

Issimo.io

ISSIMO HOLDINGS PTY LTD ACN 163 225 054

TERMS OF SERVICE

INTRODUCTION

1. Issimo is a web service that allows Publishers to create online publications and Readers to access and enjoy those Publications.
2. In these Terms of Service, the “Important Terms” mostly deal with using Issimo, and the “General Conditions” set out the legal basis on which Issimo is provided. You must accept these terms to use Issimo.

IMPORTANT TERMS

A. KEY TERMS

- A.1. The following terms are used regularly throughout these Terms of Service and have a particular meaning:

- (a) **Account** means a registered User account within Issimo.
- (b) **Agreement** means the agreement formed in accordance with these Terms of Service between the Company and the User.
- (c) **Australian Consumer Law** means the laws relating to the sale of goods or services to consumers pursuant to the *Competition and Consumer Act 2010 (Cth)* as apply in each State or Territory of Australia.
- (d) **Company** means Issimo Holdings Pty Ltd ABN 46 163 225 054.
- (e) **Content** means all information, data, text, software, music, sound, photographs, images, graphics, video and other matter of any kind accessible via the Site or contained in a Publication.
- (f) **Issimo** means the Company’s suite of tools, applications and services, known together as “Issimo”, licensed to the User under this Agreement.
- (g) **Privacy Policy** means the Company’s privacy policy as updated from time-to-time, accessible from here: <http://www.issimo.io/privacy-policy>.
- (h) **Publication** means an online publication (including all successive issues) with optimised functionality and appearance for access as a website, created using Issimo and accessible either via the Site or the Publisher’s URL.
- (i) **Publisher** means the person or entity that holds a Publisher Account.
- (j) **Publisher’s URL** means a web address controlled or owned by the Publisher from which the Publisher makes a Publication available to Readers and Visitors.
- (k) **Reader** means a user that registers a Reader Account in order to access the Publications, tools or features of the Services associated with a Reader Account.
- (l) **Services** has the meaning described in item B.2 of the Important Terms.
- (m) **Site** means the website found at <http://www.issimo.io>.

- (n) **Third Party Services** means any of the User's third party service accounts connected to and/or integrated with Issimo.
- (o) **User** is the collective term used to refer to a Visitor, Reader or Publisher as the use of the term in its context implies.
- (p) **Visitor** means a User that:
 - i. Visits the Site or views a Publication; and
 - ii. Does not hold a Reader or Publisher Account.

B. AGREEMENT

B.1. This Agreement governs the use of Issimo by any User and limits the liability of the Company to any User. This Agreement has specific terms of use (in addition to the General Conditions) that apply to:

- (a) Visitors (**Item E**)
- (b) Readers (**Item F**)
- (c) Publishers (**Item G**)

B.2. Issimo allows:

- (a) Users to Register an Account;
- (b) Publishers to create publications accessible via the internet with optimised functionality and appearance suitable for access as a website (**Publications**);
- (c) Publishers to use templates to create Publications;
- (d) Publishers to customise Publications using the tools and features of the Site;
- (e) Publishers to track analytics of Publications and reading habits of Readers;
- (f) Publishers to take advantage of such other templates, tools and features made available via the Site from time-to-time for a particular Account type;
- (g) Publishers to make income from targeted advertising based on Issimo user data and analytics;
- (h) Readers and Visitors to access and read Publications;
- (i) Readers to receive recommendations on Publications;
- (j) Readers to subscribe for Publications; and
- (k) Such other services and features that the Company may make available to Users via the Site from time-to-time.

Together referred to as the services (**Services**).

B.3. The Site is available through the URL <http://www.issimo.io> (or other domain as used by the Company from time-to-time).

B.4. In addition to any other express or implied consents, by using Issimo the User accepts and agrees to the terms of:

- (a) This Agreement; and
- (b) The Privacy Policy.

C. USING ISSIMO

C.1. To access the relevant Services, each User must register with Issimo (as a Reader or Publisher as the case may be) with a valid email address.

C.2. Each User uses Issimo at its own risk. The Company's liability to a User is limited to the provision of the Services, and the Company accepts no responsibility for:

- (a) The Content a Publisher includes in a Publication;
- (b) The purpose a Publisher creates a Publication for;
- (c) A Reader or Visitor's access to or use of a Publication.

C.3. The Company provides instructional documentation on the Site and within Issimo to assist Users with Issimo. This documentation shall be updated from time-to-time without notice.

C.4. ISSIMO

- (a) Issimo:
 - i. Is accessible to registered Users via login from the Site;
 - ii. Contains the Content that the Publisher enters into Issimo in order to create a Publication;
 - iii. May connect the Publisher or Reader's Account with Third Party Services; and
 - iv. Provides each Publisher or Reader with Account management tools.
- (b) Each Publication is deployed from the Site or the Publisher's URL using Issimo.

C.5. Third Party Services

- (a) Issimo connects to and integrates with many Third Party Services. However Issimo has no business relationship with, and does not necessarily endorse the use of Third Party Services.
- (b) Issimo cannot warrant the ongoing availability or efficacy of any Third Party Services.
- (c) The User authorises the Company to access the User Data in any Third Party Services enabled by the User.
- (d) The User must comply with the terms of use of any Third Party Service, and in no way will the Company be liable for any breach of such terms by the User's connection of Issimo to a Third Party Service.

C.6. Dependencies

- (a) The User agrees and acknowledges that:

- i. Issimo has third party dependencies which may affect its availability, including (without limitation) infrastructure providers; and
- ii. The Company has no means of controlling the availability of such dependencies, although each of those services has a robust operating standard suitable for commercial dependency.

C.7. Support

- (a) The Company provides user support for Issimo via a dedicated support email.
- (b) The Company shall endeavour to respond to all support requests within 24 hours.
- (c) The Company reserves the right to require the payment of reasonable Fees for non-standard support requests prior to the provision of such support.

D. PAYING FOR ISSIMO AND PUBLISHER FEES

- D.1. The Company will provide each User with 30 days notice in the event that a change to these Terms of Service results in any fees being payable by a User.
- D.2. This Agreement does not apply to any subscription fees or other charges that a Publisher may charge a Reader or Visitor in order to access a Publication.
- D.3. The Reader is responsible for paying any Fees charged by a Publisher to access a Publication. Any dispute over access to a Publication or any fees charged by a Publisher must be dealt with between the Reader and The Publisher. Under no circumstances will the Company perform a dispute resolution role in a dispute between a Reader and a Publisher.

E. VISITOR TERMS

- E.1. Each Visitor agrees and accepts that:
 - (a) The Visitor uses Issimo at its own risk, including relying on any information contained in a Publication.
 - (b) The Visitor may be exposed to Content that the Visitor finds offensive, indecent or objectionable, but shall have no recourse against the Company in such an event.
 - (c) The Company holds no duty of care to a Visitor to ensure ongoing access to the Site or a Publication.
 - (d) The Company makes no warranty or representation as to the quality, safety or fitness for purpose of any product or service described in a Publication.
 - (e) The views expressed in a Publication are completely independent from those of the Company, and any issue a Visitor may have with the views expressed in a Publication must be dealt with between the Visitor and the relevant Publisher.
 - (f) The Company takes no responsibility for any harm or loss suffered by a Visitor as a result of visiting the Site, accessing a Publication or relying on information contained in a Publication.
 - (g) If a Visitor suffers loss or harm as a result of visiting the Site or accessing a Publication, the Visitor agrees that:

- i. The Visitor shall have no recourse against the Company; and
- ii. The relevant Publisher that created the Publication remains responsible for any such loss or harm under Australian Consumer Law.

E.2. For the avoidance of doubt a Visitor shall have no claim against the Company for its use of, or reliance on the Contents of a Publication. Any claim that a Visitor may have arising from its access to, or reliance on a Publication shall be between the Visitor and the User that created the Publication, and not involve the Company under any circumstances.

F. READER TERMS

F.1. In addition to the Visitor terms which shall apply to the Reader as though they were a Visitor, the Reader agrees and accepts that:

- (a) The Reader may only use the Services associated with a Reader Account as determined by the Company in its sole discretion from time-to-time.
- (b) The Reader acknowledges that the Company may use information collected by the Company about the Reader's use of Issimo for the purposes of:
 - i. providing the Reader with suggestions of Publications that the Reader may be interested in;
 - ii. displaying advertising targeted at the Reader based on their reading preferences;
 - iii. improving Issimo and the Services;
 - iv. providing Publishers with de-identified analytics about the reading habits of Readers; and
 - v. generating such other information as the Company deems appropriate from time-to-time subject to the Company's Privacy Policy and any applicable laws.

G. PUBLISHER TERMS

G.1. The Publisher agrees and accepts that:

- (a) The Company may change the Services associated with the Publisher Account type by providing not less than 30 days written notice to the Publisher prior to the change taking effect. If the Publisher is not satisfied with the proposed change to the Services associated with their Account type, the Publisher may terminate this Agreement.
- (b) The Publisher indemnifies the Company, and will hold the Company harmless for any claim that arises from the Content of any Publication that the Publisher creates.
- (c) The Company may remove any Publication or an issue of a Publication in the event that such a Publication or issue of a Publication is found to be in breach of this Agreement, or any applicable law.
- (d) The Publisher shall have no right to access the Personal Information of any Reader via Issimo unless a Reader knowingly provides such Personal Information directly to the Publisher.

- (e) Analytics data provided by the Company may only be used for proper lawful purposes by the Publisher.

H. PUBLISHER CONTENT

- H.1.** The Publisher understands and agrees that all information, data, text, software, music, sound, photographs, graphics, video, messages and other matter of any kind accessible via Issimo (**Content**) is subject to this Agreement.
- H.2.** Content is the sole responsibility of the Publisher that made the content available via Issimo by uploading, publishing it in a Publication or otherwise providing it.
- H.3.** The Publisher may not modify, rent, lease, loan, sell, distribute or create derivative works based on any of the Content (either in whole or in part) unless:
 - (a) The Publisher is the owner of the Content; or
 - (b) The Publisher has been authorised to do so by the owners of that Content.
- H.4.** In the event that the Publisher is the owner of the Content, the Publisher grants the Company a worldwide, royalty-free, non-exclusive license to host and use the Content in order to provide the Publisher with the Services.
- H.5.** In the event that the Publisher is not the owner of the Content, but has been authorised to use the Intellectual Property in the Content by its owner then:
 - (a) The Publisher grants the Company such rights that the Publisher has authority to grant, in order for the Company to host and use the Content to provide the Publisher with the Services; and
 - (b) The Publisher indemnifies the Company for any breach of the owner's Intellectual Property Rights in the Content that the User may cause by making that Content available via Issimo.
- H.6.** To the extent permitted by law, under no circumstances will the Company be liable to a User in any way for any Content, including but not limited to:
 - (a) Errors or omissions in any Content;
 - (b) Editing, restricting or removing Content; or
 - (c) Loss or damage of any kind incurred as a result of the use of any Content.
- H.7.** The Publisher agrees that Content that it makes available via Issimo may be removed or altered by the Company, subject to applicable provisions of this Agreement and any legislation including, without limitation, privacy legislation.
- H.8.** The Publisher agrees that it will not upload or otherwise post, insert or provide any Content which:
 - (a) Is defamatory, fraudulent, unlawful, threatening, intimidating, harassing, harmful, hateful, abusive, tortious, vulgar, obscene, invasive of another's privacy, sexist, racist, homophobic, violent, discriminatory or degrading;
 - (b) Infringes the intellectual or other proprietary interests of third parties;
 - (c) Attempts to solicit personal information from another user, except in a way that is compliant with the law;

- (d) Impersonates another person or entity;
 - (e) Contains sexually explicit language or images, advertises or promotes the sale of products or services such as firearms, alcohol, adult products and services and any other products or services the Company considers to be inappropriate except in accordance with item H.9 below;
 - (f) Contains spam, chain letters, pyramid and other such selling and marketing schemes, computer viruses, computer code, files or programs or other harmful components that are designed to interrupt, destroy, change or limit the functionality of Issimo or any other computer software, hardware or other electronic equipment, information which in any way impinges on another user's use or enjoyment of the Site or otherwise breaches or encourages other users to breach this Agreement;
 - (g) Violates any law, statute or regulation;
 - (h) Forges information to disguise the origin of any Content; or
 - (i) Encourages or incites any other person to engage in any of the above behaviour.
- H.9.** A Publisher may make available Content of the type described in item H.8(e) above in accordance with this clause provided that:
- (a) The Publisher has verified that the Reader or Visitor is over the age of 18, and has been warned of the nature of the Content; and
 - (b) The Publisher hereby indemnifies the Company from all liability in relation to that Content.

I. ADVERTISING

- I.1.** The Publisher agrees that:
- (a) The Company may place paid advertisements within the Publisher's Publication (**Issimo Advertising**) subject to this item I; and
 - (b) The Publisher may place paid advertisements within the Publisher's Publication without payment of a Fee to the Company (**Publisher Advertising**).
- I.2.** The Company will pay the Publisher such amount of proceeds from Issimo Advertising as determined in accordance with the apportionment calculation policy described on the Site from time-to-time.
- I.3.** The Company will may payments of Issimo Advertising proceeds into the Publisher's nominated cheque account. Such payments will be subject to such charges and deductions as stated in the apportionment calculation policy, including any GST.
- I.4.** The Publisher must provide the Company with a Tax Invoice for any Issimo Advertising proceeds that it receives within 10 business days of receiving a payment.
- I.5.** The Company will provide the Publisher with not less that 30 days' notice prior to a change to the apportionment calculation policy coming into effect.

J. TERMINATION & SUSPENSION

- J.1.** Either party may end this Agreement at any time by written notice in accordance with these Terms.
- J.2.** The User agrees that the Company shall not be liable in any way for any valid termination or suspension of the Publisher's access to Issimo.

GENERAL CONDITIONS

1. INTERPRETATION

- 1.1.** The following definitions apply in this Publication:

- (a) **ABN** means Australian Business Number.
- (b) **ACN** means Australian Company Number.
- (c) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne, Australia.
- (d) **Commencement Date** means the date set out in this Agreement.
- (e) **Corporations Act** means the *Corporations Act* 2001 (Cth).
- (f) **User Data** means all information, Content, data and other such materials that the User enters into or uploads to Issimo.
- (g) **Force Majeure** means an event or cause beyond the reasonable control of the party claiming force majeure. It includes each of the following, to the extent it is beyond the reasonable control of that party:
 - i. Act of God, lightning, storm, flood, fire, earthquake or explosion cyclone, tidal wave, landslide, adverse weather conditions;
 - ii. Act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
 - iii. The effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority; and
 - iv. Embargo, inability to obtain necessary materials, equipment or facilities, or power or water shortage.
- (h) **General Conditions** means the terms and conditions set out in the section of this Agreement entitled "General Conditions".
- (i) **GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth).
- (j) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property;
- (k) **Intellectual Property Rights** means, for the duration of the rights in any part of the world, any Moral Rights, industrial or intellectual property rights, whether

registrable or not, including in respect of Intellectual Property, applications for the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.

- (l) **Important Terms** means this Agreement's details and variables set out in the section of this Agreement entitled "Important Terms".
- (m) **Moral Rights** means:
 - i. Moral rights pursuant to the *Copyright Act* 1968 (Cth);
 - ii. Or any rights analogous to the rights set out in Article 6bis of the *Berne Convention for Protection of Literary and Artistic Works* 1886 (as amended from time to time).
- (n) **Privacy Act** means the *Privacy Act* 1989 (Cth).
- (o) **Special Conditions** means the terms and conditions set out in the section of this agreement entitled "Special Conditions".
- (p) **Tax Invoice** has the meaning given by the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth).

1.2. Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural and the opposite also applies.
- (b) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (c) A reference to a clause refers to clauses in this Agreement.
- (d) A reference to legislation is to that legislation as amended, reenacted or replaced, and includes any subordinate legislation issued under it.
- (e) Mentioning anything after *includes*, *including*, or similar expressions, does not limit anything else that might be included.
- (f) A reference to a *party* to this Agreement or another agreement or Publication includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to a *person, corporation, trust, partnership, unincorporated body* or other entity includes any of them.
- (h) A reference to *information* is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (i) A reference to *dollars* or \$ is to an amount in Australian currency.

2. APPLICATION OF THIS AGREEMENT

2.1. This Agreement applies to use of and access to Issimo.

2.2. Where the User does not accept or can no longer comply with the terms and conditions of this Agreement, the User must immediately cease using Issimo.

- 2.3.** This Agreement may be updated by the Company at its absolute discretion from time-to-time, and unless stated otherwise by the Company in writing, such updates shall come into effect for use of Issimo at the commencement of the User's next billing period.

3. ISSIMO

- 3.1.** The User agrees and accepts that Issimo is:

- (a) Hosted by the Company using a secure third-party hosting services and shall only be installed, accessed and maintained by the Company;
- (b) Accessed by the User using the internet or other connection to the servers hosting Issimo and is not available 'locally' from the User's systems; and
- (c) Managed and supported exclusively by the Company from the Company's third party hosting services and that no 'back-end' access to Issimo is available to the User unless expressly agreed in writing.

- 3.2.** As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter Issimo.

- 3.3.** The Company shall not exercise its rights under clause 3.2 in a manner that would intentionally cause the User to lose access to User Data or fundamentally decrease the utility of Issimo to the User, other than in accordance with the terms of this Agreement.

4. LICENSE

- 4.1.** By accepting the terms and conditions of this Agreement, the User is granted a limited, non-exclusive and revocable license to access and use Issimo for the duration of this Agreement, in accordance with the terms and conditions of this Agreement.

- 4.2.** The Company may revoke or suspend the User's license(s) in its absolute discretion for any reason that it sees fit, including for breach of the terms and conditions in this Agreement by the User or any of its users. The Company will ordinarily advise the User of any suspension or revocation however it is under no obligation to do so.

5. USE

- 5.1.** The User agrees that it shall only use Issimo for legal purposes and shall not use it to engage any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.

6. AUTHORISED USERS

- 6.1.** A registered User shall authorise users to access Issimo in its absolute discretion.

- 6.2.** The Company accepts no liability for access to User Data by users authorised by the User or using login details of users authorised by the User.

- 6.3.** The User is solely responsible for the security of its username and password for access to Issimo.

- 6.4.** The User is responsible for ensuring that users comply with this Agreement in full and are liable for any breach of them.

7. USER DATA

- 7.1.** The Company obtains no right, title or interest in User Data including any Intellectual Property found within it.
- 7.2.** The Company accepts no liability for the content of User Data.
- 7.3.** The User is responsible for the accuracy, quality and legality of User Data and the User's acquisition of it, and the users that create, access and/or use User Data.
- 7.4.** Despite clause 7.1, the Company shall be authorised to permanently delete User Data where outstanding Fees remain unpaid in accordance the Important Terms.
- 7.5.** The Company shall not access, use, modify or otherwise deal with User Data except:
- (a) Where required by compulsion of law;
 - (b) In accordance with a provision of this Agreement; or
 - (c) Upon the User's authority (such as to provide support for Issimo).

8. PRIVACY

- 8.1.** The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about the User and other Publishers.
- 8.2.** The Privacy Policy does not apply to how the User handles User Data. It is the User's responsibility to meet the obligations of the Privacy Act, including by implementing a Privacy Policy in accordance with law (if so required).
- 8.3.** The Company makes no warranty as to the suitability of Issimo in regards to the User's privacy obligations at law or contract, and it is the User's responsibility to determine whether Issimo is appropriate for the User's circumstances.

9. INVOICING & PAYMENTS

- 9.1.** The Company shall issue the User a Tax Invoice for all Fees for which GST applies.
- 9.2.** The terms of payment set out in the Important Terms shall apply.
- 9.3.** Should the User dispute a Tax Invoice, the User must notify the Company of the disputed item within 5 Business Days of the date of the Tax Invoice. The User must pay the amount of the Tax Invoice not in dispute within the prescribed payment period.
- 9.4.** Overdue Tax Invoices shall accrue interest at the rate of 1.5% per month, or in default, the maximum rate of penalty interest prescribed under law.

10. DATA

- 10.1. Security.** The Company takes the security of Issimo and the privacy of its Users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.
- 10.2. Transmission.** The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to the User to ensure that any transmission standards meet the User's operating and legal requirements.

10.3. Storage. The Company may limit the amount of data that the User stores in Issimo, and shall advise the User of such. Data that is stored with the Company shall be stored according to accepted industry standards.

10.4. Backup. The Company shall perform backups of its entire systems in as reasonable manner at such times and intervals as is reasonable for its business purposes. The Company does not warrant that it is able to backup or recover specific User Data from any period of time unless so stated in writing by the Company.

11. ACCESS

11.1. Solution. By accepting the terms of this Agreement the User agrees that the Company shall provide access to Issimo to the best of its abilities, however it accepts no responsibility for ongoing access to Issimo.

12. INTELLECTUAL PROPERTY

12.1. Trademarks. The Company has moral & registered rights in its trademarks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.

12.2. Proprietary Information. Issimo may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of Issimo.

12.3. Solution. The User agrees and accepts that Issimo is the Intellectual Property of the Company and the User further warrants that by using Issimo the User will not:

- (a) Copy Issimo or the services that it provides for the User's own commercial purposes; and
- (b) Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in Issimo or any documentation associated with it.

12.4. Content. All content (with the exception of User Data) remains the Intellectual Property of the Company, including (without limitation) any source code, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to Issimo.

13. LIABILITY & INDEMNITY

13.1. The User agrees that it uses Issimo at its own risk.

13.2. The User acknowledges that the Company is not responsible for the conduct or activities of any user and that the Company is not liable for such under any circumstances.

13.3. The User agrees to indemnify the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with the User's use of Issimo or conduct in connection with Issimo, including any breach by the User of this Agreement.

13.4. In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, loss or corruption of data, loss of profits, goodwill, bargain or

opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to, or use of, or inability to use Issimo, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage, to business interruption of any type, whether in tort, contract or otherwise.

- 13.5.** Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and the Company's related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:

- (a) The re-supply of services or payment of the cost of re-supply of services; or
- (b) The replacement or repair of goods or payment of the cost of replacement or repair.

14. DISPUTES

- 14.1.** All disputes shall be handled in accordance with the Company's dispute resolution policy.

- 14.2.** Where the Company does not have a relevant dispute resolution policy for a type of dispute, the following process shall apply:

- (a) **Negotiation.** If there is a dispute between the parties relating to or arising out of this Agreement, then within 5 Business Days of a party notifying the other party of a dispute, senior representatives from each party must meet (or discuss directly via the telephone or internet) and use all reasonable endeavours acting in good faith to resolve the dispute by joint discussions;
- (b) **Mediation.** If the dispute between the parties relating to or arising out of this Agreement is not resolved within five Business Days of notification of the dispute under Clause 14.1, the parties must agree to submit the dispute to mediation, administered by lawyers engaged in alternative dispute resolution;
- (c) **Court proceedings.** A party may not commence court proceedings in relation to a dispute relating to or arising out of this Agreement until it has exhausted the procedures in this clause 14.2 unless the party seeks appropriate injunctive or other interlocutory relief to preserve property or rights or to avoid losses that are not compensable in damages.

15. TERMINATION

- 15.1.** Expiry or termination of this Agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this Agreement up to the date of expiry or termination.

- 15.2.** The rights and obligations under the relevant provisions of clauses 6, 7, 8, 9, 12, 13, 14, 15, and 16 survive termination of this Agreement.

16. ELECTRONIC COMMUNICATION AND ASSIGNMENT

- 16.1.** The words in this clause that are defined in the *Electronic Transactions Act 1999* (Cth) have the same meaning.

- 16.2. The User can direct notices, enquiries, and complaints and so forth to the Company as set out in this Agreement. The Company will notify the User of a change of details from time-to-time.
- 16.3. The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time-to-time. It is the User's responsibility to update its contact details as they change.
- 16.4. A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.
- 16.5. Notices must be sent to a party's most recent known contact details.
- 16.6. The User may not assign or otherwise create an interest in this Agreement without the written consent of the Company.
- 16.7. The Company may assign or otherwise create an interest in its rights under this Agreement by giving written notice to the User.

17. GENERAL

- 17.1. **Prevalence.** Each party to this Agreement agrees to the clauses in the Important Terms and the Special Conditions. The Important Terms, any Special Conditions and the General Conditions form a single legal agreement. To the extent that the Important Terms or the Special Conditions are inconsistent with the General Conditions, the terms of the Important Terms will prevail. To the extent that the Special Conditions are inconsistent with the Important Terms, the Special Conditions will prevail.
- 17.2. **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.
- 17.3. **Relationship.** The relationship of the parties to this Agreement does not form a joint venture or partnership.
- 17.4. **Waiver.** No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- 17.5. **Further Assurances.** Each party must do anything necessary (including executing agreements and Publications) to give full effect to this Agreement and the transaction facilitated by it.
- 17.6. **Governing Law.** This Agreement is governed by the laws of the state of Victoria, Australia. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.
- 17.7. **Severability.** Any clause of this Agreement, which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.

END GENERAL CONDITIONS