

SERVICE TERMS & CONDITIONS

JMS Tech Newcastle

ABN: 82 423 623 805

Address: 20/70 Hanbury Street, Mayfield, NSW, 2304

Phone: +61 416 665 227 – **Email:** mateo@jmstech.comau

Effective date: 1 July 2025

Version: v1.0 (1 Jul 2025)

By engaging or commencing any service with JMS Tech Newcastle (“we”, “us”, “our”), you (“Client”) agree to be bound by these Terms and Conditions, as well as by our Warranty Policy and Privacy Policy (available at jmstech.com.au/warranty and jmstech.com.au/privacy).

1. Definitions

For the purposes of these Terms and Conditions, the following terms shall have the meanings assigned to them below. In case of conflict, non-excludable rights and remedies under the Australian Consumer Law (ACL) shall prevail.

- **ACL (Australian Consumer Law):** Consumer protection legislation contained in the *Competition and Consumer Act 2010 (Cth)*.
- **Consumer:** A person or business acquiring goods or services as a “consumer” under the ACL (including certain business acquisitions up to AUD 100,000 or as otherwise provided by law).
- **PDH Goods/Services:** Goods or services of a personal, domestic, or household (PDH) nature within the meaning of the ACL.
- **Business Customer:** A customer that does not qualify as a Consumer under the ACL.
- **Small Business:** For the purposes of the unfair contract terms regime under the ACL, a customer that meets employee or turnover thresholds prescribed by applicable legislation at the time of contracting.
- **Services:** All diagnostic, repair, installation, maintenance, consultancy, data recovery, technical support, or web development work, provided remotely, at the Client’s premises, or at our workshop.
- **Diagnosis:** The analysis phase to reasonably identify the cause of an issue. A Diagnosis is considered complete when JMS Tech Newcastle identifies the probable cause and delivers an Action Plan.
- **Action Plan:** Recommendations or technical steps proposed by JMS Tech Newcastle to resolve the issue.
- **Repair:** Performance of tasks and/or replacement of parts to restore hardware or software functionality.
- **Service Completion:** The moment JMS Tech Newcastle notifies the Client that the contracted work has been completed (via report, email, or invoice).
- **“No diagnosis, no charge (30 min)” Benefit:** A commercial benefit applicable only to the initial diagnosis, in addition to non-excludable ACL rights; it does not guarantee a service outcome.
 1. **Waiver (30 min):** The diagnostic fee is waived if, after 30 minutes of initial diagnosis (remote, on-site, or in workshop), no Diagnosis is made and the Client chooses to stop at that point.

2. **Continuation Rule:** If the Client opts to continue and a Diagnosis is later made, the entire time invested is chargeable, including the initial 30 minutes.
3. **Limits/Exclusions:** The waiver does not apply where:
 - (i) the Client fails to provide necessary access/credentials/information;
 - (ii) the issue is intermittent or cannot be reproduced during the session;
 - (iii) third-party factors (e.g., ISP/manufacturer) are involved and a report/Action Plan is delivered;
 - (iv) the Client interrupts before 30 minutes or refuses necessary tests/instructions;
 - (v) advanced procedures or pre-authorised temporary parts are used;
 - (vi) safety conditions or pre-existing damage prevent diagnosis.

It applies once per issue/ticket and does not constitute a service outcome guarantee.
4. **Scope:** Does not cover travel, after-hours surcharges, tolls/parking, or other pre-approved additional costs. Applies once per incident.
(Operational and documentation details shall be interpreted in accordance with the current Commercial Warranty Policy).

- **Commercial Warranty (30-Day Revisit):** An additional benefit by JMS Tech Newcastle under which, if the same issue reoccurs within 30 days from Service Completion, JMS will conduct a new intervention at no labour cost (in a manner determined by reasonable technical discretion). This commercial warranty is in addition to non-excludable ACL rights and governed by its specific policy.
- **Major Failure / Minor Failure:** Terms as defined under the ACL for applicable remedies.
- **Work Order:** Physical or digital document describing the Services, fees, scope, and special instructions/conditions, accepted by the Client via signature or electronic/verifiable confirmation.
- **Estimate:** A time-limited quotation that must be accepted by the Client before Services commence, unless otherwise agreed.
- **Equipment:** Hardware, peripherals, accessories, and components provided by the Client or on which JMS performs services.
- **Third-Party Software:** Software, licences, add-ons, or tools owned by a third party, which the Client must procure, pay for, and maintain unless otherwise agreed in writing.
- **Client Data:** Information, files, databases, configurations, and any other digital content under the Client's control. The Client is responsible for maintaining adequate backups, without prejudice to non-excludable ACL rights.
- **Confidential Information:** Any non-public information disclosed by either party that is, by nature or notice, considered confidential (including technical/commercial information, access credentials, and personal data), excluding information that becomes public without breach, is independently developed, or lawfully obtained from third parties.
- **Business Hours:** Monday to Friday, 9:00 AM to 6:00 PM (NSW time), excluding public holidays. After Hours: any service provided outside this range, subject to surcharges.
- **Day:** Calendar day. Business Days (NSW): Monday to Friday in NSW, excluding public holidays.
- **GST:** Goods and Services Tax applicable in Australia.
- **NCAT:** New South Wales Civil and Administrative Tribunal.
- **Force Majeure:** An event beyond a party's reasonable control that cannot be avoided by reasonable means (e.g., natural disasters, widespread telecom or power outages, government actions, strikes, health emergencies, war or terrorism), as used in Section 14.
- **SOW / Statement of Work:** Annexed document detailing managed/specific services, SLAs,

pricing, exclusions, and Client responsibilities. Prevails over general service descriptions (see 17.3 and 26).

- **Managed Services:** Ongoing services provided under a SOW (e.g., help desk, RMM, patching, backups/DR, M365/Google management).
- **SLA (Service Level Agreement):** Time/quality targets applicable only to managed services indicated in the SOW (see 26).
- **RMM (Remote Monitoring & Management):** Agents/tools for remote monitoring, patching, and support (see 26).
- **EDR (Endpoint Detection & Response):** Advanced endpoint protection (see 26).
- **MFA/2FA (Multi-Factor Authentication):** Multi-factor authentication (see 5.2 and 26).
- **EoL / EoS (End of Life / End of Support):** Manufacturer-unsupported status, excluded from SLAs except on a best-effort basis (see 26.22).
- **APPs (Australian Privacy Principles):** Privacy principles under the *Privacy Act 1988 (Cth)* applicable to JMS (see 5.8 and 20).
- **OAIC:** Office of the Australian Information Commissioner, privacy authority (see 15.1 and 5.8).
- **NDB (Notifiable Data Breaches) scheme:** Legal regime for mandatory notification of personal data breaches (see 5.8 and 27.11).
- **WHS:** Work Health and Safety in NSW (see 22).
- **LOTO (Lock-Out/Tag-Out):** Isolation/tagging procedure for safe work (see 22.3.g).
- **RBA Cash Rate:** Target interest rate set by the Reserve Bank of Australia, used as a reference for interest (see 3.8).
- **Privacy Policy:** JMS Tech Newcastle's current policy for personal data handling and information security (see 17.2 and 20).
- **Commercial Warranty Policy:** Current policy governing the commercial 30-day revisit warranty (see 4).

Interpretative Note: All price/fee references will clearly indicate whether GST is included. Nothing in these definitions excludes, restricts, or modifies non-excludable rights and remedies under the ACL. Where applicable, other clauses will distinguish between PDH and non-PDH customers and address the treatment of small businesses under current legislation.

2. Scope and Engagement

2.1 Modes of Service Delivery

Services may be delivered remotely, on-site (at the Client's premises), or at our workshop, as agreed in the Estimate or Work Order.

2.2 Estimate and Validity

- a) An Estimate will be issued for work with an estimated value exceeding AUD 200 or for projects (e.g., web development).
- b) Unless otherwise stated, Estimates shall be valid for 14 days from the date of issue.
- c) Amounts are expressed in AUD and will clearly state whether GST is included or not; applicable GST will be itemised on the invoice.

2.3 Minor Interventions

For low-value tasks or urgent matters, Services may commence without a prior Estimate through a Work Order accepted by the Client.

2.4 Acceptance and Electronic Signature; Receipt of Communications

Engagement requires express acceptance by the Client through any of the following verifiable means:

- a) Physical or digital signature of the Estimate or Work Order; or
- b) Written confirmation via email, SMS, or designated digital platform; or
- c) Full or partial payment of the issued invoice; or
- d) Delivery of Equipment with documented verbal authorisation recorded by JMS (including date, time, and content).

Designated Electronic Addresses: For the purposes of the *Electronic Transactions Act 2000 (NSW)*, the Client designates their email address (and agreed digital platform, if applicable) as the electronic address for notifications. A communication is deemed received when it is capable of being retrieved at that address, even if not opened, unless otherwise agreed.

2.5 Scope of Services and Variations

- a) Services include only what is described in the accepted Estimate/Work Order.
- b) Any additional work or scope changes require prior approval from the Client and may involve changes to fees and timelines.
- c) If additional or different issues are identified during execution, JMS will notify the Client for authorisation before incurring additional costs.

2.6 Third-Party Dependencies and Action Plan

Where the issue depends on third parties (e.g., ISP, manufacturer, proprietary software) or conditions beyond JMS's control, we may provide an Action Plan and/or technical report for escalation. Client acceptance of the Action Plan may involve third-party processes and costs outside JMS's responsibility.

2.7 Diagnosis Where Initial Cost Cannot Be Estimated

- a) When the scope cannot be determined without preliminary evaluation, the Client authorises JMS to perform an initial diagnosis in accordance with current rates, with the "No diagnosis, no charge (30 min)" benefit as per Section 1 and the Commercial Warranty Policy.
- b) The Client may set a pre-approved maximum amount for diagnosis; if this limit is reached without a Diagnosis, new authorisation will be requested to proceed.
- c) If the diagnosis reveals a need for parts or additional work, JMS will issue an Estimate for approval before continuing.

2.8 Specific Technical Authorisations

Acceptance of the Estimate/Work Order implies authorisation to carry out technically necessary actions to fulfil the scope, including, where applicable:

- a) Installation of software/firmware and updates;
- b) Execution of procedures that may involve reinstallation, cloning, or data deletion;
- c) Remote access under Client control, generation of logs, screenshots, or (if applicable) session recording with prior consent, in accordance with our Privacy Policy and the *Surveillance Devices Act 2007 (NSW)*.

Where there is a risk of data loss, JMS will inform the Client and recommend backups beforehand.

2.9 Representation and Authority

It is presumed that the person accepting on behalf of the Client (including a corporate contact person) is duly authorised to approve the Services, access, and related expenses within the agreed scope.

2.10 Purchase Orders and Client Documents

If the Client requires a purchase order or other internal document, it must be provided before commencement. Unless otherwise agreed in writing, such documents do not alter these Terms or the accepted scope.

2.11 Relationship with Other Documents

In case of conflict: (a) Accepted SOW/Work Order → (b) these Terms → (c) other policies or communications. Provisions of the ACL shall prevail where applicable, and nothing in this Section excludes, restricts, or modifies the Client's non-excludable rights.

2.12 Price Transparency and Fee Schedule

JMS maintains a current price list (minimum charges, hourly rates, after-hours surcharges, and special rates) available on our website and upon request. Before commencing service, we will confirm applicable minimum charges and any relevant surcharges (e.g., same-day, after-hours, tolls/parking).

2.13 Unsolicited Contracts (ACL)

If the engagement qualifies as an *unsolicited consumer agreement* under the ACL (e.g., door-to-door sales or unsolicited telemarketing), a 10-business-day cooling-off period will apply, during which the Client may cancel without penalty. In such cases, JMS will comply with all applicable formal requirements and will not accept payment or provide Services during that period, except as permitted by the ACL. Nothing in these Terms limits those rights.

2.14 Managed Services / SLA

Where the Client engages Managed Services through a SOW, SLA targets, reporting, maintenance windows, service credits, and exclusions will be governed by Section 26 and the applicable SOW. For any service not covered by a SOW, support will be provided on a best-effort basis in accordance with these Terms.

3. Fees and Invoicing

3.1 Pricing Structure and GST

- a) Unless otherwise stated, amounts are expressed in AUD and will clearly indicate whether GST is included. Applicable GST will be itemised separately in the tax invoice.
- b) JMS maintains a current price list (minimum charges, hourly rates, same-day/after-hours surcharges, and special rates) available on our website and upon request. Updates apply prospectively only and do not affect already accepted Estimates.
- c) **Tax Invoice (ATO):** We will issue electronic tax invoices compliant with ATO requirements, including at minimum: the phrase "Tax invoice," our ABN, date of issue, supplier identity, description of goods/services, total amount, and GST itemised or noted as required by law; where applicable (e.g., invoices \geq AUD 1,000), the recipient's identity and additional required details will also be included.

3.2 Diagnostic Fees

Diagnostic services are charged at a **flat base rate**, depending on the delivery method:

- **Remote diagnostics:** Base rate per session.
- **On-site or workshop diagnostics:** Base rate per visit.

A current price list is available on our website or upon request. Before commencing any service, we will confirm the applicable rate and any relevant surcharges (e.g., after-hours, parking, travel).

The "**No diagnosis, no charge (30 min)**" benefit applies only to the initial diagnostic session and under the conditions outlined in Section 1 and the Commercial Warranty Policy. It does not cover travel costs, after-hours surcharges, or other pre-approved expenses.

In cases involving adverse technical conditions—such as extremely slow internet connections or faulty hardware—a **25% surcharge** may apply. This will be clearly communicated to the Client before proceeding and is intended to reflect the additional time or effort required under such circumstances.

3.3 Repairs and Additional Services

- a) Repairs, part replacements, migrations, data recovery, or other additional services are quoted at a fixed rate or hourly, and performed only upon Client approval.
- b) The cost of parts or materials is quoted and invoiced separately. Parts are covered by the manufacturer's/supplier's warranty and the Client's non-excludable rights under the ACL.
- c) **Title and Risk:** Title to parts supplied by JMS remains with JMS until full payment is received; risk transfers to the Client upon delivery.
- d) **PPSA / PMSI (if goods supplied on credit):** To the extent we supply goods on credit, the Client grants JMS a security interest over the supplied goods (including a Purchase Money Security Interest – PMSI) and authorises JMS to register it on the Personal Property Securities Register (PPSR). The Client will take reasonable steps to facilitate such registration and waives rights to certain notifications to the extent permitted by the PPSA. Nothing herein limits the Client's rights under the ACL.

3.4 Expenses and Surcharges

- a) Travel charges, parking/tolls, and surcharges for same-day, after-hours, weekend, or public holiday services may apply, as per the current price list.
- b) Any expense or surcharge will be communicated in advance and require Client approval before being incurred.

3.5 Deposits and Partial Payments

- a) For web development, projects, or jobs requiring part purchases, a minimum 50% deposit is required.
- b) The balance is payable upon delivery or service completion, unless otherwise agreed in writing.
- c) No part, equipment, or deliverable will be released until full payment is received.

3.6 Variable-Time Work Due to External Factors

Certain tasks (e.g., OS installation, disk cloning/migration, data recovery, extensive updates) may require more time due to factors beyond our control (e.g., hardware speed/condition, media failure, data volume/type, compatibility). Where exact timing is not possible, JMS will provide an estimated range and/or establish a pre-approved cost cap. If that cap is likely to be exceeded, express authorisation will be sought before proceeding.

3.7 Overage and Variations

In cases where adverse technical conditions significantly affect service delivery—such as extremely slow internet connections, hardware with known faults, or other client-side limitations—a **25% surcharge** will apply to the base rate.

This surcharge:

- Is only applied when such conditions materially increase time or complexity;
- Will be clearly communicated to the Client before proceeding;
- Does not override any non-excludable rights under the ACL.

The surcharge ensures fair compensation for extra effort and time required under these circumstances.

3.8 Payment Terms

- a) Unless otherwise agreed, invoices are Net 7 (7 calendar days from the date of issue).
- b) **Reasonable Late Fees:** On overdue balances, JMS may apply annual interest equivalent to the RBA Cash Rate (target) + 4% p.a., prorated daily from due date to payment. Calculated daily on the overdue balance without intra-month compounding. Any changes in the RBA Cash Rate will apply prospectively.
- c) **Reasonable Collection Costs:** If external collection is required, the Client must pay only reasonable, proportionate, and properly documented costs actually incurred by JMS (e.g., fees charged by a collection agency as invoiced to JMS), subject to applicable law.
- d) **No ACL Waiver:** Nothing in this clause limits the Client's non-excludable rights under the ACL or prevents access to NCAT or the courts.

3.9 Accepted Payment Methods

Cash, bank transfer, debit/credit card, and other approved methods. Payment instructions are included in the invoice.

3.10 Credit Card Surcharges

Any surcharge on card payments will not exceed the reasonable cost of acceptance and will be clearly disclosed before payment. Where no alternative payment method is surcharge-free, the advertised price must include the surcharge. All surcharges will comply with applicable laws and shall not affect the Client's non-excludable rights under the ACL.

3.11 Invoice Disputes

Any objection to an invoice must be raised in writing within 7 days of issuance, detailing the disputed items. The Client agrees to pay the undisputed portion by the due date. Dispute resolution does not limit the Client's rights under the ACL. Disputes will be managed per the procedure in Section 15 (Dispute Resolution).

3.12 Estimates and Changes

- a) Estimates are valid for 14 days, unless stated otherwise.
- b) Any Client-requested modifications after acceptance may result in revised pricing and timelines, subject to prior approval.
- c) Rate updates apply only to future work; accepted work retains its original conditions.

3.13 Compatibility with the ACL

Nothing in this Section 3 excludes, restricts, or modifies the guarantees and remedies that cannot be excluded under the ACL. For non-PDH work, remedy limitations under s 64A ACL may apply (see Section 13 – Limitation of Liability).

4. Warranty and Claims

4.1 ACL Framework – Non-Excludable Rights

Nothing in these Terms excludes, restricts, or modifies the non-excludable consumer guarantees provided under the *Australian Consumer Law (ACL)*, including guarantees of due care and skill, fitness for disclosed purpose, and provision within a reasonable time for services, as well as acceptable quality for goods.

4.2 JMS Tech Newcastle Commercial Warranty (Warranty Against Defects)

In addition to the non-excludable rights under the ACL, JMS Tech Newcastle offers the following commercial warranty:

- a) **Benefit:** If the same issue reoccurs within 30 days from the Service Completion, we will re-service the issue at no labour cost (remote, on-site, or workshop, at JMS's reasonable technical discretion).
- b) **What We Will Do:** Re-diagnose and carry out necessary tasks to address the same issue. If parts or additional services not covered by this commercial warranty are required, we will issue an Estimate for prior approval.
- c) **What the Client Must Do:** Notify us within 30 days from the Service Completion, providing reasonable proof of purchase (e.g., invoice, receipt, bank statement, or email confirmation), a description of the issue, and access (physical or remote), credentials, and sufficient information to reproduce the fault.
- d) **Costs:**
 - **Valid Claim:** JMS covers reasonable re-service costs (e.g., agreed travel costs).
 - **Not Covered:** Standard rates apply, with prior notice and Client approval.
- e) **Exclusions to this Commercial Warranty:** Does not cover:
 - (i) issues different from those originally reported/diagnosed;
 - (ii) damage due to accident, negligence, or misuse occurring after the original service;
 - (iii) new malware/virus infections;
 - (iv) hardware failures requiring part replacement (parts are covered under the manufacturer's/supplier's warranty and the ACL);
 - (v) intermittent/unreproducible issues during re-service or those caused by third-party software/services or external conditions.
- f) **Relation to ACL:** This commercial warranty is in addition to, and does not limit, consumer rights under the ACL.
- g) **Operational Reference:** This commercial warranty is interpreted in conjunction with JMS Tech Newcastle's current Commercial Warranty Policy (which forms part of these Terms).

4.3 ACL Mandatory Notice (Goods and Services)

(The following text is prescribed by law and must appear exactly as written in English)

ACL Mandatory Text (Goods and Services)

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

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

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

4.4 Warrantor Details (Prominently Displayed)

JMS Tech Newcastle — ABN: 82 423 623 805

Address: 20/70 Hanbury Street, Mayfield, NSW 2304

Phone: +61 416 665 227 — Email: mateo@jmstech.com.au

4.5 Defect Notification Period / Timeframe

The defect or recurrence of the same issue must manifest and be reported within 30 days from Service Completion to access labour-free re-service (without prejudice to ACL rights beyond this period).

4.6 Claims Procedure

The Client may submit a claim using the contact details above or via: mateo@jmstech.com.au | +61 416 665 227 | 20/70 Hanbury Street, Mayfield, NSW 2304. We will respond within a reasonable time and, if the claim is valid, will schedule priority re-service. We may perform a preliminary assessment to confirm scope and cause before applying the remedy.

4.7 Claim Expenses and Reimbursements

If reimbursement of reasonable claim-related expenses incurred by the Client is applicable, supporting documentation must be sent to mateo@jmstech.com.au. Approved reimbursements will be processed within a reasonable timeframe.

4.8 Repair Notice (ACL s 103 / Reg 91)

We will provide this notice before accepting goods for repair and will display it prominently where applicable (e.g., in the Work Order or intake receipt):

- If we repair goods capable of retaining user data (e.g., computers, drives): repair may result in data loss.
- Where applicable practice:

“Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.”

4.9 Third-Party Parts and Warranties

Third-party parts and software are managed under the warranties provided by the relevant manufacturer/supplier and in accordance with the ACL. JMS will assist the Client in lodging a manufacturer warranty claim where applicable (items not covered will be quoted in advance).

4.10 Compatibility with ACL / Transparency

This Section complies with requirements for a *warranty against defects*: transparent document, prescribed text, identity and contact details of the warrantor, applicable period (30 days), claims procedure, expenses, and confirmation that benefits are additional to the ACL.

5. Client Obligations

5.1 Access, Information and Cooperation

- a) The Client shall provide timely access to premises, equipment, networks, accounts, licences, and any information reasonably necessary for the delivery of the Services.
- b) The Client shall designate a contact person with authority to approve work, resolve queries, and receive notifications.
- c) Technical information (e.g., fault descriptions, history, recent changes) must be accurate and

complete. Delays or additional costs arising from incomplete or late information shall be borne by the Client.

5.2 Credentials and Least Privilege Principle

- a) The Client shall provide necessary credentials or permissions, preferably temporary and with the least privilege required.
- b) For remote support, the Client may supervise the session and, once concluded, revoke access and change passwords.
- c) Where reasonably necessary, the Client shall provide recovery keys (e.g., BitLocker, FileVault, BIOS/UEFI) or disable activation locks. Without these, JMS may be unable to complete the Service; time spent shall be billable in accordance with Section 3.
- d) Where the Service requires MFA/2FA, the Client shall provide one-time codes or approve real-time challenges. If this is not possible, temporary limited-access accounts may be used. Inability to complete MFA may prevent execution; time spent will be billable as per Section 3.

5.3 Ownership, Licensing and Legality of Materials

- a) The Client warrants that all materials, content, software, data, and equipment provided to JMS are owned by the Client or properly licensed/authorised for use in the context of the Service.
- b) The Client is responsible for ensuring that third-party software is properly licensed and that provider terms are met.
- c) JMS shall not be liable for the Client's licensing breaches or third-party restrictions (e.g., expired licences, support limitations, manufacturer policies), without prejudice to the Client's non-excludable rights under the ACL.

5.4 Data Backup and Operational Risk

- a) Unless expressly agreed for a backup/recovery service, the Client is responsible for completing and verifying a full backup prior to any intervention.
- b) Certain procedures (e.g., reinstallation, updates, cloning, hardware replacement, storage repair) may result in data loss or overwrite. JMS will inform the Client of such risks where foreseeable and recommend backups.
- c) If the Client declines backup, they acknowledge the risk of data loss and authorise JMS to proceed within the approved scope, without prejudice to ACL rights.
- d) Data recovery is not guaranteed; viability depends on media condition, encryption, logical/physical damage, and other factors beyond JMS's control.
- e) If the device or volume is encrypted (e.g., BitLocker, FileVault, TPM) and the Client fails to provide recovery keys, JMS may limit services to peripheral tasks and does not guarantee access or recovery.
- f) The Client shall close sensitive documents or content and disable notifications before remote sessions or screenshots to minimise data exposure.
- g) If the Client is subject to legal hold or data retention obligations, they must inform JMS in advance. JMS may limit or postpone any deletion/sanitisation tasks (see Section 27.16).

5.5 Equipment Condition and Transport

- a) The Client is responsible for adequately packing Equipment for transport or delivery to the workshop and for insuring it against loss/damage until received by JMS.
- b) The Client declares that the equipment contains no hazardous materials or unsafe conditions (e.g., leaking batteries, infestations, electrical damage). JMS may reject or isolate hazardous items and charge reasonable handling costs, with prior notice.
- c) Once in JMS custody, the rules for uncollected goods and storage in Section 10 shall apply.

5.6 On-Site Environments and Safety

- a) The Client shall provide a safe work environment in compliance with Work Health and Safety (WHS) regulations.
- b) The Client shall ensure power supply, connectivity, and where required, maintenance or downtime windows for task execution.
- c) JMS may suspend or refuse work where the environment presents WHS/safety risks (e.g., exposed wiring, infestations, electrical hazards). Time and reasonable expenses up to suspension will be billable, and the job will be rescheduled when safe.

5.7 Remote Support, Logging and Recording Authorisations

- a) The Client authorises the use of remote access tools where necessary for the Service.
- b) Any session recording (audio/video/screen) shall only occur with prior Client consent, in accordance with applicable laws and the Privacy Policy. Where applicable, recordings or screenshots may be anonymised or de-identified for quality assurance and metrics (see 20.6).
- c) The Client may request alternatives without recording (e.g., email/ticket/limited screenshots). Diagnostic services may require minimal logging or screenshots, which will be handled per the Privacy Policy.

5.8 Personal Data and Confidentiality

- a) If the Client provides personal information of employees/third parties, they warrant having a legal basis to share it with JMS (e.g., consent or contractual authorisation).
- b) Each party shall protect the other's Confidential Information and use it solely to deliver/receive the Services, in accordance with Section 11 (Confidentiality/Privacy) and the Privacy Policy.
- c) JMS will apply reasonable security measures and manage any data incidents in line with its policy (including the Notifiable Data Breaches scheme where applicable).
- d) If the Client is aware that the Service will involve sensitive information (health, biometrics, background checks, etc.), they must inform JMS in advance. JMS will apply enhanced security and data minimisation measures per its Privacy Policy.

5.9 Approvals, Variations and Cost Limits

- a) The Client shall not request tasks outside the accepted scope without first approving the variation and associated costs (see Sections 2.5 and 3.7).
- b) The Client may establish a pre-approved maximum amount; upon reaching it, JMS will halt work until new authorisation is received.
- c) Time spent waiting due to Client-related delays (e.g., lack of access, paused testing, missing credentials) may be billed at the applicable rate.

5.10 Dependencies and Third Parties

- a) Where the solution depends on third parties (ISP, manufacturer, software vendor), the Client shall handle necessary external processes and payments, unless JMS is authorised to act as agent for technical escalation, in which case required permissions and data must be provided.
- b) Timelines and outcomes reliant on third parties are beyond JMS's control; JMS will provide updates and an Action Plan in accordance with Section 2.6.
- c) Where escalation involves portals/providers (e.g., Microsoft 365, Apple, Google, OEMs), the Client warrants compliance with those providers' terms and authorises JMS to perform technical actions on their behalf (without prejudice to the ACL).

5.11 Acceptance and Testing

- a) Upon completion, JMS will invite the Client to perform reasonable testing to verify the

solution.

- b) Service Completion occurs when JMS notifies that the job is finished and the Client (or representative) reasonably confirms the result, or—if unavailable—when JMS delivers a report or record with outcomes and evidence (see Section 1).
- c) Any later issue that differs from the one originally addressed will be treated as a new Service.

5.12 Prohibitions and Acceptable Use

- a) The Client shall not request JMS to perform actions that:
 - (i) breach the law, software licences, or third-party rights;
 - (ii) bypass security controls without authorisation; or
 - (iii) involve reverse engineering or prohibited bypass methods. JMS may refuse such requests and offer lawful alternatives.
- b) If JMS identifies reasonable signs of illegal activity or unlawful material on Client equipment/data, it may suspend the Service, preserve minimal technical evidence, and cooperate with authorities as legally required—while notifying the Client to the extent legally permitted.

5.13 Compatibility with the ACL

Nothing in this Section 5 excludes, restricts, or modifies the Client's non-excludable rights under the ACL. Any risk allocation or limitation applies only to the extent permitted by law and shall not affect Consumer or PDH clients' rights.

6. Work Order and Consent

6.1 Nature and Legal Effect

The Work Order is the physical or digital document by which the Client authorises JMS Tech Newcastle to provide the Services. It may be issued with or without a prior Estimate and, once accepted, becomes an integral part of these Terms. Acceptance of the Work Order implies that the Client has read and agrees to these Terms, the Commercial Warranty Policy, and the Privacy Policy.

6.2 Minimum Work Order Contents

Each Work Order shall include, at minimum:

- a) Client identification and contact details.
- b) Description of the reported issue and/or scope of Services.
- c) Applicable rates and billing method (hourly, fixed, package), indicating whether GST is included.
- d) Minimum charges and relevant surcharges (e.g., same-day, after-hours, tolls/parking) where applicable.
- e) Pre-approved maximum amount (if applicable), and limits for diagnosis (Section 2.7) and variations (Section 3.7).
- f) Specific technical authorisations: software/firmware installation, reinstalls or cloning, actions involving potential data deletion, use of remote access, and generation of logs/screenshots (see 6.7).
- g) Applicable mandatory notices:
 - **ACL – Warranty Against Defects:** Reference to Section 4 (including prescribed text).
 - **Repair Notice (data loss / refurbished parts):** Issued prior to accepting goods for repair, where applicable (Section 4.8).
- h) Any special conditions agreed (e.g., return of replaced parts, maintenance windows,

temporary credentials).

- i) Client's physical or digital signature (or verifiable electronic acceptance).

6.3 Acceptance and Electronic Communications

Acceptance may occur via: (i) physical or digital signature; (ii) written confirmation via email, SMS, or designated platform; (iii) full or partial payment; or (iv) delivery of Equipment with documented verbal authorisation (date, time, content).

For the purposes of the *Electronic Transactions Act 2000 (NSW)*, the Client designates their email (and agreed platform, if applicable) as the electronic address for notices. A communication is deemed received when it can be retrieved at that address, even if not opened, unless otherwise agreed.

Electronic Consent and Withdrawal: The Client consents to the use of electronic signatures and notifications for the engagement and Service-related communications. This designation may be withdrawn or changed in writing and will apply prospectively without affecting prior communications.

6.4 Equipment Check-In Process (if applicable)

For workshop repairs:

- a) Brand/model, serial number, visible condition, received accessories, and equipment state will be recorded.
- b) The Repair Notice (Section 4.8) will be reiterated prior to accepting the device, if applicable.
- c) The Client may request return of replaced parts; otherwise, JMS will dispose of them responsibly. Where replaced parts contain data (e.g., storage devices) and return is not requested, JMS will securely erase or destroy them in line with its Privacy Policy. A data erasure/destruction certificate can be issued upon request (subject to applicable fees).
- d) If the device poses risks (e.g., leaking battery, infestation, electrical hazard), JMS may reject or delay intake until safe (see Section 5.6).
- e) JMS may photograph/video the device's exterior and record received accessories (cables, chargers, peripherals) as check-in evidence for security/warranty purposes.

6.5 Specific Consents and Data

- a) **Potentially destructive procedures** (e.g., reinstalls, formatting, storage repairs): The Client provides informed consent and acknowledges the need for prior backups (see Section 5.4).
- b) **Remote access / logs / screenshots:** Only with prior consent and in accordance with the Privacy Policy and applicable law (including the *Surveillance Devices Act 2007 (NSW)*).
- c) **Personal information / credentials:** The Client declares having legal grounds to share such data, which will be handled per the Privacy Policy (APPs 5, 6, 11).
- d) If the Service involves sensitive data, the Client must notify JMS in advance so enhanced safeguards can be applied (see Section 5.8).

6.6 Variations and Cost Limits

Any scope extension or change requires prior Client approval (in writing or verifiable means). If the pre-approved limit is reached without achieving the objective, JMS will pause work and seek new authorisation (see Sections 2.5, 2.7, and 3.7).

6.7 Detailed Technical Authorisations

By accepting the Work Order, the Client authorises JMS, where technically necessary to fulfil the approved scope, to:

- a) Install, configure, or update software/firmware (including diagnostic tools), and uninstall temporary components after completion.

- b) Perform procedures that may involve data deletion or overwrite, with the Client informed of the risk and advised to back up data (Section 5.4).
- c) Use remote access under Client control, generate minimal diagnostic logs/screenshots, and record sessions only with consent.
- d) Request and use temporary credentials and approve MFA/2FA challenges in real time or, where not feasible, use least-privilege temporary accounts (Section 5.2).
- e) Act as the Client's technical agent—if authorised—to escalate incidents with third parties (e.g., ISPs, manufacturers, platforms like Microsoft/Apple/Google), using the provided access (Section 5.10).
- f) Install remote support/diagnostic agents when necessary. Unless under a managed service agreement, such agents will be uninstalled or deactivated upon Service completion, unless otherwise agreed (see 26.17).

6.8 Purchase Orders and Client Documents

If a purchase order or other internal document is required, the Client must provide it before work begins. Unless agreed otherwise in writing, such documents do not modify these Terms or the accepted scope.

6.9 Copy for the Client and Record Retention

The Client will receive a copy of the accepted Work Order (or equivalent electronic confirmation) before Services commence. JMS will retain records and authorisation evidence in accordance with its retention policy (see Privacy Policy §6) and applicable tax/commercial laws.

6.10 Rejection or Suspension of Services

JMS may refuse or suspend Services if:

- (i) required credentials, permissions, or materials are not provided;
- (ii) WHS or safety risks exist;
- (iii) the environment or third parties prevent reasonable continuation; or
- (iv) the Client requests unlawful or licence-violating actions (see Section 5.12).

Time worked and reasonable expenses up to the suspension will be invoiced (see Section 3).

6.11 Relationship with the ACL and Other Documents

In the event of conflict:

- (a) Accepted Estimate/Work Order →
- (b) these Terms →
- (c) other policies.

Nothing in this Section excludes, restricts, or modifies the Client's non-excludable rights under the ACL (including mandatory notices in Section 4). For unsolicited engagements, cooling-off rights under Section 2.13 apply.

6.12 Language and Prevalence

Where versions exist in both English and Spanish, the English version shall prevail in accordance with Section 17.8.

7. Intellectual Property

7.1 Definitions for this Section

- a) **Deliverables:** Any product, code, script, configuration, design, document, report, diagram, manual, playbook, or output generated by JMS Tech Newcastle in the course of providing the

Services.

- b) **Background IP:** All code, templates, frameworks, scripts, libraries, know-how, methodologies, utilities, or tools created by JMS prior to or independently of the project, even if incorporated into the Deliverables.
- c) **Client Material:** Trademarks, logos, content, data, software, documentation, or assets owned or licensed by the Client and made available to JMS.
- d) **Third-Party Software:** Any software, component, plugin, SaaS, operating system, driver, firmware, or library owned by a third party (including open-source).
- e) **Documentation:** User manuals, operating guides, change logs, runbooks, credentials, and configuration files delivered by JMS to the Client.

7.2 Ownership

- a) Client Material remains the property of the Client. The Client grants JMS a non-exclusive, revocable, royalty-free licence to use it solely for the purpose of delivering the Services.
- b) Background IP and JMS's know-how remain the exclusive property of JMS, even if incorporated or adapted within the Deliverables.
- c) Unless otherwise agreed in writing, ownership of the Deliverables and associated copyright remains with JMS; the Client is granted the licence described in 7.3.

7.3 Licence to Client over Deliverables

Subject to full payment of applicable fees, JMS grants the Client a non-exclusive, perpetual, worldwide, royalty-free licence to internally use the Deliverables and Documentation within its organisation.

- a) **Scope:** Internal use, backup copies, deployment in the Client's owned or controlled environments, and reasonable adaptation for integration into its infrastructure.
- b) **Limits:** Unless otherwise agreed, the Client may not sublicense, resell, commercialise, publish, or make the Deliverables available to third parties outside its organisation, nor use JMS Background IP separately from the Deliverables.
- c) **Affiliates and Suppliers:** The licence permits use by the Client's affiliates and by its IT service providers for internal purposes only, provided they comply with these Terms and the Client remains liable for their actions.
- d) **Source Code:** Unless otherwise agreed (e.g., via escrow/source code release agreement), JMS is not required to deliver source code of Background IP or proprietary components. JMS will, however, provide configuration files and sufficient Documentation to operate the Deliverables per the agreed scope.

Irrevocability: Once full payment is received, the licence granted under this Section 7.3 becomes irrevocable, except in cases of material breach by the Client. Prior to full payment, JMS may suspend the Client's use of the Deliverables due to overdue payments, without prejudice to other remedies.

7.4 Restrictions and Rights Notices

The Client shall not remove copyright, trademark, or confidentiality notices included in the Deliverables/Documentation and shall take reasonable steps to prevent unauthorised disclosure of JMS Background IP.

7.5 Third-Party Software and Open-Source

- a) Deliverables may incorporate or integrate with Third-Party Software (including open-source). Use of such components is subject to their respective licence terms, which take precedence over any conflicting provisions of these Terms.
- b) The Client is responsible for acquiring/maintaining third-party licences where applicable

(unless otherwise agreed in writing) and for complying with their terms (e.g., user limits, CPUs, instances).

c) JMS will identify, where reasonably practicable, material third-party components and their licences (e.g., MIT, Apache-2.0, GPL) in the Documentation or upon project completion.

d) **Notices/Attribution:** JMS will provide (or make available) a “Third-Party Notices” file listing open-source/material components, their licences, and required notices.

e) **Source Code Where Required:** Where a copyleft licence (e.g., GPL/LGPL) requires source code availability, JMS will comply only in relation to those components and modifications as mandated, without extending rights to JMS Background IP or the Client’s proprietary code beyond what the licence requires.

f) **Client Compliance:** Continued use of third-party components by the Client implies acceptance of their licence terms (including redistribution/notice obligations where applicable). Nothing in this Section constitutes legal advice on third-party licensing.

7.6 Portfolio Rights and References

Unless otherwise agreed in writing, JMS may refer to the Client’s business name and a high-level project description as a professional reference (e.g., “hardening/backup project for NSW SME”), without disclosing Confidential Information or personal data. Use of the Client’s logos or trademarks for promotional purposes requires prior written consent.

Opt-out: Upon request, JMS will cease referencing the project/Client in future materials (without retroactive effect on already printed or published materials), and will continue to uphold confidentiality and privacy.

7.7 Limited Warranties and Infringement (Subject to ACL)

a) JMS represents that it has the right to license the Background IP and Deliverables as described in 7.3.

b) JMS warrants that, when used in accordance with these Terms and the Documentation, the Deliverables will not infringe third-party IP rights in Australia, excluding:

(i) Client Material;

(ii) Third-Party Software (including open-source);

(iii) unauthorised combinations, modifications, or uses not intended by the Documentation.

c) **Remedies:** In case of a substantiated infringement claim, JMS may, at its reasonable discretion and at no additional cost to the Client: (1) modify or replace the infringing element; (2) obtain a licence for continued use; or (3) if the above are not reasonable, remove the element and refund the portion paid for it. This does not limit the Client’s non-excludable rights under the ACL (including compensation for reasonably foreseeable losses).

d) The Client shall promptly notify JMS of any claim, allow JMS to assume the defence, and cooperate reasonably.

e) **Limited Patent Licence:** To the extent necessary for internal use of the Deliverables per 7.3, JMS grants a limited licence under its patents that would otherwise be infringed by such use. All other uses and Background IP are excluded.

f) **Remedy Limitation (Non-PDH):** For non-PDH Clients and to the extent permitted by law, JMS’s liability for claims under 7.7 is limited to the remedies set out in 7.7(c). This does not affect non-excludable ACL guarantees/remedies.

7.8 Client Material – Warranties and Limited Indemnity

The Client warrants that its Material and instructions do not infringe third-party rights and grants JMS the necessary licence under 7.2(a). Any third-party claim arising primarily from

Client Material shall be managed by the Client, without prejudice to the Client's non-excludable rights under the ACL.

7.9 Moral Rights and Staff Assignments

To the extent permitted by law, JMS will obtain from its staff and contractors the necessary consents regarding moral rights (e.g., waiver of attribution, reasonable modifications) to allow use of Deliverables as per these Terms, without compromising the authors' professional integrity.

7.10 Suggestions and Improvements ("Feedback")

Any ideas, improvement suggestions, or comments provided by the Client regarding JMS Services or tools may be freely used by JMS for any purpose (including service improvements), with no obligation of attribution or payment, and without disclosing Client Confidential Information.

7.10 bis Residuals

Nothing prevents JMS from using general knowledge, ideas, concepts, skills, or techniques retained in the unaided memory of its personnel arising from the delivery of Services, provided no Confidential Information or personal data of the Client is disclosed and no third-party rights are infringed.

7.11 Survival

The licences, usage restrictions, confidentiality obligations, and warranties/limitations in this Section shall survive Service Completion or contract termination.

7.12 Compatibility with ACL

Nothing in this Section 7 excludes, restricts, or modifies non-excludable ACL guarantees and remedies. For non-PDH clients, contractual remedies may be limited as permitted by s 64A ACL (see Section 13 – Limitation of Liability).

8. Client Warranties

8.1 General Representations of Compliance and Authority

The Client represents and warrants that:

- a) They have the legal capacity and authority to enter into the agreement and, where applicable, to bind their organisation;
- b) Their request for Services and usage thereof does not breach applicable law, software licences, third-party rights, or supplier policies;
- c) They will not request JMS to perform unlawful actions, unauthorised bypasses, or activities contrary to third-party licences/ToS (see Section 5.12).

8.2 Ownership and Licensing of Materials

The Client warrants that all Client Material (e.g., trademarks, content, data, software, documentation, credentials, equipment) provided to JMS is either owned by the Client or properly licensed/authorised for use in connection with the Services, and that they grant JMS the licence under Section 7.2(a). The Client is responsible for obtaining and maintaining necessary third-party licences unless otherwise agreed in writing (see Section 7.5).

8.3 Legitimacy of Hardware/Software

The Client warrants that all hardware and software provided or made available:

- a) Are of lawful origin and not stolen, lost, or otherwise illicit;
- b) Do not contain unlicensed or pirated software, nor have restrictions that require unauthorised bypassing;
- c) Where activation locks or encryption exist, the Client will provide recovery keys or lawfully remove the lock (see Sections 5.2 and 5.4).

8.4 Security, Malware, and Reasonable Measures

To the extent reasonably practicable, the Client declares that provided materials are free of known malware and that they will take reasonable security measures (e.g., scans, strong passwords). If JMS detects evidence of unlawful activity or illegal material, it may suspend the Service and act under Section 5.12(d).

8.5 Personal and Sensitive Data

- a) When providing personal information of employees or third parties, the Client warrants having a lawful basis (e.g., consent, contract) and that the disclosure is relevant to the Services.
- b) If the Service involves sensitive data, the Client must notify JMS in advance so that enhanced safeguards may be applied (see Section 5.8).

8.6 Accuracy of Information and Credentials; MFA

- a) Technical and contact information provided by the Client shall be truthful, accurate, and up to date.
- b) Supplied credentials must be authorised for the purpose of the Service; the Client will cooperate with MFA/2FA or enable temporary least-privilege accounts where necessary (see Section 5.2).

8.7 Compliance with Third-Party Terms

Where the Service involves managing issues or configurations within portals/providers (e.g., Microsoft, Apple, Google, OEMs, ISPs), the Client warrants that their use complies with such terms and authorises JMS to perform technical actions on their behalf within the approved scope (see Section 5.10).

8.8 Limited Indemnity for Client Materials and Acts (Subject to ACL)

To the extent permitted by law, the Client shall indemnify and hold harmless JMS from third-party claims (including reasonable legal costs) arising primarily from:

- a) Client Material (including IP infringement); or
- b) The Client's breach of warranties in Sections 8.1–8.7,
excluding any losses caused by JMS's negligence, breach of these Terms, or matters not reasonably attributable to the Client. This indemnity does not limit the Client's non-excludable rights under the ACL and shall be managed under Section 12 (Indemnity).

8.9 Remedies for Client Breach

If the Client materially breaches these warranties and fails to remedy the breach within a reasonable period following written notice, JMS may suspend or terminate the Services under Section 11, without prejudice to other available remedies and subject to the ACL.

8.10 Survival and ACL Compatibility

The warranties and obligations in this Section survive Service Completion. Nothing herein excludes, restricts, or modifies the Client's non-excludable ACL rights. Any risk allocation or indemnity shall operate only to the extent permitted by law and in a proportionate manner.

8.11 Management of Third-Party Claims

A party receiving a claim covered by this Section shall promptly notify the other. For claims under 8.8, the Client (as indemnifier) may assume and direct the defence (including legal representation), provided that: (a) they act with reasonable diligence; (b) JMS is kept reasonably informed; and (c) no settlement imposes non-monetary obligations on JMS without its prior written consent (which shall not be unreasonably withheld). If the Client declines or fails to act diligently, JMS may assume the defence, and the Client shall reimburse reasonably incurred, proportionate costs. Neither party shall admit liability or settle without the other's prior written consent (not to be unreasonably withheld). Both parties shall cooperate and provide necessary information.

8.12 Proportional Liability

To the extent permitted by law, the Client's liability under Section 8.8 is limited to the proportion of loss or damage attributable to its own acts or omissions. The Client is not liable for portions attributable to JMS or third parties.

8.13 Small Business / Unfair Terms

Where the Client qualifies as a small business under the ACL, this Section shall be interpreted so as not to cause significant imbalance or exceed what is reasonably necessary to protect legitimate interests. Any part deemed unfair under the ACL shall be deemed void without affecting the remainder.

8.14 Mitigation

Each party shall take reasonable steps to mitigate their losses and costs. Any recovery under indemnity or for damages shall be reduced to the extent the claimant failed to take reasonable mitigation measures.

9. Cancellation and Rescheduling

9.1 How and When to Notify

- a) The Client may cancel or reschedule by notifying JMS via email, SMS, or the designated platform (see Section 6.3).
- b) Unless otherwise agreed, at least 24 hours' notice is required prior to the scheduled start time (or the beginning of the arrival window communicated by JMS).
- c) "Day" means calendar day; "Business Day" means Monday to Friday in NSW, excluding public holidays (see Section 1).

9.2 Remote / On-Site / Workshop — Specific Rules

- a) **Remote support:** If the Client cancels or reschedules with less than 24 hours' notice and a time slot was reserved, a minimum charge equivalent to 15 minutes at the remote support rate may apply.
- b) **On-site:** Cancellations or rescheduling with less than 24 hours' notice may incur a minimum charge equivalent to 1 hour at the on-site rate, plus any reasonable expenses already incurred (e.g., non-refundable tolls/parking).
- c) **Workshop (equipment submitted):** No labour charge applies for cancelling work not yet started. If diagnostics or work have already commenced, time worked and materials used will be billed (see Section 3).
- d) **En route / travel in progress (on-site):** If cancellation occurs while the technician is already in transit during the agreed arrival window, the minimum on-site charge (9.2.b) and reasonable

incurred expenses may apply.

e) **Cancellation during an active session (remote):** If cancellation occurs after the session has started, time worked up to that point will be billed, with a minimum of the current billing block (see Section 3.7).

9.3 “No Show”, Lack of Access, and Wait Time

- a) If no access is available upon arrival, or if the Client/representative is not present during the agreed arrival window, the minimum on-site charge (9.2.b) will apply and the session will be rescheduled to the next available slot.
- b) Wait times not attributable to JMS (e.g., lack of credentials, keys, site permits, MFA) may be billed at the hourly rate in 15-minute increments (see Section 3.7).

9.4 Deposits, Prepayments and Parts Procurement

- a) Deposits (e.g., for web projects or parts-related work) will be applied to reasonable costs already incurred and time worked.
- b) If JMS has already purchased parts/licenses and the Client cancels:
 - i) If they are non-returnable or customised, the Client will cover the full cost.
 - ii) If returnable, the credited amount will be reduced by any restocking or supplier logistics fees.
- c) Any deposit refund will reflect the above and be processed within a reasonable time, without prejudice to the Client’s ACL rights.
- d) **Refund timeframe:** Unless there is justified cause, approved refunds will be processed within 10 business days from written confirmation of the refund amount.

9.5 Multiple Reschedulings

If the Client requests more than two date/time changes for the same Service, JMS may refuse further rescheduling or apply a reasonable administrative fee, with prior notice.

9.6 Cancellation by JMS

- a) If JMS cancels or reschedules for reasons not attributable to the Client (e.g., technician unavailability), JMS will offer reasonable alternative dates or, at the Client’s request, refund any prepaid amount for unprovided portions, without penalty and without prejudice to ACL rights.
- b) If the reason is force majeure, Section 9.7 applies.
- c) **Delays:** If JMS is unable to provide the Service within a reasonable time, the Client may cancel the unprovided portion at no charge and receive a refund for that part, without prejudice to other ACL remedies.
- d) **No-show by JMS:** If JMS fails to attend during the confirmed arrival window and force majeure does not apply, the Client may cancel without charge and obtain a refund for any prepaid amount relating to the unprovided portion.

9.7 Force Majeure (Client or JMS)

- a) Neither party shall be liable for cancellation or rescheduling due to force majeure (see Section 14).
- b) No cancellation fees will apply if the sole cause is force majeure; however, actual, reasonable, and previously agreed costs (e.g., non-returnable parts per 9.4) may be invoiced.
- c) The Service will be rescheduled as soon as feasible, or the Client may cancel the unprovided portion without penalty.

9.8 Unsolicited Agreements (Cooling-Off)

If the engagement qualifies as an *unsolicited consumer agreement* under the ACL, the Client

may cancel at no charge during the applicable cooling-off period. Nothing in this Section 9 limits those rights (see Section 2.13).

9.9 Proportionality, Evidence, and No Penalties

- a) Any cancellation or rescheduling fee will be reasonable, proportionate, and documented, reflecting actual time reserved or worked and actual expenses.
- b) No penalty beyond coverage of those costs, without prejudice to the ACL.
- c) No charge will apply where cancellation is due to the exercise of an ACL right (e.g., major failure or failure not rectified within a reasonable time regarding goods/services).
- d) Upon request, JMS will provide reasonable evidence of the applied charges (e.g., supplier restocking fee, non-refundable tolls/parking).

9.10 Practical Process for Cancelling/Rescheduling

- a) Send an email or SMS specifying the Work Order or invoice number, the appointment date/time, and whether cancellation or rescheduling is requested.
- b) JMS will confirm receipt and, if rescheduling, propose available time slots.
- c) For refunds (if applicable), the Client shall provide bank details or the original payment method.

9.11 ACL Compatibility and Small Business

- a) Nothing in this Section 9 excludes, restricts, or modifies the Client's non-excludable rights and remedies under the ACL.
- b) Where the Client qualifies as a small business, these conditions shall be interpreted to avoid significant imbalance and not go beyond what is reasonably necessary to protect legitimate interests. Any part declared unfair shall be deemed void without affecting the remainder.

10. Equipment Collection and Storage

10.0 bis Value of Goods

For the purposes of this Section 10, the “value” of goods is a reasonable estimate of their market value at the time of the collection/disposal notice issuance. If multiple items are left, each will be valued individually unless they form a set (e.g., tower, monitor, and keyboard from the same system).

10.1 Availability for Collection and Notification

- a) When the Service is complete, JMS will notify the Client via the designated electronic channels (see Section 6.3) that the equipment is ready for collection. Legally, the notice is deemed received when it is retrievable at the designated electronic address.
- b) The Client must keep contact details updated. Failure to read the notice does not suspend time limits.

10.2 Standard Collection Period and Storage Charges

- a) Unless otherwise agreed, the Client must collect the equipment within 30 calendar days of notification.
- b) After 30 days, JMS may apply reasonable storage charges of AUD 10 per week (or part thereof), proportional to space/service provided. These charges are in addition to other lawful “relevant charges” (see 10.6).

10.3 Treatment as “Uncollected Goods”

If the equipment is not collected after notification, JMS will treat it as “uncollected goods” and

act in accordance with the *Uncollected Goods Act 1995 (NSW)*, which imposes rules depending on the goods' value and requires prior notice before disposal.

10.4 Value-Based Classification and Disposal Methods

- a) **Low-value goods (< AUD 1,000)**: With oral or written notice and a 14-day collection window, JMS may dispose of the items appropriately (e.g., recycling, donation, reasonable sale).
- b) **Mid-value goods (≥ AUD 1,000 and < AUD 20,000)**: With written notice and a 28-day collection window, disposal will be via public auction or private sale at fair value.
- c) **High-value goods (≥ AUD 20,000)**: Only disposed of under an order from NCAT specifying the method.
- d) **Personal documents** (e.g., passports, bank statements, photos): With written notice and a 28-day window, items must be securely destroyed or returned to their owner.
- e) **Perishable items or waste**: May be immediately and properly disposed of without notice.

10.5 Content and Form of Disposal Notice

Any disposal notice will include at minimum: (i) JMS's name; (ii) description of items; (iii) address for collection; (iv) outstanding charges; (v) date when disposal will occur if not collected; and (vi) statement that JMS may deduct unpaid charges from sale proceeds. Notice may be served by any permitted means, including email.

If the owner is unknown or unlocatable despite reasonable efforts, JMS is not required to notify unknown interested parties. In that case, JMS will store the items for the applicable period and dispose of them per their value, this Section, and the law.

10.6 Permissible Charges (“Relevant Charges”)

As per the *Uncollected Goods Act*, allowed charges include: (i) agreed or reasonable amounts for transport, storage, or repairs; (ii) costs incurred from notice to disposal (e.g., storage, upkeep, insurance); and (iii) disposal costs (e.g., auction fees).

10.7 Sale Proceeds, Unclaimed Money, and Records

- a) JMS may deduct due charges from sale proceeds. Any surplus will be treated as unclaimed money per applicable law. If proceeds are insufficient, the Client remains liable for the shortfall.
- b) Within 7 days of disposal, JMS will prepare and keep a record (including description, date, method; if sold: buyer, sale amount, amounts withheld; if auctioned: auctioneer details) for 12 months for low-value goods and 6 years otherwise, and make it available to the Client upon request.

10.8 Repairer’s Lien (Right to Retain)

JMS retains a lien over the equipment until all due amounts for work, storage, and reasonable expenses are fully paid. This common law lien is not subject to PPSA registration.

Continued Possession: The lien applies only while JMS retains possession. If equipment is released before full payment, the lien is forfeited.

10.9 Secure Data Erasure and Sensitive Parts

Before donating, recycling, or disposing of unreturned storage devices, JMS will securely erase data in accordance with the Privacy Policy and Section 6.4(c). A certificate of erasure/destruction may be issued upon request (charge per price list). Personal documents will be handled per Section 10.4(d).

10.10 Release Conditional on Payment and ID

Equipment is released only to the rightful owner or an authorised representative upon

reasonable identity verification and full payment of all outstanding charges, including storage and applicable fees.

10.11 Hazardous or Risky Equipment

If equipment is reasonably deemed hazardous (e.g., leaking batteries, infestations, electrical risk), JMS may reject admission or isolate/suspend custody. If necessary, JMS may dispose of the item per law to mitigate risk while minimising data exposure (see Sections 6.4(d), 5.6).

10.12 Limitation of Liability (Custody and Disposal)

- a) To the fullest extent permitted by law—and without excluding non-excludable ACL guarantees—JMS is not liable for loss, damage, or theft of equipment occurring after 30 days from availability notification, unless due to JMS's negligence.
- b) Disposing of goods per the *Uncollected Goods Act* incurs no liability for JMS. This does not affect the Client's rights under the ACL.

10.13 Legal Compatibility and Precedence

- a) If any conflict arises between this Section 10 and the *Uncollected Goods Act 1995 (NSW)*, the Act prevails.
- b) Nothing in this Section limits the Client's non-excludable rights under the ACL.

10.14 NCAT Direction

Where reasonable doubt exists about proper disposal or the correct recipient, JMS may seek an order from NCAT (e.g., authorising sale, specifying notice method, distribution of funds). NCAT orders override other provisions in this Section.

11. Termination and Suspension

11.1 Scope and Relationship with Section 9

- a) This Section governs termination of the contract or of an ongoing Work Order.
- b) Appointment cancellations/rescheduling are governed by Section 9 (including minimum charges and purchased parts).
- c) Nothing in this Section excludes, restricts, or modifies the Client's non-excludable rights under the ACL.

11.2 Termination for Convenience

- a) Either party may terminate a Work Order or a master agreement on 7 calendar days' prior written notice.
- b) **Financial effects:**
 - i) The Client shall pay for work actually performed up to the effective date and reasonable costs incurred (including non-returnable parts per 9.4).
 - ii) JMS will refund any prepaid amounts for the unprovided portion (pro rata), except for non-refundable charges disclosed and accepted (e.g., non-returnable licences).
 - iii) If termination for convenience is initiated by JMS without Client fault, the Client will owe no cancellation fees and will receive a pro rata refund of any unprovided portion.
- c) **Periodic plans or prepaid hours (if any):** Unused balances are refunded pro rata or, at the Client's option, retained as a credit for 12 months; any volume discounts applied will be adjusted proportionally.
- d) **Reasonableness and reasons:** Where JMS exercises termination for convenience, it will act

in good faith, reasonably, and provide written operational reasons; this right will not be used to circumvent ACL obligations or commercial warranties.

11.3 Immediate Suspension of Service

JMS may suspend the Service (in whole or in part) without penalty, upon notice to the Client, where:

- a) There is a WHS/safety risk (see 5.6 and 6.10).
- b) The Client fails to provide access/credentials/MFA reasonably required (5.2).
- c) There is an overdue invoice (3.8), after a payment reminder.
- d) Unlawful activities or actions contrary to third-party licences/ToS are requested (5.12).
- e) There are reasonable indications of illegal material or a data breach requiring containment (5.12(d), Privacy Policy).

Suspension does not affect the Client's ACL rights.

11.4 Immediate Termination for Cause

Either party may terminate with immediate effect if the other party:

- a) Materially breaches these Terms and fails to remedy within 7 days after reasonable written notice;
- b) Commits a serious breach not capable of remedy (e.g., intentional confidentiality/privacy breach);
- c) Becomes insolvent (liquidation, administration, bankruptcy) or ceases operations;
- d) In the case of the Client, fails to pay amounts due 7 days after the due date (3.8) or repeatedly refuses to provide essential access (5.2);
- e) Legal/regulatory changes render performance unlawful or unviable (with reasonable notice).
- f) **Ipsso facto:** Any termination rights for insolvency will be exercised only to the extent permitted by law, including the *ipso facto* restrictions under the *Corporations Act 2001 (Cth)* where applicable.

11.5 Effects of Termination/Suspension

- a) **Final invoicing:** JMS will issue a final pro rata invoice for work actually performed and reasonable costs incurred up to the effective date; deposits will be applied against such amounts.
- b) **Refunds:** Where applicable (e.g., termination by JMS without cause or impossibility not attributable to the Client), JMS will refund the unprovided portion within a reasonable time (see 9.4(d)).
- c) **Equipment collection:** The Client shall collect equipment per Section 10; release is subject to full payment and the repairer's lien (10.8).
- d) **Parts/materials:** Handled per 9.4 (returnable/non-returnable).
- e) **Remote agents and access:** JMS will uninstall/disable support agents installed for the Work Order (6.7(f)) and revoke its access; the Client shall change passwords/MFA.
- f) **Client Data:** JMS will handle personal data per the Privacy Policy (erasure/legal retention, §6). Upon request, JMS may issue a certificate of erasure for media in its possession (fee per price list).
- g) **Deliverables and IP:**
 - If the Client has paid in full, it retains the licence under 7.3 (irrevocable as stated).
 - If payment is outstanding, JMS may suspend use of the Deliverables until payment (7.3, Irrevocability).
 - Nothing herein limits ACL rights (e.g., refund/compensation for major failures).

h) **Operational timelines:** Absent justified cause, JMS will issue the final invoice within 5 Business Days of the effective date and process approved refunds within 10 Business Days.

11.6 Interaction with PPSA and Repairer's Lien

- a) If JMS has supplied goods on credit, its security interests (including any PMSI) remain in effect, and JMS may exercise remedies permitted by law and these Terms (3.3(d)).
- b) The repairer's lien (10.8) continues while JMS retains possession and is independent of the PPSA.

11.7 Termination for Prolonged Force Majeure

If a force majeure event (Section 14) materially prevents performance for more than 30 consecutive days, either party may terminate the unprovided portion without penalty. Prepaid amounts for the unprovided portion will be refunded, without prejudice to other ACL rights (9.7).

11.8 Transition Assistance

At the Client's request, JMS will provide reasonable transition assistance (documentation delivery, technical handover) on a time-and-materials basis at current rates, provided the Client is up to date on payments and such assistance does not breach confidentiality or third-party licences.

11.9 No Exclusion of ACL Remedies; Proportionality

- a) Where termination or suspension relates to an ACL remedy (e.g., major failure or failure not rectified within a reasonable time), ACL remedies (refund, compensation for reasonably foreseeable loss, etc.) apply and incompatible cancellation fees will not be charged.
- b) Any settlement of amounts will be reasonable, proportionate, and supported by records of time and expenses.

11.10 Relationship with Dispute Resolution

Termination or suspension does not prevent activation of Section 15 (Dispute Resolution) or recourse to NCAT/courts where applicable.

11.11 Survival

The following survive termination or Service Completion: 3 (accrued payments), 4 (ACL and commercial warranty, as applicable), 5.8 (confidentiality/data), 6.9 (records), 7 (Intellectual Property), 8 (Client warranties), 9.4 (parts and deposits), 10 (uncollected goods and lien), 12 (Indemnity), 13 (Limitation of Liability), 14 (Force Majeure), 15 (Disputes), 18 (Notices), and any ongoing payment or privacy obligations.

11.12 Small Business / Unfair Contract Terms (UCT)

Where the Client qualifies as a small business under the ACL, this Section shall be interpreted so as not to cause a significant imbalance or go beyond what is reasonably necessary to protect legitimate interests. Any part found unfair under the ACL is void and the remainder continues in effect.

11.13 Effectiveness of Termination Notices

Termination or suspension notices take effect on the date stated in the notice or, if unstated, when they are capable of being retrieved at the designated electronic address (Section 6.3), whichever is later.

12. Indemnity

12.1 Definitions (for this Section)

- a) **Claim:** Any demand, administrative or judicial proceeding, regulator's requirement, or third-party complaint (including end customers, suppliers, rightsholders, or authorities).
- b) **Losses:** Reasonable and documented amounts paid or payable for damages, approved settlements, reasonable legal costs (on an indemnity basis or a solicitor-client basis where recoverable), fees and expenses associated with the defence and management of the Claim.
- c) **Third Party:** A person other than JMS and the Client (including affiliates when acting in their own right).
- d) **Indemnify:** The obligation to hold harmless and reimburse Losses in accordance with the scope and limits of this Section 12 and the ACL.

12.2 Client Indemnity in Favour of JMS (Third-Party Claims)

To the extent permitted by law, the Client shall indemnify and hold JMS harmless from Third-Party Claims and Losses arising primarily from:

- a) Client Material, its use or provision (including third-party IP infringement, licence breaches, or unauthorised software);
- b) the Client's instructions or its subsequent configuration/use that gives rise to the damage or the Claim;
- c) the Client's breach of Sections 5 (obligations), 7.5 (third-party software), or 8 (Client warranties);
- d) unlawful data, malware, or prohibited material present on the Client's equipment/data;
- e) false/inaccurate statements by the Client or omission of relevant information reasonably required.

Carve-outs: This indemnity does not apply to the extent the Claim or Losses are due to (i) JMS's negligence or wilful misconduct; (ii) JMS's breach of these Terms; or (iii) matters not reasonably attributable to the Client. Sections 8.12 (proportional liability) and 8.14 (mitigation) also apply.

12.3 Scope: Third Parties vs. Own Losses

This Section 12 covers Third-Party Claims. Direct losses between the parties are governed by Section 13 (Limitation of Liability) and the ACL.

12.4 JMS and Third-Party IP Infringement

JMS's obligation regarding third-party IP Claims relating to Deliverables is as set out in Section 7.7 (Limited Warranties and Infringement), which provides the exclusive remedies for that scenario, without prejudice to the Client's non-excludable ACL rights.

12.5 Privacy and Data

Each party will handle personal information in accordance with the Privacy Policy and applicable law. Any liability for data incidents will be determined under the *Privacy Act 1988 (Cth)*, the NDB scheme, these Terms (including 5.8 and 11.5(f)), and the ACL. Nothing in this Section excludes a party's liability for wilful misconduct or gross negligence in data handling, to the extent permitted by law.

12.6 Procedure and Control of Defence

Claims covered by 12.2 will be managed under 8.11 (Management of Third-Party Claims): prompt notice, the Client's (indemnifier's) right to assume conduct of the defence with diligence, cooperation between the parties, and prior consent for settlements imposing non-monetary obligations on JMS.

Late notice and prejudice: Failure to give prompt notice will reduce the indemnity only to the extent it causes actual prejudice to the indemnifier's ability to investigate/defend the Claim.

12.7 Specific Exclusions

Unless required by law:

- a) The indemnity does not cover fines/penalties imposed by an authority to the extent they are not legally indemnifiable or are due to the indemnified party's conduct.
- b) It does not cover the indemnified party's taxes or duplicate losses.
- c) It does not expand or limit non-excludable ACL guarantees/remedies.

12.8 Mitigation and Cooperation

Each party will take reasonable steps to mitigate its Losses and will cooperate in good faith in the defence and resolution of the Claim (see 8.14). The indemnified party will not incur unreasonable costs without giving a reasonable opportunity to defend per 8.11.

12.9 ACL Compatibility and Proportional Remedies

Nothing in this Section excludes, restricts, or modifies the Client's non-excludable rights and remedies under the ACL. Where the Client is non-PDH and to the extent permitted by law, the remedies under this Section will operate proportionately and in coordination with Section 13.

12.10 Small Business / Unfair Contract Terms (UCT)

Where the Client qualifies as a small business under the ACL, this Section will be interpreted so as not to cause a significant imbalance, go beyond what is reasonably necessary to protect legitimate interests, or operate unjustly. Any part found unfair will be void without affecting the remainder.

12.11 Survival

The indemnity, mitigation, cooperation, and proportionality obligations in this Section survive Service Completion or contract termination.

12.12 GST on Indemnity Payments

To the extent any amount payable under this Section 12 constitutes consideration for a taxable supply under the GST Act, the amount is exclusive of GST and the paying party shall remit an additional 10% GST upon receipt of a valid tax invoice from the receiving party. Nothing herein affects adjustments required by law.

12.13 Netting for Insurance and Recoveries; No Double Recovery

Any indemnity payment will be net of amounts recovered or reasonably recoverable by the indemnified party from insurers, liable third parties, or through rights of recovery. There will be no double recovery for the same item. The indemnified party will pursue reasonable recoveries that do not entail disproportionate costs.

12.14 Insurance and Subrogation

The indemnified party will permit the indemnifying party to tender the Claim to applicable insurance and will cooperate with insurers' subrogation rights, to the extent applicable. Neither party will waive rights that would prejudice the other's insurance coverage without that party's reasonable consent.

13. Limitation of Liability

13.1 ACL — Non-Excludable Guarantees and Remedies

Nothing in these Terms excludes, restricts, or modifies the non-excludable guarantees and remedies provided by the *Australian Consumer Law (ACL)*. For further detail and the prescribed text, see Section 4.

13.2 PDH Consumers (Personal, Domestic or Household)

Where the Client acquires PDH goods or services, any limitation or exclusion of liability in this Section does not apply to the extent it would contravene the ACL. If there is a major failure with the service or with goods, ACL remedies apply (e.g., cancellation, refund, replacement/rectification, and compensation for reasonably foreseeable loss or damage).

13.3 Non-PDH Clients — Limitation under s 64A ACL (Remedies for Consumer Guarantees)

To the extent permitted by law, where the Client does not acquire PDH goods/services, JMS's liability for failure to comply with a consumer guarantee for services is limited, at JMS's option, to: (a) re-supplying the services; or (b) paying the cost of having the services re-supplied. For goods (if any): (a) replacement or supply of equivalent goods; (b) repair; (c) payment of the cost of replacement or of equivalent goods; or (d) payment of the cost of repair.

13.4 General Cap (Non-PDH) for Other Liabilities

To the extent permitted by law, and save for ACL remedies and the carve-outs in 13.8, JMS's total aggregate liability to the Client for all claims not covered by 13.3 (whether in contract, tort—including negligence—statute, or otherwise) is limited to the total fees paid or payable for the specific Service giving rise to the claim. This cap applies in aggregate to all claims arising from the same Service.

13.4 bis Recurring Services

For periodic services, maintenance contracts, or ongoing bundles/retainers—and only to the extent permitted by law and for non-PDH clients—JMS's total aggregate liability for all claims arising from the same recurring service is capped at the fees paid for that service in the 12 months immediately preceding the event giving rise to the claim, without prejudice to 13.3 and the carve-outs in 13.8.

13.5 Exclusion of Indirect/Consequential Loss

To the extent permitted by law, JMS is not liable for indirect or consequential loss, including loss of profits, revenue, expected savings, goodwill, business interruption, loss of opportunity, or loss/corruption of data.

Carve-outs: This exclusion does not apply to the extent required by law (e.g., ACL remedies applicable to PDH) or where losses arise directly from: (i) JMS's wilful misconduct or gross negligence; or (ii) a serious breach by JMS of privacy/confidentiality obligations, each only to the extent permitted by law.

Clarification on foreseeability: For the purposes of this Section, indirect, special, or consequential losses are excluded even if foreseeable or the possibility was disclosed, to the extent permitted by law and without affecting applicable ACL remedies.

13.6 Data and Backups

The Client is responsible for maintaining complete and verified backups prior to any intervention, unless a backup/recovery service has been engaged (Section 5.4). To the fullest extent permitted by law, JMS is not liable for loss/corruption of data except where:

- a) it constitutes an applicable ACL remedy; or
- b) it results directly from JMS's wilful misconduct or gross negligence in performing the agreed service.

13.7 Third Parties

JMS does not warrant the performance of third-party products or services (manufacturers, ISPs, software vendors) beyond what is required by the ACL or by the manufacturer/supplier warranties (see Sections 4 and 7.5). Delays or failures attributable to third parties do not increase JMS's liability.

13.8 Mandatory Carve-Outs

Nothing in this Section 13 limits or excludes JMS's liability for:

- a) fraud or wilful misconduct;
- b) death or personal injury caused by JMS's negligence, to the extent such limitation would be unlawful;
- c) ACL remedies and other non-excludable rights;
- d) the remedies specifically provided in 7.7(c) for third-party IP (to the extent applicable).

13.9 Proportional Liability and Mitigation

JMS's liability is reduced to the extent the loss was caused or contributed to by the Client or a third party. Each party will take reasonable steps to mitigate its losses (see 8.12 and 8.14).

13.10 Single Cap and Concurrent Causes

Where the same loss arises from multiple causes of action (contract, negligence, statute), a single cap applies under 13.4, with no "double counting," and subject to the carve-outs and the ACL.

13.11 Force Majeure

Neither party is liable for failures or delays caused by force majeure (Section 14), without prejudice to ACL rights.

13.12 Small Business / Unfair Contract Terms (UCT)

Where the Client qualifies as a small business under the ACL, this Section will be interpreted so as not to cause a significant imbalance, will be reasonably necessary to protect legitimate interests, and will be transparent. Any part found unfair will be void without affecting the remainder.

13.13 Compatibility and Precedence

If there is any conflict between this Section 13 and the ACL, the ACL prevails. This Section applies in addition to, and without prejudice to, Section 4 (ACL), Section 7.7 (IP), Section 9 (cancellation), Section 10 (uncollected goods), and Section 12 (indemnity).

13.14 JMS Personnel

To the fullest extent permitted by law, the Client agrees not to bring personal claims against JMS's directors, employees, or contractors arising out of the Services; the Client's recourse shall be against JMS. Nothing in this clause limits personal liabilities that are non-excludable by law (including the ACL) or prevents actions for individual wilful misconduct or gross negligence where permitted by law.

13.15 Legal Prevalence

If any part of this Section 13 is inconsistent with a non-excludable law (including the ACL), the inconsistent provision is void to that extent only, without affecting the remainder.

14. Force Majeure

14.0 bis Evidence

The affected party will retain reasonable records (e.g., public orders, supplier notices, support tickets) evidencing the existence and duration of the Force Majeure event and will make them available to the other party upon reasonable request.

14.1 What Constitutes Force Majeure

Force Majeure means any extraordinary, unforeseeable event beyond the affected party's reasonable control that prevents or delays performance despite reasonable measures to prevent or overcome it. By way of example only:

- a) natural disasters (fires, floods, earthquakes, severe storms);
- b) acts of authority or regulatory changes (health orders, quarantine measures, travel/import bans, sanctions);
- c) war, terrorism, civil commotion, sabotage;
- d) widespread failures of power, telecommunications, mass Internet outages, or outages at critical cloud providers;
- e) pandemics/epidemics and public health emergencies;
- f) large-scale cyber incidents objectively impacting essential infrastructures or providers;
- g) strikes, stoppages, or blockades not attributable to the affected party.

The following are not Force Majeure: lack of funds, the affected party's own staffing failures, or equipment breakdowns under the affected party's control that were reasonably avoidable or mitigable.

14.2 Legal Effects

For the duration of Force Majeure, affected obligations are suspended and performance deadlines are extended by the period of impact plus a reasonable recovery period. Unaffected obligations continue.

14.3 Notice and Management

The affected party will notify the other as soon as reasonably practicable, indicating: (i) the nature of the event; (ii) the obligations impacted; (iii) mitigation measures adopted; and (iv) a non-binding estimate of duration. The information must be updated if circumstances materially change.

14.4 Mitigation and Business Continuity

Each party will use reasonable efforts to: (i) reschedule work; (ii) switch to remote delivery where viable; (iii) use available alternative providers; and (iv) protect Client equipment and data (including secure temporary storage) to the extent possible.

14.5 Payments and Costs During Force Majeure

- a) The Client will pay for work actually performed and reasonable costs already incurred up to the start of the impact (e.g., non-returnable parts, see 9.4).
- b) No cancellation penalties apply where Force Majeure is the sole cause (see 9.7); only actual, previously accepted costs may be passed through.
- c) If the Service is rescheduled, any prepayments remain applied to the outstanding work; if cancelled under 14.6, 14.7(b) applies.
- d) **Payments during suspension.** During suspension for Force Majeure, the Client is not required to pay for services not provided, without prejudice to: (i) work actually performed and reasonable, non-recoverable costs already incurred and accepted (see 9.4); and (ii) prepayments, which will remain as credit applied to restart or be refunded pro rata if terminated under 14.6/11.7.

14.6 Prolonged Force Majeure and Termination

If Force Majeure materially prevents performance for more than 30 consecutive days, either party may terminate the unprovided portion without penalty, in accordance with 11.7. Termination does not affect accrued obligations or the Client's non-excludable rights under the ACL.

14.7 Refunds and Parts

- a) If the Client opts to continue once the impact ceases, performance will resume with reasonable priority.
- b) If termination occurs under 14.6, JMS will refund pro rata any prepaid amounts for the unprovided portion and settle parts in accordance with 9.4 (returnable/non-returnable). Refunds will be processed within a reasonable time (see 9.4(d) and 11.5(h)).

14.8 Privacy and Security

Nothing in this Section relieves either party from complying with the *Privacy Act 1988 (Cth)* and minimum security/confidentiality obligations; where full compliance is impossible due to the impact, the affected party will apply reasonable alternative measures and notify in accordance with its Privacy Policy and the NDB scheme, where applicable.

14.9 Consistency with Other Sections

- a) Cancellation/Rescheduling due to Force Majeure: see 9.7.
- b) Termination for Force Majeure: see 11.7.
- c) Equipment delivery/retention during the impact is handled under Section 10 (including the repairer's lien).

14.10 ACL and UCT (Small Business)

Nothing in this Section excludes, restricts, or modifies non-excludable rights and remedies under the ACL. Where the Client qualifies as a small business, this clause applies proportionately and only to what is reasonably necessary to protect legitimate interests; any part found unfair will be void.

14.11 Frustration of Contract

Nothing in this Section limits rights or remedies that may arise if the contract is considered frustrated under the *Frustrated Contracts Act 1978 (NSW)* and at common law. Force Majeure does not prevent invoking frustration where legally appropriate.

14.12 Critical Suppliers

Where the event affects critical suppliers (e.g., cloud, telecommunications, manufacturers) beyond the affected party's reasonable control and substitution is not feasible with reasonable efforts, the event will be treated as Force Majeure. The affected party will use reasonable efforts to substitute or reconfigure with commercially reasonable alternatives.

15. Dispute Resolution

15.0 bis Legal Time Limits

This dispute resolution procedure does not suspend or extend limitation periods or statutory time limits for commencing proceedings, unless required by law. Each party may take reasonable steps to preserve its rights (including seeking interim relief).

15.1 Scope and Compatibility with Law

- a) This Section governs the internal and alternative process for resolving disputes arising from these Terms or a Work Order.
- b) Nothing in this Section excludes, restricts, or modifies the Client's non-excludable rights under the ACL, nor prevents recourse to NCAT, competent courts, NSW Fair Trading, or—regarding privacy—to the OAIC.
- c) Where the Client qualifies as a small business or PDH consumer, this Section will apply in a proportionate and transparent manner, and any part found unfair under the ACL is void.

15.2 Internal Handling (Initial Complaint)

- a) The Client may lodge a complaint at: mateo@jmstech.com.au or via the channels in Section 18.
- b) Acknowledgement of receipt within 2 Business Days and an initial proposal of resolution steps within 7 Business Days.
- c) Target resolution within 30 calendar days (where the matter permits).
- d) This process does not delay or limit recourse to NCAT/courts/authorities.

15.3 Good-Faith Negotiation

- a) If the dispute is not resolved through internal handling, the parties will negotiate in good faith for 14 calendar days, exchanging non-privileged information reasonably necessary to assess the claim. Communications will be "without prejudice" where appropriate.
- b) At either party's request, and before mediation, the parties will hold a senior-level escalation meeting within 7 Business Days to attempt an in-principle agreement.

15.4 Mediation (Voluntary)

- a) If no agreement is reached under 15.3, either party may propose mediation before NSW Community Justice Centres (CJC) and/or the Australian Disputes Centre (ADC).
- b) Mediation will be held in Newcastle/Sydney or virtually, in English, with a mediator mutually agreed (or appointed by the chosen institution).
- c) **Costs:** Mediator/service fees will be shared equally, and each party bears its own legal costs, unless otherwise agreed or required by law.
- d) Mediation should commence within 30 days of acceptance, unless otherwise agreed.

15.5 Arbitration (Only by Written Agreement)

- a) Arbitration is optional and only if both parties agree in writing.
- b) In the absence of specific agreement, arbitration will be under ADC or ACICA rules, seated in NSW, before a sole arbitrator, in English.
- c) The arbitrator may grant interim measures and will determine the allocation of costs.
- d) This clause does not prevent either party from applying to NCAT or the courts where permitted by law or in non-arbitrable matters.

15.6 NCAT and Courts

- a) For disputes within NCAT's jurisdiction (e.g., consumer/small claims in NSW), either party may commence proceedings in NCAT at any reasonable time.
- b) Otherwise, non-exclusive jurisdiction of the courts of NSW applies (see Section 19), without prejudice to ACL remedies.
- c) **Liquidated Debts Carve-Out:** Either party may commence summary proceedings for recovery of a liquidated debt (e.g., overdue invoices) in NCAT or the Local Court without exhausting steps 15.2–15.5, where the amount claimed is ≤ AUD 20,000 (or the applicable

statutory threshold). This does not limit the other party's right to raise defences or counterclaims.

15.7 Urgent Relief (Injunctions)

Nothing prevents a party from seeking urgent injunctive/interlocutory relief to protect confidentiality, IP, system or data security, or to preserve the status quo.

15.8 ADR Confidentiality

- a) Negotiation, mediation, and—where applicable—arbitration are confidential, and communications made in those settings are inadmissible as evidence except as permitted by law (e.g., to enforce a settlement or award, or where disclosure is legally required).
- b) The parties may make “without prejudice save as to costs” (Calderbank) offers. Such offers may be relied upon later on costs, subject to applicable law and the discretion of the court/NCAT/arbitrator.

15.9 Timeframes and Continuation of Service

- a) If the dispute is not resolved through 15.2–15.4 within 45 calendar days from the initial dispute notice, either party may commence NCAT/court proceedings or propose arbitration (if agreed in writing).
- b) **Continuity:** Unless there is material breach or non-payment (see 11.3–11.5), the parties will seek to continue performing non-disputed obligations.

15.10 Costs

Unless a court/arbitrator orders otherwise or the law provides a different regime, each party bears its own legal costs. In mediation, mediator fees are shared equally.

15.11 Privacy and Data

Privacy-related disputes will be handled under these Terms and the Privacy Policy; the Client may escalate to the OAIC if unsatisfied. Nothing in this Section limits mandatory notifications under the NDB scheme.

15.12 Interaction with Other Sections

This Section coordinates with: Section 9 (cancellation), Section 10 (uncollected goods), Section 11 (termination/suspension), Section 12 (indemnity), Section 13 (limitation of liability), and Section 18 (notices).

15.13 Small Business / UCT

This Section will be interpreted so as not to cause a significant imbalance, be reasonably necessary to protect legitimate interests, and be transparent. Any portion found unfair under the ACL is void without affecting the remainder.

15.14 Survival

Confidentiality and cooperation obligations, and any settlements reached through mediation/arbitration, survive Service Completion or contract termination.

16. Severability and Partial Enforcement

16.1 Partial Validity and Read Down

If any provision of these Terms is declared invalid, illegal, or unenforceable, in whole or in part, by a court, authority, or applicable law, it will be read down to the minimum extent necessary

to make it valid, lawful, and enforceable. If it cannot be read down, the affected part will be severed without affecting the validity and enforceability of the remainder.

16.2 Replacement of the Invalid Clause

The parties will negotiate in good faith a valid and enforceable substitute clause that most closely reflects the commercial intent and risk allocation of the original provision, consistent with the ACL and these Terms. Until replaced, relevant default legal rules will apply.

16.3 ACL and Small Business UCT

Nothing in this Section excludes, restricts, or modifies the Client's non-excludable rights under the ACL. Where the Client qualifies as a small business, any term found unfair under the ACL will be void to the extent of its unfairness and treated as not written, without affecting the remainder. JMS will not seek to enforce any term declared unfair.

16.4 Partial Enforcement and Limited Effects

The unenforceability of a provision in a particular case, jurisdiction, or with respect to certain persons will not affect its application in other cases, jurisdictions, or with respect to other persons, where lawful. Partial enforcement of a clause does not preclude further enforcement to the extent permitted by law.

16.5 No Waiver

Failure or delay by either party to require performance of any right or obligation does not constitute a waiver. Any waiver must be in writing and signed by the relevant party, and operates only for the specific case and to the extent expressly stated. Partial exercise of a right does not preclude its further exercise or the exercise of any other right.

16.6 Cumulative Remedies

Unless expressly stated otherwise, the parties' rights and remedies are cumulative and in addition to those available under the ACL, common law, and equity, to the extent permitted by law.

16.7 Pro-Validity Interpretation

These Terms are to be interpreted, to the maximum extent permitted by law, so as to preserve their validity and enforceability, having regard to context, purpose, and consistency with the rest of the contract and applicable law.

16.8 Independence of Essential Obligations

Nothing in this Section affects the enforceability of accrued or essential obligations (e.g., payment of overdue amounts, confidentiality, IP protection, return of equipment/data), to the extent permitted by law.

16.9 Differential Application to PDH / Non-PDH

Where a provision is inapplicable to PDH consumers under the ACL, this does not affect its application to non-PDH clients to the extent permitted by law.

17. Entire Agreement and Order of Precedence

17.1 Entire Agreement; No Exclusion of the ACL

These Terms, together with the accepted Work Order/Estimate, the Commercial Warranty Policy, and the Privacy Policy, constitute the entire agreement between the Client and JMS regarding the Services. They supersede any prior or contemporaneous understanding,

proposal, or communication (oral, written, or digital) not expressly incorporated. Nothing in this Section excludes, restricts, or modifies the Client's non-excludable rights and guarantees under the *Australian Consumer Law (ACL)*.

17.2 Documents Incorporated by Reference

The following are incorporated by reference (as relevant):

- a) Accepted Work Order / Estimate (including technical annexes or SOW);
- b) these Terms and Conditions;
- c) current Commercial Warranty Policy;
- d) current Privacy Policy (for the processing of personal information);
- e) current Price List and surcharges, to the extent the Work Order refers to them or they were communicated prior to acceptance;
- f) service-specific notices (e.g., technical prerequisites) communicated prior to acceptance.

17.3 Order of Precedence

Subject to the ACL and other non-excludable laws (which always prevail), in the event of conflict between applicable documents, the following order applies:

1. Accepted Work Order/Estimate (expressly agreed special conditions);
2. these Terms and Conditions;
3. Commercial Warranty Policy;
4. Privacy Policy (exclusively for the processing of personal information and privacy matters, in which case it prevails over these Terms if inconsistent);
5. Price List, FAQs, and informational communications.

17.4 Non-Reliance Acknowledgement (with Carve-Outs)

Each party acknowledges it has not relied on statements, warranties, or representations outside the documents identified in 17.2.

Carve-outs: Nothing above limits or excludes: (a) liability for fraudulent misrepresentation; (b) liability for misleading or deceptive conduct or false statements under applicable law (including the ACL); or (c) non-excludable ACL guarantees.

17.5 Amendments and Updates

- a) Any amendment or variation to these Terms or to the Work Order must be in writing and accepted by the affected party (acceptance may be electronic).
- b) JMS may update these Terms or its policies prospectively for future services. For periodic/renewable contracts, changes apply from the next renewal or upon the Client's consent.
- c) Where a change is material, JMS will provide reasonable notice (as a guide, 15 days), unless immediate effect is required by law or necessary for security.
- d) Ongoing Work Orders remain governed by the version in force at the time of acceptance, unless the Client agrees in writing to adopt the later version.

17.6 Client Terms in POs or Communications

Standard terms included by the Client in purchase orders, emails, portals, or other documents do not apply and do not modify this agreement unless expressly accepted in writing by JMS. JMS's silence does not constitute acceptance.

17.7 Electronic Signature, Digital Acceptance and Counterparts

The parties consent to the use of electronic signature, click-accept, email/SMS confirmation, or documented verbal acceptance to enter into/vary the Work Order, in accordance with applicable law. Documents may be executed in counterparts; each counterpart is an original and all counterparts together constitute a single instrument.

17.8 Language and Translations

These Terms may be available in multiple languages. If JMS also publishes an English version, the English version prevails in case of discrepancy. This rule does not limit non-excludable rights under the ACL.

17.9 Evidence and Electronic Communications

Electronic communications, system records, emails, and acceptance/delivery logs generated in the course of performance are admissible evidence of content and timing, unless proven otherwise, without prejudice to Section 18 (Notices).

17.10 UCT / Small Business

Where the Client qualifies as a small business under the ACL, this Section will be interpreted transparently and only to the extent reasonably necessary to protect legitimate interests. Any portion found unfair is void without affecting the remainder.

17.11 Validity of Electronic Execution (Applicable Law)

The parties acknowledge that the formation and electronic execution of the Work Order and variations are valid to the extent permitted by law, including the *Electronic Transactions Act 2000 (NSW)* and, where applicable, the *Corporations Act 2001 (Cth)*. If a rule requires a handwritten signature or a specific form, the parties will cooperate to provide the required formality without undue delay.

17.12 Notice of Updates via Section 18

Any update made under 17.5 will be notified in accordance with Section 18 (Notices), stating the effective date. Unless required by law or for security, the effective date will not precede the noticed lead time.

17.13 Version Control and Access

JMS will maintain a version history of these Terms and incorporated policies and, upon request, will provide at no charge the version applicable to the relevant Work Order/service and the date it was accepted.

18. Notices

18.1 Permitted Channels

Unless otherwise agreed in writing, formal notices between the parties may be given by:

- a) Email to the electronic address designated by each party;
- b) Electronic messaging/SMS to the designated number (for operational notices such as appointments, rescheduling, availability, and remote access);
- c) Postal mail to the designated physical address;
- d) Hand delivery against acknowledgement (signature/receipt);
- e) JMS's designated portal or system (where the Client has access), accompanied by an email alert;
- f) Any other method expressly agreed in writing (including digital acceptance/click-accept).

18.2 Contact Details and Changes

- a) Each party will keep its designated email, contact number, and postal address up to date.
- b) A change of contact details takes effect when notified in writing to the other party under this Section 18. Sending to the Client's outdated details does not suspend time limits if JMS used the current designated details provided by the Client.
- c) **Whitelist.** The Client agrees to designate an email address for notices and to whitelist JMS's domain. The Client's spam filter or mailbox rules do not affect the deemed-receipt rule in 18.3(a) if the message was capable of being retrieved in the recipient's inbox.

18.3 Deemed Receipt

For the purposes of these Terms, and unless there is reasonable evidence to the contrary:

- a) **Email:** deemed received when the message is capable of being retrieved at the designated electronic address. If that moment occurs after 5:00 PM or on a non-Business Day in NSW, it is deemed received at 9:00 AM on the next Business Day.
- b) **SMS/messaging:** same rules as email.
- c) **Portal/system:** when the notice is available on the portal and the alert has been sent to the designated email; the rule in 18.3(a) applies.
- d) **Hand delivery:** at the time of delivery with acknowledgement; if after 5:00 PM or on a non-Business Day, at 9:00 AM on the next Business Day.
- e) **Postal mail:** 5 Business Days after posting (unless earlier delivery is indicated or there is evidence to the contrary).
- f) If a bounce or technical rejection is received and JMS has reasonable evidence of it, the notice is not deemed received; JMS will resend by a reasonable alternative method.
- g) **Minimum content (dispute/termination):** Notices of dispute (Section 15) or termination/suspension (Section 11) will reasonably identify: (i) the contract/Work Order; (ii) the alleged cause or breach; (iii) the intended effective date; and (iv) a contact channel for response. Omission of non-essential formalities will not invalidate the notice if its purpose and effect are clear.

18.4 Scope of Channels

- a) For appointments, rescheduling, and operational notices (Section 9), email and SMS/messaging are valid.
- b) For availability and collection of equipment (Section 10), email and the portal (with email alert) are valid.
- c) For termination or suspension (Section 11), email is valid.
- d) Nothing in this Section prevents courtesy notifications by phone; however, a phone call alone is not a formal notice.

18.5 Service of Court Documents

This Section 18 does not govern service of court documents, which is subject to applicable law and procedural rules. Neither party is obliged to accept service by email unless expressly agreed in writing identifying the address for that purpose.

18.6 Consent to Electronic Communications

- a) The parties consent to the use of electronic communications for formation, variation, and notices under these Terms, to the extent permitted by law. Where a specific form is required (e.g., a handwritten signature), the parties will cooperate to complete it without undue delay.
- b) **Withdrawal of consent:** Consent to electronic communications may be withdrawn in writing; withdrawal takes effect 5 Business Days after receipt and does not affect

communications already sent. If a law requires a specific form (e.g., handwritten signature), the parties will cooperate to comply without delay.

18.7 Time and Time Zone

“Business Days” means Monday to Friday in NSW, excluding public holidays. Times and dates are interpreted by reference to NSW local time.

18.8 Multiple Recipients and Copies

Sending to the recipient’s designated primary address is sufficient. Failure to send courtesy copies (CC/BCC) does not invalidate the notice if the primary recipient received it under 18.3.

18.9 Evidence of Sending and Content

Email system records, portal logs, delivery confirmations, and acknowledgements constitute *prima facie* evidence of sending, timing, and content of the notice, without prejudice to evidence to the contrary.

18.10 Privacy

Contact details will be handled in accordance with the Privacy Policy. Communications containing personal information will be sent using reasonable security measures (e.g., protected links or encrypted attachments where appropriate).

18.11 Specific References

- a) **Contract updates (Section 17.12):** JMS will notify via the channels in this Section and indicate the effective date.
- b) **Collection and disposal notices (Section 10):** the rules in 18.3 and the timeframes under the uncollected goods regime apply.
- c) **Effectiveness of termination notices (Section 11.13):** the “capable of being retrieved” rule and the Business Day adjustment in 18.3(a) apply.

18.12 JMS Notice Details

Unless updated under 18.2, notices to JMS may be directed to:

- **Email:** mateo@jmstech.com.au
- **Postal address:** 20/70 Hanbury Street, Mayfield, NSW 2304
- **Operational phone (for operational coordination only; not formal notice unless agreed):**
+61 416 665 227

18.13 Inconsistencies

In the event of conflict between this Section 18 and any prior operational notice, this Section 18 prevails, without prejudice to the ACL and the specific rules in Section 10 (uncollected goods).

19. Governing Law and Jurisdiction

19.1 Governing Law

This contract is governed by the laws of the State of New South Wales (NSW) and the applicable laws of the Commonwealth of Australia, including the *Australian Consumer Law (ACL)*. The choice of law is made without recourse to conflict-of-laws principles (*renvoi*). The 1980 *UN Convention on Contracts for the International Sale of Goods (CISG)* does not apply.

19.2 Jurisdiction and Competent Fora (Non-Exclusive)

Subject to the ACL and other non-excludable rules, the parties submit to the non-exclusive

jurisdiction of:

- a) the courts of NSW with subject-matter and territorial competence; and
- b) the NSW Civil and Administrative Tribunal (NCAT), where it has jurisdiction.

Nothing in these Terms prevents a party from commencing proceedings in another court/tribunal with valid jurisdiction.

19.3 ACL Compatibility / Consumers and Small Businesses

- a) Nothing in this Section excludes, restricts, or modifies the Client's non-excludable rights and remedies under the ACL (including access to NCAT or NSW Fair Trading).
- b) If the Client is a PDH consumer or a small business under the ACL, this Section applies in a proportionate and transparent manner; any part found unfair is void without affecting the remainder.

19.4 Venue and Seat

Unless otherwise agreed in writing or required by mandatory law, mediations (15.4) and any agreed arbitrations (15.5) will be conducted in NSW (Newcastle or Sydney) or virtually, in English, without prejudice to NCAT or other courts in accordance with 19.2.

19.5 Interaction with Section 15 (ADR)

This Section 19 does not limit negotiation, mediation, or arbitration by agreement under Section 15, nor access to urgent court relief (15.7).

19.6 Service of Documents

Service of court documents is governed by applicable procedural law. Email is valid for service only with express written consent identifying the address for that purpose, in accordance with 18.5.

19.7 Legal Prevalence

If there is a conflict between this Section 19 and a non-excludable law (including the ACL), that law prevails; the incompatible portion is void to that extent only, without affecting the remainder.

19.8 Practical Forum within NSW

Without limiting 19.2, for liquidated debt recovery or small claims the parties acknowledge that the Local Court (Small Claims/General Division) in Newcastle is an appropriate forum, without prejudice to either party commencing in NCAT where it has jurisdiction.

19.9 Legislative Changes (Automatic Adjustment)

Any reference to NCAT, monetary thresholds, or procedural rules is to be construed as a reference to the law as in force from time to time or its successor. Any supervening invalidity due to legislative change will be read down (Section 16) without affecting the remainder.

20. Confidentiality

20.1 Confidential Information (Definition and Exclusions)

"Confidential Information" means all non-public information of a party (including technical, commercial, financial, customer/supplier information, access credentials, configurations, documentation, tickets and service records) disclosed orally or in writing, whether or not marked as confidential, where the nature of the information reasonably indicates confidentiality.

Information is not Confidential Information to the extent it: (a) is or becomes public without breach of these Terms; (b) was lawfully known to the recipient before disclosure; (c) was independently developed by the recipient without use of the discloser's information; or (d) is received from a legitimate third party without a duty of confidence.

20.2 Use and Protection Obligations

Each party shall:

- a) use Confidential Information only to provide/receive the Services or enforce rights under these Terms;
- b) disclose it only to its personnel, contractors/subcontractors (including field technicians), professional advisers (legal, accounting, audit) and insurers who need to know for that purpose and are subject to confidentiality and security obligations substantially equivalent to those herein;
- c) apply reasonable, risk-appropriate security measures (least privilege, access control, encryption in transit where appropriate), without prejudice to strengthened obligations under the Privacy Policy.

20.3 Disclosures Required or Authorised by Law; Protected Reports

Confidential Information may be disclosed where required or authorised by law, regulation, subpoena, order, or competent authority, or to make a protected report/complaint in good faith to authorities (e.g., law enforcement, NSW Fair Trading, OAIC, ASIC/ACMA), to the extent permitted by law. Where lawful and reasonable, the recipient will give prior notice to the discloser, limit the scope of disclosure, and seek protective measures (e.g., confidentiality orders).

20.4 Return or Destruction; Backups

At the discloser's request or upon completion of the Services, the recipient will return or destroy (at its election) Confidential Information within 30 days. The recipient may retain: (i) automatically created backup copies stored securely and overwritten per retention cycles; and (ii) copies required to comply with law, audits, or defence of Claims (Section 12). Any retained copy remains subject to this Section 20 until deletion.

20.5 Credentials, Security and Breaches

- a) Credentials (usernames, passwords, tokens, keys) are treated as Confidential Information, used under least privilege and, where possible, with MFA.
- b) Unless legally required, JMS will not retain credentials beyond what is necessary to deliver the Service, and the Client must revoke/rotate access upon Work Order closure (see 11.5(e)).
- c) Each party will protect Confidential Information with reasonable measures consistent with the practices described in the Privacy Policy.
- d) If a party detects a security breach affecting Confidential Information, it will notify the other within a reasonable time and coordinate containment; where personal information is affected, the *Privacy Act 1988 (Cth)* and the NDB scheme also apply, in accordance with the Privacy Policy.

20.6 De-identified Information, Metrics and Insights

JMS may use aggregated or de-identified information generated during the Service (not reasonably identifiable) for service improvement, internal statistics, or quality assurance, without re-identifying or disclosing the Client's data. Nothing herein limits the Client's rights under the ACL or the Privacy Policy.

20.7 Rights, Licences and Accuracy

Except as provided in these Terms, this Section grants no IP licences or other usage rights. Provision of Confidential Information carries no warranty of accuracy or completeness; each party remains responsible for validating information it relies on.

20.8 Injunctive Relief and Remedies

Breach of this Section may cause irreparable harm. Without limiting other remedies, the affected party may seek urgent/interlocutory injunctive relief and other remedies available at law or in equity.

20.9 Duration (Survival)

Confidentiality obligations survive for 3 years from disclosure, or for the legally required period for personal information, and indefinitely for trade secrets while they retain that status, without prejudice to statutory retention obligations.

20.10 Precedence vis-à-vis Privacy

If there is a conflict between this Section 20 and the Privacy Policy regarding the handling of personal information, the Privacy Policy and the *Privacy Act 1988 (Cth)* (and APPs) prevail. This Section is to be read complementarily.

20.11 Small Business / UCT

Where the Client qualifies as a small business under the ACL, this Section applies in a proportionate manner and only to what is reasonably necessary to protect legitimate interests; any part found unfair is void without affecting the remainder.

21. Subcontracting, Assignment and Novation

21.1 Subcontracting (Authority and Responsibility)

- a) JMS may subcontract part(s) of the Services (e.g., specialists, field technicians, data-recovery laboratory), while remaining at all times responsible to the Client for overall performance in accordance with these Terms and the ACL.
- b) Subcontracting does not alter the agreed scope, prices, or timelines unless a variation is accepted by the Client under 17.5.

21.2 Requirements for Subcontractors

JMS will require its subcontractors to:

- a) Maintain confidentiality and security equivalent to Section 20 and comply with the Privacy Policy (including access controls, least privilege, and deletion/return of data/credentials on closure);
- b) Comply with applicable laws (including the *Privacy Act 1988 (Cth)*, *Surveillance Devices Act 2007 (NSW)*, IP laws, fair trading, and any required licences);
- c) Observe WHS obligations and safe conditions when working on the Client's site (linked to Section 22);
- d) Hold reasonable insurance appropriate to the task's risk (e.g., public liability), unless the subcontractor operates under JMS's coverage;
- e) Use the Client's credentials only for the Service, with revocation/rotation on closure (see 5.4 and 20.5).

21.3 Data Access and Privacy (Subprocessing and Transfers)

- a) Where subcontracting involves processing the Client's personal information, JMS will act in

accordance with the Privacy Policy and the APPs (including APP 8 for overseas disclosures).
b) If a task requires an overseas provider, JMS will apply reasonable measures and equivalent contractual safeguards (see Privacy Policy §§4–5) and, where applicable, will notify the Client via the channels in Section 18.

21.4 Identification and Coordination

Where reasonable (e.g., on-site visits or equipment pick-up/delivery), JMS will inform the subcontractor's trading name and coordinate schedules, access, and site requirements with the Client. JMS remains the primary point of contact for technical and commercial management.

21.5 Limitations and Replacement

If an assigned subcontractor raises the Client's reasonable objections on security, compliance, or conflict-of-interest grounds, the Client will notify JMS in writing and JMS will in good faith assess a reasonable replacement or scope/mitigation adjustments. If not viable, the parties may adjust or terminate the affected portion under 11.7, with pro rata refunds where applicable.

21.6 Client Assignment and Novation

The Client may not assign, transfer, or novate (in whole or in part) its rights or obligations under these Terms without JMS's prior written consent, not to be unreasonably withheld. JMS may condition consent on reasonable assurances (e.g., the assignee's solvency or contact details).

21.7 JMS Assignment and Novation

JMS may assign or novate these Terms to: (i) an affiliate; or (ii) a purchaser of its relevant business/assets, by notifying the Client under Section 18. The assignment/novation will not diminish the Client's non-excludable ACL guarantees or remedies. If the novation entails a material adverse change and the Client is a small business/PDH consumer, the parties will negotiate reasonable adjustments in good faith or, failing that, the Client may terminate the unprovided portion without penalty (with pro rata refunds where applicable).

21.8 Change of Control of the Client

The Client will notify JMS of any change of control that materially affects risk, compliance, or performance (e.g., merger with a regulated-sector entity or transfer of operations outside Australia). JMS may request reasonable assurance measures (e.g., security contact, new access policies) or scope adjustments. If mitigation is not viable, the parties may terminate the affected portion under 11.7 with pro rata settlement.

21.9 Small Business / UCT

This Section 21 will be interpreted so as not to cause a significant imbalance, will be reasonably necessary to protect legitimate interests, and will be transparent. Any term found unfair under the ACL is void without affecting the remainder.

21.10 Survival and Consistency

Obligations regarding confidentiality/privacy, security, return/erasure of data, and insurance coverage survive the end of subcontracting or this agreement. This Section 21 is to be read together with Sections 5 (Client Obligations), 7 (IP), 12 (Indemnity), 13 (Limitation), 18 (Notices), 20 (Confidentiality), and 22 (WHS).

21.11 Assignment of Receivables (Factoring) — Service Unaffected

JMS may assign or charge receivables owed by the Client (invoices/accounts receivable) to a

finance or collections entity without the Client's consent. Such assignment does not modify JMS's obligations to deliver the Service nor the Client's non-excludable ACL rights. Good-faith payments made in accordance with current written instructions from JMS or the assignee discharge the Client to the extent of payment.

21.12 Staff Accreditation and Reasonable Checks

Where the Service requires access to the Client's premises or data, JMS will ensure its personnel and subcontractors: (a) provide reasonable identification (ID badge or similar); (b) comply with the Client's site/WHS inductions provided with reasonable notice; and (c) where proportionate to risk, have reasonable checks (e.g., references or a police check where the environment requires it). The Client may reasonably object to an individual on security/compliance grounds; JMS will seek a reasonable replacement without material impact.

21.13 Replacement for Subcontractor Underperformance

If a JMS subcontractor commits a material breach or verifiable underperformance, then following the Client's notice with reasonable particulars, JMS will assess and, where appropriate, diligently replace the subcontractor or reassign the task internally. During replacement, affected obligations may be temporarily suspended in a proportionate manner (see 14 and 11.7), without prejudice to the Client's ACL rights.

21.14 International Subprocessing — Notice and Reasonable Objection

Where JMS intends to onboard a new overseas subprocessor with access to the Client's personal information, JMS will provide prior notice under Section 18, unless there is operational urgency. The Client may raise a reasonable objection due to substantiated risks (APP 8); the parties will cooperate to agree alternative measures (e.g., additional technical/contractual controls or an alternative provider). If not viable, the Client may terminate the unprovided affected portion without penalty (pro rata refund), without affecting the remainder of the agreement.

22. WHS and Site Access (NSW)

22.0 bis Notifiable Incidents

Each party will manage, where applicable, its notification obligations to SafeWork NSW for any notifiable incident (death, serious injury/illness or dangerous incident) under the *WHS Act 2011 (NSW)* and its Regulation. The parties will cooperate by sharing reasonably necessary information without disclosing personal data beyond what the law requires.

22.1 Legal Framework and Scope

- a) The parties will comply with the *Work Health and Safety Act 2011 (NSW)* and its Regulation, as well as the Client's reasonable WHS policies applicable at the site.
- b) This Section applies to all on-site work (at the Client's premises or a third party's designated premises) and to equipment pick-ups/deliveries.

22.2 Client Obligations (Safe and Fit-for-Purpose Environment)

The Client warrants and maintains, at its cost:

- a) Safe and continuous access to the work area, including building permissions, security passes, entry instructions, and reasonable parking.
- b) Safe and hygienic conditions: order and cleanliness, adequate lighting and ventilation, a stable surface free of hazards (loose cables, liquids, mould, pests), pet control, and a smoke-

free area.

- c) Availability of the equipment to be serviced, suitable power supply, connectivity where applicable, and the presence of an authorised person with the necessary credentials/access.
- d) Compliance with building policies and any reasonable site induction provided with reasonable notice.
- e) **Asbestos and hazardous materials register.** Where the work occurs at a workplace subject to an asbestos or hazardous-materials register, the Client will provide the asbestos register and access to relevant plans and restricted zones before commencement. JMS will not work in areas with friable asbestos or hazardous materials without appropriate accreditation/controls and may suspend under 22.6.

22.3 Reasonable Limits on On-Site Service

Unless agreed in writing and the relevant licence/permit is held, JMS does not perform:

- a) Regulated electrical work (fixed/hard-wired) or switchboard/circuit modifications; only plug-in connections and basic verification.
- b) Structured cabling or telecommunications work requiring an ACMA licence (a licensed provider will be referred where necessary).
- c) Civil works (structural drilling, skirtings/ceilings), work at height without protection (>2 m), confined spaces, roofs, or unsafe mezzanines.
- d) Heavy moves without assistance/equipment (e.g., racks/UPS/printers > 25 kg); the Client will provide reasonable assistance or lifting means.
- e) Handling of damaged/swollen batteries, liquid spills, asbestos/hazardous materials, or wet equipment.
- f) Opening/servicing energised equipment where risk exists.
- g) **Energy isolation / LOTO.** For tasks involving electrical or mechanical risk (e.g., racks/UPS/plant integrated with the building), the Client will ensure isolation/Lock-Out/Tag-Out (LOTO) by a competent person before intervention. JMS will not work on live equipment beyond basic checks.

In any of these situations, JMS may suspend or reschedule under 22.6 and 11.7.

22.4 Permits, Inductions and Wait Time

- a) The Client will obtain necessary access permits (including after-hours) and provide site inductions at least **1 Business Day** in advance where reasonable.
- b) Wait times due to lack of access, escort, or permits are billable as time worked (see Section 3) or may trigger rescheduling (see Section 9).
- c) Any building charges (passes, parking, permits) are borne by the Client unless otherwise agreed in writing.
- d) **Billable inductions and security screening.** Time spent on site inductions, mandatory training, and access/security checks is time worked and billable per Section 3 where it exceeds 30 minutes per visit (unless otherwise agreed in writing).

22.5 Risks, PPE and Cooperation

- a) JMS and the Client will cooperate to identify risks and apply reasonable controls (isolation, signage, basic PPE such as gloves/goggles where applicable).
- b) The Client will disclose known risks (e.g., fragile roofs, asbestos presence, restricted zones).
- c) Where specialised PPE or non-standard equipment is required, its provision/cost will be agreed in advance.
- d) **Sites with minors / sensitive environments.** In environments with minors (schools/childcare) or sensitive facilities (health/justice), the Client will provide applicable

access policies with reasonable notice and, where required by law or policy, an authorised escort. Where proportionate to risk, JMS may assign personnel with reasonable checks (e.g., **Working With Children Check**) or propose reasonable alternatives (after-hours work, remote, or workshop).

22.6 Right to Suspend for Safety (“Stop Work”)

- a) If JMS reasonably considers a condition unsafe, it may suspend the task until rectified.
- b) Rescheduling will occur without cancellation penalties (9.1–9.5), but JMS may invoice: (i) time actually worked; (ii) travel and non-recoverable costs (specific parts) already incurred under Sections 3 and 9.
- c) If the risk persists, either party may terminate the unprovided portion (11.7), with pro rata refunds where applicable.
- d) **Safe withdrawal and demobilisation.** In a serious or imminent risk, JMS may withdraw its personnel/equipment from the affected area. Reasonable demobilisation costs and any rescheduling will be managed under Sections 3, 9, and 14, without prejudice to the Client’s ACL rights.

22.7 Incidents and Reporting

- a) The parties will notify each other without delay of safety incidents occurring during the service and cooperate on corrective measures.
- b) Where applicable, each party will handle its legal notification obligations (WHS/insurer) without prejudice to the Privacy Policy for incidents involving personal information (NDB).

22.8 Damage Due to Site Conditions / Liability

- a) The Client is responsible for damage to JMS equipment (tools/materials) caused by hazardous site conditions the Client should reasonably have disclosed or mitigated.
- b) JMS is not responsible for building infrastructure (structured cabling, conduits, switchboards, HVAC) outside the agreed scope; if a pre-existing site fault is revealed while servicing equipment, JMS will notify and may stop, propose measures, or refer to third parties.
- c) Nothing above limits the Client’s non-excludable rights under the ACL (see Section 13).

22.9 Removal, Waste and Data

- a) Packaging/consumables generated by JMS will be removed under normal conditions; e-waste and secure erasure are governed by Section 27 (additional service).
- b) Before removal/transport, the Client will back up its data (5.4); JMS will not transport loose media containing sensitive data unless agreed with a chain of custody (27.3).

22.10 Operational Coordination

- a) Schedule changes, after-hours, and urgent work are managed under Section 9 (cancellation/rescheduling) and Section 3.6 (surcharges).
- b) If third parties are required to proceed (electrician/ACMA-licensed provider/ISP), JMS may refer or coordinate for a fee, without assuming the professional responsibility of those third parties (see Section 13.7).

22.11 Interaction with Privacy and Surveillance

- a) Any recording or capture on site will occur only with valid consent and in accordance with the *Surveillance Devices Act 2007 (NSW)* and the Privacy Policy (see Section 10 of the Policy).
- b) Access credentials and logs are handled under Sections 5.4 and 20.5.

22.12 Small Business / UCT

This Section 22 applies proportionately and transparently and only to the extent reasonably

necessary to protect legitimate interests (safety, service integrity). Any part found unfair under the ACL is void without affecting the remainder.

22.13 Survival and Consistency

Obligations relating to safety, risk disclosure, non-recoverable costs, privacy, and waste disposal survive as applicable. This Section is to be read with Sections 3, 5, 9, 10, 11, 13, 14, 18, 20, and 27.

23. No Solicitation / Non-Hire

23.1 Definitions

- a) **JMS Personnel:** JMS's employees and individual contractors.
- b) **Key Personnel:** any member of JMS Personnel who has materially participated in the provision of services to the Client within the 12 months prior to the relevant event (contact, offer, or engagement).
- c) **Solicit:** includes, without limitation, inviting, encouraging, inducing, or attempting to induce a person to leave JMS or to accept employment/engagement with the Client (directly or indirectly, including via affiliates or through a third party/intermediary).

23.2 Non-Solicitation/Non-Hire Commitment

The Client agrees not to:

- a) solicit Key Personnel;
 - b) hire (as an employee, contractor, consultant, or via an interposed entity) Key Personnel; or
 - c) induce the termination or material reduction of the relationship between JMS and Key Personnel;
- during the engagement and for 12 months from the last provision of Services to the Client. The geographic scope is limited to Australia and to roles equivalent to those in which the Key Personnel provided services for the Client.

23.3 Reasonable Exceptions

This Section does not apply where:

- a) JMS Personnel respond to a public and general advertisement not specifically targeted at JMS staff;
- b) the candidate approaches the Client spontaneously without prior incitement by the Client (and the Client has not previously breached 23.2 in respect of that person);
- c) the candidate ceased to be JMS Personnel more than 6 months before the Client's first approach;
- d) JMS gives written consent (not to be unreasonably withheld); or
- e) the engagement occurs through an agency that did not act on the Client's instructions to poach JMS Key Personnel and the Client did not know, and ought not reasonably to have known, of that origin (without prejudice to the duty to cease the process once reasonably informed by JMS).

23.4 Authorised Conversion / Buy-Out

At the Client's request, JMS may authorise in writing the engagement of Key Personnel. In such case, the parties may agree a reasonable conversion fee in lieu of 23.5, documented in writing.

23.5 Replacement Cost — Liquidated Damages (Genuine Pre-Estimate)

If the Client breaches 23.2, the Client will pay JMS a replacement cost as a genuine pre-

estimate of loss (recruitment, onboarding, transition, temporary loss of know-how) equal to **15% of the gross annual remuneration** offered to the Key Personnel or **AUD 7,500** (whichever is greater), plus GST.

- a) This amount is not a penalty; it will be read down (Section 16) to be reasonable and proportionate.
- b) Payment is due within 14 days of invoice.
- c) JMS may claim additional losses only to the extent not already covered by the above amount (no double recovery).

23.6 Measures and Remedies

Without limiting the ACL or other remedies, JMS may seek injunctive/interlocutory relief to prevent or cease a breach, in addition to (or as an alternative to) 23.5, while avoiding double compensation for the same heads of loss.

23.7 No Evasion

The Client must not evade this Section through affiliates, joint ventures, third parties, or agencies acting for or benefiting the Client. Any indirect engagement is deemed, for the purposes of this Section, to be an engagement by the Client.

23.8 Privacy and Data

Both parties will comply with the *Privacy Act 1988 (Cth)* and the Privacy Policy. The Client must not use Confidential Information (Section 20) or personal data obtained during the engagement to contact JMS Personnel beyond what is permitted.

23.9 Small Business / UCT

This Section will be interpreted transparently, proportionately, and only to the extent reasonably necessary to protect legitimate interests (service continuity and team stability). Any portion found unfair under the ACL is void without affecting the remainder.

23.10 Survival and Interaction

This Section survives for the stated period and is to be read with Sections 12 (Indemnity), 13 (Limitation of Liability), 15 (ADR), 16 (Severability), and 20 (Confidentiality).

23.11 Reasonableness and Severable Restraints (*Restraints of Trade Act 1976 (NSW)*)

The restraints in 23.2 are reasonably necessary to protect JMS's legitimate interests (service continuity, team, and know-how). They are to be interpreted as a series of separate covenants by time and territory, with the widest enforceable applying: **12/9/6 months** and

Australia/NSW/Hunter Region. If a covenant is invalid, it will be read down or treated as not written to that extent, without affecting the remainder (see Section 16).

23.12 Calculation Basis

For 23.5, "gross annual remuneration" includes base salary, superannuation, reasonably expected bonuses, commissions, and fixed allowances; for part-time/contractors, it is pro-rated to an annual equivalent. If the initial offer includes a probationary or variable component, use the greater of: (i) the guaranteed total annualised; or (ii) the projected monthly average × 12.

23.13 Notice of Approach

If JMS Key Personnel contact the Client spontaneously during the 23.2 period, the Client will reasonably inform JMS before making an offer, unless prohibited by law or confidentiality. This obligation does not prevent the Client from proceeding where an exception in 23.3 applies.

24. PPSA — Security Interests and Retention of Title (if applicable)

24.1 When This Applies

This Section 24 applies only where JMS supplies goods (hardware, parts, accessories or equipment) on credit or prior to full payment. If the Client pays in full upfront, this Section has no effect (without prejudice to JMS's other rights).

24.2 Definitions

- a) **PPSA:** *Personal Property Securities Act 2009 (Cth).*
- b) **PPSR:** Personal Property Securities Register.
- c) **Goods:** personal property supplied by JMS under these Terms (including installed parts).
- d) **Security Interest:** has the meaning in the PPSA and includes retention of title and any charge over Goods and their proceeds.
- e) **PMSI (Purchase Money Security Interest):** a purchase money security interest under the PPSA (including ROT over Goods supplied on credit).

24.3 Retention of Title (ROT) and Grant of Security

- a) Title to the Goods remains with JMS until full payment of all amounts owing for those Goods (price, expenses, taxes) and any other liquidated sums owing to JMS under the Work Order.
- b) The Client grants in favour of JMS a Security Interest (including a PMSI) over the Goods (present and future Goods supplied on credit), their accessions, receivables and proceeds, to secure payment and performance of its obligations. This is a continuing, all-monies security, read down to the extent required by law.

24.4 Perfection and Registrations

- a) The Client authorises JMS to register one or more financing statements (including PMSI registrations) on the PPSR and to do what is reasonably necessary to perfect and maintain the priority of the Security Interest.
- b) The Client agrees to assist (at no unjustified cost) with any information/acts reasonably required (e.g., changes to name/ABN/ACN, addresses, descriptions of Goods), and will not create preferred encumbrances over the Goods that would subordinate JMS's priority.
- c) Reasonable costs of registration, amendment or maintenance may be charged to the Client where the supply was on credit and this is stated in the Work Order.

24.5 Client Obligations in Respect of Unpaid Goods

Until full payment and without prejudice to the ACL, the Client will:

- a) hold the Goods as bailee for JMS;
- b) keep them identifiable and, where reasonable, separate from other goods;
- c) not destroy them, alter identifiers/serials, or dispose of them except in the ordinary course of business and on commercially reasonable terms;
- d) allow JMS reasonable access for inspection/stocktake on notice under Section 18;
- e) assign to JMS, upon request, the proceeds of any authorised resale up to the amount owed.

24.6 Events of Default and Remedies (in addition to the ACL)

If a default occurs (including non-payment, insolvency, material misrepresentation, or unauthorised disposal of unpaid Goods), JMS may exercise remedies under the PPSA, common law, and these Terms, including:

- a) suspending supplies/services (see 11.2–11.5);
- b) retaining equipment/deliverables under Sections 10 and 11 (without double recovery);
- c) recovering/taking possession of unpaid Goods and realising them (selling/applying to the balance) in compliance with the PPSA and the ACL;

- d) applying reasonable recovery, transport, storage and realisation costs against amounts received;
 - e) claiming any remaining shortfall not covered by the realisation.
- Nothing herein limits the Client's non-excludable rights under the ACL.

24.7 Contracting Out to the Extent Permitted by the PPSA (Non-PDH)

To the extent permitted by the PPSA and only where the Client is not a PDH consumer:

- a) The parties agree that the notice requirements in ss 95, 118, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 135, 142 and 143 PPSA do not apply (or are modified).
- b) The Client waives the right to receive verification statements (s 157) to the extent permitted.
- c) These agreements are to be read down (Section 16) if and to the extent their application is inconsistent with any non-excludable rule (including the ACL or the PPSA itself).

24.8 Confidentiality (s 275 PPSA)

To the extent permitted by the PPSA, the parties agree not to disclose information included in, or relating to, registrations or the terms of any Security Interest, except as required by law or a competent authority.

24.9 Priority, Accessions and Proceeds

- a) A PMSI registration has the priority recognised by the PPSA, subject to timely and proper registration.
- b) JMS's interest extends to accessions and improvements incorporated into the Goods (where reasonable to apply) and to the proceeds of any disposal.

24.10 Interaction with Other Sections and the ACL

- a) This Section supplements (and does not limit) JMS's rights in Section 10 (uncollected equipment), Section 11 (termination/suspension), Section 13 (limitation), Section 18 (notices) and Section 27 (secure erasure/disposal), always subject to the ACL.
- b) Nothing in this Section excludes, restricts, or modifies non-excludable guarantees/remedies under the ACL. In case of conflict, the ACL prevails and the incompatible clause is void to that extent only.

24.11 Small Business / UCT (Read Down)

Where the Client qualifies as a small business under the ACL, this Section 24 will be interpreted transparently and only to the extent reasonably necessary to protect legitimate interests (recovery for supplied Goods). Any portion found unfair is void without affecting the remainder (see Section 16).

24.12 Survival

The rights and obligations in this Section survive until full payment and, in relation to registrations/enforcement, until formal release on the PPSR and settlement of related claims.

24.13 PPSR Release and Discharge

Upon full discharge of the secured amounts, JMS will (a) issue reasonable written confirmation of release and (b) lodge, within **10 Business Days**, the relevant discharge or amendment on the PPSR to reflect the release, unless a different period is permitted by law.

24.14 Installed Goods, Fixtures and Leased Premises

- a) This Section does not create any interest in real property or fixtures to the extent so provided by law. Where it is foreseeable that the Goods will become fixtures, the Client will obtain, with reasonable lead time, any landlord/owner consents or waivers necessary to allow

JMS access and removal of the Goods on default.

b) The Client warrants that access to premises for recovery of Goods will not infringe third-party rights; JMS will not enter premises without the occupant/owner's consent or an applicable court order.

24.15 Lawful Entry and Recovery

Any exercise of rights to enter, remove or realise Goods will be lawful, reasonable and proportionate, respecting the ACL, the *Privacy Act 1988 (Cth)* and any required order or process. Nothing in this Section authorises self-help in contravention of law.

24.16 Risk, Custody and Insurance (Non-PDH)

Where the Client is not a PDH consumer, and except for JMS's negligence:

- a) risk in the Goods passes to the Client upon delivery/installation;
- b) the Client will maintain reasonable insurance (e.g., damage/loss) until full payment and, upon reasonable request, evidence such cover;
- c) lack of insurance does not shift to JMS risks outside the ACL.

24.17 Transformed, Mixed or Resold Goods

If the Goods are transformed or commingled with others, JMS's interest extends, to the extent permitted by the PPSA, to the products/proceeds or the resulting mass on a proportionate basis. The Client will keep reasonable records enabling commercial traceability of unpaid Goods and their proceeds.

24.18 Application of Payments (Appropriation)

In the absence of the Client's written instruction, JMS may appropriate payments first to reasonable recovery/registration costs, then to valid interest/surcharges, and finally to the oldest principal, provided such appropriation does not reduce the Client's non-excludable ACL rights or affect mandatory refunds.

25. Insurance

25.1 JMS Cover (Commercially Reasonable Level)

JMS will maintain, during the term of the Services and to a level reasonably appropriate to its business and size:

- a) Public Liability;
- b) Professional Indemnity / Errors & Omissions; and
- c) Workers' Compensation where required by law for having employees.

Upon the Client's reasonable request, JMS will provide current Certificates of Currency.

Provision of a certificate does not entail disclosure of full policy terms nor a waiver of defences.

25.2 Notice of Material Changes

Where reasonably practicable, JMS will notify the Client under Section 18 if a cancellation or material reduction of cover occurs that would substantially affect delivery of the agreed Services. This does not limit the Client's rights under the ACL.

25.3 Client Insurance (Property, Transit and Data)

The Client is responsible for:

- a) insuring its equipment/premises against loss, theft, or damage (including transit to/from the workshop and while in storage—see Section 10), except where caused by JMS's negligence;
- b) maintaining data backups (see Section 5.4) and, if desired, data loss/business interruption

insurance.

The Client's lack of insurance does not shift to JMS risks beyond those provided in Section 13 and the ACL.

25.4 Certificates and Site Requirements

Where a building/owner requires proof of insurance, JMS will provide a Certificate of Currency identifying it as the certificate holder. Any request for: (i) **additional insured**, (ii) **waiver of subrogation**, or (iii) specific endorsements is subject to policy availability and the Client bearing the associated reasonable costs. JMS is not obliged to accept conditions that materially increase its risk.

25.5 Claims Handling and Cooperation

- a) A party suffering an incident potentially covered by insurance will give the other reasonable notice and seek to mitigate losses.
- b) Neither party will admit liability or enter into settlements that prejudice the other party's insurer's rights without prior consent (unless required by law).
- c) The parties will cooperate in good faith (reports, evidence, reasonable access) in handling the claim.

25.6 Subrogation and No Prejudice to Insurer

Unless agreed in writing, the parties will preserve their insurers' subrogation rights and will not act in a way that prejudices them. If the Client requires a waiver of subrogation, Section 25.4 applies and non-excludable ACL rights remain unaffected.

25.7 Transport and Custody

Where equipment is transported by a carrier designated by the Client or by third parties outside JMS's control, risk is governed by the carrier's terms and by Section 10. JMS is liable for damage caused by its negligence, without prejudice to the ACL.

25.8 Interaction with ACL and Limitation

Nothing in this Section excludes, restricts, or modifies the Client's non-excludable guarantees and remedies under the ACL. JMS's insurance does not limit its liability where prohibited by law. Section 13 (Limitation) applies subject to the ACL.

25.9 Small Business / UCT (Read Down)

This Section 25 will be interpreted transparently and only to the extent reasonably necessary to protect legitimate interests (risk cover and claims coordination). Any portion found unfair under the ACL is void without affecting the remainder (see Section 16).

25.10 Survival and Consistency

Obligations regarding claims cooperation, no admission, subrogation, and privacy survive while claims are processed. This Section is to be read with Sections 5, 10, 11, 13, 14, 18, 20, and 22.

25.11 Professional Indemnity — Claims-Made and Run-Off

Professional Indemnity cover operates on a claims-made basis. JMS will seek to maintain a reasonable retroactive date for continuing services and, where commercially reasonable, run-off cover for 12 months after completion of ongoing Services or the master agreement. This does not limit non-excludable ACL rights.

25.12 Limits on "Additional Insured" and Waivers

Any "additional insured" status (if agreed) applies only to the Public Liability policy and only to the extent of vicarious or concurrent liability arising from JMS acts or omissions; it does not

cover the Client's sole negligence or risks outside the service scope. Any waiver of subrogation or **primary & non-contributory** clause requires an available endorsement and its costs are borne by the Client (see 25.4).

25.13 Certificates and Confidentiality

Certificates of Currency or other proof of insurance are provided solely for compliance verification and may contain redactions (premiums, insured schedules, commercial terms). The Client will keep this information confidential and will not use it for marketing or representations to third parties without JMS's consent.

25.14 Deductibles/Excesses

Each party is responsible for the deductibles/excesses applicable to its policies. Nothing in this Section obliges one party to reimburse the other's deductibles, unless agreed in writing or required by law. The foregoing applies subject to the Client's non-excludable rights under the ACL.

26. Managed Services / SLA (if applicable)

26.1 Application and Order of Precedence

- a) This Section 26 applies only where the Client engages Managed Services under a SOW/Order that expressly states so.
- b) Precedence: specific SOW/Order → this Section 26 (SLA) → the remainder of the Terms. In case of conflict, the more specific document and the ACL prevail.

26.2 Definitions (SLA)

- a) **SOW/Order:** document describing the managed services engaged, scope, fees and, where applicable, SLAs.
- b) **SLA:** time and quality objectives that apply only to the services expressly identified in the SOW.
- c) **Response:** JMS's acknowledgement of the ticket/call and commencement of triage.
- d) **Restoration:** recovery of functionality (including a reasonable workaround).
- e) **Availability:** monthly percentage during which a managed service is operational, excluding Scheduled Maintenance and Exclusions.
- f) **Scheduled Maintenance:** windows notified under 26.7.
- g) **Service Credit:** monetary adjustment to the monthly charge of the service affected by an SLA breach, where provided in the SOW.

26.3 Typical Managed Services Catalogue (examples)

Only those marked in the SOW apply:

- a) Helpdesk (remote/on-site); b) RMM/Monitoring (agents, alerts, telemetry); c) OS/application patch management; d) AV/EDR; e) Backups/DR (on-prem/cloud); f) Asset and inventory management; g) M365/Google Workspace administration; h) Networks (switching/AP/firewall) within scope; i) Vendor management (ISP, hosting, SaaS); j) Reporting and QBR (periodic reviews).

26.4 Priority and Target Times (default, unless SOW differs)

Service hours: **Business Hours** (Section 1). If the Client engages after-hours, surcharges apply (Section 3.6).

- **P1 Critical** (service down / severe security): Response ≤ 1 hr; Restoration target 4 hrs (or best

efforts if third parties are involved).

- **P2 High** (material impact, multiple users): Response ≤ 2 hrs; Restoration same Business Day.
- **P3 Medium** (single user/specific function): Response ≤ 4 hrs; Restoration ≤ 3 Business Days.
- **P4 Low** (how-to, enhancements, routine): Response ≤ 1 Business Day; Restoration in next maintenance window.

Targets are reasonable and measured while the Client provides access and cooperates (26.11).

They do not apply to projects or workshops.

26.5 Availability (where the SOW sets targets)

a) Where the SOW sets Availability (e.g., for managed monitoring or a JMS-administered firewall), the monthly calculation is:

$$\% \text{Availability} = 1 - (\text{Downtime attributable to JMS / Monthly Time}) \times 100.$$

b) Exclusions: 26.9; Maintenance: 26.7; third parties: 26.10.

c) If the only breach is by a third-party provider (SaaS/ISP/cloud), 26.10 applies.

26.6 Service Credits (where provided in the SOW)

a) If a service with an availability SLA is breached and the SOW provides credits, the monthly credit will be:

- ≤ 99% and ≥ 98%: **5%** of the monthly charge for the affected service.
- < 98% and ≥ 95%: **10%**.
- < 95%: **15%** (cap).

b) Total credit cap: **15%** of the monthly charge for the affected service.

c) Credits are the sole compensation for that SLA breach, are not a penalty, and do not apply to hourly services or projects. The ACL prevails.

d) **Claiming:** within 10 Business Days of month-end, with ticket and reasonable evidence.

Credits apply to the next invoice.

26.7 Scheduled and Emergency Maintenance

a) **Scheduled:** weekly or monthly windows (e.g., Fridays 20:00–23:00 NSW) with 3 Business Days' email notice (Section 18).

b) **Emergency/security:** for critical vulnerabilities, JMS may act with reasonable prior notice (or immediately if essential).

c) Maintenance time does not count as unavailability.

26.8 Backups and DR (only if contracted in the SOW)

a) **Scope:** sources, retention, RPO/RTO and recovery tests are defined in the SOW. Without a SOW, JMS does not provide backup/DR.

b) **Testing:** sample restores per SOW periodicity; reporting in 26.14.

c) **Client responsibilities:** select critical data, validate application restores, and maintain licences/space/credentials.

d) **Limits:** without contracted RPO/RTO, service is best-effort; corrupted data/inaccessible sources/expired licences are exclusions (26.9–26.10). The ACL prevails.

26.9 General SLA Exclusions

Do not count towards response/restoration/availability:

a) Force Majeure (Section 14).

b) Maintenance (26.7).

c) Lack of access/credentials or non-cooperation by the Client (26.11).

d) Client or third-party changes not approved by JMS.

e) **EoL/EoS** (manufacturer-unsupported hardware/OS/software), non-standard configurations

or those not aligned with JMS-advised good practice.

- f) Incidents caused by malware/intrusions where the Client rejected recommended measures (AV/EDR/patching/backup).
- g) ISP, power, hosting or third-party SaaS outages.
- h) Projects/migrations/rollouts outside BAU support.
- i) Technical limitations or topologies not disclosed during onboarding.

26.10 Third Parties and Providers

- a) Where the service depends on third parties (SaaS, clouds, ISP, manufacturers), their SLA and terms govern that portion. JMS will manage escalation as the Client's agent where within scope.
- b) Third-party credits or remedies will be passed through to the Client to the extent received, constituting the compensation for that portion, without prejudice to the ACL.

26.11 Client Obligations (SLA)

The Client will:

- a) raise tickets via the designated channel and include priority and impact;
- b) provide remote/on-site access, credentials, contacts and reasonable windows;
- c) maintain power, connectivity and licences;
- d) not uninstall or block RMM/AV/backup agents;
- e) implement JMS's reasonable recommendations (patches, segmentation, MDM, backups) within agreed timeframes.

Non-compliance may suspend SLA coverage until rectified (without affecting ACL rights).

26.12 Security and Cyber Events

- a) JMS provides reasonable management and hardening within scope; it is not an ethical hacking/forensics service unless set out in a SOW.
- b) In an incident (e.g., ransomware), JMS will assist with containment and recovery on time-and-materials under current rates (Section 3) and the Privacy Policy (NDB).
- c) The Client will promptly notify incidents and not alter evidence without coordination.

26.13 Changes, CAB and Version Control

Material changes in the managed environment are processed via an approved change (lightweight CAB). JMS will keep records and may require windows and back-outs. Urgent changes are documented post-hoc.

26.14 Reporting and Review

JMS will provide (per SOW):

- a) Monthly ticket summary (SLAs, P1–P4);
- b) Patch posture and managed vulnerabilities;
- c) Backups (success/alerts and restore tests);
- d) Managed inventory and licences;
- e) Quarterly Business Review (QBR) with recommendations.

Reports are generated from platforms; their accuracy depends on connectivity and telemetry.

26.15 Measurement and Evidence

SLAs are measured using timestamps from JMS systems (RMM/ticketing/backup). If the agent is down due to Client or third-party causes, measurement may be suspended for that period.

26.16 After-Hours and Public Holidays

After-hours SLAs apply only if contracted. Otherwise, outside Business Hours JMS provides

best-efforts support with surcharges (Section 3.6). NSW public holidays do not count towards targets unless agreed.

26.17 Onboarding, Transition and Outboarding

- a) **Onboarding:** discovery, inventory, agent installation, backup/AV validation, minimum normalisation; may have a one-off fee.
- b) **Transition:** during onboarding, SLAs may not apply until stabilisation as indicated in the SOW.
- c) **Outboarding:** on completion, JMS will uninstall agents, revoke access, and deliver reasonable documentation/Client credentials; time is billable under Section 3 unless the SOW states otherwise.

26.18 Service Changes and Third-Party Updates

JMS may adjust technical descriptions to reflect best practice or vendor changes (end-of-life, APIs), with 15 days' notice (Section 18). This does not reduce the Client's ACL rights or essential contracted deliverables.

26.19 Small Business / UCT and ACL

This Section 26 will be interpreted proportionately and transparently. Any part found unfair under the ACL is void (Section 16). Nothing excludes the Client's non-excludable guarantees/remedies.

26.20 Interaction with Other Sections

Read this Section with Section 3 (fees/surcharges), 5 (Client obligations), 7 (IP), 9 (rescheduling), 11 (termination), 13 (limitation subject to ACL), 14 (force majeure), 18 (notices), 20 (confidentiality/privacy), 22 (WHS), 24 (PPSA where JMS supplies goods), 25 (insurance) and 27 (erasure/e-waste).

26.21 Fair Use (Unlimited Helpdesk)

"Unlimited" helpdesk usage is understood as reasonable for the Client's size and the contracted scope. If an unusually high and sustained volume is detected (e.g., >150% of the quarterly per-user average or continuous spikes due to internal changes not communicated), the parties will review scope and may vary the SOW or move to a higher plan by agreement. Until adjustments are agreed, JMS will continue service proportionately, without automatic suspension.

26.22 Minimum Requirements and Security Baseline

SLAs apply to supported assets (hardware/OS/software supported by the manufacturer and on current security patches). **EoL/EoS** assets or those not meeting the agreed baseline (active AV/EDR, OS patches, MFA where applicable) will be best-effort until normalised. JMS will notify deviations and, if they persist >30 days, propose a remediation plan or specific exclusion in the SOW.

26.23 Critical Vulnerabilities and Emergency Windows

Where a vulnerability is rated **Critical** (e.g., CVSS ≥ 9.0 or an urgent vendor advisory), JMS may apply patches/mitigations outside the standard window with reasonable prior notice (or immediately if essential). If the Client rejects or defers mitigation, incidents arising from that decision are excluded from SLA calculations (without prejudice to the ACL).

26.24 Service Credits — Mechanics

Credits: (a) are calculated per service and per month; (b) do not roll over beyond the following

month; (c) are applied against future invoices for the affected service or, if the service ends, paid as a refund within 14 days of account closure. Credits do not limit the Client's non-excludable ACL rights nor other compensation where applicable.

26.25 Time Calculation and Operational Ticket Closure

- a) Response/restoration timers pause while JMS awaits information/access from the Client or designated third parties, and resume upon receipt.
- b) If JMS provides a solution or reasonable workaround and the Client does not respond within 3 Business Days, the ticket may be closed operationally (without prejudice to reopening if the issue persists or recurs).

26.26 SLA and Transition (New Site Onboarding)

The SLA commences when JMS declares the service "in production" after onboarding (26.17). Additions of new sites or Client mergers require mini-onboarding; during that period, SLAs may not apply until the communicated stabilisation.

26.27 Architecture and Redundancy

Availability targets presuppose the Client maintains a reasonable architecture (e.g., UPS, basic segmentation, configuration backup and—if high availability is desired—redundant links/infra). JMS will recommend improvements when bottlenecks are identified; if the Client declines, unavailability attributable to lack of redundancy is excluded from SLA calculations.

26.28 Retention of SLA Operational Data

To audit SLA and security, JMS may retain telemetry and technical logs for up to 90 days (or the longer period required by law or the SOW), handling them under the Privacy Policy. After that period, they will be securely deleted or de-identified.

27. Secure Data Erasure and e-Waste (if applicable)

27.1 Scope

This Section applies where the Client requests that JMS: (i) erase/sanitise data on media (HDD, SSD, NVMe, mobiles/tablets, NAS, network devices with storage), (ii) physically destroy media, and/or (iii) responsibly dispose of e-waste (electrical/electronic equipment at end of life).

27.2 Client Instructions and Options

- a) The Client will specify in writing the option chosen per medium/device:
 - i) logical erasure (*data sanitisation*),
 - ii) cryptographic erasure (*crypto erase*),
 - iii) physical destruction (e.g., shredding/punching/degaussing where applicable), or
 - iv) return of the medium to the Client.
- b) If the Client does not choose, JMS will apply logical erasure by default (27.3) where reasonable and safe.
- c) For devices with activation/MDM/FRP lock (Apple/Google/Microsoft), the Client must remove the lock and unlink accounts before processing.

27.3 Logical Erasure (Default Standard)

- a) JMS will use sanitisation tools aligned with industry good practice (e.g., by reference to *NIST SP 800-88 r1*: "Clear" or "Purge", as appropriate to the medium/capabilities), leaving the medium fit for reuse or disposal.
- b) **SSD/NVMe:** crypto erase / manufacturer *sanitize/secure erase* is preferred; if not feasible,

equivalent “Purge” methods or physical destruction will be applied.

- c) **HDD:** “Clear” via full overwrite; “Purge” via degauss or physical destruction where required due to sensitivity/condition.
- d) **Mobiles/tablets:** factory reset + encryption verification; where applicable, MDM-managed wipe.
- e) Where the medium’s condition prevents erasure (e.g., electronic/mechanical failure), JMS will recommend physical destruction (27.4).

27.4 Physical Destruction of Media

- a) Under the Client’s instruction or JMS’s recommendation, the medium may be physically destroyed (shredding/punching/cutting) by JMS or a certified provider.
- b) Destruction is performed safely and documented; resulting waste is handled as e-waste (27.7).

27.5 Certificates and Traceability

- a) On request, JMS will issue a *Certificate of Erasure/Destruction* per batch or per serial, indicating date, method, device/serial and result (success/diverted to destruction).
- b) **Chain of custody (optional):** at additional cost (Section 3), JMS can implement tamper-evident seals, serial lists, hand-over/receipt signatures, and photo-documentation of the process/batch.
- c) JMS will retain traceability support (logs/reports) for up to 24 months unless a different legal period applies (see Privacy Policy and 26.28).

27.6 Limitations (Non-Forensic)

- a) Unless the SOW provides otherwise, sanitisation is commercially reasonable, is not a forensic service and does not certify military-grade security.
- b) Erasure success depends on the medium’s condition, firmware, prior encryption, and vendor locks.
- c) Nothing herein limits the Client’s non-excludable rights under the ACL.

27.7 e-Waste: Responsible Disposal

- a) JMS will handle e-waste through providers operating under applicable Australian schemes and regulations (e.g., TV/PC recycling programs and local environmental rules), prioritising reuse, recycling and recovery over final disposal.
- b) Damaged/swollen lithium batteries and risky equipment are handled under WHS guidelines (see 22) and segregated for specialist processing.
- c) The Client authorises JMS to remove labels bearing data and to erase residual network configurations/credentials prior to disposal.

27.8 Ownership, Salvage Value and Waste

- a) Ownership of equipment/media destined for e-waste remains with the Client until: (i) the Client provides JMS written disposal authorisation; or (ii) Section 10 (non-collection) applies and its timeframes/conditions are met.
- b) Where salvage value exists, JMS may offset that value against the disposal service costs, or agree its return with the Client; this will be documented on the docket/invoice.
- c) If the equipment included parts supplied on credit by JMS, Section 24 (PPSA/ROT) applies until full payment.

27.9 Client Responsibilities

The Client:

- a) maintains prior backups (Section 5.4) and confirms in writing that data may be erased;

- b) removes locks (iCloud/Google/MDM/BitLocker) and provides temporary credentials where needed for sanitisation;
- c) warrants title/right to dispose of the equipment/media and that it is not stolen or subject to claim;
- d) will not provide media containing illegal content; if JMS detects reasonable indicators, JMS may suspend the service and notify as required by law.

27.10 Costs and Timeframes

- a) Erasure/destruction/e-waste services are quoted under Section 3 (per unit, per hour or per batch) and may include logistics, staging, chain of custody and certificates.
- b) Timeframes are estimates and may vary by volume, media type and site constraints (see 22 and 9).

27.11 Incidents and NDB (Privacy)

- a) While JMS holds equipment/media/data, it will apply reasonable security measures (Section 20 and the Privacy Policy).
- b) If a notifiable breach occurs, JMS will act in accordance with the *Notifiable Data Breaches (NDB) scheme* and its Privacy Policy (assessment, containment, and notification to affected individuals/OAIC where applicable).

27.12 Transport and Storage

- a) Transport by JMS or a coordinated third party: appropriate packaging, serial lists and, where contracted, seals and tracking will be used.
- b) Temporary storage at JMS: see Section 10 (timeframes, charges and disposal for non-collection).
- c) Transit risk per Section 25.7 and the carrier's terms; JMS is liable for its own negligence (ACL prevails).

27.13 Interaction with Other Sections and Governing Law

- a) This Section complements Sections 3, 5, 9, 10, 11, 13, 14, 18, 20, 22, 24 and 25; in case of conflict, the ACL and the Privacy Policy prevail for personal data matters.
- b) Nothing in this Section excludes, restricts or modifies the Client's non-excludable guarantees/remedies under the ACL.

27.14 Small Business / UCT (Read Down)

This Section will be interpreted transparently, proportionately and only to the extent reasonably necessary to protect legitimate interests (information security and environmental compliance). Any term found unfair under the ACL is void without affecting the remainder (see Section 16).

27.15 Survival

Obligations regarding confidentiality/privacy, traceability (27.5), NDB (27.11) and PPSA (24) survive as applicable after service completion.

27.16 Legal Hold and Mandatory Retention

The Client warrants that the media/equipment are not subject to legal hold, investigation, or statutory retention (tax, corporate, regulatory). JMS may refuse or defer erasure/destruction where there are reasonable indications of such obligations. Any suspension will be notified under Section 18.

27.17 “Non-Obvious” Media and Keys/Credentials

The service includes, where applicable, sanitisation of non-obvious storage (e.g., MFP/printers, switches/routers with config/flash/NVRAM, cameras/NVRs, and certificates/keys on devices).

The Client authorises revocation or regeneration of associated certificates/credentials to prevent improper reuse.

27.18 Export and International Recycling

JMS will not export e-waste overseas unless the destination operates under equivalent environmental and safety standards and contractual traceability exists. In any event, processing in Australia under applicable schemes (e.g., *Product Stewardship Act 2011 (Cth)* and the NTCRS) will be preferred where relevant.

27.19 Lithium Batteries — ADG Code

Transport and handling of lithium batteries (including damaged/swollen) will comply with the *Australian Dangerous Goods (ADG) Code*. The Client will declare packages containing batteries and use appropriate packaging/labelling; JMS may reject non-compliant consignments.

27.20 Operational Non-Conformities

If, at commencement, locks (iCloud/Google/MDM/BitLocker) are detected, credentials are missing, or the medium is damaged preventing sanitisation, JMS may: (a) request rectification; or (b) requote the task (e.g., physical destruction/chain of custody) at the rates in Section 3, always proportionately and transparently.

27.21 On-Site Destruction (if requested)

Where the Client requires on-site destruction, JMS may provide the service directly or via a certified provider subject to WHS assessment (Section 22), site capability and additional costs (mobilisation, waste containment). A record/photos of the process will be issued where contracted.

27.22 Recycling Providers and Confidentiality

Third parties used for destruction/recycling will sign confidentiality and limited-use obligations equivalent to Section 20. To the extent permitted by law, JMS remains responsible for coordinating and verifying performance in accordance with what was contracted, without prejudice to the Client’s non-excludable ACL rights.