

## POLONIOUS ENTERPRISE LICENSING AND SERVICE LEVEL AGREEMENT

**THIS AGREEMENT** is made on the date the Customer first logs in to their Polonious Engine instance.

**START DATE** is also the date the Customer first logs in to their Polonious Engine instance.

### **PARTIES**

- (1) **POLONIOUS PTY LTD** a company incorporated in NSW, Australia whose reregistered number is **ABN: 17 117 728 999**, of 22 Mary Street, Beacon Hill, New South Wales 2100 Australia (**Owner**); and
- (2) The Customer is taken to be the individual who signed up for the Polonious Engine instance via the online billing form, as well as any organisation they entered in the 'Company Name' field of the form (**Customer**).

each of the Owner and Customer being a **party** and together the Owner and Customer are the **parties**.

### **BACKGROUND**

- The Owner owns or has rights to certain software.
- The Owner provides technical consulting Services.
- The Customer wishes to use the Owner's software and or Services subject to the terms and conditions of this Agreement.

### **RELATIONSHIP MANAGER**

- **Owner:**

Nicholas A. Fisher,  
CEO, Polonious Pty Ltd  
e. [nick.fisher@polonious.com.au](mailto:nick.fisher@polonious.com.au)

**THE PARTIES AGREE:**

Definitions and interpretation

In this Agreement:

<b>Agreement</b>	Means the Terms and Conditions set out in this Agreement between <b>Customer</b> and Polonious Pty Ltd ( <b>Owner</b> ).
<b>Business Day</b>	Means a day other than a Saturday, Sunday or public holiday recognised in New South Wales, Australia;
<b>Commencement Date</b>	Means the date of this Agreement;
<b>Confidential Information</b>	Means all information (whether in written, oral, or electronic form) relating to a party's business which may reasonably be considered to be confidential in nature including information relating to that party's technology, business, management, Know-how, Intellectual Property Rights, assets, finances, strategy, products and customers AND any information designated by the disclosing party as confidential;
<b>Conflict of Interest</b>	Means any activity that will or is likely to compromise the Owner's ability to perform its obligations under this Agreement fairly and independently, including without limitation: <ul style="list-style-type: none"> <li>(a) Any material legal proceedings or public investigation (actual or threatened);</li> <li>(b) Any material reduction to the technical or financial resources of the Owner;</li> <li>(c) Any restriction or obligation under another agreement which would be breached by the Owner entering into this Agreement; or</li> <li>(d) Where any competitor of the Customer holds or acquires more than 20% ownership or control of the Owner.</li> </ul>
<b>Customer</b>	Means the individual who signed up for the Polonious Engine instance via the online billing form, as well as any organisation they entered in the 'Company Name' field of the form
<b>Customer Account</b>	Means the Customer's database on the Polonious server, as well as any access credentials stored for that database.



<b>Data</b>	Means Customer information in electronic form stored by the Owner. All data is to be stored in AWS availability zone: Asia Pacific (Sydney) Region.
<b>Deliverable</b>	Means a product or work (including any Software, hardware and existing material) and any documentation, related manuals or technical notes to be supplied by the Owner to a Customer or a related company as described under and in accordance with this Agreement.
<b>Development Services</b>	Means optional development services as set out in SERVICE DELIVERABLES AND FEES SCHEDULE.
<b>Force Majeure Event</b>	Means any act, event, omission or accident beyond the reasonable control of a party and that could not have been reasonably anticipated or avoided by a party, which prevents it from, or delays it in, performing its obligations under this Agreement;
<b>Good Industry Practice</b>	In relation to any undertaking and any circumstances, means the exercise of that degree of care, professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or company engaged in the same type of activity under the same or similar circumstances;
<b>GST</b>	Means goods and services tax in terms of the Australian Goods and Services Act 1999 at the rate prevailing from time to time;
<b>Hosting</b>	Means the installation of the application inside the Customer network infrastructure or hosted by a third party environment supported by the Owner and accessed by the Customer.
<b>Intellectual Property (IP) Rights</b>	<p>Means copyright, patents, rights in inventions, rights in Confidential Information, Know-how, trade secrets, trademarks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case:</p> <p>(a) Whether registered or not;</p> <p>(b) Including any applications to protect or register such rights;</p>



- (c) Including all renewals and extensions of such rights or applications;
  - (d) Whether vested, contingent or future; and
- Wherever existing.

**IP Claim**

Means any claim brought against the Owner by any third party including any claim brought against a Customer relating to a claim by any other third party alleging that the use of Polonious infringes any copyright, database right or registered trade mark, registered design right or registered patent;

**Know-how**

Means inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, tests, reports, component lists, manuals, instructions, drawings and information relating to customers and suppliers (whether written or in any other form and whether confidential or not);

**Month**

Means a calendar month or part thereof;

**Owner**

Means Polonious Pty Ltd.

**Owner IPR**

The Software, the Owner’s Marks and all Intellectual Property Rights (**Owner IPR**) shall remain the sole and exclusive property of the Owner and its licensors, if any, whether the Software is separate or combined with any other products. Nothing in this Agreement or any licence or sub-licence granted under it shall convey or transfer any ownership or proprietary interest in any Owner IPR to the Customer or any third party.

**Owner Support**

Means the Service provided by the Owner to the Customer under this Agreement as set out in the Maintenance Access and Support Levels section.

**Owner Support Runoff Period**

Means a period starting on the end of the Term and ending on the earlier of:

- (e) The termination or expiry of the last of the obligations entered into by the Customer pursuant to this Agreement; and

13 Months from the date of termination or expiry of this Agreement;

**Owner’s Marks**

Means the Owner’s trademarks and trade names, service marks and service names described below:



- Polonious
- Polonious Pty Ltd
- Polonious Investigative Case Management System
- Polonious Investigative Case Management
- Polonious Case Management Solution
- PCMS
- Polonious Case Management System
- Polonious Live
- Polonious NOW

<b>Licensing and Fees</b>	Means the fees set out in the SERVICE DELIVERABLES AND FEES SCHEDULE, which includes the Licensing Fees.
<b>Personnel of a party</b>	Means the officers, employees, agents, contractors and subcontractors of that party.
<b>Polonious</b>	Means Polonious Case Management Solution, Polonious Software, Polonious, PCMS, Polonious Investigative Case Management System, Polonious Investigative Case Management, Polonious Cloud, Polonious Case Management System, Polonious Live, Polonious NOW, Polonious Systems
<b>Polonious Enterprise Licensing and Service Level Agreement</b>	Means an end user licence agreement between the Owner and a Customer for the provision of Polonious Software and Services ( <b>this Agreement</b> );
<b>Privacy and Data Protection Requirements</b>	Means all applicable laws and regulations relating to the processing of personal data and privacy in any relevant jurisdiction;
<b>Purchase Order or PO</b>	Means Customer’s financial authorisation in either electronic or tangible form, including a purchase order, bill of lading or other document designated as a PO by Customer from time to time, for Owner to provide the Services and Support under this Agreement.
<b>Reseller</b>	A company or individual authorised by the Owner pursuant to a Polonious Software Reseller Agreement between the Owner and the Reseller, to sell Polonious to Customer. A Reseller purchases Owner Software or



	Services with the intention of selling them rather than consuming or using them.
<b>Relationship Manager</b>	Means each party's representative (or his or her delegate), from time to time nominated under this Agreement, who at the date of this Agreement are the persons set out on page 1 of this Agreement.
<b>Service</b>	Means the services described in this Agreement being the provision of Software, Support and Development.
<b>Service Levels</b>	Means the Service levels to be met by the Owner in performing Service as defined under this Agreement.
<b>Senior Manager</b>	Means the senior manager of each Party's representative as nominated in writing from time to time by each Party under this Agreement.
<b>Software</b>	Means Polonious software, including any updates of the same made available to the Customer by the Owner;
<b>Specification</b>	Means the functional and technical specifications for the applicable Deliverables and/or Services and includes: <ul style="list-style-type: none"> <li>(f) The specifications for the applicable Deliverable or Service agreed between the parties as set out in this Agreement and in any relevant correspondence between the parties;</li> <li>(g) Customer requirements for the applicable Deliverable or Service as communicated to the Owner; and</li> <li>(h) Owner's or relevant manufacturer's (as the case may be) published marketing material, technical and operating documentation for the applicable Deliverable or Service.</li> </ul>
<b>Subscription Licence</b>	Means an annual or monthly fee to the Owner to continue to use Polonious Software.
<b>Subscription Fees</b>	Means the fees payable by Customer for the subscription services as set out in the SERVICE DELIVERABLES AND FEES SCHEDULE.
<b>Supplier</b>	Means a third party who provides resources to the Customer for the purpose of this Agreement.



<b>Support</b>	Means the provision of operational assistance as contained in the Maintenance Access and Support Level table contained in this Agreement.
<b>Tax</b>	Means taxes (except for GST), levies, imposts, deductions, charges, withholdings, duties or similar charges (including, without limitation, resident withholding taxes or import duties), together with any related interest, penalties, fines, and other statutory or regulatory charges;
<b>Tax Evasion</b>	Means any fraudulent activity intended to divert funds from public revenue of any government as well as any statutory tax evasion offence of any territory, where tax includes all taxes, levies and contributions imposed by governments in any territory;
<b>Tax Invoice</b>	Has the meaning given by the Australian Goods and Services Tax Act 1999.
<b>Term</b>	Has the meaning given in clause 21;
<b>User(s)</b>	Means Customer, clients, Suppliers, staff, contractors or agents who are registered to use Polonious Software and have been supplied user identifications and passwords by Customer or Owner.
<b>Update</b>	Means a Software maintenance update, patch or bug-fix which does not constitute an Upgrade;
<b>Upgrade</b>	Means a version or release of the Software intended to have new or improved functionality or any other new version or release of the Software designated by the Owner as an Upgrade;
<b>Year</b>	Means each successive period of 12 Months beginning on the Commencement Date.
<b>Customer Site</b>	A customer site describes the instance created for the customer to use via a URL.

**License Restrictions:**

1. The Owner hereby grants a Customer a non-exclusive, non-transferable, license to use Polonious, solely for Customer’s own internal business purposes, subject to the terms and conditions set out in this Agreement. Owner reserves all rights not expressly granted to the Customer. A Customer may use this license only in connection with Polonious.
2. A Customer shall not license, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available Polonious to any third party; reverse engineer or access Polonious in order to

build a similar or competitive product, build a product using similar ideas, features, functions or graphics of Polonious or copy any of those things.

3. Unless otherwise agreed in writing by the Owner, User licenses cannot be shared with other businesses or used by more than one individual User.

4. All Intellectual Property within Polonious remains the property of the Owner. Under no circumstances and notwithstanding any other agreement will this alter. All future enhancements and updates that are included in Polonious also are and remain the Intellectual Property of the Owner.

5. From time to time the Customer may sponsor feature development as they require, Owner will add those features, so they become configurable. The actual feature will be included in the base code and the Intellectual Property will reside with the Owner. The Customer specific data that is entered to enable that feature will remain the Intellectual Property of each Customer.

**License:**

6. In consideration of payment of the License Fees, Owner will provide Customer with Polonious as set out in this section.

7. A Customer Account will be set up on the host computer of Polonious and will entitle Customer to access the computer, communication and other resources of Polonious that will store and process Customer Data. Customer will be allocated a web site address (or URL) which will allow Customer's personnel to access the Customer Account via user identification and passwords for each User, which are known only to Customer except as provided herein. Customer may change Customer's passwords at any time of its choosing.

8. Customer will be responsible for activity occurring within the Customer Account, and shall abide by all applicable laws, including those of data privacy. Customer shall notify Owner of any unauthorised use of any password or account or any other suspected breach of security.

Owner will not do any act or engage in any practice in breach of any privacy law and owner must not transmit, transfer, disclose or make available Personal information as defined in the Privacy Act, including the Privacy Act 1988 (Cth).

9. Owner or its Reseller do not own any Data the Customer submits in the course of using the Service. Customer, not Owner, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and intellectual property ownership or right to use of all Data, and Owner shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Data unless caused by the negligence, fraud or wilful default of Owner and/or its Personnel.

10. Data Backup. A backup of Customer Data will be performed daily and archived on storage at AWS availability zone: Asia Pacific (Sydney) Region. In the event of Data corruption, Owner will restore Data from Owner archive.

11. As an additional service the Owner can forward by email to the customer an encrypted



compressed copy of Customer Data, to Customer within two (2) Business Days of Customer providing a written request to Owner. The Owner will provide Data in the form of a CSV file and such Customer Data shall include case data only, not documents or other digital files.

12. **Scheduled Maintenance.** The Owner performs scheduled maintenance to maintain the functions of Polonious and the computer equipment. The Owner and/or its sub-contractors will attempt to perform the routine database administration service and any upgrades at times which, in the Owner's sole opinion, will affect the least number of Users. The Owner will use commercially reasonable efforts to ensure downtime is kept to a minimum. Downtime can vary dependent upon the size of Customer Data stored inside Polonious. Small fixes, security patches or enhancements will be uploaded, and the system restarted between 1:00am and 1:30am Australian or New Zealand Standard Time, as applicable.

**Payment:**

13. In consideration of the supply of the Polonious Software and Services, Customer must pay the Service Fees to Owner on receipt of a correct Tax Invoice.

14. Unless stated otherwise in this Agreement, Customer will pay the Service Fees within thirty (30) days of receipt of Polonious' Tax Invoice.

15. Invoices that remain unpaid after ninety (90) days will incur a 10% late payment fee unless disputed per clause 19 below.

16. Where a Customer has an annual or monthly Subscription Licence the Owner will raise an annual or monthly invoice on the Customer for the Subscription Fee for the upcoming month (30-day period) or twelve (12) month period, whichever applies, on the anniversary of the Start Date of this Agreement and shall email that invoice to Customer nominated email address for receipt of invoices.

17. Unless otherwise agreed, any additional fees for Development Services or for services agreed to outside this Agreement, will be paid on presentation of a correct and approved Tax Invoice within thirty (30) days of receipt of such Tax Invoice as set out in this Agreement.

18. If paid in advance, any payment by Customer to Owner will not be taken to be an admission or acceptance by Customer that the Service has been supplied or performed under this Agreement.

19. If Customer disputes (for any reason) any amount invoiced to it either in part or full ("Disputed Portion of the Invoice"), Customer shall not be required to pay such Disputed Portion of the Invoice until the dispute has been resolved by agreement between the Parties or under clause 53 of this Agreement. A Disputed Portion of the Invoice shall be reasonable, and Owner shall be notified of such dispute within ten (10) Business Days of receipt of the Tax Invoice, and this shall not be grounds for termination of this Agreement. For the purposes of clarity any undisputed fees properly invoiced under this Agreement will be paid according to the terms of this Agreement.

**Rights and Powers:**

20. The rights, powers and remedies provided to a party in this Agreement do not exclude or limit,

any right, power or remedy provided by law or equity.

**Term:**

21. This agreement will continue on a perpetual basis, commencing on the 'Start Date' ("Initial Term") of this Agreement, until Termination according to clause 22 below.

**Termination:**

22. This Agreement may be terminated by either party:

- (a) At any time by giving not less than thirty (30) days' written notice to the other party; or
- (b) Immediately on written notice in the event of fraud, abandonment, gross or wilful misconduct, lack of legal capacity, dissolution, liquidation, insolvency, voluntary or involuntary bankruptcy of the other party; or
- (c) Immediately on written notice if the other party breaches this agreement materially and that breach cannot be remedied, or where the breach can be remedied, the other party does not remedy the breach within twenty (20) Business Days after the first party has notified the second party of the breach.

23. If the Agreement is terminated by:

- (a) Customer pursuant to clause 22 (a);
- (b) Owner pursuant to clause 22(b);

Customer shall not be entitled to a refund of any fees already paid and shall remain liable for any outstanding fees up to the end of the notice period.

24. In the event that the Agreement is terminated prior to the completion of the Initial Term or Renewal Term as applicable by:

- (a) Owner pursuant to clause 22 (a);
- (b) Customer pursuant to clauses 22 (b);

Customer shall be entitled to be refunded on a pro-rata basis for any fees already paid for the current renewal period and shall have no obligation to pay any additional fees up to the end of the current renewal period.

25. In the event of termination of this Agreement, Owner will, at the option of Customer, continue performance to completion of any Services. The Customer will pay for all Tax Invoices for such completion of Services. In the event of termination of this Agreement pursuant to this Agreement, Owner will be entitled to all sums earned prior to the effective date of termination, payable according to the rates, fees and costs. In the event that the Owner is unable or unwilling to provide the Services in accordance with this clause, Customer shall be entitled to be refunded on a pro-rata basis for any fees already paid for the current term of the Agreement and shall have no obligation to pay any additional fees up to the end of the Initial Term or Renewal Term as applicable.

**Confidentiality:**

26. The Parties acknowledge that the Confidential Information of the other is valuable to that other party. Each party undertakes to keep Confidential Information of the other secret and to protect and preserve the confidential nature and secrecy of that Confidential Information.
27. A party may only use or reproduce the Confidential Information of the other party for the purposes of performing its obligations or exercising its rights under this Agreement.
28. A party must:
- (a) Not disclose the Confidential Information of the other party to any person except as permitted by this Agreement;
  - (b) Not make, assist or permit any person (including its authorised representatives) to make any unauthorised use, disclosure or reproduction of the other party's Confidential Information; or
  - (c) Co-operate with the other party in any action which that other party may take to protect the confidentiality of its Confidential Information under this Agreement.
29. A party may disclose Confidential Information of the other party to:
- (a) Its Personnel or professional advisors requiring access to the information in connection with this Agreement;
  - (b) Any person for a relevant purpose only with the prior written consent of the other party; or
  - (c) The extent required by Law or any regulations of any government agency or stock exchange having appropriate authority, subject to it giving the other party reasonable notice of any proposed disclosure (if permitted by Law) to enable that other party to seek a protective order or other remedy to prevent or limit such disclosure.
30. The disclosing party must ensure that any person to whom Confidential Information is disclosed under clauses 28.a or 28.b is bound by an obligation of confidentiality in respect of that Confidential Information on terms consistent with the provisions of this clause.
31. Customer Data is and will remain the property of Customer at all times. Except as required by Law, Owner must:
- (a) Not use Customer Data for any purpose other than directly in relation to the performance of its obligations under this Agreement;
  - (b) Not, and must ensure that its Personnel will not, sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any Customer Data;
  - (c) Not make any Customer Data available to a third party; and
  - (d) Not remove or transfer Customer Data to any non-Customer premises or systems without obtaining the prior approval of Customer.

32. Owner must establish and maintain safeguards against the destruction, loss, corruption or alteration of Customer Data in the possession or control of Owner that:

- (a) Meet the Owner ISO data handling process; and
- (b) Comply with all applicable laws; and
- (c) Any procedures specified by Customer concerning Customer data security.

Owner must:

- (d) Comply with all stated data security requirements in respect of access to Customer Data as notified to the Owner from time to time;
- (e) Prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to Customer Data; and
- (f) Notify Customer immediately and comply with all directions of Customer if Owner becomes aware of the contravention of, or possible contravention of, any stated Customer data security requirement.

33. Owner must return Customer Data to Customer immediately on termination or expiration of this Agreement or on request by Customer at any time.

34. To the extent Owner or any of Owner's Personnel may under any law have any right in or claim to all or any of the Customer Data, Owner hereby:

- (a) Assigns, and shall ensure that its Personnel assign, to Customer all its present and future intellectual property rights in the Customer Data as and when the same come into existence that arise or that may arise in the course of its performance of its obligations under this Agreement or otherwise howsoever; and
- (b) Irrevocably waives all moral rights and rights of lien or rights similar to either of such rights it may now or later have in respect of the Customer Data.

35. Owner undertakes:

- (a) Not to make any claim that is inconsistent with Customer's sole and exclusive ownership of the Customer Data and the intellectual property rights associated therewith;
- (b) To procure that its Personnel waive all rights in and claims to all or any of the Customer Data that such Personnel may otherwise have or may assert;
- (c) To sign such documents and do such things as Customer may require to vest and to confirm that all intellectual property rights in the Customer Data are vested in Customer and to ensure that all of its Personnel do the same; and
- (d) To do such other things as the Customer reasonably requires to assist Customer in protecting or asserting its ownership of any intellectual property rights in the Customer Data, subject to

agreement by Customer to pay Owner such reasonable costs as Owner may incur in complying with this clause.

- (e) Ensure that cryptographic controls are used in compliance with relevant agreements, legislation and regulations.

**Maintenance Access and Support Levels:**

<p>Availability and Support</p>	<p>Owner will be available 24 hours a day, 365 days per year. With a 99% availability as standard.</p> <p>All support requests must be logged via the Polonious Issue Tracking System to be addressed as per the service level described below.</p> <p>Components outside the Polonious environment are out of scope. Owner will work with the providers toward the timely restoration of these issues and will use its best efforts to inform Users of the progress of these faults.</p> <p>The Service Desk is available 24x7x365 for Urgent or High-level support requests and 8x5 (Monday to Friday Australian Eastern Time excluding New South Wales public holidays) for Medium and Low-level support requests.</p>
<p>Service Levels</p>	<p>Owner will provide the following support levels (1 through to 4).</p>
<p>1-Urgent</p>	<p>24x7 - Where the problem has or will render the Customer site inoperable and requires work to commence immediately. Owner will respond within 30 minutes and work continuously to restore service within 6 hours. Continuous is defined as 6 consecutive hours including non-business hours. Progress updates are to be provided every 60 minutes or as agreed. Acceptable actions include rolling back newly released code or changes and delaying its release until issues have been addressed and tested.</p>
<p>2-High</p>	<p>24x7 - Where the problem may cause the Customer site substantially reduced functionality, requiring a response within 30 minutes and work continuously to restore service within 12 hours. Continuous is defined as 12 consecutive hours including non-business hours. Progress updates are to be provided every 60 minutes or as agreed. Acceptable actions include rolling back newly released code or changes and delaying its release until issues have been addressed and tested.</p>
<p>3-Medium</p>	<p>8x5 AEST (Monday to Friday, excluding public holidays) - Where the problem may cause the Customer site some reduced functionality (such as report generation failure, decreased speeds or similar) requiring a restoration of service within 1.5 working days.</p>
<p>4-Low</p>	<p>8x5 AEST (Monday to Friday, excluding public holidays) - Where the problem is of a minor nature requiring restoration of service five (5) working days.</p>

36. In the event the Owner fails to meet:
- (a) Urgent and High Service Levels on four (4) or more instances within any twelve (12) month period; or
  - (b) Medium or Low Services Levels on ten (10) or more instances within any twelve (12) month period,
  - (c) Then Customer shall notify Owner of such event and Customer shall be entitled to a discount from Owner of the Subscription Fees paid, of:
    - a. Four percent (4%) per failure in excess of four (4) to meet the Urgent and High Service Levels; and
    - b. Two percent (2%) per failure in excess of ten (10) to meet the Medium or Low Service Levels.

37. Any discount by Owner under clause 35 shall be deducted from the next License Fee Tax Invoice by Owner to Customer.

38. The parties acknowledge and agree that any discount provided under clause 35 is not a penalty but is intended to reflect a discount in the amount payable by Customer for Support not provided by Owner to the level agreed. The refund is not intended to be the entire compensation to Customer for any loss, costs, damages or expenses that it might suffer as a result of Owner's action or inaction which gives rise to the refund, and Customer shall be entitled to recover any such loss, costs, damages or expenses in addition to any refund as directed by any court decision or arbitration.

**Warranties:**

39. Owner makes no representation, warranty, or guarantee as to the Service operating in combination with any other hardware, software, system or data.

40. Owner warrants that the Service:

- (a) Complies with its Specifications as supplied to Customer and all applicable Laws;
- (b) Is free from defects in materials, workmanship and manufacture;
- (c) Is suitable for its intended purpose;
- (d) Is free of any charge, lien, encumbrance or liability when supplied to Customer;
- (e) Does not, and its use will not, infringe or make unauthorised use of the rights (including intellectual property rights) of any person; and
- (f) Will be provided with all due care and skill that would be expected of a skilled professional experienced in providing the same or similar services.

41. Owner further warrants that:

- (a) Its representations to Customer (including any Deliverable or Services information or correspondence) are complete and accurate, not misleading or deceptive and may be relied on by Customer in entering into this Agreement;
- (b) To the best of its knowledge, information and belief, no Conflict of Interest exists or is likely to arise in the performance of its obligations under this Agreement; and
- (c) It will not, during the term of this Agreement, engage in any activity that will or is likely to compromise Owners' ability to perform its obligations under this Agreement fairly and independently. Owner will immediately disclose to Customer any activity that constitutes a Conflict of Interest.

42. Owner will assign to Customer (or procure a direct extension to Customer from the third party of) the benefit of any warranties it enjoys in relation to a Deliverable or Service originating from a third party. This clause does not relieve Owner of its warranty obligations under this Agreement.

43. Each party warrants that it:

- (a) Is duly authorised to enter into and be bound by this Agreement;
- (b) Has the authority to grant the licence rights provided to the other party as set out in this Agreement; and
- (c) Holds all licences, approvals and permits required by law to perform its obligations under this Agreement.

44. Internet delays. Services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Owner is not responsible for any delays, delivery failures, or other damage resulting from such problems.

45. Firewalls. Services may be subject to limitations, delays, and other problems inherent in the use of a firewall and electronic communications. Owner is not responsible for any delays, delivery failures, or other damage resulting from such problems.

46. VPN Access. Services may be subject to limitations, delays, and other problems inherent in the use VPN Access and electronic communications. Owner is not responsible for any delays, delivery failures, or other damage resulting from such problems.

47. Limitation of liability. To the extent permitted by law and as expressly agreed under this Agreement, in no event shall either party's aggregate liability exceed \$1,000,000.00. This limitation will not apply in relation to a party's:

- (a) Breach of the Confidential Information or Intellectual Property obligations contained in this Agreement;
- (b) Breach of law; or
- (c) Fraud, gross negligence or wilful default.

48. All express and implied warranties, except those warranties in respect of the Services, which cannot be excluded by law, are excluded to the maximum extent permitted by law. Under no circumstances including but not limited to any act or omission on the part of Owner will Owner accept liability for any indirect, incidental, special and/or consequential damages or loss of profits resulting from any use or access, or any inability to use or access the Services.

49. In no event shall either party be liable to the other for any indirect, punitive, special, exemplary, incidental, consequential or other damages of any type or kind (including loss of data, revenue, profits, use or other economic advantage) arising out of, or in any way connected with this Service, including but not limited to the use or inability to use the Services, or for any content obtained from or through the Service, any interruption, inaccuracy, error or omission, regardless of cause in the content, even if the party from which damages are being sought or such party licensors have been previously advised of the possibility of such damages.

50. Customer warrants that:

- (a) it will keep secure any passwords used to access Polonious or the Data; and
- (b) It is the owner or lawful user of the Data.

51. Owner stores data predominately in the form of text. In order to ensure the proper operation of the Services, a limit has been set on the total capacity of Data storage as set out in Subscription Elements Section of the SERVICE DELIVERABLES AND FEES SCHEDULE.

52. Owner will notify Customer as soon as practical when the Data level is approaching 80% of the agreed storage limit. If additional storage is required, the Customer must increase their subscription appropriately as per the rates set out in the SOW.

53. If the customer does not subscribe to sufficient storage space or processing capability Owner will not be responsible for any subsequent data or performance loss.

**General:**

54. Dispute Resolution: In the event of any dispute between the parties under or in connection with this Agreement except where a party seeks urgent interlocutory relief, the parties will:

- (a) Within seven (7) Business Days (or such other period agreed between the parties) of a party providing notice of a dispute to the other party, ensure that its Relationship Manager meets with the Relationship Manager of the other party with a view to resolving the dispute; then
- (b) If the dispute is not resolved, within a further seven (7) Business Days the senior managers of the owner and the customer will meet in an effort to resolve any issue.
- (c) If the dispute remains unresolved for twenty-one (21) Business Days (or such other period agreed between the parties) of provision of the notice of dispute or within seven (7) Business Days (or such other period agreed between the parties) of the date of the last meeting under clause 53 (a) whichever is the earlier, then the parties will refer the dispute to mediation to be



conducted by the Small Business Commissioner in accordance with its then current mediation rules and guidelines for resolution within ten (10) Business Days (or such other period agreed between the parties).

55. If a dispute is referred to mediation:
- (a) Any meetings organised will be held in Sydney, in the State of New South Wales, or such other place as may be agreed;
  - (b) The parties agree to pay costs as directed by the mediator; and
  - (c) Both parties may be represented by a duly qualified legal practitioner.
56. **Governing Law.** The laws of New South Wales, Australia govern this Agreement.
57. **Complete Agreement.** This Agreement and the accompanying Statement of Work is the complete agreement between Owner and Customer regarding Owner and supersedes any prior agreements between Owner and Customer relating to the subject matter hereof.
58. **Modifications.** This Agreement will not be modified except by a properly executed written agreement. Any terms and conditions of any Purchase Order or other instrument issued by Customer in connection with this Agreement which are in addition to, inconsistent with or different from the terms and conditions of this Agreement will be of no force or effect.
59. **Legal Fees.** If either Owner or Customer employ lawyers to enforce any rights arising out of or relating to this Agreement, the prevailing party will be entitled to recover reasonable lawyer's fees from the other party if determined by any judgement.
60. **Survival.** Clauses re ownership of Intellectual Property and Confidential Information shall survive termination of this Agreement.
61. **Assignment and Binding Effect.** Each party may only assign its rights and obligations under this Agreement with the prior written consent of the other, such consent not to be unreasonably withheld.
62. **Notices.** Any notice required to be sent to a party under this Agreement will be in writing, effective on receipt by that party, and will be sent by email, mail or personal delivery to the Relationship Manager, at the Address given in this Agreement. Either party may change its notice address by giving written notice to the other party at the other party's notice address.
63. **Waiver and Severability.** The waiver of one breach or default under this Agreement will not constitute the waiver of any subsequent breach or default. Any provision of this Agreement held to be illegal or unenforceable will be deemed amended to conform to applicable laws or regulations, or if it cannot be so amended without materially altering the intention of the parties, it will be stricken, and the remainder of this Agreement will continue in full force and effect.
64. **Independent Contractors.** The parties will at all times be independent contractors and will so

represent themselves to all third parties. Neither party has granted to the other the right to bind it in any manner whatsoever and nothing herein will be deemed to constitute either party the agent or legal representative of the other nor to constitute the parties as joint venturers.

65. Excusable Delays. Neither party will be responsible for failure of performance due to causes beyond its reasonable control. Such causes include (without limitation) acts of God, labour disputes, actions of any government agency, terrorism and shortage of material.

66. Whilst Customer remains a licensed user of Polonious or continues to use a purchased copy of Polonious in any form Owner may refer to the Customer as a customer on its website and printed marketing material. Polonious may use any logo or other trademark associated with the customer with prior written approval of the customer.