

Customer Agreement Terms

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Customer Agreement Terms

PARTIES

Visionflex Pty Ltd ACN 600 815 021 of Unit 1, 8 Prosperity Parade Warriewood, NSW 2102 Australia (**Visionflex**);

and

The Customer specified in the Quotation (**Customer**).

BACKGROUND

- (A) Visionflex has developed certain Hardware and Software Products which, among other things, allows medical professionals to virtually diagnose patients, using integrated peripheral medical devices and a medically designed video conferencing platform.
- (B) The Customer wishes to use the Hardware and/or Software Products in its business operations.
- (C) Visionflex has agreed to provide the Hardware, Software Products, and other related services to the Customer on the terms and conditions set out in the Agreement.

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Agreement means an agreement for the supply of Products created under an executed Quotation, incorporating these Customer Agreement Terms.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Authorised User means an employee, agent or contractor of the Customer who has completed Training in accordance with the Agreement and who is authorised by the Customer to use the Hardware and Software.

Business Day means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales, Australia.

Commencement Date means the commencement date specified in the Quotation.

Confidential Information means any information of whatever kind disclosed or revealed by a party to the other party under or in relation to the Agreement that is by its nature confidential, is designated by the disclosing party as confidential, or which the receiving party knows or reasonably ought to know is confidential, including:

(a) where Visionflex is the disclosing party, any part of the Products and Visionflex Intellectual Property that are not otherwise publicly available; and

(b) where the Customer is the disclosing party, any Customer Data,

but does not include information that:

(c) is published or has otherwise entered the public domain without a breach of the Agreement;

(d) is obtained from a third party who has no obligation of confidentiality to the disclosing party; or

(e) is independently developed or obtained without breach of the Agreement.

Customer Agreement Terms means the terms and conditions set out in this document including any schedules.

Customer Data means the data and other information that the Customer or its Authorised Users upload to, input or process through the Hardware and Software Products.

Documentation means the prevailing documentation and information made available by Visionflex to the Customer (whether in electronic or physical form and as updated by Visionflex from time to time) in connection with the Hardware and/or the Software, including (without limitation) that which describes the function, integration methods and instructions for installation and/or use of the Hardware and/or Software Products.

EULA means Visionflex's end user licence agreement for the Software Products - [accessible here](#).

Feedback means all suggestions, comments, opinions, code, input, ideas, reports, information, know-how or other feedback provided by the Customer or its Authorised Users (whether in oral, electronic or written form) to Visionflex related to the Hardware and/or Software Products.

Fees means the Software Fees, the Hardware Fees and other charges payable by the Customer to Visionflex for the Products as specified in the Quotation.

Force Majeure means an event or cause beyond the reasonable control of the party claiming force majeure, including (without limitation):

(a) hacker attack, penetration or attack of computer virus, destruction, breakdown or impossibility of use of computer system;

(b) act of God, lightning, storm, flood, fire, earthquake or explosion, adverse weather conditions;

(c) strike, lock out or other labour difficulty;

(d) act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic, or terrorism;

(e) the effect of any applicable Laws of any government or other component authority, coming into effect after the Commencement Date; and

(f) embargo, or a power or water shortage.

Hardware means the telehealth hardware set out in the Quotation.

Hardware Fees means the fees payable by the Customer to Visionflex for the Hardware as specified in the Quotation.

Industry Best Practice means the degree of skill, care, prudence and foresight reasonably expected of a skilled and experienced supplier of information technology services providing services similar to the Software Products.

Initial Term means 1 year unless specified otherwise in the Quotation.

Insolvency Event means where a party:

- (a) has an order made or resolution passed for its winding up, liquidation or dissolution;
- (b) has a receiver, manager, controller, administrator, liquidator or similar officer appointed over any of its assets or business;
- (c) has the holder of an encumbrance take possession of any property of that party;
- (d) has a writ of execution levied against it or its property;
- (e) is unable or ceases to pay its debts as they fall due;
- (f) makes any composition, arrangements or general assignment with any creditor;
- (g) is or is deemed bankrupt or insolvent;
- (h) enters into liquidation;
- (i) ceases or threatens to cease carrying on business; or
- (j) anything occurs under the law of the jurisdiction in which a party is incorporated which has a substantially similar effect to any of the events described in this paragraphs (a) to (i) above.

Intellectual Property Rights means all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future, including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off, and rights to use, and protect the confidentiality of, confidential information, whether registered or unregistered, and includes the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration.

Law includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law of any relevant jurisdiction, and prudential standards, requirements and approvals (including conditions) of any relevant governmental agency that have the force of law.

Leased Hardware means any leased hardware or other physical equipment or items provided by Visionflex to the Customer from time to time, including all software loaded on to, embedded in or included with such equipment.

On Premises Software means the ProEx clinical virtual care software that facilitates, among other things, the connection of hardware peripheral devices or any other software product specified in the Quotation.

Personal Information has the meaning given to that term in the Privacy Laws.

Privacy Laws means the *Privacy Act 1988* (Cth), the Australian Privacy Principles set out in Schedule 1 to the Privacy Act, and applicable State and Territory legislation relating to health records and health information.

Products means all goods and services procured by a Customer from Visionflex under a Quotation from time to time, including:

- (a) Hardware;
- (b) Software Products;
- (c) Support Services;
- (d) Training Services; and/or
- (e) such other goods and services agreed by the parties from time to time.

Quotation means a quotation for the supply of Products provided by Visionflex and signed by the Customer as contemplated under clause 4.

Renewal Term means the renewal term set out in the Quotation (if any).

SaaS Software means the Vision clinical virtual care software platform that delivers health services and medical expertise to remote patients via an internet-connected device.

Service Levels means the service levels set out in Schedule 1 (Support Services).

Services means the Software Products, Support Services and Training Services.

Software means any software supplied by Visionflex to the Customer from time to time in connection with the Agreement, whether on or in any of the Hardware or provided separately for use with the Hardware or on a stand-alone basis, and whether in object code, source code, reconfigurable binary or any other form, and includes any backup or other copies, and any Software Updates, modifications, enhancements and extensions.

Software Fees means the fees payable by the Customer to Visionflex for the Software Products as specified in the Quotation.

Software Products means the SaaS Software and the On Premises Software.

Software Updates means enhancements to existing versions of Software made generally available at no charge by Visionflex to the Customer, and Software releases made generally available by Visionflex to resolve known issues with existing versions of Software.

Support Services means the support services provided or otherwise made available by Visionflex to the Customer as set out in Schedule 1 (Support Services).

Term means the Initial Term and any Renewal Term.

Training Services means the training services provided or otherwise made available by Visionflex to the Customer as set out in Schedule 2 (Training Services).

Visionflex Intellectual Property means all of Visionflex's present and future Intellectual Property Rights in the Products, Documentation and Visionflex Confidential Information (including know how and trade secrets).

1.2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (a) **(headings)** headings are inserted for convenience only and do not affect interpretation of this Agreement;
- (b) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (c) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (d) **(singular)** the singular includes the plural and vice-versa;
- (e) **(gender)** a reference to any gender includes all genders;
- (f) **(rules of construction)** neither this Agreement nor any part of this Agreement is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (g) **(legislation)** a reference to any legislation, regulation, legislative instrument or code, or provision of legislation, regulation, legislative instrument or code, includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (h) **(currency)** a reference to \$ is to Australian currency;
- (i) **(inclusive language)** the use of specific examples and/or the words 'include', 'such as', 'particularly' and 'for example' are not to be interpreted as words of limitation; and
- (j) **(replacement bodies)** a reference to a body (including an institute, association or authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.

2. PRECEDENCE

In the event and to the extent of any inconsistency between two or more documents which form part of the Agreement, those documents will be interpreted in the following order of precedence:

- (a) the Quotation; and
- (b) these Customer Agreement Terms.

3. TERM

- (a) The Agreement commences on the Commencement Date and, unless terminated earlier in accordance with its terms, continues for the Initial Term and any Renewal Term.
- (b) If Visionflex continues to provide the Customer with Products after the expiry of the Term, and the Customer agrees to the continuation of those Products, then the Agreement will continue to apply until either party elects to end the Agreement by providing at least 90 days' written notice to the other party.

4. QUOTATION

Each Quotation for the supply of Products electronically signed by the Customer will constitute a separate and binding agreement between the parties:

- (a) incorporating these Customer Agreement Terms; and
- (b) which will commence on the Commencement Date and continue for the Term.

5. PRODUCTS

Visionflex will provide the Products specified in an executed Quotation to the Customer on the terms set out in the Quotation and these Customer Agreement Terms.

6. SERVICES

6.1 Licence grant

- (a) Subject to clause 6.1(b), the Customer's compliance with the Agreement and payment of all amounts due under the Agreement, Visionflex hereby grants to the Customer a limited, non-exclusive, non-transferable, non-sublicensable licence during the Term to permit its Authorised Users to access and use the Software Products within Australia solely for the lawful operation of the Customer's business.
- (b) The licence granted by Visionflex to the Customer under clause 6.1(a) is contingent on the Customer accepting all terms and conditions imposed by a third party in connection with any third-party product or service incorporated into the Software Products.

6.2 Beta Services

- (a) From time to time, Visionflex may invite the Customer to access and test certain beta services at no additional charge, including pilot versions of the Software Products (**Beta Services**).
- (b) The Customer may accept or decline to access and use the Beta Services in its sole discretion.
- (c) The Customer acknowledges and agrees that:
 - (i) the Beta Services are provided "as is" without any warranties or guarantees;
 - (ii) the Beta Services are for evaluation purposes only and are not considered Software Products under the Agreement;

- (iii) the Beta Services are not supported and may be subject to additional terms;
- (iv) Visionflex may discontinue the Beta Services at any time in its sole discretion and may never make the Beta Services generally available; and
- (v) in no circumstances will Visionflex have any liability to the Customer or any Authorised User for any loss, damage, cost or expense arising out of or in connection with the Customer's or any of its Authorised Users access to or use of the Beta Services.

6.3 Support Services

- (a) Subject to clause 6.3(b), Visionflex will provide the Customer with Support Services in accordance with in Schedule 1 (Support Services).
- (b) The Customer acknowledges that Visionflex is not required to provide the Support Services where Software errors arise from the Customer's or its Authorised User's (as applicable):
 - (i) incorrect use of the Software;
 - (ii) failure to comply with the obligations set out in the Customer Agreement Terms;
 - (iii) use of any third-party equipment, hardware, software or communication lines; or
 - (iv) failure to ensure that the Customer's network and systems comply with the relevant specifications set out in the Documentation or otherwise notified by Visionflex in writing from time to time.
- (c) The Customer must designate up to two authorised representatives who will be the primary point of contact in relation to all support requests issued by the Customer to Visionflex. Any changes to the authorised representatives must be promptly communicated to Visionflex in writing.

7. TITLE AND RISK

7.1 Risk in the Hardware and On-Premises Software

Risk of loss or damage to:

- (a) the Hardware passes to the Customer at the time of dispatch by Visionflex; and
- (b) the On-Premises Software passes to the Customer when it is downloaded.

7.2 Title to the Hardware

Title to the Hardware remains with Visionflex until the Customer has paid for the Hardware in full in cleared funds. If Customer fails to pay for the Hardware in accordance with the Agreement, Visionflex may enter the premises at which the Hardware is kept and retake possession of the Hardware without notice at any time prior to the Customer paying for such Hardware in full in cleared funds.

8. SOFTWARE

8.1 Software Updates

- (a) Visionflex may, from time to time and in its sole discretion, make Software Updates available to the Customer.
- (b) Any Software Updates made by Visionflex and provided to the Customer will form part of the Software.
- (c) Where the Customer fails to include, implement or otherwise accept any Software Update recommended or made available by Visionflex, the warranties, representations, guarantees and undertakings provided by Visionflex in respect of the Software Products under the Agreement will not apply to any such Software Products.

8.2 Customer warranties and acknowledgements

- (a) The Customer warrants that it will not, and will not directly or indirectly permit its Authorised Users or any third party to:
 - (i) use, copy, reproduce, duplicate, adapt, modify or exploit the Software other than in accordance with the Agreement;
 - (ii) alter, modify, merge, translate, adapt, reverse engineer, disassemble or decompile the whole or any part of the Software;
 - (iii) rent, lease, loan, lend, sell, reuse, distribute, license, sublicense, market or commercialise any part of the Software or use the Software as part of a facility management, timesharing, or service bureau arrangement or for software or application development;
 - (iv) carry out any activities on the Software which may compromise the stability, integrity or security of the Software;
 - (v) use the Software for personal, family, household, or other non-business purposes;
 - (vi) threaten, institute, invalidate, challenge or put in dispute Visionflex's ownership, use or title to the Visionflex Intellectual Property;
 - (vii) infringe Visionflex's Intellectual Property Rights;
 - (viii) remove, change or obscure any copyright, trademark or other proprietary notices or labels in or on the Hardware, Software or the Documentation; or
 - (ix) use or refer to the Hardware, Software or the Documentation in developing any competitive good or service.
- (b) The Customer warrants that it will, and will procure that its Authorised Users, take all reasonable steps to maintain the confidentiality of the Software and the Documentation and to prevent any unauthorised access or use.

- (c) The Customer acknowledges and agrees that the Software is not error-free and the existence of any error in any of the Software will not constitute a breach by Visionflex of the terms of the Agreement.

9. LEASED HARDWARE

- (a) If a Quotation provides that Visionflex leases and/or licenses Hardware to the Customer, then the terms of this clause 9 will apply.
- (b) In respect of any Leased Hardware, the Customer acknowledges and agrees that:
 - (i) the Leased Hardware remains the sole property of Visionflex and the Customer is only a lessee or bailee of the Leased Hardware;
 - (ii) the Customer is permitted to use the Leased Hardware for the purpose of carrying out remote medical consultations with the Visionflex Software and other reasonable computer-based activities during the Term (**Approved Purpose**);
 - (iii) the Customer must not part with possession of any Leased Hardware except to Visionflex.
 - (iv) to the extent possible under the terms of the Customer's occupation of the premises where the Leased Hardware is located, the Customer must allow Visionflex, its licensors and/or their nominees to (and, where applicable, must ensure that the landlord allows Visionflex, its licensors and/or their nominees to) access such premises on reasonable notice to install, inspect, test, modify, maintain, repair, change or recover any of the Leased Hardware;
 - (v) Visionflex may remove the Leased Hardware (or any part of it) at any time on reasonable notice to the Customer;
 - (vi) the Customer must ensure that the Leased Hardware (and any part of it) is not handled, used, maintained, tampered or interfered with by any person, except Visionflex;
 - (vii) the Customer must indemnify Visionflex and its licensors for any losses or damage to any of the Leased Hardware (excluding fair wear and tear);
 - (viii) if requested by Visionflex, the Customer must insure the Leased Hardware for an amount and on such terms reasonably required by Visionflex;
 - (ix) the Customer must return the Leased Hardware to such address nominated by Visionflex within fourteen (14) days of the expiry or termination (for any reason) of this Agreement;
 - (x) unless expressly specified otherwise in the Approved Purpose, the Customer must not do, or cause or permit to be done, any of the following without the prior written consent of Visionflex:
 - (A) show, disclose or otherwise share the Leased Hardware (or any part of it) with any person not authorised by Visionflex in writing;
 - (B) assign, sub-bail, sub-licence, sell, lend or otherwise transfer all or any part of the Leased Hardware to any person;

- (C) copy, modify, change, decompile, reverse engineer, create derivative works of, or otherwise interfere with the Leased Hardware (or any part of it);
- (D) charge or encumber any of the Leased Hardware or allow the Leased Hardware (or any part of it) to become the subject of any charge, lien or encumbrance.

10. SERVICE LEVELS

10.1 Service Levels

- (a) Visionflex's performance of the Services will be measured by the use of Service Levels.
- (b) In supplying Services to which Service Levels apply, Visionflex will
use best endeavours to meet or exceed the Service Levels.

10.2 Failure to meet Service Levels

If Visionex fails to perform the Services to meet any applicable Service Level, Visionflex will allocate such resources as may be necessary to remedy the failure.

11. TRAINING

11.1 Condition precedent

No Authorised User is permitted to access and/or use the Hardware or the Software Products until that Authorised User has first attended, actively participated in, and successfully completed the training delivered by Visionflex under the Training Services (**Training**).

11.2 Training updates

- (a) Visionflex will notify the Customer of any changes to the training requirements that are reasonably necessary to ensure an Authorised User can safely and correctly operate the Hardware and the Software Products and to ensure ongoing compliance with any applicable Laws.
- (b) Upon receiving notice under clause 11.2(a), the Customer must procure that each Authorised User promptly undertakes any additional training reasonably required by Visionflex.

11.3 Training register

- (a) The Customer is responsible for maintaining an accurate and current training register that records the identity of each Authorised User who has successfully completed the Training and any additional or updated training required under clause 11.2, and the date on which such training was completed.
- (b) Visionflex may review and audit the Training Register at any time on 5 Business Days' written notice to the Customer to verify that all Authorised Users have successfully completed the necessary training set out in this Agreement.

12. CUSTOMER OBLIGATIONS AND ACKNOWLEDGEMENTS

12.1 Use of the Products

The Customer must, and must procure that its Authorised Users (as applicable):

- (a) comply with all applicable Laws and regulations pertaining to the Customer's access to and use of the Products, including but not limited to applicable Privacy Laws;
- (b) use the Hardware and Software Products only in accordance with the Documentation and the terms of the Agreement;
- (c) only use the Hardware in accordance with any manufacturer terms and conditions provided to it by Visionflex;
- (d) ensure that all Authorised Users to whom the Customer has provided access to the Hardware and/or Software are made aware of and comply with the terms of the EULA and the Agreement;
- (e) prevent unauthorised access to the Hardware and the Software Products and promptly notify Visionflex of any unauthorised access or use; and
- (f) keep confidential all user ID(s) and passwords provided by or on behalf of Visionflex to the Customer to access the Software Products.

12.2 Use of the Software Products

- (a) The Customer agrees that it is solely responsible for ensuring the Customer has reliable and secure access to the internet so as to be able to use the Software Products.
- (b) Without limiting Visionflex's other rights or remedies under this Agreement or at Law, Visionflex may suspend the Customer's access to the Software Products without incurring any liability if the Customer breaches this clause 12.2(b).

12.3 Provision of services using Hardware and/or Software Products

- (a) The Customer acknowledges and agrees that it is solely responsible and liable to Visionflex for:
 - (i) all use of the Hardware and/or Software Products (or any part of them) by any of its Authorised Users; and
 - (ii) all services provided by the Customer or any Authorised User to any third party using the Hardware and/or Software Products (or any part of them).
- (b) The Customer must indemnify and keep indemnified Visionflex for any damage, loss, cost or expense (including solicitor costs on a full indemnity basis) suffered or incurred by Visionflex in connection with any claim brought by a third party which arises out of the Customer's or any Authorised Users' use of the Hardware and/or Software Products (or any part of them) to provide services to the third party.

13. FEES AND PAYMENT

13.1 Payment

- (a) Unless specified otherwise in the Quotation, the Software Fees are payable by the Customer to Visionflex:
 - (i) annually in advance; and
 - (ii) within 14 days of Visionflex's invoice.
- (b) Unless specified otherwise in a Quotation, the Hardware Fees are payable in full within 14 days of Visionflex's invoice.
- (c) Visionflex may invoice the Customer as follows:
 - (i) in relation to the Initial Term, on the Commencement Date; and
 - (ii) in relation to any Renewal Term, 14 days prior to the commencement of the Renewal Term.
- (d) Each payment made by the Customer to Visionflex under the Agreement must be made in Australian dollars in the manner set out in the Quotation unless otherwise agreed by Visionflex in writing.
- (e) All amounts payable by the Customer to Visionflex under the Agreement are to be paid without set-off and free and clear of any bank charges, fees, duties or other transaction costs.

13.2 Failure to pay

If the Customer fails to pay any amount due under the Agreement by the due date, without prejudice to Visionflex's other rights under this Agreement, Visionflex may in its sole discretion:

- (a) suspend the licence granted to the Customer under clause 6.1 and/or the performance of all or any of Visionflex's obligations under the Agreement until the date payment is received from the Customer in full;
- (b) immediately terminate the Agreement by written notice to the Customer; or
- (c) charge the Customer interest on the unpaid amount at a rate equal to 3 per annum above the base lending rate of the Reserve Bank of Australia accruing daily from the first Business Day following the due date for payment specified in the relevant invoice.

14. GST

- (a) In this clause 14, a term or expression starting with a capital letter which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and associated acts and legislative instruments (collectively, the **GST Law**) will have the same meaning as in the GST Law, unless the context otherwise requires.
- (b) The parties agree that:

- (i) all Consideration payable under this Agreement is exclusive of GST unless otherwise indicated;
- (ii) if GST is or becomes payable on a Supply made under or in connection with this Agreement, an additional amount is payable by the party providing Consideration for the Supply equal to the amount of GST payable on that Supply as calculated by the party making the Supply in accordance with the GST Law;
- (iii) the additional amount payable under 14(b)(ii) is payable at the same time and in the same manner as the Consideration for the Supply;
 - (A) unless otherwise stated in this Agreement, when determining the amount of a payment under this Agreement;
 - (1) if a party is entitled under this Agreement to be reimbursed or indemnified by the other party for an expense, claim, loss, liability or cost incurred in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed, and
 - (2) if a party sets off an amount under this Agreement, the same principles apply to calculate the amount to be set-off, as if the amount had been paid in accordance with clause 14(b)(iii)(A)(1); and
- (iv) if an Adjustment Event occurs, the parties must do all things necessary to make sure that the Adjustment Event may be appropriately recognised, including the issue of an Adjustment Note.

15. INTELLECTUAL PROPERTY

- (a) The parties acknowledge and agree that:
 - (i) the Visionflex Intellectual Property is the sole and exclusive property of Visionflex or its licensors (as applicable) and the Agreement does not confer on the Customer any proprietary right, ownership, or title to any of the Visionflex Intellectual Property;
 - (ii) Visionflex will own all rights, including all Intellectual Property Rights, in any features or functionality of the Hardware and/or Software Products which are the result of Feedback provided to Visionflex by the Customer or its Authorised Users, and Customer agrees that Visionflex is free to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer or otherwise grant rights in such features or functionality in any form and any medium (whether now known or later developed), without credit or compensation to the Customer or any Authorised User; and
 - (iii) all Customer Data remains the sole and exclusive property of the Customer and does not form part of the Visionflex Intellectual Property.
- (b) The Customer must, and must procure that its Authorised Users (as applicable):
 - (i) notify Visionflex as soon as practicable of any infringement or suspected infringement of Visionflex Intellectual Property by the Customer or its Authorised Users; and

- (ii) not carry out any activities on the Hardware and/or Software Products which may compromise Visionflex's ownership of the Visionflex Intellectual Property.
- (c) The Customer agrees to do all things and sign all documents required by Visionflex to give effect to this clause 15 or to otherwise enable Visionflex to protect the Visionflex Intellectual Property.

16. PRIVACY

- (a) Each party must comply with all applicable Privacy Laws in the collection, use, storage and handling of any Personal Information obtained from the other party in connection with the Services.
- (b) The Customer warrants that it is permitted to provide Visionflex with any Personal Information provided to Visionflex in connection with the Agreement and that that Customer has made all disclosures and obtained all consents required under the Privacy Laws.
- (c) Visionflex may use and disclose to its service providers anonymous data about the Customer's and its Authorised Users use of the Products for the purpose of helping Visionflex to improve the Products. Any such disclosure will not include details of the Customer's identity or the identity of any Authorised User unless prior consent has been provided for such disclosure.

17. CONFIDENTIALITY

- (a) Subject to clause 17(b), each party (the **Receiving Party**) must only use the Confidential Information of the other party (the **Disclosing Party**) for the sole purpose of performing its obligations or exercising its rights under this Agreement and must keep the Disclosing Party's Confidential Information confidential.
- (b) Despite cause 17(a), the Receiving Party may disclose the Confidential Information of the Disclosing Party:
 - (i) to those employees, agents or contractors of the Receiving Party reasonably requiring it on a need-to-know basis, provided that the Receiving Party ensures that those employees, agents or contractors keep such Confidential Information confidential;
 - (ii) to the extent required by Law; or
 - (iii) with the prior written consent of the Disclosing Party.
- (c) The Customer authorises Visionflex to the fact the Customer is a customer of Visionflex and a user of the Services on the Visionflex website and in any marketing and promotional materials. The Customer may at any time revoke the authorisation granted to Visionflex under this clause by written notice.

18. THIRD PARTY PRODUCTS AND SERVICES

The Software Products may include, refer to, or permit the Customer to access, products and services provided by third parties. The Customer acknowledges and agrees that:

- (a) such third-party products and services are not provided by Visionflex, and the Customer accesses and uses the third-party products or services subject to that third party's terms and conditions; and

- (b) to the maximum extent permitted by Law, Visionflex is not liable in connection with any such third-party products or services.

19. LIMITED WARRANTIES AND DISCLAIMERS

19.1 Warranties

- (a) Visionflex warrants that:
 - (i) the Software Products will not infringe the Intellectual Property Rights of any third party; and
 - (ii) subject to clause 19.1(c), the Hardware is of acceptable quality and is fit for its intended purpose, and free from material defects.
- (b) To the fullest extent permitted by applicable Law, Visionflex does not warrant or make any representation that:
 - (i) the Customer's use of the Software Products will be uninterrupted or error-free; or
 - (ii) the Hardware or Software Products and/or the information obtained by the Customer through Hardware and Software Products will meet the Customer's requirements or produce particular outcomes or results.
- (c) To the maximum extent permitted by applicable Law, any warranties given by Visionflex in connection with the Hardware and/or Software Products (as applicable) will be voided where:
 - (i) the Hardware or Software Products have been mishandled, altered, damaged or rendered inoperable due to:
 - (A) the wilful or negligent act or omission of the Customer or its Authorised Users;
 - (B) any accident;
 - (C) an event of Force Majeure; or
 - (D) operation of the Hardware Software Products by the Customer or its Authorised Users other than as specified in the Documentation;
 - (ii) services have been performed by a person or entity other than Visionflex or a Visionflex authorised service representative on or in connection with the Hardware or Software Products, without the prior written consent of Visionflex;
 - (iii) a power surge or failure has occurred or the Visionflex was subjected to fire suppression discharge;
 - (iv) the Customer has failed to provide a suitable environment for the Hardware;
 - (v) an issue arises from the cleaning, refinishing or cosmetic modification of the Hardware, or any electrical or site preparation in connection with the installation of the Hardware;

- (vi) products or components including, without limitation, software or hardware, have been procured from a source not authorised by Visionflex and combined with the Hardware or Software Products;
- (vii) the Customer combines the Hardware or Software Products with third party software, hardware or other elements not under Visionflex's sole control or otherwise authorised by Visionflex in writing; or
- (viii) the Software Products are modified other than in accordance with the Agreement.

19.2 Warranty exclusions

- (a) Subject to clause 19.2(b), any representation, warranty, condition, guarantee, indemnity or undertaking that would be implied in, or affect, the Agreement by legislation, common law, tort, equity, or by course of performance, dealing, trade, custom or usage is excluded to the maximum extent permitted by Law.
- (b) Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred by the Australian Consumer Law or any other applicable Law that cannot be excluded, restricted or modified by agreement.

19.3 Liability under the Australian Consumer Law

If Visionflex is liable to the Customer in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the Australian Consumer Law that cannot be excluded, Visionflex's total liability to the Customer for that failure is limited to:

- (a) in respect of Hardware, replacing the Hardware, supplying equivalent hardware, or reimbursing the Customer for the cost of replacing the Hardware or of acquiring equivalent hardware;
- (b) in respect of the Software Products, the resupply of the Software Products or the payment of the cost of resupply; and
- (c) in respect of the Support Services and Training Services, the resupply of the Support Services and/or Training Services (as applicable) or the payment of the cost of resupply.

20. LIABILITY

20.1 Exclusion of consequential loss

Neither party will be liable to the other party whether in tort, (including negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise (even if Visionflex knew or should have known there was a possibility the Customer could suffer or incur such loss or damage) for:

- (a) any special, indirect, incidental, consequential, or punitive damages or loss;
- (b) any loss of profits, loss of business, loss of chargeable time, loss of anticipated savings, depletion of goodwill or similar losses however caused; or
- (c) loss of use or loss of or damage to data/information input or uploaded by the Customer to the SaaS Software.

20.2 Cap on liability

- (a) To the full extent permitted by applicable Laws, notwithstanding any other term of the Agreement, in no event will Visionflex's liability to the Customer arising out of or in connection with the Products or the Agreement (whether in contract, tort or otherwise) exceed the Software Fees actually paid by the Customer to Visionflex in the first twelve (12) month period under the Agreement or the twelve (12) month period preceding the Customer's claim, whichever is the greater.
- (b) Clause 20.2(a) does not limit Visionflex's liability to the Customer or its Authorised Personnel in respect of direct loss arising out of:
 - (i) damages for bodily injury (including death), or damage to real property or tangible personal property caused by Visionflex or its personnel; or
 - (ii) infringement of any third-party Intellectual Property Rights.

21. VISIONFLEX INDEMNITY

- (a) Subject to clause 20.1 and clause 21(b), Visionflex indemnifies the Customer and its Authorised Users (**Customer Indemnified Parties**) against any liability, loss, damage, cost and expense suffered by the Customer Indemnified Parties arising out of a claim made or brought against the Customer Indemnified Parties by any third party that the Customer Indemnified Parties' use of the Hardware or Software Products in accordance with the Agreement infringes the Intellectual Property Rights of any third party, provided that the Customer:
 - (i) promptly gives Visionflex notice of the claim;
 - (ii) gives Visionflex control of the claim and any negotiations for settlement at Visionflex's sole expense; and
 - (iii) at Visionflex's request and expense, gives Visionflex all reasonable information and assistance in connection with its handling of the claim.
- (b) The indemnity in clause 21(a) does not extend to any claim:
 - (i) arising from the combination of the Hardware or Software Products with other elements not under Visionflex's sole control;
 - (ii) arising from any part of the Hardware or Software Products that the Customer, any Authorised User, or a third party modifies, or that incorporates specifications, designs or formulas that the Customer provides; or
 - (iii) that arises as a result of the Customer's or its Authorised Users continued use of the Hardware or Software Products after the Customer has been notified that the Hardware or Software Products (as applicable) infringes the rights of a third party.
- (c) If the Customer is prevented from using the Hardware or Software Products because of any actual or threatened infringement of third-party Intellectual Property Rights, then at Visionflex's sole option and expense, Visionflex will promptly either:

- (i) obtain for the Customer the right to continue using the affected part of the Hardware and/or Software Products; or
- (ii) replace or modify the affected part of the Hardware and/or Software Products so that it becomes non-infringing.
- (d) If having used all reasonable commercial efforts Visionflex cannot achieve either of the circumstances in 21(c) on reasonable terms:
 - (i) Visionflex will promptly refund to the Customer a pro-rata portion of the Fees paid in advance by the Customer to Visionflex based on the Customer's use of the Hardware and/or Software Products (as applicable) during the Term; and
 - (ii) the Agreement including the Customer's right to use the Hardware and Software Products will automatically terminate.

22. CUSTOMER INDEMNITY

Subject to clause 19 and 20, the Customer indemnifies Visionflex for any liability, loss, damage, cost and expense suffered by Visionflex arising out of or in connection with a breach by the Customer of clauses 8.2, 12.1 or 15 of this Agreement.

23. TERMINATION

23.1 Mutual termination

Either party may immediately terminate the Agreement by notice in writing to the other party:

- (a) if an event of Force Majeure subsists for a continuous period of more than 90 days;
- (b) if the other party is the subject of an Insolvency Event or ceases, or indicates that it is about to cease, carrying on its business, subject to any law suspending or preventing the exercise of a termination right in the relevant circumstances; or
- (c) if the other party breaches a term of the Agreement which in the reasonable opinion of the terminating party:
 - (i) is not capable of being remedied; or
 - (ii) is capable of being remedied but is not remedied within [30] days after receiving written notice of the breach.

23.2 Effect of termination

- (a) On expiry or earlier termination of the Agreement for any reason:
 - (i) the Customer must pay to Visionflex all unpaid Fees for any Products provided to the Customer up to and including the date of termination, whether or not an invoice has been issued for those Products as at the date of termination, and any other money owed by the Customer to Visionflex under the Agreement as at the date of termination;
 - (ii) the licences granted to the Customer under the Agreement will cease immediately;

- (iii) the Customer must cease using the Software Products and all Intellectual Property Rights relating to and subsisting in the Software Products; and
 - (iv) the Customer must deliver to Visionflex all of the Visionflex Intellectual Property and other things containing the Visionflex Intellectual Property that came into the Customer's possession or control during the Term.
- (b) If the Agreement is terminated by the Customer in accordance with clause 23.1, Visionflex will provide the Customer with a pro-rata refund of any Fees paid in advance by the Customer to Visionflex for Products not supplied by Visionflex as at the date of termination.
- (c) On expiry or termination of the Agreement, Visionflex will either (at its option):
 - (i) provide to the Customer; or
 - (ii) make available for the Customer's download for a period of 30 days following termination, the Customer Data that is stored at that time within the Software. After having done so, Visionflex is entitled to delete any Customer Data.
- (d) Expiry or termination of the Agreement will not affect any claim which a party may have against the other in respect of the period before termination of the Agreement or other accrued right or remedy of a party.

24. ACCESS AND ASSISTANCE

The Customer must at all times during the Term do all things necessary to give effect to the Agreement and must provide Visionflex's personnel with such:

- (a) safe access to the Hardware and the On-Premises Software as Visionflex may require to perform its obligations under the Agreement; and
- (b) assistance as Visionflex may reasonably request from time to time.

25. FORCE MAJEURE

25.1 Event of Force Majeure

- (a) If a party is prevented in whole or in part from carrying out its obligations under this Agreement (other than an obligation to pay money) due to Force Majeure, it will notify the other party accordingly. The notice will:
 - (i) specify the obligations it cannot perform;
 - (ii) describe the event of Force Majeure; and
 - (iii) estimate the time during which the event of Force Majeure will continue (if practicable).
- (b) Following this notice and while the event of Force Majeure continues, the obligations of both parties which cannot reasonably be performed (other than an obligation to pay money) because of the event of Force Majeure will be suspended until they are no longer affected by the event of Force Majeure.

25.2 Mitigation and remedy of Force Majeure

A party who serves a notice under clause 25.1 will:

- (a) take reasonable steps to mitigate any loss suffered by either party as a result of the inability of that party to carry out its obligations under this Agreement; and
- (b) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.

25.3 Liability

The parties acknowledge and agree that if a party is prevented or delayed (in whole or in part) from performing its obligations under this Agreement (other than an obligation to pay money) due to a Force Majeure event, that party will not be in breach of the Agreement or liable for any such failure or delay in performance.

26. DISPUTE RESOLUTION

- (a) If a dispute arises out of or relating to the Agreement (**Dispute**), either party may give written notice to the other party specifying the nature and particulars of the Dispute (**Dispute Notice**).
- (b) Within 5 Business Days of the date of delivery of the Dispute Notice, each party must nominate an authorised representative and procure those representatives to use reasonable endeavours to resolve the dispute by good faith negotiations on a without prejudice basis.
- (c) Failing agreement under clause 26(b), either party may refer the Dispute to mediation to be conducted in accordance with the Resolution Institute Mediation Rules by a mediator who is independent of the parties and appointed by agreement of the parties. If the parties are unable to agree upon a suitable mediator within 5 Business Days of being notified of the intention to refer the dispute to mediation, a suitable mediator may be determined by the Chair of the Resolution Institute or the Chair's designated representative at the request of either party. The costs of mediation must be borne equally by the parties.
- (d) Neither party may commence any legal proceedings with respect to a Dispute unless it has first complied with the provisions of this clause 26 except to seek urgent equitable or interlocutory relief.
- (e) Pending the resolution of any Dispute, the parties will continue to perform their obligations under the Agreement (excluding those parts that are the subject of a Dispute) without prejudice to their respective rights and remedies.

27. NOTICES

- (a) Any formal notice or other communication given under this Agreement must be in writing and may be given by one party to the other by pre-paid post, hand delivery or email at the address set out in the applicable Quotation (or such other address as may be subsequently notified by the other party in accordance with this clause.)
- (b) Any notice or other communication provided under clause 27(a) will be deemed to have been received:

- (i) if served by pre-paid domestic post, three Business Days after being posted;
- (ii) if served by pre-paid international post, five Business Days after being posted;
- (iii) if served by hand, when delivered by hand; and
- (iv) if sent by email, when the email is confirmed to have been sent from the sender's server,

provided that if the notice or other communication is deemed under this clause to have been received on a day this is not a Business Day or after 5.00pm in the place of intended receipt, then it will be deemed to have been received at 9.00am on the next Business Day.

28. PPSA

28.1 Definitions

For the purposes of this clause 28:

- (a) "PPSA" means the *Personal Property Securities Act 2009* (Cth); and
- (b) words and phrases used in this clause 28 that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context otherwise indicates.

28.2 PPSA further assurances

If Visionflex determines that the Agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, the Customer will, at its own expense, do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Visionflex asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (b) enabling Visionflex to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and
- (c) enabling Visionflex to exercise rights in connection with the security interest.

28.3 Waiver of receipt of notices

The Customer waives each right to receive any notice under the PPSA (including notice of a verification statement) that can be waived.

29. GENERAL

29.1 Subcontracting

Visionflex may subcontract any of its obligations arising under the Agreement to any third party without the Customer's prior written consent, provided that if Visionflex subcontracts any of its obligations, Visionflex remains responsible and liable for the performance of the subcontracted obligations.

29.2 Variation

No variation of the Agreement will be legally binding on either party unless in writing and signed by both parties.

29.3 Severance

If the whole or any part of the Agreement is invalid, unenforceable, illegal, void or voidable for any reason, the Agreement will be construed and be binding on the parties as if the invalid, unenforceable, illegal, void or voidable part had been deleted from the Agreement or read down to the extent necessary to overcome the difficulty.

29.4 Waiver

A waiver by either party of any breach or a failure to enforce or to insist upon the observance of a condition of the Agreement will not be a waiver of any other or of any subsequent breach. A waiver must be in writing and signed by the party granting the waiver.

29.5 Relationship of the parties

The parties agree that Visionflex is engaged as an independent contractor and nothing in the Agreement is to be construed as constituting a partnership, employment relationship, agency relationship or joint venture between the parties.

29.6 Further assurances

Each party must, at its own expense, promptly do all things and execute all documents reasonably necessary to give effect to the Agreement and all transactions incidental to it and must use all reasonable endeavours to cause relevant third parties to do the same.

29.7 Assignment and novation

Visionflex may in its sole discretion assign or novate any of its rights and obligations under the Agreement. The Customer must not assign or transfer any of its rights or obligations under the Agreement without obtaining Visionflex's prior written consent (which may be given or withheld in Visionflex's absolute discretion).

29.8 Survival

Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement will remain in full force and effect, including but not limited to all clauses in the Agreement relating to payment, confidentiality, privacy, warranties, indemnities, limitations on liability, dispute resolution, and intellectual property.

29.9 Entire agreement

The Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties.

29.10 Governing law and jurisdiction

The Agreement is governed by and is to be construed in accordance with the laws of the State of New South Wales and the Commonwealth of Australia. Each of the parties irrevocably and unconditionally agree to submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia.

SCHEDULE 1

Support Services and Service Levels

1. DEFINITIONS

In this Schedule 1, unless the context otherwise requires:

Business Hours means 9AM to 5PM Australian Eastern Standard Time.

Critical Issue means any issue that significantly impacts the functionality of the Software Products, causing severe disruption to the Customer's operations.

Major Issue means any issue that affects the functionality of the Software Products but does not cause severe disruption to the Customer's operations.

Minor Issue means any issue that has a minimal impact on the functionality of the Software Products.

Response Time means the time elapsed from when a support request is received by Visionflex to the time when Visionflex begins addressing the issue.

2. SCOPE OF SUPPORT SERVICES

(a) Visionflex agrees to provide the following support services to the Customer:

- (i) telephone and email support: assistance with issues related to the Software Products on Business Days and during Business Hours.
- (ii) remote support: remote diagnosis and resolution of issues using appropriate software tools.
- (iii) Software updates and upgrades: provision of updates and upgrades to the Software as they become available.

(b) The support services do not include:

- (i) custom development or modification of the Software Products.
- (ii) support for issues caused by third-party products or services not provided by Visionflex.
- (iii) support for issues arising from misuse of or unauthorised modifications to the Software Products, or any negligent act or omission of the Customer or any of its Authorised Users by the Client.
- (iv) consulting services unless specifically agreed upon in writing.
- (v) installation or reinstallation of the Software Products due to changes in the Customer's environment or systems.

(c) Visionflex will prioritise support requests based on the severity of the issue and its impact on the Customer's operations.

3. SERVICE LEVELS

- (a) Visionflex will use commercially reasonable efforts to respond to support requests within the following timeframes on Business Days and during Business Hours:

Issue Type	Response Time
Critical Issue	4 hours
Major Issue	8 hours
Minor Issue	2 Business Days

- (b) Visionflex will use commercially reasonable efforts to resolve issues notified by the Customer to Visionflex within the following timeframes:

Issue Type	Resolution/Workaround Time
Critical Issue	2 Business Days
Major Issue	5 Business Days
Minor Issue	10 Business Days

SCHEDULE 2

Training Services

1. Live virtual staff training sessions
2. Virtual set up training and support resources on the Visionflex support portal