

ETERNAL CYBER TERMS AND CONDITIONS

This Agreement is entered into between Eternal Cyber Pty Ltd (ACN 693 645 126) (**we, us or our**) and you, the individual or entity stated in the Proposal (**you or your**), together the **Parties** and each a **Party**.

1. Our Disclosures

- 1.1 Please read this Agreement carefully before you accept. We draw your attention to:
 - (a) our privacy policy (on our website) which sets out how we will handle your personal information;
 - (b) clause 18 (Exclusions to Liability) which sets out exclusions to our liability under this Agreement;
 - (c) clause 19 (Liability) which sets out limitations to our liability under this Agreement, and clause 19.1 which contains an indemnity given by you in our favour.
- 1.2 We provide the Services using a combination of human Personnel and artificial intelligence (**AI**)-assisted tools and systems. While we take reasonable steps to ensure the accuracy of any AI-assisted output, AI technology has inherent limitations and may produce errors, inaccuracies or incomplete information. You should not rely on AI-assisted output without appropriate human review, and it remains your responsibility to independently verify any information or recommendations we provide.
- 1.3 This Agreement does not intend to limit your rights and remedies at Law, including any of your Consumer Law Rights.

2. Acceptance

- 2.1 You accept this Agreement by the earlier of:
 - (a) signing and returning the Proposal to us;
 - (b) confirming that you accept the Proposal via email or any form of communication through which we provide the Proposal to you;
 - (c) making full or part payment of the Services;
 - (d) providing written communication to us to commence the Services; or
 - (e) submitting a Service Request through the Portal.

3. Services

- 3.1 In consideration of your payment of the Price, we will provide the Services and any Deliverables in accordance with this Agreement, whether ourselves or through our Personnel, using a blended team of human Personnel and AI-assisted tools and systems.
- 3.2 If this Agreement expresses a time within which the Services are to be supplied, we will use reasonable endeavours to provide the Services by such time, but you agree that such time is an estimate only. Where applicable, we will use reasonable endeavours to provide the Deliverables for a Milestone by the Estimated Due Date.
- 3.3 We will not be responsible for any Services or Deliverables unless expressly set out in the scope of work in the Proposal or the relevant Statement of Work.

- 3.4 As part of the Services, we may recommend third party software or services in order to assist you with your IT security. We provide no warranty regarding the effectiveness of any third party software or service for IT security purposes and we cannot guarantee that Services will be effective in stopping all security threats or attacks.
 - 3.5 You acknowledge and agree that any information, advice, material or work provided by us as part of the Services does not constitute legal, financial, due diligence or risk management advice.
 - 3.6 In providing our Services, we make no guarantee or warranty that we will identify and mitigate all vulnerabilities or unauthorised access in your Systems. These actions are your responsibility. You acknowledge and agree that while we will use all commercially reasonable endeavours in the circumstances to assist you with, or provide recommendations relating to, identifying, mitigating or containing such vulnerabilities or unauthorised access, we cannot and do not make such a guarantee or warranty due to external variables including, but not limited to, the size and complexity of your Systems, the time and scope we are given in which to analyse your Systems, and the actions of third-party threat actors. No network or system is 100% secure, and there is no guarantee that a third-party threat actor will be unable to access your Systems without authorisation.
 - 3.7 All variations to the Services must be agreed in writing between the Parties and will be priced in accordance with any schedule of rates provided by us, or otherwise as reasonably agreed between the Parties. If we consider that any instructions or directions from you constitute a variation to the scope of the Services or our obligations under this Agreement, then we will not be obliged to comply with such instructions or directions unless agreed in accordance with this clause. If you have purchased a Pipeline and would like to order a Service not included under your Pipeline, this may be agreed between the Parties in accordance with clause 5.
 - 3.8 We maintain a catalogue of Services that may be requested by you (**Service Catalogue**), made available via the Portal. We may add, remove or modify Service Catalogue items, and their eligibility for the Unlimited Pipeline, at any time in our discretion.
- ### 4. Pipelines
- 4.1 This clause 4 applies where you have purchased an Eternal Unlimited subscription, as set out in your Proposal (**Pipeline**).
 - 4.2 Where you purchase a Pipeline, you prepay for a delivery pipeline of Services for a fixed term as set out in your Proposal (**Pipeline Term**).
 - 4.3 During the Pipeline Term, you may submit unlimited Service Requests for Services eligible for the Pipeline, as indicated in the Service Catalogue. Submitting a Service

- Request does not guarantee that the relevant Service will be delivered within your Pipeline Term.
- 4.4 Service Requests within a Pipeline will be delivered sequentially (back-to-back), and not in parallel, unless we agree otherwise in writing.
- 4.5 The Services eligible for the Pipeline, and any exclusions (including services only available under a separate recurring or continual arrangement), are set out in your Proposal and the Service Catalogue as updated from time to time.
- 5. Service Requests and Statements of Work**
- 5.1 You may build a Service Plan by selecting Services from the Service Catalogue through the Portal. Your Service Plan is a non-binding indication of the Services you may wish to request, and you may amend it at any time.
- 5.2 Each Service selected in your Service Plan, or otherwise requested by you (including in writing or by any other process we specify), will be converted into a **Service Request**.
- 5.3 Following a Service Request, we will scope the relevant Service (which may include a meeting with you and a request for supporting documentation) and confirm the scope and timeframe for that Service. Where:
- (a) you have not purchased a Pipeline, we will also provide you with a quote setting out the price for that Service; or
 - (b) you have purchased a Pipeline, the Service will be delivered as part of your Pipeline at no additional charge, unless the Service Request falls outside your Pipeline's inclusions or otherwise requires a variation under clause 3.7, in which case we will provide you with a separate quote for that Service or variation.
- 5.4 A Service Request becomes a binding **Statement of Work** only once you accept our scope and/or quote under clause 5.3. Until you accept our scope and quote, we are not obliged to provide the relevant Service.
- 5.5 Each Statement of Work is subject to, and will be governed by, this Agreement and any other conditions expressly set out in the Statement of Work. To the extent of any ambiguity or discrepancy between a Statement of Work and this Agreement, the terms of the Agreement will prevail.
- 6. Portal Access**
- 6.1 We will provide you with access to our online portal (**Portal**) through which you may view the Service Catalogue, build your Service Plan, submit Service Requests, manage your Pipelines, and view quotes and invoices.
- 6.2 Subject to your compliance with this Agreement, we grant you and your Personnel a non-exclusive, non-transferable, non-sublicensable and revocable licence to access and use the Portal solely for the purpose of receiving the Services as contemplated by this Agreement. This licence does not grant you or your Personnel any Intellectual Property Rights in the Portal.
- 6.3 While you have an Account, you agree to (and to ensure your Personnel agree to):
- (a) keep your Account information up-to-date (and ensure it remains true, accurate and complete);
 - (b) keep usernames and passwords secure and confidential, and protect them from misuse or being stolen;
 - (c) notify us if you become aware of, or have reason to suspect, any unauthorised access to your Account; and
 - (d) only use the Portal for the purpose of receiving the Services.
- 6.4 You must not (and must ensure your Personnel do not):
- (a) access or use the Portal in a way that is improper or breaches any Laws, or infringes any person's rights;
 - (b) interfere with or interrupt the supply of the Portal, or any other person's access to or use of it;
 - (c) introduce any viruses or other malicious code into the Portal;
 - (d) attempt to access any data or account that you are not expressly authorised to access; or
 - (e) reverse engineer, copy or otherwise misuse the Portal or its underlying technology.
- 6.5 If you close your Account, you will lose access to the Portal.
- 6.6 While we strive to make the Portal available to you at all times, we do not promise that the Portal will be available 100% of the time. The Portal may be disrupted during certain periods, including as a result of scheduled or emergency maintenance.
- 6.7 The Portal may interact with, or be reliant on, products or services provided by third parties, such as cloud hosting providers. To the maximum extent permitted by law, we are not liable for disruptions or downtime to the Portal caused or contributed to by these third parties.
- 6.8 We will try to provide you with reasonable notice, where possible, of any disruptions to your access to the Portal.
- 6.9 To the maximum extent permitted by law, we will not be liable for any disruption to your access to the Portal, provided that such disruption does not prevent us from delivering the Services owed to you under an accepted Statement of Work or Pipeline.
- 7. Acceptance Testing**
- 7.1 For the purpose of this clause:
- "Acceptance Tests"** means the tests to determine whether the Services or Deliverables meet any specifications for the Services or Deliverables as particularised in the Proposal or the relevant Statement of Work, or if no specifications or criteria are specified in the Proposal or the relevant Statement of Work, the criteria, reasonably determined by us, which the Services or Deliverables are to be measured against.

- 7.2 The Services or Deliverables that are subject to the Acceptance Tests are as set out in the Proposal or the relevant Statement of Work.
- 7.3 Before the Services or the Deliverables the subject of a Milestone and to which the Acceptance Tests apply, are to be completed, we will provide you with access to the Services or Deliverables for the purpose of performing the Acceptance Tests. Within 5 Business Days of us granting you such access, you agree to:
- notify us of your acceptance of the Services or Deliverables; or
 - notify us of your rejection of the Services or Deliverables, which cannot be unreasonably given, and provide us with the reasons for your rejection.
- 7.4 If you do not notify us of your acceptance or rejection of the Services or Deliverables to which the Acceptance Tests apply within 5 Business Days of us granting you access to the Services or Deliverables, you agree you will be deemed to have accepted those Services or Deliverables.
- 7.5 If the Services or Deliverables fail to meet the Acceptance Tests you can:
- accept the Services, and they will be deemed to have passed the Acceptance Tests;
 - notify us of the failure; or
 - accept the Services on the basis that you will allow us to set a timeframe to amend the error or non-compliance.
- 7.6 If you notify us of the failure in accordance with clause 7.5(b), we agree to amend the Services and resubmit them to you within a reasonable timeframe in order to re-perform the Acceptance Tests in accordance with clauses 7.3-7.6.
- 7.7 If you use the Services or Deliverables in a non-test, live or production environment prior to acceptance, such Services or Deliverables will be deemed to be accepted upon such use.
- 7.8 Nothing in this clause limits your Consumer Law Rights.
- 8. Third Party Inputs**
- 8.1 You acknowledge and agree that the Services may interact with, or be reliant on, certain Third Party Inputs, including your operating system, web browser, and CRM.
- 8.2 You acknowledge and agree that, unless we have expressly agreed to provide the services described in this clause 8.2, in the Proposal or a relevant Statement of Work:
- you are responsible for obtaining and managing all licences for the relevant Third Party Inputs;
 - you are responsible for paying all fees related to the Third Party Inputs; and
 - you agree to comply with terms and conditions applicable to the relevant Third Party Inputs at all times.
- 8.3 To the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with any Third Party Inputs, subject to clause 8.4.
- 8.4 Should any unavailability, error or change to a Third Party Input have a substantial and adverse impact on your use and enjoyment of the Services:
- you agree to notify us in writing within 10 days of the change coming into effect; and
 - following receipt of such notice by us, the Parties will use all reasonable endeavours to work together to resolve the matter.
- 8.5 This clause 8 will survive the termination or expiry of this Agreement.
- 9. Security Incidents**
- 9.1 If either Party becomes aware of or reasonably suspects that a security incident has occurred arising from our provision of the Services, such that Your Data has or may have been compromised (for example, unauthorised access) (each a **Security Incident**), that Party must promptly notify the other Party and we agree to, within a reasonable time:
- conduct an investigation to determine whether a Security Incident has occurred, and where one has, the cause and impact of it on Your Data; and
 - where a Security Incident is deemed to have occurred, remediate the Security Incident to the extent that this is operationally, commercially and technically feasible.
- 9.2 You agree that we may suspend the Services where a Security Incident has or may have occurred and this is considered necessary or prudent (as determined by us, at our reasonable discretion) to address or deal with the Security Incident.
- 9.3 We will bear our costs in conducting any investigation or remediation required under this clause 9, unless the incident triggering the Security Incident was caused or contributed to by you (including your Personnel), in which case, you will be liable for those costs reasonably and necessarily incurred by us arising from the Security Incident.
- 9.4 Each Party agrees to comply with the notifiable data breaches scheme under Part IIIC of the *Privacy Act 1988* (Cth).
- 10. Your Obligations**
- 10.1 You agree to (and to the extent applicable, ensure that your Personnel agree to):
- comply with this Agreement, all applicable Laws, and our reasonable requests;
 - if required, provide us (and our Personnel) with access to the Premises (and its facilities) and any other premises as is reasonably necessary for us to provide the Services, free from harm or risk to health or safety at the times and on the dates reasonably requested by us or as agreed between the Parties;
 - provide us with all assistance, facilities documentation, information, instructions, cooperation, access to your Systems, and other

- things reasonably necessary to enable us to provide the Services and comply with our obligations under this Agreement or at Law;
- (d) to permit our Personnel to have access to any reasonable computing, office productivity software tools, telecommunication, email and internet facilities necessary for the purposes of supplying the Services;
- (e) if required, to provide us and our Personnel with reasonable, convenient and safe access to your Systems to the extent reasonably necessary in order for us to supply the Services, and at the times agreed between the Parties;
- (f) not (or not attempt to) disclose, or provide access to, the Services to third parties without our prior written consent;
- (g) to ensure all information provided to us is kept up-to-date and the email address you provide is valid and regularly checked;
- (h) to make any changes to your Systems, such as System upgrades, that may be required to support the delivery and operation of any Services;
- (i) to ensure that any Systems used in connection with the Services have all necessary approvals and comply with all Laws;
- (j) that you have reviewed and understand the terms of this Agreement, and that you (including your Personnel) will use the Services in accordance with this Agreement;
- (k) other than as expressly permitted by this Agreement, that you will not cause or permit any software or hardware provided or managed as part of the Services to be altered, repaired, serviced or moved except by the authorised seller, an authorised repairer, the manufacturer or persons approved by us;
- (l) to notify us of any breach or suspected breach of this Agreement by you (including your Personnel), within 48 hours of becoming aware or any such breach or suspected breach; and
- (m) that you are responsible for all other users within your organisation or within your control using the Services, including your Personnel.
- 10.2 You agree to pay our additional costs reasonably incurred as a result of you failing to comply with this clause 10.
- 11. Price and Payment**
- 11.1 In consideration for us providing the Services, you agree to pay all amounts due under this Agreement in accordance with the Payment terms in the Proposal (**Payment Term**).
- 11.2 Unless otherwise stated in the Proposal or any Statement of Work:
- (a) where you purchase a Pipeline, you must pay the Price for the full Pipeline Term upfront, prior to our commencement of Services under that Pipeline; and
- (b) where you have not purchased a Pipeline, we may issue invoices to you for the relevant Services in accordance with the Statement of Work. You may pay the amount in the invoice, using the payment method set out in the invoice, within 30 days of the date of the invoice.
- 11.3 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion, and without prejudice to any of our rights or remedies under this Agreement or at Law):
- (a) after a period of 5 Business Days from the relevant due date, cease providing the Services, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs); and/or
- (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date in accordance with the Payment Terms.
- 11.4 When applicable, GST payable will be clearly shown on our invoices. You agree to pay us an amount equivalent to the GST imposed on these charges. "GST" has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 11.5 We may increase the Price for any renewal Pipeline Term, by providing you with at least 30 days' written notice before the end of your current Pipeline Term. If you do not agree to the increase, you may cancel the renewal by giving written notice to us before the end of your current Pipeline Term, in which case your Pipeline will not renew and the increase will not apply to you.
- 11.6 Where we incur reasonable travel or other out-of-pocket expenses in providing the Services (including attending your premises), you agree to reimburse us for those expenses, provided that they have been agreed with you in writing (including by email) in advance.
- 12. Warranties and Representations**
- 12.1 Each Party represents and warrants that:
- (a) it has full legal capacity, right, authority and power to enter into this Agreement, to perform its obligations under this Agreement, and to carry on its business; and
- (b) this Agreement constitutes a legal, valid and binding agreement, enforceable in accordance with its terms.
- 12.2 You represent and warrant that:
- (a) you will comply with this Agreement and all applicable Laws;
- (b) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete;
- (c) where applicable, your Systems meet the minimum requirements for the Services, as notified to you by us;

- (d) that the Services are provided to you solely for your benefit and you will not (or you will not attempt to) disclose, or provide access to, the Services to third parties without our prior written consent;
- (e) in working with us and providing us with any information, you agree that you will not breach (or cause us or our Personnel to be in breach of) any third party Intellectual Property Rights;
- (f) no insolvency events (including but not limited to bankruptcy, receivership, voluntary administration, liquidation or creditors' schemes of arrangement) affecting you or your property are occurring or are likely to occur;
- (g) that you will be responsible for the use of any part of the Services, and you must ensure that no person uses any part of the Services:
- (1) to break any Law or infringe any person's rights (including Intellectual Property Rights);
 - (2) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
 - (3) in any way that damages, interferes with or interrupts the supply of the Services; and
- (h) if you enter into this Agreement as a trustee of a trust, then:
- (1) you are the sole trustee of the relevant trust and have been validly appointed;
 - (2) you have full and valid power, authority, consents and approvals under the relevant trust to execute the Agreement and carry out the transactions contemplated by the Agreement; and
 - (3) you have the right to be indemnified out of the assets of the relevant trust for all liabilities incurred by you under the Agreement.
- 12.3 You acknowledge and agree that a failure by you to comply with any term in clause 12 may delay the Estimated Due Date and any other previously estimated timelines for completion of a Milestone or the Deliverables.
- 13. Intellectual Property**
- 13.1 As between the Parties:
- (a) we own all Intellectual Property Rights in the Portal, Our Materials, Feedback and Analytics;
 - (b) you own all Intellectual Property Rights in Your Materials; and
 - (c) nothing in this Agreement constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials or Your Materials.
- 13.2 As between the Parties, ownership of all Intellectual Property Rights in any New Materials will at all times vest, or remain vested, in us upon creation. To the extent that ownership of such Intellectual Property Rights in any New Materials does not automatically vest in us, you hereby assign all such Intellectual Property Rights to us and agree to do all other things necessary to assure our title in such rights.
- 13.3 In the use of any Intellectual Property Rights in connection with this Agreement, you agree that you must not (and you must ensure that your Personnel do not) commit any intellectual property breach. Where you reasonably suspect that such a breach may have occurred, you must notify us immediately.
- 13.4 You agree that we may use Feedback in any manner which we see fit (including to develop new features) and no benefit will be due to you as a result of any use by us of any Feedback.
- 13.5 We grant you a non-exclusive, revocable, royalty-free, worldwide, non-sublicensable and non-transferable right and licence, to use Our Materials that we provide to you and the New Materials and any Deliverables, solely for your use and enjoyment of the Services, as contemplated by this Agreement.
- 13.6 You grant us a non-exclusive, irrevocable, royalty-free, worldwide, non-sublicensable (other than to our related bodies corporate, as that term is defined in the *Corporations Act 2001* (Cth)) and non-transferable right and licence to use Your Materials that you provide to us solely for the purpose of performing of our obligations or exercising our rights under this Agreement.
- 13.7 If you (if you are an individual) or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with this Agreement, you agree to (and will procure that your Personnel) consent to our use or infringement of those Moral Rights.
- Your Data**
- 13.8 As between the Parties:
- (a) Your Data is and will remain your property; and
 - (b) you retain any and all rights, title and interest in and to Your Data, including all copies, modifications, extensions and derivative works.
- 13.9 You grant us a limited licence to copy, transmit, store, back-up and/or otherwise access or use Your Data during the Term (and for a reasonable period after the Term):
- (a) to supply the Services to you (including to enable you and your Personnel to access and use the Services), and otherwise perform our obligations under this Agreement;
 - (b) to diagnose problems with the Services;
 - (c) to enhance and otherwise modify the Services;
 - (d) to perform Analytics;
 - (e) to develop other services, provided we de-identify Your Data; and
 - (f) as reasonably required to perform our obligations under this Agreement.
- 13.10 You represent, warrant, acknowledge and agree that:
- (a) you have obtained all necessary rights, releases and permissions to provide or have Your Data

- provided to us and to grant the rights granted to us in this Agreement;
- (b) Your Data (and its transfer to and/or use, collection, storage or disclosure by us as contemplated by this Agreement) does not and will not violate any Laws (including those relating to export control and electronic communications) or the rights of any third party, including any Intellectual Property Rights, rights of privacy, or rights of publicity; and
- (c) the operation of the Services is reliant on the accuracy and completeness of Your Data, and the provision by you of Your Data that is inaccurate or incomplete may affect the use, output and operation of the Services and/or delay the Estimated Due Date or any other previously estimates timelines for completion of a Milestone or the Deliverables.
- 13.11 This clause 13 will survive termination or expiry of this Agreement.
- 14. Analytics**
- 14.1 You acknowledge and agree that we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Services, in an aggregated and anonymised format (**Analytics**). You agree that we may make such Analytics publicly available, provided that it:
- (a) does not contain any identifying information; and
- (b) is not compiled using a sample size small enough to make underlying portions of Your Data Identifiable.
- 14.2 We, and our licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content used or provided in connection with the Analytics, including all Intellectual Property Rights in the foregoing.
- 14.3 We may use and disclose to our service providers anonymous data about your access and use of the Services for the purpose of helping us improve the Services. Any such disclosure will not include details of your identity or personal information.
- 15. Confidential Information**
- 15.1 Each Receiving Party agrees:
- (a) not to disclose the Confidential Information of the Disclosing Party to any third party (subject to subclause 15.1(c));
- (b) to protect the Confidential Information of the Disclosing Party from any loss, damage or unauthorised disclosure;
- (c) to only disclose the Confidential Information to those of its Personnel who need to know the Confidential Information in connection with this Agreement, provided those Personnel keep the Confidential Information confidential in accordance with this clause 15; and
- (d) to only use the Confidential Information of the Disclosing Party for the purpose of performing obligations, or exercising rights or remedies, under this Agreement.
- 15.2 The obligations in clause 15.1 do not apply to Confidential Information that:
- (a) is required to be disclosed for the Parties to comply with their obligations under this Agreement;
- (b) is authorised in writing to be disclosed by the Disclosing Party;
- (c) is in the public domain or is no longer confidential, except as a result of a breach of this Agreement or other duty of confidence; or
- (d) must be disclosed by Law or by a regulatory authority, including under subpoena, provided that (to the extent permitted by Law) the Receiving Party has given the Disclosing Party notice prior to disclosure.
- 15.3 Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 15. A Party is entitled to seek an injunction, or any other remedy available at Law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 15.14.
- 15.4 This clause 15 will survive the termination of this Agreement.
- 16. Privacy**
- 16.1 For the purposes of this clause, **Personal Information** and **Sensitive Information** have the meanings given in the *Privacy Act 1988* (Cth), and also include any similar terms as defined in any other privacy law applicable to you.
- 16.2 You must, and must ensure that your Personnel, at all times comply with the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any privacy or anti-spam Laws applicable to you in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with this Agreement (**Privacy Laws**).
- 16.3 Without limiting this clause 16, you must ensure that:
- (a) you have collected, used, stored and otherwise dealt with Your Data in accordance with all Privacy Laws; and
- (b) we are capable of collecting, using, storing and otherwise dealing with Your Data, in the manner contemplated by this Agreement, without infringing any third party rights or violating any Privacy Laws.
- 16.4 Without limiting this clause 16, you agree to only disclose Your Data, to the extent it contains Personal Information if:
- (a) you are authorised by Privacy Laws to collect the Personal Information and to use or disclose it in the manner required by this Agreement;
- (b) you have informed the individual to whom the Personal Information relates, that it might be necessary to disclose the Personal Information to third parties; and
- (c) where any Personal Information is Sensitive Information, you have obtained the specific

consent to that disclosure from the individual to whom the Sensitive Information relates.

16.5 We agree to handle any Personal Information you provide to us, solely for the purpose of performing our obligations under this Agreement, and in accordance with any applicable Laws and our Privacy Policy.

17. Australian Consumer Law

17.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the supply of the Services by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**). To the extent that you maintain Consumer Law Rights at Law, nothing in this Agreement excludes those Consumer Law Rights.

17.2 Subject to your Consumer Law Rights, we provide all material, work and services (including the Services) to you without conditions or warranties of any kind, implied or otherwise, whether in statute, at Law or on any other basis, except where expressly set out in this Agreement.

17.3 This clause 17 will survive the termination or expiry of this Agreement.

18. Exclusions to Liability

18.1 To the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:

- (a) any instructions provided to us by you or your Personnel (including in relation to communications and negotiations with third parties, such as threat actors);
- (b) any failure by you to implement our recommendations or act upon our advice, including where we have asked you for more resourcing or support and you fail to or choose not to do so;
- (c) any failure or delay by you or any of your Personnel to provide any information or documentation necessary to allow us to provide the Services;
- (d) your (or your Personnel) breaching, or causing us (or our Personnel) to be in breach of any law or any third party rights, including Intellectual Property Rights and privacy rights;
- (e) any Third Party Inputs;
- (f) your System; and
- (g) any works services, goods, materials, or items which do not form part of the Services (as expressed in this Agreement), or which have not been provided by us.

19. Liability

19.1 Despite clause 19.2, to the maximum extent permitted by law, you indemnify us from and against any Liability that we may suffer, incur or otherwise become liable for, arising from or in connection with:

- (a) any official investigation or inquiry into you, your Personnel or your operations, by a regulatory authority under powers granted to it by Law

(including without limitation, any legal costs we incur as a result, or any actual economic loss we suffer if our business is publicly associated with such an investigation or inquiry);

- (b) any negligent acts or omissions, or wilful misconduct by you (or your Personnel);
- (c) any breach of Law by you (or your Personnel);
- (d) any breach of clauses 13, 15, or 16; or
- (e) any data provided by you to us,

except to the extent caused or contributed to by us.

19.2 Despite anything to the contrary but subject to your Consumer Law Rights, to the maximum extent permitted by Law:

- (a) neither Party will be liable for Consequential Loss;
- (b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss;
- (c) in respect of any failure by us to comply with relevant Consumer Law Rights, our Liability is limited (at our discretion) to supplying the Services again or paying the cost of having the Services supplied again; and
- (d) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to the Price paid by you to us in respect of the supply of the relevant Services to which the Liability relates.

19.3 This clause 19 will survive the termination or expiry of this Agreement.

20. Term and Termination

20.1 This Agreement will continue until terminated in accordance with this clause 20 (**Term**).

20.2 Where you purchase a Pipeline, your Pipeline will automatically renew for a further Pipeline Term of the same length, on the same terms (subject to any Price increase under clause 11.5), unless either Party provides written notice before the end of the current Pipeline Term that it does not wish to renew.

20.3 Either Party may terminate this Agreement at any time when there is no Statement of Work or Pipeline in progress, by giving written notice to the other Party.

20.4 This Agreement or any Pipeline or Statement of Work will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:

- (a) the other Party (**Defaulting Party**) breaches a material term of this Agreement or the relevant Statement of Work and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) the Defaulting Party goes bankrupt, insolvent or is otherwise unable to pay its debts as they fall due.

- 20.5 Upon expiry or termination of this Agreement, any Statement of Work or any Pipeline:
- (a) without limiting and subject to your Consumer Law Rights, any payments made by you to us for Services already performed are not refundable to you;
 - (b) you agree to pay us the Price (in full) for any Milestone that has been commenced, or for any Pipeline Term that has commenced;
 - (c) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under this Agreement;
 - (d) by us pursuant to clause 20.4, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees); and
 - (e) we may retain your documents and information (including copies) to the extent required by Law or pursuant to any information technology back-up procedure, provided that we handle your information in accordance with clause 15.
- 20.6 Unless otherwise agreed between the Parties, if this Agreement is terminated:
- (a) by us, then any current Statement of Work will also terminate on the date of termination and we will immediately cease providing the Services; or
 - (b) by you, then any outstanding Statement of Work will continue in accordance with the terms of the Statement of Work (and this Agreement) until such time as the Statement of Work is complete or the Statement of Work is otherwise terminated in accordance with its terms.
- 20.7 The Parties may, by mutual written agreement, terminate this Agreement before the end of the Term (**Early Termination**).
- 20.8 Where Early Termination is requested by you pursuant to clause 20.7, you agree to pay us:
- (a) the Price for the remainder of the Term at a discounted rate as notified by us to you; or
 - (b) where you have paid the Price upfront we will issue you with a refund of the Price paid on a pro rata basis at the same discounted rate notified by us to you; and
 - (c) our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees).
- 20.9 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.
- 20.10 This clause 20 will survive the termination or expiry of this Agreement.
- 21. General**
- 21.1 **Access:** The Services may be accessed in Australia and overseas. We make no representation that the Services comply with the Laws (including Intellectual Property Laws) of any country outside of Australia. If you access the Services from outside Australia, you do so at your own risk and you are responsible for complying with the Laws in the place you access the Services.
- 21.2 **Amendment:** Subject to clause 3.7, this Agreement may only be amended by written instrument executed by the Parties.
- 21.3 **Assignment:** Subject to clauses 21.4 and 21.16, a Party must not assign, novate or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 21.4 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with this Agreement, to a debt collector, debt collection agency, or other third party.
- 21.5 **Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.
- 21.6 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first complying with this clause 21.6. A Party claiming that a Dispute has arisen must give written notice to the other Party specifying the nature of the Dispute (**Dispute Notice**). The Parties must meet (whether in person, by telephone or video conference) within 10 Business Days of service of the Dispute Notice to seek (in good faith) to resolve the Dispute.
- If the Parties do not resolve the Dispute within 20 Business Days of the date the Dispute Notice was served (or such further period as agreed in writing by the Parties), either Party may:
- (a) where you are resident or incorporated in Australia, refer the matter to mediation, administered by the Australian Disputes Centre, to be conducted in Sydney, New South Wales, in accordance with the Australian Disputes Centre Guidelines for Commercial Mediation; or
 - (b) where you are not resident or incorporated in Australia, refer the matter to arbitration administered by the Australian Centre for International Commercial Arbitration, with such arbitration to be conducted in Sydney, New South Wales, before one arbitrator, in English and in accordance with the ACICA Arbitration Rules.
- Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 21.7 **Electronic Execution:** This Agreement may be executed using an Electronic Signature. The Parties acknowledge and agree that if a Party executes this Agreement using an Electronic Signature, then the Party is taken to have entered into this Agreement in electronic form and the Electronic Signature is deemed to be an original execution of the Agreement by the Party. "Electronic Signature" means an electronic method of signing that identifies the person and indicates their intention to sign this Agreement, which may include software programs such as DocuSign.

21.8 **Entire Agreement:** Subject to your Consumer Law Rights, this Agreement contains the entire understanding between the Parties and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in this Agreement, and this Agreement supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

21.9 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under this Agreement if such delay or failure is caused or contributed to by a Force Majeure Event, provided that the Party seeking to rely on the benefit of this clause:

- (a) as soon as reasonably practical, notifies the other Party in writing details of the Force Majeure Event, and the extent to which it is unable to perform its obligations; and
- (b) uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.

Where the Force Majeure Event prevents a Party from performing a material obligation under this Agreement for a period in excess of 60 days, then the other Party may by notice terminate this Agreement, which will be effective immediately, unless otherwise stated in the notice. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under this Agreement.

21.10 **Further Assurance:** Each Party must to promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and their obligations under it.

21.11 **Governing Law:** This Agreement is governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

21.12 **Notices:** Any notice given under this Agreement must be in writing addressed to the addresses set out in this Agreement, or the relevant address last notified by the recipient to the Parties in accordance with this clause. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

21.13 **Publicity:** Despite clause 15, with your prior written consent, you agree that we may advertise or publicise the broad nature of our supply of the Services to you, including on our website or in our promotional material.

21.14 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.

21.15 **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that

part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

21.16 **Subcontracting:** We may subcontract the provision of any part of the Services without your prior written consent. We agree that any subcontracting does not discharge us from any liability under this Agreement and that we are liable for the acts and omissions of our subcontractor.

21.17 **Waiver:** Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A waiver must be in writing and will be effective only to the extent specifically stated.

22. Definitions

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them in the Proposal, and:

Account means the account provided to you to access and use the Portal.

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

Agreement means these terms and conditions and any agreed Statement of Work issued under it and any documents attached to, or referred to in, each of them.

Analytics has the meaning given to it in clause 14.1.

Business Day means a day on which banks are open for general banking business in Sydney, New South Wales, excluding Saturdays, Sundays and public holidays.

Commencement Date means the date this Agreement is signed by the last of the Parties.

Computing Environment means your computing environment including all hardware, software, information technology and telecommunications services and Systems.

Confidential Information means information which:

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

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

Consequential Loss includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your

obligation to pay us the Price will not constitute "Consequential Loss".

Consumer Law Rights has the meaning given in clause 17.1.

Deliverables means any materials, goods, items or other deliverables forming part of the Services, as particularised in the Proposal or any Statement of Work.

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

Estimated Due Date means the date that we estimate a particular Milestone will be complete, as particularised in the Proposal or the relevant Statement of Work.

Feedback means any idea, suggestion, recommendation or request by you or any of your Personnel, your customers, whether made verbally, in writing, directly or indirectly, in connection with the Services.

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

Intellectual Property Rights or Intellectual Property means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or confidential information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable.

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

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

Milestone means the states for completion of the Deliverables, as particularised in the Proposal or the relevant Statement of Work (if any).

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth) and includes any similar rights in any jurisdiction in the world.

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

SOW Request has the meaning given in clause **Error! Reference source not found..**

Statement of Work means an order for the supply of Services, placed in accordance with clause 4.

Our Materials means all Intellectual Property which is owned by or licensed to us and any improvements, modifications or enhancements of such Intellectual Property, but excludes New Materials and Your Materials.

Payment has the meaning given to it in the Proposal or any Statement of Work.

Personal Information has the meaning given to it in clause 16.1.

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

Pipeline has the meaning given in clause 4.1.

Pipeline Term has the meaning given in clause 4.2.

Portal means the online portal operated by us through which you may view the Service Catalogue, build a Service Plan, submit Service Requests, manage your Pipelines, and view quotes and invoices.

Premises means any premises the subject of the Services, as further specified in the Proposal or any Statement of Work.

Price means the price set out in the Proposal or any relevant Statement of Work, as adjusted in accordance with this Agreement.

Privacy Laws has the meaning given in clause 16.2.

Proposal means the proposal to which this Agreement is attached.

Receiving Party means the Party receiving Confidential Information from or on behalf of the Disclosing Party.

Service Catalogue has the meaning given in clause 3.8.

Service Plan has the meaning given in clause 5.1.

Services means the services set out in the Proposal or the relevant Statement of Work, as adjusted in accordance with this Agreement.

Service Request means a request for a Service converted from your Service Plan or otherwise submitted by you in accordance with clause 5.2.

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

Third Party Inputs means third parties or any goods and services provided by third parties, including hardware, internet service providers, internal systems, customer relationship management software, email providers, cloud storage systems, or other third party systems which the provision of the Services may be contingent on, or impacted by.

Your Data means the information, materials, logos, documents, qualifications and other Intellectual Property or data inputted by you and your Personnel into the Services or stored by or generated by your use of the Services, including any Personal Information collected, used, disclosed, stored or otherwise handled in connection with this Agreement. Your Data does not include (i) the Analytics, or (ii) any data, information or materials that we generate (or that is generated on our behalf) in connection with the Services and that is not provided to you or that you do not have access to.

Your Materials means all Intellectual Property owned or licensed by you or your Personnel before the Commencement Date (which is not connected to this Agreement) and/or developed by or on behalf of you or your Personnel independently of this Agreement and any improvements, modifications or enhancements of such Intellectual Property, but excludes Our Materials and New Materials.

23. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (b) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (c) a reference to a person includes a natural person, body corporate, partnership, joint venture, association, government or statutory body;
- (d) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns;
- (e) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (f) a reference to time is to local time in Sydney, New South Wales; and
- (g) a reference to \$ or dollars refers to the currency of Australia from time to time.