

## TERMS AND CONDITIONS

These terms and conditions are between Jack Taylor Group Pty Ltd t/as upstream tech (ABN 39 159 555 889) (**we, us, our**) and **you**, the party described in the Quote, together the **Parties** and each a **Party**. These terms and conditions and the Schedule form the entire agreement under which we will provide the Goods and Services to you (together, the **Agreement**).

### 1. OUR DISCLOSURES

Please read this Agreement carefully prior to accepting this Agreement. By accepting this Agreement, you agree that:

- We will handle your personal information in accordance with our privacy policy, available at [upstreamtech.io/legal](https://upstreamtech.io/legal);
- you may be required to pay our costs if you fail to comply with certain terms in the Agreement (for example where we incur costs as a result of termination of this Agreement) (see clause 12.3);
- your failure to pay the Price in accordance with the Payment Terms may result in us charging you interest, or suspending the supply of the Goods and Services until we receive payment (see clause 4.4);
- we may set-off or deduct from any monies payable to you under this Agreement, any amounts which are payable by you to us (whether under this Agreement or otherwise), (see clause 4.5);
- subject to your Consumer Law Rights, you have not relied on any representations or warranties made by us prior to entering this Agreement that are not included in this Agreement (see clause 5.1);
- subject to your Consumer Law Rights, we will not refund any amounts paid by you (see clause 12.3);
- subject to your Consumer Law Rights, we exclude our Liability for your (or your Personnel's) acts or omissions, any use of the Goods and Services by a person other than you, events beyond our reasonable control (including Force Majeure Events), Consequential Loss and for a delay in the supply of the Goods and Services (see clause 13); and
- subject to your Consumer Law Rights, our Liability for the supply of the Goods and Services will be limited to, at our discretion the resupply of the Goods and Services or the repayment of the Price paid by you to us (see clause 13).

This Agreement does not intend to limit your rights and remedies at law, including any of your Consumer Law Rights.

### 2. ACCEPTANCE

- 2.1 You have requested the Goods and Services set out in the Schedule, and accept this Agreement by:
- (a) signing and returning this Agreement, including by email or any electronic executions platform acceptable to us;
  - (b) confirming by email that you accept this Agreement (expressly or impliedly); or
  - (c) instructing us to proceed with the Goods and Services or making any payment of the Price (including any Deposit).
- 2.2 Please read this Agreement carefully and contact us if you have any questions.
- 2.3 This Agreement will operate for the Term.

### 3. GOODS AND SERVICES

- 3.1 We agree to provide you the Goods and Services in accordance with this Agreement and all relevant Laws.
- 3.2 We will not be responsible for Goods and Services unless

expressly set out in the inclusions in the Schedule.

- 3.3 You acknowledge and agree that any dates for delivery or for completion notified by us are estimates only, and we will have no Liability to you for failing to meet any delivery or Milestone date.
- 3.4 We may provide the Goods and Services to you using our Personnel, and they are included in this Agreement.
- 3.5 All variations to the Goods and Services must be agreed in writing between the Parties and will be priced in accordance with any schedule of rates provided by us, or otherwise as reasonably determined by us. If we consider that any instruction or direction from you constitutes a variation, then we will not be obliged to comply with such instruction or direction unless agreed in accordance with this clause 3.5.
- 3.6 Upon completion of the supply of the Goods and Services (as reasonably determined by us), we may supply a project completion notice to you. If you have not raised any issues with the supply of the Goods and Services within 5 Business Days of receipt of this notice, we will consider the project completed to your satisfaction and anticipate full payment in accordance with this Agreement.

### 4. PRICE AND PAYMENT

- 4.1 In consideration for us providing the Goods and Services, you agree to pay us:
- (a) the Deposit (if any);
  - (b) the balance of the Price; and
  - (c) all other reasonable Expenses properly incurred by us in the provision of the Goods and Services, in accordance with the Payment Terms.
- 4.2 All amounts are stated in Australian dollars and are exclusive of GST (unless otherwise stated).
- 4.3 Unless otherwise agreed between the Parties, any Deposit must be paid before we commence the provision of the Goods and Services.
- 4.4 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion):
- (a) after a period of 5 Business Days, cease providing the Goods and Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so, (including legal fees, debt collector fees and mercantile agent fees); and/or
  - (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date for payment in accordance with the Payment Terms.
- 4.5 You agree that we may set-off or deduct from any monies payable to you under this Agreement, any amounts which are payable by you to us (whether under this Agreement or otherwise).

### 5. YOUR OBLIGATIONS AND WARRANTIES

- 5.1 You represent, warrant, acknowledge and agree:
- (a) to comply with this Agreement and all applicable Laws;
  - (b) that there are no legal restrictions preventing you from engaging us, or agreeing to this Agreement;
  - (c) that you have not relied on any representations or warranties made by us in relation to the Goods and Services (including as to whether the Goods and Services are or will be fit or suitable for your particular purposes), unless expressly stipulated in this Agreement;
  - (d) that you will cooperate with us, and provide us with all

documentation, information, instructions and access necessary to enable us to provide the Goods and Services, as requested by us, from time to time, and in a timely manner;

- (e) the information you provide to us is true, correct and complete;
- (f) that you will not infringe any third party rights in working with us and receiving the Goods and Services;
- (g) that you will provide us and our Personnel with sufficient access, free from harm or risk to health or safety, to the Premises (including any facilities at the Premises), to enable us to provide the Goods and Services, including at the dates and times that we may reasonably request;
- (h) that you are responsible for obtaining, and providing to us if necessary, any access, consents, licences, approvals and permissions from other parties necessary for the Goods and Services to be provided, at your cost; and
- (i) that you will be responsible for the use of any part of the Goods and Services, and you must ensure that no person uses any part of the Goods and Services:
  - (1) to break any Law or infringe any person's rights (including Intellectual Property Rights);
  - (2) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
  - (3) in any way that damages, interferes with or interrupts the supply of the Goods and Services.

## 6. YOUR STATUTORY RIGHTS:

- 6.1 Certain legislation, including the Australian Consumer Law (ACL) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the Goods and Services which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in this Agreement excludes your Statutory Rights as a consumer under the ACL.
- 6.2 You agree that our Liability for the Goods and Services is governed solely by the ACL and this Agreement.
- 6.3 Subject to your Statutory Rights, we exclude all express and implied warranties, representations and guarantees of any kind (whether under statute, law, equity or on any other basis) and all materials, work, goods and services (including the Goods and Services) are provided to you without warranties, representations and guarantees of any kind.

## 7. DELIVERY, TITLE AND RISK

- 7.1 If this Agreement states that:
  - (a) we are responsible for delivering the Goods to you, we will use reasonable endeavours to deliver the Goods to the Premises by the delivery time, as notified by us to you; or
  - (b) you are responsible for collecting the Goods from us, we will use reasonable endeavours to make available the Goods, and you agree to collect the Goods, at the collection location by the collection time, as notified by us to you. You agree to comply with any policies and procedures which apply at the relevant collection location.
- 7.2 Title in the Goods will remain with us until all amounts due and payable to us under this Agreement are paid in full.

Risk in the Goods will pass to you on delivery of the Goods to you or collection of the Goods by you (as applicable).

- 7.3 You agree that we hold a general lien over any Goods owned by us that are in your possession, for the satisfactory performance of your obligations under this Agreement. You agree that this Agreement and your obligations under this Agreement create a registrable security interest in favour of us, and you consent to the security interest (and any other registrable interest created in connection with this Agreement) being registered on any relevant securities register (and you must do all things to enable us to do so).

## 8. DATA

- 8.1 You must provide the Data requested by us in order for us to provide the Goods and Services.
- 8.2 To the maximum extent permitted by law, you acknowledge and agree that:
  - (a) we are not responsible for the integrity or existence of any Data on your System, network or any device controlled by you or your Personnel; and
  - (b) we assume no responsibility or Liability for the Data. You are solely responsible for the Data and the consequences of using, disclosing, storing or transmitting it. It is your responsibility to back-up the Data.
- 8.3 You represent, warrant, acknowledge and agree that:
  - (a) you have obtained all necessary rights, releases and permissions to provide or have the Data provided to us and to grant the rights granted to us in this Agreement;
  - (b) the Data (and its transfer to and/or use, collection, storage or disclosure by us as contemplated by this Agreement) does not and will not violate any Laws (including those relating to export control and electronic communications) or the rights of any third party, including any Intellectual Property Rights, rights of privacy, or rights of publicity;
  - (c) if at any time we need to amend or resupply the Services due to any error in the Data, you agree that this work will be invoiced separately and in addition to this Agreement in accordance with our standard schedule of rates; and
  - (d) the operation of the Services is reliant on the accuracy and completeness of the Data, and the provision by you of the Data that is inaccurate or incomplete may affect the use, output and operation of the Services and/or delay any previously estimated timelines for completion of a Milestone or the Deliverables.
- 8.4 This clause 8 will survive termination or expiry of this Agreement.

## 9. ACCEPTANCE TESTING

- 9.1 For the purpose of this clause:  
"Acceptance Tests" means the tests to determine whether the Deliverables meet any specifications for the Deliverables as particularised in a particular Milestone, or if no specifications or criteria are specified in a particular Milestone, the criteria, reasonably determined by us, which the Deliverables are to be measured against.
- 9.2 Before the Deliverables the subject of a Milestone are completed, we will provide you with access to the Deliverables for the purpose of performing the Acceptance Tests. Within 5 Business Days of us granting you such access, you agree to:
  - (a) notify us of your acceptance of the Deliverables; or

- (b) notify us of your rejection of the Deliverables, which cannot be unreasonably given, and provide us with the reasons for your rejection.
- 9.3 If you do not notify us of your acceptance or rejection of the Deliverables within 5 Business Days of us granting you access to the Deliverables, you agree you will be deemed to have accepted those Deliverables.
- 9.4 If the Deliverables fail to meet the Acceptance Tests you can:
- accept the Deliverables, and they will be deemed to have passed the Acceptance Tests;
  - notify us of the failure; or
  - accept the Deliverables on the basis that you will allow us to set a timeframe to amend the error or non-compliance.
- 9.5 If you notify us of the failure in accordance with clause 9.4(b), we agree to amend the Deliverables and resubmit them to you within a reasonable timeframe in order to re-perform the Acceptance Tests in accordance with clauses 9.2-9.5.
- 9.6 If you use the Deliverables in a non-test, live or production environment prior to acceptance, you agree that this usage will be at your own risk and such deliverables may be deemed to be accepted upon such use.
- 9.7 Nothing in this clause limits your Consumer Law Rights.

## 10. HARMFUL CODE

- 10.1 In the performance of the Services, we will make all reasonable attempts to ensure that no Harmful Code or similar programming effects are coded or introduced into the Deliverables or your System, including verifying.
- 10.2 Without limiting clause 10.1, you agree to:
- use at all times the most appropriate, sophisticated and up-to-date, pro-active security prevention software, including virus detection systems, firewalls, content filtering and intrusion detection systems for preventing and detecting Harmful Code;
  - ensure that any new security procedures, software patches and virus definitions, are applied within 24 hours of being issued; and
  - implement practices and procedures for the prevention and mitigation of the effects of Harmful Code that are consistent with good industry practice and industry standards.
- 10.3 If you become aware that any Harmful Code is found to have been installed, released or otherwise introduced into any Deliverables or our System, you agree to:
- notify us immediately, provide all information requested by us in relation to the Harmful Code, including its manner of introduction and the effect the Harmful Code has had or is likely to have;
  - take all necessary or desirable remedial action to entirely eliminate the Harmful Code and prevent re-occurrence and rectify any consequences, including the preparation of a risk assessment and mitigation plan if requested by us; and
  - retain evidence and logs regarding the occurrence to help in determining cause, damage and the likely source.
- 10.4 To the extent that the introduction of the Harmful Code is the result of a breach by you of this Agreement, the remedial efforts described in clause 10.3 will be at your cost. If the Harmful Code has not been introduced as a result of your breach of this Agreement, we agree to reimburse you for your reasonable, directly incurred costs

of remedial efforts as described in clause 10.3.

## 11. THIRD PARTY INPUTS

- 11.1 You acknowledge and agree that the Services may interact with, or be reliant on, certain Third Party Inputs, including your hosting server, domain names, operating system, subscription level, back-up systems web browser, and CRM.
- 11.2 You acknowledge and agree that, unless we have expressly agreed to provide the services described in this clause 11.2 in the Schedule:
- you are responsible for obtaining and managing all licences for the relevant Third Party Inputs;
  - you are responsible for paying all fees related to the Third Party Inputs during the Term of this Agreement. We may continue to provide this service after the End Date, subject to payment of an additional administration fee and our written consent and agreement, otherwise you may engage with the third party directly;
  - you agree to comply with terms and conditions applicable to the relevant Third Party Inputs at all times.
- 11.3 We do not make any warranty or representation in respect of any Third Party Inputs.
- 11.4 To the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with any Third Party Inputs, subject to clause 11.5.
- 11.5 Should any unavailability, error or change to a Third Party Input have a substantial and adverse impact on your use and enjoyment of the Services during the Term:
- the Parties agree to notify each other in writing within 14 days of the change coming into effect; and
  - following receipt of such notice, the Parties will use all reasonable endeavours to work together to resolve the matter.
- 11.6 This clause 11 will survive the termination or expiry of this Agreement.
- ## 12. TERM AND TERMINATION
- 12.1 This Agreement will operate for the Term.
- 12.2 This Agreement will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:
- the other Party (**Defaulting Party**) breaches a material term of this Agreement and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
  - the Defaulting Party is unable to pay its debts as they fall due.
- 12.3 On termination or expiry of this Agreement, you agree that:
- without limiting your Consumer Law Rights, you agree that any amounts made by you to us are not refundable to you;
  - you agree to pay us all amounts due and payable to us under this Agreement (including for all Goods and Services provided by us prior to termination), as a debt immediately due and payable; and
  - you agree to return, delete, destroy or give us access to recover all property belonging to us on request (including any Intellectual Property or Confidential Information), and to give us or our Personnel such rights of access necessary to exercise our rights under this clause.

12.4 The accrued rights, obligations and remedies of the Parties are not affected by termination of this Agreement.

### 13. LIABILITY, INDEMNITY AND EXCLUSIONS

13.1 **Exclusions:** Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by (whether directly or indirectly):

- (a) acts or omissions of you or your Personnel (including any works, goods or services provided by you or your Personnel);
- (b) your, or your Personnel's, breach of this Agreement, any law or third party rights;
- (c) any information, documentation, specifications or directions given by you or your Personnel; and
- (d) any event or circumstance beyond our reasonable control.

13.2 **Limitation of liability:** Despite anything to the contrary, to the maximum extent permitted by law:

- (a) neither Party will be liable for any Consequential Loss;
- (b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and
- (c) our maximum aggregate Liability in relation to the provision of the Goods and Services or this Agreement will be limited to us resupplying the Goods and Services to you or, in our sole discretion, to us repaying you the amount of the Price paid by you to us in respect of the provision of the relevant Goods and Services to which the Liability relates.

### 14. INTELLECTUAL PROPERTY

14.1 As between the Parties:

- (a) we own all Intellectual Property Rights in Our Materials;
- (b) you own all Intellectual Property Rights in Your Materials; and
- (c) nothing in this Agreement constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials or Your Materials.

14.2 As between the Parties, ownership of all Intellectual Property Rights in any New Materials or Improvements will at all times vest, or remain vested, in us upon creation. To the extent that ownership of such Intellectual Property Rights in any New Materials and/or Improvements do not automatically vest in us, you agree to do all things necessary or desirable to assure our title in such rights.

14.3 We grant you a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, to use Our Materials that we provide to you, the New Materials and Improvements, solely for the purposes for which they were developed and for your use and enjoyment of the Goods and Services, as contemplated by this Agreement.

14.4 You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of the Term, to use Your Materials that you provide to us solely for the purposes for which they were developed and solely for the performance of our obligations under this Agreement.

14.5 If you or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with this Agreement, you agree to (and agree to ensure that your Personnel) consent to our use or infringement of those Moral

Rights.

### 15. CONFIDENTIALITY

15.1 Each Receiving Party agrees:

- (a) not to disclose the Confidential Information of the Disclosing Party to any third party;
- (b) to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and
- (c) to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.

15.2 The obligations in clause 15.1 do not apply to Confidential Information that:

- (a) is required to be disclosed in order for the Parties to comply with their obligations under this Agreement;
- (b) is authorised to be disclosed by the Disclosing Party;
- (c) is in the public domain and/or is no longer confidential, except as a result of a breach of this Agreement; or
- (d) must be disclosed by Law or by a regulatory authority, including under subpoena.

15.3 Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 15. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 15.

15.4 This clause 15 will survive the termination of this Agreement

### 16. GENERAL

16.1 **Publicity:** With your prior written consent, you agree that we may advertise or publicise the broad nature of our supply of the Goods and Services to you, including on our website or in our promotional material.

16.2 **Privacy:** Each Party agrees to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

16.3 **Email:** You agree that we are able to send electronic mail to you and receive electronic mail from you. To the maximum extent permitted by law, you release us from any Liability you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.

16.4 **Amendment:** This Agreement may only be amended by written instrument executed by the Parties.

16.5 **Assignment:** Subject to clause 16.6, a Party must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

16.6 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with this Agreement, to a debt collector, debt collection agency, or other third party.

16.7 **Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.

16.8 **Online execution:** This Agreement may be executed by means of such third party online document execution service as we nominate subject to such execution being in

accordance with the applicable terms and conditions of that document execution service.

- 16.9 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask The Law Society of the Australian Capital Territory to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 16.10 **Further assurance:** You agree to promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and your obligations under it.
- 16.11 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under this Agreement if such delay or failure is caused or contributed to by a Force Majeure Event. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under this Agreement.
- 16.12 **Governing law:** This Agreement is governed by the laws of the Australian Capital Territory. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in the Australian Capital Territory and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 16.13 **GST:** If and when applicable, GST payable on the Price will be set out in our invoice. You agree to pay the GST amount at the same time as you pay the Price.
- 16.14 **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 16.15 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 16.16 **Severance:** If any provision (or part of it) under this Agreement is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under this Agreement cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from this Agreement and the remaining provisions (and remaining part of the provision) of this Agreement is valid and enforceable.

## 17. INTERPRETATION & DEFINITIONS

- 17.1 Any reference to "Goods and Services" may mean "Goods and/or Services", as the case may be.
- 17.2 In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them in the Schedule, within these terms and conditions, and:

**ACL or Australian Consumer Law** means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*, as amended, from time to time.

**Agreement** means these terms and conditions and any documents attached to, or referred to in, each of them.

**Business Day** means a day on which banks are open for general banking business in Australian Capital Territory, excluding Saturdays, Sundays and public holidays.

**Commencement Date** means the date this Agreement is accepted in accordance with its terms.

**Confidential Information** includes information which:

- (a) is disclosed to the Receiving Party in connection with this Agreement at any time;
- (b) is prepared or produced under or in connection with this Agreement at any time;
- (c) relates to the Disclosing Party's business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

**Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. The Parties acknowledge and agree that your obligation to pay us the Price under this Agreement will not constitute "Consequential Loss" for the purposes of this definition.

**Consumer Law Rights** has the meaning given in clause 6.

**Data** means all of the information, documents and other data, including any personal information, provided or uploaded by you or your Personnel to us or our Systems or otherwise accessed by us in providing the Services.

**Deposit** means the deposit payable for this Agreement, if any, as further particularized in the Quote.

**Disclosing Party** means the party disclosing Confidential Information to the Receiving Party.

**Dispute** has the meaning given in clause 16.9.

**End Date** means the date on which the Goods and Services have been provided to you, as reasonably determined by the Parties and as further particularized in the Quote or the Sign-Off Document.

**Expenses** means any expenses and any other disbursements, reasonably and directly incurred by us for the purpose of the supply of the Goods and Services, as further particularized in the Quote or any Invoice.

**Force Majeure Event** means any event or circumstance which is beyond a Party's reasonable

control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

**Goods** means the goods further particularized in the Quote, as adjusted in accordance with this Agreement.

**Improvements** means any development, modification, adaptation or improvement of Our Materials or any New Materials made by or on behalf of either Party (or any of their respective Personnel), or in respect of which Intellectual Property Rights are acquired by, either Party during the Term.

**Intellectual Property** means any copyright, registered or unregistered designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or Confidential Information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

**Intellectual Property Breach** means any breach by you (or any of your Personnel) of any of our Intellectual Property Rights (or any breaches of third-party rights, including any Intellectual Property Rights of third parties), including using or exploiting our Intellectual Property for purposes other than as expressly stated in this Agreement (including, without limitation, using our Intellectual Property for commercial purposes or on-selling our Intellectual Property to third parties).

**Laws** means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with this Agreement or the supply of the Goods and Services.

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth).

**Milestone** means the stages for completion of the Deliverables, as particularized in the Schedule.

**CONFIDENTIAL**

**New Materials** means all Intellectual Property developed, adapted, modified or created by or on behalf of us or you or any of your or our respective Personnel in connection with this Agreement or the supply of the Goods and Services, whether before or after the date of this Agreement, but excludes Our Materials and Your Materials.

**Our Materials** means all work, models, processes, technologies, strategies, materials, information, documentation, and services that we may provide to you under this Agreement, and which may contain material which is owned by or licensed to us, and is protected by Australian and international laws.

**Payment Terms** means the payment terms set out in the Quote, as adjusted in accordance with this Agreement.

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

**Premises** means the location that the Goods and Services will be provided, as further particularized in the Quote.

**Price** means the price set out in the Quote, as adjusted in accordance with this Agreement, and includes the Deposit (if any).

**Quote** means the quote to which this Agreement is attached by reference.

**Receiving Party** means the party receiving Confidential Information from the Disclosing Party.

**Services** means the services further particularized in the Quote, as adjusted in accordance with this Agreement.

**Sign-Off Process** means the document that you receive from us upon completion of the Services.

**System** means all hardware, software, networks and other IT systems used by a Party from time to time.

**Term** means the duration of this Agreement, which will commence on the Commencement Date and will continue until the End Date, unless earlier terminated in accordance with its terms.

**Third Party Inputs** means third parties or any goods and services provided by third parties, including customers, end users, suppliers, transportation or logistics providers, third party software, opensource code and hosting server suppliers, or other subcontractors which the provision of the Services may be contingent on, or impacted by.

**Your Materials** means all work, models, processes, technologies, strategies, materials, information, documentation and services (including Intellectual Property), owned or licensed by you or your Personnel before the Commencement Date and/or developed by or on behalf of you or your Personnel independently of this Agreement.

17.3 **Interpretation:** In this Agreement, unless the context otherwise requires:

- (a) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (b) a reference to "Goods and Services" or "Goods or Services" includes "Goods and/or Services";
- (c) a reference to any legislation or law includes subordinate legislation or law and all amendments,

consolidations, replacements or re-enactments from time to time;

- (d) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (e) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (f) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
- (g) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (h) words like including and for example are not words of limitation;
- (i) a reference to time is to local time in Australian Capital Territory; and
- (j) a reference to dollars refers to the currency of Australia from time to time.