

GENERAL TERMS AND CONDITIONS

These terms and conditions are between TechEnvy Pty Ltd (ABN 37 654 502 628), (**we, us or our**) and you, the person or entity stated in the Quote or Agreement (**you or your**), together the **Parties** and each a **Party**. Together, these terms and conditions and the Quote and/or Agreement form the entire agreement under which we will provide the Goods and Services to you (**Terms**).

Our Disclosures: Please read these Terms carefully and contact us if you have any questions. By accepting these Terms, you agree that:

- you may be required to pay our costs if you fail to comply with certain terms in these Terms (e.g. if we incur costs as a result of termination of these Terms (see clause 11.4(d)) or if you solicit our Personnel and engage them directly (see clause 15));
- your failure to pay the Price in accordance with the Payment Terms may result in us recovering or repossessing the Goods, charging you interest, or suspending or cancelling the provision of the Goods and Services until we receive payment (see clause 8.4);
- subject to your Consumer Law Rights, you have not relied on any representations or warranties made by us prior to entering these Terms that are not included in these Terms (see clause 9.2(b));
- we may disclose your personal information to third parties (see clause 12);
- subject to your Consumer Law Rights, we will not refund any amounts paid by you (see clause 11.4(b));
- subject to your Consumer Law Rights, we exclude our liability for any loss or damage which is the inevitable and unavoidable part of performing the Goods and Services (see clause 13.1(d));
- you agree to indemnify us for any Liability we incur from or in connection with any breach by you of our Intellectual Property Rights or those of a third party and Your Data (see clause 13.2);
- subject to your Consumer Law Rights, our liability for the provision of the Goods and Services will be limited to, at our discretion us reperforming the relevant Goods and Services or, in our sole discretion, to repaying you the amount of the Price paid by you to us in respect of the provision of the relevant Goods and Services, to which the Liability relates (see clause 13.1(b)); and
- we exclude Liability for goods and services that do not form part of the Goods and/or Services (including any incompatibility with third party software) and unauthorised third party access to your Systems (see clause 13.3)

1. Acceptance

- 1.1 You have requested the Goods and Services set out in the Quote or Agreement, and you are taken to have accepted these Terms by the earlier of:
- (a) signing and returning the Quote or Agreement to us;
 - (b) accepting the Quote or Agreement online or sending an email to us accepting the Quote or Agreement (expressly or impliedly);
 - (c) instructing us to proceed with the Goods and Services; and
 - (d) making any payment of the Price (including any deposit).

1.2 Once you accept any Quote or Agreement, these Terms will continue to apply unless terminated in accordance with these Terms (**Term**). Throughout the Term, you may issue a request for further Goods and Services by notifying us in writing.

1.3 We may, at our discretion, accept or reject a request for further Goods and Services. If we accept your request, we will issue you a Quote or Agreement and any subsequent Quote or Agreement will be binding in accordance with these Terms. For the avoidance of doubt, our provision of any subsequent Goods and/or Services will be subject to these Terms.

2. Quotes

2.1 A Quote or the amount set out in the Agreement:

- (a) only remains valid for 7 days from the date it is given unless otherwise specified in the Quote or Agreement; and
- (b) may be varied or withdrawn by us at any time (acting reasonably) by notice to you.

2.2 You agree that any Goods and/or Services, prices including the Price, dates or timeframes set out in the Quote or Agreement are:

- (a) estimates only; and
- (b) are subject to factors beyond our control including but not limited to currency, price and supply fluctuations, and

we may (acting reasonably) vary any Goods and/or Services, prices including Prices, date or timeframes set out in the Quote or Agreement accordingly with reasonable notice to you.

2.3 You agree that any prices including the Price set out in the Quote or Agreement does not include freight or delivery charges unless otherwise stated in the Quote or Agreement. Any freight or delivery charges are estimates only.

2.4 If there are any Goods, the subject of a Quote that are no longer available, we will obtain your prior written approval to provide a substitute for the Goods.

3. Goods and Services

3.1 We agree to provide the Goods and Services to you in accordance with these Terms (including any Specifications) and all applicable laws.

3.2 We may provide the Goods and Services to you using our Personnel.

4. Time

4.1 We will use our commercial best endeavours to provide the Goods and Services by the dates set out in the Quote or Agreement, or where no date is specified, then within a reasonable period of time.

4.2 We will have no liability (including a failure to meet any date referred to in any Quote or Agreement, for delays caused by one or more of the following events or circumstances:

- (a) a Variation or deemed Variation;

- (b) an act, omission or breach by you or any of your Personnel; and/or
 - (c) any other event or circumstance beyond our reasonable control (including Force Majeure Events).
- 4.3 We may, acting reasonably, suspend any Goods and/or Services and adjust any dates set out in the Quote and/or Agreement or provide the Services remotely, for a delay caused by any other event or circumstance beyond our reasonable control (including Force Majeure Events).

5. Your Consumer Law Rights

- 5.1 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 Goods and Services which cannot be excluded, restricted or modified (**Consumer Law Rights**). Nothing in these Terms excludes your Consumer Law Rights as a consumer under the ACL.
- 5.2 You agree that our Liability for the Goods and Services is governed solely by the ACL and these Terms.
- 5.3 Subject to your Consumer Law Rights, we exclude all express and implied warranties, representations and guarantees of any kind (whether under statute, law, equity or on any other basis) and all materials, work, goods and services (including the Goods and Services) are provided to you without warranties, representations and guarantees of any kind, except where expressly provided in these Terms.

6. Variations

- 6.1 All Variations must be agreed in writing between the Parties and will be priced in accordance with the Quote, Agreement, any Rates Schedule provided by us, or as otherwise agreed between the Parties.
- 6.2 You may request a variation or change to the Goods and Services, including the timing for the provision of the Goods and Services, by providing written notice (including by email) to us, with details of the requested variation or change (**Variation Request**).
- 6.3 We will not be obliged to comply with a Variation Request unless the Parties agree to the Variation Request (or an amended Variation Request) in writing, including any effect on the Price (**Variation**).
- 6.4 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 and until a Variation Request has been issued in accordance with clause 6.2 and a Variation has been agreed in accordance with clause 6.3.

7. Your Personnel and Your Items

- 7.1 You are responsible for the acts or omissions, and any goods or services provided by your Personnel. You agree to ensure your Personnel cooperate with us and do not interfere with the supply of the Goods and Services.
- 7.2 You agree that any information, documentation, specifications, goods or services provided, or directions provided, by you or your Personnel in relation to the Goods and Services (**Your Items**) will be:
- (a) provided solely at your own risk, and you agree that we will assume no responsibility or Liability for Your Items;

- (b) fit for purpose, of merchantable quality and compliant with all applicable laws; and
- (c) sufficient to enable us to comply with our obligations under these Terms and all applicable laws,

and we will have no liability to you for any Liability, and you waive and release us from any such Liability, arising from Your Items.

8. Price and Payment

- 8.1 You agree to pay us the Price in accordance with these Terms. All amounts are stated in Australian dollars and are exclusive of GST (unless otherwise stated).
- 8.2 You agree to pay us the Price and additional costs (including for Expenses) set out in any invoice provided by us to you within 15 Business Days of the date of such invoice provided by us to you.
- 8.3 You agree that the Price may be calculated in accordance with the Rates Schedule (which we may vary from time to time in our absolute discretion) and unless otherwise specified in the Quote or Agreement or agreed between the Parties, are the default rates which we will charge you.
- 8.4 If you fail to make payment of the Price or any amount payable under these Terms, we may:
- (a) after a period of 30 Business Days, suspend or cancel providing the Goods and Services (with no Liability to you), and recover, as a debt due and immediately payable from you, the Price and our additional costs of doing so;
 - (b) not provide you with any documentation, passwords, diagrams or other information relevant to the Goods and/or Services;
 - (c) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid 7 days after the relevant date for payment;
 - (d) recover or repossess any Goods belonging to us, and you agree to grant us such rights of access to allow us (or our Personnel) to do so; and/or
 - (e) commence proceedings against you and recover from you, our additional costs (including legal costs) in doing so.
- 8.5 You agree that we may set-off or deduct from any monies payable to you under these Terms, any amounts which are payable by you to us (whether under these Terms or otherwise).
- 8.6 You agree that if you dispute our invoice, you will be required to notify us within 30 Business Days, otherwise you waive any claims you may have in relation to the disputed invoice.

9. Warranties and Representations

- 9.1 Each Party represents, warrants and agrees that:
- (a) it has full legal capacity, right, authority and power to enter into these Terms, to perform its obligations under these Terms, and to carry on its business;
 - (b) that these Terms constitute a legal, valid and binding agreement, enforceable in accordance with their terms;

- (c) if applicable, it holds a valid ABN which has been advised to the other Party; and
- (d) if applicable, it is registered for GST purposes.
- 9.2 You represent, warrant and agree that:
- (a) you have effected and will maintain appropriate insurance policies for the duration of our provision of the Goods and Services under these Terms;
- (b) you have not relied on any representations or warranties made by us (on the Website or otherwise) in relation to the Goods and Services (including as to whether the Goods and Services are or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms;
- (c) you will cooperate with us, and promptly provide us with all documentation, information, instructions, facilities and access (including access to the Systems) as may be reasonably necessary to enable us to provide the Goods and Services in accordance with these Terms. If you do not provide us with the relevant documentation, information, instructions, facilities and access (including access to the Systems), you agree to pay for our costs, arising from or connected with the work required to rectify the issue, as a debt due and immediately payable;
- (d) the Services may include Third Party Inputs that interface, or interoperate, with the Services, including third party software, hardware or services and that the provision of the Services may be contingent on, limited to or impacted by the Third Party Inputs;
- (e) the information you provide to us is true, correct and complete and that we will rely on such information and documentation in order to provide the Goods and Services; and
- (f) you will not infringe any third party rights in receiving the Goods and Services.
- 9.3 You agree (if applicable):
- (a) to permit 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 Goods and/or Services including, but not limited to, installing remote access software on your devices or Systems (where required) which may require devices or Systems to be left on overnight or weekends where instructed by us;
- (b) to provide us and our Personnel with reasonable, convenient and safe access to your Premises and Systems in order for us to supply the Goods and/or Services, and at the times agreed between the Parties;
- (c) to ensure all information provided to us is kept up-to-date and the email address you provide is valid and regularly checked;
- (d) to make any changes to your Systems, such as System upgrades, that may be required to support the delivery and operation of any Goods and/or Services; and
- (e) to ensure that any Systems used in connection with the Services have all necessary approvals and comply with all Laws.
- 9.4 While we use reasonable attempts to ensure the accuracy and completeness of the content and materials on the Website (**Content**), to the extent permitted by law, we do not warrant the accuracy, completeness or suitability of any of the Content. The Content may be subject to change without notice and we do not undertake to keep the Website up-to-date. The Content does not include these Terms or any Quote and/or Agreement.
10. **Title and Risk**
- 10.1 As between the Parties, you agree to pay for the reasonable costs of delivering the Goods.
- 10.2 Title in the Goods will remain with us until all amounts due and payable to us under these Terms are paid in full.
- 10.3 Risk in the Goods will pass to you on:
- (a) collection of the Goods at the collection location; or
- (b) delivery of the Goods to the delivery location,
- provided that risk in the Goods will remain with us if, and at the times that, we are required to incorporate the Goods at the delivery location as part of the Services, and will transfer to you once we have completed the relevant Services.
- 10.4 You agree that we hold a general lien over any Goods owned by us that are in your possession, for the satisfactory performance of your obligations under these Terms. You agree that these Terms and your obligations under these Terms create a registrable security interest in favour of us, and you consent to the security interest (and any other registrable interest created in connection with these Terms) being registered on any relevant securities register (and you must do all things to enable us to do so).
11. **Term and Termination**
- 11.1 These Terms will commence on the Commencement Date, and will continue for the Term.
- 11.2 If you have a concern about our provision of the Goods and/or Services, as required under these Terms, you agree to notify us of your concern immediately. We will use our best endeavours to address your concerns and rectify our provision of the Goods and/or Services within 90 days. If we have not rectified the Goods and/or Services within 90 days, you may provide us with written notice to terminate in accordance with clause 11.3.
- 11.3 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**), if:
- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) the Defaulting Party is unable to pay its debts as they fall due.
- 11.4 Upon expiry or termination of these Terms:
- (a) we will immediately cease providing the Goods and Services;
- (b) without limiting your Consumer Law Rights, you agree that any payments made by you to us are not refundable to you;

- (c) you are to pay for all Goods and Services provided prior to termination, including Goods and Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms;
 - (d) by us pursuant to clause 11.2, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination;
 - (e) subject to clause 14, you agree to promptly return (where possible), or delete or destroy (where not possible to return), any information, documentation or Intellectual Property owned by us that is in your possession or control; and
 - (f) if agreed by us, we may assist with offboarding at an hourly rate or fixed fee determined by us in our discretion.
- 11.5 We will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of these Terms.
- 11.6 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

12. Collection Notice

- 12.1 We collect personal information about you in order to provide you with a Quote and/or Agreement, to provide our Goods and/or Services to you, to contact and communicate with you, to respond to your enquiries, to process and dispatch your orders and for other purposes set out in our Privacy Policy.
- 12.2 We may disclose that information to third party service providers who help us deliver our Goods and/or Services (including our contractors and employees, information technology service providers, data storage, web-hosting and server providers, professional advisors, payment systems operators and our business partners) or as required by law. If you do not provide this information we may not be able to provide our Goods and/or Services to you. In certain circumstances, we may disclose your personal information to third parties located, or who store data, outside Australia.
- 12.3 Our privacy policy contains further information about: (i) how we store and use your personal information; (ii) how you can access and seek correction of your personal information; (iii) how you can make a privacy-related complaint; and (iv) our complaint handling process.
- 12.4 By providing personal information to us, you acknowledge we will collect, hold, use and disclose your personal information in accordance with our privacy policy.

13. Liability and Indemnity

- 13.1 **Limitation of liability:** Despite anything to the contrary, to the maximum extent permitted by law:
- (a) neither Party will be liable for any Consequential Loss;
 - (b) our maximum aggregate liability for any Liability arising from or in connection with the Goods and Services and these Terms will be limited to us reperforming the relevant Goods and Services or, in our sole discretion, to repaying you the amount of the Price paid by you to us in

respect of the provision of the relevant Goods and Services, to which the Liability relates;

- (c) a Party's liability for any Liability under, arising from, or in connection with, these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (including a failure to take reasonable steps to mitigate the relevant Liability); and
- (d) we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by any loss or damage which is the inevitable and unavoidable part of performing the Goods and Services.

13.2 **Indemnity:** You agree to indemnify us for any Liability we incur from or in connection with:

- (a) any breach by you of our Intellectual Property Rights or those of a third party (including any Intellectual Property Rights in software licenses); and
- (b) Your Data.

13.3 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) any works, services, goods, materials or items which do not form part of the Goods and Services (as expressed in this Agreement), or which have not been provided by us (including any incompatibility of the Goods and Services with third party software); and
- (b) any unauthorised third party access to your Systems, including in relation to hacking, ransomware attack or cybercrime.

13.4 This clause 13 will survive the termination or expiry of these Terms.

14. Intellectual Property

14.1 As between the Parties:

- (a) we own all Intellectual Property Rights in Our Materials;
- (b) you own all Intellectual Property Rights in Your Materials; and
- (c) nothing in these Terms constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials or Your Materials.

14.2 As between the Parties, ownership of all Intellectual Property Rights in any New Materials, Improvements or Feedback will at all times vest, or remain vested, in us upon creation. To the extent that ownership of such Intellectual Property Rights in any New Materials and/or Improvements do not automatically vest in us, you agree to do all things necessary or desirable to assure our title in such rights.

14.3 You agree that we may use Feedback in any manner which we see fit (including to develop new features) and no benefit will be due to you as a result of any use by us of any Feedback.

14.4 We grant you a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, to use Our Materials that we provide to you, the New Materials and Improvements, solely for the purposes for which they were

developed and for your use and enjoyment of the Goods and Services, as contemplated by these Terms.

14.5 You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of the Term, to use Your Materials that you provide to us solely for the purposes for which they were developed and solely for the performance of our obligations under these Terms.

14.6 If you or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with these Terms, you agree to (and agree to ensure that your Personnel) consent to our use or infringement of those Moral Rights.

14.7 In the use of any Intellectual Property Rights in connection with these Terms, you agree that you must not (and you must ensure that your Personnel do not) commit any Intellectual Property Breach. Where you reasonably suspect that such a breach may have occurred, you must notify us immediately.

14.8 This clause 14 will survive the termination or expiry of these Terms.

15. Restraint and Solicitation Fee

15.1 You (whether inadvertently, directly or indirectly), must not, during the Restraint Period, induce or solicit our Personnel (who were Personnel at the date of termination or expiry of these Terms or within the 12 months prior), to leave their employment, agency or contractual arrangement with us.

15.2 You agree that, in consideration of these Terms:

- (a) the terms of this clause 15 are reasonable given the nature of our business, are necessary to protect our legitimate business interests and do not unreasonably restrict your right to carry on your profession or trade;
- (b) we may seek legal remedies (including equitable remedies) for a breach of this clause 15; and
- (c) on request, you agree to provide us with evidence sufficient to enable us to confirm your compliance with this clause 15.

15.3 For the purposes of this clause 15, Restraint Period means the Term, and:

- (a) 24 months after the Term of these Terms, or (if that duration is deemed unreasonable);
- (b) 18 months after the Term of these Terms, or (if that duration is deemed unreasonable);
- (c) 12 months after the Term of these Terms.

15.4 Without limiting any of our other rights or remedies, if you do not comply with any provision of this clause 15 and you engage our Personnel directly in any capacity (including in a contractor or employee relationship), you agree to pay us the amount of that relevant Personnel's annual salary with us, as a debt immediately due and payable to us, and you agree that such amount is a genuine pre-estimate of loss that we may suffer or incur as a result of your non-compliance with this clause 15.

15.5 This clause 15 will survive termination or expiry of these Terms.

16. Analytics

16.1 You acknowledge and agree that we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Services, in an aggregated and

anonymised format (**Analytics**). You agree that we may make such Analytics publicly available, provided that it:

- (a) does not contain any identifying information; and
- (b) is not compiled using a sample size small enough to make underlying portions of Your Data identifiable.

16.2 We, and our licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content used or provided in connection with the Analytics, including all Intellectual Property Rights in the foregoing.

16.3 We may use and disclose to our service providers anonymous data about your access and use of the Services for the purpose of helping us improve the Services. Any such disclosure will not include details of your, or any Personnel's, identity or personal information.

17. Confidentiality

17.1 Subject to clause 17.2, each Party must (and must ensure that its Personnel do) keep confidential, and not use or permit any unauthorised use of, all of the other Party's Confidential Information.

17.2 Clause 17.1 does not apply to Confidential Information that:

- (a) is required to be disclosed in order for a Party to comply with their obligations under these Terms;
- (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 these Terms; or
- (d) must be disclosed by law or by a regulatory authority, including under subpoena.

18. General

18.1 **Amendment:** We may update these Terms at any time and provide the updated Terms on our Website at <https://techenvy.com.au/terms>. Any update of these Terms will apply for any subsequent Goods and/or Services that we provide to you.

18.2 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (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.

18.3 **Email:** You agree that we are able to send electronic mail to you and receive electronic mail from you. To the maximum extent permitted by law, 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.
- 18.4 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event. This clause will not apply to a party's obligation to pay any amount that is due and payable to the other Party under these Terms.
- 18.5 **Governing law:** These Terms are governed by the laws of Victoria. 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.
- 18.6 **GST:** If and when applicable, GST payable on the Price will be set out in our invoice. You agree to pay the GST amount at the same time as you pay the Price.
- 18.7 **Joint and Severe Liability:** Where you constitute two or more individuals or entities, you will each be jointly and severally liable under these Terms.
- 18.8 **Maintenance and upgrades:** We reserve the right to perform maintenance and upgrades at any time and from time to time. We will:
- (a) use commercially reasonable endeavours to provide you with reasonable notice of maintenance and upgrades by sending you an email about any scheduled maintenance or upgrades that will result in an outage of more than 60 minutes; or
 - (b) use commercially reasonable endeavours to notify you as soon as practicable after becoming aware of the need for unscheduled maintenance relevant to the Services that will result in an outage of more than 60 minutes; or
 - (c) not be required to notify you for any maintenance and upgrades requested by you, including any scheduled maintenance previously agreed with you.
- 18.9 **Notices:** Any notice given under these Terms 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.
- 18.10 **Privacy:** Each Party agrees to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines including our Privacy Policy.
- 18.11 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 18.12 **Severance:** If any provision (or part of it) under these Terms 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 these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.
- 18.13 **Subcontracting:** We may subcontract any or all of the Services and will be responsible for any subcontracted Services and these Terms will apply to such subcontracted Services.
- 18.14 **Survival:** Each clause, which by its nature survives termination, will survive the termination or expiry of these Terms.
- 19. Interpretation & Definitions**
- 19.1 In these Terms, unless the context otherwise requires:
- (a) a reference to these Terms 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 "Goods and Services" includes "Goods and/or Services";
 - (c) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
 - (d) 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;
 - (e) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
 - (f) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
 - (g) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
 - (h) words like including and for example are not words of limitation;
 - (i) the single includes the plural and vice versa;
 - (j) a reference to time is to local time in Victoria; and
 - (k) a reference to \$ or dollars refers to the currency of Australia from time to time.
- 19.2 You agree that clause 19.3 applies to any and all Quotes and/or Agreements unless otherwise stated in any Quote and/or Agreement.
- 19.3 In these Terms, unless the context otherwise requires:
- 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.
- Agreement** means an agreement for Services.
- Approval** means any approval, consent, licence, permit, permission, application, registration or equivalent required to be obtained in connection with the Goods and Services by any Authority or any law.
- Authorised User**, if applicable, means a user permitted to access and use the Services, as further particularised in the Quote or Agreement.
- Authority** means any national, State, Territory or local government departments, bodies, instrumentalities or other public authorities the approval of which is applicable to or necessary for the provision of the Goods and Services.

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

Business Hours means Monday to Friday from 8.30am to 5.30pm, excluding Victorian public holidays.

Commencement Date means the date these Terms are accepted in accordance clause 1.1.

Computing Environment means your computing environment including all hardware, software, information technology and telecommunications services, third party cloud solutions and servers and Systems.

Confidential Information includes information which:

- (a) is disclosed to a receiving Party in connection with these Terms at any time;
- (b) is prepared or produced under or in connection with these Terms at any time;
- (c) relates to a disclosing Party business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms,

whether or not such information or documentation is reduced to a tangible form or marked in writing as “confidential”, and howsoever the information is received.

Consequential Loss includes any consequential loss, indirect loss, real 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. The Parties acknowledge and agree that your obligation to pay us the Price and any other amounts due and payable by you to us under these Terms will not constitute “Consequential Loss” for the purposes of this definition.

Consumer Law Rights has the meaning given in clause 5.1.

Expenses means any disbursements, including travel and accommodation costs (including flights, car hire, petrol, insurance, taxi fares, accommodation and related meal allowance, tolls and car parking expenses) and third party costs, reasonably and directly incurred by us and where appropriate, approved in advance by you for the purpose of the provision of the Goods and Services.

Feedback means any idea, suggestion, recommendation or request by you or any of your Personnel or Authorised Users, your customers, whether made verbally, in writing, directly or indirectly, in connection with the Services.

Force Majeure Event means any event or circumstance which is beyond a Party’s reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

Goods and Services means the goods and services to be provided by us to you under these Terms, as expressly set out in the Quote and/or Agreement, as adjusted in accordance with these Terms.

Handover Documentation means all passwords, devices names and IP addresses on file.

Improvements means any development, modification, adaptation or improvement of Our Materials or any New Materials made by or on behalf of either Party (or any of their respective Personnel), or in respect of which Intellectual Property Rights are acquired by, either Party during the Term.

Intellectual Property means any copyright, registered or unregistered designs, patents or trade marks; 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.

Intellectual Property Breach means any breach by you (or any of your Personnel) of any of our Intellectual Property Rights (or any breaches of third-party rights, including any Intellectual Property Rights of third parties), including using or exploiting our Intellectual Property for purposes other than as expressly stated in these Terms (including, without limitation, using our Intellectual Property for commercial purposes or on-selling our Intellectual Property to third parties).

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, a Party to these Terms or otherwise.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

New Materials means all Intellectual Property developed, adapted, modified or created by or on behalf of us or you or any of your Personnel or our Personnel in connection with these Terms or the provision of the Goods and Services, whether before or after the date of these Terms, but excludes Our Materials and Your Materials.

Our Materials means all work, models, processes, technologies, strategies, materials, information, documentation, Specifications and services that we may provide to you under these Terms, and which may contain material which is owned by or licensed to us, and is protected by Australian and international laws.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Premises means any premises the subject of the Services.

Price means the price set out in the Quote and/or Agreement for the provision of the Goods and Services, as adjusted in accordance with these Terms, and includes all Expenses and any deposit set out in the Quote and/or Agreement.

Privacy Policy means our privacy policy located at <https://techenvy.com.au/privacy-policy>.

Quote means the quote (including any online quote) or proposal to which these Terms are incorporated by reference.

Rates means the rates set out on <https://techenvy.com.au/rates> as updated from time to time by us (Password to website in Quote, Proposal or Agreement).

Rate Schedule means the schedule of Rates, charges and conditions for the Services, and as may be varied by us from time to time in our absolute discretion.

Server means a physical or virtual server which is used to serve multiple clients.

Services means the services provided by us and/or our Personnel (including under a Service Request) that we agree to perform under any Quote and/or Agreement including any work, advice and recommendations.

Service Desk means our ad-hoc information technology support in response to information technology enquiries and issues concerning our Services and submitted via a dedicated support email and phone number provided to you.

Service Request means any request for Services that either you ask us to perform or we perform proactively on your behalf.

Specifications means any specifications for the Goods and Services, and, if applicable, as further particularised in an attachment to these Terms or the Quote.

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

Term has the meaning given in clause 1.2.

Third Party Inputs means third parties or any goods and services provided by third parties, including hardware, internet service providers, internal systems, customer relationship management software, email providers, cloud storage systems, or other third party systems which the provision of the Services may be contingent on, or impacted by.

Variation has the meaning given in clause 6.3.

Variation Request has the meaning given in clause 6.2.

Website means <https://techenvy.com.au>.

Your Data means the information, materials, logos, documents, qualifications and other Intellectual Property or data inputted by you, your Personnel into the Services or stored by or generated by your use of the Services, including any personal information collected, used, disclosed, stored or otherwise handled in connection with these Terms. Your Data does not include any data or information that is generated as a result of your usage of the Services that is a back-end or internal output or an output otherwise generally not available to users of the Services.

Your Items has the meaning given in clause 7.2.

Your Materials means all work, models, processes, technologies, strategies, materials, information, documentation and services (including Intellectual Property), owned, licensed or developed by or on behalf of you or your Personnel before the Commencement Date and/or developed by or on behalf of you or your Personnel independently of these Terms.