

## CIRCUITLINK INTELLIGO SUBSCRIPTION AGREEMENT ('AGREEMENT')

This agreement is between CIRCUITLINK PTY LTD of Unit 4, 87-89 Station Road, SEVEN HILLS NSW 2147 Australia (ACN: 057 670 505) (Service Provider) and you (Customer).

### RECITALS:

- A. The **Customer** has agreed to engage the **Service Provider** to provide the services for the period and on the terms and conditions set out in this Agreement.
- B. The **Service Provider** and the **Customer** agreed that the subscriptions to the services are to be used only in conjunction with the **Service Provider's** Event Data Recorders (EDR) or products from approved third-party manufacturers supplied by the **Service Provider**, which are sold separately from the services.
- C. The **Service Provider** and the **Customer** agreed that each subscription to the services can be used on one single EDR or product from approved third-party manufacturers supplied by the **Service Provider** (Devices) only and cannot be used on multiple Devices simultaneously.
- D. This Agreement applies to all subscriptions to the services by the **Customer**. New Agreements are not required to be entered into for future subscriptions to the services.
- E. The **Service Provider** has represented that it possesses the necessary expertise, infrastructure, and capabilities to deliver and is qualified for the supply of such services.

### TERMS AND CONDITIONS

#### 1. DEFINITIONS AND INTERPRETATION

##### 1) Definitions

In this Agreement, the following words and phrases have the following meanings (unless the context otherwise requires):

**Affiliate** means any firm, corporation, or other entity, however organised, that, directly or indirectly, controls, is controlled by or is under common control with an entity. For the purposes of this definition, "control" is defined as ownership of a majority of the voting power or other equity interests of the entity under consideration.

**Agreement** means this Agreement, its recitals, service order or subscription forms, and any amendments to this Agreement from time to time.

**Access Credentials** mean the usernames, passwords and other credentials enabling access to the services, including access credentials for the User Interface but excluding access credentials for the API.

**API** means the application programming interface for the services defined by the **Service Provider**.

**Authorisation** means an authorisation, consent, declaration, exemption, notarisation, or waiver, however it is described, and in relation to anything that could be prohibited or restricted by the law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken, including any renewal or amendment.

**Claims** mean, in relation to a person, any claim, allegation, cause of action, proceeding, liability, suit or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual, or contingent.

**Corporations Act** means the Corporations Act 2001 (Cth) of Australia.

**Business Days** means any day other than a Saturday, Sunday, or public holiday in the Jurisdiction.

**Business Hours** means [09:00 to 17:00] (AEDT) on a Business Day.

**Commencement Date** means the date when the **Customer's** order is accepted or confirmed in writing by the **Service Provider**, or when the **Service Provider** commences the provision of services in alignment with the Customer's order. To avoid doubt, if the services become operational before the **Customer** returns the signed Agreement, the Commencement Date of the services will be the date when the **Service Provider** begins providing services.

**Confidential Information** means information that:

- i. is by its nature confidential;
- ii. is designated by the discloser as confidential; or
- iii. the parties know or ought to reasonably have known is confidential in nature;

and includes all information that relates to the business, processes, systems or affairs of the parties which is of a confidential nature or which is not otherwise in the public domain, including the terms of this Agreement, whether in a Document or provided orally, but does not include information that:

- i. is or becomes public knowledge other than by breach of this Agreement or by any other unlawful means;
- ii. is in the possession of the parties without restriction in relation to disclosure before the date of receipt;
- iii. is by law or the rules of any stock exchange required to be disclosed; or
- iv. has been independently developed, gained, or acquired by the parties without any reference to the Confidential Information.

**Consequential Loss** means any loss recoverable at law other than arising in the usual course of things and includes any consequential or economic loss, including:

- i. loss of anticipated or actual profits or revenue;
- ii. loss of production or use;
- iii. financial or holding costs;
- iv. loss or failure to realise any anticipated savings;
- v. loss of business or business interruption;
- vi. loss or denial of business or commercial opportunity;
- vii. loss of or damage to goodwill, business reputation, future reputation or publicity;
- viii. downtime costs or wasted overheads; and
- ix. special, punitive or exemplary damages.

**Customer Confidential Information** means any Confidential Information disclosed by or on behalf of the **Customer** to the **Service Provider** during the term of this Agreement.

**Customer Data** means all data, works and materials, including but not limited to the fleet data captured by the **Service Provider's** EDRs and uploaded to or stored on the Platform for the **Customer**; transmitted by the Platform at the instigation of the **Customer**; supplied by the **Customer** to the **Service Provider** for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Services by the **Customer** (but excluding analytics data relating to the use of the Platform and server log files).

**Data Protection Laws** means the *Privacy Act 1988*, the *Spam Act 2003*, the *Privacy and Personal Information Protection Act 1998* and all other applicable laws relating to the processing of Personal Data.

**Defects** mean a defect, error or bug in the Platform having a material adverse effect on the operation, functionality or performance of the Services but excluding any defect, error or bug caused by or arising as a result of any act or omission of the **Customer** or any person authorised by the **Customer** to use the Platform or Services; any use of the Platform or Services contrary to the Terms and Conditions of the **Service Provider (available at [www.circuitlink.com.au](http://www.circuitlink.com.au))**, whether by the **Customer** or by any person authorised by the **Customer**; a failure of the **Customer** to perform or observe any of its obligations in this Agreement; or an incompatibility between the Platform or Services and any other system, network, application, program, hardware or software not specified as compatible in the Agreement. A material adverse effect will be considered to exist when a defect, error or bug in the Platform has caused a disaster or disruption and the maximum period of

time within which the Customer Confidential Information and Customer Data may be lost due to the disaster or disruption exceeds eight hours.

**Document** includes:

- i. any paper or other materials on which there is writing, marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- ii. any article or material from which sounds, images or writing are capable of being reproduced with or without the aid of any other article or device; and
- iii. information in the form of data, text, or images stored or communicated by means of guided or unguided electromagnetic energy, or both.

**Documentation** means the documentation regarding the specifications, functionality or use of the services produced by the **Service Provider** and delivered or made available by the **Service Provider** to the **Customer**.

**Effective Date** means the date that this Agreement is the date that the **Customer** signed the Agreement.

**Eligible Data Breach** has the meaning given in the Australian Commonwealth Privacy Act 1988.

**Force Majeure Event** means an occurrence or a sequence of interrelated occurrences that are beyond the reasonable control of the affected party, encompassing events such as internet or telecommunication network failures, hacker attacks, denial of service attacks, cyber attacks, ransomware attacks, viruses or other malicious software attacks or infections or other cyber security issues, power failures, industrial disputes impacting third parties, legal amendments, disasters, epidemics, pandemics, explosions, fires, floods, tornadoes, earthquakes, hurricanes, civil unrest, such as riots, terrorist attacks, and wars government actions or restrictions, such as regulatory changes, prohibitory orders, or emergencies.

**Handover Date** means, with respect to service provision, the date when the **Customer** has confirmed in writing that the **Service Provider** has completed the provision of services; with respect to the supply of goods, the date when the **Service Provider** hands over the goods to the carrier nominated by the **Service Provider** or the **Customer** at the point of delivery, that is, the date of issue in the bill of lading or airway bill or other documents has confirmed in writing that the **Service Provider** has completed the delivery of goods.

**Intelligo** means the **Service Provider's** online fleet data storage and reporting services.

**Intellectual Property Rights** means Patents, all rights in relation to inventions and discoveries (including patent and utility model rights), plant varieties, designs, circuit layouts, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, Confidential Information (including Trade Secrets and know-how) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including applications for grant of any of these rights or other rights of a similar nature arising (or capable of arising), in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Jurisdiction** means New South Wales, Australia.

**Liability** means, in relation to a person, any liability or obligation, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Parties** mean both the **Customer** and **Service Provider** referred together.

**Patents** mean all patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other governmental authority-issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models).

**Person** means an individual, firm, partnership, trust, limited liability entity, joint venture, company, corporation, body corporate, unincorporated body, association, organisation, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body (whether or not in each case having separate legal personality).

**Permitted Purpose** means discussion, evaluation, and subject to further Agreement to be entered into by the parties, the undertaking of work by the parties in its business, including but not limited to its orders of services, customer services, communications, business plan, development of new services, accounting.

**Personal Data** means personal data under any of the Data Protection Laws.

**Personal Information** means, as defined under the Australian Commonwealth Privacy Act 1988, information or an opinion about an identified individual or an individual who is reasonably identifiable but for the purpose of this Agreement is limited to information created by or obtained by the parties while delivering services or fulfilling the parties' obligations under this Agreement.

**Platform** means the Platform managed and used by the **Service Provider** to provide the Intelligo services, including the database software, system, server and network infrastructure used by the **Service Provider** for the provision of the services.

**Services** means services set out in the Agreement.

**Service Level Agreement** means the level of service agreed to be provided by the **Service Provider** to the **Customer** with metrics by which services are measured, as well as remedies available to the **Customer** should the agreed upon service levels not be achieved.

**Special Faults** means a defect which: (a) a defect, error or bug in the Platform has caused a disaster or disruption and the maximum period of time within which the Customer Confidential Information and Customer Data may be lost due to the disaster or disruption exceeds eight hours; (b) because of its nature requires urgent attention; or (c) may cause danger to persons with the usage of the services provided by the **Service Provider**; and (d) is not a Defect.

**Subscription** means an agreement where the **Customer** pays a recurring fee to access and use the services provided by the **Service Provider** for a specified period as outlined in the Agreement, without owning the underlying Intellectual Properties.

**Support Services** means support for the **Customer** in relation to the use of services, the identification and resolution of errors in services, storage and transfer of the Customer data.

**Trade Secrets** means all inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections, patent disclosures and other confidential and proprietary information and all rights therein.

**User Interface** means the interface designed to allow the Customer to access and use the services.

## 2) Interpretation

(a) In this Agreement, unless specified to the contrary:

- (i) headings are for convenience only and do not affect the interpretation of this Agreement;
- (ii) money amounts are stated in Australian currency unless otherwise specified;
- (iii) the words "in writing" or "written" include any communication sent by letter, facsimile transmission email or any other form of communication capable of being read by the recipient;
- (iv) words importing the singular include the plural and vice-versa;
- (v) words importing a gender include any gender;
- (vi) a reference to a clause, paragraph is a reference to a clause, paragraph of this Agreement;
- (vii) where any word or phrase is given a definite meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;

- (viii) an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;
  - (ix) a reference to a statute, statutory provision, or regulation includes amendments, consolidations or replacements thereof and includes any subordinate legislation issued under it;
  - (x) a reference to a document (including this Agreement) or Agreement, or a provision of a document (including this Agreement) or Agreement, is to that document, Agreement or provision as amended, supplemented, replaced or novated;
  - (xi) a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns;
  - (xii) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
  - (xiii) a reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
  - (xiv) the expressions subsidiary, holding company and related body corporate have the same meanings as in the Corporations Act.
  - (xv) a covenant or Agreement on the part of or for the benefit of two or more persons binds or benefits them jointly and severally; and
  - (xvi) a reference to a body, whether statutory or not, which ceases to exist; or whose powers or functions are transferred to another body, is a reference to the body which replaces it, or which substantially succeeds to its powers or functions.
- (b) The language in all parts of this Agreement shall be in all cases construed in accordance with its fair and common meaning and not strictly for or against either of the Parties.
- (c) This Agreement is to be interpreted so that it complies with all applicable laws of the Jurisdiction. If any provision does not comply, then it must be read down so as to give it as much effect as possible. If it is not possible to give that provision any effect at all, then it is to be severed from this Agreement, and this Agreement is to be construed as if the severable portion did not exist. The remainder of this Agreement will continue to have full force and effect.
- (d) In the event of a conflict between the terms and conditions of the underlying Agreement and the terms and conditions in any agreements or orders, the terms and conditions in the Agreement shall govern.
- (e) Any headings are for ease of reference only and do not affect the interpretation of this Agreement.

## 2. APPOINTMENT

- 1) In consideration of the **Customer** paying the **Service Provider** in accordance with subscription fees set out in the Agreement, the **Service Provider** agrees to provide the services in Australia during the contract term in accordance with the provisions of this Agreement.
- 2) The **Customer** acknowledges and agrees that the **Service Provider** may employ its own staff and engage sub-processors for the provision of services or products.

## 3. PROVISION OF SERVICES

- 1) The parties agree that the **Service Provider** must:
  - a) provide services to the **Customer** in accordance with the specifications set out in the Agreement;
  - b) provide or ensure that the Platform will provide the **Customer** upon the Effective Date with the Access Credentials necessary to enable the **Customer** to access and use the services;
  - c) exercise all due care, skill and attention in providing the services;
  - d) do all things necessary to ensure that the services are provided to the reasonable satisfaction of the **Customer**;
  - e) ensure that the services are rendered in compliance with the Jurisdiction's relevant codes, standards and regulations;
  - f) ensure that the services are carried out in a proficient manner by professionally trained and qualified staff;

- g) perform the service in accordance with the specifications set out in the Agreement.
- 2) The **Customer** agrees that:
- a) services are performed in the **Service Provider's** sole discretion unless specific performance standards or acceptance criteria are specified in the Agreement;
  - b) the **Customer** is responsible for implementing and maintaining reasonable security measures for the Access Credentials. These measures should ensure that unauthorized individuals or applications are prevented from gaining access to the services using the Access Credentials.
  - c) the **Customer** will not rent, lease, give licence or permission to the services to a third party which is not a party in this Agreement;
  - d) the **Customer** will not utilise the Platform to offer services to third parties, such as acting as a service bureau;
  - e) only the **Service Provider** has the right to copy, maintain, enhance or otherwise modify the Platform;
  - f) the **Customer** will not reverse or attempt to reverse engineer, reverse or attempt to assemble, gain or attempt to gain access to the source code of any portion of the software; circumvent or disable any security or technological features or measures implemented within the software;
  - g) the **Customer** is prohibited from conducting or soliciting any load testing or penetration testing on the Platform or services without obtaining prior written consent from the **Service Provider**;
  - h) The **Customer** is prohibited from engaging or attempting to engage in any activities that could damage the services or Platform or interfere with the availability or accessibility of the services;
  - i) the **Service Provider** may use reasonable technical measures to limit the use of Platform resources by the Customer for the purpose of assuring services to its **Customer** generally;
  - j) the **Customer** represents and warrants to the **Service Provider** that it is in compliance with all applicable laws relevant to this Agreement, each related contract, the support services, and the operation of its business including all applicable employment, labour and human rights, health and safety, tax, export control, trade descriptions, consumer protection, anti-corruption and environmental laws in the Jurisdiction and related international laws; it undertakes to act at all times in compliance with all applicable data protection, privacy or similar laws in the Jurisdiction including all the provisions concerning security measures and the provision of any acquisition, collection, treatment, maintenance and/or transfer of personal data and direct marketing activities involving personal data; and undertakes to use all reasonable skill and care and appropriately trained and skilled personnel in undertaking its obligations under this Agreement;
  - k) if the **Customer** does not return the signed Agreement or negotiate the terms or does not pay the Subscription Fees for Services but instructs the **Service Provider** to provide services or the **Customer** commences accessing the services, that will be taken to be an acceptance of this offer, and costs will be charged in accordance with this Agreement;
  - l) where applicable, the **Service Provider** supplies Internet data plans provided by third-party Internet service providers as part of the services where the **Service Provider** does not have direct control over the performance of the internet service providers' networks, and the **Service Provider** is, therefore, not liable for performance of the Internet service, and;
  - m) in the event that excess internet data usage is attributable to issues arising from the **Customer's** end, including but not limited to improper use of the hardware or software, sharing of a single subscription license on multiple devices, etc., the **Service Provider** reserves the right to levy charges for such excess usage.
- 3) The **Service Provider** hereby grants to the **Customer** an Australia-wide, non-exclusive subscription licence to use the services by means of the User Interface for internal business purposes of the **Customer** in accordance with the Documentation during the term of this Agreement.
- 4) In the event that the **Service Provider** develops an updated or upgraded version of the software while this Agreement is in effect, the **Customer** will have access to the new version without incurring any additional charges.
- 5) The User Interface may only be used by the **Customer** through a Supported Web Browser.
- 6) The User Interface must not be used at any point in time by more than one user per subscription licence.
- 7) The **Customer** has no rights or permissions to access the software code of the Platform. This encompasses all levels of code, including the object code, intermediate code, and source code. The restriction on accessing the software code applies throughout and after the term of this Agreement.

- 8) The **Customer** acknowledges and agrees that the **Service Provider** may, from time to time, amend this Agreement. In such cases, the **Service Provider** shall provide written notification of any amendments via email or by post to the **Customer** or publish on the **Service Provider's** website [www.circuitlink.com.au](http://www.circuitlink.com.au) at least 30 days prior to the effective date of such amendments. If the **Customer** does not wish to be bound by the amended Agreement, the **Customer** must provide written notice to the **Service Provider** at least 14 days prior to the effective date of such amendments.

#### 4. DURATION OF CONTRACT TERM

- 1) The parties agree that this Agreement will commence on the Commencement Date and will continue until expiry or termination.
- 2) The **Service Provider** exclusively offers services on an annual basis, with a minimum service period of one year.
- 3) Unless the **Customer** provides a notice of termination or non-renewal at least 30 days before the expiration of the service period, the **Customer** agrees to the automatic renewal of the service on each anniversary of the Commencement Date ('Renewal Date') for a period of one year. Unless otherwise required by applicable law, the **Service Provider** will invoice the **Customer** for the applicable subscription fees for services and any taxes for each successive term.

#### 5. RELATIONSHIP OF THE PARTIES

- 1) The parties acknowledge that this Agreement is intended as a contract for the supply of services. The relationship of the parties is that of a service provider and customer and not any other relationship and, in particular, not the relationship of principal and agent or the relationship of partnership, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.
- 2) The parties acknowledge that they are separate legal entities, and each party has its own legal rights and obligations. As such, each party is responsible for its own actions and liabilities within the Jurisdiction.
- 3) Nothing contained in this Agreement shall be construed to:
  - a. give either party the power to direct and control the day-to-day activities of the other;
  - b. allow the **Customer** to create or assume any obligation on behalf of the **Service Provider** for any purpose whatsoever.
- 4) All financial obligations, including tax obligations associated with the **Customer's** business, are the **Customer's** sole responsibility, and the **Customer's** obligations to its customers are the **Customer's** exclusive responsibility.

#### 6. CREDIT AND REPURCHASE

- 1) The **Customer** agrees that all sales under this Agreement and each contract are made on a non-refundable basis. The **Service Provider** is unable to accept refund requests under this Agreement during the term hereof or upon termination hereof. It is at the **Service Provider's** absolute discretion to consider any refund requests by the **Customer** on a case-by-case basis.
- 2) The **Customer** agrees that the services are subscribed based on the technology supplied at the time of supply of the goods and services. As such, refund requests will not be accepted in the event of any technology upgrades post-delivery of goods and services, including but not limited to 4G LTE mobile service network upgrade, which may result in the goods and services becoming degraded, inoperable, malfunctioning, or obsolete.
- 3) In the event of repurchase, the **Customer** may request for a credit to be applied against future purchases. The credit request is to be considered by the **Service Provider** on a case-by-case basis and is subject to a maximum credit equivalent to one year's worth of subscription fees for the service. The credit amount will be calculated pro rata to the remaining duration of the service and will be applied towards the new purchase.

#### 7. SCHEDULED MAINTENANCE

- 1) The **Service Provider** may, at times, suspend the services to conduct scheduled maintenance to the Platform.
- 2) The **Service Provider** shall provide the **Customer** at least seven days written notice prior to the scheduled maintenance that may have a material negative impact on the availability of services.

#### 8. CUSTOMER DATA

- 1) The **Customer**, by entering into this Agreement, grants the **Service Provider** a worldwide, non-exclusive licence to copy, store and transmit the Customer Data and to edit, translate and create derivative works of the Customer Data for the purpose of the **Service Provider's** improvement of service, software and Platform and to the extent reasonably required for the performance of the obligations and the exercise of the rights of

the **Service Provider** under this Agreement. The **Customer** also, by entering into this Agreement, grants the **Service Provider** the right to sub-licence these rights to its hosting, connectivity and telecommunications service providers for the above-mentioned purpose and subject to any express restrictions elsewhere in this Agreement.

- 2) The **Customer** warrants to the **Service Provider** that the **Customer** will not restrict the **Service Provider's** utilisation of the Customer Data for the development of the **Service Provider's** techniques and know-how.
- 3) The **Customer** warrants to the **Service Provider** that the Customer Data and the **Customer's** usage of services will not in [CUSTOMER AND TECHNICAL SUPPORT](#)
- 1) The **Service Provider** is responsible for Support Services for the **Customer** during business hours throughout the term of this Agreement.
- 2) The **Service Provider** shall provide Support Services with reasonable care and skills.
- 3) The **Service Provider** is not responsible for providing the following services:
  - a. general training in the use of the services;
  - b. in respect of any duplicate issues raised by or on behalf of the **Customer**;
  - c. in respect of any issue caused by the improper use of the services by or on behalf of the **Customer** or any issue caused by any configuration by the **Customer** without prior written consent from the **Service Provider**, and;
  - d. develop modifications to the services, Platform or software requested by the **Customer**.
- 4) If the **Customer** requires the **Service Provider** for services outside the scope of the Support Services, subject to the **Service Provider's** absolute discretion, the **Service Provider** may consider providing commercially reasonable support and assistance to the **Customer** provided that the **Customer** provides all necessary labour, equipment, and information at the **Customer's** own cost and expense for the **Service Provider** to provide such support and assistance.
- 5) If the **Service Provider** offers additional features and functionalities of the services to other customers who require similar functionality to what is provided to the **Customer**, the **Service Provider** may, at its sole discretion and as reasonably necessary, provide such additional features and functionality to the **Customer**. The **Customer** acknowledges and agrees that the **Customer** will be responsible for any additional costs associated with the provision of these additional features and functionality.
- 6) The provision of the services is not covered by any **Service Level Agreement**.
- 4) fringe the Intellectual Property Rights and 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. If the **Service Provider**, at its sole discretion, reasonably determines, or a third party alleges that the Customer Data or the **Customer's** usage of services has infringed any person's Intellectual Property Rights, the **Service Provider** may modify the services in a way that they no longer infringe the Intellectual Property Rights or suspend the services. The **Customer** agrees that the **Service Provider** is not responsible for any loss, liability, or claims arising from the abovementioned modification or suspension.

## 9. DATA RETENTION

- 1) The **Customer** acknowledges and agrees it is the responsibility of the **Customer** to maintain the **Customer's** EDRs, and to ensure the accuracy, completeness, and legality of the Customer Data captured by the **Customer's** EDRs.
- 2) The **Service Provider** shall not use the Customer Data for any purposes other than those specified in this Agreement or as required by applicable laws and regulations.
- 3) The **Customer** retains all ownership rights to the Customer Data and grants the **Service Provider** the necessary rights and permissions to provide the services outlined in this Agreement.
- 4) The **Service Provider** may anonymise or aggregate the Customer Data for statistical, analytical, or research purposes, provided that the data can no longer be attributed to the **Customer**.
- 5) The **Service Provider** shall notify the **Customer** promptly in the event of any unauthorised access, disclosure, or loss of Customer Data and shall take appropriate measures to mitigate the impact of such incident.
- 6) During the term of this Agreement, unless otherwise stated or agreed by the **Service Provider**, the **Service Provider** shall be responsible for retaining the Customer Data for a period of 24 months from the date of its input into the **Service Provider's** server ('data retention period'). After this 24-month period, unless otherwise required by applicable laws or agreed upon in writing by both parties, the **Service Provider** shall have no further obligation to retain the Customer Data and may delete or destroy it without notice. The



**Customer** acknowledges and agrees to make necessary arrangements for the backup and retention of the Customer Data beyond this specified duration.

- 7) The **Customer** has the right to request the deletion or return of its Customer Data within the data retention period, subject to this Agreement and any legal obligations imposed on the **Service Provider**. Such requests must be made in writing and will be processed in accordance with applicable laws and within 30 days after the **Service Provider** receives such request.
- 8) During the term of this Agreement, the **Service Provider** shall maintain appropriate technical and organisational measures to protect the confidentiality, integrity, and availability of the Customer Data throughout the data retention period.
- 9) After the Agreement is expired or terminated by either party in accordance with this Agreement unless explicitly agreed upon in writing by both parties, the **Service Provider** is not responsible for the retention of Customer Data, and the **Service Provider** may promptly and automatically delete or securely destroy all Customer Data from the **Service Provider's** server upon the termination or expiration of this Agreement unless before the termination or expiration of this Agreement the **Service Provider** has received a written notice from the Customer or a court that the **Service Provider** is required to retain the data for legal or regulatory purposes, without the need for providing additional notice to the **Customer** or consent from the **Customer**. The **Customer** acknowledges and agrees to make necessary arrangements for the backup and retention of the Customer Data beyond the termination or expiration of this Agreement.
- 10) The **Service Provider** shall not be liable for any loss, damage, or inability to retrieve the Customer Data after the termination or expiration of this Agreement.

#### 10. DATA BACKUP AND RESTORATION

- 1) The **Service Provider** shall create a backup copy of the Customer Data on a monthly basis or regular basis as appropriate and as determined by the **Service Provider**.
- 2) The **Service Provider** shall ensure that each backup copy is sufficient to restore the services to the state they were in when the backup was taken.
- 3) Throughout the data retention period, the **Service Provider** shall retain and securely store each backup copy for a minimum period of 30 days.
- 4) Upon receipt of a written request from the **Customer**, the **Service Provider** shall, within 30 days, make reasonable efforts to restore the Customer Data stored in any backup copy created and stored by the **Service Provider**. The **Customer** acknowledges that this restoration process will overwrite the Customer Data stored on the Platform prior to the restoration.

#### 11. INVOICING AND PAYMENT

- 1) Subject to the **Service Provider's** provision of services in accordance with the terms of this Agreement, the **Customer** shall pay the **Service Provider** in accordance with the subscription fees set out in the Agreement in the manner and at the times provided for in this Agreement.
- 2) Where the **Service Provider** is entitled to invoice the **Customer** for all or part of the amount owed to the **Service Provider**, such invoices must be paid by the **Customer** within 30 days of receipt of the invoice. The **Customer** reserves the right, in accordance with this Billing Disputes clause, to question any invoice presented, require correction of any error and receive a refund of any overpayment, regardless of when the overpayment occurred.
- 3) Payment obligation by the **Customer** by the due date on the **Service Provider's** tax invoices is not subject to receipt of funds from any other party and is not subject to the occurrence of Defects.
- 4) Interest will be charged at 8.0% per annum on overdue tax invoices plus any costs of collection of all outstanding monies.
- 5) The **Service Provider** has the right to suspend services if the **Customer** fails to pay any amount due to the **Service Provider** and the **Service Provider** has provided the **Customer** at least seven days written notice, following the amount becoming overdue, of its intention to suspend the service on the basis of the **Customer's** failure to pay.
- 6) The **Service Provider** has the right to immediately terminate this Agreement or corresponding contract if the **Customer** fails to make payment within 30 days from the date the invoice is issued by the **Service Provider**.
- 7) In addition to all expenses, service charges, money invoiced by the **Service Provider**, and other money which the **Customer** may be liable at law or in equity to pay the **Service Provider**, the **Customer** will, upon demand, pay to the **Service Provider** all costs incurred by the **Service Provider** for or in connection with the recovery

of any unpaid money or other entitlements or Claims from the **Customer**, including but not limited to the **Service Provider's** legal costs, and to avoid confusion, the legal costs will be sought against the **Customer** is on an indemnity basis.

- 8) With respect to expenses incurred in the provision of the services by the **Service Provider**, such as reasonable and necessary business and travel expenses, as well as pass-through costs, that are actually incurred by the **Service Provider** for the provision of services, the **Customer** will be responsible for reimbursing the **Service Provider** for the above-mentioned expenses. The **Service Provider** is responsible for issuing invoices to the Customer for the reimbursement of expenses, supported by relevant documents, such as receipts, demonstrating the incurred expenses.

## 12. BILLING DISPUTES

- 1) The **Customer** may dispute an amount invoiced by the **Service Provider**, but only if the **Customer** does so in accordance with this Billing Disputes clause.
- 2) Except to the extent the **Customer** raises a valid billing dispute in respect of a **Service Provider's** invoice, the **Customer** agrees that the invoice is valid and payable, and the **Customer** must pay any undisputed amount included in the invoice in accordance with the Payment and Invoice clause.
- 3) To raise a valid billing dispute, the **Customer** must:
  - a) make a good faith request to the **Service Provider** to investigate the specific charges or invoice, providing at the same time specific evidence which demonstrates that a particular charge or invoice is incorrect; and
  - b) make any such request to the **Service Provider** within 12 months of the relevant invoice date.
  - c) the **Customer** may only make a claim or commence proceedings alleging that any charge or invoice is incorrect, or the **Customer** is entitled to a refund for overpayment if the **Customer** does so within 12 months of the date of invoice or overpayment.
- 4) If the **Customer** raises a valid billing dispute, then the **Service Provider** will conduct investigations that are reasonably necessary and appropriate in the circumstances of the dispute. At the end of these investigations, the **Customer** will pay any outstanding amount (together with interest on that amount calculated in accordance with the Payment and Invoice clause from the original due date for payment) within 7 (seven) days. The **Service Provider** may invoice the **Customer** a daily professional services charge to audit and validate any non-**Service Provider** analysis of the disputed amount. The **Customer** will pay any such professional services charge in accordance with the Payment and Invoice clause.

## 13. TAX

- 1) The **Customer** shall pay all applicable country, state, municipal and other taxes including, without limitation, sales, use, value added, withholding and other taxes, and customs and import duties on goods, other than taxes based upon the **Service Provider's** net income.
- 2) Should tax law in the Jurisdiction require the withholding of tax by the **Customer** on any of its payments to the **Service Provider**, then the **Customer** shall provide to the **Service Provider** relevant documents that establish the **Customer's** obligation to withhold such tax as well as all receipts, credit notices or other documents which evidence the actual withholding and submission of such taxes by the **Customer** to the applicable taxing authorities.

## 14. COMPLIANCE WITH DIRECTIONS

- 1) The **Service Provider** must comply with and must ensure that its employees at all times when providing the services comply with:
  - a) Any qualification and accreditation requirements as required by rules and regulations in the Jurisdiction;
  - b) The Jurisdiction's statutory provisions, regulations, orders and by-laws of any government, municipal or statutory authority which relate to the provision of the services; and
  - c) Generally accepted standards of good and proper conduct and behaviour in the Jurisdiction.

## 15. EXCLUSIVITY AND RESTRAINT

- 1) The parties are not required to deal with each other on an exclusive basis in relation to the subject of this Agreement in Australia.

## 16. DATA PROTECTION

- 1) The parties shall comply with the Data Protection Laws in relation to the processing of Personal Data. Both the **Service Provider** and the **Customer** are responsible for adhering to the applicable regulations regarding data protection.

- 2) The **Customer** agrees to cooperate with the **Service Provider** in order to fulfil the **Service Provider's** obligations under the Data Protection Laws. The **Customer** will take reasonable actions to support the **Service Provider's** compliance efforts.
- 3) In the event that any changes or potential changes to the Data Protection Laws would cause one or both parties to violate the Data Protection Laws in relation to the processing of Personal Data under this Agreement, the parties shall make their best efforts to promptly negotiate any necessary amendments to this Agreement to rectify such non-compliance.
- 4) The **Customer** shall only provide the **Service Provider** with Personal Data in accordance with the Agreement, and the **Service Provider** shall only process the Personal Data received in accordance with this Agreement solely for the purpose of providing services during the term of this Agreement and for a period not exceeding 30 days following the termination or expiration of this Agreement.
- 5) The **Customer** hereby grants authorization to the **Service Provider** to transfer the Personal Data internally on a need-to-know basis to the **Service Provider's** officers, employees, agents, and professional advisers who are involved in the provision of services. Additionally, the **Service Provider** is permitted to transfer Personal Data to the third-party processors or related third parties, as well as to transfer Personal Data to a country, territory, or sector that has been deemed to provide an adequate level of protection for Personal Data by competent data protection authorities.
- 6) Despite any other provision in this Agreement, the **Service Provider** may process the Personal Data if and to the extent required by applicable laws. In such cases, the **Service Provider** will ensure compliance with the relevant legal requirements.

#### 17. INCIDENT REPORTING

- 1) As soon as becoming aware of an accident or serious incident affecting the provision of services, each party shall inform the other of the cause of the event and take such action as is necessary to deal with the situation. The party responsible will provide a detailed written report setting out the cause of the event and all other relevant information as soon as practicable after remedial action has been taken.
- 2) In circumstances where the **Customer** becomes aware that the Customer Data contains any error or is corrupted, lost or functionally disabled or unreadable (Data Defect), the **Customer** should inform the **Service Provider** in writing as soon as reasonable. Upon receiving the **Customer's** report of such a Data Defect, the **Service Provider** shall conduct an investigation within a reasonable time. Should the investigation outcome shows that the Data Defect arises from an act or omission of the **Service Provider**, then the **Service Provider** shall, within a reasonable time, advise the **Customer** in writing whether the **Service Provider** is capable of remedying the Data Defect and how long it is estimated to take for the **Service Provider** to remedy the Data Defect. If the **Service Provider** has no capacity to remedy the Data Defect, then the **Service Provider** shall, at its own costs and expenses, assist and cooperate with the **Customer** to remedy the Data Defect by the **Customer** itself or through a third party. If the investigation outcome shows that the Data Defect does not arise from an act or omission of the **Service Provider**, then the **Service Provider** bears no responsibility to remedy the Data Defect.
- 3) With respect to any suspected or actual unauthorised access to, disclosure, or loss of data (Data Breach), the parties must immediately notify each other and immediately cooperate with each other to investigate and promptly take all steps reasonably available to the parties to remedy the Data Breach and to mitigate any harm to individuals which may result from the Data Breach; cooperate with each other and provide relevant authorities with all information, documents, ongoing updates, and assistance reasonably required by the authorities in respect of the Data Breach.
- 4) If known at the time of notification that there are reasonable grounds to believe the relevant circumstances amount to Eligible Data Breach, the parties shall cooperate with each other to collect all necessary information, documents required for the **Service Provider's** fulfilment of obligations under Data Protection Laws, including but not limited to general notification obligations under Division 3 Subdivision B of Part IIIC of the Privacy Act.

#### 18. THE SERVICE PROVIDER'S WARRANTIES

- 1) The **Service Provider** warrants at all times during the contract term that:
  - a) It is a company duly incorporated in Australia and has the power and authority to enter into this Agreement on the terms set out herein;

- b) It has the expertise, resources and capacity to perform to the highest standard all of its obligations under this Agreement;
  - c) The **Service Provider** will take reasonable care or exercise reasonable skill to carry out its obligations;
  - d) It will have all permits, licences and authorisations required in relation to the provision of the services;
  - e) It will comply with the Jurisdiction's all statutory provisions, regulations, orders and by-laws of any government, municipal or statutory authority which relate to the provision of the services;
  - f) This Agreement constitutes a legally valid and binding obligation on the **Service Provider**, enforceable in accordance with its terms;
  - g) It has made all enquiries of the **Customer** for the purpose of making an informed assessment of its ability to enter into and to perform all of the obligations of this Agreement; and
  - h) It has exercised its own judgment in entering into this Agreement and has not relied on any warranty or representation made by the **Customer**, its officers, employees or agents, save as specifically set out in this Agreement.
- 2) The **Service Provider** provides services that come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, the **Customer** is entitled: to cancel the service contract with the **Service Provider**; and to a refund for the unused portion, or to compensation for its reduced value. The **Customer** is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure the **Customer** is entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel the Agreement and obtain a refund for the unused portion of the Agreement.
  - 3) The **Service Provider** agrees to make reasonable efforts to ensure the availability of the services to the **Customer**. However, it is important to note that the **Service Provider** does not guarantee 100% availability. The **Customer** acknowledges that the service, software or Platform is never entirely secure or wholly free from any defects, errors, or bugs, and the **Service Provider** makes no warranty that the service, software or Platform is entirely secure or wholly free from any defects, errors, or bugs.
  - 4) The **Customer** acknowledges that the service, software, or Platform is designed to be compatible only with the system, network, application, program, hardware or software specified in the Agreement as follows, and the **Service Provider** makes no warranty that the service, software, or Platform will be compatible with any other system, network, application, program, hardware or software not specified in the Agreement.
    - a) **Compatible system, network, application, program, hardware or software:**
      - i.
  - 5) Downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement: where the services have been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by the **Customer**; has been reconstructed, repaired or altered by Persons other than the **Service Provider** or its authorised representative; or has been used with any third party product, hardware or product that has not been previously approved in writing by the **Service Provider**; a Force Majeure Event, a fault of failure of the internet or any public telecommunications network, a fault or failure of the **Customer's** computer systems to networks; any breach by the **Customer** of this Agreement; or scheduled maintenance by the **Service Provider** with seven days' notice.
  - 6) The **Service Provider** gives no warranty that the use of service by the **Customer** will not give rise to any legal liability on the part of the **Customer** or any other person. Nothing in the Agreement limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
  - 7) Except for the express warranty set out in the Agreement, the **Service Provider** grants no other warranties, express or implied, by statute or otherwise, regarding the goods or services, their fitness for any purpose, their quality, their merchantability, or otherwise.
  - 8) The **Service Provider's** liability shall be limited to a refund of the price actually paid by the **Customer**. In no event shall the **Service Provider** be liable for the cost of procurement of substitute services by the **Customer** or for any special, consequential or incidental damages for breach of warranty.

## 19. LIMITED LIABILITY

- 1) The **Service Provider**, to the extent permitted by law, shall not be liable to the **Customer** or to any other Person for any Claim, whether foreseeable or unforeseeable, for injury or damage (whether based on tort,

contract, or statute) to loss of data, availability of data, privacy, business, earnings, opportunity, profits, anticipated savings, or goodwill suffered by the **Customer** or any other person and caused directly or indirectly by the services provided pursuant to this Agreement, even if the **Service Provider** shall have been advised of the possibility of the same.

- 2) The **Customer** shall indemnify and hold the **Service Provider** harmless from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with laws and regulations by the **Customer**, any of its affiliates, agents or any other person acting on its behalf in connection with this Agreement, and the **Customer** shall compensate the **Service Provider** for all losses and expenses caused thereby.
- 3) In no event will the **Service Provider's** aggregate liability arising out of or related to this Agreement exceed the total amount actually paid by the **Customer** to the **Service Provider** for the service on which the claim is based under this Agreement in the 12-month period prior to the occurrence of the event or events.
- 4) With respect to configuration files created by the **Service Provider** in accordance with the **Customer's** instructions, the **Customer**, by accepting and using the configuration files for the **Customer's** equipment, acknowledges and accepts the following:
  - a. Configuration files are created in accordance with the **Customer's** strict and specific instructions. The **Service Provider** will not be aware of any files created using the **Customer's** own access/user rights, or changes made to the configuration files by the **Customer** after the initial configuration files have been created by the **Service Provider**.
  - b. Using the configuration files is at the **Customer's** own risk. It is the **Customer's** responsibility to perform acceptance testing of the configuration files, conduct proper ongoing maintenance of the configuration files, and adequately address any security or compliance concerns, including but not limited to compliance with the relevant law, in using the configuration files. None of the affiliates, related entities, directors, officers, employees, agents, contributors, and licensors of the **Service Provider** (**Service Provider's** Related Parties') nor the **Service Provider** makes any express or implied representation or warranty about the configuration files.
  - c. Where applicable, the configuration files are provided with guarantees which cannot be limited or excluded under the Australian Consumer Law ('Non-Excludable Term'). In the event of the **Service Provider's** breach of a Non-Excludable Term, the **Service Provider's** breach liability is limited to (1) for goods: (a) the replacement of the goods or the supply of equivalent goods; (b) the repair of the goods; (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (d) the payment of the cost of having the goods repaired. (2) for services: (a) the supplying of the services again; or (b) the payment of the cost of having the services supplied again ('Limited Liability').
  - d. To the maximum extent permitted by law, guarantees, warranties, representations, or conditions not expressly stated in writing by the **Service Provider** are excluded. The **Service Provider** and the **Service Provider's** Related Parties will not be liable for any special, direct, indirect, consequential loss or damage, loss of profit or opportunity, or damage to goodwill arising out of or in connection with the configuration files, whether at common law, under contract, tort (including negligence), in equity, under statute or otherwise. The **Service Provider's** total liability in relation to the configuration files, however arising, does not exceed the Limited Liability.

## 20. EVENTS BEYOND CONTROL

- 1) Neither party shall be liable to the other party for any direct or indirect losses or damages caused by any failure to observe the terms and conditions of this Agreement, provided that such failure is occasioned by causes beyond its reasonable control. This includes but is not limited to the occurrence of a Force Majeure Event. The non-performing party shall provide prompt written notice to the other party upon the occurrence of any such event and inform the other party of the period for which it is estimated that such failure or delay of performance will continue. The party affected by the events beyond its control shall take all reasonable steps to alleviate arrangements as may be fair and reasonable.

## 21. No ASSIGNMENT BY THE CUSTOMER

- 1) This Agreement is personal to the **Customer** and must not be assigned without the prior written consent of the **Service Provider**. Such consent may be given or withheld at the **Service Provider's** absolute discretion. Any assignment or purported assignment without the prior written consent of the **Service Provider** shall be void and of no effect.

- 2) The **Customer** agrees that the **Service Provider** may assign any rights or benefits under this agreement at any time without the **Customer's** consent.

## 22. SUBCONTRACTING

- 1) The **Customer** agrees that the **Service Provider** may engage subcontracting processors or service providers or subcontract any of its obligations under this Agreement without the prior written consent of the **Customer**, and the **Service Provider** remains wholly responsible for acts or omissions of the subcontractor.

## 23. TERMINATION

- 1) This Agreement expires and comes to an end on completion of the provision of services under this Agreement.
- 2) In the event that the Agreement is ongoing, then without cause, either party may terminate this Agreement on 30 days written notice prior to the expiry of the relevant service period.
- 3) Either party may terminate this Agreement by written notice to the other party if either Party has a receiver or administrative receiver appointed or passes a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or petition for insolvency or bankruptcy, commences negotiation or enters into any voluntary arrangement with its creditors, or ceases (or threatens to cease) to carry on business.
- 4) This Agreement may be terminated by either party in the event of the other party breaching a term of this Agreement and failing to remedy the breach within 10 business days after having received notice in writing of the breach.
- 5) The **Service Provider** may terminate this Agreement upon written notice to the **Customer** if the **Customer** commits a fundamental breach of this Agreement within the meaning of this Agreement or merges or consolidates with or into any other Person unless the surviving entity has a net worth greater than or equal to its net worth immediately before the merger or consolidation.
- 6) If such termination is disputed, it shall be dealt with in accordance with the dispute resolution provisions of this Agreement.

## 24. EVENTS FOLLOWING TERMINATION

- 1) On expiry or termination of this Agreement, the parties will return all hard copies of any Confidential Information and all other items of the parties' property. Final accounts shall be prepared and settled. Any offer contained in any outstanding purchase order that has not been accepted or deemed accepted prior to such termination shall be automatically revoked upon such termination. Any authorisation given by one party to the other shall be automatically revoked upon such termination and become invalid and void immediately.
- 2) The expiry or termination of this Agreement for any reason will be without prejudice to any rights or liabilities of the parties which have accrued prior to the date of expiry or termination.
- 3) The **Customer** agrees that expiry or termination of this Agreement for any reason gives no rights to the **Customer** for refund of money for the relevant service period during which the date of expiry or termination of this Agreement occurs.
- 4) All trademarks, trade names, patents, copyrights, designs, drawings, formulas or other data, photographs, samples, literature, and sales aids of every kind shall remain the property of the **Service Provider**. Within thirty days after the termination of this Agreement, the **Customer** shall prepare all such items in its possession for shipment, as the **Service Provider** may direct. The **Customer** shall not make or retain any copies of any confidential items or information which may have been entrusted to it. Effective upon the termination of this Agreement, the **Customer** shall cease to use all trademarks, marks, and trade names of the **Service Provider**.

## 25. CONFIDENTIALITY OBLIGATIONS

- 1) Confidentiality

The parties:

- (a) acknowledges all the Confidential Information and confidential material, including copies, remain the absolute property of the disclosing party;
- (b) acknowledges the sensitive and valuable nature of the Confidential Information to the parties; and

- (c) agrees all confidential material, including copies, will be securely stored by the parties and not directly or indirectly divulge or, communicate or otherwise disclose the Confidential Information, in whole or part, to any third party.

2) Use of Confidential Information

The parties must not:

- (a) use any of the Confidential Information for any purpose other than the Purpose;
- (b) at any time or for any reason, whether during the term of this Agreement or after its termination, divulge any confidential information to any third party;
- (c) exploit the Confidential Information for its own benefit, for the benefit of any other person or for any other purpose, or allow any other person to do so without the other party's consent;
- (d) use any of the Confidential Information in a manner or for a purpose detrimental to the other party or its related bodies corporate (if any).

3) Protection of Confidential Information

The parties must;

- (a) keep effective control of all Confidential Information received under or in connection with the Agreement and business relationship between the parties;
- (b) only disclose the confidential information on a need-to-know basis to the officers, employees, and professional advisers of the recipient;
- (c) advise each person to whom the Confidential Information is permissibly disclosed under this Agreement that the recipient is subject to a duty of confidence and that the Confidential Information is not to be used for any purpose other than for the Purpose described in the Agreement;
- (d) take all precautions that are reasonably necessary to prevent any theft, loss or unauthorised use or disclosure of that Confidential Information at the party's own expense;
- (e) take at the party's own expense all reasonable steps necessary to enforce the party's duty of confidence against any person to whom the confidential information has been permissibly disclosed by the recipient and who is in breach of that duty;
- (f) on the other party's request, provide the party with a list of recipients and details of any action taken against them; and
- (g) promptly inform the other party of any suspected or actual unauthorised use or disclosure of the Confidential Information.

4) Acknowledgements

The parties acknowledge that:

- (a) a breach of any of the confidentiality obligations under this Agreement may result in the other party suffering loss and damage including, without limitation, Consequential Loss, and may cause irreparable damage to the party or its related entities; and
- (b) in the event of a breach, or threatened or anticipated breach, of this Agreement:
  - (i) damages alone may be an inadequate remedy; and
  - (ii) that the other party is entitled to seek an interim, interlocutory, or permanent injunction restraining the breaching party without showing or proving any actual loss or damages sustained.

5) Duration of Obligations

All obligations of confidence set out in this clause continue in full force and effect after this Agreement ends for three years.

**26. RETURN OF CONFIDENTIAL INFORMATION**

- 1) Upon the request or upon expiry or termination of this Agreement, the parties must promptly return (or procure the return of) the following (or, if any of the following is incapable of being returned, irretrievably destroy, or delete and certify in writing that it has been so destroyed or deleted):

- (a) the Confidential Information; and
- (b) all copies, extracts, summaries, notes, and records in whatever form (including, without limitation, any electronic records or any unwritten form) of the whole or any part of the Confidential Information.

## 27. INTELLECTUAL PROPERTY RIGHTS

- 1) The **Customer** acknowledges that the Intellectual Property right in all works of the **Service Provider** or their servants or agents in the course of the fulfilment of the **Service Provider's** obligations hereunder, including but not limited to any inventions, corrections, bug fixes, enhancement, modifications, configurations, updates, upgrades, or new software, services and Platforms, are the absolute property of the **Service Provider** and that the **Customer** shall do all things and sign all documents that may be necessary to vest such intellectual property right in the **Service Provider**.
- 2) The **Customer** acknowledges that the licence granted to the **Customer** by the **Service Provider** under this Agreement does not provide the **Customer** with any title, ownership, or rights of the Platform, software or any **Service Provider's** Intellectual Property right.
- 6) To avoid doubt, the Intellectual Property right in all works of the **Service Provider** or their servants or agents arising from the Customer Confidential Information and Customer Data are the absolute property of the **Service Provider** and the **Customer** shall do all things and sign all documents that may be necessary to vest such intellectual property right in the **Service Provider**.
- 7) The ownership of Intellectual Property rights in all works carried out by the **Service Provider**, their employees, or agents under the **Customer's** specific instructions and created specifically for the **Customer** is subject to a further written agreement between the parties before the commencement of such works. However, it should be clarified that the **Customer's** instructions regarding inventions, corrections, bug fixes, enhancements, modifications, configurations, updates, upgrades, or new software, services, and platforms carried out by the **Service Provider** for the **Customer's** regular use of services are not considered specific instructions under this clause.
- 8) The **Customer** irrevocably appoints the **Service Provider** to be their attorney to do all things and sign all documents that may be necessary to vest such intellectual property right in the **Service Provider**.

## 28. DISPUTE RESOLUTION

- 1) General  
If a dispute arises out of or relates to this Agreement or the business between the **Service Provider** and the **Customer**, including any dispute as to breach of the Agreement or as to any claim in tort, in equity or pursuant to any statute, neither party may commence any court or arbitration proceedings relating to the dispute unless they have complied with this clause except where they seek urgent interlocutory relief.
- 2) Notice specifying the nature of the dispute  
The party (the complainant) to this Agreement claiming that a dispute has arisen under or in relation to this Agreement or the business must give written notice to the other party (the respondent) to this Agreement specifying the following:
  - a) The nature of the dispute;
  - b) The outcome the complainant desires, and
  - c) The action the complainant will settle the dispute.On receipt of the notice referred to in this clause by the respondent, both parties must endeavour to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation, determination or similar techniques agreed upon by them.
- 3) Mediation  
If the parties do not agree within twenty business days of receipt of the notice, or such further period as agreed in writing by them, as to:
  - a) The dispute resolution technique and procedures to be adopted;
  - b) The timetable for all steps in those procedures; and
  - c) The selection and compensation of the independent person required for such technique,



then they must mediate the dispute in accordance with the mediation rules of the recognised professional association for solicitors in the Jurisdiction. The president of this professional association or the president's nominee will select the mediator and determine the mediator's remuneration.

4) Proceedings

If the mediation referred to above is not completed within four weeks of reference to a mediator, then either party may commence any court or arbitration proceedings relating to the dispute as they see fit in the Jurisdiction.

5) Continue to provide the services

Notwithstanding the preceding provisions of this clause, both parties must continue to fulfil their obligations under this Agreement pending resolution of the dispute.

6) Associated costs

The costs of the mediation will be borne equally by the parties.

7) Survival of this clause

This clause survives the termination of this Agreement.

**29. INDEMNITY OF LEGAL COSTS**

1) The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses and legal costs, including court costs and reasonable solicitors' or barristers' fees.

8) To avoid confusion, the expenses and legal costs will be sought by one party against the other on an indemnity basis.

**30. NOTICES**

1) Any notice to be given to one party by another under this Agreement:

- a) must be in legible writing, in English and addressed to the intended recipient; and
- b) must be delivered to the recipient in person or by courier hand delivery, by prepaid ordinary post, by facsimile or by email; and
- c) must be signed by an authorised officer of the party giving or making it or (on its behalf) by any solicitor, director, secretary, or authorised agent of that party.

2) A notice is regarded as being given by the sender and received by the recipient:

- a) if by delivery in person, when delivered to the recipient;
- b) if by post, seven Business Days from and including the date of postage;
- c) if by facsimile transmission, whether or not legibly received, when the machine from which the facsimile is sent generates a transmission report confirming that all pages of the notice have been sent to the recipient's facsimile number; or
- d) if by email, immediately unless the sender receives an automated reply that the email was not delivered by reason of the address being invalid or otherwise.

3) If a notice is received on a day which is not a Business Day or after 5:00 pm on a Business Day, that notice is regarded as received at 9:00 am on the following Business Day.

**31. TIME OF ESSENCE**

1) Time is of the essence of this Agreement.

**32. COSTS**

1) Each party will pay their own costs in relation to this Agreement.

**33. FURTHER ASSURANCE**

1) Each Party shall execute and do (or procure the execution and doing of) all such deeds, documents, acts and things as the other Party shall reasonably require for carrying into effect the purpose and intent of this Agreement and each Contract.

**34. USE OF NAME**

1) Both parties are prohibited from creating, displaying, or distributing any advertising, public relations materials, press releases, promotional materials, or any other kind of material or public statement that uses the name of the other party, an affiliate, or a collaboration partner, or utilizes their trademark(s), without obtaining prior written approval from the other party.

**35. JURISDICTION**

1) This Agreement is to be governed by and construed in accordance with all applicable laws in force in the Jurisdiction from time to time, and the parties submit to the exclusive jurisdiction of the courts of the

Jurisdiction for the adjudication of any disputes arising from, related to or regarding the services or the subject matter of this Agreement.

**36. NON-MERGER OF PROVISIONS**

- 1) A provision of this Agreement that can and is intended to operate after its conclusion will remain in full force and effect.

**37. WAIVER**

- 1) A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.
- 2) A party will not be liable for any loss, cost or expense of any other party caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of a right.
- 3) A right expressed under this Agreement may only be waived by a party in writing and communicated to the other party to the extent that is expressly set out in that waiver.
- 4) The waiver by either party of a breach of any provision of this Agreement shall not be a waiver of the provision itself, any breach thereafter, or any other provision herein.

**38. SEVERANCE**

- 1) If anything in this Agreement is unenforceable, illegal, or void, it is severed, and the rest of the Agreement remains in force.

**39. AGREEMENT IN ENTIRETY**

- 1) The parties agree that this Agreement contains the entire Agreement between the parties and supersedes any prior written Agreements in existence (whether in writing or otherwise). Each Party hereby waives all rights and remedies which might otherwise be available to it in relation to such prior agreements.
- 2) Any previous agreements between the parties pertaining to the subject matter of this Agreement are expressly terminated. The terms and conditions of each party's purchase orders, invoices, acknowledgments, confirmations or similar documents shall not apply to any order under this Agreement, and any such terms and conditions on any such document are objected to without need of further notice or objection.
- 3) Nothing in this clause shall exclude or restrict the liability of either party arising out of its pre-contractual fraudulent misrepresentation or fraudulent concealment.