neodocs

Terms and Conditions

The Terms and Conditions set out the rights and responsibilities of both parties to the agreement. By agreeing to the Terms and Conditions when registering online you are agreeing to bound by those Terms and Conditions as set out below. If you are agreeing on behalf of your employer, you warrant that you have full legal authority to do so and you are binding your employer to these terms.

The terms become effective at the time you register online.

What these Terms cover.

Please read these Terms and Conditions carefully. All contracts that the Provider may enter into from time to time for the provision of the Hosted Services and any related services shall be governed by these Terms and Conditions.

1. Definitions

1.1   In these Terms and Conditions, except to the extent expressly provided otherwise:

"Access Credentials" means the usernames, passwords and other credentials enabling access to the Hosted Services, including access credentials for the User Interface, mobile application, and access credentials for the API;

"Affiliate" means an entity that Controls, is controlled by, or is under common Control with the relevant entity;

"Agreement" means a contract between the parties incorporating these Terms and Conditions, and any amendments to that contract from time to time;

"API" means the application programming interface for the Hosted Services defined by the Provider and made available by the Provider to the Customer;

"Business Day" means any weekday other than a bank or public holiday in Australia.

"Business Hours" means the hours of 08:30 to 17:30 Sydney Australia time on a Business Day;

"Charges" means the following amounts:

(a)   As agreed in our proposal

(b)   such amounts as may be agreed in writing by the parties from time to time

"Control" means the legal power to control directly or indirectly the management of an entity (and "Controlled" should be construed accordingly);

"Customer" means the person or entity identified in the online registration form;

"Customer Confidential Information" means:

    (a) any information disclosed by or on behalf of the Customer to the Provider or at any time before the termination of the Agreement whether disclosed in writing, orally or otherwise that at the time of disclosure:

        (i) was marked as "confidential"

"Customer Data" means all data, works and materials: uploaded to or stored on the Platform by the Customer; transmitted by the Platform at the instigation of the Customer; supplied by the Customer to the Provider for uploading to, transmission by or storage on the Platform; or generated by the Platform as a result of the use of the Hosted Services by the Customer (but excluding analytics data relating to the use of the Platform and server log files);

"Customer Indemnity Event" has the meaning given to it in Clause 18.3;

"Customer Personal Data" means any Personal Data that is processed by the Provider on behalf of the Customer in relation to the Agreement, but excluding personal data with respect to which the Provider is a data controller

"Data Protection Laws" means the Australian laws and all other applicable laws relating to the processing of Personal Data;

"Documentation" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer

"Effective Date" means the date upon which the Customer completes and submits the online Registration Form published by the Provider on the Provider's website, the date upon which the Provider sends to the Customer an order confirmation;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, epidemics, pandemics, explosions, fires, floods, riots, terrorist attacks and wars);

"Hosted Services" means NeoDocs Hosted Service Applications which will be made available by the Provider to the Customer as a service via the internet in accordance with these Terms and Conditions;

"Hosted Services Defect" means a defect, error or bug in the Platform having an adverse effect on the appearance, operation, functionality or performance of the Hosted Service Application, but excluding any defect, error or bug caused by or arising as a result of:

  (a)   any act or omission of the Customer or any person authorised by the Customer to use the Platform or Hosted Services;

  (b)   any use of the Platform or Hosted Services contrary to the

Documentation, whether by the Customer or by any person authorised by the Customer;

(c) a failure of the Customer to perform or observe any of its obligations in the Agreement

(d) an incompatibility between the Platform or Hosted Services and any other system, network, application, program, hardware or software not specified as compatible in the Hosted Services Specification;

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs;

"Mobile App" means the NeoDocs mobile application that is made available by the Provider for downloading from either the Apple Store or Android Store.

"Personal Data" means personal data under any of the Data Protection Laws;

"Platform" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"Provider" means NeoDocs-IT Pty Limited, a company incorporated in Australia (ABN 19 085 689 141) having its registered office in Sydney, Australia

"Provider Indemnity Event" has the meaning given to it in Clause 18.1;

"Services" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under these Terms and Conditions;

"Registration Form" means an online form published by the Provider and completed and submitted by the Customer, or a hard-copy order form signed or otherwise agreed by or on behalf of each party, in each case incorporating these Terms and Conditions by reference;

"Set Up Services" means the configuration, implementation and integration of the Hosted Services;

"Support Services" means support in relation to the use of, and the identification and resolution of errors in, the Hosted Services, but shall not include the provision of training services;

"Supported Web Browser" means the current release from time to time of Microsoft Edge, Mozilla Firefox, Google Chrome or Apple Safari, or any other web browser that the Provider agrees in writing shall be supported;

"Term" means the term of the Agreement, commencing in accordance with Clause 2.1 and ending in accordance with Clause 2.2

"Terms and Conditions" means all the documentation containing the provisions of the Agreement, namely the Registration Form, the main body of these Terms and Conditions and the Schedules, including any amendments to that documentation from time to time;

"Third Party Services" means any hosted, cloud or software-based services provided by any third party that are or may be integrated with the Hosted Services by the Provider from time to time in circumstances where the Customer must, in order to activate the integration, have an account with the relevant services provider or obtain activation or access credentials from the relevant services provider;

"User Interface" means the interface for the Hosted Services designed to allow individual human users to access and use the Hosted Services.

2.   Term

2.1   The Agreement shall come into force upon the Effective Agreed Date.

2.2   The Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 21 or any other provision of these Terms and Conditions.

2.3   Unless the parties expressly agree otherwise in writing, each Registration Form shall create a distinct contract under these Terms and Conditions.

3.   Set Up Services

3.1   The Provider shall provide the Set Up Services to the Customer.

3.2   The Provider shall use reasonable endeavours to ensure that the Set Up Services are provided promptly following the date of registration.

3.3   The Customer acknowledges that a delay in the Customer performing its obligations in the Agreement may result in a delay in the performance of the Set Up Services; and subject to Clause 19.1 the Provider will not be liable to the Customer in respect of any failure to meet the Set Up Services timetable to the extent that that failure arises out of a delay in the Customer performing its obligations under these Terms and Conditions.

3.4   Subject to any written agreement of the parties to the contrary, any Intellectual Property Rights that may arise out of the performance of the Set Up Services by the Provider shall be the exclusive property of the Provider.

4.   Hosted Services

4.1   The Provider shall provide to the Customer upon the completion of the Set Up Services the Access Credentials necessary to enable the Customer to access and use the Hosted Services.

4.2 The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the Hosted Services by means of the User Interface and the API for the internal business purposes of the Customer in accordance with the Documentation during the Term.

4.3 The licence granted by the Provider to the Customer under Clause 4.2 is subject to the following limitations:

(a) the User Interface may only be used through a Supported Web Browser or the Mobile App;

(b) the User Interface may only be used by the officers, employees, agents and subcontractors of either the Customer, Affiliate of the Customer or Customer's business partners;

(c) the User Interface may only be used by the users identified in the setup document, providing that the Customer may change, add or remove a designated named user in accordance with the user change procedure defined by the Hosted Services;

(d) the User Interface must not be used at any point in time by more than the number of concurrent users specified in the Registration Form OR identify document, providing that the Customer may add or remove concurrent user licences in accordance with the licence change procedure defined by the Hosted Services

(e) the API may only be used by an application or applications approved by the Provider and controlled by the Customer.

4.4 Except to the extent expressly permitted in these Terms and Conditions or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 4.2 is subject to the following prohibitions:

(a) The Customer must not sub-license its right to access and use the Hosted Services;

(b) The Customer must not permit any unauthorised person or application to access or use the Hosted Services;

(c) The Customer must not use the Hosted Services to provide services to third parties;

(d) The Customer must not republish or redistribute any content or material from the Hosted Services;

(e) The Customer must not make any alteration to the Platform

(f) The Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.

4.5   The Customer shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or application may gain access to the Hosted Services by means of the Access Credentials.

4.6   The parties acknowledge and agree that Schedule 2 (Availability SLA) shall govern the availability of the Hosted Services.

4.7   The Customer must comply with Schedule 1 (Acceptable Use Policy), and must ensure that all persons using the Hosted Services with the authority of the Customer or by means of the Access Credentials comply with Schedule 1 (Acceptable Use Policy).

4.8   The Customer must not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or Platform or impairment of the availability or accessibility of the Hosted Services.

4.9   The Customer must not use the Hosted Services in any way that uses excessive Platform resources and as a result is liable to cause a material degradation in the services provided by the Provider to its other customers using the Platform; and the Customer acknowledges that the Provider may use reasonable technical measures to limit the use of Platform resources by the Customer for the purpose of assuring services to its customers generally.

4.10   The Customer must not use the Hosted Services:

        (a) in any way that is unlawful, illegal, fraudulent or harmful;

4.11   For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

4.12   The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

5.   Scheduled maintenance

5.1   The Provider may from time to time suspend the Hosted Services for the purposes of scheduled maintenance to the Platform, providing that such scheduled maintenance must be carried out in accordance with this Clause 5.

5.2   The Provider shall where practicably give to the Customer at least 5 Business Days' prior written notice of scheduled maintenance that will, or is likely to, affect the availability of the Hosted Services or have a material negative impact upon the Hosted Services.

5.3   The Provider shall ensure that all scheduled maintenance is carried out outside Australian Eastern time Business Hours.

6. Support Services

6.1 The Provider shall provide the Support Services to the Customer during the term of a valid agreement.

6.2 The Provider shall provide the Support Services with reasonable skill and care

6.3 The Provider shall provide the Support Services in accordance with Schedule 3 (Support SLA).

6.4 The Provider may suspend the provision of the Support Services if any amount due to be paid by the Customer to the Provider under the Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.

7. Customer obligations

7.1 To the extent that the parties have agreed otherwise in writing, the Customer must provide to the Provider,

    (a) co-operation, support and advice;
    (b) information and documentation; and
    (c) governmental, legal and regulatory licences, consents and permits, as are reasonably necessary to enable the Provider to perform its obligations under the Agreement.

8. Customer Data

8.1 The Customer hereby grants to the Provider a non-exclusive licence to copy, reproduce, store, distribute, publish and export the Customer Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under the Agreement. The Customer also grants to the Provider the right to sub-license these rights to its hosting, connectivity and telecommunications service providers, subject to any express restrictions elsewhere in the Agreement.

8.2 The Customer warrants to the Provider that the Customer Data will not infringe the Intellectual Property Rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

8.3 The Provider shall create a back-up copy of the Customer Data at least daily, shall ensure that each such copy is sufficient to enable the Provider to restore the Hosted Services to the state they were in at the time the back-up was taken, and shall retain and securely store each such copy for a minimum period of 30 days.

8.4 Within the period of 1 Business Day following receipt of a written request from the Customer, the Provider shall use all reasonable endeavours to restore to the Platform the Customer Data stored in any back-up copy created and stored by the Provider in accordance with Clause 8.3. The Customer acknowledges that this

process will overwrite the Customer Data stored on the Platform prior to the restoration.

9. Integrations with Third Party Services

9.1 The Provider may integrate the Hosted Services with any Third-Party Services at any time.

9.2 Notwithstanding the presence of any Third-Party Services integration, particular Third Party Services shall only be activated with respect to the Hosted Services account of the Customer by the Provider with the prior written agreement of the Customer.

9.3 The Provider shall use reasonable endeavours to maintain any integration with Third Party Services that has been activated with respect to the Hosted Services account of the Customer. Subject to this, the Provider may remove, suspend, deactivate or limit any Third-Party Services integration at any time in its sole discretion.

9.4 The supply of Third-Party Services shall be under a separate contract or arrangement between the Customer and the relevant third party. The Provider does not contract to supply the Third-Party Services and is not a party to any contract for, or otherwise responsible in respect of, the provision of any Third Party Services. Fees may be payable by the Customer to the relevant third party in respect of the use of Third-Party Services.

9.5 The Customer acknowledges and agrees that:

(a) The activation of Third-Party Services with respect to the Hosted Services account of the Customer may result in the transfer of Customer Data and/or Customer Personal Data

(b) from the Hosted Services to the relevant Third-Party Services and vice versa;

(c) the Provider has no control over, or responsibility for, any disclosure, modification, deletion or other use of Customer Data and/or Customer Personal Data by any provider of Third Party Services;

(d) the Customer must ensure that it has in place the necessary contractual safeguards to ensure that the transfer of Customer Personal Data to, and use of Customer Personal Data by, a provider of Third-Party Services is lawful; and

(e) the Customer shall ensure that the transfer of Customer Data to a provider of Third-Party Services does not infringe any person's Intellectual Property Rights or other legal rights and will not put the Provider in breach of any applicable laws.

9.6 Additional Charges may be payable by the Customer to the Provider in respect of the activation and/or use of a Third-Party Services integration, as set out in the Services Order Form.

9.7 Subject to Clause 19.1:

(a) the Provider gives no guarantees, warranties or representations in respect of any Third-Party Services; and

(b) the Provider shall not be liable to the Customer in respect of any loss or damage that may be caused by Third Party Services or any provider of Third-Party Services.

10. Mobile App

10.1 The parties acknowledge and agree that the use of the Mobile App, the parties' respective rights and obligations in relation to the Mobile App and any liabilities of either party arising out of the use of the Mobile App shall be subject to separate terms and conditions, and accordingly these Terms and Conditions shall not govern any such use, rights, obligations or liabilities.

11. No assignment of Intellectual Property Rights

11.1 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

12. Charges

12.1 The Customer shall pay the Charges to the Provider in accordance with these Terms and Conditions.

12.2 If the Charges are based in whole or part upon the time spent by the Provider performing the Services, the Provider must obtain the Customer's written consent before performing Services that result in any estimate of time-based Charges given to the Customer being exceeded or any budget for time-based Charges agreed by the parties being exceeded; and unless the Customer agrees otherwise in writing, the Customer shall not be liable to pay to the Provider any Charges in respect of Services performed in breach of this Clause 12.2.

12.3 All amounts stated in or in relation to these Terms and Conditions are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the Customer to the Provider.

12.4 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation expiring on any anniversary of the date of execution of the Agreement

13. Payments

13.1 Payments are automatically charged to the Customer's credit or debit card each month on the day of the month that the Customer entered into the agreement unless agreed by the Provider that the Customer will pay on the issue of an invoice as agreed in clause 13.3. The Provider may issue invoices for the Charges to the Customer on or after the invoicing dates

13.2 The Customer must pay the Charges to the Provider within the period of 30 days following the issue of an invoice

13.3   The Provider may agree with the Customer in writing that payments can be made via EFT upon the Provider issuing the Customer an invoice. Invoices must be paid within 30 days of the invoice being issued.

13.3   The Customer must pay the Charges by debit card, credit card, direct debit, bank transfer or cheque.

14. Provider's confidentiality obligations

14.1   The Provider must:

   (a) not disclose the Customer Confidential Information to any person without the Customer's prior written consent, and then only under conditions of confidentiality approved in writing by the Customer

14.2   Notwithstanding Clause 14.1, the Provider may disclose the Customer Confidential Information to the Provider's officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Confidential Information for the performance of their work with respect to the Agreement and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Confidential Information.

14.3   This Clause 14 imposes no obligations upon the Provider with respect to Customer Confidential Information that:

   (a) is known to the Provider before disclosure under these Terms and Conditions and is not subject to any other obligation of confidentiality;
   (b) is or becomes publicly known through no act or default of the Provider;
   (c) is obtained by the Provider from a third party in circumstances where the Provider has no reason to believe that there has been a breach of an obligation of confidentiality.

14.4   The restrictions in this Clause 14 do not apply to the extent that any Customer Confidential Information is required to be disclosed by any law or regulation, by any judicial or governmental order or request, or pursuant to disclosure requirements relating to the listing of the stock of the Provider on any recognised stock exchange.

14.5   The provisions of this Clause 14 shall continue in force for a period of 5 years following the termination of the Agreement, at the end of which period they will cease to have effect.

15. Data protection

15.1   Each party shall comply with the Data Protection Laws with respect to the processing of the Customer Personal Data.

15.2   The Customer warrants to the Provider that it has the legal right to disclose all Personal Data that it does in fact disclose to the Provider under or in connection with the Agreement.

15.3 The Customer shall only supply to the Provider, and the Provider shall only process, in each case under or in relation to the Agreement:

(a) the Personal Data of data subjects falling within the categories specified in Section 1 of Schedule 4 Data processing information or such other categories as may be agreed by the parties in writing.

15.4 The Provider shall only process the Customer Personal Data for the purposes specified in Section 3 of Schedule 4 (Data processing information).

15.5 The Provider shall only process the Customer Personal Data during the Term and for not more than 30 days following the end of the Term, subject to the other provisions of this Clause 15.

15.6 The Provider shall only process the Customer Personal Data on the documented instructions of the Customer (including with regard to transfers of the Customer Personal Data to a third country under the Data Protection Laws), as set out in these Terms and Conditions or any other document agreed by the parties in writing.

15.7 The Provider shall promptly inform the Customer if, in the opinion of the Provider, an instruction of the Customer relating to the processing of the Customer Personal Data infringes the Data Protection Laws.

15.8 Not withstanding any other provision of the Agreement, the Provider may process the Customer Personal Data if and to the extent that the Provider is required to do so by applicable law. In such a case, the Provider shall inform the Customer of the legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

15.9 The Provider shall ensure that persons authorised to process the Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

15.10 The Provider and the Customer shall each implement appropriate technical and organisational measures to ensure an appropriate level of security for the Customer Personal Data, including those measures specified in Section 4 of Schedule 4 (Data processing information)].

15.11 The Provider must not engage any third party to process the Customer Personal Data without the prior specific or general written authorisation of the Customer. In the case of a general written authorisation, the Provider shall inform the Customer at least 14 days in advance of any intended changes concerning the addition or replacement of any third party processor, and if the Customer objects to any such changes before their implementation, then the Provider must not implement the changes OR the Customer may terminate the Agreement on 7 days' written notice to the Provider, providing that such notice must be given within the period of 7 days following the date that the Provider informed the Customer of the intended changes. The Provider shall ensure that each third-party processor is subject to

the same OR equivalent legal obligations as those imposed on the Provider by this Clause 15.

15.12   As at the Effective Date, the Provider is hereby authorised by the Customer to engage, as sub-processors with respect to Customer Personal Data, the third parties identified in Section 5 of Schedule 4 Data processing information.

15.13   The Provider shall, insofar as possible and considering the nature of the processing, take appropriate technical and organisational measures to assist the Customer with the fulfilment of the Customer's obligation to respond to requests exercising a data subject's rights under the Data Protection Laws.

15.14   The Provider shall assist the Customer in ensuring compliance with the obligations relating to the security of processing of personal data, the notification of personal data breaches to the supervisory authority, the communication of personal data breaches to the data subject, data protection impact assessments and prior consultation in relation to high-risk processing under the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates] for any work performed by the Provider at the request of the Customer pursuant to this Clause 15.15.

15.15   The Provider must notify the Customer of any Personal Data breach affecting the Customer Personal Data without undue delay and, in any case, not later than 72 hours after the Provider becomes aware of the breach.

15.16   The Provider shall make available to the Customer all information necessary to demonstrate the compliance of the Provider with its obligations under this Clause 15 and the Data Protection Laws. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 15.17, providing that no such charges shall be levied with respect to [the completion by the Provider (at the reasonable request of the Customer, not more than once per calendar year) of [the standard information security questionnaire of the Customer.

15.17   The Provider shall return all of the Customer Personal Data to the Customer after the provision of services relating to the processing and shall delete all existing copies of the relevant Customer Personal Data that is stored on the Provider's storage and backup locations.

15.18   The Provider shall allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer in respect of the compliance of the Provider's processing of Customer Personal Data with the Data Protection Laws and this Clause 15. The Provider may charge the Customer at its standard time-based charging rates for any work performed by the Provider at the request of the Customer pursuant to this Clause 15.19, providing that no such charges shall be levied where the request to perform the work arises out of any breach by the Provider of the Agreement or any security breach affecting the systems of the Provider.

15.19   If any changes or prospective changes to the Data Protection Laws result or will result in one or both parties not complying with the Data Protection Laws in relation to processing of Personal Data carried out under the Agreement, then the parties shall use their best endeavours promptly to agree such variations to the Agreement as may be necessary to remedy such noncompliance.

16. Warranties

16.1   The Provider warrants to the Customer that:

(a) the Provider has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions;

(b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under these Terms and Conditions; and

(c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under these Terms and Conditions.

16.2   The Provider warrants to the Customer that:

(a) the Platform will incorporate security features reflecting the requirements of good industry practice.

16.3   The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not breach any laws, statutes or regulations applicable under Australian law.

16.4   The Provider warrants to the Customer that the Hosted Services, when used by the Customer in accordance with these Terms and Conditions, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

16.5   If the Provider reasonably determines, or any third party alleges, that the use of the Hosted Services by the Customer in accordance with these Terms and Conditions infringes any person's Intellectual Property Rights, the Provider may at its own cost and expense:

(a) modify the Hosted Services in such a way that they no longer infringe the relevant Intellectual Property Rights; or

16.6   The Customer warrants to the Provider that it has the legal right and authority to enter into the Agreement and to perform its obligations under these Terms and Conditions.

16.7   All of the parties' warranties and representations in respect of the subject matter of the Agreement are expressly set out in these Terms and Conditions. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of the Agreement will be implied into the Agreement or any related contract.

17. Acknowledgements and warranty limitations

17.1   The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

17.2   The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of these Terms and Conditions, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.

17.3   The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

17.4   The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under these Terms and Conditions or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in these Terms and Conditions, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

18. Indemnities

18.1   The Provider shall indemnify and shall keep indemnified the Customer against any and all liabilities, damages, losses, costs and expenses including legal expenses and amounts reasonably paid in settlement of legal claims suffered or incurred by the Customer and arising directly or indirectly as a result of any breach by the Provider of these Terms and Conditions

18.2   The Customer must:

(a) upon becoming aware of an actual or potential Provider Indemnity Event, notify the Provider;

(b) provide to the Provider all such assistance as may be reasonably requested by the Provider in relation to the Provider Indemnity Event;

(c) allow the Provider the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Provider Indemnity Event; and

(d) not admit liability to any third party in connection with the Provider Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Provider Indemnity Event without the prior written consent of the Provider, without prejudice to the Provider's obligations under Clause 18.1 OR and the Provider's obligation to indemnify the Customer under Clause 18.1 shall not apply unless the Customer complies with the requirements of this Clause 18.2.

18.3   The Customer shall indemnify and shall keep indemnified the Provider against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by

the Provider and arising directly or indirectly as a result of any breach by the Customer of these Terms and Conditions

18.4 The Provider must:

(a) upon becoming aware of an actual or potential Customer Indemnity
       i. Event, notify the Customer;
(b) provide to the Customer all such assistance as may be reasonably requested by the Customer in relation to the Customer Indemnity Event;
(c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Customer Indemnity Event; and
(d) not admit liability to any third party in connection with the Customer Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Customer Indemnity Event without the prior written consent of the Customer, without prejudice to the Customer's obligations under Clause 18.3 and the Customer's obligation to indemnify the Provider under Clause 18.3 shall not apply unless the Provider complies with the requirements of this Clause 18.4.

18.5 The indemnity protection set out in this Clause 18 shall be subject to the limitations and exclusions of liability set out in the Agreement

19. Limitations and exclusions of liability

19.1 Nothing in these Terms and Conditions will:

(a) limit or exclude any liability for death or personal injury resulting from negligence;
(b) limit or exclude any liability for fraud or fraudulent misrepresentation;
(c) limit any liabilities in any way that is not permitted under applicable law; or
(d) exclude any liabilities that may not be excluded under applicable law.

19.2 The limitations and exclusions of liability set out in this Clause 19 and elsewhere in these Terms and Conditions:

(a) are subject to Clause 19.1; and
(b) govern all liabilities arising under these Terms and Conditions or relating to the subject matter of these Terms and Conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these Terms and Conditions.

19.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

19.4 Neither party shall be liable to the other party in respect of any loss of profits or anticipated savings.

19.5 Neither party shall be liable to the other party in respect of any loss of revenue or income.

19.6 Neither party shall be liable to the other party in respect of any loss of use or production.

19.7 Neither party shall be liable to the other party in respect of any loss of business, contracts or opportunities.

19.8 Neither party shall be liable to the other party in respect of any loss or corruption of any data, database or software

19.9 Neither party shall be liable to the other party in respect of any special, indirect or consequential loss or damage.

19.10 The liability of each party to the other party under the Agreement in respect of any event or series of related events shall not exceed the greater of:

    (a) $1000 and
    (b) the total amount paid and payable by the Customer to the Provider under the Agreement in the 3 months period preceding the commencement of the event or events.

19.11 The aggregate liability of each party to the other party under the Agreement shall not exceed the greater of:

    (a) $1000 and
    (b) the total amount paid and payable by the Customer to the Provider under the Agreement in the 3 months period preceding the commencement of the event or events.

20. Force Majeure Event

20.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

20.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Agreement, must:

    (a) inform the other of the period for which it is estimated that such failure or delay will continue.

20.3 A party whose performance of its obligations under the Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

21. Termination

21.1 Either party may terminate the Agreement by giving to the other party not less than 30 days notice

21.2   Either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

   (a) the other party commits a breach OR material breach of the Agreement, and the breach is remediable, but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied

21.3   Subject to applicable law, either party may terminate the Agreement immediately by giving written notice of termination to the other party if:

   (a) the other party:
       (i) is or becomes unable to pay its debts as they fall due;

21.4   The Provider may terminate the Agreement immediately by giving written notice to the Customer if:

   (a) any amount due to be paid by the Customer to the Provider under the Agreement is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
   (b) the Provider has given to the Customer at least 30 days written notice, following the failure to pay, of its intention to terminate the Agreement in accordance with this Clause 21.4.

22. Effects of termination

22.1   Upon the termination of the Agreement, all of the provisions of these Terms and Conditions shall cease to have effect, the following provisions of these Terms and Conditions shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.11, 9.7, 10, 13.2, 13.4, 14, 15, 18, 19, 22, 25, 26, 27, 28, 29.1, 29.2, 30, 31 and 32.

22.2   Except to the extent expressly provided otherwise in these Terms and Conditions, the termination of the Agreement shall not affect the accrued rights of either party.

22.3   Within 30 days following the termination of the Agreement for any reason:

   (a) the Customer must pay to the Provider any Charges in respect of Services provided to the Customer before the termination of the Agreement; and without prejudice to the parties' other legal rights.

23. Notices

23.1   Any notice from one party to the other party under these Terms and Conditions must be given by one of the following methods (using the relevant contact details set out in Section 5 of the Registration and Clause 23.2:

   (a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery
   (b) Delivered electronically via email to the Customer's email address specified on the Registration form.

24. Subcontracting

24.1 Subject to any express restrictions elsewhere in these Terms and Conditions, the Provider may subcontract any of its obligations under the Agreement, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question.

24.2 The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

24.3 Notwithstanding the provisions of this Clause 24 but subject to any other provision of these Terms and Conditions, the Customer acknowledges and agrees that the Provider may subcontract to any reputable third-party hosting business the hosting of the Platform and the provision of services in relation to the support and maintenance of elements of the Platform.

25. Assignment

25.1 The Customer hereby agrees that the Provider may assign, transfer or otherwise deal with the Provider's contractual rights and obligations under these Terms and Conditions.

25.2 The Provider hereby agrees that the Customer may assign, transfer or otherwise deal with the Customer's contractual rights and obligations under these Terms and Conditions.

26. No waivers

26.1 No breach of any provision of the Agreement will be waived except with the express written consent of the party not in breach.

26.2 No waiver of any breach of any provision of the Agreement shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of the Agreement.

27. Severability

27.1 If a provision of these Terms and Conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

27.2 If any unlawful and/or unenforceable provision of these Terms and Conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

28. Third party rights

28.1 The Agreement is for the benefit of the parties and is not intended to benefit or be enforceable by any third party.

28.2   The exercise of the parties' rights under the Agreement is not subject to the consent of any third party.

29. Variation

29.1   The Agreement may not be varied except in accordance with this Clause 29.

29.2   The Agreement may be varied by means of a written document signed by or on behalf of each party.

29.3   The Provider may vary the Agreement by giving to the Customer at least 30 days' written notice of the proposed variation, providing that if the Provider gives to the Customer a notice under this Clause 29.3, the Customer shall have the right to terminate the Agreement by giving written notice of termination to the Provider at any time during the period of 14 days following receipt of the Provider's notice.

30. Entire agreement

30.1   The Registration Form, the main body of these Terms and Conditions and the Schedules shall constitute the entire agreement between the parties in relation to the subject matter of the Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

30.2   Neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Agreement.

30.3   The provisions of this Clause 30 are subject to Clause 19.1.

31. Law and jurisdiction

31.1   These Terms and Conditions shall be governed by and construed in accordance with Australian law.

31.2   Any disputes relating to the Agreement shall be subject to the exclusive OR non-exclusive jurisdiction of the courts of Australia.

32. Interpretation

32.1   In these Terms and Conditions, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or reenacted from time to time; and
(b) any subordinate legislation made under that statute or statutory provision.

32.2   The Clause headings do not affect the interpretation of these Terms and Conditions.

32.3   References in these Terms and Conditions to "calendar months" are to the 12 named periods (January, February and so on) into which a year is divided.

32.4   In these Terms and Conditions, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.

SCHEDULE 1 (ACCEPTABLE USE POLICY)

1. Introduction

1.1   This acceptable use policy (the "Policy") sets out the rules governing:

(a) the use of the website at https://apps.neodocs.com.au, https://www.neodocs.com or any successor website, and the services available on that website or any successor website (the "Services"); and

(b) the transmission, storage and processing of content by you, or by any person on your behalf, using the Services ("Content").

1.2   References in this Policy to "you" are to any customer for the Services and any individual user of the Services (and "your" should be construed accordingly); and references in this Policy to "us" are to identify provider (and "we" and "our" should be construed accordingly).

1.3   By using the Services, you agree to the rules set out in this Policy.

1.4   We will ask for your express agreement to the terms of this Policy before you upload or submit any Content or otherwise use the Services.

1.5   You must be at least 18 years of age to use the Services; and by using the Services, you warrant and represent to us that you are at least 18 years of age.

2. General usage rules

2.1   You must not use the Services in any way that causes, or may cause, damage to the Services or impairment of the availability or accessibility of the Services.

2.2   You must not use the Services in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity.

2.3   You must ensure that all Content complies with the provisions of this Policy.

3. Unlawful Content

3.1   Content must not be illegal or unlawful, must not infringe any person's legal rights, and must not be capable of giving rise to legal action against any person in each case in any jurisdiction and under any applicable law.

3.2   Content, and the use of Content by us in any manner licensed or otherwise authorised by you, must not:

(a) be libellous or maliciously false;

(b) be obscene or indecent;

(c) infringe any copyright, moral right, database right, trade mark right, design right, right in passing off, or other intellectual property right;

(d) infringe any right of confidence, right of privacy or right under data protection legislation;

3.3   Content must not consist of or contain any advice, instructions or other information that may be acted upon and could, if acted upon, cause death, illness or personal injury, damage to property, or any other loss or damage.

3.4   Fair use applies and any deliberate breach can be cause to terminate the agreement under Section 21.

4. Etiquette

4.1   Content must be appropriate, civil and tasteful, and accord with generally accepted standards of etiquette and behaviour on the internet.

4.2   Content must not be offensive, deceptive, threatening, abusive, harassing, menacing, hateful, discriminatory or inflammatory.

4.3   Content must not be liable to cause annoyance, inconvenience or needless anxiety.

4.4   You must not use the Services to send any hostile communication, or any communication intended to insult, including such communications directed at a particular person or group of people.

4.5   You must not use the Services for the purpose of deliberately upsetting or offending others.

4.6   You must not unnecessarily flood the Services with material relating to a particular subject or subject area, whether alone or in conjunction with others.

4.7   You must ensure that Content does not duplicate other content available through the Services.

4.8   You must ensure that Content is appropriately categorised.

4.9   You should use appropriate and informative titles for all Content.

4.10   You must always be courteous and polite to other users of the Services.

5. Marketing and spam

5.1   You must not use the Services for any purpose relating to the marketing, advertising, promotion, sale or supply of any product, service or commercial offering

5.2   Content must not constitute or contain spam, and you must not use the Services to store or transmit spam - which for these purposes shall include all unlawful marketing communications and unsolicited commercial communications.

5.3   You must not use the Services in any way which is liable to result in the blacklisting of any of our IP addresses.

6. Regulated businesses

6.1   You must not use the Services for any purpose relating to gambling, gaming, betting, lotteries, sweepstakes, prize competitions or any gambling-related activity.

6.2   You must not use the Services for any purpose relating to the offering for sale, sale or distribution of drugs or pharmaceuticals.

6.3   You must not use the Services for any purpose relating to the offering for sale, sale or distribution of knives, guns or other weapons.

7.   Monitoring

7.1   You acknowledge that we may actively monitor the Content and the use of the Services

8.   Data mining

8.1   You must not conduct any systematic or automated data scraping, data mining, data extraction or data harvesting, or other systematic or automated data collection activity, by means of or in relation to the Services.

9.   Hyperlinks

9.1   You must not link to any material using or by means of the Services that would, if it were made available through the Services, breach the provisions of this Policy.

10.   Harmful software

10.1   The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies.

10.2   The Content must not contain or consist of, and you must not promote, distribute or execute by means of the Services, any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer.