

# Live Metadata License Agreement

## Terms and Conditions

Qualitem Pty Ltd (ACN 165 507 951 (**Qualitem**) is in the business of providing customers with software solutions (**Software**). The Customer (accepting this agreement) wishes to use (not own) Qualitem software (described below) and agrees to the following Terms and Conditions contained in this Live Metadata License Agreement (**Agreement**).

These Terms and Conditions may be varied by Qualitem at any time at its discretion. Where these Terms and Conditions are modified, Qualitem will notify the Customer by email or by posting a notification on its website (<http://qualitem.com>) and any changes will be effective immediately upon notice or upon such other time as the Customer is notified by Qualitem. By accessing and continuing to use any of the Software the Customer agrees that the Customer has read and understood these Terms and Conditions and any modifications to the Terms and Conditions as and when they occur.

## 1. DEFINITIONS

---

In this Agreement, certain words with the first letter in capitals have a particular meaning. The meaning of these defined terms can be found where the words appear in a bold, italic font.

Terms and words stated in the singular shall be deemed of the same importance and having the same definition as such terms and words stated in plural.

<b>Account</b>	means the Customer's account with Qualitem, which enables the Customer to access the Software under this Agreement;
<b>Account Details</b>	means the Customer ID, User ID, Password and any other details managed by Qualitem to the Customer in relation to the Customer's Account;
<b>Additional Agreements</b>	means any other agreement that the Customer may be required to enter into in order to access any of the Services, including any end-user licence agreements with respect to Third Party Software);
<b>Agreement</b>	means this Live Metadata License Agreement;
<b>Authorised User</b>	means the Customer, its employees, contractors or other personnel who are authorised by the Customer to access and use the Services using the Customer's Account;
<b>Business Day</b>	means a weekday on which trading banks (as defined in the <i>Banking Act 1959</i> (Cth)) are open in Perth, Western Australia;
<b>Commencement Date</b>	means the date the Customer trial registration is processed;
<b>Confidential Information</b>	means any confidential or commercially sensitive or valuable information, including: <ul style="list-style-type: none"><li>(a) all information treated as confidential whether marked as "Confidential" or not;</li><li>(b) trade secrets, confidential know how, operations manuals, price lists, customer lists, customer information, operational methods, operational procedures, advertising, technical and financial information, except information:<ul style="list-style-type: none"><li>(i) created independently of either Party; or</li></ul></li></ul>

- (ii) that is public knowledge (otherwise than as a result of a disclosure in breach of this Agreement);

<b>Customer</b>	means the Party accepting this agreement on behalf of its employees, contractors or other personnel who are authorised by the Customer to access and use the Software outlined in this agreement;
<b>Customer Data</b>	is described in clause 5.1;
<b>Fees and Charges</b>	means all Fees and Charges payable under this Agreement set out in Schedule 2;
<b>Intellectual Property</b>	includes without limitation: <ul style="list-style-type: none"><li>• copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright subsists and may in the future subsist;</li><li>• confidential information and trade secrets; and</li><li>• trade and service marks (whether registered or unregistered);</li></ul>
<b>Intellectual Property Rights or IPR</b>	means such rights as may subsist in the Intellectual Property;
<b>Media</b>	means any CD, tape, USB stick, disk or other electronic media required for the installation of the Software;
<b>Minimum Technical Specifications</b>	means the minimum computer, operating system, web browser and any other technical requirements for using the Software as published or notified to the Customer by Qualitem from time to time;
<b>Password</b>	is the unique system generated log-in password either given to the Customer by Qualitem or specified by the Customer to access the Services or as changed by the Customer;
<b>Period</b>	is specified in Schedule 1;
<b>Privacy Policy</b>	means Qualitem's policy and guidelines on managing the private information of the Customer annexed to this Agreement;
<b>Registration Procedure</b>	is described in clause 2;
<b>SLA or Service Level Agreement</b>	is a separate agreement for the provision of support services which are ancillary to the Customer's use and access to the Services;
<b>Software</b>	means the software provided by Qualitem to the Customer specified in Schedule 2 and as modified by Qualitem from time to time;
<b>Term</b>	means the term of this Agreement as described in clause 10;
<b>Third Party Developer</b>	means the owner of the Third Party Software or any party which has represented to Qualitem that it has the rights to grant the licences and sub-licenses to the Third Party Software as contemplated under this Agreement;
<b>Third Party Software</b>	means the Third Party Software listed in Schedule 2;

**User ID** is the unique system generated log-in name either given to the Customer by us or specified by the Customer to access the Services or as changed by the Customer;

**Website** means the Qualitem website at: <http://qualitem.com>.

## **2. REGISTRATION PROCEDURE & CUSTOMER ACCOUNT**

---

2.1 Subject to the execution of this Agreement, the Customer will be granted access to the Software upon completing the Registration Procedure for the Term and in accordance with the Terms and Conditions of this Agreement.

### **2.2 Registration Procedure**

The Customer will be deemed to have completed the registration procedure by login on the the Software's registration process. A confirmation email will be sent to the Customer on successful registration and providing any and all information reasonably requested by Qualitem in setting up the Customer's Account (**Registration Procedure**).

2.3 When completing the Registration Procedure, the Customer warrants to Qualitem that it will provide accurate and correct information about the Company and its Authorised Users and agrees to update its information as and when it changes to ensure that Qualitem's records and database remains current and accurate.

2.4 Where the Customer provides any false or incorrect information in relation to its Account (including any false or out-dated information in relation to its name, contact number or email address), Qualitem reserves all rights to refuse access to, suspend or terminate the Account and the Software.

### **2.5 Account Access**

Upon completing the Registration Procedure, the Customer may access the Software by logging in to its Account with its allocated Account Details which will be allocated to the Customer by Qualitem shortly after the Customer has completed the Registration Procedure and the Customer will be notified by email as to when the account is active.

2.6 The Customer must ensure that it does not disclose its Account Details to anyone other than its Authorised Users, representatives or agents.

2.7 While Qualitem uses reasonable commercial endeavours to maintain the privacy and secrecy of all user IDs and Passwords, the Customer acknowledges and accepts that:

- (a) it is the Customer's sole responsibility to ensure that there is no unauthorised access to its Account or the Service;
- (b) Qualitem is not responsible for any loss or damage caused to the Customer as a result of unauthorised access to its Account.

Where the Customer suspects any unauthorised use of its Account, the Customer should notify Qualitem immediately.

## **3. CUSTOMER'S OBLIGATIONS**

---

- 3.1 In consideration for the Software by Qualitem, the Customer agrees to pay all Fees and Charges in full and without deduction as and when they become due under this Agreement.
- 3.2 The Customer agrees that it bears sole responsibility for providing and maintaining any computer systems, networks, telecommunications systems, Internet access, third party services or any other materials or conditions required in order to meet the Minimum Technical Requirements specified by Qualitem in order to operate the Software or use the Services as disclosed in the Documentation.
- 3.3 The Customer agrees that in accessing and using the Software, the Customer:
- (a) and its Authorised Users will comply with any and all laws and regulations relevant to the use of the Services;
  - (b) and its Authorised Users will not use the Services in a way which compromises the functionality or use of the Services as described in clause 5.3;
  - (c) and its Authorised Users will not operate any software on Qualitem Servers that would in any way bring Qualitem's reputation into disrepute;
  - (d) and its Authorised Users will not use the Software for any purpose other than as permitted under this Agreement or for any illegal purposes; and
  - (e) has or will provide full and accurate registration information at the time of completing the Registration Procedure.
- 3.4 The Customer acknowledges and agrees that it shall be responsible for all acts and omissions of Authorised Users, and any act or omission by an Authorised User, which, if undertaken by the Customer, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by the Customer. The Customer shall undertake reasonable efforts to make all Authorised Users aware of the provisions of this Agreement as applicable to such Authorised Users' use and access to the Services and Software, and shall use its best efforts to cause Authorised Users to comply with such provisions.

#### **4. SOFTWARE AS A SERVICE (SaaS)**

---

- 4.1 From the Commencement Date, Qualitem will:
- (a) use reasonable commercial endeavours to provide the Customer with access to the Software through Internet connection to the Qualitem Server(s) through the Customer's Account twenty-four (24) hours a day, seven (7) days a week; and
  - (b) grant the Customer a non-exclusive, non-transferable, non-sub-licensable license to:
    - (i) use and install, up to the number of Permitted Users/Permitted Sites (as applicable) specified in Schedule 2, copies of the Software for the Term onto computer server(s) owned, operated and under the supervision and control of the Customer and hosted by Qualitem on a Qualitem Server. The Customer may only access the Software as hosted on a Qualitem Server and must not install the Software (or any part thereof) on any privately owned Customer equipment; and
    - (ii) permit its Authorised Users to use the Software in accordance with this Agreement, Additional Agreements and any Documentation, solely to manage the Customer Data and for purposes of conducting its business activities, within Australia, throughout the Term of this Agreement.

4.2 Within a reasonable time period following the Registration Procedure, Qualitem will, on a date agreed by the Parties, provide the Customer with any Media required to install, run and operate the Software and reasonable assistance to install the Software onto the Customer's computing system. Qualitem may require that the Customer pay an additional charge for any installation services, calculated in accordance with Qualitem's standard hourly rates and charges.

#### 4.3 **Third Party Software**

The Customer acknowledges and accepts that in relation to the Third Party Software supplied by Qualitem:

- (a) the Third Party Software is not owned, developed, maintained or supported by Qualitem;
- (b) Qualitem is permitted, under a separate licence arrangement with the Third Party Developer, to grant a sub-licence or otherwise permit the Customer to access and use the Third Party Software in accordance with this Agreement. Accordingly, the Customer accepts that:
  - (i) the Customer may be required to execute Additional Agreements in order to access the Third Party Software;
  - (ii) the Customer must only use the Third Party Software in strict accordance with this Agreement and any Documentation provided with the Software;
  - (iii) Qualitem does not make any representations or provide any warranties in relation to any Third Party Software upgrades, updates, modifications or continuity except those which are expressly stated in this Agreement and any Additional Agreements. Any and all warranties made in relation to Third Party Software are made by the Third Party Developer;
- (c) the Third Party Software is provided by Qualitem on an 'as-is' basis. Any upgrades, updates and modifications are provided by the Third Party Developer at its discretion as and when they are released by the Third Party Developer.

4.4 Qualitem expressly disclaims any and all representations and warranties of non-infringement, express or implied, regarding Third Party Software. For avoidance of doubt, the Customer agrees that Qualitem has no obligation to provide indemnification against any claims brought against the Customer by third parties alleging that any Third Party Software infringes, misappropriates, or otherwise violates the intellectual property rights or similar rights or any third party.

#### 4.5 **Customer's Use of the Software**

In accessing and using the Software, the Customer undertakes to:

- (a) access and use (and ensure that its Authorised Users access and use) the Software in accordance with this Agreement and any Additional Agreements and Documentation;
- (b) maintain accurate and up to date records of the number and locations of all copies of the Software; and
- (c) supervise and control the use of the Software in accordance with the terms of this Licence.

#### 4.6 **Excluded Use**

The Customer must not at any time during or after the Term, directly or indirectly, do or attempt to do any of the following acts:

- (a) translate or adapt the Software for any purpose without Qualitem's prior express written consent;
- (b) make any copy of the Software or Documentation without Qualitem's prior express written consent;
- (c) provide or otherwise make available the Software in whole or in part (including but not limited to program listings, object and source program listings, object code and source code), in any form to any person other than its Authorised Users without prior written consent of Qualitem;
- (d) decompile, disassemble, reverse engineer (or any similar activity) the Software or an part thereof;
- (e) infringe Qualitem's IPR or the IPR of any Third Party Developer or third party (including but not limited to decompiling, reverse engineering or reproducing any content, information or portion of the Software) or any other unlawful purpose; or
- (f) anything contrary to any other restrictions stated in this Agreement.

4.7 Except as expressly permitted by Qualitem under this Agreement, the Customer hereby undertakes not to alter or modify the whole or any part of the Software in any way whatever nor permit the whole or any part of the Software to be combined with or become incorporated in any other program except to the extent permitted by law.

## 5. CUSTOMER DATA

---

5.1 During the Term of both the trial and purchase, the Customer may upload and save electronic information, data, material and other Electronic Assets (**Customer Data**) through an Internet connection onto its Account on:

- (a) Qualitem Server located at the Qualitem Data Centre; and
  - (b) Qualitem's Virtual Servers and Virtual Data Centres (if applicable),
- as described in this Agreement.

### 5.2 Data Allowance

During the trial, Qualitem will;

- (a) at its discretion, decide how much Customer Data is stored on the Qualitem Server and may remove Customer data at any time, without notice.

throughout the Term.

### 5.3 Uploading Customer Data

The Customer warrants that in relation to uploading any Customer Data, the Customer and its Authorised Users:

- (a) have all the necessary licences and rights to use any content including images, photos and videos on the Customer's behalf by Qualitem; and
- (b) own and or otherwise have the right to store, access and maintain Customer Data hosted on the Qualitem Servers.

5.4 The Customer and its Authorised Users must not:

- (a) upload, store or transmit any Customer Data onto the Qualitem Server(s) or Services which contain any virus or which may compromise the functionality or use of the Qualitem Server(s) or Services, including uploading or transmitting any Customer Data which may damage or corrupt the Qualitem Server(s) or Services; or
- (b) use the Qualitem Server or Services in any way for any illegal or improper purposes (as determined by Qualitem in its entire discretion).

5.5 The Customer acknowledges and agrees that Qualitem reserves the right to require Customers to remove any Customer Data or Electronic Asset that may adversely affect the interests of Qualitem or other Qualitem customers. The Customer agrees that such content must be removed by Customers within twenty-four (24) hours of having been so advised by Qualitem.

#### 5.6 **Transfers of the Customer Data**

- (a) Qualitem maintains strict procedures and standards and takes all reasonable care to prevent unauthorised access to, transfer, and modification and disclosure of, the Customer Data. Qualitem will take all reasonable steps to protect the Customer Data from misuse and loss.
- (b) Qualitem will take all reasonable steps to secure any of the Customer Data that is transferred between the Customer and Qualitem Server(s) but as it is commonly acknowledged, no information transmission over the Internet can be guaranteed as fully secure and accordingly, Qualitem cannot guarantee or warrant the security of any information the Customer sends to Qualitem through the Internet or uploaded onto the Qualitem Server. The Customer acknowledges and agrees that it submits Customer Data over the Internet and into the Qualitem Server at the Customer's own risk.

5.7 The Customer acknowledges and agrees that Qualitem has recommended that the Customer maintains their own offsite, private back-up copies of their Customer Data. The Customer acknowledges and agrees that Qualitem will not be responsible for any loss of the Customer Data as a result of the Customer's use of these Services, including uploading or storing its Customer Data on Qualitem Server(s).

### 6. **TECHNICAL SUPPORT**

---

6.1 Where Qualitem is or becomes aware of any pending interruptions to access to any of the Services, including the Software, Qualitem will notify the Customer within twenty-four (24) hours of the pending interruption and the steps it will take to minimise any impact it may have on the Customer. Qualitem will use reasonable commercial endeavours to minimise any infrastructure, hardware or software maintenance or development interruptions to the Customer.

#### 6.2 **Technical Support**

The Customer may submit technical support requests via email to Qualitem's nominated email address.

### 7. **FEES**

---

7.1 This agreement covers the trial only and if the Customer wishes to purchase the Software, the Customer will enter into another Software Agreement and the Fee terms and conditions will be outlined separately in that document.

## 8. CONFIDENTIAL INFORMATION

---

### 8.1 The Customer's Confidential Information

The Customer's Confidential Information includes all Customer Data managed by Qualitem under this Agreement. The Customer's Confidential Information as described in this clause will be collected and managed in accordance with Qualitem's Privacy Policy.

### 8.2 Qualitem Confidential Information

- (a) Qualitem Confidential Information includes all information in relation to the Software, technical Information, operation, specifications or any aspect of the Qualitem Server, Data Centre and Services (***Qualitem Confidential Information***).
- (b) The Customer may only disclose Qualitem Confidential Information to:
  - (i) the Customer's directors, officers and employees who have agreed to comply with the confidentiality obligations in this Agreement;
  - (ii) the Customer's professional advisers who have agreed to comply with the confidentiality obligations in this Agreement; or
  - (iii) the Customer's contractors, subcontractors or consultants who have signed confidentiality undertakings in an agreed form.
- (c) Within twenty-four (24) hours after any written request from Qualitem, the Customer must:
  - (i) at Qualitem's option, return or destroy all copies of Qualitem Confidential Information in the Customer's possession or control; and
  - (ii) if requested by Qualitem, give Qualitem a signed letter certifying compliance with the previous paragraph.

### 8.3 The Customer agrees to:

- (a) keep Qualitem Confidential Information confidential;
- (b) adopt security measures in relation to Qualitem Confidential Information that are at least as good as it would adopt for its own confidential information;
- (c) only disclose or provide Qualitem Confidential Information to those with a need to know for the purposes of this Agreement; and
- (d) notify the Qualitem immediately if it becomes aware of any unauthorised use, copying or disclosure of Qualitem Confidential Information.

### 8.4 The Customer must not copy Qualitem Confidential Information without Qualitem's prior consent and where the consent is given, any copies of Qualitem Confidential Information must be clearly marked "Confidential".

### 8.5 The obligation to keep Qualitem Confidential Information confidential will continue to be binding notwithstanding the termination of this Agreement for at least the period of time governed by the statute of limitations and information privacy laws in Western Australia.



## **9. INTELLECTUAL PROPERTY**

---

- 9.1 The Customer acknowledges and agrees that all Intellectual Property rights in the Software licensed under this Agreement belong to Qualitem or other Third Party Developers. Nothing in this Agreement transfers or assigns any Intellectual Property Rights in the Software to the Customer whatsoever. The Customer's only right is to use the Software and Services during the Term in accordance with this Agreement.
- 9.2 Qualitem acknowledges and agrees that software owned by the Customer shall remain the intellectual property of the Customer and this Agreement does not transfer or assign any Intellectual Property to Qualitem or any other Third Party.
- 9.3 Qualitem warrants that to the best of its knowledge the Customer's use of the Software and Services as set out in this Agreement and any Documentation will not infringe the Intellectual Property Rights of any person.
- 9.4 The Customer acknowledges that Qualitem will have no responsibility or liability under this Agreement in connection with claims made by third parties to the extent that they are directed towards the use of any Third Party Software.

## **10. TERM & TERMINATION OF THIS AGREEMENT**

---

### **10.1 Term**

This Agreement will commence on the Commencement Date and continue for the Period and subsequent renewed Periods unless and until terminated in accordance with this clause 10 (**Term**).

### **10.2 Termination**

Qualitem may terminate this Agreement:

- (a) without notice to the Customer if:
- (i) the Customer commits a breach of any of clauses 4.6, 4.7, or 5.4 of this Agreement;
  - (ii) a receiver or a receiver and manager is appointed to the undertaking, property, or assets of the Customer;
  - (iii) the Customer is placed under official management;
  - (iv) the Customer ceases to carry on business or becomes insolvent or a resolution is passed for the winding up of the Customer or an order is made for the appointment of a liquidator provisionally of the Customer or for the winding up of the Customer;
  - (v) the Customer commits any breach of any legislation or codes of practice governing any aspect of the Customer's business or any Assignment;
  - (vi) the Customer brings the business of Qualitem into disrepute or is or becomes involved in a conflict with any officer (including director), employee, agent, or other client or customer of Qualitem.
- (b) by giving seven (7) days' notice to the Customer, if the Customer:
- (i) fails to pay any amount owing to Qualitem within fourteen (14) days of the date of a written request by Qualitem to make payment;

- (ii) commits any breach of this Agreement (other than those described in clause 10.2(a)(i) which warrant immediate termination) and fails to remedy that breach within fourteen (14) days of the date of a written request from Qualitem to do so.
- 10.3 Either Party may terminate this Agreement by giving the other Party thirty (30) days prior written notice.
- 10.4 Upon termination, the Customer must immediately:
  - (a) cease using the Software;
  - (b) uninstall and delete any Software on the Customer and its Authorised User's computing environment;
  - (c) return any Documentation supplied by Qualitem; and
  - (d) pay all outstanding amounts of Fees and Charges to Qualitem under this Agreement.
- 10.5 Notwithstanding termination of this Agreement, this Agreement will continue to be binding on the Parties and enforceable in respect to the rights and obligations of each Party relating to:
  - (a) the payment of any sum(s) which are owing;
  - (b) return of any Media, hardware and Documentation and any other property provided to the Customer by Qualitem;
  - (c) Qualitem's Confidential Information; and
  - (d) the Intellectual Property Rights of Qualitem and any Third Party Developer.

## **11. WARRANTIES & LIMITATION OF LIABILITY**

---

- 11.1 The Customer acknowledges that the Services and Software have not been prepared to specifically meet the Customer's individual requirements and that it is the Customer's responsibility to ensure that the facilities and functions of Software meet the Customer's requirements. The Customer acknowledges that it has exercised its own independent judgment in entering into this Agreement and accepting the Services and Software, and has not relied on any representations made by Qualitem.
- 11.2 The Customer acknowledges and agrees that Qualitem will not be liable for any failure of the Services or Software to provide any facility or function not described in the Documentation or for any failure of Software attributable to any modification (whether by alteration, deletion, addition or otherwise) to the Software as a result of either the Customer being in default of its obligations under this Agreement, by persons other than Qualitem, or any use of the Software or Services contrary to this Agreement and any Documentation.
- 11.3 Qualitem does not warrant or represent:
  - (a) that the Services or functions contained in the Software will meet the Customer's requirements; or
  - (b) that the Services will be uninterrupted or error free.

The Customer acknowledges and agrees that Qualitem is not liable for any delays or interruptions to users as a result of any service interruption or down-time.

#### 11.4 **Third Party Software**

No warranties are provided by Qualitem to the Customer whatsoever in relation to Third Party Software (or the Customer's access to the Third Party Software) supplied under this Agreement, or other materials supplied by Qualitem to the Customer in relation to Third Party Software, including any Documentation.

11.5 Qualitem shall not be liable to the Customer or any person for any direct, indirect, incidental, special or consequential loss or damages or any loss of revenue or profits whatsoever where that result is directly or indirectly related to the Software or Services provided under this Agreement. The Customer agrees that Qualitem will not be liable for such loss even where Qualitem has been advised of the possibility of such loss or damage, or where such loss or damage may be foreseeable.

11.6 The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law. In the event that any statute implies terms into this Agreement which cannot be lawfully excluded, or where Qualitem cannot be partially or wholly excluded, Qualitem's liability for breach of any such implied term and Qualitem's liability will be limited to payment to the Customer of any amount equal to the Fees paid by the Customer under this Agreement.

### 12. **INDEMNITY**

---

The Customer agrees to indemnify Qualitem and hold Qualitem harmless against any loss, costs, expenses, demands or liability, whether direct or indirect (**Loss or Liability**), incurred by Qualitem arising out of a claim, demand, suit, action or proceeding by a third party against Qualitem where such Loss or Liability arose out of, in connection with, or in respect of, the Customer's use of the Software or Services under this Agreement, or alleging that the Customer infringed any intellectual property rights. This obligation shall survive any termination of this Agreement.

### 13. **FORCE MAJEURE**

---

Neither Party will be liable for any delay in performing or failure to perform its obligations (other than a payment obligation) under this Agreement due to any cause outside its reasonable control. Such delay or failure will not constitute a breach of this Agreement and the time for performance of the affected obligation will be extended by such period as is reasonable. If such event continues for more than thirty (30) days then either Party may elect to terminate this Agreement forthwith.

### 14. **ASSIGNMENT**

---

The Customer is not entitled to assign, sub-license or otherwise transfer its obligations under this Agreement whether in whole or in part without the written consent of Qualitem.

## **15. NOTICE**

---

Any notice given by a party under this Agreement will be:

- (a) in writing;
- (b) delivered by hand or sent by pre-paid post or by facsimile transmission [or electronic mail] to the address(es) set out in Schedule 1;
- (c) effective:
  - (i) if delivered by hand – on the date of delivery,
  - (ii) if sent by pre-paid post – seventy-two (72) hours after the date of mailing in Western Australia; or
  - (iii) if sent by facsimile transmission [or electronic mail] to the correct facsimile number [or electronic mail address] of the addressee (with correct answer back):
    - A. two (2) hours after a successful transmission report has been printed or noted by the Sender's fax [or e-mail], if sent before 3.00 p.m. on any Business Day; and
    - B. in any other case at 10.00 a.m. on the Business Day following the date of sending.

## **16. SEVERANCE**

---

The Parties agree:

- (a) to apply a construction of each provision of this Agreement that creates a legal and enforceable provision;
- (b) that any illegal or unenforceable provision will be severed from this Agreement and will not affect the continued operation of the remaining provisions; and
- (c) to use their best endeavours to replace any severed provision having a commercial import as close as possible to the severed provision.

## **17. ENTIRE AGREEMENT**

---

These Terms and Conditions:

- (a) exclude all conditions, warranties and terms implied by custom, general law or statute (except ones that by law may not be excluded);
- (b) is the entire Agreement between the Parties about its subject matter; and
- (c) in relation to that subject matter, supersedes any prior:
  - (i) understanding or Agreement between the Parties; and
  - (ii) condition, warranty, indemnity or representation imposed, given or made by a Party.

## **18. GOVERNING LAW**

---

The Parties agree that this Agreement will be governed by and construed in accordance with the laws of the State of Western Australia and agree to submit to the exclusive jurisdiction of Western Australia's courts and any courts which have jurisdiction to hear appeals from any of those courts.

## Privacy Policy

**This Privacy Policy of Qualitem Pty Limited (ACN 165 507 951) (“Qualitem”, the “company”, “we”, “us”) is current as at 9 April 2015.**

This Privacy Policy is created to inform the Customer (“you”, “your”) of the company’s privacy policies and practices and to explain how your information is collected and used. This Privacy Policy applies to the services offered at [www.godatacentre.com](http://www.godatacentre.com), the web site operated by Qualitem, an Australian company, which is located at 81 Edward Street, Perth 6000. Please read this Privacy Policy carefully before using the Qualitem site. Usage of the website (and services) is conditional upon you agreeing to be bound by this Privacy Policy.

Qualitem recognises the importance of your privacy, and that you have a right to control how your personal information is collected and used.

Qualitem will not collect any personal information about you without your consent. We only collect personal information that you tell us about yourself and information about how you use our website: eg by registering, when we ask for information such as your email address, name, address, company, account number and phone number. If you contact us, we may keep a record of that contact. Qualitem also may use cookies to make your use of our website and services as convenient as possible. If you do not wish to receive any cookies you may set your browser to refuse cookies. This may mean you will not be able to use some or all of Qualitem’s online services.

Qualitem will not use or disclose any information, unless requested by the operator of your account, as required by law or if we believe in good faith it is necessary to provide you with a service you have requested. We may also do so to implement our terms of service, protect the rights, property or personal safety of another user, any member of the public or Qualitem, or if our assets and operations are transferred to another party as a going concern. We may also send you information and product updates which you have requested. Therefore we may sometimes share your personal information with a service partner, subject to confidentiality provisions, but will not otherwise disclose it to other companies without your consent.

We may contact you at the email or other address which you provide to us in order to provide you with updated information about our website, contact you in relation to your account or an order which you have placed or provide you with other information about our products and services. If you do not wish to receive this, you may remove your name from our list by visiting our website and following the instructions, or email us at [info@godatacentre.com](mailto:info@godatacentre.com).

If at any time you want to know exactly what personal information we hold about you, you can access our records by contacting us at [info@godatacentre.com](mailto:info@godatacentre.com). If your personal information is inaccurate or out of date, you can e-mail us at [info@godatacentre.com](mailto:info@godatacentre.com) and we will amend it. If you wish to have your personal information deleted, we will take all reasonable and legal steps to delete it.

Qualitem will endeavour to take all reasonable steps to keep secure any information which we hold about you, and to keep this information accurate and up to date. Qualitem will not be held responsible for events arising from unauthorised access to your personal information. Qualitem may use overseas facilities to process or back up its information and as a result, may transfer your personal information to overseas facilities for storage. Please notify us immediately if there is any breach of security. For the purposes of viewing parts of our website we may provide you with a user name and password. You are responsible for the security and confidentiality of your password and log-in information.

Qualitem provides links to external websites. These linked sites are not under our control, and we are not responsible for the conduct of companies linked to our website.

Our commitment to being customer focused and a quality provider of data centre products and services means that our business will continue to evolve as we introduce new products, services and features to our website. Because of this, Qualitem reserves the right to review its Privacy Policy at any time and notify you by posting an updated version of the policy on our website. The amended Privacy Statement will apply between us whether or not we have given you specific notice of any change.

Further Information or if you have questions or concerns regarding our privacy practices, you should contact us by email at [info@qualitem.com](mailto:info@qualitem.com).