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# 1. DEFINITIONS AND INTERPRETATION

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## 1.1 Definitions

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In this document:

Agreement means this Agreement for the provision of the Services and/or Products by Diverse Services to the Customer.

Billing Dispute means a disagreement or difference between the Customer and Diverse Services as to Charges as detailed in an invoice provided to the Customer by Diverse Services in accordance with clause 5.

Billing Dispute Notice means a notice provided by the Customer to Diverse Services in accordance with clause 5.6.

Business Day means any week day in Western Australia not being a proclaimed State or Australian public holiday.

Charges means the charge(s) in respect of a Product and/or Service as set out or provided for in the applicable Quote or Proposal, as varied from time to time in accordance with this Agreement.

Commencement Date means date of the execution of the Agreement.

Controller has the meaning it has in section 9 of the Corporations Act.

Corporations Act means the Corporations Act 2001 [Cth].

Customer's Site means locations or facilities of the Customer as set out in the Quote or Proposal at which Diverse Services provides the Products and/or Services.

End User means the operator of the Customer's Services and/or Products.

Force Majeure means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances include but are not limited to:

- a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- c) strikes

GST means the goods and services tax, as defined in "A New Tax System (Goods and Services Tax) Act 1999".

Initial Term means a period of three [3] years from the Commencement Date

Insolvent Event means:

- a) a Controller, receiver, manager, receiver and manager, trustee administrator or similar officer is appointed in respect of a person or any asset of a person;
- b) a liquidator or provisional liquidator is appointed in respect of a corporation;

- c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - (I) appointing a person referred to in paragraph (a) or (b);
  - (II) winding up a corporation; or
  - (iii) proposing or implementing a scheme of arrangement other than under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- d) any event or conduct occurs which would enable a court to grant a petition or an order is made, for the bankruptcy of an individual or his or her estate under any Insolvency Provision;
- e) a moratorium of any debts of a person, a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with a person's creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered declared or agreed to, or is applied for and is not withdrawn or dismissed within 7 days;
- f) a person becomes, or admits in writing that it is or is declared to be or is taken under any applicable law to be, insolvent or unable to pay its debts; or
- g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person.
- h) Insolvency Provision means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

Interest Rate means, at a particular date, 1.5% above the Commonwealth Bank Corporate Overdraft Reference Rate published on the first day of the month in which that particular date falls.

Office Hours means during standard office opening times which are defined here as during 8:30am to 5:30pm on a Business Day. Order for Service means an order for any Service that the Customer has submitted to Diverse Services on an order form signed and submitted and which has been accepted by Diverse Services.

Party means a party to this Agreement.

Personnel means officers, employees, agents, sub-contractors and representatives.

Products means the provision of the goods and information detailed in the Quote or Proposal specified as being provided by Diverse Services to the Customer.

Proposal means the document this Agreement forms part of, which outlines the scope of the length of engagement, pricing, Products and Services to be provided by Diverse Services.

Quote means the quotation for providing Products and or Services to the Customer on a form marked quote.

Related Bodies Corporate means a body corporate that is a holding company of a second body corporate, a subsidiary of that second body corporate or a subsidiary of a holding company of a second body corporate.

Services means the provision of the services and information detailed in the Quote or Proposal specified as being provided by Diverse Services to the Customer.

Term means the Term as defined in the Quote or Proposal.

## 1.2 Interpretation

In this Agreement:

- a) headings are for convenience: and unless the context indicates otherwise:
- b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- c) a word or phrase in the singular number includes the plural, a word or phrase in the plural number includes the singular, and a word indicating a gender includes every other gender;
- d) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - a reference to:
    - (I) a party, clause schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement;
    - (II) a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
    - (III) an agreement includes any undertaking, deed, agreement and legally enforceable arrangement whether in writing or not;
    - (IV) a document includes an agreement in writing and any deed certificate, notice, instrument or document of any kind;
    - (V) a document in writing includes a document recorded by any electronic, magnetic, photographic or other medium by which information may be stored or reproduced;
    - (VI) a document (including this Agreement) includes a reference to all schedules exhibits attachments and annexures to it and is to that document as varied, novated, ratified or replaced from time to time;
    - (VII) legislation or to a provision of legislation includes any consolidation, amendment, re-enactment, substitute or replacement of or for it, and refers also to any regulation or statutory instrument issued, or delegated legislation made under it;
    - (VIII) a person includes an individual, the estate of an individual, a corporation, an authority, an unincorporated body, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
    - (IX) right includes a power, remedy, authority, discretion or benefit;
    - (X) conduct includes an omission, statement or undertaking, whether in writing or not;
    - (XI) the word "includes" in any form is not a word of limitation;
- e) the words "for example" or "such as" when introducing an example do not limit the meaning of the words to which the example relates to that example or to examples of a similar kind;
- f) a reference to a day is to a period of time commencing at midnight and ending 24 hours later;
- g) if a period of time dates from a given day or the day of an act or event it is to be calculated exclusive of that day; and
- h) a reference to "\$" or "dollar" is to Australian currency.
- i) a reference to a "quarter" in relation to a quarter year means a period of 3 months commencing 1 January, 1 April, 1 July or 1 October;
- j) all representations, warranties and indemnities are continuing and survive termination or expiry of this Agreement;
- k) in the event of any inconsistency between the terms of this Agreement, the order of priority will be firstly an Order for Service, then the relevant Services Schedule, then this Master Services Agreement and then any other document attached to, or subsequently incorporated into, this Agreement; and
- l) in the event, and to the extent, of any inconsistency or where intended to be a replacement rather than an addition, the most recent Order for Service or Service Schedule will prevail over any earlier Order(s) for Service or Service Schedule(s).



## 2. PRODUCTS AND/OR SERVICES

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### 2.1 Provision of the Products and/or Services

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Diverse Services will provide the Customer with the Products and/or Services set out in a Quote and/or Proposal on the terms set out in the Quote and/or Proposal and on these terms. Where there is any inconsistency between the terms set out in any Quote and/or Proposal and these terms, the terms set out in the Quote and/or Proposal will prevail.

## 3. ORDERING AND ACCEPTANCE PROCEDURES

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### 3.1 Order

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On signing the Quote and/or Proposal the parties agree to be bound by these terms.

### 3.2 Additional Orders

---

During the Term, the Customer may order an additional Products and/or Service at any time from Diverse Services via a Quote or Proposal.

## 4. NON-PERFORMANCE

---

- a) Nothing in this Agreement requires Diverse Services to provide the Services and/or Products where this would place Diverse Services in breach of any law or any contract to which it is a party, provided that Diverse Services has used reasonable endeavours (excluding the payment of money or provision of other valuable consideration) to obtain all necessary consents and authorisations from third parties concerning the provision of the Services and/or Products.
- b) If Diverse Services is unable to provide the Services and/or the Products without breaching a contract to which it is a party Diverse Services will use reasonable endeavours to:
  - (I) source services and/or products which are equivalent to the Services and/or Products;
  - (II) advise the Customer of the alternative services and/or products and the Charge for those service and/or product; and
  - (III) if required by the Customer supply the alternative services and products for the specified charges pursuant to this Agreement

## 5. PAYMENT AND EXPENSES

---

### 5.1 Charges for the Services

---

- a) The Charges payable for the Product and Services are set out in the relevant Quote and/or Proposal or as otherwise agreed in writing between the Parties from time to time
- b) Unless otherwise agreed or set out in the Quote or Proposal all Services will be performed during Office Hours
- c) Unless otherwise agreed, all Services provided outside Office Hours will be charged at:
  - (I) 1.5 times the rate specified in a Quote or Proposal on weekdays; and
  - (II) 2 times the rate specified in a Quote or Proposal on weekends or public holidays.

### 5.2 Payment

---

The Customer must pay all amounts owing by the Customer under this Agreement by direct debit, cash or cheque and without set-off, counterclaim or deduction to Diverse Services.

### 5.3 Time of Payment

---

- a) Diverse Services will invoice the Customer monthly for Charges due under this Agreement or at a time as specified in the Quote or Proposal
- b) Subject to clause 5.5(c), the Customer must pay all invoices within 30 days of the date of the invoice. If the Customer fails to pay the invoice within this period, the Customer at Diverse Services's discretion may be liable to pay interest on the outstanding amount at the Interest Rate, which shall accrue daily from the due date for payment until the date payment in full is received by Diverse Services

### 5.4 Taxes

---

- a) All prices quoted for supplies made and/or to be made under this Agreement are in Australian dollars and are exclusive of GST
- b) If GST is applicable to any supply made by Diverse Services under this Agreement, Diverse Services is entitled to add to the amount otherwise payable an additional amount for the applicable GST
- c) The Customer hereby agrees to pay Diverse Services such GST charge in the same manner and at the same time as the payment for the relevant supply
- d) Diverse Services will issue tax invoices to the Customer for the purposes of GST
- e) If required by applicable law, Diverse Services will give the Customer an adjustment note arising from the adjustment event relating to a taxable supply made under, or in connection with, this Agreement within 30 days after the date Diverse Services becomes aware of the adjustment event

### 5.5 Billing Dispute

---

- a) In the event of a Billing Dispute, the Customer must notify Diverse Services in writing (Billing Dispute Notice) of the matters in dispute within 30 days of the date of the invoice (in relation to which time is of the essence)
- b) A Billing Dispute must be initiated only in good faith
- c) The Customer must pay the undisputed portion of the invoice in accordance with 5.3

- d) Diverse Services is not obliged to accept a Billing Dispute Notice in relation to an invoice unless the Customer has complied with clause 5.5(c)
- e) Subject to clause 5.6 Diverse Services will investigate a Billing Dispute within thirty (30) days of receipt by Diverse Services of a Billing Dispute Notice and will report to the Customer on its findings as soon as possible after completing such investigation
- f) If the Billing Dispute cannot be resolved by agreement within ten (10) after Diverse Services reports on its findings, the disputed amount shall be dealt with in accordance with clause 19

## 5.6 Notification of Disputed Invoices

---

In the event that the Customer does not:

- a) provide Diverse Services with a Billing Dispute Notice within the time period specified in clause 5.5(a); or
- b) provide any requested additional information to Diverse Services within 14 days of receipt of Diverse Services's request for further information; or
- c) pay amounts (excluding any disputed amounts) in the invoice to which the Billing Dispute relates by the due date, then all amounts in the invoice to which the Billing Dispute relates will be deemed to be agreed and accepted by the Customer and acknowledged as a debt due and payable in accordance with the terms of clause 5.3.

## 5.7 Suspension of Services

---

Where the Customer is late in paying any Invoices, in addition to being liable to pay interest to Diverse Services under clause 5.3, Diverse Services may at its sole discretion suspend its provision of any or all of the Products and/or Services to the Customer until all outstanding invoices have been paid. Diverse Services will be deemed not to be in breach of this Agreement where any breach arises directly or indirectly from the suspension by Diverse Services of the Products and/or Services pursuant to this clause 5.7.

## 5.8 Security

---

The Customer grants to Diverse Services a Security Interest as defined in the Personal Property Securities Act (2009) over the Customer and its assets as security for the payment of any amount due and payable under this Agreement.

# 6. IMPLIED TERMS

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## 6.1 Implied terms excluded

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Subject to clause 6.2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.

## 6.2 Statutory limitation of liability

---

Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of, or exercise of, or liability under, such condition or warranty, the condition or warranty will be deemed to be included in this Agreement. However, where the statute permits liability to be limited, the liability of Diverse Services for any breach of such condition or warranty will be limited, at the option of Diverse Services, to one of the following:

- a) if the breach relates to goods:
  - (I) the replacement of the goods or the supply of equivalent goods;
  - (II) the repair of the goods;
  - (III) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (IV) the payment of the cost of having the goods repaired; and
- b) if the breach relates to services:
  - (I) the supplying of the services again; or
  - (II) the payment of the cost of having the services supplied again

## 7. WARRANTIES

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### 7.1 Mutual Warranties

---

Each Party represents and warrants to the other Party that:

- a) it is duly incorporated under the jurisdiction of its incorporation, with all requisite corporate power and authority to own, lease and operate its assets and to carry on its business as currently owned, leased, operated and conducted;
- b) it has full power and all necessary rights to enter into this Agreement and to perform its obligations according to the terms of this Agreement; and
- c) No Insolvent Event has occurred nor is subsisting or threatened

## 8. INDEMNITIES

---

### 8.1 Diverse Services to indemnify Customer

---

Subject to clauses 8.3 Diverse Services is liable for and must indemnify and keep indemnified the Customer and the Customer's Personnel, against any liability, loss, claim or proceeding whatsoever arising under any statute, equity or at common law in respect of:

- a) any breach of this Agreement;
- b) any damage to property, real or personal;
- c) any liability to third parties arising from use of the Services and/or Products or any other goods or services supplied by Diverse Services, including any infringement of third party patents, copyright and registered designs;
- d) any injury to persons (including economic loss), including injury resulting in death;
- e) the application of any applicable law, including any workers compensation law, which deems the Customer an employer of Diverse Services's Personnel or otherwise makes the Customer liable for any loss arising out of the death or illness or injury to any of Diverse Services's Personnel which would, but for that applicable law, be the responsibility of Diverse Services; and
- f) any wages due and payable by Diverse Services to its Personnel

arising by Diverse Services's default out of or in the course of or in connection with the provision of the Services and/or Products except to the extent that such damage, injury, loss, claim, liability or proceeding is caused by or contributed to by any negligent act or omission of the Customer or of any of the Customer's Personnel.

## 8.2 Customer to indemnify Diverse Services

---

Subject to clause 8.3 the Customer is liable for and must indemnify and keep indemnified Diverse Services and Diverse Services's Personnel, against any liability, loss, claim or proceeding whatsoever arising under any statute, equity or at common law in respect of:

- a) any breach of the Agreement;
- b) any damage to property, real or personal;
- c) any liability to third parties arising from use of goods or services supplied by the Customer, including any infringement of third party patents, copyright and registered designs; and
- d) any injury to persons (including economic loss), including injury resulting in death;
- e) the application of any applicable law, including any workers compensation law, which deems Diverse Services an employer of the Customer's Personnel or otherwise makes Diverse Services liable for any loss arising out of the death or illness or injury to any of the Customer's Personnel which would, but for that applicable law, be the responsibility of the Customer; and
- f) any wages due and payable by the Customer to its Personnel

arising by the Customer's default out of or in the course of or in connection with the provision of the Services and/or Products by Diverse Services except to the extent that such damage, injury, loss, claim, liability or proceeding is caused by or contributed to by any act or omission of Diverse Services or of any of Diverse Services's Personnel

## 8.3 No liability

---

Neither Party will be liable to the other Party for any consequential, special, indirect or punitive loss, damage, cost or expense whatsoever (including loss of profits, loss of data, liability to third parties and any other expectation benefit).

- a) Diverse Services does not warrant that the Products and/or Services will be free of interruptions, delays, faults or errors. Diverse Services will not be responsible for any loss and/or damage to the Customer's business and/or the Customer's End User's that may result from any interruptions, delays, faults or errors in the supply of the Products and/or Services.
- b) Diverse Services has no liability to the Customer, any of the Customer's End Users or to any other person, for:
  - (I) the acts or omissions of any third party, including the suppliers which have been engaged by Diverse Services for the purpose of supplying or maintaining a Product and/or Service supplied to the Customer under this Agreement;
  - (II) faults or defects in Products and/or Services which are caused by the Customer's own conduct or misuse or the conduct or misuse of the Customer's End Users;
  - (III) any loss of revenue or profits, loss of data, loss of bargain and damage to reputation or for any form of indirect or consequential loss, whether in respect of breach of contract, equity, intended conduct, tort or otherwise, arising out of, or in connection with, the provision of the Products and/or Services or this Agreement;
  - (IV) faults or defects in the Products and/or Services that arise due to equipment or cabling owned or leased by the Customer or an End User or otherwise in the Customer's control or the Customer's End User's control;
  - (V) faults or defects in the Products and/or Services that arise due to failure by the Customer or any third party (other than a contractor or agent engaged by Diverse Services) to appropriately maintain any equipment or cabling relevant to the supply of the Product and/or Services;
  - (VI) the use of any Service and/or Product for other than its intended purpose; or any act or omission of the Customer or any third party including the repair or maintenance of any Services or Products supplied by Diverse Services

## 8.4 Limitation of liability

---

Any liability and indemnity under this clause 8 will be limited, at the option of the Party liable or indemnifying, to one of the following:

- a) if the liability or indemnity relates to goods:
  - (I) the replacement of the Products or the supply of equivalent Products;
  - (II) the repair of the Products
  - (III) the payment of the cost of replacing the Products or of acquiring equivalent Products; or
  - (IV) the payment of the cost of having the Products repaired; and
- b) if the liability or indemnity relates to Services:
  - (I) the supplying of the Services again; or
  - (II) the payment of the cost of having the Services supplied again; or
- c) if the liability or indemnity relates to either Products or Services, an amount equal to the total amount of Charges payable in the 12 months preceding the time when the liability or obligation to indemnify arose

## 8.5 Survival

---

The indemnities in clauses 8.1 and 8.2 and the limitations in clauses 8.3 and 8.4 survive the termination or expiry of this Agreement.

## 9. TITLE AND RISK

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### 9.1 Title and risk: Products

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- a) Subject to clause 9.1(b), title to Products shall not pass to the Customer until the Customer has paid for the Products. Risk in the Products will pass to the Customer upon delivery of the Products to the Customer
- b) Title to Products which are software shall remain with the applicable licensor(s) at all times

### 9.2 Title and risk: specifically developed items

---

- a) Title to and risk in all goods, work, items, materials and information produced or developed by or on behalf of Diverse Services or under the Customer's direction specifically in performance of an obligation under the Agreement to produce or develop them as part of the Products or Services shall pass to or vest in, and shall remain in, the Customer immediately on them being produced or developed and delivered as items capable of separate ownership.
- b) The Customer grants to Diverse Services an irrevocable licence in respect of any item, title to which has passed to or vested in the Customer pursuant to clause 9.2(a), to use that item in the course of or for the purposes of providing the Products or Services.

### 9.3 Title and risk: other items

---

Except as provided in clauses 9.1 and 9.2, title to all goods, work, items, materials and information produced or developed by or on behalf of Diverse Services in the course of or for the propose of providing or to enable it better to provide the Products or Services shall be and remain in Diverse Services.

## 10. DELIVERY

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### 10.1 Place of delivery

---

Diverse Services shall deliver the Products to the place of delivery designated by the Customer and agreed to by Diverse Services.

### 10.2 Delivery by instalments

---

Diverse Services may, at its discretion, deliver the Products by instalments in any sequence. Where the Products are so delivered by instalments, each instalment shall be deemed to be the subject of a separate contract and no default or failure by Diverse Services in respect of any one or more instalments shall vitiate the contract in respect of Products previously delivered or undelivered Products.

### 10.3 Delay

---

Any dates quoted by Diverse Services for the delivery of the Products are approximate only and shall not form part of the contract. Diverse Services shall not be liable for any delay in delivery of the Products and/or Services, howsoever caused.

## 11. CONFIDENTIALITY

---

### 11.1 Keep Confidential Diverse Services Material

---

The Customer will keep confidential all information or material belonging to Diverse Services or in Diverse Services's possession, power or control and which is obtained as a result of Diverse Services providing the Services, attending Diverse Services's premises or otherwise. This obligation shall not apply to information or material which is lawfully within the public domain, or to the extent disclosure is required by law or subject to clause 11.3.

### 11.2 Keep Confidential Customer Material

---

Diverse Services will keep confidential that information or material provided by the Customer to Diverse Services, where at the time of its provision, the Customer advised Diverse Services in writing that the relevant information or material was to be kept confidential. This obligation shall not apply to information or material which is lawfully within the public domain, or to the extent disclosure is required by law or subject to clause 11.3.

### 11.3 Use of Confidential Information

---

A Party may make a disclosure of the other Party's Confidential Information (including the terms of this Agreement), if that other Party reasonably believes it necessary, to:

- a) its suppliers of professional services (including, without limitation, legal and financial advisers, financiers and insurance carriers) if those persons undertake to keep such disclosed information confidential;

- b) for credit purposes where the persons to whom such information is disclosed undertake to keep the disclosed information confidential;
- c) any of its employees to whom it is necessary to disclose such information if that employee undertakes to keep the disclosed information confidential; or
- d) comply with any applicable law or requirement of any governmental agency.

## 11.4 Uncertainty

---

If there is any uncertainty by any Party regarding whether any information or material is in the public domain, they will treat that information or material as confidential until the other Party advises that Party in writing that it is not confidential.

## 12. RELATED BODIES CORPORATE

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### 12.1 Diverse Services's Related Bodies Corporate

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Diverse Services may:

- a) provide Products and/or Services to the Customer through the use of any of Diverse Services's Related Bodies Corporate; and/or
- b) invoice the Customer via any of Diverse Services's Related Bodies Corporate.

The Customer acknowledges that any debt the Customer owes under this Agreement is a debt owed to Diverse Services and that Diverse Services may take any necessary action in relation to any such debt notwithstanding that the right or obligation giving rise to that debt has been satisfied by a Related Body Corporate of Diverse Services or that the invoice for that debt has been provided to the Customer by a Related Body Corporate of Diverse Services.

### 12.2 The Customer's Related Bodies Corporate

---

- a) Diverse Services may, upon the Customer's written request and on such conditions as Diverse Services reasonably requires, provide Products and/or Services to the Customer's Related Bodies Corporate.
- b) If Diverse Services agrees to provide Products and/or Services to such Related Bodies Corporate, the Customer and the Customer's Related Bodies Corporate are jointly and severally liable to Diverse Services for performance of the obligations (including payment obligations) in relation to those Products and/or Services under this Agreement.

## 13. FORCE MAJEURE

---

### 13.1 No Liability for Force Majeure

---

Diverse Services will not be liable for any delay or failure to perform its obligations under this Agreement if such failure or delay is due (whether partially or wholly) to Force Majeure.



## 13.2 Diverse Services to notify Customer

---

Diverse Services will notify the Customer as soon as practicable of any anticipated delay due to Force Majeure. The performance of Diverse Services's obligations under this Agreement will be suspended for the period of the delay due to Force Majeure.

## 13.3 Delay

---

If a delay due to Force Majeure exceeds forty (40) Business Days, the Customer may terminate this Agreement immediately on providing notice to Diverse Services. If the Customer gives such notice to Diverse Services:

- a) Diverse Services shall refund moneys previously paid by the Customer under this Agreement for which no Services have been provided; and
- b) The Customer shall pay Diverse Services the Charges in relation to Products or services rendered or costs and expenses incurred prior to termination (as reasonably determined by Diverse Services) for which no payment has been made by the Customer.

## 14. ACCESS TO INFORMATION AND SITE

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The Customer will, at its own cost, provide Diverse Services with:

- a) all reasonable information, aid and assistance;
- b) access to the Customer's sites, computer hardware and software, personnel and company information; and
- c) floor space, communications, equipment and any ancillary support services at the Customer's sites, reasonably required by Diverse Services in order to provide the Products and/or Services (Diverse Services consultants will have their own laptop personal computers when working at the Customer's Site).

## 14. SERVICE PERIOD AND TERMINATION

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### 14.1 Service Period

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The Services shall commence on the Commencement Date and continue for the Term.

### 14.2 Termination

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Without limiting the generality of any other clause in this Agreement or the law concerning termination of contracts, a Party (in this clause "Notifying Party") may terminate this Agreement immediately by notice in writing to the other Party (in this clause "Defaulting Party") if:

- a) the Defaulting Party commits a material breach of this Agreement and the Defaulting Party fails to remedy the breach within thirty (30) days after the Defaulting Party has served notice in writing requiring it to do so;
- b) any payment due pursuant to this Agreement remains unpaid for a period of thirty (30) Days;
- c) the Defaulting Party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any Insolvent Event;

- d) the Defaulting Party, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- e) the Defaulting Party, being a natural person, dies; or
- f) the Defaulting Party ceases or threatens to cease conducting its business in the normal manner.

### 14.3 Additional rights

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If this Agreement is terminated for any reason, Diverse Services may:

- a) retain any moneys paid to Diverse Services by the Customer;
- b) invoice the Customer a reasonable sum for Products or Services provided in respect of work which no sum has been previously invoiced;
- c) retake possession of all property of Diverse Services or its sub-contractors in the possession of the Customer;
- d) be regarded as discharged from any further obligations under this Agreement; and
- e) pursue any additional or alternative remedies available to it.

Immediately after the termination of this Agreement, Diverse Services will, return to the Customer all of the Customer's property in Diverse Services's possession.

### 14.4 Unpaid sums

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- a) On termination of this Agreement, all unpaid sums owing by the Customer will become due and payable to Diverse Services, and if any money owing is not paid by the Customer within 14 Business Days of the date of termination the Customer will be liable to reimburse Diverse Services for all reasonable legal costs and disbursements incurred by Diverse Services in the recovery of such sums.
- b) This clause 15.4 will survive the termination of this Agreement.

## 15. VARIATION

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### 15.1 Variation of the Proposal

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- a) If at any time the Customer requests a variation to the Quote or Proposal, the Parties must immediately review the then current Products and/or Services and Charges and agree to the revised Products and/or Services and Charges based on the estimated increased/decreased costs incurred to provide the revised Products and/or Services to the Customer. Once the Parties have agreed the revised Products and/or Services and the revised Charges, the Parties must replace the Quote or Proposal accordingly.
- b) Any additional work required by the Customer outside the scope of work set out in the Quote or Proposal must be the subject of a request as provided for in clause 3.2.

### 15.2 Variation of this Agreement

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- a) Except as otherwise provided in this Agreement, the provisions of this Agreement will not be varied, except by agreement in writing signed by the Parties.

## 16. INSURANCE

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### 16.1 Diverse Services' Insurance

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- a) Diverse Services must at its own cost and expense effect and maintain for so long as it is performing or causing to be performed the Services, the undermentioned insurance policies.
- (I) Professional Liability Insurance covering liability to third Parties for claims relating to death, bodily injury, loss of property, damage to property and financial loss resulting from any act, error or omission in the conduct of the business which breaches the professional duty of care for the amount of \$1 million.
  - (II) Workers Compensation Insurance for not less than \$50 million.
  - (III) Public Liability Insurance covering liability to third Parties for claims relating to death, bodily injury, loss of property, damage to property and financial loss resulting from any act, error or omission in the conduct of the business which breaches the professional duty of care for the amount of \$2M.
- b) Diverse Services must not do, or cause or allow any of Diverse Services's Personnel to do, any act or make any omission which would provide grounds for an insurer to refuse payment of any claim made under any insurance policy effected in accordance with this Agreement.

### 16.2 Certificates of Currency

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Diverse Services must provide the Customer with a scanned copy in Adobe portable document format (PDF) of all certificates of currency for each insurance policy to be affected in accordance with this Agreement signed by either Diverse Services's insurer or insurance broker within 14 days of a request by the Customer.

### 16.3 Cancellation of Insurance

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Diverse Services must notify the Customer of the cancellation or lapse of any insurance policy as soon as is reasonably possible. Failure to comply with these requirements may result in Diverse Services being instructed to cease all work and being removed from site until such non-compliance is rectified. This shall be at Diverse Services's cost.

### 16.4 Subcontractor's Insurance

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If Diverse Services subcontracts any part of the Services, with the Customer's prior written approval, or pursuant to any other right or obligation under this Agreement, then Diverse Services must ensure that the subcontractor effects similar insurance (to the extent applicable) to that specified in this clause and must provide proof of such insurance in accordance with clause 17.2.

### 16.5 Failure to Maintain Insurance

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If Diverse Services fails to effect or to keep in force any of the insurance which is required by the Agreement to be affected, then the Customer may, in addition to any other rights and remedies it may have:

- a) effect and keep in force any such insurance and pay any such premiums as may be necessary for that purpose and may recover as a debt due from Diverse Services the amount so paid and the amount of any excess borne by the Customer or deduct such amounts from any monies due to Diverse Services pursuant to this Agreement; and/or

- b) suspend payment of any monies due under the Agreement until Diverse Services fulfils its obligations under this clause.

## 18. NOTICES

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Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- a) must be in writing;  
 b) must be addressed as follows (or as otherwise notified by that Party to the other Party from time to time in writing):

Name: Diverse Services Pty Ltd

Address: Level 8 160 St Georges Terrace, East Perth WA 6000

Email: info@diverseserivces

For the attention of: The Managing Director

Name:

Address:

Email:

For the attention of:

- c) must be signed by the Party making it or (on that Party's behalf) by its solicitor or any attorney, director, secretary or authorised agent of that Party;  
 d) must be delivered by hand or posted by prepaid post to the address, or sent by email to the email address, of the addressee in accordance with this clause 18; and  
 e) is taken to be received by the addressee:
- (I) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (II) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting;
  - (III) (if sent by email and the sender does not receive a message from its internet service provider or the recipient's mail server indicating that it has not been successfully transmitted, on the day of sending if a Business Day, otherwise on the next Business Day) and
  - (IV) (in the case of delivery by hand) on delivery;

but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day ["business day" meaning any week day not being a proclaimed State or Australian public, and is a day on which banks are open for business generally, in the place to which the communication is posted, sent or delivered].

## 19. DISPUTE RESOLUTION

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### 19.1 Notice

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If there is a dispute between the Parties in respect of any matter concerning this Agreement including its interpretation or application or the determination of any matter required to be determined pursuant to any provision of this Agreement (in this clause "Dispute"), a Party may give to the other Party notice in writing specifying that a Dispute has arisen and identifying the subject matter of the Dispute in adequate detail (in this clause "Dispute Notice").

### 19.2 Court Proceedings

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If there is a Dispute between the Parties, no Party may commence any court proceedings relating to the Dispute unless it has complied with the provisions of this clause 19. A Party may at any time apply to a court of competent jurisdiction for any urgent interlocutory or declaratory relief, despite anything contained in this clause 19.

### 19.3 Meeting of Management

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Within ten [10] Business Days after receipt of a Dispute Notice, each of the Parties must procure its managing director (or a delegate of the managing director agreed to by the other Party) to meet and negotiate in good faith with each other to resolve the Dispute expeditiously and informally.

### 19.4 Mediation

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- a) If resolution of the Dispute is not achieved within ten [10] Business Days after the first convening of the meeting referred to in clause 19.3, each of the Parties must ensure that the Dispute is referred to mediation in Perth to be administered by the Australian Commercial Dispute Centre (or another mediation organisation agreed to by the Parties) to appoint a mediator to facilitate the negotiation by the Parties of a resolution of the Dispute and arrange a conference between the Parties in the presence of that mediator with a view to the resolution of the Dispute.
- b) Each Party must ensure that its representatives attend at any conference referred to in this clause 19.4. At any mediation conference referred to in this clause 19.4, the mediation will be conducted under and in accordance with such procedures and rules as may be agreed between the Parties and, failing agreement, in accordance with the mediation rules of the mediation organisation in force at the date of the mediation.
- c) Evidence of anything said, documents presented, admissions made, or matters raised in the course of any conference with the mediator will be confidential to the Parties and the mediator and will not, unless the Parties consent, be admissible in any subsequent litigation proceedings. Failing any agreement to the contrary between the Parties, the costs of the mediation will be shared equally between the Parties.

### 19.5 Court Proceedings

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Subject to clause 19.1, if the resolution of the Dispute is not achieved within thirty [30] days in accordance with clause 19.4, either Party may commence court proceedings.

### 19.6 Continuing Obligations

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Despite the submission of a Dispute to the procedure under this clause 19, the Parties must continue to perform their obligations under this Agreement.

## 19.7 Survival

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This clause 19 will survive termination of this Agreement.

## 20. GENERAL PROVISIONS

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### 20.1 Restriction on engagement of employees

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During the course of this Agreement, and for twelve (12) months after the termination of this Agreement for any reason, each the Customer Party will not directly or indirectly employ the services of any of Diverse Services's employees or sub-contractors, without Diverse Services's prior written consent. If the Customer contrary to this clause contracts or engages any former employee or sub-contractor of Diverse Services, the Customer agrees to pay Diverse Services on demand an amount equal to twelve times the monthly salary or fee paid to the former employee or sub-contractor.

### 20.2 Assignment

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The Customer will not dispose of, assign or encumber any right or obligation under this Agreement, including this Agreement, without Diverse Services's prior written consent, which shall not be unreasonably withheld.

### 20.3 Entire Agreement

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This Agreement embodies the entire understanding and agreement between the Parties as to the subject matter of this Agreement and supersedes any prior written or other arrangement of the Parties.

### 20.4 Severability

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Any provision of this Agreement that is illegal, prohibited or unenforceable in any jurisdiction is ineffective in that jurisdiction only to the extent of the illegality, prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement or affect the legality, validity or enforceability of that provision in any other jurisdiction. If any provision or part thereof of this Agreement is made ineffective in any jurisdiction in accordance with this clause 20.4, then that provision will be replaced, to the extent legally possible, with a legal, enforceable, and valid provision that is similar in tenor to the ineffective provision.

### 20.5 Governing Law

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This Agreement is governed by and takes effect and will be construed in accordance with the laws of Western Australia and the Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Western Australia and courts entitled to hear appeals therefrom.

### 20.6 Waiver

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- a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement, of a right provided by law or under this Agreement by a Party does not preclude or operate as a waiver of the exercise or enforcement, or further exercise or enforcement of that or any other right provided by law or under this Agreement.
- b) A waiver or consent given by a Party under this Agreement is only effective and binding on that Party if it is given or confirmed in writing by that Party

- c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

## 20.7 Further acts and documents

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Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by the other Party to give effect to this Agreement.

## 20.8 Consent

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A consent required under this Agreement from a Party may not be unreasonably withheld, unless this Agreement expressly provides otherwise.

## 20.9 No representation or reliance

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- a) Each Party acknowledges that neither the other Party (nor any person acting on a Party's behalf) has made any representation or other inducement to it to enter into this Agreement except for representations or inducements expressly set out in this Agreement.
- b) Each Party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of the other Party, except for representations or inducements expressly set out in this Agreement.

## 20.10 Stamp duties

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The Customer must pay all stamp duties and any related fines and penalties in respect of this Agreement, the performance of this Agreement.

## 21. PPSR

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PPSA means the Personal Properties Securities Act 2009 (Cth); and PPSR means the Personal Property Securities Register.

### 21.1 If this Agreement creates a security interest the Customer agrees that:

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- a) It will do all things necessary including providing all information Diverse Services requires to register a Financing Statement or Financing Change Statement on the PPSR in relation to the security interest;
- b) It will not change its name, ABN or other details required on the PPSR, without first notifying the Owner;
- c) It waives its rights to receive a verification statement in respect of Financing Statement or Financing Change Statement;
- d) It will pay Diverse Services's costs of any discharge or necessary amendment of any Financing Statement or Financing Change Statement; and
- e) It will not register a Financing Statement or Financing Change Statement in respect of a security interest contemplated or constituted by this Agreement without Diverse Services's prior written consent; and

21.2 If Chapter 4 of the PPSA applies to the enforcement of a security interest, the following provisions of the PPSA will not apply to the enforcement of that security interest:

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- a) section 95 [notice of the removal of accession], to the extent that it requires the company to give the Customer a notice;
- b) section 96 [when a person with an interest in the whole may retain accession];
- c) section 121(4) [enforcement of liquid assets – notice to grantor];
- d) section 125 [obligation to dispose of or retain collateral];
- e) section 129(2) and (3);
- f) section 130 [notice of disposal], to the extent of that it requires the company to give the Hirer a notice;
- g) section 132(3)(d) [contents of statement of account after disposal];
- h) section 132(4) [statement of account if no disposal];
- i) section 135 [notice of retention];
- j) section 142 [redemption of collateral];
- k) section 143 [reinstatement of security agreement]

*This document was last modified on 22<sup>nd</sup> January 2019.*