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## General Terms

### 1. Definitions & Interpretation

#### 1.1 Definitions

In this Agreement, unless the context or subject matter otherwise requires:

**Ad Hoc and Project Services** means services of the nature of discretely scoped projects and one-off engagements;

**Agreement** means this agreement between the Parties for Ubivio to provide the Services to the Client as more accurately defined in clause 2.1;

**Business Day** means:

- (a) for the purpose of service of notices and other communications, a day which is not a Saturday, Sunday or public holiday in the place of service, or for communications sent electronically, in the principal place of business of the recipient Party; or
- (b) for any other purpose, a day which is not a Saturday, Sunday or public holiday in Brisbane, Queensland.

**Commencement Date** means the date set out as the Commencement Date in the Service Agreement;

**Client** means the entity specified as the Client in the Service Agreement and where the context requires includes its officers, employees, agents and its successors, administrators and assigns;

**Client Data** means all data and information relating to the Client and its operations, facilities, customers, clients, personnel, assets and programs in whatever form that information may exist and whether entered into, stored in, generated by or processed as part of the Services and any other data relating to the Services;

**Client Representative** means the person named as Client Representative in the Service Agreement;

**Confidential Information** means the information, concepts, ideas, methodologies, systems, designs, data, formulae, forms, specifications, algorithms, processes, statements, charts, graphs, trade secrets, drawings, manuals, software (including source and object code versions) and data (and copies and extracts made of or from that information and data) disclosed to either Party pursuant to this Agreement and includes:

- (a) confidential information relating to either Party's clientele;
- (b) information relating to the personnel, policies or business strategies of either Party; or
- (c) information relating to the terms of this Agreement;
- (d) any information of or relating to a Party which, by its very nature, would be presumed to have been disclosed in confidence or which would reasonably be regarded as detrimental to the business or reputation of the Party if disclosed.

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The Confidential Information does not include any information that is or becomes publicly known in a manner for which only minimal search is required to assemble the information without breach of the terms of this Agreement or any other non-disclosure agreement;

**Equipment** means all Supported Equipment and all other plant and equipment including without limitation software programs, systems, electronic document retention, storage and retrieval processes, telephony systems and all other information, communication and technology of whatsoever kind or nature reasonably required by the Client in order to efficiently conduct the Client's business, and includes any additional information, communications and technology which the Client may acquire, develop or create during the Term which Ubivio agrees in writing to maintain and support under this Agreement;

**Fees** means the charges payable by the Client to Ubivio for the performance of the Services and provision of Products pursuant to this Agreement, as specified in the Service Agreement;

**General Terms** means this document titled General Terms;

**Ubivio** means Telefonix Technology Group Pty Ltd (ACN 064 656 711) or, where any Related Entity of Ubivio is named in the Service Agreement, that Related Entity;

**Intellectual Property Rights means:**

- (a) jointly and severally any Rights as they relate to the Confidential Information, copyright, the design rights, the patent rights, trademark rights, the eligible layout rights, the improvements;
- (b) all other Rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; and
- (c) any application or Right to apply for registration of any of the Rights referred to in the subclause (a) or (b);

**Materials** means any documents, code, programs or other material forms of expression or any other object, process or thing comprising Intellectual Property Rights;

**Managed Services Terms** means the document setting out the terms applicable under any Service Agreement for which the Scope of Work comprises or includes a managed service arrangement;

**Minimum Specification** means the minimum system requirements and specifications set out in the Service Agreement;

**Notice** means a written notice, consent, approval, direction, order or other communication;

**Notice Address** means in respect of a Party:

- (a) the physical or email address specified in the Service Agreement; or
- (b) where a Party gives Notice to all other Parties of another physical or email address, the last such address so notified;

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**Obligation** means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;

**Party** means either Ubivio or the Client as the context dictates and Parties shall mean both or either of them as the context requires;

**Premises** means the location of the Client's business at the Commencement Date specified as such in the Service Agreement;

**Products** means all the products (including but not limited to hardware and software) to be provided by the Ubivio to the Client at any time during the Term as set out in the Service Agreement.

**Service Agreement** means the document executed by the Client and Ubivio outlining the Scope of Work and any Specific Service Terms;

**Related Entity** has the same meaning as in the Corporations Act 2001 (Cth);

Right includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action;

**Scope of Work** means a description of the nature of the Services to be provided under this Agreement, which may include:

- (a) Ad Hoc and Project Services; and/or
- (b) Term-Based Services;

**Services** means the services to be provided by Ubivio as specified in the Service Agreement and this Agreement;

**Service Level Agreement** means provisions described as Service Level Agreement in the Service Agreement;

**Specific Service Terms** means the terms (if any) set out in the Service Agreement, including but not limited to terms that are specific to the relevant Products or Services or to the arrangement between the parties.

**Supported Equipment** means Equipment in respect of which Ubivio is to provide connectivity, maintenance and support as part of its Services;

**Term** means the period of time (including any provision for extension) as specified in the Service Agreement;

**Term-Based Services** means and includes ongoing term-based arrangements, ongoing monthly arrangements and managed services arrangements; and

**Termination Payment** means the amount calculated in accordance with clause 13.3.

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## 1.2 Interpretation

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;
- (f) references to months mean calendar months;
- (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement;
- (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (k) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;
- (l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- (m) where a Party comprises more than one person, this Agreement shall bind them jointly and severally; and
- (n) a reference to a Party includes that Party's executors, administrators, substitutes, successors and permitted assigns.

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## **2. Agreement Terms**

### **2.1 Service Agreement and Agreement**

- (a) The Client acknowledges that the Service Agreement is available for acceptance by the Client by executing and returning the Service Agreement within a period of 30 days from the date it is offered. Once the Service Agreement has lapsed, this Agreement may only be entered into at Ubivio's discretion.
- (b) On the date of execution of the Service Agreement by both Parties, Ubivio agrees to provide the Services to the Client and the Client agrees to accept the Services from Ubivio in consideration for payment by the Client to Ubivio of the Fees.

### **2.2 Agreement Terms**

- (a) The terms of this Agreement are wholly set out in the Service Agreement and any attachments, appendices and exhibits to it and these General Terms, as amended or supplemented by the Parties in accordance with its terms (except where the Service Agreement relates to a managed services arrangement, in which case the Managed Services Terms form part of this Agreement).
- (b) This Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, negotiations, agreements, statements and understandings, whether verbal or in writing.
- (c) In the event of any inconsistency between anything contained in any document forming part of this Agreement then to the extent that such inconsistency cannot be reconciled the order of priority between those documents shall be:
  - (i) first, the Service Agreement (including any Specific Service Terms);
  - (ii) second, the Managed Services Terms (if applicable); and
  - (iii) third, these General Terms.
  - (iv) fourth, any Service Level Agreement.
- (d) For the avoidance of doubt, no terms (whether written or verbal) introduced by the Client, including the Client's own terms and conditions and any invoicing or receipt terms, form part of this Agreement unless expressly agreed in writing by Ubivio.

### **2.3 Term**

- (a) his clause applies to Term-Based Services only.
- (b) Ubivio will provide the Services for the Term commencing on the Commencement Date.
- (c) This Agreement shall expire at the end of the Term if a Party gives written notice to the other no less than 30 days prior to the end of the Term stating that it does not wish this Agreement to extend beyond the Term (Non-Renewal Notice).

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(d) In the absence of a Non-Renewal Notice, the Term of this Agreement shall automatically be extended for a for a further term equivalent in length to the Term.

(e) The rollover process under the preceding clauses will repeat indefinitely.

## **2.4 Holding over**

If for any reason this Agreement expires by effluxion of time in circumstances where Ubivio continues to provide Services under this Agreement, at the Client's request or acquiescence, those Services will be deemed provided on a monthly arrangement on the same terms and conditions of this Agreement and the monthly arrangement may be terminated by either Party by giving the other not less than one month notice in writing.

## **3. Services**

### **3.1 Provision of Services**

- (a) Ubivio will provide the Services as described in the Service Agreement in accordance with the terms and specifications of the Service Agreement and these General Terms.
- (b) The Client agrees that the Services will be solely and exclusively provided by Ubivio at all times during the course of this Agreement.

### **3.2 Client information and assumptions**

- (a) The Client acknowledges that Ubivio has relied upon the information provided by the Client for the purpose of preparation of the Service Agreement upon which certain assumptions have been made including as expressly listed in the Service Agreement.
- (b) The Client:
  - (i) warrants the accuracy and completeness of the information provided, including that the Client has fully and comprehensively set out, to the best of the Client's knowledge, the needs and requirements of the Client; and
  - (ii) acknowledges that Ubivio is not under an obligation to verify such information.
- (c) The Client acknowledges that a change to the Client's information or instructions may necessitate a variation of the Services under this Agreement.

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### **3.3 Minimum System Requirements**

- (a) The Client accepts and acknowledges that Ubivio will not be required to provide the Services unless the Client ensures that the Client, including the Client's Equipment, meets the Minimum Specifications set out in the Service Agreement.
- (b) Ubivio may, at its sole discretion, agree to provide services where the Equipment does not meet the Minimum Specification, including but not limited to where Macintosh operating systems are used, upon request from the Client.
- (c) If Ubivio agrees to provide services pursuant to clause 3.3(b), the extent of the services to be provided and the fees which will be required will be agreed between the Parties prior to any work being undertaken by Ubivio, as a variation of this Agreement.

### **3.4 Ubivio Commitments**

Unless otherwise provided in the Service Agreement Ubivio will:

- (a) provide the Services according to the terms of this Agreement, in a thorough, competent and workmanlike manner;
- (b) ensure that its personnel complies with paragraph (a) of this clause; and
- (c) ensure that it and its personnel hold and keep current all necessary and appropriate licenses, permits, approvals, qualifications and policies of insurance to perform the Services.

### **3.5 Client Commitments**

The Client must:

- (a) use and maintain all Equipment at all times in accordance with its operating manuals and as would otherwise be conducted by a reasonable person in the position of the Client;
- (b) in respect of Supported Equipment:
  - (i) ensure that all its personnel and any other persons permitted to access the Supported Equipment are appropriately trained, competent and do not misuse or recklessly or negligently damage the Equipment;
  - (ii) ensure Ubivio is the only provider of Services to the Supported Equipment;
  - (iii) ensure that Ubivio staff have prompt and free access to the Supported Equipment as required;
  - (iv) provide a suitable environment for the effective servicing of the Supported Equipment;

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- (v) provide conditions which are consistent with Supported Equipment specifications and that the necessary auxiliary services for the correct operation of the Supported Equipment are available;
  - (vi) provide adequate storage for spare parts including consumable parts held on-site (if applicable);
  - (vii) replenish stock of consumable items ensuring a satisfactory level of service can be maintained (if applicable);
- (c) ensure that, in relation to any of the Services to be performed on the Client's Premises:
- (i) the Client is authorised to occupy the Premises and to authorise Ubivio to have access to it as necessary to provide the Service;
  - (ii) at all times the Premises is safe and that all facilities provided by the Client for the purposes of enabling the Services to be performed are also safe; and
  - (iii) Ubivio will have unencumbered and unobstructed access to the area of the Premises as required to provide the Services from time to time.
- (d) give Ubivio and its employees and consultants reasonable access required to the Premises and the Supported Equipment when necessary to enable Ubivio to carry out and provide the Services and the client agrees that such access:
- (i) shall include an appropriately furnished area to work and access to all other Equipment of the Client as reasonably required; and
  - (ii) whilst all care will be taken to avoid any major inconvenience to the Client, the Client agrees that the access may interrupt or disrupt the Client's business while maintenance or other work is being conducted to the Supported Equipment;
- (e) provide and maintain a remote access capability to the Supported Equipment to enable Ubivio to provide remote support to the extent permitted by the Service Agreement, acknowledging that, should this remote access be denied or become unavailable and as a result an on-site support attendance is necessary, Ubivio reserves the right to charge a site attendance Fee.
- (f) where requested by Ubivio acting reasonably, shut down or cease using the whole or part of its Equipment so as to allow Ubivio to provide the Services until permitted by Ubivio to resume use, provided that:
- (i) if it is impractical for the Client to shut down or cease use of the Equipment at the time requested by Ubivio the Client must notify Ubivio as such and the Parties must reschedule such work to occur at a time appropriate for both Parties; and
  - (ii) where the Client wishes to reschedule work under this clause, Ubivio will not in any circumstances be liable for any loss, damage or delay which occurs in connection with this clause;

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- (g) ensure that all of the Client's employees, agents and contractors co-operate with Ubivio, its employees and consultants at all times and provide Ubivio with all information, support and assistance as reasonably required to perform the Services; and
  - (h) provide Ubivio a remote access capability to the equipment to enable Ubivio to provide remote support to the extent contemplated by the Service Agreement, acknowledging that, should this remote access be denied or become unavailable and as a result an on-site support attendance is necessary, Ubivio reserves the right to charge a site attendance Fee.

### **3.6 Equipment and Materials**

Ubivio will provide all equipment and all materials as may be necessary to perform the Services properly and efficiently. Unless otherwise agreed in writing all materials including Products supplied will be new and of high quality. All Ubivio equipment will be safe for use, properly maintained and capable of being used to carry out the Services.

### **3.7 Sale and lease of Products**

- (a) The Client acknowledges and agrees that title and ownership of any Product sold by Ubivio to the Client under this Agreement remains with Ubivio until the price (including GST) for the Product has been paid in full by the Client to Ubivio. The Client agrees to return any Product to Ubivio's possession immediately on demand made by Ubivio at any time before title and ownership in the Product transfers to the Client if the Client is in default of payment under this Agreement.
- (b) Any Product provided by Ubivio to the Client by way of lease or licence from Ubivio to the Client shall be provided on such lease or licence terms as may be agreed between Ubivio and the Client.

### **3.8 Workplace health and safety**

- (a) Ubivio will ensure that at all times in performing the Services it uses safe and proper procedures and practices and that all its employees are properly trained and supervised and observe all proper safety practices.
- (b) Where protective equipment, materials or clothing are required these will be provided by Ubivio and Ubivio will ensure that these are used by its personnel at all relevant times, except that Ubivio reserves the right to require that the Client provide any such equipment, materials and clothing where specialised items are required due to the nature of the Premises or the Business.

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## **4. Fees**

### **4.1 Fees**

The Client must pay the Fees to Ubivio as specified in the Service Agreement.

### **4.2 Payment terms**

- (a) Invoices are payable within 15 days end of month
- (b) Invoices will be provided to the Client by email to the email address stated in the Service Agreement or as otherwise notified by the Client from time to time.
- (c) In respect of Ad Hoc and Project Services:
  - (i) The Client agrees to pay Ubivio, without set off or deduction, all invoices rendered in accordance with any instalment or payment schedule set out in the Service Agreement, which may include an initial payment, final payment and/or progress payments or payments contingent on the completion of any milestone; and
  - (ii) payment of Ubivio's invoices must be made by the Client in one of the following ways: credit card, cheque, electronic transfer to Ubivio's bank account or cash.
- (d) In respect of Term-Based Services, except as otherwise specified in the Service Agreement:
  - (i) Ubivio will, from time to time, render invoices monthly in advance to the Client for Services to be performed and any subscriptions, charges and payments due in the following month;
  - (ii) payments must be made to the bank account nominated by Ubivio in writing or otherwise on the invoice provided to the Client;
  - (iii) Ubivio shall be entitled to require payment by direct debit from an account or credit facility approved by Ubivio and the Client agrees that its direct debit authority shall extend to any and all payments due to Ubivio under this Agreement;
  - (iv) the Client may only cancel the direct debit arrangements if it gives Ubivio at least 28 days' notice in writing before the next payment day and the Parties agree to an alternative method of payment; and
  - (v) the Client accepts and acknowledges that it is the Client's responsibility to ensure that there are sufficient clear funds available in the account to allow the debit payment to be made in accordance with the direct debit authority.

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#### **4.3 Advance Payments**

- (a) In addition to any requirements in the Service Agreement, Ubivio may require the Client to pay Ubivio in advance for 50% of the price of any Products and/or Services to be provided by Ubivio to the Client under this Agreement. Ubivio shall not have any obligation to provide Products or Services until any required advanced payments have been made by the Client and any proposed timetables for delivery of the Products and Services shall be adjusted for any delay in such payment.
- (b) Notwithstanding any longer time specified for payment under this Agreement, Ubivio shall be entitled to require payment in advance for orders at its discretion (such as if Ubivio decides that its exposure to outstanding orders and invoices with the Client is higher than it desires, or due to the Client's payment history), and the Client agrees that it must pay Ubivio the full amount of such invoice without set off or deduction before the relevant Service or Product is provided and in any event no later than 14 days from the date of the invoice.

#### **4.4 Recovery Costs**

- (a) The Client indemnifies Ubivio for all costs incurred by Ubivio in connection with recovering or attempting to recover any outstanding amount invoiced to it, including but not limited to solicitors fees on a solicitor and own client basis.
- (b) Ubivio shall be entitled to suspend any of the Services or provision of any Product, while any invoice rendered by it to the Client remains due and unpaid.

#### **4.5 Third Party Arrangements**

- (a) Where there is any arrangement or agreement between the Client and any Third Party, including any financier or Telstra, for the Third Party to either invoice the Client or pass on payment on behalf of the Client to Ubivio, in relation to any Services provided by Ubivio (Third Party Arrangement), the Client remains responsible to Ubivio for payment for all Fees in connection with those Services until payment is received in full by Ubivio.
- (b) Notwithstanding any Third Party Arrangement, Ubivio is entitled in its absolute discretion to render its own invoices for Fees in connection with such Services in a manner consistent with this Agreement.
- (c) The Client shall be responsible for ensuring that payment for Services subject to any Third Party Arrangement is received by Ubivio by the earlier of the due date for payment on each of the Third Party's invoices in accordance with the Third Party Arrangement or the due date for payment in any invoice rendered by Ubivio in accordance with this Agreement in relation to such Services.
- (d) The Client and Ubivio acknowledges and agrees that the terms and conditions of any arrangement or agreement between the Client and any Third Party shall in no way alter or derogate from the obligations of the Parties under this Agreement, and all Parties to this Agreement shall remain fully liable for all of their respective obligations and covenants under this Agreement notwithstanding any such Third Party Arrangement or agreement.

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#### **4.6 Cancelled Orders**

- (a) The Client agrees that once it has placed an order for any software or software licences with Ubivio it must pay Ubivio the full price for that software or software licence, because Ubivio's orders for software and software licences are not usually refundable from its suppliers. This applies regardless of any cancels of any order by the Client.
- (b) The Client agrees that if it cancels an order for hardware it must pay a restocking fee of the greater of [15% of the purchase price] or [the reasonable cost to Ubivio of returning or restocking such Products, including freight, costs of time and labour, and any restocking fees charged by Ubivio's supplier].
- (c) The liability of the Client under this clause is reduced to the extent that Ubivio receives a refund from its supplier, in relation to the relevant order, in which event Ubivio will pass the refund on to the Client (provided that the Client must not withhold or delay payment for the order on the basis that Ubivio may in future receive a refund).

#### **4.7 Fee review**

- (a) If the Service Agreement contains a provision for Fee reviews or variations, Fees shall vary or be reviewed in accordance with the terms of the Service Agreement.
- (b) Service Agreement Ubivio shall be entitled to increase its Fees yearly on 31 July each year by any increase in the Consumer Price Index (All Groups) for the city of Brisbane, as issued by the Australian Bureau of Statistics, or its replacement body and the Client may not object to this minimum increase.
- (c) If Ubivio's cost of wages, materials or any other supply or input applicable to any of the Services increases due to factors outside its reasonable control, Ubivio may increase any of the relevant Fees for that Service by a reasonable amount commensurate with the increase in cost to Ubivio and the Client must pay the Fees as varied with such variation to apply from the date the change in our Fees are notified to you.
- (d) Ubivio may not increase its Fees under clauses 4.7(b) or 4.7(c) more than once in any financial year.
- (e) Any price for a Product set out in the Service Agreement may be varied by Ubivio by a reasonable amount in proportion to any change, if the price which Ubivio pays for a Product is affected by a change in international currency exchange rate and we notify you of the relevant change.

#### **4.8 Interest**

Without limiting any other rights of Ubivio, where the Client has failed to pay the Fees by the due date for payment Ubivio may charge interest on any money overdue until full payment is received and cleared in Ubivio's bank account, where interest will be at a rate of 11% per annum.

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#### **4.9 Calculation of Fees**

- (a) The Fees charged in all invoices will be calculated using the rates, charges and prices for the Services and Products delivered under this Agreement set out in the Scope of Works or as set out elsewhere in this Agreement, subject to any adjustment or variation in those rates, charges and prices made in accordance with this Agreement.
- (b) Invoices for Services chargeable at hourly rates will be charged based on time records kept by Ubivio and any worksheets kept by Ubivio for those Services shall be prima facie evidence of the hours worked.
- (c) The Client is not entitled to deduct or set-off any amount from any amounts invoiced to the Client by Ubivio under this clause 4.

#### **4.10 Expenses, allowances and overheads**

- (a) In addition to Fees, there may be additional expenses, costs and overheads that are sometimes required for the completion of tasks in connection with the Services. Examples of such may include travel or accommodation expenses.
- (b) All such expenses, costs or overheads shall be reimbursed by the Client to Ubivio at cost plus a 2.5% administration charge within 14 days upon request.

### **5. Projects**

#### **5.1 Project Work**

Ubivio may but is not obliged to, on request from the Client, agree to undertake work or provide equipment outside of the scope of the Services (Project Work) in accordance with the following process:

- (a) The Client must provide a request to Ubivio in writing (Project Work Request);
- (b) Ubivio must respond to the Client within a reasonable time of receiving the Project Work Request either:
  - (i) refusing to undertake the Project Work; or
  - (ii) agreeing to undertake the Project Work and detailing:
    - (A) the equipment or services required to satisfy the Project Work Request;
    - (B) the estimated time frame for the Project Work to be completed;
    - (C) the costs and expenses involved in completing the Project Work (Quote);
- (c) Within 30 days of receipt of Ubivio's response pursuant to clause 5.1(b)(ii), the Client may, by notice in writing to Ubivio:

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- (i) withdraw the Project Work Request; or
  - (ii) not accept the Quote and provide a counter-offer;
  - (iii) accept the Quote;

If the Client does not provide notice to Ubivio before the expiry of the 30 day notice period provided pursuant to clause 5.1(c), the Client will be deemed to have accepted the Quote and Ubivio will commence the Project Work in accordance with the Quote provided;

- (d) If the Client provides notice to Ubivio in accordance with clause 5.1(c)(ii) the Parties agree to negotiate in good faith and co-operate in an effort to reach an agreement within 30 days. If an agreement cannot be reached between the Parties within this time the Client will be deemed to have withdrawn the Project Work Request.

## **5.2 Project Work Recommended by Ubivio**

Ubivio may recommend to the Client that work or equipment outside of the scope of the Services is required (Suggested Project Work) in accordance with the following process:

- (a) Ubivio must give to the Client notice in writing detailing the Suggested Project Work specifying:
  - (i) the equipment or services required to satisfy the Project Work Request;
  - (ii) the estimated time frame for the Project Work to be completed;
  - (iii) the costs and expenses involved in completing the Project Work (Suggested Project Work Quote);
- (b) Within 30 days of receipt of the Suggested Project Work Quote pursuant to clause 5.2(a), the Client may, by notice in writing to Ubivio:
  - (i) refuse the Suggested Project Work Quote; or
  - (ii) not accept the Suggested Project Work Quote and provide a counter-offer;
  - (iii) accept the Suggested Project Work Quote;
- (c) If the Client does not provide notice to Ubivio before the expiry of the 30 day notice period provided pursuant to clause 5.2(b), the Client will be deemed to have accepted the Suggested Project Work Quote and Ubivio will commence the Suggested Project Work in accordance with the Suggested Project Work Quote provided; and
- (d) If the Client provides notice to Ubivio in accordance with clause 5.2(b)(ii) the Parties agree to negotiate in good faith and co-operate in an effort to reach an agreement within 30 days. If an agreement cannot be reached between the Parties within this time the Client will be deemed to have refused the Suggested Project Work Quote.

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### **5.3 Invoicing and Payment for Project Work**

- (a) Ubivio will, from time to time, render invoices to the Client for any Project Work undertaken in accordance with this clause 5.
- (b) The Client will make payment to Ubivio within 30 days of receipt of a rendered invoice.
- (c) If the Client disputes the amount of an invoice submitted by Ubivio pursuant to this clause, then the Client is not obliged to pay the disputed portion of the invoice until the dispute is resolved, but must pay all other non-disputed amounts.
- (d) If the Client disputes an invoice, Ubivio may suspend, cancel or withdraw the provision of the Project Work and the Services in whole or in part until such time as the dispute is resolved or the full amount of the invoice is paid.

## **6. Software as a service (SAAS)**

### **6.1 Qualifications of SAAS Services**

Where the Services include the subscription to a software service (Subscribed Software) the Client acknowledges and agrees as follows in connection with the Subscribed Software:

- (a) The Client has satisfied itself as to the Subscribed Software capabilities and determined that the Subscribed Software is fit for the Client's needs. The Services do not include, and it may not be possible to, effect changes to the Subscribed Software code or functionality.
- (b) The Client accepts all additional terms of service of the Subscribed Software promulgated by the manufacturer or provider of the Subscribed Software (Subscribed Software Provider) as provided to the Client by Ubivio or as publicly available via the Subscribed Software provider's website. All such additional terms of service will be deemed part of the terms of this Agreement and any breach of the Subscribed Software terms of service by the Client, or any user accessing the Subscribed Software via or with the authority of the Client, will be a breach of the terms of this Agreement.
- (c) (Without limiting any other Right of Ubivio under this Agreement, if there is a breach of the Subscribed Software terms of service by the Client, or any user accessing the Subscribed Software via or with the authority of the Client, Ubivio shall be entitled to immediately suspend and/or terminate the Client's access to the Subscribed Software, which suspension or termination shall not be regarded as a suspension or termination of any other Service or the terms of this Agreement.
- (d) The Client accepts that Ubivio is not responsible for:
  - (i) any breach of the Subscribed Software terms of service by the Subscribed Software Provider;
  - (ii) any interruption, malfunction, fault or breakdown in the Subscribed Software;

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(iii) any loss of Client Data contained in the Subscribed Software;  
except where caused by Ubivio's willful or negligent act or omission.

- (e) Ubivio will seek to facilitate but is not responsible for any dispute resolution between the Client and the Subscribed Software Provider.

## **7. Variations**

### **7.1 Variations by Ubivio**

- (a) Ubivio may request a variation of the Services and/or the Fees at any time:
- (i) if there is a change in the Client's business or Equipment from that specified or contemplated by the Service Agreement;
  - (ii) if there is a change in law or any other third party requirements impacting the delivery of the Services including changes to underlying pricing of third party products and services required to be acquired by Ubivio to provide the Services;
  - (iii) if more than 12 months has passed since Ubivio's last Services and Fee review; or
  - (iv) if another event occurs which Ubivio reasonably considers to necessitate a variation.
- (b) Ubivio must give the Client at least 30 days written notice of the variation.
- (c) Before the expiry of the 30 day notice period, the Client may terminate this Agreement by written notice to Ubivio if the proposed variation is materially detrimental to the Client.
- (d) If the Client does not provide notice to Ubivio before the expiry of the 30 day notice period terminating this Agreement, the Client will be deemed to have accepted the variation, which will take effect immediately upon the expiry of the 30 day notice period.
- (e) Without limiting the foregoing, Ubivio may terminate this Agreement by no less than 30 days written notice to the Client if the Client does not accept a variation requested by Ubivio.

### **7.2 Variations by Client**

- (a) The Client may at any time propose to Ubivio in writing a variation of the Services and/or the Fees, provided that any such variation:
- (i) is at the discretion of Ubivio; and
  - (ii) will not be considered accepted except in writing by Ubivio.

## **8. GST**

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## **8.1 Definitions**

For the purpose of this clause:

GST means the goods and services tax under the GST Act;

GST Act has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth); and

Expressions used in this clause have the same meaning as those expressions in the GST Act.

## **8.2 Consideration**

All sums listed in the Service Agreement and other consideration or payment stipulated in this Agreement is exclusive of GST unless stated otherwise

- (a) The consideration (including any non-monetary consideration) for a Supply made under or in connection with this agreement which is a Taxable Supply is increased by an additional amount or value equal to the amount of that consideration multiplied by the relevant GST rate.
- (b) The additional amount under paragraph (a) is payable at the same time and in the same manner as the consideration for the Supply to which the additional amount relates.

## **8.3 Tax Invoice**

A Party who receives consideration, whether monetary or otherwise, must give the other Party a Tax Invoice in a form which complies with the GST Act within 10 Business Days after the end of the month in which any consideration is paid, or an invoice issued, in relation to the Supply, whichever occurs first.

## **8.4 Payments**

Unless otherwise stated in this Agreement, the following principles apply when determining the amount of a payment under this Agreement:

- (a) if a Party is entitled under this Agreement to be reimbursed or indemnified by another Party in respect of any loss, damage or outgoing, paid, suffered or incurred by or any action, proceeding, claim or demand against the first mentioned Party in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the claim, loss or outgoing for which an Input Tax Credit may be claimed; and
- (b) if a Party sets off an amount under this Agreement, the same principles apply to calculate the amount to be set-off, as if the amount had been paid in accordance with paragraph (a).

## **8.5 Adjustment Event**

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If an Adjustment Event occurs, the Parties must do all things necessary to make sure that the Adjustment Event may be properly accounted for, including the issue of an Adjustment Note.

## **9. Security of Information**

### **9.1 Ubivio's commitment**

Subject to the remaining provisions of this clause 9:

- (a) Ubivio will take reasonable precautions to safeguard all information of the Client in the custody of Ubivio against loss or unauthorised access; and
- (b) Ubivio will make all attempts, where possible and commercially reasonable, to establish and maintain safeguards against the destruction, loss or alteration of the Client Data in Ubivio's possession or control that:
  - (i) are consistent with the data security requirements notified by the Client from time to time;
  - (ii) comply with all applicable Laws concerning data security;
  - (iii) reasonably prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to Client Data; and notify the Client immediately and comply with all reasonable directions of the Client if Ubivio becomes aware of the contravention of any data security requirement.

### **9.2 Privacy Policy**

The Client acknowledges that Ubivio may collect from time to time personal information of the Client and other persons in connection with and for the purpose of delivery of the Services. All personal information collected will be collected, held, disclosed and or disposed of as necessary in accordance with the provisions of Ubivio's privacy policy which may be accessed at Ubivio's website: xxx and which the Client acknowledges having reviewed and approved before entering into this Agreement.

### **9.3 User names and passwords**

- (a) All user names, passwords and access codes of any kind to any of the Equipment remain the sole and exclusive property of the Client at all times and will not be used or disclosed by Ubivio except where proper and reasonably necessary in providing the Services.
- (b) The Client accepts the responsibility for the custody of user names, passwords and access codes within the control of the Client and agrees that Ubivio:
  - (i) is not responsible for any loss or damage to the Client and/or any costs associated with unauthorized access of the Equipment via those user names, passwords and access codes; and
  - (ii) may charge a Fee to attend to retrieval of data, re-issue of access parameters and any other actions required in consequence of such data breach.

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#### **9.4 Client Data**

- (a) The Client Data is and will remain the property of the Client at all times.
- (b) Except as required by Law, Ubivio undertakes that it will not:
  - (i) use Client Data for any purpose other than directly in relation to the performance of its obligations under this Agreement;
  - (ii) allow its representatives sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any Client Data;
  - (iii) make any Client Data available to a third party other than an approved subcontractor and then only the extent necessary to enable the approved subcontractor to perform its part of Ubivio's obligations under this Agreement; and
  - (iv) remove or transfer the Client Data to any non-Client premises or systems without obtaining the prior approval of the Client.
- (c) Where included in the Services, Ubivio will backup the Client Data to the location and extent requested by the Client as a safeguard against the destruction or loss of the Client Data, including:
  - (i) scheduling backups in accordance with the reasonable requests of the Client;
  - (ii) monitoring the success or failure of backups; and
  - (iii) testing successful reinstatement on random backup images.
- (d) Notwithstanding the above, Ubivio is not, in any circumstances, liable to the Client:
  - (i) for any costs, expenses, loss, liability or damage of any kind in connection with loss of Client Data resulting from unauthorized access or loss of Client Data:
    - (A) due to a flaw or apparent flaw in the Client's or a third party provider's systems; or
    - (B) by means other than through the use of Ubivio's own user names, passwords and IT system;
  - (ii) for any consequential loss, including without limitation loss of profit or anticipated profit, loss of reputation, loss of goodwill or loss of business opportunity, whether arising in contract, tort (including for negligence), under statute or on any other basis in law in connection with loss or unauthorized access of Client Data.

#### **10. Intellectual Property**

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### **10.1 Title**

Ubivio and the Client acknowledge that the benefit, Right, title and interest in Materials and all Intellectual Property Rights in the Materials:

- (a) supplied by the Client in relation to the Client's business, shall remain with the Client, unless otherwise agreed in writing signed by the Client and Ubivio; and
- (b) supplied by Ubivio in relation to Ubivio's business, shall remain with Ubivio, unless otherwise agreed in writing signed by Ubivio; and
- (c) created or arising out of the Services performed by Ubivio, shall immediately be assigned to and vest upon creation absolutely in Ubivio.

### **10.2 Pre-Existing Rights and Licence in created Materials**

- (a) The vesting of title in clause 10.1(c) does not affect the Intellectual Property Rights in any pre-existing material of the Client (including but not limited to software, documentation and data) which is incorporated into the created Materials.
- (b) Ubivio licenses the use of the Materials created by Ubivio and supplied to the Client's in connection with the Services, and all Intellectual Property Rights contained therein, to the Client under a perpetual royalty free licence to use such Materials for the purpose for which they were intended and at all times in accordance with this Agreement, but not to distribute those Materials to any other person or utilize them for any other purpose.
- (c) To the extent that the Intellectual Property Rights of either Party (including in any pre-existing material) are required for the performance of this Agreement, each Party grants the other an exclusive, non-transferable licence to use such Intellectual Property Rights for the purposes of this Agreement only. This licence terminates immediately on termination of this Agreement.

### **10.3 Further Assurances**

Each Party shall at the request of the other and within a reasonable time execute all documents and do all things as required by the requesting Party to give effect to this clause.

### **10.4 Indemnity**

- (a) Each Party indemnifies and agrees to keep the other indemnified for any loss, damage, cost or expense (including legal costs on an indemnity basis) for any breach by each Party of the Intellectual Property Rights of the other under this clause 10.
- (b) Each Party acknowledges and agrees that damages may not be an appropriate or sufficient remedy for any breach by a Party of the Intellectual Property Rights of the other under this clause 10 and agrees that each Party shall be entitled to obtain injunctive relief to prevent any such breach, including any anticipated breach or the continuation of any breach.

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## **10.5 Third Party Intellectual Property**

Whilst Ubivio will take reasonable precautions, Ubivio does not warrant that the Materials and any other documents or information delivered by Ubivio to the Client under this Agreement do not and will not infringe the Intellectual Property Rights of any person and the Client acknowledges that such Materials are provided to the Client for the Client's personal use only.

## **10.6 Survival**

This clause 10 survives the expiration or termination (for any reason) of this Agreement and is in addition to and not in derogation of Obligations at law or under any law or trade or professional custom or use.

## **11. Confidential Information**

### **11.1 No Disclosure**

Each Party must not, and must ensure that all of its personnel does not:

- (a) disclose, directly or indirectly, any Confidential Information of the other Party to any person except pursuant to clause 11.2; or
- (b) use (including by making copies or reverse engineering or analyzing) any Confidential Information of the other Party other than for the purposes of this Agreement,

and each Party must immediately notify other if they become aware that any unauthorised access to, or use or disclosure of, any Confidential Information has occurred.

### **11.2 Permitted disclosure**

- (a) Clause 11.1 does not prohibit a Party from disclosing Confidential Information:
  - (i) with the prior written consent of the other Party;
  - (ii) to its employees, agents, contractors and advisers (financial, legal or any other kind) but only on a need to know basis and provided the person to whom information is disclosed is the subject of confidentiality obligations in the nature of this clause 11 by deed or operation of law; and
  - (iii) as required by law but only to the extent which cannot reasonably be avoided.
- (b) Notwithstanding clause 11.2(a)(ii), a Party who discloses Confidential Information to a person under clause 11.2(a)(ii) is liable for any unauthorized disclosure of Confidential Information by that person.

### **11.3 Delivery**

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Ubivio, at the written request of the Client, is required to immediately deliver to the Client all records and documents, including, without limitation, all copies or records containing or referring to Confidential Information which are in its possession, power or control, or (at the Client's request) delete all copies of such documents in its possession, power or control, including electronic copies.

#### **11.4 Indemnity**

- (a) Each Party indemnifies and agrees to keep the other indemnified for any loss, damage, cost or expense (including legal costs on an indemnity basis) for any breach by each Party of the terms of clause 11.1.
- (b) Each Party acknowledges and agrees that damages may not be an appropriate or sufficient remedy for any breach by a Party of clause 11.1 and agrees that each Party shall be entitled to obtain injunctive relief to prevent any breach, including any anticipated breach or the continuation of any breach a Party of clause 11.1.

#### **11.5 Survival**

This clause 11 survives the expiration or termination (for any reason) of this Agreement and is in addition to and not in derogation of Obligations at law or under any law or trade or professional custom or use.

## **12. Limitation of Liability**

#### **12.1 Warranties by Ubivio**

- (a) To the fullest extent permitted by law, Ubivio makes no representation or warranty in respect of the provision of the Services except that it will carry out the Services competently, professionally and to the best of its ability within the scope of the Service Agreement and the terms of this Agreement.
- (b) Ubivio's warranties with respect to the state, quality or condition of the Services are limited to those imposed upon Ubivio by statute, including those contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth) and Ubivio expressly disclaims all other implied warranties and conditions except where the infringement is known by Ubivio beforehand.

#### **12.2 Limitations of liability**

- (a) The Client expressly accepts and acknowledges that Ubivio is not liable to the Client for any costs, expenses, loss, liability or damage of any kind, howsoever arising from or in connection with:

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(i) any of the Supported Equipment failing to operate properly or at all at any time or times during the Term;

(ii) any delay in Ubivio attending the Premises to fix any breakdown or malfunction of any Supported Equipment caused by factors outside the reasonable control of Ubivio;

(iii) any failure by Ubivio to fix any breakdown or malfunction of any Supported Equipment provided that it has made reasonable attempts to do so;

(iv) any inability of the Client to access any of the Supported Equipment;

(v) any failure of the Client to take reasonable steps to mitigate its losses (including a failure to notify Ubivio promptly of any fault or issue that may give rise to liability of Ubivio under this Agreement);

(vi) any inability of the Client to access or use the Supported Equipment due to breakdown, failure or interruption in the Supported Equipment;

(vii) any delay, failure or inability in Ubivio to repair any breakdown, failure or interruption;

(viii) any disruption or interference with the Client's business in connection with a breakdown or and at any other time in connection with the Services including while Services are being carried out; or

(ix) any delay, failure or error in the provision of the Services due to any circumstance outside Ubivio's reasonable control, including without limitations, failure of any communications network or system, electronic power surges, overloads, failures or blackouts, including but not limited to any failure in internet, telephone or data connectivity;

except to the extent that such costs, expenses, loss, liability or damage is caused by Ubivio's wilful or negligent act or omission.

(b) Ubivio will make reasonable endeavours to resolve internet or other communications network or system connectivity issues which may impact its ability to perform the Services but will not in any circumstance be liable to the Client for any costs, expenses, loss, liability or damage of any kind, arising from or in connection with such issues and the Service Level Agreement will not apply to any work done pursuant to this clause 12.2(b), except to the extent caused or contributed to by Ubivio's wilful or negligent act or omission.

(c) To the fullest extent permitted by law, Ubivio excludes all liability for loss including without limitation the loss or corruption of the Equipment or Client's Data, and any other commercial or economic loss of any kind arising from this Agreement or the provision of any of the Services by Ubivio except to the extent that such liability is a result of Ubivio's wilful or negligent acts or omissions.

(d) To the fullest extent permitted by law, Ubivio excludes all liability for indirect and consequential loss including without limitation loss of profit or anticipated profit, loss of reputation, loss of goodwill or loss of business opportunity, whether arising in contract, tort (including for negligence), under statute or on any other basis in law, arising from this Agreement whatsoever.

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- (e) To the fullest extent permitted by law, where Ubivio is liable for any defect or omission in connection with the performance of the Services, Ubivio's liability to the Client is limited to either:
- (i) re-supply of the Services by Ubivio; or
  - (ii) payment of the cost of having another provider re-supply the Services.
- (f) In all cases and to the fullest extent permitted by law, the maximum of Ubivio's liability to the Client under this Agreement is the total sum of Fees actually paid by the Client under this Agreement up to the date of the Client's claim.

### **12.3 Equipment and Products**

- (a) Ubivio does not offer any warranties or guarantees in relation to any Product provided by it to the Client. The warranty or guarantee (if any) on any Product provided by Ubivio is limited to any warranty or guarantee from the manufacturer of the Product or the distributor of the Product to Ubivio. Ubivio is not responsible for any manufacturer's or distributor's warranty or guarantee on any Product that we supply to the Client.
- (b) Ubivio will, on request, assist the Client by forwarding any Product provided by us under this Agreement, which is still covered by any manufacturer's or distributor's warranty or guarantee, to the manufacturer or distributor provided that the Client will be responsible for all freight costs.
- (c) To the extent that Ubivio is required to undertake any diagnostic work to determine whether or not an issue is covered by the manufacturer's or distributor's warranty or guarantee Ubivio will charge the Client at a rate or cost as agreed in advance.

### **12.4 Client Acknowledgement**

The Client acknowledges and agrees that the Client:

- (a) does not rely upon any prior statement, undertaking or representation made or given by or behalf of Ubivio which is not set out in this Agreement; and
- (b) is fully aware of the contents of this Agreement and all documents referred to herein and has had the opportunity to obtain independent legal advice on its terms and the terms of all other related documents prior to entering into the Agreement.

### **12.5 Survival**

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All releases, indemnities and limitation of liability contained in this Agreement shall continue in full force and effect notwithstanding the termination or expiry of this Agreement.

## **13. Termination**

### **13.1 Termination for Default**

Without limiting any other provision of this Agreement, either Party may terminate this Agreement immediately by notice in writing if the other Party:

- (a) is in breach of any term of this Agreement and any such breach is not remedied within 30 days of receiving notice from the terminating Party of the need to remedy, including but not limited to the obligation to pay the Fees;
- (b) becomes, threatens or resolves to become subject to any form of insolvency under the Corporations Act 2001 (Cth), including where a trustee in bankruptcy, administrator, liquidator (including provisional liquidator), receiver and/or manager is appointed in respect of the Party;
- (c) being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- (d) being a natural person, dies; or
- (e) (e) being a corporation, is deregistered or wound up.

### **13.2 Suspension of Services**

Without limiting any other Right of Ubivio, where the Client is in breach of this Agreement, including by failing to make a payment on time, Ubivio may, at its option, suspend the provision of the Services until the breach has been remedied and if the suspension continues for 30 days or more, thereafter immediately terminate this Agreement by notice to the Client. Ubivio will not be liable for any loss or damage suffered by the Client, directly or indirectly, as a result or in any way in connection with or associated to the Goods and/or Services being suspended pursuant to this clause.

### **13.3 Termination Payment**

- (a) Where Ubivio is providing Term-Based Services and terminates this Agreement pursuant to clause 13.1 or 13.2, the Client must pay to Ubivio a sum equal to the amount calculated in accordance with the following formula:

Termination Payment =  $(A \div 12) \times B$  Where:

A = the aggregate of the Fees paid by the Client for the 12 month period preceding the month in which the termination notice is given, or if a 12 month period has not yet elapsed since the Commencement Date, the aggregate of the Fees that Ubivio reasonably believes would have been received over a 12 month period from the Commencement Date; and

B = the number of months or part thereof from the date of termination to the end of the Term current at the time termination occurs.

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- (b) Where Ubivio is providing Ad Hoc or Project Services and terminates this Agreement pursuant to clause 13.1 or 13.2, the Client must pay Ubivio's reasonable calculation of any Fees due and payable, including Fees based on the proportion completed of any commenced but incomplete milestone.
  - (c) The Client acknowledges and agrees that the Termination Payment is a genuine pre- estimate of the loss that Ubivio will suffer if this Agreement is terminated before the expiry date of the then current Term.
  - (d) Payment of the Termination Payment is without prejudice to Ubivio's Right to claim:
    - (i) all Fees payable in respect of the period prior to the date of termination; and
    - (ii) any other damages which may be suffered by Ubivio as a result of the Client's breach.

#### **13.4 Termination by Ubivio**

- (a) Without limiting any other provision of this Agreement and unless expressly stated otherwise in the Service Agreement:
  - (i) where this Agreement provides for an automatic renewal of the term of this Agreement, Ubivio may give the client no less than 90 days written notice that this Agreement shall not renew and in such case this Agreement will end on expiry of the then term of this Agreement; and
  - (ii) Ubivio may terminate this Agreement at any time and for any reason by no less than 6 months written notice to the Client.
- (b) Ubivio is not liable to the Client for any loss or damage caused by Ubivio's termination under this clause, and the Client remains liable to Ubivio for all monies due to Ubivio under this Agreement up to and including the date this Agreement ends and in connection with any breach of this Agreement by the Client (if applicable).

#### **13.5 Consequences of Termination**

On termination of this Agreement, whether due to expiry or termination for any reason:

- (a) both Parties will return all property in their possession belonging to the other Party, including all Confidential Information and in the case of Ubivio, all Client Data except as contained in back-up systems of the Party which cannot be readily accessed and which the relevant Party undertakes to delete when reasonably possible;
- (b) the Client must pay to Ubivio any amounts owing for Services performed up to the date of termination and any other monies owing to Ubivio under this Agreement (including the Termination Payment if applicable) within 30 days of the date of termination; and
- (c) where Ubivio has undertaken any Project Work then, subject to the agreed terms for the performance of such Project Work, the Client must, at the direction of Ubivio (in its sole discretion):

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- (i) pay to Ubivio all amounts owing for any Project Work or equipment supplied as at the date of termination;
  - (ii) return to Ubivio any and all equipment provided as part of the Project Work that has not been paid for by the Client at the date of termination and the Client will be responsible for all costs associated with the removal of equipment or systems; and
  - (iii) anything else agreed by the Parties to be undertaken on termination of the Project Work assignment.
- (d) Subject to any outstanding claims by or payments owing to Ubivio, including circumstances where the Client is in breach of this Agreement, Ubivio shall refund to the Client any moneys paid in advance for Services to be performed following termination of this Agreement.

### **13.6 Post Termination Support Period**

- (a) The Client may request Ubivio to provide such transitional assistance in the nature of information and facilitation of transfer to another service provider as the Client may require for a period of up to 90 days after termination of this Agreement or such longer period as may be agreed by Ubivio, provided that assistance by Ubivio under this clause in circumstances where the Agreement has been terminated by Ubivio will be at Ubivio's discretion.
- (b) Except as otherwise agreed by the Parties, the Services of Ubivio under clause 13.6 will be performed on the same terms and conditions of this Agreement in so far as applicable and paid at the same rate applicable to the Services requested and the time spent by Ubivio, or where no comparable rate exists, at the base hourly rate of charge of Ubivio.

## **14. Sub-contractors**

### **14.1 Sub-contracting of Services**

- (a) Ubivio may sub-contract or otherwise arrange for another person to perform any part of this Agreement or to discharge any of its Obligations under any part of this Agreement without the prior written consent of the Client.
- (b) In the event Ubivio sub-contracts pursuant to subclause 14.1, Ubivio shall not be relieved of any of its liabilities or Obligations under this Agreement and Ubivio shall be liable to the Client for the acts, defaults and neglects of any sub-contractor or any employee or agent of the sub-contractor as if they were the acts, defaults or neglects of Ubivio or the employees or agents of Ubivio.
- (c) Ubivio shall be responsible for ensuring the suitability of all sub-contractors and for ensuring that the work performed by the sub-contractors meets the requirements of this Agreement.

## **15. Force Majeure**

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### **15.1 Definition**

In this clause 15, an Event of Force Majeure means the occurrence of an event or circumstances beyond the reasonable control of the Party affected by it including (without limitation):

- (a) a war (declared or undeclared), insurrection, civil commotion, military action, or an act of sabotage;
- (b) a strike, lockout or industrial action, dispute or disturbance of any kind;
- (c) an act of a government or a Governmental Agency;
- (d) an act of God; or
- (e) a storm, tempest, fire, flood, earthquake or other natural calamity, and Force Majeure shall have a similar meaning.

### **15.2 Effect of Force Majeure event**

- (a) Neither Party shall be liable for any delay or failure to perform its Obligations pursuant to this Agreement if such delay is due to Force Majeure.
- (b) If a delay or failure of a Party to perform its Obligations is caused or anticipated due to Force Majeure, the performance of that Party's Obligations will be suspended.
- (c) If a delay or failure by a Party to perform its Obligations due to Force Majeure exceeds 60 days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.

### **15.3 Consequences of Termination**

- (a) Termination under sub-clause 15.2(c) is without prejudice to the rights of each Party:
  - (i) to be paid any money owing up to and including the date of termination;
  - (ii) in relation to a breach which occurred before termination;
  - (iii) to require compliance with the provisions of clause 13.5 and any provisions of this Agreement which are expressed or intended to survive expiry or termination of this Agreement;but is otherwise without penalty to either Party.

## **16. Dispute Resolution**

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### **16.1 No proceedings**

A Party must not commence court proceedings, save for proceedings seeking interlocutory relief, in respect of a dispute arising out of this Agreement (Dispute) unless it has complied with the provisions of this clause.

### **16.2 Notification of Dispute**

A Party claiming that a Dispute has arisen must notify each other Party to the Dispute by providing details of the Dispute.

### **16.3 Best efforts to resolve Dispute**

During the 5 day period after a notice is given under clause 16.2, or such longer period as is unanimously agreed in writing by the Parties to the Dispute (Initial Period), each Party to the Dispute (Disputant) must use its best efforts and negotiate in good faith to resolve the Dispute.

### **16.4 Referral to Mediator**

If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the Dispute must be referred, at the request of any Disputant, to an independent Mediator agreed between the Parties, or by the President for the time being of the Law Society of Queensland, in the absence of agreement no later than 2 days after the end of the Initial Period, and:

- (a) the Disputants must act in the utmost good faith and co-operate with the Mediator and the other Disputants in a genuine attempt to resolve the Dispute within 10 days after it is referred to the Mediator;
- (b) the cost of the Mediator will be borne equally by the Parties to this Agreement; and
- (c) the Parties of the mediation will bear their own costs of attending.

### **16.5 Breach of this clause**

If, in relation to a Dispute, a Disputant breaches any provision of clauses 16.1 to 16.4, each other Disputant need not comply with clauses 16.1 to 16.4 in relation to that Dispute.

### **16.6 General Obligation to Co-Operate**

The Parties agree that:

- (a) they have a general Obligation to co-operate to achieve the objectives of the Agreement; and
- (b) in the event of a breakdown of their relationship, they will use their best endeavours to resolve their differences and will proceed to mediation prior to having recourse to litigation or terminating the Agreement.

## **17. General Provisions**

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### **17.1 Variations**

No variation of this Agreement nor consent to a departure by a Party from a provision, shall be of effect unless it is in writing, signed by the Parties or (in the case of a waiver) by the Party giving it. Any such variation or consent shall be effective only to the extent to or for which it may be made or given.

### **17.2 Waiver**

The non-exercise of or delay in exercising a Right of a Party shall not operate as a waiver of that Right, nor does a single exercise of a Right preclude another exercise of it or the exercise of other Rights. A Right may only be waived by notice, signed by the Party to be bound by the waiver.

### **17.3 Assignment**

- (a) Ubivio may assign all of its Rights and/or Obligations under this Agreement at any time to any person who acquires Ubivio's business or undertakes in writing to perform the obligations of Ubivio under this Agreement without needing the consent of the Client. Ubivio must give written notice to the Client of an assignment under this clause as soon as reasonably practicable after the assignment is effected.
- (b) The Client may not assign any of its Rights and/or Obligations under this Agreement to any person without first obtaining the written consent of Ubivio, which shall not be unreasonably refused if:
  - (i) the consent is requested in connection with a sale of the Client's business to the assignee;
  - (ii) the Client is up to date with all payments under this Agreement and is not otherwise in breach of this Agreement; and
  - (iii) the assignee enters into a deed with Ubivio on such terms reasonably required by Ubivio agreeing to be bound by the terms of this Agreement going forward.

### **17.4 Notices**

- (a) Any Notice or other communication in connection with this Agreement must be in writing addressed to the Notice Address of each Party and each Party consents to receive communications via email for the purpose of the Electronic Transactions (Queensland) Act 2001.
- (b) Notice or other communication under this Agreement will be deemed to be received, unless evidence of earlier receipt exists:
  - (i) in the case of a posted letter, on the third day after posting;
  - (ii) in the case of personal delivery, on the date of delivery; and

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(iii) in the case of email transmission, at the time recorded on a read receipt transmission report from the email account from which the email was sent, stipulating the time at which the email was read or otherwise displayed on the recipient's screen;

provided that a notice or communication given on a day which is not a Business Day or after 4:00pm on a Business Day will be deemed given on the next following Business Day.

- (c) For the avoidance of doubt, this clause 17.4 does not limit the way in which a notice may be given as permitted by law.

### **17.5 Further assurances**

Each Party to this Agreement shall do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it by notice from another Party to carry out and give effect to the terms and intentions of this Agreement and to perfect, protect and preserve the Rights of the other Parties to this Agreement.

### **17.6 Relationship**

Ubivio is an independent contractor of the Client and is not a partner, agent, employee or joint venturer of the Client in the conduct of the Client's business nor does it have the authority to bind the Client by contract or otherwise.

### **17.7 Execution**

- (a) This Agreement may be signed or executed in a number of counterparts, including by email transmission and digital execution, with the same effect as if the signatures to or execution of each counterpart were on the same instrument and in original form.
- (b) Each person signing this Agreement as authorised representative, attorney, trustee or agent for a Party warrants that he or she is duly authorised to enter into this Agreement on behalf of the relevant Party.

### **17.8 Severability**

This Agreement shall, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision shall, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it shall be deemed to be void and severable and the remaining provisions of this Agreement shall not in any way be affected or impaired and shall continue notwithstanding that illegality, invalidity or unenforceability.

### **17.9 Survival**

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- (a) Subject to any provision to the contrary, this Agreement shall endure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers but shall not endure to the benefit of any other persons.
  - (b) The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement shall remain in full force and effect following the expiration of the Agreement.

#### **17.10 Jurisdiction**

- (a) This Agreement is governed by and construed in accordance with the laws of the State of Queensland, Australia.
- (b) Actions, suits or proceedings relating in any way to this Agreement or documents or dealings contemplated by it, may be instituted, heard and determined in a court of competent jurisdiction in the Brisbane Central Business District. Each Party irrevocably submits to the non-exclusive jurisdiction of such courts for the purpose of any such action, suit or proceeding.