

## TERMS AND CONDITIONS

### 1 HOW TO READ THIS AGREEMENT

#### 1.1 MEANING OF CAPITALISED WORDS AND PHRASES

Capitalised words and phrases used in these terms and conditions have the meaning given:

- (a) to that word or phrase in the Term Details or a Statement of Work;
- (b) by the word immediately preceding any bolded and bracketed word(s) or phrase(s); or
- (c) in the definitions in clause 17 of this agreement.

#### 1.2 ORDER OF PRECEDENCE

- (a) Subject to clause 1.2(b) and unless otherwise expressly stated, in the event of any inconsistency between these terms and conditions and a Statement of Work, these terms and conditions will prevail to the extent of such inconsistency.
- (b) Any Special Conditions set out in a Statement of Work are incorporated in these terms and conditions and will replace and prevail over any other terms to the extent of any inconsistency.

### 2 DURATION AND RENEWAL OF THIS AGREEMENT

- (a) This agreement commences on the Commencement Date, and continues in effect for the Initial Term, and any Renewal Term applicable per clause 2(b), unless earlier terminated in accordance with clause 1311(a) (**Term**).
- (b) Subject to clause 2(c), where a Renewal Term is set out in the Term Details, upon expiration of the Initial Term, this agreement will automatically renew on an ongoing basis for the Renewal Term.
- (c) This agreement will not automatically renew on expiry of the Initial Term or a Renewal Term (**Renewal Date**), if either party provides written notice that this agreement will not renew at least 30 days prior to the Renewal Date.
- (d) The duration of any Statement of Work is indicated by the dates set out in the Statement of Work.

### 3 ORDERING AND PROVISION OF SOLUTION

#### 3.1 ORIGINAL STATEMENT OF WORK

Crewmojo will provide the Solution in accordance with the Statement of Work as completed at the Commencement Date.

#### 3.2 ADDITIONAL STATEMENTS OF WORK

- (a) The parties may agree to additional Statements of Work under these terms and conditions during the Term.
- (b) These terms and conditions will apply to all additional Statements of Work between the parties.
- (c) If the Client requests an additional Statement of Work, Crewmojo will provide the Client a draft Statement of Work.
- (d) The Client will be taken to have accepted such additional Statement of Work if the Client informs or otherwise indicates to Crewmojo that the Client wishes for Crewmojo to proceed with the performing the additional Statement of Work.
- (e) An additional Statement of Work will not limit or otherwise affect any other current Statements of Work between the parties.

### 3.3 CHANGES TO STATEMENTS OF WORK

- (a) The Client must pay a 'change in scope fee', in an amount reasonably determined by Crewmojo (**Change Fee**), for changes to the Solution (whether requested by the Client or suggested by Crewmojo) which alter the scope set out in the relevant Statement of Work and require Crewmojo to perform additional work or incur additional costs (**Changes**).
- (b) Unless otherwise agreed in writing, Crewmojo may at its discretion extend or modify any delivery schedule or deadlines for the Solution as may be reasonably required by such Changes.
- (c) Crewmojo will only be required to perform Changes, if:
  - (i) Crewmojo agrees in writing to perform the Changes;
  - (ii) the Client confirms in writing that they wish for Crewmojo to proceed with the Changes and the relevant Change Fee; and
  - (iii) the Client pays the Change Fee, in accordance with clause 7.2 as if it was a Fee.

### 3.4 HOSTED SERVICES

Crewmojo will store Client Data using a third-party hosting service selected by Crewmojo (**Hosting Service**), subject to the following terms:

- (a) (**hosting location**) The Client acknowledges and agrees that Crewmojo may host the Software via cloud-based services which use storage servers located in Australia.
- (b) (**service quality**) While Crewmojo will use its best efforts to select an appropriate hosting provider, Crewmojo does not guarantee that the Hosting Service will be free from errors or defects or that Client Data will be accessible or available at all times.
- (c) (**security**) Crewmojo will use its best efforts to ensure that Client Data is stored securely. However, Crewmojo does not accept responsibility or liability for any unauthorised use, destruction, loss, damage or alteration to Client Data, including due to hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.
- (d) (**backups and disaster recovery**) Whilst Crewmojo will establish, maintain, enforce and continuously improve storage and backup procedures and safeguards to prevent the destruction, loss or alteration of Client Data, in the event that Client Data is lost due to a system failure (e.g., a database or webserver crash), Crewmojo cannot guarantee that any backup will be available, or if available that such a backup will be free from errors or defects.

### 3.5 SUPPORT SERVICES

- (a) Where the Scope of Solution includes Support, Crewmojo will provide the Support to the Client during the Term in accordance with **Error! Reference source not found.**
- (b) The Client acknowledges and agrees:
  - (i) Crewmojo will take reasonable steps to provide Support where necessary during the Term;
  - (ii) the Client must first endeavour to resolve any issues with the Software internally and Crewmojo will not assist with issues that are beyond its reasonable control; and
  - (iii) the Client is responsible for all internal administration and managing access, including storing back-up passwords and assisting its Personnel to access and use the Software.

### 3.6 SUBCONTRACTING

Crewmojo may subcontract any aspect of providing the Solution and the Client hereby consents to such subcontracting.

## 4 THIRD PARTY SOFTWARE

### 4.1 THIRD PARTY TERMS

- (a) The Client acknowledges and agrees that the terms and conditions of third party suppliers of goods or services (**Third Party Terms**) may apply to any part of the Solution.
- (b) Crewmojo will endeavour to notify the Client of Third Party Terms that apply to the Solution, in which case:
  - (i) the Client must immediately notify Crewmojo if they do not agree to the Third Party Terms; and
  - (ii) if Crewmojo does not receive a notice in accordance with clause 4.1(b)(i) the Client will be taken to have accepted those Third Party Terms, and Crewmojo will not be liable for any loss or damage suffered by the Client in connection with such Third Party Terms.
- (c) The Client acknowledges and agrees that if the Client does not agree to any Third Party Terms, this may affect Crewmojo's ability to provide the Solution.

### 4.2 INTEGRATIONS

- (a) The Client acknowledges and agrees that issues can arise when data is uploaded to software, when data is transferred between different software programs, and when different software programs are integrated together. Crewmojo cannot guarantee that integration processes between the Software and other software programs or IT systems will be free from errors, defects or delay.
- (b) The Client agrees that Crewmojo will not be liable for the functionality of any third party goods or services, including any third party software, or for the functionality of the Software if the Client integrates it with third party software, or changes or augments the Software, including by making additions or changes to the Software code or by incorporating APIs into the Software.
- (c) If the Client adds third party software or software code to the Software, integrates the Software with third party software, or make any other changes to the Software, including the Software code (**Client Software Changes**), then:
  - (i) the Client acknowledges and agrees that Client Software Changes can have adverse effects on the Solution, including the Software;
  - (ii) the Client indemnifies Crewmojo in relation to any loss or damage that arises in connection with the Client Software Changes;
  - (iii) Crewmojo will not be liable for any failure in the Software, to the extent such failure is caused or contributed to by a User Software Change;
  - (iv) Crewmojo may require the Client to change or remove Client Software Changes, at Crewmojo's discretion; and/or
  - (v) Crewmojo may change or remove any Client Software Changes, in its absolute discretion. Crewmojo will not be liable for loss of data or any other loss or damage the Client may suffer in relation to Crewmojo's amendment to, or removal of, any User Software Change.

## 5 SOFTWARE

### 5.1 LICENCE

- (a) During the Term, Crewmojo grants to the Client a non-exclusive, non-transferable licence to use the Software and, subject to clause 5.1(b), to provide access to the Software for the Number of Licensed Users set out in a Key Details in accordance with this agreement.
- (b) During the Term, if the Client requires additional Licensed Users to the Number of Licensed Users set out in the Key Details, the following apply:

- (i) the Client may onboard additional Licensed Users directly to the Software; and
  - (ii) Additional Licensed User Fees will be payable in accordance with clause 7.1.
- (c) The Client acknowledges and agrees that during the Term, if the number of Licensed Users required by the Client decreases, any associated Licence Fees will be non-refundable.

## 5.2 CHANGES TO THE SOLUTION

Crewmojo may from time to time in its absolute discretion install enhancements to the Software, where enhancements mean any upgraded, improved, modified or new versions of the Software (including any customisations made at the Client's request).

## 6 CLIENT OBLIGATIONS

### 6.1 PROVIDE INFORMATION

The Client must provide Crewmojo with all documentation, information and assistance reasonably required by Crewmojo to provide the Solution.

### 6.2 ACCESS

The Client agrees to provide Crewmojo with access to the Client's IT system, Personnel and any other third party or other accounts used by the Client (including login details and passwords), as reasonably required by Crewmojo to provide the Solution.

### 6.3 COMPLIANCE WITH LAWS

The Client agrees that it will not by receiving or requesting the Solution:

- (a) breach any applicable laws, rules and regulations (including any applicable privacy laws); or
- (b) infringe the intellectual property rights or other rights of any third party or breach any duty of confidentiality.

### 6.4 USE OF SOLUTION

The Client must not, and must not encourage or permit any User or any third party to, without Crewmojo's prior written approval:

- (a) upload any harmful, discriminatory, defamatory, maliciously false implications, offensive, explicit, inappropriate, offensive, illicit, illegal, pornographic, sexist, homophobic or racist material to the Software;
- (b) upload any material that is owned or copyrighted by a third party;
- (c) make copies of the Documentation or the Software;
- (d) adapt, modify or tamper in any way with the Software;
- (e) remove or alter any copyright, trade mark or other notice on or forming part of the Software or Documentation;
- (f) create derivative works from, translate or reproduce the Software or Documentation;
- (g) publish or otherwise communicate the Software or Documentation to the public, including by making it available online or sharing it with third parties;
- (h) sell, loan, transfer, sub-licence, hire or otherwise dispose of the Software or Documentation to any third party, other than sub-licensing to a Licensed User for the Number of Licensed Users;
- (i) decompile or reverse engineer the Software or any part of it, or otherwise attempt to derive its source code;
- (j) attempt to circumvent any technological protection mechanism or other security feature of the Software;

- (k) permit any person other than Licensed Users to use or access the Software or Documentation;
- (l) intimidate, harass, impersonate, stalk, threaten, bully or endanger any other user of the Software or distribute unsolicited commercial content, junk mail, spam, bulk content or harassment in connection with the Solution;
- (m) share its Software account information with any other person and that any use of its account by any other person is strictly prohibited. The Client, must immediately notify Crewmojo of any unauthorised use of it or its User's account, password or email, or any other breach or potential breach of the Software's security;
- (n) use the Software for any purpose other than for the purpose for which it was designed, such as not using the Software in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity; nor
- (o) act in any way that may harm Crewmojo's reputation or that of associated or interested parties or do anything at all contrary to the interests of Crewmojo or the Solution.

## 6.5 CLIENT DATA

By providing or posting Client Data, the Client represents and warrants that, and must ensure for all its Users that the Client Data:

- (a) is accurate and true at the time it is provided;
- (b) is free from any harmful, discriminatory, defamatory or maliciously false implications and does not contain any offensive or explicit material;
- (c) does not infringe any Intellectual Property Rights, including copyright, trademarks, business names, patents, Confidential Information or any other similar proprietary rights, whether registered or unregistered, anywhere in the world;
- (d) does not contain any viruses or other harmful code, or otherwise compromise the security or integrity of the Solution or any network or system; and
- (e) does not breach or infringe any applicable Laws.

## 6.6 USERS

- (A) The Client must, and must ensure that all Users:
  - (i) comply with this agreement at all times; and
  - (ii) notify Crewmojo without delay whenever it becomes aware of any case of a breach of this clause 6 or otherwise any illegal or unauthorised use of the Solution.
- (b) The Client acknowledges and agrees that Crewmojo will have no liability for any act of a User or for damage, loss or expense suffered by a User in connection with the use of the Solution and will indemnify Crewmojo for any such damage, loss or expense.

## 7 FEES AND PAYMENT

### 7.1 LICENCE FEE

- (a) The Licence Fee payable by the Client is calculated progressively according to the Number of Licensed Users corresponding with the Rate Card at **Error! Reference source not found.** (with the first 20 Licensed Users charged in accordance with the first User Bracket, the second 80 in accordance with the second User Bracket and so forth).
- (b) The Billing Period will commence at the SOW Start Date and will continuously renew automatically at the end of every Billing Period.
- (c) Licence Fees are payable by the Client in advance of every Billing Period.
- (d) The Minimum License Fee is the minimum fee payable per Billing Period.
- (e) In the event that the Number of Licensed Users increases during a Billing Period, the Client must pay additional fees for every additional Licensed User, calculated in

accordance with 7.1(a) on a pro-rata basis for the remaining portion of the Billing Period (**Additional Licence Fee**).

## 7.2 FEES

- (a) Excluding the Licence Fee and Additional Licence Fee, the Client must pay all other Fees in the amounts and at the times set out in a Statement of Work.
- (b) To the maximum extent permitted under the *Competition and Consumer Act 2010* (Cth) any Fees paid in accordance with this agreement are non-refundable.

## 7.3 INVOICES

Unless otherwise agreed in a Statement of Work, if Crewmojo issues an invoice to the Client, payment must be made:

- (a) by the time(s) specified on such invoice; or
- (b) if no time is specified, within 30 days of receiving an invoice from Crewmojo for amounts payable.

## 7.4 SUSPENSION OF SERVICES

Crewmojo reserves the right to suspend all or part of the Solution indefinitely where the Client fails to pay the Fees in accordance with this clause 7.

## 7.5 GST

Unless otherwise indicated, amounts stated in a Statement of Work do not include GST. In relation to any GST payable for a taxable supply by Crewmojo, the Client must pay the GST subject to Crewmojo providing a tax invoice.

## 7.6 CARD SURCHARGES

Crewmojo reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

# 8 CONFIDENTIALITY AND PRIVACY

## 8.1 PRIVACY

- (a) The Client acknowledges and agrees to Crewmojo collecting, using and disclosing personal information (including the personal information of its Licensed Users) in accordance with its Privacy Policy, located <https://www.crewmojo.com/privacy>, which is incorporated into this agreement by reference.
- (b) Crewmojo will keep the Client informed of any changes to Crewmojo's Privacy Policy during the Term.

## 8.2 CONFIDENTIAL INFORMATION

The parties will not, during, or at any time after, the Term, disclose Confidential Information directly or indirectly to any third party, except:

- (a) with the other party's prior written consent;
- (b) as required by Law; or
- (c) to their Personnel on a need to know basis for the purposes of performing its obligations under this agreement (**Additional Disclosees**).

## 8.3 BREACH

If either party becomes aware of a suspected or actual breach of clause 8.2 by that party or an Additional Disclosee, that party will immediately notify the other party and take reasonable steps required to prevent, stop or mitigate the suspected or actual breach. The parties agree that damages may not be a sufficient remedy for a breach of clause 8.2.

#### 8.4 PERMITTED USE

A party may only use the Confidential Information of the other party for the purposes of exercising its rights or performing its obligations under this agreement.

#### 8.5 RETURN

On termination or expiration of this agreement, each party must immediately return to the other party, or (if requested by the other party) destroy, any documents or other Material in its possession or control containing Confidential Information of the other party.

#### 8.6 ADDITIONAL DISCLOSEES

Each party will ensure that Additional Disclosees keep the Confidential Information confidential on the terms provided in this clause 8. Each party will, when requested by the other party, arrange for an Additional Disclosee to execute a document in a form reasonably required by the other party to protect Confidential Information.

### 9 INTELLECTUAL PROPERTY

#### 9.1 DEFINITIONS

In this clause and any Statement of Work, the following terms have the following meanings in relation to Intellectual Property Rights:

- (a) **Existing Material** means Material, other than New Material;
- (b) **New Material** means Material that is created, written, developed or otherwise brought into existence during the Term for the purposes of this agreement; and
- (c) **Material** means tangible and intangible information, documents, reports, software (including source and object code), inventions, data and other materials in any media whatsoever.

#### 9.2 EXISTING MATERIAL

- (a) Except to the extent otherwise stated in a Statement of Work or in this clause 9:
  - (i) each party retains ownership of the Intellectual Property Rights in its Existing Material; and
  - (ii) nothing in this agreement transfers ownership of, or assigns any Intellectual Property Rights in, either party's Existing Material to the other party.
- (b) The Client grants to Crewmojo (and its Personnel) a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use its Existing Material to the extent reasonably required to perform any Solution.
- (c) The Client warrants that Crewmojo's use of the Client's Existing Material will not infringe the Intellectual Property Rights of any third party and will indemnify Crewmojo from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of such infringement.
- (d) Crewmojo grants to the Client a non-exclusive, royalty free, non-transferable and revocable licence to use its Existing Material, to the extent such use is reasonably required for the Client to use and enjoy the benefit of the Solution.

#### 9.3 NEW MATERIAL

- (a) Unless otherwise stated in a Statement of Work, Intellectual Property Rights in New Material are immediately assigned to and vest in Crewmojo as those rights are created.
- (b) Crewmojo grants to the Client a non-exclusive, royalty free, non-transferable and revocable licence to use the New Material to the extent such use is reasonably required for the Client to enjoy the benefit of the Solution.

## 10 WARRANTIES AND DISCLAIMERS

### 10.1 WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (b) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Client may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

### 10.2 DISCLAIMER

The Client acknowledges and agrees that:

- (a) any information provided to the Client as part of or in connection with the Solution is general in nature and may not be suitable for the Client's circumstances;
- (b) it is the Client's responsibility to comply with applicable regulations relevant to the Client's business, including industrial relations laws and privacy laws; and
- (c) Crewmojo will not be responsible for any failures, errors, bugs or defects in the Software which:
  - (i) result from the interaction of the Software with any other solution or any computer hardware or software;
  - (ii) result from any misuse of the Software; or
  - (iii) result from the use of the Software by the Client other than in accordance with this agreement or the Documentation.

## 11 LIABILITY

- (a) **(Liability)** To the maximum extent permitted by applicable law, Crewmojo limits all liability in aggregate of all claims to the Client (and any third parties who encounter the services or goods through the Client's business) for loss or damage of any kind, however arising whether in contract, tort (including negligence), statute, equity, indemnity or otherwise, arising from or relating in any way to this agreement or any goods or services provided by Crewmojo to the amount paid by the Client to Crewmojo in the 12 months preceding the date of the event giving rise to the relevant liability].
- (b) **(Indemnity)** The Client indemnifies Crewmojo and its employees, contractors and agents in respect of all liability for any claim(s) by any person (including any third party who encounter the services or goods through the Client's business) arising from the Client's or the Client's employee's, client's, contractor's or agent's:
  - (i) breach of any third party intellectual property rights;
  - (ii) breach of any term of this agreement;
  - (iii) negligent, wilful, fraudulent or criminal act or omission; or
  - (iv) use of any goods or services provided by Crewmojo.
- (c) **(Consequential loss)** To the maximum extent permitted by law, under no circumstances will Crewmojo be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with this agreement or any goods or services provided by Crewmojo (except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth)).

## 12 IF THE PARTIES HAVE A DISPUTE

- (a) If an issue between the parties arises under this agreement that cannot be resolved day-to-day, the parties will make genuine efforts in good faith to participate cooperatively in mediation, at equal shared expense of the parties.



- (b) The parties will conduct mediation through the Australian Disputes Centre (**ADC**) and in accordance with the ADC's Guidelines for Commercial Mediation (as current at the time of the dispute).
- (c) The parties will follow the mediator's recommendations on the extent of mediation required, and when to stop mediation if the issue cannot be resolved.
- (d) If mediation does not resolve the issue, the parties must:
  - (i) if they haven't already done so, engage independent legal representation at their own expense to understand the strength of their arguments; and
  - (ii) based on that advice, if settlement is not achieved, participate in arbitration (or other dispute resolution mechanism agreed in mediation) through the ADC at equal shared expense.
- (e) The parties will follow the binding outcome of arbitration (or other agreed mechanism).
- (f) Either party may at any time during this process make an offer for settlement. The parties acknowledge and agree it is in their best interests to properly consider all genuine settlement offers. The parties will use best endeavours to avoid litigation and reach a prompt settlement.
- (g) The process in this clause does not apply where a party requires an urgent injunction.

## 13 TERMINATION

### 13.1 TERMINATION FOR BREACH

- (a) If a party (the **Notifying Party**) considers that the other party is in breach of this agreement (the **Breach**), the Notifying Party may provide a notice to the other party.
- (b) The notice must include the nature and details of the Breach, with reference to the relevant clause/s of this agreement. The Notifying Party may, if it wishes to do so, make suggestions for resolving the Breach.
- (c) The other party will have 10 Business Days (or longer, in the Notifying Party's discretion) to rectify the Breach (the **Rectification Period**).
- (d) After the Rectification Period, the Notifying Party will:
  - (i) if the Breach has been successfully rectified, notify the other party that the agreement will continue; or
  - (ii) if the Breach has not been successfully rectified, notify the other party that this agreement is terminated (**Termination for Breach Notice**).
- (e) Following a Termination for Breach Notice, the parties will stop all work under this agreement unless otherwise agreed.
- (f) Any disputes regarding termination under this clause must be dealt with in accordance with clause 12. The indemnities, warranties and liability caps in clause 11 will apply to any disputes and resulting claims.

### 13.2 OTHER CONSEQUENCES FOR TERMINATION

If this agreement ends, in addition to the specific consequences set out in clause 13.1:

- (a) the licence granted to the Client under clause 5.1 will terminate and all Users will no longer have access to the Software;
- (b) the parties will:
  - (i) return all property and Confidential Information to the other party;
  - (ii) comply with all obligations that are by their nature intended to survive the end of this agreement, including without limitation 8, 9, 10 and 11; and
  - (iii) stop using any materials that are no longer owned by, or licensed to, them under clause 9 when this agreement ends.

### 13.3 DATA BACKUP

- (a) Upon termination or expiry of this agreement, the Client will not be able to access nor be given a copy of any Client Data. Crewmojo will delete data and material associated with the Client, including Client Data, within 15 months after the end of the Term.
- (b) Crewmojo will not be responsible to the Client, or any user, for, and Crewmojo expressly disclaims any liability for, any cost, loss, damages or expenses arising out the cancellation, termination or expiry of this agreement and any loss of data.

## 14 FORCE MAJEURE

- (a) A '**Force Majeure Event**' means any occurrence beyond the control of the Affected Party which prevents the Affected Party from performing an obligation under this agreement (other than an obligation to pay money), including any:
  - (i) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
  - (ii) strike or other industrial action;
  - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic; or
  - (iv) decision of a government authority in relation to COVID-19, or other epidemic or pandemic,to the extent the occurrence affects the Affected Party's ability to perform the obligation.
- (b) If a party (**Affected Party**) becomes unable, wholly or in part, to carry out an obligation under this agreement (other than an obligation to pay money) due to a Force Majeure Event, the Affected Party must give to the other party prompt written notice of:
  - (i) reasonable details of the Force Majeure Event; and
  - (ii) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.
- (c) Subject to compliance with clause 14(b), the relevant obligation will be suspended during the Force Majeure Event to the extent that the obligation is affected by the Force Majeure Event.
- (d) The Affected Party must use its best endeavours to overcome or remove the Force Majeure Event as quickly as possible and resume performing the relevant obligation.

## 15 NOTICES

- (a) Any notices required to be sent under this agreement must be sent via email using the party's email addresses set out in the Statement of Work and the email's subject heading must refer to the name and date of this agreement.
- (b) If no email address is stated in this agreement, the notice may be sent to the email address most commonly used by the parties to correspond in relation to this agreement at the time the notice is sent.
- (c) The notice will be considered to be delivered 24 hours after it was sent, unless the sender has reason to believe the email failed to send or was otherwise not delivered or received.

## 16 GENERAL

### 16.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in New South Wales. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

## 16.2 BUSINESS DAYS

If the day on which any act is to be done under this agreement is a day other than a Business Day, that act must be done on or by the immediately following Business Day except where this agreement expressly specifies otherwise.

## 16.3 AMENDMENTS

This agreement may only be amended in accordance with a written agreement between the parties.

## 16.4 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

## 16.5 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

## 16.6 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

## 16.7 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

## 16.8 COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

## 16.9 COSTS

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

## 16.10 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

## 16.11 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or

annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;

- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word “includes” and similar words in any form is not a word of limitation;
- (j) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- (k) **(currency)** a reference to \$, or “dollar”, is to Australian currency, unless otherwise agreed in writing.

## 17 DEFINITIONS

In these terms and conditions, the following words and phrases have the following meaning:

Term	Meaning
<b>Billing Period</b>	A 12 month period.
<b>Business Day</b>	A day (other than a Saturday, Sunday or any other day which is a public holiday) on which banks are open for general business in Sydney.
<b>Client Data</b>	Any Material which is uploaded or inserted to the Software, or otherwise provided to Crewmojo, by the Client or its Users, and includes any Intellectual Property Rights attaching to such materials.
<b>Commencement Date</b>	The date the last party to sign this agreement signs this agreement.
<b>Confidential Information</b>	Information of, or provided by, a party that is by its nature confidential information, is designated as confidential, or that the recipient of the information knows or ought to know is confidential (including all commercial information exchanged between the parties), but does not include information which is, or becomes, without a breach of confidentiality, public knowledge.
<b>Documentation</b>	All manuals, help files and other documents supplied by Crewmojo to the Client relating to the Solution, whether in electronic or hardcopy form.
<b>Fees</b>	Any fees payable by the Client for Crewmojo’s goods and services under this agreement, including any Licence Fees, Implementation Fees and Change Fees.
<b>Intellectual Property Rights</b>	All copyright, trade mark, design, patent, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this agreement both in Australia and throughout the world.
<b>Term Details</b>	The details related to the Term on the cover page of this agreement.
<b>License Fee</b>	The fee payable for the licence to the Software as set out in clause 7.1.

<b>Term</b>	<b>Meaning</b>
<b>Licensed User</b>	A User who has been validly granted access to the Software and Documentation by the Client in accordance with clause 5.1.
<b>Personnel</b>	Officers, employees, secondees, agents and subcontractors (who are individuals), including employees and contractors (who are individuals) of subcontractors.
<b>Software</b>	The performance management platform provided by Crewmojo as described in a Statement of Work.
<b>Solution</b>	The goods and services to be provided by Crewmojo to the Client in accordance with a Statement of Work.
<b>Statement of Work</b>	A document agreed and signed by both parties (or otherwise agreed to in accordance with clause 3.2) which sets out the terms under which Crewmojo is to provide any goods or services to the Client.
<b>User</b>	means the Client's Licensed Users, its Personnel, and any other third party who is granted access to the Software or Documentation by the Client, its Licensed Users or its Personnel.