

# Terms and Conditions

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## 1. Background

- (a) Five Faces is the registered owner of the Software. You wish to engage us to develop, host and maintain a customised version of the Software and supply related Hardware for use by you in connection with your business.
- (b) These terms and conditions (**Terms**) apply to any Services that we provide or Software that we license to you, including any Services supplied under an Order Form.
- (c) In these Terms, "Five Faces", "we" or "us" means Alphatica Pty Ltd ACN 637 610 701 t/a Five Faces and their officers, employees and agents and "you" or the "Customer" means the person(s) purchasing the Services from Five Faces under the Order Form to which these Terms accompany or otherwise wishing to purchase Services from Five Faces from time to time.
- (d) To the extent there is any inconsistency between these Terms and the terms of an Order Form, then the Order Form shall prevail to the extent of that inconsistency.

## 2. Services

- (a) We agree to:
  - (i) provide the Hardware and the Services and license the Software to you as set out in an Order Form or as otherwise agreed between the parties in writing from time to time in accordance with these Terms; and
  - (ii) perform the Services using qualified personnel in a professional manner in accordance with generally applicable Australian standards and regulations.
- (b) By accepting an Order Form or otherwise accepting commencement of the Services or use of the Software, you confirm you have read, understood and agree to these Terms.

## 3. Customer obligations

### 3.1 Customer Data and system capabilities

You must:

- (a) provide all Customer Data required by us to allow us to complete the Services as agreed between the parties;
- (b) review information, make decisions and, on an ongoing basis, provide us with the information necessary for us to perform the Services;
- (c) provide us with true and relevant information about you and your business;
- (d) have all resources necessary to operate the Software, including hardware, software, telecommunication resources and internet access acceptable to us, as set out in our Installation Policy;
- (e) comply with our recommendations from time to time in relation to your network and use of the Software;
- (f) give us reasonable access to your network including by installation of any remote support tools and hardware monitoring and reporting tools that we nominate from time to time for the purpose of maintaining the Software including analysis of errors and installation of patches or upgrades; and
- (g) cooperate with us, act reasonably and follow our directions in connection with the Services.

### 3.2 Monitoring, back up and protection of sensitive information

You acknowledge that:

- (a) you must not resupply the Hardware, Software or the Services to third parties, or permit third parties to access the Hardware, Software or Services;
- (b) you must ensure all usernames, passwords and other sensitive information associated with the Software and the Services are kept secure from unauthorised use or access at all times; and

- (c) you must notify us if you become aware that there is unauthorised access to the Software or disclosure of sensitive information including usernames and passwords to unauthorised persons.

## 3.3 Acknowledgment

You acknowledge and agree that:

- (a) the Software and Services may contain errors and not all errors or problems can or will be corrected;
- (b) we are not responsible for the resilience or availability of the communications network over which the Software and Services are supplied; and
- (c) if you do not comply with clause 3.1 then we are not obliged to supply to you the Services.

## 4. Our obligations

### 4.1 Software updates

- (a) Where we host the Software, we will notify you in advance of all releases and upgrades to the Software. Updates and upgrades are typically undertaken outside the hours of 8:30am to 5:00pm.
- (b) Where you host the Software we will provide to you copies of all releases and upgrades to the Software that are published or otherwise made available by us during the Term. It will be your responsibility to install these updates and upgrades in a timely manner.
- (c) For the avoidance of doubt:
  - (i) all Intellectual Property Rights in such releases and upgrades remain our property; and
  - (ii) the licence granted pursuant to clause 2(a)(i) extends to any releases and upgrades provided by us under this clause 4.1;

### 4.2 Service availability and Support services

We agree to:

- (a) provide you with support for the Services in accordance with our Support Policy;
- (b) use our best endeavours to ensure that the Software is available for normal use at least 99.98% of the time, calculated on a monthly basis; and
- (c) where service levels are agreed pursuant to a Proposal, use our best endeavours to ensure consistent compliance with such service levels.

### 4.3 Maintenance of Software

- (a) We will, from time to time, perform preventative or remedial maintenance for the Services and will use our best endeavours to:
  - (i) provide you with at least 24 hours' notice prior to carrying out any maintenance services; and
  - (ii) schedule such downtime to the extent practicable outside normal Business Hours.
- (b) You acknowledge and agree that notwithstanding clause 4.3(a) we:
  - (i) may be required to perform urgent preventive maintenance during Business Hours where major faults are detected and urgent preventive maintenance action is required to limit the impact or occurrence of the fault to the Services;
  - (ii) may not be able to provide notice where such urgent preventative maintenance is required; and
  - (iii) where such urgent maintenance is required, will use our best endeavours to resume the Service as soon as is practicable.

## 5. Hardware

### 5.1 Provision of Hardware

We may, with your agreement:

- (a) substitute equivalent goods for Hardware originally ordered if such Hardware is not available at the time of ordering and is not expected to be available at a reasonable future date; or
- (b) put any Hardware on back order if such Hardware is not available at the time of ordering but is expected to be available at a reasonable future date.

### 5.2 Delivery

- (a) You acknowledge and agree:
  - (i) that, unless otherwise specified in an Order Form, delivery dates provided are a guide only and we do not guarantee fixed delivery times; and
  - (ii) we are not responsible for delays in delivery of Hardware caused by any delay that you cause; acts or omissions of any third party or third party service or equipment; changes in any Order Form
- (b) Delivery of Hardware is deemed to occur on the earlier of when:
  - (i) you or your nominated carrier takes possession of the Hardware; or
  - (ii) the Hardware is delivered to your nominated address, (Delivery).

### 5.3 Notification of Defects

You must give us written notice within 24 hours of Delivery if you reasonably consider there is any defect or damage, shortage in quantity or failure to comply with any description or quote provided by us, or in the case of any latent defect, notice must be given within 48 hours of the latent defect becoming apparent.

### 5.4 Risk and Title

- (a) You bear all risk of damage to or loss of the Hardware from the time of Delivery.
- (b) The parties agree that title of the Hardware will pass to you on the later of:
  - (i) payment of all amounts owing relevant to the Hardware; and
  - (ii) Delivery of the Hardware.

## 6. Change Requests

- (a) Where you wish to make any change to the Services or the Deliverables, you may submit a change request (**Change Request**) us setting out the changes requested. The Change Request must contain sufficient detail for us to determine the effect of the requested change on the scope of the Services and Deliverables and the Fees (using our then current charge rates).
- (b) Within a reasonable period of receiving a Change Request, we will either:
  - (i) give notice that we are unable to comply with the Change Request as the requested changes are not within our reasonable capacity to provide; or
  - (ii) if within our capacity, provide to you a proposal for performing the changes to the Services and/or the Deliverables including the proposed new Services and Deliverables, and any revised Fees and expenses.
- (c) We will have no obligation to make the requested change until the parties have agreed and signed a written agreement specifying, in particular, any changes to the Services and the Fees.

## 7. Fees and invoicing

### 7.1 Fees

- (a) You must pay us the Fees for the Services.

- (b) Fees specified in these Terms and an Order Form are exclusive of GST and other similar taxes and surcharges and net of withholding or other similar taxes.

- (c) Where you have agreed to pay the Fees directly to an approved reseller of our Services, then this clause shall be deemed modified to the extent necessary to give effect to that arrangement.

### 7.2 GST

- (a) If Goods and Services Tax (**GST**) has application to any supply made under or in connection with these Terms, we may, in addition to any amount or consideration payable under these Terms, recover from you an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by you for the supply by the prevailing GST rate.
- (b) Any additional amount on account of GST recoverable from you under this clause shall be calculated without any deduction or set-off of any other amount and is payable by you upon our demand whether such demand is by means of an invoice or otherwise.

### 7.3 Invoices

- (a) Within 10 Business Days of the last day of each calendar month or on such other dates as set out in an Order Form, we will issue to you an invoice for the Fees and charges payable in respect of that period.
- (b) You must pay invoices within the time specified in the Order Form, or if not specified, within 30 days of receipt.

### 7.4 Failure to pay

If you do not pay the Fees on or before the due date, we shall be entitled to receive interest on overdue payments of 1% per month and shall be entitled to suspend provision of the Software and withhold delivery or part thereof of Services yet to be provided.

### 7.5 Set off

We may, without limiting any other rights or remedies we may have, set off any amounts you owe us under these Terms against any amounts we owe to you.

## 8. Intellectual Property Rights

### 8.1 Ownership

- (a) The Intellectual Property Rights in the Deliverables and the Software are, and shall remain the property of us, and we reserves the right to grant a licence to use the Software to any other party or parties.
- (b) You must do all things that we reasonably require to perfect our right, title and interest in and to the Intellectual Property Rights in the Software.
- (c) You shall use reasonable endeavours to prevent any infringement of our Intellectual Property Rights in the Software and shall promptly report to us any such infringement that comes to its attention.

### 8.2 License

Except where clause 8.3 applies, and for so long as you are not in breach of these Terms, we grant to you a perpetual (subject to any limits set out in an Order Form), non-exclusive, royalty-free (subject to payment of the Fees), non-transferable right to use the Deliverables, the Documentation and the Software to the extent necessary to obtain the full benefit of the Services.

### 8.3 Initial Proposal

Notwithstanding clause 8.1, where the Services consist (in whole or in part) of a detailed proposal setting out how we propose to complete a specific project or mandate, and such proposal is not accepted by you, without limiting any other clause in these Terms, the Intellectual Property Rights in such proposal shall remain our property and you must not disclose such proposal to any third party for the purposes of requesting that third party to utilise, replicate or modify such proposal for the purpose of providing any similar services to you.

## 8.4 Customer Data

- (a) All Intellectual Property Rights in the Customer Data remain your property or the property of the relevant third parties, and nothing in these Terms shall be construed as giving us any rights to such Intellectual Property Rights.
- (b) In the event we or our personnel are permitted access to or are otherwise provided with Customer Data for any reason then, without prejudice to clause 10 and subject to the same caveats as set out in clause 10(b), neither we nor our personnel shall without your prior written consent distribute, duplicate, reproduce or any way use (or permit the use of) any Customer Data, or, modify, amend or alter the contents of Customer Data or disclose or permit the disclosure of the Customer Data to any third party without your prior consent.

## 8.5 Your warranty and indemnity

- (a) You warrant that:
  - (i) you own, or hold any necessary license of, all Intellectual Property Rights in the Customer Data; and
  - (ii) in utilising any Customer Data, we will not infringe, violate or otherwise conflict with any Intellectual Property Rights owned by a third party.
- (b) You indemnify us from and against any liability arising out of any claim by a third party that the Customer Data violates or infringes any Intellectual Property Rights owned by a third party.

## 8.6 Our warranty and indemnity

- (a) We warrant that:
  - (i) we own, or hold any necessary license of, all Intellectual Property Rights in each of the Services, Software and the Deliverables; and
  - (ii) in utilising the Services, Software and the Deliverables, you will not infringe, violate or otherwise conflict with any Intellectual Property Rights owned by a third party.
- (b) We indemnify you from and against any liability arising out of any claim by a third party that we and any of our Services, Deliverables or the Software violates or infringes any Intellectual Property Rights owned by a third party.

## 8.7 Restrictions on use

You acknowledge and agree that you will:

- (a) comply with all applicable laws, regulations and codes of conduct;
- (b) comply with any reasonable directions we give you from time to time, including all Documentation relating to the use of the Hardware and Software and our fair use policies;
- (c) promptly report to us any errors, defects or malfunctions in relation to the Services, Hardware or Software;
- (d) not do anything which is intended or reasonably likely to damage, impair, interrupt or interfere with the provision of the Services or the Software;
- (e) not alter, modify, decompile, disassemble, reverse engineer, sublicense or change any software that underpins the Software or integrate it with or into any other software or create a derivative work from the software by any means other than as expressly provided under these Terms; and
- (f) not purport to grant to a third party any right to access or use our Services or the Software except as we permit.

## 9. Term and termination

### 9.1 Term

- (a) This document will commence upon the Commencement Date and will continue until terminated under clause 9.2, by mutual agreement between the parties or as otherwise set out in an Order Form.

- (b) If no term is expressly set out in an Order Form, the engagement and this agreement to provide the Services will be terminable by either party on 30 days' notice, provided such notice does not expire before the first anniversary of the date of commencement of the Services.

### 9.2 Termination for cause

In addition to any other rights to terminate set out in these Terms either party may at any time terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due pursuant to these Terms on the date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of these Terms and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any term of these Terms in such a manner as to reasonably justify the opinion that their conduct is inconsistent with them having the intention or ability to give effect to these Terms; or
- (d) the other party suffers an Insolvency Event.

### 9.3 Obligations on termination

- (a) On termination or expiry, each party shall as soon as reasonably practicable:
  - (i) return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, storage devices or other information or data provided to them by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party;
  - (ii) permanently delete any proprietary software belonging to the other party from their IT network or its storage devices;
  - (iii) promptly return (within ten days from termination or request) to the disclosing party all tangible Confidential Information (and all copies thereof) of the disclosing party, or upon written request from the disclosing party, destroy such Confidential Information;
  - (iv) cease all further use of the other party's Confidential Information, whether in tangible or intangible form; and
  - (v) return all of the other party's equipment and materials, provided that if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, they shall notify the other party in writing of such retention, giving details of the documents and/or materials that they must retain.
- (b) On termination for any reason, you shall immediately pay to us any outstanding unpaid invoices and interest due. We shall submit invoices for any Services that we have supplied, but for which no invoice has been submitted, and you shall pay these invoices immediately on receipt.

## 10. Confidentiality

- (a) Each party agrees to, and shall ensure each of their officers, employees and contractors:
  - (i) hold in strict confidence all Confidential Information of the other party;
  - (ii) use the Confidential Information solely to perform or to exercise their rights under these Terms; and
  - (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third party.
  - (iv) use their best endeavours, including keeping such information in a safe place and implementing adequate security measures, to ensure that all Confidential

Information is secure from unauthorised use, disclosure or copying by third parties.

- (b) The obligations in clause 10 do not apply:
- (i) to the extent necessary to enable disclosure required by law;
  - (ii) to any disclosure agreed in writing between the parties; or
  - (iii) where the Confidential Information has entered the public domain other than as a result of a breach by you of these Terms.

## 11. Limited warranty and exclusion of liability

### 11.1 Limitation of Liability

- (a) This clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of their employees, agents and subcontractors) to each other in respect of:
- (i) any breach of these Terms;
  - (ii) any use made of the Services, the Software or the Deliverables; and
  - (iii) any representation, statement or tortious act or omission (including negligence) arising under or in connection with these Terms.
- (b) As far as the law permits and unless otherwise specified in these Terms;
- (i) all liability to a party for any injury, loss damage, cost or expense relating to or arising from these Terms, except to the extent that the injury, loss, damage, cost or expense arises from the negligent act or omission of a party, is excluded;
  - (ii) you shall be solely responsible, as against us, for any opinions, recommendations, or other conclusions made or actions taken by you, any client of you or any other third party based (wholly or in part) on the results obtained from your use of the Software or the Services;
  - (iii) we shall have no liability for any damage caused by errors or omissions in any information or instructions that you provide to us in connection with the Services;
  - (iv) we shall have no liability for, and no obligation to amend, replace or refund, any Deliverables that cease to function in accordance with any agreed specifications or services levels to the extent the failure arises from a change to any operating or software platform or any change to the terms and conditions implemented by any third party;
  - (v) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are excluded from these Terms; and
  - (vi) where the Software becomes unavailable due to the failure of any third-party hosting provider, our liability for a breach of these Terms will be limited to the extent that we caused, or contributed to, such failure.

### 11.2 Hardware

You acknowledge and agree that:

- (a) unless otherwise specified in an Order Form, we do not provide any warranties for Hardware supplied under these Terms; and
- (b) where Hardware is covered by an original manufacturer's warranty, we shall provide all reasonable assistance in bringing a claim under such warranty and you may contact the manufacturer or importer directly in relation to any warranty claim in respect of Hardware.

### 11.3 Mitigation

Each party must mitigate any loss they suffer as a result of the breach by the other party to these Terms or any warranty or indemnity provided under these Terms.

### 11.4 Maximum liability

- (a) Subject to clause 11.4(b), the total liability of each party arising under or in connection with these Terms will be limited in the aggregate to the total Fees payable in the previous 12 month period.
- (b) Clause 11.4(a) will not limit or exclude the liability of either party for any claim arising from:
  - (i) death or personal injury or damage to property resulting from negligence; or
  - (ii) fraud or fraudulent misrepresentation; or
  - (iii) the deliberate default or wilful misconduct of that party or their employees, agents or contractors;
  - (iv) the non-payment of any Fees; or
  - (v) the indemnities contained in clauses 8.5 and 8.6.

### 11.5 Consequential Loss

Neither party, nor their members, managers, officers, employees or agents, shall be liable to the other party for any loss of use, lost or inaccurate data or data corruption, non-compliance with any statutory or legal obligation or deadline, lost profits, failure of security mechanisms, interruption of business, delays or any direct, indirect, special, incidental, reliance or consequential damages of any kind, regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise, even if informed of the possibility of such damages in advance.

### 11.6 Australian Consumer Law

If the Australian Consumer Law applies to the supply of goods or services under these Terms, we acknowledge and agree that our goods and services come with a guarantee that cannot be excluded under the Australian Consumer Law, and that the following mandatory notice under section 102(1) of the Australian Consumer Law that must be provided to the Reseller will apply:

*Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:*

- *to cancel your service contract with us; and*
- *to a refund for the unused portion, or to compensation for its reduced value.*

*You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.*

## 12. Data Protection

- (a) Both parties must comply with all applicable requirements of the Data Protection Legislation.
- (b) Without prejudice to the generality of clause 12(a), you will ensure that you have all necessary and appropriate consents and notices in place to enable lawful transfer to us of any personal data for the duration and purposes of these Terms so that we may lawfully use, process and transfer the personal data in accordance with these Terms on your behalf.
- (c) We shall notify you immediately if we become aware of any security incident affecting our network and information systems that could potentially affect you and shall respond without delay to all queries and requests for information from you about any security incident, whether discovered by us or by you.

## 13. Non-solicitation

- (a) During the term of these Terms and for a period of six months after its termination neither party shall, without the prior written consent of the other, solicit, or permit any related entity of that party to solicit, the employment of any person who is employed by the other party or their related entities in the course of developing, supplying, maintaining or supporting the Services or the Software or any part of it.

- (b) if a party breaches clause 13(a), then they shall pay to the other party an amount equal to twelve month's salary (excluding any bonus or benefits) for the employee concerned in recognition only of the disruption that such inducement has caused to the efficient conduct of the other party's business.

## 14. Force Majeure

Neither party shall be liable for any delay or failure to perform their obligations in a timely manner pursuant to this document if such delay is due to a Force Majeure Event.

## 15. Dispute Resolution

- (a) Neither party may commence court proceedings concerning any dispute between the parties arising out of or in relation to this document (**Dispute**), unless the party starting the proceedings has complied with this clause 15.
- (b) A party claiming that a Dispute has arisen must notify the other party in writing, specifying the nature of the Dispute (**Dispute Notice**).
- (c) Following the Dispute Notice being given, the CEO of both parties must endeavour in good faith to resolve the Dispute within 14 days.
- (d) If the Dispute is not resolved within 14 days of the Dispute Notice being given, the parties must endeavour in good faith to resolve the Dispute by mediation as follows:
  - (i) if the parties fail to agree on the appointment of a mediator within 21 days of the Dispute Notice being given, either party may apply to the President of the Law Society of Queensland or the nominee of the President to nominate a mediator (which nomination the parties must accept);
  - (ii) if the mediator accepts the appointment, the parties must comply with the mediator's instructions;
  - (iii) if the Dispute is not resolved within 21 days of the appointment of a mediator, the mediation ceases;
  - (iv) the parties will be jointly responsible for the fees of the mediation, and each party is to bear their own costs in relation to the mediation;
  - (v) the mediation will be held in Brisbane, Queensland;
  - (vi) the parties may be legally represented at the mediation; and
  - (vii) the mediation will not be bound by the rules of natural justice and may discuss the Dispute with a party in the absence of any other party and their advisers.
- (a) Nothing in this clause prevents a party from seeking urgent interlocutory relief in a court.

## 16. General

- (a) This document may only be amended by written agreement between all parties.
- (b) The laws of Queensland govern this document and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.
- (c) Neither party may assign, in whole or in part any of their rights and obligations under this document without the prior written consent of the other party.
- (d) A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.
- (e) These Terms supersede all previous agreements about its subject matter. This agreement embodies the entire agreement between the parties.

- (f) Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.
- (g) Each party bears their own costs in relation to the preparation of these Terms.
- (h) The failure of a party to require full or partial performance of a provision of these Terms does not affect the right of that party to require performance subsequently.
- (i) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (j) A right under these Terms may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

## 17. Notices

- (a) A notice, consent or communication under these Terms must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and delivered by hand, sent by prepaid mail or sent by email to that person's address as specified in the Order Form or as the person notifies the sender.
- (b) A notice, consent or communication is given and received:
  - (i) if it is hand delivered, on the day it is given;
  - (ii) if it is sent by post, three business days after posting (if within Australia) or seven business days after posting (if outside Australia); and
  - (iii) if it is sent by email, that day, if the time of departure from the sender's mail server is before 5.00pm on a business day, or the next business day in any other case, unless the sender receives an automated message generated by the recipient's mail server (other than an 'out of office' message or other response generated by or at the instigation of the recipient) that the email has not been delivered within two hours.

## 18. Defined terms & interpretation

### 18.1 Defined terms

In these terms:

- (a) **Australian Consumer Law** means schedule 2 to the *Competition and Consumer Act 2010* (Cth).
- (b) **Business Day** means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland.
- (c) **Business Hours** means the hours between 8:30am and 5.00pm on a Business Day.
- (d) **Commencement Date** means the date of acceptance of these Terms, or such other date set out in an Order Form.
- (e) **Confidential Information** means any information:
  - (i) relating to the business and affairs of a party;
  - (ii) relating to the customers, clients, employees, sub-suppliers or other persons doing business with a party;
  - (iii) relating to these Terms or an Order Form;
  - (iv) relating to the Intellectual Property Rights or Source Code of a party;
  - (v) which is by its nature confidential;
  - (vi) which is designated as confidential by a party; or
  - (vii) which the other party knows or ought to know, is confidential,

and includes all trade secrets, knowhow, marketing, financial and customer information, forecasts, and strategies and any other commercially valuable information of a party.

- (f) **Customer Data** means all data and information provided by you for the purposes of providing the Services relating to you and your operations, facilities, clients, personnel, assets,

products, sales and transactions in whatever form such information may exist, to be stored, transmitted, processed and/or retrieved by us in our performance of the Services.

- (g) **Data Protection Legislation** means:
- (i) the *Privacy Act 1988* (Cth) and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under it, as amended from time to time;
  - (ii) the Australian Privacy Principles (or APPs) contained in schedule 1 of the Privacy Act referred to in (i); and
  - (iii) all other laws, regulations, registered privacy codes, privacy policies and contractual terms applicable in the jurisdiction where the Services are being provided that relate to the processing of personal information.
- (h) **Deliverables** means the customised digital signage content incorporating the Software to be delivered by us to you as set out in an Order Form and which is rebranded to include your branding.
- (i) **Documentation** means any user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by us as part of the Deliverables.
- (j) **Fee** means the fees for the Services payable by you under these Terms and as set out in an Order Form, including the Services Fee.
- (k) **Force Majeure Event** means an act of God, national emergency, terrorist act, sabotage, flood, storm, earthquake, fire, explosion, civil disturbance, insurrection, riot, war, industrial action, lockout, rebellion, quarantine, embargo and other similar governmental action or a general and continued energy shortage, power or utilities interruption or failure.
- (l) **Hardware** means any physical goods and related materials that the Customer requests, orders, or purchases from time to time in accordance with this document and specified in an Order Form.
- (m) **Insolvency Event** means any of the following events concerning a party:
- (i) if an administrator, liquidator, receiver, receiver and manager or other controller is appointed to, or over, any of the property or undertaking of the party;
  - (ii) if the party is unable to pay their debts when they become due and payable;
  - (iii) if the party ceases to carry on business; or
  - (iv) if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.
- (n) **Installation Policy** means our installation policy provided to you with the Order Form, as amended from time to time.
- (o) **Intellectual Property Rights** means all industrial and intellectual property rights throughout the world, whether registered, unregistered or unregistrable, including all copyrights, patents, trademarks, service marks, designs, confidential information, trade secrets, know how, data and databases, systems and domain names.
- (p) **Services** means the services to be provided by us as specified in an Order Form or as otherwise agreed between the parties.
- (q) **Services Fee** means the fee set out in an Order Form or if not specified, an amount calculated at our usual rates and charges to carry out the Services and reviewed annually.
- (r) **Software** means the object and source code of the software to be licensed to you set out in an Order Form and any updates, added functionality or modifications which we provide to you under these Terms.
- (s) **Source Code** means software written in a form intelligible to trained programmers and capable of being translated into

object code through assembly or compiling for operations on computer equipment.

- (t) **Support Policy** means our support and maintenance policy provided to you with the Order Form, as amended from time to time.
- (u) **Third Party IP** means Intellectual Property Rights proprietary to third parties (including open-source software) which we utilise in the provision of the Services.

## 18.2 Interpretation

In these Terms:

- (a) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (b) a reference to a document or agreement (including a reference to these terms) is to that document or agreement as amended, supplemented, varied or replaced;
- (c) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (d) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day; and
- (e) a reference to '\$' or 'dollar' is to Australian currency.

