

Services Agreement

Terms

1. Interpretation

1.1 Definitions

In this Agreement the following definitions apply:

Additional Fee/s are fees in addition to the Fee that arise out of Change Requests.

Additional Deliverables means any additional deliverables you request us to provide beyond the Deliverables initially agreed in the Package.

Additional Services means any additional services provided by us beyond the Services initially agreed in the Package and includes any Additional Deliverables.

Agreement means this Services Agreement, the Package and includes any schedules and annexures.

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

Background IP means Intellectual Property developed, owned by or licensed to a party as at the Commencement Date, or acquired or developed by a party during the Term, other than for the sole purpose of this Agreement, which that party has the right to license to third parties and which are necessary or desirable for the performance of the Services.

Business Day means the days that our bank is open for business in Adelaide.

Change Requests means the written request made by either party for changes to the Services and/or Deliverables and/or Support Services, method of work, or any other work done under this Agreement, where such requests for change, acceptance of requests, and changes will only be effective following, and will be subject to, the procedures set out in clause 11.1.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whether present or future, fixed or unascertained, actual or contingent, at law, in equity, under statute or otherwise arising out of, or in connection with the Agreement.

Commencement Date means the date on we sign and accept this Agreement after it has been signed by you or the date specified in the Package as the date we commence providing the Services.

Confidential Information of a party means all information of a confidential nature, including financial, customer and employee information, supplier information, specifications, processes, statements, formulae, trade secrets, designs and data, which is not in the public domain, except by a breach of the confidentiality obligations arising under this Agreement.

Consequential Loss means the following, however arising and even if it is reasonably contemplated by the parties at the Commencement Date as a likely result of breach of the Agreement:

- (a) incidental, special, remote or unforeseeable loss or damage;
- (b) loss of revenue, profit, income, opportunity, use, business, contract, goodwill, or anticipated savings, loss caused by business interruption, but excluding loss of any amounts that would, but for the act or omission of a party, have otherwise been payable under this Agreement;
- (c) costs or expenses incurred to prevent or reduce loss or damage which otherwise may be incurred or suffered by a third party; or

- (d) loss or damage of the nature set out above in clauses (a) to (c) (inclusive) that is incurred or suffered by or to a third party.

Data means data owned or supplied by you, or which may otherwise be generated, compiled, arranged or developed through the use of the Services.

Deliverable means any deliverables to be delivered by us to you, as set out in the Package.

Deposit means 10% of the Fees.

Details means your details including:

- your representative for communications
- the name of the Project
- the background and objective of the Project.

Exclusions means services and deliverables we will not be providing to you as part of the Services as specified in the Package.

Fee means the total price payable for the Services and the Support Services, set out in the Package and payable in accordance with the Payment Timetable and as may be amended as a result of a Change Request.

GST means the goods and services tax imposed by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Infringement Claim is any actual, threatened or potential claim, demand, proceeding, suit, objection or other challenge:

- (a) affecting either parties' ownership of, or rights in, that party's Background IP; or
- (b) claiming that the supply or other use of the Material or Background IP, infringes or may infringe the Intellectual Property rights of a third party.

Intellectual Property means all rights conferred under statute, common law or equity, wherever in the world subsisting, in relation to trade marks, copyright, patents, patentable inventions and designs, whether existing now or in the future and whether or not registered or registrable, and includes any rights subsisting in or relating to Confidential Information, trade secrets, know-how, inventions, discoveries, geographical indications of origin, code, source code, microcode, methods, techniques, formulae, algorithms, modules, libraries and databases and further includes the right to apply for the registration or grant of any such intellectual property.

Material means all material other than Background IP, in whatever form, including documents, reports, products, equipment, information, data, graphic layouts, images and software, prepared and provided by us to you in connection with the Services and/or a Deliverable.

Package means Bronze, Silver or Golden Package that details:

- the Price
- the Payment Timetable
- the Services (including inclusions and Exclusions)
- the Deliverables
- your Details
- the Support Services (including inclusions and Exclusions)
- the schedule(s), proposal or scope of works specifying the Services to be provided by us to you, under this Agreement.

Payment Timetable means the timetable for payment of the Fees as specified in Package which may be upfront prior to the commencement of Services or on a timetable agreed with us prior to the signing of this Agreement.

Project means the overall project you have engaged us to deliver incorporating the Services, the Deliverables and any Additional Services.

Project Milestones means the various dates specified in the Package by which we will deliver the Services or Deliverables to you.

Services:

- means the services we have agreed to provide to you specified in the Package;
- includes the Deliverables we have agreed to provide you;
- includes the Support Services; and
- includes any Additional Services or Additional Deliverables.

Specifications means the technical and/or functional specifications of the Services (if any) we agree as part of the Project.

Support Services means the ongoing services we provide to you specified in the Package which details:

- your green hosting and support
- the support service scope
- the support service availability
- the support service levels.

Term means the term of this Agreement which commences on the Commencement Date and ends on the date we cease providing the Support Services in accordance with the agreed time frame in the Package.

Third Party Materials means textual, graphical, audio or like materials, together with any software, which is incorporated into the Services.

Third Party Rights means Intellectual Property Rights owned by or licensed to third parties including:

- (a) computer programs owned by third parties and licensed by us and any of our subcontractors to provide the Services or develop a Deliverable; and
- (b) any literary, dramatic, artistic and musical works owned by third parties and licensed to us for inclusion in the Services.

Third Party Software means any computer program or modification or enhancement of a computer program, which is not owned by us and which is used by us in connection with performing the Services, or which is at any time supplied to you by us or our subcontractors or incorporated into the Services.

1.2 Interpretation

(a) In this Agreement:

- (i) words such as including and for example do not limit the meaning of the words preceding them;
- (ii) no provision of this Agreement will be construed to the disadvantage of a party merely because that party was responsible for preparing this Agreement or including the provision in this Agreement;
- (iii) all monetary amounts are expressed in Australian Dollars (\$AUD); and
- (iv) the parties must perform their obligations on the dates and times fixed by reference to Adelaide, South Australia.

(b) In this Agreement:

- (i) reference to we, us, ours is a reference to Arising Creations; and
- (ii) reference to you, yours is a reference to you specified in the Package as the contracting party to whom we will deliver the Services.

1.3 Precedence

If there is any inconsistency between provisions or the documents comprising this Agreement, this order of precedence applies:

- (a) the Package; and
- (b) the terms of this Agreement.

2. Legally binding agreement

- (a) By executing the Package, you agree to enter into and be bound by the terms of this Agreement.
- (b) This Agreement applies to all transactions between us and you, relating to the provision of the Services and constitutes a separate legal agreement in respect of each Package.

3. Term

This Agreement commences on the Commencement Date and continues for the Term.

4. Basis of engagement

We are a non-exclusive independent contractor to you. Nothing in this Agreement is intended to create an employment or agency relationship between us and you.

5. Your Obligations

- (a) You will work with us to facilitate the provision of the Services in a timely manner and in a way which maximises our ability to meet the Project Milestones including by:
 - (i) fully co-operating, and ensuring its employee and agents co-operate, with us to enable us to provide the Services;
 - (ii) providing us with all information, documentation and instructions necessary to provide the Services in a timely fashion;
 - (iii) not unreasonably impeding our provision of the Services on the Premises;
 - (iv) ensure that the Premises is safe at all times if we or our employees or contractors are required to attend the Premises;
 - (v) ensuring you conform with the Payment Timetable;
 - (vi) not unreasonably withholding any payments; and
 - (vii) complying with all applicable laws.
- (b) We will not be liable to you or any third party for any breach or non-performance of our obligations under this Agreement cause or contributed to by the acts or omissions of you, your employees or agents.
- (c) You acknowledge that any significant delay or failure to comply with this clause 5 may result in us:
 - (i) exercising our rights in accordance with clause 26.2; or
 - (ii) upon written notice to you, suspending our obligations to perform the Services or Deliverables until you rectify your breach(es) under this clause; and
 - (iii) all money owing by you to us under this Agreement for Services or Deliverables rendered or completed, wholly or in part, will immediately become due and payable by you to us.

6. Our Obligations

We will:

- (a) perform the Services with due care and skill in a timely and professional manner;
- (b) endeavour to provide the Services and Deliverables in accordance with the Specifications and this Agreement;

- (c) comply with all applicable laws and maintain any licences or authorisations to provide the Services.

7. Our delay

- (a) We will notify you, stating reasons and the methods proposed to remedy the situation if:
 - (i) if we have not achieved a Deliverable by a Project Milestone;
 - (ii) it has become apparent to us that we will not complete a Deliverable or provide a Deliverable which will meet the Specifications by a Project Milestone.
- (b) We will implement those proposals and the responsibility of any costs will be defined through Change Request.

8. Your Delay and Communication with Us

- 8.1 We will give notice to you if we reasonably considers that we are unable to perform our obligations under this Agreement in accordance with the Project Milestones as a result of your default or any delay caused by you in providing us with any necessary documents, assistance or access (if needed) to your existing information technology infrastructure.
- 8.2 Promptly following such notice, we will jointly determine with you (and record in writing) in accordance with Change Request the period of any resulting delay and the amendment or amendments to the Project Milestones which are reasonable to make as a result of your default.
- 8.3 Our Additional Fees which relate to the delay are to be payable in accordance with the procedure for determining the Fees and invoicing in clause 12 and 13 of this Agreement.
- 8.4 All communications between us shall occur via Zoom or Skype (for video conferencing) and email for text messaging.
- 8.5 You consent to the recording of all video conferencing. You are responsible for a reliable internet connection to communicate and we are not liable to you for any delay that arises because of your communications or internet failure. You shall ensure that if an agreed time is made for communication that you will attend on time or provide reasonable advance notice of a delay or cancellation.
- 8.6 If you are delayed in attending a video conference, the scheduled time for that conference will be shortened by the amount of time you are delayed.
- 8.7 Any cancellation of a video conference by you with 24 hours of the scheduled time will result in a \$100 administration fee payable by you before we will continue to provide the Services.

9. Your Assurances

- 9.1 You undertake to ensure that any material including your Intellectual Property you provide to us for incorporation into the Deliverables:
 - (a) does not infringe the Intellectual Property Rights of any person; and
 - (b) does not comprise and cannot be used for any purpose or activity of an illegal, fraudulent or defamatory nature.
- 9.2 You will indemnify us in respect of any losses or liability incurred as a result of a breach by of its obligations pursuant to clause 9.1.
- 9.3 You shall ensure that you provides those things specified in this clause promptly after a request from us. We shall not be liable for the late delivery of the Services where you have not complied with this clause.

10. Web Browser Conditions and other conditions

- (a) This Agreement may contemplate the creation of a Deliverable viewable by website browsers most commonly used at the time development of the Project commences. Compatibility is defined as all critical elements of the Deliverable being viewable in each of the browsers that form part of the Package.
- (b) You are aware that some advanced techniques on the internet, however, may require a more recent browser version, screen resolution and brand or plug-in. You are also aware that as new browser versions are developed they may not be backward compatible. Time spent to redesign Deliverables for compatibility due to the introduction of new browser versions will be subject to Change Request unless it forms part of the Package.
- (c) If additional Services are necessary to accommodate specific browsers, plug-in technology, screen resolutions, or platforms, Additional Fees for Additional Services may arise subject to a Change Request.

11. Request for changes

11.1 Change Request

- (a) Some examples of modification to the Services might include:
 - (i) developing a new layout structure to accommodate a substantial redesign at your request;
 - (ii) replacing more than 5% of the text at your request;
 - (iii) creating a new navigation structure or changing the link graphics at your request;
 - (iv) significantly reconfiguring any database structures and/or background services.
- (b) If you submit a Change Request to us for changes to the Specifications, we will have 20 Business Days to prepare and submit a change request quote to you for consideration (**Change Request Quote**).

11.2 Change Request Quote

- (a) If we submit a Change Request to you it must be accompanied by a Change Request Quote.
- (b) You have 20 Business Days from submission of the Change Request Quote to consider whether to accept or reject the Change Request Quote.
- (c) Failure to accept the Change Request Quote within the prescribed time period results in the Change Request Quote lapsing.
- (d) Any acceptance of the Change Request Quote must be in writing and signed by you and us.
- (e) If you accept the Change Request Quote:
 - (i) this Agreement is amended to the extent necessary to incorporate the Additional Fees, Additional Services, terms, Specifications and timing to Project Milestones contained in the Change Request and the Change Request Quote;
 - (ii) we will carry out and complete the Change Request in accordance with its terms.

12. Deposit, Fees and Refunds

- (a) You must pay the Deposit on the signing of this Agreement. Deposits are non-refundable other than in our sole unfettered discretion on application to us explaining the reason why.
- (b) In consideration for us providing the Services to you, you must pay us the Fees in accordance with the Payment Timetable and in a manner that we agree before we commence providing the Services to you.

- (c) You have no right to cancel this Agreement without cause subject to your rights to do so under the law. If for some reason outside your control, you wish to cancel this Agreement, you may apply to us for our agreement to cancel the Agreement and we will determine what, if any, refund we will provide in our discretion.
- (d) If we cancel this Agreement prior to commencing the Services we will refund 100% of all monies you have paid to us.
- (e) You must advise us in advance if (where we have agreed to a Payment Timetable) you will not be able to meet the payment of our Fees in accordance with the Payment Timetable. We may suspend or terminate this Agreement with you if you fail to make a payment of the Fees in accordance with the Payment Timetable. If we terminate this Agreement because of a failure to meet the payment of our Fees, you are not entitled to a refund. We are not liable to you for suspending or terminating this Agreement because you failed to pay our Fees.
- (f) If we agree to recommence the Services, you must pay all Fees outstanding.

13. Invoices

- (a) We will issue an invoice to you for the Fees in accordance with the Payment Timetable or if no Payment Timetable is specified, upon completion of the Services or Deliverables.
- (b) Unless otherwise provided, you must pay an invoice within 7 days of the date of the invoice (**Due Date**).
- (c) All Fees are payable without set off or deduction.
- (d) You are responsible for all fees and charges associated with the payment of the Fees. We reserve the right to charge you an amount which represents the amount we are charged by any payment processor or merchant facility.

14. Dispute of invoices

- (a) If you dispute any invoice issued under clause 13, you must:
 - (i) notify us of the amount in dispute and the reason for dispute by the Due Date; and
 - (ii) pay any amounts not in dispute.
- (b) The parties must resolve any dispute under this clause 14 in accordance with clause 29.
- (c) If it is resolved that some or all of the amount in dispute should have been paid by the Due Date, you must pay the amount finally resolved together with interest on that amount calculated in accordance with clause 15(a)(i).

15. Failure to pay

- (a) If you do not make a payment by the Due Date, we are entitled to:
 - (i) charge interest on the outstanding amount at a rate equivalent to the reference rate charged by our principal bank, accruing daily;
 - (ii) suspend provision of the Services until such time as payment is received;
 - (iii) terminate this Agreement without notice; and/or
 - (iv) recover any losses suffered by us as a result of your failure to pay.
- (b) We will not be liable to you for any loss or damage of any description you suffer or incur because we exercise any one or more of our rights under clause 15.

16. GST

- (a) Unless otherwise specified, the Fees are exclusive of GST.
- (b) If GST is payable in respect of a supply made under or in relation to this Agreement, you must pay to us, an amount equal to the GST payable on the supply (**GST Amount**). The GST Amount is payable by you in addition to and at the same time as any consideration for the supply.

17. Service Warranty

- (a) We warrant that, during the period of 1 month following the delivery of the Services to you (**Warranty Period**), that the Deliverables will substantially conform to the Specifications.
- (b) Your sole remedy under the warranty in clause 17(a) will be for us to use commercially reasonable efforts to correct any substantial non-conformity of the Deliverable during the Warranty Period.
- (c) The warranty in this clause 17 will not apply to any failure of the Deliverables to conform to the Specifications that is caused by:
 - (i) the use or operation of the Deliverables in an environment or for a purposes other than intended or recommended by us;
 - (ii) modifications to the Deliverables not made or authorised by us;
 - (iii) third party software or hardware including any updates, modifications or components that are not authorised by us or that occur after the Deliverables and the Services have been delivered to you.

18. Support Services

- (a) Support Services do not include functionality or feature requests. Such exclusions are the subject of a Change Request.
- (b) Support Services are provided in accordance with the current service levels in the Package.
- (c) Support Services include occurring issues on all the cloud based services (website, hosting, SSL domain and business email) done on behalf of the participant or by external threats such as hackers and / or viruses.
- (d) You are responsible for the updates and maintenance of your own website. You agree that a failure to update security may result in hackers and / or viruses.

19. Confidential Information

19.1 Protection of Confidential Information

Each party must keep confidential any Confidential Information disclosed to it or made available to it by the other party.

19.2 Removal of Confidential Information

At the reasonable request of the party to whom the Confidential Information belongs, each party must deliver, erase or destroy all electronic and physical documents in its possession or control that contain Confidential Information.

19.3 Return exceptions

If a party must retain the other party's Confidential Information for the purpose of:

- (a) complying with any law;
- (b) litigation;
- (c) internal quality assurance and record-keeping; or
- (d) performing its obligations or exercising its rights under this Agreement,

it may retain and use it solely for this purpose but must deal with the Confidential Information in accordance with clause 19.2 promptly after it is no longer required for this purpose.

20. Intellectual Property

- (a) Background IP will remain the sole property of the owner. Neither party acquires any right, title or interest in or to the Background IP of the other party by virtue of this Agreement or the disclosure or use of the Background IP during the performance of the Services, other than as expressly set out in this Agreement.
- (b) We own all Intellectual Property rights existing in connection with the provision and creation of the Services, the Material and our Background IP.
- (c) We grant you a royalty free, perpetual, irrevocable, worldwide, personal, non-exclusive licence, to use, copy, duplicate or print the Material, including the right to sub-license, transfer, assign, re-sell, share, build upon and commercially exploit the Material.
- (d) You grant us a royalty free, irrevocable, worldwide, personal, non-exclusive licence, to use, copy, duplicate or print your Background IP for the purpose of facilitating our provision of the Services and clause 22.
- (e) You grant to us a worldwide, royalty-free, perpetual, irrevocable, transferable, non-exclusive licence to use your name and logo (including any name or logo that has been trademarked in Australia or in another jurisdiction) for the purposes of marketing, testimonials and other promotional material in any type of media or forum we choose but only in relation to our business.
- (f) Except as expressly permitted by sections 47B(3), 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth), you must not reverse assemble or reverse compile the Services or any part of the Services.

21. Third Party Rights

- (a) Where we consider it necessary to use Third-Party Materials, Third-Party Software or Third Party Rights (collectively, **Third Party IP**) to provide the Services, we will:
 - (i) use reasonable endeavours to obtain the required approvals, consents and licenses to utilise the Third Party IP;
 - (ii) update you of any associated costs and necessary support involved with the Third Party IP, including licenses, hosting and activation, both initial and ongoing.
- (b) You acknowledge and agree that you do not obtain any rights in any Third Party IP other than the licence to use the Third Party IP as incorporated into the Services by us.

22. Acknowledgement and Attribution

You authorise us to use its name and logo, together with a summary of the Services in the form of a case study, marketing and a visual aid of the end product as part of our demonstration materials.

23. Your Data

- (a) We will take all reasonable steps to maintain appropriate security over and protect your Data in our possession against misuse or loss.
- (b) You hereby grant to us a non-exclusive licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of our obligations and the exercise of our rights under this Agreement including the right to analyse, aggregate

and publish reports of aggregated your Data and to allow us to improve the delivery of the Services.

- (c) You also grant to us the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of our obligations and the exercise of our rights under this Agreement, subject always to any express restrictions elsewhere in this Agreement.
- (d) You warrant to us that the Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.
- (e) Each party shall comply with the Privacy Act with respect to the processing of the Data where that data contains personal information.
- (f) You shall own all rights, title and interest in and to all of the Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Data.
- (g) We shall not be responsible for any loss, destruction, alteration or disclosure of Data caused by any third party.

24. Warranties

24.1 Mutual warranties

Each party represents and warrants to the other party as at the Commencement Date and during the Term that:

- (a) it has full power and authority to enter into, perform and observe its obligations under this Agreement, and that its execution, delivery and performance of this Agreement has been duly and validly authorised by all necessary corporate action; and
- (b) its obligations under this Agreement are valid, binding and enforceable.

24.2 Our warranties to you

We represent and warrant to you as at the Commencement Date and at all times during the Term that:

- (a) to the best of our knowledge, we have the right and power to grant to you the licences under this Agreement; and
- (b) we have the level of skill, knowledge, experience and ability which may be reasonably expected of a professional organisation or individual, as applicable, experienced in providing services of the type and complexity of the Services.

24.3 No warranties in relation to completion or content

- (a) We provide no warranty or guarantee:
 - (i) that our Services will result in a specific monetary outcome or financial result;
 - (ii) that any result or objective can or will be achieved or attained through the provision of the Services; or
 - (iii) as to the suitability of the Services or the content of the Materials for any purpose other than that specified in the Package, which we may interpret, and apply using its experience, skill and judgment, to provide the Services; or
 - (iv) that the Services or the Deliverables will be adopted, engaged or retained by your customers.

25. Disclaimer

We will use reasonable endeavours to provide the Services or Deliverables in accordance with any timeline agreed between the parties and subject to the necessary

cooperation and assistance of you and your employees and contractors. However, any such timeline is indicative only and we make no warranty or representation that the Services or Deliverables will be provided according to that timeline.

26. Termination

26.1 Termination for cause

Either party may terminate this Agreement by notice with immediate effect if the other party:

- (a) commits a material breach of the Agreement that is not capable of remedy;
- (b) commits a material breach of the Agreement capable of remedy, and does not remedy that breach within 10 Business Days after receipt of notice of the breach; or
- (c) is bankrupt, or is liquidated or wound up, or if a controller, administrator, receiver, manager or similar insolvency administrator is appointed to a party, or over any substantial part of its assets.

26.2 Termination by us for your default

We may immediately terminate this Agreement by notice to you, if:

- (a) you fail to pay one or more undisputed amounts due and payable;
- (b) if we issue a notice to you that we intend to terminate this Agreement pursuant to this clause 26.2 if payment of the outstanding amount, plus interest, is not received within 10 Business Days of you receiving the notice; and
- (c) you fail to make payment of the outstanding amount plus interest within 10 Business Days of receiving a notice in accordance with the clause 26.2(b).

26.3 Consequences of Termination

If this Agreement is terminated by us under clause 26.1 or 26.2 or 28, all money owing by you to us under this Agreement will immediately become due and payable by you to us.

26.4 Preservation of rights

Expiry or termination of this Agreement for any reason does not affect any rights of either party against the other which arose prior to the time at which such termination or expiry occurred, or which otherwise relate to or which may arise at any future time for any breach or non-observance of obligations under this Agreement occurring prior to the termination or expiry.

27. Indemnity and Infringement Claim

27.1 Mutual indemnities

- (a) Subject to the limitation of liability under clause 30.1, each party (**Indemnifying Party**) indemnifies the other party (**Indemnified Party**) and their directors, employees and representatives (together, **Indemnified Persons**) against all and any reasonable Claims (including, but not limited to, reasonable legal costs and defence or settlement costs) directly arising out of:
 - (i) any fraudulent or unlawful act or omission of the Indemnifying Party or its representatives;
 - (ii) any damage to or loss or destruction of real or personal property caused or contributed to by any act or omission of the Indemnifying Party or its representatives;
 - (iii) any third-party Claim; and
 - (iv) any Infringement Claim,except to the extent the liability, loss, damage, cost or reasonable expense is caused or contributed to by

the act or omission of the Indemnified Persons or its representatives.

- (b) It is not necessary for a party to incur expense or make a payment before enforcing a right of indemnity conferred by this clause 27.1

27.2 Conduct of Infringement Claims

If an Infringement Claim is made:

- (a) the Indemnified Party must promptly notify the Indemnifying Party of the Infringement Claim and provide assistance at the Indemnifying Party's expenses for the purposes of managing the Infringement Claim, as reasonably requested by the Indemnifying Party; and
- (b) the Indemnifying Party is responsible for and will have the right solely to control the defence and settlement of the Infringement Claim.

28. Force Majeure

- (a) For the purposes of this Agreement, Force Majeure means anything outside the reasonable control of a party regardless of whether it is reasonably contemplated by the parties at the Commencement Date as a likely result of breach of the Agreement.
- (b) If a Force Majeure event prevents us from providing the Services, we will notify you of the Force Majeure event and the anticipated impact on our performance of the Services.
- (c) If a Force Majeure event continues for more than 30 Business Days, either party may terminate the Agreement by written notice to the other without liability for damages of any kind, including for Consequential Loss.

29. Dispute Resolution

- (a) The parties must use reasonable endeavours to resolve any dispute through negotiation.
- (b) If, within 10 business days the dispute cannot be resolved following negotiation between the parties, either party may refer the dispute for mediation.
- (c) The parties agree to negotiate in good faith to agree on the appointment of a mediator, or failing agreement, as appointed by the President of the Queensland Law Society.
- (d) The costs of the mediator are to be borne equally between the parties.
- (e) If a party fails to adhere to the terms of this clause 29 and proceedings are subsequently issued by the defaulting party, this clause can be used as a bar to any proceedings so issued.
- (f) If the dispute cannot be resolved through mediation, either party may commence proceedings.

30. Liability and Exclusion

30.1 Limitations on liability

- (a) To the fullest extent permitted by law, the total liability of a party to the other party under or in connection with this Agreement in respect of all Claims will not exceed the Fees paid or payable for the Services in the 12 months prior to the Claim.
- (b) We will not be liable for any loss or damage suffered by you as a result of any deficiency or alleged deficiency in any Service or Deliverable which is attributable to:
 - (i) the use of any Third Party IP or asset in the provision of the Services;
 - (ii) any use of the Service or Deliverable by you;
 - (iii) incorrect or inaccurate information provided by you; or

- (iv) failure by you to provide sufficient information for us to perform the Services.

30.2 Implied terms

- (a) Subject to clause 30.2(b), any condition or warranty which would otherwise be implied in this Agreement is excluded.
- (b) Pursuant to s64A of the Australian Consumer Law, this clause applies regarding any services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption. Liability for breach of a guarantee conferred by the Australian Consumer Law is limited:
 - (i) to re-supplying the Services; or
 - (ii) making full payment for the cost of having the services supplied again.

30.3 Exclusion of consequential loss

Neither party is liable to the other for any kind of Consequential Loss arising out of or in connection with this Agreement.

30.4 Australian Consumer Law

Nothing in this Agreement is intended to limit or exclude your consumer guarantees under the Australian Consumer Law.

31. General

31.1 Notice

- (a) A notice, consent, approval, waiver or other communication provided in connection with this Agreement must be in writing (**Notice**).
- (b) A Notice may be given by hand delivery, post or by email and is effective upon receipt.

31.2 Entire agreement

This Agreement represents the entire agreement between the parties and supersedes all prior discussions, negotiations, understandings and agreements in relation to the subject matter of this Agreement.

31.3 Subcontracting

- (a) We may, at our sole discretion, subcontract, assign or delegate any part of its obligations, rights and responsibilities under this Agreement, provided that we will not be relieved of its obligations.
- (b) You may not subcontract, assign or delegate any part of its obligations, rights or responsibilities under this Agreement without our written consent (which may not be unreasonably withheld but which may be given subject to reasonable conditions).

31.4 Waiver and variation

A provision of the Agreement, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party or parties to be bound.

31.5 Counterparts

This Agreement may be signed in any number of counterparts. All signed counterparts taken together constitute one agreement.

31.6 Severability

If any provision is unenforceable or invalid, it will be ineffective to the extent it is unenforceable or invalid, without affecting the validity or enforceability of the remaining provisions of the Agreement.

31.7 Survival

Termination or expiration in whole or in part of the Agreement does not affect those provisions and those obligations of a party which by their very nature survive termination, including clause 16 (GST), clause 17 (Confidential Information), clause 20 (Intellectual property), clause 24 (Warranties), clause 26.3 (Consequences of Termination), clause 27 (Indemnity and Infringement Claim), clause 29 (Dispute Resolution), clause 30 (Liability and Exclusion) and clause 31.8 (Governing law and jurisdiction).

31.8 Governing law and jurisdiction

- (a) This Agreement is governed by the laws in force in Adelaide, Australia.
- (b) The parties submit to the exclusive jurisdiction of the courts of Adelaide, Australia.