

TERMS AND CONDITIONS OF SERVICE

VERSION - January 2024

1. GENERAL OPERATION

This Agreement is entered into between Virtual IT Group Pty Ltd, ACN 625 486 508 (**VITG**) and the customer named in the Proposal (**the Client**).

It is agreed as follows:

1.1 Definitions and Interpretations

Capitalised terms have the meanings specified in clause 23 of this Agreement.

1.2 Precedence of documents

To the extent that there is any conflict or inconsistency between the documents comprising this Agreement the following order of priority shall apply:

- (a) the Proposal;
- (b) any VITG document incorporated by reference to the Proposal; and
- (c) the Terms and Conditions of Service;

2. TERM

2.1 Services Term

This Agreement commences on the Commencement Date and continues for the Services Term until the earlier of:

- (a) the Expiration Date; or
- (b) the termination of this Agreement pursuant to clause 16.

2.2 Renewal of Term

The Parties may, at any time, vary or renew the Services Term for a further period by mutual agreement in writing.

2.3 Holding Over

- (a) If the Client notifies VITG at least thirty (30) days prior to the expiration of the Services Term to terminate this Agreement, and then continues to use the Services, the Services Term is renewed on a month-to-month basis, commencing on and from the day immediately after the expiration of the Services Term (**Holding Over Period**) on the same terms as the immediately preceding term (**Holding Over**).
- (b) Either Party may terminate this Agreement at any time during a Holding Over Period by giving the other Party at least thirty (30) days' prior written notice.

3. PROVISION OF SERVICES

3.1 VITG's Obligations

VITG must provide the Services to the Client on the scope outlined in the Proposal and the terms of this Agreement.

3.2 Service Level

Where applicable, VITG must use commercially reasonable endeavours to meet Service Level Commitments (SLCs) in connection with the provision and performance of any Service to the Client under this Agreement.

3.3 Personnel and Services

- (a) VITG will use reasonable efforts to ensure that the delivery of Services to the Client will be carried out:

- (i) by suitably competent and trained Personnel; and
- (ii) to a standard of skill, care and diligence expected of a reasonably similar provider of the Services.

- (b) VITG may, at its discretion, engage Personnel (including subcontractors) in connection with its provision of Services to the Client.

- (c) VITG remains responsible for the supervision of any Personnel engaged by VITG for the performance of Services to the Client.

3.4 Delivery Timeframe

VITG will use reasonable endeavours to provide the Services to the Client by the relevant Deliverable Date and/or Deliverable Milestone specified in the Proposal.

3.5 Delivery Factors

The Client acknowledges and agrees that:

- (a) any Delivery Date and/or Deliverable Milestone under the Proposal is a good faith estimate and is not a guarantee of supply to a Service by VITG by the specified date;
- (b) there may be reasonable variation to the actual timing for the supply of Service by VITG to the Client;
- (c) VITG's timely performance of Services is contingent upon the Client's prompt assistance, cooperation and provision of access in accordance with clause 4.1;
- (d) VITG will not be Liable to the Client as a result of VITG's failure to supply any Service to the Client by any Delivery Date and/or Deliverable Milestone where:
 - (i) VITG has notified the Client of any anticipated substantial delay in accordance with clause 3.6; or
 - (ii) the delay is caused or contributed to by the Client, including such as where the Client fails to promptly provide any relevant assistance, cooperation and provision of access to VITG in accordance with clause 4.1.

3.6 Substantial Delay Notification

VITG must, as soon as practicable upon becoming aware of any anticipated substantial delay to any Delivery Date and/or Deliverable Milestone, notify the Client of any such potential delay.

3.7 Third Party Procurement

- (a) Services provided by VITG to the Client may include, rely upon, or be subject to a product and/or service procured on behalf of the Client from a third party (**Third Party Procurement**).
- (b) In respect of any Third-Party Procurement, VITG will use reasonable endeavours to assign the benefits of any third-party supplier warranty to

the Client such that the Client may derive the full benefit of the Service.

3.8 Disclosure of Risks

The Client acknowledges and agrees:

- (a) the transmission of Client Data may be over various unencrypted networks and involve amendments from time to time to conform and adapt to the technical requirements of connecting networks or devices;
- (b) notwithstanding that VITG will use reasonable efforts to mitigate relevant risks, any file or program that is available for use or download in connection with VITG's provision of a Service to the Client may not be free from virus, malicious software or other conditions that may damage, corrupt or interfere with the Client Systems or Client Data;
- (c) the Client may experience delay, interruption or disruption to the availability, functionality and good working condition of any product or service which is subject to or dependent on Third Party Procurement, such that VITG's provision of the Service to the Client may be delayed, suspended or limited.

3.9 Resolution of Defects

The Client must promptly notify VITG of any defect identified in a Service provided by VITG under this Agreement. Upon receipt of a notice the Parties must use commercial and reasonable efforts to resolve any such defect identified in that notice.

4. CLIENT OBLIGATIONS

4.1 General Obligations

The Client must use all reasonable endeavours to promptly provide VITG with all necessary assistance, cooperation and facilitation of access in connection with VITG's performance of its obligations under this Agreement, including, without limitation:

- (a) complying in a timely manner with VITG's reasonable requests for data, information and/or directions or guidelines;
- (b) providing VITG and its Personnel with access to the Client's premises, facilities and Client Systems;
- (c) provide and maintain a safe working environment for VITG and its Personnel in accordance with relevant WHS Laws; and
- (d) complying with any User Guidelines and all applicable Laws with respect to the utilisation of any Service supplied by VITG under this Agreement.

4.2 Client Restrictions

The Client must not, in utilising VITG's Services or any part thereof:

- (a) copy, publish, distribute, sell, resell, transfer, assign, licence, modify, alter, reverse engineer, decompile, disassemble, or create any derivative works;
- (b) permit any unauthorised access to any product or software provided to the Client in connection with the Services other than to the Users or otherwise as in accordance with the Proposal; and

- (c) create any unauthorised links, iframe, or content mirroring.

4.3 Client's Responsibility and Risk

The Client acknowledges and agrees that it is solely responsible, and bears all risks, with respect to each of the following in connection with VITG's provision of Services to the Client:

- (a) the act or omission of its Users in the course of accessing a Service provided by VITG;
- (b) Client's use of the Service that is contrary to the User Guidelines; and
- (c) the integrity of any Client Data and Client Systems not controlled by VITG.

5. FEES AND PAYMENT

5.1 Fees

- (a) As consideration for the provision of Services by VITG to the Client in accordance with the Proposal and this Agreement, the Client must pay to VITG the Fees in accordance with the Proposal.
- (b) Fees may be specified on the basis of the nature of the Service provided, including but not limited to monthly recurring fees, hardware fees, third-party licence fees, or one-time professional services fees.
- (c) Unless otherwise agreed by the Parties, where a Fee is categorised as a one-time professional services fee the following applies:
 - (i) where the one-time professional services fee is under \$5,000 (ex GST), the Client must pay 100% of the fee in advance.
 - (ii) where the one-time professional services fee is above \$5,000 (ex GST) the Client must pay:
 - (A) 40% of the fee upfront;
 - (B) 40% of the fee subject to the completion of the first milestone (as specified in the Proposal); or
 - (C) 20% of the fee on completion of the relevant engagement (as specified in the Proposal).

5.2 Time and Materials Fees

To the extent that any Fees under the Proposal are specified to be charged on a "time and materials" basis, the Client acknowledges and agrees that such Fees:

- (a) are provided as good faith estimates only on basis of the information known to VITG at the relevant time of VITG's acceptance of the Proposal; and
- (b) may be varied in accordance with clauses 9 and 9.2.

5.3 Further Fees for Incidental Supply

The Client acknowledges and agrees that where VITG provides any incidental Service to the Client outside of the scope of the Proposal, including as a result of the Client's contrary use of any Service from the User Guidelines or the restrictions at clause 4.2, VITG shall be entitled to charge the Client further Fees for any such supply.

5.4 Invoicing

VITG must issue to the Client a valid tax invoice in respect of any Fees charged by VITG to the Client for the supply of any Services under this Agreement.

5.5 Payment of Fees

Subject to clause 7(b), the Client must pay any Fees invoiced by VITG pursuant to clause 5.4 in full:

- (a) by electronic funds transfer in cleared funds to a bank account nominated by VITG in writing; and
- (b) by the due date specified in the invoice, or if no due date is specified, then by no later than 14 days from the date of the invoice (**Invoice Due Date**).

5.6 Interest for Late Payment

Where the Client fails to pay any invoiced Fees by an Invoice Due Date, VITG shall be entitled to charge the Client an interest on any overdue amount at the Interest Rate. Interest shall accrue daily.

6. GST

6.1 Specific Definitions

Terms in this clause have the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

6.2 Payment of GST

If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply at the same time as payment of the consideration for the supply.

6.3 GST Exclusive

All amounts stated in this Agreement, unless expressly stated otherwise, are stated on a GST exclusive basis.

6.4 Adjustment Events

If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and recipient in respect of any amount paid by the recipient under this clause 6 and an adjustment note issued (if applicable) and the Parties must make any payments promptly to give effect to that adjustment.

6.5 Reduction for Input Tax Credits

If a recipient is required under this Agreement to pay or reimburse an expense or outgoing of the supplier or is required to make a payment under an indemnity, the amount to be paid by the recipient shall be calculated by including the amount of GST the supplier paid for the expense.

7. Fee Dispute

- (a) To the extent that the Client disputes any Fee amounts under an invoice (**Fee Dispute**), the Client must provide VITG with a written notice of the Fee Dispute within five (5) Business Days' receipt of the relevant invoice, specifying reasons for the Fee Dispute.
- (b) The Client may defer payment on any disputed Fee components under the relevant invoice for the purposes of allowing the Parties to resolve the Fee Dispute in accordance with this clause.
- (c) Upon VITG's receipt of a notice under clause 7(a), the Parties agree to work in good faith to expeditiously resolve the Fee Dispute within twenty-one (21) days.

- (d) Upon resolution of a Fee Dispute, and subject to any alternative arrangement as may be agreed between the Parties, the Client must immediately pay to VITG any Fee components so deferred.

8. Not Used.

9. Annual Fee Review

9.1 Review

- (a) VITG may, acting reasonably, review and increase any Fees in relation to the Proposal, no more than once per year by giving the Client thirty (30) days' written notice (**Fee Increase Notice Period**) of any such Fee increase, specifying the new Fees amount and the reasons for the increase (**Fee Increase Notice**).
- (b) Any Fee increase is limited to the greater of 5% or CPI.

9.2 Fee Increase

- (a) Upon receipt of a Fee Increase Notice under clause 9.1, the Client may:
 - (i) propose an alternative and the parties may agree to a mutual variation of this Agreement;
 - (ii) negotiate a new agreement with VITG; or
 - (iii) elect to terminate the Agreement by notice in writing by specifying a termination date that is no later than the last day of the Fee Increase Notice Period.
- (b) The Client acknowledges and agrees that where the Client has not exercised its right under clause 9.2(a)(iii):
 - (i) the Client shall be taken to have accepted the Fee increase on the terms of the Fee Increase Notice; and
 - (ii) the Fee increase shall apply in respect of any supply of Service by VITG to the Client after the Fee Increase Notice Period.

10. SUSPENSION OF SERVICE

10.1 VITG's Right to Suspend

VITG may, by three (3) Business Days' written notice to the Client, suspend a supply of a Service to the Client under this Agreement if:

- (a) any Fees invoiced to the Client with respect to that Service are overdue by 30 days; and
- (b) the Client and/or any of its employees breaches this Agreement or any User Guidelines, and the breach:
 - (i) is not remedied by the Client within five (5) Business Days of receipt of a notice from VITG to remedy the breach;
 - (ii) is not capable to be remedied; or
 - (iii) is of such seriousness or materiality that immediate suspension is warranted, having

regard to the nature, extent and impact of the breach.

10.2 Effects of Suspension

- (a) Where VITG suspends the supply of any Service pursuant to clause 10.1 and the suspension persists or otherwise remains unresolved between the Parties for three (3) calendar months, this Agreement shall be deemed to be terminated early under clause 16.2 and the Client shall be obliged to pay VITG the Fees otherwise payable notwithstanding the period of suspension.

10.3 Recommencement of Service Provision

- (a) To the extent that a reason for suspension under clause 10.1 has been resolved between the Parties or otherwise ceases to exist, VITG must all use all reasonable endeavours to expeditiously recommence the performance of the suspended Services to the Client.
- (b) The Client must pay to VITG any cost, expense or further Fees in connection with the suspension and recommencement of Service provision pursuant to this clause 10.

11. INTELLECTUAL PROPERTY

11.1 Background IP

Each Party retains all rights, titles and interests in their respective Background IP.

11.2 VITG IP

- (a) VITG retains all rights, titles and interests in VITG IP.
- (b) Any VITG IP created in the course of, or in connection with, the Client's engagement of VITG pursuant to this Agreement shall immediately vest in VITG upon creation, notwithstanding any input, direction, or contribution from the Client in the course of such VITG IP's creation.
- (c) The Client agrees to do all things necessary, including signing any and all documents, forms or deeds, required to give full effect to the assignment of any Intellectual Property Right in VITG IP, to VITG, or as otherwise reasonably required by VITG such that VITG may take full possession, rights, titles, interests and benefits of, the VITG IP.

11.3 Grant of IP Licence

- (a) VITG grants the Client a limited, non-exclusive, non-transferable and non-sublicensable licence to access and use its Background IP and VITG IP for the sole purpose of the Client deriving the full benefit of any Services pursuant to this Agreement.
- (b) Unless as otherwise specified in the Proposal, a licence granted by VITG to the Client pursuant to clause 11.3(a) shall be for the duration of the Services Term as relevant to the Services.

12. DATA AND PRIVACY

12.1 VITG Data

- (a) Subject to the Privacy Policy, VITG may monitor, collect, analyse, create and/or compile statistical, performance and analytical reports, data and other information relating to the Client's use of any Service supplied by VITG, provided

always that any such information is aggregated and anonymised to the extent that no Personal Information is identifiable (VITG Data).

- (b) VITG retains all rights, titles and interests in all VITG Data, including any Intellectual Property Rights subsisting therein.

12.2 Ownership of Client Data

The Parties acknowledge and agree that:

- (a) the Client will disclose Client Data to VITG in the course of VITG's provision of Services to the Client under this Agreement; and
- (b) the Client retains all rights, titles and interests in all Client Data, including any Intellectual Property subsisting therein.

12.3 Grant of Licence to Client Data

The Client grants a limited licence to VITG to Process the Client Data and any Intellectual Property subsisting therein for the purposes of, and in connection with, VITG's performance of its obligations under this Agreement.

12.4 Processing of Personal Information

To the extent that VITG Processes any Personal Information on the Client's behalf in the course of performing its obligations under this Agreement the Client acknowledges and agrees that:

- (a) the Client acts as the data controller; and
- (b) VITG acts as the data processor,

in respect of any such data Processing for the purposes of applicable data protection and/or Privacy Laws where relevant.

12.5 Right to Process Personal Information

The Client acknowledges and agrees that it has all necessary rights, consents, authorities and approvals to disclose and procure VITG's Processing of Client Data and Personal Information such that VITG may lawfully Process any such data on behalf of the Client in connection with the performance of its obligations under this Agreement pursuant to the Privacy Policy, Privacy Act, and Privacy Laws.

12.6 Application of Privacy Policy

The Privacy Policy shall govern VITG's Processing of Client Data under, and in connection with, this Agreement.

13. CONFIDENTIALITY

13.1 Confidentiality Obligations

Each Recipient undertakes to:

- (a) keep the Confidential Information confidential at all times;
- (b) not disclose, or allow to be disclosed, any Confidential Information to any person;
- (c) ensure that any Confidential Information in the possession or control of the Recipient is only used for the purposes of providing and/or receiving the benefit of a Service (as relevant) pursuant to this Agreement;
- (d) take all reasonable precautions to prevent the intentional, negligent, inadvertent or accidental disclosure of any Confidential Information;
- (e) not make copies of that Confidential Information, or otherwise allow any person to do so; and

- (f) not exploit the Confidential Information for its own or any third party's benefit or purpose, or otherwise allow any person to do so, except with the Discloser's written permission.

13.2 Permitted Disclosure

A Recipient may only disclose Confidential Information where the disclosure is:

- (a) expressly permitted by the Discloser in writing;
- (b) required by Law; and
- (c) made to a Representative, provided always that:
 - (i) the Representative has a need to know the Confidential Information;
 - (ii) the Representative is made aware of the confidential nature of that Confidential Information; and
 - (iii) the Representative is bound by confidentiality obligations no less protective than the terms of this clause 13.

13.3 Compelled Disclosure

To the extent that a Recipient is compelled by any Law, court, or regulatory authority to disclose the Confidential Information, the Recipient must immediately give the Discloser prior written notice of the proposed disclosure.

13.4 Obligation to Return or Destroy

- (a) The Recipient must, when so requested by VITG, promptly return to the Discloser or destroy (as the Recipient requires) any Confidential Information in the Recipient's possession or control.
- (b) The Recipient must, when so requested by the Discloser, promptly provide evidence of the return or disposal of Confidential Information.

14. WARRANTIES AND INDEMNITIES

14.1 General Representations and Warranties

Each Party represents and warrants to each other Party that:

- (a) it has all necessary powers, capacity, and consents necessary to enter into this Agreement;
- (b) it has not experienced an Insolvency Event and is not aware of any facts or circumstances which may lead to it experiencing an Insolvency Event;

14.2 Client Representations and Warranties

The Client represents and warrants in favour of VITG that:

- (a) unless as otherwise specified by the Client in writing, any data and information provided by the Client to VITG in connection with this Agreement is true, accurate, up-to-date and complete;
- (b) each component of the Client Systems used or modified in connection with VITG's provision of Service under this Agreement:
 - (i) is safe and suitable for the scope of use and modification as relevant to VITG's provision of Service under this Agreement;
 - (ii) the Client has all necessary rights, consents, authorities and

approvals necessary to use or modify the Client Systems and to allow VITG to use or modify the Client Systems in connection with VITG's provision of the Services; and

- (iii) the Client and VITG's use and modification of any Client Systems do not violate any Laws or the rights of any third party; and

- (c) the Client has all rights, consents, authorities and approvals necessary to provide the Client Data and Personal Information to VITG for the purposes of VITG's performance of its obligations under this Agreement.

14.3 No Representations and Warranties

VITG makes no representations and warranties that:

- (a) any Service provided by VITG will be free from risks of interruption or error; or
- (b) the condition, performance and availability of any product or service from a Third-Party Procurement.

14.4 Client Indemnities

The Client indemnifies, and will keep indemnified, VITG from and against any loss, Liability, damage, cost or expense (including any enforcement cost on a full indemnity basis) arising out of or in connection with:

- (a) any Claim made or brought against VITG alleging that:
 - (i) the Processing of Client Data, whether undertaken by the Client or VITG, in accordance with this Agreement infringes upon a third party right or is in breach of the Law;
 - (ii) the cost of Third-Party Provider Product Licence fees owing or owed by VITG on behalf of the Client;
 - (iii) the Client's access or use of any Service in a manner that:
 - (A) is contrary to the User Guidelines;
 - (B) breaches the Law; or
 - (C) infringes the Intellectual Property Rights of any third party; and
 - (iv) the Client undertaking any of the restricted actions specified at clause 4.2.

15. LIMITATIONS OF LIABILITY

15.1 Limitations of Liability

VITG's (including any of its Related Entities') Liability to the Client arising under or in connection with this Agreement is limited to the aggregate of the Fees paid by the Client to VITG in the preceding 12 calendar months prior to the date the relevant Liability arises, regardless of whether the Liability is claimed under contract, equity, tort or any other cause of action whatsoever.

15.2 Exclusion of Consequential Loss

Neither Party shall be Liable to each other Party for any Consequential Loss.

15.3 Releases

The Client waives and releases VITG from and against any loss, Liability, damage, cost or expense arising out of or in connection with any of the following, to the extent that they are not caused or contributed to by the act or omission of VITG or any of its Personnel:

- (a) loss or damage to any property of the Client or its invitees;
- (b) injury or death of any person;
- (c) errors or difficulties in producing, altering, erasing, using, receiving, sending, accessing or utilising any Client Data; and
- (d) fault, defect, error or omission in:
 - (i) the Client Systems; or
 - (ii) any data, information, direction, instruction or guideline provided by the Client to VITG; and
 - (iii) any act or omission of the Client, including any of its Personnel or User, or a third party,

including such as where any of the above causes a fault, defect or loss of functionality in any Service.

15.4 No Exclusions to Statutory Rights

- (a) VITG acknowledges that the Client has statutory rights under the Laws, including, without limitations, the rights contained in the Australian Consumer Law.
- (b) Nothing in this Agreement seeks to limit any right or remedy, or exclude Liability, as may be available for or relied upon by the Client under the Laws, including the Australian Consumer Law, which cannot be limited; and

16. TERMINATION

16.1 Mutual Termination Right

A Party may at any time, by no less than thirty (30) days' notice in writing to the other Party, terminate this Agreement.

16.2 Early Termination

In the event of an early termination of this Agreement by the Client, the Client must immediately:

- (a) pay to VITG all outstanding Fees which remain unpaid under any invoice issued by VITG to the Client in respect of this Agreement;
- (b) where not paid by the Client directly to the Third-Party Product Provider, pay to VITG all Third-Party Product Licence fees and charges outstanding and payable under a Third-Party Product Licence agreement irrespective of the remaining term of the Third-Party Product Licence agreement; and
- (c) pay to VITG the aggregate of Fees payable by the Client in respect of a subsequent three (3) calendar months' period had the Agreement remained effective, which shall be immediately due and payable to VITG (**Cancellation Fee**), being a reasonable and genuine pre-estimate of VITG's losses and damages pursuant to an early termination by the Client, having regard to VITG's costs in respect of supplier arrangements, labour, equipment, and transition-in works on behalf of the Client.

16.3 Termination for Default

A Party (**Non-Breaching Party**) may immediately terminate this Agreement if the other Party (**Breaching Party**):

- (a) has breached this Agreement and the breach:
 - (i) is not remedied by the Breaching Party within twenty (20) Business Days' notice given by the Non-Breaching Party to the Breaching Party to remedy the Breach; or
 - (ii) is not capable to be remedied;
 - (iii) is of such seriousness or materiality that termination is warranted, having regard to the nature, extent and impact of the breach; and
- (b) experiences an Insolvency Event.

16.4 Effect of Termination

Upon termination of this Agreement:

- (a) the Client must cease using any Service provided by VITG under this Agreement;
- (b) VITG will cease providing any further Service to the Client under this Agreement;
- (c) the Client must pay to VITG all Fees payable by the Client to VITG in connection with this Agreement;
- (d) each Party must promptly return any property in its possession owned or procured by the other Party; and
- (e) each Party must cooperate with each other Party in good faith with respect to promptly effecting the following:
 - (i) the assignment or licensing of any Intellectual Property in favour of the relevant Party pursuant to this Agreement;
 - (ii) the return or disposal of any Confidential Information in any Party's possession or control pursuant to each Party's obligations under clause 13.4; and
 - (iii) complying with any other obligations due upon the Party respectively in connection with the termination of this Agreement.

16.5 Survival of Terms

The terms of this Agreement which are capable or expressed as:

- (a) having effect after this Agreement ends or by their nature intended to survive termination of this Agreement; or
- (b) imposing an obligation on or granting a right to a person or entity after they cease to be a Party to this Agreement,

continue to have full force after the termination of this Agreement or after such person or entity ceases to be a Party to this Agreement, including clauses in relation to:

- (c) protection of Confidential Information;
- (d) warranties and indemnities; and
- (e) obligations to make good or return property.

17. DISPUTE RESOLUTION
17.1 Disputes

- (a) The dispute resolution process under this clause 17 does not apply to the enforcement of unpaid monies between the Parties arising under this Agreement.
- (b) Nothing in this clause 17 prevents a Party from applying for an urgent injunctive, declaratory or other interlocutory or equitable relief before an appropriate court.
- (c) Neither Party may file any initiating process with any court in respect of any dispute arising out of this Agreement (Dispute) until the Parties have complied with the Dispute resolution processes in clause 17.2.

17.2 Dispute Resolution Processes

- (a) If any Party believes that there is a Dispute, that Party must notify the other Party to the Dispute in writing, specifying the nature and substance of the Dispute (Dispute Notice).
- (b) Upon an issue of a Dispute Notice pursuant to clause 17.2(a), the Parties must respectively appoint a senior representative to resolve the Dispute by good faith negotiations.

17.3 Continuity of Service Provision

The Parties agree that the obligations of the Parties in this Agreement continue notwithstanding the existence of any Dispute.

18. FORCE MAJEURE
18.1 Exclusion

Force majeure relief in this clause 18 does not apply to any obligation relating to:

- (a) the payment of monies; and
- (b) the protection of Confidential Information.

18.2 Force Majeure

On the occurrence of a Force Majeure Event:

- (a) the affected Party must, as soon as reasonably practicable, notify the other Party of any delay or failure in the performance of any obligation under this Agreement as a result of the Force Majeure Event;
- (b) the affected Party must use all reasonable endeavours to mitigate the effects of the Force Majeure Event and to resume the performance of their obligations under this Agreement as soon as reasonably practicable; and
- (c) any Delivery Date and/or Deliverable Milestone shall be extended to the extent of any delay caused by the Force Majeure Event.

18.3 No Liability

Neither Party shall be liable to the other Party for any delay or failure in the performance of any obligation under this Agreement as a result of a Force Majeure Event.

19. NON-SOLICITATION

The Client must not, and must ensure that its Related Entities, personnel and employees do not do anything

that amounts to Soliciting VITG's Personnel or Representative during the Restraint Period.

20. Notice

- (a) A notice or communication under this Agreement is only effective if it is:
 - (i) in writing, signed by or on behalf of the person giving it (including an electronic signature or statement);
 - (ii) addressed to the person to whom it is to be given; and
 - (iii) given as follows:
 - (A) delivered by hand to that person's address;
 - (B) sent to that person's address by prepaid mail;
 - (C) sent by email to that person's email address,
- (b) A notice, consent or communication given under this clause is deemed given and received:
 - (i) if delivered by hand to the recipient's address, when left at the person's address;
 - (ii) if delivered by mail, 3 Business Days after posting; or
 - (iii) if sent by email, at the time and on the day shown in the sender's delivery report,

but if the notice is deemed to be received on a day which is not a Business Day or after 5pm, it is deemed to be received at 9am on the next Business Day.

- (c) A Party's address for notice is set out in a Proposal or Client intake form, or as otherwise notified by that Party in writing to the other Party from time to time.

21. GENERAL
21.1 Variation

This Agreement may only be varied by written agreement between the Parties.

21.2 No Partnership, Agency or Employment Relationship

Nothing in this Agreement shall be taken as forming a relationship of partnership, trust, agency or employment relationship between the Parties, including with respect to any of the other Party's Personnel, supplier or subcontractor whatsoever.

21.3 Assignment

A Party may only assign its rights under this Agreement with the written consent of all Parties.

21.4 No Merger

The rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

21.5 Rights Cumulative

The rights, powers and remedies of each Party under this Agreement are cumulative and additional to, and do not prevent, the exercise of any rights, powers or remedies available to that Party at Law.

21.6 No Waiver

- (a) 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.
- (b) 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.

21.7 Severability

A provision or part of a provision in this Agreement that is illegal or unenforceable:

- (a) must be read down to the extent necessary to remove the cause of the illegality or unenforceability; or
- (b) if clause 21.7(a) is not possible, that provision or part thereof may be severed from this Agreement to the extent necessary to remove the illegality or unenforceability such that the remaining provisions of this Agreement shall remain fully effective in accordance with its terms.

21.8 Counterparts

This Agreement may be signed in any number of counterparts and a counterpart may be an electronic scan. All counterparts together make one instrument.

21.9 Governing Law and Jurisdiction

This Agreement is governed by the laws of New South Wales.

21.10 Entire Agreement

This Agreement embodies the entire agreement between the Parties and supersedes all previous agreements about its subject matter and any agreements collateral to those agreements.

22. DEFINITIONS

22.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement, means, collectively:

- (a) this Agreement;
- (b) any annexure, schedule, attachment or document incorporated by reference into this Agreement and/or the Proposal; and
- (c) any Proposal between the Parties incorporating this Agreement.

Australian Consumer Law means the consumer protection laws contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Background IP means any Intellectual Property of any Party which was in existence prior to the Commencement Date, or which is subsequently developed by a Party independently of and for purposes other than in accordance with this Agreement.

Business Day means a day that is not a Saturday, Sunday or public holiday in the Jurisdiction.

Client means the person or entity identified in a Proposal and Client onboarding form.

Client Data means any data, content or information, of any form, collected, received, created or uploaded by the Client or any User in connection with their use of a Service supplied by VITG, and includes any Personal Information subsisting therein.

Client Systems means the Client's computing and IT assets and resources, including all hardware, software, information technology, telecommunications services, network, equipment and systems.

Commencement Date means the date specified in the Proposal, being the commencement date for the Services Term.

Confidential Information means any information of any form, created at any time, that:

- (a) is by its nature confidential;
- (b) is indicated by the Discloser as confidential;
- (c) the Recipient knows or ought to reasonably have known is confidential,

and, as between the Parties, includes the Client Data and VITG Data, but does not include information that:

- (i) is public knowledge or has otherwise entered the public domain other than a result of a breach of this Agreement or by any other unlawful means;
- (ii) is obtained from a third party who is not subject to any restriction in relation to disclosure; or
- (iii) is independently discovered, acquired or developed by the Recipient without reference to any Confidential Information or breach of this Agreement.

Consequential Loss means all forms of indirect loss including loss of revenue, loss of profits, failure to recognise profits or savings and any other commercial and economic loss, howsoever caused.

Deliverable Milestones means the estimated delivery schedule for VITG's supply of the Services as specified in the Proposal.

Delivery Date means the estimated date for VITG's supply of the Services as specified in the Proposal.

Discloser means any Party who discloses Confidential Information to a Recipient under, or in connection with, this Agreement.

Dispute has the meaning given in clause 17 of this Agreement.

Enhancements means any improvements, modifications, updates, extensions or new versions of any product supplied by VITG.

Expiration Date means the last day of the Services Term, or as may be varied between the Parties in accordance with clause 2.2.

Fee or Fees means any amount payable by the Client for the supply of Services by VITG pursuant to the Proposal incorporating this Agreement.

Force Majeure Event means any event beyond a Party's reasonable control, including a/an fire, storm, flood, earthquake, explosion, accident, act of God, act of a public enemy, terrorist act, war, rebellion, insurrection, sabotage, epidemic, pandemic, quarantine restriction, government restriction, transportation embargo, power failure, failure of

telecommunications network, malicious cyber-attacks, and strike by third party employees other than a subcontractor or supplier of that Party, but in each case, provided always that the Party is without fault in causing the relevant event and the event, or its effects, could not have been prevented by reasonable precautions by that Party.

Insolvency Event, in relation to any Party means, except in the ordinary course of business:

- (a) a liquidator, provisional liquidator, receiver, trustee in bankruptcy, or any form of external administrator is appointed in respect of that Party;
- (b) the Party proposes to its creditors a scheme of arrangement, deed of company arrangement or similar composition or arrangement involving any class of its creditors;
- (c) a controller is appointed over or takes possession of all or a substantial part of the Party's assets or undertakings;
- (d) the Party is deemed insolvent under any relevant Law;
- (e) if the Party is a natural person – they die or become permanently mentally incapacitated or disabled;
- (f) any step is taken by the Party to obtain protection from its creditors, under any applicable legislation; or
- (g) anything analogous or having a substantially similar effect to any of the above specified events happens in respect of a Party under the Laws of any applicable jurisdiction.

Intellectual Property means all existing or future species of industrial and intellectual property, whether registered or unregistered, registrable or not including copyrights, patents, designs, trademarks, circuit layout rights, confidential information, trade secrets and the right to register all such intellectual or industrial property rights.

Intellectual Property Rights means all rights arising from any statute, or principle of law or equity in relation to Intellectual Property.

Interest Rate means Reserve Bank of Australia's cash rate plus 2% per annum.

Jurisdiction means New South Wales, Australia.

Law means:

- (a) all laws, statutes, codes, ordinances, decrees, rules, regulations or by-laws;
- (b) any judicial, arbitral, administrative, ministerial, departmental or regulatory judgment, order, decision, ruling; and
- (c) any determination or award of any legislative authority.

Liability means responsibility for any loss (either direct or indirect), damage, cost or expense and includes liability for Consequential Loss.

Party means any person or entity who executes this Agreement or otherwise agrees to be bound by its terms.

Personal Information has the meaning given to that term in the Privacy Act or any term analogous or having a substantially similar meaning to that term under the Privacy Laws of any applicable jurisdiction.

Personnel, in respect of any Party, means any officer, employee, secondee, agent, contractor and subcontractor, including any officer, employee, secondee, agent and contractor of any subcontractor.

Privacy Act means the *Privacy Act 1988* (Cth).

Privacy Laws means:

- (a) the Privacy Act; and
- (b) any Law (to the extent that such legislation applies) as may be in force and amended from time to time in any jurisdiction which affects the Processing of Personal Information.

Privacy Policy means VITG's policy governing VITG's Processing of Client Data and Personal Information in connection with VITG's provision of Service to the Client at: <https://vitg.com.au/>.

Process, in respect of Client Data and Personal Information, means any operation (whether conducted manually or automated) performed with respect to data, and includes the collection, recording, organisation, structuring, storage, adaptation, alteration, retrieval, consultation, use, disclosure, dissemination, alignment, combination, consolidation, restriction, erasure or destruction of such data.

Proposal means a quote or order in the form of a document of the same name issued by VITG to the Client specifying the scope of Services to be provided by VITG to the Client subject to the terms of this Agreement, and Proposal, whereby the term Proposal, Quote and Order have the same meaning and may be used interchangeably.

Recipient means any Party who receives Confidential Information under or in connection with this Agreement.

Related Entities, in respect of a person or entity, means:

- (a) any '*related body corporate*' of that person or entity (pursuant to section 50 of the *Corporations Act 2001* (Cth)); and/or
- (b) any '*associate*' of that person or entity (pursuant to section 318 of the *Income Tax Assessment Act 1936* (Cth)).

Representative means any Recipient's employee, agent, officer, director and/or professional advisor who has a need-to-know Confidential Information under this Agreement.

Restraint Period means the period commencing on and from the date of this Agreement and ending on 12 months after the Expiration Date, or if that is unenforceable, 6 months after the Expiration Date, or if that date is unenforceable, 3 months after the Expiration Date.

Service means the managed services to be provided by VITG to the Client, including by way of Third-Party Procurement and includes any product (whether hardware or software) as may be incidentally supplied by VITG.

SLC or Service Level Commitment means VITG's defined objectives in respect of its Services delivery, levels and targeted performance metrics to be provided to the Client in connection with VITG's provision of Services as specified in the Proposal. The terms Service Level Commitment, Service Level Objective and Service Level Metrics have the same meaning and may be used interchangeably.

Services Term means the term of this Agreement and the period of VITG's engagement by the Client as specified in the Client intake form, as may be extended or terminated in accordance with clauses 2 and 16 of this Agreement.

Soliciting means any of the following activities canvassing, soliciting, inducing or encouraging any person to reduce the amount of dealing that the person or entity would normally do with VITG.

Third Party Product Licence means a licence for a product or service offered by a Third-Party Provider directly or indirectly through a VITG service.

Third Party Provider means any individual, company or entity that is not VITG.

User means any person designated by the Client to utilise VITG's Services pursuant to the terms of the Proposal.

User Guidelines means any guideline, manual, instructions or policy as may be provided by VITG to the Client from time to time relating to the appropriate function, purpose, method, operation and use of any Service supplied by VITG under this Agreement.

VITG means Virtual IT Group Pty Ltd, ACN 625 486 508.

VITG Data has the meaning given in clause 12.1(a) of this Agreement.

VITG IP means any Intellectual Property owned or created by VITG in the course of, VITG's performance of its obligations under this Agreement, and includes:

- (a) any Enhancement;
- (b) VITG Data;
- (c) the User Guidelines; and
- (d) any deliverable, material, product, or source code developed, conceived, modified, amended, improved, or otherwise brought into existence in connection with VITG's performance of this Agreement,

but excludes any Client Data, unless any such Client Data incorporated into any VITG IP has been aggregated and anonymised such that no Personal Information is identifiable.

WHS Laws means: the relevant workplace health and safety legislation or regulation as applicable in the jurisdiction of any

location where Services are being performed on behalf of the Client (e.g. the Client's premise).

23. INTERPRETATION

23.1 Rules of Interpretation

In this Agreement, the following rules of interpretation apply:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) a monetary amount is in Australian dollars;
- (f) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (g) a reference to:
 - a. a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - b. a thing includes a part of that thing;
 - c. a party includes its successors and permitted assigns;
 - d. a document includes all amendments or supplements to that document;
- (h) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Agreement; and
- (i) a clause or term in a particular Part of this Agreement is the clause or term in that particular Part;
- (j) no provision will be interpreted to the disadvantage of a particular Party merely because that Party prepared the provision or would benefit under it;
- (k) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (l) the relevant time of day is:
 - a. for the purposes of giving or receiving notices the time of day where a party receiving a notice is located; and
 - b. the time of day in the place the obligation is located.