

# Standard Terms & Conditions

General

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# General Terms

## 1. Background

- 1.1. SAU Digital Pty Ltd supply a range of Services and Hardware to Customers.

These General Terms apply to the supply of Goods and/or Services to a Customer and, along with the applicable Specifications and where applicable the Co-Location Terms and Conditions and the Transit Terms and Conditions, constitute the Supply Agreement that governs the supply of Goods and/or Services to the Customer.

## 2. Definitions and Interpretations

### 2.1. Definitions

In this document, unless the contrary intention appears:

- 2.1.1. **SAU** means SAU Digital Pty Ltd ABN 82 650 456.
- 2.1.2. **SAU Data** means data of SAU or any customer of SAU (other than the Customer) which SAU accesses, stores or handles in the course of supplying Services.
- 2.1.3. **SAU Systems** means Systems owned and operated by SAU.
- 2.1.4. **Acceptable Use Policy** means the SAU Acceptable Use Policy which is available at [www.SAUnetworks.com.au/terms-conditions](http://www.SAUnetworks.com.au/terms-conditions)
- 2.1.5. **Associated Entity** means, in relation to an entity, a second entity that is an associate of the first entity by application of section 50AAA of the Corporations Act.
- 2.1.6. **Background IP** means Intellectual Property Rights that are in existence at the date of the Supply Agreement or are subsequently brought into existence other than as a result of the performance of the Supply Agreement.
- 2.1.7. **Burst Data Rate** means the excess usage of the Customer's IP Transit service in addition to Customer's IP as calculated using 95th percentile and stipulated in detail in the Specifications.
- 2.1.8. **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
- 2.1.9. **Business Hours** means 8.00 am to 5.00 pm on a Business Day unless otherwise stated.
- 2.1.10. **Commencement Date** has the meaning given to it in clause 3.4.
- 2.1.11. **Committed Data Rate** means the minimum committed IP Transit bandwidth described in the Specifications that is being purchased by the Customer from SAU pursuant to the Supply Agreement.
- 2.1.12. **Confidential Information** means information relating to the parties to the Supply Agreement, the Supply Agreement, the negotiations relating to the Supply Agreement and any information disclosed by a party to the Supply Agreement to another party that is confidential in nature, but does not include information that:
- 2.1.12.1. at the date of the Supply Agreement, was generally and publicly available, or subsequently becomes so available other than by breach of any duty or obligation;
- 2.1.12.2. at the time it was disclosed to a party, was in the possession of that party lawfully and without breach of any duty or obligation; or
- 2.1.12.3. has been disclosed to a party and was not generally and publicly available at that date of disclosure, but subsequently, through no act or omission of that party (or any person to whom it disclosed that information), becomes available from another source and is not subject to any duty or obligation as to confidence.
- 2.1.13. Without limiting the foregoing, Confidential Information includes (except where it is not confidential in nature):

- 2.1.13.1. pricing and services offered under the Supply Agreement, including service levels;
  - 2.1.13.2. financial information, projections and forecasts, valuations and financial models;
  - 2.1.13.3. intellectual property (including trade secrets); and
  - 2.1.13.4. information about business plans, market positioning, customers and suppliers.
- 2.1.14. **Corporations Act** means the Corporations Act 2001 (Cth).
  - 2.1.15. **Customer** means a person or entity to which SAU supplies Goods and/or Services, and where relevant includes entities in the Customer Group.
  - 2.1.16. **Customer Application** means any script, software, website or application developed or used by the Customer including all modifications and enhancements to them which are hosted or supported by SAU as part of the Services.
  - 2.1.17. **Customer Content** means custom code, text, images, audio, video, data, media content, features, databases, information, programs, files and other content created, generated, uploaded, stored, transmitted or otherwise used by the Customer or an End User in or through the Customer Applications or in connection with the Services.
  - 2.1.18. **Customer Data** means data of the Customer that SAU accesses, stores or handles in the course of supplying Services.
  - 2.1.19. **Customer Equipment** means equipment and Systems owned or operated by the Customer which are necessary for the supply to the Customer of the Goods and/or Services.
  - 2.1.20. **Customer Group** means the Customer and all Associated Entities of the Customer.
  - 2.1.21. **Customer Materials** means Customer Content and other materials uploaded, stored, transmitted or otherwise used by the Customer or an End User in connection with the Services.
  - 2.1.22. **Customer Systems** means Systems owned or operated by the Customer.
  - 2.1.23. **Data Security Breach** means unauthorised access to:
    - 2.1.23.1. SAU Systems or SAU Data;
    - 2.1.23.2. Customer Systems or Customer Data while the Customer Systems or Customer Data are hosted on SAU Systems; or
    - 2.1.23.3. Customer Applications while the Customer Applications are managed by SAU.
  - 2.1.24. **Default Rate** means the BBSW Rate plus 4% per annum where BBSW Rate means the mid-point Bank Bill Swap Rate published by ASX for \$1m on the date for which the rate is to be calculated. If ASX ceases to publish BBSW it means an alternative and substitute rate selected by SAU acting reasonably.
  - 2.1.25. **Discloser** means a party to the Supply Agreement who discloses Confidential Information to another party, or whose Confidential Information is disclosed to another party.
  - 2.1.26. **Dispute** means a dispute arising under or in connection with the Supply Agreement.
  - 2.1.27. **End User** means an end user of the Customer Applications or the Services, and includes any of the Customer's customers or Personnel who access or use the Customer Applications or the Services.
  - 2.1.28. **Expenses** means any out-of-pocket expenses reasonably incurred by SAU in performing its obligations under the Supply Agreement, including those specified in the Supply Agreement and includes the expenses referred to in these General Terms.
  - 2.1.29. **Expiry Date** means the day which is the last day of the Term of the Supply Agreement, as set out in the Specifications or as otherwise agreed between SAU and the Customer.
  - 2.1.30. **Fees** means the fees and charges specified, set out or referred to in, or calculated in accordance with, the Supply Agreement, any other fees that SAU may apply ad-hoc, or any ancillary charges including remote hands fees, out-of-hours or incorrect call out fees, administration charges for moves, adds or changes, or other charges notified by SAU from time to time.
  - 2.1.31. **Force Majeure Event** has the meaning given to it in clause 18.1.
  - 2.1.32. **Foreground IP** means Intellectual Property Rights which are created in the course of performing the Supply Agreement.
  - 2.1.33. **General Terms** means these General Terms and Conditions.
  - 2.1.34. **Goods** means Hardware and other goods supplied or to be supplied by SAU to the Customer, where "goods" has its ordinary meaning but includes those things included in the definition of "goods" in section 4 of the Competition and Consumer Act 2010 (Cth).

- 2.1.35. **Government Authority** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, council (municipal or otherwise), commission, authority, tribunal, agency or entity.
- 2.1.36. **Hardware** means devices and physical components required for information and communications technology systems to operate.
- 2.1.37. **Indemnified Persons** means SAU, each Related Body Corporate of SAU and the Personnel of SAU and each Related Body Corporate of SAU.
- 2.1.38. **Insolvency Event** in relation to a person means:
- 2.1.38.1. a receiver, receiver and manager, trustee, administrator, controller (as defined in the Corporations Act), liquidator, provisional liquidator or similar official is appointed in respect of the person;
  - 2.1.38.2. an application is presented against it (that is not discharged or withdrawn within 14 days of its presentation), or an order made, or a resolution is passed by its members or creditors for its winding up;
  - 2.1.38.3. any execution or other process of any court or authority for an amount in excess of \$50,000 is issued against or levied upon any of its assets and that execution or process is not discharged or withdrawn within 60 days of the date of issue;
  - 2.1.38.4. the person suspends payment of its debts generally or enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
  - 2.1.38.5. the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Corporations Act;
  - 2.1.38.6. the person ceases to carry on business or threatens to cease to carry on business;
  - 2.1.38.7. an application made against it for a sequestration order, or a controlling trustee is appointed to it under the Bankruptcy Act 1966 (Cth), or a meeting of its creditors approves a composition, compromise or arrangement under Part 10 of the Bankruptcy Act 1966 (Cth), or is bankrupt, as defined under the Bankruptcy Act 1966 (Cth); or
  - 2.1.38.8. an event happens analogous to an event specified above to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had under any one or more of the clauses above if the laws of Australia had applied.
- 2.1.39. **Intellectual Property Rights** includes all rights, whether registered or unregistered, in respect of copyright, trade marks, domain names, patents, designs, circuit layouts, plant varieties, trade secrets and confidential information and such other rights that generally fall with this definition, whether arising under statute or otherwise.
- 2.1.40. **Internet** means the global system of interconnected computer networks that use the Internet protocol suite (TCP/IP) to link devices.
- 2.1.41. **IP Transit and Customer's IP Transit** means a managed Internet protocol service, enabling the Customer and the Customer's End Users to access the Internet to send and receive traffic to and from other points connected to the Internet in accordance with the terms and conditions of the Supply Agreement.
- 2.1.42. **Law** means law or legal requirement, including at common law, in equity, under any statute, regulation or by-law, any condition of any Authorisation, and any decision, directive, guidance, guideline or requirements of any Government Authority.
- 2.1.43. **Layer2 Transport** means an unmanaged Layer 2 tunnelling service, connecting 2 point-to-point nodes enabling the Customer transparent connectivity to transmit IP traffic between the 2 designated points in accordance with the terms and conditions of the Supply Agreement.
- 2.1.44. **Loss** means any and all loss or damage of any kind whatsoever arising out of contract, tort (including negligence), under statute or any other basis at law, in equity or otherwise arising from or related in any way to this document or its subject matter.
- 2.1.45. **Network** means the telecommunications network that SAU uses to provide the Services to the Customer and to other customers (including any network to which SAU interconnects).
- 2.1.46. **Network Operator** means any entity with whom SAU has entered into a peering or transit agreement (directly or indirectly) providing for the passing of customer generated or customer-destined communications between SAU and that entity.
- 2.1.47. **Non-Excludable Term** has the meaning given to it in clause 16.2.2.

- 2.1.48. **Notes** means notes relating to, summaries and copies of and extracts from, and advice or analysis based upon or incorporating, any Confidential Information whether in documentary, visual, machine readable or other form.
- 2.1.49. **Personal Information** has the meaning given to it in the Privacy Act 1988 (Cth).
- 2.1.50. **Personnel** means in relation to a person or entity, the person or entity's officers, employees, contractors and agents.
- 2.1.51. **Proposal** means a proposal or quote given to a Customer by SAU.
- 2.1.52. **Quote** means a quote or proposal given to a Customer by SAU.
- 2.1.53. **Recipient** means a party to the Supply Agreement to whom Confidential Information is disclosed by another party.
- 2.1.54. **Related Body Corporate** has the meaning given in section 9 of the Corporations Act.
- 2.1.55. **Required Service Change** has the meaning given to in in clause 7.3.1.
- 2.1.56. **Scope of Services** means the scope of services specified in the Supply Agreement.
- 2.1.57. **SDP** means a specified service delivery point for the Services, located at the network terminating unit or equivalent SAU demarcation point at the Customer's site, as described in the Specifications.
- 2.1.58. **Services** means services supplied or to be supplied by SAU to the Customer, where "services" has its ordinary meaning but includes those things included in the definition of "services" in section 4 of the Competition and Consumer Act 2010 (Cth).
- 2.1.59. **Services IP** means all Intellectual Property Rights subsisting in, relating to or arising out of the Services.
- 2.1.60. **Service Levels and SLAs** means the service levels (if any) specified in the Supply Agreement.
- 2.1.61. **Service Order Form** means a form completed or otherwise authorised by the Customer describing the Services, the site at which the Services are to be provided, the Fees and any additional terms or special conditions applying to the Services (including any terms contained in any marketing materials provided to the Customer which relate to the Services).
- 2.1.62. **Software** means the computer information technology programs, applications and functions required for information and communications technology systems to operate.
- 2.1.63. **Specifications** means the specifications of the Goods and / or Services to be supplied by SAU to the Customer under the Supply Agreement including quantities, pricing and the Term of the Supply Agreement, and any special conditions applicable to the supply of Goods or Services that are contained in a Quote, Proposal or Service Order Form.
- 2.1.64. **Subsidiary** has the meaning given in section 9 of the Corporations Act.
- 2.1.65. **Supply Agreement** means an agreement between SAU and a Customer for the supply of Goods and/or Services, as further described in clause 3.2.
- 2.1.66. **Systems** means telecommunications systems, computer systems, networks, computer programs and databases, and the tangible media on which they are recorded and their supporting documentation.
- 2.1.67. **Telecommunications Service Provider** means a provider of telecommunications services to the public.
- 2.1.68. **Term and Contract Term** means the term of the Supply Agreement and includes any extension of that term.
- 2.1.69. **Third Party** means a person other than SAU, its Associated Entities and their respective Personnel.
- 2.1.70. **Third Party Tools** has the meaning given to it in clause 7.3.1.
- 2.1.71. **Transit Terms and Conditions** means the SAU Transit Terms and Conditions which are available at [www.saudigital.com.au/terms-conditions/](http://www.saudigital.com.au/terms-conditions/).

## 2.2. Interpretation

In this document, unless the contrary intention appears:

- 2.2.1. headings to clauses are for convenience only and do not affect interpretation;
- 2.2.2. any reference to a clause, background recital, schedule or annexure is a reference to a clause of, recital in, schedule to or annexure to, this document;
- 2.2.3. if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 2.2.4. the words "include", "including", "for example", "such as" or cognate expressions are to be construed without limitation;
- 2.2.5. a reference to a document (including this document) or to a statute, ordinance, code or other law includes a regulation, rule or other statutory instrument issued under it and consolidations, amendments, re-enactments or replacements of any of them;

- 2.2.6. an agreement, representation or warranty by two or more persons, binds them jointly and each of them individually;
- 2.2.7. an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- 2.2.8. the singular includes the plural and vice versa;
- 2.2.9. a reference to a gender includes all genders;
- 2.2.10. a reference to a party to the Supply Agreement includes where relevant Personnel of the party; and
- 2.2.11. where any obligation of this document is to be performed on a day other than a Business Day, that obligation is to be performed on the next Business Day.

### 2.3. Rights

Any indemnity or other right granted to SAU under this document is also granted to each other Indemnified Person, and SAU holds those rights for them and may enforce them on their behalf.

### 2.4. Customer Personnel

The Customer must take all reasonable steps to ensure that its Personnel comply with the Supply Agreement as if they were the Customer.

### 2.5. Changes to these Terms

SAU may change or modify these General Terms, the Co-Location Terms and Conditions, the Transit Terms and Conditions or the Acceptable Use Policy at any time and the changes will be effective when posted on SAU's web site. The Customer will be deemed to have accepted any changed or additional terms if the Customer continues to use the Services after such changes are posted on SAU's website. The Customer should review these General Terms, the Co-Location Terms and Conditions, the Transit Terms and Conditions and the Acceptable Use Policy from time to time to ensure that they are aware of changes.

## 3. Supply Agreement

### 3.1. Precedence of Supply Agreement

The terms and conditions under which SAU will supply, and the Customer will acquire, Goods and/or Services are set out in the Supply Agreement, to the exclusion of all other contracts arrangements or understandings.

### 3.2. Structure and overview

The terms and conditions of the Supply Agreement are set out in the following documents:

- 3.2.1. the Specifications;
- 3.2.2. where applicable, the Co-Location Terms and Conditions, or the Transit Terms and Conditions; these General Terms; and
- 3.2.3. the Acceptable Use Policy.

### 3.3. Order of precedence

The order of precedence of the documents making up the Supply Agreement is as set out in clause 3.2. Unless the contrary intention appears from the relevant document then, in the event of any inconsistency or conflict, the provisions of the document higher in the list will prevail and a conflicting provision in the document lower in the list will be read down or severed, to the extent necessary to resolve the conflict.

### 3.4. Commencement Date

In this document Commencement Date means:

- 3.4.1. if the Specifications include a date as the Commencement Date, that date;
- 3.4.2. if the Specifications do not include a date as the Commencement Date, but provide for acceptance testing, acceptance or a similar process, the date at which that process is completed; and

if the Specifications do not include a date as the Commencement Date, and do not provide for acceptance testing, acceptance or a similar process, the date on which SAU commences the supply of Services or, if SAU is required to install Goods or Services prior to the commencement of the supply of Services, the day on which SAU has completed installation and is ready to supply the Services.

## 4. Supply and Standards of Supply

### 4.1. Supply to the Customer

SAU agrees to supply Goods and/or Services to the Customer in accordance with the Supply Agreement and:

- 4.1.1. in a timely, efficient, proper and workmanlike manner, using reasonable care, skill and diligence;
- 4.1.2. using suitably skilled and experienced Personnel; and
- 4.1.3. in compliance with any Laws applicable to the supply of the Goods and/or Services.

### 4.2. Resupply

Unless otherwise agreed by SAU, the Customer may not resell or resupply Goods or Services without first obtaining the written consent of SAU (which is not to be unreasonably withheld).

### 4.3. Service Levels / SLAs

Without limiting clause 4.1, SAU agrees to supply Services so as to meet or exceed the Service Levels. SAU and the Customer agree that any rebates or service credits paid or payable in respect of a failure to meet a Service Level are a genuine and reasonable pre-estimate of the reduction in value of the Services that would arise from SAU's failure to meet the Service Level, and are the Customer's sole and exclusive remedy, and SAU's sole and exclusive liability, in relation to that failure to meet the Service Level.

### 4.4. Provisioning

SAU will commence the supply of Goods and/or Services on the later of the date specified for activation in the Supply Agreement and the date SAU is able to commence supply. SAU is not liable for any loss arising from delays in provisioning. The Customer must take all reasonable steps to assist with provisioning including those steps referred to in clause 6.

## 5. Equipment

### 5.1. SAU Equipment

If required for the supply of Services, SAU will supply to the Customer or locate on the Customer's premises SAU Systems and equipment (SAU Equipment). The Customer is responsible for safeguarding SAU Equipment and must compensate SAU for any loss or damage to SAU Equipment (fair wear and tear excepted), except to the extent SAU or its Personnel cause or contribute to such loss or damage.

If the Customer becomes aware of any loss of, damage to, claim over, or malfunction of the SAU Equipment, the Customer must promptly notify SAU. SAU may, at any time and at SAU's cost, modify or replace SAU Equipment provided there is no material adverse impact on the supply of the Services.



The Customer must:

- 5.1.1. provide an adequate power supply and a suitable physical environment in accordance with SAU's reasonable directions;
- 5.1.2. only permit SAU Equipment to be repaired, serviced, moved or disconnected by SAU Personnel unless otherwise permitted by SAU in writing;
- 5.1.3. not remove or obscure any identification marks on SAU Equipment;
- 5.1.4. take reasonable steps to make title to SAU Equipment clear to all persons including by not removing labels identifying SAU Equipment as SAU Equipment;
- 5.1.5. comply with all reasonable instructions given by SAU;
- 5.1.6. protect SAU ownership of the SAU Equipment;
- 5.1.7. not do anything or allow anything to be done which might affect SAU's ownership of the SAU Equipment; and
- 5.1.8. permit and take all steps required to enable SAU to remove SAU Equipment and SAU Systems from the Customer's premises on termination of the Supply Agreement.

## 5.2. Customer Equipment

The Customer is responsible for the installation of any Customer Equipment and connections to SAU Systems necessary for SAU to supply the Services. The Customer must ensure that Customer Equipment does not have a detrimental effect on SAU Systems and complies with all applicable Laws.

SAU may, without liability, immediately disconnect all or any of the Customer Equipment if SAU reasonably considers that Customer Equipment may:

- 5.2.1. cause death or personal injury;
- 5.2.2. cause damage to the property of SAU or another person; or
- 5.2.3. materially impair the operation of SAU Systems,

provided that, where and to the extent that it is reasonable for SAU to do so, SAU will notify the Customer before disconnection and ensure that the Customer has sufficient time to make alternative arrangements.

Where Customer Equipment is located at a place under the control of the Customer, the Customer must promptly comply with a written request from SAU to disconnect Customer Equipment in accordance with this clause.

## 6. CUSTOMER OBLIGATIONS

### 6.1. Assistance with provisioning

The Customer must take all reasonable steps to assist with provisioning including:

- 6.1.1. ensuring that it is possible and safe for SAU Personnel to obtain necessary access to a site;
- 6.1.2. ensuring that relevant and appropriately authorised Customer Personnel are available to give SAU Personnel timely guidance and instructions;
- 6.1.3. ensuring that Customer Equipment is ready at the appropriate times; and
- 6.1.4. following SAU's reasonable instructions in connection with making any modifications to Customer Equipment reasonably necessary to enable SAU to supply the Goods and/or Services.

### 6.2. Safeguards and security

The Customer must maintain adequate operational and technical safeguards and security procedures in relation to the Customer's and End Users' use of the Services, Customer Applications and Customer Content, and must comply with any technical documentation, user manuals or other documentation provided by SAU in relation to the Services.

### 6.3. Insurance

The Customer must at all times obtain and maintain in force insurance to a prudent level of cover and with a reputable insurer for public liability as well as insurance against loss or damage to SAU Equipment, while it is under the Customer's control or on the Customer's premises.

### 6.4. SAU instructions

The Customer must comply with all reasonable instructions given by SAU with respect to the use of the Services, and must ensure that each person that uses the Services in connection with the provision of SAU's Services to the Customer also meets the Customer's responsibilities when using the Services.

### 6.5. Compliance

The Customer must comply with all applicable Laws and must obtain and maintain any authorisation, permission, licence, waiver, registration or consent from any person including any Government Authority necessary or desirable for the legal and efficient supply of the Goods and/or Services by SAU.

### 6.6. Use of the Services

6.6.1. The Customer is responsible for any use of the Services by the Customer or any third party, whether authorised by the Customer or not.

6.6.2. The Customer must comply with, and ensure that End Users comply with the Acceptable Use Policy.

6.6.3. The Customer must not use or permit the use of the Service:

6.6.3.1. in connection with the commission of an offence, or the contravention of any Law;

6.6.3.2. in connection with the transmission of a computer virus, malware or similar;

6.6.3.3. in connection with the transmission of any defamatory, offensive, indecent, abusive, spam or menacing material;

6.6.3.4. to engage in any activities that may expose SAU or a Third Party to the risk of legal or administrative action, including prosecution under any Law; or

6.6.3.5. in a manner that might interfere with the operation of any IP address, Equipment, or Network of any person.

### 6.7. Access and passwords

The Customer must control access to and use of logins and passwords by the Customer's Personnel and End Users to ensure their compliance with the Supply Agreement.

### 6.8. Information and reporting

The Customer must supply SAU with any information it reasonably requests

6.8.1. for credit management purposes;

6.8.2. to enable SAU to monitor and help reduce the incidence of fraud;

6.8.3. to assist SAU in complying with its regulatory obligations and its obligations to report on compliance with those obligations;

6.8.4. to assess whether or not the Customer has complied, is complying and will be able to continue to comply with all obligations of the Customer under the Supply Agreement;

6.8.5. to assist SAU in preventing and responding to a Data Security Breach; and

6.8.6. for other purposes reasonably required by SAU from time to time in connection with the Supply Agreement.

#### 6.9. Remote access by SAU

The Customer must:

6.9.1. permit and facilitate remote access by SAU's engineers which may be required as part of the Services; and

6.9.2. provide reasonable assistance in relation to SAU's investigation of Service interruptions, outages, and security issues.

#### 6.10. Site access

The Customer grants to SAU and SAU Personnel a right to enter sites and premises owned or occupied by the Customer and Associated Entities of the Customer in order to comply with SAU's obligations or enforce SAU's rights under the Supply Agreement. SAU agrees to endeavour wherever practicable to exercise its right of entry during business hours and in cooperation with the Customer but is not obliged to do so if it considers it impracticable or contrary to its interests to do so.

#### 6.11. Increased cost

The Customer must pay SAU any additional costs reasonably incurred by SAU as a result of the Customer failing to comply with this clause 6.

#### 6.12. Network operation and other suppliers

SAU has certain obligations towards other Network Operators, agents and suppliers. The Customer acknowledges that those persons (and their officers, employees, contractors and agents) will not be liable to the Customer or anyone else for any claims, costs, damages, losses or other liabilities of any kind arising in any way from the Services that SAU provide or from the Customer's use of those Services and SAU's network, including (without limitation) the Customer's access to and use of any provider's site or Network Operator's networks. For the purposes of this clause 6.12, and for the avoidance of doubt, SAU is not an agent, supplier or contractor of SAU's Network Operators, agents and suppliers.

## 7. Service Changes

#### 7.1. Customer Representative

The Customer warrants to SAU that the person specified in the Order Form or otherwise in the Supply Agreement as 'Customer Representative' has the authority of the Customer to negotiate and agree with SAU any changes to the Supply Agreement.

#### 7.2. Changes generally

If SAU notifies the Customer or the Customer notifies SAU that it wishes to make a change to the Services (other than a change of the kind contemplated by clause 7.2), or add to them, then:

7.2.1. SAU will prepare a proposal, setting out how it would implement the change, the costs and timing of implementation and any impact on other aspects of the Services and the Supply Agreement;

7.2.2. the parties will negotiate, in good faith, the terms of SAU's proposal;

7.2.3. if the parties are unable to agree on the terms of SAU's proposal then either party may refer the matter as a Dispute and the procedures set out in clause 25 will apply; and

7.2.4. upon the parties reaching agreement on, and executing a document outlining the details of the change, SAU will implement the change.

### 7.3. Required Service Changes

- 7.3.1. The Customer acknowledges that SAU relies on a range of third-party systems, applications, tools, technologies and services (**Third Party Tools**) in order to deliver the Services and that from time to time there may be changes to the Third Party Tools, or certain Third Party Tools may cease to be provided or supported by the relevant third-party owners. If that occurs SAU may consider it necessary to make a change to the manner in which the Services are supplied to the Customer or via the Customer to End Users (**Required Service Change**).
- 7.3.2. If SAU considers it necessary to do so it may give the Customer notice of the Required Service Change and the change will take effect from the date specified in the notice. If SAU makes a Required Service Change it must give the Customer as much prior notice as is reasonably practicable in the circumstances, use all reasonable endeavours to maintain the same features, functionality and performance of the Services following the Required Service Change and provide reasonable assistance to enable the Customer to modify the Customer Applications and/or Customer Content as necessary to accommodate the Required Service Change.

## 8. Fees and Invoicing

### 8.1. Fees and Expenses

The Customer must pay:

- 8.1.1. the applicable Fees for Services supplied by SAU; and
- 8.1.2. the Expenses incurred by SAU in supplying the Services to the Customer except those expenses which have been taken into account in calculating the Fees payable by the Customer.

### 8.2. Periodic invoicing

Unless otherwise stated in the Specifications (for example where it is agreed that SAU will invoice on a project basis), SAU will invoice the Customer for the supply of Goods and Services on a periodic basis. Periodic invoices will be issued monthly commencing on the Commencement Date unless otherwise stated in the Specifications.

### 8.3. Invoices and payment

- 8.3.1. SAU will from time to time issue invoices to the Customer in respect of the Fees and Expenses. Each invoice must be a valid tax invoice. Unless specified otherwise in the Supply Agreement, the Customer must pay each invoice within 14 days of its date.
- 8.3.2. The Customer must pay money owed or payable to SAU in cleared funds without any set-off, abatement, counterclaim or deduction.

### 8.4. Records and logging

There is a presumption that records held and logging procedures adopted by SAU or any third party provider with which SAU is interconnected are correct and that the Fees and Expenses have been incurred and are payable by the Customer in the absence of manifest error.

### 8.5. Account access

SAU may require the Customer to provide a Personal Identification Number (PIN) to SAU which will enable SAU to verify the identity of those who are authorised to have access to the Customer's account details and to make changes to Customer's account. The Customer is entirely responsible for maintaining the security of its PIN. SAU is entitled to rely on the provision the Customer's PIN without further enquiry, as evidence of authority to access the Customer's account details and to make changes to the Customer's account.

## 8.6. Billing disputes

If the Customer disputes the validity of an invoice:

- 8.6.1. the Customer must notify SAU in writing of the reasons for the dispute within 10 Business Days of the date of the invoice;
- 8.6.2. the Customer must pay the full amount of the Fees and Expenses specified in the disputed Invoice unless the Customer has notified SAU in writing of the reasons for the dispute by the due date of the Invoice and must pay the undisputed portion of the Fees and Expenses in the invoice by the due date of the invoice;
- 8.6.3. SAU will endeavour to give the Customer a determination on the dispute within a reasonable time of receiving the Customer's notice of dispute and SAU shall keep the Customer informed as to the expected timeframe for finalisation;
- 8.6.4. where the determination is that a disputed amount is payable, the Customer must pay the amounts within 10 Business Days of receiving notice of the determination; and
- 8.6.5. if the Customer disagrees with the determination, the Customer will be entitled to engage the dispute resolution mechanisms set out in clause 25.

## 8.7. Goods and Services Tax (GST)

For the purposes of this clause 8.7 "GST" has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (**GST Act**) and the related imposition Acts of the Commonwealth. Expressions set out in italics bear the same meaning as those expressions in the GST Act. To the extent that a party makes a taxable supply under or in connection with the Supply Agreement, except where express provision is made to the contrary, the consideration payable by a party under or in connection with the Supply Agreement represents the value of the taxable supply for which payment is to be made and on which GST is to be calculated. If a party makes a taxable supply under or in connection with the Supply Agreement for a consideration, which, under this clause represents its value, then the party liable to pay for the taxable supply must also pay at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

## 8.8. Interest on overdue amounts

The Customer must pay SAU interest on overdue amounts at the Default Rate.

## 8.9. Collection costs

SAU may charge the Customer for reasonable costs incurred by SAU in recovering money owed to it by the Customer (including collection agents' fees).

## 8.10. Suspension or termination for non-payment

SAU may at its option, and without prejudice to any other remedy, at any time after payment of any Fees or Expenses has become due, temporarily suspend or terminate the supply of the Goods or Services. If SAU becomes entitled to terminate the supply of Goods or Services or this Agreement for any reason, any sums then due to SAU by the Customer will immediately become payable in full.

SAU's normal process in relation to overdue amounts is as follows:

- 8.10.1. On becoming aware that an amount is overdue – SAU will request payment and advise that the supply of Goods and/or Services may be suspended if payment is not received within 7 days;
- 8.10.2. If payment is not received within 7 days - SAU will again request payment and advise that the supply of Goods and/or Services may be suspended if payment is not received within a specified period;
- 8.10.3. If payment is not received within the period specified in clause 8.10.2, SAU will send a suspension notice and suspend supply of the Goods and/or Services.

SAU is not obliged to follow the procedure set out in clauses 8.10.1, 8.10.2 and 8.10.3 and will normally not do so in the case of Customers who have previously not paid invoices on time.

#### 8.11. Reconnection charges

The Customer must pay any reconnection charge reasonably imposed by SAU for lifting a suspension of the supply of Goods or Services under clause 8.10.

#### 8.12. Increase in costs

SAU may at any time increase the Fees if the cost of it supplying Goods and/or Services increases for any reason during the Term, including as a result of an increase in fees charged in relation to Third Party Tools, or to reflect increases in market price of equivalent goods or services. If SAU increases the Fees in accordance with this clause, it will provide the Customer with 30 days' notice of the increase.

## 9. Credit

### 9.1. Provision of credit

SAU may in its absolute discretion agree to supply Goods and/or Services on credit terms. SAU may at any time without liability undertake an assessment of the financial capability of a Customer and following that assessment may withdraw the provision of credit to the Customer and / or cease the supply of Goods and/or Services to the Customer. The Customer must provide such information regarding its financial capability as SAU reasonably requests.

### 9.2. Review of credit

SAU may, from time to time, review a Customer's creditworthiness. In doing so, SAU may seek from the Customer or an independent person such as a credit reporting agency or credit provider information or advice to assist in the creditworthiness review.

The Customer must cooperate with the review by:

- 9.2.1. providing to SAU any information (including a completed SAU credit application form) SAU reasonably requires to conduct the review; and
- 9.2.2. giving to SAU permission to communicate with credit reference associations about the Customer's creditworthiness (which the customer does by entering into the Supply Agreement).

The information sought in a credit review can include any information reasonably required by SAU about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive under law.

The Customer warrants that all material information that it provides to SAU in any creditworthiness review will provide a true and fair view of the Customer's financial position at the time it is provided, and that all other information is accurate and complete.

The Customer is entitled to see and to correct any credit information that SAU holds about the Customer.

### 9.3. Actions following review

Following a creditworthiness review of the Customer which may occur at any time before or during the Term of a Supply Agreement SAU may give to the Customer a written notice specifying a credit limit and/or the security that the Customer is required to give to SAU, which shall be in a form and amount that is no more than reasonably required. If the Customer fails to provide the security required by SAU within a reasonable time or exceeds the nominated Credit Limit, SAU may suspend the supply of Goods and/or Services.

## 10. Term of the Supply Agreement

### 10.1. Commencement and Term

The Term of the Supply Agreement commences on the Commencement Date and continues until the earlier of the Expiry Date and the date that the Supply Agreement is terminated.

### 10.2. Extension of the Term by agreement

SAU and the Customer may vary or extend the Term of the Supply Agreement at any time by agreement in writing.

### 10.3. Extension of Term for the supply of Services

Unless specified otherwise in the Supply Agreement or agreed in writing not less than 30 days before the Expiry Date of the Term or any extension of the Term (**Further Term**) either party may give notice to the other party stating it will not renew the Term or that the Term will be extended on a monthly basis. If the Customer gives notice stating that the Term is to be extended on a monthly basis, the Fees will automatically be increased by 15% unless otherwise agreed. If neither party gives such a notice the Term will automatically be renewed for a Further Term of 12 months, and SAU will continue to supply the Services during this period. The Customer may terminate the Further Term of the Supply Agreement, as so extended, at any time by giving SAU not less than 3 months' notice of termination.

## 11. Suspension of Services

### 11.1. Suspension or restriction

Without limiting any of SAU's other rights or remedies, whether under the Supply Agreement or otherwise, SAU may suspend or restrict any or all of the Services at any time, without liability to SAU if:

- 11.1.1. SAU considers it necessary to undertake emergency maintenance of SAU's Systems or scheduled maintenance of which the Customer has been provided reasonable advance notice;
- 11.1.2. SAU is required to do so by Law;
- 11.1.3. SAU or the Customer is affected by a Force Majeure Event;
- 11.1.4. an Insolvency Event occurs in relation to the Customer;
- 11.1.5. a Data Security Breach occurs or may occur if SAU does not suspend or restore the supply of Services;
- 11.1.6. the Customer or an End User has breached the terms of the Supply Agreement, including any provision of the Acceptable Use Policy, and that breach is incapable of remedy or has not been promptly remedied by the Customer or any End User after receiving a notice from SAU requiring it to do so;
- 11.1.7. the Customer has not complied with 6.6.3; or
- 11.1.8. SAU reasonably believes that:
  - 11.1.8.1. the use of the Services by the Customer or an End User poses a security risk to, or may adversely affect, the Services, either party's Systems, or any of SAU's other customers;
  - 11.1.8.2. the Customer, or an End User, is using the Services in a fraudulent, unlawful, threatening or harassing manner; or
  - 11.1.8.3. the Customer's, or an End User's, continued use of the Services may expose the Customer, SAU or any third party to liability.

### 11.2. Advance notice of suspension

Where practicable, SAU will endeavour to give the Customer reasonable advance notice of any suspension of the Services under clause 11.1. However, SAU is not obliged to give advance warning if it reasonably believes that the circumstances require otherwise (including,

for example, in the event of an emergency or serious breach or misconduct by the Customer or an End User) and SAU may suspend the Services for as long as reasonably necessary to implement the correction or to ensure compliance.

## 12. Termination for Default

### 12.1. Termination for default

Either of SAU or the Customer may terminate the Supply Agreement if:

- 12.1.1. the other party has committed a material breach of the Supply Agreement that is not capable of remedy;
- 12.1.2. the other party has committed a material breach of the Supply Agreement that is capable of remedy, and has failed to remedy that breach within 30 days after the first party gives a notice in writing specifying the breach and requiring the breach to be remedied; or
- 12.1.3. the other party becomes subject to an Insolvency Event.

### 12.2. Termination by SAU for non-payment

In addition to and without limiting its rights under clause 12.1, SAU may terminate the Supply Agreement in accordance with clause 8.10.

## 13. Effect of Termination

### 13.1. Procedures following termination

Upon termination of the Supply Agreement:

- 13.1.1. subject to clause 13.3, SAU will provide reasonable assistance and information requested by the Customer in relation to the transition of the Services to a successor supplier;
- 13.1.2. unless expressly stated otherwise in the Supply Agreement, all the Customer's rights under the Supply Agreement immediately terminate and the Customer must cease and ensure that any End User ceases using the Services other than in consultation with SAU for transition-related activities;
- 13.1.3. if requested by SAU, the Customer must promptly return to SAU or (if directed by SAU) destroy, any of SAU's Confidential Information, and any documents or other materials that record any of the Services IP, which are in the possession, custody or control of the Customer; and
- 13.1.4. the Customer remains responsible for any unpaid Fees, Expenses or other charges and must immediately pay these in full (without any set-off or deduction to SAU).

### 13.2. Charges and expenses in the case of early termination

If the Customer cancels or terminates the Supply Agreement or the supply of Services, or SAU terminates the Supply Agreement or the supply of Services for default, in either case before the end of the Term, or for any other reason the Supply Agreement or the supply of Services is terminated before the end of the Term then SAU may do any one or more of the following:

- 13.2.1. SAU may charge the Customer any applicable early termination charges;
- 13.2.2. SAU may charge the Customer the recurring monthly Fee for the terminated Services multiplied by the number of months or part months remaining in the Term;
- 13.2.3. if SAU has entered into an agreement to acquire services from a third party in order to supply the terminated Services to a Customer, SAU may require the Customer to pay SAU the costs and expenses incurred by SAU in terminating the supply to SAU of those services (including any break fee);



- 13.2.4. if SAU has leased equipment in order to supply the terminated Service to the Customer and the supply of the Service is terminated prior to the expiry of the lease, SAU may require the Customer to pay to SAU an amount equal to the sum of the remaining payments on the lease (or a lease payout amount if that is available).

A statement by SAU as to the applicable early termination charges, the costs and expenses incurred in terminating the supply to SAU of services, the remaining payments on a lease or a lease payout amount or any calculations of the relevant amounts is conclusive in the absence of manifest error.

### 13.3. Supply after termination

Any supply of Services or assistance by SAU after termination of the Supply Agreement will be by mutual agreement between SAU and the Customer. SAU may charge and the Customer must pay SAU a fee reasonably determined by SAU for the supply of such Services or assistance.

## 14. Hosting and Use of Customer Materials

### 14.1. Customer Materials

The Customer warrants and represents that:

- 14.1.1. it has the right to use and to permit SAU to use, store, copy, transmit, secure, transcode, encode, analyse and otherwise handle the Customer Materials for the purposes contemplated by the Supply Agreement; and
- 14.1.2. the Customer Materials do not contain any misleading, deceptive, defamatory, offensive, obscene or otherwise unlawful data or information.

### 14.2. Take Down

SAU reserves the right to routinely monitor the Customer Materials and may at any time, and without liability to the Customer, take down, remove, delete or cease hosting (**Take Down**) any Customer Materials that it reasonably believes may breach the warranty set out in clause 14.1. The Customer acknowledges that, in order for SAU to take such action, it may need to wholly or partially suspend or restrict the Services. Where practicable, SAU will endeavour to give the Customer reasonable advance notice of any Take Down of Customer Materials, unless it reasonably believes that the circumstances require otherwise (including, for example, in the event of an emergency or serious breach or misconduct by the Customer or an End User).

### 14.3. Virus and malware

The Customer must take all reasonable steps to ensure that it does not upload (either intentionally or negligently) any malicious content including but not limited to virus, malware which could infect any Systems of SAU, the Customer or an End User. The Customer agrees that it will not knowingly allow a virus to enter the Internet community by allowing Internet users to download files containing viruses from any of the Customer's Materials and will take all necessary and appropriate steps to ensure that each of the Systems of SAU, the Customer and each End User remains virus free. The Customer agrees to indemnify SAU and hold it harmless from and against all and any Loss incurred by SAU from any breach by the Customer of this clause.

### 14.4. Backup of data

Except as expressly provided in the Supply Agreement:

- 14.4.1. SAU does not have any responsibility for the back up of Customer Data;
- 14.4.2. the Customer is solely responsible for the backup of all Customer Data contained in the Customer Materials or elsewhere;
- and

- 14.4.3. SAU shall not be liable for any Loss arising out of or in connection with any loss of Customer Data by the Customer or an End User which is due to a failure to back up such data.

## 15. Service Limitations and Disclaimers

### 15.1. Management Tools

- 15.1.1. The Customer acknowledges that tools made available by SAU from time to time (**Management Tools**) provide the Customer with a high degree of control over the configuration and management of the Services.
- 15.1.2. The Customer agrees that it is solely responsible and liable for any and all consequences that result from the Customer's or any End User's use of the Management Tools, including any disruption to, or failure or degradation of, the Services or any Customer Applications, any corruption or loss of Customer Content, and any other Loss suffered or incurred as a result of any acts or omissions of the Customer or any End User in the course of using the Management Tools.
- 15.1.3. The Customer agrees that it is liable for and will pay to SAU any additional fees or charges levied by SAU for any steps taken to remedy any faults or damage caused by the Customer's or any End User's use of the Management Tools.

### 15.2. Internet, security and Data Security Breaches

- 15.2.1. The Customer acknowledges and agrees that the Internet and activities conducted online are, by their nature, not secure. Except as provided otherwise in the Supply Agreement, the Customer is responsible for providing all necessary security and privacy features and procedures to protect the Customer Data, Customer Systems and the Systems and Data of End Users.
- 15.2.2. SAU will implement reasonable measures consistent with industry standards to prevent Data Security Breaches.
- 15.2.3. If SAU becomes aware of a Data Security Breach or if the Customer notifies SAU of a Data Security Breach, SAU will immediately investigate the cause of the Data Security Breach and take reasonable steps to:
- 15.2.3.1. determine the nature and extent of the Data Security Breach;
  - 15.2.3.2. determine what steps can be taken to prevent future Data Security Breach; and
  - 15.2.3.3. to the extent that it is practicable to do so, implement processes and procedures in its systems that will prevent the Data Security Breach from occurring in the future.
- 15.2.4. The Customer may request SAU to take further action in relation to a Data Security Breach If such action is for the Customer's benefit only (and for avoidance of doubt, this excludes actions that SAU would otherwise reasonably have to take as a result of the Data Security Breach to upgrade its own systems in accordance with clause 15.2.3 above), this will be performed by SAU at the cost of the Customer. If requested, SAU will provide the Customer with an estimate of the cost of taking such further action before proceeding.

### 15.3. High risk situations

The Customer must not use the Services in any high risk situations or for high risk purposes, such as situations where failure or fault of the Services could harm or threaten the life, health or safety of any individual, or public health or safety.

### 15.4. Services changes

- 15.5. The Customer acknowledges and agrees that the Services may change as a result of network expansion, reconfiguration or other changes, in which case SAU will provide the Customer with reasonable notice of the change if such change is likely to have a material or detrimental impact on the Services.

## 16. Warranties

### 16.1. Statutory warranties

The Customer may have rights under statutory consumer protection laws, including the Competition and Consumer Act 2010 (Cth), which cannot be excluded, restricted, limited or modified. The following exclusions of warranties, and the limitations of liability in clauses 17 and 18, below, apply subject to any rights the Customer may have under such laws.

#### 16.2. Exclusion of warranties

- 16.2.1. Without limiting the foregoing, and to the extent permitted by law, all express or implied representations, conditions, warranties, guarantees or other provisions that are not contained in the Supply Agreement (whether based in legislation, the common law or otherwise) are excluded, including any representations, conditions, warranties or guarantees as to acceptable quality, fitness for purpose, timeliness, or non- infringement of third party rights, and in particular any representations or warranties made in relation to Third Party Tools are equally excluded by SAU.
- 16.2.2. If any condition, warranty, guarantee or other provision is implied or imposed in relation to the Supply Agreement (whether based in legislation, the common law or otherwise) and cannot be excluded (**Non- Excludable Term**), and SAU is able to limit the Customer's remedy for a breach of such a Non-Excludable Term, then SAU's liability for such a breach of the Non-Excludable Term is limited to one or more of the following, at SAU's option:
- 16.2.2.1. in relation to Goods, the replacement of the Goods or the supply of equivalent Goods, the repair of the Goods, the payment of the cost of replacing the Goods or of acquiring equivalent Goods, or the payment of the cost of having the Goods repaired;
  - 16.2.2.2. in relation to Services, the supplying of the Services again or the payment of the cost of having the Services supplied again; or
  - 16.2.2.3. in relation to the Hardware and Software, the replacement of the Hardware and Software or the supply of equivalent Hardware and Software, the repair of the Hardware and Software, the payment of the cost of replacing the Hardware and Software or of acquiring equivalent Hardware and Software, or the payment of the costs of having the Hardware and Software repaired (and in any case SAU's liability is subject to the manufacturer's warranty for the Hardware and Software and is not the responsibility of SAU).

#### 16.3. Limitations on SAU representations and warranties

Except as specified otherwise in the Supply Agreement SAU will supply Goods and/or Services on an "as is" basis and SAU does not represent or warrant that they will be error, defect or "bug" free, free from interruption or intrusion, continuously available, accurate or secure, or suitable for the Customer's business objectives or other purposes.

#### 16.4. Limitation of SAU responsibility

Except as specified otherwise in the Supply Agreement, SAU will not be responsible or liable for:

- 16.4.1. the development, functionality or performance of the Customer Applications, or the compatibility and interoperability of the Services with the Customer Applications or the Customer Systems;
- 16.4.2. without limiting the generality of clause (a), any Customer Application-related issues of which SAU was not aware, or could not reasonably have been expected to be aware, at the time SAU and the Customer entered into the Supply Agreement;
- 16.4.3. the content, operation, maintenance, backing-up, security and use of the Customer Applications or the Customer Content, except as specified otherwise in the Supply Agreement;
- 16.4.4. monitoring any Customer or End User activity;
- 16.4.5. exercising editorial control over the Customer Content and/or Customer Applications;
- 16.4.6. any claims or legal issues related to or arising out of the Customer Applications or Customer Content;
- 16.4.7. defects or errors resulting from any modifications or enhancements to the Customer Applications or Customer Content not made by SAU or made without SAU's prior written consent, or resulting from incorrect use of the Customer Applications or Customer Content by the Customer;

- 16.4.8. malfunctions that are due to incorrect use of the Customer Applications or Customer Content, or for any reason external to the Services supplied by SAU including, but not limited to, failure or fluctuation of electrical supplies, hardware failures, accidents, or natural disasters;
- 16.4.9. the acts and omissions of the Customer and/or End Users including any failure by the Customer or End Users to comply with clause 6;
- 16.4.10. any Loss incurred by the Customer and/or an End User by using the Customer Applications or Customer Content inappropriately or outside the Scope of Services;
- 16.4.11. maintaining the currency of, and ensuring the Customer's ongoing compliance with, any third-party software licences, maintenance contracts and other agreements;
- 16.4.12. any interrupted availability or degraded performance of Customer Applications or Customer Content attributable to the Customer:
  - 16.4.12.1. failing to adopt SAU's recommendations for changes or upgrades reasonably required to the Services due to material changes in the Customer's requirements (for example because of increased traffic, usage or capacity requirements); or
  - 16.4.12.2. using unsupported or out-of-date software;
- 16.4.13. loss incurred by the Customer as a result of a virus or manipulating program affecting the Customer's Equipment or Customer's Systems, whether it was transmitted by the Services supplied by SAU or otherwise.
- 16.4.14. providing support to End Users, except as specified otherwise in the Scope of Services;
- 16.4.15. the Customer's compliance with applicable Laws, including the Privacy Act 1988 (Cth) and the Spam Act 2003 (Cth);
- 16.4.16. any Loss arising from a Data Security Breach unless SAU fails to comply with its obligations in clauses 15.2.2 to 15.2.4.

#### 16.5. Customer responsibility

The Customer must take and accepts full responsibility for the items or matters referred to in clause 16.4.

#### 16.6. Manufacturer Responsibility

Subject to SAU's obligations under clause 16.7, if there is any:

- 16.6.1. defect, problem or deficiency with the Hardware provided by SAU (**Defective Hardware**), to the extent that the Defective Hardware is the fault of the respective manufacturer, SAU is not responsible or liable for the Defective Hardware and the Customer should address any such claim against the manufacturer of the Hardware for the Defective Hardware; or
- 16.6.2. defect, problem or deficiency with the Software provided by SAU (**Defective Software**), to the extent that the Defective Software is the fault of the respective manufacturer, SAU is not responsible or liable for the Defective Software and the Customer should address any such claim against the manufacturer of the Software for the Defective Software,

#### 16.7. SAU assistance with Defective Hardware and Software.

SAU agrees to provide reasonable assistance to the Customer in relation to any claims the Customer may have against the manufacturer / distributor for any Defective Hardware and any Defective Software.

## 17. Liability

#### 17.1. Unlimited liability

The exclusions and limitations on a party's liability in the Supply Agreement, including this clause 17, do not apply to:

- 17.1.1. the Customer's liability for breach of clause 20 or 21 ;

- 17.1.2. the Customer's liability under the indemnity in clause 17.5;
- 17.1.3. the Customer's obligation to pay any Fees or Expenses due and payable under the Supply Agreement; or
- 17.1.4. any liability under a Non-Excludable Term, or any other liability to the extent that it may not be excluded or limited as a matter of applicable Law.

#### 17.2. Exclusions of SAU liability

To the fullest extent permitted by law, except to the extent caused by or contributed to by SAU or its personnel, SAU has no liability in respect of any Loss arising out of:

- 17.2.1. the Customer or any Customer Personnel failing to comply with any relevant data protection or privacy laws (including the Privacy Act 1988);
- 17.2.2. a Data Security Breach;
- 17.2.3. the use of the Services by the Customer or an End User otherwise than in accordance with the Supply Agreement;
- 17.2.4. the Customer's breach of the Supply Agreement;
- 17.2.5. any Customer or third party content or software that the Customer or an End User may upload, transmit, place, add or otherwise use in relation to the Services;
- 17.2.6. the use by the Customer or an End User of Third Party Tools; and
- 17.2.7. use of the Internet by the Customer or an End user including all liability for any disclosure of Confidential Information when transmitted over the Internet.

#### 17.3. Exclusion of consequential loss

Subject to clause 17.1, neither SAU nor the Customer party will be liable, under or in connection with the Supply Agreement, whether in contract, tort (including negligence), equity, breach of statutory duty, or otherwise, for any indirect, consequential, incidental or special loss or damage, or for any loss of profits, loss of sales, loss of business or agreements, loss of goodwill, loss of or wasted management of staff time, loss of use or corruption of software, loss of or corruption to data, or loss of anticipated savings, even if such party has been advised of the possibility of such loss or damage.

#### 17.4. Cap on SAU liability

Subject to clause 16 and this clause 17, SAU's total maximum liability to the Customer for all Loss sustained, incurred or suffered by the Customer and any End Users arising under or in connection with the Supply Agreement, whether in contract, tort (including negligence), equity, breach of statutory duty, or otherwise, shall be limited for all claims in aggregate to an amount equal to, at SAU's discretion:

- 17.4.1. in relation to Goods, the replacement of the Goods or the supply of equivalent Goods, the repair of the Goods, the payment of the cost of replacing the Goods or of acquiring equivalent Goods, or the payment of the cost of having the Goods repaired;
- 17.4.2. in relation to Services, the supplying of the Services again or the payment of the cost of having the Services supplied again; or
- 17.4.3. in relation to the Hardware and Software, the replacement of the Hardware and Software or the supply of equivalent Hardware and Software, the repair of the Hardware and Software, the payment of the cost of replacing the Hardware and Software or of acquiring equivalent Hardware and Software, or the payment of the costs of having the Hardware and Software repaired (and in any case SAU's liability is subject to the manufacturer's warranty for the Hardware and Software and is not the responsibility of SAU).

#### 17.5. Indemnity

The Customer must indemnify and hold harmless the Indemnified Persons from and against all Loss sustained, incurred or suffered by any of them, arising out of or in connection with but not limited to:

- 17.5.1. the use or attempted use of the Services by the Customer or an End User;
- 17.5.2. any breach of the terms or warranties in the Supply Agreement;
- 17.5.3. any breach by the Customer of its warranty in clause 14.1;
- 17.5.4. any Customer Application and/or any Customer Content (including where such Customer Application or Content is alleged to infringe any rights, including Intellectual Property Rights);
- 17.5.5. any claims brought or threatened by a third party against any of them, to the extent that such third party claim arises out of any breach by the Customer or End Users of the Supply Agreement;
- 17.5.6. any Loss arising from a Data Security Breach to the extent such loss is attributable to the Customer or an End User or Personnel of the Customer; and
- 17.5.7. the Customer, and End User or any of their Personnel fails to comply with any relevant data protection or privacy laws (including the Privacy Act 1988).

#### 17.6. Limitation where the Customer or End User contributes to loss or damage

Any liability of SAU for any Loss sustained, incurred or suffered by the Customer, an End User or any of their Personnel arising under or in connection with the Supply Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, is reduced to the extent that the Customer, the End User or their Personnel contributed to the Loss.

#### 17.7. Obligation to mitigate

The Customer must promptly take all reasonable and practicable steps to mitigate any Loss likely to be or actually sustained, incurred or suffered by the Customer, and End User or their Personnel.

## 18. Force Majeure Event

#### 18.1. Reduction in liability or extension

Notwithstanding any other provision of the Supply Agreement, neither SAU nor the Customer shall be deemed to be in breach of the Supply Agreement or otherwise liable to the other party as a result of any delay or other failure in the performance of its obligations under the Supply Agreement (other than an obligation to pay money, including the Fees) if and to the extent that such delay or other failure is caused by or arises from any event or circumstance not within the reasonable control of the party concerned (Force Majeure Event), and the time for performance of the relevant obligation(s) shall be extended accordingly.

#### 18.2. Steps

A party whose performance of its obligations under the Supply Agreement is delayed or prevented by a Force Majeure Event must:

- 18.2.1. notify the other Party of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure Event as soon as reasonably practicable; and
- 18.2.2. after cessation of the Force Majeure Event, as soon as reasonably practicable notify the other Party thereof and resume full performance of its obligations under this Agreement.

#### 18.3. Termination

SAU may terminate the Supply Agreement in whole or in part by notice to the Customer if any Force Majeure Event has the result that SAU is unable to supply the goods or Services for more than 20 Business Days.

## 19. Assignment and Subcontracting

### 19.1. No assignment or subcontracting

Subject to clauses 19.2 and 19.3, neither SAU nor the Customer may assign, novate, transfer, sub-contract or otherwise dispose of any or all of its rights and/or obligations under the Supply Agreement without the prior written consent of the other party (which may be withheld in that party's absolute discretion).

### 19.2. Sub-contracting by SAU

Notwithstanding clause 19.1, SAU may enter into sub-contract arrangements with third parties from time to time in relation to the supply of Goods and/or Services under the Supply Agreement. Any such sub-contract shall not excuse SAU from performing its obligations under the Supply Agreement.

### 19.3. Assignment or novation by SAU

SAU may assign, novate, transfer, or otherwise dispose of any or all of its rights or obligations under the Supply Agreement to:

- 19.3.1. an Associated Entity of SAU; or
- 19.3.2. a third party that has acquired a substantial part of SAU or any of its Associated Entities' business, assets or undertaking,

without the prior consent of the Customer and, in the case of a novation, the Customer, SAU and the relevant third party will execute a novation agreement in a form reasonably prescribed by SAU.

## 20. Confidential Information

### 20.1. Maintenance of confidentiality

Each Recipient must:

- 20.1.1. maintain and take all steps necessary to maintain all Confidential Information in strictest confidence;
- 20.1.2. ensure that proper and secure storage is provided for the Confidential Information while in the possession or under the control of the Recipient or the Recipient's Personnel;
- 20.1.3. take all precautions necessary to prevent accidental disclosure of any of the Confidential Information;
- 20.1.4. not disclose any of the Confidential Information to any person other than the Recipient's Personnel and then only to the extent that they are reasonably required to receive and consider the Confidential Information in the course of (and solely for the purpose of) their role in relation to the Supply Agreement; and
- 20.1.5. not expressly or impliedly disclose the existence of the Confidential Information.

### 20.2. Compliance by Personnel

Each Recipient must ensure that its Personnel comply with clause 20.1 as if they were parties to the Supply Agreement.

### 20.3. Exceptions

Clause 20.1 does not impose obligations on the Recipient or Personnel concerning Confidential Information which the Recipient proves to the reasonable satisfaction of the Discloser:

- 20.3.1. is publicly available at the date of the Supply Agreement;
- 20.3.2. becomes publicly available without breach of the Supply Agreement after the date of the Supply Agreement;

- 20.3.3. the Recipient obtained from a third party without breach by the third party of any obligation of confidence concerning that Confidential Information; or
- 20.3.4. was already in the Recipient's possession (as evidenced by written records) when provided by or on behalf of the Discloser.

#### 20.4. Legal obligations

This document does not apply to the Disclosure of Confidential Information which the Recipient is obliged to disclose by:

- 20.4.1. law;
- 20.4.2. the rules of a recognised stock exchange on which the securities of the Recipient or a Related Body Corporate of the Recipient are quoted; or
- 20.4.3. court order;

to the person to whom it is Disclosed.

#### 20.5. Opportunity to restrict

If at any time the Recipient is required to disclose any part of the Confidential Information under clause 20.4, the Recipient:

- 20.5.1. must immediately notify the Discloser of the requirement and the reasons;
- 20.5.2. must permit the Discloser to oppose or restrict the disclosure;
- 20.5.3. must not disclose the Confidential Information until the Discloser has a reasonable opportunity to consider those reasons and take such action as it considers appropriate in the circumstances.

#### 20.6. Damages insufficient remedy

Each party acknowledges that:

- 20.6.1. the Confidential Information is confidential and at all times the property of the Discloser and that the Supply Agreement does not give any proprietary or other interest in the Confidential Information to the Recipient;
- 20.6.2. a breach of the Supply Agreement would be harmful to the Discloser;
- 20.6.3. monetary damages alone would not be a sufficient remedy for a breach of the Supply Agreement; and
- 20.6.4. in addition to any other remedy which may be available in law or equity, the Discloser is entitled to any injunctive relief to prevent breach of the Supply Agreement and to compel specific performance of it.

#### 20.7. Challenge and use

The Recipient:

- 20.7.1. must not challenge the ownership of the Confidential Information; and
- 20.7.2. must not, and must make sure that each of its Related Bodies Corporate and Personnel do not, make any use of the Confidential Information or any part of it to the competitive disadvantage of the Discloser.

## 21. Privacy

#### 21.1. Notifications and consents

The Customer acknowledges and agrees that:

- 21.1.1. SAU may collect Personal Information about individuals in the course of performing the Services;



- 21.1.2. the Customer has made, or will make, all notifications, and obtain all consents, necessary or desirable for SAU to make or obtain under the Privacy Act 1988 (Cth) in order to collect and handle those individuals' Personal Information for the purpose of performing the Services; and
- 21.1.3. the Customer will, on request, provide SAU with details of the notifications and consents made and obtained by the Customer for SAU to collect and handle those individuals' Personal Information.

## 21.2. Security

Each party to the Supply Agreement must, in connection with the Services and the performance of its obligations under the Supply Agreement comply with the Privacy Act 1988 (Cth) and ensure that it has in place appropriate technical and organisational measures to protect Personal Information from misuse, interference and loss and from unauthorised access, modification or disclosure.

## 22. Intellectual Property

### 22.1. Ownership of Services IP

The Customer acknowledges and agrees that:

- 22.1.1. all Services IP, including all Background IP, is the property of SAU or a person who has licensed Intellectual Property rights to SAU and that all Foreground IP becomes the property of SAU and part of the Services IP upon its creation; and
- 22.1.2. none of the Supply Agreement or any act or transaction occurring under or in relation to it transfers any right, title or interest in any Services IP to the Customer or any third party.

### 22.2. Licence

SAU grants to the Customer a licence to use the Services IP to the extent required by the Customer to use the Services in accordance with the Supply Agreement, such licence to be revocable only in accordance with the Supply Agreement.

### 22.3. Third party rights

SAU represents and warrants to the Customer that it has the right to supply the Services IP to the Customer and that the Customer's use of the Services IP in accordance with the Supply Agreement will not infringe the Intellectual Property Rights of any third party. If any third party makes a claim, or in SAU's reasonable opinion is likely to make a claim, that any aspect of the Services infringes the Intellectual Property Rights of the third party, SAU may, at its option:

- 22.3.1. modify or replace that aspect of the Services;
- 22.3.2. procure a licence for the Customer to continue using the Services free from any such claim; or
- 22.3.3. if neither of the above are reasonably practicable, terminate the Supply Agreement (in whole or in part) by providing written notice or termination to the Customer. Any such termination will be without liability to SAU, save for a pro-rata refund to the Customer of any fees paid in advance for any such terminated Services.

### 22.4. Customer IP

SAU acknowledges and agrees that the Customer Content and Customer Applications, and all Intellectual Property Rights subsisting in the Customer Content and Customer Applications are owned by and vest in the Customer or its licensors. SAU acknowledges and agrees that none of the Supply Agreement or any act or transaction occurring under or in relation to it transfers any right, title or interest in Customer Content and Customer Applications to SAU or any third party.

### 22.5. Licence of Customer IP and third party rights

The Customer grants to SAU a licence to use the Customer Content and Customer Applications to the extent required by SAU to supply the Services in accordance with the Supply Agreement. The Customer represents and warrants to SAU that it has the right to licence the Customer Content and Customer Applications to SAU and that SAU's use of the Customer Content and Customer Applications in accordance with the Supply Agreement will not infringe the Intellectual Property Rights of any third party.

#### 22.6. Software

If SAU provides the Customer with any software in connection with the provision of the Services, the Customer must not copy, modify or reverse assemble the software. The Customer acknowledges and agrees that the Customer is licensed by SAU to use the software only for the purposes, and in accordance with the terms, of the Supply Agreement and any terms upon which the software is ordinarily licensed or which SAU notifies the Customer.

### 23. Publicity

23.1. The Customer agrees that SAU may publicly disclose that it is providing Services to the Customer and authorises SAU to use its name and logo to identify it in promotional materials, including press releases as SAU's customer.

### 24. Non-solicitation

24.1. The Customer must not and must procure that End Users and their Associated Entities do not during the Term and the period of 1 year after the termination or expiration of the Supply Agreement, directly or indirectly, solicit or attempt to solicit for employment any persons employed by SAU during such period.

### 25. Dispute Resolution

#### 25.1. Notification of Disputes

A party claiming that a Dispute has arisen must notify the other party in writing, giving details of the Dispute, and, subject to clause 25.5, must not commence any action or court proceeding in respect of the Dispute unless it has followed the procedure set out in this clause.

#### 25.2. Attempts to resolve in good faith

During the period of 1 month after a notice is given under clause 25.1 (or any longer period agreed in writing between the parties) the parties' chief executive officers (or their delegates) must work together in good faith to resolve the Dispute.

#### 25.3. Legal proceedings

If a Dispute is not resolved within 1 month from the date of the notice given under clause 25.1 (or longer agreed period), either party may then commence any action or court proceeding in relation to the Dispute.

#### 25.4. Continuing performance

The parties must continue performing their respective obligations under the Supply Agreement while a Dispute is being resolved in accordance with this clause, unless and until such obligations are terminated or expire in accordance with the Supply Agreement. This clause 25.4 does not apply at any time after payment of any Fees or Expenses have become due and the Fees or Expenses remain unpaid, and without limitation does not prevent SAU exercising its suspension or termination rights including under clause 8.10.

Without limiting the foregoing, the Customer must continue paying Fees for the supply of any Goods or Services that are not the subject of the Dispute.

25.5. Urgent interlocutory relief and suspension or termination

25.6. Nothing in this clause:

- 25.6.1. prevents either party from commencing any action or proceeding at any time for urgent interlocutory relief in any court or tribunal having jurisdiction over such action or proceeding; or
- 25.6.2. derogates or limits the right of SAU to suspend or terminate the supply of Goods or Services for non-payment under clause 8.10.

## 26. Notice

26.1. Notices to be in writing

A communication in connection with the Supply Agreement (including a notice, consent, request, waiver or demand) (**Notice**) has no legal effect unless it is in writing.

26.2. Delivery

In addition to any other method of service provided by law, a Notice may be:

- 26.2.1. sent by prepaid ordinary post to the address for notices of the addressee, if the address is in the country of posting;
- 26.2.2. sent by prepaid airmail to the address for notices of the addressee, if the address is overseas;
- 26.2.3. sent by email to the email address of the addressee; or
- 26.2.4. delivered at the address for service of the addressee.

26.3. Timing of delivery

If the Notice is sent or delivered in a manner provided by clause 26.2, it must be treated as given to and received by the party to which it is addressed:

- 26.3.1. if sent by post to an address in the country of posting, on the fourth Business Day (at the address to which it is posted) after posting; if sent by post to an address overseas, on the fifth Business Day (at the address to which it is posted) after posting;
- 26.3.2. if sent by email before 5.00pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- 26.3.3. if otherwise delivered before 5.00pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

26.4. Emails

Notwithstanding clause 26.3, an email is not treated as given or received if the sender's computer reports that the message has not been delivered.

26.5. Time and days

If a Notice is served by a method which is provided by law and is not provided by clause 26.2, and the service takes place after 5.00pm on a Business Day, or on a day which is not a Business Day, it must be treated as having been received on the next Business Day.

#### 26.6. Assumed delivery

26.7. A Notice sent or delivered in a manner provided by clause 26.2 must be treated as validly given to and received by the party to which it is addressed even if:

26.7.1. the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or

26.7.2. the Notice is returned unclaimed.

#### 26.8. Addresses

Addresses for notices for SAU are:

Address: Ground Floor, 160 Stirling Highway, Nedlands, WA 6009

Email: Mark Calleja, general.manager@saudigital.com.au

Addresses for notices for the Customer are as set out in the Supply Agreement.

Unless otherwise agreed the Customer address, Customer contact name, and Customer contact email address specified in a Quote or Proposal will be the addresses for notices for the Customer.

#### 26.9. Change of address

A party may change any one or more of its address for notices (including any email address and facsimile number) by giving Notice of that change to each other party.

## 27. General

#### 27.1. Waiver and exercise of rights

In the Supply Agreement:

27.1.1. a single or partial exercise or waiver of a right relating to the Supply Agreement may be given subject to conditions and does not prevent any other exercise of that right or the exercise of any other right.

27.1.2. no party is liable for any loss or expense of another party caused or partly caused by the waiver, exercise or failure to exercise a right.

27.1.3. waiver of any right, power, authority, discretion or remedy arising upon a breach of or default under the Supply Agreement must be in writing and signed by the party granting the waiver.

27.1.4. this clause may not itself be waived except in writing.

#### 27.2. Variation

An amendment or variation of the Supply Agreement is not effective unless it is in writing and signed by the parties.

#### 27.3. Prohibition or enforceability

27.3.1. Any provision of, or the application of any provision of the Supply Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

27.3.2. Any provision of, or the application of any provision of the Supply Agreement, which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of the Supply Agreement in that or any other jurisdiction.

27.3.3. The application of this clause 27.3 is not limited by any other provision of the Supply Agreement in relation to severability, prohibition or enforceability.

#### 27.4. Counterparts

The Supply Agreement may consist of a number of counterparts and if so executed by hand or by electronic signature, the counterparts taken together constitute the one instrument. The parties agree that a fully executed and digitally scanned copy of the Supply Agreement, whether exchanged by facsimile or email (including in portable document format) will constitute evidence of due execution and any agreement so exchanged will serve as a legal and binding contract with the same force and effect as the original (where such facsimile or email address has been notified by a party to other party for these purposes).

#### 27.5. Electronic execution

27.6. This document can be executed by using electronic signatures. Each party consents to the use of electronic signatures (in whole or in part). The parties acknowledge and agree that each electronic signature is to be treated as an original signature for all purposes and shall have the same force and effect as an original signature.

27.7. If the signatory is a corporation, it, and each director or secretary (as applicable) that executes on behalf of the corporation, represents and warrants to the counterparty that the signing satisfies section 127(1) of the Corporations Act.

#### 27.8. Further assurance

Each party must at all times and from time to time at its own expense do all further acts and execute and deliver all further deeds, documents and instruments necessary or reasonably desirable in order to fully perform and give effect to and carry out the terms of the Supply Agreement.

#### 27.9. Governing law and jurisdiction

The Supply Agreement is governed by the laws in force in Western Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts having jurisdiction to hear appeals from those courts.