

Part A General Terms and Conditions

1 Definitions

1.1 Specific Definitions

In this Agreement, unless the context requires otherwise:

- (a) **Agreement** means:
- (i) This "Master Services and Rental Agreement" including all parts comprising it, and all schedules, annexures and attachments as amended or varied from time to time; and
- (ii) where this Agreement is incorporated into the terms of a Services Agreement or Rental Agreement, that Services Agreement or Rental Agreement.
- (b) **Authorised User** means persons who the Customer wishes to authorise to use Services that VITG is to provide under this Agreement, pursuant to the terms of the relevant Services Order and Services Agreement.
- (c) **Cancellation Fee** means any amounts payable by the Customer to VITG if a Services Agreement or Rental Agreement is terminated prior to its intended term.
- (d) **Customer** means the person or entity identified as the "Customer" in **Error! Reference source not found.** – Party Details.
- (e) **Data** means any information, documents, and other data, including Personal Information, provided, or uploaded by the Customer, Personnel or Authorised Users in the course of accessing any Services.
- (f) **Equipment Rental Order** means a request for Services by the Customer, in the form at **Error! Reference source not found.**
- (g) **Fees** means any amounts payable by the Customer to VITG with respect to VITG's provision of goods or services under this Agreement and any Services Agreement or Rental Agreement and includes all service fees (whether recurring or lump sum or on the satisfaction of any milestone) and rent.
- (h) **Guarantor** means each person specified as a "Guarantor" in **Error! Reference source not found.** – Party Details.
- (i) **Party** means one of the Customer, an entity comprising VITG or Guarantor.
- (j) **Order** means either a Services Order or Equipment Rental Order.
- (k) **Rental Agreement** means an agreement between the Parties that is deemed to be entered into by operation of clause 2.4 as a result of an Equipment Rental Order agreed between the Customer and VITG.
- (l) **Rental Equipment** means equipment that the relevant VITG entity agrees to procure and rent to the Customer pursuant to the terms of an Equipment Rental Order.
- (m) **Sourced Equipment** means equipment that the relevant VITG entity agrees to provide the Customer with the relevant details of the equipment

that needs to be sourced, but the Customer is responsible for ordering and paying for that equipment directly with the relevant supplier, pursuant to an agreed Services Order.

- (n) **Supplied Equipment** means equipment that the relevant VITG entity agrees to procure for the Customer (which the Customer will own, subject to payment) pursuant to the terms of an agreed Services Order.
- (o) **Services** means the professional, IT and technology services that the relevant VITG entity agrees to provide the Customer pursuant to an agreed Services Order.
- (p) **Services Agreement** means an agreement between the Parties that is deemed to be entered into by operation of clause 2.4 as a result of a Services Order agreed between the Customer and VITG
- (q) **Services Order** means a request for Services by the Customer, in the form at **Error! Reference source not found.**
- (r) **Third Party Inputs** has the same meaning given to that term pursuant to clause 6.1.
- (s) **Third Party Services and Products** means any services VITG engages, or products that VITG procures for the Customer, from third parties in order to provide any Services (e.g. any third-party hosting services, equipment supplied by third parties).
- (t) **VITG** means each of the entities marked as comprising "VITG" in **Error! Reference source not found.** – Party details, except where the reference is to VITG being obliged or required to do anything, or give any undertakings, guarantees, covenants, representations or warranties in relation to a Service Order or Equipment Rental Order in which case **VITG** refers only to that or those entities which are expressly defined as VITG in that Service Order or Equipment Rental Order.
- (u) **Usage Policy** means any policies of VITG given to the Customer with respect to the acceptable method, purpose and usage of any goods or services provided by VITG under this Agreement with respect to hosting services, as amended from time to time at the discretion of VITG and notified to the Customer.

1.2 General Terms

Capitalised terms of general application are defined in clause 15.2.

1.3 Other Capitalised Terms

Other capitalised terms have the meaning given to them when they are first defined in this Agreement.

2 Application of Agreement

2.1 Requesting Goods & Services

Where the Customer wishes to acquire goods or services from VITG, the Customer does so by submitting to VITG:

- (a) a Services Order in the form of **Error! Reference source not found.** (with respect to Services, Sourced Equipment or Supplied Equipment);

and/or

- (b) an Equipment Rental Order in the form of **Error! Reference source not found.** (with respect to Rental Equipment).

2.2 Parties to Negotiate

The Parties agree to negotiate in good faith with the view of agreeing to the form and content of an Order.

2.3 Agreement to Order

An Order is agreed between the Customer and VITG when it is:

- (a) signed by both of those Parties.
- (b) the Customer and VITG indicate their agreement to the Order in writing by some other form (e.g. by agreement over email); or
- (c) the Customer makes any payment for goods or services which are the subject of the Order.

2.4 Separate Agreement

Where an Order is agreed between the Customer and VITG, the Parties are taken to have entered into a separate and independent agreement incorporating the terms of that Order and this Agreement. Such agreement is independent of:

- (a) this Agreement as a standalone agreement; and
- (b) each other agreement created as a result of other Orders agreed between the Customer and VITG; and

is either a Services Agreement (if as a result of a Services Order) or a Rental Agreement (if as a result of an Equipment Rental Order).

2.5 Precedence

To the extent of any conflict between the terms of this Agreement and any Order, then the priority of those documents will be:

- (a) firstly, the Order; then
- (b) the terms of this Agreement.

2.6 Variations of Orders

- (a) The Customer may request a variation or change to the scope of any agreed Order (and consequently the relevant Services Agreement or Rental Agreement) by giving VITG a written notice of the proposed variation.
- (b) Any requested variation to the scope of an existing Order has no effect unless or until:
 - (i) VITG confirms the variation Fees that would apply to that Order.
 - (ii) both VITG and the Customer agree in writing to the variation (including the variation to Fees that apply).
- (c) Where a requested variation to an Order is agreed, the variation will supersede the original Order and the relevant Services Agreement or Rental Agreement will be deemed varied accordingly.

3 Customer Cooperation

3.1 General Obligations of Customer

The Customer must, and must ensure its Personnel:

- (a) comply with the terms of this Agreement.
- (b) comply with all applicable Laws.
- (c) comply with VITG's reasonable requests or

requirements (including provision of information or documentation) relevant to VITG's performance of its obligations under this Agreement or the Customer's receipt of goods or services under this Agreement.

- (d) provide VITG and its Personnel with reasonable access to the Customer's premises, all facilities and Computing Environment that may be necessary for VITG to perform its obligations under this Agreement.
- (e) provide and maintain a safe working environment for VITG's Personnel when accessing the Customer's premises or facilities.
- (f) ensure the Customer complies with and discharges all health and safety obligations imposed on the Customer, including in respect of VITG's Personnel, imposed by Law in relation to workplace health and safety.
- (g) promptly notify VITG if the Customer has any reasonable concerns relating to VITG's delivery of goods or services under this Agreement (with the intention that the Parties will use reasonable efforts to resolve those concerns).
- (h) not make any changes or amendments to the Customer's Computing Environment (and immediately notify VITG if it intends to make any such changes) which may affect VITG's performance of its obligations under this Agreement.
- (i) trains its Personnel and other authorised persons on the appropriate use of goods or services delivered by VITG under this Agreement; and
- (j) otherwise cooperate with, and provide all assistance to VITG, which are reasonably requested by VITG in the performance of its obligations under this Agreement.

3.2 Usage Policies

The Customer must and must ensure each of its Personnel or authorised persons, comply with VITG's Usage Policy in the use of goods or services provided by VITG under this Agreement.

3.3 Additional Costs

To the extent that the Customer fails to comply with its obligations under this clause 3 and VITG incurs any Additional Costs (including as a result of any suspension of Services), the Customer must pay to VITG those Additional Costs on demand by VITG as a debt due and payable.

4 Fees

4.1 Payment of Fees

The Customer must pay to VITG all Fees and any amounts payable to VITG under this Agreement:

- (a) in the amount and at the times specified in the relevant agreed Order setting out those Fees; or
- (b) if the timing of the payments are not included in an agreed Order, on demand by VITG.

4.2 Invoices

Where an amount of Fees are to be paid by the Customer to VITG once those Fees are invoiced, the Customer must pay those Fees within 14 days of VITG issuing that invoice.

4.3 Fees Non-Refundable

To the fullest extent permitted by Law, all Fees paid by the Customer are non-refundable.

4.4 No Deduction or Withholding

All amounts payable by the Customer to VITG must be paid without withholding, deduction or set-off whatsoever unless expressly permitted by this Agreement.

4.5 Disputing Invoices

If the Customer wishes to dispute amounts claimed by VITG under an invoice:

- (a) the Customer must provide VITG with a written notice within 5 Business Days of the date of the invoice stating the amount that the Customer disputes (including the reason for the dispute).
- (b) the Customer must pay any undisputed amounts in the invoice pursuant to the terms of this Agreement or the relevant agreed Order.
- (c) the Customer may delay paying the disputed amount until the dispute is resolved between the Customer and VITG; and
- (d) the Customer and VITG must use reasonable efforts to negotiate in good faith to resolve the dispute as soon as possible.

4.6 Customer Not Permitted to Dispute Invoices

The Customer is deemed to have irrevocably accepted an invoice and waived any disputes or claims the Customer may have with respect to that invoice if:

- (a) the Customer fails to give VITG a notice that it wishes to dispute any part of the invoice within the time referred to in clause 4.5(a); or
- (b) the Customer pays the invoice in full without raising a dispute under clause 4.5(a).

4.7 Annual review of Fees

VITG may (acting reasonably) review and increase any recurring Fees in relation to Services once per year, and those amended Fees apply after VITG gives the Customer a written notice of those increased Fees.

4.8 Interest for Late Payment

Where the Customer fails to pay any amounts, they are required to pay VITG by the relevant due date, VITG may claim from the Customer interest at a rate equal to the Reserve Bank of Australia's cash rate plus 10% per annum calculated daily and compounding monthly on any amounts that remain unpaid.

4.9 Additional Remedies of VITG

In addition to any other remedies available to VITG, where the Customer fails to pay any Fees or other amounts payable by the Customer to VITG, VITG is entitled to do any one or more of the following:

- (a) take any debt recovery or enforcement action that VITG sees fit (including recovering the costs of those actions on a full indemnity basis).
- (b) apply to wind-up, liquidate, make bankrupt, appoint an administrator, liquidator, controller, receiver, receiver and manager, trustee in bankruptcy to the Customer or do anything analogous to these things, and the Customer agrees not to defend or resist any such application; and/or
- (c) report the default to any independent credit reporting agencies.

- (b) VITG will comply with its obligations under this Agreement (including the provision of any Services) in accordance with all applicable Laws.
- (c) VITG will use reasonable efforts to ensure all VITG's obligations under this Agreement will be carried out:
 - (i) By suitably competent and trained Personnel.
 - (ii) In an efficient and professional manner; and
 - (iii) With the standard of diligence and care normally employed by duly qualified persons performing obligations similar to VITG's obligations under this Agreement.

5.2 Customer Representations and Warranties

The Customer represents and warrants in favour of VITG that:

- (a) it is validly constituted and incorporated in its jurisdiction of incorporation (if applicable).
- (b) at all times throughout the term of this Agreement, any Services Agreement, or any Rental Agreement it has not experienced an Insolvency Event.
- (c) all data, information and documentation provided by or on behalf of the Customer to VITG in connection with this Agreement or any Services Agreement or Rental Agreement is true, correct, up-to-date, and complete (and the Customer acknowledges that VITG will rely on such data, information, and documentation in order to perform its obligations).
- (d) the Customer has obtained any consents, licences, authorities, and permissions from any other parties necessary to receive the benefit of any goods or services to be provided by VITG under this Agreement and will provide those consents, licences, authorities, and permissions to VITG if and when requested by VITG.
- (e) the Customer holds a valid ABN as notified to VITG and is registered for GST purposes (where applicable).
- (f) the Customer has been given the opportunity to:
 - (i) negotiate the terms of this Agreement; and
 - (ii) seek and obtain independent legal advice in relation to this Agreement and enters into it either in reliance on that advice or having chosen not to obtain such independent legal advice.
- (g) the Customer has read and understands the terms of this Agreement and does not need any further explanation of its terms from any person.
- (h) to the extent that the Customer is the trustee of a trust, at all times:
 - (i) the Customer is the sole trustee of the trust and no action has been taken to remove the Customer as trustee or to appoint additional or new trustees.
 - (ii) it has power under the trust deed to enter into and perform its obligations under this Agreement.
 - (iii) it enters into this Agreement in its own capacity and as trustee of the relevant trust.
 - (iv) it has a right to be fully indemnified out of the trust property and such right has not been restricted, limited, or prejudiced in any way.

5 Warranties

5.1 VITG Warranties

VITG represents and warrants in favour of the Customer that:

- (a) VITG is validly constituted and incorporated in its jurisdiction of incorporation.

- (v) the trust property is sufficient to satisfy any right of indemnity of the Customer against that property; and
- (vi) the Customer is not in breach or default of any terms of the trust deed, and it has complied with all their obligations in respect of the trust.

- (e) VITG is not responsible for the integrity or existence of any Data on any Computing Environment, network or device not controlled by VITG (such as the Customer's Computing Environment).

6 Liability

6.1 Third Party Inputs

The Customer acknowledges and agrees that:

- (a) the performance of VITG's obligations under this Agreement may be contingent upon or affected by the acts or omissions of third parties, end users or suppliers (**Third Party Inputs**); and
- (b) despite anything to the contrary and to the maximum extent permitted by Law, VITG will not be responsible, and will have no Liability, for any default or breach of this Agreement or the Law to the extent such default or breach was caused by or contributed to by any Third-Party Inputs (including any delay, omission, defect, or default in those Third-Party Inputs).

6.2 Third Party Services and Products

The Customer acknowledges and agrees that:

- (a) VITG may, from time to time, use or procure Third Party Services and Products in performing its obligations under this Agreement.
- (b) to the fullest extent permitted by law, VITG does not give any representations or warranties in relation to those Third-Party Services and Products.
- (c) to the fullest extent permitted by law, VITG is not responsible for any Liability, and the Customer releases and discharges VITG from any Liability, arising out of any unavailability or defects in Third Party Products and Services (including any termination or suspension of Services as a result of Third-Party Products or Services not being available); and
- (d) VITG will use all reasonable endeavours to assign the benefits of any warranties VITG receives in relation to Third Party Products and services to the Customer such that the Customer is able to claim against the relevant third party for any loss or damage the Customer suffers as a result of unavailability or defects in Third Party Products and Services.

6.3 Use at Customer's Risk

The Customer acknowledges and agrees that:

- (a) the Customer is responsible for the acts and omissions of all Authorised Users accessing the Services or any goods provided by VITG.
- (b) the Customer's and their Personnel's or Authorised Users' use of goods or Services to be provided by VITG (including any associated programs or files) are at the risk of the Customer.
- (c) the transmission of Services or Data may be transfers unencrypted and involve:
 - (i) transmission over various networks; and
 - (ii) amendments from time to time to conform and adapt to the technical requirements of connecting networks or devices.
- (d) VITG does not guarantee or warrant that any file or program that is available for use or download via goods or Services to be provided by VITG are free

6.4 General Limitation of Liability

To the fullest extent permitted by Law, the Customer agrees that:

- (a) VITG does not give, and expressly disclaims, all representations or warranties which are not specifically included in this Agreement.
- (b) VITG's Liability:
 - (i) with respect to a particular Services Agreement or Rental Agreement, is limited in the aggregate to the Fees actually received by VITG in relation to that Services Agreement or Rental Agreement in the 12-month period prior to the date the relevant Liability arises; or
 - (ii) with respect to this Agreement as a standalone agreement (i.e. not in relation to a particular Services Agreement or Rental Agreement) is limited to the amount of Fees actually received by VITG in the 12-month period 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.

- (c) VITG will not have any Liability for any Consequential Loss whatsoever.
- (d) VITG will have no Liability, and the Customer waives and releases VITG from all Liability arising from or in connection with any:
 - (i) Loss of or damage to any property.
 - (ii) Injury or death of any person.
 - (iii) errors or difficulties in producing, altering, erasing, using, receiving, sending, accessing, or utilising any Data.
 - (iv) failure or delay in providing any goods or Services.
 - (v) breach of this Agreement or any Laws were caused by or contributed to by any:
 - (A) event or circumstance outside of VITG's reasonable control.
 - (B) any breach of this Agreement (including any representations or warranties) by the Customer.
 - (C) fault, defect, error or omission in the Customer's Computing Environment, Data, or information or documentation provided by the Customer; and
 - (D) act or omission by the Customer, its Personnel, its Authorised Users or any third party; and/or
 - (vi) any error, omission or lack of suitability that causes any reduction in the anticipated result, outcome or benefit of goods and services to be provided by VITG.

6.5 Customer Indemnity

The Customer hereby indemnifies and keeps indemnified VITG from and against all Liabilities incurred by VITG (including Additional Costs or enforcement costs on a full indemnity basis) arising out of or in connection with the Customer:

- (a) breaching any provisions of this Agreement.
- (b) repudiating this Agreement; and/or
- (c) VITG acting on instructions purporting to originate from the Customer.

and the Customer must pay to VITG all amounts that VITG claims under this clause 6.5 immediately when VITG demands payment as a debt due and payable.

6.6 VITG's Rights

Nothing in this Agreement is intended to limit the causes of action that VITG may claim against the Customer in the event of any breach of this Agreement by the Customer.

6.7 No Exclusion of Applicable Law

Nothing in this clause 6 may be taken as VITG attempting to exclude Liability or disclaiming any warranties to the extent the Law (including the Australian Consumer Law) prohibits such exclusion or disclaimer.

7 Suspension of Services

7.1 VITG Right to Suspend

VITG may, by written notice to the Customer, suspend its performance of Services or other obligations under this Agreement (including under any Services Agreement or Rental Agreement) if:

- (a) the Customer fails to pay Fees (under any Services Agreement or Rental Agreement) and those Fees remain outstanding for more than 10 Business Days.
- (b) VITG discovers or reasonably believes that the Customer or any of their Personnel or Authorised Users have breached VITG's Usage Policy and the Customer has failed to remedy that breach within one (1) Business Day after VITG request the Customer to remedy.
- (c) the part of the Services or obligations cannot be performed by VITG as a result of any Third-Party Input or Third-Party Services and Products (including any unavailability, change in functionality, defect, or default in those things).
- (d) the Customer is otherwise in breach of its obligations under this Agreement and that breach:
 - (i) in the reasonable opinion of VITG cannot be remedied; or
 - (ii) can be remedied but the Customer fails to remedy the breach within 10 Business Days of VITG requesting the Customer to remedy such breach: or
 - (iii) in VITG's reasonable opinion is of such seriousness or materiality that VITG reasonably believes that immediate suspension is warranted.

7.2 Customer to Continue Payment

The Customer must continue to pay all Fees to VITG notwithstanding any suspension of Services or other obligations of VITG under clause 7.1.

7.3 Recommencement

Where VITG suspends its performance of any Services or other obligations under this Agreement (including under any Services Agreement or Rental Agreement) for a particular

reason, where that reason ceases to exist or has been remedied, VITG will use all reasonable endeavours to recommence performing the suspended Services or obligations as soon as possible.

8 Termination

8.1 Customer Termination

The Customer may terminate any Services Agreement or Rental Agreement for convenience by:

- (a) giving to VITG a written notice specifying that the Customer wishes to terminate the Services Agreement or Rental Agreement at least 30 days prior to the intended date of termination; and
- (b) paying to VITG in cleared funds the Cancellation Fee applicable to that Services Agreement or Rental Agreement.

8.2 Mutual Termination

The Customer and VITG may, at any time, agree to terminate this Agreement or any particular Services Agreement or Rental Agreement by doing so in writing.

8.3 Termination of Agreement (as standalone agreement)

Where there are no Services Agreement(s) or Rental Agreement(s) in effect, either VITG or the Customer may terminate this Agreement for convenience by giving the other 30 days' prior written notice.

8.4 Termination of Particular Services

VITG may, by written notice to the Customer, terminate its provision of any particular Services or obligations under this Agreement if, due to any Third-Party Inputs or Third-Party Services and Products (including any defects or unavailability of those things) it is not reasonably possible or commercial for VITG to continue performing those Services or obligations.

8.5 VITG Termination

VITG may terminate this Agreement, or any Services Agreement or Rental Agreement if:

- (a) the Customer fails to pay any Fees or any other amounts payable to VITG (with respect to any Services Agreement or Rental Agreement) and such amount remains outstanding for 30 days.
- (b) the Customer has breached a material term of this Agreement (including any representations or warranties) and:
 - (i) has failed to remedy that breach within 20 Business Days of VITG requesting the Customer to remedy that breach: or
 - (ii) the breach is not capable of remedy (in the reasonable opinion of VITG).
- (c) the Customer experiences a Termination Event; or
- (d) subject to any Laws, the Customer experiences an Insolvency Event or ceases operation without a successor.

8.6 Customer Termination

The Customer may terminate a particular Services Agreement or Rental Agreement if:

- (a) VITG has breached a material term of that Services Agreement or Rental Agreement (including any representations or warranties) and:
 - (i) VITG fails to remedy that breach within 20 Business Days of the Customer requesting VITG to remedy that breach: or

- (vii) claim, assert or do any of those things any ownership or any other rights or interests in the VITG which is inconsistent with VITG's ownership of the VITG IP (including attempting to register such VITG in the Customer's or any other person's name); or
- (viii) attempt to alter, remove, or otherwise tamper with any marks or notices or identifying marks used on or in relation to any VITG IP.

9.2 Analytical Information

- (a) VITG may monitor, analyse, compile statistical or other performance information based on the Customer or their Personnel's usage of Services or other goods and services provided by VITG provided that such information is recorded and stored in an aggregated and anonymised format, only (**Analytics**).
- (b) VITG (or third-party suppliers) owns all right, title and interest in the Analytics, including any materials or technology to record or store those Analytics (including any Intellectual Property in those things).
- (c) The Customer irrevocably agrees that VITG may make Analytics publicly available, provided that:
 - (i) the Analytics do not contain any Confidential Information (including Personal Information); and
 - (ii) the sample size of the Analytics is large enough such that the underlying Data cannot reasonably be identified.

9.3 Customer Data and IP

- (a) As between the Customer and VITG, all Data remains the property of the Customer.
- (b) The Customer grants to VITG a limited licence to copy, transmit, store, access, back-up or otherwise deal with Data solely for:
 - (i) the purposes of, and during the term of, VITG delivering goods and Services under this Agreement.
 - (ii) VITG diagnosing any defects or errors in goods or Services being delivered by VITG.
 - (iii) enhance, de-bug, or otherwise improve any Services that VITG is required to provide under this Agreement.
 - (iv) developing additional services that VITG may make available (to the Customer or other persons), provided that such Data is de-identified; and/or
 - (v) VITG otherwise performing its obligations under this Agreement.
- (c) To the extent that VITG needs to use any Intellectual Property owned or licensed by the Customer (**Customer IP**) in providing Services or otherwise performing its obligations under this Agreement the Customer grants to VITG a limited license to use that Customer IP for the purposes of delivering those Services or performing those obligations.
- (d) To the fullest extent permitted by law, VITG does not assume any responsibility or Liability with respect to Data (including any loss, destruction, or unauthorised access). The Customer is solely responsible for any Data and the consequences of using, disclosing, storing, or transmitting it.
- (e) The Customer represents and warrants in favour of VITG that at all material times:

- (i) the Customer has all necessary consents, rights, permissions, and authorities to provide, transmit or otherwise deal with Data that the Customer provides to VITG from time to time.
- (ii) the Customer has all necessary right, title, consents, and authorities to grant VITG the rights under this Agreement with respect to Customer IP and Data.
- (iii) the Customer's use, transmission, storage and dealing with data for the purposes of this Agreement is compliant with all applicable Laws.
- (iv) the transfer of Data to VITG, and the grant of any rights in the Data or Customer IP to VITG under or in relation to this Agreement do not violate any applicable Laws or rights of third parties (including any Intellectual Property rights, rights of privacy, etc); and
- (v) the use, collection, disclosure, and transmission of Data for the purposes of this Agreement is compliant with the terms of any applicable privacy policies and Laws.

10 Confidential Information

10.1 General Confidentiality Obligations

A Party (as the **Receiving Party**) must keep confidential, and not disclose, any Confidential Information of another Party (as the **Disclosing Party**) except:

- (a) if the disclosure is consented to in writing by the Disclosing Party.
- (b) this Agreement permits the disclosure.
- (c) the disclosure is required by Law.
- (d) to the Receiving Party's professional or legal advisors, auditors or insurers who have an obligation to keep such Confidential Information confidential.
- (e) to the Receiving Party's Personnel, agents, representatives, and related bodies corporate to the extent those persons or entities need to know that Confidential Information for the purposes of this Agreement and they agree to keep it confidential.

10.2 Use of Confidential information

A Receiving Party must only use Confidential Information of another Party for the intended purpose of that disclosure or in connection with this Agreement.

11 Privacy

11.1 VITG Compliance With Privacy Act

At all times, VITG will:

- (a) comply with the Privacy Act and any privacy policy of VITG from time to time in relation to Data provided to VITG that contains Personal Information; and
- (b) only use Data containing Personal Information in a manner permitted by this Agreement, the Privacy Act and/or any privacy policy of VITG.

11.2 Customer Collection of Personal Information

- (a) The Customer is responsible for the collection, use, storage and otherwise dealing with Data containing Personal Information in relation to the Customer's business and all other matters in relation to that Data.

- (b) In collecting, using, storing, or otherwise dealing with Data containing Personal Information for the purposes of this Agreement (including transmitting that Data to VITG), the Customer must, and must ensure its Personnel and Authorised Users comply with all requirements of the Privacy Act.
 - (B) prevent any repeat of the Data Incident in the Future.
- (c) Without limiting the generality of clause 11.2(b), the Customer must:
 - (i) notify the Customer's Authorised Users, Personnel, and any other persons from whom Personal Information is collected about any matter prescribed by the Privacy Laws in relation to the collection, use and storage of their Personal Information.
 - (ii) ensure that any Personal Information provided to VITG by the Customer is complete, accurate and up-to-date; and
 - (iii) immediately notify VITG if the Customer becomes aware of any breach of Privacy Laws with respect to the access, use or storage of Personal Information under or in connection with this Agreement.
 - (iv) only disclose or transfer Personal Information to VITG if:
 - (A) the Customer is authorised (in accordance with all applicable Privacy Laws) to collect the Personal Information and to use or disclose it in the manner required under this Agreement.
 - (B) the Customer has informed the individual to whom the Personal Information relates, that their Personal Information may need to be disclosed to third parties (including VITG) for the Customer to do something for that individual.
 - (C) where any such Personal Information is Sensitive Information, the Customer has procured the specific consents to the disclosure from the individual to whom that information relates.

11.3 Data Incidents

- (a) For the avoidance of doubt, this clause 11.3 only applies to Data Incidents or Eligible Data Breaches in relation to Personal Information provided by the Customer to VITG in the course of or in connection with this Agreement.
- (b) To the extent that the Notifiable Data Breach scheme under the Privacy Act applies to VITG, if VITG becomes aware of a Data Incident, VITG will:
 - (i) notify the Customer of the Data Incident by telephone or email.
 - (ii) retain system logs and other information that may be relevant to the Data Incident, or to assessing the cause or impact of the Data Incident.
 - (iii) provide all information VITG reasonably believes is relevant to the Data Incident reasonably requested by the Customer for the purposes of investigating the Data Incident; and
 - (iv) immediately take all action reasonably necessary to:
 - (A) mitigate the impact of the Data Incident (including to restore or

12 Security and PPSR

12.1 Definitions

In this clause 12:

- (a) **PPSA** means the Personal Property Securities Act 2009 (Cth).
- (b) **PPSR** means the register of security interests maintained pursuant to the PPSA; and
- (c) capitalised terms which are not defined in this Agreement have the meaning given to them in the PPSA.

12.2 Creation of Security Interest

- (a) As security for the due and punctual performance of the Customer's obligations under this Agreement (including payment of any money), the Customer grants to VITG a security interest over all its present and after-acquired property and undertakings.
- (b) In addition to clause 12.2(a) where:
 - (i) VITG supplies any equipment to the Customer but the Customer has not paid for it in full; or
 - (ii) VITG rents any equipment to the Customer (whether under a Rental Agreement or otherwise).

VITG retains ownership of that equipment and the Customer grants a security interest in that equipment to secure the purchase price or rent payable by the Customer.

(collectively, **Security Interests**)

12.3 Nature of Security Interests

To the extent it is necessary to determine the nature of the Security Interests:

- (a) the Security Interest under clause 12.2(a) is a fixed and floating charge, and general security interest, over all property and undertakings of the Customer.
- (b) the Security Interest under clause 12.2(b) is a Purchase Money Security Interest over the relevant equipment.

and in any event extends to the Proceeds of that property.

12.4 Registration

VITG may register, and the Customer consents to VITG registering any Financing Statement on the PPSR in relation to the Security Interests or any part thereof.

12.5 Assurances by Customer

The Customer agrees to do all things and sign all documents reasonably necessary at the request of VITG to:

- (a) obtain any third-party consent to the creation of the Security Interests.
- (b) register and maintain registration of any Financing Statement on the PPSR with respect to the Security Interests.
- (c) perfect and keep continuously the Security Interests.
- (d) permit VITG to enforce the Security Interests.

12.6 Waiver of Administrative Provisions

To the extent permitted by the PPSA, the Customer waives its rights to receive any notice or copy of any document pursuant to the PPSA, including of any Verification Statement or Financing Change Statement, to reinstate the security interest by payment of any amounts owing or by remedy of any default or pursuant to sections 95, 96, 109, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 133, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143, unless the notice is required by the PPSA and cannot be excluded

12.7 Enforcement

Where the Customer is in breach or default of its obligations under this Agreement or otherwise VITG is entitled to enforce its Security Interests:

- (a) VITG has all powers available to VITG at law, including all rights and powers of secured parties at common law and in the PPSA, to enforce the Security Interests or against the property that is subject to those Security Interest in any way VITG sees fit.
- (b) Any repossession and retention of equipment or property under sections 120 to 123 of the PPSA extinguishes any rights and/or interests the Customer has in such property.
- (c) In addition to the powers available to VITG under clause 12.7(a), VITG may at its option:
 - (i) enter into the Customer's premises, take possession, and assume control of the Collateral.
 - (ii) receive profits of the Collateral.
 - (iii) sell or agree to sell any of the Collateral (whether or not VITG has taken possession) on such terms as VITG sees fit.
 - (iv) lease or licence the Collateral, renew,

terminate, surrender, or accept the surrender of leases or licences, as VITG see fit.

- (v) appoint a receiver and manager on such terms as VITG sees fit; and
- (vi) make debtors bankrupt, and wind-up companies, and otherwise do all things in connection with any bankruptcy or winding up which VITG thinks is necessary for the recovery or protection of the Collateral, or any part thereof.

12.8 No Dealings

The Customer must not sell, encumber, assign, transfer, dispose of or otherwise deal with any property that is subject to the Security Interests in any way or purport to do any of those things (except in relation to circulating property in the ordinary course of the Customer's business).

12.9 Proceeds

To the extent that the Customer sells, disposes of or otherwise deals with the property that is subject to the Security Interests, the Customer holds all Proceeds from such disposal or dealing on trust for VITG and must pay those Proceeds to VITG on demand.

12.10 Costs

The Customer must pay to VITG, on demand, all costs, expenses, and other amounts incurred or paid by VITG in respect of or in connection with the registration, discharge or enforcement of the Security Interests or any part thereof.

13 GST

13.1 GST Exclusive

- (a) 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 supply at the same time as paying the consideration for the supply.
- (b) All amounts stated in this Agreement, unless expressly stated otherwise, are stated on a GST exclusive basis.

13.2 Provision of Tax Invoice

A Party receiving a supply is not required to pay GST on the supply unless the Party providing the supply issues a valid tax invoice in relation to the supply.

13.3 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 13.2 and an adjustment note issued (if applicable) and the Parties must make any payments promptly to give effect to that adjustment.

13.4 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 (provided the supplier complies with clause 13.2.

13.5 Definitions

In this clause 13, "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

14 Miscellaneous

14.1 No Exclusivity

Nothing in this Agreement is intended or may be taken as VITG providing goods or services to the Customer on an exclusive basis.

14.2 Subcontracting

Subject to terms in relation to Third Party Inputs and Third-Party Services and Products, VITG may engage subcontractors to perform any part of VITG's obligations under this Agreement on behalf of VITG, but VITG will remain primarily responsible for performing its obligations under this Agreement.

14.3 Publicity

Provided the Customer gives its prior written consent, VITG may advertise or publicly announce that VITG is providing goods and services to the Customer.

14.4 Force Majeure Event

- (a) VITG will not be liable for any failure to perform its obligations under this Agreement where that performance is delayed, prevented, restricted, or interfered with as a result of a Force Majeure Event.
- (b) VITG must:
 - (i) notify the Customer promptly of any fact or circumstance to which clause 14.4(a) applies; and
 - (ii) use its best efforts to minimise the effect of the Force Majeure Event and resume performance in accordance with this Agreement as soon as possible.
- (c) If a Force Majeure Event prevents VITG from performing its obligations in relation to this Agreement or any Services Agreement or Rental Agreement for a period exceeding 2 months, VITG may terminate the relevant agreement by giving the Customer five (5) Business Days' prior written notice of the termination.

14.5 Disputes

- (a) This clause 14.5 does not apply to a Party's rights in relation to enforcing its rights in relation to unpaid money.
- (b) If there is any dispute arising out of or in connection with this Agreement:
 - (i) the Party raising the dispute must notify the other party in writing that a dispute exists, with sufficient detail to enable the dispute to be considered (**Dispute Notice**); and
 - (ii) the Parties must then meet (via senior representatives) to discuss and attempt to resolve the dispute in good faith and attempt to reach a resolution.
- (c) Subject to clause 14.5(d), neither Party may commence or file any legal proceedings or application in relation to a dispute unless or until the process set out in clause 14.5(b) has been followed and completed.
- (d) Nothing in this clause 14.5 prevents a Party from commencing any proceedings at any time for urgent interim or injunctive relief in any court or tribunal of competent jurisdiction.

14.6 Delays caused by Other Party

If where the performance of VITG's obligations under this Agreement depends upon the provision of information, materials, consents, or approvals by the Customer, or

requires the Customer's cooperation, action, or response (or that of the Customer's Personnel or Authorised Users):

- (a) the Customer must provide that information, cooperation and those materials, consents, or approvals in a timely manner.
- (b) if the Customer fails or delays in performing its obligation under clause 14.6(a):
 - (i) VITG will be entitled to an extension of time in respect of any deadline or milestone to the extent of the delay caused by the Customer; and
 - (ii) VITG will have no Liability for a failure or delay in performing its obligations under this Agreement caused by the delay or failure of the Customer.

14.7 Entire Agreement

This Agreement (including any instruments or agreements contemplated by this Agreement) is the entire agreement between the Parties about the subject matter of the Agreement, and replaces all previous agreements, understandings, representations, and warranties between the Parties in that regard.

14.8 Certification of Amounts

A statement or certificate signed by an authorised representative of VITG stating any amounts (such as amounts owing by the Customer) will be conclusive evidence of that fact in the absence of manifest error.

14.9 Variation

No variation of this Agreement is effective unless made in writing and signed by VITG and the Customer.

14.10 Relationship

Nothing in this Agreement is intended to constitute a fiduciary relationship or an agency, partnership, or trust, and neither party has authority to bind the other party.

14.11 Severability

If any provision or any part of a provision of this Agreement is wholly or partially illegal, invalid, void, or voidable, or unenforceable:

- (a) the offending provision or part thereof must first be read down to remove the cause of invalidity or unenforceability; or
- (b) if clause 14.11(a) is not possible, the offending provision or part thereof is severed to the extent necessary to remove the invalidity or unenforceability, and the remainder of this Agreement remains fully effective in accordance with its terms.

14.12 Waiver

- (a) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the Party granting it.
- (b) A waiver under clause 14.12(a) is only effective in the specific circumstance stated in writing.
- (c) A single or partial exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy.
- (d) A failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

14.13 Rights Cumulative

Except as expressly provided in this Agreement, the rights of a Party under this Agreement are in addition to and do

not exclude or limit any other rights or remedies provided by Law or elsewhere in this Agreement.

14.14 Further Assurances

Each Party must do all things and execute all further documents necessary to give full effect to this Agreement.

14.15 Assignment and Novation

- (a) The Customer may not assign or novate this Agreement or otherwise deal with any rights, benefits, obligations or liabilities under it, or purport to do so, without the prior written consent of VITG.
- (b) VITG may assign or novate this Agreement or otherwise deal with its rights and obligations under it without the Customer's consent.

14.16 Execution and Counterparts

- (a) This Agreement may be executed in any number of counterparts, each of which, when executed, is an original. Those counterparts together make one instrument.
- (b) A counterpart may be an electronic scan or image of the original.
- (c) A Party may execute this Agreement by electronic means (e.g. DocuSign) and the Party is deemed to have signed this Agreement when they affix that electronic signature.

14.17 Costs

Except as otherwise expressly stated in this Agreement, each Party must bear their own costs of preparing, negotiating, executing, and performing this Agreement.

14.18 Governing Law

This Agreement is governed by the laws of the Jurisdiction. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Jurisdiction.

14.19 Banking Code does not Apply

The Parties agree that the Banking Code of Practice does not apply to this Agreement or any Services Agreement or Rental Agreement.

14.20 Notices

- (a) Notices under this Agreement must be in writing and in English and may be given by an authorised representative of the sender.
- (b) Notice may be given to a person:
 - (i) personally.
 - (ii) by leaving it at the person's address last notified.
 - (iii) by sending it by mail to the person's address last notified.
 - (iv) by sending it by facsimile to the person's facsimile number last notified; and
 - (v) by sending it by email to the person's email address last notified.
- (c) Notice is deemed to be received by a person:
 - (i) when left at the person's address.
 - (ii) if sent by mail, 3 Business Days after posting (provided it is correctly addressed).
 - (iii) if sent by facsimile or email, at the time and on the day shown in the sender's transmission report, if it shows that the whole notice was sent to the person's facsimile number or email address last notified.

- (d) 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.
- (e) For the purposes of this Agreement, a Party's contact person, address and email address are those set out in Part A - Party Details or as amended by written notice to the other.

15 Interpretation

15.1 General Interpretation Rules

In this Agreement, the following rules of interpretation apply unless the contrary intention appears:

- (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) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation.
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, or other body corporate.
 - (ii) a thing includes a part of that thing.
 - (iii) a party includes its successors and permitted assigns.
 - (iv) a document includes all amendments or supplements to that document.
 - (v) 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
 - (vi) a clause or term in a particular Part of this Agreement is the clause or term in that particular Part.
- (g) this Agreement includes all schedules and attachments to it.
- (h) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing.
- (i) no provision will be interpreted to the disadvantage of a particular Party merely because that Party prepared the provision or would benefit under it.
- (j) a monetary amount is in Australian dollars.
- (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) in determining the time of day, where relevant to this Agreement, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this Agreement, the time of day in the place where the party required to perform an

obligation is located.

15.2 General Definitions

In this Agreement, unless the context requires otherwise:

- (a) **Additional Costs** means any additional expenses, costs, disbursements, or Liabilities incurred by VITG as a result of the Customer or Guarantor failing to strictly comply with their obligations under this Agreement.
- (b) **Business Day** means a day that is not a Saturday, Sunday or bank or public holiday in the Jurisdiction.
- (c) **Computing Environment** means a Party's computing and IT resources including all hardware, software, information technology and telecommunications services and systems.
- (d) **Confidential Information** means whether or not in material form any information of whatever kind disclosed or revealed by one Party (the **Disclosing Party**) to the other Party (the **Receiving Party**) under or in relation to this Agreement that:
 - (i) is by its nature confidential.
 - (ii) is specified by the Disclosing Party as being confidential.
 - (iii) the Receiving Party knows or reasonably ought to know is confidential.

and in the case of the Customer includes information relating to its clients or customers or business practices, but does not include information that:

 - (iv) is published or has otherwise entered the public domain other than as a result of a breach of this Agreement.
 - (v) is obtained from a third party who has no obligation of confidentiality to the Disclosing Party; or
 - (vi) is independently discovered or developed by the Receiving Party without breach of this Agreement.
- (e) **Consequential Loss** means any:
 - (i) indirect, incidental, or consequential loss including loss of profits, revenue, production, productivity, opportunity, goodwill, reputation, or use; or
 - (ii) any abnormal or unforeseeable loss including loss of data or business interruption.
- (f) **Data** means any information, documents, and other data, including Personal Information, provided, or uploaded by the Customer, Personnel or Authorised Users in the course of accessing any Services.
- (g) **Data Incident** means any actual or suspected (by VITG):
 - (i) breach of VITG's obligations in relation to protection of Personal Information under this Agreement or Privacy Laws.
 - (ii) unauthorised access to, or unauthorised disclosure of, any Personal Information; or
 - (iii) loss or destruction of Personal Information, including where it becomes corrupted so that it becomes unusable.
- (h) **Eligible Data Breach** has the same meaning given to that term in the Privacy Act.
- (i) **Force Majeure Event** means an event which is

- beyond a Party's reasonable control including a fire, storm, flood, earthquake, explosion, accident, act of the public enemy, terrorist act, war, rebellion, insurrection, sabotage, epidemic, pandemic, quarantine restriction, government restriction, transportation embargo, and strike by employees of a third person other than a subcontractor of a Party, but in each case, only if and to the extent that the non-performing Party is without fault in causing the event, and the event, or its effect could not have been prevented by reasonable precautions.
- (j) **Insolvency Event** in relation to a Party means any of the following events in relation to that Party:
 - (i) it is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable Law.
 - (ii) an application or order is made for its winding up, bankruptcy or dissolution or a resolution is passed, or any steps are taken to pass a resolution for its winding up or dissolution.
 - (iii) an administrator, provisional liquidator, liquidator, or person having a similar or analogous function under the Laws of any relevant jurisdiction is appointed in respect of it or any action is taken to appoint any such person and the action is not stayed, withdrawn, or dismissed within 10 Business Days.
 - (iv) a controller is appointed in respect of any of its property.
 - (v) it is deregistered under the Corporations Act 2001 (Cth) or other legislation or notice of its proposed deregistration is given to it.
 - (vi) a distress, attachment or execution is levied or becomes enforceable against it or any of its property.
 - (vii) it enters into or takes action to enter into an arrangement, composition, or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them.
 - (viii) a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of it or its property.
 - (ix) a petition for the making of a sequestration order against its estate is presented and the petition is not stayed, withdrawn, or dismissed within 10 Business Days or it presents a petition against itself: or
 - (x) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the relevant Party.
- (k) **Intellectual Property** means any and all intellectual and industrial property rights throughout the world including rights in respect of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trademarks, service marks, designs and circuit layouts whether or not now existing and whether or not registered or registrable including any right to apply for the registration of such rights and all renewals and extensions.
- (l) **Jurisdiction** means the State of New South Wales in Australia.

- (m) **Laws** means (whether in Australia or any other relevant jurisdiction) all laws, codes, guidelines, and the like, including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles and requirements, statutory rules of an industry body, statutory and mandatory codes of conduct, writs, orders, injunctions, judgments, Australian generally accepted accounting principles in force or as applicable from time to time.
- (n) **Liability** means any responsibility for cost, expense, loss, damages, debt, or liability whatsoever (including legal fees) and includes responsibility for Consequential Loss.
- (o) **Personal Information** means personal information (as that term is defined in the Privacy Act) that is provided to, or obtained, accessed, hosted, stored, transmitted, or otherwise used by VITG in the course of performing its obligations under this Agreement.
- (p) **Personnel** of a person or party means their employees, agents, servants, directors, officers, representatives, or other person acting on their behalf.
- (q) **Privacy Act** means the Privacy Act 1988 (Cth) and any regulations or other subordinate instruments made under it, and any amendments or replacements thereof.
- (r) **Privacy Laws** means:
 - (i) The Privacy Act; and
 - (ii) any Law (to the extent that such legislation applies to VITG or any other recipient of the Personal Information) from time to time in force in any jurisdiction which affects privacy, personal information or the collection, handling, storage, processing, use or disclosure of Data.
- (s) **Termination Event** means any of the following events:
 - (i) If the Customer is a natural person, he or she dies, experiences total and permanent disability, or otherwise has their affairs managed in accordance with Laws in relation to mental health.
 - (ii) If the Customer is a partnership, the partnership is dissolved or a new partner is added, without the prior written consent of VITG.
 - (iii) If the Customer is a trustee of a trust:
 - (A) it ceases to be the sole trustee of the trust.
 - (B) the Customer's right to an indemnity against the trust's property becomes limited, restricted, or prejudiced in any way; or
 - (C) in VITG's reasonable opinion, the trust's property is insufficient to satisfy the Customer's indemnity; or
 - (iv) any event occurs that, in VITG's reasonable opinion, materially and adversely affects the Customer's ability to perform its obligations under this Agreement (including the Customer's financial position); or
 - (v) there is a change in the control (as control is defined in section 9 of the Corporations Act 2001 (Cth)) of the Customer.

Part B Service Terms and Conditions

1 Applicability and Definitions

1.1 Applicability of Part

This 0 – Service Terms and Conditions apply to, and are incorporated into, any Service Agreements arising out of Service Orders that are agreed between VITG and the Customer.

1.2 General Definitions and Interpretation

- (a) Except for any capitalised terms which are defined in this 0 – Service Terms and Conditions, capitalised terms have the meaning given to them in 0 – General Terms and Conditions.
- (b) The rules of interpretation in 0 – General Terms and Conditions applies to this 0 – Service Terms and Conditions.

1.3 Specific Definitions

In this 0 – Service Terms and Conditions, unless the context requires otherwise:

- (a) **Commencement Date** means the date specified as such in the relevant Services Order.
- (b) **Development Services** means any standalone software development, bespoke customisation of software or SaaS Solutions or implementation Services that VITG is required to provide, pursuant to the terms of the agreed Services Order.
- (c) **Initial Term** means the period specified as such in the relevant Services Order.
- (d) **SaaS Solution** means any software as a service solution or other software to be provided by VITG to the Customer as agreed in the agreed Services Order.
- (e) **Services** means the services that VITG is required to provide, pursuant to the terms of the agreed Services Order and includes:
- (i) any SaaS Solution (including installation, calibration, testing or training in relation to the SaaS Solution.
 - (ii) Development Services.
 - (iii) Support Services; and/or
 - (iv) services with respect to sourcing or procuring for the Customer any Sourced Equipment or Supplied Equipment.
- (f) **Support Services** means those Services identified as "Support Services" in the agreed Services Order.
- (g) **Term** in relation to a Service Agreement has the meaning given to that term in clause 3.
- (h) **VITG** in relation to VITG's obligation to provide Services, only, means the relevant VITG entity who is specified in the agreed Services Order and not any other entity comprising VITG.

1.4 1.4 Overriding terms and conditions

- (a) The Customer acknowledges that VITG may have entered into a Finance Arrangement in respect of equipment used under a Services Agreement

("Services Equipment"). The Customer agrees that despite any provision to the contrary in this Agreement:

- the terms of a relevant Finance Arrangement in respect of any such Services Equipment prevail over the terms of this Agreement.
- an event of default (however described) by VITG under a relevant Finance Arrangement will entitle the Financier to terminate this Agreement even if there is no event of default by the Customer under this Agreement.
- an event of default (however described) by the Customer under this Agreement will entitle the Financier to exercise the same rights in respect of the Services Equipment as VITG is entitled to exercise under this Agreement.
- the Financier and VITG must be noted as interested parties on insurance policies which the Customer is required to maintain; and
- the Security Interest of a relevant Financier in respect of the Services Equipment takes precedence over any other Security Interest.

In this clause:

Financier means a financier who has entered into a Finance Arrangement with VITG in respect of Services Equipment which is being leased to the Customer under the Services Agreement.

Finance Arrangement means any finance arrangement between VITG and a Financier under which VITG has or is acquiring Equipment (whether by way of an equipment loan, finance lease or otherwise) which is being leased to the Customer under the Services Agreement.

2 General Provision of Services

2.1 VITG to Provide Services

In consideration for the Customer paying to VITG Fees specified in the Services Order, VITG will provide the Services pursuant to the terms of the Services Order and the resulting Service Agreement (including by providing Personnel to perform those Services).

2.2 Timing and delays

Where the Services Order or VITG states that particular Services will be completed or delivered by a particular time:

- (a) that time is an estimate only; and
- (b) VITG will not be responsible for any loss or Liability arising out of VITG failing to complete or deliver Services by that time.

2.3 Exclusion of Liability for Extraneous Work

To the maximum extent permitted by Law, VITG will not be responsible, and will not have any Liability, for any works, goods, services, materials, or items which:

- (a) do not form part of the Services as strictly set out in the Services Order; or

(b) which are not provided by VITG.

3 Term of Services Agreement

3.1 Term

A Services Agreement:

- (a) commences on the Commencement Date for that Services Agreement; and
- (b) ends or expires on the earlier of:
 - (i) termination of the Services Agreement; or
 - (ii) the end of the Initial Term (as extended or varied in accordance with the terms of the Services Agreement).

(Term)

3.2 Holding Over

The Initial Term for a Services Agreement is automatically extended by one (1) calendar month on the day that it would otherwise expire unless either VITG or the Customer gives the other a written notice at least 30 days prior to the end of the Initial Term that they want the Services Agreement to end (**Holding Over Period**). All recurring or periodic Fees continue to accrue and apply during any Holding Over Period.

3.3 Termination during Holding Over

Either VITG or the Customer may terminate a Services Agreement where the date of termination would occur during any Holding Over Period by giving the other 30 days' prior written notice.

4 Authorised Users

4.1 Only Authorised Users may use Services

The Customer must ensure that only its Authorised Users, and no other persons whatsoever, use or access the Services.

4.2 Protection of Access Credentials

To the extent that, as a part of the Services VITG provides Authorised Users with any access credentials to use or access any part of the Services (i.e. usernames or passwords), the Customer must, and must ensure its Authorised Users:

- (a) keep those access credentials safe and secure.
- (b) only use those access credentials for the purposes of accessing the relevant Services.
- (c) not share those access credentials with any other person or allow any other person to use those access credentials to access the Services.

4.3 Use of Access Credentials

To the extent that any act is done using an Authorised User's access credentials, VITG may take that as an act done by that Authorised User and the Customer without further investigation.

5 Provision of SaaS Solution

5.1 License to Use SaaS Solution

- (a) During the Term of the Services Agreement, VITG grants to the Customer a non-exclusive, non-transferable, and non-sublicensable licence to access and use the SaaS Solution (**SaaS Licence**).
- (b) The SaaS Licence:

- (i) commences on the Services Agreement Commencement Date, or the date on which the Customer and its Authorised Users are granted access to the SaaS Solution, whichever is earlier; and

- (ii) only permits the Customer to access, install, and use the SaaS Solution in accordance with the number and type of Authorised Users set out in the relevant Services Order.

5.2 Interaction with Customer Computing Environment

- (a) The SaaS Solution will only be supported by the operating system and platforms specified by VITG to the Customer (as specified in the relevant Services Order).
- (b) Apart from clause 5.2(a), VITG gives no representations or warranties in relation to the compatibility of the SaaS Solution with the Computing Environment of the Customer or any part thereof.
- (c) The Customer is responsible for testing the SaaS Solution in its Computing Environment and in this respect:
 - (i) the Customer must notify VITG of any issues encountered by the Customer with the operation of the SaaS Solution within 5 Business Days of the SaaS Solution being installed on the Customer's Computing Environment; and
 - (ii) if the Customer deploys the SaaS Solution in its live and/or non-test Computing Environment, the SaaS Solution will be deemed to be accepted in full by the Customer.

5.3 Protection of SaaS Solution and Intellectual Property

The Customer must, and must ensure its Personnel and Authorised Users:

- (a) only access and use the SaaS Solution in accordance with the terms of the SaaS Licence; and
- (b) not do anything or authorise the commission of any act that may be inconsistent with VITG's or any third party's Intellectual Property rights in the SaaS Solution.

5.4 Compliance with Terms of End User Licence

Where the SaaS Solution or any part thereof is provided by a third party and requires its users to accept further conditions for use (**End User Licence Agreement**), the Customer must, and must ensure its Authorised Users:

- (a) agree to the End User Licence Agreement; and
- (b) comply with the terms of the End User Licence Agreement at all times when using the SaaS Solution.

5.5 Variation to SaaS Solution

VITG reserves the right to vary the functionality or other capabilities of the SaaS Solution from time to time and at VITG's sole discretion, provided that it does not materially and adversely affect the intended purpose of the SaaS Solution.

6 Support Services

6.1 Provision of Support Services

Subject to clause 6.2, during the Term of a Services Agreement, VITG will provide the Support Services specified in the relevant Services Order but only during Business Days and during the usual business hours of VITG.

6.2 Customer to Comply with Processes

For VITG to provide the relevant Support Services, the Customer, its Personnel or Authorised Users must:

- (a) provide VITG with written notice that particular Support Services are required in accordance with any applicable systems and processes set out in the Services Order (or as notified by VITG to the Customer from time to time); and
- (b) when requested by VITG, provide VITG with all assistance in investigating and ascertaining the cause of any faults and otherwise providing to VITG all necessary information in relation to any particular faults or issues (including but not limited to what the Customer, its Personnel or Authorised Users have done leading up to or as a result of the relevant fault).

7 Development and Project Services

7.1 General Obligation to Perform

VITG will use its best endeavours to provide any Development or Project Services in accordance with the times, and by the relevant deadlines or milestones, set out in the relevant Services Order.

7.2 Ownership of New IP

Unless specified in the agreed Services Order:

- (a) VITG solely owns all Intellectual Property subsisting in materials, products or source codes created or developed in the course of providing Development Services; and
- (b) VITG grants the Customer a non-exclusive, non-transferable, and non-sublicensable licence to access and use that Intellectual Property from the creation or development of that Intellectual Property until the end of the Term of the Services Agreement for the sole purpose of the Customer accessing and using the Development Services during the Term of that Services Agreement.

7.3 Projects - Staged Payments

- (a) Payments for all projects shall be in line with the 40/40/20 staged method. That is:
- (b) A 40% payment shall become due and payable on instruction to begin given to VITG or on signing of a Services Order Form by the Customer.
- (c) The next 40% payment shall become due and payable on achieving an agreed milestone or on completion of sufficient progress to justify the staged payment as determined by VITG in its absolute discretion.
- (d) The final 20% payment shall become due and payable on completion of the project, as determined by the Customer and VITG together.

8 Testing of Services

8.1 VITG Testing

Within Ten Business Days of installing relevant Services (including any SaaS Solution or completion of Development Services), VITG will test those Services and notify the

Customer of any defects or faults that VITG discovers in the Services.

8.2 Customer Testing

The Customer must test any installed Services and notify VITG of any defects or faults that the Customer discovers in those Services caused by a breach of the Services Agreement by VITG within 5 Business Days of the Customer being given access to those Services.

8.3 Rectification of Defects

If VITG discovers, or is notified of any defects or faults in the Services in accordance with clause 8.1 or 8.2, VITG will:

- (a) use all reasonable efforts to rectify the faults or defects within 30 days of becoming aware of those defects or faults: or
- (b) if VITG is unable to remedy the defect or fault, at VITG's option:
 - (i) provide to the Customer a credit (against future Fees) for an amount that VITG reasonably believes is the loss of functionality of the Services as a result of the defect or fault; or
 - (ii) refund to the Customer an amount of Fees paid by the Customer for an amount that VITG reasonably believes is the loss of functionality of the Services as a result of the defect or fault.

9 Service Levels

9.1 VITG Compliance with Service Levels

If the Customer and VITG have agreed to a Service Level Agreement in relation to any particular Services Order or Services Agreement, VITG will use its best endeavours to ensure that, in providing the Services, it will meet or exceed the service levels set out in the Service Level Agreement.

10 Sourced Equipment

10.1 Notification of Details

Where a Services Order states there is any Sourced Equipment required for the Customer to access or use any Services and will be sourced by VITG, VITG will give the Customer notice of the required model, number and specifications for that Equipment, and details of the third party from whom the Customer is able to acquire such equipment (**Sourced Equipment**).

10.2 Customer to Order

The Customer is responsible for ordering, arranging for delivery, installation, financing and paying for any Sourced Equipment.

10.3 No Representations or Warranties

To the fullest extent permitted by law:

- (a) VITG does not give any representations or warranties, and expressly disclaims any warranties or guaranties, in relation to Sourced Equipment, including in relation to their condition, quality, fitness for any particular purpose, design, suitability or safety whatsoever; and
- (b) The Customer is responsible for conducting its own due diligence with respect to any Source Equipment, including testing such Source Equipment after delivery.

10.4 Delays in Procuring Sourced Equipment

If there is any delay or failure in the Customer procuring Sourced Equipment, and such delay or failure prevents VITG from performing any part of the Services, VITG will not be responsible or liable in any way as a result of the delay or failure to perform those Services.

10.5 Rented Equipment are Sourced Equipment

For the avoidance of doubt, any equipment that the Customer wishes or intends to rent from VITG pursuant to the terms of a Rental Agreement will be deemed Sourced Equipment for the purposes of any Services Agreement that equipment is relevant to.

11 Supplied Equipment

11.1 VITG to Supply Supplied Equipment

VITG will supply and sell to the Customer any Supplied Equipment specified in the relevant Services Order.

11.2 Title and Risk to Supplied Equipment

- (a) Title to the Supplied Equipment remains with VITG until the later of:
 - (i) delivery of the Supplied Equipment; or
 - (ii) the Customer pays all Fees for the Supplied Equipment in full pursuant to the terms of the Services Order.
- (b) Until title to the Supplied Equipment passes to the Customer pursuant to clause 11.2(a):
 - (i) VITG may at any time, and without prior notice to the Customer, enter into the premises of the Customer for the purposes of reclaiming possession and custody of the Supplied Equipment, even if the Supplied Equipment has been moved from its delivery location.
 - (ii) the Customer agrees to give VITG convenient and safe access to its premises, or procure such access to anywhere the Supplied Equipment is located, for the purposes of VITG or its representatives exercising its right under clause 11.2(b)(i); and
 - (iii) VITG may keep or resell any such Supplied Equipment.
- (c) Risk of loss, damage and destruction of the Supplied Equipment passes to the Customer when they are delivered to the Customer.

11.3 Defects in Supplied Equipment

- (a) The Customer must inspect the Supplied Equipment and notify VITG in writing of any fault, defect, or error in the Supplied Equipment within 24 hours of delivery and include any photos and description of the defect. VITG agrees, at VITG's cost and at VITG's option, to:
 - (i) replace the defective Supplied Equipment with a replacement.
 - (ii) repair or remedy the defect (to the maximum amount of the Fees relating to that defective Supplied Equipment); or
 - (iii) refund or provide a credit to the Customer for that part of the Fees that relate to that particular defective Supplied Equipment.
- (b) To the fullest extent permitted by law, VITG's aggregate liability for any fault, defect, error,

omission or lack of functionality or suitability with respect to any Supplied Equipment will be limited to the costs that VITG may incur in complying with and doing one of the things specified in clause 11.3(a).

- (c) When requested by VITG, the Customer must return any Supplied Equipment that the Customer claims is defective together with its original packaging, parts, accessories, documentation and/or proof of purchase that accompanied that Supplied Equipment. The Customer must ensure that the Supplied Equipment is adequately packaged to ensure that it is not damaged during delivery, and that such equipment is in reasonable condition.

12 VITG Equipment

12.1 Provision of VITG Equipment

Where the Services Order states that VITG will provide equipment (**VITG Equipment**) for the Customer's use in order to access the Services:

- (a) VITG will install and maintain such VITG Equipment in the Customer's business premises.
- (b) VITG will use reasonable efforts to ensure VITG Equipment is safe, free from defects and fit for the purpose for which it is provided; and
- (c) ownership and title to the VITG Equipment, including any replacements, parts, components, or accessories remains with VITG at all times, and VITG is only lending such VITG Equipment to the Customer for use in conjunction with the Services during the Term of the Services Agreement.

12.2 Access to Premises

- (a) At all reasonable times, the Customer must grant to, or procure for, VITG and its Personnel, agents, and contractors the right to enter and remain at the delivery location where VITG Equipment is or is intended to be installed for the purposes of:
 - (i) installing the VITG Equipment.
 - (ii) inspecting, maintaining, repairing, or replacing any VITG Equipment.
 - (iii) retrieve or repossess VITG Equipment; or
 - (iv) anything else that is incidental to the purposes above.
- (b) The Customer represents and warrants that it has (at its own cost) obtained all necessary consents, licenses, authorisations, and approvals necessary (including from any landlord or owner of the delivery location) to permit:
 - (i) the supply, delivery, installation, and storage of the VITG Equipment at the relevant delivery location; and
 - (ii) access to VITG pursuant to clause 12.2;

and the Customer agrees to provide copies of those consents, licenses, authorisations, and approvals to VITG when requested by VITG.

12.3 Customer Obligations

The Customer must, at all times after VITG Equipment has been delivered to the Customer and before VITG receives such VITG Equipment back from the Customer:

- (a) keep the VITG Equipment safe and secure and take reasonable precautions to protect the VITG Equipment from theft, loss, or damage.

- (b) not remove, alter, tamper with, or otherwise change any plates, markings, serial numbers or similar on the VITG Equipment that may be used as an identifier or otherwise indicate VITG's ownership of such VITG Equipment.
- (c) reimburse VITG on demand the costs of repairing or replacing any VITG Equipment that is damaged as a result of the Customer's, its Personnel's or Authorised Users' acts or omissions.
- (d) not move the VITG Equipment from its delivery location.
- (e) not damage or interfere with the VITG Equipment.
- (f) obtain and maintain insurance with a reputable insurance company against risk of damage or loss to the VITG Equipment for a value reasonably satisfactory to VITG and:
 - (i) ensure that such insurance policy includes VITG as an interested party; and
 - (ii) provide evidence of that insurance to VITG immediately when requested by VITG.

13 Customer's Equipment

13.1 General Warranties

If the Customer is providing its own equipment to access or use the Services (including the Customer's Computing Environment) (**Customer Equipment**), the Customer represents and warrants in favour of VITG that:

- (a) the Customer Equipment is safe and suitable for use in relation to the relevant Services.
- (b) the Customer has all necessary rights, consents, authorities, and approvals necessary to use the Customer Equipment and allow VITG to use the Customer Equipment in performance of the Services.
- (c) the Customer and VITG's use of the Customer Equipment does not violate any Laws or the rights of any third party; and
- (d) VITG may make reasonable modifications to the Customer Equipment if necessary, to provide the Services.

13.2 No Liability for Faults or Defects

To the extent that there is any fault or defect in the Customer Equipment, or the Customer Equipment causes any fault, defect, or loss of functionality in the Services:

- (a) the Customer agrees that VITG will not be responsible or have any Liability for any loss of functionality or damage to the Services caused by the Customer Equipment; and
- (b) on demand by VITG, the Customer must pay to VITG its reasonable costs of restoring or repairing any Services that are lost or damaged as a result of the Customer Equipment or any faults or defects therein.

14 Disengagement and Return of Equipment

14.1 Relocation of Data

If under a Services Agreement VITG is providing a SaaS Solution or Data hosting services, then if that Services Agreement is terminated or otherwise comes to an end:

- (a) The Customer must, within 10 Business Days of the date of termination or expiry copy all the Customer's

Data that is hosted on such Services and relocate that Data to alternative services.

- (b) VITG will allow the Customer access to Services (including to any of VITG's servers) to the extent it is necessary for the Customer to comply with clause 14.1(a); and
- (c) After the period specified in clause 14.1(a), VITG may permanently delete (with no Liability to the Customer whatsoever) any and all Data stored on VITG's servers or using the Services, and the Customer authorises VITG to do so.

14.2 Disengagement Services

VITG may offer to provide the Customer disengagement support services at VITG's then prevailing rates for professional fees. VITG is not under any obligation to provide disengagement support unless VITG and the Customer agree in writing to:

- (a) the scope of those disengagement services; and
- (b) the Fees that are payable by the Customer to VITG with respect to those disengagement services.

14.3 Return of Equipment

When a Services Agreement comes to an end (whether by termination or otherwise), the Customer must:

- (a) promptly return to VITG (and no later than 10 Business Days after the Services Agreement coming to an end):
 - (i) all Supplied Equipment which has not been paid for in full; and
 - (ii) all VITG Equipment; and
 - (iii) all associated parts, components, accessories, documentation, and software.

(**Returnable Equipment**) to a location reasonably requested by VITG.

- (b) in the alternative to clause 14.3(a) (at the option of VITG) grant or procure access for VITG to any premises in which any Returnable Equipment is situated for the purposes of VITG reclaiming possession of that Returnable Equipment.
- (c) ensure that the Returnable Equipment is in reasonable condition having regard for its age and fair wear and tear; and
- (d) to the extent that any Returnable Equipment is not returned to VITG within the period specified at clause 14.3(a), pay to VITG on demand VITG's reasonable costs of replacing that Returnable Equipment with equivalent equipment.

15 Cancellation Fee

15.1 When Cancellation Fee Applies

The Customer must pay to VITG, as a debt due and payable, a Cancellation Fee calculated in accordance with clause 15.2 if:

- (a) a Services Agreement is terminated prior to the end of its Initial Term (without any extensions of that Initial Term as a result of any holding over); and
- (b) that Services Agreement is terminated for any reason other than:
 - (i) clause 8.4 of Part A – General Terms and Conditions (VITG Termination as a result of issues with Third Party Inputs or Third-Party Services and Products); or

- (ii) clause 8.6 of Part A – General Terms and conditions (Customer termination for VITG default).

15.2 Amount of Cancellation Fees

The amount of Cancellation Fee payable by the Customer in relation to a Service Agreement is equal to the aggregate of all Fees that would have been paid by the Customer (but

has not been paid) under that Service Agreement if it had continued until the end of its Initial Term.

15.3 Genuine Pre-Estimate of Loss

The Customer agrees and acknowledges that the amount of Cancellation Fee calculated in accordance with clause 15.2 is a reasonable and genuine pre-estimate of the loss and damage that VITG will suffer as a result of the Services Agreement being terminated prior to the expiry of its Initial Term.