

# XchangeIT Software Licence and Subscription Agreement

## 1 This agreement and getting started

- 1.1 XchangeIT Software Pty Limited (ABN 28 096 197 581) of Level 3, 54 Park Street, Sydney NSW 2000 (**XchangeIT, we, us**) has developed a Solution that assists newsagents, retail stores and other participants.
- 1.2 The **Customer** (also referred to as **you, your**), being the sole trader, partnership or entity named in the registration process for the Solution, wishes to use the Solution in the operation of the single newsagent or retail store named in its Registration Form (**Store**).
- 1.3 The parties agree that XchangeIT will provide the Solution to the Customer on the terms and conditions of this agreement.
- 1.4 You agree that:
  - (a) you are authorised to enter this agreement; and
  - (b) you have read, understand and agree that the Customer and XchangeIT are bound by these terms and conditions and all modifications and additions provided for.

If you do not agree with these terms and conditions or are not authorised by the Customer to enter into this agreement, you must not complete a Registration Form. If you have any questions or concerns about the terms of this agreement, you should seek legal advice before you install the Solution. You can also ask XchangeIT commercial questions by emailing [support@xchangeit.com.au](mailto:support@xchangeit.com.au).

- 1.5 If the Customer agrees to the terms of this agreement, you can complete a Registration Form on behalf of the Customer and make your first payment of the Fees by BPAY® or credit card. The Customer must complete a separate Registration Form (and a separate agreement will arise) for each store that it operates.
- 1.6 If XchangeIT agrees to provide the Solution to the Customer, we will activate the Customer's account and process payment of the Fees and that activation day will be the **Commencement Date**. If XchangeIT does not agree to provide the Solution to the Customer, we will notify you and will not process payment of the Fees (and this agreement will not be binding on either party).
- 1.7 The terms of this agreement may change from time to time in accordance with the process set out in clause 13.

## 2 Term

### General

- 2.1 This agreement commences on the Commencement Date and will run for consecutive Periods until it is terminated in accordance with its terms (**Term**).

### Termination for convenience

- 2.2 The Customer may terminate this agreement at any time for any or no reason (i.e. for convenience) by giving XchangeIT at least 10 Business Days notice. If the Customer exercises this right, the Customer will receive no refund for any amounts already paid for the then-current Period.
- 2.3 XchangeIT may give the Customer notice (no later than 30 days before the end of the then-current Period) that this agreement will expire at the end of the then-current Period.

There are additional termination rights (some with corresponding refund rights) set out in this agreement including in clauses 8.2(e)(i) and 12.

## 3 Licence and right to use

- 3.1 XchangeIT grants the Customer a non-exclusive, non-sublicensable, non-transferable right and licence for the Term to:
  - (a) in the case of an on-premise installed Solution, download and install the Solution;
  - (b) in the case of an on-premise installed Solution, make one copy of the Solution solely for backup, testing, disaster recovery and archival purposes;
  - (c) access the Solution;
  - (d) use the Solution in the operation of the Store; and
  - (e) allow the Authorised Users to access and use the Solution on the Customer's behalf,

for the sole purpose of supporting the operation of the Store.

- 3.2 The licence granted under clause 3 is subject to compliance with the terms of this agreement including the access conditions in clause 6.

- 3.3 XchangeIT will use reasonable efforts to ensure that the Solution materially complies with the description for that Solution set out at <https://xchangeit.lpages.co/xit-main/>.

- 3.4 For clarity, XchangeIT (or its licensors, as applicable) owns all Intellectual Property Rights in XchangeIT Materials. All modifications and enhancements to XchangeIT Materials will vest in XchangeIT and become XchangeIT Materials on and from their creation.

## 4 Support Services

- 4.1 XchangeIT will use commercially reasonable endeavours to provide support services to the Customer between 8am and 5pm (Sydney, Australia time) on Business Days (**Support Services**).
- 4.2 XchangeIT will provide the Support Services remotely via methods including email, phone and TeamViewer. The Customer must cooperate with XchangeIT in connection with the Support Services including to enable XchangeIT to recreate and issues and to manage the roll out of updates and upgrades.
- 4.3 From time to time, XchangeIT may, but is not obliged to, provide the Customer with updates or upgrades to the Solution. In the case of a Solution which is provided on an on-premise basis, the Customer will be responsible for installing the updates or upgrades with XchangeIT's assistance.
- 4.4 If XchangeIT notifies the Customer that an update or upgrade is required to be rolled out urgently (e.g. to address a security concern), the Customer must do all things reasonably necessary to facilitate that roll out in a timely manner having regard to the urgency.

## 5 Data Sharing through the Solution

- 5.1 When you access the Solution, XchangeIT will ask you to nominate which of the listed suppliers and distributors (each a **Third Party Supplier**) you wish to exchange the Relevant Data with (**Data Sharing Request**).
- 5.2 You agree that:
  - (a) unless otherwise expressly agreed between the parties in writing, XchangeIT and our related bodies corporate (**Our Group**) will be Third Party Suppliers whether or not you make a Data Sharing Request. If you specify that Our Group is not to be a Third Party Supplier for the purposes

of a Data Sharing Request, then you are responsible for ensuring the Solution is configured within your systems so that you are not sharing the Relevant Data;

- (b) the **Relevant Data** will vary depending on the Third Party Supplier and will be described to you at the time you nominate a Third Party Supplier or as subsequently agreed by you. For example:
  - (i) if a Third Party Supplier is a Third Party Supplier of magazines, it could include information about the number of units of each publication sold during a nominated period;
  - (ii) if a Third Party Supplier is a distributor of greetings cards, it could include information about the number of seasonal unsold units that you wish to return for credit;
- (c) by nominating one or more Third Party Suppliers, XchangeIT is entitled to share the Relevant Data with the relevant Third Party Supplier(s).

5.3 You acknowledge and agree that:

- (a) XchangeIT does not represent or warrant that any Third Party Supplier will (or will continue to) use the Solution to exchange Relevant Data with you;
- (b) XchangeIT has no control over the Third Party Suppliers (including, for example whether they ultimately exchange Relevant Data with you);
- (c) no additional fee is charged in relation to the sharing by XchangeIT of Relevant Data with Third Party Supplier and so:
  - (i) (subject to clause 11.4) XchangeIT will have no liability whatsoever for any actions or inactions on the part of the Third Party Suppliers including any limitation on your ability to use the Solution to exchange Relevant Data;
  - (ii) your liability to pay Fees under this Agreement is not affected by any act or omission of a Third Party Supplier or any change in the number or identity of Third Party Suppliers during the Term; and

## 6 Access conditions

### General

6.1 The Customer must:

- (a) ensure the details in its XchangeIT online account including the Customer's trading name, address, phone number, email and contact person are up-to-date at all times;
- (b) provide all inputs, information and reasonable assistance to XchangeIT to enable it to carry out its obligations under this agreement;
- (c) follow XchangeIT's reasonable directions in connection with the use of the Solution by the Customer or its Authorised Users;
- (d) use the Solution in accordance with all applicable laws; and
- (e) only use the Solution, and ensure that its Authorised Users only use the Solution, in accordance with this agreement.

6.2 The Customer remains responsible and liable for all access to or use of the Solution through any of the Customer Credentials as if that access or use was by the Customer itself.

### Authorised and prohibited use

6.3 The Customer must, and must ensure that its Authorised Users:

- (a) only use the Solution within the permitted scope described in clause 3 for its internal business purposes in respect of the Store;
- (b) ensure the Solution is only accessed from one computer using the Customer Credentials at any one given time;
- (c) keep the Customer Credentials to the Solution secure;
- (d) immediately notify XchangeIT if the Customer becomes aware of any unauthorised use of the Customer Credentials or any other breach or attempted breach of security.

6.4 The Customer must have appropriate antivirus software to mitigate the risk of viruses being introduced into the Solution or XchangeIT's systems.

6.5 The Customer must, and must ensure that its Authorised Users do not:

- (a) use the Solution in a way that adversely affects the Solution or other customers' use of or access to the Solution;
- (b) use the Solution in a way that an ordinary person would not regard as ordinary business use;
- (c) use the Solution for fraudulent or otherwise unlawful purposes, or in a way that contravenes any applicable laws;
- (d) decompile, disassemble or reverse engineer the whole or any part of the Solution, or any software contained in or comprising part of the Solution;
- (e) attempt to access any part of the Solution that is not intended to be accessible by the Customer (for example by working around technical limitations)
- (f) use the Solution for the purposes of resale, resupply or commercial exploitation.
- (g) access or permit a third party to access the Solution for the purpose of creating a product that is similar to or competes with the Solution or any software contained in or comprising part of the Solution;
- (h) remove the product name, product logo, XchangeIT's name, XchangeIT's logo, or any URLs from the Solution, or from any reports or screenshots or images obtained using the Solution.

### Monitoring

6.6 The Customer authorises XchangeIT to monitor the Customer's use of the Solution and to use any data gathered for the purposes of:

- (a) ensuring compliance with this agreement;
- (b) assisting the Customer identify and resolve problems or issues with the Solution and otherwise providing the Support Services;
- (c) improving the Solution and developing or improving similar or related offerings; and
- (d) informing the Customer and its Authorised Users about additional products or solutions which may be relevant to the Customer.

## 7 Acknowledgements

The Customer acknowledges and agrees that:

- (a) to the extent permitted by applicable law and subject to clause 11.4:
  - (i) XchangeIT makes no representation or warranty that the Solution will be free from defects, errors or

faults, or that it is fit for any particular purpose (but, for clarity, this does not limit the commitment made by XchangeIT in clause 3.3); or

- (ii) the Solution may not be available from time to time, and XchangeIT makes no representation or warranty in relation to the availability of the Solution;
- (b) use of any third party product, content or service by the Customer or its Authorised Users as part of or in connection with the Solution may be subject to separate terms and conditions, whether imposed by XchangeIT or by the relevant third party (and the Customer must comply, and must ensure that its Personnel comply, with such third party terms and conditions). To the extent that the third party product, content or service is provided by XchangeIT on behalf of that third party, XchangeIT will ensure the Customer is notified of the applicable terms in writing in advance. For clarity, XchangeIT is not a provider of, and you are responsible for procuring your own, POS system; and
- (c) the Customer is responsible for any data, information or other Material or content that the Customer or its Authorised Users provide to XchangeIT through the Solution.

## 8 Changes to the Solution

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- 8.1 The Customer acknowledges and agrees that, subject to clause 8.2:
- (a) XchangeIT may change or refine any feature or functionality of the Solution, or substitute an alternative for any part of the Solution, provided that the Solution retains at least its basic functions, and that the overall performance of the Solution is not detrimentally affected; and
  - (b) all inclusions and functionality of the Solution are otherwise determined by XchangeIT from time to time.
- 8.2 If XchangeIT makes any change to the Solution that is likely to:
- (a) have a material detrimental impact on the Customer or on the Customer's business;
  - (b) materially detract from a core function of the Solution; or
  - (c) have a material detrimental impact of the overall performance of the Solution,
- then:
- (d) XchangeIT will notify the Customer of that change (**Change Notice**); and
  - (e) the Customer may terminate this agreement by written notice to XchangeIT within 30 days of the Change Notice. If, within 30 days of the Change Notice:
    - (i) the Customer gives XchangeIT a termination notice, that termination will be effective effect 30 days after the date of the Change Notice and XchangeIT will give the Customer a refund in respect of the Fees applicable to the period after such termination (subject to clause 9.3); and
    - (ii) the Customer does not give XchangeIT a termination notice then the Customer will be deemed to have accepted the proposed change to the Solution.

## 9 Fees, payment and taxes

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### Fees

- 9.1 The Fees are as described for the relevant Solution on XchangeIT's website from time to time at [www.xchangeit.com.au](http://www.xchangeit.com.au) (**Fees**). If the Fees change, we will give you at least 30 days notice, and any change in the Fees will not come into effect until the commencement of the next Period.
- 9.2 XchangeIT will invoice the Customer for the Fees in advance every 6 months (with each 6 months being a **Period**). The Fees are inclusive of GST. The payment made by the Customer at the time of its registration as contemplated by clause 1.5 is deemed to be the payment in respect of the first Period of this agreement.
- 9.3 If the Customer pays Fees based on an available discount (e.g. a discount available because Our Group is enabled as a Third Party Supplier throughout the Period), but the Customer fails to fulfil the requirements for that discount for the duration of the relevant Period, XchangeIT may issue to the Customer an invoice for an amount equal to the discount which the Customer was not eligible for.

### Payment and GST

- 9.4 Provided that XchangeIT has first given the Customer an invoice, the Customer must pay the Fees to XchangeIT before the commencement of the next Period. Unless otherwise specified in this agreement, the Fees are non-refundable.
- 9.5 The consideration for a Supply made under or in connection with this document includes GST.
- 9.6 If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time the consideration for the Supply is payable the Supplier must give the Recipient a Tax Invoice for the Supply.
- 9.7 Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

### Payment and suspension

- 9.8 If the Customer has not paid the Fees to XchangeIT by the date that is 2 weeks before the commencement of the next Period, XchangeIT will give the Customer a reminder notice.
- 9.9 If the Customer has not paid the Fees to XchangeIT by the date the next Period is due to commence, XchangeIT may suspend this agreement until the Fees have been paid in full.

## 10 Confidentiality and Privacy

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### Confidentiality

- 10.1 Each party must:
- (a) keep the other party's Confidential Information secret and confidential;
  - (b) only access, use, disclose or reproduce the other party's Confidential Information for the purpose of this agreement or otherwise as permitted under any other provision of this agreement; and
  - (c) take all steps reasonably necessary to safeguard the other party's Confidential Information from unauthorised access, use or disclosure.
- 10.2 A party must not disclose the other party's Confidential Information to any person except:
- (a) as permitted or authorised by any provision of this agreement;

- (b) to its Personnel or professional advisors on a 'need to know' basis provided those persons are bound by confidentiality obligations similar to those set out in this agreement;
- (c) with the other party's written consent; or
- (d) if required by law.

#### **De-identified data**

- 10.3 Despite any other provision in this agreement, XchangeIT and its suppliers (including any Third Party Suppliers) may use any data which is de-identified for any purpose.

#### **Privacy**

- 10.4 XchangeIT will comply with the Privacy Act 1988 (Cth) in relation to all personal information disclosed by you relating to this agreement. Our privacy policy is available on the XchangeIT website and gives further information about how your personal information will be handled by XchangeIT.

### **11 Audit, liability and indemnity**

#### **Audit**

- 11.1 You must give XchangeIT access to your systems and premises (on reasonable notice) and otherwise give XchangeIT reasonable assistance to enable XchangeIT (or its nominated auditor) to conduct an audit of your compliance with this agreement.

#### **Liability**

- 11.2 Subject to clauses 11.3, 11.4 and 11.6, XchangeIT's liability to the Customer in any Period for any loss or damage that the Customer suffers or incurs relating to this agreement is limited to the Fees paid by the Customer in connection with that Period.
- 11.3 Subject to clause 11.4, neither party is liable for any Consequential Loss that the other party suffers or incurs in connection with this agreement.

#### **Australian Consumer Law**

- 11.4 If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in relation to any good or service supplied by XchangeIT in connection with this agreement and XchangeIT's liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 11.2 and 11.3 do not apply to that liability and instead XchangeIT's liability for such failure is limited to (at XchangeIT's election):
- (a) in the case of a supply of goods, replacing the goods or supplying equivalent goods or repairing the goods; or
  - (b) in the case of a supply of services, supplying the services again or paying the cost of having the services supplied again.

#### **Exceptions to the liability cap and exclusions**

- 11.5 Nothing in this Agreement limits or excludes the liability of either party to the extent that the loss or damage (including reasonable legal costs) relates to fraudulent or illegal act or omission by a party or any of its Personnel.
- 11.6 Subject to clauses 11.7, 11.8 and 11.9, XchangeIT undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Solution (or any part thereof) in accordance with the terms of this agreement and any applicable documentation infringes the Intellectual Property Rights of a third party (**Claim**).
- 11.7 Clause 11.6 will not apply if the Claim is attributable, in whole or in part, to:

- (a) possession or use of the Solution (or any part thereof) by the Customer or its Authorised Users other than in accordance with the terms of this agreement and the documentation applicable to the Solution which is provided to the Customer in writing;
- (b) use of the Solution in combination with any hardware or software not supplied or specified by XchangeIT; or
- (c) use of a non-current release of the XchangeIT as a result of a breach by the Customer of its obligations under clauses 4.3 or 4.4.

- 11.8 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Customer must:

- (a) giving written notice of the Claim to XchangeIT as soon as reasonably practicable, specifying the nature of the Claim in reasonable detail;
- (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of XchangeIT; and
- (c) giving XchangeIT and its professional advisers with reasonable assistance in respect of the defence or settlement of the Claim.

and XchangeIT's liability under clause 11.6 will be reduced to the extent that the loss or damage is increased as a breach by the Customer of its obligations under this clause 11.8.

- 11.9 The limitations of liability in clause 11.2 do not apply to XchangeIT's liability under clause 11.6, but (to the fullest extent permitted by law, and subject to clause 11.4) clause 11.6 constitutes the Customer's sole and exclusive remedy, and XchangeIT's sole liability, in respect of Claims.

### **12 Termination**

#### **Termination for cause**

- 12.1 If:
- (a) a party commits a material breach of this agreement (including any breach by the Customer of clause 6) that is not remedied within 10 Business Days of receiving written notice of that breach from the other party; or
  - (b) an Insolvency Event occurs in relation to a party,
- then the relevant other affected party may terminate this agreement by written notice to the other party, in which case this agreement will terminate on the date specified in that written notice or, if no date is specified, immediately.
- 12.2 XchangeIT may terminate this agreement with immediate effect by giving the Customer notice if:
- (a) there is a Claim and XchangeIT is unable or unwilling to obtain an ongoing right for you to use the Solution, or to modify the Solution to address the Claim; or
  - (b) there is a change in the ownership (whether direct or indirect) of the Store or the Customer.

#### **After termination**

- 12.3 On termination or expiry of this agreement:
- (a) accrued rights or remedies of a party are not affected;
  - (b) the Customer is not entitled to a refund of any Fees paid in advance unless:
    - (i) the agreement was validly terminated by the Customer under clause 12.1 or by XchangeIT under clause 12.2, in which case the Customer is entitled to a refund in respect of the period after that termination; or

- (ii) otherwise expressly stated in this agreement;
- (c) any right or licence granted to the Customer under this agreement ceases immediately, and the Customer and its Authorised Users must stop using the Solution. It is the Customer's responsibility to extract and retrieve any Customer data from the Solution before this agreement is terminated or expires; and
- (d) each party must deliver to the other party any of the other party's Confidential Information, and any other property and materials.

#### Survival

- 12.4 Termination or expiry of this agreement will not affect clauses 10, 11, clause 12.3, this clause 12.4 and any other provision of this agreement which is expressly or by implication intended to come into force or continue on or after the termination or expiry.

### 13 Changes to this agreement

- 13.1 The Customer acknowledges and agrees that XchangeIT may change the terms of this agreement by giving the Customer notice. Any change notified by XchangeIT under this clause will only take effect at the commencement of the next Period unless the Customer terminates this agreement before the commencement of the next Period (including as permitted by clause 2.2). For clarity, the minimum notice XchangeIT will give the Customer under this clause is 21 days.

### 14 General

- 14.1 A party will not be:
- (a) in breach of this agreement as a result of; or
  - (b) liable to the other party for,
 

any failure or delay in the performance of its obligations under this agreement to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event. The affected party must take reasonable steps to mitigate the impact of the Force Majeure Event.
- 14.2 The laws of New South Wales (Australia) govern this agreement, and each party irrevocably submits to the jurisdiction of the courts of that place and courts competent to hear appeals from those courts.
- 14.3 The Customer may not assign or transfer its rights or obligations under this agreement without the prior written consent of XchangeIT. XchangeIT may not assign or transfer its rights or obligations under this agreement if that assignment or transfer would have a material detrimental effect on the Customer.
- 14.4 A right under this agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- 14.5 The Customer acknowledges and agrees that XchangeIT may use subcontractors to provide the Solution to the Customer under this agreement.
- 14.6 Each provision of this agreement will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.
- 14.7 Unless otherwise stated in this agreement, this agreement may only be varied by written agreement between the parties.
- 14.8 Any notices relating to this agreement must be sent to:
- (a) in the case of XchangeIT, Level 3, 54 Park Street, Sydney NSW 2000; and

- (b) in the case of the Customer, the representative and address as set out in the Registration Form (unless updated details have been given to XchangeIT in writing).

- 14.9 A notice will be deemed given:

- (a) if hand delivered – on the date of delivery;
- (b) if sent by post to or from an address:
  - (i) within Australia – five Business Days after posting; or
  - (ii) outside Australia – 10 Business Days after posting; or
- (c) if sent by email – the next Business Day after sending, unless the sending party receives an automated message that the email has not been delivered.

### 15 Definitions and interpretation

#### Definitions

- 15.1 In this agreement, the terms set out below have the following meaning:

**Authorised User** means any Personnel of the Customer who access and use the Solution.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Sydney (Australia).

**Claim** has the meaning given to it in clause 11.6.

**Commencement Date** has the meaning given to it in clause 1.6.

**Confidential Information** of a party means:

- (a) information of a confidential nature relating to or developed in connection with the business or affairs of the party which is disclosed to, learnt by, or which otherwise comes to the knowledge of or into the possession of, the other party;
- (b) information designated by that party as confidential; or
- (c) information regarding clients, customers, employees, contractors of or other persons doing business with that party,

but does not include information that:

- (d) is or becomes generally available in the public domain, other than through any breach of confidence;
- (e) is rightfully received by the other party from a third person other than as a result of a breach of confidence; or
- (f) has been independently developed by the other party without using any other Confidential Information of the first party.

**Consequential Loss** means:

- (a) any indirect, special or consequential loss (being a loss that does not arise naturally, that is, according to the ordinary course of things, whether or not the parties were aware of the possibility of such loss); and
- (b) any loss of revenues, loss or corruption of data, loss of reputation, loss of profits, loss of bargain, loss of actual or anticipated savings, or lost opportunities (including opportunities to enter into arrangements with third parties).

**Customer Credentials** means any access passwords, usernames, authentication or other credentials used by the Customer in connection with the Solution.

**Data Sharing Request** has the meaning given to it in clause 5.1.

**Fees** has the meaning given to that term to it in clause 9.1.

**Force Majeure Event** means any occurrence, event or omission outside a party's reasonable control and includes a failure of any of XchangeIT's third party service providers to provide services, including hosting services.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** in the context of a person means any of the following: a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the *Corporations Act 2001* (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the person; the person or the person's property or undertaking becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX *Bankruptcy Act 1966* (Cth); the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth) or is presumed to be insolvent under the *Corporations Act 2001* (Cth); the person ceases to carry on business; or an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person, otherwise than for the purpose of an amalgamation or reconstruction.

**Intellectual Property Rights** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, patent, registered or unregistered trade mark, registered or unregistered design, rights in any trade secret, knowhow, trade or business or company name, or right of registration of such rights.

**Material** includes software, firmware, tools, documentation, reports, data, diagrams, procedures, plans and other materials.

**Period** has the meaning given in clause 9.2.

**Personnel** of a party include its employees, contractors, directors, officers and agents.

**POS system** means a system used for capturing data at the time and place of sale by using computers or specialised terminals that are combined with cash registers, bar code readers, optical scanners and magnetic stripe readers for accurately and instantly capturing the transaction.

**Registration Form** means the registration form completed by the Customer at <https://www.xchangeit.com.au/PublicPages/owner-registration.aspx>.

**Relevant Data** means data of the kind described in clause 5.2(b).

**Solution** means XchangeIT software or solutions requested by the Customer in its Registration Form. For clarity, some Solutions are licensed on an on-premise basis and some Solutions are cloud based and provided as a service.

**Store** has the meaning given to it in clause 1.2.

**Supplier** means the entity making the Supply.

**Support Services** means the support services described in clause 4.

**Tax** means any tax, levy, impost, deduction, charge, rate, duty or withholding which is levied or imposed by a government authority (local, State, Federal or otherwise) from time to time, including any stamp, value added, goods and services or transaction tax, duty or charge, excluding taxes on profit or capital gains.

**Term** means the term of this agreement determined in accordance with clause 2.1.

**Third Party Supplier** has the meaning given to it in clause 5.1.

**XchangeIT Materials** includes the Solution and any Material that XchangeIT provides or makes available to the Customer and includes any modifications, additions or enhancements to those Materials made by any person. It does not include the Relevant Data or any other data entered into the Solution by the Customer or its Authorised Users.

#### Interpretation

15.2 In this agreement:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia.
- (c) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) a word which suggests one gender includes the other gender; and
- (f) clause headings are for convenient reference only and have no effect in limiting or extending the language to which they refer.