

1. Definitions

In this agreement:

- (a) **Confidential information** means all spoken, written or electronically stored information belonging to or relating to **a party, or its clients** but excludes information in the public domain (other than by default under this Agreement) or information independently known to **a party**).
- (b) **“Goods”** means all or any of the products set out in the invoices/quotation/order form;
- (c) **“Guarantor”** means a person who agrees to be liable for your debts;
- (d) **“Intellectual Property”** means all intellectual property rights including copyright, trade mark, design, patent, semi-conductor and current layout rights.
- (e) **“Managed services”** means a recurring monthly service provided by **us** that may include data hosting, internet connectivity and/or anti-spam services as selected by you;
- (f) **“Services”** means the services that **we** are to performed for **you** as described in the invoices/quotation/order form and anything created or produced as a result of those **services**, but does not include the **managed services**;
- (g) **“Us, We”** means New Age Solutions Pty Ltd and/or its employees, authorised agents and permitted assigns;
- (h) **“You”** means the Client set out in the invoice/purchase order, and its agents or assigns;

2. Acceptance of Terms and Conditions

- (a) **You** accept that any order that **you** place will incorporate these terms and conditions, regardless of any inconsistencies in **your** order. **You** also accept that **you** may not cancel any order except with **our** consent in writing.
- (b) **You** acknowledge and agree that **our** agents, representatives or employees are NOT authorised to make, and **we** are not bound by any representations, statements, assertions or agreements made by them, which not expressed by **our** manager in writing.

3. Price

- (a) All prices shown are quoted exclusive of GST unless otherwise stated.

- (b) **Goods** and **services** will be charged at **our** quotation price. Unless previously withdrawn, our quotation is open for acceptance within the period stated in it, or where no period is stated, within 14 days only after its date
- (c) **You** agree that **we** may alter **our** prices by fourteen (14) days notice to you, or at the start of the next calendar month, whichever is sooner.

4. **Payment Terms**

- (a) **We** will provide **you** with a tax invoice, and unless otherwise stated:
 - (i) payment for **goods** is due immediately upon delivery; and
 - (ii) payment for **services** is due within 14 days of the tax invoice.
- (b) **You** must make all payments in full (without any set off, deduction or counter-claim). **We** reserve the right to charge interest on overdue payments from the date when payment becomes due, calculated at the current overdraft rate of our financial institute plus 2% per whole or part calendar month, and plus an administration fee of fifty dollars (\$50).
- (c) **We** also reserve the right to charge an additional fee for credit card transactions.
- (d) **We** may, at our sole discretion refuse to supply **you** with **goods** and/or **services** if **you** are in default of any of your payment obligations under any one or more agreements with **us**.

5. **Delivery of Goods**

5.1 General Delivery

- (a) **We** will make all reasonable efforts to deliver the **goods** to **your** nominated address, and **you** must make all necessary arrangements to take delivery of the **goods**.
- (b) **You** agree that **our** delivery of **goods** to a carrier or to **your** nominee is deemed to be delivery of the **goods** to **you** for the purposes of this agreement.

5.2 Liability for Delivery

- (a) **You** agree that **we** will not be liable for any failure to deliver, any delay in delivery or any damage or loss to **goods** in transit or due to unloading or packaging, for any reason or caused by any person (whether or not we are legally responsible for the person who caused or contributed to that loss or damage).

5.3 Notification of Defects

- (a) Within two (2) business days of the date of delivery, **you** must notify **us** in writing of any alleged deficiencies in the **goods**, or of any non-delivery, short delivery or delivery of the wrong **goods**. You must also allow **us** to inspect the **goods** within four (4) business days of the date of delivery. Failure to comply with this clause will result in **you** waiving any claim, and the **goods** will be deemed free from any defect or damage.
- (b) **Goods** are under warranty from the supplier or manufacturer and **we** do not provide a separate product warranty. **You** may only reject delivery of **goods** where the wrong **goods** have been delivered, or the supplier or manufacturer of the **goods** accepts the return of defective **goods**. After inspecting the **goods**, we will notify you in writing whether you are entitled to reject the **goods** as delivered. If You are entitled to reject the **goods**, our liability will be limited as set out in Clause 14 provided that:
 - (i) The **goods** are returned in the condition in which they were delivered to **you**, including unopened packaging and instruction material.
 - (ii) The **goods** are returned to **us**, at **your** cost, within 2 business days of **us** giving **you** notice that **you** are entitled to reject the **goods**; and

6. Risk and Title in Goods

- (a) Risk in each order passes to **you** upon actual or constructive delivery of the **goods** to **you** or **your** collection of that order;
- (b) Until we have received cleared payment in full of all monies that you owe:
 - (i) Ownership and property in the **goods** remains with **us**; and
 - (ii) **You** hold the **goods** as **our** bailee, and the proceeds of their sale in trust for **us**; and
 - (iii) **You** agree that **we** have an irrevocable licence to enter any site owned, possessed or controlled by **you** to recover possession of the **goods** and to keep or resell any **goods** repossessed.
- (c) Nothing in this clause prevents **us** from maintaining an action against **you** for the purchase price of the **goods** and any costs of repossession.
- (d) In the event that the **goods** are damaged or destroyed prior to delivery to **you**, **you** acknowledge that **we** are entitled to receive all insurance proceeds payable for the **goods**. This applies even if the price has become payable by **you**.

7. Managed Services

7.1 General

- (a) This clause 7 applies if you have engaged **us** to provide the **managed services**.

- (b) The **managed services** will commence on the date that **we** create **your** account on **our** servers. It will automatically renew twelve (12) months after the commencement of the **service**, unless **you** notify **us** in writing of your intention to cancel the **managed services** at least 30 days before the end of the twelve month period.

7.2 Payment

- (a) **You** agree that:
 - (i) **your** credit card or nominated bank account will be automatically credited monthly in advance for the **managed services** fees until the termination of this agreement under clause 15.
 - (ii) the **managed services** fees do not include the resurrection of equipment or servers, and **our** normal hourly rates will apply to carrying out these extra **services**.
- (b) **We** may increase the **managed services** fees at any time, provided **we** give **you** at least thirty (30) days notice of the increase.

7.3 Your Obligations

- (a) **You** must:
 - (i) Keep **your** user names and passwords secure at all times;
 - (ii) provide and maintain all telephone, internet, computer, hardware and software equipment, and **services** necessary to access the **managed services**. **We** are not responsible for incompatibility of our equipment and network with **yours**.
 - (iii) Provide **us** with access both remotely and to any premises when required in order install the **managed services** software;
 - (iv) provide **us** with material and data in a condition that is capable of being hosted by **us** without any specialized effort on **our** part.
- (b) **You** must not:
 - (i) Uninstall, modify or interfere with any software provided as part of the **managed services**;
 - (ii) reverse engineer, decompile or disassemble the **managed services** or any other component provided as part of the **managed services**, or otherwise attempt to derive the source code of any software which may be related to the **managed services**;
 - (iii) access any data or server **you** are not authorized to access or otherwise breach **our** security in any way.
 - (iv) resell to third-parties any of the **managed services** provided by **us**.

7.4 Data Backup

You acknowledge and agree that:

- (a) the **managed services** does not include **our** monitoring that backups are completed or checking integrity of data.
- (b) **We** will only store **your** data for the maximum period set out in the Schedule, after which **your** data will be overwritten.
- (c) It is **your** responsibility to maintain, complete and confirm successful and reliable data, file and directory structure backups.
- (d) **We** recommend that **you** do not rely solely on the **managed services** for backup or disaster recovery purposes.

7.5 License to Use Software

- (a) We grant to **you** a non-exclusive, non-transferable licence to use the **managed services** software solely to access and use the **managed services**. Except for the license rights set out in this clause, this license does not grant any additional rights to **you**. All right, title and interest in our **managed services** software will remain with **us** or **our** licensors.
- (b) This license terminates on the expiration or termination of this Agreement.

7.6 Additional Warranties

In addition to any warranties contained in this agreement, **you** warrant that any data or material uploaded by **you** to **our** servers:

- (a) does not infringe the intellectual property rights of any person; and
- (b) does not contain any computer virus and will not in any way, corrupt the data or systems of any person; and
- (c) does not contain any material which is illegal.

8. Credit

8.1 **We** may grant **you** credit on the basis of a commercial credit application, and such other documents and information as **we** may require, and **you** and the **guarantor** authorise **us** to:

- (a) obtain all information **we** consider relevant in assessing your application for commercial credit pursuant to this agreement;
- (b) obtain, from a credit reporting agency, a credit report containing all personal credit information about **you** and/or the **guarantor**;

- (c) exchange information about **you** and/or the **guarantor** with credit providers in order to assess your application, notify other credit providers of **your** default, or assess **yours** or the **guarantors** credit worthiness.

8.2 Until **we** grant **you** credit by notice in writing, **we** will only supply **goods, services** or **managed services** to **you** on the basis of cash in advance. The granting of credit does not oblige **us** to extend any particular amount of credit to you.

9. Intellectual Property Rights

- (a) **You** warrant that any material, documents or artwork that **you** provide to **us** will not infringe any of **yours** or a third party's intellectual property rights;
- (b) **You** agree that:
 - (i) **We** retain all **intellectual property** in any **service** software, **managed services** software, drawings, designs or other artwork produced for **you**, or provided to **you** by **us** (including any updates or alterations).
 - (ii) **Your** purchase of any **goods** or **services** does not confer on **you** any licence or **intellectual property** which are **our** property, or which **we** have a licence to use.

10. Confidential Information

- (a) The parties agree to keep all **confidential information** confidential. A party must not use or disclose **confidential information** without the disclosing party's written authority, either during or after the term of this agreement.
- (b) Notwithstanding this clause, **you** authorise **us**, to the extent permitted by law, to collect, retain and use any information about **you** for the purposes of carrying out **our** obligations under this agreement.

11. Non-Solicitation

- (a) During the term of and for 12 months following termination of this agreement, **you** must not solicit, entice or interfere with **our** employees, contractors, suppliers or agents, or cause them to decrease their dealings with **us**.
- (b) If the restrictions set out in clause 11(a) above are judged by a court of law or other relevant tribunal to be unreasonable, then the parties agree that the restrictions in clause 11(a) will remain operative for six months only.

12. Our Warranties

Except as provided in this agreement, and other than any non-excludable warranty implied by law, **we** disclaim to the fullest extent permitted by law all

express and implied warranties, representations, guarantees and conditions under statute or general law including, without limitation any warranties:

- (a) as to merchantability, description, quality, suitability or fitness of the **goods** for any purpose; or ;
- (b) as to design, assembly, installation, materials or workmanship; or
- (c) that our server is free of viruses; or
- (d) that the **services** or **managed services** will operate uninterrupted or are error-free or be compatible with all equipment, browser and operating systems.

13. Indemnities

You release and indemnify **us** against all liability for:

- (a) any action, proceeding, claim, demand or prosecution arising from or in connection with:
 - (i) any hardware or software failure, interruption to **services**, loss of data or any other loss or damage of any kind including special or consequential damages, suffered by **you** or any third party, whether directly or indirectly arising as a result of **your** use of the **goods**, **services** or **managed services**;
 - (ii) **intellectual property** infringement or misuse of confidential information by a third party in respect of any materials that **you** provide to **us**, or any duplication or installation of third party software by **you**;
 - (iii) Any delays to, interruptions of or cessation of the **managed services**; or
 - (iv) **Your** access to or inability to access any part of the **managed services**;
 - (v) any failure of **your** backup system, whether or not the backup system was supplied by **us**, or **due** to a previous intervention by a third party;
- (b) any loss, damage, claims, costs and expenses suffered by **us** (directly or indirectly) in respect of:
 - (i) Any action that **we** take or costs that **we** incur due to **your** default including **your** failure to make any payments owing; and
 - (ii) Any costs that **we** incur due to **your** failure to accept the **goods** at the time of delivery;
 - (iii) **Our** termination of this agreement pursuant to clause 16; and

- (iv) **Your** use or misuse of the **services** or the **managed services**;
- (v) indirect or consequential damage including loss of profits and legal costs on a full solicitor and own client basis.

14. Limitation of Liability

- (a) To the fullest extent permitted by law, **we** shall not be liable to **you** for the following:
 - (i) any direct or indirect loss, damage or personal injury whatsoever, resulting from or caused by in any way by the **goods**, the **services** or the **managed services** (including special, indirect or consequential damages, which damages will be deemed to include loss or revenue, loss or profit and opportunity loss), even if **we** have been advised of the possibility of such damages or injury and whether caused by **our** negligence or through any other cause;
 - (ii) Any loss or damage caused by **our** inability to complete a **service** or the **managed services** within the required time due to the possible existence of conflicts arising between **our services** and any products or services supplied to **you** by a third party;
 - (iii) Any defects in the **goods**, the **services** or the **managed services** arising from incorrect or negligent handling, disregard of operating and/or maintenance instructions, overloading or unsuitable operating conditions, defective civil or building work, faulty erection or installation (unless carried out by **us**), unauthorized repairs or alterations; or
 - (iv) Any acts of God, act of war, strike, industrial action, fire, flood, drought, storm, outages or other act beyond **our** reasonable control that affect **our** performance of obligations under this agreement.
- (b) **We** shall also be under no liability whatsoever in respect of:
 - (i) **Goods** that are not manufactured by **us**, and the warranty of the manufacturer of those **goods** is accepted by **you** as the only warranty given to **you** in respect of the **goods**.
 - (ii) Second Hand Goods. **You** acknowledge that **you** have had the full opportunity to conduct a thorough examination of the second hand goods prior to their delivery and **we** give no warranty, condition, description or representation in relation to the second hand goods, either expressly or impliedly by this agreement.

14.2 To the fullest extent allowable at law, **our** liability under this agreement for any defect in **goods** manufactured by **us**, the **services** provided by **us** or the **managed services** under this agreement, is limited to (at **our** election):

- (a) for **goods**, the replacement of the **goods** or the repayment of the price **you** paid **us** for those **goods**; or
- (b) for **services** or the **managed services**, provision of further **services** or provision **managed services** at no charge to rectify any defect, payment of the cost of rectifying any defect, or a refund of the amount **you** paid **us** for those **services**.

15. Security

You agree that, on **your** default under this agreement, if requested by **us**, **you** will:

- (a) charge in **our** favour all beneficial interests (freehold and leasehold) in real estate held now or in the future by **you** as security for payment of all and any moneys payable by **you** to **us**; and
- (b) execute a mortgage or other instrument of security over any property referred to in 22.3(a) in the form that **we** request; and
- (c) permit **us** to lodge a caveat or other security over any property referred to in 22.3(a).

16. Termination

- (a) Except for the **managed services** service:
 - (i) **we** may terminate this agreement by giving **you** seven (7) days written notice.
 - (ii) **you** may terminate this agreement by giving **us** thirty (30) days written notice.
- (b) **You** may cancel your **managed services** at any time on giving thirty (30) days written notice to **us**. **We** may also cancel **your managed services** at any time on giving thirty (30) days written notice to **you**.
- (c) On the occurrence of any of the following, **we** may, at our discretion immediately terminate this agreement:
 - (i) **you** are in breach of any of **your** obligations under this agreement, including any item relating to payment;
 - (ii) **we** are unable to charge any owed fees to **your** credit card due to inaccurate or outdated credit card information;
 - (iii) in **our** opinion, **you** will be unable to make payments when they fall due;

- (iv) **you** do anything which might materially prejudice interests in **intellectual property** subsisting in subject matter delivered pursuant to these terms and conditions;
- (v) **b** become insolvent, **you** propose to or enter into an arrangement with **your** creditors or make an assignment for the benefit of **your** creditors, or a receiver, manager, liquidator or other is appointed in your respect.

17. Consequences of Termination:

On termination of this agreement for any reason, then in addition to any other rights **we** may have:

- (a) **We** will cancel any of **your** orders or part orders remaining unperformed; and
- (b) all amounts owing by **you** will immediately become due and payable; and
- (c) **We** may issue an invoice for any **goods, services or managed services** not previously invoiced; and
- (d) Other than provided by this agreement, or unless **we** agree otherwise in writing, **we** will not refund any fees paid by **you**; and
- (e) **We** retain a lien over and may retain all data belonging to **you**, and deny **you** both physical and remote access to **your** data until all outstanding invoices are paid (including any invoice issued under this clause); and
- (f) **You** must provide **us** with physical and remote access to uninstall any software installed in your equipment under this agreement.
- (g) The provisions in clause 6, 7.3, 7.5, 7.6, 9, 10, 11, 12, 13, 14 and 15 continue after the termination of this agreement.

18. Miscellaneous

- (a) If any provision of this Agreement is ruled by a court to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision of this Agreement.
- (b) The laws of Queensland apply to this Agreement and the parties submit to the courts of that jurisdiction.
- (c) **Our** delay or failure to enforce any rights in relation to a breach by **you** will not be construed as a waiver of those rights.
- (d) **We** may alter the terms and conditions contained in this agreement at any time by giving thirty (30) days) notice to **you** of the change;