Ntainers.co

NTAINERS.CO PTY LTD **ABN 20 610 926 102**

TERMS OF BUSINESS

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Ntainers.co Pty Ltd ABN 20 610 926 102 (**Ntainers.co**) provides software development solutions, cloud interface hosting and consultancy services. These Terms of Business govern all services provided by Ntainers.co to the Customer.

1 DEFINITIONS

1.1 The following definitions apply in this document:

(a) **ABN** means Australian Business Number.

(b) **Agreement** means this Terms of Business.

(c) **Agreement Date** means the date on which the Customer accepts the terms of these Terms of Business.

(d) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

(e) **Change Request** means a written notice from the Customer requesting a change to the Deliverables subject to the Scope, or any additional work not specified in a Scope or otherwise previously agreed to be provided by Ntainers.co.

(f) **Ntainers.co** means Ntainers.co Pty Ltd ABN 20 610 926 102.

(g) **Ntainers.co IP** means all Intellectual Property of Ntainers.co incorporated in the Work.

(h) **Commencement Date** means the earlier of:

    i   The date stated as the Commencement Date in an Scope, which in default shall be the date the Scope is accepted by the Customer; or

    ii   The date when Ntainers.co first provides Services for the Customer.

(i) **Confidential Information** has the meaning set out in clause 21.1 but does not include information that Ntainers.co can establish:

    i   Was in the public domain at the time it was given to Ntainers.co;

    ii   Became part of the public domain, without Ntainers.co's involvement in any way, after being given to Ntainers.co;

    iii   Was in Ntainers.co's possession when it was given to the Ntainers.co, without having been acquired (directly or indirectly) from the Customer; or

    iv   Was received from another person who had the unrestricted legal right to disclose that information free from any confidentiality obligation.

(j) **Customer** means the Customer as identified on any Scope.

(k)   **Customer Data** means images, information, documents or other data that is entered into the Solution by the Customer or that forms part of Customer IP.

(l)   **Customer IP** means all Intellectual Property of the Customer contained in any information provided to Ntainers.co (including via a Solution) in the course of providing the Work.

(m)   **Customer's System** means any software system used by the Customer that Ntainers.co develops a Solution to integrate with.

(n)   **Deliverable** means any deliverable supplied by Ntainers.co subject to this the Scope, and includes a Solution.

(o)   **Fee** means a fee charged by Ntainers.co for the provision of any Service.

(p)   **Fixed Fee Rate** means any set Fee that applies to a particular set of Work.

(q)   **GST** has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

(r)   **Intellectual Property** means any intellectual property rights, whether registrable or not, including all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property of a party in any part of the world, and including applications for the registration of any such rights and any improvements, enhancements or modifications to such registrations.

(s)   **Intellectual Property Rights** means, for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property, applications for the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.

(t)   **New IP** means Any Intellectual Property generated by Ntainers.co for the Customer in the process of providing the Work, but excludes any updates or further development of the Proprietary Technology.

(u)   **Privacy Act** means the Privacy Act 1988 (Cth).

(v)   **Privacy Policy** means Ntainers.co's privacy policy as updated from time-to-time, which can be found at www.Ntainers.coconnect.co.

(w)   **Proprietary Technology** means the Intellectual Property Rights Ntainers.co holds in the underlying code, or other software product that Ntainers.co may make available to the Customer as part of a Solution that forms part of Ntainers.co IP, and includes any updates or further development made during the provision of Work.

(x)   **Scope** means any scope, project specification, statement of work, proposal or quote prepared by Ntainers.co, and accepted by the Customer in writing.

(y)   **Services** means the services provided by Ntainers.co subject to this Agreement.

(z)   **Solution** means a software solution developed by Ntainers.co for the Customer as part of the Services.

(aa)   **Special Conditions** means any particular arrangements made between the parties that are governed by this Agreement and/or change any term or condition of this Agreement.

(bb)   **Subscription Fee** means a Fee charged by Ntainers.co to the Customer on a periodical basis.

(cc)   **Tax Invoice** has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

(dd)   **Third-Party IP** means any rights which are owned by a third-party that are attached to any materials included in the Work, which may be attached to (without limitation) software, code, web-design, photographs; written works; visual and artistic design; video and film; and audio recordings.

(ee)   **Third-Party System** means any software system used by a third-party that Ntainers.co develops a Solution to integrate with the Customer's System.

(ff)   **User** means the Customer or any other user authorised by the Customer to access or use the Solution.

(gg)   **Work** means the Services and Deliverables subject to a Scope.

2   AGREEMENT AND COMMENCEMENT

2.1   The relationship between the parties shall be governed by the terms of this Agreement until terminated under the provisions of this Agreement.

2.2   This Agreement commences on the Commencement Date. Where the Commencement Date pre-dates the Agreement Date the Parties expressly acknowledge that the terms and conditions of this Agreement, to the extent reasonably possible, commenced on the Commencement Date, and this Agreement is the formalisation of an existing undocumented agreement between the Parties.

2.3   In order to accept the terms of a Scope the Customer must accept the terms of this Agreement. If the Customer does not accept the terms of this Agreement, it must not accept a Scope.

3   SERVICES

3.1   Ntainers.co shall provide the following services (**Services**) to the Customer:

(a)   Development and licensing of a Solution for the Customer that may (without limitation):

   i   Integrate a Customer's System with a Third Party System;

   ii   Integrate one or more Customer's Systems with each other; or

   iii   Provide any other features or functionality in accordance with a Scope;

(b)   Host one or more Solutions on Ntainers.co's servers;

(c)   Consultancy services; and

(d)   Such other services as may be agreed between the parties from time-to-time.

3.2   Any project specification, proposal or quote prepared by Ntainers.co and accepted by the Customer (whether orally or in writing) sets out the scope (**Scope**) of the Services and Deliverables the Customer has requested (**Work**). The Work will not extend beyond that scope unless Ntainers.co and the Customer agree in writing.

3.3   Ntainers.co will provide the following Work to the Customer:

(a)   The Services; and

(b)   Such other services and Deliverables as described in a Scope as may be agreed from time to time.

4   TECHNOLOGY LICENSING

4.1   Proprietary Technology.

Where Ntainers.co provides the Customer with Ntainers.co's Proprietary Technology as part of any Solution or Work, and that proprietary technology is required to be used by the Customer in the products or services it offers to its customer, unless agreed otherwise in writing, Ntainers.co agrees to:

(a)   Grant the Customer and its successors and assigns a worldwide licence to use that Proprietary Technology within the products or services offered to the Customer's customers, on the terms of any Scope, except that:

i   The Customer must not sub-licence or in any way commercialise the proprietary technology; and

ii   The Customer must not reverse engineer, decompile or otherwise purport to copy Ntainers.co's proprietary technology.

5   SOLUTION

5.1   The Customer agrees and accepts that each Solution:

(a)   Shall only be installed, accessed and maintained by Ntainers.co on servers operated by Ntainers.co;

(b)   Shall be managed and supported exclusively by Ntainers.co and that no 'back-end' access to the Solution is available to the Customer unless expressly agreed in writing.

5.2   The Customer is responsible for providing Ntainers.co with access through any firewall on the Customer's System in order to implement a Solution.

5.3   The Customer shall remain responsible for the uninterrupted operation and security of each Customer's System that the Solution integrates with. Ntainers.co shall not be responsible if:

(a)   The Solution becomes unavailable or ceases to work as a result of the failure of the Customer's System or the Customer's computer hardware including as a result of the Customer's operation of such hardware and software; or

(b)   The security of the Solution or the Customer Data is compromised via the Customer's Systems or hardware through no fault of Ntainers.co.

5.4 As a hosted and managed service, Ntainers.co reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter the Solution.

5.5 Ntainers.co shall not exercise its rights under clause 5.4 in a manner that would intentionally cause the Customer to lose access to the Customer Data or fundamentally decrease the utility of the Solution to the Customer, other than in accordance with the terms of this Agreement.

6 THIRD-PARTY SYSTEM INTEGRATION

6.1 Connection.

(a) The Customer may be able to use integrated features of the Solution by connecting the Solution with a Third-Party System.

(b) As part of the functionality of a Solution the Customer may connect the Customer's System with a Third-Party System by allowing Ntainers.co to access the Third-Party System in accordance with any agreement the Customer has with the relevant Third-Party.

(c) When connecting the Solution with a Third-Party System the Customer warrants that they are not in breach of any agreement that applies to the Customer's access to, or use of the Third-Party System.

6.2 Ongoing Availability.

(a) The Customer agrees that Customer access to the Solution may be unavailable if the Third-Party System becomes unavailable, and that the Customer may lose functionality or Customer Data that is shared between the Third-Party System and the Solution.

(b) The Customer may disconnect the connection between the Solution and the Third-Party System by providing Ntainers.co with 14 days' notice, to allow Ntainers.co to disconnect the Solution from the Third-Party System.

(c) Ntainers.co has no relationship with any Third-Party System provider and cannot guarantee the efficacy of any Third-Party System connection.

6.3 Data from Third-Party System.

Where the Customer connects the Solution to a Third-Party System, the Customer authorises Ntainers.co to access any Customer Data from that Third-Party System for the purposes of providing the Solution, Services or Deliverables.

7 USE

7.1 The Customer agrees that it shall only use the Solution for legal purposes and shall not use it to engage any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by Ntainers.co in its discretion.

8 AUTHORISED USERS

8.1 Ntainers.co accepts no liability for access to the Customer Data by Users authorised by the Customer or using login details of Users authorised by the Customer.

8.2   The Customer is solely responsible for the security of username(s) and password(s) for access to the Solution for each User the Customer grants access to the Solution.

8.3   The Customer is responsible for ensuring that Users authorised by the Customer comply with this Agreement in full and are liable for any breach of it.

9   THE CUSTOMER DATA

9.1   Ntainers.co obtains no right, title or interest in the Customer Data including any Intellectual Property found within it.

9.2   Ntainers.co accepts no liability for the content of the Customer Data.

9.3   The Customer is responsible for the accuracy, quality and legality of the Customer Data and the Customer's acquisition of it, and the Customers that create, access and/or use the Customer Data.

9.4   Ntainers.co will keep all the Customer Data (including Personal Information contained in the Customer Data) behind a firewall within the servers operated by Ntainers.co that is dedicated to storing the Personal Information contained in the Customer Data.

9.5   Some the Customer Data will be transmitted outside the firewall when connecting with a Third-Party System or Customer's System in order to provide the services afforded by the Solution. Ntainers.co cannot guarantee the security of Customer Data transmitted to or from a Customer's System or Third-Party System.

9.6   Despite clause 9.1, Ntainers.co shall be authorised to permanently delete the Customer Data on termination of this Agreement.

9.7   Ntainers.co shall not access, use, modify or otherwise deal with the Customer Data except in accordance with this Agreement or where required by compulsion of law, or upon the Customer's authority.

10   PRIVACY

10.1   Ntainers.co maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about the Customer and other customers.

10.2   The Privacy Policy does not apply to how the Customer handles the Customer Data. It is the Customer's responsibility to meet the obligations of the Privacy Act by implementing a Privacy Policy in accordance with Privacy Laws.

10.3   Ntainers.co makes no warranty as to the suitability of the Solution in regards to the Customer's privacy obligations at law or contract including under the Privacy Act, and it is the Customer's responsibility to determine whether the Solution is appropriate for the Customer's circumstances.

11   DATA

11.1   **Security.**   Ntainers.co takes the security of each Solution and the privacy of its Customers and Users very seriously. The Customer agrees that the Customer shall not do anything to prejudice the security or privacy of Ntainers.co's systems or the information on them.

11.2 **Transmission.** Ntainers.co shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to the Customer to ensure that any transmission standards meet the Customer's operating and legal requirements.

11.3 **Storage.** Data that is stored by Ntainers.co shall be stored according to accepted industry standards.

11.4 **Backup.** Ntainers.co shall perform backups of its entire systems in as reasonable manner at such times and intervals as is reasonable for its business purposes. Ntainers.co does not warrant that it is able to backup or recover specific the Customer Data from any period of time unless so stated in writing by Ntainers.co.

12 DISCLAIMER OF THIRD PARTY SERVICES & INFORMATION

12.1 The Customer acknowledges that each Solution is dependent on third-party services, including but not limited to:

(a) Telecommunications services;

(b) Third-Party Systems;

(c) Hosting services, including Microsoft Azure;

(d) Email services; and

(e) Analytics services.

12.2 Unless agreed otherwise, the Customer agrees that Ntainers.co shall not be responsible or liable in any way for:

(a) Interruptions to the availability of the Solution due to third-party services; or

(b) Information contained on any linked third party website.

13 ACCEPTANCE TESTING

13.1 If specified in the Scope, the Customer may assess the Services to determine if they were properly provided by Ntainers.co or to determine if they contain any defects.

13.2 The Customer may notify any defects or problems with the Services by providing Ntainers.co with written notice giving Ntainers.co a reasonable amount of time to rectify the alleged issued (which in default shall not be less than 10 business days). Ntainers.co shall rectify any bona fide defects specified in the written notice in a prompt and professional manner.

14 CHANGE REQUESTS

14.1 No Change Request from the Customer is valid until accepted in writing by Ntainers.co.

14.2 Unless agreed otherwise in writing, Ntainers.co's usual rates (as specified in the Scope or otherwise provided to the Customer) shall apply in respect of any Change Request undertaken by Ntainers.co.

15   RELATIONSHIP

15.1   Ntainers.co warrants that it is an independent service provider to the Customer and that it is not an employee or partner of the Customer in any way.

15.2   Ntainers.co will not:

(a)   Hold itself out as an agent of the Customer, except to the extent necessary to carry out the Work; or

(b)   Incur obligations or liabilities on behalf of the Customer unless the Customer provides written permission.

16   KEY OBLIGATIONS

16.1   Ntainers.co will:

(a)   Ensure that the Work is complete and provided in a timely manner and/or in accordance with any timeframes agreed by the parties;

(b)   Ensure that the Work is provided in accordance with the standards outlined in the Scope;

(c)   Establish and maintain clear channels of communication at all times with the Customer, and promptly answer any questions asked by the Customer;

(d)   Comply with all the relevant laws and industry standards in respect of providing the Work; and

(e)   Act in accordance with the Customer's reasonable directions while providing the Work.

17   THE CUSTOMER'S KEY OBLIGATIONS

17.1   The Customer will:

(a)   Ensure that Ntainers.co has access to all the:

i   Resources, personnel, electronic systems and premises required to provide the Work; and

ii   All facilities and materials and information reasonably requested by Ntainers.co to provide the Work;

(b)   Establish and maintain clear channels of communication at all times with Ntainers.co;

(c)   Promptly provide clear, complete and timely instructions and all necessary information and documents to enable Ntainers.co to provide the Work effectively.

(d)   The Customer must immediately advise Ntainers.co, if Ntainers.co have misunderstood the Customer or made incorrect assumptions.

(e)   Promptly provide Ntainers.co with a copy of all applicable policies, procedures, rules, regulations, standards of conduct and requirements relevant to the provision of the Services.

18   SUBCONTRACTING

18.1   Ntainers.co may engage such third-parties as are necessary to provide the Work without the Customer's approval.

18.2   Ntainers.co shall be responsible for ensuring that all third-party subcontractors comply with Ntainers.co's obligations under this Agreement including those of Confidentiality.

19   FEES & PAYMENT

19.1   Fees

(a)   Ntainers.co will charge the Customer such fees as specified in the Scope (**Fees**) which may include:

      i   A Fixed Fee Rate;

      ii   An upfront fee;

      iii   A Subscription Fee; and/or

      iv   Payment terms in accordance with a Scope.

(b)   Where a Fixed Fee Rate applies the Customer agrees:

      i   To pay the upfront fee for Ntainers.co's commitment to undertake the agreed Work;

      ii   The Fixed Rate Fee only covers work done within the Scope;

      iii   The Customer must provide instructions (and all required information and other documents) to Ntainers.co within the timeframe(s) specified in the Scope; and

      iv   The Fixed Fee Rate does not cover any work done outside of (i) to (iv) (inclusive) above.

(c)   Ntainers.co reserve the right to not undertake any work falling outside of the Scope without additional payment or an agreement by the Customer to pay Ntainers.co at its hourly rates. Ntainers.co will advise the Customer as soon as reasonably practicable where work falls outside of Scope and give the Customer an estimate of the additional costs/rates.

(d)   Where a Subscription Fee applies, the Customer agrees:

      i   To pay the Subscription Fee in advance, and at such periods as specified in the Scope, which in default shall be yearly; and

      ii   That the Customer cannot cancel the subscription within any minimum period stated in the Scope; and

        iii   Once the minimum subscription period has elapsed the Customer must provide not less than 30 days' notice to cancel its subscription.

(e)   Unless otherwise stated, fees are exclusive of GST, which is payable in addition at the prevailing rate.

19.2   Invoicing & Payment

(a)   Ntainers.co shall provide a Tax Invoice to the Customer for any paid Work provided.

(b)   The Customer agrees to pay any Tax Invoice promptly and within the stated timeframe, which in default shall be 7 Business Days from the date of the invoice. Payment shall be by electronic transfer into Ntainers.co's nominated bank account or by a credit card service provider unless otherwise agreed between the Parties.

19.3   Disputed Tax Invoice

(a)   Should the Customer dispute any charge on a Tax Invoice, the Customer must notify Ntainers.co of the disputed item within 5 business days of the date of the Tax Invoice.

(b)   The Customer must pay the amount of the Tax Invoice not in dispute within the stated timeframe.

(c)   Failure by the Customer to notify Ntainers.co of a disputed Tax Invoice within 10 business days shall be deemed acceptance by the Customer of the entire Tax Invoice.

19.4   Interest

Ntainers.co may charge interest at a rate of 10% per annum on overdue Tax Invoices.

19.5   Late Payment.

(a)   If the Customer does not pay the full Fees as required, Ntainers.co may suspend all Work.

(b)   If Fees are not brought out of arrears within 28 days of becoming overdue, Ntainers.co may cease providing the Work without notice and end this Agreement.

(c)   The Customer agrees that Ntainers.co shall not be responsible or liable in any way for:

        i   Interruptions to the availability of Work in the event of (a);

        ii   Loss of Customer IP in the event of (b).

20   INTELLECTUAL PROPERTY

20.1   Ntainers.co IP

(a)   The Customer acknowledges that Ntainers.co retains ownership of all of Ntainers.co IP.

(b)   Ntainers.co shall grant the Customer a licence to use, for the purposes of its day to day business, the Ntainers.co IP to the extent that it is contained within the Work in accordance with the Scope.

(c)   **Trademarks.** Ntainers.co has moral & registered rights in its trademarks and the Customer shall not copy, alter, use or otherwise deal in the marks without the prior written consent of Ntainers.co.

(d)   **Proprietary Information.** The Solution may use software and other proprietary systems and Intellectual Property for which Ntainers.co has appropriate authority to use, and the Customer agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The Customer warrants that it shall not infringe on any third-party rights through the use of the Solution.

(e)   **Solution.** The Customer agrees and accepts that each Solution is the Intellectual Property of Ntainers.co and the Customer further warrants that by using the Solution the Customer will not directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in the Solution or any documentation associated with it.

(f)   **Content.** All content (with the exception of the Customer Data) remains the Intellectual Property of Ntainers.co, including (without limitation) any source code, ideas, enhancements, feature requests, suggestions or other information provided by the Customer or any other party with respect to the Solution.

20.2   Customer IP

(a)   Ntainers.co acknowledges that the Customer retains ownership of all of Customer IP.

(b)   The Customer grants Ntainers.co a non–exclusive, perpetual, non–transferable, royalty free and worldwide licence to use the Customer IP to the extent that it is contained within the Work.

20.3   Third-Party IP

(a)   Ntainers.co shall grant to the Customer such rights as the owner of the Third-Party IP permits Ntainers.co to grant the Customer.

20.4   New IP

(a)   New IP is owned absolutely by the Ntainers.co and vests in the Ntainers.co immediately.

(b)   To the extent that the Customer may at any time acquire any right, title or interest in the New IP, the Customer, by this document, agrees to assign to Ntainers.co all such rights, title and interest in the New IP.

(c)   Unless otherwise agreed in writing by the parties, and notwithstanding any provision of this Agreement to the Contrary, Ntainers.co grants the Customer a non-exclusive, non-transferable, and worldwide licence to use, for the purposes of its day to day business, the New IP to the extent that it is contained within the Work in accordance with the Scope.

21   CONFIDENTIALITY

21.1   **Confidential Information** means any written or verbal information that:

(a)   is connected with the Customer and is obtained from the Customer or one of the Customer's representatives;

(b)   The Customer informs Ntainers.co that the Customer considers it confidential and/or proprietary; or

(c)   is personal information within the meaning of the *Privacy Act 1988* (Cth).

21.2   Ntainers.co will keep all Confidential Information in confidence on an ongoing basis in accordance with this Agreement.

21.3   The Confidentiality obligations owed under this Agreement shall survive termination of the Agreement.

21.4   Ntainers.co must not:

(a)   Use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Agreement; or

(b)   Disclose any of the Confidential Information except in accordance with clauses 21.5 or 21.6.

21.5   Ntainers.co may disclose Confidential Information to its personnel (including to third parties engaged by Ntainers.co to provide services in connection with the Work) if:

(a)   The disclosure is required to enable Ntainers.co to perform its obligations or to exercise its rights under this document; and

(b)   Prior to disclosure, Ntainers.co informs the person of Ntainers.co's obligations in relation to the Confidential Information under this document;

21.6   Subject to clause 21.7, Ntainers.co may disclose Confidential Information that Ntainers.co is required to disclose by law.

21.7   If Ntainers.co is required to make a disclosure under clause 21.6, Ntainers.co must:

(a)   To the extent possible, notify the Customer immediately after it anticipates that it may be required to disclose any of the Confidential Information; and

(b)   Only disclose Confidential Information to the extent necessary to comply.

21.8   The Customer and Ntainers.co must each assist the other to comply with its obligations under the *Privacy Act* 1988 (Cth) in relation to Confidential Information.

22   PRIVACY AND DIRECT MARKETING

22.1   Ntainers.co maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about individuals.

22.2   The Privacy Policy does not apply to how the Customer handles personal information. If necessary under the Privacy Act, it is the Customer's responsibility to meet the obligations of the Privacy Act by implementing a privacy policy in accordance with law.

22.3   Ntainers.co may collect personal information about the Customer and its representatives and employees in the course of acting for the Customer. This personal information will only be disclosed and used for the purposes of providing the Work, improving Ntainers.co's services and obtaining feedback, or otherwise in accordance with the Customer's instructions and the Privacy Policy.

22.4   Where the Customer provides Ntainers.co with the personal information of its customers, employees, contractors or other individuals, the Customer warrants that it is duly authorised to do so.

22.5   The Customer consents to Ntainers.co's use of the Customer's contact details to maintain an ongoing professional relationship with the Customer and any associated entity, including in order to provide updates, invitations and other communications Ntainers.co consider may interest the Customer.

22.6   The Customer may have rights under the *Privacy Act* 1988 (Cth) to obtain access to personal information Ntainers.co holds. The Customer may ask Ntainers.co not to send direct marketing materials by contacting Ntainers.co by email in accordance with the Privacy Policy.

23   DISPUTE RESOLUTION

23.1   If any dispute arises between the Customer and Ntainers.co in connection with this Agreement (**Dispute**), then either party may notify the other of the Dispute with a notice (**Dispute Notice**) which:

(a)   Includes or is accompanied by full and detailed particulars of the Dispute; and

(b)   Is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.

23.2   Within 10 Business Days after a Dispute Notice is given, a representative (with the authority to resolve the dispute) of the Customer and Ntainers.co must meet and seek to resolve the Dispute.

23.3   Subject to clause 23.4, a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.

23.4   Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

23.5   Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this document and any related agreements.

24   TERMINATION

24.1   This Agreement shall end when the Services and/or Deliverables have been completed by Ntainers.co, or at any time agreed by the parties in writing.

24.2   Without affecting any other rights or obligations of the parties, either party may terminate this Agreement by giving 30 days' written notice.

24.3   Where a party is in breach of this Agreement, the other party may provide the breaching party a notice to remedy the breach within a reasonable time, which shall not be less

than 10 business days. Should the breach remain unremedied then the other party may terminate this contract by written notice.

24.4 Should the Customer terminate this Agreement without cause, it shall remain liable to pay any Fees that it had agreed to pay Ntainers.co for all active and/or delivered Work.

25 MODIFICATION OF TERMS

25.1 The terms of this Agreement may be updated by Ntainers.co from time-to-time.

25.2 Where Ntainers.co modifies the terms, it will provide the Customer with 30 days' written notice, and the Customer will be required to accept the modified terms in order to continue using the Services.

25.3 If the Customer does not accept the modified terms, it must notify Ntainers.co and provide Ntainers.co 10 Business Days to confirm whether the version of the Agreement that previously applied shall continue to apply to the Customer. The Customer may only terminate this Agreement following notice of modification of terms if:

(a) Ntainers.co does not confirm that the earlier version of the terms of this Agreement shall continue to apply to the Customer within the 10 Business Day notice period; and

(b) The Customer has given 30 days' notice to terminate in accordance with clause 24.

26 ELECTRONIC COMMUNICATION, AMENDMENT & ASSIGNMENT

26.1 The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.

26.2 The Customer can direct notices, enquiries, complaints and so forth to Ntainers.co as set out in this Agreement. Ntainers.co will notify the Customer of a change of details from time-to-time.

26.3 Ntainers.co will send the Customer notices and other correspondence to the details that the Customer submits to Ntainers.co, or that the Customer notifies Ntainers.co of from time-to-time. It is the Customer's responsibility to update its contact details as they change.

26.4 A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.

26.5 Notices must be sent to the parties' most recent known contact details.

26.6 The Customer may not assign or otherwise create an interest in this Agreement.

26.7 Ntainers.co may assign or otherwise create an interest in its rights under this Agreement by giving written notice to the Customer.

26.8 Notices to Ntainers.co must be sent to:

Ntainers.co Pty Ltd
903/50 Clarence St,
Sydney
NSW 2000

sales@Ntainers.co

27 GENERAL

27.1 Special Conditions. The parties may agree to any Special Conditions to this Agreement in writing.

27.2 Prevalence. To the extent that the Scope is inconsistent with the terms of this Agreement, the terms of the Scope will prevail. To the extent that the Special Conditions are inconsistent with any other term of this Agreement, the Special Conditions will prevail.

27.3 Disclaimer. Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.

27.4 Relationship. The relationship of the parties to this Agreement does not form a joint venture or partnership.

27.5 Waiver. No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.

27.6 Further Assurances. Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.

27.7 Governing Law. This Agreement is governed by the laws of the state of New South Wales, Australia. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.

27.8 Severability. Any clause of this Agreement, which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.

27.9 Interpretation. Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:

(a) The singular includes the plural and the opposite also applies.

(b) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

(c) A reference to a clause refers to clauses in this Agreement.

(d) A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.

(e) Mentioning anything after *includes*, *including*, or similar expressions, does not limit anything else that might be included.

(f) A reference to a *party* to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).

(g) A reference to a *person*, *corporation*, *trust*, *partnership*, *unincorporated body* or other entity includes any of them.

(h)   A reference to *information* is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

(i)   A reference to *dollars* or *$* is to an amount in Australian currency unless otherwise explicitly specified.

END TERMS OF BUSINESS