GENERAL TERMS AND CONDITIONS

Version 4.2

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1. Tecala Terms and Conditions

These are the General Terms and Conditions on which Tecala will provide the Services to the Customer.

1.1 **Background**

1.1.1 Tecala offers a suite of services to the Customer as listed in the Order Form and governed by the terms detailed in the Service Schedules hereto.

1.1.2 the Customer requires Tecala to provide those Services identified in the Order Form.

1.1.3 Tecala agrees to provide those Services identified in the Order Form on the terms and conditions of this Agreement.

2. Definitions and interpretation

2.1 **Definitions**

2.1.1 **Agreement** means these General Terms and Conditions and its Service Schedules, appendices and Order Forms, as amended from time-to-time in accordance with clause 23.2 (Variation).

2.1.2 **Authorised Users** means the Customer's Personnel who are authorised by the Customer to use the Service and the Material. The minimum number of Authorised Users is specified in the Order Form or Variation Form.

2.1.3 **Billing Dispute** is a Dispute lodged by the Customer in relation to an invoice or part of an invoice.

2.1.4 **Billing Dispute Notice** is a notice provided by the Customer to Tecala detailing the Billing Dispute.

2.1.5 **Business Day** means any day which is not a Saturday, Sunday or Public Holiday in the state of New South Wales, Australia.

2.1.6 **Claim** means any and all claims, actions, demands, suits or proceedings, whether in contract, tort, breach of Laws, or otherwise.

2.1.7 **Commencement Date** means the earlier date of:

2.1.7.1 the date the Customer accepts the Order Form in writing, online or by any other means notified by Tecala to the Customer; or

2.1.7.2 the date the Customer asks Tecala to begin supplying the Services.

2.1.8 **Confidential Information** of a party means all information of that party or any of its Related Bodies Corporate (regardless of form) which is disclosed to or observed by the receiving party in connection with this Agreement whether before, on or after the date of this Agreement and whether by the disclosing party or any other person,

but Confidential Information does not include information which:

2.1.8.1 is in or comes into the public domain, other than through breach;

2.1.8.2 was already lawfully possessed by the receiving party; or

2.1.8.3 is received from a third party entitled to disclose it.

2.1.9 **Corporations Act** means the *Corporations Act 2001* (Cth).

2.1.10 **Customer** means the entity identified within the Order Form.

2.1.11 **Customer Platform Administrators** means the limited number of the Customer's Personnel that the Customer may elect to hold administrative and/or ownership rights to any platform.

2.1.12 **Data** means any data, text, drawings, diagrams, images or sounds (in whatever media or format), including any data which is part of or becomes part of a database or is otherwise protected by Intellectual Property Rights (including rights in relation to confidential information) and which relates to the business and operations of the Customer (including any data ultimately owned or relating to clients of the Customer or suppliers of the Customer other than Tecala), and

2.1.12.1 is supplied to Tecala by, or on behalf of, the Customer;

2.1.12.2 is generated or hosted on, or otherwise accessible by the Customer on or through the systems that comprise the Service; or

2.1.12.3 is generated by Tecala specifically for the Customer on the basis of or derived from any information or materials provided by the Customer specifically for the purpose of or pursuant to the performance of the obligations set out in this Agreement.

2.1.13 **Dispute** means a conflict or disagreement between parties.

2.1.14 **Dispute Notice** is a written notice provided by a party claiming that a Dispute has arisen, setting out the nature of the Dispute.

2.1.15 **Eligible Data Breach** means an "eligible data breach" as defined in the Privacy Act.

2.1.16 **Event of Force Majeure** means any event that is beyond the reasonable control of a party or which a party is unable to avoid by the use of reasonable diligence and which prevents a party from performing, or delays the performance of, any of its obligations under this Agreement or any Service Schedules or Order Forms.

2.1.17 **Extended Business Hours** means those hours between 6.00 am to 9.00 pm Sydney time, each Business Day.

2.1.18 **Fees** means the fees payable by the Customer to Tecala for the Service as set out in the Order Form and any applicable Variation Form.

2.1.19 **General Terms and Conditions** means the provisions contained in this document.

2.1.20 **Goods** means physical products supplied by Tecala under an Order Form.

2.1.21 **Government Agency** means any governmental, semi-governmental, regulatory, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

2.1.22 **Indemnified Party** means the party receiving an indemnity from the other party.

2.1.23 **Indemnifying Party** means the party providing an indemnity to the other party.

2.1.24 **Intellectual Property Rights** means any existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to business processes, techniques, software, firmware, algorithms, trademarks, patents, design rights, copyrights, trade names, trade secrets, proprietary information, technology, rights and licences, proprietary rights and processes, whether registered or not, know-how, research and development in progress and any and all other intellectual property, including, without limitation, all things authored, discovered, developed, made, perfected, improved, designed, engineered, devised, acquired, produced and first reckoned to practice by the disclosing party as a result of or in connection with its business.

2.1.25 **Interest** means interest calculated at a rate equal to the Westpac Business Overdraft Rate, as published by Westpac on their publicly accessible website, on the date payment was required to be made plus 4%.

2.1.26 **Initial Term** means, in respect of a Service, the minimum contract period specified within the Order Form applicable to that Service, the term of which shall be deemed to commence on the first day it is available to the customer.

2.1.27 **IP Claim** means any claim, action, demand, suit or proceeding alleging that the use of Provided Materials infringes the Intellectual Property Rights of a third party.

2.1.28 **Law** means (whether in Australia or any other relevant jurisdiction) all laws, codes, guidelines and the like, including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles and requirements, statutory rules of an industry body, statutory and mandatory codes of conduct, writs, orders, injunctions, judgments, Australian generally accepted accounting principles and industry-wide non-statutory rules or obligations in force or as applicable from time to time.

2.1.29 **Material** means any deliverable material, computer code or document associated with the provision of the Service.

2.1.30 **Normal Business Hours** means those hours between 8.30 am to 5.30 pm Sydney time, each Business Day.

2.1.31 **Order Date** means the date specified as such in the Order Form, and if no such date is specified in the Order Form means the first date of commencement of any of the Services.

2.1.32 **Order Form** means any order form, quotation, proposal or statement of work completed by Tecala and accepted by the Customer, setting out the details of the Customer, identifies the Goods or Services, and sets out the applicable Fees for the provision of the Services.

2.1.33 **Payment Term Period** means 14 days from invoice date.

2.1.34 **Personal Information** is information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual, living or otherwise, whose identity is apparent, or can reasonably be ascertained, from the information or opinion that is provided to, or obtained, accessed or generated by, either party in connection with this Agreement.

2.1.35 **Personnel** means, in relation to a party, that party's officers, employees, agents, subcontractors and consultants.

2.1.36 **Privacy Act** means the Privacy Act 1988 (Cth) as amended from time to time.

2.1.37 **Privacy Laws** means all laws pertaining to privacy, protection of personal information and protection of information contained in communications, applicable to Australia, including the Privacy Act and the Australian National Privacy Principles as amended from time-to-time.

2.1.38 **Provided Materials** means any materials, including any Intellectual Property Rights in those materials, provided by one party to the other party for the purpose of exercising its rights or performing its obligations under this Agreement.

2.1.39 **Related Bodies Corporate** has the meaning given to that term in section 50 of the Corporations Act.

2.1.40 **Service** means any service, project deliverable or equipment to be provided by Tecala to the Customer under this Agreement as identified in the Order Form or Variation Form and further described in the relevant Service Schedule and performed in accordance with Tecala's Standard Operating Environment and Tecala Work Procedures.

2.1.41 **Service Schedule** means the separate document entitled Service Schedule, appended to this Agreement.

2.1.42 **Service Provider** means any service provider to Tecala in connection with the provision of the Service and includes, without limitation, any carrier or subcontractor.

2.1.43 **Special Conditions Schedule** means the document

titled "Special Conditions Schedule" executed by the parties and incorporated into this Agreement, which records any agreed additions, deletions, amendments, replacements, qualifications, or variations to the provisions of these General Terms and Conditions, the Service Schedules, or any other Agreement Document.

2.1.44 **Standard Operating Environment** means Tecala's selected combination of standard settings, management and monitoring applications, reporting tools, and security measures applied to the Customer's devices and systems.

2.1.45 **Statement of Work** means the dedicated statement of work or scope of work document compiled by Tecala for the Customer, or the particulars of a Service as outlined in the proposal to the Customer in case where the proposal is added as an addendum to this Agreement.

2.1.46 **Tecala** means Tecala Group Pty Ltd, a company incorporated and registered in Australia (ABN 97 079 430 416) of Level 8, 66 Clarence St, Sydney, NSW, 2000, Australia.

2.1.47 **Third-Party Platform** means any software application, online platform, or cloud service provided by a third party that is used by the Customer as part of a Service, or used by Tecala in the provision of the Services to the Customer.

2.1.48 **Variation Form** means the additional Order Form setting out the details of additional services required by the Customer or amendments to the Services specified in a preceding Order Form.

2.1.49 **Work Procedures** means Tecala's internal operational documentation describing specific details pertaining to a Service.

2.2 **Interpretation**

2.2.1 In this Agreement the following rules of interpretation apply unless the contrary intention appears:

2.2.1.1 headings are for convenience only and do not affect the interpretation of this Agreement;

2.2.1.2 the singular includes the plural and vice versa;

2.2.1.3 words that are gender neutral or gender specific include each gender;

2.2.1.4 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

2.2.1.5 a reference to:

2.2.1.5.1 a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;

2.2.1.5.2 a thing (including, but not limited to, a choice in action or other right) includes a part of that thing;

2.2.1.5.3 a party includes its successors and permitted assigns;

2.2.1.5.4 a document includes all amendments or supplements to that document;

2.2.1.5.5 a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Agreement;

2.2.1.5.6 this Agreement includes all schedules and attachments to it;

2.2.1.5.7 a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;

2.2.1.5.8 an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and

2.2.1.5.9 a monetary amount is in Australian dollars, excluding goods and services tax unless specified otherwise;

2.2.1.6 an agreement on the part of two or more persons binds them jointly and severally;

2.2.1.7 when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;

2.2.1.8 in determining the time of day, where relevant to this Agreement, the relevant time of day is:

2.2.1.8.1 for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or

2.2.1.8.2 for any other purpose under this Agreement, the time of day in the place where the party required to perform an obligation is located;

2.2.1.9 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it; and

2.2.1.10 the words 'such as', 'including', 'particularly' and similar expressions are not used, nor are they to be interpreted, as words of limitation.

3. Term

3.1 This Agreement commences on the Commencement Date and continues until the latest date of either the delivery of the Goods, the expiry or completion of the Initial Term, or the cancellation or termination of the last Service.

3.2 Unless a party provides notice to the other party with a written notice of non-renewal of 60 days, or the renewal notice period outlined on the Order form, prior to completion of the Initial term:

3.2.1 the Agreement will automatically renew on a month-to-month basis at the then-current Fees, adjusted in accordance with 9.1.5, (with 30 days' prior written notice of any adjustment), unless the Order Form specifies a different renewal term; and

3.2.2 the Agreement can be cancelled by either party on 30 days' notice in writing, unless the Order Form specifies a different cancellation period after renewal.

4. Order Forms

4.1 Each Order Form that is fully executed by the parties will create a separate agreement between Tecala and the Customer for the supply and receipt of Services.

4.2 Each Order Form incorporates by reference this Agreement.

4.3 The Services to be provided by Tecala to the Customer will be limited to those specified in the Order Form and will be provided by Tecala in accordance with the specific terms and conditions set out in the Service Schedules.

4.4 At any time after the date of the Order Form, the Customer may request Tecala to:

4.4.1 provide additional services, which fall outside the scope of the Services specified in the Order Form; and/or

4.4.2 amend the scope of the Services specified in the Order Form,

in which case the parties will complete and fully execute a Variation Form in respect of those additional services or amended Services.

4.5 Tecala is entitled to make minor alterations to the Services and to vary any method of providing the Service to the Customer, where the changes do not adversely affect the function, Service Levels, or performance of the Services.

4.6 No Order Form or Customer purchase order may contain any addition to, or modification of, any provision of this Agreement. Any purported addition to, or modification of, any provision of this Agreement contained in any Order Form will not be binding on the parties unless such addition or modification has been made in accordance with clause 23.2.

4.7 The Customer may accept an Order Form by:

4.7.1 signing and returning the Order Form to Tecala;

4.7.2 clicking 'Accept' or similar button in Tecala's online ordering system;

4.7.3 making payment of any deposit or first invoice; or

4.7.4 requesting Tecala to commence providing the Services.

Acceptance by any of these methods constitutes acceptance of both the Order Form and these terms.

5. Provision of Services

5.1 During the term of this Agreement Tecala will provide the Services to the Customer in accordance with this Agreement and the deliverables and performance guarantees as described in the Service Schedules.

5.2 The method of performing the Services is set out in the Order Form and relevant Service Schedules. Where not specified, Tecala will reasonably determine the method.

5.3 Unless otherwise specified in the Order Form and the relevant Service Schedules, the Services will be provided by Tecala during Normal Business Hours.

5.4 Tecala will provide the Services at the site or location specified in the Order Form.

5.5 The provision of the Services by Tecala to the Customer is non-exclusive.

5.6 Tecala will perform the Services in a professional and efficient manner, comply with the Customer's reasonable instructions, and use reasonable endeavours to overcome any delays.

5.7 The Customer acknowledges that the application of Tecala's Standard Operating Environment is a critical component in Tecala's ability to perform its duties in terms of the Services and this Agreement.

5.8 The Customer acknowledges that Tecala, for the purpose of securely and effectively providing the Services to the Customer, will take over the administration rights and configuration control of the applicable systems.

5.9 The Customer acknowledges that, should the Customer Platform Administrators affect any changes to any platform that deviates from Tecala's Standard Operating Environment, Tecala reserves the right to rectify the changes back to its Standard Operating Environment. All effort relating to the rectification will be invoiced on a time and material basis.

5.10 Should any party other than Tecala's Personnel or the Customer Platform Administrators be awarded access to platform administrative rights, the performance guarantees as contained in the Service Schedules will not apply to the extent affected by such access.

6. Delivery of Goods

6.1 The Goods to be supplied by Tecala are limited to those specified in the Order Form. Any additional Goods requested or required by the Customer shall be quoted separately and shall be supplied under a separate agreement.

6.2 Times for delivery quoted by Tecala or specified in the Order Form are estimates only. The Customer must accept and pay for the Goods when delivered, and Tecala is not liable for delays unless unreasonable.

6.3 A signed acknowledgement by the Customer or the Customer's agent of receipt of the Goods is evidence of delivery by Tecala unless the Customer provides evidence to the contrary.

6.4 Unless stated otherwise, the Customer is responsible for all delivery costs (including freight and insurance).

6.5 Unless otherwise specified, the Customer will evaluate the Goods or Materials for compliance with the requirements of the Order Form. In the event the Customer fails to submit a written rejection notice to Tecala within ten (10) Business Days of the Goods or Materials being delivered, the Goods or Materials

shall be deemed accepted. The Customer shall not unreasonably withhold its acceptance of any delivered Goods or Materials.

6.6 Risk of loss, damage, or deterioration to the Goods will pass to the Customer:

6.6.1 if Tecala is responsible for delivery, upon delivery of the Goods to the agreed delivery location; or

6.6.2 if Customer is responsible for collection or delivery, upon collection or dispatch from Tecala's warehouse or dispatch point.

6.7 Tecala does not provide any warranties other than those of the original equipment manufacturer (OEM), subject to any rights under the Australian Consumer Law that cannot be excluded. The Customer should pursue warranty-related repairs or Claims directly with the OEM in the first instance.

7. Responsibilities of the Customer

7.1 **Sites**

7.1.1 If any of the sites or locations at which the Services are to be provided are Customer sites or otherwise under the control of the Customer, the Customer must:

7.1.1.1 ensure the availability, safety and suitability of those sites for the provision of the Services by Tecala; and

7.1.1.2 unless otherwise specified in the Order Form and the relevant Service Schedules, provide all necessary power, consumables, cabling and telecommunications services to those sites.

7.2 **Receipt of the Services**

7.2.1 The Customer must:

7.2.1.1 provide Tecala with reasonable support, information, and access to Personnel and sites as required for Tecala to provide the Services;

7.2.1.2 appoint a representative to provide liaison with Tecala and supply Tecala with any necessary or relevant information and to make decisions or obtain decisions from others expeditiously;

7.2.1.3 ensure that its personnel attend any scheduled training or demonstrations by Tecala;

7.2.1.4 obtain and maintain all necessary licences, consents and permissions necessary for Tecala, its contractors and agents, to perform their obligations under this Agreement;

7.2.1.5 grant selected platform and system rights to Tecala and Tecala's users; and

7.2.1.6 ensure that its networks and systems comply with the relevant specifications provided by Tecala from time-to-time as required for Tecala to provide the Services.

7.3 **Care and Return of Tecala Equipment**

7.3.1 Unless otherwise set out in the Order Form or Variation Form, Tecala, the Third-Party Platform and its Service Providers retain ownership in all equipment and licensing provided in conjunction with the Service.

7.3.2 Where Tecala deploys Customer's Premises Equipment (CPE) including though not limited to; routers, switches, firewalls, access points and storage appliances as part of any Service, the Customer accepts responsibility for such assets and the Customer must:

7.3.2.1 Return any supporting equipment in sound working order within 30 days of termination or the cessation of the relevant Service;

7.3.2.2 Assume responsibility in the event of damage, loss or theft of Tecala equipment situated on a Customer's premises as part of the delivery of a Service; and

7.3.2.3 Where Tecala identifies high value equipment in an Order Form, the Customer is responsible for maintaining appropriate insurances for such equipment. All such insurance shall note Tecala's interest in the individual equipment.

7.3.3 In the event of a failure to return, or loss of equipment, Tecala shall charge the market value of equivalent replacement equipment to the Customer's account.

8. Customer delays

8.1 If the Customer fails to perform its obligations under this Agreement, Tecala:

8.1.1 is entitled to an extension of time equal to the delay caused; and

8.1.2 is not liable for any failure to perform, to the extent caused by the Customer's failure;

8.1.3 may charge the Customer for any additional costs Tecala incurs as a result of the Customer's non-performance or delays.

8.2 Where practicable, the Customer will provide prior notice if it anticipates it will be unable to perform its obligations.

9. Fees, payment and taxes

9.1 **Fees and invoicing**

9.1.1 Tecala will invoice the Customer for the Fees on the dates or within the timeframes set out in the Order Form and in accordance with the applicable Service Schedules.

9.1.2 Tecala will pro-rate the recurring Fees for the partial calendar month.

9.1.3 If the Customer terminates a project-based engagement during delivery, Tecala reserves the right

to charge up to the next milestone payment, as outlined within the Order Form.

9.1.4 Delivery of Services will be deemed to be completed at the date the service is installed and ready for use by the Customer, unless an alternative date is clearly defined in the Order Form for the Service.

9.1.5 On each yearly anniversary of the Order Date, the Fees for the Services may be increased, with effect from the anniversary of the Order Date, by the average percentage change in the Consumer Price Index (all groups) as published by the Australian Bureau of Statistics over the most recent 12-month period preceding the anniversary of the Order Date.

9.1.6 Third-party costs (including rented licensing rights, infrastructure, Third-Party Platform fees or Service Provider fees) may be adjusted due to any Service Provider, Third-Party Platform or vendor price changes or currency fluctuations. Tecala will provide a notice to the Customer of the price fluctuations within a commercially reasonable time after it receives the notice of the price changes.

9.1.7 Should the Customer exceed the Authorised User count or consume more resources than those indicated on the Order Form or Variation Form, Tecala reserves the right to adjust the billing to reflect the actual usage. Such adjustments will be calculated on Tecala's rates at the time of the adjustment. The Customer agrees to pay all such additional charges in accordance with the payment terms set out in this Agreement.

9.1.8 In the event of the Customer's actual user count in any billing period decreasing to a level lower than the Authorised User count, or the Customer's measured consumption being lower than the amount specified in the Order Form or Variation Form, Tecala may invoice the Customer based on the quantities stated in the Order Form or Variation Form.

9.1.9 If the Customer, wishes to lodge a Billing Dispute the Customer must notify Tecala by means of a Billing Dispute Notice within 14 calendar days from the date of the invoice.

9.1.10 The Billing Dispute Notice must:

9.1.10.1 specify the reasons for the dispute, which must include a copy of any records that the Customer is relying on to support its Claim;

9.1.10.2 specify the amount in Dispute; and

9.1.10.3 contain specific evidence in sufficient detail for Tecala to be able to identify the Disputed invoice and the Fees in Dispute.

9.1.11 The Customer must pay any undisputed part of an invoice in accordance with clause 9.4 (Payment) and the Customer need not pay the Disputed amount until the Dispute is resolved in accordance with clause 21 (Dispute resolution).

9.1.12 Once a Billing Dispute has been resolved, any amount to be paid or repaid must be paid within the Payment Term Period. If Tecala is required to repay an amount to the Customer, then Tecala will, at its option, either credit the overpaid amount against the next invoice or return the overpaid amount to the Customer.

9.1.13 The Customer is responsible for all costs, charges and expenses arising from or in connection with any use, misuse, compromise or disruption of a Service resulting from any virus, trojan, worm or other malicious code, denial-of-service attack, unauthorised access, exploited vulnerability or other security incident, to the extent caused or facilitated by:

9.1.13.1 any act or omission of the Customer, its Personnel, service providers or any other person accessing or using the Service on the Customer's behalf, whether intentional, negligent, inadvertent or otherwise;

9.1.13.2 the compromise, disclosure, misuse or unauthorised use of any Customer authentication element, including passwords, credentials, keys, tokens, certificates, authentication applications, devices or systems, including where a person is induced or deceived into disclosing credentials, approving a multi-factor authentication request or otherwise facilitating access;

9.1.13.3 any vulnerability, configuration or security weakness within the Customer's environment; or

9.1.13.4 the Customer's failure to comply with Tecala's security requirements as communicated in writing.

9.1.14 To the extent that any Service failure, degradation, interruption or unavailability results from or is connected with any circumstance described in 9.1.13, the affected Service will be excluded from the calculation and application of any Service Level Agreement, and Tecala will have no liability for any service credits, rebates, penalties or other remedies that would otherwise arise under the applicable Service Level Agreement. Any investigation, response, containment, recovery, remediation or other work performed by Tecala in connection with such circumstances is outside the scope of the Services and may be charged to the Customer on a time and materials basis at Tecala's then-current rates.

9.2 **Credit terms**

9.2.1 The Customer acknowledges and agrees:

9.2.1.1 that Tecala may, at its sole discretion, conduct credit checks and assessments on the Customer at any time during the term of this Agreement using credit reporting agencies, publicly available information, and other data sources deemed appropriate by Tecala;

9.2.1.2 that Tecala may obtain and use credit information for the purposes of assessing the Customer's creditworthiness, managing financial risk, and determining payment terms;

9.2.1.3 that Tecala may contact any trade or bank referee for the purpose of checking the Customer's references;

9.2.1.4 to confirm its consent to such searches and enquiries in writing;

9.2.1.5 to provide any information reasonably requested by Tecala to facilitate such credit assessments; and

9.2.1.6 that Tecala may record the existence of the Customer's account with any credit bureau.

9.2.2 Tecala may, at its discretion, establish a credit limit for the Customer. If the Customer's outstanding charges or projected usage of the Services exceed the credit limit granted, Tecala reserves the right to suspend, restrict, or limit the provision of some or all of the Services until the Customer reduces its outstanding balance or provides additional security acceptable to Tecala. Tecala will use reasonable efforts to notify the Customer prior to implementing any such restrictions.

9.3 **Expenses**

9.3.1 All Fees are exclusive of out-of-pocket expenses, travel time, delivery costs, accommodation, air fares and other peripheral costs that may be reasonably incurred by Tecala in relation to providing the Services and Tecala will charge the Customer for such costs and expenses at cost. The Customer must pay all such costs and expenses in addition to the Fees. Tecala must notify the Customer of any such costs in advance of incurring them, unless it is not reasonably practical to do so.

9.4 **Payment**

9.4.1 Subject to Clause 9.1, if Tecala's credit control clearance procedure results in credit being granted to the Customer in respect of any Service, the Customer must pay each invoice within the Payment Term Period without any deductions or withholdings and without any right of set-off.

9.4.2 Should Tecala not extend credit to, or withdraw credit from the Customer, the Fees for all Services must be paid for in full prior to, or on, the date of delivery.

9.4.3 All payments to be made to Tecala under this Agreement must be made by electronic funds transfer directly to Tecala's nominated bank account.

9.4.4 Each payment made by the Customer will be treated as received by Tecala when that payment is credited to Tecala's nominated bank account in free and clear funds.

9.4.5 Subject to clause 9.1, if Tecala has not received payment of each invoice in full by the due date, and the Customer has received a reminder notice to pay the invoice, Tecala may:

9.4.5.1 without liability to the Customer, disable the Customer's password, account and access to all or part of the Services to which the unpaid fees relate, and Tecala will be under no obligation to provide any or all of the Services to which the unpaid fees relate while the invoice remains unpaid; and

9.4.5.2 charge the Customer Interest on any unpaid and undisputed amount from the date that payment was required to be made until the date payment is actually made provided that:

9.4.5.2.1 Tecala has notified the Customer of its failure to pay and Tecala's intention to charge Interest; and

9.4.5.2.2 the Customer has still failed to pay such amounts within 14 calendar days of Tecala's notice.

9.4.5.3 The Customer must continue to pay all Fees in accordance with this Agreement where a Service is unavailable or interrupted due to an outage, failure, or other issue with a Service Provider or Third-Party Platform, and Tecala continues to incur charges from that Service Provider or Third-Party Platform. The Customer acknowledges that Service Providers and Third-Party Platforms do not provide fee reductions to Tecala for such outages or interruptions, and Tecala is obligated to continue paying those providers regardless of service availability.

9.5 **Taxes**

9.5.1 All Fees are exclusive of, and the Customer is responsible for, shipping and delivery costs, duties and taxes (other than Tecala's taxes on its income).

9.5.2 Each consideration or payment obligation for any supply made under or in connection with this Agreement is exclusive of GST.

9.5.3 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the consideration for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply.

9.5.4 The Order Form will specify the GST exclusive Fees, the amount of the GST on the Fees and the GST inclusive total amount.

9.5.5 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to Claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable pursuant to any supply made under or in connection with this Agreement.

9.5.6 If either party (Claiming Party) is entitled under this Agreement to be reimbursed or indemnified by the other party (Reimbursing Party) for a cost or expense incurred by the other party in connection with this Agreement and the claiming party may Claim an input tax credit in relation to the GST component of that cost or expense, then:

9.5.6.1 the Claiming Party must calculate the amount claimed from the reimbursing party net of any GST component of the cost or expense to which net amount GST will then be added; and

9.5.6.2 the Reimbursing Party must pay the net amount and GST on that net amount.

9.5.7 If an adjustment event occurs, the parties must do all things necessary to make sure that the adjustment event may be appropriately recognised, including the issue of an adjustment note.

9.5.8 In this clause:

9.5.8.1 GST means the GST as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and

9.5.8.2 words used in this clause which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and associated acts and legislative instruments (collectively the GST Law) have the same meaning as in the GST Law.

10. Property rights and beneficial interest

10.1 Nothing in this Agreement gives the Customer any right, title or interest (whether legal, equitable or statutory) in any part of any platforms, software and systems knowledge base articles, internal documentation, or other materials supplied, made available by Tecala to the Customer or used by Tecala to supply Services under or in accordance with this Agreement. The Customer has no right to access or use any Tecala backend systems, administrative platforms, or management tools used by Tecala to deliver the Services.

10.2 Tecala will give the Customer access to those systems and platforms dedicated to the Customer, provided the Customer complies with Tecala's security procedures. The Customer acknowledges that access to systems and platforms will be limited to areas specifically designated for the Customer's use, and the Customer must not attempt to access areas that may contain information relating to other customers or Tecala's internal operations.

10.3 If the Services include the sale of Goods or the licensing of software, Tecala will retain title in and rights to the Goods and software until payment in full for such items is received by Tecala. Until Tecala receives payment in full for such items, the Customer may hold such items as bailee for Tecala and Tecala may enter the Customer's premises where such items are kept, and repossess such items. Where the Customer sells the Goods supplied to it by Tecala and fails to make payment in full in accordance with Tecala's payment terms, the proceeds of such sale will be deemed to be held on trust in favour of Tecala, and the Customer agrees to supply Tecala with the names of all parties receiving such Goods.

11. Licensing

11.1 Tecala grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Service and the Material during the term of this Agreement solely for the Customer's internal business operations.

11.2 The Customer acknowledges and agrees that, in providing the Services, Tecala may utilise certain Third-Party Platforms, rent licences or provide access to such Third-Party Platforms as part of the Services.

11.3 The Customer acknowledges that its use of any Third-Party Platform by or for the Customer is subject to, and inextricably bound by, the applicable terms of use, licence agreements, and policies imposed by the provider of that Third-Party Platform. The Customer agrees to comply with all such terms and conditions and understands that any breach of those terms may result in suspension or termination of access to the relevant Third-Party Platform, without liability to Tecala. Tecala will make reasonable efforts to provide the Customer with access to or copies of the relevant Third-Party Platform terms upon request.

12. Intellectual Property Rights

12.1 **Ownership of materials**

12.1.1 All materials owned by the Customer or licenced by the Customer to Tecala during the term of this Agreement will remain the sole property of the Customer.

12.1.2 All materials owned by Tecala or licenced by Tecala to the Customer during the term of this Agreement will remain the sole property of Tecala.

12.2 **Grant of licence**

12.2.1 Each Party grants the other party a licence to use and reproduce any Intellectual Property in the materials it provides to the other Provided Materials for the purpose of exercising its rights or performing its obligations under this Agreement.

12.2.2 Any licence provided by the Customer does not include a licence over the Data.

12.2.3 The parties agree that:

12.2.3.1 any licence granted by one party to another pursuant to clause 12.2 will terminate upon termination or expiry of this Agreement; and

12.2.3.2 any Provided Materials must be either destroyed by the receiving party or returned to the providing party in the event of termination or expiry of this Agreement.

12.3 **Intellectual Property in Project-based work**

12.3.1 Unless specifically indicated otherwise on an Order form for project-based work, Tecala retains all Intellectual Property Rights in any software, code, applications, scripts, configurations, or other materials created by Tecala.

12.3.2 Tecala retains all Intellectual Property Rights in any pre-existing materials, templates, frameworks,

methodologies, tools, code libraries, or know-how used or incorporated into the work described in clause 12.3.1.

12.3.3 Third-party components, open-source software, or licenced materials incorporated into work described in clause 12.3 remain subject to their original licence terms. Tecala will identify all such third-party components to the Customer in the relevant Statement of Work.

12.3.4 Tecala grants the Customer a perpetual, irrevocable, non-exclusive, royalty-free licence to use any materials described in clauses 12.3.1 and 12.3.2 that are incorporated into work delivered to the Customer, solely to the extent necessary to use and maintain that work.

12.3.5 Nothing in this clause transfers ownership of Tecala's platforms, management tools, monitoring systems, or infrastructure used to deliver the Services.

12.4 **Intellectual property indemnity**

12.4.1 Each party indemnifies the other in relation to the materials provided by the Indemnifying Party under clauses 12.1.1 and 12.1.2.

12.4.2 Subject to this clause, the Indemnifying Party will defend the Indemnified Party against any IP Claim and pay any resulting court-awarded damages or settlement to which the Indemnifying Party consents in writing.

12.4.3 If any IP Claim is brought against the Indemnified Party, the Indemnified Party must:

12.4.3.1 notify the Indemnifying Party as soon as practicable;
12.4.3.2 give the Indemnifying Party the option to conduct the defence of the IP Claim, including negotiations for settlement;
12.4.3.3 provide the Indemnifying Party with reasonable assistance in defence of the IP Claim;
12.4.3.4 not make any admissions in relation to IP Claim without the Indemnifying Party's prior written consent;
12.4.3.5 permit the Indemnifying Party to obtain for the Indemnified Party the right to continue using the Provided Materials; and
12.4.3.6 use its best endeavours to mitigate any damages the Indemnified Party suffers as a result of the IP Claim, and

12.4.4 the Indemnifying Party is not liable under clause 12.4.2 to the extent that any failure by the Indemnified Party to do so prejudices the Indemnifying Party's ability to defend any IP Claim or causes the Indemnifying Party to suffer any additional damages or losses.

12.4.5 The Indemnifying Party is not liable under clause 12.4.2 to the extent that the infringement arises from:

12.4.5.1 modifications to the Provided Materials made by anyone other than the Indemnifying Party in breach of this agreement;
12.4.5.2 infringement of the Intellectual Property Rights in other software, hardware or materials not provided by the Indemnifying Party used in combination with the Provided Materials, in breach of this Agreement;
12.4.5.3 use of the Provided Materials for a purpose other than that for which they were supplied; or
12.4.5.4 compliance with any directions, information or specifications provided by the Indemnified Party in breach of this Agreement.

12.4.6 If any Claim is brought against the Indemnified Party, and the Indemnifying Party is unable to:

12.4.6.1 modify or replace the Provided Materials to make them non-infringing; or
12.4.6.2 obtain for the Indemnified Party the right to continue using the Provided Materials, on terms that the Indemnifying Party believes to be commercially reasonable, the Indemnifying Party may terminate this Agreement by giving the recipient 20 Business Days' prior written notice of such termination.

12.4.7 To the maximum extent permitted by law, this clause sets out the sole and exclusive obligations and remedies of the parties in relation to any infringement of third-party Intellectual Property Rights.

12.5 **Trademarks**

12.5.1 All the trademarks and registered trademarks referenced within this document are acknowledged as belonging to their various owners.

13. Confidentiality

13.1 **Obligations of confidence**

13.1.1 Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this Agreement, any Confidential Information of the other party, including information provided prior to this Agreement.

13.1.2 The use and disclosure of Confidential Information in clause 13.2 does not apply to the Customer's Data.

13.1.3 Each party agrees that the contents of this Agreement is proprietary and confidential and may not be duplicated, redistributed, or displayed to any other party without the express written permission of all parties.

13.2 **Permitted disclosures**

13.2.1 The receiving party may use and disclose Confidential Information only on a "need-to-know" and confidential basis:

13.2.1.1 with the prior written consent of the disclosing party;
13.2.1.2 to its Personnel and insurers;
13.2.1.3 to its Related Bodies Corporate and their Personnel;

or

13.2.1.4 in the case of the Customer only, to third parties whom the Customer engage, except that the Customer agrees not to disclose any pricing information relating to the Services,

for the purpose of this Agreement.

13.2.2 Disclosing parties must ensure recipients keep information confidential.

13.2.3 The receiving party must retain Confidential Information in a secure manner.

13.2.4 Notwithstanding the above, the receiving party may disclose Confidential Information where:

13.2.4.1 required by Law, or by a court or Governmental Agency, provided that the disclosing party notifies the other party in writing promptly; or

13.2.4.2 required by rules of a stock exchange.

13.3 **Return of Confidential Information**

13.3.1 On request by the disclosing party, and when no longer required, the receiving party must return or destroy Confidential Information (and ensure recipients do the same) within a reasonable period, except one copy may be retained for archival purposes.

13.4 **Damages insufficient**

13.4.1 Each party acknowledges that damages may not be a sufficient remedy for any breach of its obligations of confidentiality under this clause and each party is entitled to seek specific performance or injunctive relief as a remedy for any breach or threatened breach by the other party, in addition to any other remedies available at Law.

13.5 **Publicity**

13.5.1 Neither party may make any public statement about this Agreement, or anything related to the subject matter of this Agreement, without the prior written consent of the other party.

13.6 **Additional Clauses**

13.6.1 Tecala must ensure any subcontract contains equivalent confidentiality obligations.

13.6.2 In the event Confidential Information is disclosed to unauthorised third parties, the party becoming aware of the breach must inform the other in writing within 1 Business Day identifying the information disclosed, recipients, and circumstances.

13.6.3 In the event Confidential Information is disclosed to unauthorised third parties, each party must act promptly to prevent further disclosure.

13.6.4 The Customer acknowledges that Tecala's Work Procedures are the proprietary and confidential intellectual property of Tecala, and Tecala is not required to disclose its Work Procedures or any part thereof to the Customer.

14. Data ownership and security

14.1 **Data**

14.1.1 The Data and all Intellectual Property Rights in the Data are owned by the Customer and where provided to or accessible by Tecala for the purposes of providing the Services, will be held by Tecala as possessor only.

14.1.2 Tecala does not have, and will not permit the creation of, any security interest, lien or other interest over the Data.

14.1.3 Tecala will ensure that the Data is signified as the property of the Customer.

14.1.4 The Customer retains sole responsibility and accepts sole liability for all the Data it submits, uploads and uses, and the content in that data, in conjunction with the Services, irrespective of the Services provided by Tecala.

14.1.5 The Customer must maintain backups of its IT systems and Data and remains responsible for the care, protection and security of its Data, except to the extent expressly included in the Service Schedules.

14.2 **No interference with Data**

14.2.1 Tecala will not delay, manipulate (other than to make back-ups as part of the Services), remit, capture or otherwise interfere with any Data belonging to the Customer or contained in the Customer's materials, except as permitted under this Agreement or with the Customer's express written consent.

14.2.2 If the Customer has reasonable grounds to believe Tecala has failed to comply with clause 14.2.1, Tecala will provide audit trails as the Customer may reasonably require.

14.2.3 Tecala will, on request, demonstrate to the Customer's reasonable satisfaction that security controls are in place to prevent unauthorised or accidental access to, processing, erasure, or dissemination of the Data, or interruption to the Services.

14.3 **Security**

14.3.1 Tecala will apply the commercially reasonable security standards it deems appropriate in respect of any Data and Confidential Information of the Customer which it collects, stores or uses.

14.3.2 The Customer will be responsible for undertaking any

security audit in respect of its own environment and the configuration of applications and services within its environment. The Customer will submit requests for such audits to Tecala for approval, prior to the event, the approval of which will not be unreasonably withheld or delayed by Tecala.

14.4 **Compliance**

14.4.1 For Customers consuming Managed Services, Tecala will provide assistance for one internal audit per annum, capped at 3 days of work per calendar year. Additional assistance will incur charges.

14.4.2 External security reviews, audits, and questionnaires (including cybersecurity insurance audits) will be charged on a Time and Materials (T&M) basis, with estimates provided for approval, after assessment of each request;

14.4.3 Compliance activity is not bound by any Service Levels as defined in the Service Schedules, and response times shall vary subject to the complexity of each request;

14.4.4 All requests for compliance assistance must be submitted in writing, via the Tecala Service Desk.

15. Privacy

15.1 Each party must comply with all Privacy Laws when collecting, using, disclosing, transferring or otherwise handling Personal Information in performing its obligations under this Agreement.

15.2 Without limiting clause 15.1, each party will:

15.2.1 only use Personal Information for performing its obligations under this Agreement or as required by Law;

15.2.2 not disclose Personal Information without the other party's prior written consent or as required by Law;

15.2.3 ensure that persons engaged by the party only use, disclose or retain Personal Information for the purpose of performing their duties;

15.2.4 take reasonable steps to protect Personal Information from misuse, loss, and unauthorised access, modification or disclosure;

15.2.5 comply with the other party's reasonable requests concerning security, use, disclosure, access, correction, and complaints about handling of Personal Information;

15.2.6 notify the other party as soon as reasonably practicable if it may be required by Law to use or disclose Personal Information, and provide reasonable assistance to resist or object to such disclosure;

15.2.7 notify the other party as soon as reasonably practicable of any breach of this clause; and

15.2.8 on termination or expiry, destroy or deal with Personal Information in accordance with the other party's reasonable instructions.

15.3 Each party may use the other party's Personal Information for purposes related to the Services, including quotations, purchase orders, sales orders, billing, market and product analysis, and receiving and disclosing information to credit providers or credit reporting agencies as permitted under the Privacy Act 1988 (Cth).

15.4 The parties must comply to the Privacy Laws in receiving and using the Services.

15.5 If a party becomes aware or suspects it may be required under the Privacy Act to prepare a statement regarding an Eligible Data Breach, or to assess a suspected Eligible Data Breach, the party must:

15.5.1 promptly notify the other; and

15.5.2 promptly provide reasonable assistance requested by the other to manage consequences of the Eligible Data Breach or suspected Eligible Data Breach.

15.6 Tecala acknowledges it is a 'contracted service provider' under the Privacy Act.

16. Service Providers and Personnel

16.1 **Service Providers**

16.1.1 Tecala may use Service Providers, including Tecala's Related Bodies Corporate, to perform its obligations under this Agreement.

16.1.2 Tecala remains liable for obligations performed by its Service Providers, will provide the Service in accordance with the Service Levels provided by the Service provider and, any work performed by a Service Provider is deemed to be work performed by Tecala.

16.1.3 Tecala shall ensure that any Service Provider, including Tecala's Related Bodies Corporate who perform its obligations under this Agreement in accordance with clause 16.1.1, are subject to equivalent obligations as Tecala under clauses 13, 14 and 15.

16.2 **Personnel**

16.2.1 The Customer may request in writing that Tecala promptly remove any individual Tecala Personnel who is not performing the Services in a reasonably satisfactory manner or who is not suitable to perform the Services. Tecala will replace such Personnel as soon as possible. The Customer must:

16.2.1.1 not exercise its right unreasonably;

16.2.1.2 provide Tecala with five Business Days' written notice for a removal request; and

16.2.1.3 provide Tecala with an opportunity to rectify the cause of the Customer's dissatisfaction,
provided that the Customer is entitled to require immediate removal for conduct that has caused, or is likely to cause, material loss or damage to the Customer's assets, reputation or injury to its personnel, agents or contractors.

16.2.2 Neither party may, for 6 months after termination or expiry, employ, engage, solicit or entice away any person who:

16.2.2.1 during the 12 months prior to termination or expiry was a senior employee of the other party; and

16.2.2.2 had material involvement in the provision or receipt of Services under this Agreement.

This clause does not prevent employing a person who responds to a general advertisement not targeted at the other party's personnel.

16.3 **Modern Slavery**

16.3.1 Tecala acknowledges that the Customer is committed to eradicating human rights abuses and instances of modern slavery. Tecala must do all things (and must procure that its suppliers and Service Providers do all things) reasonably requested by the Customer in order to facilitate the Customer's compliance with the Modern Slavery Act 2019 (Cth) or the Modern Slavery Act 2018 (NSW) (including all related regulations and policies adopted by the Customer in relation to the same).

17. Warranties

17.1 **General warranties**

17.1.1 Each party warrants that the execution and delivery of this Agreement and the transactions contemplated by this Agreement have been duly authorised by all necessary corporate action, and that this Agreement constitutes a valid and binding obligation enforceable against it.

17.1.2 Each party warrants that it is not a party to any other agreement that would be violated or breached as a result of the execution of, or the performance of its obligations under, this Agreement.

17.2 **Mutual representations and warranties**

17.2.1 Each party represents and warrants to the other that:

17.2.1.1 it is a corporation duly incorporated and validly existing under the Laws;

17.2.1.2 it has full power and authority to enter into this Agreement and

17.2.1.3 it has taken all necessary corporate action to authorise the creation, execution, delivery and performance of this Agreement.

17.3 **Tecala representations and warranties**

17.3.1 Tecala represents, warrants and undertakes to the Customer that:

17.3.1.1 Tecala has the necessary experience, expertise and resources to perform the Services;

17.3.1.2 Tecala will perform the Services in:

17.3.1.2.1 a diligent and timely fashion;

17.3.1.2.2 a professional and workmanlike manner;

17.3.1.2.3 accordance with good industry practices;

17.3.1.2.4 compliance with any applicable laws.

17.3.1.3 all Tecala Personnel will be duly qualified and experienced for the purposes of performing the Services to which they are assigned.

18. Liability

18.1 To the extent permitted by Law, each party excludes:

18.1.1 implied representations, conditions, warranties and provisions that relate to this Agreement but which are not contained in this Agreement; and

18.1.2 liabilities for:

18.1.2.1 special, indirect, incidental, consequential or punitive damages; and

18.1.2.2 damages for economic loss, loss of profits or loss of revenue, clients, bargain, goodwill, anticipated savings, use of products or equipment, software, data or management time.

18.2 If any representation, condition, warranty or provision is implied into this Agreement and cannot be excluded, and Tecala is able to limit the Customer's remedy for a breach, then Tecala's liability for breach is limited (so far as Laws do not prohibit) to:

18.2.1 in the case of Goods, the replacement or supply of equivalent Goods, the repair of the Goods, the payment of the cost of replacing the Goods or acquiring equivalent Goods, or the payment of the cost of having the Goods repaired; or

18.2.2 in the case of Services, the supplying of the Services again, or the payment of the cost of having the Services supplied again.

18.3 The exclusions in clause 18.1 apply regardless of the basis on which such liability arises, whether for breach of contract, in tort (including negligence), in equity, under statute, under an indemnity and whether or not a party was aware or should have been aware of the possibility of such loss.

18.4 To the extent that a party is liable to the other party, the first party's maximum aggregate liability for a Claim or series of Claims is limited to the total amount paid and payable by the Customer to Tecala in respect of the Service giving rise to the Claim or series of Claims in the 12 month period prior to the date of the initial Claim.

18.5 Nothing in this Agreement limits a party's liability in respect of:

18.5.1 personal injury (including sickness and death);

18.5.2 an obligation to pay invoices;

18.5.3 any obligation of confidentiality or in relation to Confidential Information, provided that a party's aggregate liability arising from a breach of this clause does not exceed the amount recoverable under that party's applicable liability insurance policy at the time the Claim arises;

18.5.4 loss of or damage to any real or personal property, provided that a party's aggregate liability arising from such loss or damage does not exceed the amount recoverable under that party's applicable public liability insurance policy at the time the Claim arises; and

18.5.5 fraud, fraudulent misrepresentation or wilful misconduct.

18.6 A party's liability is diminished to the extent that the other party's acts or omissions (or those of a third party) contribute to or cause the loss or liability.

19. Insurance

19.1 During the term of this Agreement, and for a period of six years thereafter in the case of policies written on a "claims made" basis, Tecala will maintain in force with a reputable and financially sound insurance company, at least the following insurance policies:

19.1.1 public and products liability insurance in an amount of $10 million per event and in the aggregate;

19.1.2 professional indemnity insurance in an amount of $5 million per event and in the aggregate; and

19.1.3 workers' compensation insurance in accordance with applicable legislation and/or awards.

19.2 If for any reason an insurer cancels, or fails or declines to renew a policy then Tecala will, at its own cost, promptly purchase a replacement policy and ensure that the replacement policy includes "prior acts coverage endorsement" effective from the date on which the previous policy ceased to take effect.

20. Termination

20.1 **Termination for cause**

20.1.1 Either party (First Party) may terminate this Agreement in whole or in part and with immediate effect by notice in writing to the other party (Second Party) if:

20.1.1.1 the Second Party commits a material breach of this Agreement which is capable of remedy and does not remedy that breach within 30 calendar days of receipt of a notice from the First Party specifying the breach and requiring the breach to be remedied;

20.1.1.2 the Second Party commits a material breach of this Agreement which is incapable of remedy and the First Party has served 30 days' prior written notice of its intention to terminate;

20.1.1.3 the Second Party regularly or habitually commits a breach of this Agreement or commits a number of breaches which collectively constitute a material breach, provided that notice is provided for each such event, whether or not they are remedied.

20.2 **Termination for insolvency**

20.2.1 Either party may, by written notice, terminate this Agreement with immediate effect if:

20.2.1.1 an order is made, or a resolution is passed, for its winding up, liquidation, or administration;

20.2.1.2 a liquidator, provisional liquidator, administrator, receiver, or controller is appointed to it or any of its assets;

20.2.1.3 it enters into an arrangement, composition, or assignment with or for the benefit of its creditors;

20.2.1.4 it is insolvent, states that it is insolvent, is presumed to be insolvent under the Corporations Act, or is unable to pay its debts as and when they become due;

20.2.1.5 it fails to comply with a statutory demand under the Corporations Act;

20.2.1.6 it ceases or threatens to cease carrying on business; or

20.2.1.7 anything with substantially similar effect occurs under any Law.

20.3 **Effect of termination**

20.3.1 On termination of this Agreement, all sums due and owing under this Agreement will become immediately due and payable, except for any sums that have not been invoiced at the time of termination, which will become immediately due and payable on receipt of the relevant invoice by the other party.

20.3.2 Termination of this Agreement does not affect:

20.3.2.1 any liabilities or obligations of either party arising:

20.3.2.1.1 before such termination; or

20.3.2.1.2 out of the events causing such termination; or

20.3.2.2 any damages or other remedies to which a party may be entitled under this Agreement, at Law, in equity or otherwise.

20.3.3 Clauses 2 (Definitions and interpretation), 9 (Fees, payment and taxes), 10 (Property rights and beneficial interest), 12 (Intellectual Property Rights), 13 (Confidentiality), 14 (Data ownership and security), 15 (Privacy), 16.2.2 (six-month non-solicit), 17 (Warranties), 18 (Liability), 19 (Insurance), 21 (Dispute resolution), 23 (General), 20.4 (transition out) and 20.5 (early termination) survive termination

or expiry of this Agreement, together with any other term which by its nature is intended to do so.

20.4 **Transition Out**

20.4.1 Upon termination of this agreement, Tecala will provide to the Customer assistance to migrate data from the Tecala platform to the Customer's replacement environment. Such assistance will be scoped and quoted for at Tecala's current time and materials rates.

20.5 **Early Termination Commitment**

20.5.1 The Customer may terminate any or all Services at any time throughout the Term by providing no less than 30 days written notice and payment of an early termination commitment equivalent to the total number of part and whole months remaining in the Initial Term for that Service multiplied by the associated monthly service fee for that Service (as applicable as at the date of termination).

20.5.2 The early termination commitment in this clause does not apply in respect of Services that are not subject to a minimum contractual term, or which are specified as being capable of early termination during the Initial Term in the Order Form.

20.5.3 The Customer acknowledges the early termination commitment is a genuine estimate of Tecala's loss for early termination and agrees to pay the total amount prior to the cessation date of the service/s as specified by the Customer in the notice of termination provided.

21. Dispute resolution

21.1 **Dispute**

21.1.1 This clause applies to any dispute arising out of, relating to or in connection with this Agreement.

21.1.2 A party must not commence court proceedings relating to a dispute unless it has complied with this clause, except where a party seeks urgent injunctive relief.

21.1.3 A party claiming a dispute has arisen must give written notice to the other party setting out the nature of the Dispute (**Dispute Notice**).

21.2 **Negotiation in good faith**

21.2.1 Within 5 Business Days of receipt of a Dispute Notice, the parties must each nominate a representative with authority to resolve the Dispute and notify the other party. Within 10 Business Days of the Dispute Notice, each party's representatives must meet to resolve the Dispute by negotiation in good faith. All communications at the meeting are made on a without prejudice basis.

21.3 **Escalation**

21.3.1 If the representatives do not settle the Dispute within 10 Business Days after receipt of the Dispute Notice, the Dispute must be escalated to more senior members within each party. Senior members must meet to settle the Dispute by negotiation within 5 Business Days.

21.4 **Referral to binding arbitration**

21.4.1 If the parties do not settle the Dispute within 30 Business Days of receipt of the Dispute Notice, the Dispute must be referred to and finally resolved by arbitration administered by the Resolution Institute in accordance with the Resolution Institute Arbitration Rules in force at the time the arbitration is commenced. The seat of arbitration will be Sydney, New South Wales. The arbitration will be conducted by a single arbitrator and in the English language.

22. Force majeure

22.1 **Effect**

22.1.1 A party will not be liable to the other party for any failure to perform due to an Event of Force Majeure.

22.2 **Certain events not Force Majeure**

22.2.1 Despite clause 22.1.1,

22.2.1.1 any event referred to, or contemplated by, a party in clause 22.1, that could have been prevented or overcome by the exercise by it of the standard of a reasonable and prudent person, will not be interpreted as an Event of Force Majeure; and

22.2.1.2 lack of funds for any reason will be interpreted as a cause reasonably within the control of a party, and therefore not capable of constituting an Event of Force Majeure.

22.3 **Notice**

22.3.1 A party who cannot carry out any of its obligations, must give the other party prompt (but in no circumstances greater than five Business Days) notice in writing of:

22.3.1.1 the Event of Force Majeure;

22.3.1.2 the anticipated effect on the ability of the party giving the notice to perform its obligations under this Agreement; and

22.3.1.3 the likely duration of that effect, estimated as a whole number of hours.

22.4 **Obligations suspended**

22.4.1 The party giving notice under clause 22.3 (Notice) will be relieved of its obligations under this Agreement, so far as those obligations are affected by the Event of Force Majeure, for the time necessary to remedy the effect of that event.

22.4.2 If Tecala is relieved of all or any part of Tecala's obligations under this Agreement by any Event of Force Majeure, the Customer need not make payments to Tecala for the affected Services, until Tecala has fully:

22.4.2.1 remedied the effect of that Event of Force Majeure on a Service; and

22.4.2.2 complied with and completed those obligations in accordance with this Agreement.

22.5 **Resumption of performance**

22.5.1 The party giving notice under clause 22.3 (Notice) must, as soon as possible:

22.5.1.1 Take all necessary and reasonable steps to ameliorate and remedy the position, and to resume its performance under this Agreement; and

22.5.1.2 use all reasonable efforts to minimise any loss to the other party.

22.5.2 The other party will co-operate with the affected party, and render to it reasonable assistance, in order to comply with its obligations under this clause 22.5 (Resumption of performance).

22.6 **Termination for Force Majeure**

22.6.1 Notwithstanding any other provision of this Agreement, a party may terminate this Agreement by 30 Business Days' notice in writing to the other party, if the Event of Force Majeure continues for six months after the date of the notice served under clause 22.3.

23. General

23.1 **Agreement Documents**

23.1.1 This Agreement consists of these General Terms and Conditions, the Special Conditions Schedule, the Order Form, the Service Schedules, attachments to the Service Schedules and any appendices. If there is any inconsistency between the documents forming this Agreement, the order of precedence will be:

23.1.1.1 The agreed Special Conditions Schedule;

23.1.1.2 these General Terms and Conditions;

23.1.1.3 the Order Form;

23.1.1.4 the Service Schedules;

23.1.1.5 any attachments to the Service Schedules; and

23.1.1.6 any other appendix to this Agreement.

23.2 **Variation**

23.2.1 No variation of this Agreement is effective unless made in writing and signed by each party.

23.2.2 Unless explicitly stated otherwise in a Variation Form, all Services will be delivered in accordance with the Order Form.

23.2.3 Variation Forms are separate and additional to original Order Forms, and only take precedent for that specific service, and will in no way constitute acceptance of that variation for other existing and/or future services provision.

23.3 **Relationship of the parties**

23.3.1 Except as expressly provided in this Agreement:

23.3.1.1 nothing in this Agreement is intended to constitute a fiduciary relationship or an agency, partnership or trust; and

23.3.1.2 no party has authority to bind any other party.

23.4 **Severability**

23.4.1 Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement is not affected.

23.5 **Waiver**

23.5.1 No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.

23.5.2 A single or partial exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

23.6 **Third party rights**

23.6.1 Only the parties to this Agreement have or are intended to have a right or remedy under this Agreement or obtain a benefit under it.

23.7 **Assignment, novation and other dealings**

23.7.1 The Customer must not assign, novate, transfer or otherwise deal with this Agreement, or any of its rights or obligations under this Agreement, without Tecala's prior written consent, such consent not to be unreasonably delayed or withheld.

23.7.2 Tecala may assign, novate or transfer this Agreement, or any of its rights or obligations under this Agreement, to any Related Body Corporate of Tecala, as part of a sale, transfer, restructure or other disposal of all or substantially all of Tecala's business, restructure of any financing arrangements, or the business to which this Agreement relates;

23.8 **Costs, expenses and duties**

23.8.1 Except as expressly provided in this Agreement, each party must pay its own costs and expenses associated with the negotiation, preparation and execution of

this Agreement and any other instrument executed under this Agreement.

23.9 **Notices**

23.9.1 A notice under this Agreement is only effective if it is in writing in English and signed by or on behalf of the party giving it, addressed to the party to whom it is to be given, and sent by pre-paid mail (by airmail if the addressee is overseas), delivered to that party's address, or sent by email to the email address specified on the Order Form.

23.9.2 A notice under this Agreement is regarded as given and received on delivery if delivered; on the 3rd Business Day after posting if sent by mail within Australia and on the 7th Business Day after posting if sent by mail outside Australia; or when received if sent by email.

23.9.3 If a notice is given and received on a day that is not a Business Day or after 5.00 pm on a Business Day, it is regarded as being given and received at 9.00 am on the next Business Day.

23.10 **Governing law and jurisdiction**

23.10.1 This Agreement shall be governed by the laws of New South Wales, Australia, and the Customer consents to exclusive jurisdiction and venue in the courts located there.

23.10.2 Process may be served on either party in the manner authorised by applicable law or court rule.

23.11 **Acceptable use**

23.11.1 For all Services used by the Customer, the Customer agrees to be bound by the terms of the Acceptable Use Policies of Tecala, its Service Providers, and any Third-Party Platform as amended from time to time and made available on request.

23.12 **Execution in parts**

23.12.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, and all of which together shall constitute one and the same instrument. A counterpart may be delivered by electronic means, and such delivery shall have the same effect as physical delivery of a signed original