

## TECHBRAIN GENERAL TERMS AND CONDITIONS

The Quotation and these Conditions constitutes the agreement under which Customer has engaged TechBrain Pty Ltd ACN 108 260 359 as Trustee for the Keegan Family Trust ABN 84 108 360 350 (**TechBrain**) to provide to the Customer ongoing information technology management and support for the Term of the Agreement.

In the event of any inconsistency between the Quotation and these Conditions, the Quotation prevails to the extent of the inconsistency.

These Conditions are current as at 1<sup>st</sup> June 2022.

### 1. DEFINITIONS AND INTERPRETATION

1.1 In the Quotation and these Conditions unless the context requires otherwise, the following terms shall apply:

**Ad Hoc Services** means those services provided by TechBrain to the Customer which do not comprise nor form a part of the Agreement Services (as defined) or the Excluded Services (as defined) and which for the avoidance of doubt are more specifically set out in the Quotation and shall be charged to the Customer at the applicable Hourly Rate;

**Agreement** means the agreement for the provision of the Agreement Services by TechBrain to the Customer Quotation constituted by the Quotation and these Conditions;

**Agreement Services** means those services provided by TechBrain to the Customer pursuant to the Agreement as set out in the Quotation;

**Commencement Date** means the date on which the Customer executes the Quotation;

**Conditions** means these General Terms and Conditions;

**Confidential Information** means:

- (a) all information and materials of or concerning a Party (**disclosing party**) or any of the disclosing party's business or any of the disclosing party's related bodies corporate including the shareholders of the disclosing party, all commercial, financial, legal and technical information and know-how directly or indirectly related to the business or affairs of the disclosing party, or any of the disclosing party's related bodies corporate;
    - (i) which is disclosed by or on behalf of the disclosing party to the other Party (**recipient**); or
    - (ii) which comes to the knowledge of the recipient or any of the recipient's representatives which the recipient knows is confidential;
  - (b) all information, materials and documents at any time made available to the recipient by a disclosing party or its advisors;
  - (c) the contents of any discussions or agreements between the Parties relating to the Services;
  - (d) the terms, conditions and existence of the Agreement;
- but does not include information which:
- (e) at the time of first disclosure to the recipient was in the public domain;
  - (f) after disclosure to the recipient comes into the public domain otherwise than by disclosure in breach of the terms of the Agreement;
  - (g) was known to or by the recipient at the time of first disclosure to it and was not acquired directly or indirectly from the disclosing party; and
  - (h) the recipient receives from a third party, only where the information was not obtained directly or indirectly from the disclosing party in breach of any obligation of confidence owed by the third party to the disclosing party or any other party.

**Customer** means the entity(s) as specified in the TechBrain Application to Trade and/or in the Quotation made in connection with the Agreement;

**Excluded Services** means those services provided by TechBrain to the Customer which do not comprise nor form a part of the Agreement Services (as defined) or Ad Hoc Services (as defined) and which for the avoidance of doubt are more specifically described as such in the Quotation ;

**Equipment:**

(a) means any goods or equipment supplied by TechBrain to the Customer in connection with performance of the Services; and

(b) in clause 12 means goods or equipment supplied by TechBrain to the Customer in connection with performance of the Services in respect of which TechBrain retains a legal or beneficial interest.

**Fees** means the collective and total fees (exclusive of GST) payable by the Customer for the Agreement Services and any Ad Hoc Services and/or work performed to address a specific Excluded Service, including but not limited to the Monthly Service Fee and any Hourly Rate charged for Ad Hoc Services or Excluded Services;

**Hourly Rate** means the amount to be charged for each and every hour (or portion thereof) that TechBrain provides the Services to the Customer Quotation as set out in the Quotation;

**Incident** means an unplanned interruption to the IT devices and or networks of the Customer;

**Intellectual Property Rights** means all intellectual and industrial property rights including trademarks, copyright (including future copyright), patents, inventions, trade secrets, designs, circuit and other eligible layouts, database rights, the right to have confidential information kept confidential, and includes any application or right to apply for registration or grant of any of these rights;

**Monthly Service Fee** means the fee for services provided by TechBrain to the Customer which form part of the Agreement Services (as defined) and which for the avoidance of doubt are more specifically set out in the Quotation.

**Party** or **Parties** means either or all the parties to the Agreement;

**Problem** is the cause of one or more Incidents;

**Resolution** means restoring the IT service to a state where it has no or little business impact on the Customer;

**Schedule** means a schedule to **Quotation** the Quotation;

**Security Amount** has the meaning given in clause 4.5;

**Service Request** is a request for assistance to address a Service or an Ad Hoc Service, received by TechBrain from the Customer either directly, from a third party or because of issues generated from any maintenance or monitoring activities conducted by TechBrain;

**Services** means the services provided by TechBrain to the Customer pursuant to the Agreement.

**Software Subscription Contract** has the meaning given in clause 4.4;

**Staff Member** means an employee, contractor or consultant, whether full-time or part-time, of TechBrain;

**Support Devices** means the number of server, desktop, tablet and notebook client devices included in the Fee Proposal section of the Quotation;

**Term of the Agreement** means the term of the Agreement, as set out in clause 2;

**User** means an employee, contractor or other person working for the Customer;

**Quotation** means the quotation provided by TechBrain to the Customer for the provision of the Services and accepted by the Customer as evidenced by its execution; and

**Work Approval** means an approval for TechBrain to deliver an Ad-Hoc or Excluded Service, as issued by an authorised representative of the Customer, in accordance with the process set out in the Quotation.

1.2 In these Conditions headings and bolding are for convenience only and do not affect the interpretation of the Agreement, unless the context otherwise requires:

- (a) a word which denotes the singular denotes the plural and vice versa, and any gender denotes the other genders;
- (b) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (c) a reference to a recital, clause, annexure or exhibit is to a recital, clause, annexure or exhibit of or to these Conditions;
- (d) a reference to any Party to the Agreement or any other document or arrangement includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (e) any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation;
- (f) any other agreement or instrument, where amended or replaced, means that Agreement or instrument as amended or replaced;
- (g) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (h) a reference to a 'related body corporate' of a body corporate is to a body corporate which is related to that body corporate within the meaning of section 50 of the *Corporations Act 2001* (Cth);
- (i) a business day means a day other than Saturday or Sunday on which banks are open for general banking business in the state where the Customer has their principal place of business; and
- (j) a reference to 'dollars' or '\$' is to the currency of Australia.

## **2. TERM**

The Agreement shall commence on the Commencement Date and continue until termination in accordance with the provisions set out in Clause 15 of these Conditions.

## **3. PROVISION OF SERVICES**

- 3.1 TechBrain agrees to provide the Services to the Customer in accordance with the terms and conditions as set out in the Agreement.
- 3.2 TechBrain will provide the full range of Services to the Customer, after completion of the on-boarding process as set out in the Quotation documents provided by TechBrain and accepted by the Customer (hereafter referred to as **On Boarding**).
- 3.3 In the period between the Commencement Date and the completion of On Boarding, the Customer agrees that TechBrain will provide the Services on a best endeavours basis.
- 3.4 The Customer acknowledges and agrees that the Ad Hoc Services as specified in the Quotation are to be considered additional services and do not comprise the Agreement Services. As such, the Parties agree that the Customer shall pay additional fees in order to access the Ad Hoc Services and that these amounts shall be charged at the Hourly Rate set out in the Quotation.
- 3.5 The Customer acknowledges and agrees that the Excluded Services as specified in the Quotation are to be considered optional services and do not comprise the Services. As such, the Parties agree that the Customer shall pay additional fees in order to access an Excluded Service and that these amounts shall be charged at the same Hourly Rates as set out in the Quotation for Ad Hoc Services.

## **4. FEES AND CHARGES**

- 4.1 The Customer agrees to pay to TechBrain the Fees for the Agreement Services, the Ad Hoc Services and any Excluded Services in accordance with the payment terms as set out in the Quotation.
- 4.2 The Customer agrees that fees paid for Agreement Services as notified by TechBrain from time to time, and based on a count of devices, will be adjusted as and when TechBrain, the Customer or any other provider installs or decommissions devices used in the calculation of fees.
- 4.3 The Customer agrees that any services falling outside of the scope of the Agreement Services, such as those identified as Ad Hoc Services (and as specified in the Quotation) or an Excluded Service (as specified in the Quotation) will be chargeable at the prevailing Hourly Rate as notified by TechBrain from time to time.

- 4.4 The Customer acknowledges and agrees that it is liable for Fees payable under all software subscription contracts (**Software Subscription Contracts**) that TechBrain enters into on behalf of, and for the benefit of, the Customer in connection with the provision of the Services. Without limiting clause 15.3(b), the Customer agrees to pay to TechBrain all amounts payable under the Software Subscription Contracts on termination of the Agreement.
- 4.5 Where the Customer requests TechBrain to enter into on behalf of, and for the benefit of, the Customer, a Software Subscription Contract for multiple users, TechBrain may, as a condition to entering into such Software Subscription Contract or at any time during the Term of the Agreement, require the Customer to provide a security deposit for an amount determined by TechBrain not exceeding the total amount of Fees payable under the Software Subscription Contract (**Security Amount**).
- 4.6 If TechBrain requires the Customer to provide a security deposit under clause 4.5, the Customer must meet its security deposit obligation by providing:
- (a) a cash deposit to TechBrain equal to the Security Amount; or
  - (b) a bank guarantee to TechBrain equal to the Security Amount on terms and by a financial institution acceptable to TechBrain,
- within 7 days of receipt of TechBrain requiring the provision of the security deposit.
- 4.7 TechBrain may at any time during the Term of the Agreement require the Customer to increase the Security Amount (provided that Security Amount does not exceed the total amount of Fees payable under the Software Subscription Contract) and the Customer agrees to increase the Security Amount as required within seven days of TechBrain requiring the Security Amount to be increased.
- 4.8 The Customer acknowledges that TechBrain may have recourse to the security deposit in the event the Customer fails to pay to TechBrain all amounts payable under the Software Subscription Contract on termination of the Agreement.
- 4.9 TechBrain will release the security deposit, or the balance of the security deposit to which TechBrain has not utilised under clause 4.7, on termination of the Agreement.

## 5. GST

- 5.1. In this clause 5, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.
- 5.2. If a Party makes a supply under or in connection with the Agreement in respect of which GST is payable (not being a supply the consideration for which is specifically described in the Agreement as 'GST inclusive'), the consideration for the supply but for the application of this clause 5.2 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- 5.3. If a Party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other Party is entitled to for the loss, cost or expense, and then increased in accordance with clause 5.2.
- 5.4. A Party need not make a payment for a taxable supply made under or in connection with the Agreement until it receives a tax invoice for the supply to which the payment relates.

## 6. DELIVERY OF SERVICES

- 6.1. TechBrain will deliver the Agreement Services, the Ad Hoc Services and any Excluded Services to the Customer:
- (a) in accordance with its reasonable endeavours;
  - (b) in a professional manner and with due care and skill;
  - (c) promptly in response to the Customer's requests and in accordance with any service response timeframes set out in the Agreement;

- (d) in compliance with all laws; and
  - (e) otherwise in accordance with the Agreement.
- 6.2. The Customer will ensure that during TechBrain's delivery of the Services, the Ad Hoc Services and the Excluded Services, the Customer and its employees and contractors shall:
- (a) cooperate with TechBrain's personnel and authorised representatives;
  - (b) provide TechBrain's personnel, contractors and authorised representatives with access to the Customer's IT systems (as is only limited to the requirements of the Services or the Ad Hoc Services); and
  - (c) provide all other reasonable assistance to TechBrain,

as may be required to enable TechBrain to perform its obligations under the Agreement and any applicable law or regulation.

- 6.3. The Customer acknowledges and agrees that all Intellectual Property Rights in any materials or systems created by TechBrain in connection with the provision of the Services under the Agreement belong to TechBrain absolutely.

## **7. LIMITATIONS OF LIABILITY**

- (a) To the extent permitted by law, TechBrain's liability in respect of the Services and the Ad Hoc Services, is limited to:
  - (i) the re-supply of the Agreement Services, Ad Hoc Services or the Excluded Services; or
  - (ii) the cost of the supply of the Agreement Services, Ad Hoc Services or the Excluded Services by a third party but only to the extent, in aggregate, of the Monthly Service Fee received by TechBrain from the Customer for the collective two month period preceding the event giving rise to the cause of action. In the event that the cost should exceed this amount, the Customer shall remain liable for any amounts over and above the threshold set out in this clause 7(a)(ii). In no event shall TechBrain's total liability to the Customer for all damages, losses and causes of action (whether in contract, tort or otherwise) exceed the Monthly Service Fee received by TechBrain from the Customer for the collective two month period preceding the event.
- (b) To the extent permitted by law, and notwithstanding any other provisions of the Agreement, in no event will either Party be liable for economic loss of the other Party including loss of profits, downtime costs, loss of revenue, loss of reputation or any indirect or consequential loss arising out of or in connection with the Agreement, howsoever caused.
- (c) TechBrain may from time to time, in providing the goods and services to the Customer, use third party hardware, software and services and in such circumstances the Customer acknowledges and agrees that TechBrain is not the manufacturer or developer of the third party hardware software or services and provides no warranty as to the suitability, functionality or quality of the third party goods and services. The Customer agrees that TechBrain has no liability to the Customer arising from the use of third party goods and services and indemnifies TechBrain against any claim, action, damage, loss, cost, charge or other expenses incurred by TechBrain as a result of TechBrain providing those third party goods and services to the Customer.

## **8. INDEMNITY**

To the extent permitted by law, the Customer indemnifies TechBrain against any claim, action, damage, loss or liability which TechBrain incurs or is liable for in connection with:

- (a) liability for any death, injury or damage to any person or property arising from the provision of products or the Services, where directly caused by or contributed to by the Customer's negligent or wilful act or omission;
- (b) any claim for breach of intellectual property rights arising in connection with the provision of the Services;
- (c) any loss arising from any part of the Agreement being void, voidable or unenforceable for any reason;
- (d) anything done by TechBrain in exercise or purported exercise of its rights under the Agreement;
- (e) any breach by the Customer of its obligations under the Agreement including any failure to insure;
- (f) any loss, cost, charge or liability arising from a cyber breach; and
- (g) the use of third party goods and services provided by TechBrain.

Each indemnity in this clause 8 is a separate and independent obligation and continues after termination of the Agreement.

## **9. RESTRAINTS**

- 9.1. The Customer undertakes that it will not, either directly or indirectly or through any related bodies corporate, without the prior written consent of TechBrain:
- (a) employ, engage or retain; solicit or attempt to employ;
  - (b) or purchase any goods or Services from, any staff member of TechBrain.
- 9.2. The restriction in clause 9.1 applies for the following periods:
- (a) during the entire time the Customer receives any services from TechBrain; and
  - (b) the later of 6 months following the provision of any services by TechBrain; or
  - (c) 6 months following the cessation of the Staff Member's employment with TechBrain.
- 9.3. The restriction in clause 9.1 applies to the Customer acting either alone or in partnership or association with another person or business; as principal, agent, representative, director, officer or employee; as member, shareholder, debenture holder, noteholder or holder of any other security; as trustee of or as a consultant or adviser to any person (other than the Customer); or in any other capacity.
- 9.4. The Customer and TechBrain each acknowledge that the restriction in this clause 9 is a fair and reasonable restriction considering TechBrain's relationship with its employee(s).
- 9.5. In the event that the Customer breaches the restraint contained in this clause 9, the Customer shall pay to TechBrain an amount equal to the annual base salary plus superannuation payable to the employee by TechBrain immediately before the employee was employed, engaged, retained, solicited, offered employment by or provided goods or services to the Customer regardless of the extent of provision of goods or services to the Customer. It is expressly acknowledged and agreed that the amount referred to in this clause 9.5 is a genuine pre-estimate of the loss which would be suffered by TechBrain because of the Customer's breach of the restraint.
- 9.6. Where TechBrain provides the services of a Staff Member to the Customer and the Customer subsequently provides the services of that Staff Member to a third party client of the Customer as part of business transaction undertaken by the Customer, then the Customer must take all reasonable steps to ensure that the client of the Customer does not, directly or indirectly, without

the prior written consent of TechBrain employ, engage or retain, solicit or attempt to employ, or purchase any goods or services from that Staff Member.

- 9.7. Should the circumstances envisaged by clause 9.6 arise, the Customer will pay to TechBrain an amount equal to the annual base salary plus superannuation payable to the employee by TechBrain immediately before the employee was employed, engaged, retained, solicited, offered employment by or provided goods or services to the client of the Customer regardless of the extent of provision of goods or services to the client of the Customer.

## **10. CONFIDENTIALITY**

- 10.1 No Party may, at any time, disclose the terms and conditions of the Agreement or disclose any trade secrets, know-how, customer lists, pricing, policies, operating methods and processes, research projects or other information normally considered to be trade secrets or confidential information of the other party, to any third party without obtaining the prior written consent of the relevant party.

- 10.2 TechBrain must at all times:

- (a) use solely for the purposes of the provision of the Agreement Services and the Ad Hoc Services;
- (b) keep strictly confidential;
- (c) treat as secret and confidential;
- (d) not copy or disclose to any person without the prior written consent of the Customer; and
- (e) maintain secure custody of,

all Confidential Information.

- 10.3 TechBrain must ensure that each member of its staff involved in the provision of the Services and the Ad Hoc Services or in receipt of Confidential Information complies with the obligations set out in clause 10.1.

- 10.4 Without limiting this clause 10, to the extent that the Confidential Information includes information about an individual or from which the identity of an individual is reasonably ascertainable, TechBrain will comply with and, for the purposes of the Agreement is deemed bound by, the provisions of the applicable Australian privacy legislation and any applicable code of practice with respect to any act done or practice engaged in by TechBrain for the purpose of the Agreement, in the same way and to the same extent as the Customer would have been bound by them in respect of that act had it been directly done by or engaged by the Customer.

- 10.5 This clause 10 is a continuing obligation and survives termination of the Agreement.

## **11. EQUIPMENT**

- 11.1. Legal and beneficial ownership of Equipment shall not pass to the Customer until the Customer has paid for the Equipment in full. Until such time, TechBrain has the right to call for or recover the Equipment (for which purpose the Customer authorises TechBrain to enter the Customer premises by its servant or agents, without prior notice to the Customer) and the Customer must deliver up the Equipment to TechBrain on demand. For this purpose the Customer grants TechBrain an irrevocable licence to enter upon the Customer's premise for the purpose of retaking possession of the Equipment.

11.2. Risk in Equipment passes to the Customer immediately on delivery.

## **12. PPSA**

12.1. The Agreement is a security agreement for the purposes of the PPSA.

12.2. The Customer consents to TechBrain effecting and maintaining a registration on the register in any manner TechBrain consider appropriate in relation to any security interest granted in or constituted by the Agreement, in any item of Equipment and the proceeds arising in respect of any dealing in the Equipment.

12.3. The Customer agrees that TechBrain may at any time register a financing statement or financing change statement in respect of such a security interest (including any purchase money security interest). The Customer waives its right (including under section 157 of the PPSA) to receive notice of a verification statement in relation to any registration by TechBrain on the register of such a security interest.

12.4. The Customer agrees to do anything and sign any documents and provide all assistance and information required by TechBrain to:

- (a) facilitate the registration and maintenance by TechBrain of any security interest on the register;
- (b) acquire and maintain a perfected security interest under the PPSA in respect of any item of Equipment and the proceeds arising in respect of any dealing in the Equipment; and
- (c) ensure that TechBrain's rights and TechBrain's security and priority position are not adversely affected by the PPSA.

12.5. The Customer agrees to not register or permit to be registered a financing change statement in respect of a security interest granted in or constituted by the Agreement (including in relation to any item of Equipment) without TechBrain's prior written consent.

12.6. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest granted in or constituted by the Agreement and:

- (a) section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Customer will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
- (b) section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Customer will have no rights under them: section 127; sections 129(2) and (3); section 130(1); section 132; section 134(2); section 135; sections 136(3), (4) and (5) and section 137.

12.7. The Parties agree not to disclose information of the kind referred to in section 275(1) of the PPSA to any other person, to the extent permitted by the PPSA.

12.8. In this clause 12, PPSA means the *Personal Property Securities Act 2009* (Cth) and any other legislation and regulations in respect of it and the following words in this agreement have the meanings given to them in the PPSA: financing change statement, financing statement, purchase money security interest, register, registration, security agreement, security interest and verification statement.

## **13. PRIVACY**

During the Term of the Agreement, TechBrain shall ensure that TechBrain, its employees and contractors will all comply with and be bound by the provisions of its Privacy Policy in respect of any personal information disclosed (or otherwise imparted) by the Customer to TechBrain.

#### **14. INSURANCE**

During the Term of the Agreement, TechBrain will (at its own expense) maintain appropriate and reasonable levels and terms of insurance in respect of professional indemnity, public liability and workers compensation insurance, for the benefit of itself and the Customer.

#### **15. TERMINATION**

##### **15.1. Early Termination**

As at the Commencement Date of the Agreement, the Customer may choose to terminate the Agreement prior to completion of On Boarding upon which the full On Boarding Fee payable in respect of the On Boarding process shall become immediately payable to TechBrain.

##### **15.2. Termination**

Either Party may terminate the Agreement without cause by giving 3 calendar months written notice to the other Party.

##### **15.3. Obligations on Termination**

If the Agreement is terminated:

- (a) the Agreement Services shall continue to be provided by TechBrain to the Customer up to the date of termination;
- (b) outstanding monies due and payable owing by the Customer to TechBrain up to the date of termination shall be due and payable by the Customer; and
- (c) subject to all outstanding amounts being paid in full by the Customer, TechBrain must return to the Customer, as soon as practicable after termination, any material obtained or created by (or on behalf of) the Customer in the course of providing the Agreement Services, the Ad Hoc Services or the Excluded Services, including all Confidential Information.

##### **15.4. Non-payment**

- (a) In the event that any sum due under the Agreement is not paid by the due date without prejudice to TechBrain's other rights and remedies, TechBrain reserves the right to terminate the Agreement with immediate effect and charge interest on such sum on a day-to-day basis (as well as before any judgement) from the date the payment was due to the date of actual payment (both dates inclusive) at the rate of 2 % above the Corporate Overdraft Reference Rate of Commonwealth Bank of Australia.
- (b) Interest shall be paid by the Customer upon TechBrain's demand, pursuant to clause 13.4(a). The Customer shall also be liable for all costs and expenses incurred by TechBrain in the recovery of all sums due from the Customer under the Agreement; and TechBrain shall additionally invoice a late payment charge of \$200 for any late payment due under the Agreement by the Customer.
- (c) In the event any sum due under the Agreement is not paid by the due date and TechBrain demands payment from the Customer, until the Customer settles the outstanding payment TechBrain may suspend the provision of the Services or the Ad Hoc Services but TechBrain must reinstate the Services and the Ad Hoc Services immediately upon payment of the outstanding sum due to it.
- (d) Where TechBrain suspends the Services to the Customer under clause 15.4(c), the Customer may not enforce any part of the Agreement that requires TechBrain to provide Services to the Customer.

- (e) The Customer acknowledges and agrees that TechBrain is not obliged to return or provide access to Customer's data or information provided to TechBrain under the Agreement if any sum under the Agreement is due and owing by the Customer.

15.5. Any termination of the Agreement pursuant to this clause 15 shall be without prejudice to any other rights or remedies a Party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

## 12. GENERAL

### 1. Variations

TechBrain, acting reasonably, may vary any of the terms of these Conditions and the Quotation from time to time at its sole discretion by providing the Customer no less than 21 days notice. The Customer will be deemed to accept the variations to these Conditions and the Quotation by continuing to engage the services of TechBrain. The latest version of the Conditions will be published at <https://www.techbrain.com.au/terms-and-conditions>

### 2. Waiver

- (a) Subject to any provision of the Agreement making time of the essence, failure to exercise or delay in exercising any right, power or privilege by any Party will not operate as a waiver of that right, power or privilege.
- (b) Any waiver by a Party of any one breach or default by the other will not constitute a waiver of any other breach or default. A waiver by either Party is only effective if it is in writing.

### 3. Force Majeure

Neither Party shall be liable to the other by reason of any failure of performance due under the Agreement (except obligations to pay) if such failure arises out of causes beyond that Party's reasonable control despite its reasonable efforts, and without the fault or negligence of such Party. Any Party experiencing such an event shall give notice as promptly as possible under the circumstances. If the Force Majeure continues for a period of 3 months either party may terminate the Agreement.

### 4. Entire Agreement

The Agreement represents the whole agreement between the Parties concerning the subject matter herein and supersedes any prior agreements or representations and no other agreements or understandings, verbal or otherwise, exist between the Parties except as specifically stated.

### 5. Counterparts

The Agreement may be executed in any number of counterparts. All counterparts, taken together, shall constitute one instrument.

### 6. Relationship

The only relationship between the Customer and TechBrain is as independent contractors. TechBrain is not in any way an agent, partner or employee of the Customer.

7. Third party rights

The Parties agree that the Agreement is for the sole benefit of the parties specified above and is not intended to confer any legal rights or benefits on any third party and that there are no third-party beneficiaries to the Agreement or any part or specific provision of the Agreement.

8. Assignment or novation

The Customer agrees to an assignment of the Agreement from TechBrain to a third party provided that the proposed assignee agrees to be bound by the obligations on the part of TechBrain set out in the Agreement.

9. Severability

- (a) If any provision of the Agreement is declared by any judicial or other competent authority to be void, voidable or illegal, the remaining provisions shall continue to apply.
- (b) The Parties hereby agree to use best endeavours to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

10. Authorisation

The Customer acknowledges that the person executing the Quotation on its behalf is authorised to do so and may bind the Customer to all the terms and conditions contained herein and represents and warrants that such person is acting within the scope of his or her authority as an officer, director or duly authorised agent or employee of the Customer and that if requested by TechBrain will provide evidence to the satisfaction of TechBrain of the authority of the person executing the Quotation.

11. Governing Law

The Parties agree that the Agreement shall be construed in accordance with the laws in force in Western Australian and the Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Western Australia.