

Terms and Conditions

1. INTRODUCTION

- 1.1. These terms and conditions of use (Terms) govern the agreement between the Client and Assetnote Pty Ltd ACN 627 932 254 (Assetnote).
- 1.2. By subscribing to the Services, the Client acknowledges and agrees that it has had a sufficient chance to read and understand these Terms and agrees to be bound by them.
- 1.3. This Agreement commences on the Commencement Date.

2. INTERPRETATION

2.1. Definitions

- 2.1.1. For the purposes of these Terms:
- 2.1.2. Agreement means these Terms together with the Subscription Agreement
- 2.1.3. Assets means those assets discovered by the platform
- 2.1.4. Business Day means any day other than a Saturday, Sunday and public holidays.
- 2.1.5. Claim means, in relation to a person, any action, suit, proceeding, claim or demand instituted, made or threatened against the person, however arising and whether present or future, fixed or unascertained, actual or contingent;
- 2.1.6. Client means a third party who has a Subscription on these Terms as specified in the Subscription Agreement;
- 2.1.7. Client Representative means the Client's nominated representative as specified in the Subscription Agreement;
- 2.1.8. Commencement Date means the earlier of the date specified as the Commencement Date in the Subscription Agreement, the date upon which Assetnote confirms to the Client that the Services will commence or the date the Client makes the first payment of the Fee, whichever is the earlier;
- 2.1.9. Confidential Information means all information, in any form, written or unwritten, including trade names, trade secrets, domain names, client lists, client information and contact details, logos, methods described in patent applications, software, hardware, source code, methodologies, advice, processes, procedures, inventions, ideas, know-how, technical expertise or concepts, which is provided or made available by a party to this Agreement by another party to this Agreement or its associates (whether orally or in writing) or to a related entity or a related body corporate but excluding information already in the public domain, except where that information has become available by virtue of a breach of this Agreement;
- 2.1.10. Consequential Loss means any Liability suffered by a party which:
 - 2.1.10.1. is special, indirect or consequential loss or damage within the meaning of the common law;
 - 2.1.10.2. results from a supervening event;
 - 2.1.10.3. is a loss of revenue, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of interest, damage to credit rating, loss or denial of opportunity or increased overhead costs, loss of use, loss of profits; or
 - 2.1.10.4. is suffered by a party as a result of a claim upon it by a third party (including third party claims for personal injury or damage to property;
- 2.1.11. Fee means the fee set by Assetnote for the provision of the Services over the Term of the agreement
- 2.1.12. Force Majeure Event means any cause unforeseen and arising without fault or negligence on the part of the party affected or otherwise beyond the reasonable control of the party affected, including but not limited to acts of God, civil disorder, war, riots, industrial disturbance, national emergency, material shortages, damage to plant, equipment and or facilities, acts or omissions of public authorities including local, state or federal governments;
- 2.1.13. Taxes means a tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Agreement;
- 2.1.14. Improvement means any variation to the Services or the Intellectual Property, conceived of or developed by either Assetnote or the Client, which could improve them in any way;
- 2.1.15. Subscription Agreement means the Subscription Agreement attached to these Terms;
- 2.1.16. Insolvency Event means any of the following events in respect of either party:
 - 2.1.16.1. an application is made to a court for an order, or an order is made appointing a liquidator or provisional liquidator in respect of the party (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);
 - 2.1.16.2. proceedings are initiated with a view to obtaining an order for the winding up or similar process of the party or an order is made or any effective resolution is passed for the winding up of the party;
 - 2.1.16.3. the party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors or it proposes a reorganisation, moratorium or other administration involving any class of its creditors;
 - 2.1.16.4. a controller is appointed to take over or takes possession of all or a substantial part of the assets or undertakings of the party;
 - 2.1.16.5. the party is or is deemed or presumed by law or a court to be insolvent;
 - 2.1.16.6. the party takes any step to obtain protection or is granted protection from their creditors under any applicable legislation or an administrator is appointed to the party; and
 - 2.1.16.7. anything analogous or having a substantially similar effect to any of the events specified above happens in respect of the party under the law of any applicable jurisdiction;
- 2.1.17. Intellectual Property means:
 - 2.1.17.1. all proprietary rights and Intellectual Property Rights (including the right to make application for such rights) which relate, refer or pertain to the Assetnote platform, the Services and the Portal, any Improvements, the Confidential Information or the business of Assetnote, which are provided under patent law, copyright law, trademark law, design patent and industrial design law, or any other applicable statutory provision or common law principle, including trade secret law, that may provide a right in ideas, formulae, algorithms, concepts, inventions, know-how, trade names, trade dress or business reputation, or the expression or use thereof, and including all past, present, and future causes of action, rights of recovery, and claims for damage, accounting for profits, royalties, or other relief;
 - 2.1.17.2. all applications, registrations, licenses, sublicenses, agreements, or any other evidence of a right in Assetnote, the Services and the Portal;
 - 2.1.17.3. and any Improvement to any of the above.
- 2.1.18. Intellectual Property Rights means any intellectual property rights protected by statute or common law in Australia or elsewhere in the world and whether registered or unregistered and includes copyright, design, patent, trade mark, semiconductor and circuit layout rights;
- 2.1.19. Law means any statutes, regulations, ordinances, by-laws, orders, awards, proclamations and any enforceable policy of an Authority, certificates, licences, consents, permits, approvals and requirements of Authorities, applicable codes of practice, applicable standards (including any relevant Australian Standards), obligations under the common law and in equity as well as any fees and charges payable in connection with any of the foregoing;
- 2.1.20. Liability means all liability, causes of action, Claims, losses, damages, costs, charges, expenses, penalties and injuries of any kind parties means the parties to this Agreement and party means any of them;
- 2.1.21. personnel means subcontractors, employees, agents, advisors and other persons engaged by a party to perform its obligations under this Agreement;
- 2.1.22. Platform means the digital platform comprising software and hardware known as Assetnote which is used to provide the Services;
- 2.1.23. Portal means the dashboard interface in which the Client can interact with the Platform and Assetnote regarding the performance of the Services;
- 2.1.24. Proposal means the proposal provided by Assetnote to the Client as part of this Agreement for the provision of the Services, signed by both Assetnote and the Client.
- 2.1.25. Services mean the monitoring and security analysis services provided by Assetnote using the Platform at the Client's chosen Subscription Level on these Terms as set out in the Subscription Agreement and includes access to the Portal;
- 2.1.26. Special Conditions mean the special conditions, if any, set out in the Subscription Agreement.
- 2.1.27. Subscription means the subscription for the provision of the Services by Assetnote to the Client pursuant to these Terms;
- 2.1.28. Subscription Level means the category of Services selected by the Client as set out in the Subscription Agreement;

2.1.29. Term means period of time applicable to the Subscription as set out in the Subscription Agreement commencing on the Commencement Date and if no period is specified in the Subscription Agreement for a period of twelve (12) months from the Commencement Date and includes any extension or variation as agreed between the parties.

3. INTERPRETATION

- 3.1. The following apply in the interpretation of this Agreement, unless the context requires otherwise:
- 3.2. a reference to the agreement means this Agreement and includes any variation or replacement of it;
- 3.3. a reference to a document includes a reference to that document as amended, novated, assigned or otherwise varied;
- 3.4. a reference to a statute or other law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements of it;
- 3.5. the singular includes the plural number and vice versa;
- 3.6. a reference to a gender includes a reference to each gender;
- 3.7. the word "person" includes a firm, corporation, body corporate, unincorporated association or a government department or authority, association or other legal entity;
- 3.8. a reference to a person includes a reference to the person's legal personal representatives, successors, liquidators, trustees in bankruptcy and the like, and permitted assigns;
- 3.9. an agreement on the part of, or in favour of, two (2) or more persons binds or is for the benefit of them or any one or more of them together and separately;
- 3.10. a reference to a party means a person who is named as a party to, and is bound to observe the provisions of, this Agreement;
- 3.11. "includes" (or similar wording) means "includes but without limitation";
- 3.12. where a word or phrase is given a defined meaning in this Agreement, any other part of speech or grammatical form in respect of such word or phrase has a corresponding meaning;
- 3.13. a reference to an act includes an omission and a reference to doing an act includes executing a document;
- 3.14. words not otherwise defined in this Agreement but defined in the Corporations Act 2001 (Cth) have the meaning given in that Act;
- 3.15. a reference to dollars or \$ is to US Dollars (USD) currency. All amounts to be invoiced or paid under this Agreement are to be in USD currency unless otherwise agreed to by Assetnote;
- 3.16. headings are for reference only and do not affect the meaning or interpretation of this Agreement;
- 3.17. if any day appointed or specified by this Agreement for the payment of any money falls on a day which is not a Business Day, the day so appointed or specified is deemed to be the next day which is a Business Day;
- 3.18. if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- 3.19. a reference to a day is to be interpreted as the twenty-four (24) hour period ending at midnight at the end of that day; and
- 3.20. a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this Agreement.

4. PRECEDENCE

- 4.1. The parties agree that to the extent there is any inconsistency between any of the documents that form the Agreement, the documents with the higher precedence will prevail:
 - 4.1.1. Subscription Agreement;
 - 4.1.2. Special Conditions;
 - 4.1.3. Terms;
 - 4.1.4. Proposal;
 - 4.1.5. any other Annexure.
5. Inconsistencies, errors, ambiguities or discrepancies
- 5.1. If the Client discovers any inconsistency, error, omission, ambiguity or discrepancy in this Agreement then the Client must promptly give Assetnote written notice of the inconsistency, error, omission, ambiguity or discrepancy. Assetnote will then direct the Client as to the interpretation and construction to be followed, taking into account the order of precedence specified in this Agreement.
6. Contra proferentem
- 6.1. No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.
7. Survivorship
- 7.1. The provisions of this Agreement relating to set-off and deductions, warranties, indemnities, confidentiality, termination and dispute resolution survive the termination or expiry of this Agreement.

8. SUBSCRIPTION SERVICES

- 8.1. Assetnote will provide the Services to the Client for the Subscription Term, subject to these Terms and the policies and guidelines of Assetnote published from time to time.
- 8.2. The provision of Services by Assetnote will depend on the Subscription Level chosen by the Client and noted in the Subscription Agreement:
 - 8.2.1. the Subscription Levels are as set by Assetnote from time to time and advised to the Client;
 - 8.2.2. each Subscription Level contains a variety of different Platform features;
 - 8.2.3. Assetnote reserves the right to vary the features of a Subscription Level in accordance with these Terms;
 - 8.2.4. a Client may change its Subscription Level with the consent of Assetnote provided the Client pays the appropriate fee for that Subscription Level and any variation fee that may be applicable. The Subscription Level may also be changed as set out in this Agreement.
- 8.3. The Client agrees to promptly provide Assetnote with the following (as may be reasonably requested by Assetnote) to enable Assetnote to perform the Services:
 - 8.3.1. access to and authorisation to use all and any data, information, material and content as reasonably required by Assetnote;
 - 8.3.2. authority to communicate with the Client's third-party suppliers (if required); and
 - 8.3.3. such other information, authorisation and items as may be requested by Assetnote.
- 8.4. Where the Client provides Assetnote with information, the Client agrees and warrants that any and all information supplied by the Client is true, accurate, current and complete and the Client either owns or has right to supply the information supplied.
- 8.5. The Client acknowledges that failure to promptly provide the above may restrict Assetnote's ability to provide the Services in accordance with these Terms. Assetnote will not be liable in any respect where any failure to provide the Services is due to a delay of the Client (or a third party) to provide the required information or the Client (or a third party) providing incorrect or inaccurate information.
- 8.6. The Client further agrees to cooperate with, act reasonably and follow the reasonable directions of Assetnote in connection with this Agreement.

9. FEE

- 9.1. During the Term, the Client will pay the Fee for the Services for the agreed Subscription Level:
 - 9.1.1. in accordance with Assetnote's current payment requirements for the Fee which as at the date of this Agreement is within thirty (30) days of receipt of Assetnote's invoice; and
 - 9.1.2. otherwise as set out in the Subscription Agreement.
- 9.2. Assetnote may elect to send invoices by electronic mail to the email address set out in the Subscription Agreement or such other email address as is advised by the Client in writing to Assetnote.
- 9.3. Assetnote may increase the Fee in the following circumstances:
 - 9.3.1. where there has been a change in the Subscription Level or type at the request of the Client;
 - 9.3.2. where the number of Assets increases and:
 - 9.3.2.1. such change is a change in the Subscription Level;
 - 9.3.2.2. Assetnote has advised the Client of the increase in the number of Assets; and
 - 9.3.2.3. the Client has elected in writing to change the Subscription Level to reflect the number of Assets the subject of the Services; and

9.3.3. annually by a maximum amount of five percent (5%) to reflect any increases in costs of offering the Services. The Client will be notified in writing of any increase to the Fee.

9.4. If Assetnote has not received any payment required in accordance with these Terms, in addition to any other rights and remedies of Assetnote, Assetnote may without liability to the Client:

9.4.1. suspend the provision of the Services to the Client while the invoice(s) concerned remain unpaid;

9.4.2. disable the Client's access to all or part of the Services and Assetnote will be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

9.4.3. interest shall accrue on such due amounts at an interest rate of 1.5% per month from the date the unpaid amount became due until the unpaid amount is paid to Assetnote in full (whether before or after judgment).

9.5. Where there has been a failure to pay pursuant to the terms of this Agreement, Assetnote is under no obligation to reinstate the Services even if requested by the Client, until all Fees are paid in full. Any reinstatement will be at Assetnote's sole discretion (acting reasonably).

9.6. Upon termination, all outstanding Fees will become payable by the Client to Assetnote.

9.7. All amounts and fees stated or referred to in this Agreement:

9.7.1. are exclusive of TAXES;

9.7.2. will be in US dollars; and

9.7.3. are (subject to the terms of this Agreement) non-cancellable and non-refundable

10. THE SERVICES, THE PLATFORM AND THE PORTAL

10.1. Subject to the Client's Subscription Level and these Terms, Assetnote will:

10.1.1. provide the Services for the Term;

10.1.2. make the Portal available to the Client for the Term; and

10.1.3. provide resources on the Portal for use by the Client only.

10.2. Where the number of Assets the subject of the Services increases, Assetnote will:

10.2.1. notify the Client of the increase;

10.2.2. advise the Client that they must notify Assetnote within a nominated time period whether the Client requires the new Assets to be subject to the Services or such Assets will be removed from the Services; and

10.2.3. advise the Client of any change to the Fee should the new Assets remain subject to the Services.

10.3. Assetnote will be under no obligation to affect the Services on those Assets in excess of the Assets referred to in the Subscription Agreement unless agreed to with the Client in accordance with this clause.

10.4. The Client acknowledges and agrees that Assetnote at all times retains all right and title to all the data, materials, content on the Portal (Content).

10.4.1. The Client is not authorised to copy or reproduce the Content in any way without the prior written consent of Assetnote.

10.4.2. The Content is provided based on the Assets and the Services. Assetnote does not, unless required as part of the relevant Subscription Level, to analyse or interpret the Content for and on behalf of the Client.

10.4.3. Assetnote will not be responsible in any respect for any action or inaction of Client based on the Client's analysis or interpretation of the Content.

10.5. The Client must not add to, remove or vary any Content unless permitted by Assetnote.

10.6. The Client acknowledges and agrees that Assetnote is not responsible in any respect for any content or information provided by the Client on the Portal.

10.7. The Client is responsible for maintaining (and updating) the accuracy of any of the Client's content or information on the Portal.

10.8. The Client acknowledges and agrees that:

10.8.1. upon Assetnote consenting to the grant of access to the Client to the Portal, the Client will be issued with an account name and password which provides the Client access to the Portal;

10.8.2. the Client is responsible for ensuring the security of the Client's computer and maintaining the confidentiality of the any issued user-id and password to the Portal;

10.8.3. the Client must notify Assetnote immediately if the Client becomes aware of any unauthorised use of the Client's issued user-id and/or password;

10.8.4. the Client's use of the Portal is the Client's responsibility and is entirely at the Client's own risk and the Client accepts full responsibility for all and any information that the Client transmits via the Client's access to the Portal;

10.8.5. the Client must not use the Portal in a way that breaches this Agreement or any laws, regulations, standards or codes as enacted or modified from time to time;

10.8.6. the Client must not use, reproduce, sell, resell or otherwise exploit any of the Content or any part of it for commercial purposes other than in accordance with these Terms.

10.8.7. the Client must not modify, copy, adapt, distribute, translate or create derivative works of any kind whatsoever of any of the Content, Platform, Portal or any of the Services;

10.8.8. Assetnote retains complete editorial control over the Portal and may change, modify, alter, amend, delete any of the Content or cease the operation of the Portal at any time in its sole discretion;

10.8.9. the Portal will not operate on a continuous basis, Assetnote will use reasonable efforts to provide 99.9% availability of the Portal. The Client will be notified of scheduled maintenance);

10.8.10. Assetnote cannot guarantee the accuracy of the results from the Platform, the Portal and/or the Services. Assetnote will use best efforts to ensure the results are accurate and error free. Assetnote will ensure security industry best practices are used in securing and maintaining the Platform, the Portal and/or the Services. and

10.8.11. the Client is responsible for acquiring and maintaining all equipment, services and software (whether through third parties or otherwise) necessary to access the Portal. The Client is responsible for all telecommunication fees or charges incurred as a result of connecting to the Portal.

10.9. The Client acknowledges that it has reviewed the terms of Assetnote's Privacy Policy found at <https://assetnote.io/privacy.html>.

11. CLIENT OBLIGATIONS

11.1. The Client will ensure that at all times there is a Client Representative who:

11.1.1. may exercise all of the powers of the Client under this Agreement; and

11.1.2. may by notice in writing to Assetnote, delegate any of the Client Representative's powers, except the power to delegate.

11.2. The Client may name another person as its Client Representative by notice in writing to Assetnote. The appointment of the person named in the notice as the Client Representative will be effective from the date that notice is given to Assetnote.

11.3. The Client must not:

11.3.1. access, store, distribute through the Services any material, data or content that:

11.3.1.1. Assetnote deems to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically offensive or otherwise objectionable;

11.3.1.2. causes damage or injury to any person or property;

11.3.2. distribute or transmit through the Services any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

11.3.3. and Assetnote reserves the right, without liability, to disable the Client's access to the Services, with or without notice, should such occur.

11.4. The Client will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services. The Client will immediately notify Assetnote in writing in the event of any such unauthorised access or use.

11.5. Except as permitted by law or under this Agreement, the Client will not (nor grant any other person or entity the right to):

11.5.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services (as applicable) in any form or media or by any means; or

11.5.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or

11.5.3. access all or any part of the Services in order to build a product or service which competes with the Services; or

11.5.4. use the Services to provide services to third parties without Assetnote's authorisation (subject to clause 14); or

- 11.5.5. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit or otherwise make the Services available to any third party;
- 11.5.6. attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this Agreement;
- 11.5.7. without the prior written consent of Assetnote, not be involved either directly or indirectly, in the development, manufacture, production, importation, sale or advertisement of any other platform, which is like or comparable to the Services or the Platform in any manner which might compete, conflict or interfere in any way with the use of the Services or the Platform;
- 11.5.8. independently publish data generated from the Services without consultation with and approval from Assetnote; or
- 11.5.9. assign, transfer, charge or deal with, in any manner, any of its rights under this Agreement without the prior written consent of Assetnote.
- 11.6. The Client agrees that it will not:
 - 11.6.1. use automated scripts to collect information from or otherwise interact with the Portal;
 - 11.6.2. take any action that imposes or may impose an unreasonable or disproportionately large load on the Portal, the Platform or the infrastructure of Assetnote;
 - 11.6.3. impersonate any person or entity, or falsely state or otherwise misrepresent itself, its age or its affiliation with any person or entity.
- 11.7. The Client agrees to observe and comply with all reasonable directions and instructions given by Assetnote in relation to the Services.

12. ASSETNOTE OBLIGATIONS

- 12.1. Notwithstanding any other term of this Agreement, Assetnote does not guarantee the continuous availability of the Services. Assetnote will use reasonable endeavours to provide a 99.9% availability of the Services. For the purpose of these Terms availability:
 - 12.1.1. means the ability of the Services to perform their required functions;
 - 12.1.2. will be determined by Assetnote in its sole discretion; and
 - 12.1.3. will not be measured with reference to any unavailability caused by any third-party.
- 12.2. Assetnote will inform the Client if the Services or any part of them is unavailable at any time due to maintenance or any other foreseeable factor or cause.
- 12.3. Assetnote is not responsible for any delays, delivery failures, or any other loss or damage resulting from:
 - 12.3.1. the acts or omissions of third party providers engaged by the Client or otherwise; or
 - 12.3.2. the failure of a Client's system not in control of Assetnote;
 - 12.3.3. the transfer of data over communications networks and facilities, including the internet,
 - 12.4. and the Client acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities, systems and third party providers.
- 12.5. This Agreement shall not prevent Assetnote from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 12.6. Assetnote will obtain and maintain, with a reputable insurer, appropriate insurance relevant to the provision of the Services for the duration of this Agreement.
- 12.7. Assetnote warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

13. SUPPORT AND ADDITIONAL SERVICES

- 13.1. During the Term, Assetnote will, subject to the Subscription Level of the Client, provide the following support services as part of the Services:
 - 13.1.1. day to day operation of the Services;
 - 13.1.2. reasonably requested configuration changes;
 - 13.1.3. Emergency Support and Non-Emergency Support;
 - 13.1.4. outage management; and
 - 13.1.5. such other support as may be agreed between the parties.
- 13.2. Emergency Support will be provided by Assetnote as follows:
 - 13.2.1. twenty-four (24) hours a day, seven (7) days a week;
 - 13.2.2. on the support contact details provided by Assetnote from time to time;
 - 13.2.3. emergency support will be initiated in Assetnote's support system and will be logged and tracked in a ticket system to ensure resolution in a timely fashion; and
 - 13.2.4. Assetnote will notify the Client of the estimated time of repair / rectification together with any action the Client can take to reduce the effect of the outage.
- 13.3. Non-Emergency Support will be provided by Assetnote:
 - 13.3.1. between the hours of 8am and 5pm AEST between Monday and Friday on any Business Day; and
 - 13.3.2. after the hours referred to in clause 13.3.1 above, messages or emails will be considered on the next Business Day.
- 13.4. For the purpose of this clause:
 - 13.4.1. Non-Emergency Support means questions and issues regarding configuration and operation, any other non-service outage issues and any issue not regarded as Emergency Support; and
 - 13.4.2. Emergency Support means any system outage affecting the delivery of the Services.
- 13.5. Where the Client requires Assetnote to perform additional services (Additional Services), any Additional Services will be provided by Assetnote:
 - 13.5.1. as agreed between Assetnote and the Client in writing;
 - 13.5.2. at Assetnote's current charge rates for the provision of such Additional Services; and
 - 13.5.3. on the same terms and conditions as set out in this Agreement (as applicable) unless agreed otherwise.
- 13.6. Assetnote may implement policies around support and service levels as may be appropriate to the Services from time to time.

14. PLATFORM AND THIRD PARTIES

- 14.1. Assetnote provides the Services for the Client.
- 14.2. If specified in the Subscription Agreement and with the consent of Assetnote, the Services may be used in respect of assets owned by third parties of the Client (Third Party Assets).
- 14.3. The Client may only use the Services on Third Party Assets in the following circumstances:
 - 14.3.1. the Client's Subscription Level permits use of the Services on Third Party Assets;
 - 14.3.2. the Client obtains the prior written consent and authorisation of the owners of the Third Party Assets to use the Services on the Third Party Assets;
 - 14.3.3. the Client provides to Assetnote a list of the Third Party Assets to which the Services will be applied;
 - 14.3.4. the Client has the owner of the Third Party Assets sign Assetnote's form of consent, authorisation and waiver (or any other such document required by Assetnote) as may be required by Assetnote;
 - 14.3.5. the Client provides Assetnote with a copy of its insurance against all reasonable risks in connection with the use of the Services on Third Party Assets; and
 - 14.3.6. the Client indemnifies and holds harmless Assetnote from and against any Claim or Liability that may be made against Assetnote in respect of the use of the Services on Third Party Assets by the Client.

15. SECURITY

- 15.1. Each party shall use best endeavours to ensure that each party's data and Confidential Information is protected at all times during the Term of this Agreement from unauthorised access or use by third parties and from physical misuse, damage or destruction by any person.
- 15.2. The Client is responsible for protecting its passwords and files and shall be responsible for any damage caused by unauthorised access to the Platform.
- 15.3. If either party becomes aware of unauthorised access or use by third parties, physical misuse, damage or destruction of the Platform by any person then that party will immediately notify the other party and will take all reasonable measures to ensure such unauthorised access immediately

ceases.

15.4. The Platform, the Portal and/or the Services are maintained and secured by Assetnote and follow industry best practice and meet all applicable regulatory requirements for security

16. INTELLECTUAL PROPERTY RIGHTS

16.1. Assetnote warrants and represents that:

- 16.1.1. it owns or has the rights to use the Platform and the Portal and provide the Services;
 - 16.1.2. in supplying the Services, Assetnote will not infringe the Intellectual Property Rights of any person; and
 - 16.1.3. the Client's use of the Services will not infringe the Intellectual Property Rights of any third party.
- 16.2. Nothing in these Terms constitutes a transfer of any Intellectual Property Rights to a party.

17. WARRANTIES

17.1. The Client represents and warrants to Assetnote that:

- 17.1.1. it has full authority and power to enter into and perform its obligations under this Agreement and can do so without the consent of any other person; and
 - 17.1.2. it has taken all action which is necessary to authorise the performance of this Agreement in accordance with its terms;
 - 17.1.3. it is solvent;
 - 17.1.4. it has not entered or taken steps to enter and does not propose to enter into any arrangement, compromise or assumption with or assignment for the benefit of its creditors or any class of them; and
 - 17.1.5. the Client's Representative is authorised by the Client as the agent of the Client to act on behalf of the Client in connection with this Agreement and it authorised to sign and execute documents on behalf of the Client.
- 17.2. Assetnote represents and warrants to the Client that:
- 17.2.1. it has full authority and power to enter into and perform its obligations under this Agreement and can do so without the consent of any other person; and
 - 17.2.2. it has taken all action which is necessary to authorise the performance of this Agreement in accordance with its terms.
- 17.3. Assetnote makes no representations or assurances and gives no warranties:
- 17.3.1. as to the outcomes, analysis, vulnerabilities, exposure timelines and triage requirements that may be identified and/or obtained from use of the Services;
 - 17.3.2. that the Services will identify all vulnerabilities, attacks or exposure of Assets;
 - 17.3.3. as to any increase in revenue, profit or goodwill that may be obtained as a consequence of using the Services;
 - 17.3.4. as to the accuracy, reliability or content of any information provided or obtained using the Services;
 - 17.3.5. that the provision of the Services will result in any improvement to the Client or its business;
 - 17.3.6. that the Services or any software used to provide the Services will be uninterrupted, error free or not subject to delays (technical or otherwise);
 - 17.3.7. as to the accuracy, currency, suitability, completeness or relevance of any information contained or accessed through the Portal (Information);
 - 17.3.8. the currency, accuracy, completeness or relevance of the Information or for programming bugs or computer viruses, faults or errors in the Platform, Portal or the Information; and
 - 17.3.9. that any information downloaded or otherwise transmitted to the Client from the Portal is free from , faults or errors.

18. INDEMNITIES

18.1. To the extent permitted by Law:

- 18.1.1. Assetnote agrees to indemnify and hold harmless the Client its affiliates, successors and assigns (each an indemnified party) from and against any and all Claims and Liability (including legal fees and costs on a solicitor-client basis) incurred by such indemnified party arising out of:
 - (a) any breach of any of these Terms by Assetnote;
 - (b) or relating to allegations that the Services or any materials provided by Assetnote to the Client infringe any third-party intellectual property or other proprietary right;
 - (c) any negligent act or omission of or by Assetnote which directly causes any loss or damage to the Client, to the extent that any such Liability is not caused or contributed to by the Client.
- 18.1.2. the Client indemnifies and holds harmless Assetnote its affiliates, successors and assigns (each an indemnified party) from and against any Claim or Liability (including legal fees and costs on a solicitor-client basis) incurred by such indemnified party arising out of:
 - (a) any breach of any of these Terms by the Client;
 - (b) any unauthorised use of the Services by the Client;
 - (c) any infringement of any third-party intellectual property or other proprietary right caused by provision of data by the Client to Assetnote;
 - (d) any representation made by or information provided by the Client or its representatives being materially incorrect or misleading;
 - (e) any negligent act or omission of or by the Client which directly causes any loss or damage to Assetnote, to the extent that any such Liability is not caused or contributed to by Assetnote.

19. LIABILITY

- 19.1. Except with regard to breach of confidentiality obligations under this agreement, neither party will be liable to the other party for any Consequential Loss, whether foreseeable or unforeseeable.
- 19.2. The Client understands and agrees that:
 - 19.2.1. Assetnote is not liable to pay or reimburse the Client for any Claims for any expenses incurred by the Client in the performance of its functions and duties under these Terms;
 - 19.2.2. Assetnote is not responsible or liable for any acts or defaults of the Client or of the Client's personnel;
 - 19.2.3. Assetnote will not have any Liability to the Client or others for any unauthorised transactions made using the Client's password or account;
 - 19.2.4. the use or non-use of the Client's services by third parties; and
 - 19.2.5. the unauthorised use of the Client's password or account could cause the Client to incur Liability to both Assetnote and other users.
- 19.3. Any act or omission which, if it were an act or omission of the Client or its personnel, would be a breach of these Terms on its part, is taken to be such an act or omission for which the Client is responsible if the act is done or omitted:
 - 19.3.1. by any corporation or association which is controlled directly or indirectly in any manner by the Client, or
 - 19.3.2. by any firm or unincorporated body of which the Client is a partner or member;
 - 19.3.3. by any third party contracted by the Client.
- 19.4. To the full extent permitted by law Assetnote excludes:
 - 19.4.1. all liability in respect of loss of data, interruption of business or any Consequential Loss; and
 - 19.4.2. all representations, warranties or terms (whether express or implied) other than those expressly set out in these Terms.
- 19.5. These Terms are to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions or obligations.

20. TAXES

21. For the purpose of this clause the following definitions apply:

- 21.1. TAXES means any form of goods and services tax payable under the Tax Law;
- 21.2. Words used in this clause that are defined in the TaxLaw have the meaning given in that legislation.
- 21.3. Unless otherwise specified, all amounts payable under this Agreement are exclusive of Taxes
- 21.4. If a supply made under this Agreement is a taxable supply, the recipient of that taxable supply (Recipient) must, in addition to any other consideration, pay to the party making the taxable supply (Supplier) the amount of Tax in respect of the supply.
- 21.5. The Recipient will only be required to pay an amount of TAX to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient

in respect of the taxable supply, 21.6. If there is an adjustment to a taxable supply made under this Agreement then the Supplier must provide an adjustment note to the Recipient.

21.7. The amount of a party's entitlement under this Agreement to recovery or compensation for any of its costs, expenses or Liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or Liabilities.

22. SUSPENSION

22.1. Assetnote may suspend the Services in the following circumstances:

22.1.1. pursuant to clause 9.4 (non-payment of the Fee);

22.1.2. where the Client has breached this Agreement and failed to rectify such breach within ten (10) Business Days after receiving written notice from Assetnote to do so.

22.1.3. upon written request of the Client.

22.2. Assetnote will not be liable to the Client for any Liability or Claim arising as a result of any suspension.

22.3. After the Services have been suspended, Assetnote may reinstate the Services, but is under no obligation to do so save for when the Services have been suspended as a result of a request from the Client.

23. TERMINATION

23.1. Termination for Breach

23.1.1. Without prejudice to any other right or remedy that Assetnote may have under this Agreement or otherwise, Assetnote may by written notice to the Client terminate this Agreement with immediate effect if the Client:

23.1.1.1. becomes insolvent, bankrupt or subject to any form of external administration; or

23.1.1.2. ceases to carry on business; or

23.1.1.3. brings the reputation of Assetnote into disrepute; or

23.1.1.4. breaches a material term of this Agreement (including a failure to pay), that in the reasonable opinion of Assetnote is not capable of remedy within a reasonable time; or

23.1.1.5. breaches a term of this Agreement and fails to remedy the breach within ten (10) Business Days after receiving written notice from Assetnote to do so.

23.1.2. The Client will not be entitled to a refund of any Fee where the Agreement is terminated pursuant to this clause.

23.1.3. The Client may by written notice to Assetnote terminate this Agreement with immediate effect if Assetnote:

23.1.3.1. becomes insolvent, bankrupt or subject to any form of external administration; or

23.1.3.2. ceases to carry on business; or

23.1.3.3. breaches a material term of this Agreement and fails to remedy the breach within ten (10) Business Days after receiving written notice from Client to do so.

23.2. Effect of termination

23.2.1. On termination of this Agreement:

23.2.1.1. Assetnote will cease providing the Services;

23.2.1.2. the Client must immediately cease using any Intellectual Property, information, materials or knowledge of Assetnote acquired pursuant to these Terms;

23.2.1.3. the Client must immediately return to Assetnote all Intellectual Property, property, information and materials that relate to Assetnote, the Services, the Portal or the Platform that it holds to the extent that it is possible to do so;

23.2.1.4. subject to clause 29.3 each party must return to the other all Confidential Information to the extent that it is possible to do so;

23.2.1.5. the Client will pay the Fee to Assetnote up to and including the date of termination. Where the Fee has been paid in advance and this Agreement has been terminated due to no fault of the Client, Assetnote will calculate the applicable refund and pay to the Client such refund; and

23.2.1.6. Assetnote will on written request from the Client received prior to the date of termination provide to the Client a copy of data held on the Platform and relevant to the provision of the Services. The Client may at any time prior to the date of termination obtain a copy of its data direct from the Portal. If such request is received after the date of termination Assetnote may charge the Client an additional fee for the provision of such data.

23.3. Backup and data

23.3.1. The Client acknowledges and agrees that Assetnote will, for the benefit of the Client and itself, undertake backups of Client information obtained through the Services.

23.3.2. On termination:

23.3.2.1. Assetnote will return all Confidential Information of the Client to the Client save for any backup archived copies of any data held by Assetnote and stored in an encrypted format;

23.3.2.2. Assetnote may also retain de-identified information obtained through the Services.

23.4. Consequences of Termination

23.4.1. Termination of this Agreement will not prejudice any right of action or remedy which Assetnote may have accrued prior to termination of this Agreement.

24. DISPUTE RESOLUTION

24.1. Notice of dispute

24.1.1. If a dispute between Assetnote and the Client arises in connection with this Agreement:

24.1.1.1. either party may give to the other a notice specifying the nature and details of the dispute; and

24.1.1.2. the dispute will be resolved in accordance with the procedure set out in this clause.

24.2. Executive negotiation

24.2.1. A dispute that is the subject of a notice given under clause 30.1.1.1 must be referred to a senior executive of each party who is authorised to meet with a view to resolving the dispute.

24.6. Injunctive Relief

24.6.1. Nothing in this clause 31 will prejudice the right of a party to institute proceedings to seek injunctive or urgent declaratory relief in respect of a dispute or any matter arising under the Agreement nor does it affect the obligations of the parties to continue to perform the Agreement.

24.7. Continuation of obligations

24.7.1. Despite the existence of a dispute, each party must continue to comply with its obligations under this Agreement.

25. CONFIDENTIALITY

25.1. A party (Recipient) must ensure that it and its personnel:

25.1.1. use and reproduce Confidential Information of the party disclosing the Confidential Information (Discloser) only to perform its obligations under this Agreement; and

25.1.2. not disclose or otherwise make available a Discloser's Confidential Information other than to personnel who have a need to know the information to enable them to perform obligations under this Agreement.

25.2. All of a Discloser's Confidential Information will remain the property of the Discloser and all copies or other records containing that Confidential Information (or any part of it) must be returned by the Recipient to the Discloser on termination or expiry of this Agreement.

25.3. The Recipient acknowledges and agrees that a Discloser will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Recipient of this clause and without the need on the part of the Discloser to prove any special damages.

25.4. Subject to clause 31.5, each party agrees to treat as confidential all information of or relating to the other party that is provided to it, under this Agreement or otherwise, which the Discloser notifies in writing to the Recipient is confidential.

25.5. Each Discloser hereby consents to the Recipient disclosing any Confidential Information of the Discloser:

25.6. as required by Law; or

25.7. to external consultants and advisers of the Recipient engaged with regard to this Agreement.

26. FORCE MAJEURE

26.1. If a party hereto is affected, or likely to be affected, by a Force Majeure Event, it must immediately give the other parties prompt notice of that fact including:

- 26.1.1. full particulars of the Force Majeure Event;
- 26.1.2. an estimate of its likely duration;
- 26.1.3. the obligations affected by it and the extent of its effect on those obligations; and
- 26.1.4. the steps being taken to rectify or minimise it.

26.2. The obligations under this Agreement of the party affected by a Force Majeure Event are suspended to the extent to which they are affected by the relevant Force Majeure Event and for as long as the Force Majeure Event continues.

26.3. If the affected party's inability to perform its obligations continues for a period greater than ninety (90) days following the Force Majeure Event, the other parties have the right to immediately terminate this Agreement by written notice.

27. VARIATION

27.1. Assetnote may change these Terms by obtaining the Client's consent, or in situations that require changes by a law or regulatory body, by giving the Client notice. The period of notice given by Assetnote depends on the nature of the change (as determined by Assetnote at its sole discretion). If:

- 27.2. The change will benefit the Client: The change can be made immediately. Prior notification is not required.
- 27.3. The change is required by law, a regulatory body: at least Five (5) Business Days' prior notice.
- 27.4. All other changes: at least Twenty-one (21) Business Days' prior notice.
- 27.5. Notice of a change may be given by email to the Client.
- 27.6. Continued use of the Services after expiration of the required notice period will constitute acceptance of the varied terms by the Client.

28. NOTICES

28.1. Notices must be in writing and delivered to or sent by pre-paid post, email or facsimile at the address, email address or fax number set out in the Subscription Agreement unless a substitute address, email address or fax number has been notified in writing by a party to the other party.

28.2. The parties agree that a notice will be deemed received:

- 28.2.1. if delivered by hand, on the date of delivery;
- 28.2.2. if sent by pre-paid post, Seven (7) Business Days after posting;
- 28.2.3. if sent by facsimile, on confirmation of correct transmission of the facsimile; or
- 28.2.4. if sent by email, at the time the email leaves the sender's email server, provided the party giving the notice does not receive an automatically generated email response indicating non-receipt by the intended recipient,
- 28.2.5. provided that any notice personally delivered or sent by facsimile or electronically after 5.00pm on any Business Day will be deemed to have been validly delivered at 9.00am on the next Business Day.

28.3. Any notice given by email must also be delivered or sent by facsimile or by hand if it relates to a variation or dispute in connection with this Agreement.

28.4. A notice sent by facsimile or email will be deemed to be in writing for the purposes of this clause.

29. GENERAL

29.1. Where a term is defined in these Terms and referred to in this Agreement, the definition will, unless otherwise specified, apply to the whole of this Agreement.

29.2. This Agreement and its attachments constitute the entire Agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

29.3. Assetnote makes no representation or guarantee as to the effectiveness of the Services.

29.4. The Client must not assign, sublicense or otherwise deal in any other way with any of the Client's rights under this Agreement.

29.5. Assetnote is not liable for any delays in performing any obligation under these Terms caused by circumstances beyond its reasonable control, including but not limited to catastrophes, fire, internal or external strike, wars, terrorists acts, internal or external breakdowns or failure, and, in general, any failure of a Client to act in a timely or appropriate way.

29.6. These Terms will, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- 29.6.1. that provision will, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
- 29.6.2. if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of these Terms will not in any way be affected or impaired and will continue notwithstanding that illegality, invalidity or unenforceability.

29.7. A right created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

29.8. This Agreement may be assigned or transferred in any manner by Assetnote at its sole discretion.

29.9. Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this Agreement.

29.10. This Agreement is governed by the laws of Queensland, Australia and each party submits to the jurisdiction of the courts of Queensland, Australia.