NextTechnik.

APPENDIX SOFTWARE SERVICES AGREEMENT

This Software Services Agreement ("Agreement") is entered into as of the date of the last party to sign below ("Effective Date") between Next Technik Pty Ltd ("Next Technik"), and the entity which has executed this Agreement as identified in the Signature block below ("Customer"). Capitalised terms not defined elsewhere in this Agreement shall have the meaning given to them in the Definitions section below. Next Technik and Customer hereby agree as follows:

Definitions.

"Access" means obtaining access to the Software Program via Customer's NetSuite Software.

"Affiliate" means any entity that is under the effective control of the entity that ultimately has effective control of the first mentioned entity.

"Agreement" means these Terms and Conditions in Appendix Software Services Agreement and the Estimate.

"Confidential Information" means all information concerning, or held by, a Party's business, including information marked as confidential, that the discloser treats as confidential or which the recipient knows or ought to know is confidential, but does not include information that: (a) is in the public domain (except through unauthorized disclosure); (b) the recipient already possesses at the time of disclosure (unless the information was received through unauthorized disclosure or is subject to prior confidentiality obligations); or (c) is independently developed or acquired by the recipient (except through unauthorized disclosure).

Next Technik's Confidential Information includes all business plans, marketing information, market strategies, business practices, financial information, budgets, product roadmaps and details of future developments, products or strategies, details relating to customers, prospects, channel partners, contractors, suppliers and advisers, Next Technik's Intellectual Property Rights, the Software Program, User Documentation, any Configuration, the Agreement, all License Keys, product and service pricing and business models.

"Configuration" means any translation, adaptation or derivative work of the Software Program or User Documentation, and any configuration or settings of the Software Program whether or not they involve changes to the underlying code.

"Contract Details" means the details of the Software Program, the Service Period, the Services or other product or service options, the Price, the fees payable for the Services, payment terms, Taxes and other details relating to the particular transaction under this Agreement, as are set out in the Estimate.

"Customer" means the legal entity that Next Technik invites to sign the Estimate, and that is stated on the Estimate.

"Customer Data" includes any software, materials, code, data, text (whether or not perceptible by users), metatags, multimedia information (including sound, data, audio, video, graphics, photographs, or artwork) or any other data, items or materials that are entered by Customer, its authorized contractors or its personnel into the Software Program.

"Effective Date" means the date when both Parties have signed (electronically or otherwise) the Estimate.

"Estimate" means a document titled Estimate that sets out the Contract Details for a particular transaction, that is produced by Next Technik and signed by Customer. These Terms and Conditions are an Appendix to the Estimate.

"Force Majeure Event" includes: (a) earthquake, fire, flood or other inclement weather conditions; (b) national emergency, terrorist act, war; (c) a malfunction or failure of electricity or telecommunications equipment or services, including the internet; (d) any consequence of a virus, Trojan horse or any malicious code or denial of service attack that could not have been prevented by the use of the then current version of anti-virus software; (e) industrial action or inaction, government action or inaction, insolvency of a subcontractor of the Party claiming the Force Majeure Event; or (f) a circumstance beyond the reasonable control of the Party claiming the Force Majeure Event.

"GST" means the Australian Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act* 1999 (Cth).

"Infringement Claim" means a claim by a third person that a Software Program that is being used in accordance with the Agreement infringes any Intellectual Property Rights or Moral Rights that are enforceable in Australia.

"Intellectual Property Rights" includes copyright (other than Moral Rights), trademark, service mark, patent, design, semiconductor, circuit layout right, or other proprietary right, any right to registration of such rights, or any similar rights protected by statute, from time to time existing in Australia or elsewhere, whether created before, on or after the Effective Date.

"License Key" means a technological means of managing Access to, or use of, the Software Program that may be used to enforce the License rights acquired by Customer.

"Managed Bundle" means a customization and/or Configuration bundle including lists, records, fields, documents, scripts, workflows, help, searches, reports and other objects that are installed, updated and/or maintained by the author.

"Marks" means all trademarks, service marks, logos or other words or symbols identifying any part of the Software Program or Next Technik's business, as may be amended by Next Technik from time to time at its discretion.

"Moral Rights" means the rights of an individual that are defined as moral rights in the *Copyright Act* 1968 (Cth).

"NetSuite" means a division of Oracle.

"NetSuite Hosting Environment" means the hardware, software and network infrastructure owned or operated by Oracle (excluding any network or infrastructure outside of Oracle's firewall) that is used to host the Software Program.

"NetSuite Software" means Oracle's software applications that are used by Customer under an agreement between Oracle and Customer from time to time, and which includes SuiteFlex and SuiteBundler programs.

"New Release" means a version of the Software Program that has been produced primarily to extend, alter or improve the Software Program by providing additional functionality or performance enhancements (whether or not defects are also corrected). New Release does not include any Software Program that is marketed by Next Technik as a different product or module. Next Technik will determine at its discretion whether any Software Program is a New Release or a different product or module.

"Oracle" means Oracle America (NYSE: ORCL).

"Party" means each of Next Technik and Customer.

"Personal Information" has the meaning given to it by the *Privacy Act* 1998 (Cth).

"Price" means the amount payable for Access to the Software Program and the provision of Support during the Service Period in accordance with this Agreement, exclusive of all Taxes, as set out in the Contract Details.

"Services" means the general consulting, implementation and/or training services to be provided to Customer pursuant to an applicable statement of work signed by both Parties.

"Related Bodies Corporate" has the meaning given it by the *Corporations Act* 2001 (Cth).

"Service Period" means the period for which Customer is permitted to Access and use the Software Program and be provided with Support in accordance with the Agreement, as set out on the Estimate.

"Software Program" means the software program that is set out in the Contract Details and any Updates and New Releases. The term Software Program does not include any beta, pre-release or other special release programs. The Software Program is a "Managed Bundle" that is installed into the Customer's NetSuite account and is managed and maintained by Next Technik in accordance with this Agreement.

"Software Solution" means the Software Program operating in conjunction with the NetSuite Software on the NetSuite Hosting Environment and the User Documentation.

"Support" means the provision of support and maintenance services during the Service Period, in accordance with Next Technik's then current Support Policies found at www.nexttechnik.com/supportpolicies. The term **Support** excludes any maintenance or support of the NetSuite Software or the NetSuite Hosting Environment.

"Tax Invoice" means an invoice that is in a form that complies with *A New Tax System (Goods and Services Tax) Act* 1999 (Cth).

"Taxes" includes any GST, sales taxes, duties, withholding taxes, levies, tariffs, imposts or other charges levied by any federal, state or local government in Australia or elsewhere, that arise out of or in connection with any Software Program, Support, Services or the Agreement, and any interest, penalties or liabilities incurred on such amounts, but excludes taxes based on the net income of Next Technik.

"Update" means a version of the Software Program that has been produced primarily to provide minor functionality enhancements or to address defects in the Software Program without significantly altering the functionality of the Software Program and includes bug fixes and patches.

"User" means any person that is permitted to use the Software Program, whether or not that person is actively using the Software Program at any time.

"User Documentation" means the user manuals that are provided as part of the Software Program and any reference material and other relevant publications and aids (in electronic format, online or hard copy as determined by Next Technik) in respect of the Software Program and any updates, replacements, revisions and additions (if any) provided by Next Technik from time to time at its discretion. User Documentation excludes any document that Next Technik determines to be training material.

The words "includes" or "including" are not words of limitation.

Unless specified otherwise all amounts stated in this Agreement (including on a Estimate) are stated in AU dollars.

Headings are for convenience only and do not affect interpretation.

1. **Formation of Contract**

    1.1. This Agreement binds both Parties when the Estimate has been signed by both Parties, provided that Customer signs the Estimate within its validity period.

    1.2. To the extent that there is a conflict between:

        (a)   the Estimate;

        (b)   the Agreement;

        (c)   the Support; and

        (d)   the Services.

        the item that is higher in the list above shall prevail, subject to section 2.2.

2. **Access to the Software Program**

    2.1. The Software Program is tightly integrated with, and embedded in, the NetSuite Software and is hosted using the NetSuite Hosting Environment, and accordingly:

        (a)   the Software Program will only be available provided Customer has a valid agreement for the NetSuite Software;

        (b)   if Customer's agreement with Oracle for the NetSuite Software is suspended or terminates for any reason, then Customer will not have access to the Software Program. In this case Customer will have no claim against Next Technik, and Customer remains liable to pay Next Technik all Prices, expenses or related Taxes that are due in respect of any Software Program, Services and Support for which Customer has signed a Estimate;

        (c)   any individual's access to the Software Program (and access to certain features and functions in the Software Program) is partly determined by Customer's agreement with Oracle for the use of the NetSuite Software as well as the licensing and security rules for any individual or role that is established in the NetSuite Software;

        (d)   the terms and conditions of use of the NetSuite Software and the NetSuite Hosting Environment are included in a separate agreement between Customer and NetSuite;

        (e)   the availability of the Software Program is subject to the availability of the NetSuite Software and NetSuite Hosting Environment;

        (f)   Customer's ability to download its Customer Data from the Software Program is determined by Customer's agreement with Oracle for the NetSuite Software;

(g) Oracle's use of Customer's Data is subject to Oracle's privacy policy, as posted on Oracle's website from time to time;

(h) where Next Technik is providing Services or Support it may be necessary to access and use certain NetSuite Software programs. In this case Customer:

(i) appoints Next Technik as its lawful agent to enter into any online clickwrap agreement that NetSuite requires to be entered into in order to access and use those NetSuite software programs. For clarity, Customer is solely liable for meeting the obligations under that agreement, including payment of any fees;

(ii) permits Next Technik to use, add to, delete, modify and adapt the relevant part of the NetSuite Software or the data in it as may be required to implement or Support the Software Program;

(i) changes to:

(i) the NetSuite Software, including new releases, updates, changes to the data formats, fields and data download capabilities;

(ii) the technical requirements of the IT infrastructure that is needed to Access the Software Program;

(iii) the NetSuite Hosting Environment,

are outside Next Technik's control and may be changed by Oracle at any time. Next Technik does not incur any liability to Customer as a result of such change.

(j) Next Technik gives no warranty, representation or otherwise (nor does Next Technik adopt any warranty, representation or otherwise made by oracle or other person) in respect of the NetSuite Software, the NetSuite Hosting Environment or any other product or service provided by NetSuite or a third party;

(k) Next Technik excludes any warranty, representation or otherwise given by Oracle whether in relation to the NetSuite Software, the NetSuite Hosting Environment, any third-party software or service, the Software Program, Support, Services or otherwise.

2.2. Except to the extent permitted by law, the provisions of section 2.1 prevail over all other terms and conditions in this Agreement.

3. Access Rights

3.1. Next Technik grants Customer a non-exclusive, non-transferable right during the Service Period solely:

(a) **for a No Charge License:** for Customer's and its Affiliates' employees to Access and use the Software Program to process their own internal business information, for up to the number of Users and subject to any other limitations of use, all as set out in the Contract Details, at no cost;

(b) **for a Full Use License:** for Customer's and its Affiliates' employees to Access and use the Software Program to process their own internal business information, for up to the number of Users and subject to any other limitations of use, all as set out in the Contract Details, subject to payment of the Price and Taxes set out in the Contract Details;

(c) **for a Trial License:** for Customer's and its Affiliates' employees to Access and use the Software Program to evaluate the features and benefits of the Software Program in a non-production, non-development environment, subject to any other limitations of use, all as set out in the Contract Details. A Trial License may not be used to in conjunction with prototyping, pilots, implementation services or customizations prior to production use;

(d) to use (but not copy or adapt) the User Documentation in support of Customer's authorized use of the Software Program;

(e) to print, copy and use reports generated by the Software Program; and

(f) to allow the Software Program and User Documentation to be Accessed and used by Customer's and its Affiliates' respective contractors, provided that:

(i) the use of the Software Program and User Documentation is restricted to the same rights of usage granted to Customer, (including each such contractor as a User);

(ii) any contractor first signs an agreement with Customer (or the relevant Affiliate) that:

(A) prohibits disclosure of the Software Program and User Documentation to any other person and includes obligations of confidence that are no less onerous than those specified in the Agreement;

NextTechnik.

(B)   requires the contractor to comply with the terms relating to the Access and use of the Software Program and User Documentation.

3.2. If Customer wishes to increase the number of Users that it has a License it must first acquire a License from Next Technik for such additional Users at Next Technik's then current price.

3.3. If Customer wishes to upgrade a No Charge License or a Trial License to a Full Use License it may acquire a License from Next Technik at Next Technik's then current price.

3.4. Customer acknowledges and agrees that Next Technik may use technical means, including a License Key to prevent Customer exceeding its maximum number of permitted Users, Accessing the Software Program beyond the Service Period, where Customer has a No Charge License preventing Access to feature and functions that are only available in a Full Use License and otherwise enforce this Agreement.

4. Service Period and Renewal

4.1. On completion of each Service Period, this Agreement will automatically renew for a subsequent 12 month Service Period unless either party provides advance written notice to the other that such party does not wish to renew the Agreement. In the event either party gives notice of nonrenewal pursuant to the clause 4.1 then at the end of the current Service Period:

(a)   Customer's access to the Software Programs will be terminated, and

(b)   This Agreement will terminate.

4.2. At least 45 days Prior to the end of each Service Period Next Technik may provide Customer with a Estimate of new Service Period that includes the Price, the payment arrangements and the new terms and conditions that will apply if a new agreement is to be entered into for a new Service Period at the end of the current Service Period.

5. Exclusions

5.1. Nothing in the Agreement permits Customer to, nor to permit any person to:

(a)   download, use, copy, adapt, translate, publish, communicate to the public, or create any adaptation, translation or create a derivative work of the Software Program or the User Documentation, unless expressly permitted by the Agreement or the law;

(b)   sub-License, lease, rent, loan, assign or otherwise transfer the Software Program or User Documentation to any third person;

(c)   reverse engineer, reverse compile, de-compile or disassemble the object code of any part of the Software Program, or otherwise attempt to derive the source code of the Software Program, except to the extent permitted by law; or

(d)   charge, mortgage, encumber or create any security interest in any way over the Software Program.

6. Liability

6.1. Customer is liable for the acts and omissions of all persons who Access or use any part of the Software Solution.

7. Data

7.1. Customer acknowledges that it:

(a)   is solely responsible for the creation, posting, updating and maintenance of the Customer Data. If Next Technik provides any data migration services as part of the implementation of the Software Program, Customer must verify that the Customer Data that has been migrated has been successfully migrated and is up to date, accurate and complete prior to using the Software Program in production;

(b)   must manage, renew, create, delete, edit, maintain and otherwise control the editorial content of the Customer Data;

(c)   must ensure that the Customer Data is accurate and not false, misleading or deceptive nor is it likely to mislead or deceive;

(d)   must use, store, handle and process the Customer Data in accordance with all laws, including Privacy Laws;

(e)   must not use, store, handle or process any Customer Data that is a breach of any right of privacy, right to keep confidential information confidential, breaches any Intellectual Property Rights or is offensive, illegal, immoral or defamatory.

NextTechnik.

7.2. Customer is solely responsible for ensuring that it takes any back-ups of the Customer Data within the NetSuite Software.

7.3. Customer acknowledges and agrees that Next Technik is not responsible for the content or accuracy of any Customer Data. Next Technik will not access, delete, edit or vary any Customer Data that is stored in the Software Program except:

   (a) to implement or provide Support for the Software Program or as otherwise specified in the Agreement;

   (a) as is necessary to comply with any applicable laws, including the *Telecommunications Act* 1997 and the *Telecommunications (Interception)* Act 1979.

7.4. Next Technik may at its discretion intercept, remove, alter or prevent Access to any Customer Data that Next Technik believes is offensive, defamatory, libellous, breaches any Intellectual Property Right or other right of any person. Next Technik may at its discretion prevent, Access, remove, alter or change the Access of any person to such Customer Data (including suspending Access to the entire Software Program if determined by Next Technik to be prudent or necessary). Provided Next Technik acts in good faith Customer may not dispute Next Technik's decision to intercept, remove, alter or prevent Access to any Customer Data, the Software Program or by any person even if Customer has paid the applicable Price and Taxes. Next Technik may follow any proscribed notice (or any notice that Next Technik determines is similar under the laws of any other jurisdiction) regarding the interception, removal, alteration or prevention of Access to any Customer Data, the Software Program or by any person. If Next Technik follows such notice Next Technik shall not be liable to Customer for any consequences arising out of or in connection with that notice, nor will Customer receive any reduction in the Price for Access to or use of the Software Program which are not provided as a result of Next Technik's actions under this Section.

8. Support

8.1. Next Technik will use its best efforts to provide the level of Support of the Software Program in the manner described in the then current Support Policies during the Service Period. Next Technik may change the Support Policies from time to time at its discretion. Details of the changes will be made available to Customer, including by being posted on Next Technik's website.

8.2. Changes to the Support Policies become effective 30 days after the date when the changes are made available to Customer.

8.3. If Customer believes that there is a defect in a Software Program or the User Documentation then Customer must consult the Software Program's on-line help facility, the User Documentation and use reasonable attempts to resolve the issue.

8.4. If Customer is unable to resolve the issue after having consulted these resources then Customer may report the issue to:

   (a) Next Technik's support help desk by telephone during Next Technik's normal business hours (customers with Full Use Licenses only);

   (b) by email or by using any web-based support application at any other time.

8.5. Next Technik will use its best efforts to resolve any programming errors in a Full Use License for a Software Program or errors in the related User Documentation in accordance with the processes, procedures and time frames set out in the then current Support Policies. Next Technik may address any programming errors by implementing a patch or fix in a future Update, which is available to customers with Full Use Licenses and No Charge Licenses.

9. Updates and New Releases

9.1. If and when Next Technik makes Updates or New Releases of the Software Program generally available to supported customers, Next Technik will update the Software Program and the updated version of the Software Program will then be the version that is Accessed and used in accordance with this Agreement.

9.2. Customer acknowledges and agrees that:

   (a) the Software Program is provided on a shared service basis to Customer and other clients and Next Technik may from time to time, without the prior consent of Customer issue Updates and/or New Releases that change, add or delete the functions, features, performance or other characteristics of the Software Program, and when such Update or New Release, the User Documentation and the functionality of the Software Program shall be amended accordingly;

   (b) Next Technik does not guarantee that any change, addition, deletion, error correction, patch, Update or New Release will be compatible with any Customer Data, application, other software or interface that connects to or interfaces with the Software Program that has been made by or on behalf of Customer; and

NextTechnik.

    (c)   Next Technik will not be liable for any loss, damage or expense which Customer may incur as the result of any change, addition, deletion, error correction, patch, Update or New Release in any circumstances.

9.3.   Next Technik does not provide any support, maintenance or issue resolution service in respect of:

    (a)   the NetSuite Software or the NetSuite Hosting Environment;

    (b)   any interfaces with third party products, including the NetSuite Software;

    (c)   any lists, records or fields or other changes or customizations that have been created by Customer in the Software Program otherwise than in accordance with the User Documentation;

    (d)   any Customer Data.

10. Services

10.1. Next Technik must provide the Services stated on the Contract Details to set up, implement and/or provide training to Customer for the fees and expenses stated on the Contract Details.

11. Warranties and Guarantees

11.1. Next Technik warrants to Licensee of Full Use Licenses (and not to Licensees of No Charge Licenses or Trial Licenses) that the Software Program will operate in accordance with the functionality set out in the online User Documentation that is part of the Software Program in all material respects during the Service Period.

11.2. Next Technik warrants that it will perform any Services in a timely manner and with due skill and care.

11.3. Except for any warranties that cannot be excluded by statute, and subject to sections 11.1 and 11.2 the Software Programs and Services are provided "as is" and without any other warranty, and Next Technik disclaims all warranties, conditions and representations of any kind or nature, express or implied, including implied warranties and conditions of merchantability, merchantable or satisfactory quality and fitness for a particular purpose, title, those arising by statute or otherwise in law or from a course of dealing or uses of trade.

11.4. customer acknowledges and agrees that Next Technik does not represent or warrant that:

    (a)   the software programs or services will meet customer's or any users needs;

    (b)   the software programs will be error-free;

    (c)   the software programs can be accessed without interruption;

    (d)   that the software programs will be compatible with any hardware, software (including any browser) or data not supplied by Next Technik.

11.5. Next Technik reserves the right to charge Customer for any work (at its then current rates) or expenses incurred, where that work or expense results from any issue raised by Customer alleging that there is a defect in any Software Program, where it can be demonstrated that:

    (a)   the issue is not a defect; or

    (b)   the defect is caused by:

    (c)   Customer's incorrect use of the Software Program;

    (d)   a failure of Customer to meet its obligations under this Agreement;

    (e)   any act or omission of any person other than Next Technik;

    (f)   a third party product or service, including any product or service provided by NetSuite; or any Force Majeure Event.

12. Payment and Invoicing

12.1. Customer must pay Next Technik the Prices, fees for any Service, expenses and Taxes in accordance with the Agreement without any set-off or deduction.

12.2. Customer must pay Next Technik:

    (a)   the Price for a Full Use License for the Access and use of the Software Program and the associated Support for the Service Period are due on the Effective Date, or such other date as stated in the Contract Details;

    (b)   the fees and related expenses for any set up, implementation or training Services set out in the Contract Details, such amounts are due on the Effective Date, or such other date as stated in the Contract Details. There is no Price payable for No Charge Licenses or Trial Licenses.

12.3. Customer must pay Next Technik the Prices, fees for Services, expenses and related Taxes within 7 days from the date of the applicable invoice, unless stated otherwise in the Contract Details. Next Technik will send the Tax Invoice on or after the due date for payment specified in clause 12.2.

12.4. Next Technik may, in its discretion and without liability to Customer, prevent Access to the Full Use License for Software Program until Customer has paid the Price for the Full Use License for the Software Program and Support for the Service Period, and the Price for any implementation or other Services stated on the Estimate.

12.5. Next Technik may direct Customer to make payment to its collection agent (including a reseller or marketing partner organization through which Customer was introduced to Next Technik) by issuing a written notice to Customer stating the name of the collection agent and the details of the payments to be made to such person. If Customer makes payment in full to the collection agent in accordance with such written direction then Customer's payment obligation to Next Technik is deemed to have been satisfied.

12.6. Customer must pay a late charge for any failure to make any payment by the date required under the Agreement, calculated at a rate that is the lesser of 1.5% per month or the maximum rate permitted by law, from the date that the payment first becomes overdue, to the date that the payment is received by Next Technik, both dates inclusive.

12.7. All payments made by the Customer under this Agreement must be made free and clear and without deduction for any and all present and future Taxes. Payments due to Next Technik under the Agreement must be increased so that amounts received by Next Technik, after provisions for Taxes and all Taxes on such increase, will be equal to the dollar amounts required under the Agreement, as if no Taxes were due on such payments.

12.8. Taxes:

(a) Customer must pay to Next Technik the Prices, fees for Services and expenses in accordance with the Agreement and an additional amount equal to the GST that is payable on the taxable supply (GST Amount). Customer must pay the GST Amount when it is liable to pay the Prices, fees for Services and/or expenses.

(b) Where one Party must indemnify or reimburse the other Party (Payee) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but the payment will be increased if it is consideration for a taxable supply.

(c) Customer must pay any GST Amount without set-off or deduction regardless of any entitlement it may have to a credit or offset. However, if:

(i) the GST Amount paid or payable by Customer in respect of the supply is different from the amount of GST payable at law; and

(ii) an adjustment of that GST Amount is made between Next Technik and the relevant taxing authority,

then the Parties must make the same adjustment to the GST Amount which Customer has paid or is otherwise required to pay in accordance with the Agreement.

13. Intellectual Property Rights

13.1. All Intellectual Property Rights in the Software Program, User Documentation, any Configuration and any deliverable that are created by Next Technik, Customer or any other person, are the exclusive property of Next Technik (or Next Technik's licensor, if applicable), or must vest in or be transferred to Next Technik immediately upon creation, as the case may be. Next Technik is free to use, copy, adapt sublicense or otherwise exploit any of its property without restriction or payment of any fee to Customer.

13.2. At the request of Next Technik, Customer must assign or transfer the Intellectual Property Rights (and, where moral rights are recognised by local law, will procure each author to provide consent to Next Technik having the unhindered use of their moral rights) to any Configuration or Deliverable made by Customer, its contractors or agents to Next Technik or its designee and must sign (or procure any person to sign) any document reasonably required to effect Next Technik's rights in this Agreement (at Next Technik's cost).

13.3. Upon receipt of all fees, expenses and Taxes due in respect of Services, Next Technik grants Customer a License to Access and use the Deliverable on the same basis as the Software Program.

14. Reserved Rights

14.1. Except for the rights expressly granted by Next Technik to Customer under the Agreement:

(a) Next Technik and its licensors, if any, reserve all right, title and interest in and to the Software Program, User Documentation, any Configuration, any Deliverable or other materials provided under the Agreement and all Intellectual Property Rights in them;

(b)   no right, title or ownership interest in or to the Software Program, User Documentation, any Configuration, any Deliverable or other materials provided under the Agreement whether by implication, estoppel or otherwise, is granted, assigned or transferred to Customer under or in connection with the Agreement.

15. Marks

15.1. Customer does not acquire any right to, or interest in, any of the Marks. Customer must not at any time or in any way indicate its ownership of or any right in the Marks and must not contest the right of Next Technik to the use of any of the Marks.

15.2. Customer must not remove, alter or obscure any Mark, nor attach any additional trademarks, logos, get up or proprietary or restricted use legend, on the Software Program, User Documentation, any Configuration or on any other materials provided under the Agreement unless authorized in writing by Next Technik.

15.3. Customer acknowledges and agrees that the unauthorized disclosure, use or copying of the Software Program, User Documentation, Configuration, Deliverable or other materials provided under the Agreement may cause Next Technik serious financial loss. Accordingly, if there is any unauthorized disclosure, use or copying of any Intellectual Property Rights in the Software Program, User Documentation, any Configuration, Deliverable or other materials provided under the Agreement, Customer agrees that Next Technik will have the right to seek injunctive or other equitable relief.

16. Marketing

16.1. Each Party agrees to allow reference to the other and the relationship under the Agreement in its marketing presentations, marketing materials, lists of customers or suppliers (as applicable), and websites as well as in discussion with prospective resellers and customers, and industry/financial analysts.

16.2. Neither Party may use the other Party's trademarks, logos, get up or other branding without the other Party's prior written consent, such consent not to be unreasonably withheld.

17. Confidentiality

17.1. Each Party agrees that it will not permit the use of the other Party's Confidential Information by, nor disclose the other Party's Confidential Information to, any third person, other than:

(a)   Next Technik may disclose Customer's Confidential Information to its Affiliates, any contractors and employees of Next Technik or its Affiliates, to NetSuite and its contractors and employees and to any reseller or marketing partner organization who introduced Customer to Next Technik;

(b)   Customer may disclose the Software Program, User Documentation and any License Key provided to Customer for Customer to Access the Software Program to its employees and authorized contractors;

(c)   either Party may disclose the other Party's Confidential Information to their professional advisers, unless such use or disclosure is specifically authorized in writing by the other Party or by law.

17.2. Each Party must only use the other Party's Confidential Information for the purpose of performing the obligations under the Agreement, or if the recipient is a professional adviser, the professional adviser may use the Confidential Information for purposes connected with advising on or reporting on the Agreement.

18. Privacy

18.1. Each Party must:

(a)   comply with the requirements of the any Privacy Law in the country in which the Party (and/or the individual about whom the Personal Information relates) is located, and in any country to which the Personal Information is to be sent;

(b)   only use, manipulate, store, process and handle Personal Information for the purposes of meeting its obligations, or exercising its rights, under this Agreement or as may be required by law;

(c)   take all reasonable steps to:

(i)   ensure that the Personal Information that it holds is accurate, up to date and complete;

(ii)   protect the Personal information from misuse, interference, loss, damage, unauthorized access, modification or disclosure, unlawful use or processing, including by taking appropriate technical and organizational measures;

(d)   promptly delete Personal Information that is no longer required for a permitted purpose under this Agreement or the law;

(e)   allow the individual about whom Personal Information is kept to obtain access to that Personal Information, inspect it and ensure that it is kept accurate and up to date (including requiring errors to be corrected), at no cost to the individual;

(f)   ensure that at the time the Party collects of the Personal Information from the individual, that the Party has that individual's consent to the both Parties' collection, use, manipulation, storage, processing, handling and transfer overseas of the Personal Information for any purposes that are reasonably contemplated by this Agreement.

18.2.   Customer warrants to Next Technik that the Customer has obtained the express informed consent from each individual about whom Next Technik will obtain Personal Information from Customer as a result of this Agreement for Next Technik, its Affiliates, any reseller or marketing partner organization who introduced Customer to Next Technik, all their respective contactors and their permitted successors, assignees and sub-Licensees to use that individual's Personal Information in any manner that may be reasonably contemplated by this Agreement and/or as stated in Next Technik's privacy policy (as available on Next Technik's website), including a transfer overseas to the countries stated in the privacy policy.

19. Audit

19.1.   Next Technik may access the Software Program to carry out an audit of Customer's records and systems (and their logs) that relate to the Agreement and Customer's use of the Software Program.

19.2.   If Customer has not used the Software Program in accordance with the Agreement, then in addition to any other remedy Next Technik may have, Customer must immediately pay to Next Technik the difference between the Price for the Software Program Support and Services that should have been paid if Customer had acquired the relevant usage rights at the time of the relevant original Estimate, less the amounts actually paid for the Price for Access to the Software Program, Support and Services under that original Estimate from the date of the original Estimate.

20. Liability

20.1.   TO THE EXTENT PERMITTED BY LAW, AND SUBJECT TO SECTION 20.2, NEXT TECHNIK'S LIABILITY TO CUSTOMER FOR ANY CLAIM MADE UNDER ANY THEORY OF LAW WHETHER IT BE IN CONTRACT (INCLUDING UNDER AN INDEMNITY), TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE PROGRAM, SUPPORT, SERVICES, THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES, SHALL BE LIMITED TO FIVE THOUSAND AU DOLLARS (AUD$5,000) IN THE AGGREGATE.

20.2.   NEXT TECHNIK WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR EXPENSE WHICH IS:

(a)   INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES EVEN IF NEXT TECHNIK HAS BEEN ADVISED OF, KNOWS OF, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH LOSS, DAMAGE OR EXPENSE; OR

(b)   FOR LOST PROFITS, LOST REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS, LOST OR DAMAGED DATA OR BUSINESS INTERRUPTION OF LOSS OF GOODWILL.

20.3.   NEXT TECHNIK IS NOT LIABLE TO CUSTOMER FOR ANY LOSS SUFFERED BY CUSTOMER DUE TO NEXT TECHNIK'S INABILITY TO COMPLY WITH ITS OBLIGATIONS UNDER THE AGREEMENT AS A RESULT OF ANY FORCE MAJEURE EVENT.

21. Mitigation

21.1.   Each Party must make every effort to mitigate any loss, damage or expense that it may suffer arising out of or in connection with the Software Program, Support Service, Service, the Agreement or the relationship between the Parties.

22. Intellectual Property Rights Indemnity

22.1.   Next Technik will indemnify and hold harmless Customer against any loss, damage or expense (including reasonable attorney's fees) arising out of, or in connection with, an Infringement Claim, provided that:

(a)   Customer promptly notifies Next Technik of the Infringement Claim in writing;

(b)   Customer grants Next Technik the sole right to defend, negotiate and settle the Infringement Claim, at Next Technik's cost; and

(c)   Customer provides Next Technik with reasonable assistance, at Next Technik's cost, to defend, negotiate and settle the Infringement Claim.

22.2. Next Technik will have no obligation under this section 22 or otherwise to the extent that the Infringement Claim is based on:

(a) the combination, operation or use of the Software Program or Deliverable with any other product, equipment (other than the NetSuite Hosting Environment), business method, software or data (including any Customer Data);

(b) any modification of the Software Program or Deliverable made by any person other than Next Technik, its contractors or agents;

(c) Next Technik's compliance with any designs, specifications, or instructions provided by Customer or a third person on Customer's behalf; or

(d) any use of the Software Program or Deliverable after Next Technik has provided Customer with Access to a new version, patch or correction that would have overcome the infringement.

22.3. If an Infringement Claim is made based on one of the exclusions in section 22.2, Customer will indemnify and hold harmless Next Technik against all loss, damage or expense (including reasonable attorney's fees) arising out of or in connection with such an Infringement Claim.

22.4. If the Software Program or Deliverable becomes, or in Next Technik's opinion is likely to become, the subject of an Infringement Claim that Next Technik may be required to defend under this Section 12, Next Technik may (at its option and cost) either:

(a) procure for Customer the right to continue using the affected Software Program or Deliverable or substantially similar software, documentation or service;

(b) replace or modify the affected Software Program or Deliverable so that it becomes non-infringing but performs substantially the same functions; or

(c) if neither (a) or (b) is commercially reasonable, as determined in Next Technik's discretion, then Next Technik may terminate Customer's rights to use the affected Software Program or Deliverable and pay damages of up to an amount equal to the Price that Customer has paid for such Software Program and Support for the Service Period or Deliverable (as the case may be) in which the claim first arose.

22.5. To the extent permitted by law, this section 12 states Next Technik's entire liability and Customer's exclusive remedy for any claims related to any infringement of the Intellectual Property Rights in respect of the any Software Program or Deliverable.

23. Customer Indemnity

23.1. Customer must indemnify Next Technik against any loss, damage, or expense (including reasonable lawyer's fees) incurred by any of them that arises out of or in connection with:

(a) any breach of Sections 3.1, 5.1 and 7.1 to 7.4;

(b) any action or inaction by Next Technik intercepting, removing, altering or preventing access to any Customer Data, the Software Program or any person, for any reason and for any period, including where Next Technik receives a proscribed notice (or any notice that Next Technik believes is a similar notice under the laws of any other jurisdiction) requiring Next Technik to remove the item, providing only that Next Technik takes such action in good faith;

(c) any claim brought by any third party that arises out of or in connection with the Customer Data.

24. Termination

24.1. Next Technik may immediately suspend or terminate the Agreement by giving Customer written notice if:

(a) Customer breaches any provision of the Agreement and the breach has not been remedied within 10 days of written notice from Next Technik specifying the breach;

(b) Customer files for bankruptcy, becomes or is declared insolvent, is the subject of any proceedings (not dismissed within 30 days) related to its liquidation, insolvency or appointment of a receiver or similar officer, makes an assignment for the benefit of all or substantially all of its creditor, takes any corporate action for its winding up, dissolution or administration, enters into an agreement for the extension or readjustment of substantially all of its assets; or

(c) there is a merger, sale of substantially all of the assets, or change of control, of Customer. A "change of control" is deemed to occur when an entity acquires 50% or more of the voting shares or equity interest in Customer or 50% or more of the assets of Customer, in the event of a change of a majority of the Board of Directors (or majority of the partners if a partnership) of Customer or if there is a change of effective control of Customer.

24.2. Either Party may terminate a No Charge License for convenience by giving the other Party 30 days written notice, without any liability to the other Party. A Trial License automatically expires at the end of its Service Period, unless otherwise agreed in writing by Next Technik.

24.3. Customer may terminate the Agreement by giving Next Technik written notice if:

(a)   Next Technik breaches any provision of the Agreement and the breach has not remedied within 30 days of written notice from Customer specifying the breach; or

(b)   Next Technik ceases to carry on business, is unable to pay its debts as they fall due, enters into any form of bankruptcy or makes a scheme of arrangement with its creditors.

25. Consequences of Termination

25.1. Termination of the Agreement for any reason does not:

(a)   release Customer from the obligation to pay any monies to Next Technik whether due before or after termination of the Agreement. Next Technik has no obligation to refund any amounts paid to Next Technik by Customer for any Software Program, Support or Service for which Next Technik has received a signed Agreement prior to termination (for any reason) of the Agreement; or

(b)   discharge either Party from any liability which has been incurred by that Party prior to termination of the Agreement.

25.2. If the Agreement is terminated or the Service Period expires:

(a)   Customer must immediately pay to Next Technik (or its collection agent, if so directed in writing) all monies that are outstanding;

(b)   Customer's right to Access and use the Software Program terminates even if Customer retains the ability to physically access the Software Program after the Service Period has ended;

(c)   each Party must immediately return to the other Party or certify in writing to the other Party that it has destroyed, all copies and partial copies of the other Party's Confidential Information or any material that includes the other Party's Intellectual Property Rights.

26. General Notices

26.1. Any notice that is to be given under the Agreement must be in writing and signed by the person giving the notice.

26.2. Each Party must promptly notify the other of any change of address or contact details, and such details shall be incorporated into the Agreement from the date following the date of receipt.

26.3. Any notice is to be delivered to the address, or sent by international courier to the address or email of the recipient as set out in the Agreement. Each Party must promptly notify the other of any change of address or contact details, and such details will be incorporated into the Agreement from the date following the date of receipt.

26.4. Any notice sent in accordance with the Agreement is deemed to have been received:

(a)   if delivered, on the date of delivery;

(b)   if sent by international courier, on the 7th day after dispatch; and

(c)   if sent by email; when the email system provides a notice stating that the email was successful delivered and the email was sent:

(i)   for a notice to Next Technik, to notice@NextTechnik.com;

(ii)   for a notice to Customer, to the email address on the Estimate, or if no such address is stated on the Estimate, to any of the email addresses that Next Technik has previously used to communicate successfully with Customer.

27. Variation

27.1. The terms and conditions of the Agreement can only be varied by written document signed by both Parties.

28. Assignment and Novation

28.1. Customer must not transfer, assign or novate the whole or any part of the Agreement without the prior written consent of Next Technik.

28.2. Next Technik may transfer, assign or novate the whole or any part of the Agreement, including the right to receive any amount payable under the Agreement without the prior written consent of Customer. Notwithstanding any

other provision in the Agreement, Next Technik may disclose any of Customer's Confidential Information of Personal Information that is reasonably necessary to affect any transfer, assignment or novation. Customer must promptly sign any documents reasonably requested by Next Technik to affect such transfer, assignment or novation.

29. Subcontracting

29.1. Next Technik may subcontract the performance of any of its obligations under the Agreement, in whole or part, without the consent of Customer.

29.2. Subcontracting the performance of obligations by Next Technik shall not relieve Next Technik of any obligations.

30. Waiver

30.1. No part of the Agreement shall be deemed waived, amended or modified by either Party, unless the waiver, amendment or modification is in writing and signed by both Parties.

31. Severability

31.1. If any part of the Agreement is for any reason declared invalid or unenforceable the validity of the remaining portion of the Agreement will not be affected and the remaining portion will remain in force.

32. Rights are Cumulative

32.1. Except as expressly provided otherwise in the Agreement, the Parties' rights and remedies under the Agreement are cumulative and there is no obligation to exercise a particular remedy. If a Party is in breach of the Agreement, the nonbreaching Party may avail itself of all other rights, remedies and causes of action available at law, in equity or otherwise.

33. Electronic dealings

33.1. The Parties are entitled to rely on any communication in electronic format, including an email or facsimile, which on its face appears to be authentic, and which has the purported author's name on it to the same extent as if it were a hard copy written notice with the same content. The Parties consent to this Agreement being signed or varied through electronic communication using electronic signatures.

34. Entire Agreement

34.1. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES REGARDING THE SUBJECT MATTER AND SUPERSEDES ALL PRIOR OR CONTEMPORANEOUS AGREEMENTS, ARRANGEMENTS, UNDERSTANDINGS AND COMMUNICATIONS, WHETHER WRITTEN OR ORAL.

35. Counterparts

35.1. The Agreement may be signed in any number of counterparts, each of which shall be original, and any one of which shall be deemed to be validly executed if evidenced by a facsimile copy of the executing Party's signature with the same effect as if the signatures were on the same document.

36. Relationship of Parties

36.1. Nothing in the Agreement is to constitute or be deemed to constitute a partnership among the parties, association, joint venture, fiduciary relationship, franchise arrangement, or permits a party to act as agent for another for any purpose. Neither Party will have authority to bind another or contract in the name of the other in any way or for any purpose.

36.2. Next Technik Affiliates are third party beneficiaries under this Agreement and are entitled to rely on all the rights, representation, warranties and covenants made in this Agreement by Customer. There are no third party beneficiaries on behalf of Customer, intended or unintended.

37. Further Assurances

37.1. Each Party agrees to do all things that are reasonably necessary to give effect to the Agreement and the financial transactions contemplated by it, including the execution of documents.

38. Applicable Law

38.1. The Agreement is governed by the laws of Victoria, Australia. The Parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria, Australia and any courts competent to hear appeals from those courts.