

CUSTOMER SOFTWARE AS A SERVICE (SAAS) AGREEMENT

BACKGROUND

- A. Our software enables you to assess the security posture of your accounts, workloads and environments.
- B. You have requested us to provide you and your Authorised Users with access to the Services, which includes the SaaS Solution, in accordance with this Agreement.
- C. This Agreement is entered into between the Parties described in the Schedule.

SCHEDULE

TERM	MEANING
we, us or our	<p>Plerion Pty Ltd (ABN 86 654 628 841)</p> <p>Address: Level 16, Tower 2 Darling Park, 201 Sussex Street, Sydney, New South Wales, Australia, 2000</p> <p>Email: contact@plerion.com</p>
you or your	The party entering into this Agreement with us.
Commencement Date	The date this Agreement is accepted in accordance with its terms.
Term	<p>Subject to each Party's right to terminate this Agreement in accordance with its terms, this Agreement commences on the Commencement Date and will continue for 12 months (Initial Term). On the expiry of the Initial Term, this Agreement will be automatically renewed for subsequent 12-month periods (each a Renewal Period), unless either Party provides 30 days' written notice before the end of the Initial Term or the end of the then-current Renewal Period (as applicable) that it does not wish to renew this Agreement.</p>
Services	<p>The Services are as follows:</p> <ul style="list-style-type: none"> ● provision of the SaaS Solution; ● the Integration Services; ● the Support Services; ● such other services as we may provide from time to time, as set out in your Account and as set out in this Agreement, including Beta Services and Trial Services, and as amended by us from time to time; and <p>We may perform Additional Services (which are in addition to the above services), as may be agreed in writing between the Parties in accordance with the terms of this Agreement.</p>
SaaS Solution	<p>The SaaS Solution is subject to the SaaS Conditions, as is the access to and use of our cloud-based software solution known as "Plerion", which allows you to:</p> <ul style="list-style-type: none"> ● perform either ongoing, triggered or scheduled security assessments of: <ul style="list-style-type: none"> ○ software utilised by you, including third-party software as a service; ○ your accounts on third party cloud platforms; and ○ your workloads on third party cloud platforms, ● interact with it through our Site. You will be able to interact with Plerion in respect of security information related to an environment that you have access to and Plerion will provide feedback to you; ● obtain detailed analysis and insights into your environments in so far as security considerations are concerned; and

-
- access reports in respect of the security risks, capabilities and functionalities in your environments.

Subject to the terms of this Agreement, we will provide you with access to the SaaS Solution on finalisation of the Integration Services, or as otherwise agreed between the Parties.

SaaS Conditions

Without limiting the terms of this Agreement, the SaaS Conditions include the following:

Number of Authorised Users	As indicated in your Account, subject to any increase permitted in accordance with the Agreement.
Number of environments, accounts and/or workloads	As indicated in your Account, subject to any increase permitted in accordance with the Agreement.
Data limitations	As indicated in your Account, subject to any increase permitted in accordance with the Agreement.

Authorised User Permissions

The Authorised User Permissions are:

- for you: you will have access to all of the functionality of Plerion as indicated in your Account.
 - for Authorised Users: they will be able to access such functions of Plerion as you permit.
-

Trial Period

As set out in your Account.

Trial Services

As set out in your Account from time to time.

Trial Services Fees

The fees payable by you in respect of your use of the Trial Services and as set out in your Account.

Beta Services Fees

The fees payable by you in respect of your use of the Beta Services and as set out in your Account.

Integration Services

The Integration Services are as follows:

- we will provide to you a guide which will set out the process to be followed by you to allow for the integration of Plerion with your environments, accounts and/or workloads. The process as outlined in the guide must be followed exactly in order for you to access and utilise Plerion.
-

Support Services

The Support Services are as follows:

- access to our support team as indicated in your Account or on our Site; and
 - the provision by us of assistance with following and/or implementing the process set out in the integration guide.
-

Our Disclosures

Please read this Agreement carefully prior to accepting this Agreement. By accepting this Agreement, you agree that:

- if this Agreement expresses a time within which the Services are to be provided, such time is an estimate only, and creates no obligation on us to provide the Services by that time;
 - we reserve the right to perform maintenance and upgrades at any time;
 - we will handle your personal information in accordance with our privacy policy, available at www.plerion.com. We may disclose your personal information to third parties;
 - we may amend the Services and Fees in accordance with this Agreement. If you do not agree to this, you may terminate the Agreement;
 - your failure to pay the Fees in accordance with this Agreement may result in us charging you interest, or suspending the supply of the Services until we receive payment;
 - subject to your Consumer Law Rights, you have not relied on any representations or warranties made by us prior to entering this Agreement that are not included in this Agreement;
 - subject to your Consumer Law Rights, we will not refund any amounts paid by you;
-

-
- subject to your Consumer Law Rights, we will not be liable for any loss or damage caused by your Computing Environment, any Third-Party Inputs, events beyond our reasonable control (including Force Majeure Events), and Consequential Loss;
 - subject to your Consumer Law Rights, our Liability for the supply of the Services will be limited to, at our discretion, the resupply of the Services or the repayment of the SaaS Solution Fee paid by you to us;
 - we do not make any warranty or representation in respect of any Third-Party Inputs;
 - this Agreement will automatically renew unless you provide us with prior notice that you wish to terminate this Agreement; and
 - if you do not cancel your Account before the end of the Trial Period, you agree that your Account will automatically rollover onto a fully paid Account.

This Agreement does not intend to limit your rights and remedies at law, including any of your Consumer Law Rights.

TERMS AND CONDITIONS

1. Acceptance

- 1.1 You accept this Agreement by clicking "I accept" on the Site.

2. Services

- 2.1 In consideration of your payment of the Fees, we will provide the Services in accordance with this Agreement, whether ourselves or through our Personnel.
- 2.2 We will not be responsible for any services unless expressly set out in the inclusions in the Schedule.
- 2.3 If this Agreement expresses a time within which the Services are to be provided, we will use reasonable endeavours to provide the Services by such time, but you agree that such time is an estimate only, and creates no obligation on us to provide the Services by that time.
- 2.4 Subject to any other provisions of this Agreement, we will commence providing the Services within a reasonable time after the Commencement Date, or as otherwise agreed between the Parties in the Schedule or otherwise.

3. SaaS Licence

- 3.1 In consideration of your payment of the SaaS Solution Fee, we will supply you with the SaaS Solution in accordance with the Schedule.
- 3.2 During the Term, and subject to your compliance with this Agreement, we grant you and your Authorised Users a non-exclusive, non-transferable, non-sublicensable and revocable licence to access and use the SaaS Solution solely for your business purposes and as contemplated by this Agreement (**SaaS Licence**).
- 3.3 You agree that the SaaS Licence permits you to access and use the SaaS Solution in accordance with the SaaS Conditions, as set out in the Schedule.

4. Authorised Users

- 4.1 We agree to provide each Authorised User with access to the SaaS Solution in accordance with the Authorised User Permissions.
- 4.2 You will ensure each Authorised User complies with the terms of this Agreement.
- 4.3 Each Authorised User must agree to our End User Licence Agreement (as notified by us to you from time to time) in order to access the SaaS Solution.
- 4.4 You may request in writing that additional Authorised Users be granted a licence to access the SaaS Solution (or to upgrade a particular Authorised User to a different access tier), in accordance with clause 6.

5. Account

- 5.1 You will require an Account in order to access and use the SaaS Solution.
- 5.2 When you create an Account, you must also select a subscription (**Subscription**). You may choose between different tiers of Subscription with different Services.
- 5.3 Each Authorised User will require a login (which is linked to your Account), in order to access and use the SaaS Solution.
- 5.4 You must ensure that any information provided to us for any Account or login is accurate and complete, and you warrant that you are authorised to provide this information to us.

- 5.5 You and your Authorised Users must keep your Account and login details secure and confidential. You agree to immediately notify us if you become aware of, or have reason to suspect, any suspicious or unauthorised access to your Account or use of any login details linked to your Account.
- 5.6 We may suspend access to your Account where we reasonably believe there has been any unauthorised use of or access to the SaaS Solution and/or Services. Where we do so, we will notify you within a reasonable time of the suspension occurring, and the Parties will work together to resolve the matter.

6. Subscriptions

- 6.1 Once you have created an Account and chosen a Subscription, you agree to pay the subscription fee set out in your Account (**SaaS Solution Fee**) by the date specified in your Account (**Payment Date**), and to comply with all of your obligations in terms of this Agreement, to access and/or use certain features of the SaaS Solution and benefit from your Subscription.
- 6.2 Payment of the SaaS Solution Fee must be made by you monthly on the Payment Date.
- 6.3 Unless your Subscription is suspended or terminated in accordance with this Agreement, your Subscription will roll over as provided for in terms of this Agreement, and you will be charged the SaaS Solution Fee on an ongoing monthly basis from the Payment Date. Without limiting your rights under the Australian Consumer Law, you may cancel your Subscription at any time in accordance with clause 29 but the cancellation will only have effect from expiry of the monthly period for which you have paid the SaaS Solution Fee.
- 6.4 The payment methods we offer for the SaaS Solution Fee are set out on our Site. We may offer payment through a third-party provider. You acknowledge and agree that we have no control over the actions of the third-party provider, and your use of the third-party payment method may be subject to additional terms and conditions.
- 6.5 You must not pay, or attempt to pay, the Fees by fraudulent or unlawful means. If you make a payment by debit card or credit card, you warrant that you are authorised to use the debit card or credit card to make the payment.
- 6.6 You agree that we may set-off or deduct from any monies payable to you under this Agreement, any amounts which are payable by you to us (whether under this Agreement or otherwise).
- 6.7 **Changes to your Subscription:** If you wish to change your Subscription (for example, by upgrading to a different Subscription tier, or varying the number of Authorised Users associated with your Account), you must provide notice to us through your Account that you wish to vary your Subscription at least 5 Business Days before the next Payment Date. If you vary your Subscription and the SaaS Solution Fee increases, the increased SaaS Solution Fee will apply on the next Payment Date, and you will have access to the additional Subscription features on the next Payment Date.
- 6.8 To the extent permitted by law, the SaaS Solution Fee is non-refundable and non-cancellable once paid, save as set out in this Agreement.
- 6.9 We may need to change what is available as part of your Subscription (for example, the inclusions, exclusions, updated features) from time to time. If we change what is available as part of your Subscription, we will provide you with 30 days' notice of the change. After 30 days, we will apply the changes to your Subscription. If the changes substantially and adversely affect your enjoyment of the Subscription, you may cancel your Subscription in accordance with clause 29.
- 6.10 We may need to change the SaaS Solution Fee from time to time. If we change the SaaS Solution Fee, we will provide you with 30 days' notice of the change. After 30 days, we will apply the updated SaaS Solution Fee to your Subscription. If the updated SaaS Solution Fee is not acceptable to you, you may cancel your Subscription in accordance with clause 29.

7. Trial Period

- 7.1 We may offer you a Trial Period designed to allow you to evaluate the Services and make sure they are right for you.
- 7.2 We may offer you Beta Services during your Trial Period.
- 7.3 We have the right to terminate your Account during the Trial Period if we determine (acting reasonably) that you or any Authorised User are misusing the Services.
- 7.4 You may terminate your Account at any time during any Trial Period.
- 7.5 If you do not wish to continue using the Services beyond the Trial Period, you must cancel your Account before the end of the Trial Period by notifying us through our online portal. If you do not cancel your Account before the end of the Trial Period, you agree that your Account will automatically rollover onto a fully paid Account, and the Parties agree to be bound by the terms of this Agreement for the duration of the Term.

8. Trial Services

- 8.1 We may offer you Trial Services from time to time, as set out in your Account, for use by you.

- 8.2 There may be Trial Services Fees payable in respect of the Trial Services or part thereof as set out in your Account. For the avoidance of doubt, the Trial Services Fees are not included in the SaaS Solution Fee.
- 8.3 We will invoice you in your Account monthly in arrears in respect of the Trial Services Fee. You agree that the Trial Services Fee is due, owing and payable by you on presentation of our invoice and that you will pay the relevant Trial Services Fee on the next Payment Date after receiving the invoice.

9. Beta Services

9.1 For the purposes of this clause:

“**Beta Services**” means any services, software or functionality provided by us that are not generally available to customers and which are designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

9.2 From time to time, we may invite you to try Beta Services. You may accept or decline any such trial at your sole discretion.

9.3 You acknowledge and agree that the Beta Services supplied under this Agreement during the Term are provided while we are beta testing the Beta Services, and as such you agree:

- (a) that the Beta Services may be provided to you at a discounted rate (**Beta Services Fees**), as set out in your Account. For the avoidance of doubt, the Beta Services Fees are not included in the SaaS Solution Fee;
- (b) that we may make changes to the Beta Services (including amending any features and performing updates and fixes) at any time and without your consent, by providing notice to you;
- (c) that the Beta Services are for evaluation purposes only and not for production use;
- (d) that the Beta Services may be subject to additional terms and conditions (which if applicable, will be provided to you and that you must accept before you are provided with access to the Beta Services);
- (e) that we make no commitments as to the Beta Services being available at all times during the Term;
- (f) that we have no obligation to maintain, support, update, or provide error corrections for the Beta Services;
- (g) that we may discontinue Beta Services at any time at our sole discretion, and we reserve the right to never make the Beta Services generally available; and
- (h) to:
 - (1) in a timely manner, cooperate and with us and provide us with all assistance, resources, data, people, information, facilities, access and documentation that is reasonably necessary to enable us to test and improve the Beta Services, as requested by us from time to time;
 - (2) meet with us on a weekly basis, or as otherwise agreed between the Parties, for structured feedback sessions with the goal of helping us to improve and make changes to the Beta Services; and
 - (3) not disparage or otherwise make any unfavourable statements or comments regarding the Beta Services, us or our Personnel, either directly or by implication, verbally or in writing.

9.4 To the maximum extent permitted by law:

- (a) 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 any Beta Services; and
- (b) the Beta Services are provided “as is”, are exclusive of any warranty whatsoever, and we expressly disclaim any warranties of merchantability or fitness for a particular purpose.

9.5 We will invoice you in your Account monthly in arrears in respect of the Beta Services Fees. You agree that the Beta Services Fees are due, owing and payable by you on presentation of our invoice and that you will pay the relevant Beta Services Fees on the next Payment Date after receiving the invoice.

10. SaaS Licence – Additional Conditions of Use

10.1 You must not (and you must ensure that each Authorised User does not):

- (a) access or use the SaaS Solution except as permitted by the SaaS Licence, or other than through the interface that is provided by us;
- (b) access or use the SaaS Solution in any way that is improper or breaches any Laws, infringes any person's rights (including Intellectual Property Rights and privacy rights), or gives rise to any civil or criminal liability;
- (c) interfere with or interrupt the supply of the SaaS Solution or our System, or any other person's access to or use of the SaaS Solution;

- (d) introduce any Harmful Code into the SaaS Solution or our System;
- (e) use data mining, robots, or similar data gathering and extraction tools in relation to the SaaS solution or our Site;
- (f) frame or utilise framing techniques to enclose any of Our Materials;
- (g) use any meta tags or any other “hidden text” utilising our name or trademarks;
- (h) directly or indirectly use, copy, decompile or reverse engineer the SaaS Solution;
- (i) allow others to access or use your Account (or in the case of Authorised Users, their login details), including any password or authentication details;
- (j) use the SaaS Solution to carry out security breaches or disruptions of a network;
- (k) attempt to access any data or log into any server or account that you are not expressly authorised to access;
- (l) circumvent user authentication or security of any of our networks, accounts or hosts or those of any third party; or
- (m) access or use the SaaS Solution to transmit, publish or communicate material that is, defamatory, offensive, abusive, indecent, menacing, harassing or unwanted.

11. Availability

- 11.1 Once you have been provided access to the SaaS Solution, we will use our best endeavours to make the SaaS Solution available at all times during the Term.
- 11.2 From time to time, we may perform such reasonable scheduled and emergency maintenance and updates in relation to the SaaS Solution in order to continue to supply the SaaS Solution to you and our other customers (**Scheduled or Emergency Maintenance**). You agree that access to, or the functionality of all or part of the SaaS Solution, may need to be suspended for a time in order for us to perform Scheduled or Emergency Maintenance, and to the maximum extent permitted by law, we will not be liable to you for any interruptions or downtime to the SaaS Solution as a result of any Scheduled or Emergency Maintenance.
- 11.3 We will endeavour to provide you with reasonable notice, where possible, of any interruptions to access and availability of the SaaS Solution.

12. Malware and Defects

- 12.1 We agree to use reasonable commercial efforts to supply the Services free from defects and malware. To the extent commercially feasible and reasonable, we further agree to remediate any such defects and malware (with the exception of Third-Party Inputs) within a reasonable time and as we become aware of them. If you become aware of any issues during the Term, please notify us.

13. Third Party Inputs

- 13.1 You acknowledge and agree that the Services may interact with, or be reliant on, certain Third-Party Inputs, including your operating system and web browser.
- 13.2 You acknowledge and agree that, unless we have expressly agreed to provide the services described in this clause 13.2 in the Schedule:
 - (a) you are responsible for obtaining and managing all licences for the relevant Third-Party Inputs;
 - (b) you are responsible for paying all fees related to the Third-Party Inputs; and
 - (c) you agree to comply with terms and conditions applicable to the relevant Third-Party Inputs at all times.
- 13.3 We do not make any warranty or representation in respect of any Third-Party Inputs.
- 13.4 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 any Third-Party Inputs, subject to clause 13.5.
- 13.5 Should any unavailability, error or change to a Third-Party Input have a substantial and adverse impact on your use and enjoyment of the Services:
 - (a) you agree to notify us in writing within 2 days of the change coming into effect; and
 - (b) following receipt of such notice by us, the Parties will use all reasonable endeavours to work together to resolve the matter.

- 13.6 If:
- (a) you have provided us with the notice in accordance with clause 13.5(a); and
 - (b) the Parties are unable to resolve the matter pursuant to clause 13.5(b),
- you may elect to terminate the Agreement by providing us with 30 days' written notice, and in which case, clause 29 will apply.

13.7 This clause 13 will survive the termination or expiry of this Agreement.

14. Integration Services

14.1 We will supply you with the Integration Services in accordance with the Schedule.

14.2 Prior to us supplying the Integration Services, you agree to:

- (a) make a backup of any relevant data in your Systems which is to be the subject of, or to be used in the performance of, the Services;
- (b) make a written note or make a backup of any configuration settings or information stored in your Systems;
- (c) make a plan to restore your Systems in the event that they are corrupted or lost;
- (d) notify any relevant parties of any planned outages or downtime necessary for the performance of the Integration Services;
- (e) provide us with all information that is within your knowledge in relation to the System which would be reasonably necessary for us to know in order to perform the Integration Services; and
- (f) where the equipment in your System is a computer, download and install any available:
 - (1) security and protection updates for the operating system you use; and
 - (2) updates to malware checking and other computer protection software you use.

14.3 You acknowledge and agree that not undertaking your obligations under clause 14.2 may impact on the results or the performance of the Services, and we will not be liable to you for any Liability to the extent caused or contributed to by your failure to comply with clause 14.2.

15. Support Services

15.1 In order for you to receive the Support Services, you or your Authorised User must place a request over the phone or through our Site.

15.2 We will use our best endeavours to make the Support Services available to you during the times as set out in the Schedule.

15.3 Unless otherwise agreed, support under this Agreement is not to be used to support any other products or services and does not include training, installation of software or hardware, software development or the modification, deletion or recovery of data or any on-site services.

15.4 You agree to the reasonable usage of the Support Services. Where we consider your usage of the Support Services to be unreasonable, or unreasonably above average (compared with our other customers):

- (a) we agree to notify you in writing of our concerns; and
- (b) following your receipt of such notice, the Parties will use all reasonable endeavours to work together to resolve the matter.

15.5 If:

- (a) we have provided you with the notice in accordance with clause 15.4(a); and
- (b) the Parties are unable to resolve the matter pursuant to clause 15.4(b),

we may (at our discretion):

- (a) adjust our response time accordingly; and/or
- (b) vary the SaaS Solution Fee to reflect your increased use of our limited resources, effective on and from us giving you written notice of the new SaaS Solution Fee; or
- (c) terminate this Agreement by giving 30 days' notice in writing to you, in which case clause 29.3 will apply.

15.6 For more information on our security practices, compliance certifications, and other relevant documentation, please visit our Trust Center at <https://trust.plerion.com/>

16. Security

16.1 Subject to the terms of this Agreement, we will establish and maintain appropriate, reasonable technical and organisational security measures in accordance with good industry practice to keep Your Data secure. This notwithstanding, we do not warrant the security of Your Data.

17. Security Incidents

17.1 If either Party becomes aware of or reasonably suspects that a security incident has occurred arising from our provision of the Services, such that Your Data has or may have been compromised (for example, unauthorised access) (each a **Security Incident**), that Party must promptly notify the other Party and we agree to, within a reasonable time:

- (a) conduct an investigation to determine whether a Security Incident has occurred, and where one has, the cause and impact of it on Your Data; and
- (b) where a Security Incident is deemed to have occurred, remediate the Security Incident to the extent that this is operationally, commercially and technically feasible.

17.2 You agree that we may immediately suspend the Services, without notice to you, where a Security Incident has or may have occurred and this is considered necessary or prudent (as determined by us, at our reasonable discretion) to address or deal with the Security Incident.

17.3 We will bear our costs in conducting any investigation under this clause, unless the incident triggering the Security Incident was caused or contributed to by you (or any Authorised User), in which case, you will be liable for those costs reasonably and necessarily incurred by us arising from the Security Incident.

18. Notifiable Data Breaches

18.1 This clause 18 will only apply to the extent the notifiable data breaches scheme under Part IIIC of the *Privacy Act 1988* (Cth) (**Notifiable Data Breaches Scheme**) applies to us.

18.2 If as a result of our investigations in accordance with clause 17.1 of this Agreement, we believe a Security Incident has occurred that we consider to be notifiable under the Notifiable Data Breaches Scheme, we will:

- (a) promptly notify you of this by telephone or email;
- (b) provide notice to the Office of the Australian Information Commissioner in accordance with the Notifiable Data Breaches Scheme; and
- (c) be the sole Party to notify the individuals who are likely to be at risk of serious harm arising from the Security Incident.

18.3 Where we do not have the contact details of affected individuals, we will provide you with a statement to provide to affected individuals.

19. Your Obligations and Representations

19.1 You agree:

- (a) to comply with this Agreement and all applicable Laws;
- (b) to provide all assistance, information, documentation, access, facilities and other things reasonably necessary to enable us to comply with our obligations under this Agreement or at Law;
- (c) to provide us and our Personnel with reasonable, convenient and safe access to your premises and Systems to the extent reasonably necessary in order for us to supply the Services, and at the times agreed between the Parties;
- (d) to ensure all information provided to us is kept up-to-date and the contact information you provide is valid and regularly checked;
- (e) to make any changes to your Systems, such as System upgrades, that may be required to support the delivery and operation of any Services;
- (f) to ensure that any Systems used in connection with the Services have all necessary approvals and comply with all Laws;
- (g) that you have reviewed and understand the terms of this Agreement (including our Privacy Policy), and that you (and Authorised Users) will use the Services in accordance with them;
- (h) to notify us of any breach or suspected breach of this Agreement by you (or an Authorised User), within 48 hours of becoming aware or any such breach or suspected breach; and

- (i) that you are responsible for all Authorised Users and other users within your organisation or within your control using the Services, including your Personnel.

19.2 You acknowledge and agree that:

- (a) the technical processing and transmission of the Services, including Your Data, may be transferred unencrypted and involves transmissions over various networks; and changes to conform and adapt to technical requirements of connecting networks or devices;
- (b) the Services are provided to you and your Authorised Users, solely for your and your Authorised Users' benefit and you will not (or you will not attempt to) disclose, or provide access to, our Services to third parties without our prior written consent;
- (c) any information, advice, material, work and services (including the Services) provided by us under this Agreement does not constitute legal, financial, merger, due diligence or risk management advice;
- (d) you will be responsible for the use of any part of the Services by your Authorised Users and any other person you provide with access to the Services, and you must ensure that no person uses any part of the Services:
 - (1) to break any Law or infringe any person's rights (including Intellectual Property Rights);
 - (2) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
 - (3) in any way that damages, interferes with or interrupts the supply of the Services;
- (e) you will not alter or modify the Services in any way that is not contemplated by the purposes of the Services; and
- (f) if you are required to provide access to the SaaS Solution, and/or the Site to a third party in connection with any regulatory or audit requirement:
 - (1) you must notify us in writing, obtain our consent to such access in writing and provide all information and documentation that we reasonably request, including a non-disclosure agreement duly executed by the relevant third party in our favour;
 - (2) you must not allow any third party to use in any manner whatsoever our Services (including the SaaS Solution) without our prior written consent, which consent may be withheld at our sole discretion. You agree that any consent that we provide in respect hereof may be subject to certain conditions, and you agree to be bound by such conditions; and
 - (3) you are responsible and liable for all acts of that third party as if they were your own acts.

20. Payment

20.1 You agree to pay us the Fees, and any other amount payable to us under this Agreement, in accordance with this Agreement.

20.2 If any payment has not been made in accordance with this Agreement, we may (at our absolute discretion):

- (a) after a period of 5 Business Days, cease providing the Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so (including legal fees, debt collector fees and mercantile agent fees); and/or
- (b) 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 after the due date for payment in accordance with this Agreement.

20.3 To the maximum extent permitted by law, there will be no refunds or credits for any unused Services (or part thereof).

20.4 You agree that we may set-off or deduct from any monies payable to you under this Agreement, any amounts which are payable by you to us (whether under this Agreement or otherwise).

21. Warranties

21.1 We agree:

- (a) that we are properly constituted and have the right and authority to enter into this Agreement;
- (b) that we will use reasonable efforts to ensure all of our obligations under this Agreement will be carried out by suitably competent and trained Personnel and in an efficient and professional manner;
- (c) that we have legal authority to grant you the SaaS Licence;

- (d) that all pre-existing Intellectual Property Rights in the Services (with the exception of the property rights in any Third-Party Inputs) will be owned, held or licensed by us;
- (e) that the provision of the Services does not and will not infringe any other person's Intellectual Property Rights; and
- (f) that the Services will operate and be provided in accordance with this Agreement.

21.2 You represent, warrant and agree that:

- (a) you will provide us with any information that we require in order to provide the Services to you (for example, information that we need to set up the Accounts);
- (b) there are no legal restrictions preventing you from entering into this Agreement;
- (c) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete;
- (d) you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services are or will be fit or suitable for your particular purposes), unless expressly stipulated in this Agreement;
- (e) you are not and have not been the subject of an Insolvency Event;
- (f) if applicable, you hold a valid ABN which has been advised to us; and
- (g) if applicable, you are registered for GST purposes.

22. Intellectual Property

Our Intellectual Property Rights

22.1 As between the Parties, you acknowledge and agree that we own all Intellectual Property Rights in:

- (a) Our Materials;
- (b) New Materials or Improvements; and
- (c) any Feedback,

and as between the Parties, these Intellectual Property Rights will at all times vest, or remain vested, in us, and nothing in this Agreement constitutes an assignment or transfer of such Intellectual Property Rights. To the extent that ownership of these Intellectual Property Rights does not automatically vest in us, you agree to do all acts necessary or desirable to assure our title to such rights.

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

22.3 You also agree that:

- (a) 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;
- (b) you must not whether directly or indirectly, without our prior written consent:
 - (1) copy, modify, adapt, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble or decompile any part of the Services or otherwise attempt to discover any part of the source code of the SaaS Solution;
 - (2) use any unauthorised, modified version of the Services, including (without limitation) for the purpose of building similar or competitive software or for the purpose of obtaining unauthorised access to the SaaS Solution;
 - (3) unless authorised under this Agreement, use the Services in a web-enabled form for the purposes of third-party analysis or view via the internet or other external network access method;
 - (4) rent or sublicense the use of the Services to any third parties, without our prior written consent or as otherwise permitted under this Agreement;
 - (5) take any action that may compromise or jeopardise our Intellectual Property Rights in the Services or otherwise;
 - (6) remove or deface any confidentiality, copyright or other proprietary notice placed on the Services; or
 - (7) use the Services in any way that involves service bureau use, outsourcing, renting, reselling,

sublicensing, concurrent use of a single user login, or time-sharing.

Your Intellectual Property Rights

- 22.4 As between the Parties, you will continue to own all Intellectual Property Rights in Your Materials.
- 22.5 You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, to use Your Materials, solely for the purposes for which they were developed and for the performance of our obligations under this Agreement, and as otherwise contemplated by this Agreement.
- 22.6 If you or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with this Agreement, you agree to (and agree to ensure that your Personnel) consent to our use or infringement of those Moral Rights.

Your Data

- 22.7 As between the Parties:
 - (a) Your Data is and will remain your property; and
 - (b) you retain any and all rights, title and interest in and to Your Data, including all copies, modifications, extensions and derivative works.
- 22.8 You grant us a limited, non-exclusive, revocable licence to process and use Your Data solely as required to provide the Services to you and your Authorised Users in accordance with this Agreement. This includes:
 - (a) supplying the Services to you and your Authorised Users (including enabling your Personnel to access and use the Services), and otherwise performing our obligations under this Agreement;
 - (b) diagnosing problems with the Services and providing customer support;
 - (c) enhancing and improving the functionality of the Plerion platform;
 - (d) performing Analytics, provided such data is aggregated and anonymised; and
 - (e) developing and providing other services, provided we de-identify Your Data.
- 22.9 No access to your cloud environment

For the avoidance of doubt, we do not access, copy, store, or otherwise use any data from your cloud environments, accounts, or workloads unless explicitly provided by you for the purpose of integration or troubleshooting. The rights granted under Clause 22.8 are strictly limited to data related to your Plerion subscription and usage.
- 22.10 Data protection and retention
 - (a) We will implement and maintain industry-standard technical and organisational measures to protect Your Data.
 - (b) Up on termination or expiry of this Agreement, we will delete or anonymise Your Data within 30 days, unless we are required to retain it by law.
- 22.11 You acknowledge and agree that:
 - (a) we are not responsible for the integrity or existence of any data on the Computing Environment, network or any device controlled by you, your Authorised Users or your Personnel;
 - (b) we assume no responsibility or Liability for Your Data. You are solely responsible for Your Data and the consequences of using, disclosing, storing or transmitting it. It is your responsibility to backup Your Data; and
 - (c) any inaccuracies or incompleteness in Your Data may impact the performance and output of the Services.
- 22.12 You represent, warrant, acknowledge and agree that:
 - (a) You have obtained all necessary rights, releases, and permissions to provide or have Your Data provided to us and to grant the rights granted under this Agreement;
 - (b) Your Data (and its transfer, use, collection, storage, or disclosure by us as contemplated by this Agreement) does not and will not violate any Laws (including those relating to export control and electronic communications) or the rights of any third party, including any Intellectual Property Rights, rights of privacy, or rights of publicity; and
 - (c) you will not provide us with access to or request us to process any sensitive or regulated data (such as financial, health, or personally identifiable information) unless otherwise expressly agreed in writing.
- 22.13 This clause 22 will survive termination or expiry of this Agreement.

23. Analytics

- 23.1 You acknowledge and agree that we may monitor, analyse and compile statistical, behavioural 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.
- 23.2 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.
- 23.3 We may use and disclose to our service providers anonymous data about your access and use of the SaaS Solution for the purpose of helping us improve the SaaS Solution. Any such disclosure will not include details of your, or any Authorised User's, identity or personal information.

24. Confidential Information

- 24.1 Each Receiving Party agrees:
- (a) not to disclose the Confidential Information of the Disclosing Party to any third party;
 - (b) to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and
 - (c) to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.
- 24.2 The obligations in clause 24.1 do not apply to Confidential Information that:
- (a) is required to be disclosed in order for the Parties to comply with their obligations under this Agreement;
 - (b) is authorised to be disclosed by the Disclosing Party;
 - (c) is in the public domain and/or is no longer confidential, except as a result of a breach of this Agreement; or
 - (d) must be disclosed by Law or by a regulatory authority, including under subpoena.
- 24.3 Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 24. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 24.
- 24.4 This clause 24 will survive the termination of this Agreement.

25. Privacy

- 25.1 For the purposes of this clause, **Personal Information** and **Sensitive Information** have the meanings given in the *Privacy Act 1988* (Cth), and also include any similar terms as defined in any other privacy law applicable to you.
- 25.2 You must, and must ensure that your Personnel and your Authorised Users, at all times comply with the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any privacy or anti-spam Laws applicable to you in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with this Agreement (**Privacy Laws**).
- 25.3 Without limiting this clause 25, you must ensure that:
- (a) you have collected, used, stored and otherwise dealt with Your Data in accordance with all Privacy Laws; and
 - (b) we are capable of collecting, using, storing and otherwise dealing with Your Data, in the manner contemplated by this Agreement, without infringing any third-party rights or violating any Privacy Laws.
- 25.4 Without limiting this clause 25, you agree to only disclose Your Data, to the extent it contains Personal Information if:
- (a) you are authorised by Privacy Laws to collect the Personal Information and to use or disclose it in the manner required by this Agreement;
 - (b) you have informed the individual to whom the Personal Information relates, that it might be necessary to disclose the Personal Information to third parties; and
 - (c) where any Personal Information is Sensitive Information, you have obtained the specific consent to that disclosure from the individual to whom the Sensitive Information relates.
- 25.5 We agree to handle any Personal Information you provide to us, solely for the purpose of performing our obligations

under this Agreement, and in accordance with any applicable Laws and our Privacy Policy.

26. Australian Consumer Law

- 26.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the Services by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**).
- 26.2 If the ACL applies to you as a consumer, nothing in this Agreement excludes your Consumer Law Rights as a consumer under the ACL. You agree that our Liability for the Services provided to an entity defined as a consumer under the ACL is governed solely by the ACL and this Agreement.
- 26.3 Subject to your Consumer Law Rights, we exclude all express and implied warranties, and all material, work and services (including the Services) are provided to you without warranties of any kind, either express or implied, whether in statute, at Law or on any other basis.
- 26.4 This clause 26 will survive the termination or expiry of this Agreement.

27. Exclusions to liability

- 27.1 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 interruptions or downtime to the SaaS Solution as a result of any Scheduled or Emergency Maintenance;
 - (b) your Computing Environment;
 - (c) your, your Authorised Users, or your Personnel's acts or omissions;
 - (d) any use or application of the Services by a person or entity other than you, or other than as reasonably contemplated by this Agreement;
 - (e) any works, services, goods, materials or items which do not form part of the Services (as expressed in this Agreement), or which have not been provided by us;
 - (f) any Third Party Inputs; and/or
 - (g) any event outside of our reasonable control (including a Force Majeure Event, and a fault, defect, error or omission in the Computing Environment or Your Data).
- 27.2 This clause 27 will survive the termination or expiry of this Agreement.

28. Limitations on liability

- 28.1 Despite anything to the contrary, to the maximum extent permitted by law:
- (a) neither Party will be liable for Consequential Loss;
 - (b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by the other Party to mitigate its loss; and
 - (c) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to us resupplying the Services to you or, in our sole discretion, to us repaying you the amount of the SaaS Solution Fee paid by you to us in respect of the supply of the relevant Services to which the Liability relates.
- 28.2 This clause 28 will survive the termination or expiry of this Agreement.

29. Termination

- 29.1 Either Party may terminate this Agreement at any time by giving 30 days' notice to the other Party in your Account.
- 29.2 This Agreement will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) (which notice will be deemed to have been received by the Defaulting Party 5 days after it is sent) if:
- (a) the other Party (**Defaulting Party**) breaches a material term of this Agreement 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.
- 29.3 Upon expiry or termination of this Agreement:
- (a) we will immediately cease providing the Services;
 - (b) we will be entitled to anonymise or permanently delete all Your Data within 1 month from expiry or termination of this Agreement;

- (c) without limiting your Consumer Law Rights, you agree that any payments made by you to us are not refundable to you;
- (d) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under this Agreement; and
- (e) upon request by us, 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, subject to clause 22.

29.4 We will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to this Agreement constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of this Agreement.

29.5 Where this Agreement is terminated by you pursuant to clause 29.1, you agree to pay us:

- (a) the Cancellation Fee. You acknowledge and agree that the Cancellation Fee is a genuine pre-estimate of our loss; and
- (b) our additional costs, reasonably incurred, and which arise directly from such termination (including legal fees and debt collector fees).

29.6 Where this Agreement is terminated by us pursuant to clause 29.2 you agree to pay us:

- (a) You are required to continue paying the SaaS Solution Fee on a monthly basis until the end of the Initial Term as per the original agreement; and
- (b) The total remaining contract value for the Initial Term will remain due and payable in full, and we reserve the right to invoice for the outstanding amount as a lump sum or continue charging the monthly SaaS Solution Fee until the end of the Initial Term.

29.7 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.

29.8 This clause 29 will survive the termination or expiry of this Agreement.

30. GST

30.1 If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.

30.2 If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued if required, and any payments to give effect to the adjustment must be made.

30.3 If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.

30.4 The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

30.5 You are responsible for all taxes, levies or duties imposed by taxing authorities in your own country, and you shall be responsible for the payment of them. We have no responsibility to them on your behalf.

31. General

31.1 **Access:** The Services may be accessed in Australia and overseas. We make no representation that the Services comply with the Laws (including Intellectual Property Laws) of any country outside of Australia. If you access the Services from outside Australia, you do so at your own risk and you are responsible for complying with the Laws in the place you access the Services.

31.2 **Advertising and linked websites:** The SaaS Solution may contain links to websites of third parties. You acknowledge and agree that we do not endorse, and we are not responsible for the content contained on, any such linked websites or any hyperlink contained in a linked website. Your access to or use of any linked website is at your own risk.

- 31.3 Amendment:** This Agreement may only be amended by written instrument executed by the Parties.
- 31.4 Assignment:** Subject to clause 31.5, a Party must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 31.5 Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with this Agreement, to a debt collector, debt collection agency, or other third party.
- 31.6 Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.
- 31.7 Disputes:** You agree to notify us should you have concerns relating to our performance of the Services. A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of New South Wales, Australia 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.

Following mediation, if you are registered outside of Australia, and if the relevant Parties are unable to resolve the Dispute, the Dispute may be referred by either Party (by notice in writing to the other Party) to arbitration in accordance with the Australian Centre for International Commercial Arbitration (**ACICA**) rules. Once a Dispute has been referred to the ACICA, the Parties agree to be bound by the decision of the ACICA. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one.

Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

- 31.8 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.
- 31.9 Entire agreement:** Subject to your Consumer Law Rights, this Agreement contains the entire understanding between the Parties and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in this Agreement, and this Agreement supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 31.10 Force Majeure:** A Party will not be liable for any delay or failure to perform its obligations under this Agreement 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 this Agreement.
- 31.11 Further assurance:** You agree to promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and your obligations under it.
- 31.12 Governing law:** This Agreement is governed by the laws of New South Wales, Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales, Australia and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 31.13 Illegal Requests:** We reserve the right to refuse any request for or in relation to any Services that we deem inappropriate, unethical, unreasonable, illegal or otherwise non-compliant with this Agreement.
- 31.14 Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 31.15 Publicity:** You agree that we may advertise or publicise the broad nature of our provision of the Services to you, including on our website or in our promotional material.
- 31.16 Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 31.17 Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part

of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

32. Definitions

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

Account means an account accessible to you and/or your Authorised Users to use the Services, including, the SaaS Solution.

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.

Additional Services means any Services not set out in the Services description in the Schedule which we agree to provide to you.

Agreement means these terms and conditions and any documents attached to, or referred to in, each of them.

Authorised User, if applicable, means a user permitted to access and use the Services under your Account, as further particularised in the Schedule.

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

Cancellation Fee means the fee payable by you in accordance with this Agreement as set out in your Account.

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

Confidential Information includes information which:

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

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

Consequential Loss includes any consequential loss, indirect loss, real 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 Fees under this Agreement will not constitute "Consequential Loss" for the purposes of this definition.

Consumer Law Rights has the meaning given in clause 26.1.

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

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

Feedback means any idea, suggestion, recommendation or request by you or any of your Personnel and your Authorised Users, your customers, whether made verbally, in writing, directly or indirectly, in connection with the Services (including as part of the beta testing).

Fees means the SaaS Solution Fee, Cancellation Fee, Beta Services Fees, Trial Services Fees and includes all Expenses, if any.

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.

Harmful Code means any computer program or malware or other code that is harmful, destructive, disabling or which assists in or enables theft, alternation, denial of service, unauthorised access to or disclosure, destruction or corruption of information or data.

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.

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

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

Intellectual Property means any copyright, registered or unregistered designs, patents or trade mark rights, 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 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 this Agreement (including, without limitation, using our Intellectual Property for commercial purposes or on-selling our Intellectual Property to third parties).

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

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

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

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

New Materials means all Intellectual Property developed, adapted, modified or created by either Party or their respective Personnel in the provision of the Services, but excludes Our Materials, Your materials.

Our Materials means all work, models, processes, technologies, strategies, materials, information, documentation, and services that we may provide to you under this Agreement, 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.

Privacy Laws has the meaning given in clause 25.2

Privacy Policy means any privacy policy set out on our Site;

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

Schedule means the schedule to this Agreement.

Services means the services that we agree to perform under this Agreement, as further particularised in the Schedule.

Site means the platform on which our software as a service is made available to you.

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

Third Party Inputs means third parties or any goods and services provided by third parties, including customers, end users, suppliers, transportation or logistics providers or other subcontractors which the provision of the Services may be contingent on, or impacted by.

Your Data means the information, materials, logos, documents, qualifications and other Intellectual Property or data inputted by you, your Personnel and your Authorised Users 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 this Agreement. Your Data does not include the Analytics, or 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 Materials means all work, models, processes, technologies, strategies, materials, information, documentation and services (including Intellectual Property), owned or licensed by you or your Personnel before the Commencement Date and/or developed by or on behalf of you or your Personnel independently of this Agreement.

33. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (b) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (c) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (d) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (e) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
- (f) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (g) words like including and for example are not words of limitation;
- (h) a reference to time is to local time in New South Wales, Australia; and
- (i) a reference to \$ or dollars refers to the currency of the United States Dollar (USD) from time to time.