

STANDARD CONDITIONS OF BUSINESS

1. TERM AND CONDITIONS

- (a) These terms are general terms governing the Consultant's relationship with the Client.
- (b) The Client accepts these terms by:
 - (i) signing any Service Order attached to these terms; or
 - (ii) instructing the Consultant to commence any Services or purchase any Product after receiving a copy of these terms.

2. SERVICES

- (a) The Consultant will provide the Services as agreed in the Service Order, subject to these Standard Conditions of Business.
- (b) The Consultant's personnel are available during Business Hours on Business Days. Services requiring personnel involvement will generally be carried out during these hours unless otherwise set out in the Service Order.
- (c) The Consultant agrees to make reasonable endeavours to:
 - (i) provide the Services to the standards and within the timeframes specified in the Service Order;
 - (ii) rectify any faults in the Services for which the Consultant is responsible; and
 - (iii) liaise with relevant third parties to investigate and restore Services where affected by causes beyond its control.
- (d) The Consultant will use reasonable efforts in providing the Services, however other than as set out in this Agreement, to the fullest extent permitted at law:
 - (i) the Consultant does not take any responsibility for any aspect of the Services where the error relates to misuse, user error, variation to the user interface, the operation or failure of any third party services, software or equipment;
 - (ii) the Consultant does not warrant or guarantee the Services are uninterrupted, error free or fit for any specific purpose; and
 - (iii) the Client is responsible for defects in its own software, systems, equipment or network.
- (e) The Consultant may at its discretion, upon request by the Client, provide Out-of-Scope Services, charged at the Out-of-Scope Fee rate, and:
 - (i) Out-of-Scope Services provided remotely by the Consultant are charged in increments of 15 minutes;
 - (ii) onsite visits are charged at a minimum of one hour, then in half hourly increments, including travelling time from the Consultant's offices;
 - (iii) work done outside of Business Hours on Business Days at the Client's request is charged at 1.5 times the normal rate and at 2.5 times the normal rate for work done on weekends and public holidays; and
 - (iv) onsite visits booked but later cancelled by the Client with less than 4 hours' notice will incur a cancellation fee equal to one hour's billable rate, plus travelling time, parking and other reasonable expenses incurred.
- (f) Technology and business environments are constantly evolving and the Consultant may make adjustments to the Services to ensure the Client continues to receive the best possible results. However, the Consultant will give the Client reasonable notice of any changes, and ensure that the replacement services are of the same standards as the original.
- (g) The Consultant may appoint employees, subcontractors or agents to provide all or part of the Services, and such entities are bound by the same obligations as the Consultant.
- (h) The Consultant is not responsible for interruptions or disruptions to any Service caused by:

- (i) the act or omission of any third party, or any event which is outside of the Consultant's reasonable control, including any Upstream Supplier, Dos attacks or malicious third party activity (eg ransomware or malware); or
 - (ii) the Client's own acts or omissions.
- (i) Where the Consultant is the reseller of a Service that is provided by an Upstream Supplier (including without limitation connectivity services, data hosting or software as a service), the Client acknowledges and agrees that some aspects of such services are outside of the Consultant's direct control, and:
 - (i) the Consultant is not responsible for rectifying faults which are outside of its control. The Consultant will take reasonable steps to liaise with the Upstream Supplier but cannot guarantee turnaround times for the Upstream Supplier to resolve outages or other issues;
 - (ii) the Upstream Supplier may change or discontinue its offering from time to time, or require the Client to perform mandatory software or hardware upgrades to continue using the Service. The Consultant may either adjust any affected Services accordingly, or source alternative Upstream Suppliers, provided the Client continues to receive equivalent Services of the same or better quality; and
 - (j) The Consultant may provide target response times and procedures in association with the Services from time to time. However, they are for guidance only and failure to meet a particular target response time or procedure does not constitute material default by the Consultant.

3. PRODUCT

- (a) This clause 3 applies only if the Consultant supplies any Product to the Client.
- (b) The Consultant may, at its discretion, delay ordering Product from its suppliers, or delay shipment or delivery to the Client, until the Client has paid the Product Fee in full.
- (c) The Consultant is a reseller of the Product, and any Products set out in the Service Order remain subject to any changes in pricing, availability, or specifications dictated by the Consultant's supplier. If the Product is not available at the time of invoicing but is expected to be available at a future date the Consultant will put the Product on back order, the Consultant may revise the price of Product placed on back order by reasonable notice to the Client, as necessary to cater for:
 - (i) price increases imposed by its Upstream Suppliers;
 - (ii) substituted equivalent Product where its Upstream Suppliers are unable to supply the Product as set out in the Service Order and the Client has approved the substitution; and
 - (iii) exchange rate fluctuations where Product is sourced from outside Australia.
- (d) The Consultant does not warrant that the Product the Consultant provides under this Agreement is fit for any purpose except as specified in the Service Order (if applicable);
- (e) Ownership of the Product passes to the Client upon receipt of payment in full for the Product. All risk in the Product passes to the Client immediately upon delivery to the premises nominated by the Client.
- (f) The Client will be deemed to have accepted the Product upon delivery unless the Client otherwise notifies the Consultant within 2 Business Days;
- (g) Where the Product is shipped via courier, the Client must ensure that an authorised representative inspects the Product and confirms that it is complete and undamaged prior to accepting delivery and signing the Proof Of Delivery (POD) document. The POD should only be signed once the Product has been inspected,

as a clean signed POD will void any insurance against loss or transit damage.

4. PAYMENTS

- (a) The Client must pay Fees as specified in the Service Order.
- (b) In addition to any Fees specified in the Service Order, the Consultant will issue invoices separately for the following fees where applicable:
 - (i) setup fees (if any);
 - (ii) the Product Fee of any Product ordered, payable in advance;
 - (iii) any fees for Out of Scope Services requested and performed;
 - (iv) any surcharges if the Client has requested services that attract a surcharge, such as after hours services or onsite visits, or onsite visits other than planned services visits included in the Service Order;
 - (v) any pre-approved expenses for travel time at current daily rates if the Consultant is required to travel to a site more than 15 km from its offices; and
 - (vi) any pre-approved expenses if the Consultant is required to travel to a site more than 100 km from its offices, including travel time at current daily rates, and all travel expenses including flights, accommodation and meals (excluding alcohol) at cost.
- (c) Unless otherwise stated, each tax invoice is payable 14 days from the date of the tax invoice and may be sent by post or email.
- (d) The Client must reimburse the Consultant for any transaction, processing, dishonour, or charge-back fees in relation to the Client's payments.
- (e) All fees are in Australian dollars, exclusive of GST. If any GST is imposed on a supply under this Agreement, the Client must pay the GST amount with and in addition to the Fees.
- (f) The Consultant may vary its rates for Out-of-Scope Fees at any time by 30 days' Written Notice.
- (g) Other than during a Minimum Service Period, the Consultant may increase Service Fees at any time with 30 days Written Notice, or at any time if the Services are increased or upgraded, by agreement between the parties.
- (h) The Consultant may increase Service Fees during the Minimum Service Period:
 - (i) annually by 30 days' Written Notice, by up to the same percentage as the change in the Consumer Price Index over the previous 12 months;
 - (ii) at any time by 30 days' Written Notice, by the same amount as any increase in pricing (as calculated in AUD) imposed on the Consultant by relevant Upstream Suppliers directly relevant to the Services; or
 - (iii) at any time if the Services are increased or upgraded, by agreement between the parties.
- (i) If the Client reasonably believes that an invoice contains an error and wishes to dispute the invoice, the Client must notify the Consultant before the due date of the invoice, pay all undisputed fees on the invoice, and provide detailed information about any disputed fees, and the Consultant will not suspend or terminate the affected Services while the dispute is being investigated. The Consultant's records are prima facie evidence of fees owing and paid.
- (j) If the Client fails to pay any invoice by the due date, then without prejudice to its other rights or remedies, until payment is made in full (including for any accrued interest), the Consultant reserves the following rights:
 - (i) to charge for interest on all overdue amounts at the RBA cash rate plus 6 percentage points, compounded daily from the due date of the relevant invoice;

- (ii) to immediately suspend work of any or all Services under this Agreement or under any other agreement between the parties then on foot, and provide the Client with a Notice of Default;
- (iii) to retain a lien over all equipment, materials, data and work in progress, including those owned by the Client in the Consultant's possession or control; and
- (iv) The Client is liable by way of liquidated damages for all amounts payable under this clause plus all costs of debt collection and enforcement of payment, including legal fees on an indemnity basis.

5. CLIENT OBLIGATIONS

- (a) The Client must:
 - (i) nominate one or more Authorised Contacts, who have authority to enter into legally binding agreements on the Client's behalf. Any communications and instructions received from or to any of the Authorised Contacts are deemed to be given to or received from the Client. Any service requests or instructions given by any of the Authorised Contacts to the Consultant are deemed to have been given by the Client;
 - (ii) nominate one or more Service Address Contacts who are able to assist the Consultant with basic onsite tasks at each Service Address (such as checking a light on a server, unplugging a cable or turning equipment on) and who are able to provide technical information and access where reasonably required;
 - (iii) ensure that the list of Authorised Contacts and Service Address Contacts is kept up to date at all times;
 - (iv) supply clear instructions and feedback, and respond in a timely manner if the Consultant brings an issue to the Client's attention or requires feedback;
 - (v) provide to the Consultant in a timely manner any Client Materials, as well as any onsite or remote access, keys or passwords necessary for the Consultant to provide the Products or Services; and
 - (vi) notify the Consultant if the Client makes any changes to its hardware, software, systems, service providers, network or data which are likely to affect the Services.
- (b) The Client warrants and undertakes that:
 - (i) the Client and its representatives have all necessary authority and legal right(s) to permit and authorise the Consultant to provide the Services;
 - (ii) following the Client's instructions will not cause the Consultant to contravene any applicable laws or breach any third party rights; and
 - (iii) the Client's Hosted Materials contain no material which is defamatory, pornographic, unlawful or which contains malware or infringes the rights of any third party including copyright.
- (c) Where the Consultant requires physical access to the Client's premises or any other location under the Client's direction or control (for example, a rack in a third party data centre) to perform the Services, or to exercise any other rights under this Agreement, the Client must provide or arrange such access and a safe working environment in compliance with all occupational health and safety laws.
- (d) The Client is responsible for, and expressly agrees that the Consultant is not responsible for:
 - (i) any business performance outcomes from the Client's use of any Product or Services;
 - (ii) the support or operation of, or compatibility with, any software, hardware, equipment, or infrastructure which the Consultant has not provided to the Client;

- (iii) any issues or defects arising in relation to the Client's own data, business processes, software, systems, hardware, equipment, or network; or
 - (iv) any third party software, data, materials, or services, unless otherwise expressly agreed in the Service Order;
 - (v) any backup, disaster recovery, and business continuity practices, including backup of the Client's data (other than as specified in the Service Order); or
 - (vi) any issues which the Consultant notifies the Client as requiring its attention, which the Client fails to address.
- (e) The Client must ensure that it complies with any reasonable minimum requirements set out in the Service Order (and as amended from time to time) and:
- (i) the Consultant reserves the right to carry out an audit prior to providing Services under the Service Order, to confirm that the Client has complied with the minimum requirements; and
 - (ii) the Consultant reserves the right to check any changes to the Client's Hosted Materials, data, software, hardware, systems, or network made after the Consultant has completed its initial audit, to confirm that the Client still meets the minimum requirements.
- (f) If the Consultant reasonably determines that the Client's Hosted Materials, data, software, hardware, systems, or network do not meet the minimum requirements, or are otherwise incompatible with the Services, the Consultant may:
- (i) with the Client's agreement, undertake additional remedial work at the Client's cost, and delay or suspend the Services until such work has been completed; or
 - (ii) amend the Fees and specifications applicable to the Service Order, or exclude certain software, equipment or Services from the Service Order; or
 - (iii) if prior to any Start Date specified in the Service Order, end the Agreement, and refund any fees the Client paid for Services not delivered or commissioned.
- (g) Provision of Products or Services is subject to the Consultant being satisfied at all times that the Client is able to pay its Fees. The Client must provide the Consultant with all information the Consultant reasonably requires for the purpose of assessing the Client's credit rating. The Client irrevocably consents to the Consultant disclosing the Client's information to a credit reporting agency to obtain a credit report at any time. The Consultant may revoke any credit terms granted to the Client at any time by giving reasonable notice.
- (h) Where the Consultant installs or provides any Provided Hardware in conjunction with any Services, the Provided Hardware remains the property of the Consultant or its Upstream Supplier, and the Client must not tamper with or remove the Provided Hardware without the Consultant's consent. The Client is responsible for replacing the Provided Hardware if it is lost, damaged or stolen.

6. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

- (a) Each party agrees not to use or disclose Confidential Information of the other party, except to the extent necessary to:
- (i) carry out its obligations under this Agreement;
 - (ii) comply with any law, government authority directive or court order;
 - (iii) comply with the listing rules of any stock exchange; or
 - (iv) obtain professional advice where the advisors agree to be bound by the same obligation of confidentiality.
- (b) All Intellectual Property Rights in Client Materials belong to the Client (or where applicable, any third party owner). The Client grants the Consultant a licence to use, copy, and adapt the Client Materials to the extent necessary to provide any Services,

including the right to sublicense such rights to its employees, contractors, agents, and Upstream Suppliers.

- (c) All Intellectual Property rights in the Consultant's Materials belong to the Consultant. The Consultant grants to the Client a right to use the Consultant's Material for the purpose set out in the Service Order (if any) and to the extent necessary to use the Services, subject to this Agreement.
- (d) All Intellectual Property rights in the Consultant's Works belong to the Consultant. Upon receipt of full payment for the Services, the Consultant grants to the Client a non-exclusive, royalty-free licence to use the Consultant's Works only for the purpose for which they were provided, and to the extent that they are incorporated as part of the Services, limited to the duration of any licence period set out in the Service Order (if applicable).
- (e) Without limiting the Client's rights at law, and subject to any conflicting rights granted by this Agreement, The Client must not do (or authorise anyone else to do) any of the following, without the Consultant's written consent (which may be granted or refused at its sole discretion):
- (i) Assign, sublicense, distribute, lease, impose any charge upon any other party whatsoever for the Consultant's Materials or Consultant's Works;
 - (ii) Reinstall, copy, disassemble, decompile, reverse engineer the Consultant's Materials or Consultant's Works;
 - (iii) Combine or incorporate the Consultants Materials or Consultant's Works in any other program or system;
 - (iv) Use the Consultant's Materials or Consultant's Works in any way which is not in accordance with the specifications and this Agreement;
- (f) The Consultant may utilise third party materials as necessary to provide the Services which may be subject to third party licensing terms.
- (g) The Client grants the Consultant permission to publish promotional case studies about the project or work performed for the Client, subject always to the Consultant's continuing obligation of confidentiality.

7. PRODUCT WARRANTY

- (a) The Client may, during the manufacturer's warranty period or any applicable statutory warranty period, give the Consultant Written Notice of any defect or suspected defect in any Product, and the Consultant will take reasonable steps to arrange inspection, replacement, or repair (as appropriate).
- (b) However, if the Client returns a Product as faulty which is later verified as working correctly, the Consultant may at its discretion charge the Client for time spent inspecting the Product.
- (c) The Consultant may require that Products requiring inspection or repair under warranty be returned to a specified location.
- (d) Products presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Product.
- (e) Other than OEM software, software issues are not covered by warranty. This includes but is not limited to compatibility, suitability, problems or consequential loss resulting from computer viruses, software conflicts, or operating system corruption.
- (f) The Client is responsible for backing up all software, data and files that are stored on the Product prior to repair of the Product, or on the Client's equipment and systems generally, prior to any remote or onsite repair of any Product or Services.
- (g) Any consequential work required to be performed over and above replacing faulty Products, such as reloading software and/or recovering user data after a hard disk crash, will be considered as Out-of-Scope work and billed at applicable hourly rates.

8. INDEMNITY AND LIMITATION OF LIABILITY

- (a) Each party agrees to release and hold harmless, indemnify and defend the other party and its Indemnified Officers against any Claim or Liability from or in relation to:
- (i) its own negligence or malpractice, or reckless or intentional misconduct, and
 - (ii) its own failure to perform its obligations and responsibilities under this Agreement.
- (b) The Client agrees to release, indemnify, defend, and hold harmless the Consultant and its Indemnified Officers against any Claim or Liability arising from or in relation to:
- (i) any loss or damage to persons or property (including data) caused by the Client's wrongful or negligent acts or omissions;
 - (ii) any loss or damage to persons or property (including data) caused by the Client Materials;
 - (iii) The Client's breach of any law or infringement of any third party rights;
 - (iv) if the Client's instructions cause the Consultant to be in breach of any law or infringement of any third party rights including Intellectual Property rights; and
 - (v) any breach of the Client's warranties under this Agreement.
- (c) The Client agrees to release and hold harmless the Consultant and its Indemnified Officers against any Claim or Liability arising from or in relation to:
- (i) actions taken in relation to this Agreement in accordance with the Consultant's obligations at law or any order issued by a court of law or relevant government authority;
 - (ii) the Consultant's reasonable actions in denying anyone access to the Services for security purposes; and
 - (iii) third party materials which may be incorporated in the Products or Services,
- whether directly or indirectly arising in connection with the Products or Services, even if the Consultant knew or should have known about the possibility of such Claim or Liability.
- (d) The Consultant only accepts liability to the Client as set out in this clause, or as required by consumer or other laws that cannot be excluded by contract.
- (e) To the fullest extent allowable at law:
- (i) indirect, special, pure economic, or Consequential Loss (whether arising under contract or tort) are expressly excluded under this Agreement;
 - (ii) all warranties that may be implied by law or statute (other than those set out in this Agreement) are excluded;
 - (iii) the Consultant's liability, and liability of its Indemnified Officers under this Agreement is limited to (at its election), in relation to Services:
 - (A) supplying the Services again; or
 - (B) payment of the cost of having the Services supplied again; or
 - (C) a refund of the amount the Client paid the Consultant for those Services;
 - (iv) the Consultant's liability, and liability of its Indemnified Officers under this Agreement is limited to (at its election), in relation to Product:
 - (A) supplying the Product again;
 - (B) payment of the cost of having the Product supplied again;
 - (C) repairing the Product;
 - (D) payment of the cost of having the Product repaired; or

(E) a refund of the amount the Client paid the Consultant for the Product; and

- (v) despite any other provision to the contrary, its total liability and the total liability of its Indemnified Officers in connection with this Agreement whether under contract or tort, will not in any circumstances exceed the maximum value equal to the total fees received by the Consultant from the Client under the Service Order.

9. SUSPENSION AND FORCE MAJEURE

- (a) The Consultant may suspend its Services by Written Notice under this Agreement at any time if:
- (i) the Client fails to make any payment when due or any payment is dishonoured or subject to chargeback, subject to clause 4(i);
 - (ii) the Client fails to provide clear and timely instructions;
 - (iii) the Client fails to provide necessary Client Materials in a timely manner;
 - (iv) the Client fails to ensure that any minimum requirements are met and maintained; or
 - (v) in its reasonable opinion the Client's data, network, systems, software, or equipment may be causing damage to any person or property, and
- suspension of Services under this clause does not affect the Client's liability to make payment, and ends immediately when the issue giving rise to the suspension is remedied.
- (b) Either party may give the other party a Notice of Default if they believe the other party is in material default of this Agreement.
- (c) If a party to this agreement is affected, or likely to be affected, by a Force Majeure Event, that party must immediately give the other party prompt notice of the circumstances. The party's obligations under this agreement are then suspended to the extent to which they are affected by the relevant Force Majeure Event, and Service Fees will be reduced proportionately.
- (d) If the Force Majeure Event continues for more than 20 Business Days, the parties agree to negotiate in good faith to work out possible alternate solutions, or transition out processes.

10. TERMINATION

- (a) Either party may end this Agreement immediately by Written Notice if the other party:
- (i) fails to remedy a Notice of Default; or
 - (ii) experiences an Insolvency Event.
- (b) Other than during a Minimum Service Period, either party may end a Service Line or this entire Agreement by Written Notice of at least equal to the applicable Notice Period at any time (which is 30 days unless otherwise specified on a Service Order).
- (c) If the Client would like to end a Service Line which has and is still within a Minimum Service Period, then a termination fee is immediately due and payable calculated as 80% of the base monthly Service Fees for the balance of the Minimum Service Period applicable to that Service Line (calculated using the monthly Service Fees applicable as at the date of termination).
- (d) The parties agree that this termination Fee is in addition to the rights specified in this clause 10 and any other rights the Consultant may have, and is not a penalty, but represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from early termination in light of its sunk infrastructure, support, training and implementation costs and ongoing commitments, as well as the setting of pricing and discounts based upon the Client completing the Minimum Service Period.
- (e) Subject to staff availability, the Consultant's lien under this agreement, and payment of all outstanding fees in full, any additional work requested by the Client related to any part of the

Services being cancelled (including assistance with transition out), will be treated as Out of Scope Services. The Consultant may require upfront payment of its reasonable costs as well as reasonable notice, to perform and schedule such work at its then current rates.

- (f) If this entire Agreement or any Service Line ends for any reason, then in addition to any other rights the Consultant may have:
- (i) the Consultant may immediately suspend the Client's access to any relevant Services;
 - (ii) the Consultant will refund the Product Fee received (or cancel or amend any unpaid invoices as applicable), for any affected Product which the Consultant can reasonably cancel or return to its suppliers, less any administration, courier or restocking fees. The Client is not otherwise entitled to a refund or reduction of Product Fees (subject to its rights under the Competition and Consumer Act 2010 (Cth)).
 - (iii) the Consultant may issue an invoice for any relevant Services or Products or any other services or charges contemplated by this Agreement, that are payable but have not been previously invoiced;
 - (iv) the Client must immediately return any affected Provided Hardware upon request, otherwise the Consultant may issue an invoice for the replacement value of such Provided Hardware; and
 - (v) if the entire Agreement has ended, the Client must pay all of the Consultant's outstanding invoices whether or not due, including any invoice issued under clauses 10(f)(iii) and 10(f)(iv); and
 - (vi) the Consultant retains a lien over work in progress and any data until all outstanding invoices have been paid in full, including any invoice issued under clauses 10(f)(iii) and 10(f)(iv); and
 - (vii) the Client irrevocably grants the Consultant the right to access its systems (either remotely or by attending onsite) to perform any relevant transition out processes, relating to the service being cancelled, including to adjust, disable, remove or uninstall any relevant software (including network monitoring software or managed antivirus software) or Provided Hardware;
- (g) A party not in default may pursue any other rights or remedies available at law against a defaulting party, subject to clause 12.

11. NON-SOLICITATION

- (a) During the Restraint Period, the Client must not solicit, entice, hire or interfere with any of the Consultant's employees or subcontractors, or cause them to decrease their dealings with the Consultant, either directly or through an intermediary entity or entities.
- (b) If the Client breaches this clause, the Client must pay the Consultant an amount equal to 50% of that employee's or subcontractor's annual remuneration package. The parties agree that this is not a penalty, but represents a reasonable estimate of fair compensation for the costs to the Consultant of recruiting, hiring and training a suitable replacement for the employee or contractor.

12. DISPUTE RESOLUTION

- (a) If a dispute arises between the parties in relation to this Agreement, either party may give the other party a Written Notice that they intend to arrange mediation.
- (b) The parties must refer the dispute to an independent mediator within 21 days of the Written Notice.
- (c) If the parties cannot agree on a suitable mediator, either party may contact the Law Society in their state and request that they provide a mediator.

- (d) The costs of the mediation must be paid by the parties in equal shares.
- (e) No party may commence court proceedings unless the dispute remains unresolved after 28 days from the date of the Written Notice provided under clause 12(a).

13. DOCUMENTS

To the extent of any conflict, the various documents comprising the Agreement between the parties will take precedence in the following order (from highest to lowest priority):

- (a) any variation to these Standard Conditions of Business or the Service Order agreed in writing between the parties; then
- (b) in order of commencement date from the most recent:
 - (i) the appendix or schedule to the Service Order; and
 - (ii) the terms of the Service Order; then
- (c) these Standard Conditions of Business; then
- (d) any proposal the Consultant has provided to the Client to which these Standard Conditions of Business were attached; then
- (e) any policy or procedure the Consultant discloses to the Client (not forming part of the Service Order).

14. GENERAL

- (a) The Client may only assign, novate, or transfer any of the Client's rights under this Agreement with the Consultant's written consent, which must not be unreasonably withheld.
- (b) The Consultant may in its absolute discretion assign, novate, or transfer all or any of its rights under this Agreement with 7 days' Written Notice.
- (c) Upon assignment or novation, the parties' obligations and benefits under this Agreement are binding on and will benefit their respective representatives, successors and assigns.
- (d) Where relevant the parties' rights and obligations under clauses 4, 5(b), 5(d), 6, 7, 8, 10, 11, 12, and 14 will survive the termination of this Agreement for whatever reason.
- (e) Nothing in this Agreement constitutes an agency, partnership or contract of employment.
- (f) The laws of Queensland, Australia apply to this Agreement and the parties submit exclusively to the courts of that jurisdiction.
- (g) If any provision of this Agreement is ruled by a court to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision or part provision of this Agreement.
- (h) Nothing in this Agreement excludes, restricts or modifies or has the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010 (Cth)) and which by law cannot be excluded, restricted or modified.
- (i) Any delay or failure to enforce any rights in relation to a breach by the other party will not be construed as a waiver of those rights.
- (j) This Agreement contains the entire agreement between the parties and supersedes all previous negotiations or agreements in relation to the subject matter of this Agreement.
- (k) Any variation or amendment to this Agreement must be in writing signed by all parties.

15. DEFINITIONS AND INTERPRETATION

In this Agreement:

- (a) **Agreement** means the agreement between the parties, comprising the documents as set out in clause 13.
- (b) **Authorised Contact** means any person nominated by the Client under clause 5(a).
- (c) **Business Day** means a day (other than a Saturday or Sunday) upon which banks are ordinarily open for business in Brisbane, Queensland, Australia.

- (d) **Business Hours** means 9.00 am to 5.00 pm (AEST) on any Business Day.
- (e) **Claim** means any claim notice, demand, investigation, action, proceeding, litigation, or judgment however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence or statute) and whether involving a party to this Agreement or third party.
- (f) **Client's Materials** means any data or materials (including Hosted Materials) that the Client provides to the Consultant in order for the Consultant to provide the Products and Services to the Client, and includes any additional materials the Consultant reasonably requests from the Client from time to time.
- (g) **Confidential Information** means all spoken, written or electronically stored information belonging to or relating to either party and includes without limitation the Consultant's Works and Consultant's Materials, and any kind of technical, financial or business information, details of employees, suppliers, or customers, concepts, know-how and trade secrets, but excludes information in the public domain (other than by default under this Agreement) or information independently known to the other party.
- (h) **Consequential Loss** includes, without limitation:
- (i) loss or unauthorised disclosure of data;
 - (ii) loss of opportunity, loss of anticipated profits or savings, expenses incurred through default or breach, wasted overheads, loss of contract, loss of business, loss of production, loss of use, loss of goodwill, and all pure economic loss; and
 - (iii) disappointment, distress, stress, and inconvenience.
- (i) **Consultant's Materials** means any Documents, data, software or materials which are licensed to or owned by the Consultant, and any such items created by the Consultant independently of this Agreement.
- (j) **Consultant's Works** means all works and modifications produced or provided by the Consultant to the Client during the term of this Agreement capable of attracting Intellectual Property rights, but excluding third party material and Consultant's Materials.
- (k) **Document** means any device or media used to embody or retain data including but not limited to a document in writing, any map, plan, graph, drawing or photograph, film, negative, tape, disc, or other device.
- (l) **Fees** means the total fees for any Products or Services purchased by the Client, as set out in the Service Order.
- (m) **Force Majeure Event** means an unforeseen event beyond the control of the affected party, including an act of God, war, terrorism, riot, vandalism, hacking, information security breach, industrial action, or law or actions of any government or governmental agency.
- (n) **Hosted Materials** means any material which the Consultant hosts for the Client, whether uploaded by the Client or on its behalf.
- (o) **Indemnified Officers** means, in relation to a party, its directors, employees, contractors, agents, and representatives.
- (p) **Insolvency Event** in relation to a party means any of the following:
- (i) the party enters into a scheme of arrangement with its creditors;
 - (ii) the party is wound up or dissolved, or an administrator, liquidator or receiver is appointed; or
 - (iii) the party is placed under official management, commits an act of bankruptcy or is charged with a criminal offence.
- (q) **Intellectual Property** means all intellectual property rights, including copyright, inventions, patents (including patent applications), trade marks (whether registered or not), designs (whether registrable or not), eligible circuit layout rights, domain name licences, know-how, trade secrets, and includes the right to register any intellectual property rights.
- (r) **Liability** means any liability (whether actual or prospective), loss, damage, cost or expense of any description, including legal fees.
- (s) **Minimum Service Period** means, if applicable, the minimum length of Service Period specified in the Service Order, starting on the Start Date specified in the Service Order.
- (t) **Notice of Default** means a Written Notice that:
- (i) states that it is a notice of default;
 - (ii) specifies the default with sufficient detail and particulars;
 - (iii) gives a reasonable deadline by which the default must be remedied, of not less than 20 Business Days.
- (u) **Notice Period** means any notice period for termination set out in the Service Order, or if no such notice period is set out, then 30 days.
- (v) **Out-of-Scope Services** means all services outside the scope of the Service Order.
- (w) **Product** means any physical goods, such as Product or packaged software, that the Client requests, orders, or purchases under this Agreement.
- (x) **Product Fees** means the fees for Product that the Client requests, orders, or purchases under this Agreement.
- (y) **Provided Hardware** means any piece of hardware or accessories which the Consultant has provided to the Client in association with Services, which is owned by the Consultant or a third party.
- (z) **Restraint Period** means the duration of this Agreement and the longest enforceable period following termination of:
- (i) 6 months;
 - (ii) 3 months; or
 - (iii) 1 month.
- (aa) **Service Address** means each address set out in the Service Order for which the Consultant is providing Services (if applicable).
- (bb) **Service Address Contact** means any person nominated by the Client under clause 5(a).
- (cc) **Services** means services that the Client requests, orders, or purchases under this Agreement, the details of which shall be set out in the Service Order.
- (dd) **Service Fees** means the fees for Services that the Client requests, orders, or purchases under this Agreement.
- (ee) **Service Line** means a particular Service itemised as a separate line item in a Service Order.
- (ff) **Service Order** means the document to which these Standard Conditions of Business are attached and which sets out service specific terms and details of agreed Products and Services the Client is purchasing from the Consultant.
- (gg) **Upstream Supplier** means any wholesale or upstream supplier of any part of the Products or Services which the Consultant provides to the Client (including without limitation infrastructure or Software as a Service), whether the Consultant is a direct reseller, or whether the Upstream Supplier directly provides products or services to the Consultant, on which the Consultant's Products or Services rely.
- (hh) **Written Notice** means providing information in writing, including by email.