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By signing below, the parties agree to the terms set out in this Agreement.

|  |  |  |  |
| --- | --- | --- | --- |
| Name | {$USR\_Name|ucwords}, {if !empty($USR\_ABN)}ABN {$USR\_ABN|phone\_format:"%2 %3 %3 %3"}{/if} (**{$USR\_ABV}**) | | |
| Address | {$USR\_Address} | | |
| Contact | {$USR\_Contact\_FN} {$USR\_Contact\_LN} – {$USR\_Contact\_Role} {$USR\_Contact\_Email} | | |
| Signatory | {$USR\_Signatory\_FN} - {$USR\_Signatory\_LN} – {$USR\_Signatory\_Role} | | |
| Signature |  | Date |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Name | {$PT2\_Name|ucwords}, {if !empty($PT2\_ABN)}ABN {$PT2\_ABN|phone\_format:"%2 %3 %3 %3"}{/if} (**{$PT2\_ABV}**) | | |
| Address | {$PT2\_Address} | | |
| Contact | {$PT2\_Contact\_FN} {$PT2\_Contact\_LN} – {$PT2\_Contact\_Role} {$PT2\_Contact\_Email} | | |
| Signatory | {$PT2\_Signatory\_FN} {$PT2\_Signatory\_LN} – {$PT2\_Signatory\_Role} | | |
| Signature |  | Date |  |

1. Definitions
   1. **Definitions****.** In this Agreement capitalised terms have the following meanings:
      1. **Agreement Date** means the date the last party signs this Master Services Agreement.
      2. **Business Day** means a day that is not a Saturday, Sunday or public holiday in the Location. {if $SW\_DEV=="Yes"}
      3. **Change Request** means a written notice from {$PT2\_ABV} requesting a change to the Deliverables subject to a SOW, or any additional work not specified in a SOW or otherwise previously agreed to be provided by {$USR\_ABV}. {/if}
      4. **Commencement Date** means {$Comc\_date|date\_format:"d F Y"}.
      5. **Confidential Information** means all information belonging to, or licensed by a party to this Agreement (**Discloser**) and includes, without limitation, all Intellectual Property, notes and other records, whether written or otherwise, including information that:
         1. the Discloser advises the other party (**Recipient**) is confidential;
         2. by its very nature, might reasonably be understood to be confidential or to have been disclosed in confidence;
         3. would be of commercial value to a competitor of the Discloser;
         4. relates to any arrangements or transactions involving the Discloser;
         5. relates to any arrangements or transactions between the Discloser, and its suppliers, contractors, employees or consultants (including their identity and the value in respect of the supplies of goods, services or labour the Discloser acquires from them);
         6. relates to the Discloser's fees, quotations, prices or charges in respect of services or, formulae, technical information, plans, drawings and specifications;
         7. is a business plan or forecast;
         8. are financial records, reports, accounts and proposals of the Discloser;
         9. relates to the marketing and selling techniques used by the Discloser (including marketing plans, sales plans, research and data surveys);
         10. is personal information within the meaning of the *Privacy Act 1988* (Cth);

but excludes information that:

* + - 1. is, or becomes, generally known or available to the public, through no act or omission on the part of the Recipient;
      2. was known, without restriction as to use or disclosure, by the Recipient prior to receiving such information from the Discloser;
      3. is rightfully acquired by the Recipient from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or
      4. is independently developed by the Recipient.
    1. **Deliverable** means any deliverable supplied by {$USR\_ABV} under a SOW.
    2. **Expenses** any goods or services obtained from a third party necessary to provide the Services.
    3. **Fee** means a fee payable to {$USR\_ABV} for Services.
    4. **Fixed Fee** means a set Fee charged for pre-defined Services.
    5. **Force Majeure** means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include but are not be limited to any:
       1. act of God;
       2. outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority;
       3. industrial dispute;
       4. government restraint; or
       5. other event which is not within the reasonable control of the parties.
    6. **GST** means goods and services tax, or similar value added tax levied or imposed in Australia pursuant to the GST law or otherwise on a supply.
    7. **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
    8. **GST law** has the same meaning as in the GST Act.
    9. **Intellectual Property** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, trade secret, knowhow or other proprietary right or right of registration of such rights, including any such rights subsisting in (without limitation): circuit layouts; inventions; product formulations; databases; software code; domain names; brand names; trade names; business names; and company names.
    10. **Location** means {$REF\_City}, {$REF\_State}, Australia.
    11. **Loss** means any loss, cost, expense, charge, tax, penalties, fine, premium, or compensation arising from (without limitation):
        1. direct, incidental, consequential or indirect damages;
        2. damage to property, loss of property;
        3. loss or corruption of data;
        4. loss of profits, goodwill, bargain or opportunity,
        5. loss of anticipated savings;
        6. legal costs on a solicitor and own client basis, and the costs of enforcing this Agreement; or
        7. Personal injury or death.
    12. **Material** includes documents, software, configurations, equipment, reports, technical information, studies, plans, charges, drawings, calculations, tables, schedules and data stored by any means.
    13. **Privacy Law** means the *Privacy Act 1988* (Cth), the Australian Privacy Principles and any other applicable privacy legislation;
    14. **Privacy Policy** means {$USR\_ABV}’s privacy policy{if empty($USR\_URL)}.{elseif !empty($USR\_URL)} [accessible at {$USR\_URL}]{/if} {if $SW\_DEV=="Yes"}
    15. **Proprietary Technology** means the Intellectual Property {$USR\_ABV} holds in the underlying code, or other software product that {$USR\_ABV} may make available to {$PT2\_ABV} as part of the Services, that forms part of {$USR\_ABV} IP as defined in clause 12.1, and includes any updates or further development made during the provision of Services. {/if}
    16. **Services** means the work and deliverables to be provided by {$USR\_ABV} as described in a SOW.
    17. **SOW** means a statement of work agreed in writing between the parties and referencing this Agreement.
    18. **Subscription Fee** means a Fee payable on a periodical, ongoing basis.Tax Invoice has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
    19. **Tax Invoice** has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

1. Term, Agreement & SOWs
   1. **Commencement and Term.** This Agreement commences on the Commencement Date and shall continue unless and until terminated earlier in accordance with its terms.
   2. **Agreement and SOWs.** Each SOW entered into under this Agreement forms a separate agreement between the parties on the terms of that SOW and this Agreement. The relationship between the parties shall be governed by the terms of this Agreement and each SOW until both are terminated in accordance with their terms.
2. Services
   1. **SOWs.** The scope of the Services to be provided by under this Agreement must be set out in a SOW. The Services will not extend beyond the scope of a SOW unless the parties agree otherwise in writing.
   2. Subject to a SOW, {$USR\_ABV} will generally provide the following services to {$PT2\_ABV}:
      1. {if !empty($Duty\_1)}{$Duty\_1};
      2. {/if}{if !empty($Duty\_2)}{$Duty\_2};
      3. {/if}{if !empty($Duty\_3)}{$Duty\_3};
      4. {/if}{if !empty($Duty\_4)}{$Duty\_4};
      5. {/if}{if !empty($Duty\_5)}{$Duty\_5};
      6. {/if}{if !empty($Duty\_6)}{$Duty\_6};
      7. {/if}{if !empty($Duty\_7)}{$Duty\_7};
      8. {/if}{if !empty($Duty\_8)}{$Duty\_8};
      9. {/if}{if !empty($Duty\_9)}{$Duty\_9};
      10. {/if}{if !empty($Duty\_10)}{$Duty\_10};
      11. {/if}Such other duties, tasks and responsibilities as the parties may agree from time-to-time.
   3. {$USR\_ABV} will provide the Services to {$PT2\_ABV} and such other services and Deliverables as described in a SOW as may be agreed from time to time. {if $SW\_DEV=="Yes"}
3. Technology Licensing
   1. {$USR\_ABV} grants {$PT2\_ABV} and its successors and assigns a perpetual, royalty-free, worldwide licence to use Proprietary Technology within the products or services offered to {$PT2\_ABV}’s customers, provided that the Proprietary Technology:
      1. Is provided as part of the Services; and
      2. Is required to be used by {$PT2\_ABV} in the products or services it offers to its customer, unless agreed otherwise in writing.
   2. The licence contained in clause 4.1 is subject to the following conditions:
      1. {$PT2\_ABV} must not sub-licence or in any way commercialise the Proprietary Technology; and
      2. {$PT2\_ABV} must not reverse engineer, decompile or otherwise purport to copy the Proprietary Technology.
   3. For the avoidance of doubt, Proprietary Technology shall be treated separate from any other Intellectual Property under this Agreement.
4. Acceptance testing
   1. {$PT2\_ABV} may assess the Services to determine if they were properly provided by {$USR\_ABV} or to determine if they contain any defects.
   2. {$PT2\_ABV} may notify any defects or problems with the Services by providing {$USR\_ABV} with written notice that gives {$USR\_ABV} a reasonable amount of time to rectify the alleged issued (which in default shall not be less than 10 Business Days).
   3. {$USR\_ABV} shall rectify any bona fide defects specified in the written notice in a prompt and professional manner.
5. Change requests
   1. No Change Request from {$PT2\_ABV} is valid until accepted in writing by {$USR\_ABV}.
   2. Unless agreed otherwise in writing, {$USR\_ABV}’s usual rates (as specified in the SOW or otherwise provided to {$PT2\_ABV}) shall apply in respect of any Change Request undertaken by {$USR\_ABV}.{/if}
6. RELATIONSHIP
   1. **Independent Contractor.** The parties acknowledge and agree that:
      1. {$USR\_ABV} is an independent contractor in business in its own right, and must continue operate as such during the term of this Agreement;
      2. {$USR\_ABV} is not a representative or agent of {$PT2\_ABV} for any purpose and must not hold itself out as such;
      3. {$USR\_ABV} does not have the power to incur any debt, obligation, liability or make any contract on behalf of {$PT2\_ABV};
      4. {$USR\_ABV} is not an employee of {$PT2\_ABV} nor is {$USR\_ABV} entitled to {$PT2\_ABV}'s employee benefits or the protection offered to {$PT2\_ABV}’s employees by law.
7. Subcontracting
   1. {$USR\_ABV} may engage such third-parties as are necessary to provide the Services without {$PT2\_ABV} approval.
   2. {$USR\_ABV} is responsible for ensuring that all third-party subcontractors comply with {$USR\_ABV}'s obligations under this Agreement including those of confidentiality.
8. REMUNERATION
   1. **Fees.**
      1. {$USR\_ABV} will charge {$PT2\_ABV} such fees as specified in the SOW (**Fees**) which may include:
         1. One or more Fixed Fees;
         2. an upfront fee;
         3. a Subscription Fee; and/or
         4. payment terms in accordance with a specified payment schedule.
      2. {$USR\_ABV} reserves the right to not undertake any work falling outside the scope of a SOW without additional payment. {$USR\_ABV} will advise {$PT2\_ABV} as soon as reasonably practicable where work falls outside of these parameters and provide {$PT2\_ABV} an estimate of the additional costs/rates.
      3. Unless otherwise stated, fees are exclusive of GST, which is payable in addition at the prevailing rate.
   2. **Fixed Fees.** Where a Fixed Fee applies {$PT2\_ABV} agrees:
      1. To pay any upfront fee for {$USR\_ABV}’s commitment to undertake the agreed work;
      2. The Fixed Fee only covers work done within the scope of the SOW;
      3. {$PT2\_ABV} must provide instructions (and all required information and other documents) to {$USR\_ABV} within the timeframe(s) specified in the SOW; and
      4. The Fixed Fee does not cover any work done outside of (a) to (c) (inclusive) above.
   3. **Subscription Fees.** Where a Subscription Fee applies, {$PT2\_ABV} agrees to pay the Subscription Fee in advance, and at such periods as specified in the SOW, which in default shall be monthly.
   4. **Expenses.**
      1. In the event {$USR\_ABV} incurs Expenses in order to provide the Services, {$PT2\_ABV} agrees to pay these at cost. Such Expenses may include, without limitation:
         1. Services provided by a third-party; and
         2. Any other expense not included in the Fees subject to the SOW.
      2. {$USR\_ABV} shall obtain approval from {$PT2\_ABV} prior to incurring the cost of any Expenses.
      3. For the avoidance of doubt any services contained in Expenses shall not constitute subcontracting under this Agreement.
   5. **Invoicing & Payment.**
      1. {$USR\_ABV} shall provide a Tax Invoice to {$PT2\_ABV} for any paid Services provided.
      2. {$PT2\_ABV} agrees to pay any Tax Invoice promptly and within the stated timeframe, which in default shall be {$Inv\_Due} Business Days from the date of the invoice. Payment shall be by electronic transfer into {$USR\_ABV}’s nominated bank account unless otherwise agreed between the parties. {if $USR\_Bnk=="Yes"}
      3. {$USR\_ABV}’s nominated bank account details are:
         1. **Account Name:** {$USR\_Acct\_Name}
         2. **BSB:** {$USR\_Acct\_BSB}
         3. **Account Number:** {$USR\_Acct\_Nmr} {/if}
   6. **Disputed Tax Invoice.**
      1. If {$PT2\_ABV} disputes any charge on a Tax Invoice received from {$USR\_ABV}, {$PT2\_ABV} must notify {$USR\_ABV} of the disputed charge within 5 Business Days of receiving the Tax Invoice.
      2. {$PT2\_ABV} must pay all amounts on a Tax Invoice received from {$USR\_ABV}, that are not in dispute, in accordance with clause 9.5.
      3. {$PT2\_ABV} acknowledges and agrees that if it fails to notify {$USR\_ABV} of a disputed Tax Invoice, in accordance with clause 9.6(a), it will be liable to pay the entire Tax Invoice, and any disputed charge must be dealt with in accordance with clause 16.
   7. **Interest.**
      1. {$USR\_ABV} may charge, and {$PT2\_ABV} must pay interest at a rate of {$Late\_Interest}{if stristr($Late\_Interest, "%")}{else}%{/if} per annum, compounding monthly, on any amounts included on a Tax Invoice sent to {$PT2\_ABV}, that are not disputed in accordance with clause 9.6, and remain unpaid 10 Business Days after the Tax Invoice was sent.
      2. If {$USR\_ABV} elects to charge interest in accordance with clause 9.7(a), {$USR\_ABV} must issue a statement or consolidated Tax Invoice to {$PT2\_ABV}, within 5 Business Days of the end of each calendar month in which interest is payable, showing all overdue charges and interest payable for that calendar month.
   8. **Late Payment.**
      1. If {$PT2\_ABV} does not pay the Fees or reimburse Expenses, as required by this clause 9, {$USR\_ABV} may stop providing the Services until such Fees or Expenses are paid, including any interest due on such payments.
      2. If {$USR\_ABV} has stopped providing the Services for 28 days, or more, under clause 9.8(a) {$USR\_ABV} may terminate this Agreement, with immediate effect, by providing written notice to {$PT2\_ABV}.
      3. Termination of this Agreement by {$USR\_ABV}, pursuant to clause 9.8(b), does not affect {$PT2\_ABV}’s obligation to pay the Fees due, or reimburse the Expenses incurred to {$USR\_ABV} up to and including the date of termination less any period the Services were not provided by {$USR\_ABV} pursuant to clause 9.8(a).
9. Goods and Services Tax
   1. **Interpretations.** Terms defined in the GST Act have the same meaning in this clause 10 unless provided otherwise.
   2. **GST pass on.** If GST is or will be imposed on a supply made under or in connection with this Agreement, the supplier may, to the extent that the consideration otherwise provided for that supply under this Agreement is not stated to already include an amount in respect of GST on the supply:
      1. increase the consideration otherwise provided for that supply under this Agreement by the amount of that GST; or
      2. otherwise recover from the recipient the amount of that GST.
   3. **Tax Invoices and Adjustment Notes****.** The recovery of any amount in respect of GST by the supplier under this Agreement is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient. Subject to any other provision of this Agreement, the recipient must pay any amount in respect of GST within 7 days of the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.
   4. **Later adjustment to price or GST.** If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST recovered by the supplier, as appropriate, the supplier:
      1. may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; and
      2. must refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the supply.
   5. **Reimbursements****.** Costs required to be reimbursed or indemnified under this agreement must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.
10. Confidentiality
    1. Each party agrees:
       1. to maintain the other party's Confidential Information in strict confidence;
       2. not to disclose Confidential Information to any third parties except as provided for under this Agreement, or otherwise with the consent of the Discloser; and
       3. to use Confidential Information only for the purpose it was provided for, or to carry out its obligations under this Agreement.
    2. The Recipient may disclose the Confidential Information to its employees and consultants, where necessary to carry out its obligations under this Agreement, provided that each such employee and consultant is first bound by a written agreement that contains provisions at least as protective of the Discloser's Confidential Information as those set out in this Agreement.
    3. The provisions of this clause 11 will not restrict a Recipient from disclosing Confidential Information if required by any law or regulation, provided that the Recipient makes reasonable efforts to give the Discloser advance notice of the required disclosure.
    4. On termination of this Agreement, the Recipient will promptly carry out to the furthest practical extent, any of the following, in accordance with the Discloser's request:
       1. Return to the Discloser all tangible items and embodiments containing or consisting of the Discloser's Confidential Information, and all copies thereof (including electronic copies stored on removeable media);
       2. Delete or destroy the recipient's copy of the Discloser's Confidential Information; and
       3. Notify the Discloser of its compliance with its request.
    5. In the event the Recipient is unable to fully comply with a request pursuant to clause 11.4, the Recipient will notify the Discloser of the reasons why, and the steps it will take to ensure confidentiality of the Confidential Information is maintained.
    6. All Confidential Information remains the sole and exclusive property of the Discloser. Each party acknowledges and agrees that nothing in this Agreement will be interpreted as granting any rights to the Recipient, by license or otherwise, over any Confidential Information of the Discloser, or any Intellectual Property or other proprietary rights of the Discloser, except as specified in this Agreement.
    7. Each party acknowledges that the unauthorized use or disclosure of the Discloser's Confidential Information would cause the Discloser irreparable harm and significant damages, the degree of which may be difficult to ascertain. In such a case the Discloser may obtain immediate equitable relief for any unauthorized use or disclosure of its Confidential Information pursuant to clause 16.1(c) in addition to any other rights or remedies that it may have.
11. Intellectual Property
    1. **{$USR\_ABV} IP** 
       1. For the purposes of this clause **{$USR\_ABV} IP** means Intellectual Property rights:
          1. owned by {USR\_ABV}, or licensed to {USR\_ABV} by a third party, before the Commencement Date; or
          2. developed by {USR\_ABV} or licensed to {USR\_ABV} outside the scope of this Agreement (including any customisations, modifications, improvements or developments to such Intellectual Property).
       2. {$USR\_ABV} retains all right, title and interest to the {$USR\_ABV} IP.
       3. To the extent that {PT2\_ABV} requires the use of any {USR\_ABV} IP to receive the full benefit of the Services or use of the New IP, {USR\_ABV} grants to {PT2\_ABV}, a royalty free, worldwide, perpetual, irrevocable licence (including the right to sub-license on the same terms), to use, display, modify and distribute the {USR\_ABV} IP.
    2. **{$PT2\_ABV} IP** 
       1. For the purposes of this clause **{$PT2\_ABV} IP** means Intellectual Property rights:
          1. owned by {PT2\_ABV}, or licensed to {PT2\_ABV} by a third party, before the Commencement Date; or
          2. developed by {PT2\_ABV} or licensed to {PT2\_ABV} outside the scope of this Agreement (including any customisations, modifications, improvements or developments to such Intellectual Property).
       2. {$PT2\_ABV} retains all right, title and interest to the {$PT2\_ABV} IP.
       3. To the extent that {USR\_ABV} requires the use of any {PT2\_ABV} IP or New IP to perform the Services and any other obligations under this Agreement, {PT2\_ABV} grants {USR\_ABV} a royalty free, worldwide, revocable licence (including the right to sub-license on the same terms), to use, display, modify and distribute {PT2\_ABV} IP and New IP for the Term.
       4. {$USR\_ABV} shall not use {PT2\_ABV}'s name and logo in {$USR\_ABV} marketing or tender documents, unless {PT2\_ABV} approves such use in writing. {if $IP\_Owner == "USR"}
    3. **New IP** 
       1. For the purposes of this clause **New IP** means all Intellectual Property created, conceived or developed in the course of the performance of the Services during the Term excluding {PT2\_ABV} IP and {USR\_ABV} IP.
       2. Ownership of New IP shall vest in and be assigned to {USR\_ABV} immediately on creation.
       3. To the extent that {$PT2\_ABV} may at any time acquire any right, title or interest in the New IP, {$PT2\_ABV}, by this document, agrees to assign to {$USR\_ABV} all such rights, title and interest in the New IP.
       4. Unless otherwise agreed in writing by the parties, and notwithstanding any provision of this Agreement to the Contrary, {$USR\_ABV} grants {$PT2\_ABV} an exclusive, perpetual, transferable, royalty free and worldwide licence to use, for the purposes of its day to day business, the New IP to the extent that it is contained within the Services, and consistent with the agreed purpose (if any).{elseif $IP\_Owner =="PT2"}
    4. **New IP** 
       1. For the purposes of this clause **New IP** means all Intellectual Property created, conceived or developed in the course of the performance of the Services during the Term excluding {PT2\_ABV} IP and {USR\_ABV} IP.
       2. Ownership of New IP shall vest in and be assigned to {PT2\_ABV} immediately on creation.
       3. {$USR\_ABV} agrees to do all things and execute all documents, including obtaining all necessary moral rights waivers and consents, necessary to perfect {PT2\_ABV}’s ownership of the New IP in accordance with this Agreement.{/if}
12. Privacy
    1. {$USR\_ABV} maintains the Privacy Policy in compliance with Privacy Law for data that it collects about individuals.
    2. The Privacy Policy does not apply to how {$PT2\_ABV} handles personal information. If necessary under the Privacy Act, it is {$PT2\_ABV}’s responsibility to meet the obligations of the Privacy Act by implementing a privacy policy in accordance with law.
    3. {$USR\_ABV} may collect personal information about {$PT2\_ABV}’s representatives and employees throughout the course of this Agreement. This personal information will only be disclosed and used for the purposes of providing the Services, improving {$USR\_ABV}'s services and obtaining feedback, or otherwise in accordance with {$PT2\_ABV}’s instructions and the Privacy Policy.
    4. Where {$PT2\_ABV} provides {$USR\_ABV} with the personal information of its customers, employees, contractors or other individuals, {$USR\_ABV} warrants that it will keep such information confidential and secure and will not use such personal information other than for the purposes of providing the Services to {$PT2\_ABV} and in accordance with the Privacy Law.
13. Liability and Indemnity
    1. In no circumstances will {USR\_ABV} be liable for any direct, incidental, consequential or indirect damages, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from {PT2\_ABV}’s access to, or use of, or inability to use the Deliverables, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not {USR\_ABV} knew or should have known of the possibility of such damage, to business interruption of any type, whether in tort, contract or otherwise.
    2. Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, {USR\_ABV} and its related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, {USR\_ABV}'s liability for breach of any implied warranty or condition that cannot be excluded is restricted, at {USR\_ABV}'s option to:
       1. The re-supply of services or payment of the cost of re-supply of services; or
       2. The replacement or repair of goods or payment of the cost of replacement or repair.
14. FORCE MAJEURE
    1. A party is not liable for its inability to perform, or for any delay in performing, any of its obligations under this Agreement if that inability or delay is caused by a Force Majeure.
    2. If a delay or failure of a party to perform its obligations is caused or anticipated due to a Force Majeure, the performance of that party's obligations will be suspended.
    3. If a delay or failure by a party to perform its obligations to due to a Force Majeure exceeds sixty (60) days, either party may immediately terminate the Agreement on providing notice in writing to the other party.
15. Dispute Resolution
    1. **Scope of Dispute.** 
       1. This clause 16 shall apply in the event a dispute arises out of, or in connection with this Agreement, or the interpretation of its terms (**Dispute**).
       2. Subject to clause 16.1(c), a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause 16.
       3. Nothing in this clause 16 prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
    2. **Resolution Process.** 
       1. Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement and any related agreements.
       2. A party claiming that a Dispute has arisen must give written notice to each other party to the Dispute specifying the nature of the Dispute and their terms for resolution.
       3. On receipt of that notice by each other party, all parties must use their best endeavours to resolve the Dispute as soon as possible.
       4. If the parties have not resolved the Dispute within 14 days of receipt of the notice referred to in clause 16.2(b), or such further period as agreed in writing by them, the Dispute must go to mediation.
       5. A mediator appointed to resolve the Dispute must be:
          1. as agreed in writing between the parties; or
          2. failing agreement pursuant to clause (e)i, appointed by the President of the Law Institute or Law Society of the state or territory whose laws govern this Agreement, or his or her nominee.
       6. The mediation will be confidential with the costs of the mediator being borne equally by the parties to the Dispute. Each party will bear their own legal costs in relation to the mediation.
       7. Notwithstanding clause 16.1(c), a party may only initiate court proceedings in relation to a Dispute if it has complied with this clause 16, and the mediation has been unsuccessful.
16. NOTICEs, Amendment and Assignment
    1. **Electronic Communication.** 
       1. The words in this clause 17 that are defined in the *Electronic Transactions Act 1999* (Cth) have the same meaning.
       2. A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.
    2. **When notice is given.** A notice, consent or communication delivered under this Agreement is given and received:
       1. If it is hand delivered:
          1. by 5.00 pm (local time in the place of receipt) on a Business Day – on that day; or
          2. after 5.00 pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day – on the next Business Day;
       2. if it is sent by post:
          1. within Australia – 3 Business Days after posting; or
          2. to or from a place outside Australia - 7 Business Days after posting.
    3. **Address for notice.** Notices must be sent to the party’s most recent known contact details.
    4. **Amendment.** This Agreement can only be amended by mutual written agreement between the parties.
    5. **Assignment.** Neither party may assign its rights under this Agreement without the written approval of the other party.
    6. **Assignment by {$USR\_ABV}.** {$USR\_ABV} may assign its rights under this Agreement by providing {$PT2\_ABV} written notice, at any time and without requiring the approval of {$PT2\_ABV}.
    7. **Assignment by {$PT2\_ABV**}**.** {$PT2\_ABV} must not assign, sublicense, transfer, charge or in any manner make over or propose to assign, sublicense, transfer, charge or deal with any part of this Agreement of its rights under this Agreement without the prior written approval of {$USR\_ABV}**.**
17. TERMINATION
    1. **Termination with cause.** Either partymay terminate this Agreement immediately by giving written notice if:
       1. The other party breaches any term of this Agreement and such breach, if capable of remedy, has not been remedied within 10 Business Days of the delivery of a notice specifying the particulars of the breach;
       2. The other party becomes the subject of bankruptcy, liquidation or winding up proceedings or threatens to become insolvent;
       3. a Force Majeure continues for more than twenty (20) Business Days or for periods in aggregate of more than thirty (30) Business Days.
    2. **Termination for convenience.**
       1. {$USR\_ABV} may terminate this Agreement, or any SOW, without cause, by providing {$PT2\_ABV} with {$USR\_Notice} notice. {if $terminate =="yes" and !empty($PT2\_Notice)}
       2. {$PT2\_ABV} may terminate this Agreement, or any SOW, without cause, by providing {$USR\_ABV} with {$PT2\_Notice} notice.{/If}
    3. **Obligations on termination.** Immediately upon the termination or assignment of this Agreement, or upon request at any time by the Discloser**,** the Recipient must:
       1. deliver to the Discloser all records of Confidential Information in the Recipient's possession, power or control which are physically capable of delivery;
       2. deliver to the Discloser allof the Discloser's Material in the Recipient's possession, power or control which are physically capable of delivery; and
       3. permanently erase all records of Confidential Information from the Recipient's physical records or electronic storage devices.
    4. **Effect of termination.** On termination or expiry of this Agreement all SOWs entered into between the parties will terminate immediately unless specifically excluded from the relevant notice of termination.
    5. **Survival.** The obligations in clauses 11, 12, 13 and 14 survive termination of this Agreement.
18. GENERAL
    1. **Counterparts.** This Agreement may be executed in any numbers of counterparts. All counterparts together make one instrument.
    2. **Prevalence.** To the extent the SOW is inconsistent with the terms of this Agreement, the terms of the SOW will take precedence.
    3. **Cumulative rights.** The powers and rights of a party under this Agreement do not exclude any other power or right.
    4. **No merger.** The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this Agreement.
    5. **No Joint Venture.** The relationship between the parties to this Agreement does not form a joint venture or partnership.
    6. **Further Assurances.** Each party must do all things necessary (including executing documents) to give full effect to this Agreement and the transactions contemplated by this Agreement.
    7. **Third party rights.** No person other than the parties has or is intended to have any right, power or remedy or derives or is intended to derive any benefit under this Agreement.
    8. **To the extent not excluded by law.** The rights, duties and remedies granted or imposed by this Agreement operate to the extent not excluded by law.
    9. **Governing law and jurisdiction.**
       1. The laws of the State of {$REF\_State} in Australia govern this Agreement.
       2. Each party irrevocably submits to the non-exclusive jurisdiction of the Courts in {$REF\_City}, {$REF\_State} in Australia and the Federal Court of Australia sitting in {$REF\_State}.
    10. **No waiver.**
        1. The failure of a party to require full or partial performance of a provision of this Agreement does not affect the right of that party to require performance subsequently.
        2. A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
        3. A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
    11. **Severability.** A clause or part of a clause of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining clauses or parts of the clause of this Agreement continue in force.
    12. **Interpretation.**
        1. The singular includes the plural and the opposite also applies.
        2. If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
        3. A reference to a *clause* refers to clauses in this Agreement.
        4. A reference to legislation is to that legislation as amended, re‑enacted or replaced, and includes any subordinate legislation issued under it.
        5. Mentioning anything after *includes*, *including*, or similar expressions, does not limit anything else that might be included.
        6. A reference to a *party* to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
        7. A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
        8. References to $ or dollars, is a reference to Australian dollars.
        9. {$Entry\_id}

{$DISPLAY\_NAME} {$DISPLAY\_EMAIL} {$Login\_ID}