



## **Ibis Business Intelligence Solutions Pty Ltd Standard Supply Terms and Conditions for the provision of Computer Systems and Services (Supply Terms and Conditions)**

**Effective 25<sup>th</sup> May, 2026**

### **IMPORTANT INFORMATION – PLEASE READ**

The Standard Supply Terms and Conditions are comprised of the following parts, which together constitute a single legally binding contract relating to your use of any services, software or other products supplied by Ibis Business Intelligence Solutions Pty Ltd:

- Part A – General Terms and Conditions
- Part B – Terms and Conditions for Ostendo Software
- Part C – Terms and Conditions for Professional Services
- Part D – Terms and Conditions for Technical Services
- Part E – Terms and Conditions for Ibis Managed Hosted Services
- Part F – Terms and Conditions for Custom Business Intelligence and Developments
- Part G – Terms and Conditions for Ibis Software or Business Intelligence Developments

These Supply Terms and Conditions are to be read in conjunction with the 'Computer Systems and Services Proposal' or any 'Specific Supply Terms and Conditions' provided to the Consumer by Ibis. Together, these documents record the contractual agreement in relation to the Products and Services to be provided to the Consumer by Ibis Business Intelligence Solutions Pty Ltd (**Agreement**) between the Consumer and Ibis Business Intelligence Solutions Pty Ltd. These documents (**Agreement**) constitutes the complete and exclusive statement between the Consumer and Ibis Business Intelligence Solutions Pty Ltd and no statement or representation not contained in this Agreement will be binding on Ibis Business Intelligence Solutions Pty Ltd as a warranty or otherwise.

# Part A – General Terms and Conditions

## Definitions

**“Australian Consumer Law”** means the law as set out in Schedule 2 of the *Competition and Consumer Act 2010* as amended from time to time.

**“Claim”** will mean any action, claim, proceeding or demand whatsoever, whether presently existing or arising at any time in the future and whether referable to events or circumstances which have already occurred or which may occur in the future.

**“Confidential Information”** means:

- a. know-how, trade secrets, ideas, concepts, technical and operational information confidential to or used by either party;
- b. information concerning the affairs or property of either party or any business, property or transaction in which either party may be or may have been concerned or interested;
- c. information about the terms or effect of this Agreement;
- d. any information relating to the Intellectual Property; and
- e. information which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to:
  - i. either party; or
  - ii. any third-party with whose consent or approval either party uses that information,

but excludes any information which;

- (1) is in or enters the public domain through no fault of the recipient; or
- (2) was already known to the recipient at the time it was made available to the recipient and the recipient obtained the information by lawful means from a third party in circumstances that did not involve the third party breaching an obligation of confidence owed to the discloser; or
- (3) was developed by the recipient without reference to or use of information referred to in the definition of ‘Confidential Information’ of the discloser.

**“Consumer”** means the person or legal entity identified in a Proposal, or Amendment or Invoice who purchases a Product or Services from Ibis.

**“Custom Business Intelligence or Development”** means any customisation written, developed and supplied by Ibis Business Intelligence Solutions Pty Ltd to the Consumer.

**“Proposal”** means the ‘Computer Systems and Services Proposal’ agreed between the Consumer and Ibis setting out the Products supplied to the Consumer by Ibis and the applicable Price, licence period, and other details;

**“Effective Date”** means the date and time that the Consumer accepts the Proposal or Specific Supply Terms and Conditions (and therefore these Standard Supply Terms and Conditions), by either, accepting or signing the Proposal or Specific Supply Terms and Conditions (electronically or otherwise) or by verbal confirmation of the Proposal or Specific Supply Terms and Conditions, by clicking “I accept” or by installing or using or accepting the Services or Products supplied by Ibis (whichever occurs first).

**“Fixed Price”** means the Fixed Price for the Professional Services specified in the Proposal for a software implementation project. Some services are specifically excluded and will be charged in addition to the Fixed Price as a Variation.

**“Force Majeure”** means any circumstance beyond the reasonable control of a party which result in a party being unable to perform an obligation due under this Agreement. Such circumstances include any act of God, earthquakes, floods, storms, explosions, fires and/or any natural disaster but exclude any workforce or industrial action;

**“GST Law”** means *the A New Tax System (Goods & Services Tax) Act 1999* (Cth).

**“Ibis”** means Ibis Business Intelligence Solutions Pty Ltd ACN 602 532 918 and ABN 15 602 532 918.

**“Improvements”** means all modifications, alterations, derivative works and improvements to the Products, Services, Ibis’ Confidential Information or Intellectual Property which are developed by Ibis or the Consumer.

**“Intellectual Property”** will mean all past, present and future industrial and intellectual property rights relating to either party, including without limitation:

- a. inventions, patents, copyright, trade business, company or domain names, rights in relation to circuit layouts, plant breeders' rights, registered designs, registered and unregistered trade marks, know how, trade secrets and the right to have confidential information kept confidential, and any and all other rights to intellectual property which may subsist anywhere in the world; and
- b. any application for or right to apply for registration of any of those rights.

**“Partners”** means third party developers and subcontractors that Ibis works with to write a Custom Development

**“List Price”** means the price recommended by the supplier of the Software or Goods, set out in the Proposal or Specific Supply Terms and Conditions as changed from time to time;

**“Moral Rights”** means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, as defined in the *Copyright Act 1968* (Cth).

**“PPSA”** means the *Personal Property Securities Act 2009* (Cth) and any regulations made under it.

**“Product”** means any Software, Custom Development, Hardware or Equipment supplied by Ibis to the Consumer.

**“Ostendo Software”** means any software system developed by Development-X Ltd, including but not limited to, “Ostendo Continuum”, “Ostendo Freeway”.

**“Specific Supply Terms and Conditions”** means any Supply Terms and Conditions specifically agreed between the Consumer and Ibis that take precedence over the ‘Standard Supply Terms and Conditions’ setting out the Products and Services supplied to the Consumer by Ibis and the applicable Price, licence period, and other details.

**“Price”** means the price specified in the Proposal;

**“Requirements Analysis”** means the analysis of the Consumer’s requirements as set out in the Proposal.

**“Project Plan”** will mean all project documentation including scope of objectives and requirements, information, plans, tasks and issues lists.

**“Ibis Software or Business Intelligence Development”** will mean any Software, report, script, trigger, procedure, table, module, web development, or software developed by Ibis as a proprietary product for resale to the Consumer “as is.”

**“Software”** will mean any Software, Software Licences, Software Subscription or Ibis Software or Business Intelligence Development supplied by Ibis Business Intelligence Solutions Pty Ltd to the Consumer.

**“Software Developer”** means a software developer who provides Ibis with Software to provide pursuant to the Software Developer’s Licence Agreement.

**“Software Licence Agreement”** means the licence agreement of a Software Developer.

**“Goods”** will mean any Hardware or Equipment supplied by Ibis to the Consumer.

**“Managed Hosted Services”** will mean any hosted database, cloud hosting, remote access, monitoring and related support services supplied by Ibis, including where Consumers connect directly from their Computer to a specified Ostendo database.

**“Third Party Services”** will mean any third party services and infrastructure on which the Managed Hosted Services may rely to deliver certain functionalities.

**“Services”** will mean any Professional Services or Technical Services, Managed Hosted Services, and any other services provided by Ibis to the Consumer for software implementation projects, software support or consultancy, in accordance with this Agreement.

**“Support”** will mean any Professional Services or Technical Services provided by Ibis to the consumer for Support queries.

“**Bug**” will mean a fault in the Software that prevents the Software from performing according to the Software’s manual. A lack of a specific function will not be deemed a Bug if the Software was not designed to perform that function.

“**Ibis Internal Ostendo Backup System**” means the installation and setup of a system whereby Scripts written by Ibis are run at regular intervals throughout the day by the Windows Task Scheduler to run the Firebird Gbak backup system to create backup files of the specified Ostendo database safely while it is running, into specified backup file folders. This is an internal backup system only with the sole function to create backup files of the specified Ostendo database in specified backup file folders in order for them to be backed up the Consumer’s own backup of their Computer system. The Ibis Internal Ostendo Backup System only backs up the specified Ostendo database and does not backup the Ostendo directory or any other files such as Ostendo Report files or Ostendo Workflow files.

“**Ibis Monitoring System**” means a third party system owned and installed by Ibis for monitoring that the Ibis Internal Ostendo Backup System and all installed Ostendo Services (API, Queue and Web Services) are running. This system also helps keep all installed Ostendo Services (API, Queue and Web Services) running in case of events on the Consumer’s computer system that may normally stop them running

### **General Term and Conditions**

1. All Computer systems, Products and Services supplied by Ibis are supplied to the Consumer on the following terms and conditions, including (for the avoidance of any doubt), the terms and conditions of the Proposal or Specific Supply Terms and Conditions to the Consumer.
2. If Computer systems, Products and Services supplied by Ibis are supplied to the Consumer on the following terms and conditions, including (for the avoidance of any doubt), the terms and conditions of the Proposal or Specific Supply Terms and Conditions to the Consumer.
3. This Agreement commences from the Effective Date.
4. Upon acceptance of this Agreement by the Consumer, the Consumer agrees to comply with the following terms and conditions when accessing any Products and/or Services provided by Ibis.
5. The Consumer acknowledges and agrees that Ibis may engage third-party providers (including the Third Party Services, Partners, and Software Developer) to provide Products and/or Services to the Consumer. The Consumer must (and will procure its employees, subcontractors or agents to) comply with any terms and conditions imposed by these third-party providers as advised by Ibis from time to time, and failure to do so may result in the Consumer being unable to access the relevant Products and/or Services.
6. The Consumer’s acceptance of the Proposal or Amendment acknowledges the indebtedness and waives any right to dispute the account at a later date.
7. Any information published or otherwise about the Software and Goods is by way of information only and cannot be considered a parallel contract.
8. The most recent “Specific Supply Terms and Conditions for the provision of Computer Systems and Services” accepted by the Consumer will take precedence over the “Proposal” and “Standard Supply Terms and Conditions for the provision of Computer Systems and Services” and in the case of any conflict between these terms and conditions, the most recent “Proposal” or “Specific Supply Terms and Conditions for the provision of Computer Systems and Services” accepted by the Consumer will prevail.
9. Apart from the “Specific Supply Terms and Conditions for the provision of Computer Systems and Services with the Consumer”, these “Supply Terms and Conditions” will take precedence over any oral terms or terms printed on any Proposal or Order form and in the case of any conflict between these terms and conditions and any other document that may exist, these “Supply Terms and Conditions” will prevail.
10. Where Ibis fails to enforce any terms and conditions of this Agreement or fails in any way to exercise its rights under this Agreement, Ibis will not be deemed to have waived these rights with respect to any term or condition or right.

### **Amendments to these Supply Terms**

11. Ibis may amend any terms of this Agreement at any time, in its sole discretion.
12. An amendment will be notified to the Consumer either:
  - a. At the time the Consumer permits or purchases Product updates; or
  - b. By email notification at any time.
13. Subject to clause Part A.14, an amendment will apply and come into effect on the earlier of:
  - a. 30 days after it is notified to the Consumer; and
  - b. When the Consumer indicates acceptance on any notification of an amendment.

14. The consumer is deemed to have consented to any amendment requested by Ibis by continuing to use the Product or Services 30 days after an amendment has been notified to the Consumer, without notifying Ibis of an objection to the amendment.
15. If the Consumer does not consent to an amendment notified by Ibis, the Consumer must inform Ibis of this in writing no later than 30 days after receiving notification of the amendment.
16. If the Consumer does not consent to the amendment of a material term of this Agreement, the Consumer may request termination of this Agreement by notice to Ibis provided all fees and charges owing by the Consumer have been paid to Ibis.

### **Pricing**

17. Software and Goods are licensed or sold at the List Price (i.e. the recommended price set by the Supplier) current at the date of invoice.
18. Software and Goods priced in foreign currency will be invoiced in Australian dollars at the currency exchange rate on the date of invoice. If the invoice is unpaid after the due date a new invoice will be issued for the supply of Software and Goods.
19. Any expenses incurred by Ibis in respect of the sale transaction (including but not limited to bank fees) will be on-charged to the Consumer.
20. Pricing for Software does not include software installation, system setup and configuration, training, professional services, support, hardware, devices, wiring etc.
21. Ibis Business Intelligence Solutions Pty Ltd reserves the right to change the rates for Professional Services from time to time with thirty (30) days prior notice in writing.

### **GST**

22. All terms in this clause not defined elsewhere in this Agreement take their meaning under the GST Law.
23. Unless otherwise expressly stated, the Price and other sums payable or consideration to be provided under this Agreement are exclusive of GST.
24. If GST is payable by the Consumer on any supply made by Ibis under this Agreement, the Consumer must pay to Ibis an additional amount that is equal to the amount payable by the Consumer for the relevant supply multiplied by the prevailing GST rate. This additional amount is payable at the same time as the Price or other consideration for the relevant supply to which the additional amount relates.
25. In the event of a taxable supply, Ibis will provide a valid tax invoice (in the form prescribed by the GST Law) to the Consumer.

### **Security Interest**

26. All terms in this clause not defined elsewhere in this Agreement take their meaning under the PPSA.
27. Risk in the Software and Goods will pass to the Consumer on delivery. Delivery is deemed to be effected upon delivery of the Goods to the Consumer's premises or upon collection of the Goods by or on behalf of the Consumer.
28. Ownership of all Goods supplied to the Consumer by Ibis will not pass on delivery but will remain with Ibis until Ibis has received total payment in clear funds of all monies owing by the Consumer to Ibis, (whether relating to those goods, to the supply of services or to any other person or property supplied). Ibis holds a Security Interest in all Goods supplied to the Consumer for payment of those monies.  
Until all monies due to Ibis are paid by the Consumer, the Consumer agrees to act as a fiduciary of Ibis and the Consumer;
  - a. will not sell, charge or part possession of the Goods, otherwise than for their full values in the ordinary course of business;
  - b. will not alter, obliterate or deface the Goods and will not alter, obliterate, deface, cover up or remove any identity mark to indicate that the goods are the property of Ibis;
  - c. will store the Goods in such manner that they are clearly identifiable as the property of Ibis and will keep separate records of the goods;
  - d. will hold any proceeds of the resale of the Goods in trust for Ibis Business Intelligence Solutions Pty Ltd in a separate and identifiable manner.
29. Where the Consumer is in default, the Consumer agrees to Ibis entering the Consumer's premises or any other place where the Software or Goods are located or where Ibis reasonably believes that the software or Goods are located and uninstalling any software or work supplied, or taking possession of and selling the Goods even if Ibis does not have priority over other persons having a security interest in the Goods. Ibis may allocate all amounts received from the Consumer in any manner it determines

including any manner required to preserve any purchase money security interest in the Goods notwithstanding any purported allocation by the Consumer.

30. While the Goods continue to secure the Consumer's indebtedness and obligations the Consumer must store the Goods separately and clearly identify the Goods as being subject to Ibis's security interest.
31. The legal and beneficial ownership in any Goods from time to time supplied by Ibis remains with Ibis until all Goods have been paid for. The risk in any Goods supplied passes to the Consumer on delivery.
32. The Consumer acknowledges that until such time as full title to the Goods passes to the Consumer under this Part A clause 29, this Agreement constitutes a Security Agreement for the purposes of the PPSA, and Ibis has a Security Interest in the Goods.
33. Without limiting Part A clause 30, the Consumer agrees to do such things as Ibis may require from time to time to ensure that any Security Interest of Ibis arising from or connected with this document is Perfected under the PPSA for whatever period Ibis determines in its sole discretion, including signing documents and providing Ibis with all further information required to enable Ibis to register its Security Interests on the PPSR, and to otherwise protect the position of Ibis under the PPSA.
34. The Consumer must keep Ibis fully informed of all relevant information regarding it and its activities, including by providing not less than 14 calendar days notice in writing of any proposed change in its name or contact details, and immediately advising Ibis of material changes in its business activities.
35. The Consumer agrees to indemnify Ibis for all expenses incurred by Ibis in registering its Security Interests on the PPS Register, and will reimburse Ibis for all such expenses immediately upon demand.
36. The Consumer waives its rights under section 157 of the PPSA to receive a notice in relation to the registration events to which section 157(3)(a) of the PPSA applies, including without limitation, the right to receive a copy of a verification statement confirming registration of a financing statement or financing change statement relating to the Security Interest created by this document.
37. The Consumer agrees that nothing in sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA and Part 4.3 (other than Division 6 of Part 4.3) of the PPSA shall apply to this Agreement, all contracts, and any Security Interest in the Goods or Software created by this Agreement or any contract, and to the extent permitted by the PPSA, the Consumer waives its rights in respect of this Agreement, any contract or any Security Interest created under either of them, to receive any notice or statement under the following sections of the PPSA: 95, 118, 121(4), 123, 130, 132(3)(d), 132(4), 135, 157 and all sections in Part 4.3 (other than those in Division 6 of Part 4.3).

#### **Licensed Software**

38. All Software must be used strictly in accordance with the terms of the Software Licence Agreement with the Software Developer. The Consumer will ensure that its employees, subcontractors or agents who have authorised access to the Software read, understand and agree to comply with the Software Licence Agreement. The Consumer takes full responsibility for any breach or alleged breach of the terms of the Software Licence Agreement by the Consumer or any of its employees, subcontractors or agents and indemnifies Ibis in respect of any claim, costs or damages suffered by Ibis as a result of any such breach or alleged breach.
39. All rights, title or interest in respect of the intellectual property rights in the Software remain with Ibis, or the Software Developer at all times.

#### **Payment Terms**

40. Full payment of invoices without set-off or deduction or retention is due and payable by the due date on the invoice. Payment terms are detailed in the 'Computer Systems and Services Proposal' or the 'Specific Supply Terms and Conditions' sent to the Consumer.
41. Ibis will apportion payments to outstanding accounts as it thinks fit.
42. Ibis is under no obligation to supply goods and services on credit to the Consumer.
43. If payment is not made by the due date, Ibis is entitled to charge the Consumer interest on the unpaid overdue balance at the rate of five percent (5%) per annum above the current rate charged by Ibis' bank, calculated from the due date of payment down to the actual date of payment, and Ibis may at its discretion suspend its supply of Goods or Services until the overdue amounts are paid in full.
44. Should any invoice be unpaid after thirty (30) days from the due date of the invoice, Ibis reserves the right to withhold the supply of further Goods and Services and change the Consumer's credit terms to payment in advance for Goods and Services.
45. If at any time Ibis deems the credit of the Consumer to be unsatisfactory, it may require the Consumer to provide at its cost, security for payment and/or Ibis may suspend performance of its obligations under this Agreement until satisfaction of security is provided.

## Confidentiality

46. Each party undertakes to keep confidential any Confidential Information (written or oral) concerning the business and affairs of the other which was obtained during the negotiation of the Proposal, or during the provision of Products or Services.
47. Ibis undertakes to treat the Consumer's data with the utmost integrity and confidentiality and not to utilise it for any other purpose than to service the Consumer.
48. Ibis may disclose (or permit anyone else to disclose) Consumer's data and Confidential Information to a third party who:
  - a. has been approved in writing by the Consumer; or
  - b. is an employee or contractor of, or a professional adviser to Ibis, including any Third Party Services, Partners, Software Developer, or any third-party providers who have been engaged by Ibis to provide any Products and/or Services to the Consumer,  
(referred to as a **Permitted Party**).
49. A disclosure to a Permitted Party may only be made:
  - a. for the provision of Products or Services to the Consumer;
  - b. if previously consented to in writing by the Consumer; or
  - c. if required by law or the rules of a stock exchange, government or government agency having jurisdiction over the party concerned.

## Intellectual Property

50. All rights, title, ownership or interest in respect of the intellectual property in ideas, techniques, concepts, inventions, processes used or developed or created by Ibis in the course of providing the Services to the Consumer remain with Ibis at all times.
51. All rights, title, ownership or interest in respect of the intellectual property in Custom Business Intelligence and Developments provided by Ibis remain with Ibis at all times. The Consumer is granted a non-exclusive, limited, non-transferable, non-sublicensable, royalty-free, Australia-wide licence to use them.
52. Nothing contained in this Agreement constitutes an assignment of any Ibis's Intellectual Property from Ibis to the Consumer.

## Usage Restrictions

53. The Consumer undertakes and agrees to (and will procure its employees, contractors and agents to):
  - a. not copy, imitate, mirror, reproduce, disseminate, publish, redistribute, translate, alter, merge, adapt, modify, dissemble, reverse engineer, decompile or otherwise tamper with the Products and Ibis's Intellectual Property;
  - b. not do any act which may, in the reasonable opinion of Ibis, harm the goodwill in the Products and Ibis's Intellectual Property, or in any other way diminish the value of the Products and Ibis's Intellectual Property;
  - c. not by act or omission, permit any employee, agent, contractor, sub-licensee or other person to diminish the value of the Products and Ibis's Intellectual Property by any means including by commenting unfavourably in public about the Products, Services and/or Ibis; or
  - d. not apply to register Ibis's Intellectual Property;
  - e. not permit a third party to use or otherwise access, reproduce or disclose Ibis's Intellectual Property without Ibis's prior written consent; or
  - f. damage, infringe, or challenge Ibis's Intellectual Property, or otherwise use Ibis's Intellectual Property in a manner that:
    - i. brings, or may foreseeably bring (as determined by Ibis), Ibis into disrepute; or
    - ii. harms, or may foreseeably harm (as determined by Ibis), the goodwill, name or reputation of Ibis.
  - iii. reputation of Ibis.

## Improvements

54. The parties acknowledge and agree that:
55. certain Improvements may be made from time to time;
56. all Intellectual Property relating to the Improvements automatically vest in Ibis (or its nominees) upon creation, and shall be the sole and exclusive property of Ibis (or its nominees), excluding any Improvements to the Goods, which shall be owned by the Consumer provided that the Consumer has fulfilled its obligations under clause 29 of this Agreement; and
57. the Consumer will:
58. promptly inform Ibis of (and disclose to Ibis) all Improvements developed by the Consumer;
59. consent (and will obtain the consent of all their personnel) to any of Ibis's (or its nominees') acts or omissions which may be in breach of the Moral Rights that may be held by the Consumer and/or their personnel in any works constituting, containing or created in connection with the Improvements; and
60. do (and will procure their personnel to do) all things and sign all documents that may be necessary to vest and secure ownership, registration or other protection of such Intellectual Property relating to the Improvements in Ibis (or its nominees).

## Indemnity and Third Party Liability

61. Ibis does not represent or warrant, and hereby disclaim any representations or warranties, whether express or implied by law, to the extent permitted by law, that the provision of and access to the website and/or Managed Hosted Services and any information or software contained or referred to therein will be accessible, uninterrupted or error-free, that defects will be corrected, or that the website and/or Managed Hosted Services or the server that makes it available are free of viruses or other harmful components, or that the Consumer has the ability to transmit and receive information from or through the website.
62. The Consumer acknowledges that access to the website and/or Managed Hosted Services may be suspended, restricted, throttled, or interrupted for reasons including maintenance, system upgrades, cyber-attacks, DDoS events, platform migration, or failures in third-party infrastructure.
63. Ibis implements reasonable security measures but does not guarantee immunity from cyber threats. The Consumer is solely responsible for securing its devices, networks, browsers, and credentials when accessing the website and/or the Managed Hosted Services.
64. Ibis shall not be responsible for harm arising from:
  - a. phishing attempts impersonating Ibis
  - b. compromised user devices
  - c. insecure networks
  - d. man-in-the-middle attacks
  - e. third-party browser extensions or ad-blockers interfering with website content or functionality of Managed Hosted Services.
65. The Consumer acknowledges that the Managed Hosted Services may rely on third-party services and infrastructure to deliver certain functionalities (Third Party Services), and the Consumer to release Ibis from all liability and Claims resulting from the Managed Hosted Services being unavailable or otherwise interrupted due to the actions or inactions of those third parties.
66. The Consumer agrees to indemnify Ibis and hold Ibis harmless from all Claims and liability arising out of or in connection with the unavailability or interruption of the Managed Hosted Services caused by Third Party Services.
67. The Consumer acknowledges that the interruptions caused by Third Party Services may constitute a force majeure event, and Ibis shall be excused from performance of its obligations under this Agreement during such events to the extent reasonably necessary. For the avoidance of any doubt this includes circumstances where Microsoft, or Google, or Amazon have service interruptions.
68. The information provided herein is to be used entirely at the Consumer's own risk. In no event shall Ibis or its principals, owners, officers, managers, employees, representatives, contractors or agents be liable for any direct, indirect, incidental, special, exemplary, punitive, or consequential loss, injury or damage of any kind whatsoever (including without limitation loss of data, loss of revenue or anticipated profits, loss of business, loss of opportunity, loss of goodwill or injury to reputation and losses suffered by third parties), however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise), arising in any way out of or in connection with the provision of or any access to, use of or participation in the website or Managed Hosted Services and any information or software contained or referred to therein, or any copying, display or other use thereof or the submission or contribution by the Consumer of any information to us or the website and/or the Managed Hosted

Services, irrespective of whether such loss, injury or damage was foreseen, foreseeable, known or otherwise or whether we have been advised of the possibility of such loss, injury or damage, except only in the case of death or personal injury.

69. Upon a request by Ibis, the Consumer agrees to defend, indemnify, and hold harmless Ibis and its principals, owners, officers, managers, employees, representatives, contractors or agents from any and all liabilities, losses, Claims and expenses, including legal costs and expenses that arise from the Consumer's use or misuse of the Managed Hosted Services or any information or software contained or referred to therein or the Consumer's violation of these terms and conditions, without any obligation on Ibis' part to follow any instructions, directions or suggestions made by you.
70. The Consumer's indemnification obligations include, without limitation, Claims arising from:
  - a. misuse of the website and/or Managed Hosted Services or automated scraping tools;
  - b. introduction of malware or harmful code;
  - c. infringement of third-party IP rights;
  - d. unlawful or defamatory content uploaded by the Consumer;
  - e. privacy or data-protection violations caused by the Consumer's activities;
  - f. fraudulent impersonation of Ibis representatives or customers;
  - g. breach of cybersecurity duties or attempted unauthorised access.
71. Ibis reserves the right (but not the obligation) to assume exclusive control of the defence of any claim for which you are required to indemnify us.

### Supplier Warranty and Guarantees

72. The Consumer is responsible for determining whether the Software will satisfy their requirements. Ibis does not guarantee or warrant that the Software will satisfy all of the requirements of the Consumer. Ibis gives no performance warranties. Ibis excludes, and expressly disclaims, all express and implied warranties of merchantability or fitness for a particular purpose.
73. Ibis will not be held liable for any changes in the Software made by the developers.
74. Ibis does not warrant that the Software will be compatible with every computer system, network environment or device. It is the Consumer's responsibility to ascertain whether the Software is compatible with their computer system, network environment or device. Ibis expressly disclaims any representation, warranty or guarantee that the Software will function as intended while running on any particular computer, computer network, network file server, device or with other hardware or software.
75. Ibis does not warrant that the Software is free of "Bugs" or is error free. Ibis will not be responsible to the Consumer for costs or damages incurred as a result of any such "Bugs", errors or defects. The existence of such errors will not constitute a breach of this Agreement.
76. Fixes for "Bugs" in the Software may be provided as Software Updates by the Software Developer.
77. The Consumer is responsible for processing data accurately in the Software and for financial data posted to third party accounting systems. Ibis expressly disclaims any responsibility or liability for financial data that is posted from the Software to any third party accounting system. Any Services provided by Ibis to investigate financial data that is posted from the Software to any third party accounting system will be charged at the normal rates for Professional Services.
78. Except for any limited warranty provided by the Software Developer, there are no other warranties, either expressed or implied, concerning the Software. The Consumer understands that the Software is licenced to the Consumer "as is".
79. Ibis will not be held liable for economic loss, consequential loss or any other form of loss whatsoever where:
  - a. the defect or failure of Goods and Services is due to or resulting from damage or misuse, negligent maintenance or care while in possession of the Consumer or the Consumer's failure to follow care instructions or recommended processes for Goods and completed Services.
  - b. the defect or failure of Goods and Services is outside the control of Ibis or due to situations Force Majeure.
80. State and Commonwealth legislation implies certain non-excludable guarantees, warranties and conditions into particular agreements for the supply of goods and services, which cannot be excluded, restricted or modified (**Non-Excludable Guarantees**). This Agreement does not exclude any Non-Excludable Guarantees.
81. The Consumer acknowledges and understands that apart from any Non-Excludable Guarantees which may be applicable, Ibis does not make or provide any express warranties or guarantees regarding the Goods or Services.

82. Subject to Part A clause 55, to the maximum extent permitted by law, Ibis excludes all warranties, terms, conditions and guarantees regarding the Goods, the Services and any other goods or services supplied or provided under this document which are implied by law (including the general law) or custom.
83. To the maximum extent permitted by law, Ibis's liability to the Consumer for a breach of any of the Non-Excludable Guarantees in respect of any goods or services provided to the Consumer under this document (including but not limited to the Goods and Services) is limited to any one of the following, at the option of Ibis:
- in the case of goods, replacement of the goods or the supply of equivalent goods, repair of the goods, payment of the cost of replacing the goods or acquiring equivalent goods, or payment of the costs of having the goods repaired; and
  - in the case of services, the supply of the services again, or payment of the cost of having the services supplied again.

### **Disclaimer**

84. To the maximum extent allowed by law, Ibis disclaims all liability, whether in contract or tort, for any loss or damage arising from the Consumer's use of the Software. Such disclaimer applies to direct, indirect, special and consequential damages including loss of profit, business revenue, goodwill, loss of production, loss of product, losses resulting from down-time of the Consumer's domain or e-mail system, losses resulting from system crashes, loss of data or e-mails, or failure to achieve anticipated savings or efficiencies.

### **Workplace Health and Safety**

85. The parties (and their employees, agents and subcontractors) must comply with all applicable workplace health and safety laws and all safety instructions (including any Workplace Health & Safety policies) reasonably issued by the other party from time to time.

### **No Waiver**

86. All the original rights, powers, exemptions and remedies of Ibis will remain in full force notwithstanding any neglect, forbearance or delay in the enforcement thereof. Ibis will not be deemed to have waived any condition unless such waiver will be in writing under signature of Ibis or an authorised officer thereof and any such waiver, unless the contrary will be expressly stated, will apply to and operate only in a particular transaction, dealing or matter.

### **Default and Termination**

87. This Agreement may be terminated by Ibis in the event the Consumer is in breach of any of the foregoing terms and conditions without any further liability whatsoever on the part of Ibis.
88. This Agreement may be terminated by Ibis immediately on written notice to the Consumer, if an Event of Default of payments due to Ibis by the Consumer occurs.
89. Default will also mean, if the Consumer:
- Will commit any act of bankruptcy, or enter into any composition or arrangement with creditors.
  - Where the Consumer is a Company do any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of Ibis Ltd or if a Receiver is appointed in respect of all or any assets of Ibis.
90. Termination of this agreement will not relieve the Consumer of its obligations to pay all money owed by it to Ibis on any account whatsoever, which money will be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this agreement will not relieve the Consumer from liability arising from any antecedent breach of the terms of this agreement.
91. Upon the termination of this Agreement in the event of default or cessation of Services by the Consumer, all rights of the Consumer granted by this Agreement will terminate and the Consumer will not be entitled to receive any rebate or refund of the whole or any part of the money paid pursuant to this Agreement and the Consumer will return any Goods and Services remaining unpaid to Ibis.
92. The provisions of clauses 44 to 47 shall remain in force upon the termination of this Agreement and remain binding on the relevant parties.

### **Notices**

93. Any notice required to be given by the Consumer must be delivered to 'Ibis Business Intelligence Solutions Pty Ltd' at PO Box 197, Blackwood, South Australia 5051, or given by email to [admin@ibisbis.com.au](mailto:admin@ibisbis.com.au) or otherwise to the last known place of business by registered letter.

## **Dispute Resolution**

94. A party will as soon as reasonably practicable give the other party notice of any dispute arising between them under this agreement ('**Dispute**').
95. If there is a Dispute, the parties to the Dispute will endeavour to resolve the Dispute within a maximum of ten (10) business days of receiving notice of the Dispute.
96. If, following the Dispute resolution process set out in Part A clause 69, the parties do not resolve the Dispute, then the parties will endeavour to settle their Dispute by mediation. Either party may initiate mediation by giving written notice to the other party. The Dispute will be mediated in accordance with the current Australian Commercial Disputes Centre Guidelines for Commercial Mediation. Those Guidelines are incorporated into this Agreement. Where there is any inconsistency between those Guidelines and this Agreement, this Agreement prevails.
97. If the Dispute is not resolved by mediation within a further 10 business days, then parties may refer the Dispute to the Courts or arbitration.
98. Nothing in this Agreement will prevent either party from seeking urgent injunctive relief.

## **Severance**

99. Any illegality, unenforceability or invalidity in this Agreement will not affect the rest of this Agreement which will remain in full force and effect unless the commercial interests of either party are materially and adversely affected.

## **General**

100. This Agreement is governed by and construed according to the law in force in the state of South Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State.

## Part B - Terms and Conditions for Ostendo Software

1. Ostendo Software will be invoiced at the List Price set by the Supplier current at the date of invoice plus GST as applicable. Software is supplied as an installation file without any media or printed material.
2. Pricing for Ostendo Continuum or Ostendo Freeway Software does not include software installation, system setup and configuration, customisations, training, professional services, support, hardware, devices, wiring, cloud hosting, artificial intelligence etc.
3. User count is based on concurrent licensing, ie the number of users that can be simultaneously logged in to Ostendo at any one time. There is no restriction on the number of computers Ostendo can be installed on or the number of users that can be setup in Ostendo.
4. A dedicated Ostendo Continuum Software Licence per service is required to run any of the following services. Such licences will not be available for end users while running the respective service.
  - a. A special Technology Licence must be purchased to run the API Service Connector for connecting to the Freeway range of apps or third party programmes.
  - b. Queue Services for running events on a fixed or scheduled basis.
  - c. One licence enables unlimited Ostendo client installations running custom data screens only in Ostendo, such as the Time Capture Lite screen that comes with Ostendo.
  - d. Web Services for remote access to connect or enquire into the database via the internet, or to assign incoming emails from Microsoft Outlook for viewing in Ostendo.
5. Custom or third party developed modules are not included in the Software Licence Fee.
6. The Software must be installed on Microsoft Windows® server based networks by qualified and experienced technicians.
7. The Ostendo Software Licence grants the Licencee the right to use the Ostendo Continuum Software for one (1) company database, (i.e. on the same physical premises, on the same server, with the same computer users and with the same business owners). Multi-Company licence pricing is available on request.
8. The Ostendo Software Licence Agreement requires that Ostendo Software licences must be renewed annually. This fee is due 12 months after the purchase of the software and every year thereafter. The Software Annual Licence Renewal Fee is due every year on the purchase anniversary date of the original first licence. This 20% fee is calculated on the day of the annual anniversary purchase date of the original first licence by using the retail price of the day multiplied by the number of issued licences. This Annual Licence Renewal Fee includes upgrades and updates released during that year via internet download. It does not include any Software Support.
9. The Ostendo Software licence renewal is due 12 months after the first purchase date of an Ostendo Software licence. The due date of the Ostendo Software licence renewal is not related to any go-live date or the Consumer's use of Ostendo Software.
10. The Consumer is responsible for determining whether the Software will satisfy their requirements. Ibis does not guarantee or warrant that the Software will satisfy all of the requirements of the Consumer. Ibis gives no performance warranties. Ibis excludes, and expressly disclaims, all express and implied warranties of merchantability or fitness for a particular purpose.
11. Except for any limited warranty provided by the Software Developer (thirty (30) day "Limited Warranty and Disclaimer of Other Warranties" in the Development-X Ltd "Software Licence and Maintenance Agreement"), there are no other warranties, either expressed or implied, concerning the Software. The Consumer agrees that the Software is licensed to the Consumer "as is".
12. The Consumer is responsible for processing data accurately in Ostendo Software and for financial data posted to third party accounting systems. Ibis expressly disclaims any responsibility or liability for financial data that is posted from Ostendo Software to any third party accounting system. Any Services provided by Ibis to investigate financial data that is posted from Ostendo Software to any third party accounting system will be charged at the normal rates for Professional Services.
13. The Consumer is responsible for the security of the Ostendo API and the Ostendo API key in any connection between Ostendo Software and Ostendo Freeway or any third party system including, but not exclusive to, spreadsheets and websites. Ibis expressly disclaims any responsibility or liability for any security breach that results from the Consumer's use of the Ostendo API or the Ostendo API key.
  - a. The Consumer is responsible for correctly installing a valid and current security certificate signed by a trusted Certifying Authority (CA) and for correctly configuring port forwarding on their computer system before using the Ostendo API.
  - b. The Consumer is responsible for ensuring that the Ostendo API key is not published to, or exposed in any URL or exposed in any spreadsheet, script, code or custom software.

- c. The Consumer is responsible for keeping the Ostendo API key secure and confidential.
  - d. The Consumer is responsible to whom it provides the Ostendo API key or who it requests Ibis to provide it to.
  - e. The Consumer is responsible for managing user security setup in Ostendo Software to ensure that only authorised users have access to the Ostendo API key.
14. The Consumer is responsible for the security of any Firebird ODBC driver or any Firebird database utility installed on its computer system that can be used to make a connection to an Ostendo Software database. Ibis expressly disclaims any responsibility or liability for any security breach that results from the Consumer's use of the Firebird ODBC driver or any Firebird database utility.
15. All Software must be used strictly in accordance with the terms of the "[Software Licence and Maintenance Agreement](#)" with the Software Developer available on this [link](#). The Consumer will ensure that its employees, subcontractors or agents who have authorised access to the Software read, understand and agree to comply with the Software Licence Agreement. The Consumer takes full responsibility for any breach or alleged breach of the terms of the Software Licence Agreement by the Consumer or any of its employees, subcontractors or agents and indemnifies Ibis in respect of any claim, costs or damages suffered by Ibis as a result of any such breach or alleged breach.
16. All rights, title or interest in respect of the intellectual property rights in the Software remain with the Software Developer at all times.

## Part C - Terms and Conditions for Professional Services

1. Professional Services are provided by Ibis for;
  - a. Implementation and ongoing support for Ostendo Continuum (ERP) and Ostendo Freeway Mobility App Software.
  - b. Consultancy for business process improvement and continuous improvement.
2. Professional Services will be provided online and onsite as agreed between Ibis and the Consumer.
3. Professional Services will be provided by Ibis during the time period of 9:00am to 5:00pm, Monday to Friday, but excluding public holidays as defined in the State legislation relating to public holidays. Coverage of Professional Services may be extended by agreement in writing.
4. Professional Services provided by Ibis are subject to the availability of Consultants.
5. Professional Services requested or accepted by the Consumer will be provided on a do and charge basis at the agreed Professional Services Rate.
6. Any expenses, including parking fees, will be charged at cost.
7. The Consumer undertakes;
  - a. to ensure that appropriate staff are available during the implementation.
  - b. to maintain the Software to the requirements advised or published by the Software Developer.
  - c. to implement a backup and disaster recovery plan, and regularly backup its data and ensure the verification of its backed up data with a retention policy of at least one month.
  - d. to ensure a full backup of data, applications and operating software has been performed prior to a Consultant from Ibis Ltd performing Professional Services.
8. Unattended remote access to the Consumer's server with full Administrator rights and use of TeamViewer on client computers is required in order for Ibis to provide online services and support.
9. The Consumer will clearly identify and define their objectives, requirements and current procedures and any other pertinent information to Ibis.
10. The Consumer is required to sign off at intervals for project reviews during the implementation.
11. The Consumer will appoint a project manager who is responsible for managing and driving the project to complete implementation tasks in a timely manner. The project manager must be knowledgeable about the business, be given the authority to make decisions, assign tasks to others and be able to spend sufficient time on the project.
12. The Consumer will appoint a project team who are responsible for managing and completing implementation tasks in a timely manner.
13. The Consumer is responsible for performing the implementation tasks assigned to its staff and the timeframe in which they are completed.
14. The Consumer will follow the processes and procedures set by Ibis for managing and documenting the implementation project.
15. The role of Ibis in the implementation project is to oversee the management of the project in conjunction with the Consumer's project manager and provide guidance and direction to the Consumer's project team.
16. Ibis will take all reasonable endeavours to perform the implementation tasks assigned to it in a timely manner but does not guarantee meeting estimated timeframes.
17. The Consumer is responsible for checking the accuracy of data prepared and provided to Ibis for import into the live database.
18. Ibis will provide training to the project team and system champions who will conduct the training of other staff and will be the first line of support for staff support queries. The project team and system champions must attend all relevant training and prototyping sessions.
19. The Consumer agrees to Go-Live on the system only when the setup and data in the system is ready and staff are sufficiently trained and ready.
20. Ibis does not guarantee meeting estimated Go-Live dates.
21. Ibis and The Consumer will work together to avoid and mitigate risks by:
  - a. At the project outset identifying and documenting risks and potential risks to the project and formulating a plan to manage them.
  - b. Regularly reviewing risks to the project and the plan to manage them.

- c. Informing the other party immediately of any unforeseen changes, new developments or any other issues or risks which may impact on the project so that a plan to manage them can be formulated.
  - d. Setting realistic and unambiguous goals, expectations and estimated timeframes at the project outset.
  - e. The Consumer being responsible for handling any in house culture issues that may need to be addressed or may cause issues to this project, including any resistance to change.
  - f. The Consumer committing adequate time and resource to the project.
  - g. The Consumer appointing a suitable project manager and suitable staff to the project team.
22. The Consumer will give Ibis forty-eight (48) hours notification of cancellation of an onsite appointment otherwise a fee of two (2) hours consulting time may be applicable.
23. The Consumer will pay for service time if Ibis has presented itself to commence services at pre-arranged times, but where the Consumer, its employees or agents have caused delays by appropriate staff not being available or implementation tasks are not completed or in the readiness of the site or readiness of computer equipment with which services are to be applied.
24. The Consumer will follow the procedure for submitting Software Support queries as set by Ibis. If this procedure is not followed Ibis does not guarantee a response to Software Support queries.
25. Ibis aims to respond to Software Support queries by the end of the next business day. Response time means how long it takes to respond to Software Support queries, it does not mean how long it will take to resolve Software Support queries. While all reasonable endeavours will be taken to resolve Software Support queries in a timely fashion commensurate with the urgency of such requests, Ibis cannot guarantee how long it will take to resolve Software Support queries, or guarantee that all Software Support queries can be resolved.
26. It is agreed by the parties that the Consumer is responsible for diagnosing whether Software Support issues are caused by Hardware or Software and that if Ibis is requested to investigate and diagnose faults in order to advise the Consumer of corrective action the Professional Services costs applicable will be met by the Consumer.
27. Professional Services may not be available for some versions of the Software, at the sole discretion of Ibis.
28. It is agreed by the parties that in no event will Ibis be liable for: any delay, damage, loss, injury, failure or breakdown that the Consumer may suffer as a consequence of any errors or omissions in the provision of Professional Services, including any delay, damage, loss, injury, failure or breakdown to Consumer's other programmes and equipment, and in general any, special, indirect, or consequential damages, including but not limited to, loss of business, loss of operations, loss of profits, loss or corruption of information, data or records, re-procurement costs, statute penalties or loss of use from any cause whatsoever.
29. To provide efficient and effective Professional Services, Ibis may assign this Agreement or sub-contract some or all of its obligations hereunder.

## Part D - Terms and Conditions for Technical Services

1. Technical Services are provided by Ibis for;
  - a. Installation of Ostendo software including Firebird SQL.
  - b. Installation of the Ostendo API, Queue and Web Services.
  - c. Installation of the **“Ibis Internal Ostendo Backup System”** which means the installation and setup of a system whereby Scripts written by Ibis are run at regular intervals throughout the day by the Windows Task Scheduler to run the Firebird Gbak backup system to create backup files of the specified Ostendo database safely while it is running, into specified backup file folders. This is an internal backup system only with the sole function to create backup files of the specified Ostendo database in specified backup file folders in order for them to be backed up the Consumer’s own backup of their Computer system. The Ibis Internal Ostendo Backup System only backs up the specified Ostendo database and does not backup the Ostendo directory or any other files such as Ostendo Report files or Ostendo Workflow files.
  - d. Installation, setup and use of the **“Ibis Monitoring System”** which is a third party system owned and installed by Ibis to provide ongoing monitoring that the Ibis Internal Ostendo Backup System and all installed Ostendo Services (API, Queue and Web Services) are running on the Consumer’s computer system. This system also helps keep all installed Ostendo Services (API, Queue and Web Services) running in case of events on the Consumer’s computer system that may normally stop them running
  - e. Installation of the Firebird ODBC driver for reporting purposes only.
  - f. Network and system troubleshooting support for Ostendo and Firebird.
2. Technical Services will be provided by Ibis during the time period of 9:00am to 5:00pm, Monday to Friday, but excluding public holidays as defined in the State legislation relating to public holidays.
3. Technical Services are provided online only.
4. Technical Services are provided on a do and charge basis at the normal Professional Services Rate.
5. Technical Services will be provided by qualified and experienced technicians.
6. Support for installation of Software is limited to user queries and troubleshooting. Training for Software installation or Technical Services is not provided by Ibis.
7. Technical Services provided by Ibis are subject to the availability of Technicians.
8. Remote access to the Consumer’s file server with full Administrator rights and remote access to client computers is required in order for Ibis to provide Technical Services.
9. The cost of setting up remote access systems as specified by the Consumer will be charged for.
10. Ownership of the Ibis Monitoring System remains with Ibis.
11. Ongoing remote access to the Consumer’s file server with full Administrator rights and remote access to client computers is required for Ibis to install and maintain the Ibis Internal Ostendo Backup System and the Ibis Monitoring System.
12. The Consumer undertakes to implement a backup system and disaster recovery plan, and be responsible for regularly backing up its data and ensuring the verification of its backed up data, with a sound backup copy retention policy.
13. The Consumer will ensure that a full backup of data, applications and operating software has been performed prior to a Technician from Ibis performing Technical Services.
14. The Consumer understands and acknowledges that the Ostendo Firebird database is not VSS aware and that it has been advised by Ibis not to backup the Ostendo database using a backup system that uses a VSS service.
15. The Technical Services charged by Ibis to install Ostendo on the Consumer’s computer system will include;
  - a. Installation of the Ibis Internal Backup System.
  - b. One-off price for the use of the Ibis Monitoring Service system.
  - c. Ongoing annual subscription for the use of the Ibis Monitoring Service.
16. The Technical Services charged by Ibis to install the Ibis Internal Backup System, API Service, Queue Services or Web Services on the Consumer’s computer system will include;
  - a. One-off price for the use of the Ibis Monitoring Service system.

- b. Ongoing annual subscription for the use of the Ibis Monitoring Service.
  - c. Installation of the Ibis SSL and DNS Control system.
  - d. Ongoing annual subscription for the Ibis SSL and DNS Control system.
17. Technical Services to update and maintain the Ibis Monitoring System will be charged from time to time to keep these systems up to date with the latest versions. Non current versions of these systems may not be supported by Ibis.
18. The Consumer understands and acknowledges that the Ibis Internal Ostendo Backup System is an internal backup system only, with the sole function to create backup files of the Consumer's Ostendo database in order for them to be backed up by the Consumer's own backup of their Computer system, and that;
  - a. It is not a full backup system and is only intended to supplement the Consumer's own backup of their Computer system.
  - b. It only backs up the specified Ostendo database and does not backup the Ostendo directory or any other files such as Ostendo Report files or Ostendo Workflow files.
19. If the Ibis Internal Ostendo Backup System is installed on the Consumer's Computer system, the Consumer accepts responsibility for regularly checking that the Ibis Internal Ostendo Backup System is running and that it is creating backup files in the specified backup folders.
20. Ibis will not be responsible or liable to the Consumer for costs or damages incurred as a result of the Ibis Internal Ostendo Backup System, API Service, Queue Services or Web Services stopping for any reason, or for any subsequent failure of backups of the Ostendo database.
21. If the Ibis Internal Ostendo Backup System API Service, Queue Services or Web Services stop running on the Consumer's computer system for any reason the Consumer shall pay for the cost of reinstating them.
22. Ibis does not warrant that the Ibis Internal Ostendo Backup System, API Service, Queue Services or Web Services will be compatible with every computer system, network environment or device. Ibis expressly disclaims any representation, warranty or guarantee that the Ibis Internal Ostendo Backup System, API Service, Queue Services or Web Services will function as intended while running on any particular computer, computer network, network file server, device or with other hardware or software.
23. It is agreed by the parties that the Consumer is responsible for diagnosing whether support issues are caused by Hardware or Software and that if Ibis is requested to investigate and diagnose faults in order to advise the Consumer of corrective action the Technical Services costs applicable will be met by the Consumer.
24. It is agreed by the parties that in no event will Ibis be liable for: any delay, damage, loss, injury, failure or breakdown that the Consumer may suffer as a consequence of any errors or omissions in the provision of Technical Services, including any delay, damage, loss, injury, failure or breakdown to Consumer's other programmes and equipment, and in general any, special, indirect, or consequential damages, including but not limited to, loss of business, loss of operations, loss of profits, loss or corruption of information, data or records, re-procurement costs, statute penalties or loss of use from any cause whatsoever.
25. To provide efficient and effective Technical Services, Ibis may assign this Agreement or sub-contract some or all of its obligations hereunder.

## Part E - Terms and Conditions for Ibis Managed Hosted Services

1. Ibis Managed Hosted Services will be located in Australia East.
2. Ibis undertakes;
  - a. to implement reasonable security measures.
  - b. to maintain the Software to the requirements advised or published by the Software Developer.
  - c. To perform database maintenance on a regular basis.
  - d. to implement a backup system and disaster recovery plan, and regularly backing backup the Consumer's data and ensure the verification of the backed up data, with a sound backup copy retention policy.
  - e. To monitor the performance of the Managed Hosted Service, Ostendo database backups, Ostendo API services and Windows Scheduled Tasks.
3. The monthly fee for the Ibis Managed Hosted Service includes the initial setup of the Service. The monthly fee shall commence five (5) business days after completion of the initial setup to allow the Consumer a reasonable period for testing.
4. Ibis reserves the right to adjust subscription fee for the Ibis Managed Hosted Service at any time, without prior notice, in the event of an increase in direct operational costs, third-party vendor fees, regulatory levies, or other external expenses required to maintain the Services. Continued use of the Services following any such adjustment constitutes acceptance of the new fees.
5. Disk space usage under this Agreement shall be calculated based on the aggregate size of the Consumer's database(s), all files linked to or associated with the database(s), and a reasonable allowance determined by Ibis for anticipated growth and future storage requirements.
6. Any automated functions or processes implemented for the Consumer may result in increased utilisation of server resources. Ibis reserves the right to apply additional charges based on the extent of such resource usage.
7. Professional Services, including (but not limited to) upgrades of Ostendo, testing the Consumer's Ostendo system and linked files, resolving issues relating to scripts, customisations or reports, providing or restoring backups on demand, and disaster recovery services, shall be charged on a do and charge basis at the Professional Services rates.
8. In the event that the Consumer's data requires restoration for any reason, the Consumer shall bear all costs of such restoration, including (without limitation) the costs of restoring the data and any associated setup and installation on a replacement or new server as required.
9. Remote access to the Managed Hosted Service server will not be provided to the Consumer under any circumstances.
10. To provide efficient and effective Professional Services, Ibis may assign this Agreement or sub-contract some or all of its obligations hereunder.
11. The Consumer acknowledges and agrees that Ibis will engage third-party providers to provide Managed Hosted Services to the Consumer. The Consumer must (and will procure its employees, subcontractors or agents to) comply with any terms and conditions imposed by these third-party providers as advised by Ibis from time to time, and failure to do so may result in the Consumer being unable to access the relevant Products and/or Services.
12. Ibis does not represent or warrant, and hereby disclaim any representations or warranties, whether express or implied by law, to the extent permitted by law, that the provision of and access to the Managed Hosted Services and any information or software contained or referred to therein will be accessible, uninterrupted or error-free, that defects will be corrected, or that the Managed Hosted Services or the server that makes it available are free of viruses or other harmful components, or that the Consumer has the ability to transmit and receive information from or through the website.
13. The Consumer acknowledges that access to the Managed Hosted Services may be suspended, restricted, throttled, or interrupted for reasons including maintenance, system upgrades, cyber-attacks, DDoS events, platform migration, or failures in third-party infrastructure.
14. Ibis implements reasonable security measures but does not guarantee immunity from cyber threats. The Consumer is solely responsible for securing its devices, networks, browsers, and credentials when accessing the Managed Hosted Services.
15. Ibis shall not be responsible for harm arising from:
  - a. phishing attempts impersonating Ibis

- b. brute force attacks
  - c. compromised user devices
  - d. insecure networks
  - e. man-in-the-middle attacks
16. The Consumer acknowledges that the Managed Hosted Services may rely on third-party services and infrastructure to deliver certain functionalities (Third Party Services), and the Consumer agrees to release Ibis from all liability and Claims resulting from the Managed Hosted Services being unavailable or otherwise interrupted due to the actions or inactions of those third parties.
17. The Consumer agrees to indemnify Ibis and hold Ibis harmless from all Claims and liability arising out of or in connection with the unavailability or interruption of the Managed Hosted Services caused by Third Party Services.
18. The Consumer acknowledges that the interruptions caused by Third Party Services may constitute a force majeure event, and Ibis shall be excused from performance of its obligations under this Agreement during such events to the extent reasonably necessary. For the avoidance of any doubt this includes circumstances where Microsoft, or Google, or Amazon have service interruptions.
19. The information provided herein is to be used entirely at the Consumer's own risk. In no event shall Ibis or its principals, owners, officers, managers, employees, representatives, contractors or agents be liable for any direct, indirect, incidental, special, exemplary, punitive, or consequential loss, injury or damage of any kind whatsoever (including without limitation loss of data, loss of revenue or anticipated profits, loss of business, loss of opportunity, loss of goodwill or injury to reputation and losses suffered by third parties), however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise), arising in any way out of or in connection with the provision of or any access to, use of or participation in the Managed Hosted Services and any information or software contained or referred to therein, or any copying, display or other use thereof or the submission or contribution by the Consumer of any information to us or the Managed Hosted Services, irrespective of whether such loss, injury or damage was foreseen, foreseeable, known or otherwise or whether we have been advised of the possibility of such loss, injury or damage, except only in the case of death or personal injury.
20. Upon a request by Ibis, the Consumer agrees to defend, indemnify, and hold harmless Ibis and its principals, owners, officers, managers, employees, representatives, contractors or agents from any and all liabilities, losses, Claims and expenses, including legal costs and expenses that arise from the Consumer's use or misuse of the Managed Hosted Services or any information or software contained or referred to therein or the Consumer's violation of these terms and conditions, without any obligation on Ibis' part to follow any instructions, directions or suggestions made by you.
21. The Consumer's indemnification obligations include, without limitation, Claims arising from:
- a. misuse of the website and/or Managed Hosted Services or automated scraping tools;
  - b. introduction of malware or harmful code;
  - c. infringement of third-party IP rights;
  - d. unlawful or defamatory content uploaded by the Consumer;
  - e. privacy or data-protection violations caused by the Consumer's activities;
  - f. fraudulent impersonation of Ibis representatives or customers;
  - g. breach of cybersecurity duties or attempted unauthorised access.
22. Ibis reserves the right (but not the obligation) to assume exclusive control of the defence of any claim for which you are required to indemnify us.

## Part F - Terms and Conditions for Custom Business Intelligence and Developments

1. Custom Business Intelligence and Developments provided by Ibis may include, but are not limited to;
  - Ostendo forms, reports, scripts, database triggers and procedures, additional tables or modules, interfaces or data exchange with other systems or any other customisation.
  - Ostendo Freeway Inquiries.
  - Power BI and Klipfolio or similar reports, insights or KPI's.
  - Data warehousing, OLAP Cubes, Balanced Scorecards and any other customised Business Intelligence.
  - Sharepoint developments.
  - Any customised software developments.
2. Any Custom Business Intelligence and Development that is requested by the Consumer and is accepted by Ibis will follow the process outlined below.
  - a) Custom Business Intelligence and Developments requested by the Consumer will be provided on a do and charge basis only
  - b) Custom Business Intelligence and Developments will be specified in writing by Ibis and the Consumer. This specification may be chargeable even if the Consumer does not proceed with the Custom Development.
  - c) Once the specification is signed off by Ibis and the Consumer, then Ibis may provide the Consumer with an Indicative Price. This Indicative Price is not a Quotation or an Estimate. Ibis may not be able to provide an Indicative Price for some Custom Business Intelligence and Developments.
  - d) Some Custom Business Intelligence and Developments may require testing and prototyping to be done in order to determine if the Custom Business Intelligence or Development is viable and technically possible and/or to provide an Indicative Price. This will be done on a do and charge basis. The Consumer will pay for this testing and prototyping even if the result is that the Custom Business Intelligence or Development is not viable.
  - e) If a Custom Business Intelligence and Development project is started and unexpectedly is not viable or technically possible, the Consumer will pay Ibis for the work done on it.
  - f) Any changes to the specification will be a Variation specified in writing. Once a Variation is signed off by Ibis and the Consumer, Ibis may provide the Consumer with an Indicative Price for the Variation.
  - g) Custom Business Intelligence and Developments will be completed by Ibis as soon as practicable. Ibis does not guarantee meeting deadlines.
  - h) Ibis may require, at its sole discretion, that some Custom Business Intelligence and Developments must be tested on a test copy of the Consumer's data before it is installed on the Consumer's live database.
  - i) The Consumer will sign off the Custom Business Intelligence and Development as complete when tests and trials verify that it is functioning as specified.
  - j) Ibis may supply the customer with the Source Code of a Custom Business Intelligence and Development as soon as full payment of all invoices for that Report or Customisation has been received and cleared. However, Ibis reserves the right to encrypt some or all code that contains intellectual property that is proprietary to Ibis or its Partners.
  - k) Any further work on the Custom Business Intelligence and Development, including fixing bugs or issues, during testing or after completion will be invoiced on a do and charge basis per month.
3. Ibis has developed some standard customisations that are sold as a product in their own right. These will always be provided encrypted and the source code not provided.
4. Pricing for Custom Business Intelligence and Developments does not include installation, testing, system setup and configuration, training, professional services, support, hardware, devices, wiring etc.
5. All rights, title, ownership or interest in respect of the intellectual property in Custom Business Intelligence and Developments provided by Ibis remain with Ibis or its Partners at all times. The Consumer is granted a non-exclusive, limited, non-transferable, non-sublicensable, royalty-free, Australia-wide licence to use them.
6. Training or Software Support for the Consumer on how to develop their own Custom Business Intelligence and Developments falls outside the scope of services offered by Ibis.

7. Source Code that is the Intellectual Property of Ibis or it's Partners used in any Custom Business Intelligence or Development shall not be provided to the Consumer.

## Part G - Terms and Conditions for Ibis Software or Business Intelligence Developments

1. Ibis Software or Business Intelligence Developments may comprise any Business Intelligence development, report, script, trigger, procedure, table, module, web development, or software developed by Ibis as a proprietary product for resale to the Consumer "as is." These may be standalone or integrate with Ostendo Continuum (ERP), Ostendo Freeway, Online Webstore Systems, Microsoft Power BI, Klipfolio, Microsoft Excel, Microsoft Sharepoint, Data Exchange with third party systems, or other Software.
2. Ibis Software or Business Intelligence Developments will be invoiced at the price set by Ibis current at the date of invoice plus GST as applicable.
3. Pricing for Ibis Software or Business Intelligence Developments does not include installation, testing, customisations, system setup and configuration, training, professional services, support, hardware, devices, wiring etc.
4. Some Ibis Software or Business Intelligence Developments may require a dedicated Ostendo Software Licence to run any of the following services. Such licences will not be available for end users while running the respective service.
  - a. A special Technology Licence must be purchased to run the API Service Connector for connecting to the Freeway range of apps or third party programmes.
  - b. Queue Services for running events on a fixed or scheduled basis.
  - c. One licence enables unlimited Ostendo client installations running custom data screens only in Ostendo, such as the Time Capture Lite screen that comes with Ostendo.
  - d. Web Services for remote access to connect or enquire into the database via the internet, or to assign incoming emails from Microsoft Outlook for viewing in Ostendo.
5. Ibis Software or Business Intelligence Developments may be supplied as an installation file without any media or printed material.
6. Updates and upgrades for Ibis Software or Business Intelligence Developments will be invoiced and supplied from time to time.
7. Some Ibis Software or Business Intelligence Developments may require annual licence renewal.
8. The Consumer is responsible for determining whether Ibis Software or Business Intelligence Developments will satisfy their requirements. Ibis does not guarantee or warrant that Ibis Software or Business Intelligence Developments will satisfy all of the requirements of the Consumer. Ibis gives no performance warranties. Ibis excludes, and expressly disclaims, all express and implied warranties of merchantability or fitness for a particular purpose.
9. Ibis does not warrant that any Ibis Software or Business Intelligence Developments will be compatible with every computer system, network environment or device. It is the Consumer's responsibility to ascertain whether Ibis Software or Business Intelligence Developments is compatible with their computer system, network environment or device. Ibis expressly disclaims any representation, warranty or guarantee that any Ibis Software or Business Intelligence Developments will function as intended while running on any particular computer, computer network, network file server, device or with other hardware or software.
10. Any customisation to any Ibis Software or Business Intelligence Developments requested by the Consumer will be treated as a Custom Development.
11. All rights, title, ownership or interest in respect of the intellectual property in Ibis Software or Business Intelligence Development remains with Ibis or its Partners at all times. The Consumer is granted a non-exclusive, limited, non-transferable, non-sublicensable, royalty-free, Australia-wide licence to use them.
12. Ibis will not provide the Source Code of proprietary Ibis Software or Business Intelligence Developments to the Consumer.