remain in full force and effect. The parties hereby agree to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, the legal and the commercial objectives of the invalid or unenforceable provisions.

1.9 Personnel

1.9.1 Both parties agree that during the term of this Agreement and for a period of 12 (twelve) months after its termination that they will not approach or solicit each other's personnel with a view to offering them employment. Liquidated damages for breach of this provision will be equal to the gross salary or fees of that person for the first 12 (twelve) months of his/her new employment or contract.

1.10 Invoicing

1.10.1 Zavanti will endeavour to invoice you monthly or as specified in any Sales Order but reserves the right to invoice at different intervals. Unless otherwise specified all invoices will be electronically issued to Customer's listed email address. Invoices issued to anything other than an email address may incur additional charges. Zavanti will provide you with a breakdown of the Fees and Charges payable in each invoice. Our records and/or any relevant Service Provider's records will be conclusive evidence of usage of the Service and the Charges payable by you. Notwithstanding this, you may dispute an invoice if you reasonably believe that you are not liable to



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pay the Charges because of an inaccuracy, omission or error in the invoice. For the avoidance of doubt, this does not affect your obligation to make payment in full by the due date. If the parties agree that the dispute is valid, your account will be credited the relevant amount.

1.10.2 Zavanti will invoice for, and you will be liable for all Charges in respect of the Service commencing on and from the Service Start Date.

1.10.3 Except as otherwise agreed in writing the Customer agrees to pay all invoices properly submitted by Zavanti on the terms specified upon the invoice. Without prejudice to any other rights or remedies available to Zavanti under this Agreement Zavanti reserves the right to charge interest on overdue balances at 2 (two) percent over the St George Bank Limited base overdraft rate at the time.

1.11 Copying

1.11.1 The Customer may not make any copies of any Software Product supplied pursuant to this Agreement except such copies as are required for back up or archive purposes only. Any such copies are subject to the conditions set out in this Agreement.

1.12 Loss of Data

1.12.1 Other than as covered elsewhere in this Agreement, including Schedules, Zavanti shall not be liable for loss of data or recovery of such data whether or not that loss can be attributed to an error in a Software Product supplied by, under warranty from or supported by Zavanti. The Customer must ensure that appropriate back-ups and/or copies of data are taken upon a regular basis.

1.13 Confidentiality

1.13.1 Each party to this Agreement shall treat as confidential all Confidential Information of the other party obtained from the other pursuant to carrying out this Agreement (including, in the case of Zavanti, all information contained or embodied in the Customer Data of which it may become aware) and shall not divulge such information to any person or third party without the other party's written consent. Each party shall ensure that its employees

and sub-contractors are aware of and comply with the provisions of this Clause to the extent necessary for the proper performance of the Agreement.

1.13.2 (Without giving the party receiving the information any licence or other right to use such information) Clause 1.13 shall not extend to information:

- a) which a party is required by law to disclose; or
- b) which a party rightfully possessed prior to the commencement of discussion leading to the Contract; or
- c) which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause 1.13); or
- d) which comes into the possession of a party other than as a result of a breach of these Terms or subject to conditions of confidentiality; or
- e) is trivial or obvious.

1.13.3 Without limiting the generality of clause 1.13.1, the Customer acknowledges it may not, directly or indirectly: (i) use such Zavanti's Confidential Information to create any computer software program or user Documentation, or (ii) use or disclose such Zavanti's Confidential Information except as expressly permitted by this Agreement. Customer may not disclose to any third party, whether orally or in writing, the results of any quantitative analysis (benchmark tests) of the Software Product. Customer shall promptly notify Zavanti of any unauthorised use or disclosure of such Confidential Information that comes to its attention and provide reasonable assistance to Zavanti (at Zavanti's expense) in the investigation and prosecution of such unauthorised use or disclosure.

1.13.4 Zavanti will indemnify and keep the Customer fully and effectually indemnified from and against all actions, proceedings, claims, demands, damages or other liability, or costs (including legal costs on a full indemnity basis) which the Customer may suffer or incur as a result of any breach by Zavanti of its obligations in Clause 1.13.1.

1.13.5 Customer will indemnify and keep Zavanti fully and effectually indemnified

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from and against all actions, proceedings, claims, demands, damages or other liability, or costs (including legal costs on a full indemnity basis) which Zavanti may suffer or incur as a result of any breach by the Customer of its obligations in Clause 1.13.1.

1.14 Publicity

1.14.1 Zavanti may use individual's names, addresses and/or email addresses as may be provided to Zavanti within the Zavanti group of companies worldwide to perform its obligations under this Agreement. Such communication to be in accordance with the Privacy principles outlined in this Agreement.

1.15 Newsletter

1.15.1 Zavanti may, from time to time, provide a periodic technical newsletter by email to Customer providing details of technical tips and notification of upgrade availability.

1.15.2 Customer consents to receiving notifications regarding Zavanti Software Product or Service by email.

1.16 Notices

1.16.1 Any notice required or permitted under this Agreement shall be in writing or sent by email, registered post, or overnight courier service to the address set out in the Sales Order associated to this Agreement or to such other address which the parties may have specified in writing from time to time and shall be deemed to be served two working days following the date of posting where a working day shall mean Monday to Friday excluding public holidays.

1.17 Scope of Services

1.17.1 Zavanti will, subject to the terms of this Agreement, provide the Software Product and Services set out in a Sales Order attached or as updated from time to time. Such Sales Order also sets out the agreed unit price, initial contracted volume or specification. Any additional services shall be included as addenda to or a further Sales Order.

1.17.2 The price with respect to the Services and/or Software Product set out in the Sales Order is fixed for the term set out in the Sales Order. The price may change for

subsequent periods as advised by Zavanti from time to time or as specified in the Sales Order.

1.18 Material Breach

1.18.1 The Customer agrees to pay any sums due under this Agreement upon the due date specified in the invoice, Schedules or Sales Order attached to this Agreement. Failure to pay in accordance with the terms of this Agreement shall be deemed to be a material breach of this Agreement.

2 Term and Termination

2.1.1 The initial term of this Agreement is as specified in the Sales Order and commences from the date of this Agreement or commencement of service delivery and the term shall automatically renew in annual increments thereafter unless terminated by either party in accordance with this Agreement.

2.1.2 Either party may terminate the Agreement after its initial term for any reason by giving thirty (30) days written notice to the other party.

2.1.3 Either party shall be entitled to terminate this Agreement if the other ceases to exist, becomes insolvent or bankrupt or being a company is wound up or is deemed unable to pay its debts or has a receiver appointed over any part of its assets, or if the other party commits a material breach of this Agreement and fails to remedy such breach within thirty days after having been given written notice to do so.

2.1.4 Where the Agreement is breached by Zavanti, this Agreement may be terminated forthwith by the Customer giving written notice to Zavanti.

2.1.5 On termination of this Agreement for any Software Product, Hosted or Support Service, Customer shall cease to use the Software Product or the Hosted Service and Zavanti shall promptly return to Customer any documents, data and other confidential information used for the purposes of this Agreement. Customer will be required to advise Zavanti on the alternate service arrangement and facilitate handover of data. Zavanti shall be entitled to Charge its

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reasonable costs for the provision of this Service.

2.1.6 Customer will be liable for all Charges up to the date of termination. Such Charges shall be due on the terms as stated in the invoice.

2.1.7 The termination of this Agreement, any part of it, or of the provision of the Service (howsoever occasioned) shall not affect:

- a) any accrued rights, obligations or liabilities of either party;
- b) the coming into force or the continuance in force of any provision hereof which is implied or expressly intended to come into force or continue in force on or after such termination.

2.1.8 Without prejudice to any rights or remedies to the injured party under this Agreement the termination (howsoever occasioned) shall cause the cancellation of licenses for any and all Software Product supplied hereunder.

2.1.9 The effect of the notice of cancellation of the license for a Software Product supplied hereunder is that the Customer must immediately cease use of the Software Product, return the magnetic media and any Documentation relating to the Software Product to Zavanti, take all such steps to destroy any copies of the Software Product under the control of the Customer, have all Software Product removed from all computers operated by or controlled by the Customer, and procure that a director of the Customer warrant in writing to Zavanti that these provisions have been adhered to.

2.1.10 If this Agreement is terminated for any reason then clauses 1.6 Appropriate Law, 1.9 Personnel, 1.13 Confidentiality, 3.5 Copyright and Intellectual Property Rights shall continue to have effect as shall any other provision which by their nature or implication were intended to come into or continue in force on or after such termination.

3 Software Product

3.1 License

3.1.1 Software Product refers to the Software Product supplied to the Customer under this Agreement as set out in a Sales Order for installation on Customer's equipment or licenced servers, as appropriate, under this Agreement.

3.1.2 Zavanti grants to the Customer a non-exclusive, non-transferable, site and/or territorially specific license to use the Software Product, including the Documentation, for the term of this Agreement for the Customers own internal data processing and business use only and subject to the terms and conditions of this Agreement. Zavanti or its licensors retain all copyright, proprietary and intellectual property rights in and to the Software Product.

3.1.3 The license to use the Software Product shall be strictly according to such limits upon the use of the software and upon a particular item or type of equipment and/or such limits upon the number of users as shall be specified in any quotation or proposal supplied in writing by Zavanti and/or specified in the Schedules or Sales Order referring to this Agreement.

3.1.4 This Agreement prohibits any use of the Software Product as a service bureau, rental, resale, or for providing data processing services to third parties, or by third parties on any timesharing basis.

3.1.5 Customer shall use the Software Product in accordance with the law, including without limitation, any laws relating to processing personal data and/or privacy.

3.1.6 Subscription charges for Software Products shall be as set out in a Sales Order or as updated and agreed in writing.

3.1.7 Unless otherwise specified in a Sales Order, the subscription charges for Software Product(s) will automatically be increased on each anniversary of the commencement of service delivery by the same percentage as the increase in the Consumer Price Index for Sydney (published by the Australian

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Bureau of Statistics) for the preceding 12 month period, or 3 % - whichever is higher.

3.1.8 For Subscription Services you may vary the users at any time by giving us written notice of your intention to vary the service with additions to take effect for the full calendar month of the start date and terminations to take effect on the last day of the month.

3.2 Audit

3.2.1 Zavanti shall have the right to conduct an audit of Customer's use of the Software Product on ten (10) days' advance written notice. Customer shall cooperate with Zavanti with respect to any such audit. Any such audit shall be conducted during regular business hours either remotely using electronic access or in unusual circumstances at Customer's facilities and, to the extent feasible, shall be conducted in a manner that does not unreasonably interfere with Customer's business activities. Zavanti shall also have the right to embed technological audit mechanisms in its Software Product and to conduct audits by use of such mechanisms with or without further notice. If any Zavanti initiated audit reveals unauthorised use or use in excess of licensed capacity, within 30 days from receipt of notice by Zavanti stating the amount of unlicensed use of Software Product, Customer shall pay Zavanti for use of the unlicensed Software Product and technical support and maintenance at Zavanti's then current Enterprise List Prices plus a term license fee calculated by multiplying the aggregate of the Enterprise List Price times the number of licenses used times 1.5% for each month of unlicensed use.

3.2.2 Each audit under Section 3.2.1 shall be at Zavanti's expense, except that, if the underpaid fees exceed five percent (5%) of the license fees paid, then Customer shall pay Zavanti's reasonable costs of conducting the audit. Instead of, or in addition to, an audit Zavanti reserves the right to request a written statement of compliance with the terms of this Agreement and applicable Software Product Licenses, and Customer shall comply with such request.

3.3 Delivery

3.3.1 Zavanti shall enable download from Zavanti website or support portal by the Customer of the Software Product programs and any associated Documentation. The specification of the Software Product shall be defined as being the functions detailed in the current Software Product user Documentation or such other written specification as may be agreed between the parties to this Agreement and the Customer hereby accepts such specification as being in accordance with its requirements.

3.4 Warranty

3.4.1 For an initial period of 90 (ninety) days from the date of delivery Zavanti shall provide the support described below in respect of the Software Product free of charge under warranty.

- a) Zavanti shall correct or cause to have corrected any error in the Software Product notified to Zavanti during its normal working hours. For the purposes of this Agreement an error shall be defined solely as a deviation from or failure to work in accordance with the specification.
- b) Zavanti shall deliver one copy of the correction of an error (as described under Clause 3.4.1.a above) in machine-readable form together with sufficient instructions to enable the Customer to install or apply the said correction. If exceptionally and at its sole discretion Zavanti attends the Customer's premises to apply the correction such attendance shall be free of charge under the limited warranty. If the Customer requests the attendance of Zavanti at its site to install or apply the correction then the time and travel costs associated with such an attendance shall be chargeable at the then current Zavanti price list for such a service.
- c) Zavanti will use reasonable endeavours to correct an error as soon as reasonably practical and with due regard to the nature and effect of the error but shall not be liable for any loss and/or damage arising from or out of any delay in providing such error correction.

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- d) Zavanti further warrants that the media upon which the Software Product are delivered is free from defects in materials and workmanship under normal use for the period of thirty days from delivery.
- e) Zavanti may at its sole discretion use a modem or other electronic communication device to deliver Software Product and Consultancy Services under this Agreement. The Customer agrees to assist Zavanti in this respect and shall act upon Zavanti's reasonable instruction during the Customer's normal working hours to enable the services to be provided in this way.

3.4.2 Zavanti does not warrant the fitness for purpose or suitability of the operation of any Software Product nor that the Software Product will meet the Customer's expectations.

3.4.3 Zavanti does not warrant that any Software Product shall operate uninterrupted or error free.

3.4.4 Zavanti shall not be liable to correct any error arising from improper use, operation, modification or neglect of a Software Product or the failure on the part of the Customer to observe any instruction provided by Zavanti in relation to the use of the Software Product.

3.4.5 In no event shall Zavanti be liable for any indirect, consequential, incidental liquidated and/or special damages of any kind (including, without limitation, lost revenues or profits, lost data, work stoppage, computer failure or malfunction), even if it has been advised of the possibility of such damages. This clause does not exclude or limit the application of any provision of any statute (including the Trade Practices Act 1974 (Cth)) where to do so would contravene that statute or cause any part of this clause to be void.

3.4.6 The limited warranty provided under this clause in respect of the Software Product is in lieu of any and all other warranties or conditions, express or implied, including any warranties of satisfactory quality or fitness for a particular purpose all of which are excluded to the fullest extent

permitted by law. Zavanti has authorised no other warranty and the Customer has not relied upon any other warranty in its decision to execute this Agreement.

3.4.7 The sole remedy available to the Customer and the sole liability of Zavanti for a breach of the limited warranty set out in this clause shall not exceed the license fees paid for the Software Product for the previous 12 months.

3.4.8 No action, regardless of form, arising out of the transactions under this Agreement, may be brought by Customer for any period greater than the one year after Customer became aware or reasonably should have become aware of the occurrence of the events giving rise to the cause of action.

3.5 Copyright and Intellectual Property Rights

3.5.1 The Customer hereby acknowledges that it has no proprietary and/or other rights in or to the Software Product or any amendment, modification, new version or new releases thereof except that of usage for the Customer's own internal data processing and business use.

3.5.2 The Customer acknowledges that all existing and future copyright, patent, trademark and other intellectual property and proprietary rights arising out of or related to the Software Product shall remain the sole property of Zavanti or its licensor(s).

3.5.3 The Customer agrees not to change, remove or obscure any copyright notices or proprietary rights notices attached to the Software Product or its associated Documentation.

3.5.4 Save as permitted by the law the Customer agrees not to cause or permit the reverse engineering, disassembly, decompilation, translation, or adaptation of any of the Software Product.

3.5.5 Zavanti warrants that it owns or has rights to license the Software Product and agrees to hold the Customer harmless from any claim that usage of the Software Product infringes any patent, trademark, copyright or other intellectual property of any third party; providing:

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- a) the Customer promptly notifies Zavanti in writing of any such claim; and
- b) the Customer grants to Zavanti the sole control of the defence, at Zavanti's cost, of any such claim; and
- c) the Customer agrees to undertake such reasonable steps as Zavanti may request in relation to this matter. These may include, but are not limited to, replacement of the version or release of the Software Product concerned free of charge with the latest version or release of that software, Zavanti procuring at its own expense the Customers right to continue using the offending software or Zavanti replacing at its own expense the offending software or Documentation with material designed to perform the same function as the offending material.

3.5.6 The foregoing states the entire liability of Zavanti to the Customer regarding the infringement of any intellectual property rights of any third party. Zavanti shall have no liability for any claim for infringement of a third party intellectual property right based upon use with or combination of Product supplied with programs or data not supplied by Zavanti or use other than as prescribed in the Documentation and/or pursuant to this Agreement.

3.6 Source Code Security

3.6.1 At the written request of the Customer and upon payment of the fee prescribed and execution of a form of Escrow Agreement approved by Zavanti, a copy of the source code for the Software Product shall be deposited with an escrow agent nominated by Zavanti and the Customer may take benefit of the escrow agreement so prescribed upon payment of all amounts due, including amounts due for the exercise of the Escrow Agreement.

3.7 Acceptance

3.7.1 Upon receipt of the Software Product the Customer shall conduct such tests as it deems necessary within 7 days or such other period as agreed. If it is agreed that Zavanti will install and test the Software Product then the Customer shall make available an authorised representative to witness the acceptance tests carried out

by Zavanti and to approve the same in writing. Unless notified in writing within 14 days of the date of receipt by the Customer of the Software Product to the contrary Zavanti shall be entitled to assume that the Customer has accepted the Software Product 14 days from its delivery.

3.8 Export

3.8.1 Customer expressly acknowledges that the licence to use the Software Product granted under this Agreement is site specific and territorially limited to the country where this Agreement is executed, unless otherwise agreed in writing by Zavanti. Customer warrants that it will not export, either directly or indirectly, any Software Product, Documentation, or information about the Software Product or Documentation from the country of installation without first obtaining all necessary export approvals [including without limitation those of the country of installation and the United States of America, the "Export Laws"], and Zavanti's prior written consent, such consent will not be unreasonably withheld. Customer warrants that the Software Product shall not be used for any purpose prohibited by the Export Laws, including without limitation nuclear, chemical or biological weapons or proliferation.

3.9 Zavanti Reliance on the Customer

3.9.1 Zavanti will rely (non-exclusively) on research and suggestions from the Customer to determine enhancements and modifications to the Software Product ("software variations"), and/or test the commerciality of potential software variations or new services (an "offering").

3.9.2 The Customer may also be invited to participate in pilot programs to:

- a) test and verify that an offering works as expected in real-world Customer environments,
- b) test the market acceptance of the offering,
- c) refine the details of the offering based on feedback from pilot group participants,
- d) practice the delivery and implementation of the offering,

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- e) determine the level of support required after a full deployment,
- f) provide a decision checkpoint for proceeding with the commercialisation or to adjust the commercialisation plan to resolve issues that may jeopardise the success of the offering.

3.9.3 The terms of participation in a pilot program, including any commitment of additional time and resources and the overall benefits to the Customer will be advised at the time of invitation.

3.9.4 While it is at the sole discretion of Zavanti whether or not it will adopt any software variation or offering, the Customer acknowledges that it will have no claim to the title, ownership, copyright intellectual property, proprietary and/or patent with respect to the software variation or offering or any commercial benefit derived from it. All such rights in and to all software variations made, whether paid or unpaid by the Customer, will reside with Zavanti.

4 Consultancy Services

4.1 Consultancy Services

4.1.1 Zavanti agrees to supply the consultancy services, if any, specified in the Sales Order and any associated Statement of Work referring to this Agreement on the terms and conditions herein.

4.1.2 Consultancy Services shall refer to implementation consultancy, system design, programming specification, programming services, software modification services, training and technical advice and guidance services.

4.1.3 Charges for Consultancy Services shall be as set out in a Sales Order or as updated in any Statement of Work or as updated and agreed in writing.

4.1.4 All Services will be conducted in accordance with the agreed written specifications for the work.

4.1.5 All Services will be delivered in accordance with the timelines agreed in the Statement of Work.

4.1.6 Subject to otherwise complying with its obligations under this Agreement, Zavanti shall exercise its independent

discretion as to the most appropriate and effective manner of providing the Services and of satisfying the Customer's expectation of those Services.

4.1.7 Zavanti shall supply and the Customer agrees to take the number of man days or hours at the prices specified in the Sales Order and Statement of Work attached to this Agreement and the Customer agrees to pay for the services on the terms specified. In the absence of any explicit terms the Consultancy Services shall be provided at Zavanti's then current price list rate for such work, will be invoiced upon delivery of the Service and are payable in accordance with this Agreement.

4.1.8 Subject to compliance with security requirements and access restrictions imposed by the Customer, Zavanti may provide its Services during such hours and on such days as it considers necessary and appropriate to ensure compliance with its obligations under this Agreement.

4.1.9 Customer shall provide such access to its facilities and work spaces for Zavanti consultants to conduct these Services as agreed in the Statement of Work or other form of confirmation between the Parties.

4.1.10 Zavanti may at its sole discretion use a modem or other electronic communication device to deliver services under this Agreement. The Customer agrees to assist Zavanti in this respect and shall act upon Zavanti's reasonable instruction during the Customers normal working hours to enable services to be provided in this way.

4.1.11 Zavanti does not warrant that it will be capable of attending the Customer's premises or of providing the Services at specific times requested by the Client during the term of this Agreement, except to the extent prescribed in the Statement of Work.

4.1.12 Zavanti will use its reasonable endeavours to supply the service in the form of a named individual specified by the Customer if so desired but in any event shall not be liable for its failure to do so.

4.1.13 If the Customer schedules a date for the delivery of a Consultancy Service and then cancels the scheduled Consultancy Service less than 7 (seven) days prior to the



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delivery of that service then Zavanti shall be entitled to charge 50 (fifty) per centum of the rate for the Consultancy Service.

4.1.14 All Consultancy Service rates exclude reasonable travel, accommodation and subsistence expenses, which will be invoiced separately.

4.1.15 The Customer has fourteen (14) days, or such other period as agreed prior to delivery of the deliverable, to complete their user acceptance testing for each deliverable. In the event the Customer fails to complete the user acceptance testing with the required period, Zavanti reserves the right to invoice 90% of the amount due for that deliverable with the balance to be paid upon completion of testing by the Customer.

4.1.16 In the event of any variations to the original scope of works outlined in the Statement of Work, details of the variation, the date of the variation, and particulars regarding payment for the Variation shall be set out in writing and agreed to by both parties. A copy of the signed variation shall be given to the Customer as soon as it is reasonably practical and before the work to which the variation relates to is commenced.

4.1.17 Zavanti reserves the right to modify any financial amounts contained within the Statement of Work in the event that the customer modifies the scope of works for this project or the customer provides more information at a date that is subsequent to the Statement of Work being presented by Zavanti and signed by the client. In the event that the customer decides not to proceed with the revised Statement of Work, the client is liable for any and all work completed up to that point in the project.

4.1.18 The Customer hereby acknowledges that all property rights, intellectual, proprietary and other rights in and to any Software Product created as part of the supply of Consultancy Services belong to Zavanti or its suppliers.

4.1.19 Zavanti guarantees that all work will be of a professional standard that meets the Customer's expectation as a minimum. All finished work will be approved in writing by the Customer before work is finalised.

4.1.20 Zavanti provides a warranty period of 90 days for all finished work. This period will commence immediately after formal Customer sign off.

5 Support Services

5.1 Scope of Service

5.1.1 Zavanti provides a support service for Zavanti Software Product (Support Service) following the expiry of the limited warranty period (90 days).

5.1.2 In all cases the Support Service is available for the current version and release of the Software Product only. The Customer may decide to retain use of the prior version of a Software Product but accepts that Zavanti shall be obliged only to continue the services set out in this clause in respect of that prior version for a period of 12 months from the date of general release of a version or release of a Software Product which replaces that prior version.

5.1.3 Zavanti may at its sole discretion continue to provide Support Service for prior versions or releases of any Software Product older than 12 months from the current release or version of that Software Product.

5.1.4 Unless specifically agreed and for the agreed fees, the Support Service does not cover third-party Product, including the database, see 5.4 below for further information.

5.1.5 In consideration for the service charge for the Support Service or the charge for Hosted Service the Customer shall also be entitled to use the Zavanti support portal and subject to the conditions set out in this Agreement and the current Zavanti Support Policies and Procedures as set out in clause 10.

5.1.6 If the difficulty is determined to be an error in the Software Product concerned then Zavanti shall correct or cause to be corrected the error. An error in a Software Product shall be defined as its failure to operate in accordance with its written specification or exceptionally such written specification as may be agreed between Zavanti and the Customer from time to time.

5.1.7 If Zavanti corrects or causes to be corrected an error in a Software Product

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then Zavanti shall deliver one copy of the correction to the Customer in machine-readable form or access to Zavanti website for Customer to download the Software Product together with instructions as to how the correction should be loaded or applied. If exceptionally or at the Customer's request Zavanti attends the Customer site or accesses the site remotely to load or apply the correction the time and travel costs associated with this attendance are not included in the service charge for Support Service and shall be separately chargeable to the Customer at Zavanti's then current rates for such work.

5.1.8 Zavanti reserves the right to correct or cause to be corrected an error in the new version or release of the Software Product to which the Customer shall be entitled to receive under clause 3.3.1.

5.1.9 Except where Zavanti installs maintenance releases as part of agreed Consultancy Services or Hosted Services, the Customer undertakes to replace the current release of the Software Product with any maintenance release and, in any event, the Customer shall apply any fixes, patches or solutions supplied by Zavanti forthwith upon receipt. If the Customer decides not to implement a maintenance release, fix, patch or solution provided by Zavanti, then the Customer acknowledges that Zavanti has no further obligation under Support Services or otherwise for failures corrected by the maintenance release, fix, patch or solution.

5.1.10 Zavanti may at its discretion refer Customer requests to product suppliers for support.

5.1.11 Zavanti shall be entitled to decline to respond to (and reserves the right to charge for the time reasonably spent dealing with) a Customer Support Request made by a member of the Customer's staff not properly trained in the use of the Software Product concerned.

5.1.12 Zavanti shall not be liable to correct (and reserves the right to charge for time reasonably spent in the detection of) an error arising from the improper use, the improper operation, the unapproved modification or the neglect of any Software Product, or the failure to observe the

operating instructions supplied with or in relation to any Software Product. This includes tables, reports or enhancements provided by Zavanti.

5.1.13 Zavanti may at its sole discretion use a modem or other electronic communication device to deliver support under this Agreement. The Customer agrees to assist Zavanti in this respect and shall act upon Zavanti's reasonable instruction during the Customer's normal working hours to enable support to be provided in this way.

5.2 Service Charges

5.2.1 The service charges for Support Service for the initial 12 month period of support shall be those set out in the Schedule or Sales Order attached to this Agreement.

5.2.2 Unless otherwise specified in a Sales Order, the service charge for Support Services will automatically be increased on each anniversary of the date of this Agreement by the same percentage as the increase in the Consumer Price Index for Sydney (published by the Australian Bureau of Statistics) for the preceding 12 month period, or 3 % - whichever is higher.

5.2.3 The Support Service commences upon the expiry of the warranty period as stated in clause 3.4.1, on a 12 (twelve) monthly basis. The service will automatically renew on each anniversary of inception unless either party has given at least 60 (sixty) days written notice to terminate the Support Service prior to an anniversary or renewal date.

5.2.4 Without prejudice to any right or remedy available to either party Zavanti shall have the right to suspend or terminate the provision of Support Service if the Customer fails to make any payment due to Zavanti under this Agreement.

5.3 Future Releases

5.3.1 In consideration for the service charge for Support Service the Customer shall be entitled to receive future releases of a Software Product. In general, a future release of a Software Product will contain minor enhancements and error corrections to an earlier version of that Software

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Product and can be installed by the Customer with minimal disruption.

- a) At its discretion, Zavanti may make updates available to a specific customer or group of customers as a service update or minor release, or make a general release to all customers.
- b) Zavanti will provide updates to the Customer via its web site.

5.3.2 Customer may request Zavanti assistance in the planning, management and/or performance of the upgrade. Additional training of Customer staff may also be recommended. The costs of these additional services (recommended or not) are not included in the Support Service charge.

5.3.3 Customer Responsibilities for Updates, excluding Hosted Services:

- a) The Customer acknowledges that it is its sole responsibility to install each update of the Software Product when released. The Customer also acknowledges that all updates of the Software Product are deemed to be the same Software Product as initially licensed to the Customer, and as such will be subject to the same terms and conditions as set out in this Agreement,
- b) The Customer acknowledges that, while Zavanti will endeavour to release updates to the Software Product that ensure its ongoing compatibility with the Customer's Operating Environment, this will only be on a best endeavours basis and subject to Zavanti sole determination of the commercial soundness of doing so,
- c) The Customer agrees to notify Zavanti in writing at least sixty (60) days prior to installing a new version of the Operating Environment.

5.3.4 Updates for Hosted Services shall be subject to a Sales Order and associated Statement of Work to specify the roles and responsibilities of Zavanti, charges for the service and other matters associated with the update.

5.4 Third Party Software Product

5.4.1 Zavanti technical support does not provide technical support for third-party

software, but it will, subject to payment of agreed fees, do its utmost to use its established skills in the enterprise application market to assist in the cases that Customer may have. Customer may, however, be requested to log the outstanding case with the relevant third-party software supplier. Customer may request Zavanti to log this case on its behalf where beneficial. This will ultimately speed the resolution of the service request.

6 Force Majeure

6.1.1 Zavanti is not liable for any failure to perform, or for any delay in performing any of its obligations under this Agreement where the failure or delay is occasioned by:

- a) strike or other industrial action,
- a) any act or omission by you or any third party, including failures or delays by other Service Providers,
- b) legislative or governmental prohibitions, restrictions, or delays in the granting of approvals, consents, permits, licences or authorities,
- c) fire, flood, war, cable cut, natural disaster,
- d) any act nature,
- e) any other event beyond our reasonable control, or
- f) unscheduled maintenance to the Zavanti network or facilities in the case of emergency to the extent that the emergency is not caused by Zavanti's agents or contractors negligent or wilful acts or omissions.

6.1.2 In the event of catastrophic failures and conditions outside of the Service Provider's reasonable control (Force Majeure) the Service Provider will liaise with relevant third-party service providers Insurance Assessors & Loss Adjustors and emergency services to determine the most efficient course of action to restore service availability, and implement one of several alternative plans for such conditions.

7 Privacy Principles

7.1.1 Zavanti abides by the National Privacy Principles enshrined in the Federal

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Privacy Act 1988 (as amended) and the Internet Industry Association's Privacy Code.

7.1.2 Zavanti acknowledges Customer's absolute and sole ownership and confidentiality in its data and Zavanti will maintain a policy not to view, copy, use, retain or restrict Customer's authorised access to any of its data, other than in performing its obligations under this Agreement.

7.1.3 Customer agrees that Zavanti has the right to monitor the servers electronically and may have an obligation to disclose information under the law or to protect itself from claims by a third party or parties.

7.1.4 Customer represents, warrants and undertakes to Zavanti that all necessary notifications and consent processes have been, and will continue to be made under the National Privacy Principles in the Privacy Act 1988 in relation to the use of the Hosted Service and Customer Data, and that throughout the term of the Contract it will comply with the terms of that Act and of any other applicable legislation from time to time in force in any territory in which the Customer carries on business, in each case insofar as applicable to the Customer in relation to the use of the Hosted Service or Customer Data in accordance with these Terms.

7.1.5 Without prejudice to the generality of Clause 7.1.1, the Customer undertakes that it will not export any Customer Data to any territory except as permitted by the Privacy Act 1988.

7.1.6 Without prejudice to the generality of Clause 7.1.1, the Customer undertakes that it will, to the extent required by the Privacy Act 1988, inform individuals whose e-mail addresses are included in the Customer Data, that the Customer uses service providers to handle Customer Data on its behalf. Customer accepts the obligation of notifying individuals to the effect that it is not necessary for Zavanti to make any additional communications with individuals in order to meet any obligations it may have under National Privacy Principle 1.5.

7.1.7 Customer will indemnify and keep Zavanti fully and effectually indemnified from and against all actions, proceedings, claims, demands, damages or other liability, or costs (including legal costs on a full indemnity basis) which Zavanti may suffer or incur as a result of any breach by the Customer of Clause 7.1.6.

7.1.8 Customer undertakes to provide to Zavanti a copy of its company privacy policy prepared in accordance with National Privacy Principle 5.

8 Sanctions

8.1 Zavanti Warranty for Sanctions

8.1.1 Zavanti hereby warrants and represents that Zavanti and all its Personnel, Related Bodies Corporate, Subcontractors and suppliers:

- a) are not a Sanctioned Person;
- b) are not violating any Sanctions applicable to it; and
- c) are not engaging with a Sanctioned Person.

8.1.2 If Zavanti:

- a) provides incorrect information in connection with the Sanctions; or
- b) breaches any provision of this Agreement relating to Sanctions;

it must immediately give notice to the Customer and the Customer may:

- c) immediately terminate this Contract pursuant to clause 2.1.4 of this Agreement; and
- d) claim compensation from Zavanti for any loss which it suffers.

8.1.3 If Zavanti becomes a Sanctioned Person (including any of its Personnel, Related Bodies Corporate, Subcontractors or suppliers), Customer may immediately terminate this contract pursuant to clause 2.1.3 of this Agreement.

8.1.4 Without limiting any remedy to which The Customer might otherwise be entitled, The Customer may terminate this Agreement if it determines that the Agreement violates any applicable Sanction.

9 Bribery and Corruption

9.1.1 Zavanti must not, and must procure that its personnel and any other person acting for or on its behalf, do not:

- a) pay or accept any commissions or fees, or make or accept any payments or rebates to or from any employee or officer of the Customer or its Related Bodies Corporate, or favour any of those persons with gifts or entertainment of unusual or substantial value, or enter any business arrangements with any of those persons, that would result in a detriment to the Customer or is contrary to fair dealing; and
- b) provide or offer to provide a benefit (which is not legitimately due) to a public official (including a foreign public official) to retain or obtain a business advantage.

9.1.2 Zavanti must, and must ensure that its personnel and any other persons acting for or on Zavanti's behalf, immediately report to the Customer any offer, payment, rebate or other benefit, or any receipt of any payment, benefit or rebate of the kind referred to in clause 9.1.1.

10 Support policies and procedures

10.1 Introduction

10.1.1 Detailed below are the technical support policies and procedures for Support Services provided by Zavanti. These are meant to ensure an effective and productive relationship with the Customer.

10.1.2 Support Services are governed by the terms and conditions of the Zavanti General Terms and Conditions to which this Schedule is attached.

10.1.3 Support Services consist of providing answers to routine questions about the use of Software Product, technical issues with a Hosted Service and troubleshooting assistance by online support.

10.1.4 Support Services do not include services which, in the usual course of Zavanti's business, are provided to Customer as Consultancy services. Such Consultancy Services include, but are not limited to, custom application development and support, solution design, requirements analysis, report preparation, enhancements, upgrade assistance, training or data recreation. Nor does it cover inquiries on bookkeeping, general accounting or taxation issues, or consulting on business applications and best practices.

10.1.5 Any issues outside the scope outlined above, including but not limited to, hardware issues, network/connectivity issues, business/accounting advice, or any support required on software issues for which the Customer has received the appropriate training, are excluded from this Agreement. The determination of the nature of the Customer's query for these purposes will be made by Zavanti's support consultants and, should they be out-of-scope may be provided as Consultancy Services for fees based upon Zavanti then current rates for such Services.

10.1.6 Should the Customer fail to pay the support and maintenance fee by the renewal date, or cancel this support and maintenance agreement then this Agreement is taken to be cancelled and subject to the terms of Clause 2.

10.2 Support Access

10.2.1 Technical support may be obtained by Customer's nominated contact person. Customer must designate one employee to serve as their primary contact person, they may nominate an alternate contact person. Customer may change their contact person so long as they provide notice to Zavanti of such change.

10.3 Support Requests

10.3.1 Customer must report issues by logging on to the Zavanti website:

- <http://zavanti.com>

10.3.2 In the event of technical difficulties in accessing the online support site, calls may be logged with Zavanti through the following:

Website

<https://zavanti.atlassian.net/servicedesk/customer/user/login?destination=portals>

Hours 9 a.m. - 5:00 p.m. AEST,
Monday through Friday on non-holidays

10.3.3 After hours support requests may be provided by email request, portal submission or direct contact with dedicated support consultant through agreed channels. After hours support shall be subject the Support Response Guidelines in Clause 12.

10.3.4 Zavanti undertakes to use its reasonable endeavours to respond to the Customers support request as soon as is reasonably practical and with due regard to the nature and effect of the difficulty.

10.3.5 The service desk will respond to a call in accordance with the Support Response Guidelines (clause 12) this is generally within two business hours for critical problems.

10.3.6 Additional and/or alternative support contact means and methods may be supplied as Consultancy Service, if and when agreed.

10.4 Logging a Case

10.4.1 The following information is required to be supplied by the Customer when logging a support request:

a) Contact Name,

- b) Company Name and Location,
- c) Software Product and Version,
- d) brief description of the case, including error messages as applicable Customer will submit sufficient information, which may include documentary evidence, for Zavanti to understand and reproduce any Problem or error reported,
- e) steps taken to troubleshoot the case thus far,
- f) preferred contact method and contact information.

10.4.2 Upon logging a Case, the nominated contact will receive a case identification number for future reference.

10.5 Prioritisation of Cases

10.5.1 Our objective is to assign a prioritisation level as set out in clause 11 - Support Response Guidelines, to all cases within one business day. These prioritisation levels are used to ensure that cases are resolved in a timely manner and allow us to provide the best support possible to each Customer. Zavanti will work with the nominated contact to set the correct Severity Level of each case depending on technical and business needs.

10.5.2 Where possible, Zavanti's support staff will attempt to solve an Incident, Service Request or Problem immediately or as soon as possible thereafter in alignment with the Service Response Guidelines clause 11 below. Where appropriate, Zavanti will give an estimate of how long an Incident, Service Request or a Problem may take to resolve and, in any event, will keep Customer informed of the progress of the resolution as outlined in the Service Response Guidelines below.

10.5.3 Incidents reported to the Service Desk may result in temporary solutions to make the Service available to the Users and/or the Customer as quickly as possible. A permanent fix for the Problem may then be implemented through scheduled or unscheduled system maintenance times as defined in the service hours of this agreement. All service availability and reliability targets during this period remain unchanged.

10.5.4 These target response and corrective action times are for any fault in the Service caused by the action or infrastructure of the Service Provider. The Service Provider will still endeavour to meet the target call response and fix times for issues caused by external parties and the Customer; however, charges may be incurred as defined in the Charging section of this Agreement.

10.5.5 Zavanti shall make commercially reasonable efforts to comply with the Support Response Guidelines (clause 11) when involved in problem resolution. Customer may log on to the online support site at any time to receive an update on Defect/Enhancement Requests.

10.5.6 Zavanti reserves the right to:

- a) make the final determination on the Severity Level of a case,
- b) downgrade the severity of a case and notify the nominated contact of this action if the nominated contact fails to communicate with Zavanti in a timely manner.

10.5.7 Zavanti will revert the case to the original Severity Level if the case again becomes a severity for the nominated contact.

10.6 Support Topic Limitations

10.6.1 Zavanti may limit or terminate Support Service to a customer who uses the service in an irregular, excessive, abusive or fraudulent manner.

11 Support Response Guidelines

11.1 Support Resolution Targets

Severity	Initial Response Time	Effect	Target Resolution Time
1 (Critical)	2 business hours	Defect prevents all useful work from being done, material defects in essential functions for which no non-manual workaround exists; or Defects that cause a material loss of data, high-risk security breach or Hosted Service disruption.	If a Severity 1 Defect occurs during normal operating hours (8:30 am - 5:30 pm AEST weekdays), Zavanti will begin immediate and continuous efforts to reproduce and resolve the Defect, and will carry out those efforts until the Defect is resolved. Zavanti will use reasonable efforts to resolve all Severity 1 Defects in the shortest time possible, and will review status with Customer on a daily basis or more frequently, if requested.
2 (Major)	Next Business Day	Defects that disable essential functions but for which a non-manual workaround exists, defects that block systems test or deliverables, or defects that violate the material specifications in the Documentation, or Service component malfunction or low-risk security breach.	If the Defect is a Severity 2 issue, Zavanti will begin efforts to reproduce the problem no later than the opening of the next business day after receipt of the issue by Customer. Zavanti will use reasonable efforts to resolve Severity 2 problems as rapidly as practical, but no later than the next Update after reproduction of the Defect.
3 (Minor)	2 Business Days	All other issues.	Severity 3 Defects will be addressed in Service Provider's normal Update. For Hosted Service the consultant reports by the end of the next working day.
4 (Enhancement request)	N/A	Functionality requested which is not available in standard operations of the software. Item will be considered for future releases.	Resolution is discussed and agreed to by both parties as to a reasonable timeframe for completion.