Vivid Obsession Group Pty Ltd
Terms and Conditions

1. Definitions

1.1 "Seller" shall mean Vivid Obsession Group Pty Ltd, and/or any related companies of the Seller, and/or agents, employees, successors or assignees thereof.

1.2 "Buyer" shall mean the entity or person named on any form provided by the Seller to the Buyer (or any person acting on behalf of and with the authority of such entity or person) who buys or agrees to buy Goods. If the Buyer includes two or more persons, those persons liability is joint and several.

1.3 "Guarantor" means that person (or persons, or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.

1.4 "Goods" shall mean all Goods, Services and/or Deliverables (including but not limited any advice or recommendations given regarding the Goods) and shall mean all services provided by the Seller to the Buyer and shall include, without limitation, the provision of all graphic design, magazine and web design, communication services and supplies, all charges for IT services and IT support, labour and work, hire charges, insurance charges, or any fee or charge associated with the supply of services by the Seller to the Buyer, and as described on any Invoice, Quotation, Fees Schedule or any other forms provided by the Seller to the Buyer.

1.5 "Works" shall mean all Works, Services and/or Deliverables undertaken by the Seller (including, but not limited to any advice or recommendations given regarding the Works) and are as described on any Invoice, Quotation, Fees Schedule or any other forms provided by the Seller to the Buyer.

1.6 "Deliverables" shall mean all Deliverables, Goods, Services and/or Works undertaken by the Seller (including, but not limited to any advice or recommendations given regarding the Deliverables) and are as described on any Invoice, Quotation, Fees Schedule or any other forms provided by the Seller to the Buyer.

1.7 "Additional Services" shall mean any additional services described in the Fees Schedule.

1.8 "Client Materials" shall mean any materials provided by the Buyer to the Seller for incorporation in the Goods, Works and/or Deliverables including but not limited to, any images, photographs, illustrations, graphics, audio clips, video clips or text and any other materials that are created by the Seller specifically and uniquely for the Buyer and contained in the final work product delivered to the Buyer under these terms and conditions (Contract), including licensed software, software applications or supplied IT services, software designs, code, data and technical components, and creative designs, images, artwork and text.

1.9 "Design Concept" shall mean the design concept, including any information architecture, design and static web site image designed by the Buyer.

1.10 "Design Product" shall mean web ready page(s), print and production ready files designed by the Seller in accordance with these terms and conditions (Contract).

1.11 "Design Specifications" shall mean the design specifications for the Design Product agreed between the Seller and the Buyer. Also known as the design brief.

1.12 "Design Materials" means any designs, design materials, software, routines, know-how, methodologies, user interface conventions or design patterns, interfaces to third party products and other development and design tools (and all enhancements and derivatives thereto) which the Seller (i) developed prior to or otherwise than in the course of any Contract or (ii) develops during the course of any Contract but which are developed either at the Seller's Design cost or which are not uniquely applicable to the particular specifications, characteristics or functions of the Deliverables.

1.13 "Intellectual Property" means, in respect of any person, all intellectual property and industrial property rights and interests (including common law rights and interests) owned or held by that person, or lawfully used by that person, including, without limitation:

a) patents, trademarks, service marks, copyright, registered designs, trade names, symbols and logos; and/or
b) patent applications and applications to register trademarks, service marks and designs; and/or
c) all formulae, methods, plans, data, drawings, specifications, characteristics, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade secrets, price lists, castings, brochures and other information used by that person.

1.14 "Scripts" means any content management software provided by the Seller under this agreement (where applicable), and includes any enhancement, modification, correction or upgrade relating to the software.

1.15 "Scripts User Manual" means any documentation provided by the Seller, which contains instructions on the use of Scripts.

1.16 "Fees Schedule" shall mean the schedule of fees agreed between the Seller and the Buyer, and specified in or calculated by reference in respect to any Quotation, Estimate, or any other forms provided by the Seller to the Buyer.

1.17 "Price" shall mean the cost of the Goods, Works and/or Deliverables as determined by the Seller and any other amounts owing to the Seller by the Buyer.

1.18 "GST" shall mean goods and services tax payable under the Goods and Services Tax Act 1999.

1.19 "PPSA" shall mean the Personal Properties Securities Act 2009.

2. Acceptance

2.1 Any instructions, written or verbal, received by the Seller from the Buyer for the supply of Goods, Works and/or Deliverables and/or the Buyer's acceptance of Goods, Works and/or Deliverables supplied by the Seller shall constitute you assent by conduct to acceptance of this Contract. Written instructions will refer to the terms and conditions disclosed on the Credit Application, Quotation, and/or Estimate plus any other disclosure forms supplied by the Seller to the Buyer.

2.2 The Seller shall only supply Goods, Works and/or Deliverables subject to the Seller's terms and conditions, and no other terms and conditions of trade relating to the Buyer and/or any other entity shall over-ride the Seller's terms and conditions, unless agreed otherwise in writing.

2.3 These terms and conditions along with the Seller's credit application, quotations, estimates, order forms, and invoices, or any other documents issued by the Seller, together, form the Contract and are the full agreement between the parties.

2.4 No agents and/or representatives of the Seller are authorised to make any representations, statements, conditions and/or agreements not expressed directly by a Director or Shareholder of the Seller company in writing, and the Seller will not be bound by any such unauthorised statements.

3. General

3.1 Headings are inserted for convenience and shall not affect the construction of this Contract. The singular includes the plural and vice versa. Persons include incorporated and unincorporated entities. Words referring to one gender include the other.

3.2 If any provision of this Contract shall be invalid or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced, or impaired.

3.3 This Contract shall be subject to the laws and statutes of Queensland and subject to the jurisdiction of the court geographically closest to the physical address of the Seller.

3.4 The Seller may sub-contract any part of this Contract. No sub-contractor has any authority to agree to any variation of this Contract on behalf of the Seller.

3.5 The Seller's failure or delay in exercising or enforcing any right it has under this Contract shall not operate as a waiver of the Seller's rights to exercise or enforce such rights or any other rights in the future.

3.6 The Seller reserves the right to review these terms and conditions at any time. The Seller may, and the Buyer may not, vary or replace this Contract and it will be a condition of the Seller continuing to supply Works, Goods and/or Deliverables to the Buyer that the Buyer agrees to sign any variation or replacement of this Contract.

3.7 Any waiver of these terms and conditions by the Seller must be made in writing.

3.8 The Buyer may not assign all or any of the Buyer's rights or obligations under this Contract without the written permission of the Seller.

3.9 The Seller shall not be bound by any error or omission made by the Seller on any invoice, quotation, estimate, or any other document issued by the Seller.

3.10 The Buyer shall notify the Seller of any intention to cease trading and/or of any change in the Buyers name and/or contact details by giving at least seven (7) days notice in writing prior to any such events taking effect.

4. Cancellation

4.1 Under this clause, the Seller may cancel the Contract at any given time. The Buyer will be notified of such cancellation in writing.

4.2 The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

4.3 If the Buyer serves the Seller with a cancellation notice at any time, the Buyer shall be liable for full costs of the Works, Goods and/or Deliverables provided by the Seller, including any Goods, Works and/or Deliverables ordered and/or purchased, up to the date of cancellation.

5. Compliance with Laws & Acts

5.1 The Buyer and the Seller shall comply with the provisions of the Commonwealth Trade Practices Act / Australian Consumer Law (ACL) and Legislation, Fair Trading Acts in each of the States and territories of Australia, and applicable statutes, regulations and bylaws of government, local and other public authorities, and/or governed by the laws of Queensland, that may be applicable to the Goods, Works and/or Deliverables.

6. Personal Property Securities Act 2009

6.1 The Buyer acknowledges that this Contract creates a security interest in the Goods, Works and/or Deliverables, for avoidance of doubt, the proceeds of the sale of the Goods, Works and/or Deliverables. The Buyer will if requested by the Seller, sign any documents, provide all necessary information and do anything else required by the Seller to ensure that the security interest is a perfected purchase money security interest.

6.2 Until payment of the Price has been made in full the Buyer acknowledges and agrees that in relation to Goods, Works and/or Deliverables that are inventory, the Buyer will not allow any non-purchase money security interest to arise in respect of the Goods, Works and/or Deliverables unless the Seller has perfected the Seller's purchase money security interest prior to the Buyer taking possession of the Goods, Works and/or Deliverables.

7. Design Concept

7.1 Upon agreement of design specifications of the Design Product, and upon receipt of any Client Materials, and any fees payable as set out in the Quotation, we will commence work to develop the Design Concept.

7.2 The Buyer shall have ten (10) business days, or such other time, as Seller and Buyer agree in writing, from the date of notification to completion of the Design Concept from the Seller, to review and request in writing from the Seller revisions to the Design Concept. The Seller shall use commercially reasonable efforts to implement such revision request that are within the scope of, and consistent with, the Design Specifications.

7.3 If the Buyer chooses to depart in any material respect from the Design Specifications, the parties will, in good faith, agree to additional fees to cover those revisions

7.4 If the Buyer does not make any requests for revisions by the end of ten (10) business days from the date of written notice of completion of the Design Concept from the Seller, and/or upon completion and implementation of such request, the Buyer and the Seller have mutually agreed upon with the revised Design Specifications under clause 7.1, then the Design Concept shall be deemed to be accepted by the Buyer.

7.5 After the Design Concept has been accepted by the Buyer, any further requests from the Buyer for revisions or alterations will be subject to further charges at the Seller's standard rates set out in the Fees Schedule or as mutually agreed in writing.

8. Design Product

8.1 The Buyer will provide the Seller with any Client Materials required by the Design Specifications in an electronic file format specified and accessible by the Seller and/or as otherwise specified in the Design Specifications. Any services required to convert or input Client Materials not set forth in the Design Specifications shall be charged as Additional Services.

8.2 Upon acceptance of the Design Concept under clause 6, and provision of any required Client Materials, the Seller will commence work to develop the Design Product. The Seller will notify the Buyer of the URL (Uniform Resource Locator) or other address of any Design Product comprising a web site. The Seller may use combinations of technology, as the Seller, in consultation with the Buyer, deem appropriate to develop any Design Product comprising a web site.

8.3 The Buyer will have ten (10) business days, or such other time as the Seller and the Buyer agree in writing, from the date of notification of completion of the Design Product from the Seller, to review and request in writing from the Buyer revisions to the Design Product. The Seller shall use commercially reasonable efforts to implement such revision request that are within the scope of, and consistent with, the Design Specifications.

8.4 If the Buyer implements any revisions to the Design Product that depart in any material respect from the Design Specifications, the Buyer and the Seller will, in good faith, agree to additional fees to cover those revisions.

8.5 If the Buyer has not made any requests for revisions by the end of ten (10) business days from the date of written notice of completion of the Design Product from the Seller, and/or by such time as otherwise agreed by the Buyer and the Seller in writing, or upon completion of implementation of such request which were mutually agreed upon by the Buyer and the Seller under the revised Design Specifications, and, as per clause 7.4, then the Design Product shall be deemed to be accepted by the Buyer.

8.6 After the Design Product has been accepted by the Buyer, any further requests from the Buyer for revisions or alterations will be subject to further charges at the Seller's standard rates set out in the Fees Schedule or as mutually agreed in writing in addition to the Price.

8.7 Upon acceptance of the Design Product, the Seller shall transfer any Design Product comprising a web site to the computer system owned and operated by the Buyer or to the Buyer's designated third party contractor.

8.8 If the Seller registers a domain for the Buyer, the domain cannot be transferred until the expiry of six months from the date of the registration.

9. Intellectual Property Rights

9.1 The Client Materials the Buyer provides to the Seller in order for the Seller to carry out the Seller's obligations under this agreement are owned by the Buyer. The Buyer will grant us a license to modify, reproduce, create derivative works from, and otherwise use such Intellectual Property to provide any services or products in connection with this agreement.

9.2 All materials including, but not limited to any computer software (in object code and source code form), script, programming code, data, information or HTML script developed or provided by the Seller under this agreement, and any trade secrets, know-how, methodologies and processes related to the Seller's Goods, Works and/or Deliverables, shall remain the Seller's sole and exclusive property, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent in the Seller's Design Materials. To the extent, if any, that ownership of the Seller's Design Materials does not automatically vest in the Seller by virtue of this agreement or otherwise, the Buyer hereby will transfer and assign to the Seller all rights, title and interest which the Buyer may have in and/or to the Seller's Design Materials.

9.3 The Seller will have no liability for any claim of infringement based on the use of a superseded or altered release of Scripts if the infringement would have been avoided by the use of a current or unaltered release of Scripts, which the Seller provided to the Buyer; the unauthorised modification of Scripts; or the use of Scripts other than in accordance with the Scripts User Manual.

9.4 The Buyer acknowledges and agrees that the Seller is the sole and exclusive owner of all Intellectual Property in and relating to the Deliverables, and that the Buyer has no rights in and/or relating to the Deliverables, other than are expressly provided for in this agreement.

9.5 The provisions of clause 9.4 shall survive the expiry or termination of this agreement.

10. Software License

10.1 The Seller will grant the Buyer, and the Buyer will accept from the Seller, an exclusive, non-transferable, perpetual license to use the Deliverables that are created by the Seller's Design Materials in the Deliverables for use as, and/or incorporation into, a web site on the Internet. The Seller will also grant the Buyer a non-exclusive, non-transferable, perpetual license to use the Seller's Design Materials in the Deliverables. Any portrayal or use of the Deliverables that does not take place on a website that is operated by the Buyer for the Buyer's own business purposes shall be in breach of this clause.

10.2 In consideration of the license to use the Client Materials and the Seller's Design Materials in the Deliverables the Buyer will agree to pay the Seller the fees specified in the Fees Schedule.

10.3 Where Scripts is included in the Deliverables, the Seller will also grant to the Buyer, and the Buyer will accept, a non-exclusive, non-transferable license to use Scripts solely in connection with the Design Product for the term specified . This license may be renewed for any subsequent periods where both the Seller and Buyer expressly agree. In consideration of the license to use Scripts the Buyer will agree to pay the Seller the fees specified in the Fees Schedule.

10.4 You acknowledge that any license granted by the Seller under this clause is granted subject to third party licensors (if any).

10.5 The Buyer is not entitled to any raw video or photo footage and the Seller retains ownership of such footage at all times.

11. Sellers Obligations

11.1 We make the following warranties to you in respect of the products and services provided under this agreement:

a) we have the right to grant the licenses in respect of the Deliverables under this agreement to the Buyer without violating any rights of any third party; and
b) the Deliverables will, in all substantial respects, conform with the Design Specifications, or as otherwise agreed in writing by the Seller and the Buyer; and
c) we will use reasonable means to ensure the Deliverables comprising a website do not contain any known virus or computer software code, routines or devices (other than as provided for in the Design Specifications) designed to disable, damage or impair the Deliverables, or other software or data; and
d) any services provided under this agreement shall be performed in a workmanlike manner.

11.2 The Seller's representations in clause 11.1 will not apply where the Buyer has used the Deliverables in a manner, and/or, for a purpose not reasonably contemplated, or not authorised by the Seller, or in combination with other goods not specifically approved by the Seller, or where the Buyer has made any adaptations, extensions or modifications to the Deliverables.

11.3 The Buyer's sole remedy in the event of a representation in clause 11.1 being breached, at the Seller's option, is replacement of the defective Deliverables or refund of the license fee paid for the Deliverables.

12. Buyers Obligations

12.1 The Buyer acknowledges that the Buyer will not transfer any ownership rights in the Deliverables, and that the Seller will reserve all rights not expressly granted.

12.2 The Buyer will be responsible for the use and management of Scripts, and will agree not to copy, alter, modify or reproduce Scripts. The Buyer will also agree not to sell, transfer, publish, disclose, display or otherwise make available Scripts to others.

12.3 The Buyer will agree not to reverse engineer, decompile, disassemble, vary, modify, adapt, create derivative works, or otherwise attempt to derive the source code of any Design Product comprising a web site or Scripts.

12.4 The Buyer acknowledges that the Seller is in the business of graphic design, including designing web sites and web site concepts, and that the Seller shall have the right to provide to third parties, services which are the same or similar to the services the Seller provides to the Buyer and to use or otherwise exploit any Design Materials in providing such services.

12.5 The Buyer is responsible for any faults, which occur, in the Buyer's computer or communication equipment.

12.6 The Buyer does agree that the Deliverables comprising a web site, are not warranted to operate on computer systems and networks, which do not meet any minimum specifications, set out in the relevant Design Specifications.

12.7 The Buyer warrants that to the best of the Buyer's knowledge the Buyer owns, and/or is validly licensed to provide under this agreement, all copyright and all other intellectual property rights in and/or to the Buyer's Client Materials, and the Seller's use of the Buyer's Client Materials will not infringe the intellectual property or other rights of any third party, or breach any applicable law, statute or regulation.

12.8 The Buyer does agree to indemnify the Seller against all losses, costs, expenses, demands, or liabilities (including all legal costs and expenses) incurred by the Seller relating to any claim that the provision of the Buyer's Client Materials, or the use of the Buyer's Client Materials by the Seller, infringes the intellectual property rights of any third party or any breach of the Buyer's obligations under this agreement or any willful, unlawful or negligent act or omission by the Buyer.

12.9 The Buyer will agree to give reasonable consideration to any Design Materials request to place the Seller's proprietary notices on the Deliverables, including the Seller's attribution and hypertext links to the Seller's web sites.

12.10 The Buyer will assume responsibility for acquiring any authorisations necessary for hypertext links to third party websites in relation to Deliverables comprising a web site and the accuracy of the Client Materials.

12.11 The Buyer shall provide Client Materials that do not contain obscene, threatening or malicious content and do not infringe any law, or third party right or which may otherwise expose the Seller to civil or criminal liability. Provision of any Client Materials, which do not satisfy this clause, shall be deemed to be a material breach of this agreement.

12.12 Any provision of maintenance, which is not covered in the Design Specifications, shall be paid for by the Buyer as Additional Services at the rate set out in the Fees Schedule.

13. Privacy Act 1988

13.1 The Buyer and/or the Guarantor(s) agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor(s) in relation to credit provided by the Seller.

13.2 The Buyer and/or the Guarantor(s) agree that the Seller may exchange information about the Buyer and the Guarantor(s) with those credit providers either named as trade referees by the Buyer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

a) to assess an application by the Buyer; and/or
b) to notify other credit providers of a default by the Buyer; and/or
c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or
d) to assess the credit worthiness of the Buyer and/or Guarantor(s).

13.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1) (h) Privacy Act 1988).

13.4 The Buyer agrees that personal credit information provided may be used and retained by the Seller for the following purposes, and for other purposes as shall be agreed between the Buyer and Seller, or required by law from time to time:

a) provision of Goods; and/or
b) marketing of Goods by the Seller, its agents or distributors in relation to the Goods; and/or
c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Goods; and/or
d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and/or
e) enabling the daily operation of the Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods.

13.5 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:

a) to obtain a consumer credit report about the Buyer; and/or
b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

14. Default

14.1 Without prejudice to any other rights or remedies that the Seller may have against the Buyer, the Buyer agrees that in the event of default in payment by the Buyer then the Buyer agrees to pay on demand:

a) all costs (including, but not limited to, collection agency fees, commission, legal fees and any other costs on a solicitor and own client basis) incurred by the Seller in recovering any amounts payable by the Buyer to the Seller; and
b) interest on the amount outstanding at the end of each month in which the Buyer's account is in arrears at the rate of two percent (2%) per month (compounding) with such a rate after as well as before any judgement; and
c) a monthly administration fee of twenty five dollars ($25) by way of damages payable on the last day of each month in which the Buyer's account is in default.

14.2 In the event the Buyer's payment to the Seller is dishonoured for any reason, the Buyer shall be liable for any dishonour fees incurred by the Seller.

14.3 The Seller may at the Seller's sole discretion stop further performance of this Contract, require payment in cash before further performance of this Contract, or terminate this Contract without notice to the Buyer upon the happening of any of the following events:

a) the Buyer makes default in payment due under this Contract or in payment of any monies due by the Buyer to the Seller on any account whatsoever; or
b) the Buyer is insolvent or takes any proceedings to reschedule any indebtedness; or
c) in the Seller's opinion the Buyer is unable to pay indebtedness as it falls due; or
d) a receiver or manager is appointed to any property of the Buyer.

15. Caveat & Mortgage

15.1 The Buyer and/or any Guarantor of the Buyer agree that the Seller shall have the right to complete and register a mortgage over any property owned by the Buyer and/or Guarantor of the Buyer to secure any amount outstanding and that the Seller shall have the right at its discretion to place a caveat on any such property for the purpose of this clause and the Buyer and/or Guarantor hereby irrevocably appoint the Seller as the attorney of the Buyer and/or the Guarantor for the purpose of the Seller exercising its rights under this clause whilst any amount remains in default.

15.2 Should the Seller elect to proceed in any manner in accordance with the clause the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.

16. Quotations / Estimates

16.1 Where a quotation is given for the Price then:

a) the quotation or estimate shall only be binding upon the Seller for ten (10) days from the date of issue; and
b) where Goods, Works and/or Deliverables are required in addition to the quotation then the Buyer agrees to pay the additional Price of such Goods, Works and Deliverables; and
c) the Seller reserves the right to amend the quotation in the event of circumstances beyond the Seller's control.

17. Price

17.1 The Seller may require a deposit of fifty (50) percent of the Price prior to the provision of the Goods, Works and/or Deliverables. This will be shown on the quotation.

17.2 The Price of the Goods, Works and/or Deliverables shall be either:

a) as shown on the Seller's invoice, or
b) as stipulated (subject to clause 16) in the Seller's quotation, or
c) in respect of Goods, Works or Deliverables provided by the Seller, which has not been set pursuant to Clause17.2 (a) or (b), or otherwise agreed or in the Fees Schedule, a reasonable price for such Goods, Works and/or Deliverables.

17.3 Unless otherwise agreed, no allowance has been made in the Price for the deduction of retentions.

17.4 Unless otherwise agreed the Price is exclusive of Goods and Services Tax, and any other applicable taxes, duties, charges and costs payable by the Buyer in addition to the Price.

17.5 The Prices quoted by the Seller shall only apply to the specific Goods, Works or Deliverables as itemised or specified in the quotation. Any additional Goods, Works or Deliverables outside the scope of the Goods, Works and Deliverables itemised in the quotation, requested by the Buyer, will be subject to a variation, and will be charged at the Seller's standard prices and/or rates prevailing at the time of supply. For the avoidance of doubt, this includes artwork files created by the Seller in the design and finalisation of the Goods, Works or Deliverables and which will only be released upon payment of an additional fee as set out in the Fees Schedule.

17.6 Where the Works are suspended or cancelled, by the Seller or the Buyer, the Seller will charge for those Works completed, or partially completed, as at the date of suspension or cancellation of the Works. Such charge will be based on the hours expended and charged at the hourly rate as set out in the Fees Schedule.

17.7 If the Seller has registered a domain for the Buyer, the Seller may automatically renew the domain within 30 days from the expiration of the domain registration (at its discretion), unless the Buyer provides the Seller with 14 days written notice before the expiration of the domain..

18. Payment

18.1 Unless the Seller otherwise agrees in writing, payment of invoice's shall be due, either, Cash on Delivery and/or Completion of the Works, Goods and/or Deliverables, or, seven (7) days or fourteen (14) days, after an Invoice is issued for the Price, or, on the 20th of the month following the date on which an invoice is issued for the Price. The due date will be noted on the Seller's invoice.

18.2 Unless the Seller specifies otherwise, payment shall be by way of irreversible bank transfer, cash or cheque.

18.3 The Seller may submit a detailed payment claim at intervals of not less than one (1) month for work performed up to the end of each month. The value of Goods, Works and/or Deliverables may include the value of authorised variations.

18.4 The Seller has the right to apply or appropriate any payment to any account of the Buyer. Should the Buyer have a number of accounts, then the Seller is hereby given the right to combine any account and also set-off any amount between such accounts.

18.5 All payments by the Buyer must be made in full and without any retentions, or, deductions, or, right of set-off or counterclaim. The Buyer agrees, however, that any monies that the Seller may owe the Buyer on any account whatsoever may, at the Seller's option, be set-off against payments due by the Buyer to the Seller.

18.6 Should the Buyer dispute any invoice of the Seller's, the Buyer shall remain liable for payment to the Seller, of any outstanding invoices not subject to any dispute raised by the Buyer. Payment for any invoice not related to a dispute, shall remain due, on the date noted on the Seller's invoices.

18.7 If the Buyer fails to pay for the products and/or services within the time stipulated in the final overdue notice, the Seller may terminate all existing services at its discretion, without further notice to the Buyer and the Seller will not be liable for any loss or damage caused by the termination..

19. Disclaimer and Limitation of Liability

19.1 The Seller disclaims all warranties and conditions, whether express, implied or statutory, other than those identified expressly in this agreement, including but not limited to warranties of title, non-infringement, merchantability, and fitness for a particular purpose. The Seller will not be liable for any services or products provided by third party vendors, developers or consultants referred to the Buyer by the Seller unless such third party products or services are provided under written agreement between the Buyer and the Seller, and then only to the extent expressly provided in those agreements.

19.2 Under no circumstances (including, but not limited to negligence), shall the Seller, or any of the Seller's related companies, officers, employees, partners, agents or suppliers, be liable to the Buyer for:

a) the Buyer's reliance on the Deliverables; and
b) any direct, incidental, special, consequential, indirect or punitive damages (including loss of use, loss of data, loss of profits, loss of anticipated savings, or loss of goodwill) that result from the use of, or the inability to use, and/or relating to the Deliverables.

19.3 If the Buyer is using the Deliverables for the purposes of a business, then the Buyer does agree that the provisions under the Australian Consumer Law (ACL) and Consumer Guarantees Act shall not apply to the Seller.

19.4 If the Seller is ever liable to the Buyer, the Buyer accepts that the liability of the Seller, or any of the Seller's related companies, officers, employees, partners, agents or suppliers (together) to the Buyer or anyone else using the Goods, Works or Deliverables the Seller provides to the Buyer (together for damages, losses, and causes of action, whether in contract, tort, including negligence, under statute or otherwise) shall not exceed the total cost of providing the Deliverables or $10,000, whichever is the lesser amount.

20. Breach and Termination

20.1 Either party may terminate any Contract on 90 days' prior written notice to the other party at any time subject to clause 20.2.

20.2 Any maintenance or month to month services provided by the Seller to the Buyer, including but not limited to Office 365, Hosting and Email Solutions, where no fixed term agreement is in place, may be cancelled by the Buyer at any time upon providing thirty (30) days written notice to the Seller.

20.3 All products and services which are pre-paid by the Buyer are non-refundable. If the Buyer no longer requires the product or service, the Seller will provide the Buyer with a company credit to be used towards other products and services provided by the Seller.

20.4 Where the Buyer has entered into a fixed term agreement with the Seller for products and/ or services and cancels the agreement, the Buyer continues to be liable for payment of the products and/ or services for the remainder of the term.

20.5 If the Buyer is in breach of any of the Seller's terms and conditions or Contract, the Seller may, at the Seller's discretion, terminate the Contract.

20.6 If the Buyer commits an act of bankruptcy, or, where the Buyer is a company, and a receiver is appointed or the Buyer does anything that would render the Buyer liable to be liquidated, the Seller may terminate all or any Contracts upon written notice to you.

21. Effect of Termination

21.1 If any Contract is terminated by the Buyer or the Seller under clause 20, that Contract will terminate and the following will apply:

a) any license granted under or pursuant to that Contract or these terms and conditions will end, and the Buyer will not be authorised to use the Deliverables after expiry or termination of that Contract; and
b) the Buyer will agree to pay the Seller for any unpaid fees arising from the Buyer's use of the Deliverables up to the date of termination; and
c) the Buyer will agree to return to the Seller, on the Seller's demand, any information to which this clause relates to, which includes, but is not limited to, any manuals, specifications, designs or other information relating to the business of the Seller or the services or products provided under these terms and conditions and/or any Contract; and
d) termination of any Contract shall be without prejudice to the rights of any party which have accrued prior to, or which arise in connection with, such termination; and
e) the provisions of these terms or any Contract intended to apply after termination shall continue to apply.

22. Disputes

22.1 Any and all disputes arising between the parties under this Contract will be referred to a single arbitrator to be mutually agreed upon by the parties (or failing such agreement as appointed by The Institute of Arbitrators and Mediators Australia (IAMA). Any determination of such arbitrator shall be final and binding on the parties and not subject to review.

23. Force Majeure

23.1 Notwithstanding anything in the Contract, if the Seller shall fail to perform any obligation hereby imposed upon it, and such failure shall be caused by Acts of God, Strikes, Earthquakes, Floods, or any act of Government or any other cause beyond the reasonable control of the Seller, then the Seller shall be exempt

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