

GENERAL TERMS

INFOTRUST MANAGED TECHNOLOGY PTY LTD

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General Terms

1. Structure of Agreement

Documents and interaction

This Agreement comprises:

- (a) any Orders
- (b) these General Terms;
- (c) Third Party Terms;
- (d) any applicable Critical Information Summary or Product Schedule;
- (e) any applicable Service Levels;
- (f) any other document incorporated by reference by this Agreement or by the Parties' written agreement from time to time.

Unless expressly stated otherwise, if any of these documents is inconsistent with any other, then the documents will prevail in the order listed above.

1.2 Customer Purchase Order

If the Customer issues any purchase order, acknowledgement or similar form of document (**Customer Purchase Order**) relating to any Product described in an Order, any additional or inconsistent terms or conditions in the Customer Purchase Order will have no effect and the Customer acknowledges that such terms and conditions are rejected.

2. Term

- (a) This Agreement begins on the Contract Date.
- (b) The Minimum Term begins on the Service Start Date and continues for the agreed Minimum Term.
- (c) At the expiry of the Minimum Term the Agreement will automatically renew for a further 12 months (First Renewal Term), then will continue to renew until terminated in accordance with clause 12.1 (Termination by Either Party following Minimum Term).
- (d) The Customer agrees to repay in full any discounts applied to the Charges in the event:
 - (i) the Customer terminates this Agreement prior to the end of the Minimum Term, except where termination by the Customer occurs pursuant to clause 12.2 (Termination for Cause); and/or
 - (ii) Volumes of consumption based Products fall below the quantities defined in the Order.

3. Products

3.1 Supply by The Service Provider

- (a) The Service Provider offers the Products specified in an Order.
- (b) In consideration for payment of the Charges, the Service Provider will provide the Customer with the Products specified in any Order.
- (c) The Service Provider may in its absolute discretion cancel an Order and will notify the Customer if this occurs. Any Charges already paid by the Customer for the cancelled Order, will be reimbursed within ten (10) Business Days.
- (d) The Service Provider will supply the Products in a professional and workmanlike manner, in accordance with industry standards enforceable by law and any applicable Product Schedule.
- (e) During the Term the Service Provider may make changes at any time to the Product and / or Third Party supplied products or services provided under this Agreement, as long as such changes do not materially affect the physical or functional interchangeability or performance

of the Product and / or Third Party Product. In the event the change described in this clause 3.1(e) occurs there will be no impact to the Charges invoiced to the Customer. Any material changes to the Customer Solution from the original Order, will be agreed in writing by the Parties.

- (f) Where a Customer provides an incorrect location address for delivery of services or products, and The Service Provider incurs any costs as a result of this incorrect address, then The Service Provider reserves the right to pass through such costs (including third party fees) to the Customer. The Service Provider can provide reasonable substantiation documentation, upon request, when this occurs.
- (g) The Service Provider must obtain and maintain all the relevant regulatory and intellectual property licenses to deliver the Products and Services.

3.2 Installation and delivery

- (a) The Service Provider may, in its absolute discretion:
 - (i) not commence work on providing any Products until the Customer has paid any upfront Charges or deposit payable for the Products;
 - (ii) withhold delivery of the Products (including any Hardware) until the Customer has paid each invoice for the Products;
 - (iii) subject to clause 7.1, invoice the Customer for a Third Party Product upon confirmation of availability from the supplier. Transfer of ownership for ordered Hardware will be as described in clause 4 (Hardware); and
 - (iv) pass through to the Customer any associated fees incurred by the Service Provider as a result of procuring Hardware (e.g. fees for Hardware related services).
- (b) The Service Provider will advise the Customer of the date the Service Provider expects to install and deliver the Products and will use reasonable efforts to meet that target. Any service installation or delivery date is a target only, and the Service Provider will not be responsible for any failure to meet that target or for any loss or damage to the Customer or anyone incurred as a result of the failure to meet the target.

3.3 Use of Products

- (a) The Customer must only use the Products in accordance with the terms specified in this Agreement and any applicable law.
- (b) The Customer accepts full risk and responsibility for all use of the Products and is responsible for all Charges payable in relation to the use of the Products, whether or not such use was undertaken by the Customer, except to the extent that the Service Provider has caused or contributed to any unauthorised use.
- (c) Where applicable, the Products are only provided for the number of permitted users specified in an Order. The Customer must notify the Service Provider if the number of permitted users increases, as this may affect the Charges payable by the Customer (see clause 3.7 for impact to Charges following a change in Usage).

3.4 Service Levels

The Service Provider will supply the Products in accordance with the Service Levels and the terms in any applicable Product Schedule. If the Service Provider repeatedly fails to achieve the Service Levels and fails to take all reasonable steps to minimise the risk of reoccurrence of such failure, the Service Provider is deemed to have breached a Material Term of this Agreement and the Customer may give notice to remedy such breach pursuant to clause 12.2 of this Agreement

3.5 Third Party Providers

If the Products involve the Service Provider sourcing a license, good or service from a Third Party Provider:

- (a) third party terms & conditions (**Third Party Terms**), including any applicable End User License Agreement, may apply. The Customer agrees to any Third Party Terms applicable to any Third Party Provider license, good or service that is used in delivering the Products, and the Service Provider will not be liable for any loss or damage suffered by the Customer in connection with such Third Party Terms;
- (b) where the Products are not part of a Managed Environment, then the Customer acknowledges that all support is performed by the Third Party Provider. All requests therefore from the Customer for support in relation to performance, functionality, a fault, a defect or for any request for a license upgrade must be directed to the relevant Third Party Provider.
- (c) Where Products are part of a Managed Environment, then the Customer must direct all support requests to the Service Provider; The Customer acknowledges and agrees that Third Party service level commitments apply, and response and resolution times will be described within the Third Party terms.
- (d) the Customer indemnifies the Service Provider from and against all loss or damage as a result of the Customers breach of the applicable Third Party Terms;
- (e) The Service Provider will not be liable for any loss or damage suffered by the Customer in connection with a Product or Service provided by a Third Party, excluding where the loss or damage arises due to fraud, wilful misconduct or gross negligence on the part of the Service Provider

3.6 Additional Products

If the Customer requires additional Products (i.e. Products not already supplied by the Service Provider to the Customer), a new Order must be completed and signed by the Parties.

3.7 Variations to Products

Depending on the Product, the Customer may request changes to the Usage by:

- (a) Formal written request to the Service Provider - Upon receiving such request, the Service Provider (acting reasonably) must notify the Customer of the terms under which it will agree to any variation, or if it rejects the variation why it is not accepted
- (b) Contacting the Service Provider Support Centre – only for Customers receiving Managed Services Products
- (c) Request via Third Party vendor portal (only for applicable Products) - The Service Provider will monitor the Customer's actual Usage of the Services and if this exceeds the contracted Usage, the Service Provider will increase the Usage accordingly. Such increases will apply for the remainder of the Minimum Term and/or any further term of the Services. The Service Provider may raise additional invoices and/or adjust subsequent invoices to cover Charges for the increase in Usage. A reduction in Usage will not be reflected in the invoice if the Order specifies a minimum quantity for the Term.

3.8 Prepaid Products Validity Period

A Product may include a block of prepaid time available for the Customer to purchase to provide coverage for service contract exclusions and project variations. The Customer acknowledges and agrees that each block of prepaid time purchased expires 12 months from the date of invoice and that any unconsumed hours remaining after expiry will be written off by the Service Provider and will no longer be available for consumption by the Customer.

3.9 Training

If the Customer requires any training, an Order specifying the training must be completed and signed by the Parties.

4. Hardware

4.1 Risk and Ownership

Where an Order for Products includes renting or purchasing Hardware:

- (a) risk of loss or damage will transfer to the Customer on delivery of the Hardware;
- (b) where the Hardware is purchased (either by instalment payments or outright), ownership of the Hardware will transfer to the Customer on payment in cleared funds of all Charges (including any cancellation fee payable under clause 13.1(a)); and
- (c) if Hardware is delivered to the Customer before ownership passes to the Customer, then until ownership passes to the Customer, the Customer:
 - (i) must insure the Hardware in accordance with clause 17.2;
 - (ii) has no authority to deal with, and will not purport to deal with, or share or transfer possession of, the Hardware; and
 - (iii) must do everything necessary to protect the title of the Service Provider to the Hardware, including assuring third parties of the Service Provider's ownership of the Hardware.

4.2 Manufacturer warranties

Any Hardware purchased by the Customer from the Service Provider is subject to the warranties (if any) given by the manufacturer in respect of the Hardware. Where ownership of any Hardware purchased by the Customer under an Order has passed to the Customer, the Service Provider will assign to the Customer the benefit of any warranties given to it by the manufacturer of the Hardware. To the full extent permitted by law, the Service Provider does not provide any warranties to the Customer in addition to these manufacturer warranties.

5. Customer Acknowledgements and Obligations

5.1 Selection of Products

The Customer acknowledges and agrees that:

- (a) the Products to be supplied by the Service Provider under this Agreement are to be used wholly or predominantly for business purposes; and
- (b) The Service Provider has not made any representation, warranty or undertaking in relation to the Products (other than as expressly set out in this Agreement).

5.2 General Obligations

The Customer must:

- (a) not use the Products:
 - (i) for any improper or unlawful purpose, or in anyway that is the breach of the applicable Third Party Terms; or
 - (ii) in any way which damages or interferes with the network or infrastructure of the Service Provider or any of its Suppliers or with the supply of any service to any other customer of the Service Provider;
- (b) permit the Service Provider to deploy any tools necessary to enable effective and efficient delivery of the Services
- (c) provide the Service Provider with all documentation, information and assistance reasonably required by the Service Provider to supply the Products;
- (d) ensure that any Hardware owned by the Service Provider that is under the possession or control of the Customer remains at all times in good working order and condition and subject to any applicable warranty;
- (e) provide the Service Provider and its authorised Personnel with remote access to the Customers' IT infrastructure;
- (f) provide the Service Provider with access to:

- (i) the Customer's premises and the Customer's Users (ie Customer users of the Service Provider Products); and
- (ii) any accounts used by the Customer (including login details and passwords), to the extent reasonably required by the Service Provider to supply the agreed Products or to enable the Service Provider to examine the state of repair and operation of any Hardware owned by the Service Provider;
- (g) exercise all reasonable care and skill in performing its duties and obligations under this Agreement and in all matters act in good faith towards the Service Provider;
- (h) comply, and take reasonable steps to ensure that all Customer personnel and users comply, at all times with any reasonable directions given by the Service Provider from time to time in relation to the use of any of the Products. For Managed Services Product, this includes reasonable recommendations provided by the Service Provider to promote:
 - (i) a safer and more secure Managed Environment; or
 - (ii) a more efficient Managed Environment;
- (i) comply with any operational procedures and technical specifications specified in any Product Schedule, user guide or otherwise provided by the Service Provider or its Supplier;
- (j) reasonably consider and, where appropriate, implement the Service Provider's recommendations regarding security, software updates, and system upgrades. If the Customer chooses not to follow these recommendations and this results in, or is likely to result in, an impact on the delivery of services, the Service Provider may classify affected parts of the Managed Environment as Legacy Systems, in which case Clause 10.3 will apply;
- (k) notify the Service Provider of changes to nominated contacts, and contact information, associated with this Agreement (including any changes to Customer contacts listed on the Order)
- (l) notify the Service Provider where there is a proposed Change of Control; and
- (m) not during the term of this Agreement and for 12 months thereafter solicit or endeavour to entice away any employee, agent, consultant or contractor of the Service Provider, or counsel, assist or procure any third party to do so.

5.3 Provision of Information

The Customer agrees to provide the Service Provider with information relating to the Customer or its Business in connection with the supply of the Products, as reasonably required by the Service Provider from time to time. Information that may be required includes:

- (a) Customer Details;
- (b) information for credit management purposes;
- (c) information to assist the Service Provider or its Supplier in complying with its regulatory obligations; and
- (d) other information reasonably requested by the Service Provider relevant to the interests of maintaining the existing relationship between the Service Provider and the Customer.

5.4 Laws and Regulations

The Customer must:

- (a) comply with all laws, regulations, codes and standards applicable to the supply of the Products; and
- (b) provide any information, assistance and co-operation reasonably requested by the Service Provider to enable the Service Provider to comply with any laws, regulations, codes and standards applicable to the Products.

6. Financial Security

6.1 Creditworthiness

The Service Provider may review the creditworthiness of the Customer:

- (a) prior to the provisioning of Products, including if the Customer wishes to obtain additional Products from the Service Provider;
- (b) upon the expiry of the Minimum Term, and at least annually thereafter;
- (c) if an Insolvency Event occurs to the Customer;
- (d) if there is a Change of Control of the Customer;
- (e) if in the Service Provider's reasonable opinion there has been a material change in the Customer's financial position; or
- (f) if the Customer fails to comply with the payment terms of this Agreement, and has not raised a dispute under clause 7.3.

6.2 Consent and Co-operation in Obtaining a Credit Report

- (a) The Customer consents to the Service Provider:
 - (i) providing and exchanging details of the Customer with a credit reporting agency including, without limitation, information about the Customer's creditworthiness, credit history, credit capacity and commercial activities; and
 - (ii) obtaining a Credit Report which contains personal information concerning the Customer from any credit reporting agency for the purpose of assessing the Customer's application to the Service Provider for commercial credit or the ongoing creditworthiness of the Customer or collecting payments that are overdue in respect of commercial credit provided to the Customer by the Service Provider.
- (b) The Customer agrees to co-operate with the Service Provider, in the preparation of a Credit Report and promptly provide all financial information and non-financial information reasonably requested for the purpose of preparing a Credit Report.

6.3 Obligation to Keep The Service Provider Informed

The Customer agrees to inform the Service Provider as soon as practicable in the event that:

- (a) there is a material adverse change in its creditworthiness, as would be ascertained by a Party acting reasonably; or
- (b) the Customer, for any reason, considers it is unable to meet and comply with the payment terms of this Agreement and has not raised a dispute under clause 7.3.

6.4 Security Deposit

Where a Security Deposit is required, the following will apply:

- (a) The Service Provider may, where specified in the Order or by written notice, require the Customer to pay the Service Provider a Security Deposit of an amount up to 20% of the total value of the Agreement
- (b) The Customer must pay the Security Deposit to the Service Provider within five (5) Business Days of the Service Start Date or the date of written notice (as applicable). In addition to any other rights available to it under this Agreement, the Service Provider may suspend or terminate the supply of a Product if the Customer fails to pay the Security Deposit within the time required under this clause.
- (c) the Service Provider must hold the Security Deposit as security for the payment of any amounts due under this Agreement. If the Customer fails to pay any amount due on the due date for payment, the Service Provider may immediately deduct that amount from the Security Deposit in set-off of the Customer's payment obligation.

- (d) If the Service Provider deducts any monies from the Security Deposit under clause 6.4(c) the Customer must pay the Service Provider on demand by way of additional security that amount to replace the amount of the Security Deposit used in accordance with clause 6.4(c).
- (e) The Service Provider must return any part of the Security Deposit which is unused to the Customer on termination of this Agreement.

6.5 Directors' Guarantee

Where a Directors' Guarantee is required, the following will apply:

- (a) The Service Provider may, where specified in the Order or by written notice, require one or more directors of the Customer (each a **Guarantor**) to provide a guarantee to the Service Provider of the Customer's compliance with the Customer's duties and/or obligations arising under or in connection with this Agreement, including each obligation to pay money, and agree that:
 - (i) if the Customer in any respect fails to fully and properly perform any of its duties and/or obligations arising under or in connection with this Agreement; or
 - (ii) if the Customer commits any breach of any provision or fails to fulfil any warranty or discharge any indemnity set out in the Agreement,
 then the Guarantor will immediately upon the Service Provider's demand perform and fulfil in the place of the Customer each and every duty, obligation, provision, warranty or indemnity in respect of which the Customer has defaulted or as may be unfulfilled or not discharged by the Customer (**Directors' Guarantee**).
- (b) The Customer must provide the Directors' Guarantee to the Service Provider, in the form notified by the Service Provider, within ten (10) Business Days of the date requested. In addition to any other rights available to it under this Agreement, the Service Provider may terminate or suspend the supply of a Product if the Customer fails to provide the Directors' Guarantee within the time required under this clause.

7. Payment Terms and Fee Review

7.1 Invoice issued to the Customer

- (a) The Service Provider will invoice the Customer for:
 - (i) any Products (excluding Voice and ISP Products) following acceptance of the Customers' Order; and
 - (ii) for Voice and ISP Products on the Customer Order, following service activation of the relevant Product.
- (b) The Customer will pay the invoiced Charges, in accordance with clause 7.2 ("Due Date"), or as agreed in the Order.
- (c) Unless otherwise specified in the Order, at the commencement of each calendar month, the Service Provider will issue an invoice to the Customer:
 - (i) in advance, for the Charges for the Products to be supplied in that calendar month; or
 - (ii) for Charges for the Products supplied to the Customer during the previous month or a previous month where the Products have not previously been charged, or if an incorrect fee had previously been rendered;
- (d) The first invoice for Managed Services will be issued upon the operational transition to the Managed Environment, or as otherwise agreed between the parties. This invoice may include pro-rated Charges covering a period longer than one month. Subsequent invoices will be issued monthly in arrears, covering Charges for the preceding calendar month
- (e) The Customer acknowledges that the Service Provider's records of Products supplied are prima facie evidence that the Products were supplied.

- (f) While the Customer may direct that the Service Provider provide an invoice to the Customer's financier or other agent for payment, the Customer remains liable for all payments due under this Agreement.
- (g) Where the amount of an invoice issued under clause 7.1 is less than the Minimum Commitment, the Customer will pay an amount (the **True Up Amount**) equal to the difference between:
 - (i) the Minimum Commitment; and
 - (ii) the Charges specified in the invoice issued under clause 7.1. the Service Provider will invoice the Customer for the True Up Amount.

7.2 Due Date

- (a) The Customer must pay the Service Provider the invoiced Charges, with the exception of any disputed amount notified in accordance with clause 7.3(a), within fourteen (14) days from invoice date (the **Payment Period**). Subject to clause 3.7, the Customer must pay the Service Provider the invoiced Charges as per the Order. The payment must be by electronic funds transfer to a bank account nominated by the Service Provider, in cleared funds, without set-off or deduction of any taxes, levies, imports, duties, charges (including intermediary bank charges), fees (including merchant fees) or withholdings of any nature.
- (b) Where the Service Provider invoices the Customer (or any financier or other agent of the Customer) for part of the goods or services in an Order, payment must be made within the Payment Period. Payment of an invoice may not be delayed on the basis that another part of the goods or services in an Order remains unfulfilled.
- (c) If the Customer (including any financier or other agent of the Customer) does not pay all of the invoiced Charges (other than any amounts disputed in accordance with clause 7.3) within the Payment Period, then without affecting any other rights under this Agreement, the Service Provider may:
 - (i) charge the Customer interest on the unpaid amount, from the due date until it is paid in full, at an annual rate equal to the Reserve Bank of Australia's official cash rate plus 3%;
 - (ii) apply to the next issued invoice, a fee to cover administration costs relating to recovery of the late payment; and
 - (iii) without liability suspend the supply of any Product, including directing any Third Party Provider to suspend any license, good or service until the Customer has paid the Service Provider the unpaid amount, including any interest due.
- (d) If the Customer does not pay an invoiced amount by the due date, the Service Provider may charge the Customer for expenses incurred to recover the unpaid amount

7.3 Invoice Dispute

- (a) If the Customer, in good faith, disputes all or part of an invoice, it must:
 - (i) notify the Service Provider, via email (itbilling@infotrust.com.au) within thirty (30) days of the date of the invoice, setting out the reasons for its dispute and the specific amount in dispute; and
 - (ii) pay the undisputed amount of the invoice before the due date for payment.
- (b) The failure of the Customer to dispute an invoiced amount in accordance with clause 7.3(a) will constitute a waiver by the Customer of any objection to such amount.
- (c) Where the Customer disputes an invoiced amount in accordance with clause 7.3(a), the Service Provider will investigate the dispute and notify the Customer of the outcome of the investigation, and unless there is an obvious error, the Service Provider's decision regarding the dispute is final. If the Service Provider notifies the Customer that the disputed amount is payable, the Customer must pay that amount within ten (10) Business Days of receiving the Service Provider's notice of the outcome of its investigation.

7.4 Invoice Currency

The Service Provider will invoice in quoted currency. If the Service Provider accepts a request to bill in the Customer's local currency, the Customer will indemnify the Service Provider for any increase in Charges as a result of currency exchange fluctuations. The Service Provider may invoice the Customer, and the Customer will pay, any costs or fees incurred as a result of billing in the Customer's local currency.

7.5 Invoice Errors

The Service Provider may re-issue any invoice up to a period of twelve (12) months from the date of the initial invoice.

7.6 GST and other Taxes

- (a) Unless otherwise specified, the Charges in this Agreement are exclusive of GST.
- (b) If any Taxes are payable by the Customer in connection with the Products supplied under this Agreement, the Charges otherwise to be paid is increased by the amount of the Taxes payable, and that amount must be paid in the same manner and at the same time as the payment for Products.

7.7 Fee Review

The Service Provider may review, and by written notice of at least thirty (30) days, increase the Charges payable for Products supplied under this Agreement:

- (a) at any time to reflect any increase in input charges the Service Provider pays to a Supplier; and/or
- (b) on or after 1st July of any Term to reflect adjustments to the CPI.

8. Confidential Information and Intellectual Property

8.1 Customer's Obligations

The Customer must:

- (a) keep the Service Provider's Confidential Information confidential;
- (b) use the Service Provider's Confidential Information only for the purposes of this Agreement;
- (c) disclose the Service Provider's Confidential Information
 - (i) only to those of its employees or agents who have a need to know and who have agreed to keep it confidential;
 - (ii) as required by Law; and
- (d) immediately notify the Service Provider in writing if any person discloses or is suspected by the Customer of disclosing or intending to disclose any of the Service Providers' Confidential Information otherwise than in accordance with this Agreement

8.2 The Service Provider's Obligations

The Service Provider must:

- (a) keep the Customer's Confidential Information confidential;
- (b) use the Customer's Confidential Information only as permitted by or for the purposes of this Agreement, to comply with obligations imposed on the Service Provider or its Related Bodies Corporate by law and to comply with directions and orders issued by a Regulator; and
- (c) disclose the Customer's Confidential Information only:
 - (i) to those of its employees, agents or Suppliers and those of its Related Bodies Corporate employees, agents or Suppliers, who have a need to know and who have agreed to keep it confidential;
 - (ii) as required to facilitate use of the Customer's Confidential Information as permitted under clause 8.2(b) or as otherwise specified in this Agreement or at Law; and

- (d) immediately notify the Customer in writing if any person discloses or is suspected by the Service Provider of disclosing or intending to disclose any of the Service Provider's Confidential Information otherwise than in accordance with this Agreement

8.3 Permitted Disclosure

The obligations of confidentiality in clauses 8.1 and clause 8.2 do not apply to Confidential Information:

- (a) that is in the public domain otherwise than as a result of a breach of this Agreement or other obligation of confidence;
- (b) that is already known by, or rightfully received, or independently developed, by the recipient free of any obligation of confidence; or
- (c) where such Confidential Information is disclosed in compliance with an applicable law or a court order, provided that, prior to disclosing any such Confidential Information, the party making the disclosure has, where practicable, given the other party reasonable advance notice of such law or order and an opportunity to preclude or limit such production. This clause 8.3(c) will not prevent the Service Provider from disclosing any information the disclosure of which is required by the Listing Rules of the Australian Securities Exchange, and the Service Provider will not be required to give the Customer advance notice of such disclosure or an opportunity to preclude or limit such production.

8.4 Loss Suffered

The recipient of Confidential Information under this Agreement acknowledges and agrees that the Confidential Information is, by virtue of its special nature, valuable property of the disclosing party and that the disclosing party may suffer damage or loss by any disclosure by the recipient of the Confidential Information.

8.5 Return or destruction of Confidential Information

On expiry or termination of this Agreement, the recipient of Confidential Information under this Agreement will return to the discloser or destroy the Confidential Information in whatever medium it is held, which is in its possession or control (including all copies, reproductions, records, extracts and notes) immediately upon request by the discloser.

8.6 Intellectual Property Ownership

- (a) Each party warrants that:
 - (i) it owns, or is legally authorised to use, all Pre-Existing IP that it will use in connection with providing the Services or developing any Project IP;
 - (ii) its Pre-Existing IP will not infringe the rights of any third party; and
 - (iii) it will procure, at its cost, all licences and consents to its Pre-Existing IP which are necessary to provide the Services or develop any Project IP.
- (b) Each party acknowledges and agrees that each party remains the owner of its Pre-Existing IP and nothing in this Agreement or any Order Form is intended to transfer, assign or convey, or has the effect of transferring assigning or conveying, any right, title or interest in or to Pre-Existing IP.
- (c) Any Project IP developed during the course of the Service Provider delivering the Products or Services under this Agreement will immediately upon the creation vest in the Service Provider unless otherwise specified in the Order Form.
- (d) Subject to clause 3.5 (Third party Providers), the Service Provider warrants that:
 - (i) it owns or has otherwise obtained an appropriate licence over all Intellectual Property rights necessary to supply the Products and Services and ensure the Customer has the full benefit of the Products and Services;

- (ii) the supply, and Customer's use of, the Products and Services will not infringe any third party's Intellectual Property rights; and
- (iii) each Product and Service may be used by Customer without infringing the moral rights of any person.

8.7 Intellectual Property – Licenses

- (a) The Service Provider hereby grants (and must procure the grant) to the Customer a perpetual, non-exclusive, non-transferable, royalty free licence to use any the Service Provider Pre-Existing IP and Project IP to the extent necessary for the receipt and the use of the Services.
- (b) The Customer hereby grants (and must procure the grant) to the Service Provider a perpetual, non-transferable, royalty free licence for the Term of this Agreement to use any Customer Pre-Existing IP as is necessary for the Service Provider to provide the Services.
- (c) The parties agree that the other party will be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, methodologies and techniques related to the providing of Services or developing the Project IP, provided any Confidential Information or Pre-Existing IP is not used or disclosed in the course of such use.

9. Privacy

- (a) Each Party must comply with all Privacy Laws relating to privacy and processing Personal Information collected or handled in connection with this Agreement and any Order Form.
- (b) The Service Provider handles Personal Information as set out in the Service Provider's Privacy Policy.
- (c) By providing the Customer's and Customer Users' Personal Information to the Service Provider, the Customer acknowledges and consents to the collection, use, storage and disclosure of the Customer's and the Customer's Users' Personal Information for:
 - (i) purposes relating to the supply of the Products to the Customer; and
 - (ii) otherwise in accordance with the Service Provider's Privacy Policy.

10. Security

10.1 Physical Security and Access

When involved in the provision of Products that include access to the Customer's premises, facilities or other resources belonging to the Customer, the Service Provider will comply with the Customer's reasonable rules, and procedures, which have been provided to the Service Provider in writing. These procedures may relate to security or workplace health and safety and data security.

10.2 Data Security

When involved in the provision of Products that include the management, maintenance, storage and transfer of Customer Data, the Service Provider agrees that it will:

- (a) take reasonable actions to ensure Customer Data is secure, in line with the standard operating environment (SOE) of the Managed Environment;
- (b) notify the Customer if becoming aware of a breach of data security and will do all things reasonably necessary to remedy the breach; and
- (c) keep and maintain records of all Products provided in accordance with good professional practice.

10.3 Customer or Third Party Access to Managed Environment

- (a) During the Term, the Customer may wish for a member of the Customers personnel, or a nominated third party, to access the Service Provider Managed Environment. Such access is defined as a set of credentials supplied by the Service Provider to log into the infrastructure for support or change purposes. In this event, an Authorised Person from within the Customers' organisation must provide a written request to the Service Provider, specifying:

- (i) the reason for this request (i.e. for support or a change);
- (ii) the level of access required within the Managed Environment (single server, or whole domain);
- (iii) approximate start time, end time, and duration that the access is required for (minimum information required “date” and “business hours”); and
- (iv) the name of the person, agent or business requesting access.

The Service Provider in its absolute discretion may choose to accept or reject this request.

- (b) Should the Customer’s nominated party be granted access within the Service Provider Managed Environment, the Service Provider and the Customer agree:
 - (i) where the actions or omissions of either the Customer or Customer nominated party impacts the Service Providers’ ability to perform the Services within the Managed Environment, then the Service Provider will perform the Services on a commercially reasonable efforts basis, and no SLAs shall apply whilst the Customer nominated party has access to the Managed Environment;
 - (ii) where an incident occurs and there’s an impact to the Customer’s business operations, and the Service Provider demonstrates that the root cause is due to actions or inactions of the Customer or the New Service Provider, then all liability lies with the Customer;
 - (iii) where the Customer’s Managed Environment is located within a shared customer environment, and the Service Provider demonstrates that the actions or inactions of either the Customer or the New Service Provider has impacted that shared environment, then if the Service Provider incurs costs as a result of the impact to the shared environment, the Service Provider at its discretion can choose to pass on those reasonable costs to the Customer, and the Customer agrees to pay those reasonable costs to the Service Provider; and
 - (iv) at any time or when acting in the best reasonable interests of the Customer, the Service Provider has the right to revoke the access provided.

10.4 The Service Provider Support of Legacy Systems

The Service Provider will support Legacy Systems and legacy environments on a commercially reasonable efforts basis, however, these will not be subject to The Service Provider’s standard managed services Service Levels. Where an issue occurs in a Managed Environment that includes a legacy system, and a root cause analysis determines the issue occurred as a result of, or was contributed to by, that Legacy System, then Service Levels may not apply.

11. Maintenance and Suspension

11.1 Maintenance

The Service Provider or its Suppliers will need to perform scheduled and unscheduled maintenance or perform updates in relation to the Products from time to time. The Service Provider will endeavour, where reasonably possible, to perform maintenance during pre-approved change windows. If however unscheduled maintenance is required, then the Service Provider agrees to notify Customer as soon as possible.

Where the Service Provider has been prevented from performing maintenance or updates due to the actions or inactions of the Customer, then the Service Provider will notify the Customer of this event in writing. The Parties agree that following this notification, the Service Provider has a right to support any Products provided by the Service Provider on a reasonable effort basis, until such time

as the environment has been updated to an acceptable operating level (as assessed and determined by the Service Provider).

11.2 Suspension

the Service Provider may, without liability, immediately suspend performance of any or all of its obligations (including the supply of Products) under this Agreement if:

- (a) the Service Provider, acting reasonably, considers necessary to comply with any law or to protect the health and safety of any person;
- (b) the Customer defaults in the performance of any of its obligations under this Agreement and that default is not remedied within ten (10) Business Days;
- (c) the Customer is affected by an Insolvency Event; or
- (d) an Agreement with its Supplier(s) is suspended for any reason, that is outside the reasonable control of the Service Provider.

11.3 Other remedies

Any suspension under clause 11.2 or a Product Schedule does not prevent termination of this Agreement (as per clause 12) during the period of suspension and does not affect any other remedy of the Service Provider.

12. Termination

12.1 Termination by Either Party following Minimum Term

Following expiry of the First Renewal Term, either Party may terminate this Agreement by providing:

- (a) ninety (90) days' written notice for Managed Services, or
- (b) sixty (60) days' written notice for other the Service Provider Products.

12.2 Termination by either Party for Cause

Either Party may terminate this Agreement with immediate effect if:

- (a) the other Party breaches a Material Term of this Agreement and fails to remedy that breach within ten (10) Business Days after receiving notice from the notifying Party requiring it to do so;
- (b) the other Party breaches any other provision of this Agreement that is capable of being remedied and fails to remedy that breach within twenty (20) Business Days after receiving notice from the notifying Party requiring it to do so; or
- (c) any event referred to in clause 12.3 (insolvency Events) occurs.

12.3 Insolvency Events

A party (Defaulting Party) must notify the other in writing immediately if:

- (a) the Defaulting Party considers that there is a reasonable risk that it may cease to carry on business or its Business;
- (b) any step is taken to enter into any scheme or arrangement between the Defaulting Party and its creditors;
- (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Defaulting Party's assets or business or the Business; or
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the Defaulting Party's assets or business.

12.4 Repossession of Hardware

In addition to the Service Provider's rights to terminate, the Service Provider may also repossess any Hardware owned by the Service Provider if any of the events under clause 12.2 or 12.3 occurs. The

Customer will provide all reasonable assistance necessary to enable the Service Provider to repossess the Hardware, including but not limited to, access to locations or secured areas where the Hardware resides. If no prior notice is given, repossession of the Hardware will itself terminate this Agreement.

12.5 Accrued Rights

Termination of this Agreement will not affect the accrued rights or remedies of either party.

12.6 Termination Rights in Addition to other Rights

The rights of a party set out in this clause are in addition to and not in derogation of any right, power or entitlement of a party under any statute or regulation or otherwise at law or in equity.

13. Procedures on Expiry or Termination

13.1 Customer's Obligations on Expiry or Termination

On expiry or termination of this Agreement:

- (a) if the Agreement is terminated by the Customer pursuant to clause 12.1 or by the Service Provider pursuant to clause 12.2 or 12.3, immediately pay the Service Provider any cancellation fees associated with the termination of the Products, including those services supplied by Third Party Providers. the Service Provider will provide the Customer with details of any cancellation fees as part of the offboarding process;
- (b) on expiry or on giving or receiving notice of termination, the Customer must at its cost, deliver up any Hardware in its possession or control owned by the Service Provider in good working order and condition (reasonable wear and tear excepted) to the Service Provider at the place directed by the Service Provider together with a duly executed transfer of registration (where applicable) and such records regarding the Hardware as required by the Service Provider, failing which the Service Provider may repossess the Hardware – for the avoidance of doubt this clause 13.1(b) also includes vendor provided hardware, used in the supply of the Services;
- (c) each party must immediately settle all monies owed and owing between both parties;
- (d) each party must immediately return or confirm the destruction of all of the other party's Confidential Information, and other material and all copies thereof, in whatever medium it is held; and
- (e) except where the Minimum Term has expired, or the Agreement is terminated by the Customer pursuant to clause 12.2 (Termination for Cause), any discounts applied to the Charges must be repaid in full by the Customer.
- (f) For the avoidance of doubt, this clause 13.1 has no effect on the operation of clause 13.3.

13.2 Non-compliance

- (a) If the Customer does not immediately deliver up any Hardware where required under clause 13.1(b), the Customer must:
 - (i) Pay the Service Provider on demand, by way of liquidated damages, an amount equal to the average daily Charges payable by the Customer for that Hardware during the Term for each day the Customer fails to deliver up the Hardware in accordance with clause 13.1(b) or until the Service Provider retakes possession of the Hardware; and
 - (ii) pay the Service Provider on demand its Costs of Repossession.
- (b) If the Customer has not complied with clause 13.1(d) within five (5) Business Days of the date of expiry or termination, the Customer must allow the Service Provider (or any representative nominated by the Service Provider) to enter any premises owned or occupied by the

Customer to remove that material.

13.3 Transition-Out

- (a) At the expiry or termination of this Agreement for any reason, and subject to the Customer having paid all Charges due under clause 7 of this Agreement, the Service Provider will:
 - (i) close down any remote access it has to the Customers' Managed Environment; and
 - (ii) co-operate fully with the orderly hand-over of the performance of the services to the Customer or to a third party nominated by the Customer (**Transition-Out Assistance**).
- (b) Transition-Out Assistance will be charged on a time and materials basis as notified by the Service Provider, the scope of which is subject to the prior written approval of the Customer.
- (c) The Service Provider must provide the Transition-Out Assistance to the reasonable satisfaction to the Customer in such a way as to not interrupt business services.
- (d) As part of Transition-Out Assistance, the Service Provider will provide a copy of all documentation and supporting materials for the operational environment defined in a transition out schedule ("Transition Out Schedule"). The Transition Out Schedule will be updated from time to time during the Term, to list any as built documents, schedules, scripts, passwords, user permissions, access rights and all necessary materials to ensure a smooth handover of the business-as-usual setup. Other documentation and materials requested by the Customer which is not outlined in the Transition Out Schedule, will be charged by the Service Provider on a time and materials basis. The Service Provider must also return any Customer provided intellectual property listed in the Transition Out Schedule prior to the end of the Transition Out period.

14. Indemnity

14.1 Customer Indemnifies The Service Provider

Subject to the limitations of liability set out in clause 15, the Customer indemnifies the Service Provider against all losses, damages, expenses and costs (including reasonable legal costs) to the extent arising from as a result of:

- (a) any loss, destruction, theft or damage to any Hardware owned by the Service Provider that is under the possession or control of the Customer; or
- (b) any grossly negligent act or omission of the Customer or any of its officers, employees, agents, contractors or representatives relating to this Agreement or any Products provided under the Agreement;

provided that such indemnity is reduced proportionally to the extent that the Service Provider caused or contributed to the losses, expenses, damages, expenses or costs.

14.2 The Service Provider Indemnifies Customer

Subject to the limitations of liability set out in clause 15, the Service Provider indemnifies the Customer against all losses, damages, expenses and costs (including reasonable legal costs) to the extent arising from as a result of:

- (a) any grossly negligent act or omission of the Service Provider or any of its officers, employees, agents, contractors or representatives relating to this Agreement or any Products provided under the Agreement; provided that such indemnity is reduced proportionally to the extent that the Customer caused or contributed to the losses, expenses, damages, expenses or costs.

15. Liability

15.1 No implied terms

- (a) The Service Provider does not exclude or limit the application of any provision of any statute (including the *Competition and Consumer Act 2010 (Cth)*) where to do so would:
 - (i) contravene that statute; or
 - (ii) cause any part of this clause to be void.
- (b) Except to the extent clause 15.1(a) applies, the Service Provider excludes all:
 - (i) statutory liability;
 - (ii) tortious liability (except to the extent that loss or damage is a consequence of the Service Provider's gross negligence in which event the aggregate amount claimed must not exceed the value of the Products provided relating to that loss or damage); and
 - (iii) conditions, warranties or guarantees implied by custom, the general law or statute, arising out of, or relating to the Products, any failure to supply or delay in supplying the Products or this Agreement.
- (c) With respect to any Third Party Products, the Service Provider provides these "as-is" except to the extent prohibited by law, the Service Provider makes no warranties of any kind, whether express, implied, statutory or otherwise with respect to the Third Party Products and Services including any implied warranted of merchantability, satisfactory quality, fitness for a particular purposes, non-infringement or quiet enjoyment, any warranties that the material or content will be error free or free of harmful components, and any warranties arising out of any course of dealing or usage of trade.
- (d) Where legislation implies into this Agreement any condition, warranty or guarantee that cannot be excluded, then to the extent permitted by law, the Service Provider's liability for any breach of such condition, warranty or guarantee is limited, at the Service Provider's option, to refunding the price of the goods or services in respect of which the breach occurred or to providing, replacing or repairing those goods or providing those services again (except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption).

15.2 No Consequential Loss

Neither party is liable to the other party for any Consequential Loss, however caused, in connection with or related to this Agreement or in respect of the Products.

15.3 Limitation of liability

- (a) Subject to clause 15.3(b), the total aggregate liability of each Party arising under or in connection with this Agreement is limited to the Charges payable by the Customer to the Service Provider in the 12-month period prior to the date of the relevant claim.
- (b) The limitation of liability in clause 15.3(a) does not apply to any liability for:
 - (i) any payment due under this Agreement;
 - (ii) any personal injury or death in relation to the supply of the Products;
 - (iii) any damage to the Customer's property resulting from the supply of the Products, but the Service Provider limits its liability to its choice of repairing or replacing the property or paying the cost of repairing or replacing it;
 - (iv) any damage to Hardware owned by the Service Provider that is under the possession or control of the Customer; or
 - (v) any breach of clause 5.2 (Customer Acknowledgements and Obligations) or clause 8 (Confidential Property and Intellectual Property).

15.4 Contributory Liability

- (a) The liability of a party for loss or damage sustained by the other party will be reduced proportionately to the extent that such loss or damage has been caused by the other party's failure to comply with its obligations and responsibilities under this Agreement and/or to the extent that the negligence of the other party has contributed to such loss or damage.
- (b) The Service Provider will not be held accountable for a failure to meet its contractual obligations to the extent that the failure is attributable to the provision by the Customer of inaccurate or incomplete information or the failure of the Customer to comply with its obligations under this Agreement.

15.5 Loss or Damage of Hardware

- (a) If any Hardware owned by the Service Provider that is under the possession or control of the Customer (the **Affected Hardware**) is lost, stolen or damaged beyond economic repair, the Customer must immediately notify the Service Provider and within five (5) business days of notification, either:
 - (i) replace the Affected Hardware at the cost of the Customer with goods approved by the Service Provider being at least equivalent in type, functionality and value; or
 - (ii) pay the Service Provider the aggregate of the following amounts:
 - (A) any invoice then due and payable by the Customer to the Service Provider in respect of the Affected Hardware;
 - (B) applicable cancellation fees associated with the Affected Hardware; and
 - (C) the amount which the Service Provider notifies the Customer is, as at the date of the Customer's notice, the residual value referable to the Affected Hardware (being the residual value assumed by the Service Provider in calculating the payments, adjusted in accordance with the Service Provider's usual procedures to include its required investment return on the relevant residual value up to that date).
- (b) If the Customer replaces the Affected Hardware in accordance with clause 15.5(a)(i), then the Customer must ensure that the Service Provider obtains clear title to the replacement goods and the priority of the Service Provider's PPS Security Interest in the replacement goods is no less favourable than the priority of its PPS Security Interest in the Affected Hardware. The replacement goods shall be taken to be the Hardware (or the relevant item or items of the Hardware as the case may be) for the purposes of this Agreement.
- (c) If clause 15.5(a)(ii) applies, then, upon receipt by the Service Provider of the amount payable by the Customer under clause 15.5(a)(ii) in respect of the Affected Hardware:
 - (i) this Agreement will terminate in relation to the Affected Hardware;
 - (ii) this Agreement will continue with respect to any remaining Products or items of the Hardware, with new Charges applying as from the next invoice date, being the Charges otherwise payable less the proportion of the Charges which the Service Provider calculates was payable in respect of the Affected Hardware; and the Service Provider will make a pro rata adjustment (where applicable) to any Charges already paid in respect of the Affected Hardware for the period from receipt of the payment referred to in clause 15.5(a)(ii) to the next date on which a Charge falls due.
- (d) If The Service Provider receives any insurance proceeds in respect of the Affected Hardware:
 - (i) where the Customer has replaced the Hardware in accordance with clause 15.5(a)(i), such proceeds (net of GST) will be credited to the Customer; and
 - (ii) where clause 15.5(a)(ii) applies, such proceeds (net of GST) will be credited to the Customer to the extent of the payment received from the Customer under clause 15.5(a)(ii)(B) and clause 15.5(a)(ii)(C).

16. Force Majeure

- (a) Neither Party will be liable for any failure or delay in complying with any term of this Agreement if such failure or delay directly or indirectly results from an event outside that Party's reasonable control (**Force Majeure Event**), including but not limited to, fire, storm, flood, earthquake, pandemic, accident, war, labour dispute, materials or labour shortage other than its own staff or staff under its control, law or regulation or act or omission of any third person (including, without limitation, a carrier). Despite the foregoing, payment of money is never excused.
- (b) The Party unable to perform its obligations must:
 - (i) notify the other Party promptly, providing reasonable details of the Force Majeure Event and, so far as is known, the probable extent to which the affected Party will be unable to perform or be delayed in performing its obligation; and
 - (ii) use its best efforts to resume performance in accordance with this Agreement as soon as possible.
- (c) If any Force Majeure Event continues for more than six (6) months then this Agreement may be terminated immediately by either Party giving notice to the other Party.

17. Insurance

17.1 The Service Provider's insurance

The Service Provider will maintain the following insurance for the duration of this Agreement:

- (a) professional indemnity for \$10 million, any one claim and in the aggregate;
- (b) product and public liability \$20 million, any one occurrence, and in the aggregate;
- (c) Cyber liability for \$10 million, any one claim and in the aggregate; and
- (d) workers' compensation insurance as required by law in respect of all employees and, where relevant, sub-contractors.

17.2 Customer's insurance of Hardware

If Hardware is delivered to the Customer before ownership passes to the Customer, then until ownership passes to the Customer:

- (a) the Customer must keep the Hardware insured with an insurer of recognised standing for its full replacement value against loss or damage by theft, accident, fire and any other risks that are insured against by prudent persons engaged in a similar business to the Customer;
- (b) the Customer must ensure that the interest of the Service Provider as owner of the Hardware is noted on all insurances. The Customer must provide to the Service Provider on demand a certificate of currency in relation to the insurances which is satisfactory to the Service Provider and must ensure nothing is done or occurs which might prejudice or invalidate any insurances;
- (c) The Service Provider is entitled to receive all amounts payable under any relevant insurance of the Hardware in respect of damage to, or loss of, the Hardware and the Customer irrevocably appoints the Service Provider and each of its authorised representatives, as attorney for the Customer to recover or compromise in the respective names of the Service Provider and the Customer any claim for loss or damage under any of the insurances, and to give effectual releases and receipts. The Customer also irrevocably authorises the Service Provider to apply any insurance or other moneys received (less any GST) in respect of any loss of, or damage to, the Hardware towards any debt or liability of the Customer to the Service Provider or, in the discretion of the Service Provider, to repairing such damage or replacing the Hardware. To the extent that those insurance moneys may be insufficient to effect such repairs, the Customer must apply its own moneys for this purpose; and

- (d) the Customer must promptly notify the Service Provider if the Hardware is lost, stolen or damaged and make a claim for insurance within the relevant period.

18. Work Health & Safety

- (a) If any Service Provider Personnel are visiting the Customer's premises then the Service Provider and its Personnel will comply with all lawful directions of the Customer when using the Customer's premises, including but not limited to documented procedures relating to occupational health, safety and security in effect at those premises. This obligation extends to all procedures which are notified to the Service Provider by the Customer or which might reasonably be inferred by the Service Provider in all the circumstances.
- (b) In addition to the requirements of clause 18(a), when working on the Customer's premises, the Service Provider Personnel will comply with all applicable Commonwealth, State and local government Laws, regulations and procedures relating to occupational health and safety.

19. PPSA (Personal Properties Securities Act)

- (a) This clause 19 applies if the Service Provider is of the opinion that a PPS Security Interest is, or is contemplated to be, created under this Agreement.
- (b) The Service Provider may register a PPS Security Interest. The Customer must do anything (such as obtaining consents and signing documents) which the Service Provider requires for the purposes of: (i) ensuring that the Service Provider's security interest is enforceable, perfected and otherwise effective under the PPSA; (ii) enabling the Service Provider to gain priority for its security interest; and (iii) enabling the Service Provider to exercise rights in connection with the security interest. the Service Provider's rights under this Agreement are in addition to and not in substitution for its rights under other law (including the PPSA) and the Service Provider may choose whether to exercise rights under this Agreement and/or under such other law, as the Service Provider sees fit.
- (c) The Customer warrants that where any Hardware delivered to the Customer before ownership passes to the Customer includes Serial Numbered Property, it has provided the Service Provider with the serial numbers that the Service Provider would require to make an effective registration against all such serial numbered property in accordance with the PPSA. The Customer must not change or remove the serial number of any serial numbered property after it has disclosed the relevant number to the Service Provider.
- (d) The Customer waives its right under section 157 of the PPSA to receive notice of any verification statement.
- (e) The Service Provider and the Customer agree with each other not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in circumstances required by sections 275(7)(b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under section 275(7)(c) or request information under section 275(7)(d) if the Service Provider approves. Nothing in this clause will prevent any disclosure by the Service Provider if it believes it is necessary to comply with its other obligations under the PPSA.
- (f) To the extent that it is not inconsistent with clause 19(e) constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, the Customer agrees that the Service Provider may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that the Service Provider is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (g) To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Service Provider of any PPS Security Interest provided for by this Agreement, the Service

Provider and the Customer agree with each other that the following provisions of the PPSA do not apply:

- (i) to the extent that section 115(1) of the PPSA allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
 - (ii) in addition, to the extent that section 115(7) of the PPSA allows them to be excluded: sections 127, 129(2) and (3), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.
- (h) If section 115(1) of the PPSA does not allow section 125 of the PPSA to be excluded, the Customer agrees that at any time after any PPS Security Interest provided for by this Agreement has become enforceable, the Service Provider may delay disposing of, or taking action to retain, the whole or part of the collateral to the extent permitted by law.

20. Disputes

(a) **Objective**

The parties agree to use reasonable commercial efforts to resolve by negotiation any problem that arises between them under this Agreement. Neither party will resort to legal proceedings, or terminate this Agreement, until the following process has been exhausted, except if it is necessary to seek an urgent interim determination.

(b) **Notification**

If a problem arises (including a breach or an alleged breach) under this Agreement which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at the operational level, a party concerned about the problem may notify the other. Management representatives of each of the parties will then endeavour in good faith to agree upon a resolution.

(c) **Mediation**

If the management representatives fail to reach a solution in accordance with clause 20(b) within 5 (five) working days (or such other time frame agreed between the parties), the parties may agree to mediation. The mediator will be selected by the President for the time being of the Victorian Law Society or by his/her delegate.

(d) **Expert Determination**

If mediation pursuant to clause 20(c) fails, or either party states it does not wish to attempt settlement through a mediator within 10 (ten) working days (or such other time frame agreed between the parties), the parties may agree to expert determination. The expert will be selected by the President for the time being of the Victoria Law Society or by his/her delegate. Where the parties agree to proceed by expert determination, the determination will be conducted pursuant to any relevant legislation.

(e) **Proceedings**

If mediation and/or expert determination fails, or if either party states that it does not wish to proceed with either mediation or expert determination, then either party may commence legal proceedings against the other.

(f) **Continued Performance**

Unless prevented by the nature of the dispute, the parties will continue to perform this Agreement while attempts are made to resolve the dispute. In circumstances where the dispute relates to payment and the Service Provider is required to continue to perform its obligations under this Agreement pursuant to this clause, the Customer will continue to pay the Service Provider any undisputed amounts.

21. Anti-Bribery

- (a) The Parties will at all times comply with all applicable Laws, statutes, regulations and codes relating to anti-bribery and improper payments including but not limited to the *Criminal Code Act 1995* (Cth) (**Anti-Bribery Requirements**):.

- (b) The Service Provider will ensure that all persons performing services or providing goods in connection with this Agreement comply with the Service Providers' Anti-Bribery and Corruption Policy, available on the Service Providers' website.

22. Modern Slavery

The Service Provider represents, warrants and undertakes:

- (a) that no form of Modern Slavery is used in its business or by its directors, officers, employees, agents, representatives, contractors or subcontractors;
- (b) to comply with all applicable employment and work health and safety laws;
- (c) to comply with all applicable statutory requirements relating to Modern Slavery;
- (d) to comply with applicable Modern Slavery reporting requirements including but not limited to the Modern Slavery Act 2018 (Cth), and
- (e) to notify the Customer promptly upon becoming aware of any incident, complaint or allegation that the Service Provider or any entity in the Service Provider's supply chain has engaged in Modern Slavery;
- (f) undertakes not to engage in Modern Slavery; and
- (g) upon becoming aware of any actual, reasonably suspected or anticipated breach of this clause 22, will immediately provide written notice of the breach, giving full details, to the Customer.

23. General

23.1 Performance of Services

- (a) The Service Provider may perform any of its Services or provide any Products under this Agreement by arranging for them to be performed by any of its Related Bodies Corporate or nominated Third Party Providers.
- (b) Sprit may perform any other of its obligations under this Agreement by arranging them to be performed by any of its Related Bodies Corporate or Third Parties.
- (c) Subject to 15.1(c) the Service Provider remains responsible for the acts and omissions of its subcontractors. Related Bodies Corporate or nominated Third Parties to the same extent as if they were acts and omissions of the Service Provider.

23.2 Assignment

Notwithstanding clause 23.1, the Customer must not assign, novate or otherwise transfer any right or obligation under this Agreement without the Service Provider's written consent, which must not be unreasonably withheld or delayed. the Service Provider may assign, novate or transfer all or any of its rights and obligations under this Agreement to any of its Related Bodies Corporate, but not otherwise without the written consent of the Customer, which must not be unreasonably withheld or delayed.

23.3 Independent contractors

The Parties agrees that they are independent contractors and that this Agreement does not constitute in any form a partnership, joint venture, franchise, agency or employment relationship.

23.4 Due Diligence

The Customer acknowledges to the Service Provider that it has had ample opportunity to conduct all due diligence activities which it required before entering into this Agreement (including obtaining, or having the opportunity to obtain, legal advice), and that it has entered into this Agreement based on its own investigations and has not relied on representations or warranties made by the Service Provider.

23.5 Entire Agreement

This Agreement constitutes the entire agreement between the Parties as to its subject matter and supersedes all prior representations, understandings, arrangements or agreements in connection with that subject matter.

23.6 Variations

- (a) The Service Provider may make minor variations to this Agreement from time to time by publishing a revised version of the General Terms or any other document incorporated by reference by this Agreement on the Service Provider website. For the purposes of this clause 22.6(a), a minor variation means a change which, in the Service Provider's reasonable opinion, either benefits or has a neutral impact on the Customer
- (b) After the expiry of the Minimum Term, the Service Provider may make a major variation by giving ninety (90) days' written notice.
- (c) Any other amendments must be agreed by the Parties in writing.

23.7 Severability

Any part of this Agreement that is illegal or unenforceable will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement.

23.8 Waiver

The failure of either Party at any time to insist on performance of any provision of this Agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of this Agreement.

23.9 Notices

A notice under this Agreement must be in writing and hand delivered, sent by pre-paid post to the address of the recipient, or sent by email, to the address or email set out in the Order, or otherwise notified from time to time. A notice given will be deemed received: (i) if hand delivered, on the date of delivery; (ii) if sent by pre-paid post, three (3) days after the date of posting; and (iii) if sent by email, on the date sent, unless the recipient is able to demonstrate that the email failed to deliver.

23.10 Survival

Any provisions of this Agreement that require or contemplate performance or application after termination are enforceable against the other Party and its successors and assignees: clause 7 (**Payment Terms and Fee Review**), clause 8 (**Confidential Information and Intellectual Property**); clause 9 (**Privacy**); clause 10 (**Security**), clause 13 (**Consequences of Termination**); clause 14 (**Indemnity**); clause 15 (**Liability**); clause 19 (**PPSA – Personal Properties Securities Act**), clause 20 (**Disputes**) clause 21 (**Anti-Bribery**), and clause 22 (**Modern Slavery**)

23.11 Governing Law

This Agreement is governed by the laws applicable in the State of Victoria and the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria.

24. Definitions

In this Agreement:

Agreement means any Orders, the General Terms, any applicable Product Schedule, the Service Levels, and any other documents incorporated into the Agreement.

Authorised Person means Customer personnel authorised by the Customer to make written requests to the Service Provider, as described in clause 10.3 (Customer or Third Party Access to Managed Environment). The Authorised Person must be identified to the Service Provider in writing, and may be identified in the Order or Agreement.

Business means the Customer's business.

Business Day means a day excluding Saturdays, Sundays and public holidays in Melbourne, Victoria.

Business Hours means the the Service Provider service level commitments as defined in the Order.

Contract Date means the date of the executed agreement.

Change of Control means, in relation to the Customer, a change in any of the following:

- (a) control of the composition of the board of directors of the corporation;
- (b) control of more than one half of the voting rights attaching to shares in the corporation; or
- (c) control or more than one half of the issued share capital of the corporation, excluding any part of the issued share capital which carries no right to participate beyond a specified amount in the distribution of either profit or capital,

except where that change is as a result of trading of securities on any securities exchange reconstruction, amalgamation, merger or consolidation.

Charge means a fee for a Service Provider Product, as specified in an Order or as varied in accordance with this Agreement.

Confidential Information of a Party means all information treated by that Party or any of its Related Bodies Corporate as confidential (regardless of its form and whether the other Parties becomes aware of it before or after the date of this Agreement). the Service Provider's Confidential Information includes the terms of this Agreement and the Charges. The Customer's Confidential Information includes the Customer's Personal Information and Customer Data.

Consequential Loss means:

- (a) loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings, pure economic loss, loss or corruption of data, loss arising from any unauthorised or illegal access by any person to any part of the system providing the Products, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss and any increased operating costs suffered or incurred by any person whether arising in contract or tort (including negligence) or under any statute, any other form of consequential, special, indirect, punitive or exemplary loss or damages and any third Party loss; and
- (b) any penalties or fines imposed by a Regulator.

Consumer has the meaning given in the *National Consumer Protection Credit Act 2009* (Cth).

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

Costs of Repossession means all reasonable costs and expenses incurred by the Service Provider in effecting, or attempting, repossession of Hardware owned by the Service Provider, satisfying any third party claim, and in storing, repairing to good working order and condition, insuring, valuing and disposing of the Hardware after repossession and any costs which are incidental to any of these matters, including reasonable legal costs.

CPI means the Consumer Price Index, Australia published by the Australian Bureau of Statistics for the 12 month period prior to the relevant variation of the Charges.

Credit has the meaning given in the in the *National Consumer Protection Credit Act 2009* (Cth).

Credit Report means a report including financial and non-financial information about the Customer, summarising the creditworthiness, credit standing, credit history and/or credit capacity of the Customer.

Critical Information Summary means a document described as a Critical Information Summary on the Service Provider's website, as amended from time to time.

Customer means the customer specified in the Order.

Customer Data means the Customer's information, data or other electronic materials.

Customer's Users means any officer, employee, agent, contractor or representative of the Customer that use, or request to use, the Products.

End User Licence Agreement means an end user license agreement and any supplemental terms, which provides the terms and conditions governing the use by the Customer of a license, good or service supplied by a Third Party as amended by the Third Party from time to time.

General Terms means the terms set out in the 'General Terms' section of this Agreement.

GST means a goods and services tax, or a similar value added tax, levied or imposed under the *A New Tax System (Goods and Services Tax Imposition - General) Act 1999* or the relevant jurisdiction.

Hardware means any hardware, equipment or other goods specified in an Order.

Insolvency Event has the meaning given in clause 12.5.

Intellectual Property means proprietary information and property owned by the Service Provider or its Related Bodies Corporate including copyright, trademarks, patents and other intellectual property rights including copyright in software used to provide the Products and any publications and literature of the Service Provider.

Legacy System means devices or solutions that are no longer supported by the vendor or manufacturer, have reached end-of-sale (no longer available for purchase), and are designated as end-of-life, meaning they no longer receive updates, maintenance, or security patches.

LOC ID means location ID and is the unique alphanumeric code that uniquely identifies a physical address for telecommunications services.

Managed Environment means the Customer's IT environment managed by the Service Provider under this Agreement.

Managed Services is the Service Provider Product where the Service Provider manages the Customer's IT environment.

Material Term means a term of this Agreement relating to clause 3 (**Products**), clause 4 (**Hardware**), clause 5 (**Customer Acknowledgements and Obligations**), clause 6 (**Financial Security**), clause 7 (**Payment Terms and Fee Review**) and clause 8 (**Confidential Information and Intellectual Property**), clause 9 (**Privacy**), clause 10 (**Security**), clause 17 (**Insurance**), clause 18 (**PPSA**) and clause 19 (**Disputes**) clause 20 (**Modern Slavery**) clause 21 (**Anti-Bribery**).

Minimum Commitment means a commitment by the Customer to pay the Service Provider a minimum amount each month (or such other period specified), as specified in the Order.

Minimum Term means the minimum period of time (if any) which you have agreed to receive the Product (also described as 'Contract Term'). The Minimum Term begins on the Service Start Date and runs for the period of time specified in the Order.

Modern Slavery means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery-like exploitation as prohibited or defined as a modern slavery offence under all applicable anti-slavery and human trafficking laws, statutes and codes from time to time in force including, but not limited to the *Criminal Code Act 1995* (Cth), sch 1 divisions 270 and 270 and the *Modern Slavery Act 2018* (Cth). Modern Slavery includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes

Order means an order by the Customer for one or more Product, in such form as provided by the Service Provider from time to time (including in a Proposal signed by the Customer).

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPS Register means the Personal Property Securities Register established under Part 5.2 of the PPSA.

PPS Security Interest means a security interest under the PPSA.

Pre-Existing IP means Intellectual Property Rights which are in existence at the date of this Agreement or come into existence after the date of this Agreement otherwise than in connection with this Agreement

Privacy Laws means any laws, regulations, codes or policies applicable to protecting the privacy of individuals and their personal information, including Part 13 of the *Telecommunications Act 1997* (Cth), the *Privacy Act 1988* (Cth).

Privacy Policy means the Service Provider's privacy policy available on the Service Provider's website, as amended from time to time.

Product means a product or service offered by the Service Provider.

Product Schedule means a schedule (including any document described as a Critical Information Summary (or a Service Schedule) containing additional terms and conditions applicable to the particular Product, as notified or provided to the Customer by the Service Provider or available on the Service Provider's website, as amended from time to time.

Professional Services means installation, implementation, training, software development or other consulting services or any service described in an Order as a Professional Service.

Project IP means an Intellectual Property that was created during the life cycle of the Project.

Proposal means a proposal by the Service Provider to supply one or more Products.

Regulator means the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Communications Alliance Ltd, the Australian Competition and Consumer Commission and any authority or agency which has lawful authority over any of the subject matter of this Agreement.

Related Bodies Corporate has the meaning given to it in the *Corporations Act 2001*(Cth).

SaaS means a method of software delivery and licensing in which Software is accessed online via a subscription.

Serial Numbered Property means any Goods which may or must be described by serial number in a registration under the PPSA.

Service Levels means the service levels relating to the supply of a Product, as set out in a relevant Product Schedule or as notified or provided to the Customer or available on the Service Provider's website, as amended by the Service Provider from time to time.

Service Provider means Infotrust Managed Technology Pty Ltd ABN 99 112 320 804 of Suite 1 Level 13, 90 Collins Street, Melbourne, VIC 3000.

Service Start Date means, in respect of each Product supplied by The Service Provider pursuant to an Order, the date when the Product is available for use by the Customer.

Software means software consisting of machine readable instructions, its components, data and audio visual content (such as images, text, recordings or pictures) and related licensed materials including all whole or partial copies, which is owned or licensed by the Service Provider or one of its Related Bodies Corporate.

Software Subscription means any Charge for Software or for an enrolment for a SaaS.

Subscribed Product means those Products which the Customer has purchased on a subscription basis via the Service Provider.

Supplier means the Service Provider's supplier of a Product.

Taxes means a tax, import tax, charge or custom imposed or collected by any taxing authority or agency, gross receipts tax, levy, duty, deduction or withholding, however it is described, that is imposed by law or by a government agency, including any tax (such as GST) that the Party is required by law to collect, together with any related interest, penalty, fine or other charge.

Term means the term of this Agreement, as set out in clause 2.

Third Party means any third party who, at the Service Provider's direction, supplies a license, good or service to the Customer.

Voice means voice Products, provided by the Service Provider.

Volume means volume of consumption-based Services provided by the Service Provider

About Infotrust

Infotrust is Australia's leading ASX-listed technology and cyber security services provider and the largest member of the Infotrust Group (ASX:ITS). With over 250 professionals nationwide, including 140+ cyber specialists, Infotrust delivers end-to-end cyber security, managed IT, and advisory services for public and private sectors. Its Australian-based Security Operations Centre operates 24/7, ensuring real-time threat detection and rapid response. Infotrust empowers organisations to manage risk, protect digital assets, and strengthen Australia's cyber resilience.

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