REMOTE ACCESS AGREEMENT

Between

Shoalhaven City Council

And

LIMITATION

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Scope

Parties

This agreement is between Shoalhaven City Council and _____ ("the Company"). The document is comprised of the Agreement and its Terms and Conditions and the list of documents defined in the clause titled "Other Documents" on page 8 of this Agreement.

Purpose

This Agreement defines the services to be provided by Shoalhaven City Council to the Company and the Company's obligations and responsibilities to Shoalhaven City Council in respect of those services.

Objective

To provide the Company with remote access to the systems and applications of Shoalhaven City Council as specified in the Application for Remote Access in order that the Company can fulfil its obligations to Shoalhaven City Council.

Commencement

This agreement shall commence from _____ and shall remain in force on an ongoing basis unless terminated as per the terms and conditions.

Extent

The extent of the Agreement limits it to provision of the following:

- The provision of remote access network connection(s) to enable the Company to fulfil its obligations to Shoalhaven City Council.
- The provision of hardware and software if specified in the Application Form for Remote Access to enable the Company to carry out particular functions.
- Setup and configure systems to facilitate remote access for the Company.
- Provide assistance and support as and when required to ensure the remote access connection continues to operate as expected.

Details of Services

Technology Employed

In respect of this Agreement remote access will be facilitated by a VPN client provided and configured by Shoalhaven City Council IT Helpdesk.

Availability

The remote access connection will by default be disabled. Access will be made available upon request to the IT Helpdesk.

Support

Shoalhaven City Council will provide support for the remote access connection during standard business hours Monday to Firday 9am to 5pm AEST.

All upgrades and maintenance requires approval and must be actioned via the Request for Change process.

Outages

Where remote access is dependent upon an external communications provider Shoalhaven City Council cannot guarantee uptime, but best endeavours will be made to ensure the link is returned to normal operations as quickly as possible.

Authentication

Users are authenticated onto Shoalhaven City Council systems using a one time, two factor method of authentication which generates a unique password for each session. Authentication onto the Domain is by user name and password. All passwords must conform to Shoalhaven City Council Password Policy which forms part of this Agreement.

Other forms of authentication may be employed if appropriate, at the discretion of Shoalhaven City Council including, but not limited to, authentication by individual IP address and token authentication.

Encryption

At the discretion of Shoalhaven City Council remote access connections will be encrypted using the technologies and standards prescribed in Shoalhaven City Council Encryption Policy.

Hardware

Hardware provided by Shoalhaven City Council remains the property of Shoalhaven City Council and is supplied on a loan basis. The Applicant agrees to abide by the terms and conditions of the Equipment Loan Agreement and any policies relating to equipment use.

The following hardware is made available to the Company:

Equipment	Model	Shoalhaven City Council Asset Number	Serial Numbers

Software

The following software is made available to the Company:

Software/Application	Version	Serial Number

The software provided by Shoalhaven City Council remains the property of Shoalhaven City Council. All software must be returned on the termination of this Agreement. Shoalhaven City Council will ensure all licences remain valid and Shoalhaven City Council reserves the right to update, replace or upgrade the software from time to time. The Company agrees to operate the software in an appropriate manner, only for the purposes specified in the Contract for Service, and in accordance with Shoalhaven City Council Remote Access and Accepted Use policies.

Access Rights to Users

Access rights will be granted to remote users listed in the Application for Remote Access on the same basis as Shoalhaven City Council staff and as per the guidelines specified in the Accepted Use Policy. Remote users must only access the applications required to perform the duties prescribed in the Contract for Service. The use of Shoalhaven City Council systems and networks for other reasons than those prescribed will be treated as a breach of this Agreement.

Acceptable Use of System

The Company is responsible for staff using the system as prescribed in Shoalhaven City Council Accepted Use Policy for Computer Systems and Networks. Any breach of these policies will be treated as a breach of this Agreement.

Monitoring of System Use

Shoalhaven City Council reserves the right to monitor the use of the remote access connections and to employ any tools and applications it may deem appropriate to determine that the remote access link is operating as expected and within acceptable performance parameters.

Payment of Costs

Each party will be responsible for all costs incurred by that party under this Agreement including, without limitation, costs for phone charges, telecommunications equipment and personnel for maintaining the Network connection.

Other Documents

The following documents are to be included as part of this Agreement:-

Acceptable Use Policy and all Information Systems Management Policies listed therein.

Obligations and Expectations

Shoalhaven City Council Shall:-

- Provide the remote access network connection(s) to enable the Company to fulfil its obligations to Shoalhaven City Council.
- Provide hardware and software, if specified in the Application for Remote Access, to enable the Company to carry out particular functions.
- Setup and configure systems to facilitate remote access for the Company.
- Provide assistance and support as and when required to ensure the remote access connection continues to operate as expected.
- Act in good faith and abide by the Terms and Conditions included in this Agreement.
- Ensure that any variations to this Agreement are in writing.
- Notify the Company within 7 days of any planned outages.

The Company Shall:-

- Operate all hardware and software in accordance with manufacturers' specifications and with regard to Shoalhaven City Council's policies and the Equipment Loan Agreement (if applicable).
- Operate systems covered by this Agreement with suitably trained and skilled staff in accordance with reasonable recommendations notified by Shoalhaven City Council staff or usual industry practices.
- Take any action reasonably required to maintain the benefits of warranties during their currency and any action reasonably required for Shoalhaven City Council to have recourse to the manufacturer licences and warranties while performing functions prescribed in the Contract for Service document.
- Not alter the settings, passwords and configuration of any hardware, software or network component that facilitates remote access without the authority of Shoalhaven City Council.
- Adhere to Shoalhaven City Council's Anti-Virus and Security policies and take all reasonable and practicable steps to ensure that applications, software, hardware and data is protected against unauthorised intrusion, hacking, damage, alteration, interference loss, theft, nor engage in denial of service, virus, worms, trojan horses, time bombs and bots from external or internal sources.
- Use the remote access connection only for the functions prescribed in the Contract for Service document.
- Allow Shoalhaven City Council staff onsite to perform upgrades and maintenance to any part of the remote access system or to assist users with any operational issues.
- Act in good faith and abide by the Terms and Conditions included in this Agreement.

Completion

This Agreement remains in effect until terminated by either party as stated in clause 11 of the Terms and Conditions.

Contacts

Shoalhaven City Council	Details

Review

This Agreement may be reviewed by Shoalhaven City Council from time to time and any additions, deletions or alterations will be notified to the Company in writing.

Cost Recovery

Remote Access set up attracts a one off fee. This fee will be billed to the unit of the relevant Shoalhaven City Council Manager, and covers the internal labour costs of provisioning and training.

All Remote Access users will also be on-charged on a cost recovery basis for:-

- Cost of associated hardware
- Annual Licensing if applicable
- Communication costs

These costs will be charged to the relevant business unit signing off the request, unless alternative means are agreed at the time the application is lodged.

Remote users will also be responsible for maintaining their own personal ISP account, which may be required for access. Some users may be eligible to claim part or all of these costs back, by arrangement with their Manager.

Acceptance

The Agreement constitutes the entire agreement between the parties with respect of the subject matter hereof and supersedes and extinguishes all prior agreements and understandings between the parties with respect to the matters covered by this agreement.

FOR AND ON BEHALF OF THE COMPANY

Signature

Name

Title

Date

FOR AND ON BEHALF OF SHOALHAVEN CITY COUNCIL

Signature

Name

Title

Date

Document to be trimmed in Container 62115E.
Document Name - Company Name - Remote Access Agreement

Terms and Conditions

Pursuant to the Company's request for remote access as detailed in this Agreement, this document sets out the terms and provisions that apply to the contract between the parties. Any Schedule attached to this agreement whether at it's commencement or at any other time is considered an integral part of this Agreement and needs to be referred to separately.

1. **Definitions and Interpretations**

   This Agreement has the following terms appearing within it and the following definitions shall have effect in interpreting this Agreement:-

   a) "Agreement" means this document including the Schedules attached

   b) "Designated Premises" shall be the Company's premises as defined in the Agreement

   c) "Force Majeure" event means an event beyond the reasonable control of either party which makes it impossible or illegal to perform, or prevents compliance with, or the performance of, a party's obligations under this Agreement including but not limited to:-

      i) Fire, floods, storms, tempests, earthquakes or other act of God;

      ii) Any act of a public enemy, war, civil disorders, rebellions, revolution, riot act or civil or military authority or

      iii) Any act of a third party engaged in subversive activity or sabotage that is not an employee, agent or subcontractor of a party to this Agreement and

      iv) Any change in applicable law or regulation or in its interpretation by any judicial body, tribunal or regulatory authority to the extent that such event makes it impossible or illegal to perform, or prevents compliance with, or the performance or that party's obligations under this Agreement.

   d) "Schedule(s)" means any schedule attached to this Agreement with the agreement of both parties.

   e) "Service" means any function performed by Shoalhaven City Council as agreed with the Company.

2. **Entire Agreement**

   This Agreement constitutes the entire Agreement between the parties as they relate to the subject matter of this agreement and there are no representations, understanding or agreements relating to this Agreement which are not fully expressed in this Agreement. This agreement shall supersede and cancel all prior agreements or understandings between the parties for the matters detailed in this Agreement.

3. **Amendment**

   This Agreement shall not be amended or varied in any respect except in writing signed by duly authorised representatives of both parties. Any such amendments or variations to this Agreement shall apply on the effective date stated in such amendment or variation.

4. **Governing Law**

   This Agreement is governed by and construed in accordance with the laws of Australia.

5. **Severance**

   If any provision contained in this Agreement is held to be illegal, invalid or unenforceable, it shall be severable, shall be deemed to be deleted from this Agreement and shall not affect the validity of enforceability of other provisions in this Agreement.

6. **Assignment/Sub Contracting**

   Neither Shoalhaven City Council nor the Company shall assign or sub contract all or part of this Agreement or any interest in it, without the other party's prior written consent.

7. Successor in Interest

Notwithstanding clause 6, a successor in interest by merger, by operation of law, assignment, purchase or otherwise of the entire business of either party, shall acquire all interest of such party.

8. Dispute Resolution

If a dispute arises between Shoalhaven City Council and the Company in relation to any matter arising out of this Agreement, the parties agree to enter into negotiations in good faith to try to resolve the dispute. Either party may initiate the negotiations by advising the other party in writing.

The party who initiates the resolution procedures must name its representative in the negotiations when giving written advice to the other party. The other party must then reply in writing within 5 working days to the initiating party naming its representative in the negotiations. Each representative must have authority from the party he or she is representing to settle the dispute. Within 5 working days of both parties having been advised of the other party's representative, the representatives mush enter into open and frank discussions to try to resolve the dispute. The commencement of this discussion is deemed to be the negotiations being initiated.

If the dispute has not been settled within 20 working days from the date that negotiations were initiated, the parties will try to settle the dispute by mediation before resorting to arbitration. Either party may initiate mediation by giving 5 working days written notice to the other party. The mediator shall be agreed on by the parties, but if the parties cannot agree on one within 10 working days after the mediation has been initiated then the mediator shall be appointed by the President of the Law Society.

If the dispute has not been settled within 20 working days after the appointment of a mediator by agreement or by the President of the Law Society, or within a longer period agreed on in writing by the parties, then the parties agree to refer the dispute to arbitration in accordance with the Arbitration Act 1996 (or any statutory modification or amendment to that Act). Either party may commence the arbitration by giving written notice to the other stating the subject matter and details of the dispute and that party's desire to have the dispute referred to arbitration. The arbitration shall be conducted by one arbitrator agreed by the parties. Failing agreement on an arbitrator, the arbitrator shall be appointed by the President of the Law Society. The decision of the arbitrator shall be final and binding on the parties and the costs of the arbitrator shall (subject to any award by the arbitrator) be borne equally by the parties.

During the resolution of any dispute, the parties shall continue to perform their obligations under the agreement as far as possible as if no dispute had arisen, pending final settlement of the dispute.

Nothing in this clause shall preclude either party from taking immediate steps to seek equitable relief before a court of Australia.

9. Confidentiality

- Shoalhaven City Council and the Company agree that each party shall:-
- Not use, disclose, reproduce or otherwise make available, proprietary information (including firewall, network or host configurations) provided by the other party to any person, firm or enterprise (other than each party's employees or agents who have a need to know such information for the purposes of the Agreement), unless specifically authorised in writing to do so by the other party.
- Exercise all due care and diligence and take all reasonable precautions to prevent any unauthorised use or any proprietary information. Such precautions shall at least be as careful as the recipient for its own confidential information.
- Indemnify and keep indemnified the other party against damage or loss suffered and arising from unauthorised disclosure of proprietary information by any of its employees or agents.
- Both parties shall keep confidential the terms of this Agreement and all data and other information which comes into their possession pursuant to, or as a result of, or in the performance of this Agreement and shall not divulge such information to any third party without the prior written consent of the other.

Shoalhaven City Council will indemnify and keep the Company indemnified against all actions, proceedings, losses, liabilities, damages, claims, demands, costs and expenses (including all legal costs and expenses on a solicitor and own Company basis) (collectively called "Action") suffered or incurred by the Company to the extent such arises out of, or in connection with, any claim that the Company's authorised use of the Services or any produce of the Services, constitutes a breach of an existing patent, copyright, trade secret or other proprietary right provided that:-

a) Company, at the request of Shoalhaven City Council, affords all reasonable assistance to Shoalhaven City Council in defending or settling the Action and makes its employees available to give statements, advice and evidence as Shoalhaven City Council may reasonably request, subject to Company being reimbursed for all reasonable costs and expenses occasioned by Company's co-operation in such defences.

b) Shoalhaven City Council is notified promptly in writing of any Action and is given complete authority and information required for the conduct of the same;.

c) Shoalhaven City Council having the sole control of the conduct of any Action and all negotiations for its settlement or compromise;

d) Company ceases using the infringing item until Shoalhaven City Council obtains a license for the Company to use the item, or modifies it to become non-infringing (without substantial loss of functionality or performance).

10. Consumer Guarantees Legislation

The Company agrees that the goods or services supplied by Shoalhaven City Council are obtained for business purposes, and that Consumer Guarantees legislation does not apply.

11. Termination

Either party may terminate this Agreement by notice in writing if the other party materially breaches this Agreement and does not remedy the default or put all reasonable steps in place to prevent the default from recurring, within 30 days after receiving notice of default from the terminating party. If a breach is alleged, termination may not occur unless the parties have used all practicable steps and the dispute resolution procedure through to conclusion of mediation at least.

The Company may terminate the Agreement

- If the service is no longer required the Company may terminate the Agreement by giving thirty (30) days notice.

Shoalhaven City Council may terminate the Agreement

- Shoalhaven City Council may immediately terminate this Agreement by written notice if the other party becomes insolvent or goes into receivership or liquidation.
- If the service is no longer required the Company may terminate the Agreement by giving thirty (30) days notice.
- Termination will not affect the rights of the parties to seek legal redress in the event of any breach of this Agreement.

12. Force Majeure

If either party is unable to perform its obligations under this agreement because of any Force Majeure event, the party unable to perform shall promptly give written notice to the other party. The "disadvantaged party" may, at its option, so long as such inability to perform continues;

a) Obtain such performance at its own expense from other sources, and/or

b) Suspend the application of this Agreement including any payment or performance obligations relating to such Force Majeure period.

Neither party shall be liable to the other for damages to other claims resulting from a Force Majeure event or related lack of performance.

An event that would or could otherwise constitute a Force Majeure event for the purposes of this Agreement, is not a Force Majeure event which can be relied on by a party to the extent that:

a) That event is constituted by the insolvency of either party or a sub-contractor, or lack of funds for any other reason; or

b) The impact or the event itself could have been prevented or mitigated by steps which were reasonable taking into account the obligation to be met,

c) That event is constituted by industrial labour or personnel dispute involving Shoalhaven City Council, its sub-contractors or their respective employees.

If the impact of the Force Majeure continues for more than 90 days without substantial performance of this Agreement being able to resume, either party may terminate this Agreement by giving 7 days written notice to the other.

13. Limitation of Liability

Under no circumstances shall either party, their employees, or agents be liable to the other in contract, tort (including negligence or, to the extent, permitted by law, breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss whatsoever.

In this clause 13 "negligence" (without limiting this term) includes any act resulting wholly or partly from any error of fact, law or judgment.

Each provision of this clause 13 and each protection given to either party by any provision of this clause 13 is to be construed as a separate limitation applying and surviving even if for any reason any of the provisions is held inapplicable in any circumstances.

The provisions of clause 13 shall survive the termination of this Agreement.

14. Delay, Concession, or Waiver

Delay, concession or waiver by either party in enforcing against the other any term or provision of this Agreement shall not prejudice or restrict the rights of that party, nor shall any delay, concession or waiver establish or operate as a waiver or precedent in respect of any subsequent breach of this Agreement.

15. Ownership

Loaned Goods will remain the property of the company that loaned them and must be returned upon request within five working days of the request being issued.

16. Copyright

Ownership in copyright in all programmes, documents and electronic forms supplied to the Company by Shoalhaven City Council shall remain the property of Shoalhaven City Council. The Company may use these programs, documents and electronic forms on the terms and conditions of the licences granted by Shoalhaven City Council. If the copyright is owned by Shoalhaven City Council, the Company has a licence to use, for its internal business purposes while this Agreement remains in force.

17. Software Licences

The Company shall ensure that Shoalhaven City Council staff have the right to use third party and Company software for support purposes if required.

Shoalhaven City Council shall ensure that the Company has the right to use third party and Shoalhaven City Council software for the purposes stated in this Agreement.