

REAL SERIOUS GAMES STANDARD TERMS AND CONDITIONS OF SALE

This Agreement is made on the Effective Date between RSG and the Purchaser in the Territory as listed in the Schedule.

RECITALS

- A. RSG provides and/or stocks Products (including services) that the Purchaser wishes to buy and/or have maintained by RSG.
- B. RSG will sell the Products to the Purchaser.
- C. RSG will provide support services to ensure any defects in the Products are rectified by RSG within a reasonable time in accordance with the Defect Period provided in Item 1 of the Schedule.
- D. Upon the Purchaser's acceptance of the quote provided by RSG, the Purchaser is bound by the terms and conditions of this Agreement.

The parties agree as follows:

1. DEFINITIONS

In this Agreement, the following terms (where capitalised) have the following meanings:

ACL means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended.

Additional Software Support Fee means the amount set out in Item 6 of the Schedule.

Agreement means these Terms as modified, amended or varied in writing from time to time. For clarity, this Agreement refers to both the Head Terms and the Module Terms of any applicable Modules.

Authorised Officer means:

- a) an employee of the party whose title contains either of the words Director or Manager;
- b) a person performing the function of any of them;
- c) a solicitor acting on behalf of the party; or
- d) a person appointed by the party to act as an Authorised Officer for the purposes of the Agreement and notified to the others.

Business Day means any day other than a Saturday, Sunday, and official public holiday in the State of Queensland, Australia.

Confidential Information means all confidential and proprietary information (including without limitation, pricing, trade secrets, sales and marketing information, technology, software, ideas, know-how, processes, specifications, technical data and configurations) which is disclosed by RSG.

consumer is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if Customer is a consumer under the Agreement.

Critical Defect has the meaning provided in Item 9: of the Schedule.

Customer means an individual or end user, jointly or severally if more than one, or a duly authorised representative of the Customer purchasing the Products

of RSG and/or any resold products of RSG by parties such as the Purchaser.

Default Interest Rate means at the rate payable on a money order prescribed by a practice direction of the Supreme Court of Queensland issued under the *Civil Proceedings Act 2011* (Qld) or, if no such rate is prescribed, ten percent (10%) per annum calculated daily and payable monthly in arrears.

Delivered duty paid has the meaning as defined in the 'International Chamber of Commerce INCOTERMS 2010 Edition', as referred to in Hardware Module Term 1.1(b).

Delivery means physical delivery of any Product(s) to the Purchaser or to a carrier arranged by RSG.

Delivery Instructions has the meaning provided in Item 8: of the Schedule.

Derivative Work means any work that is based upon one or more pre-existing versions of a work provided to the Purchaser, such as an enhancement or modification, revision, translation, abridgement, condensation, expansion, collection, compilation or any other form in which such pre-existing works may be recast, transformed or adapted.

Effective Date means the date listed in the Schedule

EULA means End User Licence Agreement, as defined in the End User Licence Agreement Module.

EULA License means the license granted by the EULA Module in accordance with its Module Terms.

EULA License Period is the period commencing on the Effective Date and continues until the end of the Term or until the EULA Licence is terminated.

EULA Defaulting Party is a party who breaches the EULA License.

EULA Non-Defaulting Party is a party who does not breach the EULA License.

GST means the Goods and Services tax as defined in A *New Tax System (Goods and Services Tax) Act 1999* (Cth) and its associated Regulations as amended.

Head Terms are the terms provided in these standard terms and conditions entitled "REAL SERIOUS GAMES STANDARD TERMS AND CONDITIONS OF SALE" and excluding the Module Terms.

Installation has the meaning provided in Item 10: of the Schedule.

Insurance Policy means one, or more than one insurance policy which when combined, provide adequate public and product liability insurance for the use of the Products, with:

- a) a reputable and financially sound insurer; and

- b) a coverage amount equivalent to at least AU\$20 million against any and each action that may arise in connection with the Product(s) or the Purchaser's obligations under this Agreement.

Intellectual Property includes all business tools and materials; inventions; discoveries; innovations; novel or technical information and data; prototypes; processes; Improvements; patents, including all patents and patented applications, processes and products within the meaning of the *Patents Act 1990* (Cth); circuitry and circuit layouts; computer programs; software; code; drawings; plans; specifications; domain names; business names; trade marks, including any trade name, brand name, common law trade mark or trade mark within the meaning of the *Trade Marks Act 1995* (Cth); designs, including all designs within the meaning of the *Designs Act 2003* (Cth); trade secrets; know-how; literary, artistic and scientific works; quotes; performances of performing artists, phonograms and broadcasts; Works; and all other works resulting from intellectual activity in the industrial, scientific, education, literary or artistic fields.

Intellectual Property Rights includes all rights relating to any and all of the Intellectual Property; copyright and neighbouring rights; and moral rights as defined in the *Copyright Act 1968* (Cth) or any other applicable law, whether existing now or in the future, both in Australia and throughout the world.

IP Claim means any potential or actual infringement of RSG's Intellectual Property Rights by a third party; or any allegation by a third party that the Product(s) infringes any Intellectual Property Right of that third party.

Licence Period has the meaning state in Item 1: of the Schedule.

Maintenance means the effort to keep an application performing according to its specifications, generally without changing its functionality and includes:

- a) Corrective maintenance - the reactive modification of a software and hardware product performed after delivery to correct discovered problems;
- b) Adaptive maintenance - modification of a software and hardware product, performed after delivery, to keep a software and hardware product usable in a changed or changing environment;
- c) Perfective maintenance - software maintenance performed to improve the performance, maintainability, or other attributes of a computer program; and
- d) Preventative maintenance - the modification of a software and hardware product after delivery to detect and correct latent faults in the software and hardware product before they become operational faults;

Module(s) means the attached additional module(s) of terms and conditions, which will be agreed to by the parties and apply if selected in the Schedule. For clarity the modules are:

- a) End User License Agreement Module (**EULA Module**);
- b) Hardware Supply Module (**HW Module**);

- c) Maintenance & Support Module, also referred to as the "Service Level Agreement" (**SLA Module**);
- d) SaaS Module (**SaaS Module**);
- e) Resale Module (**Resale Module**); and
- f) Other Modules as attached to or incorporated into this Agreement from time to time.

Module(s) Term(s) means the terms and conditions of the relevant module(s).

New Release means a delivered version of an application which has altered content and may include all or part of an application

Notices means all notices, consents, approvals, waivers, requests and other communications

Order(s) means a purchase order for Product(s) submitted by the Purchaser to RSG which RSG will endeavour to fulfil.

Out of Office Hours means any time not included within normal Business Hours;

Personal Information means information or an opinion (including as part of a database), whether true or not, and whether in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, including all information that can be used on its own or with other information to identify, contact or locate a person or to identify the person in context.

Personnel of a party means employees, agents and contractors of that party.

PPSA means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended.

Privacy Act means the *Privacy Act 1988* (Cth) as referred to in Head Term 14.1.

Privacy Law means all applicable legislation, regulations, rulings, directives, compliance notices, guidelines, ordinances, industry codes of practice and policies anywhere in the world, governing privacy and data protection and that relate to the collection, use, disclosure, storage or granting of access rights to Personal Information under or in connection with this Agreement.

Product(s) means any product or service, sold or provided by RSG from time to time to which these Terms apply and which is set out in Item 1 of the Schedule.

Purchaser means the party listed in the Schedule.

Purchaser Materials means any and all systems, networks, hardware, software, data, information, backups, policies, procedures and protocols, which are or will be replaced, modified or made redundant as a consequence of the installation, testing, commissioning and/or use or operation of the Product(s) under this Agreement

RSG means Real Serious Games Pty Ltd (ACN 135 965 098) an Australian company having its principal place of business at Suite 20, Plumridge House, 36 Agnes Street, Fortitude Valley, Queensland, 4006.

Schedule means a schedule entitled "SCHEDULE TO THE RSG – STANDARD TERMS AND CONDITIONS" signed by RSG and the Purchaser as amended or

replaced from time to time by agreement of the Parties in writing.

Software means the software component of the overall Software provided by RSG in its Product.

Software Licence means a license which:

- a) Is a perpetual, non-exclusive, non-transferable and irrevocable license;
- b) Is strictly in accordance with the Software Documentation and subject to any restrictions contained in the Software Documentation;
- c) Is in compliance with any written directions or restrictions given by RSG to the Purchaser in relation to such use; and
- d) Is in compliance with these Terms.

Software Documentation means all basic, descriptive, training and instructive materials (in written, electronic or other form) describing the function, features, operation and use of the Product(s), including users' manuals, information required for installation and configuration of supplied software on applicable hardware, operating systems and integration with other applications or system software, lists of programs, jobs, transactions, files, and system elements with descriptions and layouts.

Software Updates has the meaning provided in Item 10: of the Schedule.

SOW means statement of work.

Special Conditions means the specific Product terms set out in Item 5 of the Schedule, and as amended in writing from time to time via catalogues, price lists or another written medium.

Supplier means that organisation responsible for the manufacture of the hardware and, if RSG provides the ICT hardware to You, the "Supplier" is RSG.

Support means the set of activities necessary to ensure that an operational system or component fulfils its original requirements and any subsequent modifications to those requirements.

Support Services has the meaning provided in Item 7: of the Schedule.

Tasks means the performance of certain tasks or fulfilment of certain conditions for, and as a condition precedent to, RSG performing or completing its obligations under this Agreement.

Term has the meaning set out in Item 2: of the Schedule.

Territory means the region, country or countries specified in Item 3: of the Schedule.

Third-Party EULA means the applicable End User License Agreement for any software.

Virus means any virus, Trojan horse or disabling or malicious computer code which could adversely affect access to the Software.

Warranty Period means a period of six (6) months from the date of delivery.

Works includes, but is not limited to, all literary, dramatic, musical and artistic work within the meaning of the *Copyright Act 1968* (Cth).

2. SEPARATE AGREEMENTS AND SPECIAL CONDITIONS

- 2.1. In addition to these Terms, certain Products are subject to Special Conditions as specified in the Schedule.
- 2.2. Each Module elected by RSG and the Purchaser in the Schedule, constitutes a separate Agreement, incorporating the relevant Module Terms and:
 - (a) The Head Terms; and
 - (b) The Special Conditions
- 2.3. This Agreement applies to the exclusion of any document, notice, order, terms, agreement, quotation or any other document, whether past or future, that relates to the subject matter, unless the parties agree in writing to the contrary.
- 2.4. The Purchaser may only update, modify or replace any of, or the whole of, these terms with the written agreement of RSG. Such amendments shall supersede and replace any previous terms.
- 2.5. If there are any inconsistencies or discrepancies between Agreements, the order that they shall be read in is-
 - a) The Special Conditions;
 - b) The Head Terms;
 - c) The Module Terms;
 - d) Any extraneous materials, such as proposals and letters, referred to in any Agreement, including within any schedule or annexure to the Agreement.

3. QUOTATIONS AND OFFERS

- 3.1. Any price list or other document published by RSG does not constitute a representation that the Products described in that publication is/are available to the Purchaser and RSG will not be bound by any order for Product(s) based upon or which refers to such publication.
- 3.2. Any description of Products by way of samples, documents, price lists or pamphlets is given for identification purposes only and the use of such description will not constitute sale by way of description.
- 3.3. Any quotation, displayed price, Order list or Order confirmation provided by RSG to the Purchaser concerning the proposed supply of Products is an invitation to treat only, and is subject to the Purchaser placing an Order which is the Purchaser's offer to enter into a contract with RSG on these Terms.
- 3.4. Any quotation provided by RSG will be subject to these Terms. No quotation will be binding on RSG unless it is in writing and signed by RSG or by an employee duly authorised on its behalf. Any quotation provided is based strictly on the details specified in the quotation. Any changes to the specifications may incur extra charges and require additional time for delivery.
- 3.5. Except as otherwise varied in writing by RSG, (such change being made by a duly authorised employee of

RSG) any quotation published will be valid for a period of 30 days only.

- 3.6. GST and freight are not included in quotations unless specified in writing.

4. ORDERS, ACCEPTANCE AND PERFORMANCE

- 4.1. All orders for Products placed by the Purchaser are subject to acceptance by RSG, which may be withheld by RSG in its absolute discretion, and receipt of the Purchaser's payment of the full purchase price or deposit as agreed.
- 4.2. For orders of Products made by the Purchaser which have been accepted by RSG, payment must be made prior to dispatch of the Products.
- 4.3. The Purchaser acknowledges that it is being supplied with the type of Products as specified in the Schedule.
- 4.4. RSG will use reasonable endeavours to supply the Products within the time requested by the Purchaser.
- 4.5. RSG shall be the sole and exclusive supplier of the Products to the Purchaser, and the Purchaser shall acquire and source all Products from and only from RSG, at all times throughout the Term, provided however that nothing herein shall restrict RSG from supplying the Products to or for any third parties or from developing other Products to or for third parties.
- 4.6. The Purchaser acknowledges that RSG may at any time without notice to the Purchaser vary the composition of or pricing for the Products (or components of the Products) and that RSG does not undertake that any Products supplied to the Purchaser will be identical to those previously purchased or advertised.
- 4.7. RSG may vary or amend the terms in this Agreement by written notice to the Purchaser at any time. Any variations or amendments will apply to Orders made by the Purchaser after the date of written notice.
- 4.8. RSG's obligation to perform in accordance with the terms in this Agreement will be suspended for the period of any delay arising out of anything outside the control of RSG.

5. DELIVERY

- 5.1. Any period or date for delivery stated by RSG is intended as an estimate only and is not a contractual commitment. Subject to the ACL, RSG will not be liable for any loss (including any consequential loss) or damage suffered by the Purchaser or any other person arising out of a failure to meet an estimated delivery date.
- 5.2. The Purchaser will accept delivery of the Products promptly and will be responsible for any delivery charges, demurrage or storage costs incurred by RSG as a result of a failure by the Purchaser to accept delivery.
- 5.3. The Purchaser must notify RSG in writing within five (5) Business Days of a delivery of any shortfall or damaged Products. If the Purchaser fails to give such notice, the Products will be deemed in all respects to be in accordance with the order and the Purchaser will be deemed to have accepted the Products.

6. UPDATES AND NEW RELEASES

- 6.1. RSG is under no obligation to provide updates or New Releases for the Products unless RSG has specifically

agreed to do this as a Special Condition and the update is listed as a Software Update.

- 6.2. If RSG does provide an update or New release for any Products, the Purchaser must acceptance test and, if the test is passed, install and commission the update or New Release for the Products, provided however that the Provider remains solely responsible for such acceptance testing, installation and commissioning of the update or New Release (as the case may be).

7. RISK AND INSURANCE

- 7.1. Risk in relation to the Products and all insurance responsibility for theft, damage or otherwise will pass to the Purchaser at the time the Products are delivered to the Purchaser at the place nominated on the Purchaser's Order.
- 7.2. The Purchaser assumes all risk and liability for loss, damage or injury to persons, including the Purchaser, or to the Purchaser's or a third parties' property, arising out of the Purchaser's use or possession of the Products, unless recoverable from RSG on the failure of any applicable statutory guarantee under the ACL.
- 7.3. The Purchaser shall effect and maintain the **Insurance Policy**.
- 7.4. The Purchaser must ensure RSG is listed as an insured party on the Insurance Policy and must provide written evidence of such insurance cover to RSG within two (2) Business Days of receiving a written request from RSG.

8. TRANSFER OF PROPERTY

- 8.1. Until RSG receives full payment in cleared funds for all Products supplied by it to the Purchaser, as well as all other amounts owing to RSG by the Purchaser:
- (a) title and property in all Products remain vested in RSG and does not pass to the Purchaser;
 - (b) the Purchaser must hold the Products as fiduciary bailee and agent for RSG;
 - (c) the Purchaser must keep the Products fully insured against all such risks as are usual and common to insure against in businesses of a similar nature to that carried on by the Purchaser;
 - (d) the Purchaser must keep the Products separate from its other products in a manner that will enable RSG to identify them as the Products;
 - (e) if on-sold, the Purchaser must hold the proceeds of sale of the Products on trust for RSG in a separate account with a bank to whom the Purchaser has not given security however failure to do so will not affect the Purchaser's obligation as trustee;
 - (f) in addition to its rights under the PPSA, RSG may without notice, enter any premises where it suspects the Products are and remove them and for this purpose the Purchaser irrevocably licences RSG to enter such premises and also indemnifies RSG from and against all costs, claims, demands or actions by any party arising from such action.

9. PRICE AND PAYMENT

- 9.1. The price of the Products shall be as set out in the Schedule. RSG reserves the right by written notice to the

Purchaser at any time prior to delivery to increase the price of the Products to reflect any increased cost to RSG of supplying the Products, such as without limitation any foreign exchange fluctuation, imposition or alteration of taxes or duties or any other increases in costs.

- 9.2. An invoice or statement will be delivered by RSG, to the Purchaser, in the post or via electronic mail.
- 9.3. The Purchaser will pay the invoice or statement in full to RSG within ten (10) Business Days of receiving a valid tax invoice, or as the parties may otherwise agree in writing. Time shall be of the essence in relation to payments due to RSG.
- 9.4. All payments will be made in Australian dollars (or such currency or currencies as the parties may otherwise agree) by cheque, credit card, transfer to a bank account nominated by RSG from time to time, or as otherwise agreed.
- 9.5. Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 9.6. Payment by credit card will incur a fee not exceeding what it costs RSG to accept the payment.

10. PAYMENT DEFAULT

- 10.1. If the Purchaser defaults in payment by the due date of any amount payable to RSG, then all money which would become payable by the Purchaser to RSG at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Purchaser, and RSG may, without prejudice to any of its other accrued or contingent rights:
 - (a) charge the Purchaser interest on any sum due at the Default Interest Rate;
 - (b) charge the Purchaser for, and the Purchaser must indemnify RSG from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any Products;
 - (c) cease or suspend supply of any further Products and Services to the Purchaser;
 - (d) by written notice to the Purchaser, terminate any uncompleted Agreement with the Purchaser.
- 10.2. Subject to any statutory stay of proceedings, clauses 10.1(c) and 10.1(d) may also be relied upon, at RSG' option:
 - (a) where the Purchaser is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (b) where the Purchaser is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Purchaser.

11. PERSONAL PROPERTY SECURITIES ACT

- 11.1. Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 11.2. For the purposes of the PPSA:
 - (a) terms used in clause 11 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Terms are a security agreement and RSG has a Purchase Money Security Interest in all present and future Product(s) supplied by RSG to the Purchaser and the proceeds of the Product(s);
 - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Purchaser at any particular time; and
 - (d) the Purchaser must do whatever is necessary in order to give a valid security interest over the Products which is able to be registered by RSG on the Personal Property Securities Register.
- 11.3. The security interest arising under this clause 11 attaches to the Products when the Products are collected or dispatched from RSG premises and not at any later time.
- 11.4. Where permitted by the PPSA, the Purchaser waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 11.5. RSG and the Purchaser agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
- 11.6. To the extent permitted by the PPSA, the Purchaser agrees that:
 - (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Purchaser or which place obligations on RSG will apply only to the extent that they are mandatory or RSG agrees to their application in writing; and
 - (b) where RSG has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 11.7. The Purchaser must immediately upon RSG request:
 - (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
 - (b) procure from any person considered by RSG to be relevant to its security position such agreements and waivers (including as equivalent to those above) as RSG may at any time require.
- 11.8. RSG may allocate amounts received from the Purchaser in any manner RSG determines, including in any manner required to preserve any Purchase Money Security Interest it has in Products supplied by RSG.
- 11.9. For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of Products and details of the Products shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms or the sale of the Products, except as

otherwise required by law or that is already in the public domain.

12. CONFIDENTIAL INFORMATION & INTELLECTUAL PROPERTY

- 12.1. The Purchaser guarantees to hold all information disclosed by RSG as Confidential Information in the strictest confidence and agrees not to use any Confidential Information for any purpose outside the purchase, sales and use of the Products, and not to disclose the Confidential Information to any third party.
- 12.2. Any Intellectual Property owned by RSG shall be the sole property of RSG and the Purchaser shall have no rights to this property except as agreed to in writing by RSG, or as set out in Item 4 of the Schedule.
- 12.3. RSG represents and warrants that it is the exclusive owner of (or otherwise has a license from the relevant owner) in respect of the Intellectual Property rights relating to the Products.
- 12.4. To the extent that the Purchaser develops any Intellectual Property which may be used in conjunction with the Products, unless agreed otherwise in writing, the Intellectual Property and any Intellectual Property Rights relating to the Intellectual Property will upon creation vest in RSG.
- 12.5. RSG may incorporate third party software in the Products (including open source code, freeware code and code developed by third parties engaged by RSG for any purpose) at RSG's absolute discretion. RSG shall use all reasonable endeavours to ensure that any third party software comprised in the Products does not infringe the Intellectual Property Rights of any other person, provided however that RSG shall not be liable to the Purchaser in the event any such Intellectual Property Rights are infringed.
- 12.6. To the extent that the Purchaser creates any Derivative Works, such Derivative Works shall be owned by RSG and all right, title and interest in and to each such Derivative Work shall automatically vest in RSG upon creation. RSG shall have no obligation to grant the Purchaser any right in any such Derivative Work.
- 12.7. Notwithstanding the Licence, RSG shall retain all moral rights in the Products.
- 12.8. The Purchaser may not remove any proprietary notice of RSG from any of the Products.
- 12.9. If Products or a component thereof is patented, RSG may at its discretion publish a patent notice on or in the metadata or other component of the Products notifying third parties of the existence, registration and ownership of the patent. If RSG so directs, the Purchaser shall publish a patent notice acceptable to RSG on all of its suite of software, computer products, documentation and any other software related materials in relation to the use, sale and distribution of the Products.
- 12.10. RSG may at its discretion insert such digital rights management and technological protection measures as it thinks fit into its object code or source code in the Products and may take such steps as it requires to protect, hide and maintain the confidentiality of the object code and source code from the Purchaser, any Purchasers and/or third parties.

- 12.11. The Purchaser hereby indemnifies RSG against any loss, costs, damage or expense of any kind suffered or incurred by RSG as a result of any infringement by the Purchaser of RSG's Intellectual Property Rights, it being agreed that such infringement shall constitute a material breach of this Agreement. The liability of the Purchaser shall be reduced proportionately to the extent to which such loss, costs, damage or expense are caused or contributed to by RSG.
- 12.12. If and when RSG so directs, the Purchaser shall be responsible for defending and prosecuting any infringements of Intellectual Property Rights in the Products at its sole cost and expense. Wherever possible any and all such prosecutions and defences shall be conducted in a court of competent jurisdiction in Brisbane, Queensland, Australia. RSG shall provide any and all reasonable cooperation and assistance to the Purchaser in order to assist the Purchaser in doing the same. Nothing herein shall restrict RSG from defending or prosecuting any infringements of its Intellectual Property Rights in the Products at its absolute discretion.
- 12.13. The Purchaser must inform RSG, urgently and using reasonable endeavours, upon becoming aware of any IP Claim.
- 12.14. With respect to any IP Claim –
- (a) the Purchaser's employees, agents and contractors must not make any admissions that could impair RSG's ability to successfully prosecute, defend or settle an IP Claim;
 - (b) the Purchaser gives RSG the exclusive right to prosecute, defend or settle any such IP Claim provided it keeps the Purchaser regularly informed of such IP Claim;
 - (c) the Purchaser must not attempt to settle or compromise such IP Claim, except with the prior written consent of RSG, even where RSG has directed the Purchaser to defend or prosecute an infringement of Intellectual Property Rights in the Product(s) pursuant to clause 12.12; and
 - (d) the Purchaser must provide RSG with such assistance and information as RSG may reasonably require for it to prosecute, defend, settle or oppose any such IP Claim. RSG will reimburse the Purchaser for its reasonable out-of-pocket costs in connection with such assistance.
- 12.15. The Purchaser acknowledges that a breach of any of the provisions in this clause 12, may cause irreparable damage to RSG for which monetary damages would not be an adequate remedy. Accordingly, in addition to other remedies that may be available, the Purchaser consents to RSG seeking injunctive relief for a breach or threatened breach of this clause 12 by the Purchaser.

13. SOFTWARE LICENCE

- 13.1. This clause 13 only applies when Item 1 of the Schedule designates that RSG software is being supplied to the Purchaser.
- 13.2. RSG shall grant to the Purchaser a Software License limited to only strictly authorising the Purchaser to:
- i. install and use RSG software for the purposes of the Purchaser's business;
 - ii. use RSG software in machine-readable form;

- iii. adapt and modify RSG software to the extent necessary to enable it to be used for the purposes of the Purchaser's business;
- iv. carry out acceptance tests (if any) in respect of RSG software;
- v. use and reproduce RSG software to the extent permitted under the *Copyright Act*;
- vi. use the Software Documentation supplied by RSG in support of the Customer's use of RSG software; and
- vii. make such number of copies of RSG software as reasonably required for in-house educational and training purposes;

13.3. Nothing herein disclaims, abrogates, alienates or affects RSG's subsisting and continuing moral rights in RSG software.

14. PRIVACY

14.1. RSG and Purchaser will comply with any applicable Privacy Law which applies to their situations including but not limited to the Privacy Act and the *Australian Privacy Principles*.

14.2. RSG and Purchaser's obligation under 14.1 extends to compliance with Privacy Law in respect of each other as well as in respect of any Customers.

14.3. The Purchaser agrees to be bound by the terms of RSG's Privacy Policy and Cookies Policy as amended from time to time and made available by RSG's or made available upon written request of the Purchaser and provided in a format decided at RSG's reasonable discretion.

15. OBLIGATIONS OF THE PURCHASER

15.1. The Purchaser acknowledges and agrees that the Purchaser may have to complete **Tasks** for RSG to perform and complete its obligations under this Agreement. Where the Purchaser is notified in writing to perform any Tasks by RSG, it must do these Tasks in accordance with the directions and timeframes provided by RSG to the Purchaser.

15.2. If the Purchaser fails to perform the Tasks in accordance with the directions and timeframes provided by RSG, RSG is not responsible or liable for any failure or delay in completing any of RSG's obligations that are contingent upon the performance of the Tasks.

15.3. Where RSG notifies the Purchaser it is required, the Purchaser must implement appropriate and sufficient staffing, resourcing, means, policies, and procedures to ensure:

- (a) the seamless transition and migration of the Purchaser's business, systems, networks and data from its previous arrangements and set-up to any new system or environment that makes use of the Product(s); and
- (b) operational continuity of its business in the event any of the Product(s) experience any performance failures.

15.4. Without limiting the foregoing, the Purchaser must develop and maintain adequate and appropriate disaster recovery plans, comprehensive data back up plans and the implementation of redundant networks pursuant to all applicable regulatory and industry standards and best practice protocols.

15.5. The Purchaser shall keep and maintain and place into safe custody, storage or escrow any and all Purchaser Materials.

15.6. The Purchaser acknowledges and agrees that:

- (a) RSG shall not be responsible for any loss of or damage to Purchaser Materials at any time; and
- (b) RSG shall not be responsible for re-instating all or any of the Purchaser Materials, or implementing any new systems, networks, hardware, software, staff, data, information, backups, policies, procedures and/or protocols, if for any reason the Purchaser is required, or wishes for any reason, to abandon the whole or any one or more or part of the Products at any time.

15.7. The Purchaser shall not on sell, sub-licence, rent, lease or distribute any Products to or for any third parties without RSG's prior fully informed express written consent.

15.8. Where Item 1 of the Schedule states that RSG is not providing one of the following to the Purchaser, the Purchaser is responsible for obtaining and providing at its cost any:

- (a) hardware;
- (b) software; and
- (c) networks

specified by RSG as necessary to install, test, commission and use the Products for their stated purposes in accordance with the Software Documentation.

15.9. The Purchaser shall be solely responsible for ensuring any data entered in the Products is accurate, complete and reliable. Nothing renders RSG liable for any error arising due to such data.

15.10. The Purchaser is solely responsible for checking the accuracy and reliability of any formulas or calculations used by programmes, whether or not the Purchaser has instructed RSG to programme them into the Products. RSG is not liable for the results of such formulas or calculations nor the use of such results by the Purchaser.

15.11. The Purchaser is solely responsible for checking the accuracy and reliability of any reports, tables, data sheets or other information generated by the Products. RSG is not liable for the use of these by the Purchaser.

15.12. The Purchaser undertakes and agrees that it shall not use the Products unless and until it has conducted all necessary acceptance tests and satisfied itself that the Products comply with their required functionality to the standards required by the Purchaser and any and all regulatory authorities or laws. RSG may rely upon the use of the Products by the Purchaser as a representation by the Purchaser to RSG that the Products so comply.

16. LIABILITY

16.1. To the maximum extent permitted by law and except as otherwise provided in these terms and conditions, RSG's liability under any term, condition or warranty, express or implied, is limited to the resupply of the Products.

16.2. Notwithstanding any other provision of these terms and conditions, RSG will not be liable in any way whatsoever for any indirect loss or damage, special, consequential loss or damage or punitive damages, including economic

loss, arising from the performance, non-performance or breach of these Terms.

- 16.3. To the full extent permitted by law, RSG shall not be liable for any delay, inconvenience, loss or damage of any kind arising out of the failure, malfunction, breakdown or defect of the product(s) or from loss or damage or deterioration of the Product(s) howsoever caused.
- 16.4. It is understood and agreed between the parties that these terms and conditions shall not be construed as constituting the Purchaser as agent of RSG for any purpose whatever. The Purchaser shall not describe itself as agents for RSG or in any words indicate the existence of any agency relationship between the parties.
- 16.5. The Purchaser shall at all times indemnify and hold harmless RSG and its officers, employees and agents from and against any loss or damage (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by RSG, its officers, employees and agents in respect of any claim by the Purchaser or any third party concerning or relating directly or indirectly to the Products or caused or contributed wholly or partly by any act or omission of the Purchaser, its officers, employees or agents.

17. WARRANTY OF PRODUCT(S)

- 17.1. The Purchaser agrees and acknowledges that the following specific terms apply to the supply of the respective type of Products:
- (a) RSG software – RSG provides the software to the Purchaser on an “AS IS” basis, and doesn’t warrant fitness for a particular purpose, lack of viruses, uninterrupted or error free operation, or accuracy, other than for the purpose set out in Item 5 of the Schedule.
- (b) Hardware – RSG warrants to the Purchaser that on delivery, and for the Warranty Period, any hardware manufactured by RSG will:
- i. conform in all material respects with their description and any applicable specification; and
 - ii. will be free from defects in material and workmanship.
- (c) Third party software – Your use, rights and obligations in respect of third party software is governed by its Third-Party EULA, unless it is varied by agreement between the parties to that Third-Party EULA. You agree to execute and be bound by the terms of the third party software owner’s Third-Party EULA. You accept the third party software owner’s warranty in relation to the third party software. RSG does not provide any warranty in relation to third party software.
- (d) Third party hardware – All third party hardware supplied by RSG is provided under the manufacturer’s supply and warranty conditions. RSG does not provide any additional supply or warranty conditions in relation to this hardware. RSG will pass on to you all relevant supply and warranty information provided to us by the relevant manufacturer of the hardware.
- (e) Experimental Products – these Products are provided on an “AS IS” basis without any

warranties at all. The Purchaser acknowledges that the Experimental Products may not work at all and the Purchaser accepts this risk in purchasing it. RSG is under no obligation to provide a refund or replacement Products for any Experimental Products.

- 17.2. Notwithstanding clauses 17.1(c) and 17.1(d), RSG may in its sole discretion decide to assist with the repair or replacement of a third party Products on behalf of the Purchaser, provided the Purchaser complies with clause 17.3.
- 17.3. If the Purchaser discovers during the Warranty Period that some or all of the Products do not comply with the warranty set out in clause 17.1, the Purchaser must notify RSG in writing of the defect within three (3) business days of discovering it, otherwise the warranty is void.
- 17.4. If it is established to RSG’s reasonable satisfaction that the Products do not comply with the warranty set out in clause 17.1, RSG will at its option (subject to the remainder of this clause 19) repair or replace the defective Products, or refund the price of the defective Products in full.
- 17.5. Repaired or replaced Products are warranted for ninety (90) days from the delivery date, or for the remainder of the original warranty period, whichever is longer.
- 17.6. RSG will not be liable for Products failure to comply with the warranty set out in clause 17.1 in any of the following events:
- (a) the Purchaser makes any further use of such Products after giving notice in accordance with clause 17.3;
 - (b) the defect arises because the Purchaser failed to follow RSG’s oral or written specifications or instructions, including as to the storage, commissioning, installation, use and maintenance of the Products (or if there are none, good trade practice regarding the same);
 - (c) the Purchaser alters or repairs the Products without the written consent of RSG, or the Products are subjected to any technical attention by any person other than RSG’s authorised representatives;
 - (d) the defect arises as a result of damage caused by the Purchaser, abnormal storage or working conditions, or improper use of the Products or use outside its normal application.

18. EXCLUSION OF ALL OTHER WARRANTIES

- 18.1. To the extent permitted by law, and except as set out in these conditions, RSG –
- (a) provides the Products to you on an “AS IS” basis; and
 - (b) excludes all warranties and conditions, express, implied or statutory (including all implied warranties of merchantability, fitness for a particular purpose, lack of viruses, uninterrupted or error free operation, accuracy or completeness of responses or results, lack of workmanlike effort or non-infringement) regarding the goods provided to you.

19. GOODS AND SERVICES TAX

- 19.1. Any consideration payable by the Purchaser in respect of any supply made under these Terms by RSG –

- (a) does not include any GST payable in relation to the supply of the subject matter of these Terms; and
 - (b) will be varied on the basis of the net financial impact of the GST and any associated taxation reform on the cost to RSG of providing the supply.
- 19.2. The net financial impact of the GST will be calculated on the basis of the GST payable on the supply by RSG after allowing for any reduction in cost or other financial benefit to RSG arising from the GST and any associated taxation reform and the net costs reasonably incurred in complying with the GST law.

20. CANCELLATION

- 20.1. In the event of Unsuccessful Delivery, RSG may cancel the Purchaser's Order (even if it has been accepted) by written notice to the Purchaser without limitation to its other rights under the Agreement.
- 20.2. No purported cancellation or suspension of an order or any part of it by the Purchaser is binding on RSG once the order has been accepted.

21. DEFAULT AND TERMINATION

- 21.1. RSG may at its option terminate this Agreement without cause and without giving any reason therefor by serving not less than seven (7) days prior written notice of termination upon the Purchaser.
- 21.2. The Purchaser shall be entitled to terminate this Agreement by serving written notice of the same upon RSG if:
- (a) RSG effects a material breach of this Agreement;
 - (b) The Purchaser serves written notice upon RSG requiring RSG to rectify the breach within thirty (30) days (giving full particulars of the breach); and
 - (c) RSG fails to rectify the breach, or the breach is unable to be rectified, within the said thirty (30) days.
- 21.3. Upon termination of this Agreement by RSG, RSG shall be entitled to be paid only for Products for which an Order was placed by to the Purchaser prior to the date of termination.
- 21.4. No termination fee or any compensation is payable to the Purchaser if RSG terminates this Agreement.
- 21.5. The termination of this Agreement by either party is without prejudice to any other right or remedy which they may have against the other party at law or in equity or under this Agreement.

22. FORCE MAJEURE

- 22.1. Subject to clause 22.2, neither party will be liable for any failure to perform any obligation under the Agreement to the extent that such failure is caused by events beyond its reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, pandemics, acts or threats of terrorism or war.
- 22.2. Clause 22.1 does not excuse the Purchaser from any obligation under this Agreement to pay any sum to RSG.

23. MISCELLANEOUS

- 23.1. The law of Queensland from time to time governs the terms of this Agreement. The parties agree to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 23.2. RSG's failure to enforce any of these Terms shall not be construed as a waiver of any of RSG's rights.
- 23.3. If a clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the terms of this Agreement without affecting the enforceability of the remaining terms. A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.
- 23.4. The singular includes the plural and the plural includes the singular.
- 23.5. A person includes a body corporate.
- 23.6. A party includes the party's executors, administrators, successors and permitted assigns.
- 23.7. Dollars means Australian dollars unless otherwise stated.
- 23.8. Headings are included for convenience only and are not to affect the interpretation of this Licence.
- 23.9. If a party consists of more than one person, this Licence binds them jointly and each of them severally.

24. NOTICES

- 24.1. Unless expressly stated otherwise, Notices must be in writing, signed by the sender or an Authorised Officer of the sender and marked for the attention of the person shown in Item 12 of the Schedule.
- 24.2. If the intended recipient has notified a change of postal address or changed fax number, then the communications must be to that address or number.
- 24.3. Notices are taken to have been received:
- (a) if sent by post, three Business days after posting;
 - (b) if sent by email, upon receipt of a successfully delivered email receipt by the sending party; and
 - (c) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent.

REAL SERIOUS GAMES ORDER TERMS AND CONDITIONS – MODULE TERMS

END USER LICENCE AGREEMENT MODULE

In addition to the Head Terms, the following terms apply only to the EULA supplied by Real Serious Games under this Agreement.

2. GRANT OF LICENCE

- 2.1 By purchasing this Software Purchaser agrees to the terms of the EULA Licence, to access and use the Software for the EULA License Period.
- 2.2 Subject to any other provisions in this EULA Licence, Purchaser is not authorised to copy, modify or sell the Software without the express written permission of RSG.

3. PURCHASER OBLIGATIONS

- 3.1 During the EULA Licence Period, Purchaser must:
- comply with and supervise and control the use of the Software in accordance with the terms of the EULA Licence;
 - ensure that the Purchaser's authorised users and Personnel are made aware of and comply with the terms of the EULA Licence;
 - use the Software strictly in accordance with this EULA Licence and the procedures, instructions and guidelines provided by RSG; and
 - comply with all laws pertaining to the use of the Software.
- Purchaser must not at any time:
- provide or otherwise make available the Software in any form to any person other than the Purchaser's authorised users and Personnel, without the written consent of RSG.

4. RISK, TITLE AND REPLACEMENT

- 4.1 Subject to the terms and conditions of this EULA Licence:
- risk of loss or damage to the Software passes to the Purchaser upon the purchase of the Software; and
 - The Purchaser assumes all risk and liability for loss, damage, or injury to persons or to the Purchaser's property, or third parties arising out of the use or possession of the Software provided by RSG to the Purchaser under this EULA Licence, unless recoverable from RSG on the failure of any statutory guarantee under applicable law.
- 4.2 Unless agreed otherwise in writing, title to the Software remains at all times with RSG.

5. COPYING AND MODIFICATION OF THE SOFTWARE

- 5.1 The Purchaser must:
- other than in accordance with the terms and conditions of this EULA Licence, not modify, copy, duplicate or reproduce, the Software without RSG's prior written consent;

- not attempt to reverse engineer, disassemble, reverse translate, decompile, or in any other manner decode the Software (or cause or otherwise facilitate such action through a third party) in order to derive the source code or for any other reason;
- not alter, delete or interfere with any copyright or trade mark notices which appear in the Software; and
- adopt and maintain reasonable systems and procedures to provide for the safe, secure and proper use, supervision and control of the Software by the Purchaser and its officers, employees, agents and contractors and to protect the Software from unauthorised access or misuse.

6. USE, OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Purchaser agrees and acknowledges that:
- RSG owns, or has the licence to, all Intellectual Property in the Software;
 - the Software is and at all times remains the property of RSG; and
 - The Purchaser has no proprietary right or interest in the Software other than as granted to the Purchaser under this EULA Licence.
- 6.2 The Purchaser must not register or record or attempt to register or record anywhere in the world any element of the Software or any improvements, inventions, patents, trademarks, copyright or designs derived from or similar to the Software or its contents or aid or abet anyone else in doing so.
- 6.3 Other than pursuant to this EULA Licence, the Purchaser must not, at any time during the EULA Licence Period or after termination modify, use, deal with or take advantage of the Intellectual Property Rights in the Software.

7. RECIFICATION OF DEFECTS

- 7.1 If the Purchaser notifies RSG of a Defect in the Software, the Purchaser must provide details of the Defect sufficient to enable RSG to reproduce or acknowledge the Defect.
- 7.2 RSG is not obliged to correct a Defect where the Defect has arisen due to:
- any modifications made to the Software by the Purchaser;
 - the Purchaser unreasonably refuses to upgrade their electronic systems upon which the Software is to run where such upgrade would eliminate the Defect;
 - the Purchaser unreasonably refuses to upgrade any other program used in conjunction with the Software to a newer version where such upgrade would eliminate the Defect; and
 - a Virus introduced into the Software by the Purchaser or a third party.

8. SUPPORT AND TRAINING

- 8.1 The Purchaser agrees and acknowledges that RSG is not required to provide support or training to the Purchaser in relation to access to and use of the Software.

9. WARRANTIES

- 9.1 Except as the EULA Licence specifically states, or as contained in any express warranty provided with the Software, the EULA Licence does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture or performance of the Software or any contractual remedy for its failure.
- 9.2 The Purchaser acknowledges that the Software, due to its nature, cannot be guaranteed to be interruption free, defect or error free, and the Purchaser further accepts that the existence of any such errors shall not be construed a breach of this EULA Licence or any applicable law.
- 9.3 Except as specifically set out in this EULA Licence, RSG makes no representation nor gives any warranty in relation to the Software being Virus free or for any incorrect performance or functionality of the Software.

10. LIABILITY AND INDEMNITY

- 10.1 RSG is not liable to the Purchaser in any way arising under or in connection with the installation, use of or any other dealings with the Software by the Purchaser or any third party.
- 10.2 RSG will not be liable for any direct, indirect or consequential losses suffered by the Purchaser or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to another party as a result of any Defect, delay, errors or Viruses in the Software or downtime experienced.
- 10.3 Nothing in the EULA Licence is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be so excluded, restricted or modified.
- 10.4 The Purchaser indemnifies and hold harmless and agree to keep RSG indemnified against all claim(s) and any cost(s) (including indemnity from all legal costs), expense(s), losses, damages, compensation or other liabilities that RSG or a third party may sustain or incur as a result of:
- (a) any breach of this EULA Licence by the Purchaser or its Personnel;
 - (b) any negligent or unlawful act or omission of the Purchaser or its Personnel;
 - (c) Purchaser's use of the Software;
 - (d) the introduction of a Virus into the Software by the Purchaser or its Personnel;
 - (e) The Purchaser or a third party's use or reliance on the Software; and
 - (f) a breach of any third party's copyright arising in relation to the Purchaser's use of the Software.
- 10.5 The indemnities contained in this EULA Licence will survive termination of this EULA Licence.

11. CONFIDENTIALITY

- 11.1 Each party undertakes not to use or disclose to any other person or entity any of the other party's Confidential Information and will only use such Confidential Information in good faith and for the proper purposes of this EULA Licence and subject to any restrictions imposed by the party that is the provider of the Confidential Information.

12. TERMINATION

- 12.1 RSG may immediately terminate the EULA Licence by notice in writing to the Purchaser if the Purchaser fails to perform any of its obligations under, or otherwise breaches a provision of this EULA Licence and that failure or breach is incapable of remedy or, if incapable of remedy, continues for fourteen (14) days after the Purchaser is given notice by RSG in writing requiring the breach to be remedied.
- 12.2 If a breach of this Licence by a EULA Defaulting Party is incapable of remedy, the EULA Non-Defaulting Party may terminate this EULA Licence immediately on written notice to the Defaulting Party.
- 12.3 This EULA Licence automatically terminates upon the expiration of the current EULA Licence Period.

13. CONSEQUENCES OF TERMINATION

- 13.1 Termination of this Licence shall not relieve a party of liability to the other party in respect of the rights or remedies of the other party which have accrued prior to termination.
- 13.2 Upon termination or cessation of this EULA Licence, the Purchaser:
- (a) has no right to use or obtain any advantage from the Software or from any related Intellectual Property Rights in the Software.
 - (b) must as soon as reasonably practicable return to RSG the Software, all Intellectual Property and other property belonging to RSG that is in the Purchaser's possession, custody or control.
 - (c) must not record, store, document or otherwise retain any copy or version of the Software.

14. ASSIGNMENT

- 14.1 The licence granted under this EULA Licence is personal to the Purchaser and cannot be assigned, novated, sub-licensed or transferred to a third party without the express written consent of RSG.

15. GENERAL

- 15.1 No Merger – the rights and obligations of the parties in respect of licences, indemnities, covenants and warranties contained in this EULA Licence shall remain in full force and effect, be continuing EULA Licences, indemnities, covenants and warranties and not be merged or extinguished by or upon termination of, all completion of any obligations under, this EULA Licence.
- 15.2 Entire Licence – this EULA Licence constitutes the entire Licence between the parties relating to the grant of the Software.



- 15.3** Variation and waiver – a provision of this EULA Licence or a right created under it, may not be varied or waived except in writing, signed by the party or parties to be bound.
- 15.4** Survival – the terms, conditions and provisions of this EULA Licence which are capable of having effect after the expiration or termination of this EULA Licence will remain in full force and effect following the expiration of termination of this EULA Licence.
- 15.5** Relationship:
- (a) Nothing contained in this EULA Licence shall be read or construed so as to constitute the relationship of principal and agent, partnership or of employment between the parties.
 - (b) No party may incur any liability on behalf of the other or in any way pledge or purport to pledge the other's credit.
 - (c) No party may accept any order or make any contract binding upon the other without prior written approval.

HARDWARE SUPPLY MODULE

In addition to the Head Terms, the following terms apply only to Hardware supplied by RSG under this Agreement.

1. SUPPLY OF HARDWARE

- 1.1 The hardware identified in the Order (**Hardware**), together with the relevant documentation (including any user manuals) will be Delivered duty paid in accordance with the Delivery Instructions.
- 1.2 The Purchaser must provide a signed receipt of Delivery of such Hardware from an Authorised Officer.
- 1.3 During the Term, the Company may not appoint additional Suppliers in the Territory at any point without the consent in writing of RSG which will not be unreasonably withheld.

2. PACKING AND LABELLING

- 2.1 RSG will fix a packing list giving full details of the contents of a consignment to the outside of the packaging so that it is easily located and unlikely to be lost or damaged, including the following details: (a) Place of Delivery address; (b) relevant identity numbers (e.g. PO, line item, and manufacturer's part/item numbers or RSG's serial/item numbers (where allotted)); (c) item description and quantity; (d) consignment weight in kilograms; (e) any recommended handling instructions; (f) any special safety/dangerous goods details; and (g) dispatch date.
- 2.2 RSG will pack the Hardware:
 - (a) securely to prevent damage in transit, storage and distribution, including to protect Hardware against mechanical shock and vibration from transportation, water and humidity, deterioration through excessive heating and drying; fungi, bacteria, pests, static electricity, and changes in atmospheric pressure;
 - (b) where they constitute dangerous hardware, so that they are identified, classified and packed in accordance with sections 3, 4, & 5 of the Australian Code for the Transport of Dangerous Goods by Road and Rail (latest edition);
 - (c) as individual items or in reasonably and logically sized packs, and where possible, so the weight of individual packs do not exceed 20kg;
 - (d) where large quantities are supplied and the items are to be issued as single units, with dividers inserted in reasonable and logical breaks to assist in their issue and stocktaking;
 - (e) where they contain components that are liable to sustain or cause damage if mounted in the hardware during transportation in a manner so that:
 - i. such components are removed from the Hardware and packed separately; and
 - ii. the case containing such components is identified and cross referenced to the Case containing the main unit for which they are required;

3. DOCUMENTATION AND INFORMATION

- 3.1 RSG will supply documentation related to the hardware as soon as reasonably practicable.
The Purchaser must ensure that the use of the Hardware is in accordance with the documentation provided by RSG and will not cause an unreasonable risk to the environment or the health and safety of any person.

4. EVOLUTION AND OBSOLESCENCE PROTECTION

- 4.1 The Purchaser must ensure that all Hardware supplied will be compatible with and fully interoperate with current and previously supplied Hardware.
- 4.2 The Purchaser must:
 - (a) continue to offer a current version of the Hardware, or equipment that is directly substitutable for the Hardware and that complies with the specifications, for:
 - iii. the commercial life of the Hardware specified in the Order; and
 - iv. at least the current version notice period specified in the Order, after written advice that that version will cease to be offered;

5. QUALITY

- 5.1 RSG will:
 - (a) ensure that all Hardware, and any repaired, modified or replaced components of Hardware, are new, or of a quality equivalent to new, components;
 - (b) promptly respond to any defects raised by the Purchaser concerning the Hardware; and
 - (c) maintain records relating to failure and repair of Hardware for the longer of:
 - v. the Term of this Agreement; and
 - vi. the Warranty Period,in a format agreed by the parties, and provide the Purchaser with a copy of those records on request by the Purchaser.

6. FORECASTS AND BUFFER STOCK

- 6.1 The Purchaser will provide regular forecasts (**Forecasts**) of its anticipated demand for any of the Hardware as set out in the Order.
- 6.2 Any Forecasts the Purchaser provides are indicative only and are not a commitment to purchase the forecast amounts. The Purchaser will not be liable for any failure to place orders in accordance with a Forecast.
- 6.3 If the Purchaser specifies a quantity of Hardware in the Order that RSG must maintain in order to meet the Purchaser's anticipated demand for that Hardware (**Buffer Stock**), RSG will maintain the Buffer Stock, at their discretion

MAINTENANCE & SUPPORT MODULE

In addition to the Head Terms, the following terms apply only to SLA Supplies supplied by RSG under this Agreement.

1. SLA TERM

- 1.1 As defined in Item 2 of the Schedule.

2. YOUR OBLIGATIONS

- 2.1 During the SLA Term, You must:
- (a) comply with and supervise and control the use of the Software in accordance with the terms of the EULA;
 - (b) ensure that Your authorised users and Personnel are made aware of and comply with the terms of the EULA;
 - (c) use the Software strictly in accordance with this SLA and the EULA, procedures, instructions and guidelines provided by RSG; and
- 2.2 comply with all laws pertaining to the use of the Software.

You must not at any time:

- (a) provide or otherwise make available the Software in any form to any person other than Your authorised users and Personnel, without the written consent of RSG.

3. RECTIFICATION OF CRITICAL DEFECTS

- 3.1 If You notify RSG of a Critical Defect in the Software, You must provide details of the Critical Defect sufficient to enable RSG to reproduce or acknowledge the Critical Defect.
- 3.2 RSG is not obliged to correct a Critical Defect where the Critical Defect has arisen due to:
- (a) any modifications made to the Software by You;
 - (b) You unreasonably refusing to upgrade Your electronic systems upon which the Software is to run where such upgrade would eliminate the Critical Defect;
 - (c) You unreasonably refusing to upgrade any other program used in conjunction with the Software to a newer version where such upgrade would eliminate the Critical Defect; and
 - (d) a Virus introduced into the Software by You or a third party.

4. HELP DESK

- 4.1 RSG can make available a help desk facility (**Help Desk**) to the Purchaser to enable:
- (a) the Purchaser to report to RSG defects of which it becomes aware by emailing a request to: support@realseriousgames.com ;
 - (b) RSG to respond to the requests made to the Help Desk; and
 - (c) RSG to respond to technical and user questions related to the Maintained Supplies, each in accordance with the Service Levels.

- 4.2 When reporting a defect to RSG, the Purchaser must provide any information relating to that defect as reasonably requested by RSG.

- 4.3 When a Critical Defect is reported to RSG, RSG may:

- (a) **respond** – notify the Purchaser in accordance with the Critical Defect notification procedure agreed between the parties;
- (b) **restore** – restore the Maintained Supplies affected by the Critical Defect (which may include the provision of a work around or alternative procedure to address the Critical Defect, provided that this does not adversely affect the Maintained Supplies); and
- (c) **rectify** – permanently fix the Critical Defect,

in each case within the response timeframes specified in the service levels in clause 6 below.

- 4.4 When a Critical Defect is reported to RSG, the following Support Tier levels will apply:

Support Tier	Description
1	All support incidents begin in Tier 1, where the issue is identified, and the Purchaser refers to documentation previously provided by RSG for possible mechanisms to resolve the issue themselves.
2	All support incidents that cannot be resolved with Tier 1 Support are escalated to Tier 2, where more complex support is provided by customer support Personnel.
3	All support incidents that cannot be resolved with Tier 2 Support are escalated to Tier 3, where support will be provided by qualified and experienced software engineers

5. REMEDIAL MAINTENANCE

- 5.1 RSG will provide remedial maintenance, including Critical Defect rectification in accordance with the Schedule, to ensure the Products are fully functional and perform in accordance with the relevant specifications.

- 5.2 Defects that are not Critical Defects are to be classified by the Purchaser according to the classifications set out in the table below.

Severity Level	Description
Performance Affecting issue	An issue that prevails after the Purchaser has worked through any maintenance requirements notified to them by RSG; and affects the performance of the Product where one or more devices are inoperable.
Non-Performance Affecting issue	An issue that does not affect performance and will be logged and dealt with in a planned manner, with the planned correction date provided to the Purchaser. The Purchaser will



	have performed all requirements notified to them by RSG, prior to logging a support ticket
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6. RESPONSE TIMES

RSG will provide remedial maintenance, within the following response times:

Severity Level	Response Time
Performance Affecting issue	All issues logged are to be responded to within 48 hours, with a plan of the time and duration for correction determined for Performance Affecting issues. Maximum time taken on full reimage of a new device or existing device will be approximately 4 days plus transport time to and from Brisbane.
Non-Performance Affecting issue	An issue that does not affect performance will be logged and dealt with in a planned manner, with the planned correction date provided to the Purchaser. The Purchaser will have performed all requirements notified to them by RSG, prior to logging a support ticket
Unplanned Responses	All unplanned responses are charged as an Additional Software Support Service Fee
Out of Office Hours	Out of Office Hours support is not guaranteed and is subject to availability of technical staff. Additional Software Support Service Fees apply for urgent support in out of office hours

7. REPLACEMENT OF PARTS

- 7.1 Unless otherwise specified in the Order, Maintenance and Support does not include repair and replacement of parts deemed necessary by RSG or the manufacturer for the proper performance of the Products, and may include the rebuilding of any Hardware.
- 7.2 All parts will be furnished on an exchange basis, and will be new standard parts, or of a quality equivalent to new. Unless otherwise agreed between the parties, for original hardware manufacturer items, replaced parts must be certified by the original hardware manufacturer.

8. DOCUMENTATION AND RECORD KEEPING

- 8.1 RSG will keep full records of Maintenance and Support provided, including, for each defect:
 - (a) the time that the defect was reported or identified;
 - (b) the remedial action taken, including the time each action is taken;
 - (c) any parts replaced and repaired; and
 - (d) the time that the defect was resolved;
 and will provide the Purchaser with a copy of these records on request by the Purchaser.

SAAS MODULE

1. SUPPLY OF SAAS

- 1.1 RSG will provide the cloud hosted software, services and documentation identified in the Order (**SaaS**) to the Purchaser and any other persons (or class of persons) specified in the Order (**Authorised Users**):
- (a) in accordance with this Agreement, including by any required dates set out in the Order; and
 - (b) in a way that:
 - (i) allows the Purchaser and all the Authorised Users to make full and proper use of the SaaS; and
 - (ii) meets or exceeds all applicable service levels as set out in the Order.
- 1.2 The SLA Module Terms apply to all services provided as part of the SaaS Supplies.
- 1.3 The fees for such Maintenance and Support services are included in the SaaS licence fees.
- 1.4 RSG will provide to the Purchaser and its Authorised Users (and maintain throughout the Term) all applicable account/credential, log in or access codes, passwords, SaaS portals (if any) and any other similar access requirements required by the Purchaser and its Authorised Users to make full and proper use of the SaaS and any documentation also provided by RSG.

2. LICENCE TO SAAS

- 2.1 RSG grants to the Purchaser a non-exclusive, worldwide licence to:
- (a) access and use, and to allow the Authorised Users to access and use, the SaaS (including access to any RSG portals) and documentation for the Purchaser's business purposes for the term specified in the Order; and
 - (b) make as many copies of the documentation as the Purchaser considers necessary to make full use of the SaaS and for backup, testing, security and archival purposes at no additional charge.

3. MAJOR UPDATES AND MODIFICATIONS

- 3.1 RSG may make major modifications or updates to the SaaS on at least 20 Business Days' notice to the Purchaser only if RSG:
- (a) makes available to the Authorised Users at no additional charge all improvements and additions that RSG incorporates into its standard SaaS service offering; and
 - (b) does not make any major modifications or updates that are likely to detrimentally affect or interrupt the use of the SaaS by the Purchaser or an Authorised User, including removing any features or reducing functionality of the SaaS.

4. HOSTING OF THE SAAS

- 4.1 RSG will supply, maintain and keep up-to-date, all hardware, software and network infrastructure (**Infrastructure**) necessary to comply with the supply of SaaS to the Purchaser and Authorised Users under this Module.
- 4.2 RSG will ensure that:
- (a) all commercially available software that is part of the Infrastructure is:
 - (i) maintained at no more than one version behind the then-current version (i.e. version n-1); and
 - (ii) at all times a supported version of that software;
 - (b) the Infrastructure is sufficient to allow the simultaneous use of the SaaS by all Authorised Users; and
 - (c) the software and hardware identified in the Order as the minimum requirements for client systems are sufficient to allow the use of the SaaS by Authorised Users.
- 4.3 Where –
- (a) the SaaS is provided from a shared hardware or software environment; and
 - (b) the Purchaser notifies RSG that segregation of relevant systems, processes or data is required, then RSG must not store any of the Purchaser's data on the same virtual server instance or physical environment used to store any third party data.

5. USE OF THE SAAS

- 5.1 The Purchaser will:
- (a) use the SaaS for lawful purposes and in accordance with this Agreement;
 - (b) use its best endeavours to protect any login credentials for accessing and using the SaaS and any supplied documentation against misuse and promptly notify RSG upon becoming aware of any need to suspend or change such credentials; and
 - (c) except as permitted under this Agreement or any Law, not rent, lease, reverse engineer, decompile or disassemble the SaaS.

6. POST-TERMINATION OBLIGATIONS

- 6.1 During: the period from:
- (a) the notice of termination or date of expiry of the Agreement; and
 - (b) for a period of 120 days (or such longer period agreed by the parties) following the effective date of expiration or termination of the Agreement, if requested by the Purchaser, RSG must:
 - (i) grant the Purchaser and its Personnel limited access (including any applicable licences) to the SaaS platform (including use of applicable APIs and SaaS portal(s)) solely for purposes of the



Purchaser's (and/or such nominated third party's) retrieval of the Purchaser's data and any other Confidential Information; and

(ii) provide reasonable assistance as requested by the Purchaser for the purposes of migrating the Purchaser's data from RSG's systems onto the Purchaser's systems and the systems of any third party nominated by the Purchaser. Any migration may be carried out in stages in accordance with a project plan and timetable specified by the Purchaser. For clarity, this assistance will be paid for by the Purchaser as an Additional Software Support Service Fee.

7. DATA SECURITY OBLIGATIONS

- 7.1 Security patching: When a security patch becomes available, RSG must ensure it patches any part of its network that stores or processes the Purchaser's data, or connects to the Purchaser's networks, as soon as reasonably practicable.
- 7.2 Encryption: RSG will ensure that:
- (a) all the Purchaser's data is encrypted at rest and in transit in accordance with the Purchaser's encryption standards; and
 - (b) all devices accessing, storing or processing the Purchaser's data have end point encryption installed.
- 7.3 Controlled access to systems and logging:
- (a) RSG and its Personnel must only access the Purchaser's data for the purposes of this Agreement;
 - (b) RSG must keep and maintain accurate and up-to-date records of any access, collection, or changes of the Purchaser's data by RSG (**Data Records**), including details of the relevant RSG Personnel involved and the date and purpose of the access, collection, or change; and
 - (c) at the Purchaser's request, RSG must provide the Purchaser with copies of the Data Records in real time, and if not possible, within 24 hours of real time.
- 7.4 Data Loss Prevention Capability: RSG will have in place appropriate software, systems and processes that are designed to detect and prevent loss of the Purchaser's data.
- 7.5 Back up and data recovery capability: RSG will:
- (a) make backup copies of the Purchaser's data and system configurations at least every 10 Business Days (**Back-Ups**);
 - (b) store Back-Ups securely in accordance with the Purchaser's backup requirements;
 - (c) retain Back-Ups at no additional cost to the Purchaser for 42 Days (or longer if requested by the Purchaser); and
 - (d) provide the Purchaser's data to the Purchaser if requested.

7.6 Vulnerability detection: RSG must:

- (a) ensure that any server or computer connected to the Internet that is used to access, store, modify or use the Purchaser's data undergoes vulnerability scans:
 - (i) monthly; and
 - (ii) promptly following any system change; and
- (b) immediately fix any vulnerabilities discovered and report such vulnerabilities and fixes to the Purchaser as soon as reasonably practicable.

7.7 Erasure of the Purchaser's data:

- (a) The Purchaser must approve the occurrence and method of any de-identification, destruction or permanent erasure of the Purchaser's data under this Agreement in writing.
- (b) If RSG must replace data storage infrastructure under this Agreement, it must ensure any of the Purchaser's data is permanently erased or the infrastructure is destroyed in a secure destruction centre.

RESALE MODULE

In addition to the Head Terms, the following terms apply to Supplies purchased for resale purpose by the Purchaser.

1. SUPPLY FOR RESALE

- 1.1 RSG will:
- (a) provide the Products ordered for the purposes of resale to customers that the Purchaser wishes to resell the Products to (**Resale Customer**); and
 - (b) ensure the Products comply with all applicable requirements of the ACL that would apply to the Products if RSG were supplying them directly to customers.

2. THE PURCHASER RESALE RIGHTS

- 2.1 The Purchaser may:
- (a) market, distribute, bundle and resell (and, where applicable, sub-license) the Products to Resale Customers in any manner whatsoever;
 - (b) determine the price that it charges Resale Customers for the Products; and
 - (c) use any Products intended for resale itself. Any liability of the Purchaser in relation to the use of the Products by a Resale Customer will be limited to the amount (if any) that the Purchaser actually recovers from the Resale Customer in relation to that use.

3. ASSISTANCE BY RSG

- 3.1 RSG will provide assistance to the Purchaser, the Resale Customer and any Third Parties as reasonably requested to enable the Purchaser to resell the Products to Resale Customers.

4. CONSENTS

- 4.1 If the Purchaser notifies RSG that it must obtain consent from a Resale Customer prior to Delivery of the Products, RSG must not commence providing the Products to, or in connection with, that Resale Customer unless and until the Purchaser notifies RSG in writing that such consent has been obtained.

5. PURCHASER COMMUNICATION

- 5.1 Except as required or permitted by Law or as expressly agreed by the Purchaser, RSG must not, and must ensure that its Personnel do not:
- (a) communicate with Resale Customers in relation to the Products; and
 - (b) directly or indirectly, deal with, market to, or sell to, any Resale Customers using information generated, obtained or produced under or in connection with this Agreement.

6. MARKETING AND BRANDING

- 6.1 Subject to clause 6.2, RSG grants the Purchaser a non-exclusive, royalty-free, non-transferable right and licence to use and reproduce any trade marks, names or logos of RSG and any documentation and other promotional material related to the Products, for the sole purpose of resale of the Products.
- 6.2 The Purchaser must seek RSG's written approval, which can be withheld in its sole discretion, to use any RSG trade marks in marketing or promotional material prior to publication of same.

7. PURCHASER CONTRACTS

- 7.1 Where the Purchaser resells Products to a Resale Customer, the Purchaser may enter into an agreement with that Resale Customer for the provision of the Products (**Resale Contract**). The Purchaser must include terms in a Resale Contract that are equivalent to the rights granted to, and the obligations owed to, the Purchaser under this Agreement.

8. EXPORT COMPLIANCE

- 8.1 The parties acknowledge and agree that:
- (a) certain Products provided under this Agreement (including any SOW) may be subject to trade control laws; and
 - (b) neither party will export or re-export any such Products or undertake any transaction in violation of such trade control laws; and
 - (c) RSG will take reasonable steps to ensure that its suppliers and sub-contractors who provide goods or services in its supply chain, comply with all such trade control laws.

9. END-USER TERMS

- 9.1 If RSG notifies the Purchaser that end user terms apply to the purchase of any Product, it will provide the Purchaser with a copy of those end user terms (**End User Terms**).
- 9.2 The Purchaser must ensure that any sale of a Product to which End User Terms apply is only made pursuant to the those End User Terms; and must provide a copy of the End User Terms to the Resale Customer.