

1. Definitions

- 1.1 **“Business Day”** means any day which is not a Saturday, Sunday, public holiday, special holiday, or a bank holiday in the state in which this Contract is applied. If the giving of any notice, the making of any payment, or the doing of any act required or permitted under this Contract, the timing of which falls on a day which is not a Business Day, then the timing for such actions shall be extended and will be allowed to take place on the next Business Day, but no later.
- 1.2 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s Intellectual Property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and Web Site and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when using the Provider’s Web Site, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the Web Site, prior to making enquiries via the Web Site.**
- 1.5 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Provider to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
(d) includes the Customer’s executors, administrators, successors, and permitted assigns.
- 1.6 **“Goods”** means all Goods (including but not limited to, any content, files, information, printed or virtual material, data, equipment on loan, hardware, software or applications (whether supplied from a third party software development company or where custom developed or programmed for the Customer), brands, designs, images, graphics, pictures, trademarks, manuals, and other associated documentation), accessories or parts or materials supplied, consumed, created by the Provider in the course of it conducting, or supplying to the Customer, any Services (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other). Any Goods supplied to the Customer by the Provider on a loan basis (for the duration of the Services):
(a) remains the Provider’s sole property;
(b) may be changed, substituted, revoked, or repossessed by the Provider at the Provider’s sole discretion at any time; and
(c) is not transferable.
- 1.7 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.8 **“Intellectual Property”** means all present and future rights conferred by statute, common law or equity in or in relation to business names, circuit layout, computer software, Confidential Information, copyright, designs, domain names, formulas, inventions, knowhow, patents, trademarks, and other results of intellectual activity in the industrial, commercial, scientific, literary and artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such right.
- 1.9 **“Price”** means the Price payable (plus any GST where applicable) for the Goods as agreed between the Provider and the Customer in accordance with clause 7 below.
- 1.10 **“Prohibited Content”** means any content or links that:
(a) are, or could reasonably be considered to be, in breach of the *Broadcasting Services Act 1992*; the *Fair Trading Acts* of the applicable States and Territories of Australia and the *Competition and Consumer Act 2010 (CCA)*; or any other applicable law or applicable industry code; or
(b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
(c) are, or could reasonably be considered to be in breach of any person’s Intellectual Property rights (including, but not limited to, the distribution of software or video, audio or digital files, or any other material in which the Customer does not own the copyright). The Provider will respond to all reports of infringement that are formatted in accordance with Australian copyright laws and any other applicable copyright laws. The Provider will act in accordance with the law when handling infringement reports; or
(d) are, or could reasonably be considered to be, pirated software, bulk e-mail related products, pornography or nudity or adult content, hacking or cracking related Web Sites, Warezs, hosting of large scale video, audio or digital download Web Sites, illegal material or material that is against public policy, Web Sites containing or linking to material that may be considered detrimental to the public’s health, safety or welfare (such as, but not limited to, anarchists, Cookbook, bomb making, weapon information, etc.), or anything else that may be considered detrimental or illegal.
- 1.11 **“Provider”** means ND Technology Pty Ltd T/A Nortec or Norris Hospitality or Kloudphone, its successors and assigns or any person acting on behalf of and with the authority of ND Technology Pty Ltd T/A Nortec or Norris Hospitality or Kloudphone.
- 1.12 **“Services”** means all managed and automated Services (which includes any advice or recommendations, consultancy, including, but not limited to, hosting, critical and security patch management, antivirus management, virus recovery, backup system management, monitoring, reporting and management of Supported Items, server performance monitoring, data back-up or storage, quarterly system environmental reports, disaster recovery planning, remote access solutions, strategising and analytical services, technical service, support and training, etc.) supplied by the Provider to the Customer, at the Customer’s request, from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.13 **“Supported Items”** means any of the Customer’s items or equipment to which the Services will apply.
- 1.14 **“Technical Support”** means to provide direct support to the Customer for technical issues. Support includes the following Services:
(a) attending onsite at the Customer’s premises; or

- (b) any time spent to resolve any issues with the Customer's computer system created by any operator error on the part of the Customer or any action of any third parties whether authorised or unauthorised by the Customer; or
 - (c) resolving any issues which are solely caused by the actions of third parties and originate outside of the Customer's computer system e.g., problems that relate to the supply of services by the Customer's internet service provider.
- 1.15 "Web Site" means a location which is accessible on the Internet through the World Wide Web, and which provides multimedia content via a graphical User Interface.

2. Interpretation

- 2.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
- (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
 - (c) the words 'include' and 'including', and any variants of those words, will be treated as if followed by the words 'without limitation'; and
 - (d) a reference to dollars (\$), is a reference to Australian currency;
 - (e) this Contract is not to be interpreted against the Provider merely because they prepared this Contract;
 - (f) where a URL (Uniform Resource Locator) is mentioned, the non-operation of the "URL" will not render the rights and obligations associated with it invalid;
 - (g) any reference digital resource may be replaced with another digital resource that is a "copy" of the original resource; and
 - (h) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity, or discrepancy in this Contract:
 - (i) Terms and Conditions of Trade; and
 - (ii) any schedules.
 - (i) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement, or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

3. Acceptance

- 3.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods/Services.
- 3.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 3.3 The Customer acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Provider and it has been approved with a credit limit established for the account;
 - (b) in the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Provider reserves the right to refuse delivery;
 - (c) the supply of Goods for accepted orders may be subject to availability and if, for any reason Goods are not or cease to be available, the Provider reserves the right to vary the Price with alternative Goods as per clause 7.2; and
 - (d) the Provider reserves the right to choose and/or modify the technology, infrastructure, suppliers, personnel, and telecommunications networks that it uses to perform the Services as long as the Services comply with the minimum performance requirements set out in the scope of the Services to be provided. Unless otherwise agreed, the Provider is under no obligation to modify or make changes to the agreed Services at the Customer's request, any such changes where agreed shall be treated as a variation in accordance with clause 7.2.
- 3.4 None of the Provider's agents or representatives are authorised to make any representations, statements, conditions, or agreements not expressed by the Director of ND Technology Pty Ltd in writing nor is the Provider bound by any such unauthorised statements.
- 3.5 Once accepted by the Customer, the Provider's quotation shall be deemed to correctly interpret the Customer's instructions, whether written or verbal. Where verbal instructions only are received from the Customer, the Provider shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
- 3.6 The Provider shall take all due care and skill whilst conducting the Services and will ask pertinent questions to ascertain the Customer's requirements in the preparation, institution, and management of the plan for the Customer. The Customer shall provide accurate information without embellishment in order to ensure an appropriate level of service and protection. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Provider accepts no responsibility for any loss, damages, or costs however resulting from the inaccurate information.
- 3.7 The Provider reserves the right to terminate the Customer's order if it learns that the Customer has provided false or misleading information, interfered with other users or the administration of the Provider's Services, or violated these terms and conditions.
- 3.8 The Customer acknowledges and agrees that where the Services are subject to the CSG (Customer Service Guarantee) prescribed under the Telecommunications (Consumer Protection and Service standards) Act 1999 (Cth), the Provider reserves the right to deny the supply the Services if the Services which are subject to liability for compensation under the CSG. In the event that the Customer requests the Provider to continue with the Services, the Customer agrees to waive all rights and protections under the CSG and shall not make a claim (including, but not limited to, any claim made under Section 118A of the telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) against the Provider for compensation under the CSG in relation to the Services supplied and understands the consequences of providing this waiver.
- 3.9 The Customer warrants that it has not relied on any representation made by the Provider which has not been stated expressly in this Contract or upon any descriptions or illustrations or specifications contained in any document, including any catalogues or publicity material produced by the Provider.
- 3.10 The Provider shall, from time to time, make recommendations (including, but not limited to, improvements in respect of software licence non-compliance etc) to the Customer in relation to improvements to the Supported Items and/or the Customer's other systems and networks for

the purpose of preventing faults, errors. The Provider shall not be held liable for any claims, loss or damages caused to the Services or Supported Items should the Customer fail to comply with such recommendations.

- 3.11 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Release Waiver

- 4.1 Where the Provider gives any advice, recommendation, information, assistance or service provided by the Provider in relation to the Goods and/or Services (including, but not limited to, additional measures required to protect against potential security breaches or cyber-attack, etc.) supplied is given in good faith to the Customer, or the Customer's agent and is based on the Provider's own knowledge and experience and shall be accepted without liability on the part of the Provider, human error is possible under these circumstances, and the Provider shall make all effort to offer the best solution to the Customer. Where such advice or recommendations are not acted upon then the Provider shall require the Customer or their agent to authorise commencement of the Services in writing by way of signing the Provider's release waiver. The Provider shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.

5. Errors and Omissions

- 5.1 The Customer acknowledges and accepts that the Provider shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Provider in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Provider in respect of the Services.
- 5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of the Provider; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 5.3 In circumstances where the Customer is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) ("**Customer Error**"). The Customer must pay for all Goods it orders from the Provider notwithstanding that such Goods suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take delivery of such Goods. The Provider is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.

6. Change in Control

- 6.1 The Customer shall give the Provider not less than fourteen (14) Business Days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Provider as a result of the Customer's failure to comply with this clause.

7. Price and Payment

- 7.1 At the Provider's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Provider to the Customer; or
 - (b) the Provider's quoted Price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 *Additional and/or Varied Services:*
- (a) the Provider agrees that there will be no charge in the preparation of the initial quotation, which may include Customer discussions, project scoping, etc. However, in some instances the aforementioned Services may be charged to the Customer additionally (at the Provider's sole discretion).
 - (b) the Provider reserves the right to amend the Price:
 - (i) if during the course of the Services, the Goods cease to be available from the Provider's third party suppliers, then the Provider reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties;
 - (ii) where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of the Provider's standard hourly rates (and double such rate for any Services provided outside the Provider's normal business hours) and will be shown as variations on the invoice;
 - (iii) where the performance of any contract with the Customer requires the Provider to obtain products and/or services from a third party, the contract between the Provider and the Customer shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to the Provider, and the Customer shall be liable for the cost in full including the Provider's margin of such products and/or services;
 - (iv) as a result of increases beyond the Provider's reasonable control in the cost of materials or labour, or due to fluctuations in currency exchange rates;
 - (v) in the event that the Provider is requested to provide on-site services, in which case a minimum call-out fee equal to one (1) hours labour (and/or two (2) hours labour for any requested provision of Services after-hours), plus travel, parking costs and the cost of any Goods purchased for the Services shall apply.
 - (c) notwithstanding clause 7.2 the Customer acknowledges and accepts that additional charges may apply to certain Services and support provided by the Provider (including, but not limited to, reconfiguration of the Customer's computer or network etc). Any such charges shall be shown as a variation to the original Price.
- 7.3 Services may be requested outside of the hours of 7.30am to 6.00pm Monday through Friday, and including all public holidays by prior arrangement, but may be subject to additional charges.
- 7.4 Unless otherwise agreed the Provider shall be entitled to increase the Price and ad hoc rates at the start of each renewal term of any fixed term contracts and shall provide written notice to the Customer at least thirty (30) days prior to the end of the initial term or the previous renewal term (as applicable). In the event that the Customer does not agree with the Price increase then the Customer's shall be entitled to terminate

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- this Contract by providing notice to the Provider in accordance with clause 29 and at least fourteen (14) days prior to the date that the increase in the Price and ad hoc rates is due to take effect (time being of the essence).
- 7.5 Variations will be charged for on the basis of the Provider's quotation, and will be detailed in writing, and shown as variations on the Provider's invoice. The Customer shall be required to respond to any variation submitted by the Provider within ten (10) Business Days. Failure to do so will entitle the Provider to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 7.6 At the Provider's sole discretion, a non-refundable deposit may be required.
- 7.7 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Provider, which may be
- (a) on completion of the Services;
 - (b) seven (7) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Provider.
- 7.8 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Provider.
- 7.9 The Provider may in its discretion allocate any payment received from the Customer towards any invoice that the Provider determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Provider may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Provider, payment will be deemed to be allocated in such manner as preserves the maximum value of the Provider's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 7.10 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Provider nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify the Provider in writing within three (3) Business Days, the invoice shall remain due and payable for the full amount, until such time as the Provider investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Provider placing the Customer's account into default and subject to default interest in accordance with clause 30.1.
- 7.11 The Customer acknowledges and agrees that the Customer's obligations to the Provider for the provision of the Services shall not cease, and ownership of the Goods (if applicable) shall not pass, until:
- (a) the Customer has paid the Provider all amounts owing thereto for the particular Services; and
 - (b) the Customer has met all other obligations due by the Customer to the Provider in respect of all agreements between the Provider and the Customer.
- 7.12 Receipt by the Provider of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised and until then the Provider's ownership or rights in respect of the Services, and this Contract, shall continue.
- 7.13 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Provider an amount equal to any GST the Provider must pay for any supply by the Provider under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 8. Customer Acknowledgements and Responsibilities**
- 8.1 The Customer warrants that they are the owner of the Supported Items and are licenced to use any third-party software loaded onto any Supported Items.
- 8.2 It shall be the Customer's responsibility to:
- (a) obtain and maintain any third-party consents and approvals prior to the commencement of the Services;
 - (b) ensure that any third-party software is compatible with the Customer's systems and networks. Where the Customer requests the Provider to make enquiries from the third-party supplier in respect of compatibility the Customer acknowledges that the Provider shall have no liability for any incorrect information provided by the third party; and
 - (c) make the premises available for the scheduled Services and maintain any new or existing cabling in accordance with all Australia industry standards and guidelines necessary for the Supported Items and Services to operate effectively.
- 8.3 The Customer:
- (a) may not resell or resupply or otherwise permit any third party (including any clients or subcontractors of the Customer) to use, access or operate the Services, without the prior written consent of the Provider;
 - (b) warrants that all software, data, materials and information that is stored on or transmitted by any of the Supported Items or the Services will not infringe the rights of any person or breach any law or regulation and that the Customer has procured and paid for all relevant software licences in respect of all third-party software that is now or at any time installed on the Supported Items;
 - (c) shall indemnify the Provider in respect of all and any loss, costs and damage incurred by the Provider:
 - (i) as a result of any breach by the Customer of its obligations or any warranty provided by the Customer under this clause 8;
 - (ii) as a result of any use by the Provider of any software, data or other materials or information stored on or transmitted by the Supported Items or Services; and/or
 - (iii) which are incurred by the Provider as a result of the Customer's breach of this Contract, including, any loss, costs and damage incurred by the Provider where the Customer's breach causes the Provider to be in breach of any agreements with the Provider's suppliers.
- 8.4 It shall be the Customer's responsibility to promptly notify the Provider if any of the Supported Items become subject to any security interest or purchase money security interest or other action under the Personal Property Securities Act 2009 (Cth) and the Customer shall indemnify the Provider against any loss or damage incurred by the Provider caused by any of the foregoing matters or the repossession of any Supported Items or any other action taken by any person that is a secured party in respect of the Supported Items.
- 8.5 The Customer further agrees not to procure any computer or information technology hardware or software from any third party during the term of this Contract.
- 8.6 It shall be the Customer's responsibility to insure for their full replacement value:

- (a) all Supported Items; and
- (b) any goods sent to the Provider for repair in accordance with clause 26.2 or otherwise.

9. Repair Notice

9.1 If the Customer is a consumer within the meaning of the CCA, this clause constitutes a Repair Notice given under the ACL (Australian Consumer Law), and the Customer acknowledges that:

- (a) the repair of equipment may result in the loss of any files stored on the hard drive, etc. (“**User-Generated Data**”). It is the sole responsibility of the Customer to back-up any User-Generated Data which they believe to be important, valuable, or irreplaceable prior to submitting the equipment for repair; and
- (b) equipment presented for repair may be replaced by, or repaired with, refurbished Goods of the same type rather than being repaired.

10. Terms of Use

10.1 When the Customer uses the Services, the Customer must:

- (a) comply with all laws, all directions by a regulator, all notices issued by authorisation of, or under, law (e.g., Copyright Act 1968) and reasonable directions by the Provider;
- (b) keep the Customer’s account information, password, data, and Goods confidential and secure. The Customer remain responsible for any use or misuse of such;
- (c) follow any reasonable instructions provided by the Provider in relation to the Services;
- (d) access and use the Services solely in accordance with these terms and conditions and any reasonable instructions provided by the Provider;
- (e) employ back-up power and surge protectors at the Customer’s premises;
- (f) respond promptly to the Provider’s communications in relation to the Services;
- (g) provide accurate and prompt responses to the Provider’s requests for any information or documentation reasonably required by the Provider to provide the Services;
- (h) maintain adequate security precautions in connection with the Customer’s use of the Services (including, but not limited to, failure to use/maintain anti-virus software, accessibility to the data via insecure internet connections, insecure passwords or unsecure access to passwords, leaving active connection to the hosted solution unattended or any other event which on the basis of a reasonable test would in the opinion of the Provider be inadequate etc.);
- (i) ensure that the Provider at all times is granted all necessary licences, permissions, building clearances and access reasonably required by the Provider to perform the Support including without limitation:
 - (iv) physical access to any relevant premises and hardware;
 - (v) logon and password access to any relevant computer systems; and
 - (vi) remote online access to any relevant computer systems where available.
- (j) remove most of the downtime risk associated with an “in-house” computer system; and
- (k) failure by the Customer to comply with clause 10.1 will entitle the Provider, at its option, to suspend the Support without liability until such time as clause 10.1 is complied with.

10.2 The Customer must not:

- (a) modify passwords or other access credentials for any Supported Items or any configuration settings of any Supported Items at any time without written consent from the Provider;
- (b) make copies of copyrighted material including, but not limited to, digitisation and distribution of photographs from magazines, books or other copyrighted sources, copyrighted music or video and the installation of any copyrighted software for which the Customer does not have an active license is strictly prohibited;
- (c) export software, technical information, encryption software or technology, in violation of domestic export control laws;
- (d) install malicious programs into the Provider’s network or servers (e.g., viruses, worms, Trojan horses, e-mail bombs etc);
- (e) use, or attempt to use, or permit another person to use or attempt to use, the Services:
 - (i) so as to cause offence, to defame, abuse, communicate obscenities, menace or annoy;
 - (ii) to actively engage in procuring or transmitting material that is in violation of sexual harassment or workplace relations laws;
 - (iii) for any purpose or activity of an illegal or fraudulent nature in any jurisdiction, including damaging any property or injuring or killing any person, to breach the security of any computer network (hacking), to breach any persons privacy, or to distribute unsolicited software or junk mail;
 - (iv) for advertising purposes without the Provider’s express written consent;
 - (v) to breach any of the Intellectual Property rights held by the Provider or any third party;
 - (vi) to transmit, publish or communicate materials which is defamatory, offensive, abusive, indecent, menacing or unwanted;
 - (vii) to expose the Provider to liability (including any claims for damages);
- (viii) to install or store any software applications, code or scripts on or through the Services unless prior written approval from the Provider has been obtained;
- (ix) to disable or circumvent any protection or disabling mechanism related to the Services;
- (x) to store, access or operate any data, code or software on, or in connection with, the software that could be categorised or identified as:
 - A. a computer virus or malicious code;
 - B. pornographic material; or
 - C. “warez” or associated with “warez”.
- (xi) in any way which damages, interferes with or interrupts the Services, or a supplier’s network used to provide the Services;
- (xii) to intercept or attempt to intercept any communication not otherwise intended for the Customer;
- (xiii) contact the Provider’s suppliers or the wholesale / carrier or third-party provider of a service in relation to the Services or service faults. The Provider may impose a fee for doing so and this fee will be passed onto the Customer. They may, however, contact the Customer

in relation to any reported service difficulties in relation to appointment making and service restoration, and for this reason the Provider will need to provide the Customer contact details to such parties;

- (xiv) logon to an account that the Customer is not authorised to access;
 - (xv) access data or take any action to obtain services not intended for the Customer or corrupting the data (including, but not limited to, network sniffing, pinged, floods, packet spoofing, denial of service, and forged routing information for malicious purposes);
 - (xvi) attempt to probe, scan or test the vulnerability of any system, subsystem or network without prior written authorisation from the Provider;
 - (xvii) tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;
 - (xviii) circumvent user authentication or security of any Provider host, network or account (or those of any supplier of the Provider) is strictly prohibited;
 - (xix) interfere with or denying service to anyone;
 - (xx) use any program/script/command, or sending messages of any kind, with the intent to interfere with, or disable, any persons' terminal session, via any means, locally or via the Internet;
 - (xxi) send spam or other duplicative or unsolicited messages in violation of applicable laws including without limitation the Spam Act 2003;
 - (xxii) use any form of harassment via email, or any other form of messaging, whether through language, frequency, or size;
 - (xxiii) any unauthorised use, or forging, of email header information is strictly prohibited;
 - (xxiv) use an email for any email address, with the intent to harass or to collect replies;
 - (xxv) create or forward "chain letters", "Ponzi" or other "pyramid" schemes;
 - (xxvi) use of the Services in breach of the Privacy Act 1988 (Cth) or otherwise in breach of any person's privacy (such as by way of identity theft or "phishing") is strictly prohibited;
 - (xxvii) use of the Services in breach of any instruction manuals, user documentation or reasonable directions of the Provider is strictly prohibited.
 - (xxviii) do anything that prevents or hinders the Provider from providing support services to any other person.
 - (f) the Provider at its sole discretion acting reasonably shall be entitled to determine when there has been a breach of clause 10.2 and without limiting any other provision of these terms and conditions, the Provider shall be entitled without liability to take such actions as it deems appropriate in the circumstances.
- 10.3 If, in the Provider's opinion, the Services are being used by anyone in breach of these terms and conditions (including clause 10) or internet etiquette, the Provider may:
- (a) refuse to post such infringing information to public areas;
 - (b) remove, review or edit such infringing information from any computer on the Provider's network, with the exception of private electronic messages;
 - (c) discontinue any infringing communication;
 - (d) suspend the Services indefinitely, or for a specific period;
 - (e) terminate the Services, and refuse to provide the Services to the Customer, or the Customer's associates, in the future; and
 - (f) inform appropriate government and regulatory authorities of suspected illegal or infringing conduct.

11. Provision of the Services

- 11.1 The Provider will make best efforts to ensure that the Customer receives continual and uninterrupted Services (including network or hosting servers) during the term of this Contract, however;
- (a) the Provider does not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to regularly scheduled maintenance cycles, and many events/circumstances beyond the control of the Provider. In no event though, shall the Provider be liable to the Customer for damages (including loss of income) resulting from or in relation to any failure or delay (including server downtime, programming errors, lack of connection or slow connection) of the Provider to provide Services under this Contract, or any loss of data, if such delays or failures are due to circumstances beyond our control. Such a failure or delay shall not constitute a default under this Contract; and
 - (b) any time specified by the Provider for provision of the Services is an estimate only and the Provider will not be liable for any loss or damage incurred by the Customer as a result of provision being late. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Provider is unable to provide the Services as agreed solely due to any action or inaction of the Customer, then the Provider shall be entitled to:
 - (i) charge the Customer additionally for re-providing the Services at a later time and date (and any storage fees for Goods); or
 - (ii) subject to clause 29, terminate the Contract.
- 11.2 The Provider may, at their sole discretion, limit or deny access to the Services if, in the judgement of the Provider, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network.
- 11.3 The Customer authorises the Provider to delete without notice or liability any information or materials found on the Supported Items (or equipment controlled by the Provider) that is found to be of an obscene nature, unauthorised, unlawful, uncollected for an excessive period of time or excessive in volume.

12. Delivery

- 12.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Provider's address; or
 - (b) the Provider (or the Provider's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 12.2 At the Provider's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 12.3 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 12.4 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Provider is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Provider is sufficient evidence of the Provider's rights to receive the insurance proceeds without the need for any person dealing with the Provider to make further enquiries.

- 12.5 If the Customer requests the Provider to leave Goods outside the Provider's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.

13. Hosting Services

- 13.1 "Live Date" means the date in which the Provider provides the hosting services as per initial acceptance of the Provider's quotation.
- 13.2 Hosting services shall only be used by the Customer for lawful purposes. Any use which violates any applicable national or international laws is strictly prohibited (e.g., posting or transmitting any unlawful, threatening, abusive, libellous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind – including, but not limited to, any transmission constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability).
- 13.3 Hosting services exclude domain registrations and Secure Sockets Layer (SSL) Certificates, and where the Customer is changing from another hosting provider the install and set-up of the Web Site on the Provider's web servers, which shall be charged to the Customer additionally.
- 13.4 The Provider will, at its sole cost and expense:
- (a) host the Web Site on the Provider's or other third party web servers;
 - (b) ensure that from the Live Date:
 - (i) sufficient capacity is maintained on the Provider's webserver to enable users access to the Web Site in a timely manner;
 - (ii) the Web Site is accessible to users in accordance with the agreed service levels (subject to reasonable downtime for server maintenance which has been notified to the Customer prior to the commencement of the downtime or (where applicable) maintenance in accordance with clause 13.9);
 - (c) provide the Customer with reasonable access to the Website to perform maintenance services.
- 13.5 The Provider will not:
- (a) alter or amend, or permit any person to alter or amend the Web Site without the written consent of the Customer;
 - (b) post or display on the Web Site any advertisement, sponsorship or promotion without the written consent of the Customer;
 - (c) use any user data for marketing, referral or other purposes except as expressly authorised by this Contract;
 - (d) sub-licence, rent, time-share, lease, lend or grant any rights to use the Web Site; or
 - (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this Contract.
- 13.6 The Provider will make best efforts to ensure that the Customer receives continual and uninterrupted Services (including network or hosting servers) during the term of this Contract, however the Provider does not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to regularly scheduled maintenance cycles, and many events/circumstances beyond the control of the Provider. In no event, though, shall the Provider be liable to the Customer for damages (including loss of income) resulting from or in relation to any failure or delay (including server downtime, programming errors, lack of connection or slow connection) of the Provider to provide Services under this Contract, or any loss of data, if such delays or failures are due to circumstances beyond our control. Such a failure or delay shall not constitute a default under this Contract.
- 13.7 The Provider may, at their sole discretion, limit or deny access to the Services is, in the judgement of the Provider, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network.
- 13.8 Where the Customer engages a third-party hosting provider, the Provider shall not be held liable should the Customer's Web Site be affected by any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the Web Site.
- 13.9 *Web Site Maintenance Services:*
- (a) subject to clause (b), the Provider will provide the Web Site maintenance services in accordance with the maintenance terms set out in the Provider's maintenance schedule.
 - (b) the Customer will procure all necessary authorisations, licences, and consents to enable the Provider to have access to the Web Site in order to provide the maintenance services.
 - (c) should the Customer maintain the Web Site, then the Provider shall not be held responsible or liable for any interruption or non-performance of the Web Site and shall be entitled to charge the Customer for any remedial work that may be required to store the function of the Web Site.
- 13.10 *Customer's Obligations:*
- (a) the Customer will, at its sole cost and expense:
 - (i) subject to any contract with the Provider for Web Site development, develop and maintain the Web Site;
 - (ii) provide the content to the Provider, in such form as reasonably prescribed by the Provider from time to time, and hereby grants the Provider a non-exclusive, worldwide, irrevocable licence to use such content for the purposes of hosting the Web Site;
 - (iii) do all things reasonably necessary to enable the Provider to host the Web Site on the Provider's webserver;
 - (iv) change the type of hosting account used if that account is deemed by the Provider to be unacceptable because of poor service, lack of bandwidth or in any other way insufficient to support the Web Site;
 - (v) is responsible for any fees payable and due to previous hosting organisations engaged by the Customer;
 - (vi) ensure that content supplied to the Provider do not contain Prohibited Content, a link to any Web Site that contains Prohibited Content, or any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the hosting services.
 - (b) the Customer will not:
 - (i) logon to an account that the Customer is not authorised to access;
 - (ii) access data or take any action to obtain services not intended for the Customer;
 - (iii) attempt to probe, scan or test the vulnerability of any system, subsystem or network;
 - (iv) tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;
 - (v) transmit any material outlined in clause 13.10 and 8.3;
 - (vi) do anything that prevents or hinders the Provider from providing hosting services to any other person.
 - (c) the Customer acknowledges that spamming (i.e., the sending of unsolicited email), email address cultivation, or any unauthorised collecting of email addresses without prior notification of the email address owner is strictly prohibited.

- 13.11 *Network Traffic:*
(a) network traffic shall be measured by the Provider and may include all forms of traffic to and from the Web Site. Domestic data transfer is provided free of charge, but the Provider reserves the right to suspend hosting services (at any time and without notice to the Customer) for what it deems to be excessive traffic usage.
- 13.12 *Limitation of Liability for Hosting Services*
(a) in consideration of clause 21.6, in the event the hosting services provided to the Customer are disrupted or malfunction for any reason, the Provider's liability shall be limited to damages which under no circumstances shall exceed the amount due and payable by the Customer to the Provider for the hosting services during the period of disruption or malfunction.
- 14. Email Hosting Services**
- 14.1 It shall be the Customer's responsibility for the set-up and configuration of the Customer's email on any business computer or mobile devices, etc. Should the Customer prefer, the Provider can refer a third-party IT service professional.
- 15. Search Engine Optimisation (SEO)**
- 15.1 Although the Provider shall use their knowledge and experience to gain the best results possible, the Provider gives no guarantee of the quality of visitor or the position / page rank or volume of visits to the Web Site, or warranty that the Web Site will be effective in promoting the Customer's business or result in any increase in sales of the products/services of the Customer. Periodic reporting will be sent to the Customer's nominated email address, at the sole discretion of the Provider.
- 16. Domain Registration**
- 16.1 Where the Provider is to register a domain name on the Customer's behalf, the Provider cannot guarantee the availability of the domain name, nor assume a successful registration of such a name.
- 17. Backups**
- 17.1 The Customer is responsible for maintaining their own e-mail backups on their own systems, unless otherwise agreed; the Provider does not provide any sort of compensation for lost or incomplete data in the event that backups do not function properly.
- 17.2 The Provider will use their best endeavours to ensure complete and accurate backups of hosted data but assume no responsibility for this duty. It is recommended by the Provider that the Customer always keeps a backup of their Web Site whenever possible. The Provider makes no guarantees about the availability of backups.
- 17.3 If the Customer requires assistance in creating backups, please contact the Provider or view the Provider's support pages. The Customer's hosting control panel provides a backup utility, and the Customer should periodically download a copy of their backed-up files.
- 18. Unsolicited E-mail (SPAM)**
- 18.1 Spamming, or the sending of unsolicited e-mail, from the Provider's servers, or using a return e-mail address that is maintained on the Provider's servers, is strictly prohibited. Using SPAM to advertise a Web Site hosted on the Provider's network is not only illegal under Australian Federal law, but also constitutes as a violation of this provision. If the Customer's account is found to have been sending SPAM, whether the Customer is aware, or not aware, of the SPAM activity, the Provider reserves the right to limit or terminate the e-mail Services on the Customer's account at any time and without prior notification.
- 19. Server Abuse**
- 19.1 Any attempts to undermine or cause harm to the Provider's servers, or a Customer of the Provider, is strictly prohibited. The Provider reserves the right to seek compensation for loss of business and damage done to their servers by the Customer, or dedicated server lessee.
- 19.2 It shall be the Customer's responsibility to ensure the security and confidentiality of their account and must not allow any unauthorised use of such by any third party. The Customer will be liable for any infringement of these terms and conditions in respect of the Customer's account, irrespective of whether such infringement is by the Customer or any authorised or unauthorised third party.
- 20. Customer Data**
- 20.1 The Customer's data remains the property of the Customer at all times.
- 20.2 The Provider will:
(a) only make copies of the Customer's data to the extent reasonably necessary for the Services (which includes, but is not limited to, back-up security, disaster recovery and testing of the Customer's data);
(b) not use, exploit, redistribute, re-disseminate, copy, or store the Customer's data other than for the purposes of the Services; and
(c) take reasonable steps to protect the Customer's data.
- 20.3 The Customer acknowledges and agrees that:
(a) the Services and/or the Customer's data may be hosted by the Provider or the Provider's suppliers on hardware or infrastructure located in or outside Australia; and
(b) the Provider may not own or operate the infrastructure upon which the Customer's data is hosted, stored, transferred or processed in the course of the provision of the Services.
- 20.4 The Customer shall:
(a) only upload, input, and transfer Customer's data into and/or via the Services or disclose the Customer's data to the Provider, which the Customer is fully entitled and authorised (including, by obtaining any necessary consent) to so upload, input, transfer and disclose; and
(b) ensure that the Customer's data and/or the Provider's and/or the Provider's suppliers' collection, use, storage and/or disclosure thereof in the course of performing the Services, does not and will not breach any applicable law or right of any person.
- 20.5 The Customer authorises the Provider and the Provider's suppliers to use the Customer's data for the purpose of providing the Services to the Customer. In addition, the Customer agrees and acknowledge that the Provider may be obligated to provide the following information to its

suppliers, and the Customer hereby licenses and authorises the Customer to do so, and warrants that it has obtained all necessary consents that may be required for the Customer to do so:

- (a) details of all representations and the content of all discussions between the Provider and the Customer;
 - (b) the contact details and identify of the Provider's staff who have dealt with the Customer;
 - (c) the Customer's contact details;
 - (d) copies of any materials, emails or documents;
 - (e) telephone recordings;
 - (f) all other system notes the Provider may have in its power, possession or control;
 - (g) reports on the Customer's use of the Services;
 - (h) anything else that may be relevant; and
 - (i) details of any feedback, complaint, or issue in relation to the quality or delivery of any Goods or Services raised by the Customer with the Provider.
- 20.6 The Customer is solely responsible for the accuracy, legality, and quality of the Customer's data and for obtaining any permissions, licenses, rights and authorisations necessary for the Provider to use, host, transmit, store and disclose the Customer's data for the purposes of providing the Services.
- 20.7 Except in respect of any Non-Excludable Guarantee, the Customer agrees that the Customer, not the Provider, is solely responsible for:
- (a) backing up and archiving all the Customer's data;
 - (b) securing the Customer's data;
 - (c) any loss, corruption or hacking of the Customer's data or Supported Items; and
 - (d) unauthorised access to the Supported Items, and to the Customer's other networks and systems.
- 20.8 Unless otherwise agreed in writing by the Provider, the Customer is solely responsible for security of the Supported Items and the Customer's other networks and systems, including securing them from unauthorised access, including by way of firewalls, and ensuring that the firewalls are protected by passcodes that are regularly changed. The Customer shall promptly inform the Provider if it suspects or uncovers any breach of security and shall use all commercially reasonable endeavours to promptly remedy such breach.
- 20.9 The Customer shall indemnify the Provider in respect of any losses, costs and damage the Provider incurs in respect of any claim that any of the Customer's data infringes the Intellectual Property rights or other rights of any person or breaches any law, regulation, code or standard.

21. Risk and Limitation of Liability

- 21.1 The Customer acknowledges and agrees that the Provider shall not be held responsible or liable for:
- (a) anything related to the Customer's Web Site or any other services provided;
 - (b) any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of the Provider;
 - (c) any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking or Services provided by the Provider. Whilst the Provider will endeavour to restore the Web Site, files, or data (at the Customer's cost), it is the sole responsibility of the Customer to back-up any data which they believe to be important, valuable, or irreplaceable prior to the Provider providing the Services. The Customer accepts full responsibility for the Customer's software and data and the Provider is not required to advise or remind the Customer of appropriate backup procedures (unless included as part of the Services); and
 - (d) any loss or damage to the Customer's software or hardware caused by any 'updates' provided for that software.
- 21.2 The Provider, its directors, agents, or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Customer or any person related to or dealing with the Customer out of, in connection with or reasonably incidental to the provision of the Services by the Provider to the Customer.
- 21.3 The maximum liability of the Provider under this Contract shall at no time exceed the amount of Professional Indemnity insurance cover in respect of any single act, omission, or statement, unless otherwise specified in the Provider's proposal.
- 21.4 The Customer agrees to indemnify the Provider, (including its partners, associates or employees) and any other person who may be sought to be made liable in excess of the limit of liability described in clause 21.3 in respect of any activity arising from, or connected with this Contract in respect of any claim of whatsoever kind, that may be made by any person and any costs and expenses that may be incurred by the Provider. All references herein to loss or damage shall be deemed to exclude loss or damage sustained by any third party in respect of which the Customer is liable and responsible (as between the Customer and the third party) whether by statute, contract tort or otherwise.
- 21.5 The liability of the Provider to the Customer shall expire twelve (12) months from the issue of the last invoice relevant to the particular project, unless in the meantime the Customer has made a claim in writing to the Provider, specifying a negligent act, omission or statement said to have caused alleged loss or damage sustained or sustainable.
- 21.6 Subject to clause 26, the Provider shall be under no liability whatsoever to the Customer for any expenses, claims, costs (including, but not limited to, legal fees and commissions), damages suffered or incurred by the Provider, or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Provider of these terms and conditions, caused by any failure by the Customer to comply with their obligations under this Contract, or that arise from any claim relating to the Services by any person that the Customer authorises to use the Services, or where due to server downtime or programming errors (alternatively the Provider's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 21.7 The Customer acknowledges that the Provider is only responsible for parts that are replaced by the Provider and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify the Provider against any loss or damage to the Goods, or caused by the goods, or any part thereof howsoever arising.
- 21.8 The Services are provided on an "as is, as available" basis. The Provider specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.
- 21.9 The Customer understands that by placing information on a Web Site, such information may be accessible to all internet users. The Provider does not (unless expressly requested by the Customer) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity. The Customer assumes full responsibility for their use of the Services, and it is the Customer's sole

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responsibility to evaluate the accuracy, completeness and usefulness of all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by the Provider, or on the internet generally.

- 21.10 Notwithstanding clauses 21.1 to 21.9, the Provider shall not be liable for any loss or damage sustained or sustainable by the Customer in relation to:
- (a) errors occurring during the course of any services which are not provided by, nor the responsibility of, the Provider;
 - (b) errors occurring in plans or specifications not created or prepared by the Provider;
 - (c) any failure of any third-party component including, without limitation, Software failure, hardware failure, network failure, or power failure;
 - (d) the Services being inaccessible to that Customer for any reason;
 - (e) incorrect or corrupt data, lost data, or any inputs or outputs of the Services;
 - (f) computer virus, trojan and other malware in connection with the Services;
 - (g) security vulnerabilities in the Services or any breach of security that results in unauthorised access to or corruption of data;
 - (h) any failure of any third-party software including, without limitation, the operating system and any other software;
 - (i) failure of the Customer to maintain hardware sufficient to meet minimum hardware requirements for the Services;
 - (j) the Customer's participation in any experiments, beta software or pilots;
 - (k) reliance on the Provider's advice;
 - (l) the Customer's failure to observe proper safety measures and procedures;
 - (m) the delivery, setup and installation of Goods;
 - (n) any harm to or claim by a third party in connection with the Services or Goods;
 - (o) any unauthorised activity in relation to the Services;
 - (p) the Customer's use of or reliance on the Services for a purpose other than the business purposes of the Customer or the reasonably expected purpose of the Services;
 - (q) any act or omission of the Provider, its personnel or any related body corporate under or in relation to the Contract;
 - (r) any delay in the provision of the Services.

22. Identifiers

- 22.1 The Customer agrees and acknowledge that in order for it to use the Services, the Provider may need to allocate to the Customer one or more identifiers such as a DID number, IP address or domain name ("**Identifiers**").
- 22.2 The Customer acknowledges and agrees that the Customer shall have no right, title or interest in any Identifiers, that the Identifiers may not be owned by the Provider and the Provider may need to forego, reallocate or reassign the Identifiers to comply with rules and other requirements (as applicable) in respect of the Identifiers, such as the Australian Communications and Media Authority's regulations and directions from the administrators of domain names, or any requirements of the Provider's upstream suppliers.
- 22.3 The Provider will notify the Customer if the Provider is required to forego, reallocate, or reassign any Identifier allocated to the Customer by the Provider.
- 22.4 The Customer shall indemnify the Provider against any claim, damage or loss which arises as a result of any use, misuse or unauthorised use of any Services or Supported Items by means of account credentials owned by or provided to the Customer.

23. Title to Goods

- 23.1 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 7.11:
- (a) the Customer is only a bailee of the Goods and must return the Goods to the Provider on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Provider and must pay to the Provider the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Provider and must pay or deliver the proceeds to the Provider on demand;
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Provider and must sell, dispose of or return the resulting product to the Provider as it so directs;
 - (e) the Customer irrevocably authorises the Provider to enter any premises where the Provider believes the Goods are kept and recover possession of the Goods;
 - (f) the Provider may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Provider;
 - (h) the Provider may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

24. Personal Property Securities Act 2009 ("PPSA")

- 24.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 24.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Services that have previously been supplied and that will be supplied in the future by the Provider to the Customer, and the proceeds from such Goods/Services.
- 24.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Provider may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

- (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 24.3(a)(i) or 24.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Provider for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Provider;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Services or the proceeds of such Goods/Services in favour of a third party without the prior written consent of the Provider;
 - (e) immediately advise the Provider of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 24.4 The Provider and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 24.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 24.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 24.7 Unless otherwise agreed to in writing by the Provider, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 24.8 The Customer must unconditionally ratify any actions taken by the Provider under clauses 24.3 to 24.5.
- 24.9 Subject to any express provisions to the contrary (including those contained in this clause 24), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

25. Security and Charge

- 25.1 In consideration of the Provider agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering the Provider's security interest over the Customer on the PPSA, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 25.2 The Customer indemnifies the Provider from and against all the Provider's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Provider's rights under this clause.
- 25.3 The Customer irrevocably appoints the Provider and each director of the Provider as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 25 including, but not limited to, signing any document on the Customer's behalf.

26. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 26.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify the Provider in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Provider to inspect the Goods.
- 26.2 Where the Provider elects to repair the defective Goods, the Customer agrees that the Goods may be replaced by refurbished Goods of the same type rather than being repaired, and the Customer further agrees that refurbished parts may be used to repair the Goods. The Customer acknowledges and accepts that where the Goods are repaired and are capable of retaining User-Generated Data, it is possible that the repair of the Goods may result in loss of data. The Customer further acknowledges that the Provider reserves the right to take the Customer's Goods onsite to make or complete any repairs and that the repairs conducted onsite may be subject to time delays. The Provider will return the Goods to the Customer after the repairs have been completed as soon as reasonably practicable.
- 26.3 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 26.4 The Provider acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 26.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Provider makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Provider's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 26.6 If the Customer is a consumer within the meaning of the CCA, the Provider's liability is limited to the extent permitted by section 64A of Schedule 2.
- 26.7 If the Provider is required to replace the Goods under this clause or the CCA, but is unable to do so, the Provider may refund any money the Customer has paid for the Goods.
- 26.8 If the Customer is not a consumer within the meaning of the CCA, the Provider's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by the Provider at the Provider's sole discretion;
 - (b) limited to any warranty to which the Provider is entitled, if the Provider did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 26.9 Subject to this clause 26, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 26.1; and
 - (b) the Provider has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 26.10 Notwithstanding clauses 26.1 to 26.9 but subject to the CCA, the Provider shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;

- (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by the Provider;
 - (e) fair wear and tear, any accident, or act of God.
- 26.11 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Provider as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that the Provider has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 26.11.
- 26.12 The Provider may in its absolute discretion accept non-defective Goods for return in which case the Provider may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 26.13 Notwithstanding anything contained in this clause if the Provider is required by a law to accept a return, then the Provider will only accept a return on the conditions imposed by that law.
- 26.14 Subject to clause 26.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

27. Intellectual Property Rights

- 27.1 If during the course of providing the Services, the Provider develops, discovers, or puts into operation a new concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of the Provider and the Customer shall not use or supply the same in any way whatsoever without first obtaining the written consent of the Provider.
- 27.2 The Customer warrants that all designs, specifications, information, and instructions to the Provider will not cause the Provider to infringe any patent, registered design, or trademark in the execution of the Customer's order. Furthermore, the Customer agrees to indemnify, defend, and hold the Provider harmless from all loss incurred or suffered by the Provider arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's Intellectual Property rights by the Customer during its use of the Services.
- 27.3 Any coding and other supplied code (if any) remains the Intellectual Property of the Provider. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.
- 27.4 Where the Provider has developed software (and associated documentation) databases, training materials, electronic tools and/or for any of the Provider's source code ("Tools"), then a copyright in those Tools shall remain vested in the Provider and the Provider retains ownership and all Intellectual Property rights thereof but grants the Customer a non-exclusive and non-transferable licence for its use (solely in relation to the operation of the Customer's own business). The Customer will use any Tools supplied by the Provider, and identified as such, strictly in terms of the licence (or any other conditions imposed by the Provider) under which it is supplied. The Customer further agrees that they shall not without the Provider's prior written consent:
- (a) use in any way, or rely on the Tools for any purpose other than what it was designed or is suitable for;
 - (b) copy, reproduce, translate, adapt, vary, merge, modify, or create any derivative work based on the Tools;
 - (c) reverse engineer, decompile, disassemble, reconfigure or otherwise attempt to discover the source code of the software, or assist another party to do the same;
 - (d) sell, market, network, transfer, lease, licence, sub-licence, rent, lend, or otherwise distribute, the Tools in any way whatsoever;
 - (e) combine the Tools with any other software and/or item, etc.; or
 - (f) use the Tools to commit a crime (including, but not limited to, sending spam) and the Customer agrees to indemnify the Provider against any action taken by a third party against the Provider in respect of any such infringement.
- 27.5 Notwithstanding anything herein, upon termination of the Contract (in accordance with clause 29) the Provider shall revoke the licence to use and remove any Tools. Once removed, the Provider shall accept no liability and the Customer indemnifies the Provider for any losses and/or damages (including, but not limited to, any subsequent security breach or virus infection, etc.) that may occur once the Provider has removed their Tools.
- 27.6 Subject to copyright laws (and/or any other applicable copyright laws) and the conditions therein, the Customer agrees that they shall not in any way sell, reproduce, adapt, distribute, transmit, publish, or create derivative works from, any part of the software (if supplied by the Provider) without the Provider's prior consent in writing.
- 27.7 The Customer hereby authorises the Provider to utilise images of the Services created by the Provider in advertising, marketing, or competition material by the Provider.

28. Confidentiality

- 28.1 Subject to clause 28.2, each party agrees to treat as confidential the other party's Confidential Information and agree not to divulge it to any third party, without the other party's written consent.
- 28.2 Both parties agree to:
- (a) use the Confidential Information of the other party only to the extent required for the purpose it was provided;
 - (b) not copy or reproduce any of the Confidential Information of the other party in any way;
 - (c) only disclose the other party's Confidential Information to:
 - (i) employees and third-party providers who need access to the information and who have agreed to keep it confidential;
 - (ii) its legal advisers and insurance providers if those persons undertake to keep such information confidential; and
 - (iii) not disclose the other party's Confidential Information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any regulatory body.
- 28.3 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request unless required by law to retain it.
- 28.4 Confidential Information excludes information:
- (a) generally available in the public domain (without unauthorised disclosure under this Contract);

- (b) received from a third party entitled to disclose it;
- (c) that is independently developed.

29. Cancellation and Termination

- 29.1 Without prejudice to any other remedies the Provider may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Provider may suspend or terminate the supply of Goods/Services to the Customer and the provider shall be entitled to withhold any documentation, passwords, keywords, network diagrams from the Customer. The Provider will not be liable to the Customer for any loss or damage the Customer suffers because the Provider has exercised its rights under this clause.
- 29.2 Either party may, without liability, terminate these terms and conditions or cancel provision of the Services:
- (a) if there is no agreement term specified, at any time by giving thirty (30) days' notice to the other party;
 - (b) if an agreement term is specified, at any time after the end of the agreement term by giving thirty (30) days' notice to the other party;
 - (c) failure to give notice of intention to cancel at least thirty (30) days prior to the expiration date of the agreement term, the agreement term shall automatically renew on a monthly basis, unless cancelled by way of the Customer providing the Provider with thirty (30) days' notice.
- 29.3 The Provider may, in addition to their right to cancel under clause 29.1:
- (a) do so at any time:
 - (i) prior to the commencement of the Services, by giving notice to the Customer, in the event the Provider determines it is not technically, commercially or operationally feasible to provide the Services to the Customer; or
 - (ii) in the event the Customer materially breaches these terms and conditions, and such breach is not capable of remedy.
- 29.4 Should the Customer, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this Contract will be terminated by the Provider (at their sole discretion) and all Services completed, but not billed or paid, will be payable in full within seven (7) days from the date of the submitted invoice.
- 29.5 Upon termination of this Contract, the Provider will immediately delete all files and content relating to the Customer and the Services provided thereto.
- 29.6 It is the Customer's responsibility to make arrangements for the transfer of their data prior to the termination date. The Provider accepts no liability for any loss or damage incurred by the Customer as a result of the deletion of such data.
- 29.7 In the event the Services are terminated as per clauses 29.1 or 29.2, the Services can be re-instated under a new agreement at the prevailing rates; however no credits or discounts will be granted and reinstatement costs shall apply.

30. Default and Consequences of Default

- 30.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Provider's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 30.2 If the Customer owes the Provider any money, the Customer shall indemnify the Provider from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Customer would be liable;
- in regard to legal costs on a solicitor and own client basis, internal administration fees, the Provider's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 30.3 Further to any other rights or remedies the Provider may have under this Contract, if a Customer has made payment to the Provider, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Provider under this clause 30 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 30.4 Without prejudice to the Provider's other remedies at law the Provider shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Provider shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Provider becomes overdue, or in the Provider's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by the Provider;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

31. Compliance with Laws

- 31.1 The Customer and the Provider shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

32. Privacy Policy

- 32.1 All emails, documents, images, or other recorded information held or used by the Provider is Personal Information, as defined and referred to in clause 32.3, and therefore considered Confidential Information. The Provider acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Provider acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Provider that may result in serious harm to the Customer, the Provider will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

- 32.2 Notwithstanding clause 32.1, privacy limitations will extend to the Provider in respect of Cookies where the Customer utilises the Provider's Web Site to make enquiries. The Provider agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking Web Site usage and traffic; and
 - (c) reports are available to the Provider when the Provider sends an email to the Customer, so the Provider may collect and review that information ("collectively Personal Information")
- If the Customer consents to the Provider's use of Cookies on the Provider's Web Site and later wishes to withdraw that consent, the Customer may manage and control the Provider's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 32.3 The Customer agrees that the Provider may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 32.4 The Customer consents to the Provider being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 32.5 The Customer agrees that personal credit information provided may be used and retained by the Provider for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 32.6 The Provider may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 32.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 32.3 above;
 - (b) name of the credit provider and that the Provider is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided the Provider is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Provider has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Provider, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 32.8 The Customer shall have the right to request (by e-mail) from the Provider:
- (a) a copy of the Personal Information about the Customer retained by the Provider and the right to request that the Provider correct any incorrect Personal Information; and
 - (b) that the Provider does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 32.9 The Provider will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 32.10 The Customer can make a privacy complaint by contacting the Provider via e-mail. The Provider will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 33. Unpaid Seller's Rights**
- 33.1 Where the Customer has left any item with the Provider for repair, modification, exchange or for the Provider to perform any other service in relation to the item and the Provider has not received or been tendered the whole of any monies owing to it by the Customer, the Provider shall have, until all monies owing to the Provider are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 33.2 The lien of the Provider shall continue despite the commencement of proceedings, or judgment for any monies owing to the Provider having been obtained against the Customer.
- 34. Service of Notices**
- 34.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;

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- (c) by sending it by registered post (within three (3) Business Days if posted domestically or ten (10) Business Days if posted internationally) to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- 34.2 If sent by email to the other party's last known email address. Any notice issued via email shall be deemed to be delivered upon the email being sent, provided that if an email is sent out of Business Hours, it shall be deemed to be delivered at 9am on the next Business Day.
- 34.3 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

35. Trusts

- 35.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Provider may have notice of the Trust, the Customer covenants with the Provider as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not without consent in writing of the Provider (the Provider will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

36. General

- 36.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 36.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.
- 36.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the Parramatta Courts in that state. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).
- 36.4 The Provider may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 36.5 The Customer cannot licence or assign without the written approval of the Provider.
- 36.6 The Provider may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Provider's sub-contractors without the authority of the Provider.
- 36.7 The Customer agrees that the Provider may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Provider to provide Goods to the Customer.
- 36.8 This Contract may be executed in counterparts provided that no binding agreement shall be reached until the executed counterparts are exchanged. A counterpart of a document exchanged by email shall constitute evidence of the execution of the original.
- 36.9 This Contract constitutes the entire agreement between the parties and to the extent possible by law, supersedes all prior understandings, representations, arrangements, and agreements between the parties regarding its subject matter.
- 36.10 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns etc, ("Force Majeure"), DNS (Domain Name System) caching, propagation, or other DNS issues outside the reasonable control of either party, or failure or outage of any telecommunications links or other connections forming part of the Internet which are beyond the reasonable control of either party.
- 36.11 Both parties warrant that they have the power to enter this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 36.12 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.