

IMPLEMENTATION SERVICES AGREEMENT

This Dbvisit Implementation Services Agreement (“**Agreement**”) sets out the terms and conditions which apply to Implementation Services to be provided by Dbvisit to you in relation to the Licensed Product as set out in the Order Document or as otherwise agreed from time to time.

1. Definitions

1.1 Capitalised terms in this Agreement have the meaning given to that term in the End User License Agreement, the current version of which can be found at <http://www.dbvisit.com/legal>

1.2 In addition, the following terms have the following meanings throughout this Agreement:

“**Agreement**” means this agreement.

“**Fees**” has the meaning given to that term in clause 5.1.

“**Implementation Services**” means the services to be provided by Dbvisit as described in Section 2.2.

“**Dbvisit**” means Dbvisit Software NZ Limited, a New Zealand company (no. 9205860) based in Auckland, New Zealand, except where the Order Document expressly states that one of its affiliate companies located in your country enters into this Agreement, in which case, “**Dbvisit**” means that specified company.

“**Licensed Product**” means the software product licensed by you pursuant to an End User License Agreement, provided that you have paid the applicable License Fees.

2. Implementation Services

2.1 Subject to payment of all Fees and License Fees due and payable pursuant to this Agreement and the End User License Agreement and subject to Section 3, Dbvisit will provide you with Implementation Services in relation to the Licensed Product for the period specified in the Order Document, or if no period is specified in the Order Document, until the completion of the implementation and installation of the Licensed Product, unless otherwise agreed by you and Dbvisit.

2.2 Dbvisit will provide you with advice, assistance, and other services agreed by you in respect of the installation, implementation, and use of the Licensed Product. Implementation Services will be provided to you remotely, unless you and Dbvisit agree otherwise.

2.3 You and Dbvisit will work together to prioritise and agree in writing the scope and estimated period of Implementation Services prior to Dbvisit providing any assistance. You and Dbvisit may update or vary that scope and/or estimated period of the Implementation Services by mutual agreement from time to time throughout the provision of the services, however you acknowledge that any such update or variation

may result in an increase to the Fees, or any estimate of the Fees payable provided to you by Dbvisit.

2.4 The self-paced Dbvisit online training course required to achieve Certified Associate status for your Licensed Product for a member of your project team.

3. Conditions of Implementation Services

3.1 While Dbvisit may provide assistance in respect of your installation and implementation of the Licensed Product, you will remain responsible for the direction, control and completion of such installation and implementation. Dbvisit is not responsible for carrying out or completing the installation, implementation, testing or deployment of the Licensed Product, and Dbvisit will not be liable for any delay or deficiency in such installation, implementation, testing or deployment.

3.2 You may only receive Implementation Services:

(a) if the Licensed Product is properly licensed (whether under a term licence, perpetual licence, monthly rental basis or otherwise) under a current End User License Agreement; and

(b) if the Licensed Product is licensed to you under a perpetual license, if you have completed the applicable training course in respect of the Licensed Product and you are receiving support services under a current Support Agreement with Dbvisit.

4. Customer assistance

4.1 You must provide all of the access, facilities, information, cooperation and assistance that Dbvisit may reasonably require to fulfil its obligations under this Agreement.

5. Fees and invoicing

5.1 You must pay Dbvisit the applicable Fees as set out in the Order Document or signed Statement of Work for all Implementation Services provided by Dbvisit.

- 5.2 If the Fees are based on an hourly consulting rate then Dbvisit may from time to time provide you with estimates of the amount of time involved in providing you with Implementation Services (and/or an estimate of the amount of Fees payable). Dbvisit will make any such estimates in good faith, however such estimates are non-binding, and you must pay Dbvisit the Fees in respect of the total actual time spent by Dbvisit in providing you with Implementation Services regardless of any estimates given.
- 5.3 If the Fees are based on an hourly consulting rate then Dbvisit will maintain a record of the time spent in providing you with Assistance and will make those records available to you on request.
- 5.4 In addition to the Fees payable to Dbvisit in accordance with this Section 5, you will reimburse Dbvisit for all expenses incurred in providing you with the Implementation Services, on production of the applicable receipts.
- 5.5 To avoid doubt, if you and Dbvisit agree that Implementation Services will be provided to you at your premises or at any other location specified by you, you will reimburse Dbvisit for reasonable travel expenses incurred by Dbvisit in accordance with Section 5.4 and, if the Fees are based on an hourly consulting rate pay the applicable hourly rates for the time spent by Dbvisit on such travel.
- 5.6 Dbvisit will provide you with an invoice for all amounts due and payable under this Agreement. You must pay the sum set out in each invoice within 30 days of the date of the invoice in accordance with the electronic transfer details set out in the Order Document. Unless otherwise stated, all amounts payable under this Agreement:
- (a) are exclusive of any sales tax, goods and services tax or value added tax payable which must be paid by you, if applicable, at the time of payment of each invoice; and
 - (b) shall be paid gross without deduction of any withholding taxes and, if subject to any withholding taxes, you shall ensure that such sum is paid to Dbvisit as shall, after deduction of any withholding tax, be equivalent to the amount due.
- 6. Termination**
- 6.1 You may terminate this Agreement at any time without cause by giving 10 days' written notice to Dbvisit. On termination of this Agreement, Dbvisit will cease providing all Implementation Services under this Agreement and will invoice you for the applicable Fees provided up to the date of termination.
- 6.2 If you fail to pay the Fees within 30 days of the due date specified in Section 5.6, Dbvisit may immediately suspend the provision of assistance or, at Dbvisit's sole discretion, terminate this Agreement.
- 6.4 Termination of this Agreement is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination.
- 6.5 You will be liable to pay any outstanding invoices and for any Implementation Services provided by Dbvisit prior to termination within 10 Business Days of termination of this Agreement.
- 6.6 Termination of this Agreement does not affect the End User License Agreement. However, if the End User License Agreement terminates for any reason, then the Agreement will automatically terminate and no refund of any unused portion of the Fees will be paid.
- 7. Warranties**
- 7.1 Dbvisit warrants to you that it will provide you with Implementation Services with commercially reasonable care and skill in accordance with generally acceptable industry practices using personnel reasonably trained and experienced in the Licensed Product.
- 7.2 EXCEPT AS SET FORTH IN SECTION 7.1, ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, IN RESPECT OF THE PROVISION OF IMPLEMENTATION SERVICES ARE EXCLUDED TO THE FULL EXTENT PERMITTED BY LAW.
- 8. Liability**
- 8.1 IN NO EVENT SHALL DBVISIT, ITS RESELLERS OR DISTRIBUTORS BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST SAVINGS OR PROFIT, LOST DATA OR BUSINESS INTERRUPTION EVEN IF DBVISIT IS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY). THIS LIMITATION PROTECTS DBVISIT AND ANY DISTRIBUTOR OR RESELLER FROM WHOM YOU OBTAINED THE LICENSED PRODUCT. IN NO EVENT SHALL DBVISIT'S LIABILITY FOR DIRECT DAMAGES ARISING UNDER THIS AGREEMENT OR RELATING THERETO, EXCEED, THE FEES ACTUALLY PAID BY YOU FOR THE LICENSED PRODUCT THAT GAVE RISE TO THE LIABILITY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE FOREGOING LIMITATION MAY NOT APPLY TO YOU.
- 8.2 Without limiting the foregoing, Dbvisit will not be liable for any failure to comply with this Agreement or any delay or deficiency in any Implementation Services to the extent it results from:
- (a) any acts or omissions by you or the provision of Assistance in accordance with your instructions;
 - (c) any inaccuracy in any material provided by you in relation to Assistance; or
 - (d) any circumstances beyond the reasonable control of Dbvisit.

9. Independent contractor

- 9.1 Dbvisit is an independent contractor and this Agreement must not be construed to create a joint venture, agency, trust or partnership relationship between you and Dbvisit.
- 9.2 Dbvisit is responsible for the salaries of Dbvisit's employees, redundancy or other forms of severance pay, and the fees and costs of its contractors, PAYE and other employee benefits.

10. Payment default

- 10.1 If you fail to pay any applicable fees or charges in respect of the Licensed Product or Assistance by the due date for payment specified in an invoice then you agree to pay, on demand, the following additional amounts: (a) interest on the unpaid amounts at the rate of 15% per annum from the due date to the date of actual payment, (b) US\$10 administration fee for every week that the unpaid amounts remain unpaid and (c) the actual costs of collection incurred by Dbvisit.

11. Governing Law

- 11.1 THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF NEW ZEALAND UNLESS A DIFFERENT STATE'S LAWS IS EXPRESSLY PRESCRIBED IN THE ORDER DOCUMENT ("**SPECIFIED STATE**"), IN WHICH CASE ONLY THE SPECIFIED STATE'S LAWS SHALL APPLY. THE PARTIES WILL INITIATE ANY DISPUTE RESOLUTION PROCEEDING IN NEW ZEALAND OR THE SPECIFIED STATE (AS APPLICABLE) AND IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION OF COURTS LOCATED IN NEW ZEALAND OR THE SPECIFIED STATE. YOU WILL BRING ANY ACTION AGAINST DBVISIT ARISING OUT OF THIS AGREEMENT WITHIN ONE YEAR AFTER THE CLAIM ARISES, OR BE BARRED. If Dbvisit is required to enforce this Agreement or its rights, you irrevocably agree to receive legal notices and papers by electronic mail at your last known email address (Dbvisit will also attempt to send you a backup copy by regular mail or regular service).