

These terms and conditions (**Terms**) govern the relationship between a Client and Teragon Systems Pty Ltd ACN 684 869 225 with regard to any and all services as described in a quote (**Quote**).

The **Quote** is subject to these Terms (collectively, the **Agreement**). If you do not agree to the terms of the Agreement, you must not engage Teragon Systems to undertake any services (**Services**).

You will be deemed to have accepted the Agreement if you:

- i. pay the Fees (or any part thereof);
- ii. provide the written confirmation that you accept the Quote;
- iii. instruct or direct Teragon Systems Pty Ltd to commence the provision of the Services; or
- iv. accept delivery and/or the provision of the Services.

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement unless the context indicates otherwise, the following words have the following meanings:

Agreement is made up of these Terms and the Quote (including all schedules, annexure and attachments).

APPs are the Australian Privacy Principles contained in the *Privacy Act 1988* (Cth).

Background IP means Intellectual Property rights owned by or licensed to a Party as at the Commencement Date or acquired or developed by a Party during the term of this Agreement independently of the activities carried out under this Agreement, which that Party has the right to license to third parties and which are necessary or desirable for the performance of the Services.

Business Day is a day (not Saturday or Sunday) that trading banks are open for business in Adelaide, South Australia, Australia.

Cancellation Fees means the fees outlined in a Quote payable by the Client if the Client wishes to cancel (or otherwise terminate) a Quote.

Claim is any action, claim, suit, demand, loss, damage, liability, cost, expense, tax, outgoing or payment whatsoever (whether foreseeable or not).

Client's IP is all IP owned by the Client and includes all IP in the Data.

Client Resources means all equipment, facilities, materials, information, and Data (including any Client IP) to be supplied by the Client to Teragon Systems under this Agreement as specified in the Quote.

Commencement Date means the date Teragon Systems commences the provision of the Services, or any other date agreed in writing.

Completion Date means the date on which Teragon Systems completes the Services, as outlined in the Quote (if any) or such other date as the Parties may agree in writing.

Confidential Information of a Party is all technical, financial, commercial and other information (in whatever medium) of or relating to it or its business affairs, which is disclosed or available to, or observed or accessible by, the other Party in connection with this Agreement which:

- (a) is marked as 'confidential', 'sensitive', 'private' or any other similar description; or
- (b) a reasonable person would (given its nature) consider confidential,

but excluding information that:

- (c) is readily available in the public domain without breach of confidentiality; or
- (d) the receiving Party can establish by written records is or has been legally known to, developed by, or acquired by, that receiving Party, independently of this Agreement.

Data is all information provided by the Client so Teragon Systems can supply the Services and/or the Deliverables, or transmitted, received, stored, processed, generated, compiled, or modified through use, or in connection with the provision, of the Services and/or the Deliverables.

Deliverable is any materials, Services, equipment, or other items supplied or to be supplied by Teragon Systems to the Client under this Agreement or a Quote.

Developed IP is all IP created, written or otherwise brought into existence by or on behalf of Teragon Systems in connection with or for the purposes of providing the Services or meeting its other obligations under this Agreement, and all IP in the Deliverables (but excluding Teragon Systems' IP),

and includes any further IP existing prior to the Commencement Date which the parties expressly agree will be assigned to the Client under this Agreement or a Quote.

Documentation is all documentation, reports, calculations, models, designs, drawings, plans and specifications in whatever form relating to, or prepared under, this Agreement.

Fees are the fees and/or charges payable by the Client under a Quote.

Force Majeure Event is an act of war, revolution, or terrorism; an act of God; or any other incident beyond the control of a Party - in each case which could not have been prevented or foreseen through the exercise of reasonable skill and care.

GST Law means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property or **IP** means statutory and other proprietary rights in respect of copyright and neighbouring rights, all rights in relation to inventions, patents, plant varieties, registered and unregistered trademarks, registered and unregistered designs, circuit layouts, trade secrets, and all other rights resulting from intellectual activity in the industrial, scientific, literary, or artistic fields.

Insolvent is an entity being insolvent (under section 95A of the Corporations Act (Cth)); having an administrator, controller (per section 9 of the Corporations Act) or similar officer appointed to all or any of its property; having taken (or had taken against it) any step for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors; or suffering any event or similar event to those set out in this definition which would restrict its business operations or cause those operations to be placed under the control of a person other than its directors under the laws of its place of incorporation.

Moral Right is a right:

- (a) of attribution of authorship;
- (b) not to have authorship falsely attributed;
- (c) of integrity of authorship; or
- (d) any similar right,

in each case conferred by statute, and which exists or comes to exist anywhere in the world.

Party means the Client or Teragon Systems; and **Parties** mean both the Client and Teragon Systems.

Permitted Purpose is collection, use, disclosure, storage or handling of Personal Information in order for Teragon Systems to comply with its obligations under this Agreement.

Personal Information is information or an opinion about an identified or reasonable identifiable natural person (whether true or not), including personal information as defined in the *Privacy Act 1988* (Cth), collected or generated by, disclosed to, or accessed by Teragon Systems in connection with this Agreement.

Personnel are directors, officers, employees, professional advisers, agents or Authorised Subcontractors of a Party (but the Personnel of the Client do not include Teragon Systems).

Privacy Code is a privacy code approved under the *Privacy Act 1988* (Cth).

Quote is a document agreed by the parties, setting out the details of, and requirements for, a set of Services to be supplied by Teragon Systems under this Agreement from time to time.

Service Levels means the service levels (if any) specified in the Quote.

Services means the goods and services to be provided by Teragon Systems under this Agreement, as set out in a Quote.

Teragon Systems' IP is all present and future IP created, written or otherwise brought into existence by or on behalf of Teragon Systems completely independently of the performance of Teragon Systems' obligations under this Agreement, and which Teragon Systems can demonstrate by written records has been developed completely independently of this Agreement and not been paid for directly or indirectly by the Client; but does not include any such IP which the parties expressly agree in a Quote will be assigned to the Client.

Tax includes:

- (a) any tax, levy, impost, deduction, charge, rate, withholding or duty by whatever name called levied, imposed or assessed (including, without limitation, withholding tax, employment taxes, land tax, property tax, excise duties, customs duties, goods and services tax, value added tax, sales tax, consumption tax, stamp duty and transaction duties or any similar impost imposed or levied); and
- (b) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above

Tax Invoice has the meaning given to that term by the GST Act.

Terms means these terms and conditions.

1.2 Interpretations

In this Agreement unless the context otherwise requires:

- (a) words importing any gender include every gender;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to this Agreement;
- (e) reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (f) any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- (g) the headings to the clauses and schedules of this Agreement are not to affect the interpretation;
- (h) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment;
- (i) the word "including" (and related forms including "includes") means "including without limitation";
- (j) a reference to \$ or dollars is to Australian dollars; and
- (k) unless expressly specified, the terms defined in the Quote have the same meaning as this Agreement and vice-versa.

1.3 Business Day

Something due to be done on or by a non-Business Day must be done on or by the next Business Day.

1.4 Notice in writing

Where an action of a Party is required to be evidenced in writing under this Agreement (for example, the provision of a Party's consent or approval, etc), the parties acknowledge and agree that email communication will satisfy such requirement for the action to be in writing.

1.5 Precedence: Unless expressly stated otherwise, this terms and conditions in the body of this Agreement prevail over those in any Quotes, schedules, annexures, or attachments to the extent of the inconsistency.

2. TERM AND TERMINATION

2.1 Period of Agreement

This Agreement will begin on the Commencement Date and continue until the Completion Date (if any) unless terminated earlier in accordance with this Agreement.

2.2 Termination for Convenience

- (a) Subject to subclause 2.2(b), either Party may terminate this Agreement at any time by providing 30 days written notice.
- (b) Termination of this Agreement will not affect any current Quotes.

2.3 Termination of a Quote

A Quote will expire at the end of the term specified in the Quote, unless:

- (a) it is terminated earlier by providing the number of days written notice as specified in the Quote; or
- (b) it is terminated for cause in accordance with clause 2.4.

2.4 Termination for cause

A Party may terminate this Agreement (in whole or with respect to particular Quotes only) with immediate effect by written notice to the other Party if the other Party:

- (a) commits a material breach of this Agreement, which is not remediable,
- (b) commits a material breach of this Agreement, which is capable of remedy, but is not remedied within 30 days after being required by notice to do so; or
- (c) becomes Insolvent.

2.5 Consequences of termination

If this Agreement is terminated in whole or with respect to particular Quotes:

- (a) termination does not affect any accrued rights or liabilities of the parties;

- (b) the Client must pay the Fees for any Deliverables or Services provided up to the date of termination under any terminated Quote; and
- (c) any Fees paid in advance by the Client for Deliverables or Services not provided to the Client at the date of termination, must promptly be repaid to the Client.

2.6 Cancellation Fees

- (a) If either Party cancels all or part of the Services under a Quote, the Client may be required to pay Teragon Systems the applicable Cancellation Fee as set out in the relevant Quote.
- (b) For the avoidance of doubt, the Client will be deemed to have cancelled all or part of the Services under this Agreement (or a Quote, as the case may be), where:
 - (i) is the Client terminates this Agreement in accordance with clause 2.3(a);
 - (ii) Teragon Systems terminates this Agreement in accordance with clause 2.4.
- (c) Any Cancellation Fee charged upon termination of this Agreement is without prejudice to any other accrued rights of Teragon Systems as at the date of termination.
- (d) Due to the nature of the Services, some Fees payable under this Agreement (or a Quote) are of an annual commitment (irrespective of whether the total annual Fees are divided to monthly, weekly or other periodic payments). Any Fees that are of such a nature that require an annual payment will be specified in a Quote. The Client acknowledges and agrees to indemnify Teragon Systems for any Fees that require an annual commitment, despite termination of this Agreement or a Quote.

2.7 Survivability

The following provisions survive termination or expiry of any Quote or this Agreement: 1 – (Definitions and Interpretation); 2.5 – (Consequences of termination); 2.7 – (Survivability); 5 – (Fees); 9 – (Intellectual Property and Moral Rights); 10 – (Confidentiality); 11 – (Privacy); 13– (Disclaimer); 14 – (Indemnities); 15 (Liability); 15.3 – (Insurances); 18 – (Dispute resolution); 19 – (Notice); 20 – (General), and any other contractual provisions that by their nature are intended to survive termination or expiration of this Agreement.

3. QUOTES

3.1 Addition of a new Quote

- (a) The Parties will negotiate the terms of any draft Quote in good faith.
- (b) Once executed by both Parties, the draft Quote will be an effective Quote under this Agreement.
- (c) Any disputes regarding the contents of a Quote will be dealt with under clause 18 of this Agreement.

3.2 Variations to an existing Quote

- (a) A Party wishing to vary a Quote must notify the proposed variations to the other Party.
- (b) Upon receipt of the notice described in clause 3.2(a), the Parties must negotiate in good faith:
 - (i) any changes to any Fees; and
 - (ii) any impacts which the variation will have on Teragon Systems' ability to perform its obligations.
- (c) If the variations are agreed, they will be reflected in a document (executed by both Parties) outlining the change and any identified assumptions and impacts. For the avoidance of doubt, the document reflecting the variation may be:
 - (i) a variation deed or agreement outlining the changes; or
 - (ii) a new Quote that replaces the existing Quote.
- (d) Notwithstanding any other clause in this Agreement, if the costs to Teragon Systems increase, including but not limited to an increase in the costs of Teragon Systems to supply the Services, Teragon Systems may in its sole discretion update the Fees to a corresponding amount on notice to the Client.

4. PROVISION OF SERVICES

4.1 Appointment

The Client appoints Teragon Systems to provide the services requested from time to time in a Quote (the **Services**) in accordance with the terms and conditions set out in this Agreement and any special conditions (if any) specified in a Quote.

4.2 Performance of Services

In respect of the Service, Teragon Systems must:

- (a) provide all Services and/or Deliverables described in the relevant Quote, and all resources, technology and consumables necessary for the provision of those Services and/or Deliverables;
- (b) perform the Services in accordance with the timing requirements (if any) specified in the relevant Quote or otherwise agreed in writing with the Client;
- (c) perform the Services using appropriate methods and practices, with the skill, prudence and foresight reasonably expected experienced and reputable suppliers of services similar to the Services;
- (d) provide the Services in accordance with the Service Levels specified in the Quote (if any); and
- (e) comply with all laws, regulations, codes, ordinances, and/or industry standards relevant to the provision of the Services.

4.3 Client's obligations

During the Agreement, the Client will:

- (a) co-operate with Teragon Systems as Teragon Systems reasonably requires;
- (b) provide the information and documentation that Teragon Systems reasonably requires; and
- (c) ensure that the Client's personnel cooperate with and assist Teragon Systems where necessary.

4.4 Failure to comply

If the Client does not provide the resources that Teragon Systems reasonably requires (and within a reasonable time period) to perform the Services, then any additional costs and expenses which are reasonably incurred by Teragon will be paid by the Client and the Client will accept any delay in the provision of the Services.

5. FEES

5.1 Fees

- (a) The Fees for the Services are stated in the relevant Quote.
- (b) The Client acknowledges that, unless otherwise stated, the Fees are exclusive of any GST that may be charged by Teragon Systems to the Client, and therefore, Teragon Systems will be entitled to add on GST.

5.2 Payment Terms and Invoicing

- (a) The Client must pay Teragon Systems the Fees in accordance with the payment schedule set out in the Quote. Unless otherwise specified in the Quote, invoices will be issued for Services in the timeframes specified in the Quote.
- (b) Teragon Systems will submit a correctly rendered invoice for such Fees in accordance with the requirements set out in the Quote.
- (c) Teragon Systems will upon request of the Client, provide the Client such substantiation of an invoice as the Client may reasonably require to verify the charges, including any relevant timesheets.

5.3 Cost and disbursements

Teragon Systems is permitted to charge for all costs and expenses incurred in performing the Services, including travelling, photocopying, courier services, postage or as otherwise listed in the Quote.

5.4 Pro-rated payment

In the event that part or all of Services is not completed for whatever reason, Teragon Systems will be entitled to charge pro rata for so much of the Services that is completed.

5.5 Cancellation Fees

Where the Client cancels all or part of the Services under a Quote, the Client may be required to pay Teragon Systems the applicable Cancellation Fee as set out in the Quote.

5.6 Payment of Invoices

- (a) The Client must pay undisputed, correctly rendered invoices in Australian dollars by electronic funds transfer to Teragon Systems' bank account as detailed to the Client in writing, within 14 days from the date of receipt by the Client of those invoices.
- (b) Payment is on account, and is not an admission of liability, acceptance or approval of Teragon Systems' performance, the value of the Services or that Services have been provided in accordance with this Agreement.

5.7 Tax and GST

- (a) The Client must pay to Teragon Systems any taxes (including GST) that are payable on the supply of the Services.
- (b) If an amount of GST is payable on a supply under these terms:
 - (i) the Client must pay, in addition to the other consideration payable or to be provided for the supply, an additional amount equal to the GST payable on the supply; and
 - (ii) the Client must pay the additional amount to Teragon Systems at the same time as the Fees.
- (c) If for any reason the amount of GST payable on a supply varies from the GST amount paid to Teragon Systems, the Parties will account to each other for the difference.

5.8 Failure to Pay

If the Client does not make payment of the Fees in accordance with the payment terms specified in the Agreement or the Quote, Teragon Systems is entitled to do any or all of the following:

- (a) charge interest on the outstanding amount at the rate of 10% per year above the cash rate of the Reserve Bank of Australia, accruing daily.
- (b) require the Client to pay, in advance, for any Services (of any part of the Services) which have not been performed; and
- (c) not perform any further Services (or any part of the Services).

6. CLIENT OBLIGATIONS

6.1 General

During the Agreement, the Client will:

- (a) comply with all laws, regulations, codes, ordinances, and/or industry standards relevant to the provision of the Services.
- (b) co-operate with Teragon Systems as reasonably required;
- (c) provide the information and documentation that Teragon Systems reasonably requires;
- (d) make available to Teragon Systems such Client Resources as Teragon Systems reasonably requires to complete the provision of Services without charge; and
- (e) ensure that the Client's staff and agents cooperate with and assist Teragon Systems.

6.2 Expenses and Delays

If the Client does not provide the Client Resources that Teragon Systems reasonably requires (and within a reasonable time period) to perform the Services, then:

- (a) any additional costs and expenses which are reasonably incurred by Teragon Systems will be paid by the Client; and/or
- (b) Teragon Systems will be awarded an extension of time to deliver the Services to account for any delays causes.

7. SUBCONTRACTING

7.1 Right to subcontract

Teragon Systems may subcontract its obligations under this Agreement.

7.2 Responsibility of Teragon Systems

Teragon Systems remains principally liable for the performance of any subcontracted obligations under this Agreement and is responsible for the acts, omissions, defaults and/or negligence of its Authorised Subcontractors.

8. HOSTING SERVICES

8.1 Application

This clause only applies if the Client is using hosting services

8.2 Provision of services

Teragon Systems will provide the Client the hosting services as specified in a Quote (**Hosting Services**).

8.3 Client responsibilities

The Client acknowledges and agrees that it is entirely responsible for:

- (a) the content of any Data on the Client's website; and
- (b) all other content in Data that Teragon Systems hosts on the Client's behalf;

- (c) ensuring that the Data that Teragon Systems hosts on the Client's behalf does not contain any virus, worms, trojan horse, malware or otherwise disrupt, impair, corrupt or otherwise adversely affect the data or systems of any person; and
- (d) all dealings and engagements the Client has with users of the Client's website.

8.4 Indemnities

- (a) The Client will indemnify Teragon Systems against all costs (including legal costs), expenses, damages, accounts or other losses or liability, including those from any actions, suits, proceedings, claims or demands, made against or suffered by Teragon Systems in connection with the Data that is being hosted by Teragon Systems on the Client's behalf (including the Website), including, but not limited to, any third party claim that the Data of the Client that is being hosted by Teragon Systems :
 - (i) infringes any Intellectual Property rights;
 - (ii) Moral Rights of any person; or
 - (iii) otherwise breaches any law.
- (b) For the avoidance of doubt, the Client will not be liable for costs (including legal costs), expenses, damages, accounts or other losses or liability arising from Teragon System's negligence or breach of this Agreement.

8.5 Maintenance

Teragon Systems reserves the right to perform maintenance and upgrades to the hosting server at any time and from time to time. Teragon Systems will endeavour to provide the Client with reasonable notice of maintenance and upgrades; however, the Client acknowledges and agrees that sufficient notice may not always be possible when emergency maintenance and upgrades are required.

8.6 Disaster Recovery

- (a) Teragon Systems archives Data from time to time for the purpose of disaster recovery. In the event of Data corruption or equipment failure, Teragon Systems will use best endeavours to restore your website and Data from its archives. The Client acknowledges and agrees that the Client's Data in our archives may be out of date.
- (b) The Client warrants that it will back up its own Data periodically in accordance with industry-standard and best practice disaster recovery and business continuity processes.

8.7 Disclaimer

For the avoidance of all doubt and to the full extent permitted by law:

- (a) clause 8.6 sets out Teragon Systems entire obligation with respect to disaster recovery and business continuity; and
- (b) to the full extent permitted by law, Teragon Systems excludes all liability in respect of loss or corruption of Data.

9. INTELLECTUAL PROPERTY AND MORAL RIGHTS

9.1 Teragon Systems' IP

- (a) Teragon Systems represents and warrants that it is the absolute legal and beneficial owner of, or that it holds a valid licence to use, Teragon Systems' IP.
- (b) The Client acknowledges and agrees that Teragon Systems' IP remains the property of Teragon Systems.
- (c) Teragon Systems grants to the Client a revocable, non-exclusive, non-transferable, royalty-free licence for the term of this Agreement to exercise all rights in Teragon Systems' IP as is necessary for the Client to enjoy the benefit of the Services and to use the Deliverables solely for the purposes of the business of the Client.

9.2 Developed IP

- (a) The Parties agree that the rights, title and interest in the Developed IP will vest with Teragon Systems with effect from the date of creation of that IP.
- (b) Teragon Systems grants to the Client a revocable, non-exclusive, worldwide, non-transferable, royalty-free licence for the term of this Agreement to exercise all rights in the Developed IP as is necessary for the Client to enjoy the benefit of the Services and to use the Deliverables solely for the purposes of the business of the Client.

9.3 Client's IP

- (a) Subject to clause 9.3(b), Teragon Systems acknowledges and agrees that:
 - (i) the Client's IP remains the property of the Client; and

- (ii) this Agreement does not confer on Teragon Systems any proprietary right or title to any of the Client's IP.
- (b) The Client grants Teragon Systems a non-exclusive, royalty-free licence during the term of the Agreement to use and reproduce the Client's IP for the sole purpose of performing its obligations under this Agreement.
- (c) On termination or expiry of this Agreement, and upon the Client's request, Teragon Systems must deliver or render faithful account to the Client for all the Client's IP including all Documentation and other things containing the Client's IP that came into Teragon Systems' possession or under its control in the course of providing the Services.

9.4 Moral Rights

Teragon Systems must obtain from each of its Personnel and individuals who are involved in the performance of the Services, an express agreement not to enforce any Moral Rights they may have presently or in the future, in any Deliverables, work or material produced in the performance of the Services, including by executing any Moral Rights consents reasonably required by the Client.

9.5 Further actions

Each party must (at the request of the other party) execute all further documents and take such further action required to generally give effect to this clause 8, including as required to obtain, perfect, enforce, assert or defend its interests in or rights to use the Intellectual Property rights afforded under this clause 8.

10. CONFIDENTIALITY

10.1 Ownership of Confidential Information

Each Party (a **Recipient**) acknowledges that the other's (**Discloser's**) Confidential Information is, and remains, the property of the Discloser. This Agreement does not convey any proprietary or other interest in one Party's Confidential Information to the other (except to the extent expressly indicated in clause 9). The Recipient must keep the Discloser's Confidential Information strictly confidential and not disclose it or allow it to become available to any third party, except as provided for in this Agreement. This obligation survives the termination of this Agreement and will continue until the information no longer constitutes Confidential Information of the Discloser.

10.2 Authorised use and disclosure of Confidential Information

- (a) The Recipient may only access and use the Discloser's Confidential Information to perform its obligations or exercise its rights under this Agreement (including, in the case of the Client, exploiting Deliverables), or with the Discloser's prior consent.
- (b) The Recipient must comply with any reasonable restraint on such use stipulated by the Discloser.
- (c) The Recipient may disclose the Discloser's Confidential Information to the extent required to comply with any law or regulatory requirement.
- (d) The Recipient must take and ensure its third party disclosees of the Discloser's Confidential Information take, all reasonable precautions to maintain confidentiality of that information and protect it from unauthorised access, use and disclosure.

10.3 Unauthorised Disclosure or Use of Confidential Information

Each Party acknowledges that damages are unlikely to adequately redress its breach of this clause, so a Discloser may seek injunctive or other equitable/interlocutory relief to protect its Confidential Information against breach of this clause, without proof of actual damages.

10.4 Return of Confidential Information

- (a) On termination of this Agreement, and on request of the Discloser, the Recipient must, subject to clause 10.5:
 - (i) deliver to Discloser any Discloser Confidential Information in the Recipient's possession or control that is reasonably capable of being delivered; or
 - (ii) irretrievably delete, erase or destroy all Discloser Confidential Information in the Recipient's possession or control that is not capable of delivery to the Discloser, and confirm in writing to the Discloser that it has done so.
- (b) For the avoidance of all doubt, Teragon Systems will be entitled to charge the Client on a time and material basis for the return Confidential Information in the form of Data. These fees will be disclosed in a Quote.

10.5 Retention of certain Confidential Information

Provided the Recipient continues to comply with this clause 10, the Recipient may retain any Confidential Information that:

- (a) is included in any board papers of the Recipient, or in back up tapes made in the ordinary course of its business which are not capable of ready search and deletion;
- (b) the Recipient is required by law or any regulatory requirement to retain, or needs to retain to defend itself in any proceeding being brought or threatened against it at the time the Confidential Information must be returned or destroyed;
- (c) the Recipient is required to retain for its own reasonable internal credit, risk, insurance, taxation or record-keeping purposes; or
- (d) is contained in any electronic record made in the ordinary course of the Recipient's business which is captured by automated document retention procedures designed to allow the Recipient to comply with document retention laws.

11. PRIVACY

11.1 Privacy Laws

Each Party must comply (and ensure that its Personnel are aware of and comply) with the APPs, any applicable Privacy Code and other applicable laws or codes governing Personal Information (together **Privacy Laws**) in doing any act or engaging in any practice pursuant to this Agreement,

11.2 No Use or Disclosure of Personal Information Except for Permitted Purpose

Teragon Systems will not use or (unless required by law) disclose any Personal Information other than for the Permitted Purpose without the Client's prior written approval, and must:

- (a) take all reasonable steps to protect Personal Information in its possession or control against misuse, interference, loss, and unauthorised use, access, modification or disclosure;
- (b) only allow its Personnel to access and use Personal Information where necessary for the Permitted Purpose and otherwise ensure that its Personnel treat Personal Information in accordance with Teragon Systems' obligations in this clause 11;
- (c) immediately notify the Client of any breach or possible breach of Teragon Systems' obligations regarding Personal Information;
- (d) keep logs and records of all access to Personal Information by its Personnel and provide copies of those logs and records to the Client promptly upon request; and
- (e) on termination of this Agreement or if requested by the Client, either:
 - (i) return all Personal Information in Teragon Systems' possession or control to the Client;
 - (ii) destroy all Personal Information in Teragon Systems' possession or control; or
 - (iii) de-identify all Personal Information in Teragon Systems' possession or control.

12. CYBER SECURITY

- (a) The Parties acknowledge and agree that:
 - (i) the internet poses inherent cyber security risks to all users of online technology; and
 - (ii) the nature of cyber security threats are ever evolving and becoming more sophisticated and malicious over time; and
 - (iii) whilst Teragon Systems will use its best efforts to protect its systems from all known cyber security risks, it cannot guarantee, provides no representations or warranties, that the Client (and the Client's Data) will be protected from all cyber security threats.
- (b) The Parties acknowledge and agree that each Party must implement appropriate cyber security measures and systems, and otherwise use best endeavours to protect its Confidential Information and Data from cyber security threats.
- (c) Neither Party bears any liability to the other Party and is not responsible in any way for any loss, damage, unauthorised destruction, alteration, disclosure of, or access to any Confidential Information, Data and all other information held by either Party.
- (d) To the maximum extent permitted by law, Teragon Systems disclaims all liabilities arising from any cyber security threats, including (but not limited to) loss, damage, unauthorised destruction, alteration, disclosure of, or access to any Confidential Information or Data.

13. DISCLAIMER

13.1 No reliance

Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement.

13.2 Consumer Guarantees

Nothing in the Agreement excludes, restricts or modifies any terms, conditions, warranties or liabilities which are imposed or implied by any statute, including but not limited to the Competition and Consumer Act 2010 (Cth), and which by statute cannot be excluded, restricted or modified. Limitations and exclusions in this Agreement are made only to the maximum extent permitted by law.

13.3 Exclusions

- (a) To the maximum extent permitted by law, other than the warranties expressly stated in this Agreement (or any applicable Quote), Teragon Systems gives no warranties regarding the provision of the Services and all implied or imposed conditions, warranties and rights are hereby excluded, including (without limitation) warranties in relation to fitness for purpose, merchantability, and/or the Services being provided error free and/or in a timely manner.
- (b) Where any condition, warranty or right is implied or imposed by law and cannot be excluded, the sole liability of Teragon Systems for loss or damage incurred in respect of goods and/or services supplied (or agreed to be supplied) shall be limited to:
 - (i) in the case of goods, at Teragon Systems' option:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; and
 - (ii) in the case of services, at Teragon Systems' option:
 - (A) supplying the services again; or
 - (B) paying the cost of having the services supplied again.

13.4 Client Systems

- (a) Teragon Systems does not represent that the Services are fail safe and the Client acknowledges and agrees that Teragon Systems will not be responsible for any loss suffered as a result of use of the Services or any third-party products or services.
- (b) The Client acknowledges and agrees that the Services are not fault-tolerant and is not designed or intended for use in any hazardous environments requiring fail-safe performance or operation.

14. INDEMNITIES

14.1 Indemnity by Teragon Systems

- (a) Teragon Systems must reimburse the Client for, and indemnify and hold them harmless against, all Claims suffered or incurred by the Client arising in connection with:
 - (i) fraud, or fraudulent misrepresentation, gross negligence, or wilful misconduct of this Agreement by Teragon Systems or its Personnel; and/or
 - (ii) infringement of a third party's intellectual property rights arising out of any act or omission of Teragon Systems or its Personnel.
- (b) Teragon Systems will not be liable to the Client (including under this clause 14.1) to the extent that the Client's acts or omissions have contributed to the Claim and/or liability. For the avoidance of doubt, the Client has a duty to mitigate any losses arising from an act or omission of Teragon Systems.

14.2 Indemnity by the Client

- (a) The Client must reimburse Teragon Systems for, and indemnify and hold them harmless against, all Claims suffered or incurred by Teragon Systems in connection with or arising out of:
 - (i) fraud, or fraudulent misrepresentation, gross negligence or wilful misconduct of this Agreement by the Client or its Personnel; and/or
 - (ii) any information supplied by the Client to Teragon Systems, its employees or suppliers, within or outside the scope of this Agreement.
- (b) The Client will not be liable to Teragon Systems (including under this clause 14.2) to the extent that Teragon Systems' acts or omissions have contributed to the Claim and/or liability. For the avoidance of doubt, Teragon Systems has a duty to mitigate any losses arising from an act or omission of the Client.

15. LIABILITY

15.1 Indirect or consequential loss

Neither Party is liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature (including any loss of business opportunity, loss of revenue, income, profits or anticipated savings, loss of contracts or business relationships, loss of reputation or goodwill, or loss or corruption of information or data).

15.2 Liability Limit

Notwithstanding any other provision of this Agreement, the liability of Teragon Systems with respect to Services and Deliverable provided under a particular Quote, whether arising in contract, tort, negligence, breach of statutory duty or otherwise, will not exceed the Fees paid by the Client to Teragon Systems under that Quote in any twelve (12) month period.

15.3 Insurances

- (a) Teragon Systems must take out and maintain during the term of the Agreement any insurance policies specified in the Quote.
- (b) Where no insurance levels are specified in the Quote, Teragon Systems must take out and maintain all insurance from a reputable insurer that is adequate to cover all risks usually covered for the Services and as required by law.

16. NON-SOLICITATION

Neither party will, without the prior written consent of the other, for a 12 month period after termination of this Agreement or expiry of any individual Quote, directly or indirectly solicit or offer employment or otherwise engage any employee of the other party. Nothing in this clause will prevent a party from employing a person who responds to a general advertisement or recruitment agency seeking applications.

17. FORCE MAJEURE

If a Force Majeure Event occurs and prevents a Party (**Affected Party**) performing its obligations, under this Agreement, that Party must promptly notify the other Party of the event, the time it started and likely duration, the extent that its obligations are affected and the measures proposed to remedy or mitigate its consequences. The Affected Party's obligations are then suspended solely to the extent it is prevented from performing them by the Force Majeure Event. The Affected Party must:

- (a) promptly take all necessary steps to remedy or mitigate the Force Majeure Event's effects, so as to resume full performance of its obligations as soon as reasonably possible; and
- (b) take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations.

If the delay or failure exceeds 30 days, the other Party may immediately terminate this Agreement on notice to the Affected Party and clause 2.5 will apply.

18. DISPUTE RESOLUTION

18.1 Handling of Disputes

Any dispute, difference or disagreement under this Agreement (**Dispute**) must be handled under this clause. However, nothing in this clause prevents a Party seeking urgent interim or interlocutory relief from a court of law to preserve property or prevent irreparable harm. Further, if a Party fails to comply with this clause, the other Party need not comply with it before commencing proceedings in any court or tribunal of competent jurisdiction. The parties will continue to perform the Agreement despite any Dispute, provided that either Party may exercise any of its rights under this Agreement at any time.

18.2 Initial negotiations between parties

A Party wishing to resolve a Dispute must notify the other Party describing the Dispute in sufficient detail for the other Party to adequately evaluate it (the **Dispute Notice**). The parties must attempt to resolve any Dispute by agreement through the Client's Authorised Representative and Teragon Systems' Authorised Representative.

Those discussions (and Documentation tendered in connection with them) will be solely to resolve the Dispute on a "without prejudice" basis (whether or not expressly designated).

18.3 Mediation

If those discussions fail to resolve the Dispute, a mediator will be selected by agreement of the parties, or failing agreement within 10 Business Days, by The Australian Commercial Disputes Centre (ACDC) under its "Guidelines for Commercial Mediation" (on the request of either Party). The parties will then use their reasonable efforts to resolve the dispute by mediation under ACDC's "Guidelines for Commercial Mediation".

18.4 Termination of mediation

Either Party may terminate the mediation at any time on notice to the other Party and the mediator.

19. NOTICE

A notice, request, demand, consent or approval (**notice**) from a Party to another (**Recipient**) must be in writing, addressed to Recipient and delivered by one of the following means (deemed delivery and receipt being as specified below for each method, provided that if the provisions below would deem a notice to be delivered / received on a non-Business Day or after 4pm on a Business Day, then the notice will be deemed to have been delivered / received on the next Business Day):

- (a) delivered to Recipient's address – deemed delivered/received at date and time of delivery;
- (b) sent by registered mail to Recipient's address - deemed delivered/received on the third Business Day after posting (within Australia) or on the tenth Business Day after posting (outside Australia);
- (c) emailed to Recipient's email address (deemed delivered/received when the sender gets a confirmation message from Recipient's mail server indicating that the message was received by Recipient without error).

The address and email address of each Party is specified in the Quote and is subject to any updates notified by either Party in writing.

20. GENERAL

20.1 Governing law and Jurisdiction

This Agreement is governed by the Laws in force in the State of South Australia, Australia. Each Party irrevocably submits to the non-exclusive jurisdiction of the courts in Adelaide, South Australia, Australia and waives any objection to proceedings in any such court on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum.

20.2 Entire agreement

This Agreement supersedes all previous agreements in respect of its subject matter and is the entire agreement of the parties with respect to that subject matter.

20.3 Relationship of parties

Nothing in this Agreement is to be construed as constituting one Party as employer, agent or partner of the other Party or in joint venture with the other Party. No Party has authority to bind or purport to bind the other Party. For the avoidance of doubt, Teragon Systems is an independent contractor of the Client.

20.4 Amendment

Any amendment, consent to modification, supplement, replacement, novation, or assignment of any provision of this Agreement must be in writing and is effective only if signed by an authorised representative of each Party.

20.5 Assignment

No Party may assign, novate or create an interest in its rights under this Agreement without the prior written consent of the other Party.

20.6 Waivers

A waiver of any right, power, authority, discretion or remedy must be in writing, signed by the Party granting the waiver. A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy does not result in a waiver of that right, power, authority, discretion or remedy.

20.7 Severability

All or part of any provision of this Agreement that is illegal, invalid or unenforceable will be severed from this Agreement and the remaining provisions (and parts of provisions) will continue in force.