



multibase

Standard Terms of Supply of Services

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**Document Title**

Standard Terms of Supply of Service

Document owner

Multibase WebAustralis Pty Ltd

Approval

Ann de Vos – Director
1 May 2013

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www.multibaseit.com.au

Standard Terms of Supply of Services

1	Application of these Terms	4
1.1	Applicability	4
1.2	Entire agreement	4
1.3	Changing these Terms	5
2	The Services we provide	5
2.1	The Services	5
2.2	Appointment of Project Leads	5
2.3	Change Control	5
2.4	Acceptance	7
3	Pricing and charges	7
3.1	Goods and Services Tax (“GST”)	7
3.2	Chargeable Services	7
3.3	Payment terms	8
3.4	Price reviews	9
4	Services warranties	9
4.1	Warranties	9
4.2	Scheduled maintenance outages	10
4.3	Unscheduled outages	10
4.4	Information in third party websites and other third party information	11
5	Customer responsibilities	11
6	Technical Support	12
6.1	Contracts which include technical support	12
6.2	Chargeable technical support	12
7	Training and documentation	13
7.1	Documentation	13
7.2	Training	13
8	Termination	13
8.1	Termination by the Customer	13
8.2	Termination by Multibase	14
8.3	Consequences of termination	14
9	Intellectual property	15
9.1	Intellectual property rights	15
9.2	Indemnification	16
10	Privacy and confidentiality	16
10.1	Privacy	16
10.2	Confidentiality	16
10.3	Development work credit	17
11	Exclusion of implied terms and limitation of liability	17
12	Cooperation and dispute resolution	18
12.1	Co-operation	18
12.2	Dispute resolution	19
13	General	19
13.1	Assignment and resale	19
13.2	Severability	19
13.3	Force Majeure	19
13.4	Service of all notices	20
13.5	Governing law	20

1 Application of these Terms

1.1 Applicability

- 1.1.1 These are the terms and conditions (the “Terms”) under which Multibase WebAustralis Pty Ltd ACN 063 962 916 trading as Multibase (and called “Multibase”, “us” or “we” in this document) is willing to provide the Customer (called “the Customer” or “you” in this document) with those services and service deliverables (collectively, the “Services”) which are subscribed to or purchased by the Customer. In the case of third party products or services supplied as part of the Services, such as SSL, DNS or URL licences and third party software, these will be supplied subject to separate terms of licence which will bind the Customer and with which the Customer must comply. These Terms do not apply to the licence of any Multibase software, other than custom-written software and other files, unless otherwise expressly and in writing agreed by Multibase on a case-by-case basis.
- 1.1.2 You are deemed to have accepted these Terms:
- a. when you sign and return these Terms to Multibase; or
 - b. when we commence the provision of a Service for the first time; or
 - c. when you order a Service or request Multibase staff to perform any other work on your behalf, by email, telephone, or in writing.
- 1.1.3 Unless otherwise agreed in writing, these Terms, as modified from time to time, will apply to all the Services and any other work we perform for you from the time that we start providing the Services or other work to you, and continue whilst ever we continue to do so.

1.2 Entire agreement

- 1.2.1 The following documents constitute the specific contract between Multibase and the Customer for the provision of any Services:
- a. These Terms.
 - b. Multibase’s Privacy policy, which is available on its web site.
 - c. Any specific product or service descriptions which are included in quotations or order forms for the Services authorised by you and accepted by Multibase.
 - d. Any additional terms and conditions applying to the Services, which are listed on order forms or other agreements authorised by you and accepted by us for those Services.
- 1.2.2 Both parties agree that together these documents form the entire, complete and exclusive agreement (“the Agreement”) between the Customer and Multibase for the provision of the Services and supersede all prior agreements and understandings, whether written or oral, or whether established by custom, practice, policy or precedent, with respect to the subject matter of the Agreement, including, without limitation, any purchase order provided by you for the Services.

1.3 Changing these Terms

- 1.3.1 A copy of these Terms is posted on our web site at www.multibaseit.com.au.
- 1.3.2 We may change these Terms at any time. If we change these Terms, we will notify you by updating the Terms on our web site. The Terms as modified will not be applicable to any contract we already have with you or any Service that we have already provided but will be applicable to any renewal term or extension of an existing contract or any Services you acquire after the date of such change. It is therefore important to refer to our web site before any renewal of future purchase of Services.

2 The Services we provide

2.1 The Services

- 2.1.1 Multibase shall provide the Services as specified in quotations and order forms authorised by you and accepted by Multibase, or in other formats as may be agreed, from time to time.
- 2.1.2 Multibase may change the specifications of these Services from time to time at its discretion, subject to these Terms.
- 2.1.3 Using a web site operated by Multibase, whether or not payment for use of the web site is required, is also defined as a Service under these Terms.
- 2.1.4 Multibase provides domain name registration and renewal of domain name registrations authorised by you. The relevant fees are outlined on our website. For further details see <http://www.multibaseit.com.au/development-support/managed-services/domain-name-services>

2.2 Appointment of Project Leads

- 2.2.1 From time to time during the provision of the Services, Multibase will notify you of a single point of contact who will be responsible for all formal communications between Multibase and the Customer ("Multibase Project Lead") and you will notify Multibase of a single point of contact who will be responsible for all formal communications between you and Multibase ("Customer Project Lead").
- 2.2.2 The Customer Project Lead (or his or her delegate from time to time) will be only Customer person to make reports to or receive notifications from Multibase and to request any technical support services in respect of the Services. Apart from technical support requests to the Multibase help desk, all other requests and notifications must be made to the Multibase Project Lead.

2.3 Change Control

- 2.3.1 Multibase or the Customer may initiate change requests in respect of the Services. The reasons for a change may include: customer requests; regulatory changes; changes in technical scope; or other detail program issues or requirements. The Project Lead of the party initiating a change will submit a Change Request to the other party's Project Lead, and then both Project Leads will review such request for validation. Project changes must be submitted in a clear and concise manner in the form requested by Multibase from time to time ("Change

Request Form”). Under no circumstances will Multibase be obliged to perform any work for you unless a Change Request has been submitted by you and agreed by Multibase in respect of such work in accordance with this clause 2.3.

- 2.3.2 After the submission of a Change Request Form to a Project Lead and validation of the requested change, the Multibase Project Lead will review the requested change to determine if it is within the scope of the Services Multibase has agreed to provide.
- a. **Within Services Scope.** If the Multibase Project Lead determines that the change requested by the Customer is within the scope of Services Multibase has agreed to provide, the Project Leads of both parties will execute the Change Request Form and implement the change into performance of the Services as appropriate.
 - b. **Outside Services Scope.** If the Multibase Project Lead determines that the requested change is outside the scope of Services Multibase has agreed to provide, the Multibase Project Lead will then determine whether such requested change impacts the pricing or scheduling projections for the performance of the Services. Then:
 - i. If the Multibase Project Lead determines that the requested change does not impact the pricing or scheduling projections of the Services Multibase has agreed to provide, the Project Leads will execute the Change Request Form and implement the requested change into the performance of the Services as appropriate;
 - ii. If the Multibase Project Lead determines that the requested change does impact the pricing or scheduling projections of the Services Multibase has agreed to provide, the terms of clause 2.3.4 will apply.
- 2.3.3 Multibase reserves the right to reject Change Requests at its discretion.
- 2.3.4 Upon determination that the Change Request impacts the pricing or scheduling of the Services, a cost estimate applicable to the implementation of the Change Request will be prepared by the Multibase Project Lead and provided to the Customer Project Lead. The cost estimate will fully document the scope of the change, and provide a basis of estimate for the proposed adjustments in price, schedule, and/or other factors as applicable.
- 2.3.5 The execution of the Change Request Form by both parties will cause the Change Request Form to become part of and incorporated into the Agreement applicable to the relevant Services. Commencement of the performance of the requested change is conditioned upon the mutual execution of the Change Request Form and, if required by the Customer’s purchasing systems or Multibase, Multibase’s receipt of an additional purchase order authorization from the Customer to cover the agreed upon price for each requested change.
- 2.3.6 Nothing in the clause 2.3 will be understood to limit Multibase in charging for the provision of any services where it is entitled to do so under the Agreement applicable to the Services, including in respect of any issue investigation or design work preparatory to a Change Request, or which are requested by the Customer outside the scope of the Services and performed by Multibase.

2.4 Acceptance

- 2.4.1 In the case of Services which are not of a continuous nature, involving system set-up or development, or specific projects or specific deliverables, and requiring any form of acceptance by the Customer (“Acceptance”), we may present you with an Acceptance document. You will execute such document acknowledging Acceptance of the Services and will return the document to Multibase within five (5) business days from the date of your receipt of the document if:
- a. The Services have been substantially completed and delivered by Multibase (or substantial completion of each individual service phase or deliverable, as is applicable to the specific engagement), including the completion and passing of any acceptance tests agreed between the Customer and Multibase, where “substantial completion” means that only minor errors or omissions remain that can be completed or corrected under warranty; or
 - b. The Customer has commenced production use of the Services (or such individual service phase or deliverable, as is applicable to the specific engagement).
- 2.4.2 If you reasonably believe that Multibase did not substantially complete the Services (or such part the subject of an Acceptance document), you must notify us in writing of your specific reasons for rejection of the Services (or such part) within five (5) business days from delivery of the Acceptance document. We will address your issues and then will re-present the Acceptance document for execution, in accordance with the requirements of this clause 2.7.
- 2.4.3 If we do not receive the signed Acceptance document or a written notification of the reasons for the rejection of Services (or relevant part) from you within five (5) business days of delivery of the Acceptance document, the absence of your response will be deemed affirmative Acceptance of the Services (or such part), and a waiver of any right of rejection or other remedy, other than correction of errors and omissions under warranty.

3 Pricing and charges

3.1 Goods and Services Tax (“GST”)

- 3.1.1 All prices quoted exclude GST unless otherwise stated. In addition to the amounts quoted, you must pay GST on those amounts if applicable at the same time as you pay our Invoice.

3.2 Chargeable Services

- 3.2.1 Multibase charges for the Services in a number of ways, including but not limited to:
- a. Services with defined features, such as application or website hosting and/or product support, which are typically but not exclusively charged annually in advance;
 - b. Development, technical and consulting services charged on an hourly (“time and materials”) rate, where all work actually performed is charged to the Customer;
 - c. Development, technical and consulting services charged at a fixed price, where the fixed price is always charged provided the specifications do not change in any way.

- 3.2.2 Once a fixed price quote has been accepted, any discussions on modifying the agreed design and requirements may be chargeable.
- 3.2.3 A request for an estimate on a particular piece of work, or a request to investigate a particular issue, may be chargeable.
- 3.2.4 The minimum time chargeable for work performed from Multibase's premises is 15 (fifteen) minutes per person per request.
- 3.2.5 If required, Multibase will travel to work on your site.
 - a. For short work periods, travel is chargeable at normal hourly rates. The minimum time chargeable for on-site work is 2 (two) hours per person per visit, plus travel.
 - b. For a full 8-hour working day, travel inside the Sydney Metropolitan area is not charged. Outside the Sydney Metropolitan area one-hour travel is free, with subsequent hours forward and return, door-to-door, charged at half the relevant standard hourly rate. You must organise and pay for ordinary expenses, such as hotel, airfare, taxis or transportation, and meal allowance if not provided.

3.3 Payment terms

- 3.3.1 Setup fees for Services are payable on acceptance by Multibase of your properly completed order, unless otherwise advised.
- 3.3.2 Multibase's standard contract term for renewable Services is 12 months with annual payment in advance. The Services will be invoiced on commencement, and shall continue for one year (the "Term") and are renewable automatically on each anniversary of that date provided fees are paid within normal trading terms. Such Services are renewable automatically for further annual Terms unless the Agreement is terminated. Multibase may make other renewal periods available.
- 3.3.3 Payment and invoicing arrangements for development, technical or consulting Services will be specified on a quotation, order form or invoice in relation to such Services.
- 3.3.4 An Invoice will be sent by ordinary prepaid post or emailed. You agree to pay the invoice totals within the required time, using a method of payment acceptable to Multibase.
- 3.3.5 Unless otherwise agreed, credit terms are seven (7) days. Multibase may charge and you agree to pay if invoiced by Multibase interest on all overdue monies from the due date to the date of payment at the overdraft rate for sums within an agreed facility of its Australian bank from time to time.
- 3.3.6 You have seven (7) days from date of receipt of an invoice to query an invoice or timesheet. After this time, the invoice will be deemed accepted by you and may not be disputed.
- 3.3.7 The Services (or any part) may be withheld if invoices are not paid in full within the normal terms of trading.
- 3.3.8 Multibase may store credit card details on file, strictly in accordance with our privacy policy.

3.4 Price reviews

- 3.4.1 In the case of all Services of a continuous and renewable kind, Multibase may by giving notice to the Customer in accordance with this clause 3.4 adjust the price for the Services at your next renewal.
- 3.4.2 In addition, in the case of all Services or other work requested by you charged on an hourly basis, including issue investigation or design work, or which is requested by the Customer outside the scope of the Services agreed to be performed by Multibase, such Services and other work will be charged in accordance with Multibase's standard hourly rate at the time of the performance of the Services or other work.
- 3.4.3 Multibase reviews its pricing at the beginning of each financial year based on March to March Sydney CPI figures, on adjustments in pricing by its suppliers and on other market conditions.
- 3.4.4 Multibase may also increase or decrease the fee for the next renewal period following:
- a. A review of your usage of the Services, normally averaged monthly over the period; or
 - b. A change in the scope of the Services being provided to you.
- 3.4.5 If Multibase changes the applicable fee for your next renewal, we will give at least one month's notification to you prior to the expiry of the then current Term, following which the revised fees will take effect.
- 3.4.6 Multibase also may by notice in writing to the Customer charge excess usage fees or increase or decrease the applicable fee during the Term if your usage of the Services has changed significantly during the Term.

4 Services warranties

4.1 Warranties

- 4.1.1 Multibase will use reasonable skill and care in providing the Services.
- 4.1.2 In all cases Multibase uses its best endeavours in the provision of the Services, however because the general reliability of the Internet and of connections to and from the Internet and of equipment and software used in the supply of the Services may be influenced by factors beyond the control of Multibase, it is impossible for Multibase to guarantee that our provision of the Services will be uninterrupted, that you will be able to properly access and use the Services, that the Services will be provided without error, or that the Services will be free from malicious attack or intrusion by third parties.
- 4.1.3 Once Multibase has been informed that the Services have been interrupted, that you have not been able to access or use the Service or that there is an error in the Services, then Multibase warrants that it will make every reasonable effort to correct such problem or error as soon as possible.
- 4.1.4 A 30-day software development warranty period begins upon delivery of any fixed price development project. This covers bug fixing or work agreed as not being delivered to

specification. A bug is a coding error that causes an unexpected defect, fault, flaw, or imperfection in a computer program such that it does not perform as the developers intended. An unspecified feature or modification is not a bug and this warranty period does not cover new or unspecified work even if it is required by you.

- 4.1.5 No warranty applies to work done on a time and materials, hourly or daily basis. This includes bug fixing, which will be charged to your account.
- 4.1.6 Due to the nature of certain Services, it may be necessary or desirable in the course of provision of the Services for Multibase to make technical changes, upgrades or other changes to the systems that we use to provide the Services from time to time. If these changes affect the Services in any way, it may be necessary for you to make changes to your systems using the Services or your business processes in order to continue using the Services correctly or beneficially. We will use reasonable commercial efforts to inform you of any such changes that we believe may affect you. You will be responsible for any changes needed to your systems or processes and Multibase is not liable for the costs of making these changes unless such changes are already expressly part of the obligations of Multibase under the Agreement.

Examples of the changes to our systems that we may make and that are contemplated by this clause include but are not restricted to the following:

- a. If authorised or unauthorised users challenge the logic of software which is installed on our systems or we need to put in place additional or defensive mechanisms to prevent or minimise the effects of such attacks.
- b. If we upgrade our technical environments in response to emerging issues and changes in third party software, security alerts and threats, and service patches, and these changes affect the correct operation of your existing service.
- c. When hardware and software components of your hosting service require retirement, replacement or upgrades.
- d. When essential servicing and maintenance is conducted on your hosting environment including server software, application software, web sites and content management systems.

4.2 Scheduled maintenance outages

- 4.2.1 If required, scheduled maintenance is conducted during a regular maintenance window out of business hours. You may obtain the details of the current maintenance window from Multibase customer service. These maintenance windows are not individually notified.

4.3 Unscheduled outages

- 4.3.1 In the event of an unscheduled outage, Multibase will endeavour to advise customers of the problem as soon as practicable, between the hours of 8.00am and 6.00pm AEST on business days, depending on severity. Outside of these hours and if the staff member judges it appropriate, Multibase may advise you by mobile telephone.

4.3.2 If an outage is in an external service not controlled by Multibase (e.g. telecommunications lines), Multibase will liaise with the external service provider and in doing so use its best endeavours to resolve the problem in the shortest possible time frame.

4.4 Information in third party websites and other third party information

4.4.1 From time to time Multibase may include links to web sites or other information on its web sites or in other forms and may provide these to you. Multibase does not necessarily adopt the information or opinions included in such information and expressly disclaims responsibility for the truth or accuracy of such third party information or representations and advises you to rely on their own enquiries as to its or their accuracy or worth.

5 Customer responsibilities

5.1.1 **Keep logins and passwords secure.** You are responsible for security related to your use of and access to the Services. You are responsible for keeping any logins and passwords secure and accessible only to persons authorised to use the Service and will be responsible for all uses made of logins, passwords and other access information supplied to you to the extent misused as a consequence of your failure to do so, whether authorised by you or not. Upon request, Multibase may assist you with your efforts to detect and identify breaches of security in relation to the Services, but shall not be liable in any manner to you for Multibase's failure or inability to detect or identify security breaches.

5.1.2 **Learn how to use the Services.** You are responsible for knowing or learning how to use the Services or deliverables under the Services effectively. Multibase may be able to assist you by providing documentation, training, customer service and/or technical support assistance in a variety of forms, to the extent to which you are entitled to such assistance under the Agreement or which is otherwise agreed as a paid service or otherwise, but under no circumstances will Multibase be liable for the cost of restoration of any Services or any error correction required to any deliverables required as a consequence of misuse by any of your personnel.

5.1.3 **Bear third party costs.** You are liable for the cost of any third party products or services that may be required in connection with your use of the Services. We will use reasonable efforts to notify you in advance if we become aware that you require additional third party products or services to use a Service.

5.1.4 **Exercise responsibility for file content.** You are solely responsible for the content of all files contained in your storage space on the Multibase network which is provided by Multibase as part of the Services. You can be held legally liable for the contents of documents, images, emails or files in such storage, including those generated from any web site hosted by us as part of the Services. Multibase does not review documents, images, emails or other files for content before they are posted on a server or delivered from that server, and does not verify, endorse or otherwise take responsibility for the contents of any user-created content. However, we reserve the right to remove any document, image, email or file from our servers or our network or terminate any emailing or downloading process which we determine is in violation of our rules and guidelines or claimed by any person to violate any law, without liability of any kind to you. You agree that you are solely responsible for complying with all statutory requirements and government policies regarding electronic content prior to posting,

transmitting or otherwise communicating documents, images, emails or files to the web and you will indemnify Multibase and its subcontractors in respect of all actions, proceedings, costs, demands and claims arising your breach of any statutory requirements and governmental policies regarding electronic content. Multibase does not develop or host “adult” or gambling sites or applications.

6 Technical support

6.1 Contracts which include technical support

6.1.1 The cost of reasonable help desk and support response services for some Services is covered by service package fees, if this is provided for in the Agreement. If you require additional support which is beyond the bounds of the technical support specified in the applicable contract, our staff member will request a purchase order or other authorization from you to avoid any confusion and before work can commence. This avoids embarrassment, misunderstanding, or unexpected charges. Multibase is solely responsible for determining what is covered by the Agreement and work that is chargeable.

6.2 Chargeable technical support

6.2.1 Maintenance, support and service requests on Services that are chargeable will be invoiced at Multibase’s then standard rates for such work unless otherwise specified expressly in the Agreement. Chargeable technical support includes services such as:

- a. significant investigations to determine the cause of a service problem which is particular to your web site, application or system and not to the operation of our service in general;
- b. programming and support for web sites, applications and systems that we have developed and installed, once they have gone into production on your hosting environment;
- c. web sites and applications developed by someone other than Multibase but which you require us to support and service;
- d. assistance with your own programming or web development;
- e. web or mail server configurations not part of the original setup of the service e.g. changes to domains and subdomains, additional FTP accounts, etc.;
- f. payment gateway installations, beyond customer service such as interpreting transaction reports;
- g. all other services beyond the bounds of customer service, which is defined at the sole discretion of Multibase.

6.2.2 A request for Multibase to undertake investigations, modifications or corrections to a site, application or other system which you have constructed and/or maintained must be made in writing (e.g. email, fax, or on our order form).

7 Training and documentation

7.1 Documentation

7.1.1 At Multibase's discretion, standard documentation is provided for some standard products and services at no additional charge. For custom software, web applications, web sites, non-standard software modules, and custom hosting arrangements, you are responsible for the cost of documenting your systems and configurations. Multibase can undertake this work as part of a development project or under a separate support services contract with you. Documentation, if required, is a chargeable part of a project. If documentation has not been specifically requested, estimated or quoted, we will not supply it. All custom documentation, including additions, deletions, and amendments is chargeable to you.

7.2 Training

7.2.1 Training may be available and is charged at applicable rates. For some standard products, Multibase can provide standard training sessions for which no additional charge is made for preparation of materials. If we need to develop customised training for you, we will charge for planning the training and preparing training materials.

8 Termination

8.1 Termination by the Customer

- 8.1.1** You may terminate the Agreement immediately on notice in writing to Multibase if:
- a. Multibase becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
 - b. Multibase enters into or proposes to enter into a scheme, composition or arrangement with any of its creditors;
 - c. Multibase breaches a provision of the Agreement and the breach has not been remedied within fourteen (14) days after receiving notice of the breach.
- 8.1.2** You may decline to renew the Agreement at the end of the term of the Agreement by giving ninety (90) days' notice to Multibase in writing, or other period of notice as may be specified in the Agreement.
- 8.1.3** You may terminate the Agreement during its term upon thirty (30) days prior written notice if Multibase ceases, advises that it will cease, or significantly alters the Services under the Agreement in a way which is agreed between the parties to be detrimental to you.
- 8.1.4** If Multibase changes the price of any Services under the Agreement applicable to them and the Customer does not accept the change, you may terminate the Services with effect on the date of the next renewal upon giving written notice to Multibase within thirty (30) days of our advice to you.

8.2 Termination by Multibase

- 8.2.1 Multibase may terminate provision of the Services immediately upon notice in writing to you, if you fail to pay all amounts when due or fail to abide by any other provisions of the Agreement.
- 8.2.2 Multibase may terminate the Agreement or any part of the Services at any time if you breach any obligation under the Agreement, or fail to respond within ten (10) calendar days to an inquiry from Multibase concerning the breach of any provision of the Agreement.

8.3 Consequences of termination

- 8.3.1 If you send us notice of termination of the Services for any reason or if we terminate the provision of the Services to you, then you must stop using the Services. If you continue to use any part of the Services beyond the date of the termination, you will be charged all applicable fees for such use and the Agreement will continue to apply. This does not apply to any deliverable, such as software and documentation or other files, under the Services for which you have paid all applicable invoices, subject to the following provisions of these Terms.

- 8.3.2 Upon cessation of the provision of the Services by Multibase:

- a. you will at a time or times agreed with Multibase and in a manner approved by us deinstall and remove all items of equipment belonging to you and such software and other files belonging or licensed to you by third parties from our systems;
- b. we will provide you in a mutually agreeable format all of your files, records, data and documentation then stored by us on our systems

provided that we have been paid for all Services rendered prior to the date of such provision, deinstallation or removal as the case may be. The Customer must make available for collection by Multibase all property belonging to us loaned to you under the terminated contract.

- 8.3.3 If Multibase has not received within thirty (30) days after the effective date of termination of the Agreement instructions from you concerning the disposition of any items of equipment belonging to you, those items of the software licensed to it alone or other Customer files, records and data, then Multibase may dispose of such items in any confidential manner as Multibase may determine.
- 8.3.4 If you cancel a Time and Materials job after commencement, Multibase will charge for all hours actually performed and not yet paid for up to the time of cancellation and you are liable to pay this amount.
- 8.3.5 If any fixed price job is cancelled by the Customer, Multibase will determine the percentage of the job that has been completed up to the time of cancellation and you are liable to pay this amount less any deposit or progress payments received. If you have paid in advance more than is owing as calculated under this provision, we will refund to you such surplus.
- 8.3.6 If you have paid in advance for specific third party items that have not been delivered, such payments will be taken into account in the final adjustment made and we will refund to you or credit those amounts against a larger sum owing to us, as the case may be.

- 8.3.7 Except as otherwise expressly set forth in these Terms, or unless otherwise specified in writing by Multibase, you will not receive any refund for payments you have already made as of the date of termination, and you may incur additional fees. If termination of the Agreement is due to your breach of the Agreement, including any warranty, you shall bear all costs of such termination, including any reasonable costs Multibase incurs in closing your account. You agree to pay any and all costs incurred by Multibase in enforcing your compliance.
- 8.3.8 Multibase will have no liability to you as a consequence of termination of the Agreement except as expressly provided in these Terms.

9 Intellectual property

9.1 Intellectual property rights

- 9.1.1 Nothing in these Terms affects any intellectual property rights of Multibase, including its copyright and information confidential to Multibase, including but not limited to such intellectual property in all software products, upgrades, multi-media software, hard-copy or electronic manuals and documentation created by or for Multibase. No part of any software or other document or file supplied or made available as part of or incidental to the provision of the Services may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical photocopying, recording or otherwise, unless it has been developed or supplied by Multibase for such purpose, Multibase does so as part of the provision of the Services or, in any other case, Multibase expressly and in writing agrees with such storage or transmission.
- 9.1.2 All intellectual property rights in software and other files and documents which are created by Multibase for you in the course of provision of the Services shall vest in you upon payment in full to Multibase of all fees and charges invoiced by it in respect of such creation, provided however that, if and to the extent that any such software and other files and documents that include pre-existing material or material created independently of the Services, whether by Multibase or any third party, and that are inextricably incorporated in such items, intellectual property rights in such items shall not be assigned but shall be licensed only, for use solely in conjunction with such items supplied by Multibase. Multibase reserves the right to re-use computer programs and other materials, as well as concepts, routines, methodologies, code and other information and processes in other applications and for its own use, provided that nothing about, or confidential to, the Customer or its business may be used or disclosed for the benefit of any third party.
- 9.1.3 Multibase warrants that the Services will not infringe the intellectual property rights in Australia of any person.
- 9.1.4 You warrant that:
- a. any software or other materials which you supply for use by Multibase in the provision of the Services; and
 - b. the manner in which you make use of the Services

will not violate any law, or violate or infringe upon the rights of any other party, including, without limitation, contractual rights, intellectual property rights, publicity and privacy rights and the rights against libel, defamation and slander.

9.2 Indemnification

- 9.2.1 Multibase will indemnify, hold harmless and defend you and your officers, employees and agents from and against any loss or liability arising from any claim, demand, suit, action or proceeding for any infringement or an alleged infringement of the intellectual property rights of any person which occurs as a consequence of the provision of the Services, except as provided by the following provision of this clause.
- 9.2.2 You will indemnify and hold Multibase and its successors, assignees, agents and licensees harmless from any claim, demand, liability, cost and expense (including reasonable legal fees) that arises out of or results from breach of any warranty given by you in these Terms.

10 Privacy and confidentiality

10.1 Privacy

- 10.1.1 Multibase is committed to protecting personal information (as that expression is defined in the *Privacy Act 1988* (Cth)) that it receives or to which it has access in the course of or incidental to the provision of the Services. Multibase's Privacy Policy is available on its web site. The policy outlines the type of information that is collected by Multibase, and how it is used and protected. The policy tells you what to do if you do not want your personal information collected, and how you can change information you have already provided to us.
- 10.1.2 By using our services, including our web site, you agree with the terms of our current Privacy Policy which is posted on our web site. If you do not agree with any part of this Policy, it is not possible to use our services.

10.2 Confidentiality

- 10.2.1 Each party has given and will continue to give to the other party or have access to certain technical and commercial information. Each party undertakes:
- a. to keep confidential all such information as is not freely available to the public, including without limiting the generality thereof such information as a party may from time to time specifically designate as confidential (if and for so long as such information has not been received by the recipient from a third party without any duty of confidentiality or is not in the public domain as a consequence of proper disclosure by any person other than the recipient hereunder);
 - b. to return to the other party on demand in writing therefor all written or machine readable material embodying such technical and commercial information and all copies thereof in the possession of the party receiving the demand, except such materials stored on valuable media, which shall be destroyed or erased and such destruction or erasure certified within seven (7) days of the date thereof;
 - c. to ensure that its staff are aware of and observe the provisions of this clause.

10.2.2 The foregoing provisions apply to:

- a. your business operations including financial information, marketing strategies, client strategies, client lists, pricing strategies, client information and data, which shall be deemed confidential to you;
- b. all information in relation to Multibase's prices, business plans, policies, present and future products, customers and related documentation and unpublished concepts, routines, methodologies, code and other information, processes other material created or used by Multibase in the performance of the Services, which shall be deemed confidential to Multibase.

10.3 Development work credit

10.3.1 You agree that Multibase may claim credit in its own promotional material for the development of a project, and to develop and publish a case study on the work performed. You may request that details identifying you not be published.

11 Exclusion of implied terms and limitation of liability

11.1.1 THE REMEDIES PROVIDED IN THESE TERMS AND IN THE OTHER APPLICABLE CONTRACT DOCUMENTS ARE THE EXCLUSIVE REMEDIES OF THE CUSTOMER. IN NO EVENT SHALL MULTIBASE BE LIABLE TO YOU OR ANY RELATED ENTITY, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER CAUSE OF ACTION WHATSOEVER, FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL LOSS, DAMAGE OR EXPENSE, INCLUDING BUT NOT LIMITED TO ANY LOSS OF EXPECTED PROFITS, LOSS OF BUSINESS REVENUE, LOSS OF EXPECTED SAVINGS, LOSS OF OPPORTUNITY OR LOSS OF OR DAMAGE TO GOODWILL, OR ANY OTHER FORM OF EXPECTED BENEFIT, OR FOR LOSS OR CORRUPTION OF DATA, HOWEVER ARISING, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES BEING INCURRED. Unless already part of our service commitment to you under the Agreement, you acknowledge that you must maintain backups of all data entered into or generated by the Services that it may require to restore for its business.

11.1.2 MULTIBASE DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL BE ERROR FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. EXCEPT AS EXPRESSLY SET OUT IN THESE TERMS AND IN THE APPLICABLE CONTRACT DOCUMENTS, TO THE EXTENT PERMITTED BY LAW, NO OTHER WARRANTIES OR GUARANTEES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION MERCHANTABILITY, SUITABILITY OR ACCEPTABLE QUALITY, OR AS TO FITNESS FOR A PARTICULAR PURPOSE, ARE MADE BY MULTIBASE AND MULTIBASE MAKES NO WARRANTIES HEREUNDER WITH RESPECT TO ANY THIRD PARTY PRODUCTS OR SERVICES THAT MULTIBASE MAY SUPPLY AS PART OF THE SERVICES.

11.1.3 Important note: In the event that performance of the Services constitutes a supply of goods or services to a consumer as defined in the Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended) or relevant State or Territory

legislation ("the Acts") nothing contained in the Agreement excludes restricts or modifies any condition, warranty or other obligation in relation to the Agreement and any goods and services to be supplied hereunder which pursuant to the Acts or any of them is applicable or is conferred on you where to do so is unlawful, in which event Multibase's sole liability for breach of any such guarantee, condition, warranty or other obligation shall be limited (except to the extent specifically set forth herein) to:

- a. in relation to goods: (A) the replacement of the goods or the supply of equivalent goods or payment of the cost of replacing the goods or acquiring equivalent goods; or (B) the repair of the goods or payment of the cost of having the goods repaired;
- b. in relation to services: (A) the supplying of the services again; or (B) the payment of the cost of having the services supplied again

as in each case Multibase may elect.

11.1.4 Mandatory statement under Regulation 90 of the *Competition and Consumer Regulations*:

Goods that we supply may come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. These rights may be lawfully limited in respect of goods or services not ordinarily acquired for personal, domestic or household use or consumption. To request a replacement or a refund, please send your written request to Multibase by letter or email to warranties@mbase.com.au.

- 11.1.5** Other than in respect of personal injury or damage to tangible property, Multibase's liability to you for direct damages, loss or liability for any cause whatsoever, and regardless of the form of action, will be limited to the total amount of fees paid by you, over a period of 12 months prior to the date that the damage, loss or liability occurred, in respect of the Services in the provision of which you suffered the damage or which gave rise to the cause of action.

12 Cooperation and dispute resolution

12.1 Co-operation

- 12.1.1** Each party must sign all documents and do all things necessary or desirable to give effect to the Agreement and will require its officers, employees and agents to declare, make or sign all documents and do all things necessary or desirable to give full effect to the Agreement.

- 12.1.2** In addition to and notwithstanding any other obligation under the Agreement, each party will:

- a. To the extent practical, co-operate with the other party in the pursuit of the Customer's business objectives relevant to the Services;
- b. Pursue best practice in the delivery of the Services; and

- c. As soon as practicable consult with the other party on any matter arising which may materially affect the performance by the other party of its obligations under the Agreement.

12.1.3 No consent, approval, condition or thing required to be done pursuant to the Agreement must not be capriciously or unreasonably reached, withheld, given or carried out by either Party.

12.2 Dispute resolution

12.2.1 The parties shall use their best endeavours through negotiation to resolve amicably any disagreement or disputes between them arising out of or in connection with the Agreement.

12.2.2 If, after twenty (20) days from the commencement of such negotiation referred to in clause 12.2.1, the parties have been unable to resolve amicably the dispute, either party may refer the dispute to arbitration in accordance with clause 12.2.3.

12.2.3 Unless otherwise agreed by the parties, the arbitration shall be held in Sydney, Australia, in accordance with the relevant rules of the Australian Commercial Disputes Centre ("Rules") by one or more appropriately qualified and independent arbitrators or experts appointed in accordance with the Rules. The language of the arbitration shall be English. The outcome of the arbitration shall be binding on the Parties and each Party may be legally represented during such arbitration.

12.2.4 Nothing herein prevents either party from requesting interim or conservatory measures from the Courts.

13 General

13.1 Assignment and resale

13.1.1 Except as otherwise set forth herein, your rights to use the Services under the Agreement are not assignable or transferable. Any attempt by your creditors to obtain an interest in its rights under the Agreement, whether by attachment, levy, garnishment or otherwise, renders the Agreement voidable at Multibase's option.

13.1.2 The benefit of the Agreement must not be assigned by a party without the written consent of the other party and such consent is not to be unreasonably withheld, except that a party may at its discretion assign the Agreement to a related body corporate.

13.2 Severability

13.2.1 If any provision of the Agreement is held invalid, unenforceable or illegal for any reason, the Agreement remains otherwise in full force apart from such provision which will be deemed deleted.

13.3 Force Majeure

13.3.1 Neither party shall be deemed in default of the Agreement, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labour strike, lockout, or boycott, provided that the party relying upon this

section shall take all steps reasonably necessary under the circumstances to mitigate the effects of the force majeure event upon which such notice is based; provided further, that in the event a force majeure event described in this clause extends for a period in excess of thirty (30) days in the aggregate, either party may immediately terminate the Agreement.

13.4 Service of all notices

13.4.1 Service of all notices shall be considered sufficient if sent by facsimile, standard pre-paid, certified or registered post to the party's business address, or by electronic mail.

13.5 Governing law

13.5.1 The Agreement is governed by the laws of New South Wales, Australia.

I have read and understood the above mentioned "Terms" and hereby agree to abide by them.

SIGNED for and on behalf
of:

Position:

Name:

Signature:

Date:
