

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “LEAP” means Leap Consulting (WA) Pty Ltd, its successors and assigns or any person acting on behalf of, and with the authority of, Leap Consulting (WA) Pty Ltd.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting LEAP to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Services” means all Goods (which includes any content, files, information, printed or virtual material, data, hardware, software or applications (whether supplied from a third party software development company or where custom developed or programmed for the Client), brands, designs, images, graphics, pictures, trademarks, manuals, and other associated documentation and/or goods, accessories or parts) or Services (which includes any advice or recommendations, consultancy, hosting (which includes virtual server hosting, website hosting, e-mail hosting, etc.), monitoring, data back-up or storage, design and/or website maintenance, brands, designs, project management work, brand integration, strategising and analytical services, technical service, support and training, repairs, or installation of Goods, etc.) supplied by LEAP to the Client, at the Client’s request, from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “Web Site” means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.
- 1.6 “Prohibited Content” means any content or links that:
 - (a) are, or could reasonably be considered to be, in breach of the Broadcasting Services Act 1992; the Fair Trading Acts of the applicable States and Territories of Australia and the Competition and Consumer Act 2010 (CCA); or any other applicable law or applicable industry code; or
 - (b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
 - (c) are, or could reasonably be considered to be, in breach of any person’s intellectual property rights (including, but not limited to, the distribution of software or video, audio or digital files, or any other material in which the Client does not own the copyright). LEAP will respond to all reports of infringement that are formatted in accordance with Australian copyright laws and any other applicable copyright laws. LEAP will act in accordance with the law when handling infringement reports; or
 - (d) are, or could reasonably be considered to be, pirated software, bulk e-mail related products, pornography or nudity or adult content, hacking or cracking related websites, Warez, hosting of large scale video, audio or digital download websites, illegal material or material that is against public policy, websites containing or linking to material that may be considered detrimental to the public’s health, safety or welfare (such as, but not limited to, anarchists, Cookbook, bomb making, weapon information, etc.), or anything else that may be considered detrimental or illegal.
- 1.7 “Sub-contractor” means any third party Sub-contractor engaged by LEAP to assist and carry out services to complete the Services.
- 1.8 “Price” means the cost of the Services (plus any GST where applicable) as agreed between LEAP and the Client in accordance with clause 5 below.
- 1.9 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts, Services provided by LEAP.
- 2.2 These terms and conditions:
 - (a) sets forth the entire and final understanding of the Client and LEAP pertaining to the subject matter hereof and supersedes all prior arrangement, whether oral or written; and
 - (b) may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and LEAP.
- 2.3 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with LEAP and it has been approved with a credit limit established for the account.
- 2.4 In the event that the supply of Goods request exceeds the Client’s credit limit and/or the account exceeds the payment terms, LEAP reserves the right to refuse Delivery.
- 2.5 The Client shall as soon as practicable make available to LEAP all information, documents, software, hardware, and other particulars required by LEAP for the provision of Services.
- 2.6 None of LEAP’S agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Director of LEAP in writing nor is LEAP bound by any such unauthorised statements.
- 2.7 Any advice, recommendations, information, assistance or service provided by LEAP in relation to the Services provided is given in good faith, is based on information provided to LEAP, and LEAP’S own industry knowledge, and experience. Whilst it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Services, human error is possible under these circumstances, and LEAP shall make all effort to offer the best solution to the Client.
- 2.8 Provided LEAP acts reasonably, they are entitled to assume that any request in connection with the Services that LEAP receives from the Client (or the Client’s agents, employees or contractors) or from the premises where the Services are being provided or accessed, is authorised by the Client.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

- 2.10 The commencement date shall be the date of the first delivery of the Services, or from the date of signing, whichever, is the earlier. Fixed Price Contracts shall be for the period ('initial term') as agreed between both parties and shall revert to a monthly roll over basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least one (1) months required notice as defined in the Contract prior to the expiration date of the initial term or any additional term.
- 2.11 The Client acknowledges and accepts that the Price stated will remain fixed for an initial period as stated from the date of this contract and will then be subject to revision on the basis of the movement in the Consumer Price Index (CPI).
- 2.12 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on LEAP'S Web Site and/or in LEAP'S Service Maintenance Contract. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.13 The Client acknowledges and accepts that LEAP'S support Services and calls are:
- (a) conducted Monday to Friday between 7.30 am and 6:00 pm (excluding Public Holidays);
 - (b) in the event that LEAP is required to provide the Services urgently, that may require LEAP'S staff to work outside the aforementioned normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then LEAP reserves the right to charge the Client a premium charge unless otherwise agreed between LEAP and the Client; and
 - (c) support Services are not guaranteed outside LEAP'S normal business hours, unless part of a contracted arrangement.
- 3. Errors and Omissions**
- 3.1 The Client acknowledges and accepts that LEAP shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by LEAP in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by LEAP in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of LEAP; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4. Change in Control**
- 4.1 The Client shall give LEAP not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by LEAP as a result of the Client's failure to comply with this clause.
- 5. Price and Payment**
- 5.1 At LEAP'S sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by LEAP to the Client; or
 - (b) the Price as at the date of delivery of Services according to LEAP'S current Price schedule (Prices are subject to change, one (1) months' notice will be provided by LEAP of any such Price adjustments); or
 - (c) LEAP'S quoted price (subject to clause 5.2) which will be valid for the period stated in this Contract or otherwise for a period of fourteen (14) days.
- 5.2 *Additional and/or Varied Services:*
- (a) LEAP agrees that there will be no charge in the preparation of the initial quotation (however any site visits may be chargeable), which may include Client discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at LEAP's sole discretion). In the event the Client requires proofs, mock-ups, layouts, samples or dummies or printed, typewritten or other good copy and/or edits, this shall be invoiced at LEAP'S hourly rate unless specified otherwise in the initial quotation, therefore, this variation shall be detailed on the invoice as per sub-clause (c);
 - (b) where the performance of any contract with the Client requires LEAP to obtain products and/or services from a third party, the contract between LEAP and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to LEAP, and the Client shall be liable for the cost in full including LEAP'S margin of such products and/or services;
 - (c) LEAP reserves the right to amend the Price where there is any variation to the accepted plan of scheduled Services, or instructions/specifications, which will be charged for on the basis of LEAP's standard hourly rates (and double such rate for any Services provided outside LEAP's normal business hours) and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion;
 - (d) as a result of increases beyond LEAP'S reasonable control in the cost of materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, third-party network operator or supplier costs, etc) or labour will be charged for on the basis of LEAP's quotation and will be shown as variations on the invoice.
- 5.3 Variations will be charged for on the basis of LEAP'S quotation, and will be detailed in writing, and shown as variations on LEAP'S invoice. The Client shall be required to respond to any variation submitted by LEAP within ten (10) working days. Failure to do so will entitle LEAP to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At LEAP'S sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by LEAP, which may be:
- (a) on provision of the Services; or
 - (b) fourteen (14) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by LEAP.
- 5.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by LEAP nor to withhold payment of any invoice because part of that invoice is in dispute.

- 5.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and LEAP.
- 5.8 LEAP may in its discretion allocate any payment received from the Client towards any invoice that LEAP determines and may do so at the time of receipt or at any time afterwards. On any default by the Client LEAP may re-allocate any payments previously received and allocated. In the absence of any payment allocation by LEAP, payment will be deemed to be allocated in such manner as preserves the maximum value of LEAP's Purchase Money Security Interest (as defined in the PPSA) in the Services.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to LEAP an amount equal to any GST LEAP must pay for any provision of Services by LEAP under this Contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price, except where they are expressly included in the Price.
- 5.10 The Client acknowledges and agrees that the Client's obligations to LEAP for the provision of the Services shall not cease, and ownership of the Goods (if applicable) shall not pass, until:
- (a) the Client has paid LEAP all amounts owing thereto for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to LEAP in respect of all agreements between LEAP and the Client.
- 5.11 Receipt by LEAP of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then LEAP'S ownership or rights in respect of the Services, and this Contract, shall continue.

6. Provision of the Services

- 6.1 The Services are provided on the basis of specifications, information and instructions provided by the Client to LEAP (whether written or verbal). The Client acknowledges that it is their responsibility to ensure that such are detailed sufficiently to satisfy LEAP'S requirements of interpretation and understanding, as once accepted by the Client, LEAP'S quotation shall be deemed to interpret correctly those specifications, information and instructions. Therefore, LEAP shall not accept any liability for the supply of Services contrary to the Client's intention, or errors or omissions in the Services, due to insufficient or inadequate provision of detailed specifications, information and instructions by the Client or oversight or misinterpretation thereof, and LEAP may charge the Client additional costs incurred thereby in remedying the Services, and if reasonably practical, will notify the Client of such costs before they are incurred and the Client agrees to them.
- 6.2 LEAP may supply Goods to the Client where it is required for the provision of Services, and
- (a) delivery of the Goods is taken to occur at the time that LEAP (or LEAP'S nominated carrier) delivers the Goods to the Client's nominated address, even if the Client is not present at the address; and
 - (b) at LEAP'S sole discretion, any costs of delivery shall be included in the Price; and
 - (c) LEAP may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions; and
 - (d) risk of damage to, or loss of, the Goods passes to the Client on delivery, and the Client must insure the Goods on, or before, delivery.
- 6.3 Whilst LEAP shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties (subject to LEAP'S normal service hours of 7.30am to 6.00pm on business days), the Client acknowledges that any time specified thereby for provision of the Services is an estimate only and LEAP will not be liable for any loss or damage incurred by the Client as a result of any delay. In the event that LEAP is unable to provide the Services as agreed solely due to any action or inaction of the Client then LEAP shall be indemnified from any liability for any resulting failure to provide the Services and/or entitled to charge a reasonable fee for re-providing the Services at a later time and date.
- 6.4 *Normal Working Hours:*
- (a) Services may be requested outside of the hours of 7.30am to 6.00pm Monday through Friday, and including all public holidays by prior arrangement, but may be subject to additional charges.

7. Repair Notice

- 7.1 If the Client is a consumer within the meaning of the CCA, this clause constitutes a Repair Notice given under the Australian Consumer Law ("ACL"), and the Client acknowledges that:
- (a) the repair of equipment may result in the loss of any files stored on the hard drive, etc. ("**User-Generated Data**"). It is the sole responsibility of the Client to back-up any User-Generated Data which they believe to be important, valuable, or irreplaceable prior to submitting the equipment for repair; and
 - (b) equipment presented for repair may be replaced by, or repaired with, refurbished Goods of the same type rather than being repaired.

8. Client's Obligations

- 8.1 The Client shall:
- (a) co-operate with LEAP in connection with the provision of the Services, and shall ensure that the work area is free from hazards and all other objects (including but not limited to, cabling or items that are likely to break) that may limit such access to the Client's premises, equipment and adequate working space and facilities, such as electrical outlets, within a reasonable distance from the equipment. LEAP shall not be liable for any loss or damage to any property, or injury to any person, that may be caused by the Client's failure to comply with this clause 8.1(a);
 - (b) obtain, keeps and make available to LEAP, machine readable copies of all programs, operating systems, drivers and data files relating to the equipment. LEAP does not assume any liability as a consequence of the Client's inability to use its machine readable data;
 - (c) not modify, create any derivative work of, or incorporate any other goods into the network or any portion thereof. LEAP shall not be responsible for the maintenance of, or the repair of problems or malfunctions caused by any modifications of enhancements made by the Client or by anyone else other than LEAP.
- 8.2 The Client accepts and acknowledges that during the course of the Services:
- (a) existing plastics or connections may be broken to access a repair area and/or carry out general maintenance, which is beyond LEAP control. Any additional cost associated with replacement items shall be borne by the Client; and

- (b) where the Client chooses to deliver their laptop, computer or any other digital device to LEAP business premises for repair, all risk to such items remains with the Client in the first instance, any damage to the Goods or any personal injury experienced during this delivery method, shall be the Client responsibility; and
- (c) the Client shall provide content to LEAP, in such form as reasonably prescribed by LEAP from time to time, and hereby grants LEAP a non-exclusive, worldwide, irrevocable licence to use such content for incorporation in the Services; and
- (d) ensure that such content supplied to LEAP is not Prohibited Content, or contains any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the Services; and
- (e) the Client will ensure that LEAP is given such information and assistance (including remote access (where required) to any computer systems plus usernames and passwords or any other locations) as LEAP'Ss reasonably requires to enable LEAP to complete any necessary Services.

9. Client's Property and Materials

- 9.1 In the case of property and materials left with LEAP without specific instructions, LEAP shall be free to dispose of them at the end of three (3) months after LEAP receiving them and to accept and retain the proceeds (such sale is to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods), if any, and/or charge the Client in addition to the Price to cover LEAP'S own costs in storing, handling and/or disposing of such property.
- 9.2 The lien of LEAP shall continue despite the commencement of proceedings, or judgment for any moneys owing to LEAP having been obtained against the Client.
- 9.3 Where materials or equipment are supplied by the Client, LEAP accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.

10. Hosting Services

- 10.1 "Live Date" means the date in which LEAP provides the Hosting Services as per initial acceptance of LEAP's quotation.
- 10.2 Hosting services shall only be used by the Client for lawful purposes. Any use which violates any applicable national or international laws is strictly prohibited (e.g. posting or transmitting any unlawful, threatening, abusive, libellous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind – including, but not limited to, any transmission constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability).
- 10.3 Hosting services exclude domain registrations and Secure Sockets Layer (SSL) Certificates, and where the Client is changing from another hosting provider the install and set-up of the Web Site on LEAP's web servers, which shall be charged to the Client additionally.
- 10.4 LEAP will, at its sole cost and expense:
 - (a) host the Web Site on LEAP's or other third party web servers;
 - (b) ensure that from the Live Date:
 - (i) sufficient capacity is maintained on LEAP's webserver to enable users access to the Web Site in a timely manner;
 - (ii) the Web Site is accessible to users in accordance with the agreed service levels (subject to reasonable downtime for server maintenance which has been notified to the Client prior to the commencement of the downtime or (where applicable) Maintenance in accordance with clause 10.9);
 - (c) provide the Client with reasonable access to the Website to perform maintenance services.
- 10.5 LEAP will not:
 - (a) alter or amend, or permit any person to alter or amend the Web Site without the written consent of the Client;
 - (b) post or display on the Web Site any advertisement, sponsorship or promotion without the written consent of the Client;
 - (c) use any user data for marketing, referral or other purposes except as expressly authorised by this Contract;
 - (d) sub-licence, rent, time-share, lease, lend or grant any rights to use the Web Site; or
 - (e) assign, transfer or authorise anyone else to exercise the rights in any licence granted pursuant to this Contract.
- 10.6 LEAP will make best efforts to ensure that the Client receives continual and uninterrupted Services (including network or hosting servers) during the term of this Contract, however LEAP does not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to regularly scheduled maintenance cycles, and many events/circumstances beyond the control of LEAP. In no event, though, shall LEAP be liable to the Client for damages (including loss of income) resulting from or in relation to any failure or delay (including server downtime, programming errors, lack of connection or slow connection) of LEAP to provide Services under this Contract, or any loss of data, if such delays or failures are due to circumstances beyond our control. Such a failure or delay shall not constitute a default under this Contract.
- 10.7 LEAP may, at their sole discretion, limit or deny access to the Services is, in the judgement of LEAP, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network.
- 10.8 Where the Client engages a third party hosting provider, LEAP shall not be held liable should the Client's Web Site be affected by any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the Web Site.
- 10.9 *Web Site Maintenance Services:*
 - (a) subject to clause (b), LEAP will provide the Web Site Maintenance Services in accordance with the maintenance terms set out in LEAP's maintenance schedule.
 - (b) the Client will procure all necessary authorisations, licences and consents to enable LEAP to have access to the Web Site in order to provide the Maintenance Services.
 - (c) should the Client maintain the Web Site, then LEAP shall not be held responsible or liable for any interruption or non-performance of the Web Site and shall be entitle to charge the Client for any remedial work that may be required to store the function of the Web Site.
- 10.10 *Client's Obligations:*
 - (a) the Client will, at its sole cost and expense:
 - (i) subject to any contract with LEAP for Web Site Development, develop and maintain the Web Site;

- (ii) provide the content to LEAP, in such form as reasonably prescribed by LEAP from time to time, and hereby grants LEAP a non-exclusive, worldwide, irrevocable licence to use such content for the purposes of hosting the Web Site;
- (iii) do all things reasonably necessary to enable LEAP to host the Web Site on LEAP's webserver;
- (iv) change the type of hosting account used if that account is deemed by LEAP to be unacceptable because of poor service, lack of bandwidth or in any other way insufficient to support the Web Site;
- (v) is responsible for any fees payable and due to previous hosting organisations engaged by the Client;
- (vi) ensure that content supplied to LEAP do not contain Prohibited Content, a link to any Web Site that contains Prohibited Content, or any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the Hosting Services.

(b) the Client will not:

- (i) logon to an account that the Client is not authorised to access;
- (ii) access data or take any action to obtain services not intended for the Client;
- (iii) attempt to probe, scan or test the vulnerability of any system, subsystem or network;
- (iv) tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;
- (v) transmit any material outlined in clause 10.108.2(d);
- (vi) do anything that prevents or hinders LEAP from providing Hosting Services to any other person.

(c) the Client acknowledges that spamming (i.e. the sending of unsolicited email), email address cultivation, or any unauthorised collecting of email addresses without prior notification of the email address owner is strictly prohibited.

10.11 *Network Traffic:*

- (a) network traffic shall be measured by LEAP and may include all forms of traffic to and from the Web Site. Domestic data transfer is provided free of charge, but LEAP reserve the right to suspend Hosting Services (at any time and without notice to the Client) for what it deems to be excessive traffic usage.

10.12 *Limitation of Liability for Hosting Services*

- (a) in consideration of clause 17.8, in the event the Hosting Services provided to the Client are disrupted or malfunction for any reason, LEAP's liability shall be limited to damages which under no circumstances shall exceed the amount due and payable by the Client to LEAP for the Hosting Services during the period of disruption or malfunction.

11. Email Hosting Services

- 11.1 It shall be the Client's responsibility for the set-up and configuration of the Client's email on any business computer or mobile devices, etc. Should the Client prefer, LEAP can refer a third party IT service professional.

12. Search Engine Optimisation (SEO)

- 12.1 Although LEAP shall use their knowledge and experience to gain the best results possible, LEAP gives no guarantee of the quality of visitor or the position / page rank or volume of visits to the Website, or warranty that the Web Site will be effective in promoting the Client's business or result in any increase in sales of the products/services of the Client. Periodic reporting will be sent to the Client's nominated email address, at the sole discretion of LEAP.

13. Domain Registration

- 13.1 Where LEAP is to register a domain name on the Client's behalf, LEAP cannot guarantee the availability of the domain name, nor assume a successful registration of such a name.

14. Backups

- 14.1 The Client is responsible for maintaining their own e-mail backups on their own systems, unless otherwise agreed; LEAP does not provide any sort of compensation for lost or incomplete data in the event that backups do not function properly.
- 14.2 LEAP will use their best endeavours to ensure complete and accurate backups of hosted data, but assume no responsibility for this duty. It is recommended by LEAP that the Client always keeps a backup of their website whenever possible. LEAP makes no guarantees about the availability of backups.
- 14.3 If the Client requires assistance in creating backups, please contact LEAP or view LEAP'S support pages. The Client's hosting control panel provides a backup utility and the Client should periodically download a copy of their backed up files.

15. Unsolicited E-mail (SPAM)

- 15.1 SPAMing, or the sending of unsolicited e-mail, from LEAP'S servers, or using a return e-mail address that is maintained on LEAP'S servers, is strictly prohibited. Using SPAM to advertise a website hosted on LEAP'S network is not only illegal under Australian Federal law, but also constitutes as a violation of this provision. If the Client's account is found to have been sending SPAM, whether the Client is aware, or not aware, of the SPAM activity, LEAP reserves the right to limit or terminate the e-mail Services on the Client's account at any time and without prior notification.

16. Server Abuse

- 16.1 Any attempts to undermine or cause harm to LEAP'S servers, or a Client of LEAP, is strictly prohibited. LEAP reserve the right to seek compensation for loss of business and damage done to their servers by the Client, or dedicated server lessee.
- 16.2 It shall be the Client's responsibility to ensure the security and confidentiality of their account and must not allow any unauthorised use of such by any third party. The Client will be liable for any infringement of these terms and conditions in respect of the Client's account, irrespective of whether such infringement is by the Client or any authorised or unauthorised third party.

17. Risk and Limitation of Liability for Client Data

- 17.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

- 17.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, LEAP is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by LEAP is sufficient evidence of LEAP's rights to receive the insurance proceeds without the need for any person dealing with LEAP to make further enquiries.
- 17.3 If the Client requests LEAP to leave Goods outside LEAP's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 17.4 The Client acknowledges and agrees that LEAP shall not be held responsible or liable for:
- (a) anything related to the Client's website or any other Services provided;
 - (b) any supplied content breaching any Acts, legislation or regulations, unless due to the negligence of LEAP;
 - (c) any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking or Services provided by LEAP. Whilst LEAP will endeavour to restore the website, files or data (at the Client's cost), it is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to LEAP providing the Services. The Client accepts full responsibility for the Client's software and data and LEAP is not required to advise or remind the Client of appropriate backup procedures (unless included as part of the Services);
 - (d) any loss or damage to the Client's software or hardware caused by any 'updates' provided for that software.
- 17.5 LEAP, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by LEAP to the Client.
- 17.6 The Services are provided on an "as is, as available" basis. LEAP specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.
- 17.7 The Client understands that by placing information on a website, such information may be accessible to all internet users. LEAP does not (unless expressly requested by the Client) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity. The Client assumes full responsibility for their use of the Services, and it is the Client's sole responsibility to evaluate the accuracy, completeness and usefulness or all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by LEAP, or on the internet generally.
- 17.8 Furthermore, LEAP shall be under no liability whatsoever to the Client for any expenses, claims, costs (including but not limited to legal fees and commissions), damages suffered or incurred by LEAP, or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by LEAP of these terms and conditions, caused by any failure by the Client to comply with their obligations under this Contract, or that arise from any claim relating to the Services by any person that the Client authorises to use the Services, or where due to server downtime or programming errors (alternatively LEAP's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 17.9 The Client acknowledges that LEAP is only responsible for parts that are replaced by LEAP and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify LEAP against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 18. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)**
- 18.1 The Client must inspect LEAP'S Services on completion (or Goods on delivery) and must within five (5) days notify LEAP in writing of any evident defect, error or omission in the Services provided (including LEAP'S workmanship) or of any other failure by LEAP to comply with the description of, or quotation for, the Services which LEAP was to provide. The Client must notify any other alleged defect in LEAP'S Services as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow LEAP to review the Services that were provided.
- 18.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("**Non-Excluded Guarantees**").
- 18.3 LEAP acknowledge that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, LEAP makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. LEAP'S liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5 If the Client is a consumer within the meaning of the CCA, LEAP'S liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6 If LEAP is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then LEAP may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.
- 18.7 If the Client is not a consumer within the meaning of the CCA, LEAP'S liability for any defective Services is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by LEAP at LEAP'S sole discretion;
 - (b) limited to any warranty to which LEAP is entitled, if LEAP did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 18.8 Subject to this clause 18, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 18.1; and
 - (b) LEAP has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost; and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 18.9 Notwithstanding clauses 18.1 to 18.7 but subject to the CCA, LEAP shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store the Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;

- (c) the Client continuing to use any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Goods by the Client or any third party without LEAP'S prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by LEAP;
 - (f) fair wear and tear, any accident, or act of God.
- 18.10 Notwithstanding anything contained in this clause if LEAP is required by a law to accept a return then LEAP will only accept a return on the conditions imposed by that law.

19. Title

- 19.1 The Client acknowledges and agrees that, until ownership of the Goods passes to the Client in accordance with clause 5.10:
- (a) the Client is only a bailee of the Goods and must return the Goods to LEAP on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for LEAP and must pay to LEAP the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for LEAP and must pay or deliver the proceeds to LEAP on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of LEAP and must sell, dispose of or return the resulting product to LEAP as it so directs.
 - (e) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of LEAP.
 - (f) LEAP may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Client.
- 19.2 If the Client fails to return the Goods, or refuses to allow LEAP to recover the Goods, the Client irrevocably authorises LEAP (as the invitee of the Client) to enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated, or LEAP believes the Goods are kept, and take/recover possession of the Goods, without being responsible for any damage thereby caused. Furthermore, provided LEAP acts with reasonable care, the Client must reimburse LEAP for any loss and/or costs incurred thereby.

20. Intellectual Property

- 20.1 The Client warrants that all designs or instructions to LEAP will not cause LEAP to infringe any patent, registered design or trademark in the execution of the Client's order. Furthermore, the Client agrees to indemnify, defend, and hold LEAP harmless from all loss incurred or suffered by LEAP arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's intellectual property rights by the Client during the use of the Services.
- 20.2 Any coding and other supplied code (if any) remains the intellectual property of LEAP. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.
- 20.3 Where LEAP has provided software (and associated documentation) and/or for any of LEAP'S source code, LEAP retains ownership thereof, but grants the Client a non-exclusive and non-transferable licence for its use (solely in relation to the operation of the Client's own business). The Client will use any third-party software and/or source code supplied by LEAP, and identified as such, strictly in terms of the licence (or any other conditions imposed by LEAP) under which it is supplied. The Client further agrees that they shall not without LEAP'S prior written consent:
- (a) copy the software and/or source code; or
 - (b) allow any third party to have access to the software and/or source code; or
 - (c) where LEAP'S phone configuration details are used such details are confidential and access to such is strictly prohibited unless the Client is to (upon written advice) carry out a factory reset for the phone system to be configured again from inception; or
 - (d) alter, modify, tamper with, or reverse engineer the software and/or source code; or
 - (e) combine the Software and/or source code with any other software and/or item, etc.
- 20.4 Subject to Australian copyright laws (and/or any other applicable copyright laws) and the conditions therein, the Client agrees that they shall not in any way sell, reproduce, adapt, distribute, transmit, publish, or create derivative works from, any part of the software (if supplied by LEAP) without LEAP'S prior consent in writing.
- 20.5 The Client hereby authorises LEAP to utilise images of the Services created by LEAP in advertising, marketing, or competition material by LEAP.

21. Cancellation and Termination

- 21.1 Either party may, without liability, cancel these terms and conditions or cancel provision of the Services:
- (a) if there is no Contract term specified, at any time by giving thirty (30) days' notice to the other party;
 - (b) if a Contract term is specified, at any time after the end of the Contract term by giving thirty (30) days' notice to the other party;
 - (c) failure to give notice of intention to cancel at least thirty (30) days prior to the expiration date of the Contract term, the Contract term shall automatically renew on a monthly basis, unless cancelled by way of the Client providing LEAP with thirty (30) days' notice.
- 21.2 LEAP may, in addition to their right to cancel under clause 21.1:
- (a) do so at any time:
 - (i) prior to the commencement of the Services, by giving notice to the Client, in the event LEAP determine it is not technically, commercially or operationally feasible to provide the Services to the Client;
 - (ii) in the event the Client materially breaches these terms and conditions, and such breach is not capable of remedy.
- 21.3 Should the Client, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this Contract will be terminated by LEAP (at their sole discretion) and all Services completed, but not billed or paid, will be payable in full within seven (7) days from the date of the submitted invoice.

- 21.4 In the event of the premature termination of this Contract (including by notification from the Client, (at least thirty (30) days prior to the expiration date of the Contract term), or as a result of Default, but excluding any breach or termination of this Contract by LEAP):
- (a) the Client shall be responsible for the immediate payment of the following sums:
 - (i) all monies due and payable up to the date of termination, noting applicable rates may change if the Fixed Term Contract is shorter than that noted in the Quotation; and
 - (ii) all other sums owing by the Client under this Contract (or any other Contract with the Client) as a result of the Default and termination of this Contract, including consequential damages for the loss of bargain and all loss, costs, charges and expenses incurred by LEAP in connection with (and resulting from) the premature termination of this Contract, which shall be calculated at a minimum of sixty percent (60%) of the remainder of the Price under this Contract where a Fixed Term applies (to cover such costs as equipment purchased etc;) and
 - (iii) Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, or change of mind will definitely not be accepted once an order has been placed.

22. Personal Property Securities Act 2009 ("PPSA")

- 22.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 22.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and a Purchase Money Security Interest ("PMSI") is granted in priority to all other creditors by the Client in favour of LEAP and this security interest is given in all Equipment (including any goods and/or Services) and/or collateral (account) – being a monetary obligation of the Client to LEAP – that has previously been supplied and that will be supplied in the future by LEAP to the Client.
- 22.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which LEAP may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 22.2(a)(i) or 22.2(a)(ii);
 - (b) indemnify, and upon demand reimburse, LEAP for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of LEAP;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of LEAP.
- 22.4 LEAP and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 22.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 22.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 22.7 Unless otherwise agreed to in writing by LEAP, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 22.8 The Client must unconditionally ratify any actions taken by LEAP under clauses 22.2 to 22.5.
- 22.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 22.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 22 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 22 will apply generally for the purposes of the PPSA.

23. Security and Charge

- 23.1 In consideration of LEAP agreeing to provide the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 23.2 The Client indemnifies LEAP from and against all LEAP'S costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising LEAP'S rights under this clause.
- 23.3 The Client irrevocably appoints LEAP and each director of LEAP as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 23 including, but not limited to, signing any document on the Client's behalf.

24. Default and Consequences of Default

- 24.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at LEAP'S sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 24.2 If the Client owes LEAP any money the Client shall indemnify LEAP from and against all costs and disbursements incurred by LEAP in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, LEAP'S Contract default fees, and bank dishonour fees).
- 24.3 Further to any other rights or remedies LEAP may have under this Contract, if the Client has made payment to LEAP by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by LEAP under this clause 24 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

- 24.4 Without prejudice to any other remedies LEAP may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or where the Client fails to cooperate with LEAP or hinders LEAP'S ability to provide the Services hereunder) under these terms and conditions LEAP may suspend the provision of Services to the Client or terminate this Contract. LEAP will not be liable to the Client for any loss or damage the Client suffers because LEAP has exercised its rights under this clause.
- 24.5 Without prejudice to any other remedies LEAP may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions LEAP may, at their sole discretion (without being liable to the Client for any loss or damage the Client suffers because LEAP has exercised its rights under this clause):
- (a) suspend or terminate this Contract and/or any of the Services without notice or refund;
 - (b) make an additional charge to the Client; or
 - (c) block access to any part of the Services (including but not limited to, restricting the public and/or Client's access to the website, withholding domain codes, passwords and Goods or removing the Web Site from the web entirely and/or supply of Services in respect any phone system.
- 24.6 Without prejudice to LEAP'S other remedies at law LEAP shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to LEAP shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to LEAP becomes overdue, or in LEAP'S opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by LEAP;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 25. Privacy Policy**
- 25.1 All emails, documents, images or other recorded information held or used by LEAP is Personal Information, as defined and referred to in clause 25.3, and therefore considered Confidential Information. LEAP acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). LEAP acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by LEAP that may result in serious harm to the Client, LEAP will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 25.2 Notwithstanding clause 25.1, privacy limitations will extend to LEAP in respect of Cookies where transactions for purchases/orders transpire directly from LEAP's website. LEAP agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to LEAP when LEAP sends an email to the Client, so LEAP may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via LEAP's website.
- 25.3 The Client agrees for LEAP to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by LEAP.
- 25.4 The Client agrees that LEAP may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 25.5 The Client consents to LEAP being given a consumer credit report to collect overdue payment on commercial credit.
- 25.6 The Client agrees that personal credit information provided may be used and retained by LEAP for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 25.7 LEAP may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 25.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 25.3 above;
 - (b) name of the credit provider and that LEAP is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;

- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and LEAP has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of LEAP, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 25.9 The Client shall have the right to request (by e-mail) from LEAP:
- (a) a copy of the Personal Information about the Client retained by LEAP and the right to request that LEAP correct any incorrect Personal Information; and
 - (b) that LEAP does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 25.10 LEAP will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 25.11 The Client can make a privacy complaint by contacting LEAP via e-mail. LEAP will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

26. Trusts

- 26.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not LEAP may have notice of the Trust, the Client covenants with LEAP as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of LEAP (LEAP will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

27. General

- 27.1 Any notice to be given by either party to the other may be sent by either e-mail or recorded delivery to the most recent e-mail address or address notified to the other party, and if sent by e-mail shall (unless the contrary is proved) be deemed to be received on the day it was sent or if sent by recorded delivery shall be deemed to be served two (2) days following the date of posting.
- 27.2 The Client acknowledges that they have relied on their own judgment to evaluate the suitability of the Services for the purpose for which they require them. The Client must not rely on any statement, representation or promise made by LEAP that is not expressly set out in this Contract.
- 27.3 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.4 Subject to clause 18, LEAP shall be under no liability whatsoever to the Client for any expenses, claims, costs (including but not limited to legal fees and commissions), damages suffered or incurred by LEAP, or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by LEAP of these terms and conditions, caused by any failure by the Client to comply with their obligations under this Contract, or that arise from any claim relating to the Services by any person that the Client authorises to use the Services, or where due to server downtime or programming errors (alternatively LEAP'S liability shall be limited to damages which under no circumstances shall exceed the Price).
- 27.5 These terms and conditions and any Contract to which they apply shall be governed by the laws of Western Australia, the state in which LEAP has its principal place of business, and are subject to the jurisdiction of the Courts in that state.
- 27.6 This Contract does not create any rights in any third parties, except assigns, successors and heirs expressly permitted hereunder.
- 27.7 LEAP may license or sub-contract all or any part of its rights and obligations without the Client's consent, and:
- (a) LEAP does not warrant the accuracy or quality of the Sub-contractor's work or warrant that any recommendations of the Sub-contractor are appropriate or adequate or are fit for their purpose or that they are not given negligently; and
 - (b) the Client shall not make any demand on LEAP or commence any legal proceedings against LEAP. LEAP shall have no liability, whether in negligence or otherwise, to the Client in relation to any Services performed by the Sub-contractor;
 - (c) Client agrees and understands that they have no authority to give any instruction to any of LEAP Sub-contractors without the authority of LEAP.
- 27.8 The Client agrees that LEAP may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for LEAP to provide Goods to the Client.
- 27.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 27.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.