



Standard Definiti's Terms and Conditions

1. Definitions

In these terms and conditions (these Terms):

Act means the Competition & Consumer Act 2010.

Additional Terms means any other provisions that the DEFINITI Entity and the Customer agree in writing are to form part of the Contract.

Claim means any claim, demand, action or proceeding.

Collateral has the meaning given under the PPSA and in particular for the purposes of the Contract, the personal property that is not used predominately for personal, domestic or household purposes as identified in clause 10 hereof to which the Security Interest has attached.

Confidential Information means information in any format (including oral information) that by its nature is confidential or in respect of which the relevant Disclosee knows or ought to know is confidential; or information that is designated by the relevant Disclosor as confidential.

Contract means the contract between the Customer and the DEFINITI Entity for the supply of the Products and/or Services by the DEFINITI Entity to the Customer and in respect of which these Terms form part, as further described in clause 2(b).

DEFINITI means Definiti Pty Ltd (ACN 140 306 716).

DEFINITI Entity means the company within the DEFINITI Group that in the particular circumstance is the supplier to the Customer of the relevant Products or Services.

DEFINITI Group means the corporate group comprising of DEFINITI and Definiti and each Related Body Corporate of any of them.

Customer means the person, business or company that in the particular circumstance is the customer of the Products or in respect of whom the Services are provided.

Customer Provisions means the provisions of any of the Customer's terms of trade provided by the Customer or on its behalf, whether or not those provisions are





attached to or referred to in an Order or any other instrument and whether or not they are received by the DEFINITI Entity before the Customer has viewed these Terms. Definiti means Definiti Pty Ltd (ACN 140 306 716).

Disclosee means the party who in the context receives the relevant Confidential Information.

Disclosor means the party who in the context provides or causes to provide the relevant Confidential Information to the Disclosee.

Intellectual Property includes all copyright (including rights in relation to software, phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Milestone Payment means any payment for specific deliverables and the linked payment outlined in the Contract for the delivery of Services and payable by the Customer on the DEFINITI Entity's achievement of each specified milestone event.

Order means the order from the Customer (if any) in respect of the relevant Products and/or Services. The Order does not comprise of any Customer Provisions, and no Customer Provisions form part of the Contract, except as may be provided in clause 2(e).

PPSA means the Personal Property Securities Act 2009 as amended.

PPS Register means the personal property securities registered established under section 146 of the PPSA.

Prescribed Terms means any terms, conditions, guarantees and warranties which the Act and any other law expressly provides may not in respect of the Contract be excluded, restricted or modified, or may be excluded, restricted or modified only to a limited extent.

Products means computer hardware, software and other products supplied by the DEFINITI Entity to the Customer.

Progress Payment means any payment to be made by the Customer to the DEFINITI Entity for work in progress during any project, including but not limited to implementation of a Service to be delivered under the Contract.

Related Body Corporate means a related body corporate as determined in accordance with section 50 of the Corporations Act 2001.

Relevant Legislation means the Act and any other relevant legislation that implies warranties, conditions or guarantees in respect of the Products, Services or the Contract and that may not be excluded or only excluded to a limited extent.

Security Interest has the meaning given under the PPSA.



Services means the services supplied to the Customers by the DEFINITI Entity, its servants, agents or subcontractors and includes services that are ancillary to any Product supplied to the Customer under the Contract.

Specific T&C means the DEFINITI Entity's terms and conditions, if any, that are specific to the particular category of Products or Services supplied to the Customer, and includes any schedules attached thereto.

2. The Contract

(a) The DEFINITI Entity agrees to sell and deliver the Products and provide the Services to the Customer, and the Customer agrees to purchase and accept delivery of the Products and accept the Services from the DEFINITI Entity, in accordance with the Contract.

(b) Unless otherwise agreed in writing by the DEFINITI Entity, the Contract comprises of these Terms, the Order (if any, and provided that the Order is not rejected in whole or in part by the DEFINITI Entity in accordance with clauses 3(a) and (b)), any Specific T&C, any Additional Terms and any of the DEFINITI Entity's documents referred to in any of those documents.

(c) If there is any inconsistency between the provisions of these Terms, the Order, the Specific T&C and the Additional Terms, the inconsistency will be resolved by applying the provisions of the Additional Terms first, followed by the provisions of the Specific T&C, followed by these Terms, to the extent of the inconsistency.

(d) The Contract constitutes the entire agreement between the DEFINITI Entity and the Customer in regard to the Products and/or Services supplied by the DEFINITI Entity to the Customer, and supersedes all prior understandings, arrangements and agreements in respect to the subject matter of the Contract.

(e) Unless the DEFINITI Entity agrees in writing to the contrary, no Customer Provisions form part of the Contract. If the DEFINITI Entity agrees in writing that some or all of the Customer Provisions are to form part of the Contract, then in the event there is any inconsistency between the Customer Provisions and the other provisions of the Contract, the parties will endeavour to agree in writing the provisions that will prevail. If the parties fail to so agree, the other provisions of the Contract will prevail to the extent of the inconsistency.





3. Orders

(a) All Orders will be deemed to be accepted by the DEFINITI Entity unless the DEFINITI Entity notifies the Customer that the Order is rejected. An Order may be rejected by the DEFINITI Entity at any time until the Products and/or Services that are the subject of the Order are delivered to the Customer. Provided the Order has not been so rejected by the DEFINITI Entity, these Terms apply to each Order in accordance with clause 2(b).

(b) The DEFINITI Entity may reject an Order in accordance with clause 3(a) in whole or in part. If the DEFINITI Entity rejects only part of an Order, the part not so rejected forms part of the Contract.

(c) All quotations, tenders or price lists issued by the DEFINITI Entity are not an offer to sell the Product or supply the Services to the Customer.

(d) Unless otherwise stated in the Contract or in writing by the DEFINITI Entity's authorised representative, all prices quoted are exclusive of Goods and Services Tax (GST) and all other taxes, freight charges, agents' charges and any other charges, duty or impost.

4. Invoicing

(a) Products will be invoiced on shipment from DEFINITI's warehouse to Customer's premises or the DEFINITI Entity's staging facility and may represent partial or whole shipments, as applicable.

(b) Services (including any Milestone or Progress Payment) will be invoiced as incurred, unless otherwise agreed in writing.

5. Payment

(a) Unless otherwise agreed in writing the price of the Product and/or Services will be the DEFINITI Entity's quoted price. Unless otherwise agreed in writing, upon receipt of a tax invoice from the DEFINITI Entity the Customer must pay to the DEFINITI Entity the amount of GST applicable to a supply under the Contract.

(b) Unless otherwise agreed in writing by the DEFINITI Entity, payment is required prior to delivery of the Product and/or the performance of the Services.

(c) If the DEFINITI Entity agrees to supply Products and/or Services to the Customer on credit and the Customer fails to make a payment due to the DEFINITI Entity pursuant to the agreed credit terms the DEFINITI Entity may, in its sole discretion:





- (i) suspend the provision of credit until all amounts are paid in full;
- (ii) vary or cancel any credit facility it makes available;
- (iii) charge interest on any overdue amount at the annual rate of 3% above the prevailing base lending rate provided by the DEFINITI Entity's principal banker;
- (iv) refuse further supply under the Contract; and/or
- (v) terminate the Contract without notice.

6. Delivery

- (a) Unless otherwise agreed in writing the DEFINITI Entity will deliver the Products to the Customer's premises as notified by the Customer in writing.
- (b) Delivery times or any estimate of time to deliver Product or provide Services that are advised to the Customer or stated in the Contract are estimates only and the DEFINITI Entity will not be liable under any circumstances for any loss, damage or delay suffered or incurred by the Customer or its customers in respect of any delay in delivering or failure to deliver any Product or Service when due or estimated.
- (c) The DEFINITI Entity may make part deliveries of an order and each delivery will constitute a separate Contract in accordance with these Terms, unless otherwise agreed in writing by the DEFINITI Entity's authorised representative.

7. Software

- (a) If any Product supplied under the Contract is a software product then in addition to these Terms, that Product will be supplied subject to any applicable licence agreement or licensing laws.
- (b) The Customer agrees to use the software Product in accordance with the terms & conditions of any applicable licence agreement and if required by the DEFINITI Entity will execute any licence agreement.
- (c) Where any of the software supplied is the DEFINITI Entity's software then the DEFINITI Entity agrees to grant to the Customer a non-exclusive, non-transferable licence in relation to the software. The DEFINITI Entity's licence for the software may contain other terms and conditions in relation to the software and its use, and the Customer agrees to comply with those terms.

8. Inspection & Acceptance





The **Customer:**
(a) must inspect and test all Products upon their delivery to the Customer; and
(b) in relation to any Product that the Customer believes is defective or does not comply with the Contract, must within seven days of delivery give written notification to the DEFINITI Entity setting out how the item is defective or does not comply with the Contract.
If the Customer does not comply with this clause then, to the extent permitted by any Relevant Legislation, the relevant Product will be deemed accepted by the Customer.

9. Title & Risk

- (a) Risk of loss of or damage to the Products will pass to the Customer upon delivery of the Products to the Customer or when the Customer takes custody or control of the Products.
- (b) Title in the Products will not pass to the Customer until the whole of the purchase price and any other charges payable under the Contract are paid by the Customer. Until that time, the Customer must store the Products in such a manner as to show clearly that they are the property of the DEFINITI Entity and shall upon the DEFINITI Entity's demand deliver up those Products to the DEFINITI Entity.
- (c) Title to any software Products remains with the DEFINITI Entity or the applicable third party licensor(s) at all times.

10. PPSA

- (a) The terms Accession, Collateral, Debtor, Financing Change Statement, Financing Statement, Grantor, Proceeds, Secured Party, Security Agreement and Security Interest have the meanings given in the PPSA.
- (b) The Customer acknowledges and agrees that:
 - (i) the Contract constitutes a Security Agreement that covers the Collateral for the purposes of the PPSA;
 - (ii) the DEFINITI Entity holds (as Secured Party) a Security Interest over all of the present and after acquired goods supplied by the DEFINITI Entity to the Customer and any Proceeds of the sale of those goods (Collateral);
 - (iii) any purchase by the Customer on credit terms from the DEFINITI Entity or retention of title supply pursuant to clause 10 hereof will constitute a purchase money security interest (PMSI) as defined under section 14 of the PPSA;





- (iv) the PMSI granted herein will continue to apply to any Products coming into existence or proceeds of sale of Products coming into existence;
 - (v) the DEFINITI Entity will continue to hold a Security Interest in the Products in accordance with and subject to the PPSA, notwithstanding that the Products may be processed, commingled or become an accession with other goods;
 - (vi) any Security Interest will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interest;
 - (vii) until title in the Products pass to the Customer, it will keep all Products supplied by the DEFINITI Entity free and ensure all such goods are kept free of any charge, lien or Security Interest and not otherwise deal with the Products in a way that will or may prejudice any rights of the DEFINITI Entity under the Contract or the PPSA; and
 - (viii) in addition to any other rights under these Terms or otherwise arising, the DEFINITI Entity may exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Customer, after providing the Customer with 24 hours' notice of intention to enter and seize, to search for and seize, dispose of or retain those Products in respect to which the Customer has granted a Security Interest to the DEFINITI Entity. DEFINITI undertakes to remove all Customer owned data or configuration from such items.
- (c) The Customer undertakes to:
- (i) if required by the DEFINITI Entity, sign any further documents and provide such information which the DEFINITI Entity may reasonably require to register, amend or update a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPS Register;
 - (ii) indemnify and upon demand reimburse the DEFINITI Entity for all reasonable expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register or releasing any Security Interests;
 - (iii) not register or permit to be registered a Financing Change Statement in the Collateral without the prior written consent of the DEFINITI Entity; and
 - (iv) provide the DEFINITI Entity not less than 7 days prior written notice of any proposed change in the Customer's name, address, contact numbers, business practice or such other change in the Customer's details registered on the PPS Register to enable the DEFINITI Entity to register a Financing Change Statement if required.
- (d) The DEFINITI Entity and the Customer agree that sections 96 (when a subordinate interest in the whole may retain an Accession), 125 (disposal or retainment of personal property in which a security interest is attached), 132(3)(d) (payments to



other secured parties) and 132(4) (written statement every 6 months until disposal) of the PPSA do not apply to the Security Agreement created under the Contract.

(e) The Customer waives its rights to received notices under sections 95 (notice by secured party entitled to remove an Accession), 118 (interests in land), 121(4) (account, chattel paper and negotiable instruments), 130 (notice of disposal on default), 132(3)(d) (payments to other secured parties) and 132(4) (written statement every 6 months until disposal) of the PPSA.

(f) The Customer waives its rights as a Grantor and/or a Debtor under sections 142 (redeeming the personal property in which a security interest is attached) and 143 (reinstatement of the security agreement) of the PPSA.

(g) Unless otherwise agreed in writing by the DEFINITI Entity, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

(h) The Customer shall unconditionally ratify any actions taken by the DEFINITI Entity under this clause 10.

(i) This clause 10 will survive the termination of the Contract to the extent permitted by law.

11. Customer Cancellation

(a) Unless otherwise agreed in writing, the Customer may not cancel an order that has been accepted by the DEFINITI Entity.

(b) If the DEFINITI Entity agrees to the cancellation of an order, the Customer will be liable for any of the DEFINITI Entity's costs incurred prior to the date of cancellation.

(c) The DEFINITI Entity has a 72 hour cancellation/rescheduling policy for Services. Should the Customer cancel or change the scheduled service time with less than 72 hours' notice, the Customer will be charged a loss of revenue cancellation/rescheduling fee of \$45 ex GST per cancelled/rescheduled full scheduled day.

12. Warranties, Conditions or Guarantees

(a) The only warranties, conditions or guarantees that apply to any Product or the Service are those provided or implied under any Prescribed Terms (if any) together with all warranties expressly stated in writing by the DEFINITI Entity or those that are provided by the manufacturer or supplier of a Product. All other warranties, conditions or guarantees in respect of any Product or Service or their supply, whether express or implied, are excluded.





(b) The DEFINITI Entity will notify the Customer of any applicable manufacturer's warranty in relation to any Product. Software Products are warranted in accordance with the relevant licence agreements that govern their use.

(c) The DEFINITI Entity warrants to the Customer that all Services provided by the DEFINITI Entity will be provided with due care and skill and all Products manufactured by the DEFINITI Entity will at the time of delivery to the Customer be of merchantable quality and conform to applicable Australian Standards. DEFINITI will resolve faults discovered during the warranty period. A fault is defined as non-compliance to the documented requirements with reference to what has been included in the scope of work. Warranty expires 150 calendar days from delivery into a User Acceptance Test environment or 90 calendar days from delivery into a Production environment, whichever comes first.

13. Limitations of Liability

(a) Notwithstanding anything to the contrary herein contained but subject to the provisions of any Relevant Legislation, the DEFINITI Entity's liability in respect of any Claim arising in any way out of the Contract or its performance or from any failure to perform the Contract, whether that liability arises under contract, tort (including negligence), breach of statutory duty or otherwise, is limited as follows:

(i) if the Claim is in relation to a Product or Service and if any guarantee under the Act is applicable to the Product or Service and the DEFINITI Entity's liability is due to a failure to comply with the guarantee and such failure cannot be remedied or is a major failure as defined in the Act (each such failure hereafter referred to as a Relevant Failure), the DEFINITI Entity's liability is as stated in the Act in respect of that Relevant Failure;

(ii) if the Claim is in relation to a Product or Service and if any guarantee under the Act is applicable to the Products or Services and the liability is due to a failure to comply with the guarantee and such failure is not a Relevant Failure, or if there is a breach of any warranty in respect of the Products or Services that is provided by the DEFINITI Entity under the Contract, the DEFINITI Entity's liability is limited as follows in respect of such failure:

(A) if the failure or breach is in respect of a Product, the DEFINITI Entity's liability is limited to replacement of the Product or the supply of an equivalent Product, the repair of the Product, payment of the cost of replacing the Product or of acquiring an equivalent Product, or payment of the cost of having the Product repaired, as determined by the DEFINITI Entity in its sole discretion; and





(B) if the failure or breach is in respect of a Service, the DEFINITI Entity's liability is limited to the supply of the Service again or payment of the cost of having the Service supplied again, as determined by the DEFINITI Entity in its sole discretion; and

(iii) in respect of any other liability (if any), the DEFINITI Entity's liability is limited in the aggregate to the lower of either the amount of \$50,000 and the sum which equals the total purchase price or fees (excluding GST) paid or payable by the Customer under the Contract.

(b) Subject to any Relevant Legislation, under no circumstances will the DEFINITI Entity be liable to the Customer for any consequential, financial, economic or special loss or damage whatsoever suffered or sustained by the Customer or any other party including but not limited to business interruption, interest or loss of use, profit, revenue, production, goodwill or data and the like, whether arising in any way from the Contract or products supplied or services performed under the Contract or otherwise.

(c) If the Customer is a consumer as defined in section 4B of the Act (i) the Products come with guarantees that cannot be excluded under the Australian Consumer Law; (ii) the Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage; and (iii) the Customer is also entitled to have the Products repaired or replaced if the Products fail to be of acceptable quality and the failure does not amount to a major failure.

14. Credit Assessment

(a) If Products and/or Services are supplied to the Customer on credit, the DEFINITI Entity may need to disclose to a credit reporting agency certain information referred to in clause 14(c) about the Customer when assessing the Customer's application for credit and managing the Customer's account with the DEFINITI Entity. The Customer authorises the DEFINITI Entity to disclose such information to a credit reporting agency for these purposes.

(b) Subject to the DEFINITI Entity's obligations under clause 15, the DEFINITI Entity may give the information referred to in clause 14(c) to a credit reporting agency to obtain a consumer credit report about the Customer or to allow the credit reporting agency to create or maintain a credit information file about the Customer. The DEFINITI Entity may disclose a credit report about the Customer to any credit provider or debt collection agency for the purpose of assessing the Customer's credit-worthiness or to collect overdue payments





(c) The DEFINITI Entity may disclose information to the following effect relating to the Customer in accordance with clauses 14(a) and (b): Customers name and address; credit limits on customer accounts; invoice/order values; information that, in the DEFINITI Entity's opinion, the Customer has committed a serious credit infringement; or information that the DEFINITI Entity has ceased to supply products or services to the Customer.

(d) The DEFINITI Entity may obtain information about the Customer from any business that provides information about the commercial credit-worthiness of persons for the purposes of assessing the Customer's application to purchase on credit and collecting any overdue amounts.

(e) The DEFINITI Entity may refuse to supply Products and/or Services to the Customer on credit on the basis of the DEFINITI Entity's credit assessment of the Customer.

15. Privacy

(a) The Customer agrees to the DEFINITI Entity collecting, using and disclosing Confidential Information about the Customer, including personal information as defined in the Privacy Act 1988, for various purposes, including but not limited to:

- (i) assessing credit worthiness;
- (ii) supplying the Products and/or Services to the Customer and the management of the account;
- (iii) communicating with the Customer about products or services that the DEFINITI Entity or its partners or affiliates may provide to the Customer;
- (iv) implementing these Terms and the Contract; and
- (v) complying with relevant laws.

(b) The DEFINITI Entity, at the written request of the Customer, will provide access to any personal information relating to the Customer held by the DEFINITI Entity and correct or amend any personal information relating to the Customer held by the DEFINITI Entity which is incorrect or out of date.

(c) The DEFINITI Entity will handle the Customer's personal information in accordance with the Privacy Act 1988 and other applicable laws.

16. Intellectual Property

(a) If any Intellectual Property rights are generated from work under the Contract (Contract IP), the Additional Terms (if any) or the Specific T&C may contain provisions





that determine who is the owner of the Contract IP. If they do not, the Contract IP will be the sole property of the DEFINITI Entity.

(b) The Customer acknowledges and agrees that:

(i) with the exception of any Contract IP, all Intellectual Property rights embodied in or in connection with the Products and/or Services, including all associated documentation, parts or software, are the sole property of the DEFINITI Entity or its suppliers; and

(ii) all Intellectual Property of the DEFINITI Entity or its suppliers may only be used by the Customer as expressly authorised in the Contract or as otherwise authorised in writing by the DEFINITI Entity or its suppliers. Subject to the terms of any such authorisation, such use may continue only for the term of the Contract.

(c) Any licensing of Intellectual Property rights in any software products supplied to the Customer under the Contract will immediately cease upon expiry or termination of the relevant licence agreement that governs the use of that software.

(d) The Customer must not at any time during the term of the Contract or after its expiry or termination, without the prior written consent of the DEFINITI Entity or its relevant supplier, register or use any trademarks, trade names, domain name, trading style, commercial designation or design owned or used by the DEFINITI Entity or its suppliers in connection with the Products or the Contract.

(e) The Customer will indemnify the DEFINITI Entity in respect of and keep it harmless from all liabilities, damages, costs and expenses which the DEFINITI Entity may suffer or incur as a result of information supplied by the Customer or work done in accordance with the Customer's specifications or as a result of the Customer changing any work conducted by or Product supplied by the DEFINITI Entity or arising due to the combination or use of Products by the Customer with other equipment, parts or software not supplied by the DEFINITI Entity, and which results in the infringement of any Intellectual Property of any person.

17. Confidentiality

(a) Each party acknowledges that the other party may have disclosed and/or may from time to time disclose to it Confidential Information. Subject to clause 17(d) the Disclosee must:

(i) only use the Confidential Information solely for the purposes contemplated under the Contract, and





(ii) not, during the term of the Contract or thereafter, disclose to any third party any part of the Confidential Information, other than is required to carry out such purposes.

(b) If it is necessary for the Disclosee to disclose particular Confidential Information to any third party, the Disclosee will obtain from such third party a binding undertaking to maintain in confidence the Confidential Information, on terms no less stringent than the obligations of confidentiality and non-use contained in this clause 17.

(c) If required by the Disclosor, upon expiry or termination of the Contract the Disclosee must cease to use and must return or destroy (as the Disclosor may instruct) all of the Disclosor's Confidential Information that is in the possession or control of the Disclosee.

(d) The provisions of this clause 17 do not apply to the extent that the relevant information is:

(i) at the time of disclosure, already rightfully known to or in the possession or control of the Disclosee and is not subject to an obligation of confidentiality binding on the Disclosee;

(ii) public knowledge;

(iii) approved to be disclosed by the Disclosor; or

(iv) required to be disclosed by a government authority or by relevant laws.

18. WH&S

Prior to any DEFINITI Entity representative entering a Customer site the Customer will ensure that the DEFINITI Entity representative is notified of the Customer's workplace health and safety policies, procedures and risks which may be applicable whilst at the site and receives all proper training, instruction and supervision in respect of such policies, procedures and risks. The Customer will indemnify the DEFINITI Entity in respect of and keep it harmless from all liabilities, damages, costs and expenses which the DEFINITI Entity or any of its officers, employees, subcontractors, representatives or agents may suffer or incur as a result of any breach by the Customer of its obligations under this clause, or any failure on the part of the Customer to maintain a healthy and safe workplace.

19. Force Majeure

Notwithstanding any other provision of the Contract, the DEFINITI Entity will not be liable for any delay or failure to perform any of its obligations under the Contract if





such failure or delay is due to an act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omission of Government or other competent authority, industrial disputes of any kind (whether involving the DEFINITI Entity's employees and/or the DEFINITI Entity's contractors or otherwise), fire, lightning, explosion, flood, subsidence, inclement weather, acts or omission of persons or bodies for whom the DEFINITI Entity is not responsible or any other cause, whether similar or dissimilar to the foregoing, that is outside the reasonable control of the DEFINITI Entity.

20. Termination

(a) In addition to any other rights of either party to terminate the Contract, either party (Terminating Party) may terminate the Contract immediately by notice in writing to the other party (Other Party) if:

(i) performance of any material obligation by the Other Party is overdue by a period of at least seven days and the breach of that obligation is not capable of being remedied;

(ii) the Other Party breaches any provision of the Contract which is capable of being remedied and fails to remedy the breach within seven days of written notice from the Terminating Party requiring the breach to be remedied;

(iii) the Other Party provides materially false or misleading information to the Terminating Party in respect of the Other Party's obligations under the Contract or its performance or proposed performance of the Contract (for example, if the Customer provides false or misleading information about its use of the Services);

(iv) the Other Party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;

(v) in the reasonable opinion of the Terminating Party, the Other Party's capacity or ability to undertake its obligations under the Contract has materially diminished and is likely to remain materially diminished for an unreasonable period.

(b) Additionally, the DEFINITI Entity may terminate the Contract immediately by notice in writing to the Customer if, in the reasonable opinion of the DEFINITI Entity, the Customer has used or may use the Products or Services for any unlawful or improper purpose or in a manner that may jeopardise the security or interface in the proper operation of the Services or any part thereof.

(c) Termination of the Contract, whether under this clause 20 or otherwise, shall be without prejudice to the rights and entitlements of the parties prior to the date of termination.





(d) Upon termination of the Contract:

(i) each party will return to the other party or, at the direction of the other party, destroy or delete all property of the other party which is in the first party's possession or control, including the Confidential Information of the other party;

(ii) either party may pursue any additional or alternative remedies provided by law;

(iii) the DEFINITI Entity may:

(A) repossess any of its property in the possession, custody or control of the Customer; and

(B) charge a reasonable sum for Services performed in respect of which no sum has been previously charged; and

(iv) if the DEFINITI Entity is the terminating party, the DEFINITI Entity may be regarded as discharged from any further obligations under the Contract.

21. Notices

(a) A party giving notice under the Contract must do so in writing or by electronic communication that is: directed to the recipient's address, as varied by any notice; and hand delivered or sent by pre-paid post or electronic communication to that address.

(b) The address of each party is stated in the Additional Terms (if any) or the Specific T&C or, if not so stated, will be the last known address for the party as communicated to the other party.

(c) The parties agree that a notice given in accordance with clause 21(a) is received:

(i) if hand delivered, on delivery;

(ii) if sent by pre-paid post, three business days after the date of posting; (iii) if sent by electronic communication, at the time the sender receives notification that the notice has been transmitted satisfactorily.

22. General

(a) Subject to clause 22(b), no amendment to any provision of the Contract will be deemed valid unless agreed in writing by each party.

(b) The DEFINITI Entity may amend these Terms at any time by publishing the revised Terms on the DEFINITI Group website www.Definiti.com.au. By continuing to place orders for Products or Services, the Customer will be deemed to have accepted the revised Terms.





(c) The DEFINITI Entity may use subcontractors to perform any task required to complete the Contract. The DEFINITI Entity will take all reasonable steps to verify that such subcontractors are suitably qualified to complete the task to the required standard.

(d) Work that is requested by the Customer during the course of a project that is not part of the original scope of work under the Contract is a variation to the Contract and as such must be quoted independently to the project.

(e) Unless otherwise agreed in writing, the Customer will pay the charges for time spent by any DEFINITI Entity personnel required to travel both to and from Customer's premises together with any other related incidental expenses.

(f) Neither party is an agent, representative or partner of the other.

(g) Neither party may assign or otherwise transfer or deal with its rights or obligations under the Contract or any part of the Contract without first obtaining the written consent of the other party.

(h) No rule of construction of the Contract shall apply to the disadvantage of a party on the basis that the party put forward the Contract or any relevant part of it (including these Terms).

(i) If the Customer claims a sum under or arising out of the Contract, then it may not withhold, deduct or set off the claimed sum against any amount which the DEFINITI Entity is otherwise entitled to be paid under the Contract.

(j) No right under the Contract shall be deemed to be waived except by notice in writing signed by each party. A waiver by any party pursuant to this clause will not jeopardise its rights in respect of any subsequent breach of the Contract. Subject to this clause, any failure by any party to enforce any provision of the Contract, or for any forbearance, delay or indulgence granted by any party to the other party, will not be construed as a waiver of the first party's rights under the Contract.

(k) Headings used in these Terms and/or the Contract are for convenience and ease of reference only and are not part of the Contract and shall not be relevant to or affect the meaning or interpretation of the Contract.

(l) A reference in these Terms and/or the Contract to the singular includes the plural and vice versa.

(m) If any part of the Contract is held invalid, unenforceable or illegal for any reason, the Contract shall remain otherwise in full force apart from such provision, which shall be deemed deleted.

(n) The parties must use all reasonable efforts in good faith to resolve any dispute which arises between them in connection with the Contract (Dispute). Any Dispute which cannot be settled by negotiation between the parties or their representatives





shall be submitted to mediation in accordance with the Rules of the Law Society of New South Wales. During such mediation a party may be represented by a duly qualified legal practitioner. Where the Dispute is of a technical nature, the parties may elect to resolve the Dispute by referring it to a mutually agreed expert in the subject matter of the dispute. Where the parties cannot agree on the appointment of this expert, the parties agree to request the then President of the Australian Computer Society or their designate to select an appropriate consultant.

(o) The covenants, conditions and provisions of the Contract which are capable of having effect after the expiration or termination of the Contract shall remain in full force and effect following the expiration or termination of the Contract.

(p) These Terms are governed by the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of that State and Courts of Appeal therefrom.

