Services Terms

AGREEMENT

These Terms shall constitute the agreement between you (the "Customer") and **iP Edge PTY LTD (ABN 28 130 685 728** whose postal address is PO Box 1164, Mona Vale, NSW 1660 ("iP Edge") upon which iP Edge shall supply web consultancy services, hosting services, software or other technical services to you unless there is a separate written and signed agreement between you and iP Edge intended by the parties to be the sole agreement with respect to such supply in which event such agreement shall apply to the supply to the total exclusion of these Terms. In the absence of any such written and signed agreement between you and iP Edge these Terms shall apply to the exclusion of any other terms and conditions, including any such terms forming part of or purporting to apply by reason of any order form or process initiated, issued or delivered by you to iP Edge in connection with iP Edge's supply of such services

1. DEFINITIONS

1.1   In these terms, unless the context otherwise requires, the following words and expressions mean

"Affiliate"	any person, partnership, joint venture, corporation, subsidiary, or other form of enterprise, controlling, controlled by, or under common control with, the Customer or iP Edge
"Agreed Form"	the form and terms of a document agreed between and for the purposes of identification initialled by or on behalf of the parties
"Application"	the final version of the web site or application (capable of live production) developed on or by iP Edge for the Customer under these terms
"Staging Application"	the test version of the Application for Customer's review in accordance with **Clause 6**
"Coding Designs"	the format, design and lay-out of coding for the Application pages written by iP Edge and any related documentation in both eye and machine readable form based upon the Content
"Content"	the editorial content of the Application provided to iP Edge by Customer under these terms
"Estimated Price"	the estimated price communicated to the Customer for the Application and Services to be provided under these terms
"Hosting Service"	the Customer's account and web space on any Internet Service Provider (ISP)/Web Presence Provider (WPP) computer upon which the Customer has authorised iP Edge to install test and publish the Application
"Intellectual Property"	any and all copyright and all related rights, neighbouring rights including any rights relating to unauthorised extraction or reutilisation, design rights and any other intellectual property rights whether registered or not
"Project Timeline or Plan"	the project plan for the design, building and implementation of the Application in the Agreed Form
"Service(s)"	the services agreed to be provided by iP Edge under these terms including without limitation the creation of the Coding Designs, the incorporation of the Content on the Application and any additions, amendments and updates thereof as requested and authorised from time to time by the Customer
"Software"	iP Edge software applications and processes as supplied to the Customer by iP Edge under these terms

"Specification"	any technical and functional specifications for the Application in the Agreed Form
"Workshop Document(s)"	any documentation that the parties agree will be the output from workshops conducted under and approved by the Customer pursuant to **clause 3** which, without limitation, includes any Site Map, Requirements Definition, Specification or Project Timeline or Plan

1.2 Words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and un-incorporate and (in each case) vice versa

1.3 Where any provision in or schedule to these terms refers to or requires any action consent or notice to be in writing this shall be deemed to include or allow as the case may be writing created transmitted or stored in electronic form including without limitation by email

2. IP EDGE RESPONSIBILITIES

2.1 iP Edge shall, subject to and in accordance with these terms and any applicable Workshop Documents

2.1.1 provide the Services, including any specified in any Workshop Document

2.1.2 provide or collaborate in workshops in accordance with **clause 3** and with the full co-operation and assistance of the Customer prepare and deliver or contribute to any agreed Workshop Documents

2.1.3 with the full co-operation and assistance of the Customer ensure that the Content is fairly and accurately incorporated in the Coding Designs

2.1.4 with the full co-operation and assistance of the Customer design build and install the Application on any Hosting Service or, in the event the Customer fails to provide authorisation for a Hosting Service, on computer disk

2.1.5 supply to the Customer any Software which iP Edge has agreed to supply under these terms and provide maintenance and support for the Application subject to and in accordance with the terms of iP Edge's Software licence and support agreement from time to time

2.2 iP Edge shall

2.2.1 provide the Services with all reasonable skill and care

2.2.2 provide suitably skilled and trained and knowledgeable personnel to carry out the Services

2.3 Unless iP Edge expressly agrees to under these terms or otherwise in writing, the Customer shall be solely responsible to

2.3.1 install all relevant components of the Application on the Hosting Services and manage all aspects of the processes connected therewith

2.3.2 obtain any licences consents or authorities required from any person to install or operate the Application on the Hosting Services or to use any third party software in connection with or forming part of the Application or Hosting Services

2.3.3 obtain any support and maintenance services for the Application or any component thereof

2.4 Other than as expressly provided in these terms, iP Edge gives no other warranties and any warranties or conditions that might be implied into these terms, including but not limited to warranties and conditions of title, non-infringement, merchantability and fitness for a particular purpose, are expressly excluded to the fullest extent permitted by law

3. WORKSHOPS AND WORKSHOP DOCUMENTS

3.1 iP Edge shall hold or collaborate in such workshops as the parties may agree designed to elicit the Customer's precise requirements for any Application or Services or part thereof, such workshops to be attended by such of the Customer's staff as the Customer may designate. The Customer acknowledges and agrees that it is essential for iP Edge to contribute to any Workshop Documents in a timely and professionally competent manner that the Customer ensures that its information technology or other suitably qualified, competent and trained staff member nominated for this purpose ("Customer Contact") attend and contribute effectively at and provide all information reasonably requested by iP Edge at all such workshops. As soon as practicable following any relevant workshop, iP Edge shall prepare and submit to the Customer for approval a draft of any Workshop Document which has been agreed by the parties to be a deliverable from such workshop

3.2 The Customer shall inform iP Edge in writing within 14 days of its receipt of the draft Workshop Document as to whether such draft is approved and, if not, what changes the Customer may reasonably require. iP Edge shall use its reasonable endeavours to accommodate any such changes in a revised draft of the Workshop Document (provided that the Customer agrees to any change in the Estimated Price, estimated cost of Services or anticipated project timetable or any other adverse implications such requested changes may involve)

3.3 After revising the draft Workshop Document, iP Edge shall re-submit it to the Customer for written approval, which the Customer shall not unreasonably withhold or delay

4. PROJECT MANAGEMENT

4.1 iP Edge will nominate a suitably competent and trained person to manage the day to day performance of iP Edge's obligations under these terms ("Project Manager"). The Customer Contact will manage the Customer's interests and obligations under these terms. The Project Manager and Customer Contact shall, other than in exceptional circumstances, attend all of the meetings referred to in **clause 4.3** below

4.2 The parties shall use their respective reasonable endeavours to avoid changing any Project Manager or Customer Contact where such a change would be reasonably likely to impact adversely on the ability of either party to meet mutually planned outcomes for any project under these terms or any Project Plan. In the event that a party makes a change to relevant personnel that has or would be reasonably likely to have the above stated adverse impact, until the parties have agreed such changes as are reasonably required to these terms or any Project Plan, that party shall not be able to enforce any obligation against the other party the performance of which has been adversely affected by the change to personnel

4.3 During the performance of all projects agreed to be undertaken by the parties hereunder each party agrees to respond promptly to any issues or requirements referred to it by the other party relating to the performance of the Services or any other obligations under these terms, and shall seek to resolve any problems arising in relation to the provision of the Services as quickly and effectively as possible. The parties shall meet at appropriate regular intervals in order to monitor the performance of the parties' obligations and the progress of work with the aim of ensuring as best as practicable that completion of projects or work takes place in accordance with any Project Plan

5. CUSTOMER RESPONSIBILITIES

5.1 If the Customer has agreed for iP Edge to deliver install and test the Application on the Customer's own account and web space with a Hosting Service the Customer acknowledges and agrees that it will need to enter into a separate contract with the Hosting Service and such contract shall provide for the performance of all of iP Edge's obligations under these terms including, without limitation, full access to the Customer's Hosting Service account and web space. The Customer will be solely responsible for any and all Hosting Service charges

5.2 The Customer shall, subject to and in accordance with these terms and any applicable Workshop Documents

5.2.1 obtain maintain and provide to iP Edge all necessary authorisations, consents and licences required for iP Edge to have full access to the Customer's account and web space on any agreed Hosting Service, including without limitation, "write permission" for the Customer's web page directory and any other directories or programs which iP Edge may need to access or operate to perform its obligations under these terms and to install test and publish the Application on such Hosting Services

5.2.2 obtain maintain and provide to iP Edge all necessary authorisations, consents and licences required for iP Edge to use or integrate any third party software programs in conjunction with the Application

5.2.3 deliver in a timely manner the Content and any required updates of Content to iP Edge for inclusion in the Coding Designs and the Application

5.2.4 provide iP Edge with any information which it may reasonably require from time to time to enable iP Edge to perform its obligations under these terms or any Workshop Document

5.3 The Customer acknowledges and agrees that iP Edge's ability to deliver the Services also depends upon the Customer's full and timely cooperation, as well as the accuracy and completeness of any information the Customer provides. iP Edge is not responsible for any loss suffered by the Customer if the Customer does not provide it with this access, cooperation and information

5.4 The Customer acknowledges and agrees that it is solely responsible for complying with any laws taxes duties and tariffs applicable in any way to the Application or any other Services and will hold harmless protect indemnify and defend iP Edge and its subcontractors from any claim action suit penalty tax fine or tariff arising from the Customer's use of the Application or exercise of internet electronic commerce and/or any failure to comply with any such laws taxes duties and tariffs. This indemnity will survive any termination of these terms

6. APPLICATION REVIEW AND APPROVAL

6.1 iP Edge shall, subject to and in accordance with these terms and any applicable Workshop Document and with the full co-operation and assistance of the Customer design and deliver or give access to the Customer to the Coding Designs for the Beta Application for the Customer's review. The Customer shall within 30 days of such delivery or access notify iP Edge in writing of

6.1.1 any facility or functionality which in its opinion is not substantially in compliance with any applicable Workshop

Document including software bugs

6.1.2   any modifications it requires to the Coding Designs for the Staging Application

failing any such bona fide notification, the Customer shall be deemed to have accepted the Coding Designs for the Staging Application and iP Edge shall proceed to deliver the Application as a completed product

6.2   In the event that the Customer makes a bona fide notification under **clause 6.1.1**, then iP Edge shall promptly investigate the issues raised by the notification and if necessary it shall promptly make or procure the making of such modifications or enhancements to the Staging Application so that all facilities or functionality of the Staging Application are substantially in compliance with any applicable Workshop Document.

6.3   In the event that the Customer makes a bona fide notification under **clause 6.1.2**, then the parties shall follow the procedures for Controlled Changes as set out in **clause 7**. Following approval of any CCN in accordance with **clause 7** iP Edge shall proceed to complete development and delivery of the Application

6.4   iP Edge shall, subject to and in accordance with these terms and any applicable Workshop Document and with the full co-operation and assistance of the Customer deliver or give access to the Customer to the Application for the Customer's review. The Customer shall within 30 days of such delivery or access notify iP Edge in writing of any facility or functionality which in its opinion is not substantially in compliance with any applicable Workshop Document, failing any such bona fide notification, the Customer shall be deemed to have accepted the Application

6.5   In the event that the Customer makes a bona fide notification under **clause 6.4**, then iP Edge shall promptly investigate the issues raised by the notification and if necessary it shall promptly make or procure the making of such modifications or enhancements to the Application so that all facilities or functionality of the Application are substantially in compliance with any applicable Workshop Document and then give notice in writing to the Customer that all necessary remedial work has been completed. If following an investigation of the issues raised by such notification iP Edge is reasonably of the opinion that all facilities and functionality of the Application are substantially in compliance with any applicable Workshop Document then iP Edge shall give notice in writing to the Customer to this effect

6.6   If within 30 days of iP Edge giving any notice referred to in **clause 6.5** the Customer can demonstrate that the Application is still not substantially in compliance with any applicable Workshop Document and such non compliance is solely as a consequence of a defect or error or failing in the delivery of Services by iP Edge then the Customer may by written notice to iP Edge require it

6.6.1   first, before any right the Customer may have under **clause 6.6.2** shall arise, to fix (without prejudice to the other rights and remedies the parties may have) a new date, giving iP Edge in all the circumstances a reasonable period of time, to make or procure the making of such modifications or enhancements to the Application so that all facilities or functionality of the Application are substantially in compliance with any applicable Workshop Document. If by the specified date the Application shall fail such compliance solely as a consequence of a defect or error or failing in the delivery of Services by iP Edge then the Customer shall be entitled by written notice to iP Edge to require the Customer and iP Edge to proceed under **clause 6.6.2**

6.6.2   to allow the Customer to accept the Application subject to an abatement of the Estimated Price, such abatement to be such amount that iP Edge has invoiced to and been paid by the Customer for any facility or functionality within the Application that is lost solely as a result of such defect error or failing. In such event, iP Edge shall not issue any further invoices with respect to the provision of such facilities or functionality, the parties shall use their respective reasonable endeavours to negotiate in good faith to agree the amount of such abatement and any support or maintenance obligation to any person iP Edge may have under these terms or otherwise with respect to such facility or functionality shall forthwith cease. [In the absence of written agreement as to the abatement within 21 days after the date of such notice the parties shall proceed to have the issue determined as if it were a Technical Dispute (as defined in **clause 12.1**) under **clauses 12.2 and 12.3** of these terms with any meetings held up to the date of the notice served under **clause 6.6.1** being deemed to be project team meetings for the purposes of **clause 12**

7. CHANGE CONTROL

The Customer may at any time request or iP Edge may at any time recommend a change or modification to any agreed Workshop Document including any Specification agreed for the purposes of these terms or any Services agreed to be provided hereunder (a "Controlled Change") and propose an amendment to these terms in accordance with the formal Change Control Procedure ("CCP") as set out in this **clause 7**

7.1   Unless the Customer and iP Edge otherwise agree in writing there shall be no presumption that the obligations undertaken by either party in connection with these terms or under any Workshop Document if applicable which may be the subject of a Controlled Change are in any way changed until the amendment to these terms or Workshop Document has been effected in accordance with the CCP

7.2   The Customer and iP Edge shall first discuss Controlled Changes proposed by either party and such discussion will result in

the parties agreeing either

    7.2.1   to not proceed further with a Controlled Change or
    7.2.2   that the Customer shall submit a written request for a change to the Supplier or
    7.2.3   that the Supplier shall submit a written recommendation for a change to the Customer

7.3   Where a written request for a change is received from the Customer, iP Edge shall, unless otherwise agreed, submit a Change Control Note ("CCN") to the Customer within three weeks of receipt of the written request. A written recommendation for a change by iP Edge shall be submitted as a CCN direct to the Customer at the time of such recommendation

7.4   Each CCN shall be represented in approved project management software and contain

    7.4.1   a sequential CCN number if appropriate
    7.4.2   the originator and the date of the request or recommendation for the change
    7.4.3   full details of the change including any changes required to Workshop Documents, Coding Designs or Application or Software specifications, functions or facilities or to Services
    7.4.4   the estimated effort of the change if appropriate
    7.4.5   a timetable for implementation together with any proposals for acceptance of the change if appropriate
    7.4.6   a schedule of payments or revised payments if appropriate

7.5   In the absence of any express agreement to the contrary in a CCN, iP Edge shall not warrant that the content or implications legal or factual of any CCN is accurate or complete, each party being responsible for its own due diligence, enquiry, analysis and determinations in relation to all matters covered by any CCN. Notwithstanding the foregoing, iP Edge shall prepare any CCN with all due skill and care

7.6   For each CCN submitted the Customer shall evaluate the CCN and as appropriate either

    7.6.1   request further information or
    7.6.2   approve the CCN or
    7.6.3   notify iP Edge of its rejection of the CCN

7.7   In the event of a request for further information or rejection by the Customer of a CCN under **clause 7.6**, the parties shall use their respective best endeavours to negotiate and agree an amended CCN within the original period of validity of such CCN. In the event that the Customer does not approve a CCN within the period of its validity, iP Edge shall be entitled to charge its reasonable fees and charges for preparing such CCN

7.8   If approved (as originally submitted or as amended), such approved CCN shall be confirmed accepted by an authorised person on behalf of the Customer and iP Edge. Such confirmation of the CCN will signify acceptance of a formal amendment to these terms and any applicable Workshop Document by both the Customer and iP Edge

8. PAYMENT

8.1   The Estimated Price and fees for Services shall be invoiced to and paid by the Customer on a monthly basis or otherwise at the discretion of iP Edge or, if applicable, in accordance with any payment profile set out in a Workshop Document. Except for any payment due and payable as set out in a Workshop Document, all payments shall be made by the Customer within thirty (30) days of the date of the appropriate tax invoice issued by iP Edge

8.2   Unless otherwise agreed, all Services shall be charged on a time and materials basis. Any Estimated Price is based on the number of days estimated by iP Edge as being required for the provision of the relevant agreed Services. Subject to **clause 8.8**, iP Edge shall be entitled to charge the Customer for any additional days required in order to complete the provision of agreed Services. iP Edge shall also be entitled to charge for additional days attributable to any changes agreed by the parties to Workshop Documents or other Services to be delivered under these terms or to any breach of these terms by the Customer

8.3   The Customer shall reimburse iP Edge for any reasonable expenses necessarily incurred by iP Edge in connection with the provision of the Services

8.4   All invoices submitted by iP Edge shall include iP Edge's invoice reference number and date, the billing period, any reimbursable expenses incurred, a description of the fee being charged, and if in connection with the delivery of Services, a brief narrative description of the billable task(s)

8.5   The Estimated Price and fees for Services are exclusive of Goods and Services Tax or other Government imposed excises or taxes (if any) which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law

8.6   If any sum payable by the Customer under these terms is not paid by the due date, iP Edge reserves the right to charge interest on any overdue amount (not subject to a notified bona fide dispute) from the due date until payment in full at the rate (both before and after judgment) of 2% per annum above the base rate of St George Bank Limited from time to time in force. To be excluded

from the late payment charge a bona fide disputed invoice amount shall be notified in writing to iP Edge within fourteen days of receipt of the relevant invoice

8.7 Except where otherwise agreed by the parties in writing, the Services shall be provided between the hours of 9.00am and 5.00pm Monday to Friday excepting Australian statutory holidays. Where the Services are provided outside these times at the written request of the Customer, iP Edge may increase its then current per hour and per day rates by 33% or by 50% in the case of Services provided on a Sunday (or Australian statutory holiday)

8.8 As soon as practicable upon becoming aware that the number of days estimated for the provision of any agreed Services will need to be exceeded to enable the relevant Service to be completed or delivered iP Edge shall notify the Customer of the fact and the reasons therefore and provide to the Customer iP Edge's best estimate of the additional days required to complete the provision of the relevant Service. iP Edge shall not be entitled to invoice the Customer for any days in excess of those estimated with respect to any Service without the consent of the Customer provided that the Customer acknowledges and accepts that the withholding of any such consent by it may result in the relevant Service not being completed or delivered

9. RIGHTS IN SERVICES AND SOFTWARE

9.1 Subject to any special terms that iP Edge may agree with the Customer in any Workshop Document, the Customer acknowledges and agrees that iP Edge work product comprising or within the Coding Designs, the Services, the Application, the Software and any Workshop Documents consists of original work and materials undertaken by iP Edge either previously or in performing its obligations under these terms (together "iP Edge Intellectual Property"). The Customer acknowledges and agrees that the copyright and all other intellectual property rights in such iP Edge Intellectual Property whenever created shall remain the exclusive property of iP Edge and the Customer shall have no rights in respect thereof save as may be granted to it by iP Edge in accordance with any licence which iP Edge may grant to the Customer from time to time. For the avoidance of doubt, iP Edge Intellectual Property shall include, without limitation, original work specifically undertaken by iP Edge for the purposes of fulfilling its obligations under these terms and in order to meet any facilities or functionality required by the Customer in any Application or Software whether or not such original work is identified under any Workshop Document, specification or other documentation

9.2 The Customer agrees and acknowledges that these terms confers on it no rights in iP Edge Intellectual Property other than as are expressly granted by these terms. At the request and expense of iP Edge, the Customer shall do all such things and sign all documents or instruments reasonably necessary fully to vest in iP Edge the rights agreed to belong to iP Edge under **clause 9.1** above

9.3 Subject to and conditional upon the Customer having paid in full iP Edge's invoiced fees and charges for Services connected with the development and delivery of the Application under these terms and subject to **clause 9.4**, iP Edge hereby grants to the Customer a non-transferable non-exclusive perpetual licence to possess and use (and make reasonable copies of) the Coding Designs and the Application for the Customer's own commercial purposes only upon these terms

9.4 In the event that iP Edge shall have incorporated any Software in the Coding Designs or the Application then the Customer shall only have rights to possess and use such Software in connection with the Application under the terms of the applicable iP Edge Software licence agreement from time to time

9.5 The Customer shall

9.5.1 reproduce all copyright and trade mark notices on each copy of the iP Edge Intellectual Property
9.5.2 without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of iP Edge in the iP Edge Intellectual Property in its possession from access use or copying not authorised by these terms

9.6 The Customer agrees to use the iP Edge Intellectual Property only as provided in these terms and to not use it to develop web sites or applications for third parties or for any other purpose without the prior written authorisation of iP Edge

9.7 iP Edge shall have the right to display graphics and other Application design elements as examples of its portfolio work

9.8 **Clauses 9.1, 9.2, 9.3, 9.6** and **9.7** shall survive any termination of these terms

10. WEBSITE CONTENT

10.1 The Customer unconditionally represents warrants and undertakes that all Content including without limitation any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to iP Edge for inclusion in the Coding Designs or the Application are owned by the Customer or that the Customer has permission from the rightful owner to use such Content in the Coding Designs or Application in the manner and for the purposes required or approved by the Customer from time to time

10.2 The Customer unconditionally represents warrants and undertakes to iP Edge that the Content and any other content of the

Application supplied by Customer are in no way whatsoever a violation or infringement of any third party Intellectual Property, right of privacy or publicity or any other rights of any person and that they are not obscene, libellous or defamatory or in any other way unlawful and will not in any way inhibit restrict or impair the free and/or unrestricted exercise by iP Edge of the rights granted in this Agreement

10.3   The Customer hereby agrees to hold harmless protect indemnify and defend iP Edge and its subcontractors from any liability (including legal fees and costs on a full indemnity basis) or any claim or suit, threatened or actual, arising from any breach by the Customer of its obligations under this **clause 10** or from any use by IP Edge of Content authorised by the Customer

10.4   The foregoing warranties and indemnities shall survive any termination of these terms

11. HOSTING SERVICES

11.1   The Customer understands that iP Edge does not own any web hosting servers or infrastructure and solely acts as a facilitator for the hosting services provided by Microsoft Azure. Any fees paid to iP Edge by the Customer for Hosting Services are for these facilitation services only including: IIS web server setup & configuration, MS SQL Server database setup & configuration, file system configuration as well as pro-active and incident support liaison with Microsoft Azure

11.2   The Customer agrees to abide by all relevant Terms & Conditions specified by Microsoft Azure regarding the usage of the service.

11.3   iP Edge represents warrants and undertakes to the Customer that it shall pay Microsoft Azure all Fees due within fourteen (14) days of their invoices except where Microsoft Azure does not provide the Hosting Service according to its agreement

11.3   iP Edge hereby agrees to assist the Customer in any enquiries related to the Hosting Services and ensure Microsoft Azure meet all their stated obligations

12. DISPUTE RESOLUTION

Each party shall use its best endeavours to resolve amicably and expeditiously any dispute which may arise between them concerning these terms, any Workshop Document or any documents incorporated by reference therein. If a dispute cannot be resolved amicably within 7 days of such dispute being notified in writing by one party to the other for the purposes of this clause then the dispute shall be determined as follows

12.1   If the dispute is of a technical nature concerning the interpretation of any Workshop Document or relating to the functions or capabilities of the Application or the Software or any similar or related matter or that the parties agree is of a technical nature ("Technical Dispute") then such dispute shall be referred to the next scheduled project team meeting or a meeting of the Project Manager and Customer Contact convened for this purpose

12.2   If such meeting cannot resolve a Technical Dispute to the satisfaction of both parties then the dispute will be referred as a matter of urgency to an appropriately qualified senior manager or director of each party

12.3   If such senior managers or directors cannot resolve a Technical Dispute within 21 days of the meeting referred to in **clause 12.1** or such other period that they may agree then such a dispute must be referred for final settlement to an expert nominated jointly by the parties or, failing such nomination within 14 days of either party's written request to the other for such referral, the parties agree to settle such dispute by expert determination administered by the Australian Commercial Disputes Centre ("ACDC"). The ACDC expert determination shall be conducted in Sydney in accordance with ACDC Rules for Expert Determination operating at the time of referral and for such purposes the terms of such rules are hereby incorporated into these terms

12.4   Non technical disputes shall be referred as a matter of urgency to the managing directors of each party and if they cannot resolve such dispute within 21 days of it being referred to them then the dispute shall be determined by the New South Wales Courts and the parties hereby submit to the non exclusive jurisdiction of those courts for such purpose

13. LIABILITY AND LIMITATIONS

CUSTOMER'S ATTENTION IS EXPRESSLY DRAWN TO THE PROVISIONS OF THIS CLAUSE

13.1   If, in the performance of these terms or any Workshop Document, iP Edge causes the Customer loss or damage, regardless of the basis of the Customer's claim (including negligence) then

    13.1.1   iP Edge's total aggregate liability for any loss or damage is limited to the amount actually paid by the Customer to iP Edge for the Services which gave rise to the claim or

13.1.2 in case of Services provided to the Customer free of charge, iP Edge's total liability will not exceed A$1,000 or its equivalent in the local currency where the Services are provided

13.2 Notwithstanding anything else contained in these terms, neither party shall be liable to the other for any loss of profits or revenue, business interruption or loss of business information, goodwill or any type of special, indirect, incidental, consequential, exemplary or punitive damages whether arising from negligence, breach of contract or otherwise howsoever (including loss or damage suffered by the other as a result of any action brought by a third party) even if such loss was reasonably foreseeable or a party has been advised of the possibility of such loss or damage in advance

13.3 Notwithstanding any other provision of these terms iP Edge does not warrant that use or operation of the Application will be uninterrupted or error-free

13.4 For the avoidance of doubt, time shall not be of the essence of this contract. If iP Edge shall fail to provide the Application or any Service by any applicable agreed date, other than as a consequence of any act or omission of the Customer (whether or not such act or omission constitutes a breach of these terms) or a third party over which iP Edge has no control or responsibility, then iP Edge shall provide such resources as may be at its disposal and reasonably required in order to provide the Application or such Services within the shortest possible time thereafter and compliance by iP Edge with this **clause 13.4** shall be in full and final settlement of any liability it may have for any loss or damage suffered by the Customer as a result of such failure by iP Edge

13.5 The limitations contained in this section do not apply to either the Customer or iP Edge for breach of their respective confidentiality obligations in **clauses 9 or 15** or for breaches of each other's intellectual property rights

13.6 The Customer and iP Edge agree that all terms and limitations of these terms, including the warranty and liability limitations and exclusions, are fair and reasonable in light of the amounts to be paid by the Customer, the nature of the Services, the strength of the bargaining position of each party, the alternative ways the Customers needs could have been met and the potential benefits and risks for both party in entering into these terms

14. FORCE MAJEURE

14.1 Notwithstanding anything else contained in these terms, neither party shall be liable for any delay in performing its obligations under these terms or any Workshop Document if such delay is caused by circumstances beyond its reasonable control including, without limitation, any delay caused by any act or omission of the other party (whether or not such act or omission constitutes a breach of these terms) or a third party provided however that any delay by a sub-contractor or supplier of the party so delaying shall not relieve that party from liability for delay except where such delay is beyond the reasonable control of the sub-contractor or supplier concerned

14.2 Subject to the party which is entitled to claim the protection of **clause 14.1** ("Affected Party") promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of the Affected Party's obligations shall be suspended during the period that the relevant circumstances persist and, if applicable to any obligation under these terms or a Workshop Document, the Affected Party shall be granted an extension of time for performance equal to the period of the delay. Except where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by the other terms of these terms and by law) any costs arising from such delay shall be borne by the party incurring the same

14.3 Both parties will in any event use all reasonable endeavours to mitigate the impact of any event of force majeure and to recommence performance of their obligations under these terms as soon as reasonably possible

15. CONFIDENTIALITY

15.1 Definition of Confidential Information and Exclusions.

"Confidential Information" means non public information that a party to these terms ("Disclosing Party") designates as being confidential to the party that receives such information ("Receiving Party") or which, under the circumstances surrounding disclosure ought to be treated as confidential by the Receiving Party and includes, without limitation, information in tangible or intangible form relating to and/or including released or unreleased Disclosing Party software or hardware products, the marketing or promotion of any Disclosing Party software or hardware products, the marketing or promotion of any Disclosing Party product, Disclosing Party's business policies, plans or practices, its personnel, customers or suppliers and information received from others that Disclosing Party is obligated to treat as confidential. If any party has any doubts about what constitutes Confidential Information then such party agrees to consult with the other party before acting in any manner that may breach its obligations under these terms

Except as otherwise indicated in these terms, the term "Disclosing Party" also includes all Affiliates of the Disclosing Party and, except as otherwise indicated, the term "Receiving Party" also includes all Affiliates of the Receiving Party

Confidential Information shall not include any information, however designated, that

15.1.1   is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed to Disclosing Party

15.1.2   became known to Receiving Party prior to Disclosing Party's disclosure of such information to Receiving Party pursuant to or prior to or in contemplation of these terms

15.1.3   became known to Receiving Party from a source other than Disclosing Party other than by the breach of an obligation of confidentiality owed to Disclosing Party

15.1.4   is independently developed by Receiving Party without use of Disclosing Party's Confidential Information or

15.1.5 constitutes Suggestions (as defined in **clause 15.5** of these terms)

15.2   Obligations Regarding Confidential Information.

Receiving Party shall

15.2.1   refrain from disclosing any Confidential Information of the Disclosing Party to third parties for ten (10) years following the date that Disclosing Party first discloses such Confidential Information to Receiving Party

15.2.2   take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information of the Disclosing Party and shall procure that all of its directors, employees, professional advisers and sub-contractors who have access to any information of the disclosing party to which the obligations of **clause 15** apply shall be made aware of those obligations

15.2.3   not disclose any Confidential Information to its sub-contractors without first obtaining their written agreement to confidentiality obligations no less onerous than those set out in this **clause 15**

Receiving Party may disclose Confidential Information of Disclosing Party in accordance with a judicial or other governmental order, provided that Receiving Party either

15.2.4   gives the Disclosing Party reasonable notice prior to such disclosure to allow Disclosing Party a reasonable opportunity to seek a protective order or equivalent, or

15.2.5   obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation. Notwithstanding the foregoing, the Receiving Party shall not disclose any computer source code that contains Confidential Information of the Disclosing Party in accordance with a judicial or other governmental order unless it complies with the requirement set forth in **clause 15.2.4**

Receiving Party may disclose Confidential Information only to Receiving Party's employees and consultants on a need-to-know basis. The Receiving Party will have executed or shall execute appropriate written agreements with third parties sufficient to enable Receiving Party to enforce all the provisions of these terms

Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorised use or disclosure of Confidential Information or any other breach of this **clause 15** by Receiving Party and its employees and consultants, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent its further unauthorised use or disclosure

Upon termination of these terms for any reason, Receiving Party shall, at Disclosing Party's request, return all originals, copies, reproductions and summaries of Confidential Information and all other tangible materials and devices provided to the Receiving Party as Confidential Information, or at Disclosing Party's option, certify destruction of the same

15.3   Remedies.

The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorised disclosure of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction

15.4   Miscellaneous.

All Confidential Information is and shall remain the property of Disclosing Party. By disclosing Confidential Information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein. Disclosing Party reserves without prejudice the ability to protect its rights under any such patents, copyrights, trademarks, or trade secrets except as otherwise provided herein

The parties agree to comply with all applicable international and national laws that apply to any Confidential Information or any product (or any part thereof), process or service that is the direct product of the Confidential Information

The terms of confidentiality under these terms shall not be construed to limit either the Disclosing party or the Receiving party's right to independently develop or acquire products without use of the other party's Confidential Information

If either Disclosing Party or the Receiving Party employs attorneys to enforce any rights arising out of or relating to these

terms, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs

15.5   Suggestions.

The Customer may from time to time provide suggestions, comments or other feedback ("Suggestions") to iP Edge with respect to Confidential Information concerning the Coding Designs the Application or the Software. Both parties agree that all Suggestions are and shall be given entirely voluntarily. Suggestions, even if designated as confidential by the Customer, shall not, absent a separate written agreement, create any confidentiality obligation for iP Edge. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, iP Edge shall be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Suggestions provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise

16. TERMINATION

16.1   This agreement continues until terminated as set out here

16.2   Either party may terminate these terms by written notice to the other if

16.2.1   the other party commits any breach of any provision of these terms or a Statement of Work which is capable of remedy (including for the avoidance of doubt any breach referred to in **clause 16.2.2**) and that other party fails to remedy the breach within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied

16.2.2   the other party commits any breach of any provision of these terms which constitutes a material breach (material breach for this purpose meaning a breach that has caused or, with the passage of time, will cause substantial harm to the interests of the aggrieved party or if it involves knowing and unauthorised infringement of the aggrieved party's intellectual property, or if it involves knowing or grossly negligent unauthorised disclosure or use of the aggrieved party's confidential information, or if it involves a continuing failure after warning to pay any undisputed fees when due, or if the aggregate effect of non-material breaches by the same party satisfies these standards for materiality)

16.2.3   the other party shall have a receiver or administrative receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the other party shall become subject to an administration order (or have an administrator appointed) or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business

16.2.4   there are no outstanding Services agreed to be provided under these terms

16.3   Upon any termination of these terms

16.3.1   provisions regarding fees and expenses, rights arising from Services, confidentiality and protection of intellectual property, limitations of liability, obligations on termination and any provisions specified as surviving in a Workshop Document will remain in effect

16.3.2   subject as otherwise provided in these terms and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under these terms

17. GENERAL

17.1   Neither party has been induced to enter into these terms by a statement or promise which it does not contain. This agreement and any applicable Workshop Document constitutes the entire agreement between iP Edge and the Customer with respect to the supply of Services and supersedes all previous communications, representations and agreements either written or oral (save for fraudulent misrepresentation) with respect thereto. This shall not exclude any liability which a party would otherwise have to the other party in respect of any statement made fraudulently by that party prior to the date of these terms

17.2   Neither party may assign, transfer or otherwise dispose of any of its rights or obligations under these terms without the prior written consent of the other such consent not to be unreasonably withheld or delayed. Subject to the foregoing, these terms will bind and inure to the benefit of any successors and assigns

17.3   This agreement shall be governed by and construed in accordance with law of New South Wales

17.4   Each provision of these terms shall be construed separately and notwithstanding that the whole or any part of any such provision may be held by any body of competent jurisdiction to be illegal invalid or unenforceable the other provisions of these terms and the remainder of the provision in question shall continue in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision

17.5   During the period during which iP Edge is providing the Services and for a period of 9 months thereafter neither party shall (whether personally or by its agent and whether for itself or on behalf of any other person, firm or company) recruit, solicit, induce or seek to induce any employee or contractor of the other party involved in the performance of the Services or obligations under these terms

to leave its employment or terminate or breach its contract with such other party, provided however, that neither party will be precluded from engaging in general recruiting techniques that do not target the employees of the other party and from employing any person responding to such general solicitation. In the event that a party is in breach of this **clause 16.5** it shall pay to the party which has suffered loss as a result of such breach (the "innocent party"), by way of a genuine pre-estimate of the innocent party's damages, a sum calculated at the total aggregate value of fees, salary and other benefits paid to the employee or contractor concerned by the innocent party during the last 6 months of such employee's employment or contractor's engagement with the innocent party

17.6   The relationship of iP Edge to the Customer is solely that of independent contractor, and nothing contained herein is intended or will be construed as establishing an employment, joint venture, partnership, and or other business relationship between the parties

17.7   Any variation of these terms or any Workshop Document must be in writing, and signed by an authorised representative of each of the parties. No term or provision hereof will be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented

17.8   The Customer agrees that iP Edge may refer to the Customer as a client of iP Edge and as a user of its Software in iP Edge marketing and public relations material. For the avoidance of doubt, this **clause 17.8** does not give either party the right to disclose Confidential Information

18. NOTICES

18.1   Any document notice claim or demand to be given served or made by either party to the other in connection with these terms shall be sufficiently given served or made by delivering or sending the same by hand or courier, recorded delivery or registered air mail post, facsimile or email to the registered office or any notified address of the party to whom it is addressed

18.2   Any such document notice claim or demand shall be deemed to be given served or made

18.2.1   if delivered, at the time of delivery
18.2.2   if sent by courier, at the expiration of 12 hours of the same having been dispatched
18.2.3   if posted, at the expiration of 2 days after the envelope containing the same shall have   been posted
18.2.4   if sent by facsimile or email, upon completion of transmission