1. Term

1.1 Initial Term

The initial term of this agreement:

(a) commences on the Commencement Date;

(b) continues for a period of 12 calendar months, subject to a further rollover term under clause 1.2, continues until the Expiry Date,

unless otherwise terminated earlier in accordance with clause 1.2 of this agreement (**Initial Term**).

1.2 Rollover

Unless:

(a) one of the parties provides written notice to the other party of an intention to allow the Term to expire prior to the expiration of the Initial Term or any Further Term under this clause 1.2 (**Expiry Notice**); or

(b) the agreement has been otherwise terminated earlier in accordance with clause 14 of this agreement,

this agreement shall automatically and continuously renew for further periods of 12 calendar months (**Further Term**) on the terms and conditions of this agreement.

1.3 Scaling-up

Subject to availability as determined in DataMuster's sole discretion, a Customer is entitled at any time during the Initial Term or Further Term to scale up its Access Level from Basic Access to Advanced Livestock Management (provided the pre-requisite in clause 3 is satisfied at each relevant scale-up time), and at such time a Further Term will:

(a) commence if the Initial Term has not yet elapsed; or

(b) restart if the Further Term has already commenced in accordance with clause 1.2,

and the Customer will not be entitled to scale down its Access Level to Basic Access until the minimum scale-up term under clauses 1.3(a) or (b) has elapsed.

1.4 Expiry Notice

If a party provides an Expiry Notice to the other party in accordance with clause 1.2, the Term shall expire on the date of expiration of the Further Term (as the context requires).

2. Acceptance of Terms

Please ensure that you take the time to read all of these Terms and Conditions. By using the DataMuster Platform, you agree to be contractually bound by these Terms and Conditions. If you do not agree, please do not use the DataMuster Platform.

3. Prerequisite for Advanced Livestock Management

(a) The Customer acknowledges that initial access to the Advanced Livestock Management Access Level is subject to availability of the Advanced Livestock Management level and the Customer meeting with DataMuster's Personnel (whether a client engagement officer or otherwise) so that DataMuster may (in DataMuster's sole discretion) determine:

(1) whether the temperament of the Customer's cattle is such that the use of the Advanced Livestock Management is likely to be of assistance; and

(2) any other factor DataMuster deems relevant to whether the Advanced Livestock Management Access Level is suitable for the Customer,

(the "**Suitability Meeting**").

(b) If DataMuster determines that the Advanced Livestock Management Access Level is:

(1) presently unavailable for whatever reason, DataMuster may decline the Customer's request to scale up to or otherwise receive access to this Access Level;

(2) inappropriate for the Customer, DataMuster may decline the Customer's request to scale-up to or otherwise receive access to this Access Level; or

(3) appropriate for the Customer, the Customer must purchase the hardware as specified in the Hardware Terms.

4. DataMuster Platform and Support Services

4.1 Account

(a) The Customer must create an Account for access to the DataMuster Platform and Support Services as specified in clause 4.2.

(b) The Customer must keep its password to its Account secure and may only share with Personnel (if applicable), as the Customer is solely responsible for any activity on its Account.

(c) The Customer agrees to notify DataMuster immediately if it becomes aware of any security breach or any unauthorised use of its password or Account.

4.2 Trial Period

(a) Where, prior to or during the creation of the Customer's Account, DataMuster has provided an offer in writing to the Customer to undertake a Trial Period, the DataMuster Platform will be provided to the Customer free of charge for that Trial Period.

(b) The Customer will receive a licence in accordance with clauses 4.3(a)(1) and 4.3(a)(2)(A) however the Customer will not be entitled to receive nor is DataMuster obliged to provide the Reports under clause 4.5(a).

(c) Two Business Days prior to the end of the Trial Period, the Customer must notify DataMuster in writing or via the DataMuster Platform whether it elects to purchase licence to the DataMuster Platform. If the Customer fails to notify DataMuster in accordance with this clause 4.2(c), then the Customer will be taken to have elected not to purchase a licence to the DataMuster Platform and their access will be terminated.

4.3 **DataMuster Platform and Support Services**

(a) Subject to clauses 5.1 and 6.1, DataMuster:

    (1) grants to the Customer a revocable, non-exclusive, non-transferable licence to the DataMuster platform (in accordance with the relevant Access Level) for its internal business purposes and use in accordance with the terms of this agreement;

    (2) agrees to provide access to the DataMuster Platform according to the nominated Access Level, namely:

        (A) Basic Access; or

        (B) Advanced Livestock Management (subject to availability in DataMuster's sole discretion and clauses 2 and 4.3(b)); and

    (3) agrees to provide the Support Services,

in accordance with the terms of this agreement.

(b) The Customer acknowledges that where the Customer elects to receive the Advanced Livestock Management Access Level, the obligations upon DataMuster under this agreement are subject to and dependent upon the Customer's ongoing compliance with the Hardware Terms.

4.4 **Additional support**

Any support services provided by DataMuster to the Customer outside of the scope of the Support Services, as determined in the sole discretion of DataMuster, will be charged at an additional cost to the Customer, at the rates communicated by DataMuster to Customer from time to time.

4.5 **Reports**

DataMuster will issue the Customer with Reports based on the data received or collected:

(a) for Basic Access Level - on a per transaction engagement, within 7 days of receiving the data in accordance with clause 7.1(d);

(b) for Advanced Livestock Management Access Level - on a daily (with the exception of animals that are not weighed on that day), monthly, quarterly and yearly basis.

4.6 **Limited Licence**

The Customer acknowledges, and agrees, that the rights granted to it under the Licence are expressly limited to the rights stated in clause 4.2. To the fullest extent permitted by law, all implied rights in relation to the Licence are excluded.

5. Availability

5.1 **Accessibility**

(a) At the Customer's request, DataMuster may conduct the Data and Technology Audit, in exchange for the Customer's payment of the Audit Fee.

(b) Upon completion of the Data and Technology Audit, DataMuster will issue the Customer with recommendations for accessibility. Completion of

the Data and Technology Audit in no way guarantees or certifies that the Customer will be entitled to receive access to the Advanced Livestock Management Access Level.

(c) Irrespective of whether a Data and Technology Audit is undertaken, the Customer agrees that it must have 3G or 4G accessibility, or have otherwise agreed to the Accessibility Set Up Fee under clause 5.1(d).

(d) DataMuster agrees to take any steps as reasonably required (in DataMuster's sole discretion) to facilitate access to the DataMuster Platform for the Accessibility Set-up Fee.

(e) DataMuster reserves the right not to permit access to the DataMuster Platform if the Customer does not meet the accessibility requirements under this clause 5.1.

5.2 **Availability**

DataMuster will use its best endeavours to provide the DataMuster Platform and the Support Services during the Term, with the exception of clause 5.3.

5.3 **Suspension**

(a) DataMuster may temporarily suspend or restrict (in part or whole, in DataMuster's absolute discretion) and without prior notice to the Customer, the Customer's access to the DataMuster Platform and Support Services if:

    (1) such suspension is pursuant to clause 6.2 (late payment of invoice);

    (2) due to a breach (or suspected breach) of your Account;

    (3) in DataMuster's sole discretion, the Customer is otherwise in breach in any way of this agreement;

    (4) there is a malfunction, fault or breakdown of any of Data, or if DataMuster is required to undertake the repair, maintenance or service of any part of the DataMuster Platform;

    (5) an event of Exceptional Circumstance occurs, which affects or may affect DataMuster's ability to provide the DataMuster Platform;

    (6) if there is a Claim made that the continued provision of the DataMuster Platform or Support Services infringes the rights of any person;

    (7) if there is a Claim made that exposes DataMuster to liability or prosecution for an offence or liability to a statutory prosecution; or

    (8) DataMuster is required by Law to do so.

(b) Suspension in accordance with clause 5.3(a) will not affect any right which accrues prior to, or after, suspension of DataMuster's obligations under the agreement.

5.4 Notice

In the event that access to the DataMuster Platform is suspended in accordance with clause 5.3, DataMuster will endeavour to provide the Customer with prior written notice where it is reasonable and practicable in DataMuster's opinion.

5.5 Downtime and Limitations

The Customer acknowledges and agrees that:

(a) DataMuster is not responsible or Liable for the Customer's use of the DataMuster Platform or Support Services or any other purpose;

(b) access to the DataMuster Platform may occasionally be limited due to scheduled maintenance;

(c) access to the DataMuster Platform is reliant upon various factors outside the control of DataMuster, including, without limitation, events of Exceptional Circumstance, the Customer's internet service provider, telecommunications provider, local network equipment or computing devices used to access the DataMuster Platform. While DataMuster will use all reasonable endeavours to ensure the Customer has continuous access to the DataMuster Platform, DataMuster will not be liable to the Customer or any other person for any Claim or to any other extent for Loss or damage caused by such factors;

(d) any downtime or unavailability due to server upgrades, network device upgrades or software upgrades is outside the scope of this agreement.

5.6 Loss of Access

Customer shall have no Claim (including a Claim for Loss) against DataMuster in respect of loss of access or functionality to the DataMuster Platform referred to in this clause 5.6.

5.7 Important acknowledgements

As a fundamental condition of the agreement, the Customer acknowledges and agrees that:

(a) any statement or information provided by DataMuster prior to, during the Term of this agreement or after its expiration is general in nature and should not be relied upon; and

(b) DataMuster will not be Liable in any way for (and is released from) any Loss (including any Loss incurred by the Customer or their Personnel) arising from any error, inaccuracy, incompleteness or other similar defect in the DataMuster Platform.

6. Fees and Payment

6.1 Subscription Fees; Payment

(a) The Subscription Fees are calculated on the basis of the Customer's Access Level to the DataMuster Platform and the number of cattle monitored by the DataMuster Platform (subject to sole discretion of DataMuster to reduce or waive any fees).

(b) In consideration for Customer's payment of the Subscription Fees (as may be varied from time to time under clause 6.4), DataMuster will provide access to the DataMuster Platform and the Support Services.

(c) The Customer agrees to pay the Subscription Fees owing under this agreement to DataMuster within by way of direct debit, being an automatic deduction from a nominated bank account or credit card within the time period specified in DataMuster's invoice or if none is specified, then the Subscription Fees are payable monthly in arrears.

(d) Any dispute raised under clause 6.4 or 13 does not displace the Customer's obligations to make payment under this clause 6.1 of any undisputed Subscription Fees.

6.2 Late or non-payment of invoices

If the Customer fails to pay an amount within the time contemplated in clause 6.1(c), DataMuster may do any one or more of the following:

(a) charge interest on the amount owing at 2 percent per month on the outstanding or overdue portion of Subscription Fees once 60 days has elapsed from the due date for payment of the Subscription Fees;

(b) restrict or suspend access to the DataMuster Platform and the Support Services in accordance with clause 5.3; and/or

(c) terminate the agreement, in accordance with its terms.

6.3 Refund

Except for a Claim under a Non-Excludable Condition, the Customer will not be entitled to a refund of prepaid but unused Subscription Fees in any circumstances, other than where suspension or cancellation of the Support Services and/or access to the DataMuster Platform occurs due to an Exceptional Circumstance, in which case a proportional refund may be offered.

6.4 Disputed Subscription Fees

(a) The Customer is entitled to dispute the Subscription Fees by providing DataMuster with written notice 72 hours from the time the invoice is issued to it setting out why it disputes the Subscription Fees (**Fee Dispute Notice**).

(b) DataMuster will respond to the Customer's Fee Dispute Notice within 72 hours of receipt of that notice, and in its sole discretion may choose to issue an amended invoice.

(c) If the dispute under this clause 6.4 relates to an amount in excess of $1,000 and the dispute cannot be resolved to the satisfaction of both parties, a dispute may be raised by either party in accordance with clause 13.

6.5 Fees review

The Customer agrees that DataMuster may review and revise the Subscription Fees not more than once in any 12 months by publishing the new fees at the Website or by written notice to the Customer, which revised Subscription Fees will apply on the commencement of the next Further Term (as applicable).

6.6 **Indemnity**

The Customer agrees to indemnify, and keep indemnified, DataMuster in relation to any and all Loss it incurs as a result of the Customer's breach of any of its obligations in this clause 6.

7. Customer's obligations

7.1 **General obligations**

In consideration for being provided with the DataMuster Platform and Support Services, the Customer will, except where specified otherwise, at all times during the term of this agreement, observe and perform the terms and conditions set out in this agreement:

(a) (**compliance with directions**) comply with all of DataMuster's reasonable directions in relation to the use of the DataMuster Platform and Support Services;

(b) (**safeguard Intellectual Property Rights**) promptly notify DataMuster of any:

    (1) unauthorised or improper use of DataMuster's Intellectual Property Rights that the Customer is, or becomes, reasonably aware of; or

    (2) event or incident that is likely to or will impact on access and use of the DataMuster Platform, the provision of the Support Services, or any other obligation of DataMuster under this agreement,

and, assist DataMuster in taking all necessary steps to defend DataMuster's Intellectual Property Rights other than by the institution of legal proceedings;

(c) (**not to tamper with markings**) not alter, obscure, remove, conceal or otherwise interfere with any branding or markings or other indication of the source of origin which may be placed by DataMuster on the DataMuster Platform;

(d) (**report**) where the Customer has purchased the Basic Access Level, provide DataMuster with the raw data in a CSV format, and no other format;

(e) (**reputation**) not do or omit to do any act or thing which is likely to cause DataMuster's name (or the name of its licensors) or reputation or the name or reputation of DataMuster or its licensors' products and services to be diminished or adversely affected; and

(f) (**other information**) provide DataMuster with any other information reasonably requested by DataMuster from time to time to allow it to carry out its obligations under this agreement.

8. Third party software licences

8.1 **Third party content**

The Customer acknowledges and agrees that:

(a) DataMuster can (in its sole discretion) incorporate Third Party Content into the DataMuster Platform, unless otherwise expressly agreed to by the parties in writing; and

(b) Third Party Content may be subject to licences or other terms and conditions provided by the relevant third party.

8.2 **Compliance**

(a) The Customer must comply with the licence terms of the DataMuster Platform and any Third Party Content installed or used in the provision of the DataMuster Platform.

(b) The Customer must not do or permit to do any act that breaches, or causes DataMuster to breach, a software licence installed or used in the provision of the DataMuster Platform.

8.3 **Indemnity**

(a) The Customer agrees to indemnify, and keep indemnified, DataMuster against:

    (1) any and all Loss it incurs; and

    (2) any Claim by a third party,

as a result of the Customer's breach of clause 8.2.

9. Intellectual Property Rights

9.1 **Ownership of the DataMuster Platform**

(a) Ownership of the DataMuster Platform is not modified by this agreement.

(b) The Intellectual Property Rights in the DataMuster Platform remain vested in DataMuster or its licensors.

9.2 **Ownership of and use of data**

(a) Customers will always own their Customer Data, and this agreement does not change that.

(b) The Customer:

    (1) grants DataMuster a non-exclusive, non-transferable, worldwide, royalty free licence to use the Customer Data (to the extent the Customer may have any rights in relation to such Customer Data) for the purposes of performing obligations under this agreement; and

    (2) where elected upon set-up of its Account, gives DataMuster its express consent to do any of the following:

        (A) share the Customer Data on a de-identified basis for the purposes of benchmarking against others in the industry;

        (B) use its Customer Data for research, development and monitoring purposes (including publications) and improving the algorithms on the DataMuster Platform.

(c) DataMuster will take all reasonable steps to ensure that the Customer's Data is de-identified for activities carried out in clause 9.2(b), but provides no guarantees that the Customer may not be identifiable by aggregating that Customer Data, or through other means.

(d) DataMuster will always own their DataMuster Data, and this agreement does not change that.

9.3 Provision and ownership of New IP

(a) Upon its creation, all New IP will be owned by and assigned to DataMuster or its licensors.

(b) Any and all tangible information, including source codes, specifications and other information or Intellectual Property Rights which:

(1) the Customer communicates or gives to DataMuster for the purposes of improving the DataMuster Platform; or

(2) are owned by or have previously been assigned, transferred or accrued to the Customer and subsequently become embodied in the DataMuster Platform,

are assigned from the Customer to DataMuster or its licensors on the Commencement Date.

9.4 Prohibited activities

The Customer will not (and must not permit or procure its Personnel) to:

(a) reverse engineer or decompile the DataMuster Platform;

(b) reproduce, make error corrections to or otherwise modify or adapt the DataMuster Platform to create any derivative works based on the DataMuster Platform;

(c) use, or permit, the DataMuster Platform to be accessed or used in any way other than in a manner expressly permitted by this agreement;

(d) attempt to gain unauthorised access to the DataMuster Platform (including an Access Level of same) or any Materials other than those which the Customer has been given express permission to access via the DataMuster Platform;

(e) challenge the validity of any Intellectual Property Rights of DataMuster, any of its licensors or a Related Body Corporate of DataMuster; or

(f) permit the DataMuster Platform to be accessed in any unauthorised way;

(g) do or permit any other act which infringes DataMuster's Intellectual Property Rights;

(h) do or permit an act that uses the DataMuster Platform or any supporting infrastructure in a way that could infringe a third party's Intellectual Property Rights; or

(i) use the DataMuster Platform in any way that could damage the reputation of DataMuster or its licensors.

9.5 Notification of infringement claim

The Customer must notify DataMuster promptly from the date it becomes aware of:

(a) any actual or suspected infringement by a third party of DataMuster's Intellectual Property Rights (or the Intellectual Property Rights of DataMuster's licensors); or

(b) any actual or threatened claim by a third party that DataMuster's Intellectual Property Rights (or the Intellectual Property Rights of DataMuster's licensors) have or will be infringed by any act, omission or permission by the Customer or its Personnel in connection with this agreement.

10. Customer Data

10.1 Provision of information

Through the usage of the DataMuster Platform, the Customer may provide to, and have stored Customer Data on DataMuster's servers.

10.2 Backup

(a) DataMuster will ensure regular backups of the Customer Data, but excludes all Liability in connection with backups, loss or deletion of Customer Data.

(b) The Customer is responsible for separately making backups of its Customer Data, and DataMuster excludes all Liability in connection with backups (or lack thereof) of Customer Data. The consent provided by a Customer of the Advanced Livestock Management Access Level under clause 9.2(b) does not alter this position.

(c) Should the Customer want to receive copies of the Customer Data retained by DataMuster, it may do so by submitting a request in writing to DataMuster and paying the fee prescribed by DataMuster.

10.3 Customer Data delivery or destruction

DataMuster may, but is not required, to provide the Customer with any copy or record of the Customer Data, or destroy the Customer Data (subject to clause 10.4) upon receiving a written request by the Customer.

10.4 Customer Data storage

The Customer acknowledges and agrees that DataMuster may (but is not obligated to the Customer) to hold Customer Data in its systems for up to seven years from the date of termination of this agreement, or longer if required by Law.

11. Confidential information

11.1 Non-disclosure

(a) A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information.

(b) Each party must take all reasonable steps to ensure that its Personnel (or subcontractors) engaged for the purposes of the agreement, do not make public or disclose the other party's Confidential Information.

(c) A party is not in breach of this clause 11.1 in circumstances where it is legally compelled to disclose the other party's Confidential Information.

(d) Notwithstanding any other provision of this clause 11.1, the parties may disclose the terms of this agreement (other than Confidential Information of a technical nature) to its Related Bodies Corporate or Related Entities, solicitors, auditors, insurers and accountants.

11.2 Return of Confidential Information

The Customer must, on demand and its own cost, promptly return to DataMuster any Confidential Information supplied by DataMuster in connection with this agreement.

11.3 Security and unauthorised access

Each party must use commercially reasonable efforts to ensure that all information and Materials of the other party (or its agents or contractors) in the custody of that party for purposes connected with this agreement are protected at all times from unauthorised access or use by a third party, and from misuse, damage or destruction by any person.

11.4 Acknowledgement as to types of remedy

Each party acknowledges and accepts that:

(a) the other party would suffer financial and other loss and damage if its Confidential Information was disclosed to any other person or used for any purpose other than as permitted by this agreement and accordingly that monetary damages may be an insufficient remedy; and

(b) in addition to any other remedy, which may be available in law or equity, the other party is entitled to seek injunctive relief to prevent a breach of any of clause 11.1 and to compel specific performance of clause 11.1.

12. Privacy Law

To the extent applicable to it, each party agrees to comply with all Privacy Laws in relation to any and all Personal Information that it collects from the other party in connection with the agreement.

13. Dispute

13.1 Dispute Resolution Process

(a) Subject to clause 13.1(b), a party claiming that a dispute or disagreement has arisen out of, or in connection with, this agreement (**Dispute**) will, within five Business Days of the Dispute arising, give written notice to the other party providing particulars of the Dispute (**Notice of Dispute**) and, designating which of its authorised officers has authority to settle the Dispute.

(b) The parties agree that the dispute resolution process in this clause 13.1 does not apply to Disputes in connection with the calculation or invoicing of the Subscription Fees.

(c) The parties will meet at location or arrange a telephone conference as agreed between the parties in writing within five Business Days of receipt of the Notice of Dispute in accordance with clause 13.1(a) to seek to resolve the dispute amicably.

(d) If the Dispute has not been resolved within twenty Business Days of receipt of the Notice of Dispute in accordance with clause 13.1(a), the parties may agree to refer the dispute to mediation administrated by a mediator recommended and accredited by Resolution Institute in accordance with Resolution Institute's professional mediation rules or an equivalent professional mediator in any jurisdiction outside of Australia. The party issuing

the Notice of Dispute must pay the costs of the mediator appointed pursuant to this clause.

(e) If the Dispute has not been resolved within thirty Business Days of receipt of the Notice of Dispute in accordance with clause 13.1(a) then (on the basis that the exhaustion of the dispute resolution process set out in this clause 13.1 is a condition precedent to the right of either party to commence court proceedings in relation to the Dispute) then the party who first served the Notice of Dispute may commence litigation.

(f) Any mediation discussions and proceedings undertaking in accordance with clause 13.1 constitute Confidential Information and will take place in Brisbane, Queensland (or such other location as the parties may agree between themselves in writing).

13.2 Urgent relief

Despite the condition precedent referred to in clause 13.1(d), nothing in this agreement shall prevent either party seeking injunctive or urgent declaratory relief for any matter (including to protect Confidential Information) arising out of, or in connection with, this agreement.

13.3 Obligations continue

Despite the existence of a Dispute, each party will at all times continue to fulfil all obligations under this agreement, including in respect of confidentiality.

14. Termination

14.1 Termination with cause

Either party (**First Party**) may terminate this agreement immediately by written notice upon the occurrence of one of the following events:

(a) if the other party is in breach of this agreement and that other party has failed to remedy the breach within 30 days of a written notice to it from the First Party, specifying the breach and requiring it to be remedied;

(b) if the other party is in breach of this agreement and that breach is not capable of remedy, as reasonably determined by the First Party; or

(c) an Insolvency Event occurs in respect of the other party.

14.2 Termination without cause

(a) The agreement may be terminated by mutual agreement of the parties.

(b) DataMuster may terminate access to the DataMuster Platform and Support Services, for any reason, upon providing the other party with 30 days' prior written notice of such termination. In this case, the Support Services will terminate at the expiration of the period of notice.

(c) Other than in clause 20.9, the Customer is not entitled to terminate this agreement without cause.

14.3 Consequences of termination or expiration

Upon termination or expiration of this agreement:

(a) all monies owing under the agreement (including Subscription Fees for the current month in respect

of DataMuster Platform and Support Services during the Initial Term) become immediately payable and due; and

(b) subject to any right which survives termination or expiration, the Customer shall immediately:

    (1) stop identifying itself as DataMuster's customer;

    (2) stop any and all use of any Intellectual Property Rights, trade marks, trade names and brand names of DataMuster; and

    (3) immediately return or (if requested to do so by other party) destroy all Confidential Information and Materials belonging to DataMuster in the Customer's possession or control.

14.4 No prejudice of rights

Termination shall not prejudice or affect any right or action which shall have accrued or shall thereafter accrue to either party.

14.5 Survival

The following clauses survive termination of the agreement: clause 6.6 (Indemnity in relation to fee payment), clause 8.2 (Compliance with third party software licences), clause 8.3 (Indemnity in relation to third party software licences), clause 9 (Intellectual Property Rights), clause 11 (Confidential information), clause 12 (Privacy Law), clause 14.3 (Consequences of termination or expiration), clause 15 (Liability), clause 16 (Warranties), clause 17 (Indemnity), 20.2 (Governing law; jurisdiction), 21 (Definitions and interpretation) and this clause 14.5.

15. Liability

15.1 Exclusion of liability

(a) To the extent permitted by Law, in no event will DataMuster be liable to the Customer, the Customer or any third party for Consequential Loss even if DataMuster has been made aware of the possibility of such Consequential Loss prior to entering into this agreement.

(b) DataMuster Personnel may make recommendations or provide options to the Customer in respect of matters such as accessibility, suitability to receive an Access Level or training of their animals (among other matters). The Customer acknowledges that it is the Customer's sole responsibility to consider the recommendations provided by DataMuster Personnel as applicable to their own circumstances. To the extent permitted by Law, in no event will DataMuster be Liable to the Customer for Loss arising out of any such recommendations.

(c) DataMuster will not be liable for Claims made by third parties arising out of or in connection with this agreement.

15.2 Implied terms

(a) To the full extent permitted by Law, any term which would otherwise be implied into this agreement is excluded.

(b) To the full extent permitted by Law, the Customer acknowledges that the DataMuster Platform is licensed by DataMuster on an 'as is, where is' basis and DataMuster makes no warranties or representations as to the Outputs and the DataMuster Platform.

(c) In the event any Law implies or imposes any Non-Excludable Condition, such terms will apply, save that the liability of DataMuster for breach of any such term will be limited in accordance with clause 15.3.

15.3 Australian Consumer Law

(a) To the extent the Australian Consumer Law applies, DataMuster acknowledges the application of the *Competition and Consumer Act 2010* (Cth) to the provision of services to its Customers, and will comply with all Non-Excludable Conditions.

(b) Subject to clause 15.3(a), the following mandatory warranties against defects apply:

    (1) DataMuster's services come with guarantees that cannot be excluded under the Australian Consumer Law.

    (2) For major failures with the services , the Customer is entitled:

        (A) to cancel the agreement with DataMuster; and

        (B) to a refund for the unused portion of, or compensation for its reduced value.

    (3) The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure in does not amount to a major failure, the Customer is entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel the agreement and obtain a refund for the unused portion of the agreement.

15.4 Limitation of liability

Subject to clause 15.3, to the extent DataMuster is found Liable in connection with this agreement (whether in contract, tort, indemnity or statute), DataMuster's cumulative Liability in the aggregate shall be limited (at the option of DataMuster) to any one or more of the following:

(a) re-supplying services to which the Liability relates or the supply of equivalent services; or

(b) reimbursing the Customer (subject to clause 15.5) for paying someone else to supply the services which the Liability relates.

15.5 Liability cap

To the extent that DataMuster is Liable in connection with this agreement (whether in contract, under a right of indemnity, tort or statute), then DataMuster's cumulative Liability in the aggregate (to the fullest extent permitted by Law) shall in no event exceed the sum of the Subscription Fees received by DataMuster under this agreement in the three months prior to the date upon which the Liability first arose.

16. Warranties

16.1 Right and title

Each party warrants to the other party that it has the full right and title to enter into this agreement and to grant the rights it sets out to the other party (whether through itself or its licensors).

16.2 Customer Data Warranty

The Customer warrants that it has all necessary ownership or licences to upload the Customer Data (if any) to the DataMuster Platform and to grant a licence to DataMuster to use the data as anticipated by and for any purposes in connection with this agreement (including in relation to the consent provided by the Customer of the Advanced Livestock Management Access Level).

17. Indemnity

The Customer indemnifies and will keep indemnified, DataMuster and its Personnel or subcontractors (**Indemnified Persons**) against any:

(a) Claims (or alleged Claims) against any Indemnified Person; or

(b) Loss suffered by any Indemnified Person,

in connection with this agreement or the use of the DataMuster Platform including arising in relation (in part or in whole) to:

(c) error, inconsistency or failure in the Outputs;

(d) the Customer's use of or reliance on the DataMuster Platform or Support Services;

(e) any fraud or wilful misconduct of the Customer or its Personnel under or in connection with the agreement;

(f) the negligent acts or omissions of Customer or its Personnel under or in connection with the agreement, including instructions provided to DataMuster by Customer's Personnel;

(g) the Customer's alleged infringement of a third party's Intellectual Property Rights;

(h) any breach of the agreement by the Customer; or

(i) a fine or penalty arising due to a contravention (or alleged contravention) of Law, which is in connection with an error or omission in the use of the DataMuster Platform, Support Services, or transaction conducted using the DataMuster Platform.

18. Goods and Services Tax

18.1 Definitions

In this clause 18:

(a) **GST** has the meaning given in the GST Law.

(b) **GST Law** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

18.2 GST exclusive consideration

Unless expressly stated to the contrary, all amounts under this contract are exclusive of GST.

18.3 Payment of GST

(a) If a party (**Supplier**) is obliged under the GST Law to pay an amount of GST for a taxable supply made by the Supplier to another party (**Recipient**) under this agreement, the Recipient must pay the Supplier an amount equal to the GST payable on the supply by the Supplier.

(b) The Recipient must pay the amount referred to in clause 18.3(a) and any interest, penalties, fines or expenses relating to the GST, in addition to and at the same time as the consideration otherwise payable by the Recipient for the supply.

18.4 Tax Invoice

If requested by the Recipient, The Supplier may provide the Recipient with a Tax Invoice on or before payment of the amounts required by this clause 18.

19. Publicity

DataMuster and the Customer will jointly agree to any press release in respect of this agreement or the DataMuster Platform prior to its publication, such agreement shall not be unreasonably withheld, delayed or conditioned.

20. General

20.1 Notices

(a) Any notice or other communication to or by any party must be in writing and in the English language, addressed to the address of the recipient in clauses 20.1(b) and (c), or to any other address as the recipient may have notified the sender, and be signed by the party or by an authorised representative of the sender.

(b) The Customer can give DataMuster notice under this agreement by email at the address nominated in the DataMuster's Address Details.

(c) DataMuster can give the Customer notice under this agreement by sending an email to the address nominated in the Customer's Address Details.

(d) The Customer agrees to keep its contact information up-to-date with DataMuster.

(e) A party may from time to time change its address or numbers for service by notice to each other party.

20.2 Governing law; jurisdiction

These terms will be governed by and construed in accordance with the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland.

20.3 Exercise rights

A single or partial exercise or waiver by a party of any right under or relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.

20.4 Performance

In connection with DataMuster's performance of its obligations and exercise of rights under this agreement, DataMuster may (in its absolute discretion) have its

obligations performed or rights exercised on its behalf by any of DataMuster's affiliates and their respective agents, contractors, distributors, and service providers.

20.5 Remedies cumulative

The rights and remedies under this agreement are cumulative and not exclusive of any rights or remedies provided by law.

20.6 No assignment

The Customer must not assign, transfer or novate all or any part of its rights or obligations under or relating to this agreement or grant, declare, create or dispose of any right or interest in it, without DataMuster's prior written consent (which will not be unreasonably withheld).

20.7 Severability

If a provision of this agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

20.8 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this agreement and the transactions contemplated by it.

20.9 Variation

(a) DataMuster reserves the right to update or otherwise make changes to these Terms and Conditions (including in relation to any Access Level) from time to time upon at least 15 days' notice (**Notice Period**) which notice DataMuster will provide to a Customer by any reasonable means (including via the Customer's Address Details, DataMuster's website or the DataMuster Platform).

(b) During each respective Notice Period, the Customer is entitled to terminate this agreement by notice in writing to DataMuster should the Customer not agree to the varied terms.

(c) The Customer acknowledges that their ongoing use of the DataMuster Platform on and from the conclusion of the Notice Period indicates your acceptance of and agreement to any changes to these Subscription Terms and Conditions.

20.10 Costs

Each party is responsible for all its own costs incurred in the negotiation and performance of this agreement including legal costs.

20.11 Independent advice

The Customer acknowledges that it has had all reasonable opportunities to obtain legal advice on the terms and conditions contained in this agreement, and understands the terms and conditions of this agreement.

20.12 Waiver

The waiver or failure to require the performance of any provision herein will not be deemed to constitute a waiver of a later breach of the same or any other provision herein, and no such waiver will be effective unless in writing.

20.13 Previous agreements

This agreement supersedes all previous agreements between DataMuster and the Customer with respect to the subject matter contained herein.

20.14 Whole agreement

This agreement is the entire agreement and understanding between the parties relating to the subject matter of this agreement, and supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.

21. Definitions and interpretation

21.1 Definitions

In this agreement:

Access Level means each of the two tiers of access to the DataMuster Platform, being Basic Access, or Advanced Livestock Management as described in detail at Schedule 1.

Accessibility Set-up Fee means the fee chargeable by DataMuster to the Customer to facilitate access to the DataMuster Platform (in DataMuster's sole discretion), as advised in writing by DataMuster.

Account means an account in your name or company's name that you register on the Website or through the DataMuster Platform.

Advanced Livestock Management has the meaning given to that term in Schedule 1.

Audit Fee means the fee of $550 (including GST) for DataMuster to conduct the Data and Technology Audit.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Business Day means:

(a) if determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and

(b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Perth.

Basic Access has the meaning given to that term in Schedule 1.

Claim means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:

(a) it is present, unascertained, immediate, future or contingent;

(b) it is based in contract, tort, statute or otherwise; or

(c) it involves a third party or a party to this agreement.

Corresponding Patent means:

(a) all later patent applications (including foreign applications) that are filed or may later be filed

based on or corresponding to an earlier patent application;

(b) all divisional and continuation, in whole or in part, applications and reissue applications based on any earlier patent application;

(c) all issued and unexpired patents resulting from any patent application; and

(d) all issued and unexpired reissue, re-examination, renewal, or extension patents that may be based on any such patents.

Confidential Information means, in relation to each party (for the purposes of this definition, **Discloser**), all information disclosed by or on behalf of the Discloser, concerning or relating to:

(a) the fee and remuneration structure set out in this agreement;

(b) know-how, trade secrets, ideas, marketing strategies, operational information, technical information and financial information;

(c) proprietary software tools, business processes, project management methodologies and tools, software testing and verification methods, solution architecture models and solutions;

(d) its business affairs (including products, services, customers and suppliers);

(e) other information, which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential; and

(f) any Derived Information or Materials embodying the above information,

whether such information was:

(g) disclosed orally, in writing or in electronic or machine readable form; or

(h) disclosed as a result of discussions between the parties concerning or arising out of this agreement,

but excluding any such information:

(i) which is publicly known;

(j) which is disclosed to the other party without restriction by a third party (other than the Discloser) and without any breach of confidentiality by that third party; or

(k) which is developed independently by other party without reliance on any of the confidential information.

Consequential Loss means any of the following:

(a) loss of revenue;

(b) loss of profits;

(c) loss of opportunity to make profits;

(d) loss of business;

(e) loss of business opportunity;

(f) loss of use or amenity, or loss of anticipated savings;

(g) loss or corruption of data;

(h) special, exemplary or punitive damages; and

(i) any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this agreement,

including any of the above types of loss arising from an interruption to a business or activity.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer means the person that wishes to use the DataMuster Platform and Support Services and has entered into an agreement with DataMuster to use the DataMuster Platform and Support Services on the terms and conditions in these Terms of Service.

Customer Data means the data supplied or generated by the Customer, its Personnel and used in connection with the DataMuster Platform, but excluding the DataMuster Data.

Customer's Address Details are the Customer's address details in the Customer's Account in the DataMuster Platform, as may be updated from time to time.

Derived Information means any copy, note, calculation, conclusion, summary or other Material derived or produced partly or wholly from any Confidential Information.

Data and Technology Audit means the audit undertaken by a DataMuster Personnel to determine the suitability of the Customer's technology and data retention as relevant to the Customer's ability to access the DataMuster Platform (and related services).

DataMuster's Address Details are:

(a) Address: C/- Central Queensland University 'Building' 1 Bruce Highway, Norman Gardens QLD 4701

(b) Attention: Mark Tobin, General Manager

(c) Email: info@datamuster.com.au,

as may be updated from time to time.

DataMuster Data means the data supplied or generated by DataMuster, its Personnel and used in connection with the DataMuster Platform, but excluding Customer Data.

DataMuster Platform means the integrated cattle management system and method offered on an as-a-service basis, including any modifications, enhancements, corrections or fixes thereto, and the New IP.

Exceptional Circumstance means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under this agreement. Such circumstances include:

(a) adverse changes in government regulations;

(b) any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any natural disaster;

(c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, cyber-attacks, viruses or malware, data loss as a result of the actions of a third party;

(d)   strikes or industrial disputes;

(e)   materials or labour shortage; and

(f)   acts or omissions of any third party network providers (such as internet, telephony or power provider).

Further Term has the meaning given to that term in clause 1.2.

Government Body means:

(a)   any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;

(b)   any public authority constituted by or under a law of any country or political subdivision of any country; and

(c)   any person deriving a power directly or indirectly from any other Government Body.

Hardware Terms means the terms and conditions governing the purchase of the walk-over-weigh system, datahubs as described in the Patent and any Corresponding Patent.

Initial Term has the meaning given to that term in clause 1.1.

Insolvency Event means an event of bankruptcy or insolvency, an assignment for the benefit of creditors, the appointment of a receiver, receiver and manager, provisional liquidator, liquidator and official manager or any similar person to any assets of a person, a failure to comply with a statutory demand, or anything else which occurs which is analogous or has a substantially similar effect, under the laws of any jurisdiction, or the person is otherwise insolvent or unable to pay its debts as and when they fall due.

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions, plant breeder's rights and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Law means any statute, rule, regulation, proclamation, order in council, ordinance, local law or by-law, whether:

(a)   present or future; or

(b)   State, federal or otherwise.

Liability means any liability, debt or obligation, whether actual, contingent or prospective, present or future, qualified or unqualified or incurred jointly or severally with any other person.

Licence means the licence to the DataMuster Platform granted to the Customer under clause 4.2.

Loss means any loss (including Consequential Loss), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise.

Material means property, information, equipment guides, firmware, documented methodology or process, documentation or other material in whatever form, including any reports, specifications, business rules or requirements,

user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

New IP means any and all Intellectual Property Rights created in the course of, or connection with, the performance of the Support Services or by virtue of access to the DataMuster Platform.

Non-Excludable Condition means an implied condition, warranty or guarantee, including under the *Competition and Consumer Act 2010* (Cth) as applicable from time to time, the exclusion of which from a contract would contravene any applicable Laws or cause any part of this agreement to be void.

Output means any analysis, report or other output generated by or through the DataMuster Platform.

Patent means Australian patent 2005233651 owned by Sheep CRC Ltd.

Personal Information has the meaning given in the Privacy Law.

Personnel means in relation to a party, any Related Body Corporate, Related Entity, employee, officer, agent, contractor, professional adviser of that party.

Privacy Law means the *Privacy Act 1988* (Cth).

Related Body Corporate includes any corporation that is deemed to be related to a person by virtue of the provisions of the Corporations Act.

Related Entity means a person which is a related entity within the meaning of that term in section 9 of the Corporations Act.

Report means a standardised report which may include information analysing cattle weight, pregnancy, readiness for mustering, overall health and other key health indicators, based on the data provided or collected and the Access Level.

Subscription Fees means the recurring fees payable by the Customer for varying levels of access to the DataMuster Platform and Support Services as specified in the fees published at Schedule 1, or on the Website as at the start of Initial Term or Further Term (as applicable), as may be varied in accordance with clause 6.4.

Support Services means first-level customer support and technical support services to the Customer during the Term by email between the hours of 9am to 5pm Brisbane time on Business Days.

Term means the total duration of the agreement, including the Initial Term and any Further Term in accordance with clause 1.2.

Terms of Service means this document, being these DataMuster Subscription Terms of Service.

Third Party Content means any content, materials or software provided by a third party.

Trial Period means the period of as advised in writing by DataMuster.

Website means the website at www.datamuster.net.au through which the DataMuster Platform is offered.

21.2   **Interpretation**

(a)   Unless the contrary intention appears, a reference in this agreement to:

(1) this agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;

(2) one gender includes the others;

(3) the singular includes the plural and the plural includes the singular;

(4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;

(5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, this agreement and a reference to this agreement includes any schedule or attachment;

(6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;

(7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;

(8) money is to Australian dollars, unless otherwise stated; and

(9) a time is a reference to Perth time unless otherwise specified.

(b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.

(c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.

(e) A provision of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

21.3 Business Days

(a) If anything under this agreement must be done on a day that is not a Business Day, it must be done instead on the next Business Day.

(b) If an act is required to be done on a particular day, it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

21.4 Parties

(a) If a party consists of more than one person, this agreement binds each of them separately and any two or more of them jointly.

(b) An agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.

(c) An agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.

Schedule 1 - Access Levels and Subscription Fees

Basic Access	
Under this Access Level, the Customer will provide DataMuster with a CSV file containing information on its animals, from which DataMuster will produce a Report on variables such as weight gains and losses, and other information in DataMuster's sole discretion. The Customer will also receive Support Services from DataMuster's Personnel to assist with any questions or to ascertain the Customer's goals with animal management.	
Fixed amount	$50.00 / month flat rate (exc. GST)
1-2000 head	+ 10c / head / transaction (exc. GST)
2001 head or more	+ 7c / head / transaction (exc. GST)
Advanced Livestock Management	
Under this Access Level, the Customer will receive advanced, real-time data on their animals when the animal uses DataMuster's walk-over-weigh systems. DataMuster will produce reports on a daily (with the exception of animals that are not weighed on that day), monthly, quarterly and yearly basis analysing variables such as an animal's weight, health, detecting when a cow has calved, maternal parentage, reproductive efficiency, growth rates, pinpoint time for ideal mustering and relevant industry comparisons. The Customer will also receive additional ongoing Support Services from DataMuster's Personnel (including in relation to the walk-over-weigh scales, per the Hardware Terms).	
Fixed amount	$50.00 / month flat rate (exc. GST)
1-1000 head	+ 25c / head / month (exc. GST)
1001 head or more	+ 15c / head / month (exc. GST)