

# LIGR SOFTWARE AS A SERVICE AGREEMENT

## 1 Agreement

### 1.1 Definitions

The definitions in this Agreement are set out in clause 16.

### 1.2 Parties to the Agreement

This Agreement is between Live Graphic Systems Pty Ltd (ABN: 38 616 093 237), its successors and assignees, (referred to as **we, us or our**), and you, our client (referred to as **you or your**), and collectively the **Parties**.

### 1.3 Services

You have requested our SaaS Services. You agree and accept that these terms and conditions form the agreement under which we will supply the SaaS Services to you (**Agreement**).

### 1.4 Acceptance

- (a) You accept this Agreement by confirming acceptance via the platforms or applications through which we provide this Agreement to you, including our urls, websites and mobile apps; or clicking a box indicating acceptance.
- (b) By accepting this Agreement and/or accessing and/or using the SaaS Services, you:
  - (i) warrant to us that you have reviewed this Agreement;
  - (ii) warrant to us that you have the legal capacity to enter into a legally binding agreement;
  - (iii) warrant to us that you have the authority to act on behalf of any person or entity for whom you are using the SaaS Services, and you are deemed to have agreed to this Agreement on behalf of any entity for whom you use the SaaS Services;
  - (iv) warrant to us that you have all hardware, software and services which are necessary to access and use the SaaS Services (other than that being provided by us under this Agreement); and
  - (v) agree to use the SaaS Services in accordance with this Agreement.

## 2 Term

### 2.1 Agreement Commencement Date

This Agreement starts on the date you accept this Agreement in accordance with clause 1.4(a) and continues until the date on which your Account is terminated in accordance with this Agreement (**Agreement Term**).

## 3 Accounts

### 3.1 Account creation

- (a) You must create an account on our Site (**Account**) in order for you and your Authorised Users to access and use the SaaS Services. You must ensure that any information you provide is complete and accurate and you are authorised to provide this information.
- (b) It is your responsibility to keep your Account details confidential. You are responsible for all activity on your Account, including activity by Authorised Users and for ensuring that any activities on your Account comply with this Agreement.
- (c) You are the Account owner and regardless of any change in any contact details, you will remain responsible for your Account, as set out in this Agreement. If you wish to change the Account owner, you must provide us with a written request to transfer the ownership of the Account to the incoming party, which must also include the incoming party's written consent to take over full responsibility for the Account, in a form acceptable to us.
- (d) You agree that we are a software as a service provider and we are not responsible for the management or administration of your Account or your Authorised Users.

## 4 SaaS Licence

### 4.1 Licence

In consideration for entering into this Agreement, we grant you a non-exclusive, non-transferable (except with our written permission), non-sublicensable (except as otherwise permitted under this Agreement), personal and revocable licence to access and use the SaaS Services for your business purposes or personal purposes (**SaaS Licence**).

### 4.2 Authorised Users

You agree that the SaaS Licence permits you to access and use the SaaS Services in accordance with the number of Authorised Users permitted by the SaaS Services (if any limit apply).

## 5 SaaS Licence Restrictions

### 5.1 Usage

You must not (and must ensure your Authorised Users do not) access or use the SaaS Services except as permitted by the SaaS Licence and you must not and must not permit any other person to:

- (a) use the SaaS Services in any way which is in breach of any applicable Laws or which infringes any person's rights, including Intellectual Property rights;

- (b) use the SaaS Services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
- (c) use the SaaS Services in any way that damages, interferes with or interrupts the supply of the SaaS Services;
- (d) introduce malicious programs into our hardware and software or Systems, including viruses, worms, trojan horses and e-mail bombs;
- (e) reveal your Account's password to others or allow others to use your Account (other than Authorised Users);
- (f) use the SaaS Services to carry out security breaches or disruptions of a network. Security breaches include accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
- (g) use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the SaaS Services;
- (h) to send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages or use the SaaS Services in breach of any person's privacy (such as by way of identity theft or "phishing"); or
- (i) use the SaaS Services to circumvent user authentication or security of any of your networks, accounts or hosts or those of your members or suppliers.

## 5.2 Your obligations

In order for us to provide the SaaS Services, you must:

- (a) promptly obtain and provide to us any required licenses, approvals or consents necessary for our performance of the SaaS Services; and
- (b) promptly pay us any amounts payable to us under this Agreement.

## 6 Using the SaaS Services (the tiers)

### 6.1 Choosing a tier

- (a) When creating a sporting match on the SaaS Services for streaming (**Match**) you must select the tier you wish to apply to that Match.
- (b) We currently offer three tiers, as follows:
  - (i) a free tier which does not require any payment by you to us and allows you to stream your Match subject to providing us the right to display our own advertising and advertising on behalf of third parties at our sole discretion (**Our Advertising**) during the streaming of your Match (**Free Tier**);
  - (ii) a paid tier which allows you to stream your Match without the display of our advertising or the advertising of third parties (**Streamer Tier**); and
  - (iii) a third tier which allows you to stream your Match and choose and display your own advertising or the advertising of third parties (**Your Advertising**) during the streaming of your Match (**Earners Tier**).
- (c) The above tiers are further described on our Site.

### 6.2 Buying Credits

- (a) To select the Streamer Tier or Earners Tier for a Match, you must have enough paid credits (**Credits**) available to cover the amount required for a Streamer Tier or Earners Tier Match (as applicable) as set out on the Site and as updated by us from time to time.
- (b) To purchase Credits you must select the Credits you would like to purchase on the Site and pay the fee for those Credits set out on the Site (**Fee**) via credit card or any other payment method set out on the Site.
- (c) When purchasing Credits, you may select to turn on the auto top up feature (**Auto Top Up**). Auto Top Up allows you to automatically purchase Credits up to your pre-selected amount when your Credits reach a minimum amount, as set out on the Site. By setting up Auto Top Up you agree that we may automatically charge your credit card or any other payment method permitted by us and selected by you, your pre-selected amount when your Credits reach a minimum amount, as set out on the Site. It is your responsibility to ensure you have enough funds on your credit card or other selected payment method to complete the transaction. You can turn off Auto Top Up at any time in the Account settings.
- (d) All Fees are in USD and exclude all taxes (including GST) unless stated otherwise. You are responsible for all taxes, levies or duties imposed by taxing authorities in your own country, and you will be responsible for payment of them. We have no responsibility for them on your behalf.
- (e) Once purchased, to the maximum extent permitted by law, Credits are non-refundable and non-transferrable.
- (f) Unless specified on the Site at the time of purchase, Credits remain valid until the earlier of the date on which they are used and the date this Agreement expires or is terminated in accordance with its terms.

### 6.3 The Free Tier

Where you select the Free Tier for any Match, you acknowledge and agree that in consideration of our provision of the SaaS Services to you, we are permitted to display Our Advertising during the steaming of your Match and we have no Liability to you for the display of Our Advertising during the steaming of your Match.

#### 6.4 The Streamer tier

Where you select the Streamer Tier for any Match, you acknowledge and agree that you must pay the applicable Credits due in advance.

#### 6.5 The Earner Tier

Where you select the Earner Tier for any Match, you acknowledge and agree that:

- (a) you must pay the applicable Credits due in advance;
- (b) you are solely responsible for sourcing Your Advertising and correctly allocating it for display during streaming of your Match (sourcing or assisting you with the display of advertising does not form part of our service);
- (c) Your Advertising complies with all applicable Laws, binding codes, orders or directions from regulators;
- (d) you are entitled to provide Your Advertising to us and to stream Your Advertising and you have obtained all necessary rights, releases and permissions to provide all materials and to grant the rights granted to us in this Agreement in respect of Your Advertising;
- (e) all Your Advertising provided to us and its transfer to and use by us as authorised by you under this Agreement, does not violate any laws (including those relating to privacy, export control and electronic communications) or rights of any third party, including any Intellectual Property rights, rights of privacy, or rights of publicity;
- (f) all Your Advertising must comply with our policies as available on our Site and updated from time to time;
- (g) you are solely liable to any third parties for whom you display Your Advertising;
- (h) we do not provide any guarantees that Your Advertising will in any way benefit your business, including that it will result in sales or be viewed by any number of people;
- (i) you may remove or change Your Advertising at any time via the settings but you must refresh the page for any changes to be implemented during live streaming;
- (j) we may, at any time, remove or prevent Your Advertising from streaming if:
  - (i) it is deemed by us to be misleading, offensive, unlawful or inappropriate for any reason;
  - (ii) it does not comply with our policies or the terms of this Agreement; or
  - (iii) we otherwise believe it could be prejudicial to our interest or your interest; and
- (k) we have no Liability to you for the display of Your Advertising during the steaming of your Match.

## 7 Third Parties

### 7.1 Third Party Inputs

You acknowledge and agree that:

- (a) the provision of the SaaS Services may be contingent on, or impacted by, third parties, other customers' use of our services, suppliers, other subcontractors (**Third Party Inputs**); and
- (b) despite anything to the contrary, to the maximum extent permitted by law, we will not be responsible and will have no Liability, for any default or breach of this Agreement or law, if such default or breach was caused or contributed to by any Third Party Inputs.

### 7.2 Interoperability with Third Party Inputs

- (a) You acknowledge that the SaaS Services include certain optional functionality that may interface or interoperate with third party software or services.
- (b) To the extent that you choose to use such functionality and they are not a part of the SaaS Services, you are responsible for:
  - (i) the purchase of;
  - (ii) the ancillary requirements related to; and
  - (iii) the licensing obligations,related to the applicable third party software and services.
- (c) It is your responsibility to ensure the requirements are met in order for you to benefit from the specific functionality made available to you.

### 7.3 Survival

This clause will survive the termination or expiry of this Agreement.

## 8 Support Services

### 8.1 Support

During the Agreement Term, we will provide you with technical support services as set out on the Site.

## 9 Privacy

### 9.1 Privacy Act

We will at all times comply with the Privacy Act, and in relation to Data that contains or is Personal Information, we will only use this Data in the manner permitted by this Agreement and the Privacy Act

### 9.2 Your obligations

- (a) You acknowledge and agree that you are responsible for the collection, use, storage and otherwise dealing with Personal Information related to your business and all matters relating to the Data.
- (b) You will comply and ensure that all of your Personnel and Authorised Users comply with the requirements of the Privacy Act and any other privacy or data protection obligations applicable to you (**Privacy Laws**), in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with this Agreement.
- (c) Without limiting this clause 9, you must:
  - (i) notify your Authorised Users, Personnel, or other natural persons from whom Personal Information is collected about any matter prescribed by Privacy Laws in relation to the collection, use and storage of their Personal Information;
  - (ii) ensure that any Personal Information transferred to us is complete, accurate and up to date; and
  - (iii) notify us immediately upon becoming aware of any breach of Privacy Laws that may be related to the use of the Personal Information under this Agreement.
- (d) Without limiting this clause 9, you may only disclose Personal Information in your control to us if:
  - (i) you are authorised by Privacy Laws to collect the Personal Information and to use or disclose it in the manner required by this Agreement;
  - (ii) you have informed the individual to whom the Personal Information relates, that it might be necessary for you to disclose their Personal Information to third parties and if required, you have obtained their consent to do so; and
  - (iii) where any Personal Information is Sensitive Information, you have obtained specific consent to that disclosure from the individual to whom the Sensitive Information relates.

## 10 Warranties

### 10.1 Our warranties

We warrant and agree that:

- (a) we are properly constituted and have the right and authority to enter into this Agreement;
- (b) we will provide the SaaS Services in accordance with all applicable Laws;
- (c) we will use reasonable effort to ensure all of our obligations under this Agreement will be carried out:
  - (i) by suitably competent and trained Personnel; and
  - (ii) in an efficient and professional manner.

### 10.2 Your warranties

You warrant and agree that:

- (a) there are no legal restrictions preventing you from agreeing to this Agreement;
- (b) you are not subject to an Insolvency Event;
- (c) you will cooperate with us and provide us with all assistance, resources, data, people, information, facilities, access and documentation that is reasonably necessary to enable us to perform the SaaS Services, and as otherwise requested by us, from time to time, and in a timely manner;
- (d) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete and you acknowledge and agree that we will rely on such information and documentation in order to provide the SaaS Services;
- (e) you will inform us if you have reasonable concerns relating to our provision of SaaS Services under this Agreement, with the aim that the Parties will use all reasonable efforts to resolve your concerns;
- (f) you are responsible for obtaining any consents, licences, authorities and permissions from other parties necessary for the SaaS Services to be provided in accordance with this Agreement, at your cost, and for providing us with the necessary consents, licences, authorities and permissions;
- (g) you will maintain the confidentiality and security of any of your Account details or passwords;
- (h) if applicable, you hold a valid ABN which has been advised to us; and
- (i) if applicable, you are registered for GST purposes.

## 11 Intellectual Property

### 11.1 Our Intellectual Property

All Intellectual Property in the Software and SaaS Services and that Intellectual Property developed, adapted, modified or created by us or our Personnel (including in connection with this Agreement, the Software and the SaaS Services and any machine learning algorithms output from the SaaS Services) is and will remain owned exclusively by us or our third party service providers.

## 11.2 Obligations

You must not, without our prior written consent:

- (a) copy or use, in whole or in part, any of our Intellectual Property;
- (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of our Intellectual Property to any third party;
- (c) reverse assemble, reverse engineer, reverse compile or enhance the SaaS Services;
- (d) breach any Intellectual Property rights connected with the Software or the SaaS Services, including altering or modifying any of our Intellectual Property;
- (e) cause any of any of our Intellectual Property to be framed or embedded in another website; or creating derivative works from any of our Intellectual Property;
- (f) resell, assign, transfer, distribute or make available the SaaS Services to third parties;
- (g) "frame", "mirror" or serve any of the SaaS Services on any web server or other computer server over the Internet or any other network;
- (h) alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers or any other means of identification used on or in relation to the SaaS Services or Software;

## 11.3 Non-Identifying Analytics

Despite anything to the contrary in this Agreement or elsewhere, we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the SaaS Services, in an aggregated and anonymised format (**Analytics**). You agree that we may make such Analytics publicly available, provided that it:

- (a) does not contain identifying information;
- (b) is not compiled using a sample size small enough to make the underlying data identifiable.

## 11.4 Rights in Analytics

We and/or our licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content provided in connection with the Analytics, including all Intellectual Property rights in the foregoing.

## 11.5 Your Intellectual Property

As between you and us:

- (a) all Data is and remains your property; and
- (b) you retain any and all rights, title and interest in and to the Data, including all copies, modifications, extensions and derivative works thereof.

## 11.6 Licence

You grant us a limited licence to copy, transmit, store and back-up or otherwise access the Data and Your Advertising during the Agreement Term solely to:

- (a) supply the SaaS Services to you (including to enable you and your Personnel to access and use the SaaS Services and to display Your Advertising where you select the Earner Tier);
- (b) diagnose problems with the SaaS Services;
- (c) enhance and otherwise modify the SaaS Services;
- (d) develop other services, provided we de-identify the Data; and
- (e) as reasonably required to perform our obligations under this Agreement.

## 11.7 Your Data and compliance

- (a) You must, at all times, ensure the integrity of the Data and that your use of the Data is compliant with all Laws.
- (b) You represent and warrant that:
  - (i) you have obtained all necessary rights, releases and permissions to provide all your Data to us and to grant the rights granted to us in this Agreement; and
  - (ii) the Data and its transfer to and use by us, as authorised by you under this Agreement do not violate any Laws (including those relating to export control and electronic communications) or rights of any third party, including any Intellectual Property rights, rights of privacy, or rights of publicity; and
  - (iii) any use, collection and disclosure authorised in this Agreement is not inconsistent with the terms of any applicable privacy policies.

## 11.8 Data

We assume no responsibility or Liability for the Data. You are solely responsible for the Data and the consequences of using, disclosing, storing or transmitting it.

### 11.9 Survival

This clause will survive the termination or expiry of this Agreement.

## 12 Confidential Information

### 12.1 Confidential

Each Party (**Recipient**) must keep confidential, and not disclose, any Confidential Information of the other party (**Discloser**) except:

- (a) where permitted by this Agreement;
- (b) with the prior written consent of the Discloser;
- (c) where the Confidential Information is received from a third party, except where there has been a breach of confidence;
- (d) on a confidential, "needs to know" basis to the Recipient's Personnel, auditors, insurers, agents and professional advisors; or
- (e) where the Recipient is compelled to do so by Law, provided that it gives the other party written notice prior to disclosure.

### 12.2 Use

The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed and in connection with this Agreement.

### 12.3 Survival

This clause will survive the termination or expiry of this Agreement.

## 13 Liability

### 13.1 Our Liability

Despite anything to the contrary, to the maximum extent permitted by law:

- (a) our maximum aggregate Liability arising from or in connection with this Agreement (including the SaaS Services or the subject matter of this Agreement) will be limited to, and must not exceed in the aggregate for all claims the total amount paid by you to us in the 12 month period directly preceding the date on which such Liability arose; and
- (b) we will not be liable to you for any Consequential Loss,

whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

### 13.2 Exclusions to Liability

- (a) Despite anything to the contrary, to the maximum extent permitted by law, we will have no Liability, and you waive and release us from and against, all Liability (whether under statute, contract, negligence or other tort, indemnity, or otherwise) arising from or in connection with any:
  - (i) loss of, or damage to, any property or any injury to or loss to any person;
  - (ii) failure or delay in providing the SaaS Services;
  - (iii) breach of this Agreement or any Laws; or
  - (iv) the Computing Environment,where caused or contributed to by any:
  - (v) Force Majeure Event;
  - (vi) a fault, defect, error or omission in your Computing Environment or Data; or
  - (vii) act or omission of you, your related parties, Authorised Users, Personnel or any third party (including customers, end users, suppliers, providers or subcontractors),

and, in any event, any error, omission or lack of suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the SaaS Services.

- (b) Despite anything to the contrary, to the maximum extent permitted by law, we will have no Liability, and you waive and release us from and against, all Liability (whether under statute, contract, negligence or other tort, indemnity, or otherwise) arising from or in connection with Your Advertising.

### 13.3 Indemnity

To the maximum extent permitted by law, you indemnify and continue to indemnify us against all Liability we suffer or incur arising from or as a consequence of Your Advertising, or a breach by you of clause 9 (Privacy), clause 11 (Intellectual Property), clause 12 (Confidential Information) and your Authorised Users' use of the SaaS Services contrary to the terms of this Agreement, including from any claim, fine, penalty or disciplinary action relating to the Data or Your Advertising.

### 13.4 ACL

Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to our provision of our services which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in this Agreement attempts to exclude, restrict or modify

your Statutory Rights as a consumer under the ACL. Any and all other warranties or conditions which are not guaranteed by the ACL are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in this Agreement.

### 13.5 Acknowledgement

You acknowledge and agree that:

- (a) you are responsible for all users using the SaaS Services, including your Personnel and any Authorised Users;
- (b) you use the SaaS Services and any associated programs and files at your own risk;
- (c) the technical processing and transmission of the SaaS Services, including your Data, may be transferred unencrypted and involve:
  - (i) transmissions over various networks; and
  - (ii) changes to conform and adapt to technical requirements of connecting networks or devices;
- (d) we may use third party service providers to host the SaaS Services. If the providers of third party applications or services cease to make their services or programs available on reasonable terms, we may cease providing any affected features without Liability or entitling you to any refund, credit, or other compensation;
- (e) the SaaS Services may use third party products, facilities or services. We do not make any warranty or representation in respect of the third party products, facilities or services;
- (f) we do not guarantee that any file or program available for download and/or execution from or via the SaaS Services is free from viruses or other conditions which could damage or interfere with Data, hardware or software with which it might be used;
- (g) we are not responsible for the integrity or existence of any Data on the Computing Environment, network or any device controlled by you or your Authorised Users; and
- (h) we may pursue any available equitable or other remedies against you if you breach any provision of this Agreement.

### 13.6 Survival

This clause will survive the termination or expiry of this Agreement.

## 14 Termination

### 14.1 Mutual Termination

You may terminate this Agreement at any time by emailing our support staff or submitting a support ticket with us asking to terminate your Account or this Agreement.

### 14.2 Termination for cause of the Agreement

To the extent permitted by law, either Party may terminate this Agreement if the other Party:

- (a) has breached a material term of this Agreement and has failed to remedy such breach within 20 Business Days of receiving notice to do so, subject to any other express right of termination;
- (b) ceases operation without a successor; or
- (c) is subject to an Insolvency Event.

### 14.3 Effect of termination

On termination of this Agreement:

- (a) you must cease using the SaaS Services and we will cease to provide the SaaS Services and any scheduled Matches (including Your Advertising) will be cancelled and will not be streamed;
- (b) you agree that, unless you terminate pursuant to clause 14.2, any unused Credits are forfeited and are not refundable to you;
- (c) you must pay all amounts due and payable under this Agreement, including under an indemnity, within 5 Business Days of termination;
- (d) you agree to promptly return (where possible) or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property; and
- (e) we will archive your Account, including your Data.

### 14.4 Remove your data

You must, within one month of the date of termination or expiry of this Agreement, copy all your Data on the SaaS Services and we will allow you access to the SaaS Services during this time solely for the purposes of such copy. After this time, we will be entitled to permanently delete all Data on the SaaS Services.

### 14.5 Disengagement services

On termination of this Agreement, we may offer to provide you with dis-engagement support services at our then current rates, such dis-engagement support services to be agreed in writing by the Parties.

### 14.6 Accrued rights

The accrued rights, obligations and remedies of the Parties are not affected by the termination of this Agreement.

#### 14.7 Survival

This clause will survive the termination or expiry of this Agreement.

### 15 General

#### 15.1 No Exclusivity

The SaaS Services will be provided to you on a non-exclusive basis.

#### 15.2 Feature sets

We reserve the right at any time and from time to time to change or remove features of the SaaS Services provided that, where there is any material negative alteration to the functionality of the SaaS Services in accordance with this clause, we will provide you with 20 Business Days' notice and you may terminate this Agreement by written notice without Liability to us.

#### 15.3 GST:

- (a) **Taxable supply:** If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.
- (b) **Adjustment events:** If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued (if required), and any payments to give effect to the adjustment must be made.
- (c) **Payments:** If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.
- (d) **GST terminology:** The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

#### 15.4 Subcontracting

We may engage subcontractors to perform the SaaS Services on our behalf.

#### 15.5 Publicity

With your prior written consent, we may use advertising or publicly announce that we have undertaken work for you, including in website testimonials and in our marketing material.

#### 15.6 Disputes and notices

- (a) Neither Party may commence court proceedings relating to any dispute arising from, or in connection with, this Agreement without first meeting with a senior representative of the other Party to seek (in good faith) to resolve that dispute (unless that Party is seeking urgent interlocutory relief or the dispute relates to compliance with this provision).
- (b) Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to the Party at the address on the Site. A Party may change its notice details by written notice to the other Parties. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.

#### 15.7 Force Majeure and Delay

- (a) If the provision of the SaaS Services depends upon or includes the provision of information, materials, consents or approvals by you or your Personnel, or requires your cooperation, action or response (or that of your Personnel), you must provide that information, cooperation and those materials, consents or approvals in a timely manner. If you breach this obligation, we will be entitled to an extension of time in respect of any deadline or milestone to the extent of the delay caused by you and we will have no Liability for a failure to perform the SaaS Services caused by you.
- (b) If we are delayed from performing our obligations due any circumstance beyond our reasonable control (including fire, flood, earthquake, storm, epidemic, pandemic, COVID-19, government sanctioned shutdown) for a period of at least two months, we may terminate our agreement with you by giving you five Business Days' notice in writing.

#### 15.8 Waiver and Relationship of the Parties

- (a) Any failure or delay by a Party in exercising a power or right (either wholly or partly) in relation to this Agreement does not operate as a waiver or prevent a Party from exercising that power or right or any other power or right. A waiver must be in writing.
- (b) This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties. Nothing in this Agreement gives a Party authority to bind the other Party in any way.

#### 15.9 Severance, Assignment and entire agreement

- (a) If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will



be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions.

- (b) Neither Party may assign, transfer or otherwise deal with all or any of its rights or obligations under this Agreement without the prior written consent of the other Party. Any purported dealing in breach of this clause is of no force or effect.
- (c) This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

#### 15.10 Amendment, Counterparts, Governing Law and overseas access

- (a) This Agreement may only be amended by written instrument executed by both Parties.
- (b) This Agreement may be executed in any number of counterparts that together will form one instrument.
- (c) This Agreement is governed by the laws of New South Wales. You irrevocably and unconditionally submit to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waive any rights to object to proceedings being brought in those courts.
- (d) The SaaS Services may be accessed in Australia and overseas. We make no representation that the SaaS Services complies with the laws (including Intellectual Property laws) of any country outside of Australia. If you access the SaaS Services from outside Australia, you do so at your own risk and are responsible for complying with the laws in the place you access the SaaS Services.

#### 15.11 Survival

This clause will survive termination or expiry of this Agreement.

### 16 Definitions and interpretation

#### 16.1 Definitions

The following words will mean:

**Agreement** means this agreement;

**Authorised User** means a user permitted to use the SaaS Services;

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales;

**Computing Environment** means your computing environment including all hardware, software, information technology and telecommunications services and Systems;

**Confidential Information** includes confidential information about a Party's business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know-how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential" but does not include any information which is in the public domain other than through a breach of confidence. Our Confidential Information includes our Intellectual Property including the Software. Your Confidential Information includes the Data;

**Consequential Loss** includes any indirect, incidental or consequential loss, loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any remote, abnormal or unforeseeable loss, loss of use and/or loss or corruption of data or any loss or damage relating to business interruption, or otherwise, suffered or incurred by a person, arising out of or in connection with this Agreement (whether involving a third party or a Party to this Agreement or otherwise);

**Data** means the information, logos, documents and other data inputted by you, your Personnel or Authorised Users into the Software or stored by the SaaS Services or generated by the SaaS Services as a result of your use of the SaaS Services;

**Force Majeure Event** means an event which is beyond a Party's reasonable control including a fire, storm, flood, earthquake, explosion, accident, act of the public enemy, terrorist act, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, transportation embargo, and strike by employees of a third person;

**Insolvency Event** means the occurrence of any one or more of the following events in relation to either Party:

- (a) it is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable laws;
- (b) an application or order is made for its winding up, bankruptcy or dissolution or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
- (c) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of it or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 10 Business Days;
- (d) a controller is appointed in respect of any of its property;
- (e) it is deregistered under the Corporations Act or other legislation or notice of its proposed deregistration is given to it;
- (f) a distress, attachment or execution is levied or becomes enforceable against it or any of its property;
- (g) it enters into or takes action to enter into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;

- (h) a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of it or its property;
- (i) a petition for the making of a sequestration order against its estate is presented and the petition is not stayed, withdrawn or dismissed within 10 Business Days or it presents a petition against itself; or
- (j) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the relevant Party.

**Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, customer names or internet domain names. Our Intellectual Property includes the Software;

**Laws** means acts, ordinances, regulations, rules, code and by-laws of the Commonwealth or any state or territory and includes the Privacy Act and the *Spam Act 2003* (Cth);

**Liability** means any expense, cost, expense (including reasonable legal fees), liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise;

**Party** means either party to this Agreement;

**Personal Information** is defined in the Privacy Act;

**Personnel** means, in relation to a Party, the officers, employees, contractors, sub-contractors and agents of that Party;

**Privacy Act** means the *Privacy Act 1988* (Cth);

**SaaS Service** means our Software as a service as described on the Site and any other services provided to you under this Agreement;

**Sensitive Information** is defined in the Privacy Act;

**Site** means <https://www.ligrsystems.com/>;

**Software** means the software used to provide any of the SaaS Services, and includes any instructions in hard copy or electronic form and any update, modification or release of any part of that software after this Agreement is entered into by the Parties; and

**System** means all hardware, software, networks and other IT systems used by a Party from time to time, including a network.

## 17 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (d) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (e) the words "in writing" include any communication sent by letter or email or any other form of communication capable of being read by the recipient;
- (f) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (g) includes and similar words mean includes without limitation;
- (h) a reference to \$ or dollars refers to the currency of the United States of America from time to time;
- (i) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body that performs most closely the functions of the defunct body; and
- (j) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it.