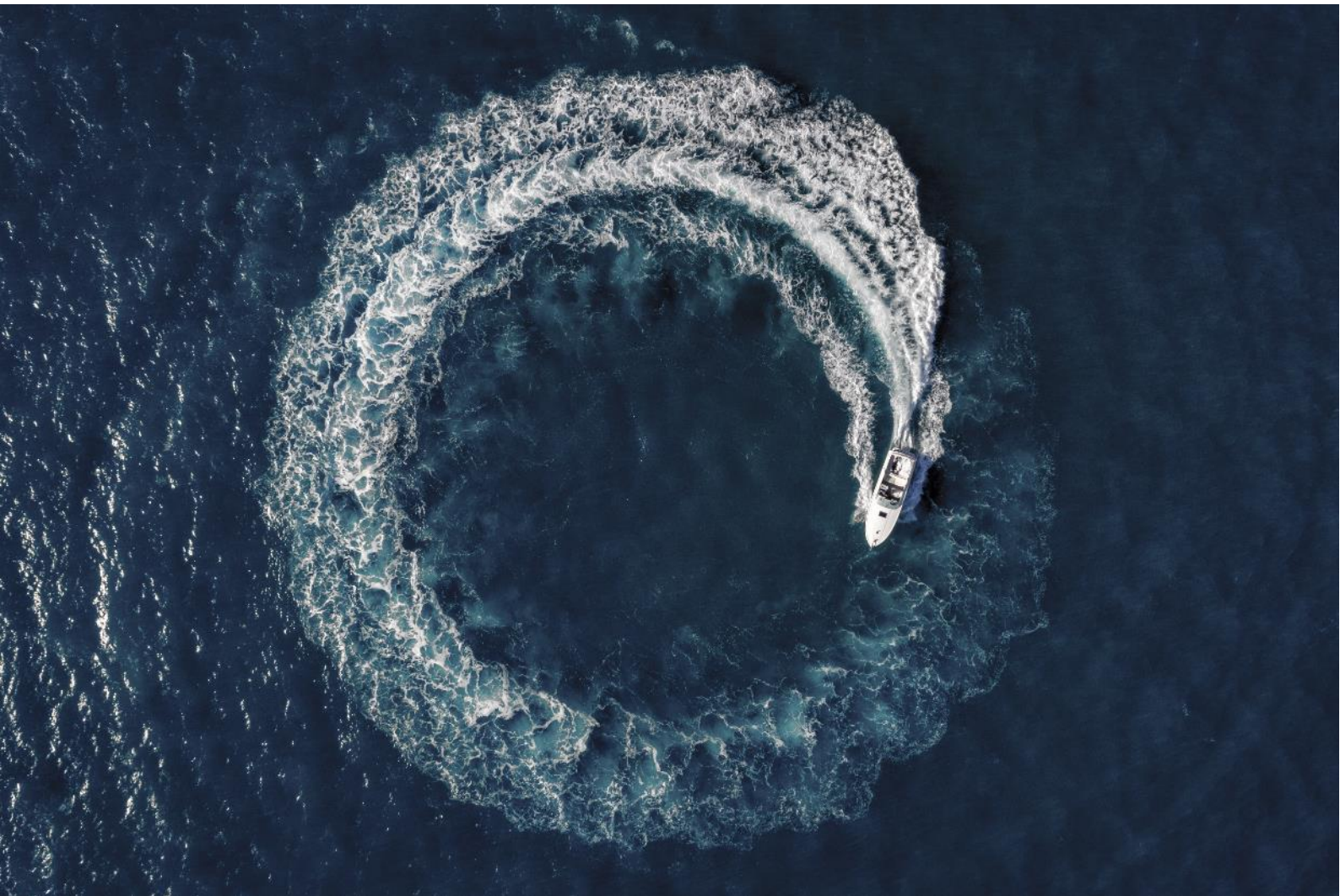




Terms of Trade

Terms of Trade



Author: Stewart Bairstow
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TERMS AND CONDITIONS

1.1 DEFINITIONS

In this **Agreement**, unless the context clearly indicates otherwise:

Address for Service means, in respect of a party, the address for service of notices to that party as specified in the Statement of Work;

Agreement means when a customer engages Rapid Circle under these terms and conditions and executes a Statement of Work setting out the Services that Rapid Circle will provide.

Business Day means any day that financial institutions are open for business in the place where an act or thing is to be done in respect of this Agreement;

Confidential Information means the information (whether technical or commercial) of either party or in either party's control, which is by its nature confidential, including information relating to Customer's specification or requirements for the Services, details concerning the personnel, policies, and business strategies of a party, third party information which is in a party's control and is of a confidential nature and the terms of any Statement of Work, but excluding information that is or becomes public knowledge, other than by breach of this Agreement, or was in the possession of a party before it was disclosed to it by the other party;

Consolidated Entity has the meaning given in section 9 of the Corporations Act 2001 (Cth);

Customer IP means any and all Intellectual Property in Materials owned or controlled by Customer before the commencement of this Agreement and during the Term;

Customer Premises means those premises set out in the Statement of Work at which Customer requests Rapid Circle to supply or procure the provision of the Services;

Data includes Personal Information as defined in the Privacy Act 1988 (Cth);

Discloser means a party who discloses or otherwise makes available its Confidential Information to the other party pursuant to this Agreement;

Documentation means any materials provided by Rapid Circle to Customer in relation to the Services whether in physical or electronic form and whether delivered to Customer or otherwise accessed by Customer;

Electronic Message means electronic mail or a message sent via the Rapid Circle online portal;

Equipment means all or any physical hardware and associated tools supplied by Rapid Circle to Customer and related to or required for the supply of the Services;

Fault means a design flaw or malfunction in respect of a Service that causes a material loss of ability to operate in accordance with the Customer requirements;

Force Majeure Event means a circumstance beyond the reasonable control of a party, which results in that party being unable to observe or perform an obligation under this Agreement, including but not limited to acts of God, lightning strikes, storms, floods, earthquakes or any natural

disasters, explosions, war, invasion, rebellion, sabotage, epidemic, pandemic and labour disputes (excluding labour disputes relating to the workforce of either party), problems with telecommunications networks provided by Other Suppliers and Other Supplier's technical problems and any consequences therefrom which are themselves beyond the reasonable control of the party seeking to rely on the Force Majeure Event;

GST means tax levied under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and legislation of the Commonwealth, a state or a Territory that is enacted to replace or supplement that Act;

Information System has the meaning given to that term in section 5(1) of the *Electronic Transactions Act 2000* (NSW);

Insolvency Event means the occurrence of any one or more of the following events in relation to either party:

- (a) an application is made to a court for an order that it be wound up (other than for the purposes of amalgamation or reconstruction of the companies comprising a Consolidated Entity), declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed unless the application is withdrawn, struck out or dismissed within 5 Business Days of it being made;
- (b) a liquidator, provisional liquidator or mortgagee in possession is appointed;
- (c) an administrator or a controller is appointed to any of its assets;
- (d) it enters into an arrangement or composition with one or more of its creditors, or assignment for the benefit of one or more of its creditors;
- (e) it proposes a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors, or its winding-up or dissolution (other than for the purposes of amalgamation or reconstruction of the companies comprising a Consolidated Entity);
- (f) it is insolvent as disclosed in its accounts or otherwise, or states that it is insolvent or is presumed to be insolvent under an applicable law;
- (g) it becomes insolvent under administration or action is taken which could result in that event;
- (h) it is taken to have failed to comply with a statutory demand as a result of section 459F (1) of the Corporations Act;
- (i) a notice is issued under sections 601AA or 601AB of the Corporations Act; a writ of execution is levied against it or a substantial part of its property;
- (j) it ceases to carry on business or threatens to do so; or

(k) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition;

Intellectual Property means any intellectual and industrial property rights throughout the world, including copyright, inventions (including patents), trademarks, service marks, designs, circuit layouts and rights to have information kept confidential, whether existing before or after the date of this Agreement and whether or not registered or registrable, and includes any right to apply for the registration of such rights, including all renewals and extensions;

Know How means the knowledge, techniques and methodologies developed and acquired by the Personnel of Rapid Circle in the course of providing the Services and any Documentation embodying such knowledge, techniques, and methodologies;

Loss means liabilities, expenses, losses, damages, and costs (including but not limited to legal costs on a solicitor and client basis), incurred by or awarded against a party;

Managed Services means the ongoing management and provision of services by Rapid Circle, as agreed and set out in a Statement of Work;

Materials means anything that is written down (including in a computer-readable manner only), designs, software code, discoveries, inventions, process improvements, methodologies, and guides data;

Normal Business Hours means the hours of 8am to 5 pm on any Business Day unless otherwise agreed in writing by the parties in a Statement of Work or Statement of Work.

Other Supplier means a telecommunications carriage service provider, data centre facility manager or a software or equipment supplier engaged by Customer, including any subcontractors of those Other Suppliers, but excluding Rapid Circle and its subcontractors or agents;

Out-of-pocket Expenses means all expenses incidental to the provision of the Services, and which are not included in the Fees that are authorised by Customer prior to being incurred;

Personnel means in respect of a party, that party's officers, employees, contractors, and agents;

Professional Services means any services (excluding Services), which are carried out by Rapid Circle at the request of Customer pursuant to a Services under a Statement of Work;

Rapid Circle IP means any and all Intellectual Property in Materials owned or controlled by Rapid Circle before the commencement of this Agreement and created by Rapid Circle (at its expense) or on its behalf during the Agreement in the course of providing the Services;

Recipient means a party who obtains the Confidential Information pursuant to this Agreement;

Related Bodies Corporate means the definition set out under Section 50 of the Corporations Act 2001 (Cth);

Service Fees means the fees stated in a Statement of Work, as may be varied by agreement in writing;

Service Levels means the performance standards according to which Rapid Circle is to provide or procure the provision of the Services, as set out in the respective Statements of Work;

Services means the services provided by Rapid Circle to the Customer as set out in the relevant Statement of Work or Statement of Work, including but not limited to Managed Services;

Service Start Date means the date identified as such in a Statement of Work as the date that Rapid Circle starts or is required to provide Services to Customer;

Statement of Work means the document that captures and defines an agreement by the parties hereto for the provision of Services which, for the avoidance of doubt, includes Managed Services;

Term means:

- (a) in respect of this Agreement, the period commencing on the date of execution of this Agreement and continuing until terminated in accordance with clause 17; and
- (b) in respect of each Statement of Work, the period commencing on the Service Start Date during which the Services must be provided as set out in a Statement of Work, unless earlier terminated in accordance with clause 17, and any extension of that period by written agreement between the parties. For the avoidance of doubt, if the provisions of this Agreement end then all other agreements entered into between Rapid Circle and the Customer in respect of the Services (including the Statements of Work) shall, unless the relevant agreement expressly provides otherwise, also end at the expiry of the term of the relevant agreement;

Territory means the geographical region specified in a Statement of Work;

1.2 INTERPRETATION

In this **Agreement**, unless the context requires otherwise:

- (a) words importing the singular shall (where appropriate) include the plural and vice versa;
- (b) words importing any gender shall (where appropriate) include the other genders and vice versa;
- (c) words importing natural persons shall (where appropriate) include firms, corporations, unincorporated associations, partnerships, and any other entities recognised by law and vice versa;
- (d) headings are included for the convenience of reference only and shall not affect the meaning or interpretation of this Agreement;

- (e) references in this Agreement to any statutory enactment or law shall be construed as references to that enactment or law as amended or modified or re-enacted from time to time and to the corresponding provisions of any similar enactment or law of any other relevant jurisdiction;
- (f) references in this Agreement to clauses, schedules and parties shall be construed as references to the clauses, schedules, and parties of and to this Agreement;
- (g) a reference to \$ or dollars is a reference to the lawful currency of Australia;
- (h) the obligations and liabilities imposed, and the rights and benefits conferred on the parties under this Agreement shall be binding upon and endure in favour of the respective parties and each of their respective legal personal representatives, successors in title and permitted assigns; and
- (i) references to an agreement or document in this Agreement or in a Statement of Work, are references to agreements or documents in the form agreed to by both the parties to this Agreement.

2 AGREEMENT COMPOSITION AND ORDER OF PRECEDENCE

- (a) This Agreement consists of the following:
 - (i) These terms and conditions;
 - (ii) relevant Statement of Work; and
 - (iii) any other agreements referred to herein or in any of the above documents.

A reference to 'Agreement' herein refers to the documents referred to in clause (a) collectively, as applicable.

- (b) If there is any conflict between the documents referred to in clause (a), then those documents will prevail in the order listed in clause (a), unless parties have expressly agreed otherwise under those documents.

3 SERVICES

3.1 PROVISION OF SERVICES

- (a) Subject to this Agreement, Rapid Circle shall supply the Services to Customer from the Service Start Date for the Term.
- (b) If the Services are to be delivered to several Customer Premises listed in a Statement of Work, the Service Start Date for each Customer Premises will be specified in the relevant Statement of Work.
- (c) Rapid Circle will ensure that the Services are provided at the relevant agreed Service Levels (if any) and otherwise in accordance with the terms of this Agreement. To the extent permitted by law, Rapid Circle will not be liable to Customer if Rapid Circle's failure to achieve the relevant Service Level is caused directly by any wrongful act or omission of Customer, any third party (not employed or engaged or sub-contracted by Rapid Circle in the provision of the Services), any Other Supplier or by reason of a Force Majeure Event; and
- (d) Rapid Circle may engage third party contractors to perform part but not all of the Services, provided each of those persons is suitably qualified, skilled, experienced, and capable of performing the work or services Rapid Circle engages them to perform. Rapid Circle remains liable for the performance of their obligations as if Rapid Circle had performed such obligations itself.

3.2 VARIATIONS TO SERVICES

- (a) Either party can request in writing a variation to the Services including any increase or reduction of any part of a Service.
- (b) The recipient of a request under 3.2(a) must respond within 10 Business Days either accepting (with amendments or otherwise) or rejecting the request. Rapid Circle's request or response to a request by the Customer, must set out revised scope and if any, changes to the Service Fees including any applicable early third-party early termination fees.
- (c) If parties agree to proceed with the variation based on Rapid Circle's response under clause 3.2(b), Rapid Circle will submit a draft amendment to the relevant Statement of Work for those Services within 10 Business Days of such agreement.

- (d) Once parties have agreed and executed the amendment, the relevant Statement of Work will be amended accordingly. For avoidance of doubt, any variation to the Services is effective only after an amendment is executed by both parties.

3.3 USE OF SERVICES

- (a) Customer is responsible for the use of the Services at Customer Premises and Customer is liable for all expenses and costs arising from that use.
- (b) Customer must not knowingly use the Services or permit any other person to use the Services:
 - (i) to break any law or infringe any person's rights;
 - (ii) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing, or unwanted; or
 - (iii) in any way that damages, interferes with, or interrupts the Services or the systems that Rapid Circle uses to supply the Services.
- (c) Customer will indemnify Rapid Circle against all loss, damage, costs, actions, claims, demands, or liabilities suffered by Rapid Circle as a result of any person other than Rapid Circle and its Personnel using or accessing the Services as identified in clause 3.3(b).

3.4 CO-OPERATION WITH THIRD PARTIES

- (a) Rapid Circle may comply with reasonable written requests by the Customer to cooperate with any of Customer's third-party consultants and suppliers for the purpose of Rapid Circle's obligations under this Agreement, provided Customer agrees in writing to pay all reasonable fees incurred by Rapid Circle in complying with such requests, at the rates specified in the relevant Statement of Work.
- (b) Prior to providing access or disclosing information pursuant to clause 3.4(a), Rapid Circle may require Customer's third-party consultants or suppliers to sign a confidentiality agreement in the form reasonably required by Rapid Circle and to enter into a licence agreement for the use of the Intellectual Property (including Rapid Circle IP) in any Materials provided by Rapid Circle.
- (c) Rapid Circle is not liable for any breach of a Service Level which results from complying with the request under clause 3.4(a).

3.5 ONLINE PORTAL

- (a) Where Rapid Circle provides Customer with access to an online portal so that Customer can manage the Services or order additional Services online, Rapid Circle will provide Customer with a secure login identity and secret password.
- (b) Customer is responsible for maintaining the confidentiality of its password and account information. Customer is also responsible for all activities that occur in its account and Customer agrees to notify Rapid Circle immediately on becoming aware of any unauthorised use of its account. Rapid Circle is not responsible for any loss that Customer may incur as a result of any unauthorised person using Customer's account or password unless that usage is attributable to a negligent act or omission by Rapid Circle or a breach of this Agreement.
- (c) Customer will be bound by any online order issued by a duly authorized representative of Customer which is received by Rapid Circle and that is documented in a Statement of Work and accepted by Rapid Circle by notice issued via the online portal or otherwise within 5 days of the order being made. For the avoidance of doubt, for the purpose of this clause 3.5(c), a duly authorized representative of the Customer shall be limited to the Customer representative person identified as the primary Customer contact nominated in each Statement of Work for the Services and any other person nominated in writing by the Customer for this purpose.

3.6 RESPONSIBILITIES

- (a) Customer must:
 - (i) permit Rapid Circle Personnel to have access to Customer Premises as reasonably required to install the Equipment. Rapid Circle agrees that it will seek the approval of the Customer and the landlord prior to installation of any Services or Equipment;
 - (ii) ensure that Rapid Circle has full access to both the Customer's virtual and physical infrastructure during Normal Business Hours or at such other times as Customer and Rapid Circle mutually agree in writing;
 - (iii) ensure that any infrastructure referred to under (ii) above in connection with the Service which is not supplied by Rapid Circle has all required

- regulatory approvals, is not prohibited by law or any regulator and is capable of operating with the Service;
- (iv) not cause or permit any Equipment to be configured, repaired, serviced, or moved except by suppliers approved by Rapid Circle; and
 - (v) use all reasonable endeavours (at the cost and expense of Rapid Circle) to assist Rapid Circle in any investigation by any government body or regulator in which Rapid Circle is involved where Customer's use of the Services is relevant to the investigation and is required by law to assist, but otherwise at Customer's discretion.
- (b) If Rapid Circle employees, agents or contractors attend by prior arrangement at Customer Premises to inspect the Customer Premises for purposes set out under 3.6(a) above, and Customer requires this to be rescheduled, without providing at least 48 hours prior notice, then Customer shall pay to Rapid Circle all costs associated with cancelling, postponing or rescheduling at the rates specified in the respective Statement of Work.
- (c) Rapid Circle acknowledges and agrees that it will:
- i. comply or procure the compliance with all applicable laws, regulations, guidelines and other requirements of any relevant government or governmental agency;
 - ii. conform or ensure conformance with all applicable codes and standards;
 - iii. comply or procure compliance with current industry practice;
 - iv. obtain and keep in full force and effect all approvals necessary for the proper and efficient provision of the Services;
 - v. maintain insurance policies that would reasonably be expected from a prudent, expert, and experienced provider of those services including but not limited to public and product liability insurance with a minimum sum insured of \$10 million and professional indemnity insurance with a minimum sum insured of \$10 million, which shall remain in force during the Term and for two years from the Termination Date.

3.7 FAULT REPORTING

- (a) Customer may report a Fault with the Services to Rapid Circle on a 24 x 7 basis and reported Faults will be dealt with by Rapid Circle in accordance with the relevant procedure in the relevant Statement of Work.
- (b) Customer acknowledges that Rapid Circle is not responsible for Faults caused by Other Suppliers, nor is Rapid Circle liable to Customer for any failure by that Other Supplier to remedy the Fault within the timeframes in any Service Level. Rapid Circle will use all reasonable endeavours to help rectify the Fault by liaising with the Other Supplier.

3.8 TRANSITION - OUT SERVICES

- (a) If this Agreement is terminated in whole or in part for any reason Rapid Circle will co-operate with the Customer to ensure an orderly migration of the Services to the Customer or, at the Customer's request, a new service provider.
- (b) The detailed scope and implementation of the Transition Out services will form part of a Transition Out Plan which will be agreed with the Customer and charged on a time and materials basis at Rapid Circle's then standard rates for similar services.
- (c) On termination of this Agreement and on completion of the Transition Out Plan, Rapid Circle will ensure that all Documentation, Data, and other material belonging to the Customer (and all backup media of any nature containing information and Data belonging to the Customer) must be delivered to the Customer forthwith and Rapid Circle's managing director (or equivalent officer) must certify full compliance thereof.

4 FEES AND PAYMENT

4.1 FEES

- (a) The Fees for Services (including any Professional Services) are invoiced in Australian dollars unless otherwise agreed to by both parties, in which case those fees will be determined in accordance with the exchange rate set out in the Statement of Work or, if no such rate is specified, at the exchange rate published in the Australian Financial Review on the date on which those Services are billed.

- (b) Rapid Circle reserves its right to charge Customer fees for Professional Services at the day rate or where applicable, for the fixed price set out in the Statement of Work.
- (c) Subject to clauses 4.2 (**Price Review**) and 4.3 (**Invoicing**), the Fees specified in the relevant Statement of Work represent the total consideration payable by Customer to Rapid Circle for the supply of the Services excluding GST.

4.2 PRICE REVIEW

- (a) Subject to clause 4.3(b), on written notice by either party:
 - (i) at least 2 months prior to the end of the initial engagement the Term; and
 - (ii) thereafter, at least 2 months prior to the end of any Contract Year, (**Review Notice**), a review of the Service Fees may be conducted to reflect any variation to Rapid Circle's standard fees and charges applicable to the Services.
- (b) Customer may only issue one Review Notice during any 12-month period.
- (c) Upon issuance of a Review Notice, Rapid Circle must notify Customer that the Service Fees are:
 - (i) replaced with revised Service Fees (**New Service Fees**); or
 - (ii) not amended, and if not amended, Rapid Circle must provide reasons for this.
- (d) Subject to clause 4.2(c), the New Service Fees will apply from the Commencement of the next Contract Year.
- (e) If Customer disputes Rapid Circle's decision under clause 4.2(c), it must continue to pay the Service Fees at the then current pricing and may refer the matter to be resolved under clause 15.
- (f) If Customer does not refer any decision for dispute resolution under clause 15 within 30 days of receiving the notice referred to in clause 4.2(c), Customer will be deemed to have accepted Rapid Circle's decision.

4.3 INVOICING

- (a) Rapid Circle will invoice Customer for Service Fees and Out-of-pocket Expenses (if any) on a monthly between the 28th to the last day of each month and (subject to there being no dispute in relation to the Services covered by the invoice) the Customer must pay each invoice from Rapid Circle within 7 days of the date of that invoice, unless otherwise agreed by the parties in writing.
- (b) Subject to clause 4.4, if Customer does not pay any undisputed invoice from Rapid Circle within 15 days of receiving notice from Rapid Circle to remedy its non-payment, Rapid Circle may suspend the Services immediately by written notice to Customer and in its absolute discretion, charge Customer interest on any account unpaid on the due date at a rate equal to the lesser of 1.5% per month or the highest allowed under applicable laws, from the due date until the amount is paid in full by Customer.

4.4 FEES DISPUTE

If Customer disputes any Service Fees or other amounts invoiced by Rapid Circle:

- (a) Customer must notify Rapid Circle of the dispute within 5 Business Days of the invoice date;
- (b) Customer may withhold payment of the disputed amount until the dispute has been resolved provided Customer has provided reasonable details regarding the nature of the dispute to allow a proper investigation, but Customer remains liable to pay any amount not in dispute in accordance with clause 4.3.
- (c) if the dispute relates to only a portion of the invoice, Rapid Circle may (at Customer's request) cancel the disputed invoice and re-issue Customer with invoices for each of:
 - (i) the disputed portion of the invoice; and
 - (ii) the undisputed portion of the invoice;
- (d) Customer must pay the invoice for the undisputed portion referred to in clause 4.5(c)(ii) within the due date; and
- (e) the dispute will be resolved in accordance with the dispute resolution process set out in clause 15.

5 GST

Unless otherwise specified, all the amounts identified as payable in this Agreement

- (a) as Service Fees (including fees for Professional Services) are GST exclusive. If the supply under or connection with this Agreement is a taxable supply then these amounts must be increased by an amount calculated as $A \times R$ where:
 - A is the GST exclusive amount;
 - R is the rate of GST prevailing at the time the supply is made (currently 10%).
- (b) All GST amounts payable by Customer will be separately identified on the tax invoice issued by Rapid Circle. Customer must subject to clause 4.4, pay the invoice in full.
- (c) If a payment required to be made by Customer is a reimbursement for costs or expenses incurred by Rapid Circle and is calculated by reference to the GST inclusive amount of an expense or cost incurred by Rapid Circle, then the payment due by Customer is to be first reduced by the amount of any input tax credit to which Rapid Circle is entitled in respect of that expense or cost, before an adjustment is made to it for GST in accordance with the formula in clause 5(a).

6 SERVICE LEVELS

- (a) Rapid Circle will use its best endeavours to perform or procure the performance of all the Services so as to meet or exceed the Service Levels.
- (b) If Rapid Circle fails to meet a Service Level in accordance with the relevant Statement of Work, then the remedies available to the Customer are stated in the relevant Statement of Work for that particular Service and in this Agreement.
- (c) Rapid Circle will perform all Service Level reporting in the manner described in the respective Statement of Work (as the case may be).

7 INTELLECTUAL PROPERTY

7.1 RAPID CIRCLE IP

- (a) Customer acknowledges that Rapid Circle IP remains the property of Rapid Circle.
- (b) Any Know How acquired or developed by Rapid Circle becomes part of Rapid Circle's knowledge base and may, subject to clause 8.1, be used by the Personnel

of Rapid Circle without restriction, even where the Know How was acquired or developed in the course of or as a consequence of providing the Services or any Professional Services to Customer.

- (c) Rapid Circle grants a personal, non-exclusive, royalty-free licence to Customer in the Territory to use the Rapid Circle IP solely in conjunction with and to the extent necessary for Customer to use any deliverables of the Services provided by Rapid Circle to Customer.

7.2 CUSTOMER IP

- (a) Rapid Circle acknowledges that Customer IP remains the property of the Customer.
- (b) Subject to the provision of clause 8, Customer grants a personal, non-exclusive, royalty free licence to Rapid Circle in the Territory during the Term of the relevant Statement of Work to use Customer IP to the extent necessary for Rapid Circle and its Personnel to provide the Services to Customer.

7.3 THIRD PARTY INTELLECTUAL PROPERTY

Rapid Circle has set out in each Statement of Work (where applicable) any Materials created and owned by a third party that will be used in connection with provision of the Services. Rapid Circle will procure for Customer at Customer's cost a licence to use those Materials on the terms imposed by the relevant third party. In such circumstances, the Customer must use Materials which are subject to a third-party licence solely in accordance with the relevant third-party licence terms.

8 CONFIDENTIAL INFORMATION

8.1 CONFIDENTIAL INFORMATION

- (a) The Recipient of Confidential Information from the Discloser undertakes to the Discloser to:
 - (i) use the Confidential Information of the Discloser only for the purpose of this Agreement; and
 - (ii) not disclose or allow to be disclosed any Confidential Information from the Discloser except as permitted in this clause 8 or to its Personnel to the extent its Personnel need to know that Confidential Information for the purposes of this Agreement or a Statement of Work.

- (b) A Recipient may disclose the Confidential Information provided by the Discloser in order to comply with:
 - (i) any applicable law or legally binding order of any court, government, semi-government authority, administrative or judicial body; or
 - (ii) as authorised in writing by the Discloser.
- (c) Before any disclosure is made by a Recipient under clause 8.1(b), the Recipient must:
 - (i) (unless it is prohibited to do so by law) give notice to the Discloser with full details of the circumstances of the proposed disclosure of the relevant Confidential Information to be disclosed; and
 - (ii) with as much time as reasonably possible in all the circumstances to challenge the proposed disclosure in a court of law or appropriate body.
- (d) Upon the expiration or termination of this Agreement or upon demand by the Discloser, the Recipient must promptly return to the Discloser (or if the Discloser requests, destroy) all materials containing any of the Confidential Information in the Recipient's possession or control. Notwithstanding the above, both Rapid Circle and the Customer may keep a copy of the other party's Confidential Information in so far as it is relevant, and solely for the purpose, of keeping a business record of the Services provided under this Agreement.

8.2 SURVIVAL OF CLAUSE

This clause 8 will survive the termination of this Agreement.

9 ASSIGNMENT

This Agreement is personal to each party and neither party may assign the rights or benefits of this Agreement to any person except with the prior written consent of the other party, which shall not be withheld unreasonably.

10 NON-SOLICITATION

Each party agrees that it must not, during the term of this Agreement and for 12 months after the Agreement terminates, solicit the services of any Personnel of the other party who has been engaged or involved in the provision or receipt of the Services or the management of this Agreement, without the prior written consent of the other party. This clause will not apply where an employee of either party applies of their own volition for a publicly advertised position with the other party.

11 PUBLICITY AND SITE REFERENCE

- (a) Neither party shall make any public announcement or disclosure to third parties information about this Agreement without the prior written consent of the other party unless such disclosure is required to be made by law or by any regulatory authority to whose jurisdiction the party is subject.
- (b) Rapid Circle may seek to use Customer as a site reference providing information to prospective customers of Rapid Circle, with the prior written consent of the Customer.

12 FORCE MAJEURE

- (a) Subject to due compliance with clause (b) below, neither party shall in any circumstances be liable to the other for any delay or non-performance of its obligations under this Agreement arising from a Force Majeure Event. For the avoidance of doubt and notwithstanding anything to the contrary contained in this Agreement, before a party can rely on a Force Majeure Event, that party must comply with clause 12(b) below.
- (b) In the event of either party being so delayed or prevented from performing its obligations, such party must:
 - (i) give notice in writing of such delay or prevention to the other party as soon as reasonably possible stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (ii) use all reasonable endeavours to mitigate the effects of such delay or prevention of the performance of its obligations under this Agreement; and
 - (iii) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- (c) If Rapid Circle is prevented from performing its obligations by an event of Force Majeure for more than 60 days, the Customer may terminate this Agreement by notice to Rapid Circle.

13 LIMITATION OF LIABILITY

13.1 EXCLUSIONS LIMITED BY LAW

Any provision of this Agreement which seeks to limit or exclude a liability of Rapid Circle or Customer is to be construed as doing so only to the extent permitted by law. Notwithstanding, neither party shall be liable to the other for any indirect or consequential loss (including but not limited to loss of goodwill, loss of business, loss of anticipated profits or savings and all other pure economic loss) arising out of or in connection with this Agreement.

13.2 LIABILITY CAP

Subject to clauses 13.1 and 13.3, the liability of Rapid Circle to Customer in respect of any Loss arising in connection with a breach of this Agreement is limited in aggregate to an amount equal to the sum of all amounts paid by Customer to Rapid Circle during the period of 12 months immediately prior to the occurrence of the breach

13.3 UNLIMITED LIABILITY

Clause 13.2 does not apply to limit or restrict in any way:

- (a) Rapid Circle's liability for the death or personal injury of any person; or
- (b) Rapid Circle's liability to Customer for Loss caused by the negligent, malicious, or fraudulent actions or omissions of Rapid Circle or its officers, affiliates, employees, contractors, agents, or third parties engaged by Rapid Circle in the provision of Services.

13.4 CUSTOMER'S LIABILITY

Other than liability of the Customer accruing under clauses 17 and 18 and except to the extent that liability cannot be limited or excluded, the total aggregate liability of Customer, its affiliates, officers, subcontractors, service providers, agents, and employees, to Rapid Circle whether arising under or in connection with this Agreement or the performance or non-performance of, or anything incidental to, this Agreement is limited to twelve months' Service Fees.

14 DATA PROTECTION, SECURITY, AND INTEGRITY

- (a) Rapid Circle shall:
 - (i) only carry out processing of any Data on the Customer's instructions;

- (ii) implement appropriate technical and organisational measures to protect any Data against unauthorised or unlawful processing and accidental loss or damage; and
 - (iii) not transfer Data to countries outside Australia without prior written consent of the Customer.
- (b) Rapid Circle shall:
 - (i) not subcontract any processing or use of the Data without the prior written authorisation of the Customer;
 - (ii) ensure that access to Data is limited to those Personnel who need access to the Data to meet Rapid Circle's obligations under this Agreement and that all Personnel are informed of the confidential nature of the Data;
 - (iii) comply with its obligations under the Privacy Act, and shall not, by act or omission, put the Customer in breach of, or jeopardise its position under the Privacy Act;
 - (iv) promptly and fully notify the Customer in writing of any notices in connection with the processing of any Data, including subject access requests, and provide such information and assistance as the Customer may reasonably require; and
 - (v) promptly and fully notify the Customer in writing if any Data has been disclosed in breach of this clause and take every step to enable the Customer to comply with its obligations under the Privacy Act.

15 DISPUTE RESOLUTION

15.1 INFORMAL RESOLUTION OF DISPUTE

Before a party seeks any external dispute resolution in relation to a dispute arising in connection with this Agreement, it must, subject to clause 15.2, use reasonable endeavours to resolve the dispute with the other party prior to commencing proceedings in an external judicial tribunal.

15.2 CONTINUATION OF OBLIGATIONS

Despite the existence of a dispute between the parties with respect to this Agreement, each party must continue to comply with its obligations under this Agreement.

15.3 INTERLOCUTORY PROCEEDINGS

Nothing in this clause 15 prevents a party from commencing proceedings to enforce this clause or for interlocutory relief.

15.4 SURVIVAL

This clause 15 will survive termination of this Agreement for two years.

16 SUSPENSION OF A SERVICE OR PART OF A SERVICE

(a) Rapid Circle may, upon prior written notice to Customer, suspend the provision of a Service or part of a Service (including help desk services), without liability to Customer, only if:

- (i) the Customer fails to make payment under clause 4.3(b);
- (ii) it is necessary for Rapid Circle to perform emergency maintenance in connection with its network or systems; or
- (iii) subject to Rapid Circle providing Customer at least 10 Business Days' prior written notice, Rapid Circle performs scheduled maintenance or other scheduled service work in connection with its network or systems; or
- (iv) the occurrence of a Force Majeure Event and the provisions of clause 12 are satisfied; or
- (v) Rapid Circle is required to do so by law or to comply with the direction of a regulator or emergency service organisation.

(b) Rapid Circle will not carry out scheduled maintenance during usual business hours in the place where the Services are being provided or unless Customer has given its prior consent to do so.

(c) Where it is reasonable to do so, Rapid Circle will provide the Customer with prior written notice of suspending a Service pursuant to this clause.

(d) Despite the foregoing, Rapid Circle will use its best efforts to resume the provision of the suspended Service as quickly as possible.

17 TERMINATION

- (a) Either party may terminate this Agreement and all the Statements of Work immediately by notice to the other party if:
 - (i) the other party breaches an obligation under this Agreement or the relevant Statement of Work:
 - (aa) which is not capable of remedy; or
 - (ba) which is capable of remedy, but fails to remedy that breach within 14 days of receipt of a notice requiring it to do so, provided that any notice issued by either party under this clause 17(a)(i)(ba) includes reasonably adequate details of the breach so that the other party can understand the exact nature of the alleged breach; or
 - (ii) an Insolvency Event occurs in relation to the other party
- (b) If this Agreement or an associated Statement of Work terminates for reasons other than the Customer terminating under clause 17(a), Rapid Circle will advise of the relevant early termination fees (if applicable) in connection with the relevant services as described in 18(a).
- (c) If a Force Majeure Event prevents Rapid Circle from supplying the Services in respect of a Statement of Work for a period of more than 60 days, either party may, without liability to the other, terminate this Agreement immediately by written notice to the other provided that the party seeking to terminate this Agreement as a result of a Force Majeure Event, Rapid Circle has complied with the provisions of clause 12(b) of this Agreement.

18 CONSEQUENCES OF TERMINATION

- (a) If this Agreement or a Statement of Work terminates (for any reason) before the expiry of the relevant Term, Customer must pay to Rapid Circle any corresponding third-party costs being early termination fee payable by it to a third party due to the termination of a service prior to the expiry of the minimum contracted term, on being notified of the amount and the payment due date.
- (b) If Customer terminates this Agreement without cause, Customer must immediately pay to Rapid Circle an amount equal to the Service Fees and other fees (excluding

fees already paid under clause 18(a) that would have been payable by Customer under the relevant Statement of Work(s) from the date of termination for a period of 3 months after the termination date.

- (c) If this Agreement is terminated or expires:
 - (i) each party must, in connection with the terminated Agreement:
 - (aa) pay all amounts owing to the other up to the date of termination, subject to there being no dispute in relation to those amounts;
 - (bb) at its own cost, immediately return to the other all Materials containing or comprising Confidential Information of a party (including a party's Intellectual Property) (as well as all copies thereof); and
 - (cc) provide the other with such access to its premises as may be required to remove any Equipment belonging to it;
 - (ii) it does not affect any rights or remedies either party may have against the other arising out of or in connection with this Agreement or a Statement of Work prior to termination; and
 - (iii) clauses 3.3(c) [**Indemnity**], 7 [**Intellectual Property**], 8 [**Confidential Information**], 13 [**Limitation of Liability**], 15 [**Dispute Resolution**], and 18[**Consequences of Termination**] survive the termination of this Agreement.

19 WARRANTIES

- (a) Each party represents and warrants that:
 - (i) at the date of this Agreement, it has full corporate power to enter into and give effect to this Agreement and to complete the transactions contemplated by this Agreement; and
 - (ii) it has taken all necessary action to authorise the execution of this Agreement;

- (iii) the delivery and performance of this Agreement does not contravene any contractual, legal, or other obligations that apply to it, including the infringement of any intellectual property rights of any third party.
- (b) Rapid Circle represents and warrants that the Services will be carried out:
 - (i) with due care and skill and a standard of diligence reasonably expected from a prudent, expert and experienced provider of those services and in accordance with all applicable laws;
 - (ii) using appropriately qualified Personnel;
 - (iii) in accordance with the Customer's directions.
- (c) Rapid Circle represents that:
 - (i) at the date of this Agreement, it has obtained and will maintain for the duration of this Agreement all permissions, licences, and consents necessary for Rapid Circle to perform and or provide the Services;
 - (ii) it has adequate resources to meet its obligations under this Agreement in a timely and reliable manner.

20 RECORD KEEPING

Rapid Circle must keep records, and must ensure all sub-contractors keep records, necessary to demonstrate compliance with their obligations under this Agreement. Those records (where they relate to financial matters) are to comply with generally accepted Australian accounting principles applied on a consistent basis.

21 GENERAL PROVISIONS

21.1 ENTIRE AGREEMENT

This Agreement and any document referred to in clause 2(a) (as applicable) constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

21.2 VARIATION

Neither this Agreement may be varied except in writing agreed by the parties.

21.3 WAIVER

A right created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

21.4 MODERN SLAVERY

In performing its obligations in connection with this Agreement, Rapid Circle will, and will ensure that all its personnel and its Related Bodies Corporate will:

- a. Comply with all modern slavery laws; and
- b. Take reasonable steps to ensure that there is no modern slavery in the Rapid Circle or its personnel's supply chains or in any part of their business or the supply chains of Rapid Circle's Related Bodies Corporate or in any part of their businesses.

Rapid Circle will comply (and ensure that all its personnel and Related Bodies Corporate comply) with any reasonable requests made by the Customer for assistance, for the provision of information or documents as required by the Customer under or related to modern slavery laws.

21.5 SANCTIONS, ANTI-BRIBERY AND ANTI-CORRUPTION

Rapid Circle must comply with, and must ensure that its subcontractors and agents comply with, any sanction imposed by any country or recognised global body applicable to the performance by the supplier of its obligations under this Agreement. Rapid Circle must, and must ensure that its subcontractors and agents, comply with all laws, statutes, regulations and codes as may be amended from time to time regarding bribery, corruption and prohibited business practices.

21.6 BUSINESS CONTINUITY PLAN (BCP)

Rapid Circle will provide its BCP testing results to the Customer annually.

21.7 FURTHER ASSURANCES

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this Agreement, Statement of Work or Statement of Work

21.8 TIME FOR DOING ACTS

- (a) If:

- (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

21.9 GOVERNING LAW AND JURISDICTION

The laws applicable in the State of Queensland govern this Agreement and each Statement of Work. The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and any courts with competent jurisdiction to hear appeals from those courts.

21.10 SEVERANCE

If any clause or part of any clause of this Agreement is in any way unenforceable, invalid, or illegal, it is to be read down so as to be enforceable, valid, and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity, or legality of the remaining clauses (or parts of those clauses), which will continue in full force and effect.

21.11 PRESERVATION OF EXISTING RIGHTS

The expiration or termination of this this Agreement does not affect any right that has accrued to a party before the expiration or termination date.

21.12 NO MERGER

Any right or obligation of any party that is expressed to operate or have *effect* on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

21.13 EXECUTION

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument. Each party consents to the other party executing this Agreement and any Statement of Work by affixing their electronic signature.

21.14 RELATIONSHIP OF PARTIES

Unless otherwise stated:

- (a) nothing in this Agreement, any Statement of Work or Statement of Work creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration, or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

21.15 NOTICES

- (a) Any notice, demand, consent, approval, request, or other communication (notice) to be given under this Agreement must be in writing and must be given to the recipient at its Address for Service and is given if:
 - (i) hand delivered on the date of delivery;
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting;
 - (iii) sent by prepaid Express Post International airmail between countries, on the date that is 10 Business Days after the date of posting; or
 - (iv) if sent by Electronic Message, an hour after the time the sender's Information System recorded that the Electronic Message left the sender's Information System unless, within 8 hours after the transmission (being counted as hours from 9.00am to 5.00pm on a Business Day), the sender is informed (by automatic notice or otherwise) that the electronic mail has not been received by the recipient, but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (recipient's time), it is regarded as received at 9.00am on the following Business Day.