

STANDARD TERMS AND CONDITIONS OF CONTRACT

1. Defined Terms & Interpretation

1.1. In this Agreement:

Business Day means a day which is not a Saturday, Sunday or public holiday in Brisbane, Qld.

Customer means the customer or any person acting on behalf of and with the authority of the customer.

Customer Data means information relating to the Customer and its business including the Customer's customers that is provided to or collected by the Supplier in the course of delivery of Goods and Services under this Agreement.

Confidential Information means the information, concepts, ideas, methodologies, systems, designs, data, formulae, forms, specifications, algorithms, processes, statements, charts, graphs, trade secrets, drawings, manuals, software (including source and object code versions) and data (and copies and extracts made of or from that information and data) disclosed to either party pursuant to this Agreement and includes:

- (a) confidential information relating to either party's Customererele;
- (b) information relating to the personnel, policies or business strategies of either party; or
- (c) information relating to the terms of this Agreement;
- (d) any information of or relating to a party which, by its very nature, would be presumed to have been disclosed in confidence or which would reasonably be regarded as detrimental to the business or reputation of the party if disclosed;

but does not include any information that is or becomes publicly known in a manner for which only minimal search is required to assemble the information without breach of the terms of this Agreement or any other non-disclosure agreement.

Defect means a breakage or other defect in the Goods that is more than a packaging or cosmetic defect.

Fees means the fees specified in the amounts or at the rates set out in the Order provided that if no Fees are so specified, the Supplier's hourly rates from time to time for the relevant Service shall apply (subject to any variation or adjustment permitted under the terms of this Agreement).

Goods means the Goods supplied by the Supplier to the Customer in accordance with the Order.

Order means the Order made by the Customer to purchase the Goods and/or Services and includes:

- (a) any proposal document, quotation or proposed order submitted by the Supplier which is accepted by the Customer; and
- (b) any order or supply request that is submitted by the Customer and accepted in writing by the Supplier; and
- (c) any purchase via the Supplier's website or other shopfront facility.

Services means the service/s to be supplied by the Supplier to the Customer in accordance with the Order.

Supplier means Telefonix Technology Group Pty Ltd ACN 064 656 711 trading as Azentro of 3/42 Cavendish Road, Coorparoo QLD 4151.

Terms & Conditions means this document titled Standard Terms and Conditions of Contract.

1.2. In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (d) a reference to time is to Queensland, Australia time;
- (e) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (i) any agreement, representation, warranty or indemnity by or in favour of two or more parties (including where two or more persons are included in the same defined term) binds them or is for the benefit of them jointly and

severally;

- (j) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;
- (k) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (l) Headings are for ease of reference only and do not affect interpretation.

2. Agreement and Order Terms

- 2.1. By making or accepting an Order the Customer agrees to engage the Supplier to supply the Goods and/or provide the Services on the terms and conditions of the Order and these Terms & Conditions, which collectively form the agreement (this Agreement) between the parties.
- 2.2. Subject to clause 2.3, the Customer agrees that the terms of the Order (including all attachments and annexures thereto) and these Term & Conditions comprise the entirety of this Agreement and supersede any prior negotiations, agreements and understandings in connection with the delivery of the Goods and Services. No terms introduced by the Customer, including invoice terms and any terms and conditions used in connection with the Customer's business, will be considered part of this Agreement unless agreed in writing by the Supplier.
- 2.3. Where the Order was made or purchased online, the terms of this Agreement include the terms of any shopfront facility acknowledged by the Customer in the making of the purchase.
- 2.4. If there is any inconsistency between the terms of the Order and these Terms & Conditions, the terms of the Order override these Terms & Conditions to the extent of that inconsistency.

3. Performance

- 3.1. The Supplier shall not be bound to supply to the Customer any Goods or Services under an Order made by the Customer unless and until the Supplier has accepted the Customer's Order.
- 3.2. The Customer accepts and acknowledges that once an Order has been accepted by the Customer or the Supplier (as the case may be) it cannot be cancelled by the Customer without the prior written consent of the Supplier.
- 3.3. The Order may specify a date for delivery or commissioning of the Goods and/or Services the subject of the Order (**Delivery Date**) and the Supplier will use all commercially reasonable endeavours to meet the requested Delivery Date but shall not, in any circumstance be liable to the Customer for any loss or damage suffered by the Customer for any failure to meet the Delivery Date from any cause.
- 3.4. The Customer must, where required, provide the Supplier with details of the electrical and other requirements for any Goods or Services material to the Customer. The Supplier will not, in any circumstances, be liable for any costs or losses associated with providing electricity (or the reliability of the electricity facilities) or any other pre-requisites and requirements of the Customer not notified to the Supplier prior to the acceptance of the Order.
- 3.5. Where the Supplier made known to the Customer any pre-requisites including minimum system requirements required by the Supplier in order to provide the Goods and Services, the Customer warrants that all such pre-requisites are met and warrants the accuracy of any other information provided to the Supplier for the purpose of quoting or performing the delivery of the Goods and Services.
- 3.6. The Customer acknowledges that if the Customer does not comply with the requirements of clause 3.4 and 3.5:
 - (a) the Supplier may refuse to provide the Goods and Services and/or terminate this Agreement; or
 - (b) the Supplier may require a variation to the terms of the Order including but not limited to an increase of the Fee.
- 3.7. The Supplier will fulfil its obligations under this Agreement to provide Goods and Services:
 - (a) with due care and skill and in a workmanlike manner through the use of suitably qualified personnel or (where applicable) subcontractors;
 - (b) in accordance with the terms of this Agreement;
 - (c) in compliance with all applicable laws and regulations; and
 - (d) in compliance with any applicable licences, authorities or permits.

4. Price and payment

- 4.1. The Fees will be due and payable by the Customer to the Supplier in accordance with the payment terms specified in the Order.
- 4.2. The Customer agrees to pay the Supplier, without set off or deduction, all invoices rendered in accordance with any instalment or payment schedule set out in the Order, which may include an initial payment, final payment and/or progress payments or payments contingent on the completion of any milestone.
- 4.3. The Supplier shall be entitled to invoice the Customer monthly in advance for all Fees for recurring services, subscriptions, charges and payments under this Agreement (Recurring Fees). For any Recurring Fees invoiced in advance the Customer must pay the full amount of the Supplier's Recurring Fees before the commencement of the recurring period (which is most commonly a monthly recurring period) to which the invoice relates or within 7 days of the date of the invoice whichever is later.
- 4.4. If no payment terms are specified in the Order, the Customer must pay the Fees within 14 days after receipt of an invoice from the Supplier. Payment must be made by the Customer in one of the following ways: credit card, cheque, electronic transfer to the Supplier's bank account or cash.
- 4.5. Where the Customer has failed to pay an invoice by the due date the Supplier may charge interest on any money overdue until full payment is received and cleared in the Supplier's bank account at a rate of 11% per annum.
- 4.6. If the Supplier is required to deliver Goods to the Customer and the delivery is delayed by the acts or omissions of the Customer, the balance of the Fees outstanding at the date that delivery is attempted (if any) will become payable on that date and the Customer shall be liable for all reasonable additional costs incurred by the Supplier in storing the Goods and/or re-attempting delivery.
- 4.7. In the event the Customer is in breach of its obligation to pay any amount on an invoice rendered by the Supplier in accordance with the Order or these Terms & Conditions by the due date, the Customer shall keep the Supplier forever indemnified for all costs incurred by the Supplier in connection with recovering or attempting to recover the outstanding amount, including but not limited to solicitor's fees on a solicitor and own client basis.
- 4.8. Unless otherwise specified in the Order, the Fees are:
 - (a) in Australian dollars (AUD);
 - (b) exclusive of all taxes (including goods and services tax), duties, levies, other statutory impositions that may apply; and

- (c) inclusive of all other costs and disbursements on the part of the Supplier in providing the Goods and Services.
- 4.9. Except to the extent that the parties agree to a different Fee variation under clause 5 of these Terms & Conditions or as otherwise agreed in writing by the Supplier, the Supplier shall be entitled to increase its Fees yearly on 1 July each year by an amount, on a percentage basis, equivalent to any increase in the Consumer Price Index (All Groups) for the city of Brisbane, as issued by the Australian Bureau of Statistics, or its replacement body and the Customer may not object to this minimum increase.
- 4.10. Where there is any arrangement or agreement between the Customer and any Third Party, including any financier or Telstra, for the Third Party to either invoice the Customer or pass on payment on behalf of the Customer to the Supplier, in relation to any Services provided by the Supplier (**Third Party Arrangement**), the Customer remains responsible to the Supplier for payment for all Fees in connection with those Services until payment is received in full by the Supplier. The Supplier is, notwithstanding any Third Party Arrangement, entitled in its absolute discretion to render its own invoices for Fees in connection with such Services in a manner consistent with this Agreement. The Customer shall be responsible for procuring that payment for Services subject to any Third Party Arrangement is received by the Supplier by the earlier of the due date for payment on each of the Third Party's invoices in accordance with the Third Party Arrangement or the due date for payment in any invoice rendered by the Supplier in accordance with these Terms & Conditions in relation to such Services.
- 4.11. The Customer and the Supplier acknowledges and agrees that the terms and conditions of any arrangement or agreement between the Customer and any Third Party shall in no way alter or derogate from the obligations of the parties under these Terms & Conditions, and the parties shall remain fully liable for all of their respective obligations and covenants under these Terms & Conditions notwithstanding any such arrangement or agreement with any Third Party.

5. Variations

- 5.1. The Customer accepts and acknowledges that the Goods, Services, Fees or any other aspect of the Order is

subject to variation in the following circumstances:

- (a) where the scope of works of any Services, description or quantity of any Goods or other parameters of the Order change, whether at the request of the Customer or for any other reason, such that the cost of supply to the Supplier changes (as determined by the Supplier);
 - (b) where there is a change in the price of prime cost items (including steel), third party products (including software and hardware), any laws which affect the mode of delivery of the Goods or Services, or any fluctuations in currency (for international orders);
 - (c) if more than 12 months have elapsed from commencement of this Agreement or the last Fee review by the Supplier; or
 - (d) if another event occurs which the Supplier reasonably considers to necessitate a variation.
- 5.2. The Supplier will, whenever possible, negotiate variations including fee adjustments with the Customer in advance and the Customer agrees that the Supplier may suspend or terminate this Agreement if the Customer does not agree to the Supplier's variation. For the avoidance of doubt, where the Supplier requests a variation to the Fees in writing, the Customer is taken to have approved that variation unless the Customer objects to the variation in writing within thirty (30) days of date the Supplier's variation notice was given.
- 5.3. In the case of termination under clause 5.2, the Supplier shall refund to the Customer any Fees received in advance by the Customer for Goods or Services not yet delivered subject to which the Customer shall have no other claim against the Supplier.

6. Risk and Title to Goods

- 6.1. In this clause 6, "PPSA" means the *Personal Property Securities Act 2009 (Cth)* and any terms in this clause 6 that are defined in the PPSA have the same meaning as defined in the PPSA.
- 6.2. Any Goods to be supplied as part of the Order will be at the Customer's risk as and from:
- (a) for Goods to be delivered by the Supplier or its agents including by post, the time of delivery of the Goods to the delivery destination; or
 - (b) for Goods collected by the Customer or an agent for the Customer including a carrier arranged by the Customer or arranged by the Supplier but paid by the Customer in addition to the Fee, the time of collection of the Goods by the Customer or the Customer's agent or carrier;
- and the Customer will be liable for any loss or damage to the Goods from the time that risk passes to the Customer under this clause.
- 6.3. Notwithstanding risk passing to the Customer under clause 6.1, property and title in the Goods will not pass to the Customer until payment in full of all monies owed to Supplier have been paid and cleared in the Supplier's bank account, and until such time the Customer:
- (a) must not part with possession of the Goods except where the Goods are inventory of the Customer and sold in the ordinary course of business of the Customer;
 - (b) must not allow any person to have or acquire any security interest in the Goods;
 - (c) must insure the Goods for their full insurable or replacement value (whichever is the higher);
 - (d) must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods;
 - (e) the Supplier reserves the right to take possession and dispose of Goods as it sees fit at any time until full payment is received;
- unless agreed otherwise in writing by the Supplier.
- 6.4. The Supplier reserves the right to take possession and dispose of Goods as it sees fit at any time until full payment is received and the Customer grants permission to Supplier to enter any property to recover the Goods with such force as is necessary;
- 6.5. Notwithstanding the foregoing, should the Customer sell or deal with the Goods prior to payment to the Supplier being made, the Customer agrees that it holds the proceeds of such dealing on trust for the Supplier and must either pay the amount of the proceeds to the Supplier immediately or pay those proceeds into an account with a bank or deposit-taking institution as trustee for the Supplier.
- 6.6. The Customer agrees that a certificate purporting to be signed by an officer of Supplier identifying Goods as unpaid for will be conclusive evidence that Goods have not been paid for and of Supplier's title to those Goods.
- 6.7. The Customer agrees that the Supplier's retention of title rights under this clause 6 are a security interest within the meaning of the PPSA, and the Supplier may at any time register a financing statement against the Customer and/or the Goods individually in connection with the Supplier's security interest under this clause 6.
- 6.8. The Customer agrees that sections 95, 130, 132(3)(d), 132(4), 135 and 143 of the PPSA will have no application to the agreement between the Supplier and the Customer in respect of these Terms and the Customer waives its rights under section 157 of the PPSA to receive a notice under that section.

7. Warranty and Defects in Goods

- 7.1. The Customer warrants that it has independently investigated and is satisfied that the Goods, including all aspects of their functionality and specifications, meet the Customer's business requirements and are fit for the Customer's intended purpose. For the avoidance of doubt, any opinions offered by the Supplier in connection with the advisability of Goods are opinions only and the Supplier does not warrant that the Goods will meet any particular business outcomes for the Customer.
- 7.2. The Customer must inspect and notify the Supplier of any Defects in the Goods within 3 Business Days of receipt of the Goods by the Customer. The Customer is otherwise taken to have accepted the Goods and any rectification is subject to warranty terms only.
- 7.3. The Customer acknowledges that any Goods supplied by the Supplier are not manufactured by the Supplier and, except to the extent required by law, the Supplier makes no warranty or representation in connection with the Goods.
- 7.4. The Customer shall be entitled to the benefit of the manufacturer's warranty (if any) in respect of each item of the Goods for the duration of the Manufacturer's relevant warranty period and subject to the terms of the warranty as advised by the Supplier or available publicly through distribution by the manufacturer. This Customer acknowledges that the warranty period ordinarily commences on the date of delivery or commissioning of the Goods.
- 7.5. The Supplier shall facilitate, to the extent that it is able to, the replacement or repair of any faulty Goods by the manufacturer provided that the Customer indemnifies the Supplier for any costs in association with the warranty claim that are not covered by warrant, including shipping and/or delivery.
- 7.6. Any warranty given does not extend to any Goods other than that supplied by the Supplier, nor does it extend to Goods maintained otherwise than by properly trained personnel or interfaced other than in accordance with the conditions specified by the Supplier.
- 7.7. The Customer acknowledges that the Customer shall have no rights under warranty by the Supplier until payment in full has been made for the Goods.

8. Service Attendances, Training and Support

- 8.1. Except as provided in the Order, the supply of Goods and Services does not involve attendances to the premises of the Customer and the Supplier reserves the right to charge a Fee for any such attendance. The Supplier may require the Customer to allow remote access to its technology for the performance of any Services or to investigate any complained defect by the Customer and the Customer agrees to permit such access, physical attendances in this case may result in an additional Fee. Attendance Fees will be as stipulated in the Order or where not stipulated, calculated at the then prevailing rates of the Supplier.
- 8.2. Where the sale of Goods or Services includes training and support (as specified in the Order), the Supplier will use all reasonable commercial efforts to train the Customer in the use and operation of the Goods as the Supplier considers necessary, in its sole discretion.
- 8.3. The Supplier will provide manuals for the proper operation, use and upkeep of the Goods if applicable. The Customer accepts and acknowledges that its rights to make any claims against the Supplier for the condition of the Goods are subject to the Customer having complied and observed all directions and advice provided in the manuals.
- 8.4. Where the Order includes support services in connection with third party Goods, the Supplier will use reasonable efforts to provide such support as commissioned but makes no warranty that the Supplier will be in position to address any failure, malfunction or other troubleshooting concern of the Customer and the Supplier reserves the right to refer such matters to the manufacturer of the Goods where appropriate.
- 8.5. The Customer accepts and acknowledges that, except where maintenance services are included in the Order, the maintenance of the Goods is the sole responsibility of the Customer and that maintenance will often require properly skilled and trained personnel. The Supplier will not be obliged to provide any ongoing maintenance or support unless the Customer and the Supplier enter into a service agreement to this effect.
- 8.6. Where personnel of the Supplier attends the premises of the Customer or any other site at the Customer's request, the Customer indemnifies the Supplier for any injury to such personnel or damage to their or the Supplier's property that occurs on site. The Supplier undertakes to ensure that it and any of its personnel follow any reasonable safety and security directions advised by the Customer when accessing any site to provide Goods or Services.

9. Privacy and Security of Information

- 9.1. The Customer and the Supplier agree to all collection of personal information by either of them as necessary for the proper performance and/or delivery of the Goods and Services by the Supplier.
- 9.2. Without limiting the foregoing, the Supplier complies with the Australian Privacy Principles ("APP") and has an APP Privacy Policy outlining the manner in which the Supplier may collect, use, disclose and dispose of personal information, the terms of which are imported in and form part of this Agreement.
- 9.3. The Customer must also comply with the APP and indemnifies the Supplier in connection with any breach of privacy on the part of the part of the Customer or its agents.
- 9.4. The Supplier will use all reasonable efforts to maintain the safety and security of Customer Data in its possession and will notify the Customer immediately should the Supplier become aware that any Customer

Data of a sensitive or personal nature in its possession has been the subject of unauthorised access by others.

10. Intellectual Property and Confidential Information

10.1. The parties agree that:

- (a) the Customer retains at all times all intellectual property rights, title or interest of any kind in all Customer Data however subsisting at any time; and
- (b) the Supplier owns any and all existing and future intellectual property rights, title or interest of any kind in any materials supplied or created by the Supplier in connection of the delivery of Goods and Services under this Agreement, which are hereby licensed to the Supplier under a perpetual royalty free licence to utilise those materials in connection with the Customer's business for the purposes for which they were intended but not in connection with any other activity or purpose.

10.2. Without limiting the foregoing, the Supplier accepts no liability for any use of any materials supplied by the Supplier in connection with the Goods and Services by any other person or for any other purpose other than for which they were provided to the Customer and the Customer agrees to fully indemnify the Supplier in connection with claim by any third party or other loss or damage suffered by the Supplier in connection with such use or distribution including an account of profits.

10.3. Without limiting the provisions of clause 9, the Customer and the Supplier agree that from time to time they may each become aware of Confidential Information of the other, each party agrees that it will not, at any time during this Agreement or thereafter, disclose Confidential Information to any person or use such Confidential Information for any purpose except in the proper performance of this Agreement, provided that this clause does not prevent disclosure of Confidential Information:

- (a) to a party's officers, employees, advisers or independent contractors but only on a need to know basis and only if those persons are under an obligation of confidentiality either by law or by deed; or
- (b) required by law, but only to the extent as cannot reasonably be excluded or avoided; or
- (c) with the prior written consent of the other party.

10.4. A party who discloses Confidential Information under clause 10.3(a) is liable to the other party for any unauthorised disclosure or use of Confidential Information to the person to whom it is disclosed.

10.5. The parties acknowledge that nothing in this Agreement obliges either party to disclose Confidential Information to the other and on conclusion of this Agreement or the engagement of the parties each party shall be entitled to immediately require the other to return to it any and all Confidential Information in its possession except as reasonably required to be retained by the recipient party including for the purpose of tax and audit obligations.

10.6. Each party hereby agrees to indemnify and keep indemnified the other in connection with any loss or damage incurred by the other in connection with a breach by the former of the provisions of this clause 10, which the Customer acknowledges includes, in respect of any breach by the Customer:

- (a) an indemnity against any loss or damage (including legal costs) in connection with claim by any third party or other loss or damage suffered by the Supplier in connection with such the unauthorised use or distribution of materials or information provided by the Supplier under this Agreement; and
- (b) an account of profits for such unauthorised use or distribution.

10.7. The parties acknowledge and agree that damages may not be a sufficient or appropriate remedy for any breach of this clause 9 and that either party may obtain injunctive relief to prevent any threatened or suspected disclosure or use or the continuation of any disclosure or use of materials and information, including Confidential Information under this clause 10.

10.8. For the avoidance of doubt, the obligations of each party under this clause 10 survive completion or termination of this Agreement and continue until released in writing by the other party.

11. Limitation of Liability

11.1. To the fullest extent permitted by law, the Supplier makes no representation or warranty in respect of the provision of the Services except that it will carry out the Services competently, professionally and to the best of its ability within the scope of the Proposal and the terms of this Agreement.

11.2. The Supplier's warranties with respect to the state, quality or condition of the Goods or Services are limited to those imposed upon the Supplier by statute, including those contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* and the Supplier expressly disclaims all other implied warranties and conditions except where the infringement is known by the Supplier beforehand.

11.3. The Customer expressly accepts and acknowledges that the Supplier is not liable to the Customer for any costs, expenses, loss, liability or damage of any kind, howsoever arising from or in connection with:

- (a) any inability of the Customer to access or use Goods or Services provided due to breakdown, failure or interruptions outside of the Supplier's control;
- (b) any delay, failure or inability in the Supplier to supply the Goods or Services within any specific time frames or to repair any breakdown, failure, interruption or defect;

- (c) any disruption or interference with the Customer's business in connection with a breakdown or and at any other time in connection with the Services including while Services are being carried out;
- (d) any delay, failure or error in the provision of the Goods or Services due to any circumstance outside the Supplier's reasonable control, including without limitations, failure of any communications network or system, electronic power surges, overloads, failures or blackouts, including but not limited to any failure in internet, telephone or data connectivity;

except to the extent that such costs, expenses, loss, liability or damage is caused by the Supplier's wilful or negligent act or omission.

- 9.4 The Supplier will not be liable for any costs, expenses, loss, liability or damage of any kind suffered by the Customer in connection with any non-deliberate inaccuracy, error or omission on the part of the Supplier in carrying out the Services or providing the Goods notwithstanding any negligence on the part of the Supplier.
- 9.5 To the fullest extent permitted by law, the Supplier excludes all liability for loss including without limitation the loss or corruption of the Goods or Customer's Data, and any other commercial or economic loss of any kind arising from this Agreement or the provision of any of the Services by the Supplier except to the extent that such liability is a result of the Supplier's wilful or negligent acts or omissions.
- 9.6 To the fullest extent permitted by law, the Supplier excludes all liability for indirect and consequential loss including without limitation loss of profit or anticipated profit, loss of reputation, loss of goodwill or loss of business opportunity, whether arising in contract, tort (including for negligence), under statute or on any other basis in law, arising from this Agreement whatsoever.
- 9.7 To the fullest extent permitted by law, where the Supplier is liable for any defect or omission in connection with the Goods or Services, the Supplier's liability to the Customer is limited to either:
 - (a) re-supply of the Goods or Services by the Supplier; or
 - (b) payment of the cost of having another provider re-supply the Goods or Services.
- 9.8 In all cases and to the fullest extent permitted by law, the maximum of the Supplier's liability to the Customer under this Agreement is the total sum of Fees actually paid by the Customer under this Agreement up to the date of the Customer's claim.
- 9.9 The Customer acknowledges and agrees that the Customer:
 - (a) does not rely upon any prior statement, undertaking or representation made or given by or behalf of the Supplier which is not set out in this Agreement; and
 - (b) is fully aware of the contents of this Agreement and all documents referred to herein and has had the opportunity to obtain independent legal advice on its terms and the terms of all other related documents prior to entering into the Agreement.

12. Termination and Suspension

- 12.1. Without limiting any other provision of this Agreement, the Supplier may terminate this Agreement at any time by written notice to the Customer if:
 - (a) the Customer is in breach of any term of this Agreement and any such breach is not remedied within 14 days of receiving notice from the Supplier of the need to remedy, including but not limited to the obligation to pay the Fees;
 - (b) the Customer becomes, threatens or resolves to become subject to any form of insolvency under the *Corporations Act 2001 (Cth)*, including where a trustee in bankruptcy, administrator, liquidator (including provisional liquidator), receiver and/or manager is appointed in respect of the Party, or where the Customer being a company or other legal entity is de-registered, dissolves or is wound up or being a person dies; or
 - (c) the Supplier (acting reasonably) determines that it is unable or incapable of supplying the Goods or Services the subject of this Agreement including where the Supplier ceases to carry on business.
- 12.2. If the Supplier terminates this Agreement under clause 12.1(a) or 12.1(b), the Customer shall be entitled to immediately sue the Customer for damages in connection with the termination of this Agreement which shall include full payment of all outstanding Fees payable to the Supplier under the terms of this Agreement and all other Fees which would otherwise been due to the Supplier but for termination of this Agreement.
- 12.3. If the Supplier terminates this Agreement under clause 12.1(c), the Supplier shall refund to the Customer any Fees paid in advance by the Customer for any Goods or Services not delivered, subject to which the Customer shall have no further claim against the Supplier.
- 12.4. Without limiting any other right of the Supplier, where the Customer is in breach of this Agreement, including by failing to make a payment on time, the Supplier may, at its option, suspend the delivery of Goods and Services until the breach has been remedied. The Supplier will not be liable for any loss or damage suffered by the Customer, directly or indirectly, as a result or in any way in connection with or associated to the Goods and/or Services being suspended pursuant to this clause.

13. Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

14. Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

15. Variation of Agreement

The terms of this Agreement may not be varied except by written agreement of the parties.

16. Assignment

The Supplier may assign all of its rights and/or obligations under this Agreement at any time to any person who acquires the Supplier's business by written notice to the Customer. The Customer and the Supplier may not otherwise assign their interest in this Agreement except with the prior written consent of the other, which shall not be unreasonably refused.

17. Notices

17.1. Any notice or other communication in connection with this Agreement must be in writing addressed to the contact details of each party as contained in the Order and each party consents to receive communications via email for the purpose of the Electronic Transactions (Queensland) Act 2001.

17.2. A Notice or other communication under this Agreement will be deemed to be received, unless evidence of earlier receipt exists:

- (a) in the case of a posted letter, on the third day after posting;
- (b) in the case of personal delivery, on the date of delivery; and
- (c) in the case of email transmission, at the time recorded on a read receipt transmission report from the email account from which the email was sent, stipulating the time at which the email was read or otherwise displayed on the recipient's screen;

provided that a notice or communication given on a day which is not a Business Day or after 4:00pm on a Business Day will be deemed given on the next following Business Day.

17.3. For the avoidance of doubt, this clause 17.2 does not limit the way in which a notice may be given as permitted by law

18. Governing law and jurisdiction

This Agreement is governed by the law of Queensland and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland in the Brisbane CBD.