

Clearpath Information Systems – Terms and Conditions of Trade

1. **Definitions**
- 1.1. "Clearpath" means Renee Michelle Bean T/A Clearpath Information Systems, its successors and assigns or any person acting on behalf of, and with the authority of, Renee Michelle Bean T/A Clearpath Information Systems.
- 1.2. "Client" means the person/s requesting Clearpath to provide the Services as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3. "Services" means all Goods (which includes any content, files, information, printed or virtual material, data, hardware, software or applications (whether supplied from a third party software development company or where custom developed or programmed for the Client), brands, designs, images, graphics, pictures, trademarks, manuals, and other associated documentation and/or goods, accessories or parts) or Services (which includes any advice or recommendations, consultancy, hosting (which includes virtual server hosting, website hosting, e-mail hosting, etc.), monitoring, data back-up or storage, design and/or website maintenance, brands, designs, project management work, brand integration, strategising and analytical services, technical service, support and training, repairs, or installation of Goods, etc.) supplied by Clearpath to the Client, at the Client's request, from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
- 1.4. "Web Site" means a location which is accessible on the Internet through the World Wide Web and which provides multimedia content via a graphical User Interface.
- 1.5. "Prohibited Content" means any content or links that:
 - (a) are, or could reasonably be considered to be, in breach of the Broadcasting Services Act 1992; the Fair Trading Acts of the applicable States and Territories of Australia and the Competition and Consumer Act 2010 (CCA); or any other applicable law or applicable industry code; or
 - (b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
 - (c) are, or could reasonably be considered to be, in breach of any person's intellectual property rights (including, but not limited to, the distribution of software or video, audio or digital files, or any other material in which the Client does not own the copyright), Clearpath will respond to all reports of infringement that are formatted in accordance with Australian copyright laws and any other applicable copyright laws. Clearpath will act in accordance with the law when handling infringement reports; or
 - (d) are, or could reasonably be considered to be, pirated software, bulk e-mail related products, pornography or nudity or adult content, hacking or cracking related websites, WareZ, hosting of large scale video, audio or digital download websites, illegal material or material that is against public policy, websites containing or linking to material that may be considered detrimental to the public's health, safety or welfare (such as, but not limited to, anarchists, Cookbook, bomb making, weapon information, etc.), or anything else that may be considered detrimental or illegal.
- 1.6. "Sub-contractor" means any third party Sub-contractor engaged by Clearpath to assist and carry out services to complete the Services.
- 1.7. "Price" means the cost of the Services (plus any GST where applicable) as agreed between Clearpath and the Client in accordance with clause 5 below.
- 1.8. "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax Act 1999" (Cth).
2. **Acceptance**
- 2.1. The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts, Services provided by Clearpath.
- 2.2. These terms and conditions:
 - (a) sets forth the entire and final understanding of the Client and Clearpath pertaining to the subject matter hereof and supersedes all prior arrangement, whether oral or written; and
 - (b) may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Clearpath.
- 2.3. The Client shall as soon as practicable make available to Clearpath all information, documents, software, hardware, and other particulars required by Clearpath for the provision of Services.
- 2.4. None of Clearpath's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Director of Clearpath in writing nor is Clearpath bound by any such unauthorised statements.
- 2.5. Any advice, recommendations, information, assistance or service provided by Clearpath in relation to the Services provided is given in good faith, is based on information provided to Clearpath, and Clearpath's own industry knowledge, and experience. Whilst it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Services, human error is possible under these circumstances, and Clearpath shall make all efforts to offer the best solution to the Client.
- 2.6. Provided Clearpath acts reasonably, they are entitled to assume that any request in connection with the Services that Clearpath receives from the Client (or the Client's agents, employees or contractors) or from the premises where the Services are being provided or accessed, is authorised by the Client.
- 2.7. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.8. The commencement date shall be the date of the first delivery of the Services, or from the date of signing, whichever, is the earlier. Fixed Price Contracts for Service Contracts shall be for the period ("initial term") as agreed between both parties and shall be reviewed automatically, thereafter, for like periods ("additional terms"), unless agreed otherwise until terminated by either party by giving at least one (1) months required notice as defined in the Contract prior to the expiration date of the initial term or any additional term.
- 2.9. The Client acknowledges and accepts that the Price stated will remain fixed for an initial period as stated from the date of this contract and will then be subject to revision on the basis of the movement in the Consumer Price Index (CPI).
- 2.10. These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on Clearpath's Web Site and/ or in Clearpath's Formal Commercial Agreement. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.11. An additional fee will apply for call outs, subject to Clearpath's standard fee schedule.
3. **Online Ordering**
- 3.1. The Client acknowledges and agrees that:
 - (a) Clearpath does not guarantee the website's performance or availability of any of its Goods; and
 - (b) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
 - (c) there are inherent hazards in electronic distribution and as such Clearpath cannot warrant against delays or errors in transmitting data between the customer and Clearpath including orders. The Client agrees that to the maximum extent permitted by law, Clearpath will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders.
- 3.2. Clearpath reserves the right to terminate the Client's order in the event that Clearpath learns that the Client has provided false or misleading information, interfered with other users or the administration of Clearpath's Services, or violated these terms and conditions.
4. **Change in Control**
- 4.1. The Client shall give Clearpath not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, and contact phone or fax number's, change of trustees or business practice). The Client shall be liable for any loss incurred by Clearpath as a result of the Client's failure to comply with this clause.
5. **Price and Payment**
- 5.1. At Clearpath's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Clearpath to the Client; or
 - (b) Clearpath's quoted price (subject to clause 5.2) which will be valid for the period stated in this Contract or otherwise for a period of thirty (30) days.
- 5.2. Clearpath reserves the right to vary the Price:
 - (a) if a variation to the plan of scheduled Services, or Client specifications is requested (including, but not limited to, additional work required due to hidden or unidentifiable difficulties not evident prior to commencement of the Services, any request to investigate and/or repair any faults or defects outside Clearpath's normal business hours);
 - (b) as a result of increases beyond Clearpath's reasonable control in the cost of materials or labour (e.g. third-party network operator or supplier costs, etc.).
- 5.3. Variations will be charged for on the basis of Clearpath's quotation, and will be detailed in writing, and shown as variations on Clearpath's invoice. The Client shall be required to respond to any variation submitted by Clearpath within ten (10) working days. Failure to do so will entitle Clearpath to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4. At Clearpath's sole discretion, a non-refundable deposit may be required.
- 5.5. Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by Clearpath, which may be:
 - (a) on provision of the Services; or
 - (b) by way of instalments in accordance with Clearpath's payment schedule;
 - (c) thirty (30) days following the date of any invoice given to the Client by Clearpath; or
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Clearpath.
- 5.6. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Clearpath nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Clearpath.
- 5.8. Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Clearpath an amount equal to any GST Clearpath must pay for any provision of Services by Clearpath under this Contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price, except where they are expressly included in the Price.
- 5.9. The Client acknowledges and agrees that the Client's obligations to Clearpath for the provision of the Services shall not cease, and ownership of the Goods (if applicable) shall not pass, until:
 - (a) the Client has paid Clearpath all amounts owing thereto for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to Clearpath in respect of all agreements between Clearpath and the Client.
- 5.10. Receipt by Clearpath of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Clearpath's ownership or rights in respect of the Services, and this Contract, shall continue.
6. **Provision of the Services**
- 6.1. The Services are provided on the basis of specifications, information and instructions provided by the Client to Clearpath (whether written or verbal). The Client acknowledges that it is their responsibility to ensure that such are detailed sufficiently to satisfy Clearpath's requirements of interpretation and understanding, as once accepted by the Client, Clearpath's quotation shall be deemed to interpret correctly those specifications, information and instructions. Therefore, Clearpath shall not accept any liability for the supply of Services contrary to the Client's intention, or errors or omissions in the Services, due to insufficient or inadequate provision of detailed specifications, information and instructions by the Client or oversight or misinterpretation thereof, and Clearpath may charge the Client additional costs incurred thereby in remedying the Services, and if reasonably practical, will notify the Client of such costs before they are incurred and the Client agrees to them.
- 6.2. Where the performance of any Contract with the Client requires Clearpath to obtain products and/or services from a third party, the Contract between Clearpath and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to Clearpath, and the Client shall be liable for the cost in full including Clearpath's margin of such products and/or services.
- 6.3. Clearpath may supply Goods to the Client where it is required for the provision of Services, and
 - (a) delivery of the Goods is taken to occur at the time that Clearpath (or Clearpath's nominated carrier) delivers the Goods to the Client's nominated address, even if the Client is not present at the address; and
 - (b) at Clearpath's sole discretion, any costs of delivery shall be included in the Price; and
 - (c) risk of damage to, or loss of, the Goods passes to the Client on delivery, and the Client must insure the Goods on, or before, delivery.
- 6.4. Whilst Clearpath shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties (subject to Clearpath's normal service hours of 9:00 am to 2:30pm on business days), the Client acknowledges that any time specified thereby for provision of the Services is an estimate only and Clearpath will not be liable for any loss or damage incurred by the Client as a result of any delay. In the event that Clearpath is unable to provide the Services as agreed solely due to any action or inaction of the Client then Clearpath shall be indemnified from any liability for any resulting failure to provide the Services and/or entitled to charge a reasonable fee for re-providing the Services at a later time and date.
- 6.5. **Normal Working Hours:**
 - (a) Services may be requested outside of the hours of 9:00am to 2:30pm Monday through Friday, and including all public holidays by prior arrangement, but may be subject to additional charges.
7. **Repair Notice**
- 7.1. If the Client is a consumer within the meaning of the CCA, this clause constitutes a Repair Notice given under the Australian Consumer Law ("ACL"), and the Client acknowledges that:
 - (a) the repair of equipment may result in the loss of any files stored on the hard drive, etc. ("User-Generated Data"). It is the sole responsibility of the Client to back-up any User-Generated Data which they believe to be important, valuable, or irreplaceable prior to submitting the equipment for repair; and
 - (b) equipment presented for repair may be replaced by, or repaired with, refurbished Goods of the same type rather than being repaired.
8. **Client's Obligations**
- 8.1. The Client shall:
 - (a) co-operate with Clearpath in connection with the provision of the Services, and shall ensure that the work area is free from hazards and all other objects (including but not limited to, cabling or items that are likely to break) that may limit such access to the Client's premises, equipment and adequate working space and facilities, such as electrical outlets, within a reasonable distance from the equipment. Clearpath shall not be liable for any loss or damage to any property, or injury to any person, that may be caused by the Client's failure to comply with this clause 8.1(a);
- (b) obtain, keep and make available to Clearpath, machine readable copies of all programs, operating systems, drivers and data files relating to the equipment. Clearpath does not assume any liability as a consequence of the Client's inability to use its machine readable data;
- (c) not modify, create any derivative work of, or incorporate any other goods into the network or any portion thereof. Clearpath shall not be responsible for the maintenance of, or the repair of problems or malfunctions caused by any modifications or enhancements made by the Client or by anyone else other than Clearpath.
- 8.2. The Client accepts and acknowledges that during the course of the Services:
 - (a) existing plastics or connections may be broken to access a repair area and/or carry out general maintenance, which is beyond Clearpath's control. Any additional cost associated with replacement items shall be borne by the Client; and
 - (b) where the Client chooses to deliver their laptop, computer or any other digital device to Clearpath's business premises for repair, all risk to such items remains with the Client in the first instance, any damage to the Goods or any personal injury experienced during this delivery method, shall be the Client responsibility; and
 - (c) the Client shall provide content to Clearpath, in such form as reasonably prescribed by Clearpath from time to time, and hereby grants Clearpath a non-exclusive, worldwide, irrevocable licence to use such content for incorporation in the Services; and
 - (d) ensure that such content supplied to Clearpath is not Prohibited Content, or contains any viruses, trojan horses, worms, time bombs, cancel bots or any other software program or routine designed for or capable of interfering with the operation of the Services; and
 - (e) the Client will ensure that Clearpath is given such information and assistance (including remote access (where required) to any computer systems plus usernames and passwords or any other locations) as Clearpath's reasonably requires to enable Clearpath to complete any necessary Services.
9. **Client's Property and Materials**
- 9.1. In the case of property and materials left with Clearpath without specific instructions, Clearpath shall be free to dispose of them at the end of three (3) months after Clearpath receiving them and to accept and retain the proceeds (such sale is to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods), if any, and/or charge the Client in addition to the Price to cover Clearpath's own costs in storing, handling and/or disposing of such property.
- 9.2. The lien of Clearpath shall continue despite the commencement of proceedings, or judgment for any moneys owing to Clearpath having been obtained against the Client.
- 9.3. Where materials or equipment are supplied by the Client, Clearpath accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.
10. **Web Site Development**
- 10.1. **Clearpath's Responsibilities:**
 - (a) Upon acceptance of Clearpath's estimate, and in accordance with this agreement, Clearpath will:
 - (i) use its best endeavours to develop the Web Site in accordance with the Client's instructions and specifications; and
 - (ii) to the extent specified in the Client's instructions and specifications, negotiate and procure any third-party agreements on behalf of the Client.
 - (b) The Client acknowledges that the development of the Web Site by Clearpath is based upon current technology platforms (e.g. internet browsers etc.), and therefore Clearpath cannot guarantee that Web Site features and/or Cop/Content will display correctly, and that the overall visual experience will be the same, for use by either superseded or presently undeveloped technology.
- 10.2. **Client's Responsibilities:**
 - (a) The Client will, in addition to any other obligations expressed in this agreement, have the following responsibilities:
 - (i) provision of all Copy (including data, logos, designs and/or graphic and related materials) to be incorporated into the Web Site; provision of any other information, ideas or suggestions which are to be expressly considered by Clearpath in developing the Web Site
 - (ii) The Client will ensure that Clearpath is given such information and assistance as Clearpath reasonably requires to, enable Clearpath to construct and maintain the Web Site.
 - (b) It shall be the Client's responsibility to ensure that any specific requirements they may have for web browsers is included in the brief, as unless otherwise specified therein, the choice of web browsers and technology used in the development of the Web Site shall be at the sole discretion of Clearpath. In the event that additional Services are requested, or required (as per clause 10.1(b)), in order to meet any specific requirements for web browsers, after Clearpath has commenced work on the Web Site, shall be treated as a variation to the Charges, and a strict estimation of further work required shall be submitted to the Client for approval before proceeding with the variation work.
 - (c) Clearpath will not be responsible for, and accepts no liability for, any deficiency or alleged deficiency in the Web Site which is attributable to:
 - (i) incorrect information provided by the Client, either pursuant to this clause or otherwise; or
 - (ii) failure by the Client to provide relevant information, either pursuant to this clause or otherwise; or
 - (iii) any third-party products and/or services used by Clearpath in creation of the Web Site.
- 10.3. **Maintenance:**
 - (a) Subject to sub-clause (b), Clearpath will provide the Maintenance Services in accordance with the maintenance terms set out in Clearpath's maintenance schedule.
 - (b) The Client will procure all necessary authorisations, licences and consents to enable Clearpath to have access to the Web Site in order to provide the Maintenance Services.
- 10.4. **Search Engine Optimisation (SEO):**
 - (a) Although Clearpath shall use their knowledge and experience to gain the best results possible, Clearpath gives no guarantee of the quality of visitor or the position / page rank or volume of visits to the Web Site, or warranty that the Web Site will be effective in promoting the Client's business or result in any increase in sales of the products/services of the Client. Periodic reporting will be sent to the Client's nominated email address, at the sole discretion of Clearpath.
11. **Terms of Use**
- 11.1. The Client acknowledges and agrees that:
 - (a) any attempt to circumvent domain parking restrictions by using selective HTTP redirects, or any other method, to send traffic from parked domains to websites other than the main website is strictly prohibited; if multiple domain names with separate content are required the appropriate account type must be used; and
 - (b) Clearpath does not allow the installation of the Client's own chat rooms on shared hosting accounts unless given express written permission by Clearpath; these types of services tend to be large system hogs and Clearpath cannot allow it as a default account option; and
 - (c) the Client is not permitted to run certain programs in the background on shared hosting servers; this tends to use a lot of system resources, and can impair service to other customers on that server. If the Client is unsure of whether or not their software falls into this category the Client should contact Clearpath; and
 - (d) Clearpath does not allow IRC or IRC bots to be operated on their servers. Any account found to be in violation of this provision will be immediately suspended and/or deactivated and no refund will be issued; and
 - (e) the Client must not sublease, sub-host or give away control of any portion of their internet hosting space and/or resources (including, but not limited to, e-mail accounts, space, bandwidth, ftp accounts or access to their self-managed consoles to third parties etc.) unless otherwise given permission in writing by Clearpath, as in the case of authorised reseller hosting accounts. Clearpath reserves the right to:
 - (i) request contact details of the Client's current website developer/webmaster in relation to the Client's hosting account; and
 - (ii) know who is accessing, and maintaining files on, Clearpath's servers.

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- (f) file hosting and file storage services of any type is prohibited on all shared hosting accounts managed by Clearpath, unless Clearpath has given their express written permission. The Client must not use the shared hosting account as a dedicated download or file repository for use by external websites unless arranged otherwise with Clearpath. Clearpath's shared hosting Services are strictly offered for websites hosted on Clearpath's servers only; this does not mean that the Client cannot have downloads on their website, this provision means that the Client cannot operate a website that specialises in downloads, and the Client may not use their shared hosting account as a storage repository for MP3s, games, videos, audio, music or other files not directly related to the Client's website.
- 12. Backups**
- 12.1. The Client is responsible for maintaining their own e-mail backups on their own systems, unless otherwise agreed; Clearpath does not provide any sort of compensation for lost or incomplete data in the event that backups do not function properly.
- 12.2. Clearpath will use their best endeavours to ensure complete and accurate backups of hosted data, but assume no responsibility for this duty. It is recommended by Clearpath that the Client always keeps a backup of their website whenever possible. Clearpath makes no guarantees about the availability of backups.
- 12.3. If the Client requires assistance in creating backups, please contact Clearpath or view Clearpath's support pages. The Client's hosting control panel provides a backup utility and the Client should periodically download a copy of their backed up files.
- 13. Unsolicited E-mail (SPAM)**
- 13.1. SPAMming, or the sending of unsolicited e-mail, from Clearpath's servers, or using a return e-mail address that is maintained on Clearpath's servers, is strictly prohibited. Using SPAM to advertise a website hosted on Clearpath's network is not only illegal under Australian Federal law, but also constitutes as a violation of this provision. If the Client's account is found to have been sending SPAM, whether the Client is aware, or not aware, of the SPAM activity, Clearpath reserves the right to limit or terminate the e-mail Services on the Client's account at any time and without prior notification.
- 14. Server Abuse**
- 14.1. Any attempts to undermine or cause harm to Clearpath's servers, or a customer of Clearpath, is strictly prohibited. Clearpath reserve the right to seek compensation for loss of business and damage done to their servers by the Client, or dedicated server lessee.
- 14.2. It shall be the Client's responsibility to ensure the security and confidentiality of their account and must not allow any unauthorised use of such by any third party. The Client will be liable for any infringement of these terms and conditions in respect of the Client's account, irrespective of whether such infringement is by the Client or any authorised or unauthorised third party.
- 15. Risk and Limitation of Liability**
- 15.1. The Client acknowledges and agrees that Clearpath shall not be held responsible or liable for:
- (a) any loss, corruption, or deletion of files or data (including, but not limited to software programmes) resulting from illegal hacking or Services provided by Clearpath. Whilst Clearpath will endeavour to restore files or data (at the Client's cost), it is the sole responsibility of the Client to back-up any data as per clause 7.1(a). The Client accepts full responsibility for the Client's software and data and Clearpath is not required to advise or remind the Client of appropriate backup procedures;
- (b) loss or damage caused by any component failure, notwithstanding any rights the Client has under the CCA, or the Client's software or hardware caused by any 'updates' provided for that software;
- (c) any unlicensed software, data loss or problems arising caused by the user or software.
- 15.2. If during the provision of the Services Clearpath is required to perform a backup of any data to its server as it sees fit in order to repair computers/devices such information data will be held for a maximum of thirty (30) days. The Client must inform Clearpath within thirty (30) days (commencing from the repair date) if any data is missing so that Clearpath can attempt to restore the missing data. Whilst Clearpath will take all possible precaution to protect the Client's data on Clearpath servers it may be required in some circumstances to view personal data in order to test a successful data recovery or data restore procedure. Clearpath will treat such information as confidential and shall not disclose any or part thereof of said information, unless it falls under the umbrella as detailed in clause 15.5. After thirty (30) days Clearpath will delete the data and Clearpath accepts no liability for deletion of files should the Client fail to comply with this clause.
- 15.3. Clearpath's directors, agents, or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of Services by Clearpath to the Client.
- 15.4. The Client agrees to defend, hold harmless and indemnify Clearpath for any and all claims, causes of action, damages, demands, fines, liabilities and penalties arising out of the Client's breach of any warranty made by the Client pursuant to this Contract. The Client further agrees to defend, hold harmless and indemnify Clearpath for any and all claims, causes of action, damages, demands, fines, liabilities and penalties arising out of the Client's negligent or reckless acts or omissions arising out of this Contract.
- 15.5. The Client acknowledges that it is the policy of Clearpath to report all findings of illegal material (including, but not limited to, images and software) to the relevant authorities.
- 15.6. Public Access:**
- (a) The Client understands that by placing information on the Web Site, such information may be accessible to all internet users. Clearpath does not (unless expressly requested by the Client) limit or restrict access to such information, nor protect such information from copyright infringement or other wrongful activity. The Client assumes full responsibility for their use of the Services, and it is the Client's sole responsibility to evaluate the accuracy, completeness and usefulness or all opinions, advice, services, and other information, and the quality and merchantability of all Services provided by Clearpath, or on the internet generally.
- 16. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)**
- 16.1. The Client must inspect Clearpath's Services on completion (or Goods on delivery) and must within seven (7) days notify Clearpath in writing of any evident defect, error or omission in the Services provided (including Clearpath's workmanship) or of any other failure by Clearpath to comply with the description of, or quotation for, the Services which Clearpath was to provide. The Client must notify any other alleged defect in Clearpath's Services as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Clearpath to review the Services that were provided.
- 16.2. Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("**Non-Excluded Guarantees**").
- 16.3. Clearpath acknowledge that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Clearpath makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. Clearpath's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5. If the Client is a consumer within the meaning of the CCA, Clearpath's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6. If Clearpath is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then Clearpath may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.
- 16.7. If the Client is not a consumer within the meaning of the CCA, Clearpath's liability for any defective Services is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Clearpath at Clearpath's sole discretion;
- (b) limited to any warranty to which Clearpath is entitled, if Clearpath did not manufacture the Goods;
- (c) otherwise negated absolutely.
- 16.8. Subject to this clause 16, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.1; and
- (b) Clearpath has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Client's cost; and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 16.9. Notwithstanding clauses 16.1 to 16.7 but subject to the CCA, Clearpath shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store the Goods;
- (b) the Client using the Goods for any purpose other than that for which they were designed;
- (c) the Client continuing to use any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) interference with the Goods by the Client or any third party without Clearpath's prior approval;
- (e) the Client failing to follow any instructions or guidelines provided by Clearpath;
- (f) fair wear and tear, any accident, or act of God.
- 16.10. Clearpath may in its absolute discretion accept non-defective Goods for return in which case Clearpath may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 16.11. Notwithstanding anything contained in this clause if Clearpath is required by a law to accept a return then Clearpath will only accept a return on the conditions imposed by that law.
- 17. Title**
- 17.1. The Client acknowledges and agrees that, until ownership of the Goods passes to the Client in accordance with clause 5.9:
- (a) the Client is only a bailee of the Goods and must return the Goods to Clearpath on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Clearpath and must pay to Clearpath the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Clearpath and must pay or deliver the proceeds to Clearpath on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Clearpath and must sell, dispose of or return the resulting product to Clearpath as it so directs.
- (e) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Clearpath.
- (f) Clearpath may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Client.
- 17.2. If the Client fails to return the Goods, or refuses to allow Clearpath to recover the Goods, the Client irrevocably authorises Clearpath (as the invitee of the Client) to enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated, or Clearpath believes the Goods are kept, and take/recover possession of the Goods, without being responsible for any damage thereby caused. Furthermore, provided Clearpath acts with reasonable care, the Client must reimburse Clearpath for any loss and/or costs incurred thereby.
- 18. Intellectual Property**
- 18.1. The Client warrants that all designs or instructions to Clearpath will not cause Clearpath to infringe any patent, registered design or trademark in the execution of the Client's order. Furthermore, the Client agrees to indemnify, defend, and hold Clearpath harmless from all loss incurred or suffered by Clearpath arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's intellectual property rights by the Client during the use of the Services.
- 18.2. Any coding and other supplied code (if any) remains the intellectual property of Clearpath. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.
- 18.3. Where Clearpath has provided software (and associated documentation) and/or for any of Clearpath's source code, Clearpath retains ownership thereof, but grants the Client a non-exclusive and non-transferable licence for its use (solely in relation to the operation of the Client's own business). The Client will use any third-party software and/or source code supplied by Clearpath, and identified as such, strictly in terms of the licence (or any other conditions imposed by Clearpath) under which it is supplied. The Client further agrees that they shall not without Clearpath's prior written consent:
- (a) copy the software and/or source code; or
- (b) allow any third party to have access to the software and/or source code; or
- (c) where Clearpath's phone configuration details are used such details are confidential and access to such is strictly prohibited unless the Client is to (upon written advice) carry out a factory reset for the phone system to be configured again from inception; or
- (d) alter, modify, tamper with, or reverse engineer the software and/or source code; or
- (e) combine the Software and/or source code with any other software and/or item, etc.
- 18.4. Subject to Australian copyright laws (and/or any other applicable copyright laws) and the conditions therein, the Client agrees that they shall not in any way sell, reproduce, adapt, distribute, transmit, publish, or create derivative works from, any part of the software (if supplied by Clearpath) without Clearpath's prior consent in writing.
- 18.5. The Client hereby authorises Clearpath to utilise images of the Services created by Clearpath in advertising, marketing, or competition material by Clearpath.
- 19. Cancellation and Termination**
- 19.1. Either party may, without liability, cancel these terms and conditions or cancel provision of the Services:
- (a) if there is no Contract term specified, at any time by giving thirty (30) days' notice to the other party;
- (b) if a Contract term is specified, at any time after the end of the Contract term by giving thirty (30) days' notice to the other party;
- (c) failure to give notice of intention to cancel at least thirty (30) days prior to the expiration date of the Contract term, the Contract term shall automatically renew on a monthly basis, unless cancelled by way of the Client providing Clearpath with thirty (30) days' notice.
- 19.2. Clearpath may, in addition to their right to cancel under clause 19.1:
- (a) do so at any time:
- (i) prior to the commencement of the Services, by giving notice to the Client, in the event Clearpath determine it is not technically, commercially or operationally feasible to provide the Services to the Client;
- (ii) in the event the Client materially breaches these terms and conditions, and such breach is not capable of remedy.
- 19.3. Should the Client, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this agreement will be terminated by Clearpath (at their sole discretion) and all Services completed, but not billed or paid, will be payable in full within seven (7) days from the date of the submitted invoice.
- 19.4. In the event of the premature termination of this Contract (including by notification from the Client, (at least thirty (30) days prior to the expiration date of the Contract term), or as a result of Default, but excluding any breach or termination of this Contract by Clearpath):
- (a) the Client shall be responsible for the immediate payment of the following sums:
- (i) all monies due and payable up to the date of termination, noting applicable rates may change if the Fixed Term Contract is shorter than that noted in the Quotation; and
- (ii) all other sums owing by the Client under this Contract (or any other Contract with the Client) as a result of the Default and termination of this Contract, including consequential damages for the loss of bargain and all loss, costs, charges and expenses incurred by Clearpath in connection with (and resulting from) the premature termination of this Contract, which shall be calculated at a minimum of sixty percent (60%) of the remainder of the Price under this Contract where a Fixed Term applies (to cover such costs as handsets etc.); and
- (iii) Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, or change of mind will definitely not be accepted once an order has been placed.
- 20. Personal Property Securities Act 2009 ("PPSA")**
- 20.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 20.2. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Goods previously provided, or that will be provided in the future, by Clearpath to the Client;
- (b) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to Clearpath for Services – that have previously been provided and that will be provided in the future by Clearpath to the Client.
- 20.3. The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Clearpath may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 20.3(a)(i) or 20.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Clearpath for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Clearpath;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of Clearpath.
- 20.4. Clearpath and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 20.5. The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 20.6. The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 20.7. Unless otherwise agreed to in writing by Clearpath, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 20.8. The Client must unconditionally ratify any actions taken by Clearpath under clauses 20.2 to 20.5.
- 20.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 21. Security and Charge**
- 21.1. In consideration of Clearpath agreeing to provide the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 21.2. The Client indemnifies Clearpath from and against all Clearpath's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Clearpath's rights under this clause.
- 21.3. The Client irrevocably appoints Clearpath and each director of Clearpath as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 21 including, but not limited to, signing any document on the Client's behalf.
- 22. Default and Consequences of Default**
- 22.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Clearpath's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2. If the Client owes Clearpath any money the Client shall indemnify Clearpath from and against all costs and disbursements incurred by Clearpath in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Clearpath's Contract default fees, and bank dishonour fees).
- 22.3. Further to any other rights or remedies Clearpath may have under this Contract, if the Client has made payment to Clearpath by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Clearpath under this clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 22.4. Without prejudice to any other remedies Clearpath may have, if at any time the Client is in breach of any obligation (including those relating to payment and/or where the Client fails to cooperate with Clearpath or hinders Clearpath's ability to provide the Services hereunder) under these terms and conditions Clearpath may suspend the provision of Services to the Client or terminate this Contract. Clearpath will not be liable to the Client for any loss or damage the Client suffers because Clearpath has exercised its rights under this clause.
- 22.5. Without prejudice to any other remedies Clearpath may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Clearpath may, at their sole discretion (without being liable to the Client for any loss or damage the Client suffers because Clearpath has exercised its rights under this clause):
- (a) suspend or terminate this agreement and/or any of the Services without notice or refund;
- (b) make an additional charge to the Client; or
- (c) block access to any part of the Services (including but not limited to, restricting the public and/or Client's access to the website, withholding domain codes, passwords and Goods or removing the Web Site from the web entirely and/or supply of Services in respect any phone system).
- 22.6. Without prejudice to Clearpath's other remedies at law Clearpath shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Clearpath shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Clearpath becomes overdue, or in Clearpath's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by Clearpath;
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 23. Privacy Act 1988**
- 23.1. The Client agrees for Clearpath to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Clearpath.

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- 23.2. The Client agrees that Clearpath may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 23.3. The Client consents to Clearpath being given a consumer credit report to collect overdue payment on commercial credit.
- 23.4. The Client agrees that personal credit information provided may be used and retained by Clearpath for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 23.5. Clearpath may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 23.6. The information given to the CRB may include:
- (a) personal information as outlined in 23.1 above;
 - (b) name of the credit provider and that Clearpath is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Clearpath has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Clearpath, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 23.7. The Client shall have the right to request (by e-mail) from Clearpath:
- (a) a copy of the information about the Client retained by Clearpath and the right to request that Clearpath correct any incorrect information; and
 - (b) that Clearpath does not disclose any personal information about the Client for the purpose of direct marketing.
- 23.8. Clearpath will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 23.9. The Client can make a privacy complaint by contacting Clearpath via e-mail. Clearpath will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 24. General**
- 24.1. Any notice to be given by either party to the other may be sent by either e-mail or recorded delivery to the most recent e-mail address or address notified to the other party, and if sent by e-mail shall (unless the contrary is proved) be deemed to be received on the day it was sent or if sent by recorded delivery shall be deemed to be served two (2) days following the date of posting.
- 24.2. The Client acknowledges that they have relied on their own judgment to evaluate the suitability of the Services for the purpose for which they require them. The Client must not rely on any statement, representation or promise made by Clearpath that is not expressly set out in this Contract.
- 24.3. The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.4. Subject to clause 16, Clearpath shall be under no liability whatsoever to the Client for any expenses, claims, costs (including but not limited to legal fees and commissions), damages suffered or incurred by Clearpath, or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Clearpath of these terms and conditions, caused by any failure by the Client to comply with their obligations under this Contract, or that arise from any claim relating to the Services by any person that the Client authorises to use the Services, or where due to server downtime or programming errors (alternatively Clearpath's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 24.5. These terms and conditions and any Contract to which they apply shall be governed by the laws of Queensland, the state in which Clearpath has its principal place of business, and are subject to the jurisdiction of the Kingaroy Courts in Queensland.
- 24.6. This Contract does not create any rights in any third parties, except assigns, successors and heirs expressly permitted hereunder.
- 24.7. Clearpath may license or sub-contract all or any part of its rights and obligations without the Client's consent, and:
- (a) Clearpath does not warrant the accuracy or quality of the Sub-contractor's work or warrant that any recommendations of the Sub-contractor are appropriate or adequate or are fit for their purpose or that they are not given negligently; and
 - (b) the Client shall not make any demand on Clearpath or commence any legal proceedings against Clearpath. Clearpath shall have no liability, whether in negligence or otherwise, to the Client in relation to any Services performed by the Sub-contractor;
 - (c) Client agrees and understands that they have no authority to give any instruction to any of Clearpath Sub-contractors without the authority of Clearpath.
- 24.8. The Client agrees that Clearpath may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Clearpath to provide Goods to the Client.
- 24.9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.10. Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.