



**LAGOM TECHNOLOGY**

complete - simple - business - I.T.

# General Terms & Conditions



This is a legally binding agreement between Lagom Technology PTY LTD (us/we/our) and the person described in the Application (you, your) setting out the terms and conditions upon which we will supply the Goods and/or Services to you.

## 1 Framework

1.1 An agreement between us is formed when we receive a signed copy of the Application, and consists of the Application (in the form of a Letter or other document), any Special Terms and Conditions and these General Terms and Conditions (Agreement).

1.2 For the purpose of resolving any inconsistency specified in clause 1.1, the order of precedence is:

- (a) the Application;
- (b) any Special Terms and Conditions; and
- (c) the General Terms and Conditions.

## 2 Term and Services

2.1 This Agreement commences upon the later of:

- (a) the date set out on the Application; or
- (b) the date the Application is accepted by us.

Our acceptance is shown by our acceptance in writing or by issuing an invoice; or, by providing the Goods and or Services, and continues for the minimum term set out in the Application (Minimum Term) unless terminated earlier in accordance with the terms of this Agreement (Term).

2.2 We will provide you with the Goods and/or Service(s) on the terms and conditions of this Agreement.

2.3 Unless otherwise agreed by us in writing, sale of additional Goods and/or Services to you are subject to our standard terms and conditions for that Good and/or Service, which is identified on the Application.

2.4 Following the expiration of the Term, this Agreement will continue until terminated by either party on 30 days written notice.

2.5 We will provide the Services to you professionally and with appropriate due care and skill and in compliance with applicable laws, applicable third-party licenses (where such is provided by you to us you must notify us of such) and regulations.

2.6 Except for any payment by you of the fees, rates, and charges for the Services, but notwithstanding any other clause under this Agreement, if a party is unable to perform any obligation under this Agreement because of a Force Majeure Event, that party will have no liability to the other party.

### 2.7 On site work

(a) From time to time our employees may need to visit your premises for the purposes of equipment installation, configuration, troubleshooting or similar. When they do, you agree to the following:

- (i) Ensure they are working in a safe environment, providing any safety equipment that may be required for them to complete the job, in accordance with the Work Health and Safety Act 2012 (SA).
- (ii) Provide any extra tools such as ladders, etc that they may require. Our employees only bring the basic tools for working with computers and troubleshooting of networks.
- (iii) Provide clear and immediate access to the premises.



(b) Failure to provide the above items may mean that our employee may have to cancel the appointment, with any time and materials incurred up until the point of cancellation to be charged to you.

### 3 Loan of Equipment

3.1 From time to time, at your request, we may loan you equipment provided you pay us the fees for rental of such equipment for the duration of the loan (as determined by mutual agreement between the parties).

3.2 We will loan you our equipment if:

- (a) there is a service failure; and
- (b) in our reasonable opinion, we need to install our own equipment in order to quickly put your services back into operation; and
- (c) your Contact Person is not immediately available to approve such installation.

3.3 We make no representations or warranties as to the quality of the equipment loaned to you under this clause 3, or its suitability for your intended use.

3.4 Nothing in this clause 3 or in this Agreement obliges us to loan our equipment to you (whether available for loan or not). We shall not be liable in any circumstances if we do not have any equipment available for loan.

### 4 Payment

4.1 Unless otherwise specified:

- (a) you must pay the invoiced fees, rates and charges associated with the Goods and/or Services, invoice, or order, within 7 days from invoice issue date; and
- (b) we will invoice you for ongoing Services monthly in advance.

4.2 We may vary the terms of this Agreement, including any fees, rates, and charges:

- (a) without notice to you if the variation arises due to a change in taxation law or other governmental action; and
- (b) by providing notice to you of any other variation after completion of the Minimum Term.

4.3 If you fail to pay any payments under this Agreement by the due date, we may:

- (a) charge you interest at rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid on the date payment is due; and
- (b) charge you for all costs incurred by us or any third parties involved in collecting the debt from you.

4.4 If your bill is paid by direct debit from:

- (a) an account held by you at an approved financial institution; or
- (b) a valid credit card nominated by you;

and a direct debit is dishonored or cancelled, you agree to pay our administration fee set out in our invoice plus any dishonor fees.

4.5 If you dispute an invoice, you must:

- (a) raise that dispute with us as soon as reasonably possible and in any event within 7 days of Invoice receipt; and



(b) pay any undisputed amount included in the invoice in accordance with clause 4.1(a).

4.6 If you raise a dispute under clause 4.5, we will conduct prompt investigations and advise you of our findings.

4.7 If following an investigation by us under clause 4.6, the parties are unable to resolve the dispute, then either party may commence proceedings pursuant to clause 15.

4.8 All amounts payable under this Agreement is exclusive of GST. If GST is payable on any supply made by us under this Agreement, you must pay us an amount equivalent to the GST at the time that payment to us is due.

## 5 Title and Risk

5.1 We retain title and ownership of the Goods until payment is made in full.

5.2 Until title has passed to you, you hold the Goods as bailee and must clearly identify such Goods as our property and you must have the relevant insurance in place for the Goods.

5.3 All risk in the Goods and our equipment and software located on your premises passes to you upon delivery to you, or the item being provided at your premises as applicable.

## 6 Termination

6.1 Without prejudice to any right or remedy available, either party may at any time terminate this Agreement immediately by providing written notice to the other party if, the other party becomes insolvent, is subject of a bankruptcy order, or makes any arrangement or composition with or assignment for the benefit of its creditors or goes into voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, or a receiver or administrator is appointed over any of its assets, or in the case of partnership or a corporation, on dissolution or on the filing of an application to dissolve or in the case of a person that person dies.

6.2 Without prejudice to any right or remedy available to us we may terminate this Agreement immediately:

(a) without notice if you use the Services unlawfully;

(b) by written notice if:

(i) you commit a material breach of this Agreement, which is capable of remedy and you fail to remedy the breach within 7 days of a written notice to do so;

(ii) you commit a material breach of this Agreement which cannot be remedied; or

(iii) any agreement between us and a supplier terminates or expires for any reason, such that we are unable in our reasonable opinion to continue to provide you with the Services. In such case, we will endeavor to provide you with as much written notice as is reasonably possible.

6.3 This Agreement will terminate immediately upon written notice by you:

(a) if we commit a material breach of this Agreement, which is capable of remedy, and we fail to remedy the breach within 7 days of a written notice to do so; or

(b) we commit a material breach of this Agreement which cannot be remedied.

6.4 Excluding clause 6.1 and 6.3, if you terminate this Agreement prior to the end of the Minimum Term you must pay all the fees, rates and charges applicable for the Minimum Term and any other monies owing by you to us, within 7 days of the date of termination or within 7 days of receipt of an invoice for that amount, whichever is the earlier. You agree this payment is a genuine pre-estimate of our loss and damage due to your cancellation.



6.5 Upon the termination or expiry of this Agreement:

- (a) you must pay all outstanding invoice and amounts within 7 days of the date of termination;
- (b) no refund may be given for any payments made in advance;
- (c) you must return or destroy (at our option) all copies of our Confidential Information, IPR and other material, information or property of any kind in accordance with our instructions;
- (d) you agree we may enter your premises to remove any of our Confidential Information, IPR and other material, information, or property of ours, our Personnel, or our Related Parties; and
- (e) the accrued rights and obligations of each party are unaffected.

7 Your duties

7.1 You must:

- (a) use the Goods and/or Services, equipment, software or other item used in the Services lawfully and in accordance with our reasonable directions;
- (b) allow us and our Personnel reasonable access to the site(s) and any relevant equipment for the purpose of performing the Services where required, and if site access is delayed then we may charge our standard rates for the additional time expended by us and our Personnel;
- (c) promptly provide all decisions, materials, support staff and any information reasonably required by us to assist us in performing the Services, including providing detailed specifications of the requirements in writing, responding to questions without delay, performing intermediate tests and tests of work results;
- (d) provide adequate power, water and other utilities; and
- (e) ensure a safe working environment for our Personnel and inform us of any special safety and factory regulations and particular sources of danger that we may encounter at your site.

7.2 You must not:

- (a) other than making 1 copy for backup purposes, translate, adapt, modify, alter, decompile, disassemble, or reverse engineer the software (including the software comprising Lagom Technology IP and Delivery IP);
- (b) alter or remove any copyright or other intellectual property notifications on the Goods, equipment, software or other items provided to you by us; or
- (c) attempt to rent, sell, remove or otherwise interfere with, create an interest in or dispose of our equipment or software.

8 Restraint

8.1 Unless otherwise provided in this Agreement, you must not, and must procure that each of your directors, officeholders and employees do not, during the Term and for a period of 12 months following termination of this Agreement, employ or solicit directly or indirectly or through any related or interposed body corporate, trust, principal, agent, shareholder, beneficiary, contractor, consultant or any other capacity, the employment or contract or consultancy or any other similar capacity any of our or our related parties staff or contractors or to enter into any other paid services for or with you. This provision shall not prohibit the hiring of any person who responded to general solicitations, including but not limited to, job postings published in newspapers, trade publications or on websites that did not target the person directly.

8.2 If clause 8.1 is not complied with then you must pay to us, which the parties agree is not a penalty, an amount equal to 50% of the total compensation, including but not limited to, salaries, wages, superannuation, bonuses, commissions, employee benefits, fees and other payments which the employee or subcontractor or consultant received during the prior 12 months of his or her employment, contract or consultancy with us.



8.3 This clause 8.3 does not limit any other remedies available to us for any other breach of this clause 8.3 or this Agreement, nor shall it preclude us from asserting any cause of action independent of this clause 8.3.

## 9 Privacy and Creditworthiness

9.1 For the purpose of this clause, Personal Information has the meaning given in the *Privacy Act 1988* (Cth), and also includes any similar terms as defined in any other privacy law applicable to the parties.

9.2 We agree to ensure that our Personnel, at all times comply with the Australian Privacy Principles as set out in the Privacy Act 1988 (Cth) and any privacy or anti-spam Laws applicable to us in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with this Agreement (**Privacy Laws**).

9.3 The parties agree to act in good faith in all dealings between them in relation to this Agreement.

9.4 You authorize us and our related parties to, in accordance with the *Privacy Act 1988*, use and exchange Your Data before, during and after the provision of Goods and Services to you with any of our service providers, Related Parties, and employees for the following purposes:

- (a) to comply with our licenses;
- (b) to provide, administer and maintain Service delivery to you and your account; and
- (c) to assist us in assessing your creditworthiness and make new offers to you.

9.5 You agree, and, if you are a partnership each partner agrees, to authorize us to obtain a commercial or consumer credit report and to obtain personal or business information about you from your current service provider in order to provide the Services.

9.6 You agree that we may use your personal or business information for the following purposes:

- (a) considering or applying our credit policy to your application for consumer or commercial credit and whether to continue to provide the Services to you;
- (b) ongoing credit management of your account, including collection of overdue payments;
- (c) ongoing maintenance of credit records about you;
- (d) notifying you of information in connection with the Services; and
- (e) development, research and direct and indirect promotion of our products and services.

9.7 You agree that we may disclose your personal or business information for the following purposes to:

- (a) a credit reporting agency to assess your application for Services, or to notify of a default by you and to allow a credit reporting agency to create or maintain a credit information file about you;
- (b) credit providers to obtain information about the status of your account;
- (c) collection agents to recover overdue amounts;
- (d) carriers or service providers if required to enable them to provide the Services to you, or in the event we are no longer able to provide the Services to you;
- (e) assignees of all or part of our business assets, including trade receivables;
- (f) government or regulatory bodies and other organizations as authorized or required by law; and
- (g) our Personnel, Related Parties, employees, agents (such as outsourcing agencies) and contractors engaged by us.

9.8 The type of information referred to in clause 9 includes identifying details (such as name, address, drivers' license), information in your application, whether, in our opinion, you have committed a serious credit



infringement, and information relating to the conduct of your account and your use of the Services.

9.9 You agree that we or our agents may utilize any information collected and recorded by us in relation to your account to assist us in the process of debt recovery.

9.10 If you are an individual, or the individual named as a Contact Person in the Application, you may seek access to and request the correction of any credit information or personal or business information held by us by notifying us in writing of the request.

9.11 You agree that we and our Related Parties may use any information, including your electronic contact details such as email, collected and recorded by us in relation to your account to send commercial electronic messages as defined under the Spam Act 2003 (Cth).

## 10 Our Warranties and Obligations

10.1 We warrant to you that, during the Term, we will perform the Services:

- (a) in a proper and professional manner, and in accordance with best industry practice;
  - (b) with due care, skill and diligence;
  - (c) that we will use all reasonable efforts to ensure all of our obligations under this Agreement will be carried out by suitably competent and trained Personnel; and
  - (d) that the provision of the Services does not and will not infringe any other person's IPR
- (Collectively, **Limited Warranty**).

10.2 For the avoidance of doubt, we make no warranties about any Goods/Third Party Products. Any warranties applicable to any Goods/Third Party Products are given solely by the original manufacturer or vendor, and we have no responsibility or liability for the failure or fault in, or to maintain or service, any Goods/Third Party Products.

10.3 Except for the Limited Warranty, all Goods, Services, software and other products provided to you under this Agreement are provided on an "as is" basis and without any express, implied, statutory or other warranties of any kind. Without limiting the generality of the foregoing, we disclaim any and all implied warranties (including, without limitation, any implied warranties of merchantability, fitness for a particular purpose or noninfringement of IPR) to the extent permitted by law.

10.4 Access to the Internet and your wide area network (WAN), if applicable, cannot be guaranteed where it is outside our direct control. Such access is dependent on additional services and products beyond those to be supplied by us under this Agreement. We shall have no responsibility for any inability of you to access the Internet and/or your WAN for any reason, and no such inability shall relieve you from any of your payment obligations under this Agreement.

10.5 We agree to effect and maintain (at a minimum) with a reputable insurance provider:

- (a) a public and products liability insurance policy, or equivalent, in the amount of no less than \$20million for any one claim;
- (b) a professional indemnity insurance or equivalent, in the amount of no less than \$2million for any one claim; and
- (c) all other insurances required by law in order for us to provide you with the Goods and/or Services.

10.6 On request, we agree to provide you with evidence sufficient to enable you to confirm our compliance with clauses 10.5 and 10.6.

## 11 Liability

11.1 To the maximum extent permitted by applicable law and subject to clauses 11.2, 11.3, 11.4, and 11.5 but notwithstanding any other provision of this Agreement, a party's total aggregate liability to the other



party's claim for any costs, loss, liability, expense or damage, indirect, economic loss, or otherwise whatsoever, resulting from, arising under or in connection with this Agreement, whether based in contract, tort (including negligence), equity, statute, by way of indemnity or contribution, warranty or guarantee or any other type of damage or loss or otherwise, will not exceed an amount and scope equal to the greater of the aggregated amount for all events of:

- (i) the extent of the proceeds received from a party's insurance cover; or
- (ii) the fees rates and charges received from you under this Agreement for the Services in the 12 months preceding the event giving rise to the cause of action; or
- (iii) the amount charged to you for the Goods, whichever is the lesser.

11.2 To the extent we are unable to exclude liability under this clause 11, and in respect of the Limited Warranty where such is reported to us within 12 months of any such breach, you agree that our total aggregate liability to you or a person claiming through you is limited to at our option to:

- (a) resupplying the Services again, or paying for the cost of doing so; or
- (b) repairing or supplying equivalent Goods or paying the cost of repair or replacement, but in any event our liability will not exceed the cost of the relevant Goods or Services.

11.3 Notwithstanding any other clause in this Agreement, in no circumstances will either party be liable in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business, productivity, or anticipated savings, corruption, loss or destruction of data, failure of a backup to run correctly or for any indirect, special or consequential loss whatsoever.

11.4 Despite anything to the contrary, to the maximum extent permitted by law, a party's liability under this Agreement is proportionately reduced to the extent of the relevant contribution (including contributory negligence or otherwise) by the affected party and its employees, agents, contractors, or Personnel, including any failure by the affect party to mitigate its liability.

11.5 Nothing in this Agreement limits a party's liability for negligence by them under this Agreement if that negligence causes personal injury or death.

11.6 If there is a programming error by us in relation to the Services, our liability and costs will be limited as follows:

- (a) we will rectify the error if the error can be reversed in our reasonable opinion; or
- (b) we will use all reasonable endeavors to restore the most recent and appropriate backup.

## 12 Intellectual Property and License

12.1 Unless otherwise agreed in writing, all equipment, software, documentation, or other items used by us to provide the Services to you, whether situated on our or your premises, remain our property.

12.2 You acknowledge and agree that we remain the owner of all Lagom Technology IP. We acknowledge and agree that you remain the owner of all Background IP, including any improvements to Background IP. Nothing in this Agreement constitutes a transfer or assignment of any IPR in Lagom Technology IP or Background IP.

12.3 You grant to us and our Related Parties a revocable, royalty-free, non-exclusive, world-wide license to use and reproduce all Background IP for the sole purpose of providing the Services.

12.4 You acknowledge and agree that all Delivery IP vests in us and is our property as and when created, and you assign all right title and interest in and to the Delivery IP to us (including: (i) Moral Rights which are waived; and (ii) any Delivery IP created prior to or after the date of this Agreement).

12.5 During the Term, we may grant you from time to time, a non-exclusive, revocable, non-transferable right to use the Delivery IP for the sole purposes of you receiving the Services.





12.6 Where you use software and documentation supplied by us (whether it is software owned by us or by a third party), you shall ensure that the terms of the license as notified to you by us covering such software and documentation shall be complied with by you, your Personnel and you shall, provided you have been notified of the terms indemnify us against any loss, damages, costs, compensation or expenses whatsoever arising directly out of the failure by you, your Personnel to comply with the terms of such license. The indemnity under this clause will be proportionately reduced to the extent that we (or our Personnel) contribute to the loss, damages, costs, compensation, or expenses, including our failure to mitigate such loss, damages, costs, compensation, or expenses.

12.7 You warrant that any software, Background IP or services you use, propose to use, or have us use, or have in your possession that is relevant to this Agreement, other than software and documentation supplied by us, does not and will not infringe the IPR of any third party.

### 13 Indemnities

13.1 Subject to clause 11.4, each party (as applicable, the **Indemnifying Party**) shall indemnify and hold the other party and its Personnel (each an **Indemnified Party**) harmless and defend the Indemnified Parties at an Indemnifying Party's own expense, from and against any and all claims, damages, liabilities, losses, expenses, compensation and costs (including reasonable legal fees and expenses on a solicitor/client basis) arising directly out of liability for:

- (a) the gross negligence and willful misconduct of the Indemnifying Party.
- (b) the Indemnifying Party (or its Personnel) breaching any privacy or confidentiality obligation under this Agreement, or any applicable law; and
- (c) the infringement of any IPR owned by a person other than the Indemnified Parties, which subsist within or outside Australia in any information, Background IP, documents, equipment, software, or articles which are:
  - (i) provided by the Indemnifying Party to a Indemnified Party in connection with this Agreement; or
  - (ii) which the Indemnifying Party uses or propose to use or have in its possession or control;
- (d) not used;
- (e) your use of the Goods and/or Services, equipment, software or any other item provided to you by us;
- (f) any Demand against us or our Personnel (including negligence) by any person other than you, which arises directly under this Agreement;
- (g) any damage which you or your Personnel cause to us or our service providers network, equipment, software, infrastructure, or other property or to the property of our other customers; and
- (h) any losses associated with the breach of your privacy information or a party's Confidential Information as a result of theft or hacking of any Goods and/or Services, to the extent caused or contributed to by you, or by any criminal or negligent act or omission by you.

13.2 You must immediately notify us in writing of any Demand made, or threatened or brought, against you. Where the Demand arises from an infringement or alleged infringement referred to in clause 13.1(a). We may require you in such an event to cease use of the infringing or alleged infringing material in connection with this Agreement or may only permit you to continue such use upon such terms and conditions as notified to you by us in writing. For the purpose of this clause, "infringement" includes unauthorized acts which would, but for the operation of section 163 of the Patents Act 1990 (Cth), section 40A of the Designs Act 1906 (Cth) and section 183 of the Copyright Act 1968 (Cth) (or any sections that replace those sections from time to time), constitute an infringement.

### 14 Dispute and Mediation

14.1 Each of us agrees to use reasonable endeavors to resolve any dispute that arises in connection with



this Agreement by mediation before bringing a legal claim or starting legal proceedings against the other, except where that party seeks urgent interlocutory relief.

14.2 If the parties are unable to resolve a dispute either party may give notice to the other party specifying the nature of the dispute and requiring its resolution under this clause 15 (Notice of Dispute).

14.3 If the parties cannot resolve the dispute within 7 days of service of the Notice of Dispute, the dispute is to be submitted to mediation and the Institute of Arbitrators & Mediators Australia Rules for Mediation and Conciliation shall apply to the mediation to the extent that they are consistent with this clause 15.

14.4 If the parties have not agreed on the mediator and the mediator's remuneration within 7 days of service of the Notice, the mediator will be appointed by, and the mediator's remuneration will be determined by, the President for the time being of The Institute of Arbitrators and Mediators Australia, SA Branch at the request of either party and the parties will pay the mediator's remuneration in equal shares except that each party shall bear their own costs of and in relation to the mediation.

## 15 Confidentiality

15.1 Except as required by law, each party must not, during the Term or at any time thereafter, disclose to any person any Confidential Information of the other party nor make use of any of the other party's Confidential Information whether directly or indirectly:

(a) without the other party's prior written consent, unless such disclosure is made in the proper course of our duties under this Agreement, or, where the disclosures are:

- (i) of information in the public domain;
- (ii) in respect of your information, of information typically disclosed in information sharing meetings, including but not limited to IT managers meetings;
- (iii) made by us to suppliers in the process of soliciting tenders, quotes or supplies;
- (iv) made by us as reasonably expected to occur in the provision of the Services; or
- (v) is required to be disclosed by law or by us to a governmental body or authority

15.2 A party (first party) on the other party's request, must deliver up to the other party all materials comprising or containing any of the Confidential Information of the other party and all other property of the other party which may then be in the first party's possession, custody or control, except for, where required for the first party's corporate records, one copy of such.

15.3 You acknowledge and agree that our Personnel will from time to time make copies of your current data to facilitate offsite support and after-hours maintenance or development. Without limiting clause 9 (Privacy), we will ensure that we have collected, used, stored and otherwise dealt with Your Data in accordance with all Privacy Laws and will comply with all obligations under this Agreement for any of Your Data we have onsite.

15.4 Each party acknowledges that a breach of clause 15.1 would be harmful to the other party's business; and money damages will not be, by itself, an adequate remedy for breach of this Agreement, and that the other party is entitled to equitable relief which may include the grant of an injunction.

15.5 Notwithstanding clause 16, you agree that all the terms of this Agreement, including but not limited to, all fees, rates and charges, the manner by which fees, rates and charges are charged, payment terms and, all quotes, details of the method of operation of us, are strictly confidential. You must not under any circumstances provide to any other person a copy of this Agreement for any purpose whatsoever, including to obtain comparative rates.

## 16 Publicity

Both parties may publicly disclose the fact that this Agreement is in effect and that you are a customer of ours



and that we are a contractor to you. Press releases issued by a party to this Agreement will be subject to the other party's prior review and approval.

## 17 Australian Consumer Law

17.1 Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the Services by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**). To the extent that you maintain Consumer Law Rights at law, nothing in this Agreement excludes those Consumer Law Rights.

17.2 Subject to your Consumer Law Rights, we exclude all express and implied warranties, and all material, work and services (including the Services) are provided to you without warranties of any kind, either express or implied, whether in statute, at Law or on any other basis.

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

## 18 Security

18.1 Subject to the terms of this Agreement, we will establish and maintain appropriate, reasonable technical and organizational security measures in accordance with good industry practice to keep Your Data secure.

## 19 Security Incident

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

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

19.2 We will bear our costs in conducting any investigation or remediation required under this clause, unless the incident triggering the Security Incident was caused or contributed to by you (including your Personnel and your Authorized Users), in which case, you will be liable for those costs reasonably and necessarily incurred by us arising from the Security Incident.

## 20 Acceptance Testing

20.1 For the purpose of this clause:

**"Acceptance Tests"** means the tests to determine whether the Services meet any specifications for the Services as particularized in this Agreement, or if no specifications or criteria are specified in this Agreement, the criteria, reasonably determined by us, which the Services are to be measured against.

20.2 Before the Services to which the Acceptance Tests apply, are to be completed, we will provide you with access to the Services for the purpose of performing the Acceptance Tests. Within 5 Business Days of us granting you such access, you agree to:

- (a) notify us of your acceptance of the Services; or
- (b) notify us of your rejection of the Services, which cannot be unreasonably given, and provide us with the reasons for your rejection.

20.3 If you do not notify us of your acceptance or rejection of the Services to which the Acceptance Tests apply within 5 Business Days of us granting you access to the Services, you agree you will be deemed to have accepted those Services.



20.4 If the Services fail to meet the Acceptance Tests you can:

- (a) accept the Services, and they will be deemed to have passed the Acceptance Tests;
- (b) notify us of the failure; or
- (c) accept the Services on the basis that you will allow us to set a timeframe to amend the error or non-compliance.

20.5 If you notify us of the failure in accordance with clause 20.4(b), we agree to amend the Services and resubmit them to you within a reasonable timeframe in order to re-perform the Acceptance Tests in accordance with clauses 20.3- 20.6.

20.6 Nothing in this clause limits your Consumer Law Rights.

## 21 General

21.1 You must not assign or transfer or in any other way dispose of to any third party the benefit or burden of this Agreement without our prior written consent.

21.2 We may, assign, transfer or novate this Agreement to a Related Party, and upon request you will do all things reasonably required by us to effect this.

21.3 This Agreement constitutes the entire Agreement between the parties relating to the subject matter and any other thing supplied under this Agreement and supersedes all prior agreements, arrangements and undertakings.

21.4 Terms expressed by their sense or context intended to survive the expiration or termination of this Agreement do so, including clause 16.

21.5 Each party shall bear their own costs of and incidental to the preparation, negotiation and execution of this Agreement and any variation or amendment of this Agreement.

21.6 Any notice or demand in connection with this Agreement must be in writing and may be signed by the relevant party or its solicitors and may be:

(a) addressed to the Contact Person or for us to an active Partner as relevant and delivered or posted to the address of the addressee in this Agreement or any other address notified to the sender as an address for the giving of notices.

21.7 Unless a later time is specified in it, a notice or demand takes effect from the time it is taken to be received, which is:

- (a) if left at the address of the addressee, when left at that address unless the time of leaving the notice in the place in which it is left is not a Business Day or is after 5pm on a Business Day, when it will be deemed to be given or made on the next following Business Day in that place;
- (b) if posted, on the second Business Day after posting; and

21.8 A notice or demand sent or delivered in the manner provided under clause 21.7 is deemed to be received by the addressee notwithstanding that the addressee has been liquidated, deregistered or is absent from the place at which the notice or demand was delivered or sent, or notwithstanding that the notice is returned unclaimed.

21.9 This Agreement and all related matters are governed by and construed in accordance with the laws of South Australia, Australia, and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of South Australia.

21.10 If any part of this Agreement is, or becomes void or unenforceable, that part is or will be, severed from this Agreement to the extent that all parts that are not, or do not become, void or unenforceable these remain in full force and effect and are unaffected by that severance.



21.11 A power or right under this Agreement may not be waived except expressly stating the specific power or right to be waived in writing signed by the party granting the waiver.

21.12 The failure to exercise or delay in exercising any power or right by a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right.

21.13 Nothing in the Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between us and neither party has any right to bind the other in contract or otherwise.

21.14 Except as otherwise set out in this Agreement where we may vary this Agreement, this Agreement may be varied only by written instrument signed by the parties.

21.15 Each party must at its own cost execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purposes of this Agreement.

## 22 Definitions

22.1 In this document, unless the context requires otherwise:

**Agreement** means the documents specified in clause 1.1 together with any other attachment, schedule or appended document;

**Application** means the application, Letter or Quotation under which you request us to supply specified Goods and/or Services to you;

**Lagom Technology IP** means our and our Related Parties IPR which is in existence at the date of this Agreement, or, comes into existence after such other than in connection with this Agreement;

**Background IP** means your IPR which is in existence at the date of this Agreement, or, comes into existence after such other than in connection with this Agreement, including Your Data;

**Business Day** means any day not being a Saturday, Sunday or State public holiday at your first address set out in the Application;

**Business Hours** means in respect of Service delivery the operating hours of the relevant Service as set out in the Application and being Monday to Friday other than a day that is not a Business Day;

**Confidential Information** means, in any form whatsoever:

(a) all trade and business secrets and other confidential information relating to the operations, dealings, pricing, transactions, financial arrangements, internal structures, clients, personnel, assets, liabilities, strategies, prices, businesses and affairs of a party or which come into a party's possession in the course of this Agreement or by reason of the provision of the Services; and

(b) any of Lagom Technology IP;

(c) and for the avoidance of doubt includes our information where disclosed by any existing or potential customer, supplier, contractor, agent, licensor or licensee;

**Contact Person** means your contact person identified on the Application;

**Demand** means any action, claim or demand made for loss, damage, compensation, costs or expenses or any other relief, whether arising under statute or common law;

**Delivery IP** means all IPR created, discovered or coming into existence as a result of or in connection with this Agreement or the provision of the Services including (without limitation) IPR developed by us and our Related Parties in providing the Services and or Goods;

**Force Majeure Event** means any act of God (including lightning, flood severe weather, explosion, fire), war,



civil disorder, acts of Government or other authorities, embargo, strike or other labour dispute or (without limitation) any other event or occurrence that is beyond our reasonable control;

**Goods** means items of hardware, software, or other items that you have ordered from us as set out in the Application, or may order from us from time to time;

**GST** means the tax imposed by A New Tax System (Goods and Services Tax) Act 1999 and A New Tax System (Goods and Services Tax) Transition Act 1999 and related tax imposition Acts of the Commonwealth of Australia;

**IPR** means all present and future registered and unregistered rights in respect of copyright, designs, trademarks, circuit layouts, know how, trade secrets, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organization 1967 and all Moral Rights;

**Limited Warranty** is defined in clause 10.1;

**Minimum Term** means the minimum term for the Agreement as specified in the Application;

**Moral Rights** means any of the rights described in Article BIS of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended from time to time), being “droit moral” or other analogous rights arising under any statute, that exist or that may come to exist, anywhere in the world;

**Notice of Dispute** is defined in clause 15.2;

**Personnel means** any of the following persons in relation to a party:

- (a) that party’s officers, employees, agents, consultants, contractors and subcontractors;
- (b) officers, employees, agents, consultants and contractors of the that party’s subcontractors; or
- (c) other persons engaged by that party, under their direction and control, or for whom that party is responsible;

**Quotation** means the quotation, proposal or other similar document under which you request us to supply specified Goods and/or Services to you;

**Related Party** means any person that is a related body corporate or an associated entity (within the meaning of the Corporations Act 2001 (Cth)) of ours, including but not limited to an entity in which we holds shares or units.

**Services** means the services to be provided by us to you set out in the Application, or may order from us from time to time;

**Special Terms and Conditions** mean the special terms and conditions applicable to a particular Good or Service provided by us;

**Term** is defined in clause 2.1;

**Third Party Product** means any product or equipment added to your equipment or any part of your network by any person other than us; and

**Website** means our website located at [www.lagomtech.com.au](http://www.lagomtech.com.au)

**Your Data** means the information, materials, logos, documents, qualifications and other IPR or data inputted by you, your Personnel into the Services or stored by or generated by your use of the Services, including any Personal Information collected, used, disclosed, stored or otherwise handled in connection with this Agreement. Your Data does not include any data, information or materials that we generate (or that is generated on our behalf) in connection with the Services and that is not provided to you or that you do not have access to.

22.2 In this Agreement, unless the context requires otherwise:



- (a) the singular includes the plural and vice versa;
- (b) the word “person” includes a firm, body corporate, unincorporated association, authority or other entity and their executors, administrators substitutes and successors;
- (c) headings are inserted for convenience and do not affect the interpretation of this Agreement;
- (d) a reference to a clause, schedule, or Application, refers to a clause, schedule or Application of this Agreement;
- (e) a reference to the word “includes” means, including but not limited to;
- (f) a reference to an Agreement or other instrument includes any variation or replacement of them; and
- (g) a reference to a statute includes all statutes amending, consolidating, or replacing such statute.