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## General Terms and Conditions

### Agreement Terms

#### YOUR DETAILS

Legal Entity:			
Trading Name			
Main Phone:		ABN:	
Registered Address			
Billing Address:			
Contact Person:		Title:	
Contact Phone:		Email address:	

#### OUR DETAILS

Accucom Systems Integration Pty Ltd  
Unit 25, 11 Brookhollow Ave  
Norwest NSW 2153  
Phone: 1300 584 655  
ABN: 61 091 531 654

#### START DATE:

Commencement:	
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#### Agreed by Customer

Signed for you by your authorised representative:

Legal Entity:			
Name:		Title:	
Signature:		Date:	

#### Agreed by Accucom Systems Integration Pty Ltd

Signed for us by our authorised representative:

Name:		Title:	
Signature:		Date:	

## 1. MEANING OF WORDS AND INTERPRETATION

1.1 In this Agreement, unless otherwise specified:

**Accucom** means Accucom Systems Integration Pty Ltd (“we” or “us” or “our”)

**Agreement** means these General Terms and Conditions (“GTC”) and all Service Schedules attached from time to time;

**Acceptable Use Policy** means the latest version of our acceptable use policy that can be found at <http://www.accucom.com.au> as varied by us from time to time;

**Commencement Date** means the date of execution of the General Terms and Conditions;

**Related Body Corporate** or RBC has the meaning given to it under s 9 of the Corporations Act 2001;

**Confidential Information** means:

- (a) in relation to each party and its RBCs, all information relating to each party’s business, employees, vendors, suppliers, contractors, finances, customers, products and services, strategies and plans, technical information, know-how and other information in relation to its business which are regarded, treated or marked by the owner as confidential, proprietary or of a commercially sensitive nature or which the recipient should have known is confidential to the other party; and
- (b) in the case of us and our RBCs, it also specifically includes all information relating to the Services and our network, no matter how recorded; but does not include any information that:
  - (i) information which is lawfully in the public domain;
  - (ii) is rightfully known by the recipient prior to the date of disclosure to it;
  - (iii) comes into the public domain otherwise than through any default of the recipient party or any person acquiring the same from the recipient party;
  - (iv) is disclosed to the recipient party by a third party without involving any breach of confidence; and
  - (v) information which is required to be disclosed by law.

**Eligible Data Breach** has the same meaning given to it in s 26WE(2) of the Privacy Act 1988 (Cth).

**End User** means an individual, company or other entity to whom you provide services using the Services;

**Fees** means, for each Service, the charges payable to us or our RBC plus GST for that Service including as applicable all installation charges, usage charges, access charges, termination charges and early disconnection charges;

**Force Majeure** means a circumstance beyond the reasonable control of a party and may include acts of God, lightning strikes, earthquakes, floods, storms, fires, pandemics and any natural disaster, acts of war, terrorism, riots, civil commotion, malicious damage and strikes;

**General Terms and Conditions or GTC** means the clauses set

out herein excluding any Service Schedules attached.

**Goods and Services Tax or GST** means Goods and Services Tax as imposed by A New Tax System (Goods and Services Tax) Act 1999 or if that legislation is not valid or does not exist for any reason, any legislation imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that legislation;

**Intellectual Property Rights** means and includes all copyright and neighbouring rights, patents, patent applications, trademarks (registered and unregistered) and designs (registered and unregistered), circuit layout rights, trade secrets, confidential information, know-how and all other intellectual property rights;

**Our Equipment** means equipment, plant, machinery, hardware, software, computer, telecommunications devices or any other equipment owned by us or an RBC;

**PMSI** means Purchase Monies Securities Interest the meaning given in section 14 of the PPSA;

**PPSA** means Personal Property Securities Act 2009 (Cth) (“the PPS Act”), the Personal Property Securities Regulations 2010 (Cth); any other regulations made from time to time under, or for the purposes of the PPS Act; any other legislation or any amendment to any existing legislation made at any time; and resulting from or enacted as a consequence of, any of the above.

**Security Deposit** means a sum of money or bank guarantee specified in the Table of Particulars payable by you in accordance with clause 6;

**Services** means the services specified in the Service Schedules;

**Service Schedules** means the schedules attached to these General Terms and Conditions;

**Term** means a period of 12 months from the Commencement Date or such longer period as specified in a Service Schedule;

**Third Party Provider** or TPP means a third party vendor or supplier;

**TPP Equipment** means equipment, plant, machinery, hardware, software, computer, telecommunications devices or any other equipment not owned by us;

**TPP Software Products** means software not owned by us and includes associated media, printed materials and “online” or electronic documentation;

**Your Content** means any material (including data), in which Intellectual Property Rights owned by you subsist, which we host or transmit.

**Your Details** means the information provided on the first page of the GTC.

1.2 In this Agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect interpretation; the singular includes the plural and vice versa; and other grammatical forms of defined words or expressions have corresponding meanings;

- (b) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (c) a reference to a party includes its executors, administrators, successors and permitted assigns;
- (d) a reference to a person or individual includes a corporation, partnership, joint venture, association, authority, trust, or government agency and vice versa;
- (e) a reference to any statute or other legislation is to a statute or other legislation as amended or replaced from time to time;
- (f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly or severally; and
- (g) all references to \$ are to Australian dollars;

## **2. DURATION**

2.1 Subject to termination under clause 18, this Agreement commences on the Commencement Date and expires at the end of the Term.

2.2 Notwithstanding clause 2.1 above, clauses 10 (intellectual property) and clauses 11 (confidential information), and shall survive the expiry or termination of this Agreement.

## **3. SERVICES**

3.1 The General Terms and Conditions set out our standard customer terms. The Service Schedules attached set at the specific services provided by us, using Our Equipment, TPP Equipment or TPP Software Products or a Third Party Provider through us to you.

3.2 For each additional service required by you during the Term, we will provide a new Service Schedule relating to those services. Once the new Service Schedule is signed by you it will form part of this Agreement.

3.3 Where we provide a service using TPP Equipment or TPP Software Products, our agreement with you for the provision of a Service is expressly subject to our agreement with the TPP.

3.4 If the General Terms and Conditions are inconsistent with any terms of a Service Schedule, then the terms of the Service Schedule will apply, to the extent of any inconsistency.

3.5 We will use reasonable care and skill to supply the Services to you in accordance with this Agreement.

3.6 We may vary the specifications for a Service by giving you 60 days prior notice.

3.7 We will provide you with consultancy services on our current terms and conditions within a reasonable period, upon your request.

3.8 If we agree with you to install a Service by a particular date, you agree that the nominated installation date is a target date only which we will use reasonable

endeavours to meet. We are not liable to you for any loss or damage suffered by you in connection with any failure to meet any agreed or represented installation date.

3.9 Given the nature of telecommunications and computer systems (including our reliance on TPP Equipment and TPP Software Products (that we do not own or control) we do not warrant that:

- (a) our Services will be continuous or fault-free; and
- (b) we are or will be able to prevent or reduce any malicious attack on computer systems and data made from within or outside our business and that such an attempt could damage your computer systems or data or those operated by any third party including your End Users.

3.10 You acknowledge and agree that:

- (a) delays and failures in internet access can occur due to factors outside our control including the open nature of the internet as a medium, communication loads, failures and other characteristics of the internet and the behaviour of other users;
- (b) the Services may be unavailable to you due to computer downtime attributable to malfunction, upgrades or preventative or remedial maintenance activities; and

3.11 We may for our internet customers:

- (a) intercept the Services of data transmitted over the Services for the purpose of complying with our obligations at law;
- (b) monitor usage of the Services; and
- (c) without limiting our suspension rights under clause 8, suspend Services or part of them:
  - (i) during any technical failure, modification or maintenance of the Services; or
  - (ii) if you or an End User does anything which we reasonably consider may have a detrimental effect on the Services or our network; or
  - (iii) to protect against or limit fraudulent or illegal use of the Services or protect us from legal liability.

3.12 Each party will appoint a representative who will be the primary point of contact for each party in relation to day-to-day matters arising in relation to this Agreement. Where possible, all communications to either party should be addressed to that party's representative.

3.13 We will supply appropriately qualified personnel to provide the Services.

3.14 You acknowledge that our personnel may perform similar services from time to time to other customers. This Agreement shall not prevent us from providing such similar services nor restrict us from using personnel provided to you under this Agreement to provide such similar services to other customers. However written consent needs to be obtained from you prior to using any of your documentation or information including but not limited to site maps,

diagrams etc.. for any scenario for examples with other customers or opportunities.

#### **4. END USERS**

4.1 You must impose on End Users no less stringent obligations than the terms and conditions of this Agreement for the Term.

#### **5. YOUR OBLIGATIONS**

5.1 If you are an Accucom Internet Customer you must observe the Acceptable Use Policy.

5.2 If you are an Accucom Internet Customer it is your responsibility to check the Acceptable Use Policy from time to time for any amendments made to it by us.

5.3 You must comply with all laws, regulations, standards and codes applicable to the use of the Services. In particular, you must:

- (a) comply with all directions issued by us to assist us in complying with our regulatory obligations (including, our obligations under relevant privacy legislation the Telecommunications Act 1997 and the Telecommunications (Interception) Act 1979. Without limiting the above, you acknowledge that we may need to issue you with directions about:
  - (i) providing information to the police and other law enforcement agencies;
  - (ii) providing information for directory purposes; and
  - (iii) the provision of emergency services; and
- (b) comply with all relevant directions and orders issued by any regulator from time to time.

5.4 Without limiting your obligations under this clause 5, you agree that you and your End Users must not knowingly use or permit use of a Service:

- (a) to distribute material that is defamatory, offensive, abusive, obscene, indecent, menacing, threatening, harassing or illegal under any law where transmissions are sent from, viewed or received;
- (b) knowingly transmit any computer virus or other material which intended to interfere with the operation of computer systems or damage or destroy data or databases;
- (c) to make any hoax call;
- (d) in any manner which constitutes a violation or an infringement of any duty or obligation in contract, tort or otherwise to any third party (including by copying or distributing material where it has no right to do so, such as copyright work or confidential information);
- (e) in connection with the commission of an offence against the laws of the Commonwealth or the states or territories of Australia; or
- (f) in a way which interferes with the operation of a Service, our network or Our Equipment, TPP Equipment or TPP Software Products.

#### **6. SECURITY DEPOSIT**

6.1 If deemed necessary from our accounts department and agreed upon with both parties on the date of execution of this Agreement you must provide us with the Security Deposit.

6.2 From time to time we may increase the amount of the Security Deposit or request a security deposit where one was not previously requested, if we reasonably consider there is or may be deterioration in your credit worthiness or an increase in our credit exposure ("New Security Deposit"). You must lodge the New Security Deposit with us within 7 days of our notice to you. We agree that the New Security Deposit we nominate will not exceed the amount we invoiced to you in respect of the preceding 3 months.

6.3 We may use the Security Deposit or the New Security Deposit to pay any invoices which you fail to pay by the due date or to discharge any other liability you have to us in relation to this Agreement (including after its termination or expiry).

6.4 We will return the Security Deposit or the New Security Deposit (less any amount deducted under clauses 7.4, 7.9, 8.4 and 8.5) within 30 days of the expiry or termination of this Agreement.

6.5 If you fail to provide the:

- (a) initial Security Deposit; or
- (b) the New Security Deposit,

as required by this clause 6, we or a RBC may suspend our performance of all or any part of this Agreement and/or, after giving you 7 days' notice, terminate this Agreement.

6.6 If we or an RBC perform or continue to perform any obligations under this Agreement despite not having received the Security Deposit or New Security Deposit, that conduct will not constitute a waiver by us or an RBC of our rights under this clause 6.

#### **7. FEES AND PAYMENT**

7.1 You must pay us the Fees in accordance with this Agreement. This is an essential term of the Agreement.

7.2 Your liability to pay for a Service will commence on the date we make it available and the Service is ready for use in accordance with the design and/or specification, to you even if you do not commence using it until a later date.

7.3 Except where otherwise specified in a Service Schedule, we may increase our retail prices for all or any Services by giving you 60 days' notice and reduce our prices without prior notice.

7.4 We will issue monthly invoices which we will provide to you on or about the fifteenth day of each month. Each invoice will specify the total Fees payable by you to us for the Services supplied over the preceding month.

7.5 You must pay us the amount specified in each invoice no later than 30 days from the date or any other terms agreed by both parties in writing, of the invoice ("Due Date"). If we reasonably consider there has been a change in your creditworthiness, we may, by notice to you, shorten the Due Date period.

7.6 Where we are responsible for the installation of a Service, we will invoice you separately for that installation.

7.7 If the provision of the Services requires us to obtain on your behalf any equipment from any third parties, you must pay us the cost of that equipment on delivery to you.

7.8 You agree that our records are, in the absence of manifest error, prima facie evidence of the Services we supplied to you.

7.9 A dispute in relation to payment of part or all of an invoice does not preclude you from paying all Fees specified in our invoice. A disputed invoice must be paid and then dealt with in accordance with the dispute resolution procedures under clause 19.

7.10 You will pay us in any manner acceptable to us. If you elect to pay us by credit card you authorise us to debit the amounts due to us from your credit card including the applicable credit card surcharge from our provider.

## **8. LATE PAYMENTS**

8.1 If:

- (a) you do not make a payment in accordance with clause 7.5; and
- (b) you make a payment by credit card and the card expires or we are otherwise unable to debit the amounts due to your credit card; and
- (c) you do not give written notice to us specifying that a dispute exists as to payment of part or all of the invoice within 7 days of the Due Date,

we may, in our absolute discretion, and after giving you 7 days' notice, immediately suspend the supply of all or part of one or more of the Services provided by us or a Third Party Provider or an RBC and/or terminate this Agreement or a Service Schedule.

8.2 While a Service is suspended, we, any Third Party Provider, or an RBC may continue to incur ongoing costs of supply, administration, system maintenance, and capacity reservation and costs associated with keeping that Service in a suspended state. Except in the case of usage-based fees that do not accrue during suspension, you will be liable for all Fees and charges incurred while the Service is suspended, whether or not the Service is capable of being used during that period. You acknowledge and agree that any suspension of a Service due to your failure to make payment when due and payable is reasonable, proportionate, and necessary in the circumstances, and is a legitimate step taken by us to mitigate loss, manage credit risk, and reduce our exposure to further costs being incurred.

8.3 If you ask us to reconnect your Service following your suspension for failing to pay an account, you may be charged an RBC a reconnection fee. The reconnection fee for any Service will not exceed the original connection fee we or an RBC charged you for that Service. You acknowledge that reconnection cannot be guaranteed and is subject to full payment of all outstanding amounts, including fees and charges incurred during suspension, and the satisfaction of any reasonable reconnection requirements.

8.4 If any amount payable by you under this Agreement is not paid in full on its due date, interest will accrue on the overdue amount at a rate equal to 2% per annum above the Commonwealth Bank of Australia's 3-month Bank Bill Swap Bid rate (BBSY). Interest is calculated daily on a non-compounding basis from the due date until the date of actual payment (both dates inclusive). If the stated rate is not quoted, or ceases to be available for any period, we may, acting reasonably, nominate a comparable replacement commercial rate. Payment of interest is without prejudice to, and does not limit, any other right or remedy we may have under this Agreement or at law

8.5 Any expenses, costs or disbursements incurred by us in recovering any outstanding amounts including fees of debt collectors or solicitors shall be paid by you on an indemnity basis.

8.6 You acknowledge and agree that the amount payable under this clause is not a penalty, but a genuine and reasonable pre-estimate of the loss, costs and expenses incurred and likely to be incurred by us as a result of the relevant breach or event, including administrative, operational and opportunity costs. You further acknowledge that such costs would be difficult to precisely quantify at the time of contracting, and that the amount payable is fair, proportionate, and commercially justifiable compensation, agreed between the parties acting reasonably.

8.7 To the extent permitted by law, we are not liable for any loss or damage arising from the suspension of a Service due to non-payment, or from any reasonable delay in reconnecting the Service once all outstanding amounts have been paid, except where such loss is caused by our negligence or wilful misconduct.

## **9. TAXES AND CURRENCY**

9.1 The Fees are exclusive of taxes, duties and charges, imposed or levied in Australia or overseas in connection with the supply of the Services including, but not limited to, GST and withholding tax but excluding income taxes. You must pay any taxes, duties or charges (including any new taxes, duties or charges imposed subsequent to the date of this Agreement) in respect of any goods or services supplied or payments made or to be made under this Agreement.

9.2 Without limiting this clause 9, to the extent that a taxable supply is made under this Agreement, the party:

making the supply will provide the recipient with a tax invoice; and

- (a) the recipient receiving the supply must pay the GST inclusive amount for that taxable supply.

## **10. INTELLECTUAL PROPERTY**

10.1 We or an RBC may own copyright in any software provided pursuant to this Agreement.

10.2 Nothing in this Agreement amounts to an assignment of either party's Intellectual Property Rights.

10.3 You grant us a non-exclusive licence for the Term to use, copy and modify Your Content for the sole purpose of enabling us to supply the Services to you.

10.4 You must immediately notify us in writing of any

actual, suspected or anticipated infringement of any third party's Intellectual Property Rights that arises from or in connection with Your Content.

10.6 You indemnify us against all loss, expense and damage suffered or incurred by us which arises from or in connection with:

- (a) any claim made against us by any person alleging that Your Content, or our use of it, infringes that person's Intellectual Property Rights; or
- (b) Infringement of our Intellectual Property Rights.

10.7 We will not be required to perform any obligation under this Agreement where the performance of that obligation would involve us being in breach of any third party Intellectual Property Rights.

## **11. CONFIDENTIAL INFORMATION**

11.1 Each party will:

- (a) keep the Confidential Information of the other party confidential and will not disclose it or make it available directly or indirectly to any third party;
- (b) use the Confidential Information solely for the purpose of performing its obligations under this Agreement;
- (c) only disclose the Confidential Information of the other party to its officers, employees, professional advisers and permitted subcontractors who have a need to know the Confidential Information for the purposes of this Agreement (and only to the extent that it is needed) and have undertaken to maintain the confidentiality of the Confidential Information; and
- (d) immediately notify the other of any actual or potential breach of confidentiality, disclosure or unauthorised use of the other party's Confidential Information and take all steps to prevent or stop a suspected or actual breach of this clause.

11.2 Upon demand and upon termination or expiry of this Agreement, each party must:

- (a) deliver to the other party all of the other party's Confidential Information in its possession which is capable of being delivered; and
- (b) delete, erase, or otherwise destroy any of the other party's Confidential Information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which is not capable of delivery to the other party and provide an undertaking that it has complied with this sub-clause.

## **12. OUR EQUIPMENT AND INSURANCE WHEN LEASED OR SUPPLIED AS PART OF A FULLY MANAGED SOLUTION**

12.1 You:

- (a) acknowledge that Our Equipment, TPP Equipment and TPP Software Products do not become your property;
- (b) must keep Our Equipment, TPP Equipment and TPP

Software Products secure;

- (c) provide and use your best endeavours to ensure End Users provide us with full, free and safe access to the relevant premises to install, repair, replace, maintain or remove Our Equipment, TPP Equipment and TPP Software Products;
- (d) must use Our Equipment in accordance with any written instructions from us;
- (e) must provide, or ensure End Users provide, a suitable physical environment for Our Equipment, TPP Equipment and TPP Software Products;
- (f) must notify us immediately on becoming aware that any of Our Equipment, TPP Equipment and TPP Software Products requires maintenance;
- (g) must ensure Our Equipment, TPP Equipment and TPP Software Products is only repaired, serviced, moved or disconnected by us;
- (h) ensure that Our Equipment, TPP Equipment and TPP Software Products is not damaged or destroyed;
- (i) bear the risk of loss or damage to Our Equipment, TPP Equipment and TPP Software Products, While it is in your possession, custody or control or the possession, custody or control of your End Users.

12.2 We may at any time, change, replace, maintain or remove Our Equipment, TPP Equipment and TPP Software Products on 2 business days' notice where practicable, and you must give all reasonable assistance to us to do so.

12.3 You must protect our title to Our Equipment, TPP Equipment and TPP Software Products and not do anything or allow anything to be done with Our Equipment, TPP Equipment and TPP Software Products that might affect its ownership.

12.4 Before the date on which Our Equipment, TPP Equipment and TPP Software Products is delivered to you or your End Users, you must, at your cost, effect and maintain for the Term and for a reasonable period following the termination or expiration of this Agreement, the following insurance policies:

- (a) insurance of Our Equipment, TPP Equipment and TPP Software Products against loss or damage and all of the normal risks for replacement value; and
- (b) public liability insurance in the sum of \$5 million.

12.5 At any time when reasonably requested by us, you must produce current certificates of insurance in respect of each policy referred to in clause 12.4 above.

12.6 If you fail to effect and/or keep in force any of the insurance policies specified in this clause, we may effect and keep in force any of those insurance policies and the cost of the insurance will be immediately due and payable by you to us.

12.7 Nothing in this clause 12 affects any provisions of a Service Schedule relating to insurance of any other equipment.

## **13. PMSI**

13.1 You agree that these terms and conditions create a PMSI in the product (and their proceeds) supplied presently and in the future by us to you to secure all obligations owed by you to us.

13.2 You agree to do all things necessary and execute all documents reasonably required by us to register the PMSI granted by you under these terms and conditions and to ensure that we acquire a perfected security interest in the product under the PPSA.

13.3 You will, upon demand, pay all of our expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the repossession of the Product the subject of these terms and conditions or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that we have with you.

13.4 This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations. . The secured interest will, where allowable by the law and unless otherwise expressly agreed, take priority over all other third party interests in the products.

13.5 Until ownership of the product passes to you, and despite anything else in this Agreement or any other documents under which a security interest is created:

- (a) to the maximum extent permitted by section 115(1) of the PPSA, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA will not apply to any security interest;
- (b) to the maximum extent permitted by section 115(7) of the PPSA, sections 127, 129, 132, 134(2), 135, 136(3), (4) and (5) and 137 of the PPSA will not apply to any security interest;
- (c) you waive any rights to receive a copy of any verification statement, financing statement, financing change statement or any other notice required to be provided under the PPSA (including under sections 144 and 157 of the PPSA) in respect of each security interest, unless the requirement to give notice cannot be waived or excluded.

13.6 To the extent permitted by the PPSA, these terms and conditions exclude any provisions of the PPSA which may be excluded in our discretion and which would otherwise confer rights on you.

13.7 You further agree that where we have the rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply. If, after the date of this Agreement, the PPSA is amended so that a secured party and/or a grantor is no longer permitted to agree not to comply with, or to exclude, any provision of the PPSA, we may notify you that any such provision is no longer excluded, or that we must comply with it, as specified in the notice.

13.8 Your right to possession of goods still owned by us under these terms and conditions shall cease if:

- (a) you being an individual, commit an act of bankruptcy, or,

- (b) you being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of your assets, any proceedings are instituted for your winding up, or you enter into a Deed of Company Arrangement, or
- (c) you cease or threaten to cease conducting business in the normal manner or apply for deregistration or receive a deregistration notice, or
- (d) any cheque you provide to us is dishonoured for payment, or
- (e) you fail to comply with any demand for payment issued by us, or
- (f) you breach any of the terms and conditions contained herein and/or are in default of any other agreement between us and you.

13.9 You agree that we are entitled to enter premises where the product supplied by us and still unpaid for a period of 90 days or above or in case of a dispute and to repossess, remove and sell such product. You agree to indemnify and keep us indemnified in respect of any claims, actions and costs that may arise against us in relation to the removal, repossession and sale of the product pursuant to these terms and conditions including any claims brought by third parties.

13.10 You agree that repossession and retention of the product pursuant to the PPSA will only satisfy so much of the monies which may become payable to us by you, as is equivalent to our estimation of the market value of the product as it is at the date of the repossession and the repossession and retention will immediately extinguish any rights for interest you have on the product value of the product recovered.

13.11 Until ownership of the product passes, you might not give us a written demand or allow any other person to give us a written demand requiring us to register a financing change statement under the PPSA or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA.

13.12 You must notify us:

- (a) at least 10 business days before:
  - (i) you, an associate of you or a related entity of yours changes its or their name; or
  - (ii) any of your ABN, ARBN or ARSN changes or is cancelled; and
- (b) immediately if any data contained on the register in connection with this Agreement or other documents giving rise to the security interest is or becomes misleading or incorrect.

13.13 You must promptly take all reasonable and prudent actions under, or in connection with, the PPSA, including anything reasonably requested by us for that purpose. This includes but is not limited to establishing and implementing appropriate policies and systems, taking reasonable steps to identify and protect any security interest in our favour, and ensuring that each such security interest is perfected

with the highest priority reasonably available.13.14 By giving you written notice at any time, we may require you, at your cost and by the time specified in the notice, to do any one or more of the following in relation to any security interest:

- (a) take all reasonable steps, provide information, produce documents, and obtain any necessary consents;
- (b) execute, sign, and deliver any notices, consents, or documents required;
- (c) provide to us any document of title or chattel paper and execute and deliver any signed blank transfers we reasonably require in respect of any property subject to a security interest;
- (d) enable us (or any of our related entities) to register, maintain, amend, or renew (before expiry) any financing statement or financing change statement in respect of any PPSA security interest held or intended to be held by us; and
- (e) do anything else we reasonably consider necessary or desirable to:
  - (i) ensure that any PPSA security interest is valid, enforceable, effective, and perfected (including, where possible, by control);
  - (ii) register, protect, perfect, record, or otherwise better secure any PPSA security interest; and
  - (iii) obtain, preserve, or improve the priority of any PPSA security interest.

13.14 You agree that even if the PPSA security interest has been registered, you may also be required to enter into a general security agreement and be bound by the terms of that agreement.

#### 14. NON-SOLICITATION OF EMPLOYEES

14.1 During the Term and for 6 months after its termination either party must not on their own or directly or indirectly through a third party solicit for hire any of our personnel including employees, consultants or contractors who have had direct involvement with the provision of your Services, without our express written consent.

14.2 If either party breaches clause 14.1 above the offending party will be liable to pay all reasonable fees incurred to replace that employee, consultant or personnel, including any third party commission fees.

#### 15. WARRANTIES

15.1 Each party warrants to the other party that as at the date of this Agreement:

- (a) there are no actions, claims, proceedings or investigations pending or threatened against it or by it of which it is aware, which may have a material effect on the subject matter of this Agreement; and
- (b) it has all licences, authorisations, consents, approvals and permits required by all applicable laws and regulations in order to perform its obligations under this Agreement, and otherwise complies with all laws and regulations applicable to

the performance of those obligations.

- (c) It has the appropriate skills and knowledge to design, deploy and services recommended.

15.2 You warrant that:

- (a) you have made your own enquiries as to the suitability of the Services for your requirements and that you have not relied on any warranties or representations from us in relation to the performance or suitability of the Services except as are stated in this Agreement; and
- (b) any information you have or do give to us about your financial position and business is true and correct in all material respects.

#### 16. INDEMNITIES FOR INJURY, DEATH AND PROPERTY DAMAGE

16.1 Each party indemnifies the other and its officers, employees and agents ("those indemnified") against all expenses, losses, damages and costs (including legal fees) incurred by those indemnified as a result of:

- (a) any injury to or death of any person caused by an act or omission of its officers, employees, agents or subcontractors; and
- (b) any damage to real or tangible property owned or in the possession, custody or power of that party caused by any act or omission of its officers, employees, agents or subcontractors.

#### 17. LIMITATION OF LIABILITY

17.1 Except to the extent any loss or damages that are caused by the gross negligence, willful misconduct or material breach of the Agreement by us or our subcontractors, then to the maximum extent permitted by law, we exclude all liability for any breach of warranty, representation or condition of this Agreement.

17.2 Our liability to you is limited to the extent of our liability to the TPP's agreement with us.

17.3 To the maximum extent permitted by law, we shall not be liable for any special, consequential, indirect or exemplary damages, costs, expenses on losses arising from this Agreement.

17.4 Where we are liable for a breach of any warranty or condition implied by the Competition and Consumer Act 2010 in respect of the Services, our liability is limited (where permitted by the applicable legislation) to:

- (a) in the case of goods:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) the payment of the cost of having the goods repaired, which we in our absolute discretion, elect.
- (b) in the case of services:
  - (i) the supply of the services again; or

- (ii) the payment of the cost of having the services supplied again, which we in our absolute discretion elect.

17.5 Without otherwise limiting this clause and to the maximum extent permitted by law, each parties' aggregate liability to the other party for all loss suffered or incurred by the other party in connection with this Agreement (including from the supply or non-supply of the Services, any negligent act or omission by us, any breach of contract, under any indemnity or any other cause) is limited:

- (a) for each claim or series of connected claims which relate to a Service, to the Fees (excluding GST) paid in respect of that Service in the 3 months prior to the date on which the event giving rise to the claim first arose;
- (b) for each claim or series of connected claims which do not concern or relate to a Service, to the Fees (excluding GST) paid under this Agreement in the month prior to the date on which the event giving rise to the claim first arose; and
- (c) in the aggregate for all claims, to the amount of Fees (excluding GST) paid under this Agreement.

## 18. ELIGIBLE DATA BREACH

18.1 If either Party:

- (a) becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach;
- (b) becomes aware that there are reasonable grounds to believe that there has been an Eligible Data Breach,

it will notify the other party of this fact as soon as practicable.

18.2 Where either party is required to comply with any obligations arising under the Privacy Act 1998 (Cth) in relation to an Eligible Data Breach of Your data, You must ensure compliance with all those obligations.

18.3 If You believe it is unable for any reason to comply with its obligations without the assistance of Us, You must notify Us as soon as practicable and in any event within 7 days, that it requires such assistance from Us, specifying the nature of that assistance.

18.4 If We provide any services to You to assist in complying with the obligations under clause 18.1 those services may be provided as an Out of Scope service.

## 19. TERMINATION

19.1 A party may immediately (or with effect from any later date it may nominate) terminate this Agreement by written notice to the other party if:

- (a) the other party materially breaches this Agreement and fails to remedy such breach within 14 days of receipt of notice from the first party specifying the breach and requiring it to be remedied;
- (b) the other party materially breaches this Agreement and the breach is incapable of remedy;
- (c) any step is taken to appoint a receiver, receiver and

manager, an official manager, a controller, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of the other party's assets, undertaking or business;

- (d) any step is taken by a mortgagee or chargee to enforce a security held in respect of the whole or any part of the other party's assets undertaking or business;
- (e) any step is taken to enter into any scheme of arrangement between the other party and its creditors; or
- (f) the other party becomes insolvent or is otherwise unable to pay its debts as and when they become due or otherwise if something with the same or similar effect to paragraphs (c), (d), (e) or (f) happens under the laws of any jurisdiction.

19.2 Subject to clause 19.3 below, you may terminate a Service supplied under a Service Schedule on giving 90 days's written notice.

19.3 We may terminate this Agreement pursuant to clause 6.5, if you misuse any of our Confidential Information or are unable to provide a service provided by a Third Party Provider because that Third Party Provider no longer supplies the Service.

19.4 For the purpose of clause 18.1 (a) and (b) the parties acknowledge that a series of minor breaches constitute a material breach.

## 20. CONSEQUENCES OF TERMINATION

20.1 We will immediately or at the first available opportunity cease to provide any Services.

20.2 The expiry or termination of this Agreement will not affect or limit any accrued rights of the parties.

20.3 You must immediately return any of our Confidential Information.

20.4 If you wish to terminate a Service supplied under a Service Schedule before the expiry of its Term then you will not be entitled to any refund, credit or provision for the Services supplied and must pay within 7 days of giving notice:

- (a) all Fees payable for the remaining Term; and
- (b) the following early termination fee to us:
  - (i) where the Service Schedule specifies a minimum monthly fee for the Service, then the early termination fee will be:  
minimum monthly fee no. of unexpired less 5% X months in the Term
  - (ii) where the Service Schedule does not specify a minimum monthly fee for the Service, then the early termination fee will be:  
average monthly fee for Service (calculated on the X no. of unexpired amount we invoiced you for months in the Service in the expired Term portion of the minimum term) less 5%

The parties agree that the discount percentage of 5% is a reasonable and genuine pre-estimate of the net present value of the early termination fee.

20.5 If we terminate this Agreement under clause 19.1, 19.3 or 6.5, then you must pay us by way of an early termination fee the amount calculated in accordance with clause 20.4 for each Service which terminates prior to its Term. This clause does not otherwise limit your liability to us on termination of this Agreement.

20.6 You agree that the early termination fees required by clauses 20.4 and 20.5 are genuine pre- estimates of the loss we will suffer in connection with early termination.

20.7 Upon termination or expiration of this Agreement you must pay us any outstanding moneys, Fees or charges owed by you to us within 14 days of the date of expiry or termination of this Agreement.

20.8 You must immediately stop using or accessing Our Equipment, TPP Equipment and TPP Software Products.

## **21. DISPUTE RESOLUTION**

21.1 If a party considers that a dispute, difference or question arising out of this Agreement ("Dispute") has arisen, that party must give written notice to the other party specifying the Dispute ("Notification").

21.2 Within 7 days (or any longer period agreed between the parties) after a Notification is given, a representative of each of the parties ("Project Executives") must personally or through a nominee attempt in good faith to resolve the Dispute.

21.3 If the Project Executives cannot resolve the Dispute within 7 days (or any longer period agreed between the parties) after the Notification the parties may refer the Dispute to the Chief Executive Officers ("CEO") of each party.

21.4 If the CEOs cannot resolve the Dispute within 7 days after the Notification is given the Dispute will be submitted to mediation. The Mediation Rules of the Law Society of New South Wales and the President of the Law Society of New South Wales, or the President's nominee will select the mediator and determine the mediator's remuneration.

21.5 The parties will bear their own costs or the dispute resolution but the costs and expenses of mediation will be borne by the parties equally.

21.6 If the Dispute is not resolved by mediation any party may refer the dispute to arbitration to be administered by the Institute of Arbitrators and Mediators Australia ("IAMA"). The arbitration award by IAMA shall be final and binding on the parties.

21.7 This clause 20 does not limit in any way a party's right to seek any injunctive, declaratory or other relief from a court.

21.8 The parties must continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.

## **22. NOTICES**

22.1 A notice to be given by a party to another party under this Agreement must be:

- (a) in writing;
- (b) directed to the recipient's address specified in this Agreement or as varied by written notice; and
- (c) left at or sent by prepaid registered post or hand delivery to that address,
- (d) and will be deemed to be duly given:
  - (i) on the day of delivery if by hand; or
  - (ii) 3 days after the date of posting by prepaid registered post.

## **23. FORCE MAJEURE**

23.1 A party will not be liable for any failure or delay in the performance of its obligations under this Agreement (other than payment) if that failure or delay is due to Force Majeure. Any party who is, by reason of Force Majeure, unable to perform any obligation or condition under this Agreement must notify the other party as soon as possible specifying:

- (a) the cause and extent of such non-performance;
- (b) the date of commencement of non- performance; and
- (c) the means proposed to be adopted to remedy or abate the Force Majeure.

23.2 A party who is, by reason of Force Majeure, unable to perform any obligation or condition under this Agreement must:

- (a) use all commercially reasonable endeavours to remedy or abate the Force Majeure as quickly as possible;
- (b) resume performance as quickly as possible after cessation of the Force Majeure; and
- (c) notify each party when the Force Majeure has terminated or abated to an extent which permits resumption of performance to occur.

23.3 Subject to any other termination provisions, a non-performance by either of the parties of any obligation or condition under this Agreement shall be excused during the time and to the extent that such performance is prevented, wholly or in part, by an event of Force Majeure of which notice has been given under this clause 22.

23.4 The period of time during which performance of any obligation or condition is prevented by Force Majeure shall be added to the time provided in this Agreement for performance of that obligation or condition and to the time required for the performance of any act dependent on that obligation or condition.

23.5 If the Force Majeure event set out in 22.1 or 22.2 continues for a period of 30 (thirty) days the other party may terminate this Agreement and/or any service schedule. If the Agreement and/or any service schedule is terminated in these circumstances, each party will bear its own costs and neither party will incur further liability to the other.

## **24. SEVERABILITY**

24.1 Any provision of this Agreement will be read down to the extent necessary to prevent that provision or this

Agreement being invalid, voidable or unenforceable in the circumstances.

24.2 If despite clause 23.1, a provision of this Agreement is still invalid, unenforceable or voidable:

- (a) if the provision would not be invalid or voidable if a word or words were omitted, that word or those words will be deleted; and
- (b) in any other case, the whole provision will be deleted, and the remainder of this Agreement will continue to have full force and effect.

## **25. ASSIGNMENT**

25.1 You must not assign, sell, transfer, lease, charge, mortgage or licence this Agreement or any right under this Agreement without our prior written consent which may be granted or withheld in our absolute discretion and which if granted may be granted subject to such terms and conditions that we may prescribe.

25.2 We may assign, sell, transfer, lease, charge, mortgage or licence this Agreement or any right under this Agreement without your prior written consent.

25.3 You will be deemed to have assigned this Agreement or any right under it if there is a material change in the control of or shareholding in you.

## **26. PUBLICITY**

26.1 Except as otherwise permitted under this Agreement, a party will not, directly or indirectly make any media release, public announcement or public disclosure relating to this Agreement or its subject matter without the agreement of all the parties unless it is required to make the announcement or disclosure by law or by a stock exchange.

## **27. COUNTERPARTS**

27.1 This Agreement may be executed in any number of counterparts and all counterparts taken together constitute one instrument, but this Agreement is of no force or effect until the signed counterparts are exchanged.

## **28. ENTIRE AGREEMENT**

28.1 This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes any previous understandings or agreements on that subject matter. Each party acknowledges that in entering into this Agreement, that it:

- (a) has not relied on any statement made or conduct engaged in by another party or any person on behalf of another party other than the statements set out in this Agreement; and
- (b) was not influenced or induced to enter into this Agreement by any statement or conduct of the type referred to in paragraph (a).

## **29. FURTHER ASSURANCES**

29.1 Each party will promptly at the request of the other party execute and deliver such further documents and do such further acts as shall be reasonably necessary to give full effect to this Agreement and the transactions and conditions contemplated in this Agreement.

## **30. WAIVER**

30.1 A waiver by a party of a provision of or of a right under this Agreement is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.

30.2 A waiver is effective only in the specific instance and for the specific purpose for which it is given

30.3 Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

## **31. AMENDMENTS IN WRITING**

31.1 This Agreement including its Schedules may only be altered in writing signed by all parties.

## **32. GOVERNING LAW**

32.1 This Agreement is governed by the laws of New South Wales in Australia. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

## **33. SET OFF**

33.1 We may set off any monies which are payable by you under this Agreement against any monies which we may be liable to pay to you.