

TERMS AND CONDITIONS

This Agreement is entered into between **Milan Industries Group Pty Ltd (ABN 14 642 190 967)** (**we, us and our**) and the customer as identified in the Quote (**you or your**), together the **Parties** and each a **Party**.

Background

- A. We provide IT related services and we are a reseller of Software, SaaS Services and Hardware.
- B. You have requested our Services.
- C. We have agreed to provide our Services to you, in accordance with the terms of this Agreement.

1. Term

This Agreement will commence on the date the first Quote is executed with you (**Commencement Date**) and will continue for an initial term of 12 months, and will automatically extend for subsequent 12 month periods, unless:

- (a) you provide us written notice of termination at least 90 days' prior to the expiration of the then current 12 month period; or
- (b) this Agreement otherwise expires or is terminated in accordance with its terms,

(the **Term**).

2. Services

In consideration of your payment of the Price, we will provide the Services in accordance with this Agreement, whether ourselves or through our Personnel.

3. Authority

By accepting this Agreement, you warrant to us:

- (a) you have the legal capacity to enter into a legally binding agreement; and
- (b) you have all hardware, software and services which are necessary to access and use the Services (other than those required to be provided by us under this Agreement or any agreed Quote).

4. Commencement

We will commence the provision of the Services within a reasonable time after the later of:

- (a) your acceptance of any Quote; and
- (b) the satisfaction of any other conditions precedent contemplated by this Agreement, any Quote or otherwise advised to you by us.

5. Service Requests

- 5.1 This Agreement constitutes a "standing offer" under which, during the Term, we may provide the Services under separate Quotes.

- 5.2 You may issue a request for us to provide Services via email or by any other process which we may advise to you, from time to time (**Services Request**).

- 5.3 We may, in our sole discretion, accept or reject a Services Request. If we accept a Services Request we will provide you with a Quote to cover the accepted Services Request.

- 5.4 Where we issue a new Quote, we will only be required to comply with a Quote once you have accepted the Quote in accordance with its terms, or if the Parties have agreed in writing to an amended Quote.

- 5.5 The first Quote we sign with you, will trigger the formation of the Agreement. Each Quote we sign with you while the Agreement is in progress will also be subject to, and governed by, this Agreement and any other conditions agreed to by the Parties in writing. To the extent of any ambiguity or discrepancy between a Quote and the terms of this Agreement, the terms of this Agreement will prevail to the extent of such ambiguity or discrepancy.

6. SaaS Licence

If you have ordered any SaaS Services, in consideration for the SaaS Fee and any other applicable portion of the Price, we grant you (subject to your compliance with this Agreement) a non-exclusive, non-transferable (except with our written permission), non-sublicensable (except as otherwise permitted under this Agreement), personal and revocable licence to access and use any SaaS Services, as set out in any Quote, or as used to provide the Services to you, during the Term (**Licence**).

7. On premises Software

If you have ordered a copy of any Software for download and installation on your premises, in consideration for the Software Fee and any other applicable portion of the Price, we grant you (subject to your compliance with this Agreement) the right to install the Software on your own servers in accordance with the number of instances ordered by you, during the Term (**On Premises Installation**).

8. Licence Restrictions

You must not (and must ensure your Authorised Users do not) access or use the Services (including any SaaS Services or Software) except as permitted by the Licence and you must not and must not permit any other person to (as applicable):

- (a) use the Services in any way which is in breach of any applicable Laws or which infringes any person's rights, including Intellectual Property Rights;
- (b) use the Services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
- (c) use the Services in any way that damages, interferes with or interrupts the supply of the Services;

- (d) introduce malicious programs into our hardware and software or Systems, including viruses, worms, trojan horses and e-mail bombs;
- (e) reveal your Services account's password to others or allow others to use your Services account (other than Authorised Users);
- (f) use the Services to carry out security breaches or disruptions of a network. Security breaches include accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
- (g) use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the Services;
- (h) send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages or use the Services in breach of any person's privacy (such as by way of identity theft or "phishing"); or
- (i) use the Services to circumvent user authentication or security of any of our networks, accounts or hosts or those of members or suppliers.
- 9. Authorised Users**
- 9.1 If set out in any Quote, you agree that the Licence for the SaaS Services permits you to access and use the Services in accordance with the number of Authorised Users, as set out in any Quote.
- 9.2 You may, at any time during the Quote Term, increase the number of Authorised Users by adding a allowing a new Authorised User to use the SaaS Services and we will apply new fees (and support fees if relevant) for such increased Authorised Users from the next Payment Date.
- 10. Leasing the Hardware**
- 10.1 Where we agree to lease Hardware to you, in consideration for your payment for the Hardware, we will provide to you the Hardware as set out in any Quote.
- 10.2 We own the Hardware and you take the Hardware as bailee only.
- 10.3 During the Term for any leased Hardware, despite any provision to the contrary, to the maximum extent permitted by law, you acknowledge and agree:
- (a) to ensure that you have any necessary permissions or consents to install and use the Hardware (including any strata or building management consent);
- (b) to the fullest extent possible to not allow anyone to interfere or otherwise tamper with the functioning of the Hardware;
- (c) to protect and maintain the Hardware and keep it in good order and condition;
- (d) to ensure that only trained Authorised Users use the Hardware;
- (e) that you are responsible for any loss, cost, theft, damage, vandalism or destruction of or to the Hardware;
- (f) that no such loss, cost, theft, damage or destruction of or to the Hardware will impair or frustrate any of your obligations under this Agreement (including, without limitation, payment of the Price); and
- (g) we may take such steps as may be necessary or desirable in order to protect or enforce our rights under the delivery clause 11 (including giving us and our agents the right to enter your premises) and you agree to sign such documents and do such things as we may reasonably require in such regard.
- 10.4 Unless otherwise advised by us, you are not permitted to otherwise conduct any support, maintenance and/or otherwise tamper with the leased Hardware or permit any third party not authorised by us to do so. We have no obligation to provide any Services for, and provide no warranties in respect to, the Hardware, or any part of the Hardware, which has been provided by or modified by a person other than us.
- 10.5 Upon expiry or termination of this Agreement or an applicable Quote for the leased Hardware, you are responsible for returning all leased Hardware to us at your cost.
- 10.6 Unless expressly set out in a Quote that the specified Hardware is to be purchased, all Hardware will be leased and this clause 10 will apply.
- 11. Delivery of Hardware**
- 11.1 We will take reasonable steps to deliver the Hardware in the manner and within the delivery lead time agreed with you in writing or in the Quote (as applicable) (**Delivery**).
- 11.2 For the avoidance of doubt, you agree estimated Delivery times are an estimate only and do not guarantee Delivery by the estimated date.
- 11.3 Where possible, Delivery of the Hardware will be made to the delivery location agreed with you in writing or in the Quote (as applicable).
- 11.4 We reserve the right to deliver Hardware by instalments and each delivery shall be regarded as separate.
- 11.5 You are obliged to take delivery of the Hardware and in taking delivery to do all acts reasonably expected of you for us to make delivery.
- 11.6 Upon reasonable request by you, we may amend a Delivery after it has been shipped where practicable and on terms agreed between the Parties.
- 11.7 If we fail to deliver some or all of the Hardware pursuant to what was agreed with you, you will not be entitled to cancel that purchase order or any other purchase order. We will not be obliged to accept any claims for non-delivered Hardware or non-conforming Hardware unless written notice of the claim is given to us within 5 Business Days after receipt of the delivery at the delivery location.
- 11.8 If you have taken delivery of the Hardware and you give notice that you reject the Hardware on the basis that the

Hardware does not comply with the Quote, you must take steps that are reasonable in the circumstances to preserve the Hardware as far as practicable in the state in which they were received in order to return the Hardware to us.

- 11.9 You must not alter, remove, conceal, or tamper with any batch numbers or other means of identification used in relation to the Hardware.
- 11.10 We will not be liable for any loss suffered by you arising out of any delay or failure to deliver the Hardware (or any part of them) or failure to deliver in the requested quantities.
- 11.11 Unless otherwise agreed between the Parties, you agree to pay for all Delivery Costs

12. Suspension and Cancellation of Hardware Delivery

- 12.1 We may suspend or cancel delivery of Hardware if:
- we reasonably believe that the Hardware may cause injury or damage or may infringe the Intellectual Property Rights of any person;
 - we are unable to deliver the Hardware due to any event beyond our control; or
 - any payment owing to us is overdue.
- 12.2 No such suspension or cancellation will in any way constitute admission of liability or fault on our part.

13. Title and Risk in Purchased Hardware

- 13.1 This clause 13 will only apply where it is expressly set out in a Quote that the specified Hardware is to be purchased.
- 13.2 Until title to the purchased Hardware passes to you, you acknowledge and agree that:
- the purchased Hardware are held by you as a bailee for us; and
 - we may take such steps as may be necessary or desirable in order to protect or enforce our rights under these delivery clause 11 (including giving us and our agents the right to enter your premises) and you agree to sign such documents and do such things as we may reasonably require in such regard.
- 13.3 Title in the purchased Hardware and any replacement parts otherwise provided by us will not pass to you until you have paid the relevant Hardware Fee for those Hardware in full.
- 13.4 Risk of loss or damage to the purchased Hardware and any replacement parts provided by us will remain with us only until the Hardware has been dispatched from our premises. After that time risk of damage to, or loss or deterioration of, the Hardware from any causes passes to you.
- 13.5 Damage to or loss of the Hardware after risk has passed to you does not discharge you of your financial obligations under this Agreement unless the loss or damage is due to an act or omission of ours.

14. Your Obligations for Purchased Hardware and Leased Hardware

- 14.1 You must, until all outstanding monies have been paid to us for purchased Hardware delivered to you, and for the Quote Term for all leased Hardware:

- separately store those Hardware in such a way that makes it clear they are our property;
- in the event of an Insolvency Event occurring in relation to you, we or our representative will be entitled, upon giving 2 Business Days' notice, to enter premises occupied by you to search for and remove any of those Hardware without in any way being liable to you. If the Hardware or any of them are wholly or partially attached to or incorporated in any other product, we may, when practical, remove them in any way necessary to remove the Hardware; and
- all costs and expenses incurred by us as a result of taking action in accordance with paragraph (b) above, together with transportation and storage charges, will be immediately payable by you to us on demand.

15. Security interest

- 15.1 In this clause 15, PPSA means *Personal Property Securities Act 2009* (Cth). Unless otherwise defined in this Agreement, capitalised terms in this clause have the meanings given to them in the PPSA.
- 15.2 You acknowledge and agree:
- our interest in the Hardware and all proceeds is a Security Interest and this Agreement is a Security Agreement;
 - that you consent to us registering our Security Interest on the Personal Property Securities Register (including as a purchase money security interest) and you agree to provide all assistance reasonably required by us to facilitate Registration; and
 - that you waive your right to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 15.3 You acknowledge and agree that this Agreement is intended to create a Security Interest in the Property in the names of the respective title holders of the Property.
- 15.4 Without limiting our rights in this clause 15, you:
- charge the Property in favour of us with the repayment of all amounts owing by you under this Agreement (**Charge**);
 - consent to any registration in connection with the Charge, including a registration under the PPSA, and a caveat or mortgage, as may be appropriate against the title of the Property including any register, or similar, maintained by any authority which is customarily used for that purpose;
 - agree to execute any documents (including legal or statutory mortgages in favour of us over any real property not held on, or acquired after, the date of this Agreement and obtaining a solicitor's certificate for all interested parties in the Charge (including all Guarantors and any title holders of the Property) certifying that the relevant party has been explained the implications of entering the relevant documents) in form and substance acceptable to us acting reasonably and to pay on

demand any associated duties and registration fees;

- (d) agree to promptly do all things that we reasonably require in connection with this clause 15; and
- (e) unconditionally and irrevocably agree to us procuring the registration of a caveat, mortgage or a notice of our Charge on any register.

15.5 You agree that we may call upon any Security Interest, and/or exercise our rights under this clause 15, only if you are in breach of this Agreement.

15.6 This clause 15 will survive termination or expiry of this Agreement.

16. Manufacturer Warranty

16.1 Nothing in this Agreement excludes or alters your rights under any warranty provided by a manufacturer of Hardware, SaaS Services or Software.

16.2 Nothing in this Agreement is intended to prevent you from directly contacting the manufacturer in relation to the warranty offered by the manufacturer or in relation to any other matter.

17. Professional Services

In consideration for the Professional Services Fee and any other applicable portion of the Price, we will provide the Professional Services, as set out in any Quote.

18. Implementation Service

In consideration for the Implementation Fee and any other applicable portion of the Price, we will provide the Implementation Services, as set out in any Quote.

19. Development Services

19.1 If available, you may request a bespoke solution or changes to the scope, functionality or nature of any SaaS Services and/or Software provided to you in any Quote, or the elements of the SaaS or Software used to provide the Services to you, via a written request provided to us.

19.2 Following notification, at our discretion, we may provide you with written notice in the form of a Quote setting out:

- (a) the bespoke solution, or the changes required to the SaaS Services or Software and the development services required in respect of such changes (**Development Services**);
- (b) the allocation of Intellectual Property Rights for the Development Services; and
- (c) the fees required for us to undertake such Development Services (**Development Fee**).

19.3 If you agree to the proposed solution or changes, the Development Services and the Development Fees then, subject to the Parties signing an Quote and subject to this Agreement, we will provide the Development Services to you in consideration for payment of the Development Fee.

20. Support Services

20.1 In consideration for Support Fee and any other applicable portion of the Price, we will provide you with the Support Services as set out in any Quote.

20.2 To request any Support Services you must use our online support ticketing system.

20.3 You acknowledge and agree that any questions or faults caused by software, hardware or other components which are not the subject of the Services are not included as part of the Support Services.

21. Service Levels

We will use reasonable commercial efforts to respond to any fault in accordance with any service level agreement agreed between the Parties provided that:

- (a) you provide us immediate written notice of the fault;
- (b) you investigate and ascertain the cause of the fault and provide to us all necessary information relevant to the fault (including but not limited to what you have done in relation to the fault); and
- (c) you acknowledge that if we cannot meet a service level due to circumstances or an event beyond our control, whether known or unknown at the time for entering into the Agreement or Quote (including any Force Majeure Event), we will have no Liability for such failure or delay.

22. Third Parties

You acknowledge and agree that:

- (a) the provision of the Services may be contingent on, or impacted by, third parties, other customers' use of the services, suppliers, or subcontractors (**Third Party Inputs**); and
- (b) despite anything to the contrary, to the maximum extent permitted by law, we will not be responsible and will have no Liability, for any default or breach of this Agreement or Law, if such default or breach was caused or contributed to by any Third Party Inputs.

23. Third Party Terms and Conditions

23.1 In performing the Services, we may suggest software, services, hardware or APIs offered by third parties (**Third Party Products**). You acknowledge where we suggest you use such Third Party Products, this is not an agreement to purchase or licence such Third Party Products to you. If you agree to receive Third Party Products we will provide a Quote to you setting out the Third Party Products to be provided to you.

23.2 To the extent that you choose to receive such Third Party Products, you are solely responsible for:

- (a) the purchase of;
 - (b) the requirements; and
 - (c) the licensing obligations,
- related to the applicable Third Party Products.

- 23.3 It is your responsibility to ensure these requirements are met in order for you to benefit from the specific functionality of the Third Party Products.
- 23.4 If you direct us, and we agree as part of the Services, to set up any Third Party Products for you, you agree that such direction does not affect any of your obligations in clause 23.2. You represent, warrant and agree that prior to making any such direction you have read and you agree to any terms and conditions for such Third Party Products and where we accept any such terms and conditions for you when assisting with Third Party Products, we do so solely on your direction and we are in no way advising that such terms and conditions are acceptable to your business or in any way providing legal advice to you.
- 24. Privacy**
- 24.1 Each Party will at all times comply with the Privacy Act and any other privacy law or privacy regulation applicable to that Party (**Privacy Laws**).
- 24.2 In relation to Customer Data that contains or is Personal Information, we will only use this Customer Data in the manner permitted by this Agreement and Privacy Laws.
- 24.3 You acknowledge and agree that we may need to provide this Customer Data to Third Party Inputs or Third Party Products in the provision of the Services.
- 24.4 You are responsible for the collection, use, storage and otherwise dealing with Personal Information related to your business and all matters relating to the Customer Data.
- 24.5 Without limiting this clause 24, you may only disclose Personal Information in your control to us, if:
- you are authorised by Privacy Laws to collect the Personal Information and to use or disclose it in the manner required by this Agreement, including where it is required to be disclosed to any Third Party Inputs or Third Party Products;
 - you have informed the individual to whom the Personal Information relates, that it might be necessary to disclose the Personal Information to third parties; and
 - where any Personal Information is Sensitive Information, you have obtained the specific consent to that disclosure from the individual to whom the Sensitive Information relates.
- 24.6 If we suspect that a Customer Data Incident has occurred, we will, within 30 days of becoming aware that a Customer Data Incident may have occurred, prepare an assessment to determine whether there are reasonable grounds to believe that a Customer Data Incident has occurred, and the costs of such assessment must be paid by you.
- 24.7 Where you suspect that a Customer Data Incident has occurred, we will, within 30 days of receiving notice from you that you suspect that a Customer Data Incident has occurred, prepare an assessment to determine whether there are reasonable grounds to believe that a Customer Data Incident has occurred, and the costs of such assessment must be paid by you.
- 24.8 If, as a result of our assessments as set out in clauses 24.6 or 24.7, we believe a Customer Data Incident has occurred that we consider to be notifiable under the Notifiable Data Breaches Scheme, we will notify you of the Customer Data Incident by telephone or email and provide notice to the Office of the Australian Information Commissioner (**OAIC**) of such Customer Data Incident in accordance with the Notifiable Data Breaches Scheme and we will be the sole Party to notify the individuals who are likely to be at risk of serious harm arising from the Customer Data Incident. Alternatively, where we do not have the contact details of affected individuals, we will provide you with a statement to provide to affected individuals.
- 25. Your Obligations**
- You agree to:
- comply with this Agreement, our reasonable requests or requirements, and all applicable Laws; and
 - provide all assistance, information, documentation, access, facilities, authorities, consents, licences and permissions reasonably necessary to enable us to comply with our obligations under this Agreement or at Law, in a timely manner, including to:
 - permit all members of our Personnel to have reasonable access to your premises and environment for the purposes of supplying the Services, free from harm or risk to health or safety;
 - ensure that we have full and unhindered access to any items of equipment relevant to the Services during business hours or at such other times as agreed between the Parties;
 - permit all members of our Personnel to have access to any reasonable computing, office productivity software tools, telecommunication, email and internet facilities necessary for the purposes of supplying the Services; and
 - other than as expressly permitted by this Agreement, not cause or permit any items of the Services to be altered, repaired, serviced or moved except by persons approved by us.
- 26. Change Requests**
- 26.1 You may request a variation or change to the Services, including the timing for the provision of the Services, by providing written notice (including by email) to us, with details of the variation or change (**Change Request**).
- 26.2 We will not be obliged to comply with a Change Request unless we:
- accept the Change Request, including any variation to the Price to effect the Change Request (**Price Change**), in writing; and
 - the Price has been adjusted to reflect the Price Change.
- 26.3 If we consider that any instruction or direction from you constitutes a variation, then we will not be obliged to comply

with such instruction or direction unless a Change Request has been issued and accepted by us, in accordance with this clause 26.

27. Payment

27.1 You agree to pay us:

- (a) the Price;
- (b) all Expenses; and
- (c) any other amounts payable to us under this Agreement,

in accordance with the Payment Terms.

27.2 We will not provide any purchased Hardware to you until the applicable portion of the Price has been received for the purchase Hardware.

27.3 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion):

- (a) immediately cease providing the Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so; and/or
- (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 8% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date for payment in accordance with the Payment Terms.

27.4 Where part of the Price is a fixed-fee, this is based on fair use of the Services to which the fixed-fee relates. Fair use is determined based on the average expected usage of the applicable Services by a similar client. If your use is considered by us to be excessive then additional fees may be charged, with notice to you.

27.5 The Price for any Services may be increased by us providing 30 days' written notice to you. If you do not agree to any amendment made to the Price, you may terminate this Agreement by giving us 30 days' notice in writing, in which case, clause 36.3 will apply.

28. Warranties

28.1 We represent, warrant and agree that:

- (a) we are properly constituted and have the right and authority to enter into this Agreement;
- (b) we will provide the Services in accordance with all applicable Laws; and
- (c) we will use reasonable effort to ensure all of our obligations under this Agreement will be carried out:
 - (1) by suitably competent and trained Personnel; and
 - (2) in an efficient and professional manner.

28.2 You represent, warrant and agree that:

- (a) there are no legal restrictions preventing you from entering into this Agreement;

- (b) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete;
- (c) you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services are or will be fit or suitable for your particular purposes), unless expressly stipulated in this Agreement;
- (d) the Services are provided to you solely for your benefit and you will not (or you will not attempt to) disclose, or provide access to, our Services to third parties without our prior written consent;
- (e) any information, advice, material, work and services (including the Services) provided by us under this Agreement does not constitute legal, financial, merger, due diligence or risk management advice;
- (f) you will be responsible for the use of any part of the Services, and you must ensure that no person uses any part of the Services:
 - (1) to break any Law or infringe any person's rights (including Intellectual Property Rights);
 - (2) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
 - (3) in any way that damages, interferes with or interrupts the supply of the Services;
- (g) you are not and have not been the subject of an Insolvency Event;
- (h) if applicable, you hold a valid ABN which has been advised to us; and
- (i) if applicable, you are registered for GST purposes.

29. Intellectual Property

- 29.1 All Intellectual Property in the Services and all Intellectual Property developed, adapted, modified or created by us or our Personnel (including without limitation in connection with this agreement and any machine learning algorithms output from the foregoing) is and will remain owned exclusively by us or our third party service providers.
- 29.2 You agree to grant us a licence to use any Intellectual Property Rights of yours for the purposes of us providing the Services to you.
- 29.3 You must strictly comply with any SaaS Services or Software licence entered into between the Parties and any breach of such licence by you will be deemed to be a material breach of this agreement.
- 29.4 Subject to the you complying with the terms of this Agreement at all times, we grant to you an revocable, non-exclusive, non-transferrable, licence, without the right to sublicense, to use the Services, for the applicable Quote, for the purposes of your business provided that you must not:
- (a) copy, modify, adapt, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble or decompile the Services or any part of

- the Services or otherwise attempt to discover any part of the source code of the Services;
- (b) use any unauthorised, modified version of the Services, including (without limitation) for the purpose of building similar or competitive software or for the purpose of obtaining unauthorised access to the Services;
 - (c) use the Services in a manner that is contrary to any Laws or in violation of any Intellectual Property Rights or privacy rights;
 - (d) publish, post, upload or otherwise transmit data that contains any viruses, trojan horses, worms, time bombs, malware, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with information or property of any person;
 - (e) use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Services;
 - (f) unless authorised under this agreement, use the Services in a web-enabled form for the purposes of third party analysis or view via the internet or other external network access method;
 - (g) rent the use of the Services to any third parties;
 - (h) take any action that may compromise or jeopardise our Intellectual Property Rights in the Services or otherwise;
 - (i) remove or deface any confidentiality, copyright or other proprietary notice placed on the Services;
 - (j) make any representations or warranties to any third parties that could be construed as being representations or warranties from us in relation to the Services or any other matter;
 - (k) use the Services in any way that involves service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing of the Services; or
 - (l) do any other thing in relation to the Services specifically prohibited by us, to you, in writing, as being prohibited.
- 29.5 Subject to clause 29.4, nothing in this agreement grants to you, or any member of your Personnel, any Intellectual Property Rights.

30. Analytics

- 30.1 Despite anything to the contrary in this Agreement or elsewhere, we may monitor, analyse and compile information based on and/or related to your use of the Services, in an aggregated and anonymised format (**Analytics**).
- 30.2 We and our licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content provided in connection with the Analytics, including all Intellectual Property rights in the foregoing.

31. Customer Data

- 31.1 As between you and us:
- (a) all Customer Data is and remains your property; and
 - (b) you retain any and all rights, title and interest in and to the Customer Data, including all copies, modifications, extensions and derivative works.
- 31.2 You grant us a limited licence to copy, transmit, store and back-up or otherwise access the Customer Data during the Term solely to:
- (a) supply the Services to you (including to enable you and your Personnel to access and use the Services);
 - (b) diagnose problems with the Services;
 - (c) enhance and otherwise modify the Services; and
 - (d) develop other services, provided we de-identify the Customer Data (including the Analytics), and
 - (e) as reasonably required to perform our obligations under this Agreement.
- 31.3 You must, at all times, ensure the integrity of the Customer Data and that your use of the Customer Data is compliant with all Laws.
- 31.4 You represent and warrant that:
- (a) you have obtained all necessary rights, releases and permissions to provide all Customer Data to us and to grant the rights granted to us in this Agreement; and
 - (b) the Customer Data (and its transfer to and use by us) as authorised by you, under this Agreement does not violate any Laws (including those relating to export control and electronic communications) or rights of any third party, including any Intellectual Property rights, rights of privacy, or rights of publicity.
- 31.5 We assume no responsibility or Liability for the Customer Data. You are solely responsible for the Customer Data and the consequences of using, disclosing, storing or transmitting it.
- 31.6 This clause 31 will survive expiry or termination of this Agreement.

32. Confidential Information

- 32.1 Each Receiving Party agrees:
- (a) not to disclose the Confidential Information of the Disclosing Party to any third party;
 - (b) to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and
 - (c) to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.
- 32.2 The obligations in clause 32.1 do not apply to Confidential Information that:

- (a) is required to be disclosed in order for the Parties to comply with their obligations under this Agreement;
- (b) is authorised to be disclosed by the Disclosing Party;
- (c) is in the public domain and/or is no longer confidential, except as a result of a breach of this Agreement; or
- (d) must be disclosed by Law or by a regulatory authority, including under subpoena.
- 32.3 Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 32. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 32.
- 32.4 This clause 32 will survive the termination of this Agreement.
- 33. Australian Consumer Law**
- 33.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 33.2 Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the services, you are entitled:
- (a) to cancel this Agreement with us; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.
- 33.3 You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the services and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or services.
- 33.4 If the ACL applies to you as a consumer, nothing in this Agreement excludes your Statutory Rights as a consumer under the ACL. You agree that our Liability for the Services provided to an entity defined as a consumer under the ACL is governed solely by the ACL and this Agreement.
- 33.5 Subject to your Statutory Rights, we exclude all express and implied warranties, and all material, work and services (including the Services) are provided to you without warranties of any kind, either express or implied, whether in statute, at Law or on any other basis.
- 33.6 This clause 33 will survive the termination or expiry of this Agreement.
- 34. Exclusions to liability**
- 34.1 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:
- (a) your or your Personnel's acts or omissions (including any directions to provide or refrain from providing Services);
- (b) any use or application of the Services (including the Software and Hardware) by a person or entity other than you, or other than as reasonably contemplated by this Agreement;
- (c) any works, services, goods, materials or items which do not form part of the Services (including the Software and Hardware, and as expressed in this Agreement), or which have not been provided by us;
- (d) any relocation, configuration or reconfiguration of any Services (including the Software and Hardware) by you;
- (e) any Third Party Inputs or Third Party Products; or
- (f) any event outside of our reasonable control (including a fault, defect, error or omission in the Computing Environment or Customer Data).
- 34.2 This clause 34 will survive the termination or expiry of this Agreement.
- 35. Limitations on liability**
- 35.1 Despite anything to the contrary, to the maximum extent permitted by law:
- (a) we will not be liable for Consequential Loss;
- (b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel); and
- (c) our maximum aggregate Liability arising from or in connection with this Agreement (including the Services or the subject matter of this Agreement) will be limited to, and must not exceed in the aggregate for all claims the total amount of the Price you paid to us (and retained by us) in the 12 month period directly preceding the date on which such Liability arose.
- 35.2 This clause 35 will survive the termination or expiry of this Agreement.
- 36. Termination**
- 36.1 We may terminate this Agreement Quote, at any time by providing 30 days' written notice to you.
- 36.2 This Agreement or any Quote will terminate immediately upon written notice by:
- (a) us, if:
- (1) you (or any of your Personnel) breach any material term of this Agreement;
- (2) you (or any of your Personnel) breach any provision of this Agreement and that breach has not been remedied within 10 Business Days of being notified by us;

- (3) for any other reason outside our control which has the effect of compromising our ability to provide the Services; or
- (4) you are unable to pay your debts as they fall due; and
- (b) you, if we:
- (1) are in breach of a material term of this Agreement, and that breach has not been remedied within 60 days of being notified by you; or
- (2) are unable to pay our debts as they fall due.
- 36.3 Upon expiry or termination of any Quote or this Agreement:
- (a) we will immediately cease providing the Services under that Quote or this Agreement (as applicable);
- (b) you agree to pay for all Hardware and Services provided prior to termination, including Hardware and Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under the expired or terminated Quote or Agreement (as applicable);
- (c) you agree to promptly return all leased Hardware to us and any failure to return any leased Hardware to us within 30 days of the date of termination or to return the leased Hardware to us in working condition, other than usual wear and tear, will require you pay, as a debt due and immediately payable, to us, our reasonable costs incurred in replacing or repairing the leased Hardware (as applicable);
- (d) if required, you agree to grant us such rights of access to any premises and environment where the Hardware is located to allow us (or our Personnel) to immediately recover or repossess any Hardware belonging to us;
- (e) pursuant to clauses 36.1(a)(1) or (4), you also agree to pay us our additional costs arising from, or in connection with, such termination;
- (f) we may agree to provide disengagement services to you, solely at your expense, as quoted to you by us;
- (g) each Party agrees to, as soon as reasonably practicable, return to the other Party (where possible), or delete or destroy (where not possible to return), any of the other Party's property (including any Confidential Information and Intellectual Property) in relation to the expired or terminated Quote or this Agreement (as applicable); and
- (h) 1 month after termination, we may at our sole discretion anonymise or delete all Customer Data which we hold or control in relation to the expired or terminated Quote or this Agreement (as applicable).
- 36.4 Unless otherwise agreed between the Parties, if this Agreement expires or is terminated, then any current Quote will also terminate on the date of termination of the Agreement.
- 36.5 We will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to this Agreement constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of this Agreement.
- 36.6 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.
- 36.7 This clause 36 will survive the termination or expiry of this Agreement.
- 37. Insurance**
- 37.1 You (and any of your Personnel) are not entitled to the benefit of any accident, third party liability, public liability or indemnity policies of insurance or workers compensation policies that we may hold.
- 37.2 You agree to make your own arrangements to ensure that any insurances required by Law or which are industry standard for the types of activities and functions of your business are affected and maintained throughout the Term.
- 37.3 You agree to provide us with evidence of such arrangements, if requested.
- 37.4 You agree to notify us promptly if for any reason any insurances required by Law are void or expire.
- 38. GST**
- 38.1 If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.
- 38.2 If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued if required, and any payments to give effect to the adjustment must be made.
- 38.3 If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.
- 38.4 The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 39. General**
- 39.1 **Non-solicitation:** You acknowledge that our Personnel are a valuable asset of our business. Accordingly, you agree that during the Term and for 12 months after the Term, you will not, directly or indirectly, knowingly recruit or solicit, employ,

- engage as a consultant, or otherwise retain, any of our Personnel who are involved in the performance of this Agreement, to work for you or any business which competes with us (unless we provide our express written consent). If you solicit or entice any of our Personnel, as set out above, you must pay to us upon demand, AUD \$20,000 (plus GST) per employee or contractor.
- 39.2 **No Exclusivity:** The Services will be provided to you on a non-exclusive basis.
- 39.3 **Publicity:** You acknowledge and agree that we may publicly announce that we have undertaken work for you, including in website testimonials and in our marketing material. You can opt-out of publicity by contacting us at the email address provided at the beginning of this Agreement.
- 39.4 **Amendment:** You may only amend this Agreement by written instrument executed by the Parties. We may amend this Agreement at any time with written notice to you. If you do not agree to any amendment made to this Agreement, you may terminate this Agreement by giving us 30 days' notice in writing, in which case, clause 36.3 will apply.
- 39.5 **Assignment:**
- (a) You must not assign or deal with the whole or any part of your rights or obligations under this Agreement without our prior written consent (such consent is not to be unreasonably withheld or delayed).
 - (b) We may assign, novate or transfer this Agreement, in whole or in part, to:
 - (1) any Milan Industries Group Member at any time without your consent;
 - (2) any third party without your consent as part of any divestiture, corporate restructure or reorganisation of all or part of the business of the Milan Industries Group; and
 - (3) any other third party with your written consent (such consent is not to be unreasonably withheld or delayed).
 - (c) You agree to enter into any documentation we require to give effect to the assignment, novation or transfer.
- 39.6 **Counterparts:** This Agreement and any Quote issued under it may be executed in any number of counterparts that together will form one instrument.
- 39.7 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Institute of Victoria to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 39.8 **Entire agreement:** This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 39.9 **Email:** You agree that we are able to send electronic mail to you and receive electronic mail from you. You release us from any Liability you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 39.10 **Entire agreement:** This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 39.11 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under this Agreement if such delay is due to any circumstance beyond our reasonable control (including but not limited to epidemics, pandemics, and Government sanctioned restrictions and orders (including any delay or disruption caused or contributed to by COVID-19), whether known or unknown at the time of entering into this Agreement) (**Force Majeure Event**).
- 39.12 **Governing law:** This Agreement is governed by the laws of Victoria, Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 39.13 **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 39.14 **Online execution:** This Agreement and any Quote issued under it, may be executed by means of such third party online document execution service as we nominate subject to such execution being in accordance with the applicable terms and conditions of that document execution service.
- 39.15 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 39.16 **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

40. Definitions

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them in any Quote, and:

ACL or Australian Consumer Law means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

Affiliates means, with respect to any particular entity (**First Entity**), an entity or individual that Controls, is controlled by, or is under common Control with, the First Entity.

Agreement means these terms and conditions, any agreed Quote issued under it and any documents attached to, or referred to in, each of them.

Business Day means a day on which banks are open for general banking business in Victoria, excluding Saturdays, Sundays and public holidays.

Computing Environment means your computing environment including all hardware, software, information technology and telecommunications services and Systems.

Confidential Information includes information which:

- (a) is disclosed to the Receiving Party in connection with this Agreement at any time;
- (b) is prepared or produced under or in connection with this Agreement at any time;
- (c) relates to the Disclosing Party's business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

Consequential Loss includes any consequential loss, indirect loss, real, special or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

Control means the ability to direct the policies or operations of an entity, whether by contract, ownership of equity interests, or otherwise.

Customer Data means the information, logos, documents, customer information, Personal Information and other data to which you provide us access, or which is stored by the Services, or generated by the Services as a result of your use of the Services.

Customer Data Incident means any actual or suspected (by us):

- (a) unauthorised access to, or unauthorised disclosure of, any Personal Information; or

- (b) loss of Personal Information, including where Personal Information is damaged or corrupted so that it becomes unusable,

where, as determined by us, the access or disclosure is likely to result in serious harm to one or more individuals and we have not been able to prevent the likely risk of serious harm with remedial action.

Delivery Costs means the costs associated with the delivery or provision of the Hardware, including any insurance, customs, tariffs, duties or other such charges that may apply to the delivery of the Hardware.

Development Fees is defined in clause 19.2.

Development Services is defined in clause 19.2.

Disclosing Party means the party disclosing Confidential Information to the Receiving Party.

Exclusions means any services or products specifically excluded from the Services.

Expenses means any disbursements, travel costs, accommodation costs and third party costs, reasonably and directly incurred by us or our Personnel for the purpose of the provision of the Services.

Force Majeure Event has the meaning given in clause 39.11.

Hardware means any hardware provided to you as described in any Quote.

Hardware Fee means fee for Hardware (whether leased or purchased) as described in any Quote.

Implementation Fee means the fee for any Implementation Services as described in any Quote.

Implementation Service means (if applicable) the implementation services as described in any Quote, to set up the Services.

Insolvency Event means any of the following events or any analogous event:

- (a) a Party disposes of the whole or any part of the Party's assets, operations or business other than in the ordinary course of business;
- (b) a Party ceases, or threatens to cease, carrying on business;
- (c) a Party is unable to pay the Party's debts as the debts fall due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Party's assets, operations or business;
- (e) any step is taken for a party to enter into any arrangement or compromise with, or assignment for the benefit of, a Party's creditors or any class of a Party's creditors; or
- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of a Party's assets, operations or business.

Intellectual Property means any domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

Intellectual Property Rights means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

Laws means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any person with the authority to bind the relevant Party in connection with this Agreement or the provision of the Services.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

Milan Industries Group means us and our Affiliates.

Milan Industries Group Member means any member of the Milan Industries Group.

Notifiable Data Breaches Scheme means the Notifiable Data Breaches scheme under Part IIIC of the Privacy Act.

Payment Date means the date on which we issue our invoice to you.

Payment Terms means the terms for your payment of any amount in any invoice we issue to you, as set out in any Quote or otherwise agreed between the Parties in writing.

Personal Information is defined in the Privacy Act.

Privacy Act means the *Privacy Act 1988* (Cth).

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents.

Price means the price set out in any Quote and includes any Professional Services Fee, SaaS Fee, Software Fee, Hardware Fee, Implementation Fee, Support Fee and all Expenses.

Professional Services means the professional services as described in any Quote.

Professional Services Fee means the fee for any Professional Services as described in any Quote.

Receiving Party means the party receiving Confidential Information from the Disclosing Party.

SaaS Services means the cloud based software as a service used to provide any of the Services or provided to you as part of the Services, (where set out in any Quote) and includes any instructions in hard copy or electronic form and any update, modification or release of any part of that software as a service after this Agreement is entered into by the Parties.

SaaS Fee means the fee for any SaaS Services as described in any Quote.

Sensitive Information is defined in the Privacy Act.

Services means the work or services that we agree to perform under this Agreement, as further particularised in any Quote, and includes any Professional Services, Implementation Services, any Software licensed to you, any SaaS Services licenced to you, any Support Services, and any Hardware provided to you (whether leased or purchased).

Software means the software used to provide any of the Services or provided to you as part of the Services (where set out in any Quote), and includes any instructions in hard copy or electronic form and any update, modification or release of any part of that software after this Agreement is entered into by the Parties.

Software Fee means the fees for the Software as described in any Quote.

Support Fee means the fees for Support Services as described in any Quote.

Support Services means the support services as described in any Quote.

System means all hardware, software, networks and other IT systems used by a Party from time to time, including a network.

Quote means a quote provided by us and signed by each Party, for the provision of the Services, in accordance with clause 5.

41. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (b) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (c) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (d) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (e) a reference to a party (including a Party) to a document includes that Party's executors,
- (f) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally; and
- (g) a reference to time is to local time in Victoria.