

# Last Yard Customer and Licence Agreement

Effective date: 2 February 2022

This Last Yard Customer and Licence Agreement (the “Agreement”) is between you and Last Yard Pty Ltd (ABN 98 114 916 504) (“Last Yard”). If you are agreeing to this Agreement not as an individual but on behalf of your company, then “Customer” or “you” means your company, and you are binding your company to this Agreement. **PLEASE NOTE THAT IF YOU SIGN UP FOR A LAST YARD PRODUCT USING AN EMAIL ADDRESS FROM YOUR EMPLOYER OR ANOTHER ENTITY, THEN (A) YOU WILL BE DEEMED TO REPRESENT SUCH PARTY, (B) YOUR CLICK TO ACCEPT WILL BIND YOUR EMPLOYER OR THAT ENTITY TO THESE TERMS, AND (C) THE WORD “YOU” IN THESE TERMS WILL REFER TO YOUR EMPLOYER OR THAT ENTITY.**

This Agreement becomes binding when you have accepted this agreement or when Last Yard is used, whichever is the sooner. This Agreement does not have to be signed in order to be binding.

## 1 Scope of Agreement

- 1.1 This Agreement governs your initial purchase as well as any future purchases made by you that reference this Agreement. This Agreement includes any Orders and any other referenced policies and attachments (including our Privacy Policy).
- 1.2 Last Yard provides software and services that enable customers to create, manage, distribute, print, publish and display retail communication which includes but is not limited to tickets, signs, talkers, promotions, digital boards, digital shelf edge, advertising, social media posts and display advertising and mobile device display and communication.
- 1.3 This Agreement governs (a) Last Yard’s downloadable software products (“Software”), (b) Last Yard’s cloud-based solutions (“Cloud Products”), (c) Last Yard software loaded on Media Players and compute sticks (“Software”) and (d) any related support or professional services provided by Last Yard. Software and Cloud Products, together with related Documentation, are referred to as “Products”.
- 1.4 Product Specific Terms. Some Products may be subject to additional terms specific to that product as set forth in the Last Yard Product Specific Terms. By accessing or using a Product covered by the Product Specific Terms, you also agree to the Last Yard Product Specific Terms.
- 1.5 You wish to use Products across your store network to manage your head office and store shelf-labelling, ticketing, signage, promotions, digital boards, digital shelf edge, advertising processes, social media posts and display advertising and mobile device display advertising and communications.

## 2 Account Registration

- 2.1 You may need to register for a Last Yard account in order to place orders or access or receive any Products. Any registration information that you provide to us must be accurate, current and complete. You must also update your information so that we may send notices, statements and other information to you by email or through your account. You are responsible for all actions taken through your accounts. You acknowledge and agree that if you provide information that is intentionally inaccurate, not current or incomplete in a

material way, or we have reasonable grounds to believe that such information is untrue, inaccurate, not current or incomplete in a material way, we have the right to immediately suspend access to Products or terminate this Agreement.

### 3 Orders

- 3.1 Last Yard's Product ordering documentation or process ("Order Form") will specify your authorized scope of use for the Products, which may include: (a) numbers of licences or copies, (b) number and type of Authorized Users, (c) storage or capacity, or (d) other restrictions or billable units (as applicable, the "Scope of Use"). The term "Order Form" also includes any applicable Product or Support and Maintenance renewal, or purchases you make to increase or upgrade your Scope of Use.
- 3.2 Reseller Orders. This Agreement applies whether you purchase Products directly from Last Yard or through Last Yard partners or resellers "Reseller". If you purchase through a Reseller, you will sign an Order Form with a Reseller and the Reseller is responsible for the accuracy of any such Order. Resellers are not authorized to make any commitments on Last Yard's behalf, and we are not bound by any obligations to you other than what we specify in this Agreement.

### 4 Authorised Users

- 4.1 Only the specific stores and individuals for whom you have paid the required fees and whom you designate through the applicable Product ("Authorized Users") may access and use the Products. Some Products may allow you to designate different types of Authorized Users, in which case pricing and functionality may vary according to the type of Authorized User. Authorized Users may be you or your Affiliates' employees, representatives, consultants, contractors, agents, or other third parties who are acting for your benefit or on your behalf. "Affiliate" means an entity which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with a party, where "control" means the power to direct the management or affairs of an entity, and "ownership" means the beneficial ownership of 50% (or, if the applicable jurisdiction does not allow majority ownership, the maximum amount permitted under such law) or more of the voting equity securities or other equivalent voting interests of the entity.
- 4.2 You may increase the number of Authorized Stores and Users permitted to access your instance of the Product by placing a new Order Form or, sending us written instructions, or in some cases, directly through the Product. In all cases, you must pay the applicable fee for the increased number of Authorized Users. You may decrease the number of Authorized Users under this Agreement but refunds for retrospective Authorized Users decreases will not be paid. You are responsible for compliance with this Agreement by all Authorized Users. All use of Products by you and your Authorized Users must be within the Scope of Use and solely for the benefit of you or your Affiliates.

### 5 Terms

- 5.1 Access to Software and Cloud Products. This agreement commences on the agreed commencement date of you using the Software or Cloud Products "Commencement Date" as defined on the Order Form. Subject to the terms and conditions of this Agreement, Last Yard grants you a non-exclusive, non-sublicensable and non-transferable licence to access and use the Software or Cloud Products during the applicable Subscription Term (as defined on the

Order Form) in accordance with this Agreement. If Last Yard offers client software (e.g., a desktop or mobile application) for any Cloud Product, you may use such software solely with the Cloud Product, subject to the terms and conditions of this Agreement. You acknowledge that our Cloud Products are on-line, subscription-based products and that we may make changes to the Cloud Products from time to time.

- 5.2 You may request additional enhancements, for example; additional or changes to ticketing data integrations and ticket template redesigns. Last Yard will invoice you for these hours and you will pay. This support will be provided as quickly as is reasonably possible.
- 5.3 In the unusual event that you request Last Yard to purchase a font licence, or artwork, image, or video licence to support your template designs, you will be invoiced for these fees and you will pay.
- 5.4 “Your Data” means any data, content, code, video, images or other materials of any type that you upload, submit or otherwise transmit to or through Software or Cloud Products. You will retain all right, title and interest in and to Your Data in the form provided to Last Yard. Subject to the terms of this Agreement, you hereby grant to Last Yard a non-exclusive, worldwide, royalty-free right to (a) collect, use, copy, store, transmit, modify and create derivative works of Your Data, in each case solely to the extent necessary to provide the applicable Products to you and (b) for Products that enable you to share Your Data or interact with other people, to distribute and publicly perform and display Your Data as you (or your Authorized Users) direct or enable through the Product
- 5.5 Security. Last Yard implements and maintains physical, technical and administrative security measures designed to protect Your Data from unauthorized access, destruction, use, modification, or disclosure. We also maintain a compliance program that includes independent third-party audits and certifications. However, you understand that use of the Products necessarily involves transmission of Your Data over networks that are not owned, operated or controlled by us, and we are not responsible for any of Your Data lost, altered, intercepted or stored across such networks. We cannot guarantee that our security procedures will be error-free, that transmissions of Your Data will always be secure or that unauthorized third parties will never be able to defeat our security measures or those of our third party service providers.

## 6 Responsibility for Your Data

- 6.1 General. You must ensure that your use of Products and all Your Data is at all times compliant with all applicable local, state, federal and international laws and regulations (“Laws”). You represent and warrant that: (i) you have obtained all necessary rights, releases and permissions to provide all Your Data to Last Yard and to grant the rights granted to Last Yard in this Agreement and (ii) Your Data and its transfer to and use by Last Yard as authorized by you under this Agreement do not violate any Laws (including without limitation those relating to export control and electronic communications) or rights of any third party, including without limitation any intellectual property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorized herein is not inconsistent with the terms of any applicable privacy policies. Other than its security obligations under Section 5.5 (Security), Last Yard assumes no responsibility or liability for Your Data, and you shall be solely responsible for Your Data and the consequences of using, disclosing, storing, or transmitting it.
- 6.2 Indemnity for Your Data. You will defend, indemnify and hold harmless Last Yard from and against any loss, cost, liability or damage, including attorneys’ fees, for which Last Yard

becomes liable arising from or relating to any claim relating to Your Data, including but not limited to any claim brought by a third party alleging that Your Data, or your use of the Products in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law. This indemnification obligation is subject to your receiving (a) prompt written notice of such claim (but in any event notice in sufficient time for you to respond without prejudice); (b) the exclusive right to control and direct the investigation, defence, or settlement of such claim; and (c) all reasonable necessary cooperation of Last Yard at your expense.

- 6.3 Removals and Suspension. Last Yard has no obligation to monitor any content uploaded to the Products. Nonetheless, if we deem such action necessary based on your violation of this Agreement or in response to reasonable takedown requests that we receive, we may (1) remove Your Data from the Products or (2) suspend your access to the Products. We will generally alert you when we take such action and give you a reasonable opportunity to cure your breach, but if we determine that your actions endanger the operation of the Products or other users, we may suspend your access immediately without notice. You will continue to be charged for the Products during any suspension period. We have no liability to you for removing or deleting Your Data from or suspending your access to any Products as described in this section.
- 6.4 Deletion at End of Subscription Term. We may remove or delete Your Data within a reasonable period of time after the termination of your Subscription Term.
- 6.5 Product Specific Terms. Some of our Products may be subject to additional terms specific to that service as set forth in our Last Yard Product Specific Terms.

## 7 Support and Maintenance

- 7.1 Support Services. Last Yard will as part of your subscription provide you support services including initial telephone-based and web-based store training and access to the Last Yard help desk.
- 7.2 Last Yard strives for 100% uptime and uses commercially reasonable efforts to make the Service available 24 hours a day, 365 days a year, except for: (i) planned downtime and monthly maintenance windows and (ii) any unavailability caused by circumstances beyond our reasonable control.
- 7.3 Our Software and Cloud Products may contain features designed to operate in conjunction with online applications and offline software products provided by third parties, for example product information data feeds (non-Last Yard applications). To use those features of the Software or Cloud Products you may be required to install, enable or otherwise obtain access to one or more non-Last Yard applications. The terms and conditions on which you acquire any of those non-Last Yard applications are solely between you and the third party provider.
- 7.4 If you access non-Last Yard applications for use with our Software and Cloud Products, you authorise us to allow the third party providers of those non-Last Yard applications to access any and all data you provide to us in connection with these Terms, so that the non-Last Yard applications can be used by you in conjunction with our Software and Cloud Products.
- 7.5 If, for any reason whatsoever, you discontinue your use of any non-Last Yard applications, we may cease to provide the corresponding features of our Software and Cloud Products designed to operate in conjunction with those non-Last Yard applications.
- 7.6 To the maximum extent permitted by law, Last Yard is not liable for: (a) any third party products or services (including non-Last Yard applications), whether or not they are identified

or endorsed by us as certified or otherwise; (b) any disclosure, modification or deletion of your data resulting from access to your data by a third party provider of any non-Last Yard applications; or (c) any loss or damage suffered or incurred by you as a result of the discontinuation, cessation or unavailability of any non-Last Yard applications operating with the corresponding features of our Software and Cloud Products

- 7.7 Last Yard may provide you with enhancements, upgrades and bug fixes for our Software and Cloud Products from time to time. Wherever possible the upgrade or maintenance will be undertaken outside of standard business hours on a given day. However, we may need to undertake emergency maintenance at other times, including during business hours, and will reasonably endeavour to notify you in advance of any such maintenance.
- 7.8 It is your responsibility to put in place the necessary administrative policies and procedures to ensure the safe and effective use of the Products. These policies and procedures should reflect common best practices for this type of information technology. Some practices include, but are not limited to the following:
- a) Passwords etc. – we will provide user IDs and passwords, registration codes to your Authorized users. It is your responsibility to properly manage these user IDs, codes and passwords, to keep these user IDs, codes and passwords safe and to give your users adequate training in protection and management of these codes and passwords. User IDs are granted to individual, named persons and may not be shared. You are responsible for any and all actions taken using your accounts and passwords, and you agree to immediately notify Last Yard of any unauthorized use of which you become aware.
  - b) Security – the Product includes some security features, however all external security (e.g. workstation and network security) is your responsibility.
  - c) Data Backup – the Product does not provide data backup or restore functions of your data hosted on your servers. This is your responsibility and Last Yard takes no responsibility for the loss of any data.
  - d) Disaster Recovery – You must ensure that non Last Yard data is secure in the case of any disaster scenarios.
- 7.9 We will not modify Software or Cloud Products to comply with your specific requirements unless we believe that there is sufficient general commercial merit. Modifications are made at the discretion of Last Yard.
- 7.10 The Product must be used as intended and this is generally specified in the user documentation.

## 8 Financial Terms

- 8.1 Delivery. We will deliver the Software licence keys or Cloud Product login instructions to the email addresses specified in your Order Form. All deliveries under this Agreement will be electronic. For the avoidance of doubt, you are responsible for installation of any Software, and you acknowledge that Last Yard has no further delivery obligation with respect to the Software after delivery of the licence keys.
- 8.2 Payment. You agree to pay all Subscription Fees in accordance with each Order Form by the due dates as defined by the number of days ("Payment Term"). Subscription Fees are invoiced in advance and are calculated by multiplying the total number of stores in your group ("Store Count") by the Last Yard charges for subscription to use Products as defined on the Order Form ("Store Fee"). Unless otherwise specified in your Order Form, you will pay using

the method ("Payment Method") as defined on the Order Form and you will pay all amounts in AUD dollars at the time you place your Order Form. All amounts are non-refundable, non-cancellable and non-creditable. Last Yard reserves the right to suspend Product access or services or terminate this Agreement if the Store Subscription Fees is overdue. If you purchase Products through a Reseller: (a) you owe payment to the Reseller as agreed between you and the Reseller, but you acknowledge that we may terminate your rights to use Products if we do not receive our corresponding payment from the Reseller, (b). Your order details (e.g., the Products you are entitled to use, the number of Stores, Store Fee, Subscription Term, etc.) will be as stated in the Order placed with us by the Reseller on your behalf, and Reseller is responsible for the accuracy of any such Order as communicated to us.

- 8.3 If you add Authorized Users during your Subscription Term, we will charge you for the increased number of Authorized Users pursuant to the then-currently applicable rates in your next billing cycle. You agree that we may bill your credit card for renewals, additional users, and unpaid fees, as applicable.
- 8.4 Subscription Terms and Renewals. The Software and Cloud Products are provided on a subscription basis for a set term specified in your Order Form ("Subscription Term"). Unless either party cancels your subscription prior to the expiration of the current Subscription Term, your subscription will automatically renew for an equivalent Subscription Term. You will provide any notice of non-renewal by contacting our support or sales teams. All renewals will be charged at the then current rates.

## 9 Restrictions

- 9.1 You may not, without the express written permission of Last Yard;
- a) use a Product unless it is being used solely for the purpose of processing your own data and specifically not for the data or business of any other store, individual or organisation or at any other physical location without its own Last Yard Agreement and subscription;
  - e) reproduce a Product in any way, shape or form, except as permitted by this Agreement;
  - f) alter a Product except as permitted by the normal operation of the Product;
  - g) produce or manufacture or commission the manufacture or production of, any product or process that is similar to the Product;
  - h) loan, rent, lease, transfer, show, demonstrate or explain the Products to a third party except as part of a transfer or other use expressly permitted by this Agreement;
  - i) reverse engineer, decompile or disassemble any Product or any part thereof;
  - j) carry on or be concerned or interested in any business (whether alone; or jointly with or as a director, consultant, manager, servant, agent, or partner of any person, firm, or corporation; or with their respective employees, servants, or agents; or as the trustee or beneficiary of any trust; or otherwise by any means whatsoever) that does any of the things specified in the paragraphs above in this Section 9.1; or
  - k) transfer this Agreement to a third party unless you first receive the written consent of Last Yard, the third party agrees to an Agreement in the same terms as this Agreement and the third party pays the required fees, and you stop using the Product.
- 9.2 You must not use Products for any illegal or improper purpose or for any activity which breaches any laws or standards (including generally accepted community standards), to enable you or any other person to defame, harass, threaten or offend any person or to



distribute obscene, indecent, inflammatory or unlawful material. You must ensure that your use of any materials you obtain by using and accessing the Product comply with all applicable laws, including the Corporations Act 2001 (Cth).

- 9.3 All rights not expressly granted to the user of the Products under this Agreement are expressly reserved to Last Yard.

## 10 Intellectual Property

- 10.1 All Intellectual Property Rights and title to all proprietary information in and rights to any software provided by or used by you including the Products, all Product databases and the information contained in such databases, any de-identified aggregated data submitted and accepted by you for use in the Product or created by the Product from your individually identifiable information submitted by you pursuant to this Agreement and de-identified of all your data identifiers, and any derivative works prepared by or for Last Yard from all of the foregoing including, without limitation, any reports, calculations and models based thereon including without limitation all copyrights, patent rights, moral rights, and other rights in works of authorship, trademarks, trade secret rights, and any other rights and interest in any of the foregoing shall be and remain at all times for all purposes with Last Yard.
- 10.2 Cloud Products are made available on a limited access basis, and no ownership right is conveyed to you, irrespective of the use of terms such as “purchase” or “sale”. From time to time, you may choose to submit Feedback to us. We may in connection with any of our Products freely use, copy, disclose, license, distribute and exploit any Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise. No Feedback will be considered your Confidential Information, and nothing in these Terms limits our right to independently use, develop, evaluate, or market products or services, whether incorporating Feedback or otherwise.
- 10.3 For purposes of this Agreement, “Intellectual Property Rights” includes all, or any intermediate version or portion, of any formulas, processes, outlines, algorithms, ideas, inventions, know how, techniques, intangible, proprietary and industrial property rights and all intangible and derivative works thereof, including without limitation any and all now known or hereafter existing, in and to (i) trademarks, trade name, service marks, slogans, domain names, uniform resource locators or logos; (ii) copyrights, moral rights, and other rights in works of authorship, including, but not limited to, compilations of data, (iii) patents and patent applications, patentable ideas, inventions and innovations; (iv) know-how and trade-secrets; and (v) registrations, applications, renewals, extensions, continuations, divisions or reissues of the foregoing.

## 11 Confidentiality

- 11.1 Aggregate Data. Last Yard may use de-identified data in electronic or other formats.
- 11.2 Individual Customer Data. The Customer data created by the Customer shall be the exclusive property of Customer, subject to the rights granted to Last Yard in this Agreement. The Customer hereby agrees that the return of that information is not feasible, as it will have been integrated into the Product and the related, proprietary databases of Last Yard.
- 11.3 Certain independent Customers share some Individual Customer Data with the Customer’s parent organisation and/or support office and/or head office. Customers can choose not to share Individual Customer Data by disabling this Data Sharing option in the Product or by

sending an email request to support@lastyard.com. Last Yard will action and confirm your request within 3 business days.

- 11.4 Confidential Information. Except as provided for in this Agreement, each party shall only use the other party's Confidential Information solely in the performance of its obligations under this Agreement, treat as confidential such Confidential Information, and not disclose it, except as expressly permitted by this Agreement. Confidential Information may be disclosed by a party to its legal counsel, accountants and authorized employees, contractors or consultants who have a need to use the Confidential Information; provided that it contractually obligates them to a duty of confidentiality no less restrictive than the duty imposed by this Section and remains liable for any breach of confidentiality by such legal counsel, accountants, or authorized employees, contractors or consultants. Without limiting the foregoing, each party shall treat the other party's Confidential Information with at least the same degree of care that it uses to prevent the disclosure of its own Confidential Information, but in no event less than reasonable care. Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information. Upon the expiration, cancellation or termination of this Agreement, each party shall return or destroy all copies of the other party's Confidential Information.
- 11.5 Confidential Information shall not include information that the recipient can prove (a) was generally available to the public at the time it was received or thereafter becomes generally available to the public through no fault of the receiving party, (b) was known to each party prior to the time of disclosure without being subject to a duty of confidentiality, or was independently developed without any use of the Confidential Information, (c) becomes known from a third party who obtained it lawfully and was not under a duty of confidentiality to the disclosing party, or (d) is disclosed in response to an order or requirement of a court, administrative agency, or other governmental body or a requirement of a recognised stock exchange; provided, however, that each party must to the extent practicable (1) vigorously oppose disclosure of the other party's Confidential Information, and (2) provide prompt advance notice of any potential disclosure. Any Confidential Information so disclosed will otherwise remain subject to the provisions of this Section.
- 11.6 Each party acknowledges that breach of this Section by it would result in irreparable harm to the other party, for which money damages would be an insufficient remedy, and therefore that the other party will be entitled to seek injunctive relief to enforce the provisions of this Section.

## 12 Insurance

- 12.1 Last Yard will, from the Commencement Date, arrange and maintain a reputable insurance company:
- a) a product liability policy of insurance to the minimum value of twenty million dollars (\$20,000,000.00) million per occurrence;
  - b) a public liability policy of insurance to the minimum value of twenty million dollars (\$20,000,000.00) million per occurrence;
  - c) workers' compensation insurance as required by law;
  - d) professional indemnity insurance in a reasonable amount to cover the obligations of Last Yard under this Agreement.

## 13 Termination



- 13.1 Either party may terminate this Agreement before the expiration of the Subscription Term if the other party materially breaches any of the terms of this Agreement and does not cure the breach within thirty (30) days after written notice of the breach. Either party may also terminate the Agreement before the expiration of the Subscription Term if the other party ceases to operate, declares bankruptcy, or becomes insolvent or otherwise unable to meet its financial obligations.
- 13.2 You may choose to terminate this Agreement (including all Orders) at any time for any reason upon written notice to us, but, upon any such termination (i) you will not be entitled to a refund of any pre-paid fees and (ii) if you have not already paid all applicable fees for the then-current Subscription Term, any such fees that are outstanding will remain due and payable.
- 13.3 Once the Agreement terminates, you (and your Authorized Users) will no longer have any right to use or access any Products, or any information or materials that we make available to you under this Agreement, including Last Yard Confidential Information. You are required to delete any of the foregoing from your systems as applicable (including any third party systems operated on your behalf) and provide written certification to us that you have done so at our request.
- 13.4 The following provisions will survive any termination or expiration of this Agreement: Sections 6.2 (Indemnity for Your Data), 8.2 (Payment), 10.2 (Feedback), 11 (Confidentiality), 13 (Termination), 14 (Limited Warranty), 16 (General).

## 14 Limited Warranty

- 14.1 Mutual Warranties. Each party represents and warrants that it has the legal power and authority to enter into these Terms.
- 14.2 Last Yard undertakes that: (a) it shall make available to you any enhancements, updates, bug fixes (including implementation and configuration files and settings) for Products that are released by Last Yard during the term of this Agreement; (b) Last Yard has full right and title to grant this Agreement and neither the entering of this Agreement nor the performance by Last Yard of its obligations will cause it to be in breach of any Agreement to which it is a party or is subject; (c) the use by you of the Products shall not infringe any copyright, trade mark, registered design, or similar or other intellectual property rights of any third party, nor give rise to payment by you of any royalty to any third party or to any liability to pay compensation to a third party.
- 14.3 You acknowledge that: (a) the acknowledgments at the beginning of this Agreement are correct; (b) no promise, representation or warranty or undertaking has been made or given by Last Yard, or any person or company on its behalf, in relation to the profitability of, or any other consequences or benefits to be obtained from the delivery or use of the Product or any accompanying manuals, and written materials, other than those advised to Last Yard and acknowledged by Last Yard before using the Product; (c) you are not entitled to rely on any representations unless they are acknowledged in writing or by return e-mail by Last Yard; (d) no other representations have been made or relied on by you; and (e) the entire risk as to the quality, performance and suitability of the Product is borne by you, and it is your responsibility to thoroughly test and evaluate the Product.
- 14.4 Subject to Section 14.3, you acknowledge that: (a) you are satisfied with the functionality of the Product; (b) if you choose to subscribe with the Product and pay the fees, you have relied upon your own skill and judgment in doing so.

- 14.5 Last Yard cannot and does not warrant that the Product is suitable for all localities in the world. It is your responsibility to ensure that the Product is suitable for the locality in which it will be used.
- 14.6 Last Yard cannot and does not warrant that the Product is totally error free or that the Product may not, in some circumstances, fail to function. If the Product contains errors or the Product fails to function, Last Yard will endeavour to remedy the defects in subsequent upgrades, updates or bug fixes.
- 14.7 Our Warranties. We warrant, for your benefit only, that we use commercially reasonable efforts to prevent introduction of viruses, Trojan horses or similar harmful materials into the Cloud Products (but we are not responsible for harmful materials submitted by you or End Users) (the "Performance Warranty").
- 14.8 Warranty Remedy. We will use commercially reasonable efforts, at no charge to you, to correct reported non-conformities with the Performance Warranty. If we determine corrections to be impracticable, either party may terminate the applicable Subscription Term. In this case, you will receive a refund of any fees you have pre-paid for use of the Cloud Product for the terminated portion of the applicable Subscription Term. The Performance Warranty will not apply: (i) unless you make a claim within thirty (30) days of the date on which you first noticed the non-conformity, (ii) if the non-conformity was caused by misuse, unauthorized modifications or third-party products, software, services or equipment or (iii) to No-Charge Products. Our sole liability, and your sole and exclusive remedy, for any breach of the Performance Warranty are set forth in this Section 14.
- 14.9 To the full extent permitted by the laws applicable to this Agreement, any conditions or warranties imposed by such laws are hereby excluded. Insofar as liability under or pursuant to any legislation may not be excluded, such liability is limited to replacement of the Product or correction of the defects in the Product or associated material, or refund of the fee, at the exclusive option of Last Yard.
- 14.10 Except to the extent provided above, under no circumstances shall Last Yard or any agent, related company or related person be liable for any loss, damage or injury (including without limitation any loss of profit, indirect, consequential or incidental loss, damage or injury) arising from the supply or use of the Product and any accompanying materials or any failure by Last Yard or any related company to perform any obligation or observe any terms of this Agreement.
- 14.11 The warranties given by Last Yard will not apply if Last Yard is not responsible for the problem, for example, if the problem results from: (a) an unauthorised modification made to the Product by you or any other party; (b) the media (where applicable) being subjected to accident, abuse, or improper use.

## 15 Modern Slavery

- 15.1 "Modern Slavery" includes any one or more of the following:

- a) any conduct involving the use of any form of slavery, human trafficking, exploitation, forced labour practices or servitude to exploit children or other persons taking place in a supply chain;
  - b) any other slavery-like practices; and
  - c) any conduct constituting an offence or as otherwise defined as Modern Slavery, under any Modern Slavery Law.
- 15.2 "Modern Slavery Law" means any laws and any primary, delegated or subordinate legislation and regulations (and any binding or non-binding guidelines issued by any entity or person so authorised under Modern Slavery Law), applicable in Australia or otherwise applicable to Last Yard from time to time with respect to reporting on or addressing the risks of Modern Slavery, or both, including in business operations and supply chains and with respect to related purposes and includes but is not limited to the Modern Slavery Act 2018 (Cth) and the Modern Slavery Act 2018 (NSW).
- 15.3 Last Yard must:
- a) comply with each Modern Slavery Law;
  - b) not do anything that will cause you, any Affiliate or Last Yard to breach any Modern Slavery Law;
  - c) provide information as reasonably requested by you from time to time and which is reasonably required by you, or any Affiliate, to comply with obligations under each Modern Slavery Law (if any); and
  - d) inform you promptly of any risks or issues Last Yard becomes aware of within the operations or supply chains of Last Yard involving, or in connection with, Modern Slavery.
- 15.4 Last Yard acknowledges and agrees that you may use and publish any information or documentation provided to you by Last Yard pursuant to Section 15.3 for the purposes of satisfying your obligations or the obligations of any Affiliate under any Modern Slavery Law.

## 16 General

- 16.1 This Agreement embodies all the terms that are binding between the parties, and replaces all previous representations and proposals not embodied herein.
- 16.2 We may modify the terms and conditions of this Agreement from time to time, by posting the modified Agreement on our website. We will specify the effective date of the modifications. Modifications to this Agreement will take effect at the next renewal of your Subscription Term and will automatically apply as of the renewal date unless you elect not to renew pursuant to Section 8.4 (Subscription Terms and Renewals).
- 16.3 This Agreement shall be governed by the laws of Western Australia and shall be deemed to have been made in Western Australia. Any proceedings arising out of or in connection with this Agreement may be brought in any court of competent jurisdiction in Western Australia.
- 16.4 If any provision of this Agreement is held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, the validity and enforceability of the remaining provisions shall not be affected.
- 16.5 You agree Last Yard can disclose publicly the fact that you are a customer of Last Yard and approve the use of your business logo for marketing purposes. You agree to help Last Yard write a case study and/or testimonial that will appear on Last Yard's website. Final content of the case study and/or testimonial will be sent to You for your approval (provided or withheld

in its sole discretion) prior to being published on the Last Yard website (lastyard.com) or elsewhere.

- 16.6 You acknowledge that you will only operate the Product on a device that is running an operating system supported by the associated vendor. Last Yard recommends you operate the latest release of the Chrome browser.
- 16.7 We are always striving to improve our Products. In order to do so, we need to measure, analyse, and aggregate how users interact with our Products, such as usage patterns and characteristics of our user base. We collect and use analytics data regarding the use of our Products. For more information on these techniques and the type of data collected, please read our Privacy Policy.
- 16.8 We collect certain data and information about you and your use of our Products. We collect and use all such data and information in accordance with our Privacy Policy, which you acknowledge.
- 16.9 Nothing in this Agreement prevents us from disclosing Your Data to the extent required by law, subpoenas or court orders, but we will use commercially reasonable efforts to notify you where permitted to do so.