

1. Definitions

- 1.1 **“Authorised User”** means:
- (a) an employee, agent or contractor of the Customer; or
 - (b) any other third party authorised by the Customer to use an Authorised Account.
- 1.2 **“Business Day”** means any day which is not a Saturday, Sunday, public holiday, special holiday, or a bank holiday in the state in which this Contract is applied. If the giving of any notice, the making of any payment, or the doing of any act required or permitted under this Contract, the timing of which falls on a day which is not a Business Day, then the timing for such actions shall be extended and will be allowed to take place on the next Business Day, but no later.
- 1.3 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.4 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **“Cookies”** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when using MIACOR IT's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.6 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting MIACOR IT to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors, and permitted assigns.
- 1.7 **“Customer Data”** means all the unprocessed data supplied and inputted by the Customer into the secured access area for the subscription Services from time to time in conjunction with the subscription Services. Such data (data or information) may include, but not be limited to, still and moving images, any sound recordings and personal data.
- 1.8 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.9 **“Intellectual Property”** means all present and future rights conferred by statute, common law or equity in or in relation to business names, circuit layout, computer Software, Confidential Information, copyright, designs, domain names, formulas, inventions, knowhow, patents, trademarks, and other results of intellectual activity in the industrial, commercial, scientific, literary and artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such right.
- 1.10 **“MIACOR IT”** means Smits Pty Ltd T/A MIACOR IT, its successors and assigns or any person acting on behalf of and with the authority of Smits Pty Ltd T/A MIACOR IT.
- 1.11 **“Price”, “Fee” or “Subscription Fee”** means the price payable (plus any GST where applicable) for the Services as agreed between MIACOR IT and the Customer in accordance with clause 9 below.
- 1.12 **“Services”** means all Products (which includes any content, files, information, printed or virtual material, data, hardware, Software or applications (whether supplied from a third party Software development company or where custom developed or programmed for the Customer), brands, designs, images, graphics, pictures, trademarks, manuals, and other associated documentation and/or goods, accessories or parts) or Services (which includes any subscription Services, advice or recommendations, consultancy, monitoring, data back-up or storage, strategising and analytical services, technical service, support and training, etc.) supplied by MIACOR IT to the Customer, at the Customer's request, from time to time (where the context so permits the terms ‘Products’ or ‘Services’ shall be interchangeable for the other). Any Products supplied to the Customer by MIACOR IT on a loan basis (for the duration of the Services):
- (a) remains MIACOR IT's sole property;
 - (b) may be changed, substituted, revoked or repossessed by MIACOR IT at MIACOR IT's sole discretion at any time; and
 - (c) is not transferable.
- 1.13 **“Software”** shall mean the programs and other operating information (including documentation) used by a computer.
- 1.14 **“Support”** means to provide direct support to the Customer for technical issues in relation to the Services. Support excludes the following services:
- (a) any time spent to resolve any issues with the Customer's computer system created by any operator error on the part of the Customer or any action of any third parties whether authorised or unauthorised by the Customer;
 - (b) resolving any issues created by new third party hardware or software introduced to the Customer's computer system without MIACOR IT's knowledge;
 - (c) resolving any issues which are solely caused by the actions of third parties and originate outside of the Customer's computer system e.g. problems that relate to the supply of services by the Customer's internet service provider;
 - (d) bug fixes.

2. Interpretation

- 2.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
- (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);

- (c) the words 'include' and 'including', and any variants of those words, will be treated as if followed by the words 'without limitation';
- (d) a reference to dollars (\$), is a reference to Australian currency; and
- (e) this Contract is not to be interpreted against MIACOR IT merely because they prepared this Contract; and
- (f) where a URL is mentioned, the non-operation of the "URL" will not render the rights and obligations associated with it invalid;
- (g) any reference digital resource may be replaced with another digital resource that is a "copy" of the original resource; and
- (h) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity or discrepancy in this Contract:
 - (i) Terms and Conditions of Trade; and
 - (ii) any schedules.
- (i) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

3. Acceptance

- 3.1 The parties acknowledge and agree that:
 - (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Products or Services provided by MIACOR IT.
- 3.2 These terms and conditions herein and any other document incorporated by reference constitute the entire legal agreements between the parties in respect of their subject matter and supersede any previous understandings or agreements, including without limitation any verbal discussions or emails exchanged by the parties in relation to that subject matter. The parties agree that they have not relied on any representation or statements outside the terms of this Contract.
- 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3.4 The Customer acknowledges that the supply of Products or Services on credit shall not take effect until the Customer has completed a credit application with MIACOR IT and it has been approved with a credit limit established for the account.
- 3.5 In the event that the supply of Products or Services requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, MIACOR IT reserves the right to refuse delivery.
- 3.6 Once accepted by the Customer, MIACOR IT's quotation shall be deemed to interpret correctly the Customer's instructions, whether written or verbal. Where verbal instructions only are received from the Customer, MIACOR IT shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
- 3.7 The Customer warrants that it has not relied on any representation made by MIACOR IT which has not been stated expressly in this Contract or upon any descriptions or illustrations or specifications contained in any document, including any catalogues or publicity material produced by MIACOR IT.
- 3.8 The Services supplied under this Contract do not include, unless otherwise specified in writing by MIACOR IT:
 - (a) travel and accommodation required to provide authorised on-site Services;
 - (b) courier and freight charges;
 - (c) Support of other Software, accessories, attachments, machines, hardware, peripherals, systems or other devices not supplied by MIACOR IT;
 - (d) rectification of lost or corrupted data arising from any reason other than the negligence, fault or omission of MIACOR IT;
 - (e) Support which is rendered more difficult because of any changes, alternation, addition, modifications or variations to the Services, the operating system or the operating environment;
 - (f) attendance to faults caused by using the Products;
 - (g) diagnosis or rectification of problems not associated with the Products;
 - (h) loss or damage caused directly or indirectly by operator error or omission and over which MIACOR IT has no control; and
 - (i) any direct costs other than MIACOR IT's personnel's time and ordinary overheads.
- 3.9 MIACOR IT will ask pertinent questions to ascertain the Customer's requirements in the preparation, institution and management of the plan for the Customer. The Customer shall provide accurate information without embellishment in order to ensure an appropriate level of service and protection. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, MIACOR IT accepts no responsibility for any loss, damages, or costs however resulting from the inaccurate information.
- 3.10 MIACOR IT reserves the right to terminate the Customer's order if it learns that the Customer has provided false or misleading information, interfered with other users or the administration of MIACOR IT's Services, or violated these terms and conditions.
- 3.11 These terms and conditions may be meant to be read in conjunction with MIACOR IT's service proposal, and where the context so permits, the terms 'Products' or 'Services' shall be included as defined therein.
- 3.12 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Release Waiver

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

5. Authorised Users

- 5.1 MIACOR IT may designate Authorised Users in accordance with approval communicated by the Customer.

- 5.2 The Customer warrants that all of the information provided (whether that information is provided by an Authorised User or the Customer) is accurate and complete in all respects, and will update MIACOR IT whenever any of this information changes.
- 5.3 The Customer is responsible for ensuring that Authorised Users comply with the Contract to the fullest extent.
- 6. Errors and Omissions**
- 6.1 The Customer acknowledges and accepts that MIACOR IT shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by MIACOR IT in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by MIACOR IT in respect of the Services.
- 6.2 In circumstances where the Customer is required to place an order for Products, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Products (whether they are made to order Products or not) ("**Customer Error**"). The Customer must pay for all Products it orders from MIACOR IT notwithstanding that such Products suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take Delivery of such Products. MIACOR IT is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.
- 7. Change in Control**
- 7.1 The Customer shall give MIACOR IT not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by MIACOR IT as a result of the Customer's failure to comply with this clause.
- 8. Credit Card Information**
- 8.1 MIACOR IT will:
- (a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by MIACOR IT;
 - (b) not disclose the Customer's credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 26) or where required by law.
- 8.2 The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Customer, MIACOR IT is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.
- 9. Price and Payment**
- 9.1 At MIACOR IT's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by MIACOR IT to the Customer upon placement of an order for Products; or
 - (b) the Price as at the date of delivery of the Products according to MIACOR IT's current price list, as previously disclosed to the Customer upon the Customer's placement of an order for Products; or
 - (c) MIACOR IT's quoted Price (subject to clause 9.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days; or
 - (d) as per MIACOR IT's non-refundable monthly Subscription Fees for the Services, which will be as stipulated (including when due and payable) by MIACOR IT in the service proposal.
- 9.2 *Additional and/or Varied Services:*
- (a) MIACOR IT agrees that there will be no charge in the preparation of the initial quotation, which may include Customer discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned Services may be charged to the Customer additionally (at MIACOR IT's sole discretion);
 - (b) where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of MIACOR IT's standard hourly rates (and double such rate for any Services provided outside MIACOR IT's normal business hours) and will be shown as variations on the invoice;
 - (c) where the performance of any agreement with the Customer requires MIACOR IT to obtain products and/or services from a third party, the Contract between MIACOR IT and the Customer shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to MIACOR IT, and the Customer shall be liable for the cost in full including MIACOR IT's margin of such products and/or services;
 - (d) in the event that MIACOR IT is requested to provide on-site Services, in which case a minimum call-out Fee equal to one (1) hour labour (and/or two (2) hours labour for any requested provision of Services after-hours), plus travel, parking costs and Products, shall apply;
 - (e) the Customer acknowledges that additional charges may apply to certain Services and Support provided by MIACOR IT (including, but not limited to, reconfiguration of the Customer's computer or network). Any such charges shall be shown as a variation to the original Fee;
 - (f) MIACOR IT may adjust the monthly Subscription Fee (providing written notice to the Customer) from time to time (subject to the addition of extra users or Products) without prejudice. The updated Subscription Fee shall take effect in the following term. Where the Customer does not accept such changes it must immediately notify MIACOR IT. Such notice of non-acceptance will cancel the automatic renewal of the Contract, and the Contract will cease at the end of the term in which MIACOR IT gave notice of changes. All Services are billed to the Customer one (1) month in advance (unless otherwise specified);
 - (g) as a result of increases beyond MIACOR IT's reasonable control in the cost of materials or labour (e.g. third-party suppliers' costs), or due to currency exchange rates.

MIACOR IT – Terms & Conditions of Trade

- 9.3 Variations will be charged for on the basis of MIACOR IT's quotation, and will be detailed in writing, and shown as variations on MIACOR IT's invoice. The Customer shall be required to respond to any variation submitted by MIACOR IT within ten (10) working days. Failure to do so will entitle MIACOR IT to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 9.4 At MIACOR IT's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Products or Services, in accordance with any quotation provided by MIACOR IT or as notified to the Customer prior to the placement of an order for Products or Services.
- 9.5 Time for payment for the Products being of the essence, the Price will be payable by the Customer on the date/s determined by MIACOR IT, which may be:
- (a) on delivery of the Services;
 - (b) by way of instalments/progress payments in accordance with MIACOR IT's payment schedule;
 - (c) for certain approved Customers due fourteen (14) days following the date of any invoice given to the Customer by MIACOR IT;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by MIACOR IT.
- 9.6 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and MIACOR IT.
- 9.7 MIACOR IT may in its discretion allocate any payment received from the Customer towards any invoice that MIACOR IT determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer MIACOR IT may re-allocate any payments previously received and allocated. In the absence of any payment allocation by MIACOR IT, payment will be deemed to be allocated in such manner as preserves the maximum value of MIACOR IT's Purchase Money Security Interest (as defined in the PPSA) in the Products.
- 9.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by MIACOR IT nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify MIACOR IT in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as MIACOR IT investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in MIACOR IT placing the Customer's account into default and subject to default interest in accordance with clause 23.1.
- 9.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to MIACOR IT an amount equal to any GST MIACOR IT must pay for any supply by MIACOR IT under this or any other agreement for the sale of the Products. The Customer must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

10. Terms of Use

- 10.1 When the Customer uses the Services, the Customer must:
- (a) comply with all laws, all directions by a regulator, all notices issued by authorisation of, or under, law (e.g. Copyright Act 1968) and reasonable directions by MIACOR IT;
 - (b) keep the Customer's account information, password, data and Products confidential and secure. The Customer remain responsible for any use or misuse of such;
 - (c) follow any reasonable instructions provided by MIACOR IT in relation to the Services;
 - (d) access and use the Services solely in accordance with these terms and conditions and any reasonable instructions provided by MIACOR IT;
 - (e) employ back-up power and surge protectors at the Customer's premises;
 - (f) respond promptly to MIACOR IT's communications in relation to the Services;
 - (g) provide accurate and prompt responses to MIACOR IT's requests for any information or documentation reasonably required by MIACOR IT to provide the Services.
 - (h) maintain adequate security precautions in connection with the Customer's use of the Services (including, but not limited to, failure to use/maintain anti-virus Software, accessibility to the data via insecure internet connections, insecure passwords or unsecure access to passwords, leaving active connection to the hosted solution unattended or any other event which on the basis of a reasonable test would in the opinion of MIACOR IT be inadequate etc.);
 - (i) ensure that MIACOR IT at all times is granted all necessary licences, permissions and access reasonably required by MIACOR IT to perform the Support including without limitation:
 - (A) physical access to any relevant premises and hardware;
 - (B) logon and password access to any relevant computer systems; and
 - (C) remote online access to any relevant computer systems where available, remove most of the downtime risk associated with an "in-house" computer system.
 - (j) failure by the Customer to comply with clause 10.1 will entitle MIACOR IT, at its option, to suspend the Support without liability until such time as clause 10.1 is complied with.
- 10.2 The Customer must not:
- (a) use, or attempt to use, or permit another person to use or attempt to use, the Services:
 - (i) so as to cause offence, to defame, abuse, communicate obscenities, menace or annoy;
 - (ii) for any purpose or activity of an illegal or fraudulent nature in any jurisdiction, including damaging any property or injuring or killing any person, to breach the security of any computer network (hacking), to breach any persons privacy, or to distribute unsolicited software or junk mail;
 - (iii) for advertising purposes without MIACOR IT's express written consent;
 - (iv) to breach any of the Intellectual Property rights held by MIACOR IT or any third party;
 - (v) to transmit, publish or communicate materials which is defamatory, offensive, abusive, indecent, menacing or unwanted;
 - (vi) to expose MIACOR IT to liability (including any claims for damages);

- (vii) to install or store any Software applications, code or scripts on or through the Services unless prior written approval from MIACOR IT has been obtained;
 - (viii) to disable or circumvent any protection or disabling mechanism related to the Services;
 - (ix) to store, access or operate any data, code or Software on, or in connection with, the Software that could be categorised or identified as:
 - (A) a computer virus or malicious code;
 - (B) pornographic material; or
 - (C) "warez" or associated with "warez".
 - (x) in any way which damages, interferes with or interrupts the Services, or a supplier's network used to provide the Services;
 - (xi) to intercept or attempt to intercept any communication not otherwise intended for the Customer; and
 - (xii) contact MIACOR IT's suppliers or the wholesale / carrier or third party provider of a service in relation to the Services or service faults.

The supplier may impose a fee for doing so and this fee will be passed onto the Customer. They may, however, contact the Customer in relation to any reported service difficulties in relation to appointment making and service restoration, and for this reason MIACOR IT will need to provide the Customer contact details to such parties.
 - (xiii) logon to an account that the Customer is not authorised to access;
 - (xiv) access data or take any action to obtain services not intended for the Customer;
 - (xv) attempt to probe, scan or test the vulnerability of any system, subsystem or network;
 - (xvi) tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;
 - (xvii) send spam or other duplicative or unsolicited messages in violation of applicable laws including without limitation the Spam Act 2003;
 - (xviii) do anything that prevents or hinders MIACOR IT from providing Support Services to any other person.
 - (b) the Customer acknowledges that spamming (i.e. the sending of unsolicited email), email address cultivation, or any unauthorised collecting of email addresses without prior notification of the email address owner is strictly prohibited;
 - (c) MIACOR IT at its sole discretion acting reasonably shall be entitled to determine when there has been a breach of clause 10.2 and without limiting any other provision of these terms and conditions, MIACOR IT shall be entitled without liability to take such actions as it deems appropriate in the circumstances.
- 10.3 If, in MIACOR IT's opinion, the Services are being used by anyone in breach of these terms and conditions (including clause 10) or Internet etiquette, MIACOR IT may:
- (a) refuse to post such infringing information to public areas;
 - (b) remove, review or edit such infringing information from any computer on MIACOR IT's network, with the exception of private electronic messages;
 - (c) discontinue any infringing communication;
 - (d) suspend the Services indefinitely, or for a specific period;
 - (e) terminate the Services, and refuse to provide the Services to the Customer, or the Customer's associates, in the future;
 - (f) inform appropriate government and regulatory authorities of suspected illegal or infringing conduct.
- 10.4 MIACOR IT may, at their sole discretion, limit or deny access to the Services is, in the judgement of MIACOR IT, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network.
- 10.5 The Customer authorise MIACOR IT to delete without notice or liability any information or materials found on the Products (or equipment controlled by MIACOR IT) that is found to be of an obscene nature, unauthorised, unlawful, uncollected for an excessive period of time or excessive in volume.
- 10.6 MIACOR IT will make best efforts to ensure that the Customer receives continual and uninterrupted Services (including network or hosting servers) during the term of this Contract, however MIACOR IT does not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to regularly scheduled maintenance cycles, and many events/circumstances beyond the control of MIACOR IT. In no event though, shall MIACOR IT be liable to the Customer for damages (including loss of income) resulting from or in relation to any failure or delay (including server downtime, programming errors, lack of connection or slow connection) of MIACOR IT to provide Services under this Contract, or any loss of data, if such delays or failures are due to circumstances beyond our control. Such a failure or delay shall not constitute a default under this Contract.
- 10.7 **Back-ups**
- (a) MIACOR IT makes no warranties or guarantees, implied or express, in respect of the retention of or continued accessibility of any back-ups in connection with the Services.
 - (b) The Customer acknowledges that MIACOR IT has recommended the Customer take reasonable steps to back-up the Customer Data separately from the Services.
 - (c) MIACOR IT will put in place and manage back-up procedures described in MIACOR IT's quotation or proposal and/or other written communication from MIACOR IT to the Customer.
- 11. Delivery of the Products and Provision of the Services**
- 11.1 Delivery ("Delivery") of the Products is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Products at MIACOR IT's address; or
 - (b) MIACOR IT (or MIACOR IT's nominated carrier) delivers the Products to the Customer's nominated address even if the Customer is not present at the address.
- 11.2 The cost of Delivery will be payable by the Customer in accordance with the quotation provided by MIACOR IT to the Customer, or as otherwise notified to the Customer prior to the placement of an order for Products or Services.
- 11.3 The commencement date shall be (whichever is the earlier) either:
- (a) the date of signing this Contract; or
 - (b) the date of the first Delivery of the Services under this Contract; and
 - (c) upon the formation of this Contract, any previous agreement between the parties in respect of the Services will be terminated.

MIACOR IT – Terms & Conditions of Trade

- 11.4 The Contract shall be for the period ("initial term") as agreed between both parties and shall revert to a monthly roll over basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least one (1) month required notice prior to the expiration date of the initial term or any additional term.
- 11.5 MIACOR IT may provide the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 11.6 Any time specified by MIACOR IT for provision of the Services is an estimate only and MIACOR IT will not be liable for any loss or damage incurred by the Customer as a result of provision being late. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that MIACOR IT is unable to provide the Services as agreed solely due to any action or inaction of the Customer, then MIACOR IT shall be entitled to:
- (a) charge the Customer additionally for re-providing the Services at a later time and date; or
 - (b) subject to clause 24.5, terminate the Contract.

12. Risk and Limitation of Liability for Customer Data

- 12.1 Risk of damage to or loss of the Products passes to the Customer on Delivery and the Customer must insure the Products on or before Delivery.
- 12.2 If any of the Products are damaged or destroyed following Delivery but prior to ownership passing to the Customer, MIACOR IT is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by MIACOR IT is sufficient evidence of MIACOR IT's rights to receive the insurance proceeds without the need for any person dealing with MIACOR IT to make further enquiries.
- 12.3 If the Customer requests MIACOR IT to leave Products outside MIACOR IT's premises for collection or to deliver the Products to an unattended location then such Products shall be left at the Customer's sole risk.
- 12.4 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in MIACOR IT's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by MIACOR IT.
- 12.5 MIACOR IT will take reasonable steps to ensure that the Software is secure from unauthorised access consistent with generally accepted industry standards.
- 12.6 Notwithstanding the above clause, the Customer acknowledges and agrees that MIACOR IT shall not be held responsible or liable for:
- (a) any loss, corruption, or deletion of files or data (including, but not limited to Software programmes) resulting from illegal hacking or Services provided by MIACOR IT. Whilst MIACOR IT will endeavour to restore the system, files or data (at the Customer's cost), it is the sole responsibility of the Customer to back-up any data which they believe to be important, valuable, or irreplaceable prior to MIACOR IT providing the Services. The Customer accepts full responsibility for the Customer's Software and data and MIACOR IT is not required to advise or remind the Customer of appropriate back-up procedures (unless included as part of the Services);
 - (b) any loss or damage to the Customer's Software or hardware caused by any 'updates' provided for that Software.
- 12.7 The Services are provided on an "as is, as available" basis. MIACOR IT specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.
- 12.8 The Customer acknowledges that from time to time, without notice, access to all or part of the Services may be disrupted or limited. During this time MIACOR IT, to the best of its ability will endeavour restore access to the Services as soon as practicable.

13. Access

- 13.1 MIACOR IT may need to access the property in order to provide the Services. The Customer agrees to provide MIACOR IT safe access to the property to:
- (a) install any Products to facilitate the provision of Services to the Customer;
 - (b) inspect, test, maintain and repair or replace the Products; and
 - (c) recover the Products after the Services have been terminated. MIACOR IT shall not be liable for any costs of removing the Products or remediation of the property.
- 13.2 If the Customer does not own the property, it is the Customer's responsibility to get the owner's permission for MIACOR IT to access the property and install any Products.
- 13.3 The Customer owes MIACOR IT the value of the Products as a debt due if MIACOR IT cannot access the property to recover it, or in the event the Products are lost or damaged.

14. Compliance with Laws

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

15. Title

- 15.1 MIACOR IT and the Customer agree that the Customer's obligations to MIACOR IT for the provision of Services shall not cease (and ownership of any Products shall not pass) until:
- (a) the Customer has paid MIACOR IT all amounts owing to MIACOR IT; and
 - (b) the Customer has met all of its other obligations to MIACOR IT.
- 15.2 Receipt by MIACOR IT of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 15.3 It is further agreed that, until ownership of the Products passes to the Customer in accordance with clause 15.1:
- (a) the Customer is only a bailee of the Products and must return the Products to MIACOR IT on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Products on trust for MIACOR IT and must pay to MIACOR IT the proceeds of any insurance in the event of the Products being lost, damaged or destroyed;

- (c) the Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer must hold the proceeds of any such act on trust for MIACOR IT and must pay or deliver the proceeds to MIACOR IT on demand;
- (d) the Customer should not convert or process the Products or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of MIACOR IT and must sell, dispose of or return the resulting product to MIACOR IT as it so directs;
- (e) the Customer irrevocably authorises MIACOR IT to enter any premises where MIACOR IT believes the Products are kept and recover possession of the Products;
- (f) MIACOR IT may recover possession of any Products in transit whether or not Delivery has occurred;
- (g) the Customer shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of MIACOR IT; and
- (h) MIACOR IT may commence proceedings to recover the Price of the Products sold notwithstanding that ownership of the Products has not passed to the Customer.

16. Personal Property Securities Act 2009 (“PPSA”)

- 16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Products that have previously been supplied and that will be supplied in the future by MIACOR IT to the Customer, and the proceeds from such Products.
- 16.3 The Customer undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which MIACOR IT may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 16.3(a)(i) or 16.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, MIACOR IT for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Products charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of MIACOR IT;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products or the proceeds of such Products in favour of a third party without the prior written consent of MIACOR IT;
 - (e) immediately advise MIACOR IT of any material change in its business practices of selling the Products which would result in a change in proceeds derived from such sales.
- 16.4 MIACOR IT and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 16.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by MIACOR IT, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Customer must unconditionally ratify any actions taken by MIACOR IT under clauses 16.3 to 16.5.
- 16.9 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

17. Security and Charge

- 17.1 In consideration of MIACOR IT agreeing to supply the Products and/or provide its Services, the Customer grants MIACOR IT a security interest by way of a floating charge (registerable by MIACOR IT pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Customer or owned by the Customer in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Products and/or Services under this Contract and/or permit MIACOR IT to appoint a receiver to the Customer in accordance with the *Corporations Act 2001* (Cth).
- 17.2 The Customer indemnifies MIACOR IT from and against all MIACOR IT's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MIACOR IT's rights under this clause.
- 17.3 In the event that the Customer defaults or breaches any term of this Contract and as a result, the security provided in clauses 15.1, 16.2 and 17.1 as applicable, is deemed insufficient by MIACOR IT to secure the repayment of monies owed by the Customer to MIACOR IT, the Customer hereby grants MIACOR IT a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Customer now, or owned by the Customer in the future, to secure the performance of the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

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

- 18.1 The Customer must inspect MIACOR IT's Services on completion and must within seven (7) days notify MIACOR IT in writing of any evident defect in the Services (including MIACOR IT's workmanship), or of any failure by MIACOR IT to comply with the description of, or quote for, the Services which MIACOR IT was to provide. The Customer must notify any other alleged defect in MIACOR IT's Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow MIACOR IT to review the Services that were provided.

- 18.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 18.3 MIACOR IT acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, MIACOR IT makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Products. MIACOR IT's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5 If the Customer is a consumer within the meaning of the CCA, MIACOR IT's liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6 If MIACOR IT is required to replace the Products under this clause or the CCA, but is unable to do so, MIACOR IT may refund any money the Customer has paid for the Products.
- 18.7 If the Customer is not a consumer within the meaning of the CCA, MIACOR IT's liability for any defect or damage in the Products is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by MIACOR IT at MIACOR IT's sole discretion;
 - (b) limited to any warranty to which MIACOR IT is entitled, if MIACOR IT did not manufacture the Products;
 - (c) otherwise negated absolutely.
- 18.8 Subject to this clause 18, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 18.1; and
 - (b) MIACOR IT has agreed that the Products are defective; and
 - (c) the Products are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Products are returned in as close a condition to that in which they were delivered as is possible.
- 18.9 Notwithstanding clauses 18.1 to 18.8 but subject to the CCA, MIACOR IT shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Products;
 - (b) the Customer using the Products for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Products after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by MIACOR IT;
 - (e) fair wear and tear, any accident, or act of God.
- 18.10 Notwithstanding anything contained in this clause if MIACOR IT is required by a law to accept a return, then MIACOR IT will only accept a return on the conditions imposed by that law.

19. Intellectual Property

- 19.1 If during the course of providing the Services, MIACOR IT develops, discovers, or puts into operation a new concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of MIACOR IT and the Customer shall not use or supply the same in any way whatsoever without first obtaining the written consent of MIACOR IT.
- 19.2 The Customer warrants that all designs, specifications, information and instructions to MIACOR IT will not cause MIACOR IT to infringe any patent, registered design or trademark in the execution of the Customer's order. Furthermore, the Customer agrees to indemnify, defend, and hold MIACOR IT harmless from all loss incurred or suffered by MIACOR IT arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's Intellectual Property rights by the Customer during its use of the Services.
- 19.3 Any coding and other supplied code (if any) remains the Intellectual Property of MIACOR IT. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.
- 19.4 Where MIACOR IT has developed Software (and associated documentation) databases, training materials, electronic tools and/or for any of MIACOR IT's source code ("Tools"), then a copyright in those Tools shall remain vested in MIACOR IT and MIACOR IT retains ownership and all Intellectual Property rights thereof, but grants the Customer a non-exclusive and non-transferable licence for its use (solely in relation to the operation of the Customer's own business). The Customer will use any Tools supplied by MIACOR IT, and identified as such, strictly in terms of the licence (or any other conditions imposed by MIACOR IT) under which it is supplied. The Customer further agrees that they shall not without MIACOR IT's prior written consent:
- (a) use in any way, or rely on the Tools for any purpose other than what it was designed or is suitable for;
 - (b) copy, reproduce, translate, adapt, vary, merge, modify, or create any derivative work based on the Tools;
 - (c) reverse engineer, decompile, disassemble, reconfigure or otherwise attempt to discover the source code of the Software, or assist another party to do the same;
 - (d) sell, market, network, transfer, lease, licence, sub-licence, rent, lend, or otherwise distribute, the Tools in any way whatsoever;
 - (e) combine the Tools with any other Software and/or item, etc.; or
 - (f) use the Tools to commit a crime (including, but not limited to, sending spam) and the Customer agrees to indemnify MIACOR IT against any action taken by a third party against MIACOR IT in respect of any such infringement.
- 19.5 Notwithstanding anything herein, upon termination of the Contract (in accordance with clause 24) MIACOR IT shall revoke the licence to use and remove any Tools. Once removed, MIACOR IT shall accept no liability and the Customer indemnifies MIACOR IT for any losses and/or damages (including, but not limited to, any subsequent security breach or virus infection, etc.) that may occur once MIACOR IT has removed their Tools.
- 19.6 Subject to Australian copyright laws (and/or any other applicable copyright laws) and the conditions therein, the Customer agrees that they shall not in any way sell, reproduce, adapt, distribute, transmit, publish, or create derivative works from, any part of the Software (if supplied by MIACOR IT) without MIACOR IT's prior consent in writing.
- 19.7 The Customer hereby authorises MIACOR IT to utilise images of the Services created by MIACOR IT in advertising, marketing, or competition material by MIACOR IT.

20. Customer Data

- 20.1 The Customer warrants that:
- (a) they have the legal right to supply the Customer Data to MIACOR IT in connection with the managed Services level contract (and that there are no circumstances likely to give rise to breach of any of privacy);
 - (b) the Customer Data contains nothing that is defamatory.
- 20.2 MIACOR IT will:
- (a) only make copies of the Customer Data to the extent reasonably necessary for the Services (which includes, but is not limited to, back-up security, disaster recovery and testing of the Customer Data);
 - (b) not use, exploit, redistribute, re-disseminate, copy or store the Customer Data other than for the purposes of the Services; and
 - (c) take reasonable steps to protect the Customer Data.
- 20.3 From time to time, MIACOR IT will be directed in writing to move data on one piece of hardware ("**Copied Data**") to another, MIACOR IT will have the right to delete Copied Data no less than one (1) month after copying the Copied Data. Customer agrees that:
- (a) in order to facilitate the movement of Copied Data, MIACOR IT must retain a copy of the Copied Data on its own hardware;
 - (b) if the Customer wishes to obtain another copy of the Copied Data, it must notify MIACOR IT within one (1) month of the provision of the service to copy the Copied Data; and
 - (c) if the Customer does not respond to MIACOR IT's notification asking to retain the Copied Data, the Customer acknowledges and agrees that the Copied Data will be deleted.
- 20.4 The Customer Data remains the property of the Customer at all times.
- 20.5 On the termination of the Services or the expiry of the minimum subscription period the following shall apply:
- (a) the Customer shall immediately cease using MIACOR IT's intellectual property and the Services;
 - (b) where the Customer elects for the destruction of the Customer Data, MIACOR IT will as soon as reasonably practicable ensure that all the Customer Data is deleted from the secured access area of the website;
 - (c) where the Customer elects for the return of the Customer Data, the Customer must make a written request within ten (10) Business Days after the date of the termination or expiry of the Contract ("the Request"). MIACOR IT shall use reasonable efforts to fulfil such a request within one (1) month of the Request or in an earlier time frame approved by the Customer ("Retention Period") provided that:
 - (i) the Customer has paid all monthly Subscription Fees and any other monies owed to MIACOR IT as at the date of the Request; and
 - (ii) the Customer shall pay all the costs and expenses (including, but not limited to, the costs of data extraction, transfer and migration and any compatibility issues with both parties' technology platforms, hardware or Software incurred by MIACOR IT in return the Customer Data ("Return Costs").
- 20.6 Where the Customer fails to stipulate either return or destruction of the Customer Data within ten (10) Business Days, MIACOR IT may destroy or otherwise dispose of any of the Customer Data in MIACOR IT's possession and the Customer shall not have any claim whatsoever after this time.

21. Confidentiality

- 21.1 Subject to clause 21.2, each party agrees to treat as confidential the other party's Confidential Information, and agree not to divulge it to any third party, without the other party's written consent.
- 21.2 Both parties agree to:
- (a) use the Confidential Information of the other party only to the extent required for the purpose it was provided;
 - (b) not copy or reproduce any of the Confidential Information of the other party in any way;
 - (c) only disclose the other party's Confidential Information to:
 - (i) employees and third-party providers who need access to the information and who have agreed to keep it confidential;
 - (ii) its legal advisers and insurance providers if those persons undertake to keep such information confidential; and
 - (iii) not disclose the other party's Confidential Information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any regulatory body.
- 21.3 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request unless required by law to retain it.
- 21.4 Confidential Information excludes information:
- (a) generally available in the public domain (without unauthorised disclosure under this Contract);
 - (b) received from a third party entitled to disclose it;
 - (c) that is independently developed.

22. Limitation of Liability

- 22.1 Subject to clause 18, MIACOR IT, its partners, associates, and employees shall exclude any indirect, incidental, special and/or consequential loss and/or expense, claim and/or cost (including legal fees and commissions, loss of profit, business, contracts, opportunity, goodwill, reputation and/or anticipated saving), or corruption of data suffered by the Customer arising out of a breach by MIACOR IT of these terms and conditions.
- 22.2 The maximum liability of MIACOR IT under this Contract shall at no time exceed the amount of Professional Indemnity insurance cover in respect of any single act, omission or statement, unless otherwise specified in MIACOR IT's proposal.
- 22.3 The Customer agrees to indemnify MIACOR IT, (including its partners, associates or employees) and any other person who may be sought to be made liable in excess of the limit of liability described in clause 22.2 in respect of any activity arising from, or connected with, this Contract in respect of any claim of whatsoever kind, that may be made by any person and any costs and expenses that may be incurred by MIACOR IT. All references herein to loss or damage shall be deemed to exclude loss or damage sustained by any third party in respect of which the Customer is liable and responsible (as between the Customer and the third party) whether by statute, contract tort or otherwise.
- 22.4 The liability of MIACOR IT to the Customer shall expire twelve (12) months from the issue of the last invoice relevant to the particular project, unless in the meantime the Customer has made a claim in writing to MIACOR IT, specifying a negligent act, omission or statement said to have caused alleged loss or damage sustained or sustainable.

- 22.5 Notwithstanding clauses 22.1 to 22.4, MIACOR IT shall not be liable for any loss or damage sustained or sustainable by the Customer in relation to:
- (a) errors occurring during the course of any services which are not provided by, nor the responsibility of, MIACOR IT;
 - (b) errors occurring in plans or specifications not created or prepared by MIACOR IT;
 - (c) any failure of any third party component including, without limitation, Software failure, hardware failure, network failure, or power failure;
 - (d) the Services being inaccessible to that Customer for any reason;
 - (e) incorrect or corrupt data, lost data, or any inputs or outputs of the Services;
 - (f) computer virus, trojan and other malware in connection with the Services;
 - (g) security vulnerabilities in the Services or any breach of security that results in unauthorised access to or corruption of data;
 - (h) any failure of any third party software including, without limitation, the operating system and any other Software;
 - (i) failure of the Customer to maintain hardware sufficient to meet minimum hardware requirements for the Services;
 - (j) the Customer's participation in any experiments, beta software or pilots;
 - (k) reliance on MIACOR IT's advice;
 - (l) the Customer's failure to observe proper safety measures and procedures;
 - (m) the delivery, setup and installation of Products;
 - (n) any harm to or claim by a third party in connection with the Services or Products;
 - (o) any unauthorised activity in relation to the Services;
 - (p) the Customer's use of or reliance on the Services for a purpose other than the business purposes of the Customer or the reasonably expected purpose of the Services;
 - (q) any act or omission of MIACOR IT, its personnel or any related body corporate under or in relation to the Contract;
 - (r) any delay in the provision of the Services.

23. Default and Consequences of Default

- 23.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at MIACOR IT's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 23.2 If the Customer owes MIACOR IT any money, the Customer shall indemnify MIACOR IT from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Customer would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising MIACOR IT's rights under these terms and conditions, internal administration fees, MIACOR IT's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 23.3 Further to any other rights or remedies MIACOR IT may have under this Contract, if a Customer has made payment to MIACOR IT, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by MIACOR IT under this clause 23 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 23.4 Without prejudice to MIACOR IT's other remedies at law MIACOR IT shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to MIACOR IT shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to MIACOR IT becomes overdue, or in MIACOR IT's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by MIACOR IT;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

24. Suspension, Termination and Cancellation

- 24.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply or purchase of Products and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 24.2 If MIACOR IT, due to reasons beyond MIACOR IT's reasonable control, is unable to deliver any Products and/or Services to the Customer, or in the event MIACOR IT determines it is not technically, commercially or operationally feasible to provide the Services to the Customer; MIACOR IT may cancel any Contract to which these terms and conditions apply or cancel Delivery of Products and/or Services at any time before the Products and/or Services are delivered by giving written notice to the Customer. On giving such notice MIACOR IT shall repay to the Customer any money paid by the Customer for the Products and/or Services. MIACOR IT shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 24.3 The Customer may cancel Delivery of the Products and/or Services by written notice served within forty-eight (48) hours of placement of the order. If the Customer cancels Delivery in accordance with this clause 24.3, the Customer will not be liable for the payment of any costs of MIACOR IT, except where a deposit is payable in accordance with clause 9.4. Failure by the Customer to otherwise accept Delivery of the Products and/or Services shall place the Customer in breach of this Contract.
- 24.4 After the notice period stated in accordance with clause 24.3, either party may, without liability, terminate these terms and conditions or cancel provision of the Services:
- (a) if there is no agreement term specified, at any time by giving one (1) months' notice to the other party;
 - (b) if an agreement term is specified, at any time after the end of the agreement term by giving one (1) months' notice to the other party;

- (c) failure to give notice of intention to cancel at least one (1) month prior to the expiration date of the agreement term, the agreement term shall automatically renew on a monthly basis, unless cancelled by way of the Customer providing MIACOR IT with one (1) months' notice.
- 24.5 Should the Customer, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this Contract will be terminated by MIACOR IT (at their sole discretion) and all Services completed, but not billed or paid, will be payable in full within seven (7) days from the date of the submitted invoice.
- 24.6 Upon termination of this Contract, MIACOR IT will immediately delete all files and content relating to the Customer and the Services provided thereto.
- 24.7 It is the Customer responsibility to make arrangements for the transfer of their data prior to the termination date. MIACOR IT accepts no liability for any loss or damage incurred by the Customer as a result of the deletion of such data.
- 24.8 In the event the Services are terminated as per clauses 24.1 or 24.4, the Services can be re-instated under a new agreement at the prevailing rates; however no credits or discounts will be granted and reinstatement costs shall apply.

25. Dispute Resolution

- 25.1 Where a dispute arises between the parties ("Dispute"), it will be referred to MIACOR IT and the Customer's directors for resolution ("Dispute Resolution"). MIACOR IT and the Customer agree to solve any Disputes amicably and in good faith and on a without prejudice basis and not begin court proceedings or mediation or arbitration proceedings until the Dispute Resolution channel provided in this clause has been exhausted.
- 25.2 The Dispute Resolution process will be as follows:
- (a) a party may give notice to the other party about the nature of the Dispute (a "Dispute Notice") within fourteen (14) Business Days of the circumstances giving rise to the Dispute first occurring and the parties will seek to reach settlement amongst themselves within fourteen (14) Business Days of receipt of the Dispute Notice ("Negotiation Period"). Should the parties fail to resolve the Dispute within the Negotiation Period, the Dispute will be submitted for mediation (out of court and arbitration proceedings) in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules;
 - (b) if the parties fail to solve the entire Dispute or fail to reach agreement on any of the matters described above in mediation within twenty (20) Business Days (or any other period agreed in writing) from the date of submission to mediation the matter will be submitted to final and binding arbitration in accordance with, and subject to The Institute of Arbitrators and Mediators Australia Rules for the Conduct of Commercial Arbitrators;
 - (c) each party will pay its own costs for the proceedings (in either mediation or arbitration). The parties will share equally the costs payable to The Institute of Arbitrators and Mediators Australia.
- 25.3 Nothing in this Contract prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
- 25.4 Despite the existence of a Dispute, the parties must continue to perform their respective obligations under the Contract and any other agreement between the parties.

26. Privacy Policy

- 26.1 All emails, documents, images, or other recorded information held or used by MIACOR IT is Personal Information, as defined and referred to in clause 26.4, and therefore considered Confidential Information. MIACOR IT acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). MIACOR IT acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by MIACOR IT that may result in serious harm to the Customer, MIACOR IT will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 26.2 Notwithstanding clause 26.1, privacy limitations will extend to MIACOR IT in respect of Cookies where the Customer utilises MIACOR IT's website to make enquiries. MIACOR IT agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to MIACOR IT when MIACOR IT sends an email to the Customer, so MIACOR IT may collect and review that information ("collectively Personal Information")
- If the Customer consents to MIACOR IT's use of Cookies on MIACOR IT's website and later wishes to withdraw that consent, the Customer may manage and control MIACOR IT's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.**
- 26.3 The Customer agrees for MIACOR IT to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by MIACOR IT.
- 26.4 The Customer agrees that MIACOR IT may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.

MIACOR IT – Terms & Conditions of Trade

- 26.5 The Customer consents to MIACOR IT being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 26.6 The Customer agrees that personal credit information provided may be used and retained by MIACOR IT for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Products; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Products; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Products.
- 26.7 MIACOR IT may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 26.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 26.4 above;
 - (b) name of the credit provider and that MIACOR IT is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided MIACOR IT is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and MIACOR IT has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of MIACOR IT, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 26.9 The Customer shall have the right to request (by e-mail) from MIACOR IT:
- (a) a copy of the Personal Information about the Customer retained by MIACOR IT and the right to request that MIACOR IT correct any incorrect Personal Information; and
 - (b) that MIACOR IT does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 26.10 MIACOR IT will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 26.11 The Customer can make a privacy complaint by contacting MIACOR IT via e-mail. MIACOR IT will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

27. Unpaid Seller's Rights

- 27.1 Where the Customer has left any item with MIACOR IT for repair, modification, exchange or for MIACOR IT to perform any other service in relation to the item and MIACOR IT has not received or been tendered the whole of any monies owing to it by the Customer, MIACOR IT shall have, until all monies owing to MIACOR IT are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 27.2 The lien of MIACOR IT shall continue despite the commencement of proceedings, or judgment for any monies owing to MIACOR IT having been obtained against the Customer.

28. Service of Notices

- 28.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 28.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

29. Trusts

- 29.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not MIACOR IT may have notice of the Trust, the Customer covenants with MIACOR IT as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust, the trustees and the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;

- (c) the Customer will not during the term of the Contract without consent in writing of MIACOR IT (MIACOR IT will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

30. General

- 30.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 30.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of Queensland, and are subject to the jurisdiction of the courts in Brisbane, Queensland. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).
- 30.3 MIACOR IT may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 30.4 The Customer cannot licence or assign without the written approval of MIACOR IT.
- 30.5 MIACOR IT may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of MIACOR IT's sub-contractors without the authority of MIACOR IT.
- 30.6 The Customer agrees that MIACOR IT may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for MIACOR IT to provide Products to the Customer.
- 30.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to MIACOR IT, once the parties agree that the Force Majeure event has ceased.
- 30.8 Both parties warrant that they have the power to enter this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 30.9 The Customer agrees that during the term of the Contract and for a minimum of twelve (12) months following the termination of the Contract for any reason, the Customer will not attempt to canvass, solicit, entice, encourage or persuade any contractor/s, employee or consultant of MIACOR IT to terminate their contract or employment with MIACOR IT.
- 30.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 30.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.