Terms of Service – Amaze

The following Terms of Service (collectively, with other terms and conditions contained in the Privacy Policy and any agreed to Quote, the **Agreement**) govern the terms on which Amaze Intelligence Pty Ltd ACN 142 237 830 (the **Service Provider**) agrees to provide the Services (as defined below) to you (the **Client**).

If you are agreeing to this Agreement on behalf of someone or entity, you represent and warrant that you have the irrevocable authority and agreement of that person or entity to be bound by this Agreement.

These Terms of Service may be updated by the Service Provider from time to time. Each Quote will be a separate contract and the Terms of Service that apply to the Services of each Quote will be the version of these Terms of Service that is on the Website at the time the Quote is accepted by the Service Provider.

1. DEFINITIONS

1.1 In this Agreement unless inconsistent with the context or subject matter:

(a) **ACL:** the Australian Consumer Law (as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth)).

(b) **Account:** an account established on the Hosted Services which enables the Client and/or an Authorised User to access and use the Hosted Services.

(c) **Agreement:** this agreement consisting of these Terms of Service and the Quote (for the avoidance of doubt each Quote (together with these Terms of Service) forms its own separate Agreement).

(d) **Applicable Laws:** any laws governing or affecting the arrangements contemplated by this Agreement.

(e) **Authorised User:** has the meaning given under clause 7.2.

(f) **Client:** the Client identified in the Quote, and if there is more than one Client is a reference to each Client jointly and severally.

(g) **Client's Address for Service:** means the email address or address of the Client set out in the Quote.

(h) **Client Data**: all data, files, works and materials uploaded to or stored on the Hosted Services by the Client (or Authorised Users), transmitted to the Hosted Services at the instigation of the Client (or Authorised Users), or supplied by the Client (or Authorised Users) to the Provider for uploading to, transmission by or storage on the Hosted Services.

(i) **Commencement Date**: the date this Agreement becomes binding on the Client in accordance with clause 2.

(j) **Confidential Information:** any information, whether recorded in writing or otherwise disclosed by one party to the other which any reasonable person would consider to be of a confidential nature, including without limitation any trade secrets, methods, strategies, competitor details, pricing, and other business processes. Confidential Information does not include information that:

i) is or becomes independently developed or known by the other party through no breach of this Agreement by that party; or

ii) becomes publicly available without breach of this Agreement.

(k) **Contract Materials**: all things, works, items, concepts, designs, inventions, developments, improvements, systems or other materials or information of whatever nature created, made, discovered, produced or developed by the Service Provider or its Personnel (either alone or with others) directly in connection with the Services after the Commencement Date, but excluding Pre-existing IP Rights.

(l) **Fees**: any fees applicable to the Services, in accordance with clause 6.1.

(m) **Force Majeure Event:** an act, omission or circumstance over which the Service Provider could not reasonably have exercised control.

(n) **GST:** has the meaning given to it in the GST Act.

(o) **GST Act:** the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

(p) **Hosted Services**: those hosted service offerings of the Service Provider as described in clause 7.1.

(q) **Initial Term**: means the initial term of the Agreement as set out in the Quote.

(r) **Insolvency Event**: means:

    i) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;

    ii) a liquidator or provisional liquidator is appointed in respect of a person;

    iii) any application (that is not withdrawn or dismissed within seven days is made to a court for an order, or an order is made, or a meeting is convened or a resolution is passed, for the purpose of (i) appointing a person referred to in paragraph i) or ii) of this definition; (ii) winding up or deregistering a person; or (iii) proposing or implementing a scheme of arrangement of a person, other than with the prior approval of the Agent under a scheme of arrangement pursuant to Part 5.1 of the Corporations Act;

    iv) any action, proceedings, procedure or step is taken for the purpose of implementing or agreeing (i) a moratorium of any indebtedness of a person; (ii) any other composition, compromise, assignment or arrangement with any creditor or creditors of a person; or (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of its creditors or a trustee;

    v) any event occurs in relation to a person in any jurisdiction that is analogous, or has a substantially similar effect, to those set out in paragraphs i) to iv) of this definition (inclusive); or

    vi) a person is or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

(s) **Intellectual Property Rights:** all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration.

(t) **Loss:** any loss, liability, cost, charge, expense, tax, duty or damage of any nature whatsoever, including special, incidental, or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence).

(u) **Master Services Agreement**: the Master Services Agreement entered into between the parties (if any).

(v) **Materials**: all materials, documentation and information (whether reduced to written form or otherwise) provided to the Client by the Service Provider (or otherwise made accessible to the Client by the Service Provider) at any time.

(w) **Personnel**: the directors, officers, employees, contractors, suppliers, advisers or agents of a party.

(x) **Pre-existing IP Rights**: Intellectual Property Rights in all materials owned or licensed by the Client or Service Provider (as the case may be) prior to the date of this Agreement or which was developed independently of the Services (including in the Service Provider's case any materials which were developed in connection with the Services and which are non-specific to the Client).

(y) **Privacy Legislation:** means the Privacy Act 1988 (Cth), including Australian Privacy Principles, and the guidance and codes of practice issued by the Office of the Australian Information Commissioner from time to time.

(z) **Quote:** the proposal or quote provided by the Service Provider to the Client which attaches or includes a link to these Terms of Service, including any attachments to the Quote.

(aa) **Related Entity:** has the meaning provided for that term in the *Corporations Act 2001* (Cth).

(bb) **Service Level Agreement:** the Service Provider's Service Level Agreement for the Hosted Services as accessed on the Website (or as otherwise provided by the Service Provider to the Client).

(cc) **Service Levels**: has the meaning given to it under clause 7.7.

(dd) **Services:** the services to be provided by the Service Provider to the Client, and as amended from time to time in accordance with this Agreement.

(ee) **State**: New South Wales.

(ff) **Third Party Terms**: means the terms applicable to third party software.

(gg) **Website**: the website of the Service Provider, accessible at amaze.au.

1.2 In this Agreement unless inconsistent with the context or subject matter:

(a) References to a party to any agreement or document include that party's permitted assignees and successors, including executors and administrators and legal representatives.

(b) Words denoting the singular include the plural and words denoting the plural include the singular.

(c) The word 'person' includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any government agency.

(d) No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this Agreement.

(e) If a period of time begins on a given day or the day of an act or event, it is to be calculated exclusive of that day.

(f) A reference to time is a reference to time in the capital city of the State.

(g) A reference to a day is a reference to a day in the capital city of the State.

(h) A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.

(i) If any act is required to be performed under this Agreement on or by a specified day and that day is not a business day, the act must be performed on or by the next business day.

(j) A reference to an amount of dollars, Australian dollars, $ or A$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency.

(k) Where this Agreement is executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.

(l) A reference to writing or written includes email.

(m) Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2. APPLICATION

2.1 This Agreement will become binding on the Client on the earlier of the date that:

(a) the Client indicates their acceptance to the terms (such as by accepting or signing a Quote – for online Quotes acceptance may be indicated by clicking "I agree" or similar phrasing in relation to these terms or by accessing and using the Services);

(b) the Client instructs the Service Provider to proceed with any Services; or

(c) the Client pays any amount to the Service Provider in respect of the Services,

(the date being the **Commencement Date**).

2.2 Unless otherwise specified by the Service Provider all Quotes are valid for 30 days from the date of quotation, and are subject to the confirmation and acceptance by the Service Provider (such as by issuing a purchase order). Any Fees stated in a Quote are provided on the basis of the information current to the Service Provider at the date of the Quote. The Service Provider reserves the right to increase the Fees where applicable in accordance with the terms of this Agreement. Fees may also change due to currency exchange rate fluctuation (where applicable).

2.3   The Client acknowledges and agrees that the supply of Services remains subject to availability and if, for any reason the Service Provider is unable to proceed with the supply, the Service Provider reserves the right to cancel the Services (and issue a refund for the cancelled Services if applicable). This is the Client's only remedy in these circumstances and the Service Provider will not be liable to pay any other amount to the Client.

2.4   No invoice, terms or other document issued by or on behalf of the Client (including the terms on any purchase order, warranty or other agreement given to the Service Provider) will vary or form part of this Agreement unless otherwise agreed by the Service Provider in writing. This Agreement replaces and supersedes any invoice, terms or other document given by the Client to the Service Provider whether before or after the time that this Agreement is supplied to the Client.

3.   TERM

3.1   This Agreement commences on the Commencement Date and will continue for the Initial Term as set out in the Quote unless it is terminated earlier (**Term**).

3.2   Unless otherwise specified in the Quote, the Client agrees to a month to month contract term for the Services, which automatically renews at the end of each month unless either party gives 30 days' written notice to the other party of its intention to terminate. The termination will take effect at the end of the notice period.

3.3   Where the Quote specifies a fixed term basis, then the Services will be provided pursuant to the Quote until the expiry date as specified on the Quote (and there is no right to terminate without cause prior to expiry of the fixed term).

4.   PROVISION OF SERVICES

4.1   The Service Provider and the Client agree that the Service Provider will provide the Services to the Client on the terms and conditions contained in this Agreement.

4.2   The scope of the Services being provided is as agreed by the parties in a Quote and/or as otherwise agreed in writing in accordance with the other terms of this clause. The Services may include:

(a)   those Services as set out in a Quote; and

(b)   such additional services not quoted, but requested by the Client in accordance with clause 4.3.

4.3   The Client may request the Service Provider to provide extra services or make changes to the scope, which the Service Provider may accept or reject in its sole discretion. The Service Provider will advise the Client of any additional fees payable in respect of any extra services or changes and payment of fees is to be made in the same manner as Fees are due under this Agreement.

4.4   The Quote may contain additional terms which form part of this Agreement. In the event of any inconsistency between this Agreement and any Quote, the terms contained in the Quote will prevail to the extent of such inconsistency.

4.5   Where the Services include Hosted Services, then the terms of clause 7 will apply to the Hosted Services.

4.6   The Hosted Services are not targeted towards, nor intended to be used by anyone under the age of 18. By using the Hosted Services, the Client and each Authorised User represents and warrants that they are 18 years of age or older. If the Client or an Authorised User is under the age of 18, they must not use the Hosted Services.

5.   PERFORMANCE OF SERVICES

5.1   The Services will be performed in the manner as set out in the Quote and on and from the date as specified in the Quote, or where no date is specified, then from a date as agreed between the parties.

5.2   Although the parties may have agreed on the delivery schedule, the parties acknowledge and agree that:

(a)   any times provided by the Service Provider to the Client in respect of the provision of the Services are variable and estimates only and are non-binding on the Service Provider. Whilst the Service Provider attempts to provide all Services at the agreed

times, sometimes delays are inevitable and the Service Provider will not be responsible for any Losses suffered by the Client in the event of delay; and

(b) failure of the Service Provider to meet any delivery date will not constitute a breach of this Agreement by the Service Provider or entitle the Client to any damages or other remedy.

5.3 Services performed for a third party on behalf of the Client will be deemed delivered to the Client for purposes of this Agreement.

6. FEES AND PAYMENT TERMS

6.1 Fees

(a) In consideration of the Service Provider providing the Services to the Client, the Client agrees to pay the Service Provider the Fees and any other consideration:

    i) in the amounts as set out in a Quote; or

    ii) if there is no fee amount set out in a Quote or no Quote is provided for a Service (for example if on-call support is not included in the Quote), then the fees will be determined based on the Service Provider's then current rate card on a time and materials basis or as otherwise advised,

        (the **Fees**).

(b) Fees may vary during the Term, based on the Client's usage as detailed in the Quote, or where additional features or services are purchased or upgraded. Services which include usage-based billing such as (but not limited to) 'per gigabyte" (GB) data usage excess, cloud utility per hour billing, voice calls, operating system software and feature licences will receive a final invoice on the first of the month for the previous usage month.

6.2 Payment terms

(a) Unless otherwise specified in the Quote, the Service Provider will invoice the Client for the provision of the Services 14 days in advance of each billing cycle.

(b) Unless otherwise specified in the Quote, the Client must pay the Fees in advance on the first day of each billing cycle (with the first payment due on or before the Commencement Date).

(c) If the Quote specifies that payment of any fees is to be made upfront, then the Client acknowledges that the Service Provider will not commence supply of the Services until this upfront payment has been made.

(d) If initial setup is applicable, then the full amount of the initial setup is due upfront, as well as payment in advance of the first billing cycle fees as reflected in the Quote.

(e) Any upgrades purchased will be payable within 14 days of the purchase, and will be prorated for any part billing cycle.

(f) All payments must be made by the method as approved by the Service Provider.

(g) If the parties have agreed that the Fees will be paid via a direct debit arrangement, then the Client irrevocably authorises the Service Provider to debit the Fees during the term from the Client's nominated bank account/credit card/debit card (**Debit Account**), on or about the due date for payment without notice to the Client. The Client must ensure that the Debit Account details are up to date at all times and the Client must notify the Service Provider in the event that the details are no longer current, and provide replacement details. The Client also irrevocably authorises the Service Provider to deduct all other fees and charges payable by the Client to the Service Provider under this Agreement from the Client's nominated Debit Account. The Client warrants that the Client is the owner or has the right to use any Debit Account details provided to the Service Provider. Default charges will apply in the event that the Client stops the authority to charge the Debit Account without acceptance by the Service Provider.

(h) Other methods of payment such as electronic funds transfer will require credit approval.

(i)

6.3 Increase due to other reasons

(a) Where the Client is on a month to month subscription to the Services, then the Service Provider reserves the right to increase the Fees (for that subscription) to the Service Provider's current list price upon any monthly renewal.

(b) If this increase applies to the Client, then the Service Provider will give at least 30 days' written notice of the increase, and the increased Fee will apply at the start of the next month following expiry of the notice period. If the Client does not agree to the increase, then they may choose to terminate the subscription to the Services by giving notice to the Service Provider within 30 days of the Service Provider giving notice of the increase.

6.4 Other expenses

(a) The Client agrees to pay for all other expenses incurred by the Service Provider in connection with the performance of the Services as set out in the Quote or as otherwise pre-approved in writing by the Client (**Expenses**).

(b) The Service Provider reserves the right to:

   i) require the Client to pay for the Expenses upfront, in which case the Service Provider will invoice the Client for such Expenses upfront and the Client agrees to make payment by the due date on the invoice; and/or

   ii) provide the Client with an invoice in arrears for such Expenses, in which case the Client authorises the Service Provider to make payment of such Expenses on its behalf, and the Client must make payment of the invoice in arrears by the due date stated on the invoice,

and in the event that the Client fails to do so the Client acknowledges that the Service Provider may not be able to provide the Services (however all Fees will still be payable).

6.5 Default in terms

The Client will also pay to the Service Provider, on demand, on a full indemnity basis, all amounts that the Service Provider may, at its absolute discretion, expend or incur (including legal costs on a solicitor and own client basis and any debt collection agency costs/commissions) as a result of the Client breaching any of the terms of this Agreement, including failing to make any payment when due.

6.6 Default in payment

In the event the Client fails to pay the Fees or other amounts payable hereunder when due in full in cleared funds in accordance with this Agreement, the Service Provider may at its discretion and in addition to any other rights it has under this Agreement or at law:

(a) cease providing the Services to the Client without notice until all overdue amounts are paid (including any charges under sub-clause (b) and accrued interest in accordance with sub-clause (c)), and the Service Provider will not be responsible for any Loss the Client suffers because of this, this includes for Hosted Services, disabling remote access, ssh, ftp, https and/or disabling the connection to all Hosted Services;

(b) charge the Client a reconnection fee of $165 to reinstate any Hosted Services;

(c) charge the Client interest on the overdue amount at the rate of 12% per annum accruing daily until the date of actual payment of the overdue amount and all accrued interest; and/or

(d) terminate this Agreement, whereupon the Fees for the Services performed up to the date of termination, whether or not the time for payment under this Agreement has arrived, will be immediately due and payable in addition to any other amounts payable by the Client as at the date of termination.

6.7 General

(a) The Client may not withhold payment or make any deduction from any amount owing without the Service Provider's prior written consent, irrespective of any claim the Client may have against the Service Provider.

(b) All fees are non-refundable to the extent permitted by law, except that in the event this Agreement is terminated by the Client due to the Service Provider's default, or terminated by the Service Provider without reason, then the Client will be entitled to a pro-rata refund for any fees paid in advance for Services that have not been performed. For the avoidance of doubt, all setup fees, domain registration and SSL are not refundable.

(c) Upgrades and downgrades can be completed in the current billing period only. Data usage once billed is irrevocable. If the Client requires more bandwidth for the current billing period, the Client must contact the Service Provider no later than 48 hours prior to the end of the billing period.

7. HOSTED SERVICES

7.1 Application

The Supplier may provide internet connectivity services (the **Bandwidth**), certain equipment used in internet connectivity services (the **Hardware**), space in its business premises to store and operate such Hardware (the **Space**) and licensing of the associated operating system and web server (the **Software**), together comprising an infrastructure and hosting services package (together the **Hosted Services**). Where the Client has signed up to Hosted Services the terms of this clause will apply.

7.2 System Utilities and Web Server Software Licence Access

(a) Subject to the Client's compliance with this Agreement, the Service Provider hereby grants the Client the non-exclusive, non-transferable, revocable right to use the Software as specified in the Quote during the Term in accordance with the terms of this Agreement.

(b) The right to access and use the Software as granted under this clause is granted to the Client and those persons authorised by the Client (**Authorised Users**) and is subject to any restrictions and limitations as specified in the Quote (or as modified in accordance with this Agreement), including that:

i) the Software is only to be used for the Client's direct needs;

ii) the Software is only to be used solely on the Hardware provided and in conjunction with the Hosted Services.

(c) If the Client requires additional functionality in respect of the Hosted Services not listed in the Quote, then it may request the Service Provider to provide such additional functionality. If the Service Provider agrees to do so, then the Fee for that functionality is as advised by the Service Provider and is payable from the date the additional functionality is made available for use by the Client. In the event functionality is added mid-billing cycle, the Fee for the additional functionality will be pro-rated for that billing cycle. Such functionality may not be removed once added, other than by the agreement of both parties.

(d) The Client is solely responsible for ensuring its Authorised Users comply with this Agreement, and a breach by any of the Authorised Users of this Agreement, will be deemed to be a breach by the Client. The Client is solely responsible for use of the Hosted Services by any of its Authorised Users and for any Client Data that is posted to the Hosted Services.

(e) The Client is strictly prohibited from granting access to the Hosted Services to any person other than Authorised Users.

7.3 Software restrictions

Except to the extent expressly permitted in this Agreement, the right granted to the Software by the Service Provider to the Client under clause 7.2(a) is subject to the following prohibitions:

(a) the Client must only sub-license its right to access and use the Software to its Authorised Users in accordance with this Agreement;

(b) the Client must not copy, rent, lease, distribute, or otherwise transfer any of the rights that they receive under this Agreement (except to the extent permitted);

(c) the Client must not directly or indirectly copy, reproduce, share, republish, frame, download, transmit, distribute, sell, reverse engineer, decipher, decompile, translate, alter, modify, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Hosted Services or any software, documentation or data related to the Services (except to the extent expressly permitted by the Service Provider including as necessary to install on Hardware and for internal, archival purposes. For such purposes the Client must obtain the written consent of the Service Provider before doing so, and all copies must reproduce all proprietary notices);

(d)   the Client must not republish or redistribute any content or material from the Hosted Services unless the Service Provider has provided prior, explicit written consent;

(e)   the Client must not create derivative works based on the Hosted Services; and

(f)   the Client must not make any alteration to the Hosted Services.

7.4   **Proprietary Rights**

(a)   The Client acknowledges that the Service Provider (or the relevant third-party licensor) shall at all times retain all title, interest and rights (including Intellectual Property Rights) which subsist in or which may be obtained from the Hosted Services and Materials including:

   i)   the Intellectual Property Rights subsisting in each;

   ii)   any customisations of, and modifications to, the Hosted Services and Materials;

   iii) information, source codes and other information technology relating to or connected with the Hosted Services or Materials;

   iv)   the layout and formatting of the Hosted Services and the Materials;

   v)   marketing information relating to or connected with the Hosted Services or Materials; and

   vi)   technical information, including trade secrets, drawings, plans, encryptions, codes and product descriptions and information relating to or connected with the Hosted Services and the Materials,

   however, excludes the Client Data.

(b)   No right, title and interest in any of the Hosted Services and Materials is transferred or granted to the Client except so far as expressly stated in this Agreement. The Client must not use the Hosted Services in any way that is inconsistent with the Service Provider's ownership.

(c)   The Client must not infringe, reduce the value of or otherwise damage or misappropriate the Intellectual Property Rights of the Service Provider in the Hosted Services and Materials.

(d)   For the avoidance of doubt, the Client has no right to access the software code (including object code, intermediate code and source code) of the Hosted Services, either during or after the Term.

7.5   **Account**

In order to use the Hosted Services, the Client must have their own Account. The Client is authorised to create administrator-level Accounts for the administration of its access to the Hosted Services and its Authorised Users are each permitted to create one user-level Account. Different user Accounts may have access to different parts of the Hosted Services as set out on the Website or as advised by the Service Provider from time to time. In creating and using the Account:

   i)   the Client (and each Authorised User) must not use false or misleading information and must update their details should they have changed from the last time they used the Hosted Services;

   ii)   the Client (and each Authorised User) must follow any password policies made available by the Service Provider from time to time (and as are stated on the Hosted Services from time to time);

   iii) the Client (and each Authorised User) is responsible for the security of its username, user tokens and password and the Service Provider will assume that anyone using the Client's (and each Authorised User's) Account is authorised to do so by the Client and the Client is responsible for their actions. Under no circumstances will unauthorised access and use of the Client's Account reduce the Client's liability to the Service Provider; and

   iv)   the Client must notify the Service Provider immediately if it becomes aware of any unauthorised use of its Account or other security breach.

7.6   **Use of Hosted Services**

(a)   The Client's use of the Hosted Services and the Services, including the content, information, software or materials submitted on or through the Hosted Services and the

Services, must not (and they must ensure that their Authorised User's use and information must not):

i) be unlawful, threatening, abusive, harassing, embarrass, defamatory, inciting of violence or hatred, misleading or deceptive, fraudulent, invasive of another's privacy, tortious, offensive, profane, contains or depict pornography, false, untruthful, inaccurate, or otherwise unsatisfactory or inappropriate as determined by the Service Provider in its sole discretion;

ii) be in any manner which could damage, disable, overburden, or impair the Hosted Services or interfere with any other party's use and enjoyment of this Hosted Services or the proper working of the Hosted Services or any activities conducted on the Hosted Services;

iii) be in any manner which imposes or may impose (as determined by the Service Provider in its sole discretion) an unreasonable or disproportionately large load on the Service Provider's (or the Service Provider's third party providers') infrastructure;

iv) be in any manner to phish or deceptively obtain information of other users of the Hosted Services;

v) impersonate or otherwise misrepresent the Client's identity or affiliation with any other person or entity;

vi) constitute unauthorised or unsolicited advertising;

vii) be for purposes of junk, obscene, indecent, offensive or threatening electronic mail or electronic mail in contravention of the Spam Act 2003 (Cth) (**Spam Act**) or to attract, lure or illegally obtain information from other users of the Hosted Services;

viii) run any form of auto-responder or "spam" on the Services, whether or not in breach of the Spam Act;

ix) run any Internet Relay Chat (IRC) services;

x) violate classification standards;

xi) infringe or violate any third party's rights or violate any Applicable Law. When using the Services the Client (and each Authorised User) must comply with all Applicable Laws. For example, but not limited to, the Client (and each Authorised User) must not use the Services for:

    A. any criminal activities such as distributing child pornography;

    B. forgery, identity theft, misdirection or interference with electronic communications,

    C. invasion of privacy;

    D. improper data collection activities;

    E. securities violations, money laundering, or terrorist activities; or

    F. false advertising, propagating or profiting from frauds and unfair schemes,

the Client must also comply with all positive obligations that they have under Applicable Laws, including but not limited to:

    G. all disclosure requirements;

    H. records maintenance for regulated industries; and

    I. financial institution safeguards;

xii) contain any viruses or similar which could affect the integrity, operation or security of the Hosted Services. The Client (and each Authorised User) must not use the Services to distribute, receive communications or data gleaned from, or execute any action directed by any type of injurious code, including but not limited to:

    A. trojans;

    B. key loggers;

    C. viruses;

    D. malware;

    E. botnets;

    F. denial of service attacks;

    G. flood or mail bombs;

H. logic bombs; or

I. other actions which we reserve the sole right to determine to be malicious in intent;

xiii) create liability for the Service Provider or cause the Service Provider to lose (in whole or in part) the services or custom of the Service Provider's internet service provider, other clients, users or other suppliers;

xiv) damage the credibility or integrity of the Hosted Services or the Service Provider, or dilute, tarnish, or otherwise harm the Service Provider's brand in any way; or

xv) interfere with or disrupt the Hosted Services or servers or networks connected to the Hosted Services, or disobey any requirements, procedures, policies, or regulations of networks connected to the Hosted Services;

xvi)

(b) Whilst using the Hosted Services and the Services, the Client must not, and must ensure that its Authorised User's do not:

i) attempt to gain unauthorised access to the Hosted Services or computer systems or networks connected to the Hosted Services through any means;

ii) commit fraud or forgery (or attempted forgery), harass or abuse any individual, or harm minors in any way;

iii) collect, store, input, upload, post, disclose or transmit personal information or data about others, including, without limitation email addresses

iv) breach or violate any of the Service Provider's Policies;

v) falsify or delete any attributions, legends, or other proprietary designations of origin or source of any content of the Hosted Services;

vi) copy, store or otherwise access or use any information contained on the Hosted Services for purposes not expressly permitted by this Agreement;

vii) use the Hosted Services for any purposes that are not permitted by this Agreement or in any way that is inconsistent with the purpose of the Hosted Services, or in a manner that falsely implies the Service Provider's endorsement, partnership or otherwise misleads others as to the Client's affiliation with the Service Provider;

viii) attempt to circumvent payment of any Fees in anyway;

ix) tamper with, hinder the operation of or make unauthorised modifications to the Hosted Services or any part thereof;

x) use manual or automated software, devices, or other processes to "crawl" or "spider" any page of the Services;

xi) harvest or scrape any content from the Services;

xii) use the Services for high-risk activities including but not limited to the operation of nuclear facilities, air traffic control, life support systems, or any other use where the failure of service could lead to death, personal injury, or environmental damage;

xiii) take any action in violation of the Service Provider's guidelines and policies;

xiv) damage or modify the Hosted Services or the Website or any part thereof; or

xv) circumvent, bypass, disable or otherwise attempt to bypass or interfere with any security related features or any measures used to prevent or restrict access to the Services (or other accounts, computer systems or networks connected to the Services).

(c) The Client must not use any method to circumvent the provisions of this Agreement, or to obtain Services in excess of those for which the Client has contracted for. The Client must only use those IP addresses that have assigned to the Client, and must not use any IP addresses other than that the Service Provider has assigned. The Client must not use any mechanism to exceed the amount of resources assigned to the Client through the Services, or to conceal their activities.

(d) In addition to being forbidden from performing any acts made illegal by the Spam Act or any other anti-spam laws, the Client must not send bulk electronic mail ("e-mail") utilising their resources on the Services unless they comply with the requirements of those anti-spam laws. The Client is forbidden from taking any action that would result

in the Client's IP addresses, or any IP address associated with the Service Provider or other subscribers, being placed on any anti-spam list or the ZEN Spamhaus blocklist. The Service Provider reserves the right to determine whether an e-mail violation has occurred.

(e) The Client must not use the Services in violation of the copyrights, trademarks, patents, or trade secrets of third parties, nor shall they utilise the Services to publish such materials in a manner that would expose them to public view in violation of the law. The Service Provider will terminate the Account of repeat violators if it considers it appropriate to do so. If a third party believes that a subscriber of the Service Provider is violating its intellectual property rights, it should notify the Service Provider by e-mail at abuse@amaze.com.au. A notification should include the IP address where the violation is believed to have occurred in addition to any other requirements of the relevant law.

(f) The Client is responsible for the acts of others utilising their access to the Services and will be held responsible for violations of the Services by their sub-users or persons who gain access to the Services using the Client's access codes. Any activity that the Client is prohibited from performing by this Agreement is equally prohibited by anyone with, or who obtains, access to the Client's Services.

(g) The Client must notify all persons who they allow to receive access to their Services of the provisions of this Agreement. In particular, the Client must notify them that this Agreement is binding upon them.

(h) The Client must utilise proper security protocols, such as setting strong passwords and access control mechanisms, safeguarding access to all logins and passwords, and verifying the trustworthiness of all persons with the Client's Account access information.

(i) The Client must inform the Service Provider if and when they learn of any security breaches regarding their Services. The Client must also help the Service Provider or any government authority investigate, prosecute, and fix those breaches. If the Service Provider asks the Client to help with any legal action in relation to those breaches, then the Service Provider will pay the Client's reasonable costs for assisting in that action

7.7 **Availability & Service Levels**

(a) The Service Provider will provide the Services in accordance with the Service Level Agreement (the **Service Levels**).

(b) The Service Provider will only be deemed to fail to achieve a Service Level in accordance with the terms set out the Service Level Agreement. Where the Service Provider fails to achieve a Service Level it shall not be deemed to be a material breach of this Agreement not capable of remedy.

(c) The remedies made available to the Client in the Service Levels shall be the sole remedies available to the Client in relation to the Service Provider's failure to achieve a Service Level.

7.8 **IP Addresses**

(a) The Service Provider may designate for the Client's use on a temporary basis a number of Internet Protocol Addresses (**IP Addresses**). The Client accepts that the IP Addresses are the sole property of the Service Provider and are designated to the Client to use on a temporary basis and are not portable. The Service Provider reserves the right to change the IP address designations at any time but in doing so shall use reasonable efforts to minimise inconvenience to the Client, and shall give the Client reasonable notice of changes. The Client agrees that it will have no right to use IP Addresses assigned to it upon termination of this Agreement, and that any change in IP Addresses the Client may need to make after termination of this Agreement shall be the sole responsibility of the Client.

7.9 **Maintenance and support**

(a) The Client may choose different levels of associated management, maintenance and support services, which need to be specified in the Quote if applicable.

(b) Maintenance and support services shall not include services for problems arising out of:

i) tampering, modification, alteration, or addition to the Hardware or Software, which is undertaken by persons other than the Service Provider or its authorised representatives; or

ii) software or hardware supplied by the Client.

7.10 **Client's obligations for use of the Hosted Services**

(a) The Client:

i) must document and promptly report all errors or malfunctions of the Hardware or Software to the Service Provider in a reasonable time frame;

ii) must maintain a current archive copy of all Software and data. In the event of a critical system failure that involves Hardware replacement, the Service Provider shall restore the system to its original configuration as at the date of the accepted Quote, and the Client shall be responsible for restoring all data;

iii) must properly train its Personnel in the use of the Hardware and Software;

iv) is responsible for maintaining its own internet access and all necessary telecommunications equipment, software, and other materials at its facilities necessary for its Authorised Users to access its information and materials through the Hosted Service;

v) must promptly report all changes in contact personnel via the Service Provider's Website or support email address (support@Amaze.com.au) and receive written verification from the Service Provider that changes have been received;

vi) must follow support procedures as outlined on the Service Provider's Website when support is required;

vii) agrees to provide the Service Provider with administrative/root level passwords and inform the Service Provider if and when the passwords change. In the event that the Client changes passwords or usernames that prevent the Service Provider from remotely accessing a Service, the Client waives all rights to the maintenance and support services.

7.11 **Third Party Integrations**

(a) The Hosted Services may support integrations with third party services to enable the Hosted Services to provide a number of features. In order for the Hosted Services to integrate with such third party systems:

i) the Client may be required to have an account set up with that third party supplier; and

ii) the Client authorises and directs the Service Provider to disclose the Client Data as required to such third party systems in order for the Service Provider to provide the Services.

(b) The Client acknowledges that such third party services are beyond the Service Provider's reasonable control, and in the event that:

i) a third party service is experiencing issues or downtime; or

ii) the Client is required to maintain an account with that third party service and fails to do so,

this may also cause the Hosted Services to become unavailable and the Service Provider accepts no responsibility for any Losses or notification in this regard.

(c) Where information is transferred to a third party service, the Service Provider will not be liable for any Loss arising from the use of that information by that third party service.

7.12 **Technical Disclaimers**

(a) Unless otherwise specified in a Quote or otherwise purchased as an add-on:

i) the Client has agreed to not accept any backup option for the Hosted Services;

ii) the Service Provider is not responsible for providing any data back up services;

iii) the Client has assumed all responsibility in the event of data loss or data corruption;

iv) the Client has agreed to maintain a current archive copy of all Software and Client Data; and

v) except to the extent caused by the Service Provider's negligent act or omission, the Client holds harmless and releases the Service Provider for any Loss the Client suffers in the event of any loss of or unavailability of Client Data.

(b) The Service Provider does not and cannot control the flow of data to or from the Service Provider's Internet Data Centers and other portions of the Internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions caused by these third parties can produce situations in which the Service Provider's Client connections to the internet (or portions thereof) may be impaired or disrupted. Although the Service Provider will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events, the Service Provider cannot guarantee that they will not occur. Accordingly, except to the extent caused by the Service Provider's negligent act or omission the Service Provider disclaims any and all liability resulting from or related to such events.

7.13 **Termination or suspension of your Hosted Service**

(a) The Service Provider may immediately suspend, restrict or terminate this Agreement and/or the Client's (and the Client's Authorised Users') access to all or part of the Hosted Services, including access to the Client Data immediately where:

i) it is reasonably necessary for security, technical, copyright or operational reasons;

ii) the Service Provider reasonably believes that the Client is engaged in illegal or fraudulent use of the Hosted Services;

iii) the Service Provider reasonably believes that the Client Data is inappropriate or unlawful;

iv) the Service Provider reasonably believes that the Client is using the Hosted Services in a way that would cause Loss or damage to or otherwise cause legal liability to the Service Provider, other users, third parties or disrupt others' use of the Hosted Services.

8. THIRD PARTY SOFTWARE

8.1 If the provision of the Services includes the implementation and/or licence of software provided by third parties, then the following terms apply (together with the Third Party Terms). Such software is owned (or licenced) and operated by third party providers. To the extent permitted by law, such third party providers will be deemed to supply the third party software to the Client and not the Service Provider.

8.2 The price for such software is as specified in the Quote or as otherwise advised by the Service Provider to the Client from time to time. Any Third Party Terms are solely between the Client and the third party provider, the Service Provider is not a party to such arrangements (except that it may make payments to third party providers on behalf of the Client as its agent).

8.3 The Client acknowledges that licensing to third party software may include automatic renewal terms. If the Client fails to give notice of termination of such licences at the end of the initial licence term, then the licence will automatically roll over for further terms (in accordance with the Third Party Terms).

8.4 Where the Service Provider is handling payments with the third party provider on behalf of the Client for purchased licences, then, in the event that the Client terminates this Agreement early, prior to the end of a licensing term that it has purchased, the Client agrees to pay the Service Provider an amount equal to the licence fee that would have been payable from the date of termination to the end of the licence term.

8.5 As a result of the foregoing, the Service Provider has no control over and does not ensure, guarantee or provide any warranty or representation in respect of the quality, suitability, reliability, availability, fitness for purpose, legality, accuracy, completeness or otherwise of:

(a) the third party software; or

(b) the third party provider's ability to undertake their respective obligations.

8.6 Subject to the other terms of this clause and to the maximum extent permitted by any applicable laws, third party software is supplied by the Service Provider without warranty of any kind and the Service Provider expressly exclude such warranties. The Client acknowledges and agrees that:

(a) third party software is provided subject to the terms of the applicable third party provider;

(b) third party software is covered by the applicable third party provider's warranty and the Client must refer to the warranty details of such third party provider. The Service Provider does not provide any warranties in addition to the third party provider's warranty;

(c) the Client is solely liable for the Client's compliance with any copyright, trade mark and any other proprietary restrictions relating to such third party software;

(d) the Client must not misuse the third party software and must ensure use is compliant with such Third Party Terms;

(e) the Client assumes all responsibility and risk of use of any third party software;

(f) the Service Provider does not make any representations in relation to the continuing availability of the third party software and will not be liable for the third party software being unavailable or discontinued;

(g) the Service Provider does not promise that the third party software will be error-free, or that the Client's use of the third party software will provide any specific results; and

(h) the Service Provider does not represent or warrant that the third party software will be virus free or free of performance anomalies or be operational without interruption.

9. THIRD PARTY SERVICES AND DOMAIN NAME REGISTRARS

9.1 The Services may permit the Client to link to other websites, services or resources on the Internet, and other websites, services or resources may contain links to the Services. When the Client accesses third party resources on the Internet, they do so at their own risk. These other resources are not under the control of the Service Provider, and the Client acknowledges that the Service Provider is not responsible or liable for the content, functions, accuracy, legality, appropriateness or any other aspect of such websites or resources. The inclusion of any such link does not imply the Service Provider's endorsement or any association between the Service Provider and their operators. The Client further acknowledges and agrees that the Service Provider shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods or services available on or through any such website or resource.

9.2 The Service Provider is an authorised reseller of the domain name registrar Synergy Wholesale and OpenSRS. The Service Provider does not warrant that any domain name the Client applies for can or will be registered. Accordingly, the Client should not act on a domain name application until they have been notified that their requested domain name has been registered. Both the Client's registration of a domain name, its ongoing use, and renewal are subject to the relevant auDA Policy Pules (available at www.auda.org.au) and the terms of use of the applicable domain name registrar. The Client is responsible for reading and complying with those rules and terms of use. The Service Provider is not liable for, and the Client irrevocably releases the Service Provider from, any and all claims and loss they may have, suffer or incur in connection with a domain name they order and use through the Service Provider. The Service Provider has no responsibility to resolve a dispute between the Client and their domain name provider. The Service Provider is not obliged to renew the Client's domain name if they have not selected the domain name auto renewal option on the Service Provider's Website or if they have not paid the renewal fee in advance using the method specified by the Service Provider. The Service Provider is not liable for any loss or damage suffered or incurred by the Client for the non-renewal of their domain name. If this Agreement is terminated, but the Client does not transfer their domain name registration to another registrar, they agree that the Service Provider may still contact them in relation to the renewal of their registration. The Service Provider will not, however, be liable for failing to do so.

10. CLIENT DUTIES AND RESPONSIBLITIES

10.1 **Supply of information, approvals, documents and assistance**
The Client acknowledges and agrees that it will promptly provide all information, documentation, approvals and assistance reasonably required by the Service Provider in order for the Service Provider to provide the Services as soon as possible on being requested to do so. This includes, without limitation, access to data and internal systems

necessary to perform the Services. Any delays may delay the Services and may incur additional charges.

10.2 **Access**

(a) The Client must:

    i) provide, for the Service Provider and its Personnel, in a timely manner and at no charge, access to the Client's systems, data and other facilities as reasonably required by the Service Provider including any such access as is specified in the Quote;

    ii) ensure that the Service Provider and its Personnel have clear and free access to the Client's systems as required to provide the Services;

    iii) ensure that the Client's systems and the above locations are safe and comply with Applicable Laws.

(b) When the Service Provider's Personnel are performing Services on site at the Client's premises, Client will allocate appropriate working space and physical access for all the Service Provider assigned Personnel. the Service Provider will not be liable for any Loss or damage to the premises unless due to the Service Provider' (or its Personnel's) negligence.

(c) Where the Client fails to provide access to the Service Provider as required by this clause, and that prevents the progress of the Services, then, the Service Provider reserves the right to:

    i) charge out its standard fees (regardless if the Service Provider' Personnel are unable to carry out the work); or

    ii) terminate this Agreement and invoice the Client for any part or parts of the Services already completed.

(d) The Client will be liable for any Loss incurred by the Service Provider as a result of the Client's failure to provide a safe and compliant workplace where the works are being performed in accordance with this clause, including without limitation any injury to the Service Provider' Personnel.

10.3 **Compliance with Laws**

The Client acknowledges and agrees that it will not by receiving or requesting the Services:

(a) breach any Applicable Laws, rules and regulations (including any applicable privacy laws); or

(b) infringe the Intellectual Property Rights or other rights of any third party or breach any duty of confidentiality.

10.4 **Delay**

If the Service Provider's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Client or its Personnel for a period of at least 21 days, then, without prejudice to any other right or remedy it may have, the Service Provider may:

(a) terminate this Agreement; and

(b) invoice the Client for any part or parts of the Services already performed and any Services currently in progress.

11. VARIATIONS AND AMENDMENTS

11.1 Subject to the other terms of this clause, either party may propose changes to the scope or execution of the Services but no changes shall come into effect until agreed by both parties. Variations may result in additional costs in which case the Service Provider will provide an additional quote (with additional fees required to be paid as advised by the Service Provider at the time of request), and if accepted by the Client an invoice will be issued to accommodate those changes.

11.2 The Service Provider reserves the right to make changes to the Services which are necessary to comply with Applicable Laws, government agency requests or safety requirements.

11.3 Any Services outside of scope will incur additional costs.

12. WARRANTIES

12.1 Each party warrants to the other that as at the date of this Agreement and for the duration of this Agreement:

    (a) it has the legal right and power to enter into this Agreement;

    (b) the execution, delivery and performance of this Agreement by it has been duly and validly authorised by all necessary corporate action on its part;

    (c) this Agreement is a valid and binding Agreement on it, enforceable in accordance with its terms; and

    (d) it is not suffering an insolvency event.

13. INTELLECTUAL PROPERTY

13.1 **Pre-existing IP**

    (a) Each party acknowledges that all Pre-existing IP Rights remain the sole property of the owner. Ownership of Pre-existing IP Rights remains unchanged by this Agreement, other than as expressly set out in this Agreement.

    (b) Each party warrants it has the rights to all Pre-existing IP Rights and the grant of licence of such on the terms set out in this Agreement to the other party will not violate or infringe upon the Intellectual Property Rights or any other rights whatsoever of any person, form, corporation or other entity.

    (c) If the use of the Client's Pre-existing IP Rights by the Service Provider becomes necessary for the performance of the Services, the Client grants the Service Provider a worldwide, fully paid-up, non-exclusive, royalty free, perpetual, transferable, assignable licence (with the right to sub-licence) to exploit the Pre-existing IP Rights owned by the Client for the purpose of providing the Services.

13.2 **Contract Materials**

    (a) Unless otherwise agreed by the parties in writing, the Client acknowledges that the Service Provider (or the relevant third-party licensor) shall at all times retain all title, interest and rights (including Intellectual Property Rights) which subsist in or which may be obtained from the Contract Materials.

    (b) To the extent that the Service Provider owns the Contract Materials, the Service Provider grants, or will procure the grant to the Client of a limited, revocable, non-exclusive, non-transferable, non-sublicensable nor assignable licence to use the Intellectual Property Rights in the Contract Materials subject to the following restrictions:

        i) the Client may only use the Contract Materials solely to the extent required to benefit from the Services in its business and only for the Term;

        ii) the Client must not sub-licence the Contract Materials to any third party;

        iii) the Client is strictly prohibited from distributing the Contract Materials to any third party or from dealing commercially with the Contract Materials; and

        iv) the Client must not to take or permit or omit any action which would or might:

            A. invalidate or put in dispute the Service Provider's title to the Contract Materials or any part of it;

            B. oppose any application for registration or invalidate any registration of the Contract Materials or any part of it;

            C. support any application to remove or undo the Service Provider's title in the Contract Materials or any part of it; or

            D. assist any other person directly or indirectly in any of the above.

    (c) Unless otherwise agreed, on termination of the Term, the Client's licence to use the Intellectual Property Rights in the Contract Materials is immediately revoked, and the Client must cease to use such Contract Materials.

13.3 **Acknowledgement**

The Client acknowledges and agrees that at all times:

    (a) the Service Provider shall retain ownership of:

        i) the strategies, methodologies and know-how used by it to provide the Services; and

ii)   all details relating to hosting services, including technical and operational specifics;

(b)   the Service Provider is not obligated to disclose or provide any such information to the Client, even in the event the Client chooses to migrate services.

13.4   **Client Data**

(a)   The Client:

i)   will retain ownership of all Intellectual Property Rights in the Client Data;

ii)   warrants that all Client Data is accurate, complete, up-to-date and in compliance with all Applicable Laws; and

iii)   grants the Service Provider a worldwide, non-exclusive, perpetual, royalty free, fully paid, sub licensable, transferable and irrevocable licence to use, aggregate, copy, reproduce, store, distribute, publish, prepare derivative works of, display, perform, exploit, export, adapt, edit and translate the Client Data to the extent reasonably required by the Service Provider for the performance of the Service Provider's obligations and exercise of its rights under this Agreement.

(b)   The Client acknowledges that it is solely responsible for all Client Data.

13.5   **Client warranties**

The Client:

(a)   warrants that the receipt and use in the performance of this Agreement by the Service Provider, and its Personnel of the Client Data will not infringe the rights, including any Intellectual Property Rights, of any third party; and

(b)   must keep the Service Provider indemnified in full against any liabilities, costs, charges, or expenses, damages and losses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by the Service Provider arising out of or in connection with any claim brought against the Service Provider for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this Agreement of the Client Data.

13.6   **Survival**

This clause survives termination of Agreement.

14.   MIGRATION OF DATA

14.1   The Client is solely responsible for the migration of any Client Data from the Service Provider's hosting services onto the systems of the Client (or a third party authorised by the Client). For the avoidance of doubt, the Service Provider is not obligated to provide assistance with any data migration.

14.2   In the event the Client requests assistance in migrating, the Service Provider may, in its absolute discretion, agree to provide such assistance, however, such assistance shall be subject to availability and agreement on applicable fees. All terms relating to the migration, including the scope and applicable fees will be agreed between the parties.

15.   TERMINATION

15.1   **Termination with cause**

Either party (the non-defaulting party) may terminate this Agreement with immediate effect by giving written notice to the other party if:

(a)   the other party (being the Client) fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 7 days after being notified in writing that the payment is overdue;

(b)   the other party suffers an Insolvency Event; or

(c)   the other party commits a breach of any term of this Agreement and either:

i)   the breach is irremediable; or

ii)   the breach is remediable, and the other party fails to remedy that breach within a period of 30 days after the other party has, or is deemed to have, received written notice requesting it to do so.

16. CONSEQUENCES OF TERMINATION

16.1 On termination or expiry of this Agreement:

(a) each party must promptly deliver to the other all property belonging to the other that is in its possession or control, including any Confidential Information or intellectual property;

(b) the Client must immediately pay to the Service Provider all amounts payable to the Service Provider (including amounts that are payable but not due);

(c) the Service Provider may invoice the Client with respect to the Services performed up to the date of termination and such invoice shall be payable immediately on receipt;

(d) to the extent permitted by law, no refunds of amounts paid in respect of the period post termination or expiry will be provided.

16.2 The termination of a Quote does not affect any other Quote/s which shall continue.

16.3 Termination or expiry of this Agreement does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

17. CONFIDENTIALITY & PRIVACY

17.1 **Confidential Information**

(a) Each party (**Recipient**) must keep secret and confidential and not disclose any information relating to another party or its business (which is or has been disclosed to the Recipient by the other party, its representatives or advisers) or the terms of this Agreement, except:

i) where the information is in the public domain as at the date of this Agreement (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the Recipient);

ii) if the Recipient is required to disclose the information by Applicable Law or the rules of any recognised securities exchange, provided that the Recipient has to the extent practicable having regard to those obligations and the required timing of the disclosure consulted with the provider of the information as to the form and content of the disclosure;

iii) where the disclosure is expressly permitted under this Agreement;

iv) if disclosure is made to its officers, employees and professional advisers to the extent necessary to enable the Recipient to properly perform its obligations under this Agreement or to conduct their business generally, in which case the Recipient must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;

v) where the disclosure is required for use in legal proceedings regarding this Agreement; or

vi) if the party to whom the information relates has consented in writing before the disclosure.

(b) Each Recipient must ensure that its directors, officers, employees, agents and representatives comply in all respects with the Recipient's obligations under this clause.

(c) This clause survives termination or expiry of this Agreement.

(d) This clause does not apply to the Service Provider with respect to exercising their rights under clause 22.

17.2 **Privacy**

(a) In respect of any Personal Information (as defined in the Privacy Legislation) that is included in Client Data or otherwise provided to, collected or received by either party in connection with the Services, the Client must comply with:

i) the Privacy Legislation, and handle all Personal Information in accordance with the Privacy Legislation (as it applies to the Client); and

ii) the applicable policies and guidelines of the Service Provider as made known from time to time.

(b) The Client warrants and represents that all Personal Information that it provides to the Service Provider complies with this clause at all times. Immediately upon the Client becoming aware of any breach by it of any Privacy Legislation in respect of Personal Information provided to the Service Provider, the Client must inform the Service Provider of this.

17.3 If either party receives a request for access to or correction of any Personal Information from any person (including the Office of the Australian Information Commissioner) prior to providing such access to or correcting the information it must notify the other party.

18. DISCLAIMER

18.1 The Service Provider provides the Services on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. The Client relies on the Services and any information or guidance provided by the Service Provider to the Client throughout the provision of the Services (**Information**) at its own risk.

18.2 Without limiting the other terms of this clause, the Client acknowledges and agrees that:

(a) any Information is not and should not be construed as financial and/or legal advice and is not intended to be a substitute for such advice and should not be relied upon as such. Such Information is provided as general guidance only, without representation or warranty;

(b) whilst every effort is made to ensure any Information provided by the Service Provider is accurate, the Service Provider makes no representations about the currency, suitability, reliability, availability, timeliness, and accuracy of any Information for any purpose. The Client should verify the accuracy of any information provided before relying on it;

(c) the Service Provider does not control any third party that it refers to the Client and takes no responsibility for the actions of third parties. As a result, the Service Provider provides no guarantee or warranty or indemnity in respect of such third party's ability to undertake their respective obligations or otherwise;

(d) although the Service Provider provides Information to assist the Client, the Service Provider is not responsible for decisions that the Client may make nor losses that may arise out of any decision made by the Client at any time. The Client is solely responsible for following or not following, or making an assessment of, any Information provided. The Client should make their own enquiries and obtain their own independent advice in relation to the Information provided before making any decision or taking any action based on their contents;

(e) although the Service Provider will take reasonable steps to ensure that the provision of the Services does not damage or shutdown any computer systems and networks, the Service Provider does not guarantee and will not be responsible for any Loss that the Client suffers as a result of:

i) Client Data security being compromised;

ii) any impact to Client applications, services or business operations; and/or

iii) any damage or shutdown to such computer systems and networks

iv) the Client is solely liable for ensuring that it complies with Applicable Laws. For the avoidance of doubt the Service Provider will not be liable for ensuring that the Client complies with Applicable Laws;

(f) the Service Provider does not warrant that:

i) the Services will be secure or available at any particular time or location;

ii) any defects or errors will be corrected;

iii) any content or software available at or through the Services is free of viruses or harmful components;

(g) the Service Provider does not provide any guarantee of results or any particular outcome; and

(h) the Service Provider makes no warranty that the Services will generate any increase in sales, business activity, profits or any other form of improvement for the Client's business or any other purpose.

19. EXCLUSION AND LIMITATION OF LIABILITY

19.1 Subject to the other terms of this clause, the Service Provider excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Services that are not expressly set out in this Agreement to the maximum extent permitted by law.

19.2 Concerning the liability of each party to the other party, each party will not be liable for any Loss to the extent that:

(a) it is caused by the other party's negligent act or omission;

(b) it results from the other party failing to take reasonable steps to avoid or minimise the Loss; and

(c) it is caused by events outside of that party's reasonable control.

19.3 Subject to the other terms of this clause, the liability of either party for any Loss arising out of or in connection with this Agreement, including any breach by that party of this Agreement however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, will not exceed an amount equal to the amount of the Fees payable for the Services most directly related to the claim. The liability of either party for any claim arising out of or in connection with any Service will not exceed an amount equal to the amount of the Fees payable for such Service. The total aggregate liability of either party for each and all claims arising out of or in connection with this Agreement will not exceed:

(a) an amount equal to the aggregate total amount of all Fees paid or payable under the Agreement in the 12 month period immediately preceding the date of the event giving rise to the claim; or

(b) $100,000,

whichever is the lesser.

19.4 Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Service Provider in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of services, to the extent that the ACL applies to the Services.

19.5 If the Service Provider is liable to the Client in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, the Service Provider 's total liability to the Client for that failure is limited to, at the option of the Service Provider the resupply of the Services or the payment of the cost of resupply.

19.6 The limitation and exclusion of liability in this clause applies whether the liability claim is based on breach of contract, under a warranty or an indemnity, tort (including negligence), under statute, in equity or otherwise.

19.7 Without limitation to the other terms of this clause, each party excludes any liability to the other party, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this Agreement.

19.8 Notwithstanding anything else in this clause, each party's liability will be reduced to the extent the Loss or damage is caused by or contributed to by the other party or its Personnel.

20. FORCE MAJEURE EVENT

20.1 In the event that a Force Majeure Event prevents the Service Provider from performance of its obligations under this Agreement (for example, if it prevents the Host Services from being accessible by the Client), then the Service Provider will notify the Client in writing as soon as practicable and that notice must state the particulars of the Force Majeure Event and the anticipated delay.

20.2 On providing the notice in clause 20.1, the Service Provider will have the time for performance of the affected obligations extended for a period equivalent to the period during which performance has been delayed, hindered or prevented, however, the Service Provider must continue to use all reasonable endeavours to perform those obligations. During such period the Fees will be abated to the extent that the Host Services are not accessible by the Client.

20.3 The performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.

21. GST

21.1 **Definitions**

Words used in this clause 21 that have a defined meaning in the GST Act have the same meaning as in the GST Act unless the context indicates otherwise.

21.2 **GST**

(a) Unless expressly stated otherwise, the consideration for any supply under or in connection with this Agreement is exclusive of GST.

(b) To the extent that any supply made under or in connection with this Agreement is a taxable supply (other than any supply made under another agreement that contains a specific provision dealing with GST), the amount payable by the recipient is the consideration provided under this Agreement for that supply (unless it expressly includes GST) plus an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.

(c) The recipient must pay the additional amount at the same time as the consideration to which it is referable, and upon the issue of an invoice relating to the supply.

(d) Whenever an adjustment event occurs in relation to any taxable supply to which clause 21.2(b) applies:

i) the supplier must determine the amount of the GST component of the consideration payable; and

ii) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

22. TESTIMONIAL AND PUBLICITY RIGHTS

(a) Subject to the other terms of this clause, in consideration of the Service Provider providing the Services, the Client agrees that it may be identified as a client on the Service Provider's Website or other marketing materials of the Service Provider, and that the Service Provider may request and use the Client's business name and logo for this purpose. The Client also agrees that the Service Provider may develop a case study featuring the Client's use of the Services and that this may be used for publicity purposes, including for display on the Service Provider's Website.

(b) The Client may revoke its consent to such rights granted to the Service Provider under clause 22(a) by giving 30 days' written notice to the Service Provider. Such revocation will not apply retrospectively to any use by the Service Provider prior to expiry of the notice period (unless otherwise agreed by the Service Provider).

23. NOTICES

23.1 All notices authorised or required under this Agreement to be given by a party to the other shall be in writing sent by email or delivered personally or sent by pre-paid registered post and in each case addressed to the other party at that party's Address for Service or as the case may be at such other address as a party may from time to time notify to the other.

23.2 The following shall constitute proof of receipt:

(a) proof by posting by registered post; or

(b) proof of dispatch by email.

23.3 Receipt of a notice given under this Agreement will be deemed to occur:

(a) in the case of a communication sent by pre-paid registered post, on the third business day after posting;

(b) in the case of an email, on the business day immediately following the day of dispatch.

23.4 If a notice is sent via post, it must also be sent via email.

24. GENERAL

24.1 **Variation**

(a) The Service Provider may vary these Terms of Service immediately, without notice to the Client, where the Service Provider considers that the change is likely to benefit the Client or otherwise have a neutral impact on the Client.

(b) The Service Provider may vary these Terms of Service on giving 30 days' notice if the Service Provider considers that the change will have a minor detrimental impact on the Client. If the Client does not agree to the change then they may reject the change and terminate this Agreement within 30 days of the Service Provider giving notice of the change.

24.2 **No Waiver**

(a) No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this Agreement unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.

(b) Words or conduct referred to in clause 24.2(a) include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.

24.3 **Assignment, Novation and Other Dealings**

Any rights of a party that arise out of or under this Agreement are not assignable or capable of novation by that party without the prior written consent of the other party, whose consent must not be unreasonably withheld.

24.4 **Costs**

The parties must bear their own costs of and incidental to the negotiation, preparation and execution of this Agreement.

24.5 **Severability**

(a) If the whole or any part of a provision of this Agreement is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

(b) Clause 24.5(a) does not apply if the severance of a provision of this Agreement in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this Agreement.

24.6 **No Merger**

On completion or termination of this Agreement, the rights and obligations of the parties set out in this Agreement will not merge and any provision that has not been fulfilled remains in force.

24.7 **Survival**

Any clause which by its nature is intended to survive termination or expiry of this Agreement will survive such termination or expiry.

24.8 **Further Action**

Each party must do all things (including completing and signing all documents) reasonably requested by the other party that are necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

24.9 **Time of the Essence**

Time is of the essence in this Agreement in respect of any date or time period and any obligation to pay money.

24.10 **Relationship of the Parties**

Nothing in this Agreement gives a party authority to bind any other party in any way. Nothing in this Agreement imposes any fiduciary duties on a party in relation to any other party.

24.11 **Remedies Cumulative**

Except as provided in this Agreement and permitted by law, the rights, powers and remedies provided in this Agreement are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of this Agreement.

24.12 **Entire Agreement**

(a) Subject to the other terms of this clause, this Agreement states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

(b) In the event the parties have entered into a Master Services Agreement, then this Agreement does not supersede or replace the Master Services Agreement entered into between the parties. For the avoidance of doubt, the Master Services Agreement will continue to be binding on the parties. In the event of any conflict between the terms of this Agreement and the Master Services Agreement, the terms of the Master Services Agreement will prevail.

24.13 **No Reliance**

No party has relied on any statement, representation, assurance or warranty made or given by any other party, except as expressly set out in this Agreement.

24.14 **Governing Law and Jurisdiction**

This Agreement is governed by the law in force in the State. Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in the State and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement.