

## Intelligent Retail® Terms and Conditions Australia

These Software Licence and Services Terms and Conditions (the "Terms and Conditions") shall apply to the use of the software and the delivery of services by 3Q Holdings Limited trading as Intelligent Retail®, ABN 42 089 058 293, of Ground Floor, 35 Spring Street, Bondi Junction, NSW, Australia 2022 ("Us", "We", "Our"), to the customer identified in the corresponding Quotation and/or Order Forms ("You", "Your") (together referred to as "Both of Us"). *The references to registered trade marks referred to throughout this document relate to Australia and New Zealand only.*

Both of Us hereby agree as follows

### 1. Definitions.

The following terms have the meanings set forth below whenever they are used in these Terms and Conditions:

**"\$"** or **"dollars"** means Australian dollars.

**"Business Hours"** means 9am to 5.00pm AEST Monday to Friday, excluding Bank Holidays.

**"Capital Order Fee(s)"** means the fees payable by You for the purchases as detailed in the Order Forms.

**"Cancellation Fee"** means the fee payable by You in the event of a cancellation in accordance with Clause 5.4 and as detailed in Schedule 1.

**"Connect Software"** means Our 'Connect' software as described in the Quotation and Documentation and Demonstrated to You.

**"Content"** means text, data, trademarks, logos, artworks, photographic images and other visual or audio materials:

- (a) supplied by You to Us for use in providing the Services; and/or
- (b) uploaded by You to the Connect Software and/or Website; and/or
- (c) generated by Your use of the Connect Software and/or Website.

**"Contract"** means a contract for the supply by Us and purchase by You of Services in accordance with these Terms and Conditions, the Quotation, the Documentation and the Website Features Document and which shall become effective upon Your acceptance of a Quotation in accordance with Clause 11.1.

**"Demonstration"** means a demonstration of Our Services provided to You by Us and which may include but shall not be limited to the Connect Software and "Demonstrated" shall be construed accordingly.

**"Deposits"** means the deposits payable by You in accordance with Clause 11.1 and which shall be calculated as stated in the Quotation, these Terms and Conditions and/or the Documentation.

**"Documentation"** means documentation supplied to You by Us including but not limited to literature describing the Services such as the Website Features Document, the SEO Program Document, Our 'Website Design Document', Our 'Intelligent Retail® Support Hosting Services' document, Our 'Intelligent Retail® Hardware Services Document' and Our 'Linking Your Existing Website to Connect Multichannel Retail System' document.

**"Flat Design"** means the flat design for the Website.

**"Hardware"** means the hardware, including but not limited to computer equipment, printers and electronic storage devices, supplied by Us to You under the Contract and as set out in the Quotation.

**"Hosting"** means the hosting of the Connect Software, Website and Content on Our or Our subcontractor's servers in accordance with the provisions of Clause and "Host" and "Hosted" shall be construed accordingly.

**"Hosting Fee"** means the fee payable by You to Us for Hosting and as detailed in the Monthly Ongoing Order and which may include a portion for Website Hosting and a portion for Connect Software and Content Hosting.

**"Implementation Pack"** means the pack of information We shall send to You in accordance with Clause 5 which shall include Documentation.

**"Initial Term"** means the initial term of a Contract commencing upon Your acceptance of a Quotation in accordance with Clause 11.1, such term being twelve (12) months unless stated otherwise on the Quotation.

**"Installation"** means the installation by Us of the Connect Software and the Hardware, or the Connect Software onto Your hardware if specified in the Quotation and "Install" and "Installed" shall be construed accordingly.

**"Installation Date"** the date agreed by You and Us in accordance with Clause 5 for the first installation of the Connect Software onto the Hardware, or Your hardware if specified in the Quotation.

**"Issue"** means Your problems/queries regarding the Connect Software and Website (if selected by You as detailed in the Quotation) that are notified to Us by Your nominated representatives in accordance with the provisions of Clause 17 and Annex 3.

**"Leasing"** means the payment option for You to lease the capital costs of the Services via a lease company and as detailed in the Quotation if leasing is selected and "Lease" shall be construed accordingly.

**"Monthly Ongoing Fee(s)"** means the fees payable by You for the ongoing Services as detailed in the Order Forms and calculated in accordance with the Website Features Document and Documentation provided to You by Us with the Quotation.

**"Onsite Hardware Support"** means the onsite support We shall provide to You for the Hardware, if selected by You as detailed in the Quotation and as set out in Annex 2.

**"Order Forms"** means the order forms provided to You by Us with the Quotation and which detail the capital purchases element of the Services to be supplied by Us and the corresponding Capital Order Fees and the ongoing element of the Services to be supplied by Us and the corresponding Monthly Ongoing Fees.

**"Project Plan"** means the plan We may provide to You setting out estimated timescales and the input required from You in order that We may deliver the Services.

**"Quotation"** means Our quotation provided to You following the Demonstration which summarises Your requirements for Our Services. A separate Quotation may not be provided for smaller or simple Services in which event the Order Forms shall be considered the Quotation for the purposes of the Contract.

**"Rearrangement Fee"** means the fee payable by You in the event You request a rearrangement of the Installation Date in accordance with Clause 5.3 and as detailed in Schedule 1.

**"Replaced Hardware"** means Hardware or any part thereof that is replaced by Us as part of the Onsite Hardware Support.

**"Revenue"** means all revenue processed through the Website and/or any other website detailed in the Quotation, including but not limited to product sales and all other charges. For the avoidance of doubt, revenue is calculated on a gross basis and is not net of returns or refunds.

**"Revenue Share"** means the percentage of the Revenue You shall pay to Us in consideration of the SEO Services, as set out in, and if specified in, the Quotation.

**"Review"** means the requirement for You to review the Services, provide information and/or complete an activity at specified milestones as advised by Us in accordance with Clause 12 and/or the Project Plan.

**"Review Period"** means the period of time in which You shall conduct a Review and which will be two (2) weeks unless otherwise notified by Us in accordance with Clause 13.4.

**"SEO Order"** means Our search engine optimisation services order form detailing the SEO Services to be supplied by Us and the corresponding Set-up Fee and SEO Services Fee.

**"SEO Program Document"** means the document provided to You by Us which describes the SEO Services.

**"SEO Service Plan"** means the document specifying the details of Your bespoke requirements for the SEO Services.

**"SEO Services"** means the search engine optimisation services provided by Us to You as detailed in the SEO Program Document and SEO Order and specified in the SEO Service Plan.

**"SEO Services Fee"** means the fee payable by You for the SEO Services as detailed in the SEO Order and calculated in accordance with the SEO Program Document provided to You by Us.

**"Services"** means those services and the corresponding deliverables provided by Us to You, which may include but shall not be limited to the Subscription Services, Installation, the Connect Software, Hardware, creation of the Website, Support, Onsite Hardware Support, SEO Services and Hosting, as specified in the Quotation, Order Forms and SEO Order (if SEO Services are selected by You) and as described more fully in the Documentation and/or on Our website at [www.intelligentretail.com.au](http://www.intelligentretail.com.au).

**"Set-up Fee"** means the fee payable by You for the set-up of the SEO Services and as detailed in the SEO Order.

**"Subscription Fee"** means the fee payable by You for the Subscription Services and as detailed in Schedule 1.

**"Support"** means the provision of technical support and maintenance for the Connect Software and Website (if selected by You as detailed in the Quotation), and a response to Issues, including but not limited to a response to Issues by telephone or electronic mail during the Business Hours and as described in Annex 3.

**"Website"** means the website or sites to be created, enhanced, modified, supported and/or maintained by Us, or in respect of which We shall provide Services in accordance with these Terms and Conditions and as set out in the Quotation and Order Forms and specified in the Website Requirements Document.

**"Website Features Document"** means the document provided to You by Us which describes the available Website features and which shall include but shall not be limited to a description of how the Monthly Ongoing Fee is calculated and which shall form part of the Contract.

**"Web Requirements Document"** means the document specifying the details of Your bespoke requirements for the Website.

## **A. SUBSCRIPTION SERVICES**

The following terms and conditions apply where You purchase Our Subscription Services.

### **2. Your Account**

- 2.1 In order for us to provide the Services, We will provide You with a username and password to log onto Your account.
- 2.2 You are solely responsible for:
  - (a) maintaining the confidentiality and security of Your username, password and account; and
  - (b) all activities on Your account.
- 2.3 You must notify Us immediately of any unauthorised use of Your account.
- 2.4 We will not be liable for any loss or damage arising in connection with any unauthorised use of Your account.

### **3. Scheduling of Services**

3.1 You must ensure that:

- (a) You and Your personnel are familiar with the use and operation of the Services;
- (b) no other software, data or equipment having an adverse impact on the Connect Software has been introduced; and
- (c) You load your Content and configure the Connect Software and any Updates in Your computing environment.

3.2 With respect to each Service specified on a Quotation, and for which the applicable Subscription Fee is paid when due, We will grant You access to operate the Services.

### **4. Fees & Payment.**

4.1 Unless otherwise specified in the Quotation, You will pay the Subscription Fee for the Subscription Services.

4.2 Unless otherwise specified in the Quotation, We will invoice you and you will pay the Subscription Fee monthly in advance, within 14 days of the date of the invoice.

## **B. STANDARD ON-SITE SERVICES**

The following terms and conditions apply where You purchase Our Standard On-Site Services.

### **5. Scheduling of Services**

5.1 If You are a new customer, upon commencement of the Services, We shall arrange the Installation Date and training dates with You and send You an Implementation Pack. For the avoidance of doubt, it is important that You review the Implementation Pack before proceeding any further with the Services as it contains details of the Services and any subsequent changes You request will be subject to the change request process detailed in Clause 11.7.

5.2 We shall schedule delivery of the Services in accordance with Our then-current workload at the time of receipt of Your acceptance of a Quotation, and estimated delivery timescales shall be as detailed in the Quotation, Project Plan or as otherwise advised by Us to You from time to time. While We shall use Our reasonable endeavours to meet such estimated timescales, You agree that meeting such timescales shall not be the essence of a Contract.

5.3 Once an Installation Date has been agreed by You and Us, You may request a change to such Installation Date to which We may agree at Our discretion and which shall be subject to the payment by You of the Rearrangement Fee.

5.4 In the event You decide not to proceed with the Services after the Refund Period but prior to the Installation Date, You may request a cancellation which shall be subject to

payment by You of the Cancellation Fee. For the avoidance of doubt, You may not cancel the Services after the Installation Date.

## **6. Provision of Connect Software**

- 6.1 Efficient and timely Installation by Us requires a level of commitment and input from You and We shall require You to perform certain actions and provide information at various stages. In particular, You are required to comply with the Installation obligations detailed in Schedule 1 ("Installation Obligations").
- 6.2 In the event You fail to comply with the Installation Obligations and the Installation has to be rearranged or additional Installation Dates are required You shall be liable to pay Us the Rearrangement Fee and You may also incur other additional fees in order for Us to be able to complete Installation.
- 6.3 In the event the Installation needs to be rearranged as a result of circumstances that could not reasonably be foreseen by You or Us, Both of Us shall use reasonable endeavours to agree a mutually convenient alternative Installation Date.
- 6.4 If You intend to provide Your own hardware for the Connect Software and Services it is Your responsibility to check the specification of such hardware is compatible with the Connect Software and Services as advised by Us and at least two (2) weeks prior to Installation. In the event You fail to confirm such compatibility You may:
  - (a) cancel the Services subject to the payment by You of the Cancellation Fee; or
  - (b) rearrange the Installation subject to payment by You of the Rearrangement Fee.
- 6.5 Upon completion of the Installation We will test the Installation and request You sign off the Installation as complete. You shall ensure You have a representative with appropriate authorisation available to sign off Installation at the time it is completed.
- 6.6 For the avoidance of doubt, You may only reject an Installation if it does not comply with the description detailed in the Quotation and Documentation. If the Installation complies with the Quotation and Documentation but fails to meet Your expectations, this does not constitute a right to reject the Installation.
- 6.7 Within two (2) weeks of sign off of the Installation either party may decide not to proceed with the Services and terminate the Contract on fourteen (14) days written notice.
- 6.8 In the event the Contract is terminated in accordance with Clause 6.7 above:
  - (a) We will refund to You the portion of the fees that relate to the Connect Software, if paid;
  - (b) We will permit You to continue to use the Connect Software for two (2) weeks after termination while You find a replacement service provider. For the avoidance of doubt, the provisions of Clause 19.3 shall continue to apply

and You specifically may not divulge or make the Connect Software available to any other third party or replacement service provider;

- (c) We will export to You any Content that We can reasonably access that has been uploaded to the Connect Software. Such export will be in the format advised by Us to You and shall be charged at Our usual hourly rate. For the avoidance of doubt, We may not be able to export all Content uploaded;
  - (d) the fee for any Hardware installed at Your premises shall become immediately payable and You shall have ownership of such Hardware upon receipt by Us of payment in full;
  - (e) the portion of the fees that relate to the implementation Services shall become immediately payable and We may invoice You at Our usual hourly rate for any time spent delivering the Website design services We have provided; and
  - (f) the portion of the Monthly Ongoing Fee for Support and the Hosting fee will be payable pro rata for the period in which You have received the Services.
- 6.9 Upon completion of Installation We will provide You with training in accordance with the Order Forms and/or Project Plan. Such training may be provided in person or remotely at Our discretion. If You require additional training, this will be subject to the provisions of Clause 11.7.

## **7. Hardware.**

- 7.1 The terms and conditions of this Clause 7 shall apply only if We are providing Hardware to You, as detailed in the Quotation.
- 7.2 We may arrange for delivery of the Hardware prior to the Installation Date and You shall notify Us of any damages, shortages or errors within three (3) working days of such delivery and We shall repair or replace any Hardware damaged in transit or rectify any shortages or errors at Our option. If You do not notify Us within five (5) working days We shall not be liable to repair or replace any Hardware damaged in transit or rectify any shortages or errors.
- 7.3 You shall retain the original packaging for the Hardware and shall handle the Hardware in accordance with the carrier's instructions.
- 7.4 Risk in the Hardware shall pass to You on delivery. Ownership shall pass to You upon receipt by Us of payment in full of the Capital Order Fee for the Hardware as detailed on the Order Forms.
- 7.5 The Connect Software will be installed on specific Hardware or Your hardware, as detailed in the Quotation. In the event that You want to transfer the Connect Software to different hardware You shall pay Us the fee advised by Us to You for such transfer.
- 7.6 The Installation of Hardware will form part of the main Installation and the terms of Clause 12 shall apply to the Installation of Hardware.

- 7.7 The fees quoted for installation are based on typical building conditions that allow simple application of trunking and cable runs and any additional information provided to Us by You prior to the Quotation being supplied. In the event You fail to inform Us of any unusual circumstances that could reasonably be foreseen to affect Installation or there are unusual building conditions that could not reasonably have been foreseen by You or Us, additional fees will be payable by You for the Installation.
- 7.8 In the event You have selected to install the Hardware Yourself, as detailed in the Quotation, You do so at Your own risk and We shall not be liable for any faults or errors resulting from such installation. You must check the Hardware functions within fourteen (14) days of delivery and if the Hardware doesn't function, it will be replaced or repaired in accordance with the manufacturer's terms and We shall have no liability for such faulty Hardware. Should You require Our support for this activity it shall be chargeable in accordance with Our then current hourly rate.
- 7.9 In the event You have requested for Us to install the Hardware, as detailed in the Quotation, We shall check the Hardware functions and resolve issues with faulty Hardware unless such issues were a result of the way in which the Hardware was stored or handled by You. We may repair or replace the Hardware at Our discretion.
- 7.10 After Installation, if You haven't selected Onsite Hardware Support, support for the Hardware shall be as per the manufacturers' warranty. We will provide You with contact details for the relevant manufacturer in the event of a problem, but You shall be responsible for contacting such manufacturer and managing any problems with the Hardware at Your expense, including but not limited to returning the Hardware to such manufacturer and organising for any repairs or replacements to the Hardware.

## **8. Onsite Hardware Support.**

- 8.1 The terms and conditions of this Clause 8 shall apply only if We are providing Onsite Hardware Support to You, as detailed in the Quotation.
- 8.2 We will provide Onsite Hardware Support in the Business Hours in accordance with the description in Annex 2. For the avoidance of doubt, We may choose to either repair or replace parts or total pieces of Hardware at Our option and You shall notify Us within ten (10) days of first becoming aware of a problem or fault with the Hardware. For the avoidance of doubt, We are under no obligation to provide loan hardware whilst the Hardware is being repaired or replaced and in this event You will have to use an alternative means to continue trading.
- 8.3 In the event the Hardware is in Our reasonable opinion beyond the state of economic repair We may terminate the Onsite Hardware Support after the first service visit and shall refund to You any of the portion of the Monthly Ongoing Fees that relate to Onsite Hardware Support paid in advance by You for the remainder of the current twelve (12) month period of Onsite Hardware Support.
- 8.4 In the event any replacement parts needed for the Hardware repair are not available We may terminate the Onsite Hardware Support and refund You any of the portion of the Monthly Ongoing Fees that relate to Onsite Hardware Support paid in advance by



You for the remainder of the current twelve (12) month period of Onsite Hardware Support.

- 8.5 Ownership of any Replaced Hardware shall pass to Us upon provision by Us to You of the new Hardware, or part thereof, that is the replacement for the faulty Hardware.
- 8.6 We shall not be obliged to provide Onsite Hardware Support if:
- (a) payment of the Monthly Ongoing Fees by You is overdue; or
  - (b) You do not notify Us within ten (10) days of first becoming aware of a problem or fault with the Hardware.
- 8.7 We shall be under no obligation to provide Onsite Hardware Support in respect of any of the exclusions detailed in Annex 2 or any requests for support not in accordance with the Onsite Hardware Support services described in Annex 2, including but not limited to:
- (a) failure by You to comply with the obligation detailed in Annex 2;
  - (b) Hardware faults or problems resulting from any modifications or customisation of the Hardware not made by Us or permitted by Us;
  - (c) any hardware other than the Hardware covered by Onsite Hardware Support as detailed in the Quotation; and/or
  - (d) incorrect or unauthorised use of Hardware or operator error where such use or operation is not in accordance with the Documentation or the Hardware manufacturer's instructions; and any programs used in conjunction with the Hardware.
- 8.8 We shall notify You in writing as soon as We are aware that any problem is covered by Clause 8.7 or any of the events listed in Annex 2 or in the event that no fault is found with the Hardware and any time spent by Us investigating or rectifying such problems will be chargeable at Our then current rates. We shall invoice such charges at Our discretion and such shall be paid within 14 days from the date of said invoice.

## **9. Personnel.**

- 9.1 You shall advise Us of all rules, regulations and practices with which Our employees or sub-contractors should comply while on Your premises. Our personnel shall use reasonable endeavours to comply with such rules and regulations whenever they are on Your premises. You shall take reasonable precautions to ensure the health and safety of Our staff, employees, agents and sub-contractors while they are on Your premises.
- 9.2 In the event We require authorised access to Your premises to deliver the Services, You shall provide and/or acquire such authorised access. In the event of You providing such access but without the appropriate approvals, or in the event of You not providing such access, You shall not seek any action or remedy from Us in association with any loss or damage to You arising from such unauthorised access or lack of access

and shall indemnify Us from any loss or damage arising from Your failure to obtain authorised access.

- 9.3 Without in any way restricting the right of an employee freely to accept employment and change employment, if You induce an employee of Ours assigned to the provision of the Services to enter Your service at any time while such Services are being provided under these Terms and Conditions or during a period of six months thereafter then You shall pay to Us an amount being equivalent to fifty percent (50%) of the employee's net annual salary such sum being a genuine pre-estimate of the cost of the disruption that such inducement would cause to the efficient conduct of Our business.

## **10. Fees & Payment.**

Unless otherwise stated in the Quotation, We shall invoice You the balance of all the Capital Order Fees, except for the Capital Order Fees for the Website, prior to Installation and You shall pay such invoice at least two (2) weeks prior to the Installation Date. In the event You fail to pay such invoice at least two (2) weeks prior to the Installation Date We may cancel the Installation and You shall pay Us the Cancellation Fee.

## **C. GENERAL TERMS AND CONDITIONS**

The following terms and conditions apply to both Our Subscription Services and Standard On-Site Services, where applicable.

### **11. Contract Formation and Scheduling of Services.**

- 11.1 Upon receipt of Our Quotation and Order Forms You may accept the Quotation and create a binding Contract subject to these Terms and Conditions by signing and returning the Order Forms to Us and paying the Deposits.
- 11.2 Any terms and conditions in addition to, or at variance with, the Contract contained within Your purchase order or any other documentation provided by You shall be void and of no effect. In the event of any conflict between these Terms and Conditions, the Order Forms, the Quotation, the Website Features Document and the Documentation, the order of precedence shall be:
- (a) these Terms and Conditions;
  - (b) the Order Forms;
  - (c) the Quotation;
  - (d) the Website Features Document;
  - (e) Documentation;

- unless the Order Forms contain a provision that expressly states that it overrides a specified clause in these Terms and Conditions.

- 11.3 We may delegate or sub-contract any obligation under the Contract without Your prior consent and We shall be liable for all acts or omissions on the part of Our sub-contractors as though they were Our acts and omissions.
- 11.4 Except as provided by Clause 11.5, upon receipt of the signed Order Forms and cleared payment for the Deposits the Services shall commence.
- 11.5 In the event that You are Leasing, the Services will commence upon receipt by Us of the Deposits, the signed Order Forms and Leasing documents and authorisation from the Leasing company.
- 11.6 In the event that We are supplying a Project Plan, this shall usually be within two weeks of commencement of the Services. You shall review such Project Plan and notify Us of any issues with Your resources or availability which may affect the timelines or require other amendments to the Project Plan.
- 11.7 At any time before completion of any Services as described in the Contract and/or any Documentation, You may request an amendment or alteration to the Services. Such requests may be subject to the payment of additional fees by You. We shall not unreasonably refuse a request provided that Both of Us have mutually agreed in writing upon such amendment or alteration, and any associated change to the fees and/or timescales. We reserve the right to refuse such requests if We believe they will adversely impact on the functionality or usability of the Services, or may breach third party intellectual property rights. If You change Your requirements or there is a change in circumstances that affect the Services, or Our ability to deliver the Services, and such change is caused by You, We may give notice to You that such changes constitute a request for an amendment or alteration to the Services even though no formal request has been made by You. Once Both of Us have agreed upon amendments or alterations, they shall be attached to and form part of the Contract and shall be delivered subject to these Terms and Conditions. For the avoidance of doubt, We shall not be obliged to deliver any amendments to the Services unless agreed in writing by Us in accordance with this Clause 11.7.
- 11.8 In the event You decide not to proceed with the Services within two (2) weeks of receipt by Us of the Deposits ("Refund Period"), You may request a cancellation and We shall refund the Deposits to You in full, providing no Services or any part of the Services have been delivered.
- 11.9 We endeavour to provide a high quality service to Our customers, however, in the event that You have any problem or issue with the Services at anytime, You should contact Our help desk or Your account manager in accordance with the Company Complaints Procedure set out in Schedule 1.

## **12. Provision of Connect Software.**

- 12.1 We shall provide the Connect Software in accordance with the Quotation. For the avoidance of doubt, if there is specific functionality required by Your business it is Your responsibility, prior to the commencement of the Services, to confirm the Connect Software includes such functionality by:

- (a) asking for it to be Demonstrated to You; or

- (b) requesting confirmation from Us in writing that such functionality is standard and included; or
- (c) requesting such functionality is added as new functionality and receiving confirmation from one of Our directors that such new functionality will be available.

- We shall have no liability for such functionality not being available in the event that You fail to seek such confirmation from Us.

12.2 Whilst We endeavour to provide sufficient back up of the Content during the Services, it is Your responsibility to keep additional, separate back ups of the Content and any other programs or information You have loaded onto the Hardware. This is good commercial practise and, for example, may be necessary if the Hardware needs to be replaced in the event of a problem as part of the Onsite Hardware Support (if selected by You).

12.3 Whilst the Monthly Ongoing Fees for Support (if selected and paid by You) include some updates to the Connect Software ("Updates"), additional Updates and new versions of the Connect Software ("New Versions") may be made available to You from time to time and shall be subject to the payment of additional fees, as advised by Us. In the event that You are not receiving Support from Us, You may purchase any Updates or New Versions made available at the fees advised by Us at the time of such Update or New Versions.

12.4 Any Updates or New versions made available to You shall be for Your use only in accordance with the licence granted to You under the terms of the Contract.

12.5 The Services We supply You may include connection to third-party websites and services, such as eBay or Amazon. The scope and availability of such services are outside Our control, and may be subject to change without notice. As a result of such changes the functionality available to You from such third-party services may also change, or We may no longer be able offer connection to such third-party services. We shall use Our reasonable endeavours to maintain connection to third-party websites and services, but You agree that We shall not be liable in the event that we can no longer offer connection to such third-party services, or for any changes in the functionality of such services.

12.6 You acknowledge that title in the Connect Software remains vested in Us at all times.

### **13. Provision of Website Services.**

13.1 The terms and conditions of this Clause 13 shall apply only if We are providing a Website to You, as detailed in the Quotation and any such Website shall be Hosted by Us. The Services will not commence until We receive payment in full for the Deposit that relates to Website Services which shall be calculated as twenty five percent (25%) of the Capital Order Fee for the Website Services.

13.2 Upon commencement of the Services, We shall arrange a Website design consultation with You and create the Website Requirements Document which shall be agreed by Both of Us. For the avoidance of doubt, it is important that You review the Website

Requirements Document before agreeing to it as any subsequent changes You request will be subject to the change request process detailed in Clause 11.7.

- 13.3 In the event that You require Us to use website designs from existing designs You own:
- (a) We do not warrant that We can exactly reproduce such existing design;
  - (b) You warrant that You own or are the licensee of the intellectual property in such designs and You grant Us the right to use such designs; and
  - (c) You shall indemnify Us against any breach of third party intellectual property rights as a result of Us using the designs and/or creating something similar.

For the avoidance of doubt, We reserve the right to refuse to use Your website designs if We reasonably believe they are likely to breach third party intellectual property rights or are unlawful in any respect.

- 13.4 We shall provide the Website Services in accordance with the Quotation and Website Requirements Document and shall notify You of any Reviews requiring action on Your part or sign off and the corresponding Review Period. For the avoidance of doubt, We will notify You of the final Review required before the Website goes live and it is Your responsibility to check the operation of the Website at this Review.

- 13.5 For each Review We will notify You that You need to either:
- (a) review the corresponding Website Services and sign off the Review as accepted or notify Us in writing of any changes that are required because in Your reasonable opinion the Website Services do not meet the description in the Website Requirements Document; or
  - (b) provide Us with the information We have requested; or
  - (c) complete the action or activity We have requested.

- 13.6 Upon receipt of a notification of a Review You shall respond in accordance with Clause 13.5 above within the Review Period.

- 13.7 Upon receipt of Your notification of required changes in accordance with Clause 13.5(a) above, We shall amend the Website Services to correspond with the Website Requirements Document and re-submit them to You for Review in accordance with Clause 13.5.

- 13.8 In the event that You request a change which We reasonably consider to be additional to or different from the description of Your requirements in the Website Requirements Document, such change request shall be subject to the process detailed in Clause 11.7.

- 13.9 For the avoidance of doubt, You may only reject a Review if the Services do not comply with the description detailed in the Website Requirements Document. If the

Services comply with the Website Requirements Document but fail to meet Your expectations, this does not constitute a right to reject the Review.

13.10 In the event that You do not respond in accordance with Clause 13.5 within the Review Period, then We may suspend provision of the Services and put them on hold ("On Hold") and any expenses We incur by putting the Services On Hold and subsequent resumption of the Services shall be added to the consideration and any time-scales shall be delayed accordingly.

13.11 In the event that We have put the Services On Hold in accordance with Clause 13.10, and You respond at a later date, You may request resumption of the Services and We shall re-schedule the Services according to Our available resources. For the avoidance of doubt, this may mean We cannot resume the Services for a matter of weeks if We do not have the resources available.

13.12 The Website design services selected by You will include designated design and project management time as set out in the Website Features Document. In the event You exceed this time, any further work required will be charged at Our usual hourly rate.

13.13 When We notify You of the Review required for the Flat Design for the Website, either party may decide not to proceed with the Services and terminate the Contract on fourteen (14) days written notice.

13.14 In the event the Contract is terminated in accordance with Clause 13.13 above:

- (a) We will refund to You the portion of the fees that relate to the Connect Software, if paid;
- (b) We will permit You to continue to use the Connect Software for sixty (60) days after termination while You find a replacement service provider;
- (c) We will provide You with the Flat Design and grant You a perpetual, royalty free license to use such Flat Design;
- (d) We will export to You any Content that We can reasonably access that has been uploaded to the Connect Software. Such export will be in the format advised by Us to You and shall be charged at Our usual hourly rate. For the avoidance of doubt, We may not be able to export all Content uploaded;
- (e) the fee for any Hardware installed at Your premises shall become immediately payable and You shall have ownership of such Hardware upon receipt by Us of payment in full; and
- (f) the portion of the fees that relate to the implementation Services shall become immediately payable and We may invoice You at Our usual hourly rate for any time spent delivering the Website design services We have provided.

13.15 Whilst We endeavour to provide estimates of when the Website will be ready to go live ("Go Live Date"), We do not guarantee any Go Live Date and You should not make

arrangements dependant on a fixed Go Live Date. In the event that You do make such arrangements this shall be at Your own risk and We shall have no liability if the Go Live Date is not achieved.

13.16 For the avoidance of doubt the Initial Term of the Contract for the Website Services commences on Your acceptance of the relevant Quotation in accordance with Clause 11.1. The Website Services Contract shall then be terminated or renewed in accordance with clause 27.

#### **14. Linking to an Existing non-Intelligent Retail® Website.**

14.1 The terms and conditions of this Clause 14 shall apply only if We are providing a service to link to an existing website ("Link Service") that You own to the Connect Software, as detailed in the Quotation.

14.2 Upon commencement of the Services, We shall arrange a technical consultation with You to describe the method used by Us to link to other websites, as per the Documentation. Following the Installation of the Connect Software, We shall then setup the web service interface and test environment and We will then provide the training service. You shall then finalise the integration works in accordance with Our guidelines. This Link Service is time bound as per the Documentation, and any additional time required can be purchased at Our then current hourly rate.

#### **15. Hosting.**

15.1 We agree to Host the Website, the Connect Software and Content on Our computer facilities or those of Our subcontractors for the duration of the Contract subject to the payment by You of the Hosting Fee. For the avoidance of doubt, We will not Host other content or programs as part of this service.

15.2 By using the Hosting You agree to comply with the Acceptable Use Policies ("AUP") attached to these Terms and Conditions at Annex 1 and to indemnify Us against all damages, losses, costs, expenses, fines and liabilities incurred by or awarded, asserted or claimed against Us by third parties arising from Your breach of this Clause 15 and/or the AUP.

15.3 In the event that We reasonably believe You are in breach of this Clause 15 and/or the AUP We may at Our option:

- (a) suspend the Hosting until such breach is remedied by You; or
- (b) treat such as a material breach and terminate the Contract in accordance with Clause 28.2(a)).

15.4 For the avoidance of doubt, in the event that We become aware that the Website is being used for any unlawful purpose and/or that the Content is identified as containing material of an offensive or unlawful nature We reserve the right to request the hosting provider to remove access to the Website and to delete all such offending or unlawful material without prior notice or reference to You.

- 15.5 For the avoidance of doubt We do not promise 100% server uptime and reserve the right to move or suspend the Website for short periods of time to allow Us to carry out maintenance or repair to Our servers or to implement improvements. We will notify You of planned maintenance by email. Please be aware that We occasionally perform emergency maintenance or repairs and on these occasions it will not be possible to notify You in advance.
- 15.6 You acknowledge that no additional fee shall be due to Us upon Your uploading, downloading or editing Content but that the total data volume shall be limited to the physical space on the server that has been allocated to You and there is a bandwidth allocation, as set out in the Quotation and/or Order Forms. In the event that You exceed Your allocated physical space or bandwidth, We shall invoice You for the excess space or bandwidth used at Our then current rate.
- 15.7 In the event that You upload or amend Content or perform administrative tasks on the Website which cause problems on Our systems or those of Our subcontractors, We reserve the right to immediately suspend or delete the Website as We reasonably deem necessary without prior notice or reference to You and You will be liable for any costs incurred by Us and/or Our service partners and sub-contractors in remedying such problems.
- 15.8 We endeavour to implement reasonable security of data and to protect the Hosting, however You hereby accept that no Hosting environment is 100% secure and We do not warrant to protect Your Hosted Website or Content.
- 15.9 Website speed is affected by the page Content and navigation functions. We regularly assess the speed performance of the Websites, but, because You manage the Content and navigation functions, We are not responsible for any loss of speed as a result of heavy Content or navigation functions. Upon Your request, We can make recommendations about how to modify page setup to improve performance. However, it is Your responsibility to set up pages in a way that will maintain a good balance of Content, navigation functionality and performance.

## **16. SEO Services.**

- 16.1 The terms and conditions of this Clause 16 shall apply only if We are providing SEO Services to You, as detailed in the Quotation.
- 16.2 When We receive the signed SEO Order from You and payment in full of the Set-up Fee, the SEO Order will form part of the binding Contract. All references to the Services in the Contract shall then also apply the SEO Services.
- 16.3 Upon receipt of the signed SEO Order and cleared payment for the Set-up Fee, We shall arrange a consultation with You and create the SEO Service Plan which shall be agreed by Both of Us. For the avoidance of doubt, it is important that You review the SEO Service Plan before agreeing to it as any subsequent changes You request will be subject to the process detailed in Clause 11.7.
- 16.4 The SEO Services shall commence upon agreement of the SEO Service Plan and shall have an initial term of twelve (12) months and will renew in accordance with clause 28, unless and until terminated in accordance with Clause 28.



- 16.5 You hereby grant Us the authority to submit the Website to search engines at Our discretion for the purposes of delivering the SEO Services. For the avoidance of doubt, submission to any individual online service or channel such as search engine or social network shall be at Our discretion and We do not commit to submitting the Website to any third party service that incurs additional cost.
- 16.6 You hereby acknowledge that the SEO Services are provided using the internet and search engines that are beyond Our control and We shall not be liable for the actions of Google, Bing, Yahoo or any similar service provider. You accept that such service providers may remove the Website, amend the search criteria, amend their terms or amend their search and ranking criteria or take other similar action and We shall not be responsible or liable for such actions.
- 16.7 You acknowledge that in providing the SEO Service We may need to amend the Content to optimise certain words in product descriptions and You hereby authorise Us to make such amendments as We reasonably deem necessary. While We shall use Our reasonable skill and care in making such amendments We shall not be liable for any errors made in product descriptions or pricing.
- 16.8 We shall perform the SEO Services in accordance with the description of the SEO Services in the SEO Program Document and the SEO Service Plan and You hereby agree that We may amend search phrases and web pages on the Website as We reasonably deem necessary to provide a high quality SEO Service to You.
- 16.9 In the event that You override any amendments We make in accordance with Clause 16.7 or Clause 16.8 by giving Us notification in writing of Your objections, You hereby accept that We may not be able to deliver the SEO Services at their optimum level. We shall not be considered to have failed in Our obligations under these Terms and Conditions to the extent that the Services are affected by You overriding any amendments. You shall remain obliged to pay Us in full as set out in these Terms and Conditions regardless of any failure by Us to perform any SEO Services as a result of You overriding any amendments We make.
- 16.10 We shall schedule delivery of the SEO Services in accordance with Our then-current workload and do not warrant that the personnel delivering the SEO Services will be available at any particular time.

## **17. Support.**

- 17.1 We shall provide Support to You in respect of the Connect Software and Website (if selected by You as detailed in the Quotation) in accordance with Annex 3. For the avoidance of doubt, We shall only provide Support for the latest two versions of the Connect Software.
- 17.2 For the avoidance of doubt, You shall purchase a minimum of twelve (12) months Support from Us, which shall commence when the training has been completed in accordance with Clause 6.9.
- 17.3 We shall not be obliged to provide Support if payment by You of the Monthly Ongoing Fees is overdue.

17.4 In consideration for the payment of the Monthly Ongoing Fees, We shall respond to Issues and supply Support only to Your nominated and authorised representatives. For the avoidance of doubt, such representatives shall be a member of Your organisation and shall not be a third party without Our prior written approval.

17.5 We shall act upon Your Issues in accordance with the provisions of Annex 3. Whilst We will use Our reasonable endeavours to resolve Issues, We do not warrant that We can resolve all Issues.

## **18. Exclusions from Support.**

18.1 We shall be under no obligation to provide Support in respect of:

- (a) Issues resulting from any modifications or customisation of the Connect Software or;
- (b) Website not made by Us or permitted by Us.

For the avoidance of doubt, modifications to the Connect Software or Website shall include but not be limited to:

- (c) changes to the logical or physical file system or database schema for the Connect Software or changes to the Content made directly by You, any software or website other than the Connect Software or Website;
- (d) incorrect or unauthorised use of the Connect Software or Website or operator error where such use or operation is not in accordance with the Documentation;
- (e) incorrect implementation of Updates or New Versions by You or any other third party other than Our authorised agents;
- (f) any fault in the equipment upon which the Connect Software or Website is installed unless You have selected Onsite Hardware Support as part of the Services; or
- (g) any programs not supplied by Us used in conjunction with the Connect Software or Website; and use of the Connect Software or Website with computer hardware, operating systems or other supporting software other than those advised by Us to You or specified in the Documentation.

18.2 In the event You or Your authorised representatives communicate with Us in a manner We reasonably consider to be aggressive or abusive, We shall be under no obligation to provide Support and may terminate the Contract with immediate effect if such manner of communication is repeated.

18.3 We shall notify You in writing as soon as We are aware that any Issue is covered by Clause 18.1 and any time spent by Us investigating such Issues will be chargeable at Our then current rates. We shall invoice such charges at Our discretion and such shall be paid within 30 days from the date of said invoice.

18.4 In the event that You notify Us of an Issue and We deem such Issue to be a request for an amendment to the Connect Software or Website rather than a fault or bug, such request shall be subject to the process detailed in Clause 11.7.

18.5 Efficient and timely provision of Support by Us requires a level of commitment and input from You and We shall require You to perform certain actions and provide information at various stages in a timely manner.

## **19. Licence to Use.**

19.1 Subject to these Terms and Conditions, We hereby grant to You a personal, non-transferable licence to use the Connect Software and Website for the purposes set out in the Quotation and Order Forms and for no other purpose whatsoever.

19.2 You hereby grant to Us a royalty-free licence to access and use the Content for the sole purpose of performing Our duties hereunder.

19.3 You agree that You:

- (a) will not reverse engineer, decompile, or disassemble the Connect Software or Website, except to the extent that We cannot prohibit such acts by the applicable law;
- (b) will not sell, assign, license, lease, rent, loan, lend or otherwise distribute or transfer the Connect Software or Website in any manner to third parties other than as permitted by the Contract;
- (c) will use the Connect Software and Website for Your own business purposes only as set out in the Quotation;
- (d) will maintain and not remove any notices placed on the Connect Software or Website by Us, Our licensors or Our subcontractors;
- (e) will take security measures sufficient to reasonably safeguard the Connect Software and Website from administrative access by persons other than Our or Your authorised employees or agents; and
- (f) will keep the Connect Software and Website free and clear of all claims, liens and encumbrances.

## **20. Data Protection and Privacy.**

20.1 You agree to comply with the Privacy Act 1988 (Cth) (the "Act").

20.2 You hereby acknowledge and accept that We may need to access the Content and any personal information (as defined by the Act) included in the Content in order to provide the Services and We shall not access or use such Content and personal information for any other purpose.

20.3 You acknowledge that You are responsible for the compliance of Your staff and subcontractors with the provisions of the Act and hereby agree to indemnify Us against any breach by You of Your obligations under the Act.

## 21. Your Obligations.

21.1 Efficient and timely provision of the Services by Us requires a level of commitment and input from You and We shall require You to perform certain actions and provide information at various stages, such as Reviews. In particular, You are required to comply with the obligations detailed in Schedule 1 ("Obligations"). In the event You fail to comply with such Obligations:

- (a) We may limit the Services We deliver to You for a period determined by Us until such Obligations are met and We receive a commitment from You to comply with such Obligations in the future. For the avoidance of doubt, You shall be liable to continue to pay the fees during the period that the Services are limited; or
- (b) either party may terminate the Contract and upon such termination, in the event that the Capital Order Fees have not been paid You shall pay them and We may invoice You at Our usual hourly rate for any time spent delivering the Services prior to the commencement of the Monthly Ongoing Fees. Such invoice shall be immediately payable by You.

21.2 You shall provide co-operation and support to Us in Our efforts to provide the Services. Such co-operation and support shall include, but not be limited to:

- (a) a reasonable level of responsiveness to Our requirements and communications;
- (b) the timely transmittal and release to Us of appropriate and accurate documentation and information;
- (c) the timely provision of Website Content to Us at Our reasonable request;
- (d) completion of the Reviews and any other work performed by Us within agreed timescales;
- (e) the prompt provision of authorised access to the Website, the Connect Software, Your servers and network, either on site or remotely, and access to Your hardware or the Hardware as requested by Us to facilitate delivery of the Services. In the event of You providing such access but without the appropriate approvals, or in the event of You not providing such access, You shall not seek any action or remedy from Us in association with any loss or damage to You arising from such unauthorised access or lack of access;
- (f) the making available of facilities including but not limited to computer facilities, desk space, telephone access and parking when and to the extent as is reasonably requested by Us;

- (g) the making available of competent personnel to assist Us when and to the extent as is reasonably requested by Us; and
  - (h) anything else reasonably requested by Us.
- 21.3 You hereby warrant that You are the owner or licensor of the Content and that You have the right and authority to provide Us with access to the Content and to grant Us the right to use the Content for the purposes of fulfilling Our obligations under the Contract.
- 21.4 You are responsible for ensuring the Content:
  - (a) is complete and accurate; and
  - (b) complies with all applicable legislation and regulations and You hereby agree to indemnify Us from any loss or damage arising from Your failure to do so.
- 21.5 You hereby acknowledge that You are responsible for the compliance of Your business to Payment Card Industry DSS standards ("Compliance") and You shall work with the accredited payment service providers with whom We partner to support any Compliance attestation. For the avoidance of doubt, We and Our payment service provider partners are not responsible for Your Compliance and You hereby agree to indemnify Us from any loss or damage arising from Your failure to achieve Compliance.
- 21.6 You agree that if You do not perform Your obligations under these Terms and Conditions and such non-performance affects Our ability to perform, We shall not be considered in default under these Terms and Conditions to the extent so affected, and You shall remain fully obligated to pay Us as provided in these Terms and Conditions regardless of any failure to perform any services so affected.

## **22. Revenue Share.**

- 22.1 In the event that Both of Us have agreed a Revenue Share, as specified in the Quotation, the provisions of this Clause 22 shall apply.
- 22.2 You shall provide Us with a monthly update of the Revenue for each month within five (5) days of month end. You shall provide Us with a summary of Revenue for each calendar quarter within two (2) weeks of quarter end.
- 22.3 We shall invoice You for the Revenue Share quarterly in arrears and You shall pay Our invoices by the due date set out on the invoice.
- 22.4 You will keep accurate separate records of the Revenue and You will at any reasonable time or times upon receipt of ten (10) working days written notice by Us give Us access to Your premises and records for the purpose of auditing such records. In the event such audit reveals an error in the calculation of the Revenue Share, We may invoice You immediately for any underpayment and such invoice shall be immediately payable.

22.5 We reserve the right to amend the Revenue Share on an annual basis at the end of the current twelve (12) month period.

### **23. Leasing.**

23.1 The terms and conditions of this Clause 23 shall apply only if You have selected to Lease, as detailed in the Quotation.

23.2 You shall pay Us the Monthly Ongoing Fees in accordance with Clause 24.

23.3 You hereby agree to abide by the terms of the agreement provided by the Leasing company ("Lease Agreement") and acknowledge that a breach of the Lease Agreement shall constitute a material breach of the Contract in which event We shall have the option to terminate the Contract with immediate effect. For the avoidance of doubt, the Lease Agreement is strictly between You and the Leasing company and We shall have no liability in respect of the Lease Agreement.

23.4 You hereby agree to sign the 'Lease Signed Delivery Note', to confirm Installation has been completed, within twenty-four (24) hours of the completion of Installation as notified by Us, unless there is a dispute with Installation. In the event You do not sign the 'Lease Signed Delivery Note' within twenty-four (24) hours of the completion of Installation We reserve the right invoice You directly for all fees due.

23.5 In the event that there is any Replaced Hardware that has been Leased You shall notify the Leasing company of the serial numbers of the new Hardware and shall obtain all necessary consents and authorities from the Leasing company to part with possession of the Replaced Hardware so that ownership of the Replaced Hardware shall pass to Us.

### **24. Fees & Payment.**

24.1 Unless otherwise stated in the Quotation, We shall invoice You three (3) subsequent amounts each equal to 25% of the balance of the Capital Order Fee for the Website. These invoices will be sent at Our discretion with the final invoice occurring no earlier than completion of the Flat Design as advised by Us to You, or eight (8) weeks from the Website design consultation meeting in accordance with Clause 13.2, whichever occurs earliest. You shall pay such invoice 14 days from invoice date.

24.2 At the commencement of the Services We shall set-up the Connect Software and Website Hosting simultaneously and the Hosting Fee will commence when We commence such set-up. In the event You choose to delay the set-up of the Website by providing Us with written notice at least one (1) week prior to the commencement of the Services We will not invoice You the Website portion of the Hosting Fee until the Website set-up commences. If You choose such delay, You will be liable for a Hosting reconfiguration fee ("Reconfiguration Fee ") as detailed in Schedule 1 to cover the extra work Our engineers need to do on the live Hosted environment and such Reconfiguration Fee will be payable upon commencement of the Website set-up. Unless otherwise stated in the Quotation, the Hosting Fee is payable monthly in advance.

- 24.3 Unless otherwise stated in the Quotation We shall invoice You the Monthly Ongoing Fees from the first day of Installation and then at the first of each month after first day of Installation in accordance with the Documentation and the Order Forms.
- 24.4 In the event that You have selected SEO Services, We shall invoice You the SEO Services Fee in the month following the consultation arranged in accordance with Clause 16.3 and then on the first of each month in accordance with the SEO Order.
- 24.5 We may invoice You for Our reasonable expenses (charged at cost) incurred in attending You for the provision of the Services.
- 24.6 All Monthly Ongoing Fees, including the SEO Services Fee, are payable by direct debit unless previously agreed in writing by Us.
- 24.7 Unless otherwise stated, all invoices are payable within fourteen (14) days of date of invoice.
- 24.8 All Monthly Ongoing Fees, including the SEO Services Fee, are payable within thirty (30) days of date of invoice.
- 24.9 Where Your Monthly Ongoing Fees include a percentage share of Revenue a portion of the Monthly Ongoing Fees for ongoing Website Services is calculated as a percentage of Website Revenue, as described in the Quotation or Website Features Document. You hereby grant Us permission to review Your Revenue taken through the Website in order to calculate such Monthly Ongoing Fees.
- 24.10 We reserve the right to amend the Monthly Ongoing Fees, Hosting Fees and/or SEO Services Fees upon thirty (30) days written notice to You. You may give notice to terminate the Contract without penalty within fifteen (15) days of receipt of such written notice from Us. If We do not receive written notice within fifteen (15) days You are deemed to have agreed to the amendment to the Monthly Ongoing Fees, Hosting Fees and/or SEO Services Fees.
- 24.11 An invoice may only be disputed if an amount detailed on the invoice is not in accordance with the Contract, in which event You shall notify Us in writing within ten (10) days of receipt of such invoice and detail the basis of Your claim. You shall not be entitled to withhold or delay payment on any undisputed amounts on the invoice and cannot withhold payment of a whole invoice if only part of it is disputed. In the event that a Service We deliver does not meet Your expectations, You shall not be entitled to withhold or delay payment of Our invoices and should follow the Company Complaints Procedure outlined in Schedule 1.
- 24.12 The parties agree that all amounts payable under the Contract are expressed on a GST exclusive basis. If GST is payable in relation to a Taxable Supply, the amount payable for that Taxable Supply is the amount for that Taxable Supply specified in the Contract plus GST. The parties must provide each other with all documentation required to claim any Input Tax Credit, set off, rebate or refund for or in relation to any GST included in any payment made under the Contract. In this clause 24.12, the terms "GST", "Taxable Supply" and "Input Tax Credit" have the meaning given in A New Tax System (Goods and Services Tax) Act 1999 and related tax imposition Acts of the Commonwealth of Australia.

- 24.13 You shall be liable for any other agreed upon fees or customs duties applicable.
- 24.14 You shall pay a debt collection fee of \$100 if any undisputed invoice is more than five (5) working days late, such sum being a genuine pre-estimate of loss such late payment would cost Us. You shall pay an interest charge on any undisputed sum outstanding to Us at the rate of 3% per annum over Our nominated bank's overdraft lending rate as at the date of invoice.
- 24.15 If payment of the Capital Order Fees, Hosting Fee, Monthly Ongoing Fees, SEO Services Fee or any part thereof is overdue then unless You have notified Us in writing that such payment is in Dispute within ten (10) days of the receipt of the corresponding invoice We may at Our option:
- (a) suspend all work in progress in respect of the Services until such payment is made in which case any expenses to Us occasioned by such suspension and subsequent resumption shall be added to the consideration and the time-scales shall be delayed accordingly; or
  - (b) treat such as a material breach and terminate the Contract in accordance with Clause 28.2 and You shall be liable for the balance of the fees, which shall fall due and payable immediately upon such termination.

## **25. Warranties.**

- 25.1 We warrant that the Connect Software will comply with Documentation and Demonstration for ninety (90) days from the Installation Date.
- 25.2 We warrant that We will provide the Services using reasonable skill and care using staff with appropriate experience and qualifications for the tasks to which they have been assigned. While We endeavour to provide a reliable and high quality Services, We do not warrant that the operation of the Website, Connect Software or Hosting will be uninterrupted or error free. Notwithstanding the foregoing, in the event that We provide You with any business advice in the course of delivering the Services, such advice shall be for information purposes only and use of such advice should be reasonably considered by You and shall be at Your own risk.
- 25.3 With regard to analysis of web-based data and statistics, while We shall use Our reasonable endeavours to provide You with accurate information based on the data and tools available to Us, We do not warrant that such information shall be error-free.
- 25.4 With regard to SEO Services (if selected by You), while We shall use Our reasonable endeavours to drive appropriate internet traffic to the Website You acknowledge that the operation of the SEO Services depends upon a number of factors which are outside of Our control including, but not limited to, the activities of the relevant media owners, search criteria entered by the end users, seasonal changes and search trends, and the search-engine optimisation activities of third parties on the internet. You agree that in this context the warranty exclusions set out in Clause 25.5 are reasonable.
- 25.5 The warranties set out in this Clause 25 are the only warranties that apply to the Connect Software and the Services. To the extent permitted by law, We hereby



exclude all other conditions, warranties, representations or other terms that might otherwise be implied or incorporated into the Contract by law, such as (but not limited to) those of satisfactory quality, fitness for a particular or any purpose, ability to achieve any particular result (including but not limited to Website traffic results) or the use of reasonable skill and care.

- 25.6 You hereby agree that Your sole remedy in respect of any non-conformance with any warranty in these Terms and Conditions is that We will remedy such non-conformance (either by Ourselves or through a third party) and if, in Our reasonable opinion, We are unable to remedy such non-conformance then We will refund the corresponding portion of the fees applicable to the Service that is the subject of Your claim, if paid, whereupon the Contract to supply the Services shall immediately terminate.
- 25.7 You must promptly notify Us in writing of any breach of the above warranties in order to benefit from the remedy stated above in Clause 25.6. You shall provide all information as may be deemed necessary by Us to assist Us in resolving such breach.

## **26. Limitation of Liability.**

- 26.1 To the extent permitted by law, in no event will We be liable under these Terms and Conditions or any Contract for any damages resulting from: (i) loss of, damage to or corruption of data, (ii) loss of use, (iii) lost profits, (iv) lost revenue, (v) loss of reputation, (vi) loss of anticipated savings, and/or (vii) any indirect or consequential loss. Such liability is excluded whether such damages were reasonably foreseeable or actually foreseen.
- 26.2 To the extent permitted by law, Our maximum aggregate liability to You for any cause whatsoever under these Terms and Conditions and any Contract shall be for direct costs and damages only and will be limited to a sum equivalent to 100% of the fee paid and payable by You for the Services in the 12 month period immediately preceding the date to which Your claim relates.
- 26.3 We hereby exclude all liability that We have not expressly accepted in these Terms and Conditions. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause 26 "We" includes Our employees, sub-contractors, licensors and suppliers who shall therefore have the benefit of the limits and exclusions of liability set out in this Clause.
- 26.4 No action, regardless of form, arising out of transactions occurring under or contemplated under these Terms and Conditions may be brought by either party more than two (2) years after the cause of action has accrued.
- 26.5 To the extent permitted by law, You shall have no remedy in respect of any representation (whether written or oral) made to You upon which You relied in entering into any Contract and We shall have no liability to You other than pursuant to the express terms of these Terms and Conditions.

## 27. Consumer Guarantees

- 27.1 The term “Consumer” has the meaning given to that term in schedule 2 to the *Competition and Consumer Act 2010* (Cth).
- 27.2 Notwithstanding any other provision in this Agreement, nothing in this Agreement excludes any rights Consumers may have against Us under the *Competition and Consumer Act 2010* (Cth), if applicable.

## 28. Duration & Termination.

- 28.1 Each Contract shall become effective upon acceptance of a Quotation in accordance with Clause 11.1 and will continue for the Initial Term and any Renewal, unless and until terminated in accordance with these Terms and Conditions.
- 28.2 Either party ("the Initiating Party") may terminate a Contract at any time after one of the following events occur:
- (a) on giving written notice to the other party if the other party commits any material breach of any term of these Terms and Conditions and in the case of a breach which is reasonably capable of remedy fails to remedy that breach to the reasonable satisfaction of the Initiating Party within thirty (30) days of a written request to remedy the same; or
  - (b) if the other party shall have a receiver or administrative receiver appointed over it or any of its undertaking or assets or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity shall assume all of the liabilities of it) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on its business or if any substantially similar event shall take place under the laws of another jurisdiction; or
  - (c) upon ninety (90) days written notice.
- 28.3 In the event You terminate the Contract prior to the end of the current twelve (12) month period, the sum of all the Monthly Ongoing Fees for the remainder of the twelve (12) month period shall be immediately payable by You.
- 28.4 Upon each anniversary of the commencement of the Initial Term, the Contract shall automatically continue for a further twelve (12) month period (“Renewal”). In the event You do not wish to renew the Contract or any individual Service, You may terminate the Contract or any individual Service by providing Us with two (2) months written notice, which must be received by Us at least two months prior to the end of the then current twelve (12) month period. For the avoidance of doubt, Renewal of the Contract does not affect the duration or term of any individual Service which may have terminated part way through a twelve (12) month period. Such Services will only be extended with Our express written agreement.

- 28.5 We may review the Services on an annual basis prior to Renewal to address any necessary adjustments and may choose at Our discretion to not renew all Services, but shall not unreasonably do so. We shall notify You of any adjustment prior to Renewal.
- 28.6 Notwithstanding the provisions of Clause 6.8(c) and Clause 13.14(f), upon termination of the Contract for any reason, We shall delete the Content and Website from Our systems after thirty (30) days.
- 28.7 Except as provided by Clause 6.8 and Clause 13.14(d), upon termination of the Contract for any reason, Your licence to use the Connect Software shall cease and You shall delete the Connect Software from Your systems and destroy any copies of the Connect Software and at Our reasonable request You shall provide Us with written confirmation that You have complied with this Clause 28.7.
- 28.8 The expiry of a Contract or the termination thereof for whatever reasons shall be without prejudice to any other rights or remedies a party may be entitled to under law and shall not affect the respective rights and liabilities of either of the parties accrued prior to such termination.

## **29. Intellectual Property.**

- 29.1 We are the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in the Connect Software, Services and Website design. Ownership of the Connect Software, Services and Website design shall remain with Us or Our licensors. For the avoidance of doubt ownership and all intellectual property rights to any design, new software, new protocol, new interface, enhancement, update, derivative works, revised screen text or any other items that We create for You shall continue to belong to Us or Our licensors. Any rights not expressly granted herein are reserved to Us.
- 29.2 Subject to the provisions of Clause 29.1 You are the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which subsist in the Content. Title to the Content shall remain vested in You or Your licensors.
- 29.3 You hereby agree to indemnify Us against any and all loss or damage arising from the breach of any third party intellectual property right resulting from Our possession or use of the Content, the incorporation of the Content into the Website or uploading to the Connect Software, or the performance of the Services in accordance with Your express requirements and the Contract.
- 29.4 Subject to the provisions of this Clause 29, and in particular subject to Clause 29.3, We shall defend at Our own expense any claim brought against You alleging that the normal use of the Connect Software or Website design infringes a patent or copyright belonging to a third party ("Intellectual Property Claim") and We shall pay all damages awarded or agreed to be paid to any third party in settlement of an Intellectual Property Claim provided that You:
- (a) promptly furnish Us with written notice of the Intellectual Property Claim upon becoming aware of the same;

- (b) make no admissions or settlements without Our prior written consent;
  - (c) act in accordance with Our reasonable instructions and provide Us with reasonable assistance in respect of the Intellectual Property Claim; and
  - (d) give to Us the sole authority to defend or settle the Intellectual Property Claim.
- 29.5 If in Our reasonable opinion the Connect Software or Website design is or may become the subject of an Intellectual Property Claim then We shall either:
- (a) obtain for You the right to continue using the Connect Software or Website design;
  - (b) replace or modify the Connect Software or Website design so that it becomes non-infringing; or
  - (c) if such remedies in (a) and/or (b) above are not in Our opinion reasonably available, then You shall cease to use the Connect Software or Website design and We shall refund to You the corresponding portion of the corresponding fees as normally depreciated, if paid, whereupon the Contract shall immediately terminate.
- 29.6 We shall have no liability for any Intellectual Property Claim resulting from the combination of the Connect Software or Website with other applications or material that were neither supplied nor combined with the Connect Software or Website by Us or if the same results from any breach of Your obligations under these Terms and Conditions.
- 29.7 This Clause 29 states Our entire obligation and liability and Your sole remedy in respect of any infringement or alleged infringement of any intellectual property rights arising from Your use of the Connect Software or Website. We hereby exclude all other obligations and liabilities in relation to infringement or alleged infringement of the intellectual property rights of any person.

### **30. Confidentiality.**

- 30.1 Confidential Information shall be defined as any information (whether disclosed in oral, written or electronic form) belonging or relating to Our or Your business affairs or activities and which: (i) has been marked as confidential or proprietary, (ii) has been identified orally or in writing as being of a confidential nature, or (iii) ought to have been known by the receiving party to be confidential in the circumstances.
- 30.2 Each party undertakes that for a period of five years from the date of disclosure it will not, without the prior written consent of the other party, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than is necessary for the performance of its rights and obligations under the Contract. Each party hereby agrees that it shall treat the other's Confidential Information with the same degree of care as it employs with regard to its own Confidential Information of a like nature, disclosing such Confidential Information only:

- (a) to those of its employees, consultants and bona fide professional advisers who need to have such information for the purposes of these Terms and Conditions, and ensuring that such employees, consultants;
- (b) professional advisers shall be bound by the same confidentiality obligations as are set out in this clause;
- (c) as may be necessary in accordance with the PPSA for the security interest to be perfected; or
- (d) as may be required by law.

30.3 The provisions of Clause 30.2 shall not apply to:

- (a) any information in the public domain otherwise than by breach of these Terms and Conditions;
- (b) information lawfully in the possession of the receiving party thereof before disclosure by the disclosing party;
- (c) information lawfully obtained without restriction from a third party; and
- (d) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority provided that the party under such duty to disclose shall use all reasonable endeavours to give the other party as much prior notice of such disclosure as is reasonably practicable and permitted by law.

30.4 We may publicise Our involvement with You and You hereby authorise Us to use images of the Website which may include Content for publicity purposes. In the event that You do not want Us to use images of the Website which contain Content for publicity purposes, You may notify Us in writing and We shall not use such images in any future publicity.

30.5 Except as provided by Clause 30.6, You may not publicise Your involvement with Us without Our prior written consent. For the avoidance of doubt, such publicity restriction includes but shall not be limited to You not publicising Your involvement with Us on websites, internet forums, Twitter, Facebook or other social media sites. You hereby agree to indemnify Us against all damages, losses, costs, expenses and liabilities incurred by Us arising from Your breach of this Clause 30.5 including but not limited to damages and losses resulting from loss of reputation or goodwill. In the event that You breach this Clause 30.5, We may at Our option:

- (a) suspend the Services until such breach is remedied by You; or
- (b) treat such as a material breach and terminate the Contract in accordance with Clause 28.2(a).

30.6 Nothing in Clause 30.5 shall prevent You from recommending Us to any third party whom You believe would benefit from Our Services.

30.7 If a Contract is terminated, each party shall, at the other party's option, return or destroy all Confidential Information of the other party.

### **31. Assignment.**

You may not assign any Contract or otherwise transfer any rights or obligations under any Contract except with Our prior written consent.

### **32. Force Majeure.**

Neither party is responsible for failure to fulfil its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder. Dates or times by which each party is required to render performance under the Contract shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by such causes.

### **33. Notices.**

All notices made pursuant to these Terms and Conditions or any Contract must be made in writing. Any written notice to be given or made pursuant to the provisions of these Terms and Conditions or any Contract and shall be sent postage prepaid by registered or recorded mail or reputable courier service, addressed to the other party's address stated in these Terms and Conditions and the Quotation (or as otherwise notified by a party to the other party in writing) and shall be marked for the attention of "The Company Secretary". Unless otherwise provided in these Terms and Conditions or any Contract, all notices shall be deemed as given on the day of their receipt by the receiving party.

### **34. Entire Agreement.**

These Terms and Conditions together with the Quotation, Order Forms and SEO Order and Your acceptance thereof as set out in Clause 11.1 and Clause 16.2 constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous representations, agreements and other communications between the parties, both oral and written.

### **35. Dispute Resolution, Law & Jurisdiction.**

35.1 In the event of any dispute arising under these Terms and Conditions or any Contract the parties may be resolved by mediation in accordance with the ACICA Mediation Rules. The mediation shall take place in Sydney, Australia and be administered by the Australian Centre for International Commercial Arbitration (ACICA)..

35.2 If the dispute is not resolved by mediation or if the parties decide not to participate in mediation in accordance with Clause 35.1, each party hereby irrevocably agrees that the courts of New South Wales shall have non-exclusive jurisdiction to settle any disputes of whatever nature arising out of or relating to these Terms and Conditions or any Contract.

35.3 Notwithstanding the provisions of Clause 35.1, nothing in these Terms and Conditions or any Contract shall limit either party's right to seek injunctive relief.

35.4 These Terms and Conditions and any Contract shall be governed by the laws of New South Wales.

### **36. PPSA**

36.1 For the purposes of this clause 36, the terms 'financing statement', 'financing change statement', 'security agreement', 'PPS lease' and 'security interest' have the meanings set out in the Personal Property Securities Act 2009 (Cth) (the "PPSA").

36.2 You acknowledges and agrees that:

- (a) the Contract constitute a PPS lease for the purposes of the PPSA; and
- (b) a security interest is taken in all goods previously supplied by Us to You (if any) and all goods that will be supplied in the future by Us to You during the continuance of the parties relationship.

36.3 You agree to do anything (including obtaining consents, signing or producing any further documents, and/or providing any further information) which We request and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
- (b) enabling Us to apply for any registration, complete any financing statement, financing change statement or give any notification, in connection with the security interest; and/or
- (c) Us exercising Our rights in connection with the security interest.

36.4 Everything that We are required to do under this clause 36 is at Your expense.

36.5 You waive any rights you may have:

- (a) to receive notices under sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4), 134(1) and 135 of the PSSA; and
- (b) under sections 142 and 143 of the PPSA.

36.6 The parties agree that sections 96 and 117 of the PPSA do not apply to the Contract.

### **37. Survival.**

The following clauses shall continue to be in effect after the termination or expiration of the Contract: 1,4, 10, 19.3, 20, 21.3, 21.4, 21.5, 9.2, 9.3, 22.4, 23.3, 24, 26,27, 28.3, 28.6, 28.7, 28.8, 29, 30, 33 - 37 inclusive.

### **38. General.**

38.1 If any provision of these Terms and Conditions or any Contract is determined by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree that the remaining provisions of these Terms and Conditions or any Contract shall not

be affected thereby, and that the remainder of these Terms and Conditions and any Contract shall remain valid and enforceable.

- 38.2 No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto.
- 38.3 No single or partial exercise of any power or right by either party shall preclude any other or further exercise thereof or the exercise of any such power or right under these Terms and Conditions or any Contract.
- 38.4 These Terms and Conditions and any Contract may not be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorised representatives of Us and You.

## Schedule 1

### 1. Cancellation Fee

Where 2-4 weeks notice of cancellation is provided there is a charge of 8% of the total value of the cancelled Orders to cover costs incurred by Us and Our partners. Where less than 2 weeks notice is given, a charge of \$1,500 or 10% of the total Order Forms value (whichever is greater) will apply. You agree that such charge amounts to a genuine pre-estimate of the losses suffered by Us on such cancellation.

### 2. Rearrangement Fee

Where 2-4 weeks notice of rearrangement is provided there is a charge of \$300 to cover costs incurred by Us and Our partners. Where less than 2 weeks notice is given, a charge of \$1,000 will apply. You agree that such charge amounts to a genuine pre-estimate of the losses suffered by Us on such rearrangement.

### 3. Subscription Fee

Unless otherwise specified in the Quotation, the Subscription Fees will be \$[Insert] per month.

### 4. Obligations

We strive to maintain excellent relationships with Our customers and request that You behave in a professional manner so that We can work together effectively. To protect Our staff We reserve the right to withdraw Service if You communicate in what Our staff deem an abusive or offensive manner. Our staff are paid to provide assistance to Our customers and We do not tolerate unreasonable behaviour toward them. Should this occur, We will provide a verbal or written warning, then upon reoccurrence will withdraw Service completely. In all cases You are still liable for full support fees in accordance with Clause 21.1(a), and You will still be entitled to software updates where these are deemed essential.

**Power Supplies:** It is Your responsibility to ensure that the power supplies are stable and clean enough so as not to cause damage to computer systems. If We believe the



power supplies are potentially damaging We shall advise You install a power conditioner at Your cost.

## 5. Installation Obligations

If you require Installation services, We shall send You a Pre-Requisites questionnaire. We require the completed questionnaire no less than 2 weeks prior to the first Installation date otherwise We may cancel Installation.

We reserve the right not to install the system if building works are underway or incomplete on the day of Our Installation, If We need to rearrange Installation due to this You shall pay us the Rearrangement Fee.

We reserve the right not to install the system if broadband is not operational. If We need to rearrange Installation due to this You shall pay us the Rearrangement Fee.

## 6. Reconfiguration Fee

Currently \$600 ex GST but this may be amended by Us from time to time.

## 7. Company Complaints Procedure

Any complaint should, in the first instance be directed to the head of Customer Care. They will try to resolve the complaint directly or escalate through to the company Customer Complaint process. In the event that a complaint cannot be resolved by following this process, the provisions of Clause 35 shall apply and Both of Us shall attempt to settle such dispute via mediation.

## [ANNEX 1 - Acceptable Use Policy \(AUP\)](#)

Capitalised terms used in this AUP shall have the meaning given in a separate hosting services agreement document available on request.

### [Abuse](#)

You may not use the hosting provider's network or services to engage in, foster, or promote illegal, abusive, or irresponsible behaviour, including:

- (a) Unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorisation of the owner of the system or network;
- (b) Monitoring data or traffic on any network or system without the express authorisation of the owner of the system or network;
- (c) Interference with service to any user of the hosting provider or other network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks;
- (d) Use of an Internet account or computer without the owner's authorisation;

- (e) Collecting or using email addresses, screen names or other identifiers without the consent of the person identified (including, without limitation, phishing, Internet scamming, password robbery, spidering, and harvesting);
- (f) Collecting or using information without the consent of the owner of the information;
- (g) Use of any false, misleading, or deceptive TCP-IP packet header information in an email or a newsgroup posting;
- (h) Use of the service to distribute software that covertly gathers information about a user or covertly transmits information about the user;
- (i) Use of the service for distribution of advertisement delivery software unless: (i) the user affirmatively consents to the download and installation of such software based on a clear and conspicuous notice of the nature of the software, and (ii) the software is easily removable by use of standard tools for such purpose included on major operating systems; (such as Microsoft's "ad/remove" tool); or
- (j) Any conduct that is likely to result in retaliation against the hosting provider's network or website, or the hosting provider's employees, officers or other agents, including engaging in behavior that results in any server being the target of a denial of service attack (DoS).

### Bulk Email

You may not use a mail service (such as Our email or the hosting provider's Email) to send bulk mail. Please see the applicable Product Terms and Conditions for those services.

### Mail Requirements

You must comply with the SPAM Act 2003 (Cth) and other laws and regulations applicable to bulk or commercial email.

### Unsolicited Communications

You may not use Your service to send email or any other communications to a person who has indicated that they do not wish to receive it.

### Vulnerability Testing

You may not attempt to probe, scan, penetrate or test the vulnerability of Our system or network, or to breach the hosting provider's security or authentication measures, whether by passive or intrusive techniques, without Our express written consent.

### Newsgroup, Chat Forums, Other Networks

You must comply with the rules and conventions for postings to any bulletin board, chat group or other forum in which You participate, such as IRC and USENET groups including their rules for content and commercial postings. These groups usually prohibit the posting

of off-topic commercial messages, or mass postings to multiple forums. You must comply with the rules of any other network You access or participate in using Your services.

### Offensive Content

You may not publish, transmit or store on or via the hosting provider's network and equipment any content or links to any content that We reasonably believe:

- (a) Constitutes, depicts, fosters, promotes or relates in any manner to child pornography, bestiality, or non-consensual sex acts;
- (b) is excessively violent, incites violence, threatens violence, or contains harassing content or hate speech;
- (c) is unfair or deceptive under the consumer protection laws of any jurisdiction, including chain letters and pyramid schemes;
- (d) is defamatory or violates a person's privacy;
- (e) creates a risk to a person's safety or health, creates a risk to public safety or health, compromises national security, or interferes with a investigation by law enforcement;
- (f) improperly exposes trade secrets or other confidential or proprietary information of another person;
- (g) is intended to assist others in defeating technical copyright protections;
- (h) infringes on another person's copyright, trade or service mark, patent, or other property right;
- (i) promotes illegal drugs, violates export control laws, relates to illegal gambling, or illegal arms trafficking;
- (j) is otherwise illegal or solicits conduct that is illegal under laws applicable to You or to Us; or
- (k) is otherwise malicious, fraudulent, or may result in retaliation against Us by offended viewers or recipients, or is intended to harass or threaten.

Content "published or transmitted" via Our network or equipment includes Web content, email, bulletin board postings, chat, tweets, and any other type of posting or transmission that relies on the Internet.

### Live Events

You may not use Your hosting services to stream live sex acts of any kind, even if the content would otherwise comply with the AUP. We may prohibit You from streaming other live events where there is a special risk, in Our reasonable discretion, that the event may violate the Offensive Content section above.

## Copyrighted Material

You may not use the hosting provider's network or services to download, publish, distribute, or otherwise copy or use in any manner any text, music, software, art, image, or other work protected by copyright law unless:

- 1) You have been expressly authorised by the owner of the copyright for the work to copy the work in that manner; or
- 2) You are otherwise permitted by established copyright law to copy the work in that manner.

It is Our policy to terminate in appropriate circumstances the services of customers who are repeat infringers.

## Shared Systems

You may not use any shared system provided by the hosting provider in a way that unnecessarily interferes with the normal operation of the shared system, or that consumes a disproportionate share of the resources of the system. For example, we may prohibit the automated or scripted use of Mail Services if it has a negative impact on the mail system, or we may require You to repair coding abnormalities in Your Cloud-hosted code if it unnecessarily conflicts with other Cloud customers' use of the Cloud. You agree that we may quarantine or delete any data stored on a shared system if the data is infected with a virus, or is otherwise corrupted, and has the potential to infect or corrupt the system or other customers' data that is stored on the same system.

## Other

- (a) You must have valid and current information on file with Your domain name registrar for any domain hosted on the hosting provider's network.
- (b) You may only use IP addresses assigned to You by Us in connection with Your hosting services.
- (c) You agree that if the IP numbers assigned to Your account are listed on an abuse database like Spamhaus, You will be in violation of this AUP, and We may take reasonable action to protect the IP numbers, including suspension and/or termination of Your service, regardless of whether the IP numbers were listed as a result of Your actions.
- (d) You agree that if You register a DNS record or zone on the hosting provider's managed or operated DNS servers or services for a domain of which You are not the registrant or administrative contact according to the registrars WHOIS system, that, upon request from the registrant or administrative contact according to the registrars WHOIS system, We may modify, transfer, or delete such records or zones.

## ANNEX 2 - HARDWARE SUPPORT

### 01. Exclusions to Onsite Hardware Support.

The Onsite Hardware Support does not include any maintenance of the Hardware which is necessitated as a result of any cause other than fair wear and tear including without limitation:

- (a) Failure or fluctuation of electric power air conditioning humidity control or other environmental conditions;
- (b) Your neglect or fault or that of a third party;
- (c) Any fault in any attachments or associated equipment which do not form part of the Hardware including any equipment belonging to BT or any similar service provider;
- (d) The use of defective or inappropriate supplies with the Hardware;
- (e) Any defect or error in any software used upon or in association with the Hardware;
- (f) Your failure inability or refusal to afford Our personnel proper access to the Hardware;
- (g) Any act of God fire flood water wind lightning transportation vandalism burglary war or any other similar occurrence; or
- (h) Year 2000 compliance issues in the Hardware, its associated software or operating environment.

The Onsite Hardware Support also excludes:

- (a) Service other than at the location agreed in the Quotation or such other location as We shall have approved in writing.
- (b) Repair or renewal of tapes, disks packs, printing ribbons, print heads, toner units, developer units, optical drums, fuser units, batteries, rubber feed wheels, laser diodes, CRTs, Liquid Crystal Displays, detachable power leads, cabinet parts or other consumable supplies.
- (c) Physical damage of any form including faults arising as a result of drop damage.
- (d) Electrical or other environmental work external to the Hardware.
- (e) Maintenance of any attachments or associated equipment which do not form part of the Hardware.
- (f) Repair or renewal of cabling unless such cabling is specifically included in the Quotation.

## 02. Events

The following events will result in additional charges being made in accordance with Clause 8.8:

- (a) Coffee spills or other foreign substances damaging the Hardware in any way.
- (b) Presence of paper clips, coins etc., in the Hardware.
- (c) Defective coins in Coin Dispensers / Acceptors.
- (d) No Fault Found / No Issue present 1st / 2nd line checks to ensure this does not occur
- (e) Hardware training issues (Staff)
- (f) Lost or broken key and locks.
- (g) Any damage owing to Your misuse.
- (h) Cancelled call (where the engineer has arrived on site).
- (i) Any damage owing to fire, water, burglary, lighting strike, vandalism.
- (j) Any damage owing to the use of media, consumables, paper etc., which is not to the manufacturers specification.
- (k) Floppy disk metal sliders coming off in the floppy disk drive.
- (l) Faults or damage caused by power supply failures or fluctuations.
- (m) Hardware not switched on. 1st / 2nd Line checks to ensure this has been checked
- (n) Hardware inadvertently turned off. 1st / 2nd Line checks to ensure this has been checked
- (o) Cables in the wrong positions.
- (p) When an obvious reason is established for the equipment not being faulty e.g. The problem is caused by interference from another device or source.
- (q) Any problems caused by You unsuccessfully installing hardware or software on Your systems.
- (r) Lost or unavailable passwords requiring engineering intervention to restore system access.
- (s) Virus problems requiring engineering intervention.
- (t) Print heads
- (u) External Cables.
- (v) Consumables replaceable by You are those wearing parts that can be replaced without removing covers or screws e.g. Toner cartridge, print cartridges, etc.

- (w) Engineer replaceable consumables are those parts of the printer that can only be replaced by removing covers and screws e.g. Fusers, feed rollers, wear pads, etc.
- (x) Major sub-assemblies such as certain display screens, which, when broken, cannot be repaired but must be replaced. We will (if We are able to do so), at Your request and expense, replace such sub-assembly subject to You accepting Our written quotation therefore prior to commencement of work.

### 03. Your Obligations

We shall not be obliged to provide Onsite Hardware Support if You fail to comply with the following obligations. You shall:

- (a) Ensure that proper environmental conditions are maintained for the Hardware and shall maintain in good condition the accommodation of the Hardware the cables and fittings associated therewith and the electricity supply thereto.
- (b) Not make any modification to the Hardware without Our prior written consent.
- (c) Keep and operate the Hardware in a proper and prudent manner in accordance with the manufacturers operating instructions and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the Hardware.
- (d) Ensure that the external surfaces of the Hardware are kept clean and in good condition and shall carry out any minor maintenance recommended by the manufacturer from time to time.
- (e) Save as aforesaid not attempt to adjust or repair or maintain the Hardware and shall not request permit or authorise anyone other than Us or Our sub-contractors to carry out any adjustments repairs or maintenance of the Hardware.
- (f) Use on the Hardware only such operating supplies, as the manufacturer shall recommend in writing.
- (g) Not move the Hardware nor remove the Hardware from the location detailed in the Quotation without Our prior written consent.
- (h) Not use in conjunction with the Hardware any attachment or additional equipment other than that which has been supplied by or approved in writing by the manufacturer or Us.
- (i) Provide Us or Our subcontractors with full and safe access to the Hardware for the purposes of this Agreement
- (j) Ensure in the interest of health and safety that Our personnel while on Your premises for the purposes of this Agreement are at all times accompanied by a member of Your staff familiar with Your premises and safety procedures.

- (k) Promptly notify Us if the Hardware needs maintenance or is not operating correctly. Failure by You so to notify Us within ten days of You first becoming aware of such failure or incorrect working shall free Us from all obligations to investigate or correct such failure or incorrect working.
- (l) Make available to Us or Our subcontractors such programs operating manuals and information as may be necessary to enable Us or Our subcontractors to perform Our obligations hereunder and shall if requested by Us or Our subcontractors provide staff familiar with Your programs and operations which staff shall co-operate fully with Our personnel in the diagnosis of any malfunction of this Equipment.
- (m) Make available to Us or Our subcontractors free of charge all facilities and services reasonably required by Us to enable Us or Our subcontractors to perform the maintenance services including without limitation computer runs core dumps printouts data preparation office accommodation typing and photocopying.
- (n) Provide such telecommunications facilities as are reasonably required by Us or Our subcontractors for testing and diagnostic purposes at Your expense.
- (o) Keep full security copies of Your programs data and computer records in accordance with best computing practice.
- (p) Keep a backup of all programs and data installed on the computer, this is particularly important as in the event of a failure it is likely We will exchange the computer for a permanent equivalent. In the likely event an equivalent computer is provided, You accept responsibility for installing Your programs and data onto the replacement, other than the Operating System and the Connect Software itself.

### ANNEX 3 - SUPPORT SERVICES AND HOSTING (Excluding Onsite Hardware Support)

#### Policy on closing support calls

We shall close a support call raised on the helpdesk where the following circumstances are true:

- (a) We cannot recreate the issue.
- (b) Our IBM software testing robots cannot create issue.
- (c) No other customers have reported the same or similar issue.
- (d) You cannot demonstrate the issue or give clear steps on when and how the issue occurs.



## 1. Standard Support

### Access to the helpdesk

You can access the helpdesk and raise any question. You can do this via telephone, email or directly access it online. When You log a call it is given a priority and sent to the team or person most appropriate to get a solution. There are 2 main teams; Customer Services and Technical Support.

### Customer Services

This team consists of Product Specialists. So if it is a "How Do I?" type question it will usually be answered by a product specialist.

### Connect Support

If the question is more technical in nature it will be sent to one of Our technical team to investigate and provide a solution. The vast majority of cases are closed at this point. If not, it may be escalated to Our testing team for additional investigation. For example, one of the things they can do if needed is to create an equivalent environment to the one in Your business and then try and recreate the fault in order to analyse it further, this can be time consuming but is a good way to resolve some of the more intricate questions.

### Helpdesk Libraries

On the helpdesk we have made available the Help sheet Library created to answer the most commonly asked questions. These libraries are available 24/7. There are all free to download for Our support customers, there are now over 100 help sheets to improve Your experience of Connect. These cover a wide range of topics from Mass Price Changes, Using Our Handheld Scanner, Doing a Cash Declaration through to Advertising on Facebook.

### Video Help sheets

There are now 20 of these short informational videos to quickly help You on some of the most common tasks or even some advanced activities.

### Fixes and automatic upgrades

The Connect architecture allows automatic updates to be applied to Your whole Connect system. So if we get a report of a problem from one retailer in Edinburgh for example, if we feel everyone would benefit from the fix, it will be applied in the next update. This activity prevents the potential problem occurring on Your system before it has taken place. Also with certain Windows updates or Commidea changes etc. we need to update Our software to accommodate these. These background activities keep Connect more robust and reliable.

Before any upgrades are sent out we have a testing policy. Firstly it is run through Our IBM Rational Robot system which understands hundreds of thousands of actions in Connect and at computer speed clicks and types and looks for expected results. We have over 9 hours of computer speed testing. Then we go to beta stage where some customers test the new update on their sites. Then we roll out the fully tested upgrade.

## Expected Response Times

These expected response times allow You and Your staff to know when we will aim to respond to a request. This is the guide we work towards. They are not guaranteed, although even in peak times we aim to be in response times for Priority 1 calls.

Priority	Level	Example	Target Response Time
1	Severe	Till down	1 hr
2	High	Time critical support	8 hr
3	Standard	Normal	16 hr
4	Scheduled	Scheduled work	As per plan

## Support Hours

The support team are open Monday to Friday 9-5pm excluding bank holidays. See Our Advanced Support for extended support hours.

## Database Management

As with any database which is constantly growing with new data it needs a certain amount of optimising. Our team create automated routines to run on Your database tuning for better performance.

## New and Updated Connect Features

New features appear in Connect as part of Our automatic upgrades. So as not to disrupt store operations these are usually automatically turned off and can be switched on in the Back Office. For information on new features please see the release notes available on the Helpdesk.

## Customer Satisfaction Questionnaire

Every year we issue a customer satisfaction questionnaire by email and invite as many customers to feed back as possible. This is an opportunity to let us know if You would like any changes, areas to improve or if You have any requests for new features. We do reserve time and we do act on these results. If You have any ideas of new functions at other times we welcome ideas on "Request a Feature" on Our helpdesk.

## 2. Enhanced Support Service

This optional additional service is aimed at those customers who would like an extended support service, usually those with multi-store estates. We recommend this for customers with more than 4 stores and, or a sizeable eCommerce business with warehouse fulfillment centre. Or for those who have ongoing specialist requirements.

## Service Level Agreement

We work towards higher priority response as indicated in the service levels below. They allow You and Your staff to know when we will aim to respond to a request. This is the guide we work towards, the response times are not guaranteed, although even in peak times we aim to be in response times for Priority 1 calls.

Priority	Level	Example	Target Response Time
1	Severe	Till down	1 hr
2	High	Time critical support	3 hr
3	Standard	Normal	8 hr
4	Scheduled	Scheduled work	As per plan

### Additional Support Hours

In addition to the standard support hours of Monday to Friday 9-5pm excluding bank holidays, support for priority 1 calls is available on Saturday 9-1pm for Your peace of mind that if something should happen to Your tills or system then someone is there to look at it for you.

### Additional Support for Commidea Chip and Pin

Most of Our retailers have a direct relationship with Commidea for integrated Chip and Pin. Our policy is to direct calls about this service to them. The nature of larger companies is that staff prefer to have a single company for support, therefore with Enhanced Support Intelligent Retail® will take more ownership of these calls and where we can work to a resolution. There are occasions when it makes sense to call Commidea directly for example a query on a payment going through where we will have no details, so will ask the person in the store to talk to Commidea directly in order to achieve the fastest possible resolution time.

### Discount on Proactive Maintenance

Keeping computer systems in good health is an important task. All computers slow down over time and need to be proactively maintained and optimised for speed, and security to reduce risk of errors from day to day general ongoing usage. Intelligent Retail® offers a remote dial in service that we recommend once a year. These can be scheduled with the Project Team and booked in with Technical Services Agents schedules.

This service will include a report of recommendations, for example if we find a system would benefit from a RAM upgrade we will note this as a recommendation. It's a little like an MOT but we are doing some of the actions at the same time.

Standard cost is: \$200 per till for preparation, remote software health check of up to 1 hour actively on till and the report. An additional \$30 every 15 minutes afterwards (should we find a lot of work needs doing). Customers on the Enhanced Package will receive a 20% discount from these standard rates.

### 3. Account Management Service

This optional additional service is aimed at those customers who would like a higher level of personal service with Your own Dedicated Account Manager and direct dial telephone number. This service is highly recommended for those customers with more than 4 stores and, or a sizeable eCommerce business with warehouse fulfillment centre. Or for those who have ongoing specialist requirements.

#### Working in Partnership

With an extensive knowledge of Connect software and Our business, Your account managers are an ideal point of contact and Champion for Your business at Intelligent Retail®. Your Account Manager is there to build a solid, long-term relationship to ensure both companies get the most out of the partnership.

#### Direct Contact

Your Account Manager is a named single point of contact and You will have their direct telephone number.

#### Regular Update Meetings

Run smartly and efficiently by telephone to review progress on any particular programmes or events that are forthcoming as well as discussing ongoing use of the Connect system, helping Your company get more out of it.

#### Updates

You will be kept abreast of the latest Connect updates. You will have a good opportunity to explore what the latest Connect updates mean to the business and how to get most out of them.

#### Project Management

Where there are joint projects Your Account Manager will partner Your team to develop project plans between businesses and help manage through to a successful delivery.

#### Account Management Service Q&A

Q: Who will be my main point of contact?

A: You will be provided with a dedicated Account Manager, they will initially consult with You to assess Your business needs. From this a document is produced to set out the guideline of requirements and aims.

Q: How do I log support calls?

A: The best way to log calls is still via the helpdesk as the team make sure it is sent to the best person to action the call. With Your account manager You can discuss any calls that have been logged if You want to escalate or ask any questions.

Q: When would my regular update meeting be?

A: A regular meeting would be set up between Your main point of contact and Your Account Manager at Intelligent Retail®. This would be scheduled as required, on a weekly, fortnightly or monthly basis and is conducted by conference call.

Q: How will I benefit from latest Connect updates?

A: Your Account Manager will give You a preview of new features and products available in Connect.

## 4. Hosting Services

Intelligent Retail® has a range of hosting services available for Your Connect Website and Connect Retail database system. Each service includes a limited amount of bandwidth and disk space per month. Additional resources used will be charged each month.

### 4.1 About Our Hosting

Hosting is an integral and essential part of Connect. It means You have a reserved space on Our secure servers to hold Your information and Connect software. The servers are situated inside a data centre (which is a large temperature controlled, secure room full of servers). Intelligent Retail® select the best in hosting providers, currently we currently use Rackspace® Hosting the World's leader in hosting\*. Since 2001 Rackspace has been hosting and supporting mission critical websites, internet applications, email servers, security and storage services.

We selected Rackspace because of its excellent reputation in the marketplace for reliability and quality service. Rackspace use supported stacks of the software that we use on Our services such as Apache and Tomcat, increasing reliability. Rackspace engineers are on site at Rackspace and work to an agreed procedure should they be called upon. This leads to higher reliability. The multichannel solution provides a feature rich solution based on a dynamic hosting environment, with any such environment it changes on a regular basis with ongoing upgrades and security patches etc. We do not therefore guarantee 100% uptime, some planned and unplanned downtime is to be expected from time to time although we do aim to minimise this.

Rackspace has also built its reputation on providing high capacity for peaks in demand and fast connections again improving resilience.

Rackspace also has green credentials. It became one of the world's first hosting companies to offer carbon neutral hosting through tree planting in October 2006 and partnered with the ITF, the world's longest standing tree planting charity. So far Rackspace is planting between 300-400 trees a month. Other initiatives include using the most power efficient hardware as well as building new facilities which utilise the latest power efficient technologies.

### 4.2 Hosting for Your shops / warehouse

#### Central communications hub

Information is flowing through to different locations through the data centre. The fast internet links and fast servers mean this is efficient. It means Your information is shared

between Your Connect system so You can see information centrally. You can also access Your central database from any Connect system to complete back office functions such as placing orders, running reports, goods in or Till functions like taking phone orders.

### **Backup for Your company data**

Anyone who has ever lost data knows how painful it can be. It is important to back up Your company records. In Connect Your records are backed up and stored in the data centre. This includes transaction history, customer information and product information which are automatically backed up. So if a severe problem should occur, for example Your till has a major failure, Your system information will be stored either on the main server or in one of the regular backups we take. This service is complimentary as part of the infrastructure, and if requests are made to restore data the service may be chargeable. We would advise making Your own backups if data is critical as we cannot be held liable for losses of data.

### **4.3 Website Hosting**

If You have a website with us then we will be hosting it in the same data centre. It will be on different servers though. These servers have a specialist software stack that is supported by us and the on-site engineers at Rackspace. Your website has its own database to drive it efficiently. Your online customers will be looking at Your website which is securely separated away from the rest of Your system. Your website has to be fast and reliable and together with Rackspace we aim to deliver a high quality service. We don't guarantee uptime at any level.

### **Increased Visibility Pack**

This is part of the hosting package to increase the visibility of Your website in the search engines. It includes the following functions: 1) Product optimisation which creates the codes and page structure to help search engines find Your individual products when You upload them. 2) Human Readable URLs. Even though Your product pages are created automatically by the Connect system, Your website page names will be clear to humans and therefore better for search engine rankings. 3) A sitemap is created automatically each time You upload new products. This lists Your products with a link to each page allowing search engines to more easily spider Your website which can improve the number of products listed.

### **4.4 Silver 'Clustered' Web Server Hosting**

Typically, hosting infrastructures are based on using a single server to host multiple services, including web, database, email, and others. A single server is not only a single point of failure, but also has finite capacity for traffic, that in practice can be troublesome for busy websites.

The Standard Intelligent Retail® Hosting Service includes a clustered architecture that separates Web Server and Database Server to increase reliability and decrease the chances of one service affecting another.

The Clustered Web Server Hosting is an optional additional service that provides an additional Web Server with the same content on so that if one fails or restarts the other server takes over.

Software is run to synchronise website files and images between primary and fail over server.

Apache load balancer software is used so if a slowdown or restart is identified on the primary server, the failover server will usually kick in.

Clustered Servers are known as a perfect solution for high-availability hosting. It doesn't guarantee 100% uptime but it does improve uptime when certain server failures occur. By clustering services across multiple servers, and using load balancing You can eliminate single points of failure increasing availability of Your website and other web services beyond that of ordinary single server hosting.

#### 4.5 Gold 'Clustered' Web Server Hosting + RackWatch 24/7

This optional additional service is as per the Clustered Web Hosting and includes RackWatch Platinum 24/7.

RackWatch is a centralised monitoring solution that monitors pages on Our hosted servers, checking every 5 minutes to ensure the quick identification of problems. Should a device not respond, Rackspace support engineers are sent an alert via pager and email. Rackspace will investigate the problem immediately, checking the console for the error message and determining the severity of the problem. Their support and Data Centre (DC) operations engineers will respond to hardware failures and fix them which ensures that You suffer minimal device or solution downtime.

With this Premium level of RackWatch the engineers also run through a sequence of instructions that we have specified with the aim of proactively getting the servers running again quickly.

Monitoring checks many of the mission critical services and improves the likelihood that they are up and running.

This is not a 100% uptime guarantee and RackWatch does not pick up 100% of potential problems that may occur, but it does mean that some of the key services running on Your website are monitored every 5 minutes and if an issue is raised Rackspace engineers will be alerted to look into the problem. Due to the nature of server hosting we cannot guarantee that a fix is implemented within a certain amount of time but server downtime is given a number 1 priority by the team at Rackspace.

This service is intended for those customers who want the extra peace of mind that Rackspace monitoring is in place 24/7 with Rackspace engineers on hand to investigate