

## 1. DEFINITIONS

- 1.1 **Agreement** means this document, the Schedule and any annexures or amendments thereto.
- 1.2 **Claim** means any allegation, debt, Liability, proceeding, claims, action, notice threatening claim, demands, litigation, judgements, suits howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at Law, in equity, under statute or otherwise.
- 1.3 **Commencement Date** means the date the Customer accepts this Agreement.
- 1.4 **Confidential Information** includes, but is not limited to:
- Any information specifically designated as confidential;
  - Information that, by its very nature, might reasonably be understood to be confidential or to have been disclosed in confidence;
  - Technical information concerning the products or the materials used in the provision of the Service or a Party's business;
  - Information that would be of commercial value to a competitor of a Party, Related Bodies Corporate, other entities or other companies;
  - Information relating to any advice or other service a Party provides, has provided or will provide;
  - Information about a Party's financial performance;
  - Information relating to a Party's financial or business affairs, including performance or profitability reports, Service Fee and quotes for the Service, and details of any transactions in which the Party is, has been, or may be involved;
  - Trade secrets;
  - Customer lists and Customer information;
  - Techniques, databases, policies and procedures;
  - Contractual, technical and production information including Upfront records and information;
  - Plans, including marketing plans, business projections, business plans and business forecasts concerning a Party's performance or likely future activity; and
  - Notes and developments regarding confidential information,
  - Precedents and all other records except for such information that:
    - Was rightfully in a Party's possession and not subject to an obligation of confidentiality before the Commencement Date; or
    - Is, or becomes, in the public domain, other than as a result of a breach of this Agreement or of common law obligations.
- 1.5 **Customer** means the Customer engaging the Tradesperson for the Job.
- 1.6 **Expenses** means any additional expenses incurred by Upfront beyond the Service Fee, including legal or collection agency fees.
- 1.7 **Force Majeure Event** means any event beyond Upfront's control, including but not limited to:
- Fire, explosion, flood, earthquake, cyclone or natural disaster;
  - Any third parties' variation, suspension, cancellation or failure to provide information, goods or services used by Upfront in the provision of the Services;
- Epidemic, pandemic, disease or virus;
  - War, revolution, outbreak of hostilities, riot, civil disturbance, acts of terrorism or any other unlawful act against public order or authority;
  - Theft, malicious damage, strikes, lock-outs, or industry action of any kind;
  - Power failure, failure of telecommunications lines, failure or breakdown of equipment, plant machinery or vehicles;
  - Cyber attack or technological disruption;
  - The illness, disablement or death of an employee essential to the performance of the Services.
- 1.8 **GST** means goods and services tax under the *A New Tax System (Goods and Service Tax) Act 1999* and regulations thereunder as in force from time to time ("GST Law") and terms used have meanings as defined in the GST Law.
- 1.9 **Intellectual Property** means all intellectual property including developments, discoveries, innovations, inventions, procedures, trade secrets, copyrights, Confidential Information, trademarks, whether present or future, registered or unregistered.
- 1.10 **Intellectual Property Rights** means all intellectual property rights, including all copyright, patents, trade marks, design rights, trade secrets, domain names, know how and other rights of a similar nature, whether registrable or not and whether registered or not, whether present or future, and any applications for registration or rights to make such an application.
- 1.11 **Job** means the services requested by the Customer and to be performed by the Tradesperson as agreed by the Users.
- 1.12 **Liability** means all liabilities, Loss, Claim, damages, outgoings, costs and expenses of whatever description and whether present, unascertained, contingent or prospective.
- 1.13 **Loss** means all loss, damage, expense, costs (including legal fees on a full indemnity basis and expenses of whatsoever nature or description) and debts including any liability for consequential or indirect losses, economic losses or loss of profits, use, opportunity, production, interest, earnings or profit.
- 1.14 **Payment** means the sum of the payment requested by the Tradesperson and to be paid by the Customer in full in relation to the Job.
- 1.15 **Permitted Use** means the sole use of accessing the Platform for the Service.
- 1.16 **Platform** means the technical platforms and services hosting the application known as 'Upfront Pay' and providing the Service.
- 1.17 **Privacy Policy** means the privacy policy accessible on Upfront's website as amended from time-to-time.
- 1.18 **Service** means the service of holding the Payment in anticipation of the Job.
- 1.19 **Service Fee** means the Service Fee payable to Upfront for the Service, being the sum of 2.9% plus GST of the Payment.
- 1.20 **Term** means the period commencing on the Commencement Date and expiring on the completion of the Service or termination of this Agreement, whichever is earlier.
- 1.21 **Tradesperson** means the Tradesperson engaged by

the Customer to perform the Job.

**1.22 Upfront** means Upfront Pay Pty Ltd ACN 645 588 334.

**1.23 User Data** means data owned by the User and provided to Upfront via the Platform or other means in the course of Upfront providing the Services.

**1.24 User** means the users of the Platform, being the Customer and/or Tradesperson as applicable in the circumstances from time to time.

## **2. ACCEPTANCE**

**2.1** This Agreement is between the User and Upfront for the Service. The parties acknowledge and agree this Agreement does not govern the relationship between the Customer and the Tradesperson or govern the agreement in relation to the Job.

**2.2** The User may accept this Agreement by any one of the following ways:

- a) In writing clicking 'I accept' to the Terms and Conditions on the Platform; or
- b) By conduct in creating an account on the Platform.

**2.3** The Customer's acceptance of the Agreement is irrevocable and may only be rescinded in accordance with the Agreement or with Upfront's written consent.

**2.4** This Agreement will commence on the Commencement Date and continue for the Term.

## **3. JOB**

The Users agree:

**3.1** This Agreement is not a trade agreement between the Customer and the Tradesperson and does not govern the intricacies of the Job to be performed.

**3.2** Upfront does not provide any guarantees or warranties about any User or the accuracy of the data on the Platform, including without limitation the Tradesperson or its ability to perform the Job.

**3.3** Upfront is not engaged to collect debtors for the User or investigate disputes, but rather Upfront is engaged to and will merely release the Payment, less the Service Fee and Expenses, once the Customer and Tradesperson agree the Job is complete.

**3.4** The User must promptly notify Upfront via email if there is an issue, whether with the Service, Job or otherwise ('an Issue').

**3.5** Once Upfront is notified of an Issue, Upfront will determine in its discretion whether to release the Payment to the respective User, less the Service Fee and Expenses or whether to hold the Payment until the parties reach a unanimous agreement or Upfront is notified of the decision of a competent authority such as the Court.

**3.6** The parties agree that if a User does not respond to Upfront's request for further information within 14 days, Upfront may in its sole discretion release the Payment to a respective User, less the Service Fee and Expenses.

**3.7** There is no obligation on Upfront to release the Payment while there exists an Issue as notified to Upfront by the Users.

**3.8** Any money held by Upfront as deposited by the User will not be invested and will not accrue interest in favour of the User.

## **4. SERVICE**

**4.1** Upfront shall provide the Service to the User in consideration for the User paying the Service Fee as follows:

- a) The Tradesperson will create an Account on the Platform;
  - b) The Tradesperson will create a 'job' on the Platform;
  - c) The Customer will approve the Job details via the Platform;
  - d) The Users will accept these Terms and Conditions via the Platform;
  - e) The Customer shall make payment in full of the Payment to Upfront using the Job reference number;
  - f) The Tradesperson shall complete the Job;
  - g) The Tradesperson and the Customer shall confirm the Job is completed on the Platform; and
  - h) Upfront shall release the Payment, less any Service Fee and Expenses, to the Tradesperson.
- 4.2** The parties agree each and every instance whereby a User utilises the Platform for a Service will be treated as a separate Service transaction under this Agreement.
- 4.3** Upfront will endeavour to meet any agreed deadlines however these are not guaranteed and are estimates only.
- 4.4** Upfront may cancel or vary the delivery deadlines at any time before the Service is provided or finalised by written notice.
- 4.5** Should Upfront fail to provide the Service:
- a) The parties are not entitled to treat the Agreement as repudiated, waived or void; and
  - b) Upfront will negotiate with the User an agreed outcome; and
  - c) Damages or compensation will be limited to the sum of the Service Fee.
- 4.6** The User acknowledges Upfront may from time to time engage third parties on terms as determined by Upfront in its sole discretion and Upfront may rely on information, statistics and data generated by third parties to provide the Service.

## **5. LICENCE**

**5.1** Upfront has the right to use the Platform and provide the Service.

**5.2** Subject to the payment of all money that becomes due, Upfront hereby grants the User a revocable, a non-transferrable, non-exclusive licence to access the Platform in accordance with policies and guidelines as issued by Upfront from time to time and use the Platform and for the Permitted Use for the Term on the terms and conditions contained in this Agreement.

**5.3** The licence pursuant to this Clause shall not entitle the Customer to reproduce, copy and/or use the Intellectual Property, Confidential Information, or the Platform for any use beyond the Permitted Use, commercial or otherwise.

## **6. SERVICE FEE AND PAYMENT**

**6.1** The Customer and Tradesperson agree the Service Fee shall be paid to Upfront immediately upon completion of the Job and hereby irrevocably authorise Upfront to deduct the Service Fee and any Expenses from the Payment without notice.

**6.2** Upfront shall provide the Tradesperson with Tax Invoices for the Service Fee, Expenses and any applicable GST.

**6.3** The Tradesperson agrees it is the Tradesperson's responsibility to invoice the Customer in relation to the Job in accordance with standard industry practices

and Upfront is not liable or involved in this process in any manner.

- 6.4 The User shall complete, and authorises Upfront to complete, any documents necessary or desirable to enable the User to make payment of the Service Fee together with any applicable GST via direct deposit, credit card or debit card.
- 6.5 If the User fails to make payment of any part of the Service Fee, the payment will become overdue and without prejudice to Upfront's other rights and remedies under this Agreement or at law, Upfront will be entitled to suspend or cancel all or part of the Service and/or terminate this Agreement effective immediately.
- 6.6 If the Payment is not received by Upfront for any reason whatsoever, the Users hereby release Upfront from any Liability, Claim or Loss arising either directly or indirectly therefrom.
- 6.7 The Tradespersion agrees the Tradespersion is responsible for providing accurate and up-to-date account details on the Platform.
- 6.8 The User is not entitled to set-off against the Service Fee any amounts due from Upfront.
- 6.9 If the User breaches this Agreement, the breaching User agrees to pay all Loss including any legal fees on a full indemnity basis incurred by Upfront in its attempts to recover a debt owing to it.
- 6.10 Recovery costs shall be payable by the User notwithstanding any order of a court in relation to the debt claimed by Upfront.
- 6.11 The Parties agree that this Clause shall survive the expiry or termination of this Agreement.

## 7. UPFRONT'S OBLIGATIONS

- 7.1 **Skill and Care:** In performing the Service, Upfront shall comply with lawful requirements and exercise the reasonable skill, care and diligence to be expected of a qualified and experienced member of Upfront's profession providing a service of a similar scope and character.
- 7.2 **Complaint Handling:** Upfront shall investigate any complaint about the Service or the Platform promptly, fairly and effectively and will inform the User of how the complaint will be handled including expected timeframes for a response. The parties agree the dispute resolution process contained in this Agreement applies once a party has notified the other of a dispute in accordance with this Agreement.
- 7.3 **Breaches:** Upfront will cooperate with legal authorities in the investigation of any suspected or alleged crime or civil wrongdoing by the User or any third party and the User consents to the release of information, confidential or otherwise, as required by law.

## 8. USER OBLIGATIONS

- 8.1 **Information:** The User shall supply to Upfront, without charge and in such time so as not to delay or disrupt the performance of the Service, all necessary and relevant data, documents and information as requested by Upfront from time to time. The User warrants that such data, documents and information provided by the User is accurate and correct.
- 8.2 **Decisions:** The User shall give decisions, instructions, consents or approvals on or to all matters properly referred to the User by Upfront in such reasonable time so as not to delay or disrupt the performance of the Service.

8.3 **Access:** The User shall only access the Service in accordance with policies and guidelines as issued by Upfront from time to time.

8.4 **Use:** The User shall only use the Service for the Permitted Use. The User shall not use or permit the Service to be used by third-parties or for any unlawful or malicious purpose.

8.5 **Restrictions:** The User shall not interfere with Upfront's performance of the Service.

8.6 **Reporting:** The User agrees to report any breaches of the Agreement or any matter which is reasonably likely to become a breach of the Agreement immediately by way of written notice to Upfront.

## 9. SUPPORT AND MAINTENANCE

- 9.1 Upfront shall from time-to-time undertake maintenance and/or updates of the Platform and will endeavour to provide notice to the User at least 24 hours prior to undertaking such updates or maintenance that are likely to be disruptive to the User's use of the Platform.
- 9.2 It is the User's responsibility to ensure it can access the Platform and/or the Service.
- 9.3 Upfront provides no warranty as to the Platform's suitability for the User's equipment.

## 10. USER DATA

### *Hosting*

10.1 The User acknowledges and agrees that Upfront shall engage third-party data hosts with servers to host the User Data.

### *Ownership*

10.2 Ownership of the User Data shall remain with the User.

10.3 By accepting this Agreement, the User hereby grants a non-exclusive, revocable and non-lapsing licence to Upfront to process User Data uploaded to the Service and use such User Data for research, marketing, advertising, selling the User Data to third parties and the like.

### *Accuracy*

10.4 The User is solely responsible for ensuring the legality, integrity, reliability, accuracy and quality of the User Data.

### *Security and Backup*

10.5 Upfront shall take reasonable technical measures to prevent unauthorised or unlawful disclosure of User Data or its accidental loss, destruction or damage during the performance of the Service.

10.6 The User agrees to create back-ups of all User Data prior to uploading the User Data to the Service.

10.7 The User undertakes to follow all security measures required by Upfront as notified in writing from time to time.

10.8 The User shall conduct its own investigations into and to put in place all appropriate security measures to ensure the security of its own IT infrastructure, including but not limited to anti-virus software, storage of sensitive data and the protection of passwords and usernames and the private information of the User and the User's clients.

## 11. INTELLECTUAL PROPERTY

11.1 All Intellectual Property Rights and proprietary rights in the Service, the Platform, and the Intellectual Property shall remain vested in Upfront or a third party as determined in Upfront's sole discretion and at no times shall ownership transfer to the User.

11.2 The User shall not directly or indirectly do anything that would or might invalidate or put in dispute Upfront's title in the Service, the Platform and the Intellectual Property.

11.3 The Intellectual Property rights in the User Data remain vested in the User.

11.4 Any Intellectual Property which is created as a result of improvements or modifications to the Service, vests in Upfront immediately upon its creation and the User assigns all right, title and interest in such Intellectual Property to Upfront and will promptly do any further acts or execute any documents required by Upfront to effect such assignment.

11.5 The User acknowledges and agrees that any Intellectual Property which is created in accordance with Clause 11.4 may be used in any manner by Upfront in its sole discretion, including in the provision of services to other Customers.

## **12. RISK AND TITLE**

12.1 The parties agree that:

- a) Upfront has the right to use the Platform and provide the Service and title does not pass to the User in any circumstances; and
- b) All risk of Loss or Claim arising from the use of the Service and the Platform passes to the User upon provision of the Service, whether the provision of the Service is in instalments or otherwise.

## **13. DEFAULT AND TERMINATION**

13.1 The User shall be in default immediately upon any of the following ('Default'):

- a) The User breaches this Agreement;
- b) The User uses the Service or permits the Service to be used for any use other than the Permitted Use;
- c) Any money payable to Upfront becomes overdue;
- d) The User becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- e) The User dies, loses capacity, becomes bankrupt, executes a personal insolvency agreement or ceases to carry on business;
- f) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the User or any asset of the User or Upfront is notified that such an appointment is being considered.

13.2 Upon the User's Default and without prejudice to Upfront's other remedies under this Agreement or at law Upfront shall be entitled to terminate, cancel or suspend all or any part of the Service or the Agreement effective immediately.

13.3 This Agreement may be terminated by either party:

- a) By the mutual consent of the parties; or
- b) By written notice effective immediately in the event that a Force Majeure Event occurs and continues for more than 30 days.

13.4 Upfront may terminate this Agreement at any time as determined necessary in its sole discretion by way of written notice to the parties effective immediately.

13.5 On expiration of the Term or the termination of this Agreement:

- a) The User must promptly return all Intellectual Property and Confidential Information to Upfront;

b) The Service Fee for any part of the Service provided to the date of termination shall immediately become due and payable to Upfront;

c) Upfront may in its sole discretion elect to provide the User with a refund of all or part of any Payment, Expenses or Service Fee.

13.6 Termination shall be without prejudice to any claim either party may have against the other in respect of any breach of the Agreement which occurred prior to the date of termination.

13.7 This Clause shall survive the termination or expiry of this Agreement.

## **14. INDEMNITY AND RELEASE**

### *Release*

14.1 The User must perform its obligations under this Agreement at its sole risk.

14.2 Upfront will not be liable to the User for any Liability, Loss, harm, injury, disease, illness or death sustained by any person or for any loss or damage to property directly or indirectly howsoever caused, and the User indemnifies Upfront from any Liability in respect of any such matter.

14.3 The User assumes all responsibility for any Loss or damage suffered by the User or Upfront whatsoever arising out of the use of the Service ('Malfunction') (including but not limited to user input or operation error or negligence, viruses howsoever contracted, server fault, electrical malfunction or power surges, software malfunction or failure), and shall hold Upfront completely harmless for any Loss suffered as a direct or indirect result of the Malfunction, except if such loss or damage was solely caused by a negligent act or omission of Upfront.

14.4 The User acknowledges and agrees Upfront shall at no time be Liable for any and all Losses or Claims arising out of:

- a) Any act, omission or default by the User;
- b) Any delay, negligence, act, advice, matter or thing done or permitted or omitted to be done by Upfront;
- c) The provision of services by third parties, including third parties engaged in relation to a data hosting; to the extent permitted at law and the User hereby releases Upfront from such Liability.

14.5 The User agrees:

- a) All guarantees, conditions, and warranties, expressed or implied, by law, custom or otherwise are excluded to the extent permitted by law; and
- b) To the extent that Upfront breaches this Agreement or any condition or warranty implied herein which cannot be excluded or modified, the liability of Upfront for damages shall not exceed the total Service Fee payable for the Term.

### *Indemnity*

14.6 The User hereby agrees to indemnify Upfront against all Claims and all Loss as elected by Upfront in writing without prior notice from time to time on a case by case basis, howsoever suffered by Upfront or that Upfront may suffer or potentially suffer arising out of:

- a) Any Expense;
- b) Acts, omissions, delays or defaults of the User or parties engaged by the User other than Upfront;
- c) Use of the Service for any use beyond the Permitted Use;
- d) Infringement of any third party's Intellectual Property Rights when processing the User Data;

- e) The User's failure to back up the User Data or put in place appropriate security measures;
- f) The User's failure to ensure the legality, integrity, reliability, accuracy or quality of the User Data;
- g) The User failing to notify Upfront in writing of any issue, delay, problem or failure within the Service;
- h) Acts, omissions, delays or defaults of third parties (whether negligent or otherwise), including third parties in relation to data hosting;
- i) The User's breach of any Law (including civil and criminal penalties arising from such breach);
- j) Upfront failing to provide the Service or delaying the provision of the Service; or
- k) The User's incompetence, misrepresentation, unlawful activity or carelessness (including the provision of inaccurate or incomplete information or instructions);

howsoever caused indirectly or directly to the extent available at law, except where such Loss or Claim is solely caused by the negligent act or omission of Upfront.

#### Process

14.7 The parties agree that Upfront may call upon the indemnity and/or release contained in this Clause at any time and the User must immediately make good any demand or request by Upfront pursuant to this Clause including without limitation payment of Upfront's legal fees on a full indemnity basis.

14.8 The parties agree:

- a) This Clause is an Essential Term of this Agreement;
- b) This Clause shall survive the termination or end of this Agreement;
- c) Upfront is not required to provide notice in relation to this Clause; and
- d) The dispute resolution provisions contained in this Agreement do not apply to this Clause.

### 15. DISPUTE RESOLUTION

15.1 A party must not start arbitration, court proceedings or any other proceedings, except interlocutory relief, in respect of any dispute, controversy or claim arising out of or in relation to this Agreement ("Dispute"), unless that party has complied with this Clause.

15.2 A party claiming that a Dispute has arisen ("Complainant") must notify the other party to the Dispute ("Respondent") of:

- a) The nature of the Dispute;
- b) What outcome the Complainant wants; and
- c) What action the Complainant thinks will settle the Dispute ("Dispute Notice").

15.3 Once a Dispute Notice has been given, the parties must use their reasonable endeavours to agree how to resolve the Dispute.

15.4 If the parties concerned cannot agree how to resolve the Dispute within 10 Business Days of the Dispute Notice being given, each party may take its own advice on the best manner in which the Dispute is to be settled.

15.5 The User acknowledges and agrees that where the User breaches the warranties, representations, indemnities, covenants, agreements, undertakings and obligations ("agreed terms") contained herein, damages may not be an adequate remedy and the agreed terms will be enforceable by injunction, order

for specific performance or such other equitable relief as a court of competent jurisdiction may see fit.

15.6 In the event the invoice is disputed, the User hereby undertakes to make prompt payment of the sum of funds not under dispute.

### 16. AUSTRALIAN CONSUMER LAW

16.1 This Clause applies if the *Competition and Consumer Act 2010* (Cth) ('the Act') is deemed to apply.

16.2 The parties agree:

- a) Notwithstanding anything contained in this Agreement, Upfront acknowledges that the agreement and relationship between the User and Upfront may be subject to the *Competition and Consumer Act 2010* (Cth) ('the Act');
- b) The provisions of this Agreement, where in conflict with the Act, shall be read down to the extent required by operation of the provisions of Act;
- c) The Service may come with guarantees that cannot be excluded under the Australian Consumer Law and Upfront does not purport to exclude or attempt to exclude such guarantees; and
- d) The provisions of the Act, including any statutory obligations applicable to Upfront shall only be enforceable by the User in relation to the Service or any part of the Service purchased by the User as a consumer pursuant to the Act.

16.3 The Service shall be rendered with all adequate due care and skill, as required by the Act and shall be fit for the purposes disclosed by the User to Upfront and delivered within a reasonable time.

16.4 The Service comes with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the Service, the User is entitled:

- a) To cancel this Agreement; and
- b) To a refund for the unused portion of the Service Fee, or to compensation for its reduced value.

16.5 The User is also entitled to be compensated for any other reasonably foreseeable loss or damage.

16.6 If the failure does not amount to a major failure, the User is entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel this Agreement and obtain a refund for the unused portion of the Agreement.

### 17. PRIVACY

17.1 The User confirms that they have reviewed Upfront's Privacy Policy and agrees to and accepts the terms of the Privacy Policy.

17.2 The User acknowledges and agrees that the Privacy Policy may be updated by Upfront from time to time and such updated will take immediate effect.

17.3 The User acknowledges and agrees that Upfront shall store the User's personal information and User Data with a third party host.

17.4 The User agrees that personal information collected from or about the User, may be used and disclosed by Upfront for any of the following purposes:

- a) To perform the Service and Upfront's obligations under this Agreement;
- b) To use de-identified data to perform trend analysis and other aggregation of data across Upfront's Customer base to enhance Upfront's services and consultation offering;
- c) Any purpose detailed in the Privacy Policy; and
- d) To disclose information as required by law.

17.5 The User expressly consents to Upfront sending to the User by phone, email, SMS/MMS, fax and post, marketing and advertising information and materials in relation to Upfront and its related entities' products, services, promotions, offers and events. The User may opt out of receiving such information by written notice to Upfront.

17.6 Upfront shall only use the User's personal information to the extent allowed under the *Privacy Act 1988* (Cth).

## 18. MISCELLANEOUS

18.1 This Agreement shall be binding upon the heirs, successors, substitutes, executors, administrators, representatives, employees, agents, or assigns of the parties.

18.2 **Relationship:** Upfront undertakes to provide the Service as an independent contractor. The relationship between the parties shall not be deemed to be that of employer/employee, principal/customer (within the common law definition), joint venture, partnership or otherwise. The User must not purport to act in any way on behalf of Upfront or in any way purport to bind Upfront.

18.3 **Costs:** Each party shall pay their own costs associated with this Agreement, unless expressly stated otherwise in this Agreement.

18.4 **Multiple Party:** If a party consists of more than one person, this Agreement binds each of them separately, any two or more of them jointly and an obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.

18.5 **Statutes:** The provisions of any Statute which alters the effect of any provision of this Agreement shall not apply to this Agreement so far as this lawfully can be done.

17.7 **Severance:** If anything in this Agreement is invalid, unenforceable, illegal or void then it is severed, and the rest of this Agreement remains in force.

18.6 **No Waiver:** A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. No waiver is effective unless it is in writing. The waiver of a power or right is effective only in the specific instance and for the specific purpose for which it was given.

18.7 **Amendment:** Upfront reserves the right to review and amend this Agreement from time to time. Any amendment will take effect from the date Upfront notifies the User of the amendment.

18.8 **Assignment:** This Agreement is personal to the User, Guarantor and Upfront and cannot be assigned.

18.9 **Entire Agreement:** This Agreement contains the entire agreement and understanding between the parties on the subject matter of this Agreement and supersedes all prior discussions and agreements. The User acknowledges none of Upfront's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Upfront in writing nor is Upfront bound by any such unauthorised statements.

18.10 **Confidentiality:** This Agreement, the matters dealt with herein and any information exchanged between the parties shall remain confidential between the parties. This duty of confidence shall not extend to disclosure of the placement of the Agreement itself and its nature, or to any information already known

to the recipient prior to disclosure, or lawfully received by the recipient from a third party, or to information published at the date of such disclosure, or subsequently through no fault of the recipient.

18.11 **Good Faith:** Each party agrees that it will do all things and execute all documents necessary or desirable to give full effect to this Agreement even though not specifically provided for.

18.12 **Business Days:** If anything is required to be done on a day that is not a Business Day, then it must be done instead on the next Business Day where "Business Day" means a week day other than a statewide public holiday.

18.13 **Counterparts:** This Agreement may be executed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

18.14 **Warranty of Authority:** Each person signing this Agreement as an Officer, Attorney, trustee or other representative of a party, assures each other party that he/she possesses unrestricted authority to execute this Agreement in that capacity at the time of signing.

18.15 **Contra Proferentum:** No rule of construction of documents shall apply to the disadvantage of a party on the basis that the party put forward this Agreement.

18.16 **Governing Law:** This Agreement is governed by the laws of Queensland and the parties irrevocably submit to the exclusive jurisdiction of Queensland courts in respect of any action or proceeding concerning this Agreement.

18.17 **Further assurances:** Each party to this Agreement will, at its own expense and without additional consideration, upon receipt of a request by another party promptly do such further acts and will execute, acknowledge, deliver and record such other documents and instruments as may be reasonably necessary or desirable from time to time to give full effect to this agreement and any transaction contemplated by this agreement.

18.18 **Time of Essence:** Time shall be of the essence of the User's obligations hereunder unless otherwise agreed in writing by Upfront.

18.19 **Bargaining Power:** The parties acknowledge that prior to making this Agreement:

a) Each party could negotiate for the alteration or rejection of any of the provisions of this Agreement; and

b) There was no material inequality in bargaining power between the parties; and

c) Each party had consulted or had the opportunity to consult independent legal and or financial advisers.

18.20 **Electronic:** Both parties acknowledge and agree that the original of this Agreement may be in email form and agree to accept an email copy as the original and binding Agreement. Although this Agreement is not conditional upon the subsequent execution of an original and duplicate by the parties, either party may request the other party to execute an original and duplicate of this Agreement in which case the parties agree to do so.

18.21 **Notices:** Notices or other communication including without limitation any request, demand, consent or approval under this Agreement must be in writing

and may be given by a party or that party's solicitor or authorised agent. The parties agree:

- a) Posted notices will be treated as given two Business Days after posting.
- b) Electronic notices will be treated as delivered on the day it is sent or if sent after 5:00pm, then it is regarded as delivered at 9:00am on the following Business Day;
- c) Notices are effectively delivered if in writing and;
- d) Delivered or posted to the party or its solicitor; or
- e) Sent to the facsimile number or email address of the party or its solicitor.

## **19. INTERPRETATION**

19.1 In this Agreement, unless the context otherwise requires:

- a) A reference to any legislation or legislative provision any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- b) The singular includes the plural and vice versa;
- c) A reference to a party, individual or person includes a corporation, Company, joint venture, association, authority, trust, state or government and vice versa;
- d) A reference to any gender includes all genders;
- e) A reference to a recital, clause or Schedule, annexure is to be a recital, clause, Schedule or annexure of or to this Agreement;

- f) A reference to 'the parties' is a reference to all parties of this Agreement;
- g) A reference to any party includes and this Agreement is binding upon that party's assigns, agents, substitutes, employees, sub-contractors, directors, secretaries, trustees, Related Bodies Corporate, executors, administrators, attorneys, successors or heirs;
- h) A recital, Schedule, annexure or a description of the parties forms part of this Agreement;
- i) A reference to any agreement or document is to that agreement or document (and any of its provisions) as amended, novated, supplemented or replaced from time to time;
- j) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- k) A reference to 'dollars' or '\$' is to Australian currency;
- l) An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly;
- m) Specifying anything after the words 'including' or similar expressions does not limit what else is included unless express wording to the contrary; and
- n) A party which is a trustee is bound both personally and in its capacity as a trustee

