P2P Hire

End User Licence Agreement

Operative Provisions:

1. P2P Hire and Relationship of parties

(a) P2P Hire provides a platform which allows Suppliers to advertise their goods and services to Hirers, and for Hirers to contact those Suppliers with a view to Suppliers supplying their goods and services to Hirers on terms to be agreed between them, which incorporate the terms in clause 4.6.

(b) P2P Hire:

(i) is not a party to any supply or hire of goods or services between Suppliers and Hirers;

(ii) operates the platform as a marketplace for Suppliers; and

(iii) is not an insurance provider, and is not offering insurance to any Supplier or Hirer.

(c) To the extent a clause is relevant to the relationship between Users, this Agreement will form a binding set of obligations between Users (and not P2P Hire) for the purpose of interacting on the Platform, including listings and any issues or disputes.

2. SUBSCRIPTION Licence AND FEES

2.1 Subscription Fees and other fees

(a) In consideration of the User complying with the terms of this Agreement, P2P Hire grants to the User a non-exclusive, non-transferable, non-sublicensable, revocable licence to use and access the Platform (or parts of it) as set out in this Agreement.

(b) In addition to the grant of the licence in clause 2.1(a) on the terms of this Agreement, P2P Hire may offer to grant certain access and features provided via the Platform for a periodic term (being the Subscription Term) on a subscription basis in consideration for the payment of fees, which the User may accept using the Platform. The access and features, term and fees selected and accepted by the User form part of this Agreement.

(c) The Subscription Term will automatically renew for further periods equal to the initial Subscription Term until cancelled or terminated:

(i) by the User; or

(ii) by P2P Hire,

in accordance with this Agreement.

(d) In addition to the Subscription Fee payable by the User to P2P Hire on account of the grant of the licence in clause 2.1, other fees may be payable by a User to P2P Hire pursuant to clause 6. Fees or other consideration may be payable from a Hirer to a Supplier under the terms of an agreement between a Hirer and a Supplier.

2.2 Changes to the fees

(a) The Fees are valid at the time of acceptance by the User and are valid for the Subscription Term agreed to by the User.

(b) P2P Hire will provide reasonable notice to the User of any changes to the Fee of not less than the Subscription Term agreed to by the User.

(c) If the User does not accept a change to the fee referred to in this clause 2.2(b), the User must cancel their subscription. If they do not cancel their subscription, and subject to the Consumer Law, they are deemed to have agreed to the new fee.

(d) The User may cancel their subscription using the Platform or by giving notice to the P2P by emailing info@p2phire.com.au with sufficient information to enable the P2P to identify the User and their subscription.

(e) The User acknowledges that P2P Hire uses a payment gateway which automatically debits the amount of the Fees at the beginning of each Subscription Licence period. It is the User's responsibility to access P2P Hire's payment gateway to cancel the automatic payment. P2P Hire shall not be liable for any loss, cost, expense, damage or liability resulting from the User's failure to ensure that their automatic payments are cancelled.

(f) The User's cancellation of a Subscription Licence, will result in the User's access to the Platform being deactivated.

3. USERS

3.1 Acceptance

(a) The terms in this document constitute an offer by P2P Hire to a User. The User may accept this Agreement and create a binding agreement by:

(i) conveying acceptance of these Terms (for example, via a tick box when accessing the Platform);

(ii) accessing the Platform; or

(iii) creating an account on the Platform.

(b) By creating an account on the Platform, the User irrevocably consents to:

(i) the collection of certain personal information by P2P Hire upon the registration of an account, including the User's:

(A) name;

(B) where applicable, business name, ABN, company name, and ACN;

(C) address;

(D) phone number;

(E) email address; and

(F) identification documents (including photo ID), and

(ii) the disclosure of the information in clause 3.1(b)(i) to other Users for the purpose of a Hire.

3.2 User as an employee or representative

If the individual using or accessing the Platform does so on behalf of their employer or a business entity, the individual, in their individual capacity:

(a) represents and warrants that they are authorised to act on behalf of that employer or the business entity;

(b) represents and warrants that they are authorised to bind the employer or business entity, and its representatives, to this Agreement; and

(c) agrees they are jointly and severally liable with that employer or business entity.

4. USER'S OBLIGATIONS

The User must strictly comply with all the obligations in this clause 4, and must not permit any third party to do anything prohibited by this clause 4.

4.1 Access, security and permitted use of the Platform

(a) The User will only allow the Platform to be used by the User.

(b) The Platform may only be used for the purposes of:

(i) listing a Supplier's goods and services for supply;

(ii) viewing listing posted by a Supplier; and

(iii) communications between a Supplier and a Hirer in respect of a particular listing,

and for not other purposes.

(c) The User must take all reasonable precautions to ensure the security of access to the Platform.

(d) The User must not, under any circumstances, allow any third party or any person (other than as a User in their own right) to access or use the Platform for any purpose.

(e) The User will inform P2P Hire immediately if it becomes aware of any unauthorised use or access of the Platform by any person.

(f) The User is, at all times, responsible for the use of its account on the Platform, irrespective of who is using it, even if it is used without the User's permission.

4.2 Permitted Copies

(a) A Supplier may keep a copy of its own a listing.

(b) Subject at all times of the copyright and other rights of a Supplier, a Hirer may take a copy of a listing for the sole purposes of its record keeping in respect of the supply under that listing.

(c) In no event or circumstances may the User make a copy (including as a backup) of the Platform or the Content, including to circumvent the usage or other limitations set out in this Agreement or inherent in the Platform.

4.3 Integrity of the Platform

The User must not:

(a) assign, sublicense, sell, distribute, transfer, pledge, lease, rent, lend, share or export the Platform, the Content or User's rights under this Agreement;

(b) alter or circumvent any copy protection mechanisms in the Platform or Content;

(c) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Platform;

(d) implement or use any method or mechanism designed to enable product functionality not available in the Platform but available in:

(i) other P2P Hire products; or

(ii) other P2P Hire releases of the same product;

(e) modify, adapt, translate or create derivative works based on the Platform or Content (including datasets, CSV files, tables, spreadsheets);

(f) reverse engineer any part of the Platform in order to:

(i) build a competitive product or service;

(ii) build a product using similar ideas, features, functions or graphics of the Platform; or

(iii) copy any ideas, features, functions or graphics of the Platform;

(g) use, or allow the use of, the Platform or the Content on any project or to provide a service (whether or not any charge is made) to any third party;

(h) allow or permit anyone to use or have access to the Platform or Content;

(i) copy or install the Platform other than as expressly provided for in this Agreement;

(j) not to do anything which will have an adverse effect on the Platform or P2P Hire; or

(k) take any action, or fail to take action, that could adversely affect the trademarks, service marks, patents, trade secrets, copyrights or other Intellectual Property Rights of P2P Hire or any third party with Intellectual Property Rights in the Platform (each, a **"Third Party Licensor**").

4.4 **Appropriate conduct**

The User must not:

(a) send spam or otherwise duplicative or unsolicited messages;

(b) send or store infringing, obscene, threatening, libellous, or otherwise unlawful or tortuous material, including material harmful to children;

(c) copy, scrape or data-mine the whole or any part of the Platform, including any screen or data scraping or other methods of taking any content from the Platform;

(d) transmit, store, insert, or activate any virus, Trojan horse or other malware or computer programming code, including source and object code, which may impair, deny or otherwise adversely affect the use of, access to, or security of the Platform;

(e) interfere with or disrupt the integrity, security or performance of the Platform or its related systems, networks or the data contained therein;

(f) not to engage in or permit any form of deceptive, misleading, fraudulent or unlawful activity or conduct in relation to the use of the Platform or in relation to P2P Hire;

(g) breach any Laws, or cause P2P Hire to breach any Laws;

(h) not make any false, misleading or deceptive representations in connection with the Platform; or

(i) not to publish or otherwise communicate any review of, or information about, the Platform (which is not publicly available) to any third party without the prior written consent of P2P Hire, except as specifically provided for in an agreement with P2P Hire, including this Agreement.

4.5 **Listing conduct**

In respect of a listing and any communications with a Hirer or P2P Hire, a Supplier must:

(a) act reasonably and in good faith at all times;

(b) ensure that all information and communication is complete, accurate, comprehensive and not misleading;

(c) concerning the supply of services (as a supplier or recipient, and including in conjunction with the supply of goods), comply with all Laws relating to employment, the *Fair Work Act*, any State or territory employment and long service leave Laws, and any tax Laws; and

(d) comply with all Laws in respect of the supply of the goods or services in that listing.

4.6 **Supply agreement and release of P2P Hire**

A Supplier must:

(a) reduce the terms of the agreement for the supply of goods or services to writing, provide those terms to the Hirer in writing, and receive written acceptance of those terms ("P2P Contract");

(b) include in every P2P Contract or other agreement with a Hirer, a binding and enforceable provision, which is not varied or diminished (other than to fit grammatically), to the following effect:

(i) the agreement for the supply of the goods and/or services is between the Supplier and the Hirer. There is no agreement between the Supplier and P2P Hire, nor between the Hirer and P2P Hire, in respect of that supply;

(ii) the Supplier and the Recipient both severally agree that P2P Hire is not liable to either the Supplier or the Hirer in respect of any supply of the goods and/or services as between them, and they each severally release P2P Hire from any claim which either or both of them had or may have against P2P Hire; and

(iii) On request by P2P Hire, the Supplier and the Hirer will, at their own cost, provide a fully executed, binding, and enforceable deed poll in favour of, and in the form provided by, P2P Hire, to give effect to clauses 4.6(b)(i) and 4.6(b)(ii), and

(c) not seek payment from the Hirer, P2P Hire, or any third party, except as expressly set out in the P2P Contract; and

(d) nothing in this Agreement or the P2P Contract is intended to limit the operation of the Consumer Laws. Under the Consumer Laws, a Hirer may be entitled to certain remedies (like a refund, replacement or repair) from the Supplier if there is a failure with any goods or services supplied by a Supplier.

4.7 **Hirer's acknowledgement**

A Hirer must ensure that any agreement with a Supplier in respect of a listing on the Platform is reduced to writing and includes the terms referred to in clause 4.6, and must comply with those terms.

4.8 **Safety and protection**

(a) A Supplier must provide adequate guidance, relative to the kind of good being supplied, on how to safely use any goods supplied, including by providing introductory training or guidance on the goods and the relevant manufacturer manuals or procedures. In doing so, the Supplier must presume that the Hirer does

not have any particular level of experience with the goods supplied, even if the Hirer claims such experience.

(b) When using the Goods, the Hirer must follow all training, guidance, manufacturer manuals and procedures, and must comply with all Laws. If the Hirer is in any doubt as to how the goods supplied by the Supplier, the Hirer must immediately stop using the goods and seek guidance from the Supplier on how to use the goods.

(c) A Supplier must safely supply services to the Hirer in a careful, diligent, proper and efficient manner in accordance with the standards expected of a person with the skills, expertise, experience and resources necessary to competently provide the services.

4.9 **Insurance**

(a) The Supplier must have all necessary and prudent insurances in place, including:

(i) public liability insurance to $20 million or more; and

(ii) any insurances required by Law.

(b) The Supplier must seek written confirmation from its insurers that:

(i) insurance is not invalidated where the supply of the goods or services for gain contemplated when using and listing on the Platform, and pursuant to the terms of any P2P Contract.

4.10 **P2P may provide supply agreement**

(a) Notwithstanding clause 4.6 above, P2P Hire may, at its discretion, make available a supply agreement ("**P2P Supply Agreement**") for the Supplier and the Hirer to consider using to reduce their agreement to writing.

(b) The Supplier and the Hirer acknowledge that the P2P Supply Agreement is a generic agreement which does not take, and is not capable of taking, into account the requirements of the Supplier or the Hirer or both, or any practical or legal requirements relating to the supply of specific Goods.

(c) P2P Hire provides a P2P Supply Agreement, P2P Hire makes no warranties that any P2P Supply Agreement will be:

(i) fit for the purpose of reducing the terms of the agreement between the Supplier and the Hirer in relation to the temporary supply of certain goods by the Supplier to the Hirer; or

(ii) fit for the supply of the specific Goods by the Supplier to the Hirer.

(d) The Supplier and the Hirer acknowledges and agrees that nothing in this Agreement obliges the parties to use the P2P Supply Agreement in relation to the supply of Goods by the Supplier to the Hirer, and may separately obtain a written supply agreement provided that such supply agreement complies with the terms of this Agreement on terms agreeable to them.

(e) The Supplier and the Hirer acknowledges and agrees that P2P Hire are not legal, financial or insurance advisors and nothing in this Agreement or the P2P Supply Agreement constitutes legal, financial or insurance advice. Each of the Supplier and the Hirer are responsible for obtaining independent legal, financial and insurance advice in relation to any contract (including the P2P Supply Agreement).

(f) To the extent permitted by the Consumer Laws, P2P Hire disclaims all liabilities that may arise, directly or indirectly, as a result of the use by the Hirer or the Supplier of the P2P Supply Agreement.

5. THE PLATFORM

5.1 Subscription License and Platform Not Available Locally

(a) The User agrees and accepts that the Platform may only be accessible using the Internet and the Platform (or any part of it) may not be either partially or fully accessible from the User's device.

(b) The User agrees and accepts:

(i) the speed of response from the Platform is dependent on the User's internet connection and device, and the performance of the Platform may be affected by such external factors as bandwidth, latency, speed of connection, connection stability, and the User's compatible devices; and

(ii) it is solely responsible for ensuring it has, at all relevant times, sufficient internet-connectivity (including bandwidth, latency, speed and stability) and devices in order for them to use the Platform.

(c) The User is solely responsible for supplying and maintaining the software, hardware, operating system, network connections and other operational requirements required to access the Platform.

(d) The User acknowledges and agrees that its failure to comply with clause 5.1(c) may affect its ability to successfully use the Platform.

5.2 Parts of P2P Hire Controlled by Third Parties

The User agrees and accepts that the Platform is or may be from time to time operated from servers owned and controlled by a third party. As such, the User acknowledges that certain functions are out of P2P Hire' control, including:

(a) databases; and

(b) Cloud-based infrastructure,

and that, unless contrary to the applicable law, P2P Hire is not responsible for any event or action caused by any third party contemplated in this clause 5.2.

5.3 Maintenance, Updates, Changes, Inaccessibility and Errors

Subject also to clause 7:

(a) P2P Hire reserves the right to make some or all of the Platform inaccessible from time to time as is required for updates, maintenance and/or upgrades. P2P Hire will use reasonable endeavours to schedule planned updates, maintenance and/or upgrades outside of key business operations' periods.

(b) From time to time, without notice, access to all or part of the Platform may be disrupted or limited. During such an interruption, P2P Hire will use its reasonable endeavours to restore access to the Platform as soon as practicable.

(c) P2P Hire reserve the right to correct any errors on the Platform, upgrade, maintain, tune, backup, amend, add to or remove features from, redesign, improve or otherwise alter the Platform at P2P Hire' sole and absolute discretion.

(d) The User acknowledges and agrees that P2P Hire will not be liable for any loss or damage that the User or any other person incur by any changes made to the Platform and/or the User not being able to access the Platform or any part of it.

5.4 **Collection of usage, system and other information**

(a) The Platform may include mechanisms:

(i) to collect limited data and information from the User's device which access the Platform and transmit it to P2P Hire; and

(ii) to locally cache such data and information on the User's computer.

(b) The data in clause 5.4(a) (**"AM Info"**) may include details of devices, network equipment, details of the operating systems in use on such computer equipment, the location of the User's devices and the profile and extent of the User's use of the different elements of the Platform.

(c) P2P Hire may use the AM Info to:

(i) model the profiles of usage, hardware and operating Platforms in use collectively across its user base in order to focus development and support;

(ii) provide targeted support;

(iii) ensure that the usage of the Platform by the User is in accordance with the Agreement and does not exceed any user number or other limits on its use; and

(iv) advise the User about service issues such as available updates.

(d) To the extent that any AM Info constitutes Personal Information, P2P Hire will handle that Personal Information in accordance with the Privacy Act.

5.5 **Security Responsibilities**

P2P Hire will take reasonable steps to ensure the Platform is secure from unauthorised access consistent with generally accepted industry standards.

5.6 **Third Party Content**

The inclusion of any third-party link does not imply any endorsement or recommendation of a linked website by P2P Hire. P2P Hire will not be responsible for any third-party advertising content displayed in the Platform. Any link on the Platform to a third-party website, or decision to accept any third-party offer, is entirely at the User's own risk.

5.7 **Third Party Integrations**

(a) Any integration, including be it programmatic or by linking, or by any other method to another software or hardware system of any kind does not imply endorsement or recommendation of that system.

(b) P2P Hire will not be liable for any loss or damage that the User or any other person may incur by use of any other system.

(c) P2P Hire accepts no responsibility for any aspect of any third-party system that may be integrated.

5.8 **Suspension of Access**

P2P Hire may terminate or suspend access to the Platform to the User indefinitely and without compensation if the User uses the Platform, or appears to P2P Hire to be intending

to use the Platform, in a manner reasonably deemed inappropriate by P2P Hire or which breaches the terms of this Agreement.

6. PAYMENTS

6.1 Payments generally

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(a) P2P Hire may charge you:

(i) a Subscription Fee to access the Platform;

(ii) whenever you post a listing, any amounts shown on the Platform as payable for posting a listing; and

(iii) additional fees we may introduce at any time through displaying such fees on the Platform.

(b) All amounts payable referred to in clause 6.1(a):

(i) will be paid through our payment gateway as available on the Platform from time to time, including via credit or debit cards; and

(ii) subject to Law, will be non-refundable.

6.2 Stripe specific terms

(a) P2P Hire currently uses Stripe for managing payments from Users.

(b) Payment processing services for the User on the Platform are provided by Stripe and are subject to the Stripe Connected Account Agreement (available from https://stripe.com/au/legal/connect-account), which includes the Stripe Terms of Service (available from https://stripe.com/au/legal/ssa) (collectively, the "**Stripe Services Agreement**"). By agreeing to this Agreement or continuing to operate as a User of the Service, the User agrees to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of the Platform enabling payment processing services through Stripe, the User agrees to provide P2P Hire accurate and complete information about the User, and the User authorises P2P Hire to share that information and transaction information related to its use of the payment processing services provided by Stripe.

(c) Use of Stripe is subject to its fees, terms and conditions, which are accessible from Stripe or on request, and are subject to change, and requires the disclosure of personal information by the User to Stripe which is subject to Stripe's privacy policy and involves the User providing its personal information to an international recipient.

(d) The User acknowledges that the contract that the User enters into with Stripe is a separate contract to this Agreement. Any problems or issues that the User have with the direct debit authority should be raised directly with Stripe.

(e) The User must keep the payment authority in place until 30 days after the termination of this Agreement or the end of a subscription takes effect.

(f) The User acknowledges that P2P Hire will continue to debit fees under the payment authority until the subscription is cancelled in accordance with this Agreement.

(g) It is the User's responsibility to ensure the payment authority is cancelled upon termination or expiry of the relevant subscription.

(h) The User must ensure that the User's nominated credit card or bank account is able to accept direct debits and have sufficient funds available to pay any fees under this Agreement plus any other applicable fees as and when they are due to be debited.

(i) P2P Hire will endeavour to notify the User of any dishonoured or overdue payments.

(j) Additional fees and charges may be incurred by the User for any dishonoured payments by Stripe or the User's financial institution pursuant to the User's agreements with them.

(k) The User will indemnity P2P Hire for any fee charged by Stripe on account of the User's payments, the User's missed payments or any other amount for the User's use of Stripe.

(l) The User will indemnify P2P Hire in respect of any costs in seeking payment of fees under this Agreement and any other amount owing under this Agreement, including legal costs and debt collection costs.

7. MAINTENANCE, UPDATES, CHANGES TO THE PLATFORM

7.1 Platform Updates

(a) P2P Hire may, in its sole discretion, make modification, enhancements, updates or new releases of the Platform from time to time in order to, amongst other matters, enhance or improve the functionality or operation of the Platform or comply with legislative requirements ("**Platform Updates**").

(b) P2P Hire will use reasonable endeavours to ensure that any future version of the Platform is backwards-compatible with at least the most recent previous version, but the parties acknowledge that this may not always be possible or practicable with any or all Platform Updates.

(c) P2P Hire may notify the User of Major Updates to the Platform prior to the updated Platform being released, published or, in the case of an emergency update, as soon as practicable.

(d) Minor updates may occur to the Platform at any time and P2P Hire is not required to notify the User though may do so at its own discretion.

(e) P2P Hire make any Platform Updates available for access and use by the User as soon as reasonably practicable following the creation and general release of such Platform Updates.

(f) The User acknowledges there may be downtime for the Platform, including where P2P Hire is required to configure and upload a Platform Update.

(g) The Platform Updates will be provided to the User through the Platform free of charge.

(h) Use of the Platform Updates by the User through the Platform will be subject to the same terms and conditions as use of the Platform under this Agreement.

(i) The parties acknowledge that P2P Hire may be required to update the Platform to remain in compliance with either Apple Inc. and the App Store, and/or Google Inc. and the Google Play Store's standard (collectively "**the Third-Party App Standards**"). The User agrees that P2P Hire will not be liable for incompatibility of any Platform Updates to the Platform should that modification or update be required to remain compliant the Third-Party App Standards.

8. P2P Hire's Obligations

8.1 P2P Hire' Obligations

Subject to the User complying with its obligations set out in the Agreement, P2P Hire will endeavour to develop, host and maintain the Platform.

8.2 Representations and Warranties of P2P Hire

P2P Hire represents and warrants that:

(a) the Platform is developed using a standard of care and skill expected of an entity who regularly acts in the capacity of an "app developer or software developer"; and

(b) in providing access to the Platform, it will comply with the law and with industry standards in accordance with relevant Australian law.

9. PRIVACY

9.1 Privacy Obligations

If Personal Information is disclosed to a User in the course of this Agreement or the use of the Platform, the User agrees that it will not:

(a) sell the Personal Information to any third party; or

(b) distribute or disclose Personal Information to any third party other than:

(i) to its personnel and/or related bodies corporate; or

(ii) onto third party servers which it controls;

who will only use the Personal Information for the purposes contemplated by this Agreement.

9.2 The Privacy Act

For the purposes of clause 9.1 the term "disclose" is to have the same meaning as defined in the Privacy Act.

10. Intellectual Property

10.1 P2P Hire' Intellectual Property

(a) All title, ownership rights and Intellectual Property Rights, including copyright in relation to Platform is owned or used under licence by P2P Hire.

(b) Without P2P Hire' express prior written consent, the User undertakes that it will not and will not permit any person to:

(i) directly or indirectly alter, replicate, copy, recreate, create derivative work from, decompile, reverse engineer, reserve assemble, reserve compile, enhance, interfered with or with part of the Platform and/or the Software or otherwise obtain, modify or use any source or object code, architecture, or algorithms contained in the Platform or any documentation associated with the Platform;

(ii) interact with any P2P Hire trademark (whether registered or not) that could cause any adverse effect to P2P Hire' ownership and/or rights to the intellectual property; or

(iii) copy or reproduce, or create an adaptation or translation of, all or part of the Platform in any way, except to the extent that reproduction occurs

automatically through the ordinary use of the Platform and/or Software in accordance with this Agreement;

(iv) incorporate all or part of the Platform and/or Software in any other webpage, site, application or other digital or non-digital format for purposes other than marketing and/or training;

(v) (subject to other rights explicitly granted under this Agreement) sell, license, sublicense, lease, rent, distribute, disclose, permit access to, or transfer to any third party, whether for profit or without charge, any portion of the Platform and/or Software on any medium;

(vi) do anything that will infringe the Intellectual Property Rights of any third party; or

(vii) attempt to do any of the above.

(c) Without limiting the foregoing, the User also acknowledges in any modifications, improvements or enhancements suggested by or contributed to or provided by the User in regard to the Platform shall immediately vest in P2P Hire.

10.2 **The User's Intellectual Property**

(a) Nothing in this Agreement will transfer ownership of material and data inputted into the Platform by the User to P2P Hire.

(b) The User grants P2P Hire a non-exclusive, royalty free, irrevocable license to use of any material and data inputted by the User in connection with this Agreement.

(c) P2P Hire is not obliged to retain any material or data inputted into the Platform by the User.

10.3 **Threats and action**

If the User becomes aware of any infringement or threatened infringement of any Intellectual Property Rights, the User must give notice pursuant to clause 16.1 to P2P Hire including full particulars of the infringement. P2P Hire may, in its absolute discretion, institute and prosecute an action against the infringer.

10.4 **Provide all assistance**

The User must each execute all documents and do all things reasonably necessary to aid and co-operate in the prosecution of any actions brought by P2P Hire under this clause.

10.5 **Survival of Obligation**

The operation of this clause 10 survives the termination of this Agreement.

11. **LIABILITY**

11.1 **Exclusion of express warranties**

(a) Nothing in this Agreement is intended to exclude or displace any guarantees or warranties afforded to you under the Consumer Law. Under the Consumer Law, the User may be entitled to a repair or replacement service, or other similar rights in accordance with the Consumer Law from time to time, in respect of the Platform.

(b) Subject to the obligations of P2P Hire in respect of the provision of the Platform under this Agreement, P2P Hire makes no warranties or guarantees to a User, and provides no warranty or guarantee:

(i) that the Platform will be accessible at all times, uninterrupted or error free;

(ii) that the Output is fit for purpose, or of a particular quality;

(iii) that any part of the Platform is without bugs or viruses;

(iv) that the Platform is immune to unauthorised access or security breach; and

(v) in respect of the retention of, or continued accessibility of, any data.

11.2 **User Acknowledgements**

The User acknowledges and agrees that:

(a) P2P Hire is not responsible for the conduct or activities of any other user of the Platform;

(b) P2P Hire is not an accounting firm, legal firm or financial advisor, and the use of the Platform or the Output does not constitute the provision of accounting, tax, legal or financial advice (including insurance advice); and

(c) the User is solely responsible for complying with all applicable accounting, tax, financial advice, and other laws.

11.3 **Consumer and small business laws**

(a) If the User is a "consumer" or "small business" within the meaning of the Consumer Law, there are certain rights (such as the consumer guarantees implied by the Consumer Law, which cannot by law be excluded ('Non-Excludable Conditions'). This clause is subject to those Non-Excludable Conditions.

(b) Subject to the application of any applicable Non-Excludable Conditions and to the maximum extent permitted by law, P2P Hire:

(i) excludes from this Agreement all guarantees, conditions and warranties that might but for this clause be implied into this Agreement;

(ii) excludes all liability to the User for any Costs, expenses, losses and damages suffered or incurred directly or indirectly by the User in connection with this Agreement, including using the Platform, whether that liability arises in contract, tort or under statute; and

(iii) will not, under any circumstances, be liable to the User for any Consequential Loss.

(c) If P2P Hire' liability under this Agreement cannot be lawfully excluded, to the maximum extent permitted by law, P2P Hire's liability for breach of any Non-Excludable Condition is limited:

(i) in the case of services, to (at P2P Hire's option) the supplying of the services again; or the payment of the cost of having the services supplied again.

11.4 **Costs**

P2P Hire excludes all other liability to the User for any Costs, including Consequential Loss, suffered or incurred directly or indirectly by the User in connection with the Agreement, or the Platform, in connection with:

(a) the occurrence of an Unforeseen Event as described in accordance with clause 16.2;

(b) reliance on technical advice, modelling or calculations provided by P2P Hire;

(c) the infringement or claimed infringement by any person other than P2P Hire of the Intellectual Property Rights including moral rights of any person in connection with the Agreement;

(d) any unauthorised activity in relation to the Platform by the User;

(e) any breach of this Agreement by the User;

(f) the User's use of or reliance on the Platform for a purpose other than the business purposes of the User or the reasonably expected purpose of the Platform; or

(g) the User's failure to fulfil its obligations under the Agreement. The foregoing limitation applies however the Costs are caused whether they arise in contract, tort (including by P2P Hire' negligence), or under statute.

11.5 **Consequential Loss**

Neither party is liable under this Agreement for any Consequential Loss arising out of a breach by either of them of this Agreement, including (without limitation) any liability under the indemnity in clause 12.

12. **INDEMNITY**

12.1 **Indemnity**

The User indemnifies and will keep P2P Hire and its representatives indemnified against all liability arising from claims for:

(a) in respect of any P2P Contract;

(b) in respect of any loss or damage to, or caused by, any goods or services supplied by a Supplier;

(c) libel, slander, defamation, product disparagement or indecent, false, misleading or deceptive conduct;

(d) any breach of clause 4 (User's Obligations);

(e) any breach of clause 9 (Privacy);

(f) any breach of the provisions of this clause 12.1;

(g) infringement of Intellectual Property Rights;

(h) piracy, counterfeiting, plagiarism, or unfair competition;

(i) invasion of the right of Privacy; and

(j) any incorrect, fraudulent or false information provided by the User.

13. **TERMINATION**

13.1 **Immediate Termination by P2P Hire for Default**

P2P Hire may terminate this Agreement immediately by notice to the User if:

(a) an Insolvency Event occurs in relation to the User; or

(b) the User commits any breach of any of its obligations under this Agreement and:

(i) the breach is incapable of being remedied; or

(ii) if the breach is capable of being remedied, the User has failed to remedy the breach within ten (10) Business Days after the receipt of the notice; or

(iii) the User has been issued a notice of default more than two (2) times during a twelve (12) month period, or

(c) it gives 14 days' written notice to the email address associated with the User's account.

13.2 **Immediate Termination by User for Default**

The User may terminate this Agreement immediately by notice to P2P Hire:

(a) by closing their account on the Platform via any provided method or by writing to P2P Hire with sufficient information to identify the User and their account on the Platform;

(b) if an Insolvency Event occurs in relation to P2P Hire; or

(c) if P2P Hire commits any breach of any of its obligations under this Agreement and:

(i) the breach is incapable of being remedied; or

(ii) if the breach is capable of being remedied, P2P Hire has failed to remedy the breach within thirty (30) Business Days after the receipt of the notice; or

(iii) P2P Hire has been issued a notice of default more than three (3) times during a twelve (12) month period.

13.3 **Effects of Termination**

On termination of this Agreement, the licence will terminate and:

(a) the User must immediately:

(i) cease all activities related to the use of the Platform;

(ii) destroy all Content and other materials (including all electronic or physical copies) in its possession relating to the Platform; and

(iii) do any further things as may be reasonably required by P2P Hire to protect its right, title and interest in the Platform.

(b) P2P Hire may, in addition to terminating the Agreement:

(i) deactivate the User's access and use of the Platform (without being liable in trespass or detinue);

(ii) repossess any of P2P Hire's property in the possession, custody or control of the User;

(iii) terminate or suspend access to the Platform;

(iv) refuse to disclose any passwords (recognising it may not be able to disclose any unhashed passwords);

(v) be regarded as discharged from any further obligations under this Agreement; and

(vi) pursue any additional or alternative remedies provided by law.

14. **Dispute Resolution**

(a) Subject to clause 14(f), any dispute which arises between the parties in connection with this Agreement (dispute) must be dealt with in accordance with the requirements of this clause 14, before either party will be entitled to commence proceedings against the other party in respect of the dispute.

(b) The party claiming that a dispute has arisen (complainant) must give the other party a written notice setting out:

(i) a detailed explanation of the nature of the dispute; and

(ii) what action the complainant thinks will resolve the dispute (dispute notice).

(c) Within ten (10) Business Days of the dispute notice being received by the other party, a nominated senior executive of each party must meet, act in good faith and use best endeavours to resolve the dispute at that meeting, or such subsequent meetings as may be reasonably required.

(d) If the dispute is not resolved pursuant to clause 14(c) within thirty (30) days of the dispute notice being received by the other party, the parties agree to attend a privately held mediation with a mediator appointed by the nominated senior executive or both parties and in the absence of agreement within seven (7) days of disagreement by such mediator as appointed by the President, or person in like office of the Australian Disputes Centre.

(e) If the dispute is not resolved within a further thirty (30) days pursuant to clause 14(d) then either party may commence proceedings against the other party in respect of the dispute.

(f) Nothing in this clause 14 prevents a party from seeking urgent injunctive or similar relief from a court.

15. VARIATION

(a) P2P Hire may propose to amend this Agreement from time to time to be accepted by Permitted Users. If it does so, P2P Hire will give reasonable written notice to the Customer of the terms of the amended EULA. The amended EULA will replace the terms of this EULA.

(b) If the Customer does not agree to the terms of the amended EULA, the Customer must close their account on the Platform via any provided method or by writing to P2P Hire with sufficient information to identify the User and their account on the Platform, and not use the Platform for any purpose other than to close their account. This Agreement then terminates immediately in accordance with clause 13.2(a).

16. GENERAL

16.1 Notices

Any communication under or in connection with this Agreement:

(a) must be to the addressee from time to time;

(b) must be in writing;

(c) must be delivered or posted by prepaid post to the address, or sent by email to the addressee, in accordance with clause 16.1(d); and

(d) If a notice is sent or delivered in the manner provided in 16.1(c) it must be treated as given to or received by the addressee in the case of:

(i) delivery in person, when delivered;

(ii) delivery by post, on the third (3rd) Business Day after posting;

(iii) delivery by email, at the earlier of the time stated in a read receipt sent by the recipient's computer or when the message has been delivered to the email address of the addressee, but if delivery is made after 5.00pm on a Business Day it must be treated as received on the next Business Day in that place.

16.2 Unforeseen Event

A party is not responsible for any loss arising out of any occurrences or condition beyond its control, including acts of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government, a failure of a supplier, public utility, power, internet infrastructure (including hardware) or common carrier or computer disruption due to the effects of a computer virus, trojan, worm, malware or other malicious code.

16.3 **Assignment**

(a) Subject to clause 16.3(b), a party may only assign, novate encumber, declare a trust over or otherwise create an interest in its rights under this document with the prior written consent of the other party, which it may withhold in the other party's absolute discretion.

(b) P2P Hire may assign, novate, encumber, declare a trust over or otherwise create an interest in its rights under this Agreement without the consent of the User, and may disclose to any potential holder of the right or interest any information relating to this Agreement or any party to it, as part of a sale of all or part of its business or assets.

16.4 **Amendment**

(a) The User acknowledges and agrees that P2P Hire may amend or vary this Agreement at any time by either posting the changes on its website, by making the replacement terms available when logging into the Platform, or by electronic notification to the User, at P2P Hire' sole election.

(b) The User is responsible for regularly reviewing the website and log in to the Platform to obtain timely notice of such amendments or variations.

(c) The User's continued use of the Platform after amendments or variations are made by P2P Hire constitutes the User's acceptance of this Agreement being as modified by the amendments or variations.

16.5 **Liability for expenses**

Each party must pay its own expenses incurred in reviewing, negotiating, executing, and performing this Agreement.

16.6 **Giving effect to this Agreement**

Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.

16.7 **Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

(a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

(b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

(c) the exercise of a right does not prevent any further exercise of that right or of any other right.

16.8 **Relationship**

Nothing in this Agreement is intended to create or be construed as creating a relationship of agency, joint venture or partnership between any of the parties. Unless expressly stated in this Agreement, no party may act as agent of or in any way bind another party to any obligation.

16.9 **Operation of this Agreement**

(a) This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect. Any condition, warranty, representation or other term concerning the supply of the Platform and Content which might otherwise be implied into, or incorporated in, the Agreement, whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

(b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.

(c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

16.10 **Inconsistency with other documents**

If this Agreement is inconsistent with any other document or agreement between the parties, this Agreement prevails to the extent of the inconsistency.

16.11 **Reliance**

Neither party has entered into any contract under this Agreement in reliance on or as a result of any representation, promise, statement, conduct or inducement by the other otherwise than as set out in this Agreement.

16.12 **Consents**

Where this Agreement states that the consent or approval of P2P Hire is required, P2P Hire may:

(a) give or withhold that consent or approval in its absolute discretion; and

(b) give that consent or approval subject to conditions, unless this Agreement expressly states otherwise.

16.13 **Liability of Parties**

If a party consists of more than one person:

(a) an obligation of that party is a joint obligation of all of those persons and a several obligation of each of them; a right given to that party is a right given jointly and severally to each of those persons, and if exercised by one of them, is deemed to be exercised jointly; and

(b) a representation, warranty or undertaking made by that party is made by each of those persons.

16.14 **Governing law**

The laws of Western Australia, Australia govern this Agreement. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

17. **INTERPRETATION**

17.1 **Definitions**

Unless this Agreement explicitly states otherwise, expressions used in the Agreement have the following meanings:

(a) **Agreement** means this these terms and conditions.

(b) **Business Day** means any day which is not a Saturday, Sunday or public holiday in Perth, Western Australia.

(c) **Confidential Information** means information that is by its nature confidential, including information relating to the:

(i) personnel, policies, practices, User or business strategies of the parties;

(ii) Intellectual Property Rights of either party;

(iii) the terms of this Agreement;

but does not include information:

(iv) already rightfully known to the receiving party at the time of disclosure by the other party; or

(v) in the public domain (including information made publicly available via a mechanism in the Software by the User) other than as a result of disclosure by a party in breach of its obligations of confidentiality under the Agreement.

(d) **Content** means the information made available via the Platform, which may be written, video, audio, or in another form, and may be static content or Output.

(e) **Consequential Loss** means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss, loss of goodwill, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

(f) **Cost** means any costs, expenses, losses, damages, claims, demands, proceedings, and other liability.

(g) **Consumer Law:** means the *Competition and Consumer Act 2010* (Cth) as amended from time to time including the Australian Consumer Law set out in Schedule 2, and all related regulations.

(h) **Fees** means the Subscription Fees and any other fees charged to the User by P2P Hire under this Agreement.

(i) **Hirer** means a person who is considering or wishes to hire goods temporarily or receive services from a Supplier.

(j) **Insolvency Event** means in respect of a party:

(i) the appointment of an administrator, a receiver or receiver and manager in respect of that party;

(ii) an application to a court or an order for the winding up of the party; or

(iii) the occurrence of anything analogous or having a substantially similar effect to any of the preceding events.

(k) **Intellectual Property Right** means all present and future rights conferred by statute, common law or equity in or in relation to business names, circuit layouts, computer software, confidential information, copyright, designs, domain names, formulas,

inventions, knowhow, patents, recipes, trademarks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

(l) **Law** means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.

(m) **Output** means any information, data, results, analysis and other output of the Platform in response to the User's inputs to the Platform.

(n) **P2P Hire** means P2P Hire Pty Ltd (ABN 70 673 977 261) (ACN 673 977 261) of Unit 4, 327 Wanneroo Road, Balcatta WA 6021.

(o) **Platform** means the P2P Hire platform and related services' platform (including any Cloud-based Version) for P2P Hire Users (and includes all material (including tangible and intangible information), software (in source and object code forms), web applications, images, files, manuals, documents, devices, data, databases, supplied, created, written, developed or otherwise brought into existence (whether before, on or after the date of this Agreement) by P2P Hire or on its behalf, and all their subsequent versions, updates and enhancements, and includes the Content and any Output.

(p) **Personal Information** has the meaning given to that term in the Privacy Act.

(q) **Privacy Act** means the *Privacy Act 1988* (Cth) and includes any code registered under the Privacy Act and the Australian Privacy Principles.

(r) **Services** means any service provided by P2P Hire in connection with the installing, configuring, deployment, installation, development (if any) and licensing of the Software and (as the case may be).

(s) **Stripe** means Stripe Payments Australia Pty Ltd (ACN 160 180 343)

(t) **Subscription Fee** means the fee payable by the User to P2P Hire on account of the grant of a subscription licence under this Agreement.

(u) **Subscription Term** means the term accepted by the User when entering into the subscription in clause 2.

(v) **Supplier** means a person who posts, or intends to post, a listing for the supply of goods or services on the Platform.

(w) **User** means:

(i) the person or entity registered with an account on the Platform as a User; or

(ii) the individual accessing or using the Platform,

as the case may be. A User may also be a Supplier, a Hirer, or both.

17.2 **Interpretation**

In this Agreement:

(a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:

(b) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;

(c) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) "supply" includes:

(i) the sale, hire, lease, bailment of goods; and

(ii) the supply of services or labour, including under a contract for services or a contract of service,

whether or not for monetary or other consideration.

(e) "goods" includes real property, personal property, fixtures, and intangible property.

(f) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;

(g) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;

(h) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;

(i) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Agreement, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;

(j) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(k) references to payments to any party to this Agreement include payments to another person upon the direction of such party;

(l) all payments to be made under this Agreement will be made by unendorsed bank cheque or other immediately available funds;

(m) the words "includes" or "including", in any form, is not a word of limitation

(n) When the date or last day for doing an act is not a Business Day, the day or last day for doing the act will be the next following Business Day; and

(o) In the interpretation of this Agreement, no rule of contract interpretation applies to the disadvantage of a party on the basis that it put forward this Agreement or any part of it.