

SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (**Agreement**) is between D&M Financial Services Pty Ltd (ABN 47 169 034 459) trading as Harmonee (referred to as **Harmonee**) and each individual or entity agreeing to this Agreement (referred to as **you** or **your**), collectively the **Parties** and each a **Party**. This Agreement governs the access and use of the Harmonee software (**Software**) and related services made available to you (together with the software referred to as **Service**). You can access the Services via the website: www.harmonee.com.au or other websites (collectively referred to as **Site**) on any computer, mobile, tablet, console or other devices (**Device**).

Any information provided via the Site or Services are provided for general information purposes only. They do not take into account all user specific information or your complete personal circumstances, and Harmonee does not warrant that any information provided via the Services is comprehensive, complete, accurate or up to date. Information on the Site or otherwise obtained via the Services should not be regarded as substitute for professional legal, financial, accounting or tax advice. Please refer to clause 16 for Harmonee's complete disclaimers.

1. ACCEPTANCE

- 1.1 This Agreement forms a binding legal agreement between the Parties. By using the Services, you agree to comply with and be legally bound by the terms of this Agreement. Please read this Agreement carefully. If there are any questions, you should contact Harmonee using the contact details at the end of this Agreement.
- 1.2 You acknowledge and agree to this Agreement by (i) ticking 'I Agree'; (ii) downloading, accessing or using the Site and Services; or (iii) making part or full payment for the Services. If you do not agree to this Agreement, you should cease accessing or using the Site and Services immediately. If you are agreeing to this Agreement on behalf of an entity including but not limited to a company or other organisation, you represent and warrant that you have the authority to bind such organisation and to act on behalf of any person who is using the Services (each a **User**, collectively referred to as **Users**).
- 1.3 You agree the Services will only be used by you or Users who are your employees, contractors or authorised agents acting in the ordinary course of business and directly working for or managed by you. You must ensure that such User using or accessing the Services does so in accordance with the terms of this Agreement.
- 1.4 Harmonee reserves the right to make changes to this Agreement at any time, effective upon the posting of a modified Agreement. Harmonee endeavours to communicate these changes to you via email. It is your obligation to ensure that you (and each User where applicable) has read, understood and agrees to the most recent Agreement available on our Site.
- 1.5 Using the Site or Services may be prohibited or restricted in certain countries. If you use the Services outside Australia, you are responsible for complying with the laws and regulations of the territory from which you access or use the Site or Services.

2. ADDITIONAL TERMS AND CONDITIONS

- 2.1 This Agreement supplements and incorporates Harmonee's policies including Harmonee's Privacy Policy and Website Terms of Use (collectively the **Harmonee Policies**) as set out on the Site.

3. SOFTWARE AND SERVICES

- 3.1 The Software is the sole and exclusive property of Harmonee.
- 3.2 To access the Services, you must:
 - (a) complete Harmonee's registration form as set out on the Site (**Registration Form**) including name, contact details and other related information as requested by Harmonee (**User Information**); and
 - (b) subscribe to the Software and Services (**Subscription**) for the period of time as set out on the Site (**Subscription Period**). The fees for each Subscription Period (**Subscription Fee**) will vary subject to the functionalities and Services you request as identified on the Registration Form.

- 3.3 Upon receipt of the completed Registration Form and applicable Subscription Fee, Harmonee will create an account (**Account**) for you or your organisation (as applicable). You are responsible for determining (a) what Services you require; and (b) if you are an organisation with an Account to manage multiple users, who will be a User of the Services and the User's access level or revoke their access to the Services at any time for any reason via your Account.
- 3.4 Harmonee may, upon your request and in accordance with your Registration Form, customise the appearance of the Site and Services such as incorporating your logo or trade mark into the appearance of the Services accessed by your Users. It is at Harmonee's sole discretion whether or not the Software and Services are customised in accordance with your request. If Harmonee agrees to customise the Services for you and, subject to the level of customisation, a separate agreement may be entered into between the Parties outlining the terms and conditions of your customisation.
- 4. DATA**
- 4.1 Any commercial information and other information you submit via the Site and Services (collectively referred to as **Data**), User Information or information otherwise collected by Harmonee may be stored in servers located in countries outside of Australia. Harmonee will take reasonable steps and use industry standard procedures to ensure that Data is kept secure and confidential.
- 4.2 You grant Harmonee a licence to use, copy, transmit, reference, disclose or back-up your Data for purposes including support and training in accordance with this Agreement or as required for Harmonee to provide the Services.
- 4.3 You represent and warrant that: (a) any and all Data you submit via the Site and Services are your sole and exclusive property; or (b) you have secured any and all authorisation and rights to use the Data as applicable under the relevant laws.
- 4.4 You acknowledge and agree that:
- (a) any collation, conversion and analysis of Data performed as part of the Services is likely to be subject to human input and machine errors, omissions, delays and losses including but not limited to any loss of Data. Harmonee is not liable for any such errors, omissions, delays or losses. You acknowledge and agree you are responsible for adopting reasonable measures to limit the impact of such loss or error;
 - (b) Harmonee is not responsible for any corruption or loss of any Data if such loss is due to an act or omission by you or any person who accesses the Site and use the Services via your Device or Account; and
 - (c) you are responsible for complying with all laws and regulations regarding the use and disclosure of Data including but not limited to the *Privacy Act 1988* (Cth), the *Spam Act 2003* (Cth) and any other requirements under Australian law.
- 5. SECURITY**
- 5.1 Harmonee has implemented and will maintain security systems for the transmission of User Information and other Data, consisting of encryption and "firewall" technologies that are understood in the industry to provide adequate security for the transmission of such information over the Internet. These measures are intended to prevent unauthorised data infiltration or security breaches. Harmonee does not guarantee the security of any Data or User Information stored on your Device.
- 6. THIRD PARTY APPS**
- 6.1 You may also purchase third party applications to obtain additional features or functionalities as set out on the Site (**Third Party Apps**). Third Party Apps may be subject to additional terms and fees which may be payable via the Site or separately subject to your arrangement with the Third Party App provider (**Third Party**). Harmonee makes no representation or warranty about Third Party Apps and disclaims all responsibility and liability for the quality, reliability or failure of any Third Party Apps.
- 6.2 If you purchase any Third Party Apps for use in conjunction with the Software, you acknowledge that Harmonee may allow the Third Party supplying the Third Party App to access any inputted Data as required for the interoperation of the Third Party App to the Software. Harmonee is not responsible for any disclosure, modification or deletion of Data resulting from any such access by Third Parties. Harmonee recommends you check the Privacy Policy for each Third Party App before proceeding with any purchase or use.

7. PAYMENT

- 7.1 You agree to pay Harmonee the Subscription Fee upfront as required to enable you to access and use the Services.
- 7.2 If you purchase a Third Party App and agree with the Third Party to pay the applicable fees via the Site, you agree such fee will: (a) form a part of your Subscription Fee; and (b) be payable in accordance with these terms as required to enable you to access and use the Third Party App.
- 7.3 You will be required to make payment by way of direct debit and you must provide your direct debit detail to Harmonee's payment service provider when completing your Registration Form. You must make further payments prior to the expiry of your Subscription on the relevant periodic basis.
- 7.4 You acknowledge and agree that
- (a) to maintain your subscription, payment to Harmonee will be made automatically in advance on a monthly payment date, from your nominated credit card; and
 - (b) as you have allowed Harmonee and its direct debit service provider to automatically direct debit your nominated credit card, if Harmonee's direct debit service provider is unable to process payment, Harmonee will attempt to contact you via email as soon as Harmonee is aware of the payment failure. Until payment is confirmed, your access and any Users' access to the Services may be suspended until Harmonee receives confirmation of payment.
- 7.5 If you make a payment by way of credit card, you warrant that the information you provide to Harmonee is true and complete, that you are authorised to use the credit card to make payment and that your payment will be honoured by your card issuer.
- 7.6 If payment is not made within 30 days of the last payment date, Harmonee may lock your Account without notice to you, in which case you will not be able to access your Account or use the Services and any information or Data stored on your Account will be deleted and will not be recoverable.
- 7.7 All amounts are stated in Australian dollars and unless otherwise stated, all amounts are exclusive of goods and services tax (**GST**).
- 7.8 Harmonee's pricing structure or payment methods may be amended from time to time in its sole discretion.

8. CANCELLATION OF REGISTRATION

- 8.1 If you would like to cancel your Subscription, you may do so by giving 30 days' (**Notice Period**) written notice to Harmonee using the contact details below. Your access to your Account and each User's access to the Services will be terminated at the end of the Subscription Period month following the expiry of the Notice Period and you will not be charged any further Subscription Fee to your direct debit account.
- 8.2 It is your responsibility to retrieve or back-up all relevant Data from your Account prior to expiry of the Notice Period.
- 8.3 Harmonee may terminate this Agreement immediately, in its sole discretion, if:
- (a) you breach any of the terms of this Agreement and do not remedy the breach within 7 days after receiving notice of the breach if the breach is capable of being remedied;
 - (b) Harmonee reasonably suspects that you are attempting to reverse engineer the Software that is provided to you;
 - (c) where there is an Insolvency Event;
 - (d) Harmonee considers that a request for the Services is inappropriate, improper or unlawful;
 - (e) Harmonee reasonably believes that you have shared your Account details with another individual, organisation or entity without our prior written consent;
 - (f) for any other reason outside Harmonee's control which has the effect of compromising its ability to provide you with the required Services within a required timeframe.
- 8.4 On termination of this Agreement, Harmonee may retain your Data, User Information and related documents (including copies) as required by law or regulation. Your express or implied agreement to this Agreement constitutes your authority for Harmonee to retain or destroy documents in accordance with the applicable statutory periods, or on termination of this Agreement.

9. YOUR OBLIGATIONS

- 9.1 You warrant that all information including User Information provided to Harmonee is true, accurate and complete.

- 9.2 You acknowledge and agree that you are responsible for how the Users use the Services and that:
- (a) each User uses the Services at their own risk;
 - (b) the Services will only be used for your or the User's own lawful personal or business purposes, in accordance with this Agreement;
 - (c) all usernames and passwords required to access the Services are kept secure and confidential;
 - (d) if there is any unauthorised use of your passwords or any other breach of security, you will immediately notify Harmonee of such activity;
 - (e) it is your responsibility to determine that the Services meet your and each User's needs and are suitable for the purposes for which the Services are used;
 - (f) you are responsible for obtaining any consents, licences, permits and permissions from other parties as required for the Services to be provided, at your cost, and for providing Harmonee with the necessary consents, licences and permissions; and
 - (g) the reliability of the Services is dependent upon each User's Device operating system, a User's internet connection and choice of web-browser.
- 9.3 You acknowledge and agree that each User:
- (a) is authorised to use the Services and to access any Data, User Information or other information they input into the Software or provide to Harmonee as required for the Services;
 - (b) holds all applicable licence and registrations as required in their State or Territory to use the Services including but not limited to a current Australian Financial Services licence; and
 - (c) will keep all usernames and passwords required to access the Services secure and confidential.
- 9.4 You may use the Services on behalf of third parties or in order to provide services to such third parties and you must ensure that you are authorised to do so and that all persons for whom or to whom you provide such services will comply with and accept all terms of this Agreement that apply to you.
- 9.5 Harmonee is not responsible to any person or entity other than you and nothing in this Agreement confers, or purports to confer, a benefit on any other person or entity. If you use the Services on behalf of or for the benefit of any third party, including Users, you agree that:
- (a) you are responsible for ensuring that you have the right to do so;
 - (b) Harmonee does not warrant the fitness for purpose or suitability of the Software for such third party's purposes and third parties may not rely on Harmonee for any purpose;
 - (c) you are responsible for authorising any person who is given access to your User Information and any of your Data, and you agree that Harmonee has no obligation to provide any person or entity with access to such Data without authorisation from you and may refer any requests for access to the Data to you to address; and
 - (d) you will indemnify Harmonee, on first demand, against any and all claims, expenses, liabilities or losses arising out of in connection with Harmonee's refusal to provide any persons with access to your Data in accordance with this Agreement and Harmonee making Data available to any person with authorisation from you.
- 9.6 You remain solely responsible for complying with all applicable laws. It is your responsibility to ensure that the storage of and access to your Data via the Site comply with laws which are applicable to you, including any laws requiring you to retain records of your Data.
- 9.7 Each User must have their own safeguards and back up processes in place to recover from any failures or loss of Data which might occur whilst using the Services and protecting the confidentiality of Data with suitable management procedures, as you may see fit.
- 10. PROHIBITED USE**
- 10.1 You acknowledge and agree that you and each User will not:
- (a) User the Services in any manner that is illegal or violates any applicable law or regulation;
 - (b) attempt to circumvent or disable the Software or any technology features or measures in the Software by any means or in any manner;
 - (c) attempt to modify, copy, adapt or reproduce the Software except as necessary to use it for normal operation;
 - (d) attempt to decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for the Software;

- (e) distribute, encumber, sell, rent, lease, sub-license, or otherwise transfer, publish or disclose the Software to any third party (except as permitted under this Agreement);
 - (f) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Services or Site or used in connection with the Software or Site (except as agreed in writing by the Parties);
 - (g) use the Services or Site in any manner to aid in the violation of any third party Intellectual Property, including but not limited to another's copyrights, trade secrets, and patents;
 - (h) take any action that interferes, in any manner, with Harmonee's rights with respect to the Site and Services;
 - (i) attempt to undermine the security or integrity of Harmonee's computing systems or where the Software, Site or any and all part of the Services is hosted by a third party, that third party's computing systems and networks;
 - (j) use, or misuse, the Site or Services in any way which: is in breach of any Harmonee Policies, may impair the functionality of the Services or the Site or other systems used to deliver the Software and Services or impair the ability of any other user to use the Site or Services;
 - (k) attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access a Device or the computer system on which the Services is accessed; and
 - (l) transmit, or input into the Software or Site any files that may damage the Site or Services, content that may be offensive, or material or Data in violation of any law (including any content protected by copyright or trade secrets which you do not have the right to use).
- 10.2 Title, ownership rights and Intellectual Property rights in and to any content displayed on the Site or in the Software, or accessed through the Site or the Services, are the property of the applicable content owner and may be protected by applicable copyright or other law. This Agreement gives you no rights to such content.
- 10.3 You acknowledge that any breaches of this clause may lead to termination of this Agreement.
- 11. PRIVACY POLICY**
- 11.1 Harmonee agrees to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines, as set out in our Privacy Policy which is available on our Site.
- 12. INTELLECTUAL PROPERTY**
- 12.1 If you hold a current Subscription, Harmonee grants you a personal, non-exclusive, non-transferable, limited and revocable licence (**Licence**) to use any reports or related materials containing your Data generated from the Services for your personal or non-commercial purpose. All other uses are prohibited unless you obtain Harmonee's prior written consent.
- 12.2 Title to, and all Intellectual Property rights in the Software, the Site and any documentation relating to the Services, remain the property of Harmonee, its successors and permitted assigns. Your right to use such Intellectual Property is subject to the terms of this Agreement.
- 12.3 You grant Harmonee a non-exclusive, worldwide licence to use any Intellectual Property which subsists in the Data you provide in connection with the use of your Account and the provision of the Services, including copyright in any third party logos or other materials.
- 12.4 Title to and all Intellectual Property rights in any Data you input into the Services remain your property. However, your access to the Data and continued use of the Services is contingent on payments of your Subscription Fee for your Subscription.
- 12.5 It is your responsibility to maintain copies of all Data which is inputted into the Software. Harmonee will endeavour to prevent loss of Data, however, as the Data which is submitted via the Services is hosted by third parties, Harmonee does not make any guarantees that there will be no loss of data and does not represent or warrant that access to the Services, the Data or an Account will be available without interruption.
- 12.6 If the User enables third-party applications for use in conjunction with the Software, the User acknowledges that Harmonee may allow the providers of those third-party applications to access any inputted data as required for the interoperation of such third-party applications with the Services.

Harmonee is not responsible for any disclosure, modification or deletion of data resulting from any such access by third-party application providers.

13. SUPPORT

13.1 Harmonee may provide support to you during business hours as set out on the Site. If you require support, please contact Harmonee using the details set out on the Site. Harmonee endeavours to respond to a support request within a reasonable period of time.

14. UPDATES AND AVAILABILITY OF SERVICES

14.1 Harmonee may issue updates to the Services (**Updates**) from time to time for the duration of this Agreement.

14.2 Whilst Harmonee intends that access to the Services via the Site should be available on a full-time basis, it is possible that the Site is unavailable due to Updates, maintenance or other development activity.

14.3 Where possible, Harmonee will provide notice to its Users of any Updates, maintenance or development activity in advance by email or through the Site.

15. FEEDBACK AND DISPUTE RESOLUTION

15.1 Your feedback is important to Harmonee. Harmonee seeks to resolve your concerns quickly and effectively. If you have any feedback or questions about our Services, please contact any member of Harmonee's staff.

15.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:

(a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).

(b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of [State] to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

15.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

16. AUSTRALIAN CONSUMER LAW

16.1 Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).

16.2 Nothing in these Terms removes your Statutory Rights as a consumer under the ACL. You agree that our liability for Services provided to consumers is governed solely by the ACL and these Terms. Harmonee excludes all conditions and warranties implied by custom, law or statute except for your Statutory Rights.

16.3 Except for your Statutory Rights, all material and work is provided to you without warranties of any kind, either express or implied; and Harmonee expressly disclaims all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.

16.4 If you are a consumer as defined in the ACL, the following applies to you: *We guarantee that the services we supply to you are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the services for or for a result which you have told us you wish the services achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are unable to exclude liability; our total liability for loss or damage you suffer or incur from our services is limited to us re-supplying the services to you, or, at our option, us refunding to you the amount you have paid us for the services to which your claim relates.*

17. LIMITATION OF LIABILITY AND DISCLAIMERS

- 17.1 You acknowledge that whilst Harmonee will take reasonable steps to ensure that the Services will be fit for the advertised purpose, to the fullest extent permitted by law, Harmonee gives no guarantees that:
- (a) the Services will meet your requirements as the functionality of the Site and Services is dependent upon configuration of your Device and other components;
 - (b) the Site or Services will work in each of your desired use case scenarios; and
 - (c) the Site or Services can be executed on every operating system, as it is impossible to test each variant.
- 17.2 The Services use third party services including hosting services which may be provided without any sort of warranties, and Harmonee cannot ensure that these third party hosting services are provided free of defect or without interruption.
- 17.3 Harmonee does not warrant that use of the Site or Services will be uninterrupted or error free. The operation of the Site and Services is dependent on public telephone services, computer networks, the Internet, which can be unpredictable and may from time to time interfere with the use of the Services. Harmonee accepts no responsibility for any such interference or prevention of your use of the Services.
- 17.4 You acknowledge and agree that while the information and materials provided on or via the Site or Services or otherwise provided to you by Harmonee is provided in good faith on an “as is” basis, Harmonee and its directors, officers, employees, contractors and agents accept no responsibility for and make no representations or warranties to you or to any other person as to the reliability, accuracy, currency or completeness of the information in such materials or information generally contained or produced via the Site or Services. You are solely responsible for (and where applicable you must ensure each User understands they are responsible for) determining the suitability of any Services and you rely on any information provided to you through the Site and Services at your own risk.
- 17.5 Harmonee makes no representations regarding, and accepts no responsibility for, the suitability, accuracy or legality of any forms or results produced by the Services. Further, Harmonee assumes no obligation to notify you of any changes in the suitability, accuracy or legality of the forms or results produced by the Services including but not limited to the accuracy of financial projections and modelling.
- 17.6 You acknowledge and agree that any information, insight or guidance provided through the Site or Services is not an attempt to practise areas including finance, law, accounting or tax, to provide financial, legal, accounting or tax advice or act as a substitute for professional advice. Use of the Site, Services or materials provided via the Services does not establish any kind of fiduciary relationship.
- 17.7 All risk arising out of the use or performance of the Services remains with you. You understand and agree that the use of the Services, material or data downloaded or otherwise obtained through the use of the Services, is at your own discretion and risk and that you will be solely responsible for any infections, contaminations or damage to your and each User’s Device, computer, system or network. Harmonee is not responsible or liable for delays, inaccuracies, errors or omissions arising out of your or a User’s use of the Services, any third party software or operating system.
- 17.8 To the maximum extent permitted by applicable law, Harmonee and its licensors disclaim all warranties, express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose and non-infringement of third party intellectual property rights or lack of viruses, for the Site and Services. In no event will Harmonee or its licensors be liable for any consequential, incidental, indirect, special, punitive, or other damages whatsoever arising out of this Agreement, the use of or inability to use the Services, even if Harmonee has been advised of the possibility of such damages.
- 17.9 You acknowledge that Harmonee may pursue any available equitable or other remedy against you as a result of a breach by the User of any provision of this Agreement.
- 17.10 Harmonee or its licensors’ liability for breach of any of its obligations under this Agreement for the Services, or breach of any warranty implied by law, will be limited, to the extent permitted by law, to the total price paid for the Subscription to use the Site and Services. Harmonee’s total liability to you for all damages in connection with the Services will not exceed the price paid by you under this

agreement for the Services. The foregoing limitations, exclusions and disclaimers will apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.

- 17.11 You acknowledge and agree that Harmonee will not be liable for any non-compensatory damages including punitive, aggravated, multiple, exemplary, liquated or any other non-compensatory damages or the consequences of non-payment.

18. INDEMNITY

- 18.1 You will be liable for and agree to indemnify, defend and hold Harmonee harmless from and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:

- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) any breach of this Agreement;
- (c) any misuse of the Services and/or Licence, from or by you, your employees, contractors, agents or a User;
- (d) any breach of law, regulation or licence by you or a User;
- (e) any claim brought by any third party including any User against a Party arising out of the Site or Services;
- (f) any claim by any third party, including a User that:
 - i. the grant, or exercise of any licence, of any Intellectual Property rights under this Agreement; or
 - ii. the supply or use of the Services or Site, infringes the Intellectual Property rights or any rights of any person.

- 18.2 You agree to co-operate with Harmonee (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our Software and License including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given Harmonee.

- 18.3 The obligations under this clause will survive termination of this Agreement.

19. NOTICE

- 19.1 Any notice required or permitted to be given to you under this Agreement will be addressed to you at the email address provided in the Registration Form.

20. RELATIONSHIP OF PARTIES

- 20.1 Neither Party is authorised to bind the other Party in any way without prior written consent of the other Party.
- 20.2 The Parties acknowledge and agree that they will not seek to bind the other Party other than with the prior written consent of the other Party.

21. RIGHTS OF THIRD PARTIES

- 21.1 Any person or entity who is not a party to this Agreement has no right to benefit under or to enforce any of this Agreement.

22. ASSIGNMENT

- 22.1 This Agreement is personal to you. You must not assign or deal with the whole or any part of your rights and/or obligations under this Agreement without Harmonee's prior written consent.
- 22.2 Any purported dealing in breach of this clause is of no effect.

23. WAIVER OR VARIATION OF RIGHTS

- 23.1 Any failure or delay by Harmonee in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Harmonee from exercising that power or right or any other power or right.

24. POWERS, RIGHTS AND REMEDIES

- 24.1 Except as expressly stated to the contrary in this Agreement, the powers, rights and/or remedies of a Party under this Agreement are cumulative and are in addition to any other powers, rights and remedies of that Party. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right, or remedy that a Party may have at any time against the other Party to this Agreement or any other person.

25. FORCE MAJEURE

If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control (**Force Majeure**), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders of acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

26. CONSENTS AND APPROVALS

26.1 Where this Agreement provides that a Party may conditionally or unconditionally give or withhold any consent or approval in relation to any matter in this Agreement, that Party may in its absolute discretion, and without being obliged to give reasons for doing so, withhold any consent or approval or give consent or approval conditionally or unconditionally.

27. FURTHER ASSURANCE

27.1 Each Party must from time to time and in a timely manner do all things reasonably required of it by another Party to give effect to this Agreement.

28. ENFORCEABILITY

28.1 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the provisions in question will not be affected.

29. ENTIRE AGREEMENT AND UNDERSTANDING

29.1 The date of this Agreement is the date that this Agreement is accepted by you.

29.2 In respect of the subject matter of this Agreement:

- (a) this Agreement contains the entire understanding between the Parties; and
- (b) all previous oral and written communications, representations, warranties or commitments are superseded by this Agreement and do not affect the interpretation or meaning of this Agreement.

30. GOVERNING LAW AND JURISDICTION

30.1 This Agreement is governed by the laws of Victoria and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria.

31. DEFINITIONS

Insolvency Event means the occurrence of any of the following events in which a Party:

- (a) is unable to pay its debt as they fall due;
- (b) makes or commences negotiation with a view to making, a general rescheduling of its indebtedness, a general assignment, scheme or arrangement or composition with its creditors;
- (c) takes any corporate action or any steps are taken or legal proceedings are started for:
 - i. its winding-up, dissolution, liquidation or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by the other Party (which approval will not be unreasonably withheld); or
 - ii. the appointment of a controller, receiver, administrator, office manager, trustee or
- (d) seeks protection or is granted protection from its creditors, under any applicable legislation.

Intellectual Property includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, company names or internet domain names.

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