Ranchbot Terms of Service

These Services are provided by Ranchbot Monitoring Solutions Inc ("**Provider**"). Your access to and use of the Services is subject to these Terms of Service. Use of the Services indicates your acceptance of these Terms of Service. We may update these Terms of Service from time to time, and your continued use of the Services constitutes acceptance by you of any updates. Please read these Terms of Service carefully before using the Services.

1.   DEFINITIONS AND INTERPRETATION

1.1   Definitions

In these Terms of Service, unless inconsistent with the context or subject matter:

(a)   **"Account"** means an account enabling a person to access and use the Hosted Services;

(b)   **"Client"** means the client named in the Order Form;

(c)   **"Client Data"** means all data, works and materials uploaded to or stored on the Hosted Services by the Client, transmitted by the Hosted Services at the instigation of the Client, or supplied by the Client to the Provider for uploading to, transmission by or storage on the Hosted Services;

(d)   **"Commencement Date"** means the date that the Client receives the Monitor;

(e)   **"Confidential Information"** means any information disclosed by one party to the other during the Term (whether disclosed in writing, orally or otherwise) that at the time of disclosure:

(i)   was marked as "confidential"; or

(ii)   should have been reasonably understood by the party it was disclosed to, to be confidential;

(f)   **"Ranchbot Alerts"** means information provided by the Provider to the User in the form of SMS, emails or any other form of communication the Provider uses in order to inform the User of the status of the Services or any issues with the Tanks, including warnings that a User defined limit may have been breached;

(g)   **"Fee"** means the fee per Monitor as stated by the Provider on the Website or otherwise in writing;

(h)   **"Force Majeure Event"** means an event, or a series of related events, that is outside the reasonable control of the party affected, including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars;

(i)   **"Sales Tax"** means any sales tax, current or future, imposed by any state, territory or country applicable to the provision of these Services;

(j)   **"Hosted Services"** means the software as a service platform known as MyRanchbot, as described on the Website. The Hosted Services connect the Monitor to Ranchbot's web platform which provides:

(i)   a display and status of all monitored Tanks as well as display of current alerts;

(ii)   the ability of the User to set maximum and minimum limits at which the system will send an alert to a selected User when breached;

(iii)   the ability to view water level history; and

(iv)   the facility to manage User and general Client Data;

(k)   **"Intellectual Property Rights"** means all intellectual property rights wherever in the world, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, systems and the source code for those systems, and trade marks);

(l)   **"Materials"** means all materials, documentation and information (whether reduced to written form or otherwise) provided to the Client by the Provider at any time;

(m)   **"Minimum Term"** means 12 months commencing on the Commencement Date;

(n)   **"Monitor"** means a Ranchbot Monitor which is installed and connects to the Hosted Services;

(o)   **"Order Form"** means the form completed by the Client on the Provider's website in respect of an order for the Hosted Services, or written quote provided by the Provider and accepted by the Client;

(p)   **"Policy"** means any policy of the Provider in place from time to time;

(q)   **"Privacy Policy"** means the Provider's Privacy Policy as in place from time to time which is accessible on the Website;

(r)   **"Services"** means any services that the Provider provides to the Client, including the provision of the Hosted Services and the sale of the Monitor;

(s)   **"Tank"** means a water tank, reservoir, trough or similar;

(t)   **"Term"** means the term of these Terms of Service, commencing in accordance with clause 2.1 and ending in accordance with clause 2.2;

(u)   **"Terms of Service"** means these terms of service and any amendments to these Terms of Service from time to time;

(v)   **"User"** means a user of the Hosted Services who is nominated by the Client;

(w)   **"Website"** means the Provider's website located at www.ranch-bot.com.au.

1.2   **Interpretation**

In these Terms of Service unless inconsistent with the context or subject matter:

(a)   a reference to a person includes any other entity recognised by law and vice versa;

(b)   words importing the singular number include the plural number and vice versa;

(c)   a reference to a party means a party to these Terms of Service and includes that party's heirs, executors, successors and permitted assigns;

(d)   clause headings are for reference purposes only;

(e)   where any word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning;

(f)   references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile transmissions;

(g)   references to these Terms of Service or other document include these Terms of Service or such document as varied or replaced, notwithstanding any change of the parties thereto;

(h)   a reference to a monetary amount is a reference to US Dollars;

(i)   an obligation on two or more parties shall bind them severally.

(j)   an obligation incurred in favour of two or more parties shall be enforceable by them severally;

(k)   references to time are to local time in Dallas, Texas;

(l)   where time is to be reckoned from a day or event, such day or the day of such event shall be excluded;

(m)   a reference to a business day means any day on which trading banks are open for business in Dallas, Texas;

(n)   if any time period specified in this document expires on a day which is not a business day, such period shall be deemed to expire at the end of the first business day thereafter;

(o)   a reference to legislation includes references to all amendments to that legislation;

(p)   a reference to a month means a calendar month;

(q)   expressions like *including*, *such as* or *for example* are to be interpreted without limitation.

2.   TERM

2.1   These Terms of Service shall apply as soon as they are accepted and continue for the Term unless they are terminated earlier in accordance with clause 17.

2.2   These Terms of Service shall continue for at least the Minimum Term, following which either party may terminate these Terms of Service on giving the other party 30 days' written notice.

3.   HOSTED SERVICES

3.1   The Provider owns and operates the Hosted Services.

3.2   The Provider grants to the Client a non-exclusive, revocable, non-transferable licence to access and use the Hosted Services on and from the Commencement Date and throughout the Term on the terms set out herein.

3.3   Except to the extent expressly permitted in these Terms of Service, the licence granted by the Provider to the Client under clause 3.2 is subject to the following prohibitions:

(a)   the Client must not sub-license its right to access and use the Hosted Services;

(b)   the Client must not permit any unauthorised person to access or use the Hosted Services;

(c)   the Client must not use the Hosted Services to provide services to third parties;

(d)   the Client must not republish or redistribute any content or material from the Hosted Services;

(e)   the Client must not directly or indirectly reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Hosted Services or any software, documentation or data related to the Services;

(f)   the Client must not modify, translate, or create derivative works based on the Hosted Services (except to the extent expressly permitted by Provider or authorised within the Hosted Services); and

(g)   the Client must not make any alteration to the Hosted Services.

3.4   The Client is solely responsible for providing at its cost any equipment required to use the Hosted Services, including a computer, laptop, smartphone, iPad, tablet or similar device which has an appropriate internet connection.

3.5   The Hosted Services will issue Ranchbot Alerts on the relevant devices which the Users enable to receive such Ranchbot Alerts. The Client must ensure that all User contact details are correct and up to date; and Users are solely responsible for ensuring that their relevant devices can receive Ranchbot Alerts.

3.6   The Provider will use best efforts to send all Ranchbot Alerts. Certain technical and other issues may prevent their distribution of Ranchbot Alerts and the Provider accepts no responsibility if a Ranchbot Alert fails to be issued at a critical time.

3.7   The Client is solely responsible for nominating Users to access the Hosted Services and keeping the list of Users with access up to date, and configuring all settings on the Hosted Services. The Provider accepts no responsibility for the configuration of settings (for example, if the Client fails to input appropriate minimum and maximum limits for water levels in Tanks and as a result does not receive a Ranchbot Alert in respect of any issues with their Tanks).

4.   CLIENT OBLIGATIONS

4.1   The Client acknowledges and agrees that it will:

(a)   only use the Hosted Services in accordance with the terms of these Terms of Service and any Policy;

(b)   not use the Hosted Services in any way that causes, or may cause, damage to the Hosted Services or impairment of the availability or accessibility of the Hosted Services ;

(c)   at all times ensure it employs administrators who are trained in using the Hosted Services and can teach the Users how to use the Hosted Services; and

(d)   at all times and at its own cost ensure its internal technology (including its computers, information and operating systems) is current and up to date (as determined by the Provider acting reasonably).

4.2   To access and use the Hosted Services the Client (and its Users) may need to register and set up an Account. The Client and its Users are solely responsible for maintaining the confidentiality of any Account details and is liable for all activities that happen under the Account, even if such activities are not authorised by the Client.

4.3   The Provider recommends that all Users view the Ranchbot Dashboard (which forms part of the Hosted Services) at least twice a day to ensure that the Client gets the best value from the Hosted Services and can view changing trends that may be a forewarning of future problems.

5.   FEE

5.1   The Fee is payable for each individual Monitor that the Hosted Services will be used in respect of.

5.2   The Client shall pay the Fee to the Provider yearly in advance in cleared funds by the method nominated by the Provider without set-off or counter claim, commencing on the Commencement Date.

5.3   The Provider will issue the Client a tax invoice in respect of the Fee.

5.4   All amounts stated in or in relation to these Terms of Service are, unless the context requires otherwise, stated exclusive of any sales or value added taxes, which will be added to those amounts and payable by the Client to the Provider.

5.5   Depending on the method of payment the Client wishes to pay the Fee, additional charges (such as a small credit card processing fee) may be incurred.

5.6   The Provider may at any time without notice suspend the provision of the Hosted Services if any amount due to be paid by the Client to the Provider under these Terms of Service is overdue. This may result in the Client's account for the Hosted Services being blocked.

5.7   If the Client's access to the Hosted Services is suspended, the Client agrees to turn off the Monitor until Client is granted access to the Hosted Services again. If the Monitor remains running during the suspension, a pro-rata charge reflecting the costs incurred by the Provider as a result of the Monitor continuing to transmit data will apply. This is due to the fact that the Provider is responsible for the cost of satellite and carrier data transmission from the Monitor to the Hosted Services at all times that the Monitor is switched on. The Provider's calculation of this charge shall be final and binding.

5.8   If the Client fails to pay the Fee in full by the due date for payment, interest (at the rate of 12% per annum) on the unpaid amount will accrue from the due date for payment until payment is received in full.

5.9   All amounts paid by the Client are non-refundable to the extent permitted by law.

6.   MONITOR

6.1   The Client must purchase the Monitor from the Provider on or before the Commencement Date by paying the amount for the Monitor as stated by the Provider on the Website or otherwise in accordance with the Provider's directions at the time stated by the Provider. Unless otherwise stated the purchase price for the Monitor is exclusive of any sales or value added taxes which must be paid for by the Client at the same time as it purchases the Monitor. The purchase of the Monitor is subject to these Terms of Service as well as any additional terms stated by the Provider from time to time.

6.2   To the extent permitted by law, the purchase price paid for the Monitor is non-refundable, and the Monitor may not be returned to the Provider, unless it is defective and is returned within one year of the date of purchase along with proof of purchase. The Monitor will not be considered defective if the defect arises in connection with the use of the Monitor by the Client (for example, if the Monitor becomes physically damaged whilst in the Client's possession).

6.3   The Monitor will be posted by the Provider to the Client's nominated address at the Client's cost. Risk in the Monitor transfer to the Client when the Provider or its delivery agents first attempt to deliver the Monitor to the Client's nominated address. The Client authorises the Provider to leave the Monitor at the address without signature, and the Provider accepts no liability for any lost or stolen Monitors.

6.4   Title in the Monitor remains with the Provider until it is paid for in full by the Client.

6.5   The Client is responsible for setting up the Monitor and installing it and connecting it to the Hosted Services in accordance with the directions of the Provider.

6.6   The Monitor will transmit information to the Hosted Services via satellite, 3G/4G or any other appropriate technology as determined by the Provider.

7.   MAINTENANCE SERVICES

7.1   The Provider reserves the right to provide general maintenance services to the Hosted Services including updating and upgrading the Hosted Services during the Term as the Provider considers necessary from time to time, in its discretion and without notice. During any such updates access to the Hosted Services may be limited. The Provider will attempt to push such updates at the times it determines will cause the least inconvenience to users of the Hosted Services.

8.   EXCESSIVE CHANGE IN WATER LEVELS

8.1   In a small number of cases, water level changes can be excessive. This is when the water level of a Tank moves up and down many times within a day. This can generate excessive transmission of data via satellite.

8.2   The Provider has technology that minimises the impact of this type of circumstance. In cases where a Monitor sends more than 10 transmissions a day on a regular basis, the Provider reserves the right to

charge the Client an additional fee which will be equivalent to the additional satellite charges which the Provider must pay.

An example of excessive change is when the water level in a tank has more than 6 peaks and troughs during a 24 hour period on a regular basis. This can be caused by malfunctioning or primitive pump controllers. A previous example of this is when a Tank was too small for its purpose and its level oscillated many times during a day with a high risk of running empty. The Provider will record accurately the water level changes allowing decisions to be made about correct sizing of tanks and pump issues.

8.3   The Monitor will send a maximum of 24 transmissions in any 24 hour period.

9.   CLIENT DATA

9.1   The Client hereby grants to the Provider a non-exclusive, perpetual and irrevocable licence to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Client Data to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under these Terms of Service, together with the right to sub-license these rights to its hosting, connectivity and telecommunications service providers to the extent reasonably required for the performance of the Provider's obligations and the exercise of the Provider's rights under these Terms of Service, or otherwise for the Provider's own information such as if it gathers such data to measure any metrics associated with the Client's use of the Hosted Services and then use those metrics however it so wishes. The licence granted hereunder extends to permit the Provider to use the Client Data for the Provider's commercial and business purposes, provided that it is first anonymized before being published to any third party. The Client will retain ownership of all Client Data, however the Provider shall retain ownership of the structure of the Client Data. In addition, the Provider may use the Client Data in accordance with its Privacy Policy.

9.2   The Client warrants to the Provider that the Client Data will not:

(a)   breach the provisions of any law, statute or regulation; and

(b)   infringe the Intellectual Property Rights or other legal rights of any person.

10.   OWNERSHIP

10.1   The Client will retain ownership of any Monitor which it pays for in full, however the Provider shall retain ownership of any Intellectual Property Rights in respect of the Monitor.

10.2   The Provider shall always retain ownership of the Hosted Services and Materials including:

(a)   the Intellectual Property Rights subsisting in each;

(b)   all source code;

(c)   any customisations of, and modifications to, the Hosted Services and Materials to suit the Client's individual needs.

10.3   Nothing in these Terms of Service shall operate to assign or transfer any Intellectual Property Rights in the Hosted Services or Materials from the Provider to the Client.

10.4   The Client must not:

(a)   Use the Hosted Services in any way that is inconsistent with the Provider's ownership;

(b)   Invalidate or put in dispute the Provider's title to the Hosted Services or any part of it;

(c)   Oppose any application for registration or invalidate any registration of the Intellectual Property Rights in the Hosted Services or any part of it;

(d)   Support any application to remove or undo the Company's title in the Intellectual Property Rights in the Hosted Services or any part of it; or

(e)   Assist any other person directly or indirectly in any of the above.

11.   CONFIDENTIALITY OBLIGATIONS

11.1   Each party must:

(a)   keep the other party's Confidential Information strictly confidential; and

(b)   not disclose the other party's Confidential Information to any person without the other party's prior written consent.

11.2   Notwithstanding clause 11.1, either party may disclose the other party's Confidential Information to the party's officers, employees, professional advisers, insurers, agents, service providers, referrers and subcontractors who have a need to access the relevant Confidential Information.

11.3   This clause 11 imposes no obligations upon either party with respect to the other party's Confidential Information that:

(a)   is known to the first mentioned party before disclosure under these Terms of Service and is not subject to any other obligation of confidentiality;

(b)   is or becomes publicly known through no act or default of the first mentioned party; or

(c)   is obtained by the first mentioned party from a third party in circumstances where the first mentioned party has no reason to believe that there has been a breach of an obligation of confidentiality.

(d)   is required to be disclosed by any law or regulation.

11.4   This clause does not apply to prohibit the publication and use by the Provider of the Client Data in accordance with these Terms of Service and Provider's Privacy Policy.

11.5   The provisions of this clause 11 shall continue in force indefinitely following the termination of these Terms of Service.

12.   SERVICE LEVELS

12.1   The Provider shall use all reasonable endeavours to maintain the availability of the Hosted Services to the Client, but does not guarantee 100% availability. The Client acknowledges that the Provider utilizes a number of third party services in order to provide the Hosted Services (such as telephone and internet providers), and in the event that a third party provider is experiencing issues this may also cause the Hosted Services to become unavailable.

12.2   The Hosted Services forecasts the current water level of a Tank based on the previous received level from the Monitor and the recent trend. The actual water level of a Tank will typically be within a standard margin of + or -12 cm from the forecast. In case of extremely fast level change such as a sensor probe being lifted in and out of the Tank a number of times, the forecast level may temporarily show extreme values but will settle down quickly once the extremes pass.

12.3   Once the next data transmission is received from the Monitor module the forecast value is replaced by detailed actual values. The actual values are accurate to within 1- 2 cm.

12.4   Data can be sent as often as every 20 minutes from the Monitor depending on the rate of change. In the case of a series of extreme changes in water levels, there may be transmission delays of up to 20 minutes after the first change. The transmission of the water level data of a Tank is not immediate but typically only takes a few minutes with a maximum of 20 minutes

12.5   The Hosted Services have shown a high degree of reliability in testing and field use. It is not possible to guarantee the delivery of every transmission via the satellite service utilised by the Provider in order to provide the Hosted Services. The satellite communications network which transmits data between the Monitors and the Hosted Services is rated at over 99.2% certainty of successful delivery of data, however can be impacted by factors outside of our control including the following:

(a)   Foliage, trees and structures that may obscure parts of the sky adjacent to the Monitor;

(b)   Extreme weather events (storms);

(c)   Space weather;

(d)   Technical issues in the network;

(e)   Outages of telephone network connections to ground stations (typically only delays the receipt of data).

12.6   The Hosted Services may also be impacted by:

(a)   Failures and technical issues with any of the third party providers that the Provider utilizes in order to provide the Hosted Services;

(b)   Technical issues with the Provider's hardware, software and services;

(c)   Technical issues with the Monitor.

12.7   The Hosted Services have been designed to be resilient and to minimise the impact of any technical issues as they arise. The Provider will use its best efforts to remedy any issues as soon as possible. The Provider has been shown to provide a service availability of greater than 99%, however makes no guarantee that this availability will continue to be achieved.

12.8   In the event that the Provider cannot provide up to date information for a Monitor and Ranchbot Alerts due to any reason including those outlined above, it is recommended that Users manually inspect all Tanks with a Monitor to ensure that no unexpected event has occurred that may lead to insufficient water for the Client's stock, crops or any other needs or any other adverse event has occurred.

12.9   In the event that the Hosted Service or any component of it is not operational, it is the sole responsibility of the Client and its Users to manually monitor their Tanks. It is therefore very important for the Client to check the Hosted Services at least twice per day to ensure that it is working adequately, and in the event it is not, to manually monitor their Tanks to avoid suffering any loss or damage.

13.   WARRANTIES

13.1   The Client warrants that it has:

(a)   the legal right and authority to enter into these Terms of Service and to perform its obligations under these Terms of Service;

(b)   not relied upon any representations, warranties or conditions offered or made by or on behalf of the Provider except to the extent expressly set out in these Terms of Service.

13.2   No data transmission over the internet can be guaranteed as totally secure. Whilst the Provider strives to protect the Client Data, the Provider does not warrant and cannot guarantee the security of the Client Data transmitted to the Provider. Accordingly, the Client Data which the Client transmits to the Provider (including via the Hosted Services) by any means is transmitted at the Client's own risk.

13.3   The Client acknowledges that complex software is never wholly free from defects, errors and bugs, and the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

14. DISCLAIMER AND LIMITATIONS OF LIABILITY

14.1 The Provider provides the Services, including Hosted Services, on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. To the extent permitted by law, the Provider specifically disclaims any implied warranties including in relation to title, merchantability, fitness for a particular purpose and non-infringement. Furthermore the Provider does not guarantee continuous, uninterrupted or secure access to its Services, or that any information provided by the Provider is up to date and accurate. The Provider does not warrant that the use of the Hosted Services will result in the Client achieving any specific result or outcome (for example, financial savings), notwithstanding what is stated on the Provider's Website. The results of using the Hosted Services vary from property to property, depending on a number of factors outside of our control.

14.2 The Provider shall not be liable to the Client in respect of any losses arising in any way in connection with these Terms of Service or the Hosted Services, including loss of profits or anticipated savings or revenue or income, use or production, business, opportunities or contracts, corruption of any data, database or software, special indirect or consequential loss or damage whether such losses are suffered by the Client or a third party and the Client hereby indemnifies the Provider in respect of same.

14.3 Without limiting the foregoing, the total liability of the Provider to the Client shall not exceed the total amount paid by the Client to the Provider in the six month period preceding the first event giving rise to the liability.

14.4 The limitation and exclusion of liability in this clause applies whether the liability claim is based on breach of contract, under a warranty or an indemnity, tort (including negligence), under statute, in equity or otherwise.

14.5 Notwithstanding any other term in these Terms of Service, nothing in these Terms of Service is intended to limit or exclude any liability on the part of Provider or its related entities, officers, directors, employees, agents, contractors or suppliers where and to the extent that any applicable law prohibits such exclusion or limitation.

15. INDEMNITY

15.1 The Client agrees to indemnify and hold the Provider and its related entities, officers, directors, agents, employees, contractors and suppliers harmless from and against any actions, claims, demands, proceedings, losses of every kind and nature, known and unknown, including legal fees (on a solicitor and own client basis) and claims made by third parties, due to or arising out of the Client's breach of these Terms of Service or any policy or the terms and policies they incorporate by reference, or the Client's violation of any law or the rights of a third party, or otherwise in arising in connection with the Services. For the avoidance of doubt the Client agrees to indemnify the Provider in respect of any legal fees (on a solicitor and own client basis) or other fees incurred by the Provider recovering non-payment of the Fee.

16. FORCE MAJEURE EVENT

16.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under these Terms of Service (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

16.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under these Terms of Service, must:

(a) promptly notify the other; and

(b) inform the other of the period for which it is estimated that such failure or delay will continue.

16.3 A party whose performance of its obligations under these Terms of Service is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

17. RENEWAL AND TERMINATION

17.1 At the expiry of the Minimum Term either party may terminate these Terms of Service by giving 30 days written notice of termination to the other party.

17.2 Should neither party give such notice, these Terms of Service will continue on a month to month basis. The Provider reserves the right to increase the Fee at the expiry of the Minimum Term upon giving written notice to the Client.

17.3 Either party may terminate these Terms of Service immediately by giving written notice of termination to the other party if:

    (a) the other party:

        (i) commits a material breach of these Terms of Service that has not been remedied within 14 days of notice of the material breach or cannot be remedied;

        (ii) if the other party is the Client, it fails to pay any amount when due and the amount remains outstanding for a period of 7 days;

        (iii) is dissolved;

        (iv) ceases to conduct all (or substantially all) of its business;

        (v) is or becomes unable to pay its debts as they fall due;

        (vi) is or becomes insolvent or is declared insolvent; or

        (vii) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

    (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;

    (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under these Terms of Service); or

    (d) if that other party is an individual:

        (i) that other party dies;

        (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or

        (iii) that other party is the subject of a bankruptcy petition or order.

18. EFFECTS OF TERMINATION

18.1 On termination of these Terms of Service, the license to the Hosted Services is revoked and the Client must cease using, and must ensure its Users cease using, the Hosted Services, and must uninstall or allow the Provider to uninstall the Services from all its systems on request by the Provider.

18.2 Termination of these Terms of Service shall be without prejudice to the rights and obligations of the parties which accrued prior to termination.

19. NOTICES

19.1 Any notice from one party to the other party under these Terms of Service must be given by one of the following methods:

    (a) delivered personally or sent by courier, in which case the notice shall be deemed to be received upon delivery; or

    (b) sent by email, in which case the notice shall be deemed to be received once the email is capable of being retrieved by the recipient, providing that, if the stated time of deemed receipt is not within business hours, then the time of deemed receipt shall be when business hours next begin after the stated time.

20. GENERAL

20.1 Testimonial and Publicity Rights

If the Provider requests, the Client may provide a testimonial as to the quality of work the Provider has delivered. In consideration of the Provider providing the Services, the Client also agrees that it may be identified as a client on the Provider's website or other marketing materials, and that the Provider may request and use the Client's logo for this purpose which the Client must provide, and Client also agrees that the Provider may develop a case study featuring the work that the Provider/the Client has done for the Client and that this may be used for publicity purposes.

20.2 Binding on Successors

These Terms of Service shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.

20.3 Assignment

The Provider may assign any part of its rights, title, interest and obligations pursuant to these Terms of Service to a third party at any time by giving the Client written notice. The Client may not assign its interest or obligations under these Terms of Service without the prior written consent of the Provider, which shall not be unreasonably withheld.

20.4 Governing Law

These Terms of Service are governed by the laws of Texas, USA. The parties submit to the jurisdiction of the Courts of Texas and Courts competent to hear appears from them.

20.5 Entire Understanding

These Terms of Service contains the entire understanding and agreement between the parties as to the subject matter of these Terms of Service. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of these Terms of Service are merged in these Terms of Service and are of no further effect.

These Terms of Service supersede any standard terms of purchase referred to in Client's purchase order or other documentation.

No oral explanation or information provided by a party to another affects the meaning or interpretation of these Terms of Service or constitutes any collateral agreement, warranty or understanding.

20.6 Waiver

No waiver by a party of a provision of these Terms of Service is binding unless made in writing.

20.7 Severance

If a provision of these Terms of Service is void or unenforceable it must be severed from these Terms of Service and the provisions that are not void or unenforceable are unaffected by the severance.

20.8 Cumulative Rights

The rights and remedies of a party to these Terms of Service are in addition to the rights or remedies conferred on the party at law or in equity.

20.9 Costs

Each party must bear their own costs of and incidental to the negotiation, preparation and execution of these Terms of Service.

20.10 Electronic Transactions

The parties hereby consent to receiving these Terms of Service and any notices pursuant to these Terms of Service by electronic means.

20.11 Dispute resolution

(a) If a dispute arises in connection with these Terms of Service then a party may only deal with that dispute in the manner set out in this clause.

(b) A party to a dispute which arises in connection with these Terms of Service may give to the other party to the dispute a notice specifying the dispute and requiring its resolution under this clause.

(c) Within 14 days after a notice is given under the above clause (or such longer period as is agreed in writing by the parties to the dispute) each party to the dispute must use its best efforts to resolve the dispute in good faith acting reasonably.

(d) If despite the parties' best efforts a dispute is not resolved within 14 days after notice a party may by notice to the other party to the dispute refer the dispute for mediation in accordance with the Mediation Rules by the Australian Institute of Mediation and Arbitration. The mediation will be conducted by a mediator to be appointed by agreement of the parties or in default of agreement to be appointed by the President of the Victorian Law Society or their nominee at the request of a party.

(e) If the dispute is not resolved within 28 days after the appointment of the arbitrator any party may take legal proceedings to resolve the dispute.

(f) The provisions of this clause do not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.