

1. Preamble

- 1.1 This Agreement is between iiter and the Customer.
- 1.2 This Agreement may be accepted by doing either one or more of the following:
 - (a) Signing these terms and conditions; or
 - (b) Signing the proposal, Schedule or quotation issued by iiter in which these terms and conditions were attached or referred to; or
 - (c) Placing an order or request for Goods or Services or accepting Goods or Services or a quotation or proposal after receiving notice of these terms and conditions.

2. Definitions and Interpretation

- 2.1 In this agreement, except to the extent that the context otherwise requires:
 - (a) **'Agreement'** means these terms and conditions, a schedule, quotation or proposal in which these terms and conditions are referred or to which they are attached and any other annexures referred to in the preceding documents.
 - (b) **'AWS'** means Amazon Web Services Inc.
 - (c) **'AWS Services'** means the services provided by iiter which relate to, are derived from or are connected with an AWS based service or platform.
 - (d) **'Azure'** means the Microsoft Azure cloud services.
 - (e) **'Customer'** means person or entity named as the Customer in the attached or referenced schedule, proposal or quotation.
 - (f) **'Goods'** means all goods supplied by iiter to the Customer from time to time.
 - (g) **"Intellectual Property Rights"** means copyright, trademark, design, patent, and any other rights whether or not they are registered or registrable, relevant to, among other things, the textual, graphical, electronic, audio and other information, content, data or material used by iiter in respect to this Agreement.
 - (h) **'iiter'** means iiter Pty Limited ACN 654 686 101.
 - (i) **'Services'** means all services supplied by iiter to the Customer from time to time.
 - (j) **"Third Party Vendors"** third parties not party to this agreement that provide services to the Customer
- 2.2 A reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's officers, employees, executors, administrators, successors and permitted assigns and substitutes.
- 2.3 A reference to a statute, regulation or by-law includes a reference to any amendment, re-enactment or consolidation of such instrument from time to time.

3. Supply of goods and services

- 3.1 iiter agrees to supply Goods and/or Services to the Customer in accordance with this Agreement.
- 3.2 The Customer agrees and acknowledges and agrees that iiter may rely on Third Party Vendors to provide certain services. From time to time, these vendors may undergo changes, including but not limited to acquisitions, mergers, and alterations to the services they offer.
- 3.3 In the event of any changes made by Third Party Vendors, including changes in their pricing or service offerings. iiter reserves the right to adjust its own services and pricing to reflect these changes.

4. Purchase Orders

- 4.1 All requests for the supply of Goods and/or performance of Services must be made to iiter in writing, and delivered by facsimile, post or email. iiter may in its absolute discretion choose not to accept any order or request for Goods or Services without reason.
- 4.2 Any amendments to purchase orders for Goods or Services must be approved by iiter in writing to be effective. Acceptance of a purchase order does not constitute acceptance of any terms and conditions other than those specified in this Agreement or expressly accepted in writing and signed by or on behalf of iiter. For the avoidance of doubt, even where the Customer attaches or refers to other terms and conditions in purchase orders or other requests for quotations or Goods or Services, received after this Agreement has been entered into (**additional terms**), such additional terms are expressly excluded from this Agreement and will be of no force or effect against iiter unless it expressly agrees otherwise (by notice in writing, signed by a director of iiter).
- 4.3 The Customer acknowledges that Goods delivered to a courier are outside iiter's control and iiter will not be liable for any loss, damage, delay or non-delivery of goods contributed to by a third party, to the extent permitted by law.
- 4.4 Deliveries shall be made during normal working hours and at the cost and risk of the Customer. In the event the Customer or the Customer's agent is not on site to accept the delivery, then the driver's signature denoting the time, date & place of delivery, shall be deemed to be acceptance of the said delivery by the Customer.
- 4.5 If a date for supply of Goods or Services is nominated by the Customer, iiter will not be bound to supply Goods or Services by that date unless it expressly agrees to do so in writing, signed by iiter, in which case, it will be deemed to agree to use reasonable endeavours to supply by the relevant date. iiter will be excused from any failure to supply which is contributed to by causes beyond its reasonable control and the time specified for completion of supply will be extended commensurately.

5. Warranty

iiter makes available no additional warranty in relation to the Goods and Services other than those prescribed by law, or in the case of Goods manufactured by a third party, warranties provided by the respective third-party manufacturer as described in documentation supplied by iiter or by the manufacturer.

6. Acceptance

Unless the Customer provides iiter with written notice on any aspect of delivery and supply which is alleged to be other than in accordance with this Agreement within 7 days of delivery, the Customer is deemed to have accepted the respective Goods or Services for that delivery.

7. Ownership

- 7.1 Notwithstanding the delivery of any Goods or part of them, the Goods remain the sole and absolute property of iiter as full legal and equitable owner until such time as the Customer has paid iiter the full purchase price of the Goods together with the full price of any other goods then the subject of any other contract with iiter. Risk in all Goods passes to the Customer on delivery.
- 7.2 The Customer acknowledges that it receives possession of and holds Goods delivered by iiter solely as bailee for iiter until such time as the full price for those Goods has been paid to iiter together with the full price of any other goods then the subject of any other contract with iiter. Until such time as the Customer becomes the owner of the Goods, it must:
 - (a) Store them on the premises separately;
 - (b) Ensure that the goods are kept in good and serviceable condition;
 - (c) Secure the Goods from risk, damage and theft; and

- (d) Keep the Goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Customer.
- 7.3 Until the Goods are paid for in full:
- (a) The proceeds of any sale of the Goods (or sale of other goods into which the Goods have been incorporated) must be paid into a separate account and held in trust for iiter. The Customer must account to iiter from this fund for the full price of the Goods;
 - (b) The Customer is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale received the Customer shall account to iiter for the price of the Goods immediately;
 - (c) Should the Customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy law or being a company calls a meeting for the purpose of or to go into liquidation or have a winding-up petition presented against it or has a receiver or administrator appointed, iiter may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this Agreement suspend or cancel this Agreement or require payment in cash before or on delivery or tender of Goods or documents notwithstanding terms of payment previously specified or may, subject to the law, repossess and take over the Goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.
- 7.4 If the Customer does not pay for any goods on the due date then iiter is hereby irrevocably authorised by the Customer to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer in which the goods are stored at such premises) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever.
- 7.5 On retaking possession of the goods iiter may elect to refund to the Customer any part payment that may have been made and to credit the Customer's account with the value of the Goods less any charge for recover of the goods, or to resell the Goods.
- 8. Security and PPSA**
- 8.1 For the purposes of this clause, "PPSA" means the Personal Property Securities Act 2009 (Cth) as amended from time to time. Where a particular section or term from the PPSA is used in this Agreement, it is deemed to be that section or term as defined or used in the PPSA as amended, renumbered or replaced from time to time.
- 8.2 The Customer acknowledges and agrees that this Agreement constitutes a security agreement in relation to iiter's security interest in all present and after-acquired Goods for the purposes of the PPSA. The Customer agrees to grant a "Purchase Money Security Interest" to iiter.
- 8.3 For the avoidance of doubt, the Customer acknowledges and agrees that it grants to iiter a security interest in all Goods supplied by iiter to the Customer (whether now or in the future) and in any proceeds from the sale of those goods.
- 8.4 To the extent permitted by law, the following provisions of the PPSA do not apply, and for the purposes of section 115 of the PPSA are contracted out of this Agreement:
- (a) sections 95 (notice of removal of accession), to the extent that it requires iiter to give a notice to the Customer, 96 (retain of accession) and 125 (obligation to dispose of or retain collateral);
 - (b) section 130 (notice of disposal), to the extent that it requires iiter to give a notice to the Customer;
 - (c) section 132(3)(d) (contents of statement of account after disposal);
 - (d) section 132(4) (statement of account if no disposal);
 - (e) section 135 (notice of retention);
 - (f) section 142 (redemption of collateral); and
 - (g) section 143 (reinstatement of security agreement).
- 8.5 For the purposes of section 14(6) of the PPSA, the Customer (and iiter) agree that any payments received from the Customer by iiter pursuant to or in any way connected with this Agreement, will be applied in such order as iiter deems fit in its absolute discretion.
- 8.6 The Customer consents to:
- (a) and agrees to execute any other document or instrument required to give effect to the security interests created by this Agreement; and
 - (b) the registration with the relevant authority or public register of any security interest created by this Agreement or any other document required to give effect to a security interest created by this Agreement, including without limitation the registration of a financing statement or financing change statement on the Personal Property Securities Register.
- 8.7 The Customer must pay all costs of and incidental to the preparation, execution and registration of any instrument which is executed for the purposes of giving effect to this clause and must also pay all costs incidental to the withdrawal, discharge or release of such instrument.
- 8.8 To the extent permissible at law, the Customer waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relation to a Security Interest granted by the Customer, as Grantor to iiter.
- 9. Returns**
- Returns on Goods can only be accepted if authorised in writing by iiter (which may be given, given with conditions or withheld in the absolute discretion of iiter), and the Goods are in the same condition as delivered and within 14 days of delivery. iiter reserves the right to charge the Customer for any costs or losses incurred by iiter, in addition to any amounts charged by the third-party manufacturer of the Goods. Software returns are accepted under any circumstances.
- 10. Intellectual Property**
- 10.1 Unless expressly agreed otherwise in writing by iiter, any pre-existing Intellectual Property Rights owned by iiter before the commencement of this Agreement, will remain vested in iiter.
- 10.2 Any pre-existing Intellectual Property Rights owned by the customer before the commencement of this Agreement, will remain vested in the customer.
- 10.3 The customer agrees to grant to iiter a non-exclusive, transferable, royalty free licence to use the customer's pre-existing Intellectual Property Rights to the extent that use relates to the provision of Goods and Services under to this Agreement.
- 10.4 Subject to any Intellectual Property Rights existing in any third party materials, all Intellectual Property Rights, created by iiter on or after the commencement of this Agreement will remain vested in iiter notwithstanding those rights were created pursuant to or for use in or with Goods or Services supplied to or performed for the customer. iiter hereby grants the customer a personal, revocable, licence to use such Intellectual Property Rights for internal purposes only in connection with gaining benefit and use of the goods and services supplied under this Agreement.
- 10.5 Where deemed necessary by iiter, certain of its or its supplier's Intellectual Property Rights (including software and services) will be licensed to the Customer on terms set out in separate licence agreements provided with the Goods as specified by documentation supplied by iiter or by the respective manufacturer from time to time. Where iiter notifies you of the existence or requirement to enter into any third party licence agreements, the customer must prior to

delivery of goods or performance of services enter into such licence agreements.

10.6 Following on from the preceding, iiter hereby notifies you of the existence of AWS Customer Licence Terms. By entering into this Agreement, the customer acknowledges that its use of the AWS Services is subject to the AWS Customer Licence Terms, a separate agreement between the customer and Amazon Web Services Inc, a current version of which is attached to this Agreement.

11. Customer obligations

11.1 The Customer shall make available to iiter at all times during business hours complete, correct and adequate information, and such of its equipment and facilities and its personnel as required to provide such access and information as iiter may reasonably require in order to perform the Services.

11.2 The Customer will accept the consequences of all instructions, specifications or directions given by the Customer or by any of its employees and carried out by iiter in good faith. Unless iiter expressly and in writing agrees otherwise, iiter does not represent or guarantee that the outcome of the Services will meet the Customer's expectations or objectives.

11.3 The Customer shall indemnify and save iiter harmless from and against any expense, loss, claim, judgment, award or order (including settlement of any claim entered into upon legal advice) suffered by or made against iiter arising from or incidental to compliance by iiter with any instruction, specification or direction of the Customer.

12. Subcontracting

12.1 iiter and the Customer hereby acknowledge and agree that iiter may subcontract certain portions of the work it is performing under this Agreement. iiter will be responsible for the performance of iiter's subcontractors on iiter's obligations under this Agreement.

13. Payment Terms; GST

13.1 All Goods and Services are either supplied at prices contained in a corresponding and valid quotation or proposal prepared by iiter or if none, then at iiter's published prices current at the time of supply in \$AUD. The price of any Goods is quoted EXW (Incoterms 2010) from iiter's premises.

13.2 The Customer must make payment to iiter of the price of each Good or Service supplied by iiter as set out in corresponding tax invoice. Payment must be made within thirty (30) days from the end of month in which iiter's invoice is dated. In the event of a dispute by the Customer with any invoiced fees or charges, the Customer will pay the undisputed portion.

13.3 The Customer will reimburse iiter any expenses reasonably incurred by iiter in the performance of the Services in addition to the price for the supply of the Services.

13.4 The prices for supply of Goods and/or Services under this Agreement are exclusive of GST. If as a result of any party to this Agreement making a supply under or in connection with this Agreement, that party (the "Supplier") becomes liable to remit an amount of GST:

- (a) the amount otherwise payable by the party providing the consideration for that supply ("Recipient") shall be increased by the amount reasonably determined by the Supplier as the amount of GST for which the Supplier is liable as a result of making that supply ("additional amount"); and
- (b) the additional amounts shall be payable at the same time and in the same manner as the consideration otherwise payable under this Agreement.

13.5 "GST", "GST law" and other terms used in Agreement which have definitions in the A New Tax System (Goods and Services Tax) Act

1999 have the meanings provided in those definitions and any other applicable legislation and any ruling whether binding or nonbinding.

13.6 If payment in full is not made by the Customer within thirty (30) days of the due date for payment, then without prejudice to any other of iiter's rights under this Agreement or at law:

- (a) the Customer shall pay upon demand interest upon such unpaid amounts at the rate of two per cent (2%) over iiter's bank's overdraft rate for corporate customers. The Customer acknowledges that such interest is a genuine pre-estimate of iiter's cost of funding such overdue amounts and is not a penalty;
- (b) The Customer shall pay the cost of any collection, legal costs and related costs incurred by iiter in respect of the unpaid invoice/s; and
- (c) iiter will be at liberty to suspend all credit and supply to the Customer and place all work on hold indefinitely. **14.**

Termination/Amendment/Rescheduling

14.1 The Customer may reschedule the provision of any Services no later than fourteen (14) days prior to the scheduled date of commencement of such Services, for any period up to thirty (30) days from the scheduled date of commencement or as otherwise agreed in writing by iiter. In the event that the Customer requests rescheduling less than fourteen (14) days prior to the scheduled date of commencement of any Services, or for a period longer than thirty (30) days from the scheduled date of commencement, iiter may require payment, and the Customer will pay on iiter's invoice, a rescheduling fee of twenty-five per cent (25%) of the estimated or fixed fee for the provision of such Services, which is a genuine pre-estimate of iiter's cost of redeployment of personnel.

14.2 Either party may terminate any of the Services, or this Agreement as a whole, with or without cause, by thirty (30) days' prior written notice.

14.3 In the event of termination of this Agreement or any of the Services by the Customer without cause under clause 14.2 or termination or suspension of any of the Services or the whole of this Agreement by iiter for cause under clause 14.4, iiter will as soon as possible discontinue the performance of the Services affected thereby and the Customer will pay iiter:

- (a) iiter's charges on a time and materials basis for all of the affected Services performed by it up to the effective date of such termination or suspension; and
- (b) a termination fee equal to twenty-five percent (25%) of the estimated or agreed fixed fee for the provision of all remaining such Services not performed (in the case of Services subject to a fixed fee, such percentage shall apply to any balance remaining after deduction of the amount invoiced in respect of such Services under paragraph (a) of this clause), which is a genuine pre-estimate of iiter's cost of redeployment of personnel.

14.4 In addition, either party may suspend performance of any of the Services, or terminate this Agreement as a whole, and/or require delivery of any item of equipment or documentation remaining upon the other's premises forthwith at any time after:

- (a) failure to comply with any obligation of the other party under this Agreement or any other agreement between the parties and the continuance of such breach for a period of twenty-one (21) days after the due date for performance of that obligation.
- (b) an order is made for the other party or any holding company of the other party ("the relevant company") to be wound up otherwise than voluntarily for the purpose of amalgamation or reconstruction, the relevant company becomes insolvent or bankrupt, has a receiver of its property or assets or any of them

appointed, has an official manager appointed, makes or offers to make any assignment for the benefit of creditors, enters or offers to enter into a deed or scheme or arrangement of composition with creditors, or any proceedings under any bankruptcy or liquidation or insolvency laws are commenced by or against the relevant company.

14.5 In the event of termination or suspension of performance of any of the Services or the termination of the whole of this Agreement for any reason, iiter shall not be liable to pay any refund or rebate of any fees already paid by the Customer, but such payment will be credited against any liability of the Customer under this clause.

14.6 iiter reserves the right to amend this Agreement, provided such amendments are conveyed to the customer in writing. The customer further acknowledges that such writing will be by ordinary mail to the address set out in the original credit application, proposal or quotation, unless the customer advises in writing to iiter a new address, and this new address is acknowledged by return in writing by iiter. Any amendments will be deemed to be accepted upon placement of a further order

with iiter after notice of the amendment, or 28 days, from notice, whichever occurs first.

15. Exclusion and Limitation of Liability

15.1 While iiter will take all reasonable measures to preserve the Customer's data to which iiter may have access in the course of provision of the Services, iiter cannot accept any responsibility in the event that any data is corrupted or erased for any reason. The Customer accepts that it must maintain backup data in order to avoid any loss or damage arising from such corruption or erasure, and will indemnify and save iiter and its employees harmless from any loss or damage howsoever arising as a result of any claim by the Customer or any third party as a result thereof.

15.2 The Customer acknowledges by entry into this Agreement that no promise, representation, warranty or undertaking has been made or given by iiter or any person on its behalf in relation to the capacity, uses or benefits to be derived from use, profitability of or any other consequences of or benefits to be obtained from the provision of the Services, except as set out in this Agreement and any additional Statement of Work governed by this Agreement, and that the Customer has relied on its own skill and judgment in deciding to acquire the Services. In particular, the Customer acknowledges that iiter does not and cannot warrant that any services will be uninterrupted, error free, or free of harmful components, or that any content will be secure or not otherwise lost or damaged.

15.3 In the event that the supply of any goods or services under this Agreement constitutes a supply of goods or services to a consumer as defined in the Competition and Consumer Act 2010 (Cth), as amended, or relevant State or Territory legislation ("the Acts"), nothing contained in this Agreement excludes, restricts or modifies any condition, warranty or other obligation in relation to this Agreement and the goods and services to be supplied hereunder, which pursuant to the Acts or any of them is applicable or is conferred on the Customer where to do so is unlawful. In any event iiter's sole liability for breach of any such condition, warranty or other obligation, including any consequential loss which the Customer may sustain or incur, shall be limited (except to the extent specifically set forth herein) to:

- (a) in relation to goods:
 - (i) the replacement of the goods or the supply of equivalent goods or payment of the cost of replacing the goods or acquiring equivalent goods; or
 - (ii) the repair of the goods or payment of the cost of having the goods repaired;
- (b) In relation to services:

- (i) the supplying of the services again; or
- (ii) the payment of the cost of having the services supplied again as in each case iiter may select.

15.4 Subject only to clause 15.3, all conditions and warranties which would or might otherwise be implied in this Agreement, whether by operation of statute, inference from circumstances, industry practice or otherwise, are hereby excluded.

15.5 Other than as set out in clause 15.3, and notwithstanding anything else in this Agreement, under no circumstances will iiter be liable to the Customer:

- (a) in respect of any loss or damage suffered by the Customer in the nature of consequential, incidental, exemplary or indirect loss or damage, loss of profit, use or data, or loss of or damage to goodwill or any other opportunity or expectation benefit;
- (b) for any unanticipated down time of all or a portion of the services (or any systems or processes connected with the services) for any reason;
- (c) for any unauthorised access to, alteration of or deletion, destruction, damage, loss or failure to store any of the customer's content or other data;
- (d) in respect of any liability of the Customer to any third party; or
- (e) in respect of any loss, damage or injury to the extent the aggregate of all liability for all claims under or incidental to this Agreement exceed the value of the aggregate of the fees paid hereunder during the period of 6 months prior to the date of claim, whether arising from the supply of the Services or any failure by iiter to perform any obligation or observe any term of this Agreement.

15.6 iiter will not be liable in relation to any proceeding or claim which:

- (a) was caused by any act or omission of the Customer or its employees or agents; or
- (b) relates to actions of iiter which were expressly or impliedly authorised by the Customer, or by the Customer's employees or agents.

16. Confidentiality

Both parties will keep in confidence all information which it receives from the other which is marked in any way so as to indicate its confidentiality or which by its nature is confidential and will not, without prior written consent of the disclosing party, publish, disclose or otherwise make available, directly or indirectly, any item of such information to any person other than its employees, agents, or contractors who need to know the same in the performance of their duties. The receiving party further agrees that it will only use such confidential information in connection with the obligation arising as a result of the Agreement. Such confidential information does not include any data or information which:

- (a) was in the receiving party's lawful possession prior to the submission thereof by the disclosing party,
- (b) is later lawfully obtained by the receiving party from a third party under no obligation of secrecy,
- (c) is independently developed by the receiving party, or
- (d) is, or later becomes, available to the public through no act or failure to act by the receiving party.

17. Force Majeure

17.1 A Force Majeure event means anything outside reasonable control of a party, including but not limited to:

- (a) power, data or communication outages;
- (b) Acts of God or the public enemy, national emergencies, radioactive contamination, insurrection, riot, hostile or warlike action or sabotage;
- (c) A transaction embargo;

- (d) Industrial action (including a picket); and
- (e) Any legislation or regulation and any action or inaction of any government or government agency.

17.2 If iiter is wholly or partially unable to perform its obligations because of a Force Majeure event, then:

- (a) As soon as reasonably practicable after the Force Majeure event arises, iiter will notify the customer of the extent to which iiter is unable to perform its obligations; and
- (b) iiter's obligation to perform will be suspended for the duration of the delay arising out of the Force Majeure event.

18. Personal Information

The Customer consents to iiter from time to time, seeking, advising, exchanging and verifying any personal or commercial information of the Customer with any third party and to carrying out any further pertinent investigation about the Customer's contact/address details, credit arrangements, trading terms, credit worthiness, credit standing, credit history or credit capacity, financial status etc.

19. Governing law

This Agreement shall be governed by the law for the time being in the State of Victoria.