

LOCALSEARCH TERMS OF AGREEMENT

1. General

- (a) This agreement (**Agreement**) is comprised of these terms, any applicable Module Terms and any Order Forms entered into between Localsearch (**we, us, our**) and the relevant client noted on the Order Form (**you, your**). If you are entering into this Agreement on behalf of a company or person that you represent, you warrant that you have the requisite authority to do so.
- (b) This Agreement may be amended from time to time. The latest version of this Agreement is available at business.localsearch.com.au/legal/. You agree to the then current version of this Agreement when entering into any Order Form, and also on renewal of the Order Form or any Services under an Order Form.

2. Definitions

In this Agreement, unless the contrary intention appears:

Acceptable Use Policy means our acceptable use policy available from time to time at www.localsearch.com.au;

Applicable Law in relation to any person, action or thing means the following in relation to that person, action or thing:

- (a) any law, rule or regulation; or
- (b) any obligation under any licence; or
- (c) any lawful and binding determination, decision or direction of a regulator;

Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

Client means the individual or business entity who purchases Services from the Company and whose details are set out in the Order Form.

Change of Control means, in relation to a body corporate, the occurrence of an event or circumstance where a person who is not presently able to do any of the following things becomes able to do one of the following things (whether directly or indirectly or through one or more intervening persons, companies or trusts):

- (a) control the composition of more than one half of the body's board of directors;
- (b) be in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the members of the body or its ultimate holding company; or

hold or have a beneficial interest in more than one half of the issued share capital of the body or its ultimate holding company;

Confidential Information means in relation to either party, information (whether in oral, written or electronic form) belonging or relating to that party, its business affairs, technologies, designs, personnel, copyrights, concepts, methodologies, software or activities which is not in the public domain and which:

- (a) either party has marked as confidential or proprietary;
- (b) either party, orally or in writing has advised the other party is of a confidential nature; or
- (c) due to its character or nature, a reasonable person in a like position and under like circumstances would treat as confidential;

but does not include information which:

- (a) is or becomes, through no act or failure to act on the part of the disclosing party, generally known or available;
- (b) is known by the receiving party at the time of receiving such information as evidenced by its written records;
- (c) is lawfully received by a party from a third party free of any obligation of confidence at the time of disclosure;
- (d) is independently developed by the recipient, its officers, employees, agents or contractors; or
- (e) is required by Applicable Law, a court or governmental order to be disclosed;

Digital Services means digital related services, as further described in the Digital Services Module 1;

Digital Services Module 1 means the module for Digital Services available at business.localsearch.com.au/legal/ or attached to these terms;

End User means you or your employee, agent or contractor, or any other person who accesses, uses or receives any direct or indirect benefit of the Services, including your customers;

Fees means the fees set out in an Order Form;

Insolvency Event in respect of a party means the occurrence of any of the following events:

- (a) the party becomes an externally-administered body corporate under the *Corporations Act 2001* (Cth) or steps are taken by any person towards making the party an externally administered body corporate;
- (b) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) has been appointed over any of the property of the party or any steps taken for the appointment of such a person;

- (c) the party has been served with a demand under section 459E of the *Corporations Act 2001* (Cth) with which it is taken, under section 459F of the *Corporations Act 2001* (Cth), to have failed to comply;
- (d) a resolution is proposed or is passed by the shareholders or directors of the party in relation to any reduction of capital, compromise with any creditor or the appointment of any person to administer the affairs of the party;
- (e) the party is insolvent; or
- (f) any occurrence analogous to any of (a) to (e) above under the Applicable Law of the jurisdiction in which the party is registered or carries on business;

Intellectual Property Rights means:

- (a) any patent, trade mark (whether registered and whether within or outside Australia), copyright, registered design or other design right and any corresponding property or right under the laws of Australia or any other jurisdiction;
- (b) any right under the laws of Australia or any other jurisdiction to apply for the grant or registration of a patent, trade mark, copyright, design, or any corresponding property right; and
- (c) any rights and the benefit of any obligation owed in respect of an invention, discovery, trade secret, know-how, concept, data, information, process, methodology, formula or Confidential Information;

Localsearch means Localsearch Operations Pty Ltd (ACN 139 550 971), Localsearch Web Pty Ltd (ACN 607 894 253), Local Directories Pty Ltd of 138 Robina Town Centre Drive, Robina QLD 4226; or any former trading entities;

Module Terms means the Digital Services Module 1 and Print Services Module 2;

Non-Recurring Services means Services that we provide on a one-off basis, including all Print Services and some Digital Services;

Objectionable Matter has the meaning given in clause 6(b)(xii);

Order Form means an order form agreed between the parties for any Services;

Our Material has the meaning given in clause 9(a)(ii);

Payment Provider means any payment provider who we may appoint from time to time and make available for payment of any Fees;

Personal Information has the meaning given to it in the *Privacy Act 1988* (Cth) as amended from time to time;

Print Services means hardcopy and online advertising services, as further described in the Print Module 2;

Print Services Module 2 means the module for Print Services available at business.localsearch.com.au/legal/ or attached to these terms;

Recurring Services means Services we provide on an ongoing, rather than a one-off basis including some Digital Services.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001*(Cth)

Services means the services you order using an Order Form, which may include:

- (a) Print Services;
- (b) Digital Services;

Your Materials has the meaning given to it in clause 8(a).

3. **Order Forms**

- (a) We may from time to time agree to new Order Forms with you.
- (b) We may agree Order Forms in a number of ways:
 - (i) electronically using a handheld device (such a smart-phone or tablet);
 - (ii) online, or on a one of our websites;
 - (iii) via email;
 - (iv) in hard copy, or
 - (v) verbally over the phone.
- (c) Any Order Form we agree with you forms a separate Agreement (and if there is more than one Service set out in an Order Form, each Service forms a separate Agreement). We may agree or refuse an Order Form in our discretion.

4. **Provision of Services**

- (a) We will;
 - (i) use reasonable endeavours to make the Services available for your use; and
 - (ii) provide the Services with reasonable skill and care and in accordance with this Agreement.
- (b) Subject to clause 16, we may make changes to the Services from time to time. These changes may include updates, new releases and changes to the user interface. Once incorporated, these changes form part of the Services.

5. **Term**

Each Agreement:

- (a) commences on the date we agree to the Order Form in accordance with clause 3 and expires in accordance with the relevant Module Terms; and

- (b) renews in accordance with the relevant Module Terms.

6. Your responsibilities

- (a) You must (and ensure that any End Users):
 - (i) do all things necessary so that we are able to provide the Services in accordance with this Agreement, including but not limited to providing us with all necessary access to information we may need to provide the Service, including Your Materials;
 - (ii) obtain any required licences and approval for your use and receipt of the Services in any jurisdiction you are using the Services;
 - (iii) comply with our reasonable directions and guidelines with regards to the Services;
 - (iv) maintain the confidentiality of each username and password allocated to you and any End Users and not disclose them to any third party;
 - (v) use the Services in accordance with Applicable Law; and
 - (vi) use the Services in accordance with our Acceptable Use Policy.
 - (vii) consent to us recording our telephone conversations with you.
- (b) You must not (and must ensure that any End Users do not):
 - (i) build a competitive product or service;
 - (ii) act in a manner which might be perceived as damaging to our reputation and goodwill or which may bring us into disrepute or harm
 - (iii) make or have made a product using similar ideas, features, functions or graphics of the Services;
 - (iv) copy any features, functions or graphics of the Services or “frame” or “mirror” the Services;
 - (v) reverse engineer or in any other way copy, access or utilise any software (or any part of software) we provide in connection with the Services other than in accordance with the terms of this Agreement or to the extent permitted by law;
 - (vi) take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Services or our systems or networks connected to the Services, or otherwise interfere with or disrupt the operation of any of the Services, or the servers or networks that host them or make them available;
 - (vii) make or receive transmissions or communications of any type or quantity that adversely affect our operation or jeopardise the use of the Services or other services, or their performance by you or any other person or entity;

- (viii) use the Services:
 - (i) in connection with any form of spam, unsolicited mail, fraud, scam, phishing, “chain letters”, “pyramid schemes” or similar conduct;
 - (ii) in a way that interferes (or threatens to interfere) with the efficiency and security of the Services; or
 - (iii) in a manner that infringes any person’s Intellectual Property Rights (including ours), Confidential Information or other rights.
- (ix) work around (or attempt to do work around) any technical limitations in the Services;
- (x) upload to the Services or otherwise use them to design, develop, distribute and/or otherwise transmit or execute, any virus, worm, Trojan Horse, time bomb, web bug, spyware, malware, or any other computer code, file, or program that may or is intended to damage or hijack the operation of any hardware, software, or telecommunications equipment, or any other actually or potentially harmful, disruptive, or invasive code or component;
- (xi) act in a way that may waste resources or prevent others from using or receiving the full benefit from the Services or other services;
- (xii) submit to the Services any material that is illegal, misleading, defamatory, indecent or obscene, threatening, infringing of any third party's Intellectual Property Rights, invasive of personal privacy or which is otherwise illegal (**Objectionable Matter**);
- (xiii) resell or resupply the Services to any third party; or
- (xiv) allow any third party to use the Services.
- (c) If there is a delay or failure by you in performing your obligations:
 - (i) we are not responsible for any delay or failure to provide the Services as a consequence; and
 - (ii) you must pay any additional cost incurred by us because of any delay or failure by you in performing your obligations.
- (d) We reserve the right to remove from the Services any of Your Materials that constitute Objectionable Matter or which violate this Agreement or the terms of use of any third party (but are not obligated to do so).

7. Fees

- (a) You must pay the Fees in respect of the Services using one of the following options, as set out in the Order form:

Service Type	Payment Method	Details
Recurring Services	Credit/Debit Card Payment Provider Direct Debit	We will automatically debit the amount owing each month in advance and issue you with a tax invoice / receipt.
	Invoiced	We will invoice you monthly in advance for the amount owing,
Non-Recurring Services	As set out in the Module Terms.	

- (b) Where Fees are invoiced, each invoice must be paid within 14 days of the invoice date. We may send invoices via the email address set out in the Order Form or to the billing address as set out in the Order Form. You acknowledge your responsibility to ensure that we have your most up to date address and billing information.
- (c) Any payments by direct debit are subject to you providing the relevant authority (available at business.localsearch.com.au/legal/). If you do not provide the relevant authority, we may immediately invoice you for the balance of all Fees payable under the relevant Order Form.
- (d) When you provide your credit card or other payment information to us you represent:
- (i) that you are properly authorised to use the credit card or other payment method for payment of the Fees;
 - (ii) the information you provide is true, correct and complete;
 - (iii) any Fees incurred by you will be honoured by your credit card company or other payment provider; and
 - (iv) you will pay all Fees, including any applicable taxes.
- (e) We reserve the right at our discretion to cancel any payment if it appears fraudulent in any way, and we may notify the card holder and the relevant authorities.
- (f) We reserve the right at our discretion, if you have more than one order form, to collect payment of the Fees, via any payment method you may have provided us on any of the order forms.

- (g) Your credit card information may be retained by us or the Payment Provider for the purpose of charging you the Fees. Your use of the Payment Provider's system is subject to any relevant user agreements and privacy policies of the Payment Provider.
- (h) Fees which do not appear on an invoice or which are not charged in a current billing period may be invoiced or charged in any future period due to our processing procedure.
- (i) Any money we receive from you (or which is paid on your behalf) may be applied by us in payment of any debt due to us by you under this or any other agreement between the parties.
- (j) If any supply made under or in connection with an Order Form is a taxable supply, the consideration that the recipient of that taxable supply must otherwise pay or provide for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply, subject to a valid tax invoice being delivered to the recipient. Words or expressions used in this Agreement which have a particular meaning in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning, unless the context otherwise requires.
- (k) If you do not pay any Fees or other amounts payable under this Agreement by the due date (or a payment is dishonoured), we may do one or more of the following:
 - (i) exercise our rights to suspend Services or terminate the Agreement in accordance with clauses 17 or 18;
 - (ii) charge interest on all overdue amounts at 2% per calendar month, calculated daily and compounded monthly until the outstanding amount is paid in full;
 - (iii) engage a debt recovery agent to recover the amounts outstanding;
 - (iv) institute legal proceedings against you to recover the amounts outstanding; or
 - (v) use or disclose any Personal Information collected and recorded in relation to you to a third party to assist us in the process of debt recovery.

8. Your Materials

- (a) You may provide the following information to us:
 - (i) information relating to your organisation and business processes;
 - (ii) information relating to your customers and End Users, such as their name, email address and telephone number;
 - (iii) material we require for the purpose of providing the Services, including any:
 - (i) artwork, logos trade marks, designs, names and the layout and composition of any advertisement provided to us and/or approved by you for publication; and

- (ii) content, such as data, videos, images, scripts, text, applets, links and any information; and
 - (iv) any other information which might be entered by you or provided via the Services to us.,
- (together, **Your Materials**)
- (b) You are responsible for the integrity, accuracy and quality of Your Materials.
- (c) We will follow our archiving procedures for Your Materials in accordance with our standard back up policy from time to time. In the event of any loss, corruption or damage to Your Materials, your sole and exclusive remedy will be for us to use reasonable endeavours to restore Your Materials that are lost, corrupt or damaged, from the latest of our back-ups of Your Materials. We are not responsible for any loss, destruction, alteration, damage, corruption or disclosure of Your Materials as a result of any of your acts or omissions or those of any third party.
- (d) You grant us, our Related Bodies Corporate, service providers and subcontractors a non-exclusive royalty-free, fully paid-up worldwide licence to:
 - (i) use Your Materials to perform (and improve the performance of) the Services, and in the course of performing the Service to use Your Materials (and all Intellectual Property Rights therein);
 - (ii) use Your Materials to inform you of other products or services that we may offer from time to time or in relation to third party products and services; and
 - (iii) share Your Materials, in an aggregated anonymized form, with a Related Body Corporate or other third party (with whom we may contract or be affiliated with from time to time) for the purposes of performing or improving the Services.
- (e) We may conduct analytics processing on the client-side software, including, in order to collect anonymous data relating to user browser, user device, location and search data. We will own all data arising from such processing (including all Intellectual Property Rights contained therein).
- (f) You grant us, our Related Bodies Corporate, service providers and contractors permission to provide, administer, monitor, track and access your Services (including any specific accounts held by the Client) for any administrative purposes we deem appropriate.

9. Intellectual property rights

- (a) We own (or are an authorised licensee of) the Intellectual Property Rights:
 - (i) in the Services;
 - (ii) in any content or other material used or provided by us as part of or to use the Services (**Our Material**); and

- (iii) any new Intellectual Property Rights developed in the course of providing the Services.

You agree to do all things necessary to confirm our ownership of such Intellectual Property Rights.

- (b) You own (or are an authorised licensee of) the Intellectual Property Rights in the Your Materials.
- (c) To the extent necessary to use the Services, we grant you a non-exclusive, non-transferable, revocable licence to use the Services and Our Material in accordance with this Agreement. You may not use Our Material other than with the Services.
- (d) The parties agree that, other than as provided in clause 8, or this clause 9, nothing in this Agreement transfers ownership in, or otherwise grants any rights in any Intellectual Property Rights of, a party.
- (e) You agree that we may use your name and trade marks, details of and the duration and value of this Agreement in our lists of customer references and marketing materials or otherwise on our websites at www.localsearch.com.au and www.business.localsearch.com.au.

10. Warranties

- (a) Each party warrants that:
 - (i) it has the authority to enter into and perform its obligations under this Agreement and any Order Forms; and
 - (ii) this Agreement and any Order Forms have been duly executed and are legal, valid and binding agreements enforceable against it.
- (b) You warrant and represent that:
 - (i) you have not relied on any representation we have made which has not been stated expressly in this Agreement or upon any descriptions, illustrations or specifications contained in any document including an Order Form, catalogues or publicity material which we have provided to you;
 - (ii) you have all necessary consents to transfer Personal Information to us through your use of the Services in compliance with the *Privacy Act 1988* (Cth) as amended from time to time;
 - (iii) you will conduct such tests and computer virus scanning as may be necessary to ensure that any of Your Materials uploaded or downloaded by you or End Users do not contain any computer virus and will not in any way, corrupt the data or systems of any person; and
 - (iv) you have the rights and capacity to grant the licence under clause 8(d), and Your Materials will not infringe the Intellectual Property Rights of any third party.
 - (v) You have sole responsibility for ensuring the accuracy of all information

- (c) You agree and acknowledge that you have sole responsibility for ensuring the accuracy of all information provided to us and warrant and undertake to us that your employees assisting in the execution of an Order Form have the necessary skills and authority to do so.
- (d) You agree:
 - (i) That you have purchased and will not use any Services for personal, domestic or household use or consumption;
 - (ii) and accept full risk and responsibility for your use and End Users use of the Services;
 - (iii) to keep secure any usernames and passwords used with the Services; and
 - (iv) to immediately notify us of any unauthorised use of the Services or any other breach of security known to you
- (e) We warrant that we have and will at all times during the term of this Agreement have the skill, facilities, capacity and staff necessary to perform our duties and obligations under this Agreement.
- (f) Subject to clause 11(d) we do not warrant that any Service will:
 - (i) operate in an uninterrupted or error free manner;
 - (ii) meet any of your requirements, other than as expressly set out in this Agreement;
 - (iii) be secure and free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to our services or systems;
 - (iv) result in you receiving any increase in revenue, profit, goodwill or website usage as a consequence of your use of the Services; or
 - (v) work with all operating systems and browsers,and except as set out in this Agreement, the Services are provided on an as-is basis;
- (g) We are not responsible for the availability or functionality of any Services or the functions of any Service based on the availability or functionality or social networks (such as Facebook, Twitter, LinkedIn, Instagram and Google Aps) and/or any of their functions, including any APIs. You acknowledge that any activity in such social networks is subject to these networks terms of use and system limitations.
- (h) You agree and consent that Localsearch may record phone calls between us and you at any time for the purposes of quality and training purposes.

11. Liability

- (a) Subject to clause 11(d), our aggregate liability (including the indemnity in clause 12(a)), whether arising from breach of contract or tort (including negligence), in equity or any other form of action and whether or not you were advised of the possibility of the loss or damage, for claims arising out of or in relation to this Agreement is limited to:
 - (i) in relation to Print Services and Digital Services, the Fees payable in respect of the relevant Service;
 - (ii) in all other respects, \$100.
- (b) Subject to clause 11(d), you agree that we are not liable to you under this Agreement (including the indemnity in clause 12) or otherwise for any loss or liability however arising for loss of profits, delay, loss or corruption of data, loss or reputation, loss of business, loss of use, loss of business opportunities, loss of anticipated savings, loss of goodwill or for any type of indirect, incidental, consequential or special loss or damage which may be suffered or incurred or which may arise directly or indirectly in relation to this Agreement.
- (c) Each party must promptly notify the other as soon as it becomes aware of any act or possible claim, demand or suit which may be brought against either party in relation to the Services or this Agreement.
- (d) Where legislation implies in this Agreement that any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty must be treated as included in this Agreement. However, our liability for any breach of the condition or warranty is limited, at our option, to one or more of the following:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

12. Indemnities

- (a) We warrant that the Services do not and will not infringe any Intellectual Property Rights of a third party. We indemnify you against all expenses, demands and liabilities for any alleged infringement.
- (b) For the avoidance of doubt, the indemnity in clause 12(a) will not apply to the extent that the expense, demand or liability referred to in clause 12(a) is caused or contributed to by:
 - (i) you;
 - (ii) the combination of the Services with any of Your Materials or any software, service or other materials not provided by us; or
 - (iii) any modifications, customisations or configurations to the Services not made by us.

- (c) You must take all reasonable steps to mitigate an expense, demand or liability referred to in clause 12(a).
- (d) You indemnify us, our employees, agents and Related Bodies Corporate against all expenses, claims, damages, demands and liabilities (including, but not limited to, all reasonable costs, expenses and lawyer's fees) arising as a result of:
 - (i) your breach of the warranty set out in clause 10(b)(iv) or the obligation set out in clause 6(b)(xii);
 - (ii) your or any End User's use or misuse of the Services; and
 - (iii) your failure to comply with any Applicable Law.

13. Confidentiality

- (a) A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information except as necessary to perform obligations or exercise rights under this Agreement or any Order Form. Each party must take all reasonable steps to ensure that its employees and agents, and any subcontractors engaged for the purposes of this Agreement or any Order Form, do not make public or disclose the other party's Confidential Information.
- (b) A party is not in breach of clause 13(a) if it discloses the terms of this Agreement or any Order Form (other than Confidential Information of a technical nature) to a Related Body Corporate, solicitors, auditors, insurers or accountants, provided it ensures that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to the disclosing party.
- (c) Each party agrees to comply with their obligations under the *Privacy Act 1988 (Cth)* and will only collect, use and disclose Personal Information in accordance with this Act. We agree to only handle Personal information in accordance with our privacy policy (available from time to time at business.localsearch.com.au/legal/).

14. Making complaints

- (a) If you have any complaints in connection with the Services (including complaints about their invoice), you must contact us first to resolve the complaint via the contact details available on our website at www.localsearch.com.au.
- (b) We will handle any complaint in accordance with our complaints procedure. Information on our complaints procedure may be obtained by contacting us.

15. Changes

- (a) Either party may from time to time propose changes to the Services.
- (b) In such circumstances, we will prepare a statement setting out the impact of the change, including to the Services, any timescales and the Fees (**Impact Statement**).

- (c) If you agree to the Impact Statement, the changes set out therein will be implemented. We have no obligation to make any change without an agreed Impact Statement. We may however charge for any extra costs and expenses incurred by us at your request (whether written or oral) at our then current standard rates.

16. Variations to this Agreement

- (a) We may vary, alter, replace or revoke this Agreement, including any Module Terms at any time (**Variations**):
 - (i) without notice to you, if the Variation is likely to benefit you or have a minor or neutral detrimental impact on you; or
 - (ii) by giving you 21 days notice of the Variation prior to the date the Variation is to take effect, if the Variation could be reasonably expected to adversely affect you. We may provide such notice in writing, via email or by publishing a notice on our website.
- (b) Where a Variation could be reasonably expected to adversely affect you, or have more than a minor detrimental impact, and we notify you of such Variation under clause 16(a), you may terminate this Agreements by giving us notice in writing within 21 days from the date of the notice to you without incurring any fees or charges, other than any Fees incurred up to the date on which the relevant Order Forms are terminated.
- (c) Any Variations implemented by us will take effect:
 - (i) in respect of Fees for the Services which are billed on a monthly basis, from the next billing cycle 21 days after we notify you of such Variations; or
 - (ii) in respect of all other amendments, 21 days after we notify you of such Variations.
- (d) If you request changes to the Fees, and we accept those changes, the changes will only apply from the following billing cycle after such agreement by us.

17. Temporary suspension

- (a) You acknowledge and agree that, notwithstanding any other provision of this Agreement, we may temporarily suspend your right to access or use any portion of the Services immediately upon notice to you:
 - (i) for any non-payment of Fees by you;
 - (ii) in the event of any technical failure, modification or maintenance involved in the Services;
 - (iii) if you fail to comply with any reasonable direction given by us;
 - (iv) if we reasonably believe that suspension is necessary to prevent or mitigate damage or disruption to the Services;

- (v) due to defects in any third party software or loss of our licence rights or restrictions imposed by a third party;
 - (vi) if we reasonably suspect that you, an End User or any person in connection with the Services has committed fraud, is engaged in fraudulent activity or where evidence suggests illegal conduct in relation to the Services;
 - (vii) due to an act or omission of a third party that is not caused by us (for example a denial of service attack);
 - (viii) for compliance with any Applicable Law or government entity;
 - (ix) if you are a natural person (and not a company) and pass away;
 - (x) if there is an emergency;
 - (xi) if we have the right to suspend or terminate any other agreement with you;
 - (xii) in the event of any material breach of this Agreement by you; or
 - (xiii) if an Insolvency Event occurs in relation to you.
- (b) Subject to clause 17(c), if we suspend the Digital Services under clause 17(a), you will still be liable for all Fees payable under this Agreement during the period of suspension.
- (c) If your access to the Services is suspended for any reason beyond your control, you will not be responsible for payment of the Fees during the period of suspension.
- (d) We will use reasonable endeavours to reactivate the Services once the cause of the suspension is rectified to our reasonable satisfaction.
- (e) If we take any action in accordance with clause 17(a), we may delete any or all of your information, material, software, data or other content stored on our system at our sole discretion.

18. Termination

- (a) We may terminate this Agreement or any Services:
- (i) at any time, for any reason, upon not less than 90 days written notice to you;
 - (ii) if you do not pay any Fees in accordance with this Agreement;
 - (iii) immediately if we reasonably suspect that you, an End User or any person in connection with the Services has committed fraud, is engaged in fraudulent activity or where evidence suggests illegal conduct in relation to the Services;
 - (iv) you are a natural person (and not a company) and pass away;

- (v) you are a company and experience a Change of Control, other than with our consent; or
 - (vi) we are entitled to terminate any other agreement with you.
- (b) Either party may terminate this Agreement immediately on written notice to the other if:
 - (i) the other party is in material breach of this Agreement which is capable of being remedied and is not remedied within 28 days from the date of notice of that breach;
 - (ii) the other party is in material breach of this Agreement which is not capable of being remedied; or
 - (iii) an Insolvency Event occurs in relation to the other party.
- (c) The Module Terms may set out additional termination rights.

19. Effect of termination

- (a) On termination of this Agreement by either party:
 - (i) each party must pay to the other party all amounts owed by it in connection with the Agreement, including under any indemnities;
 - (ii) you must (and you must ensure your end users do) immediately cease using the Services set out in the relevant Order Forms; and
 - (iii) you must, at our request, return or destroy all Our Materials, Confidential Information or other property we provide to you.
- (b) We may destroy or otherwise dispose of any Your Materials provided under this Agreement that are in our possession unless we receive a written request no less than ten (10) days after the effective date of termination. We will then use our reasonable efforts to return a copy of the Your Materials within 30 days of receipt of a written request provided that you have, at that time, paid all outstanding Fees. You will pay us any reasonable fees incurred in returning a copy of the Your Materials. In either case, this clause 19 (b) does not prevent us from maintaining aggregated or analytics data relating to you.
- (c) You acknowledge that, notwithstanding any other provision of this Agreement, we may delete or destroy all Your Materials if a written request to return Your Materials is not received within ten (10) days following termination. You acknowledge and agree that:
 - (i) we have no obligation to provide notice to you of any such deletion or destruction of Your Materials; and
 - (ii) there is no liability on our part for any loss of Your Materials.
- (d) Additional consequences of termination may be set out in the relevant Module Terms.
- (e) Termination of this Agreement does not affect:

- (i) the accrued rights or remedies of either party under this Agreement.
 - (ii) the continuation of this Agreement or any other Order Form then in force.
- (f) All of the rights and obligations of each party to this Agreement which are expressed to survive termination of an Order Form, or which by their nature or context must survive termination of an Order Form, will survive the termination of that Order Form, including clauses 9, 10, 11, 12, 13, 18, 19 and 24.

20. Third party providers

- (a) You acknowledge that you may be able to use or access third party products and/or services in conjunction with the Services (for example, payment services or social media services). If you use or access any third party products or services you do so at your own risk. You agree to comply with any terms and conditions applicable to such third party products and services.
- (b) We shall have no liability or obligation whatsoever in relation to the content or use of any such third party products and services used in conjunction with the Services.

21. Force majeure

Neither party will have any liability under or be deemed to be in breach this Agreement for any delays or failures in performance of this Agreement (other than failure by you to pay any Fees to us) which result from circumstances beyond the reasonable control of that party (including but not limited to failures by telecommunications carriers, service providers or power supplies). If such circumstances continue for a continuous period of more than ten (10) Business Days, either party may terminate any affected Order Forms by written notice to the other party.

22. Assignment

This Agreement shall be binding upon you and inure to the benefit of the parties hereto any successor of us. For this purpose, successor means any persons, firm, corporation, or other business entity, which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires all of, or substantially all of the assets of us.

23. Non-Solicitation of Employees

You agree and acknowledge that during the period commencing from the date on the Order Form and ending one year following this date, you shall not, without our prior written consent, directly or indirectly:

- (i) solicit or encourage any person to leave the employment of us; or
- (ii) hire, on behalf of you or any other related person or entity, any person who has left our employment within a one-year period following the termination of that person's employment with us.

24. Miscellaneous

- (a) Except as specified in clause 7 of this Agreement, In the event of any inconsistency between:

- (i) an Order Form;
- (ii) the Module Terms; and
- (iii) this Agreement,

the documents will take precedence in the order listed above.

- (b) We may subcontract, assign or outsource some or all of the performance of any Services under any Order Form. We are not relieved of any of our liabilities or obligations under this Agreement by doing so. You may not assign or subcontract your obligations under this Agreement in any way.
- (c) Any notices hereunder shall be in writing and sent to the address or email address set out in the relevant Order Forms (or such other address for notices which may be notified by one party to the other from time to time).
- (d) If a party consists of more than one (1) person, this Agreement binds each of them separately and any two (2) or more of them jointly. A party which is a trustee is bound both personally and in its capacity as a trustee.
- (e) This Agreement along with the Module Terms any related Order Forms is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement, the Module Terms and any related Order Forms and supersedes any prior representations, arrangements or understandings which were or may have been entered into between you and us.
- (f) With the exception of any Variation made in accordance with clause 16, any amendment or variation to this Agreement or any Order Form is not effective unless it is in writing and signed by the parties.
- (g) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- (h) This Agreement and any Order Form may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.
- (i) The law of the State of Queensland governs this Agreement and any Order Form. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and of the Commonwealth of Australia.