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Envirodata

Standard Conditions of Supply

1. Definitions and Interpretation

1.1 Definitions

In these Standard Conditions, the following terms have the meanings set out below:

Business Day means a day on which banks are open for business in the place in Brisbane, Queensland, Australia and **Business Hours** has a corresponding meaning, except these definitions do not apply for the purposes of clause 22.2.

Claim means any action, suit, proceeding or demand of any kind.

Company, Envirodata, We and Us each means Envirodata Weather Stations ACN 131 757 125, a member of the Envirodata Group (even if not a company) or other person (as identified in the Quotation) responsible for supplying the Services and/or supplying the Goods (as the case may require).

Company Representative means the representative of the Company identified in the Quotation or any other person authorised by the Company from time to time.

Confidential Information means the Contract and any information (in whatever form) or Documentation of a confidential nature (or which the Company or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of the Customer or an End User (including in relation to the Services) and which:

- (a) is disclosed to the Customer or its Personnel by or on behalf of the Company;
- (b) is generated by the Customer or its Personnel in supplying the Services; or
- (c) otherwise comes to the knowledge of the Customer or its Personnel.

Contract means the following documents:

- (a) Quotation;

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- (b) any special conditions and attachments; and
 - (c) these Standard Conditions of Supply.

Contract Price means:

- (a) if it is a fixed price, the amount payable (excluding Taxes payable in accordance with clause 10) by the Customer to the Company in relation to the Services and/or Goods as set out in a Quotation, or
- (b) alternatively, such amount as calculated by reference to the Goods supplied and for the Services, the total time spent travelling and working onsite, and costs incurred or as otherwise specified in the Quotation, and

as adjusted by clause 9 (Contract Price), clause 10 (for Taxes) and any other clause in this Contract.

Notes re Pricing:

1. We estimate the costs for your installation or service work based on the information supplied to us. While we make every effort to keep your costs to a minimum, further charges may be made for additional work required, and additional time on Site for whatever reason, including Induction Courses, and other HSE and organisation requirements.

2. Unless we state in our Quotation that it is a fixed price agreement, we will charge for the total time actually spent in travelling and working onsite and costs incurred.

3. Before performing significant extra work that would incur costs above our estimate, we will advise you before proceeding. This does not apply to minor variations, totalling less than \$250 extra.

4. Travel time will be charged for the actual travel time spent from departure ex Warwick QLD or other nominated departure point specified by us to your destination and return. This includes unexpected delays for whatever reason, provided the delay is outside our control.

5. Where possible, we share travel costs between nearby Customers, but only where travel costs are reduced for both, or all Customers involved. To do this, you have to agree that we can perform your work according to our schedule.

6. If you require work to be done immediately or on a particular day or time, full travel costs both ways will normally be charged.

7. For installation of new systems, cancellation or postponement within the ten business days prior to commencement will be charged a 20% disruption fee. Cancellation or postponement once we have

Corporations Act means the *Corporations Act 2001* (Cth).

Customer and **you** means the customer named in the Quotation.

Customer Representative is, initially, as defined in the Quotation and includes:

- (a) the Customer; or
- (b) such other person as the Customer may, in writing to the Company, substitute for that representative.

Delivery Date means the date/s specified in the Quotation for delivery of each of the Services and the Goods (where applicable).

Delivery Point means the place/s identified in the Quotation for delivery of each of the Services and Goods (where applicable) or as otherwise agreed by the parties.

Dispute means any dispute, question or difference of opinion between the Company and the Customer arising out of or under the Contract.

Documentation includes plans, designs, drawings, calculations, engineering information, data, Specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

End User means either the Customer or an entity identified in the Contract (or notified to the Company by the Customer) to whom the Customer provides goods and/or services comprising or derived from, in whole or in part, the Goods and Services.

Envirodata Group means the Company and:

- (a) any Related Body Corporate of the Company;
- (b) any unincorporated Joint Venture in which the Company or any Related Body Corporate of the Company has a participating interest of not less than 50 percent; and
- (c) any body corporate or unincorporated Joint Venture managed by the Company or any Related Body Corporate of the Company.

Excise Duties means any tax imposed, claimed, levied or assessed by or payable to any Government Agency in relation to the production or manufacture of Goods.

Facilities means any accommodation, sustenance, transportation, medical or toilet facilities.

Force Majeure means an event or cause or contributing factor which is beyond the control of the Party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that Party, and which could not have been reasonably foreseen, and includes (subject to satisfying the requirements of the foregoing):

- (a) Act of God, earthquake, cyclone, typhoon, tornado, hurricane, fire, explosion, flood, landslide, lightning, storm or other adverse weather conditions, tempest, drought, fire or meteor or meteorite, magnetic or solar event, emergency (declared or not), and other heavy and inclement weather or other event that adversely affects such things as (but is not limited to) the internet and world wide web, electronic and other forms of communications, computer hosting, computer functions, electricity and other essential services, manufacturing processes, treatment processes, transportation, supply chain processes, delivery, installation, construction, erection, commissioning, repairs, servicing and decommissioning and all other types of business interruptions;

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- (b) War (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
 - (c) Act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
 - (d) Confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority;
 - (e) Industrial action of any kind not specific to the Party claiming the force majeure;
 - (f) A breakdown or failure of equipment;
 - (g) Contamination of any kind,
 - (h) Health related events (including declared health emergencies, local and large scale outbreaks of contagions, infections, diseases, illnesses, epidemics and/or pandemics (whether natural, artificial, physical, mental or a combination of things), and
 - (i) An act or omission of a third party that could not have been reasonably prevented or avoided by the Party claiming the force majeure.

Goods means the goods (if any) identified in the Quotation that are to be supplied by the Company and, where applicable, includes any other goods associated with the supply of the Services.

Government Agency means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

HSE Management Plan(s) means health, safety and environmental management plan(s).

HSE Policies and Standards means the Customer's health, safety and environmental policies and associated standards applicable from time to time.

HSE and organisation requirements means any and all requirements of the Customer as referred to in the HSE Management Plan(s) and HSE Policies and Standards and any other requirements reasonably required by the Customer (to be met by the Company for the supply of the Goods and Services).

Indirect Transaction Taxes means any value added tax, goods and services tax or similar tax including, without limit, sales, use or consumption taxes, imposed, claimed, levied or assessed by, or payable to, any Government Agency, but does not include any related penalty, fine or interest thereon.

Induction Courses means all appropriate and relevant induction courses required by the Customer.

Input Tax Credit means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

Intellectual Property Rights and IPR means all industrial and intellectual property rights whether protectable (or no) by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind including but not limited to:

- (a) loss of profit, data, business contracts, revenues or anticipated savings; or
- (b) loss resulting from any claim made by any third party; or
- (c) special, indirect or consequential loss or damage of any nature whatsoever.

Party means a party to the Contract.

Personal Information has the meaning given in the *Privacy Act*.

Personal Information means the Personal Information that one party transfers to the other party from time to time in connection with the Contract.

Personnel means:

- (a) in relation to the Company, any of its its past or present officers, employees, agents and representatives; and
- (b) in relation to the Customer or an End User any of its past or present officers, employees, agents and representatives.

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

Process means collect, hold, use, transfer, destroy and any other dealing.

Quotation means an individual quotation or estimate and any invoice issued by the Company to the Customer in respect of the supply of Services or the provision of Goods which shall be subject to the terms of the Contract and includes, where applicable, a variation in accordance with clause 9.

Related Body Corporate has the meaning given in the Corporations Act.

Services means the work identified in the Quotation to be supplied by the Company (and includes any supply of any incidental goods not specified but otherwise required in accordance with the Contract). Such work may include (but is not limited to) induction, training, design, modelling, construction, erection, demolition, excavation and tunnelling, installation, earthworks, transportation, electrical works, delivery, commissioning, testing, compliance, audit, repair, maintenance, remediation, hire and/or operation of machinery.

Where the Customer is supplied with software then services supplied may include access to the Software, hosting service, storage back up services, support and professional services and **Service Levels** (if applicable) shall have a corresponding meaning being those levels contemplated by or specified in the Quotation or on our website.

Notes about Services:

1. While we will make every effort to ensure that your Goods are in a fully working state when we leave your Site, we are not responsible for any malfunction or failure after we have left. To ensure that your Goods are operational at the time we depart, we will complete a standard check list before departure.

2. Servicing your Goods does not alter your standard return to factory warranty for new equipment (purchased within 12 months or 24 months if we installed the equipment), nor your right to use our factory repair service.

3. If we become aware of damage to other equipment during our visit, we will advise you prior to departure. However, we take no responsibility other than as required by law.

Site means the Customer's premises, or such other location specified.

Specifications means the specifications for the Services and Goods (as applicable) and any modification of those specifications.

Tax or Taxes means, unless the contrary intention is expressed, any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable.

Tax Invoice means an invoice or other document, including, without limit, a credit note or debit note, in a form that is valid under the applicable law of the jurisdiction in which a liability to pay Indirect Transaction Taxes is imposed, claimed, levied or assessed, which must be held by a person for that person to be able to claim Input Tax Credits.

Warranty Period means (as applicable) the period identified as such in the Quotation or, where such period is not identified in the Quotation, the period of 1 year following the receipt of any particular Goods by the Customer.

1.2 Interpretation

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

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

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- (d) The meaning of general words is not limited by specific examples introduced by "including" or "for example".
 - (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes all of them.
 - (f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).
 - (g) A reference to an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
 - (h) A reference to "use", in the context of dealing with Intellectual Property Rights, includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating.
 - (i) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.

2. Precedence of Documents

2.1 Precedence of Contract documents

If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in the definition of Contract.

2.2 Entire agreement

- (a) The Contract contains the entire agreement between the Customer and the Company with respect to its subject matter and supersedes all prior communications and negotiations between the Customer and the Company in this regard, unless those communications expressly form part of the Contract.
- (b) No terms or conditions submitted by the Customer that are in addition to, different from or inconsistent with those contained herein, including, without limitation, the Customer's printed/published terms and conditions and any terms and conditions contained in any Customer's purchase order, order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon the Company unless specifically and expressly agreed to in writing and signed by a duly authorised representative of the Company.

2.3 Amendment to be in writing

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by the Company and the Customer, as the case may be.

3. Supply by Company

- 3.1 The Company must supply the Goods and the Services in accordance with the terms of the Contract and in consideration of the payment of the Contract Price by the Customer.
- 3.2 Unless otherwise stated in writing by the Company in the Quotation or elsewhere, the following are the terms for payment and credit:
- (a) For large orders, orders with custom manufacturing or orders including third party equipment totalling more than 20% of the value of the order, the Company reserves the right to require a deposit before the order is accepted into our production schedule. All requirements for a deposit will be noted on the Quotation.
 - (b) Credit accounts, where approved, will require payment in full within 30 days from the date of shipment of Goods, unless prior written agreement has been made to vary these terms. If the Customer does not have an approved credit account with Envirodata, then the total amount of the order will be payable prior to dispatch.
- 3.3 Unless otherwise stated in writing by the Company in the Quotation or elsewhere, prices are valid for 60 days from the date of the Quotation.

4. Company Standards of Supply and Customer's Warranty

4.1 Company's warranties

In addition to the warranty contained in clause 5.2, the Company warrants that:

- (a) all of the Services will be provided in accordance with all applicable legislation and laws or regulations; and
 - (b) in relation to the provision of Goods:
 - (i) the Goods will be of merchantable quality;
 - (ii) the Goods will be free from defects in design, materials and workmanship, and suitable for the relevant purpose of those Goods; and
 - (iii) the Company has good and marketable title to the Goods and the Customer will receive title to the Goods free of any charge or encumbrance;
- 4.2 The Customer warrants all information and materials forming part of any offer, tender or order are true and correct in every respect and are not misleading or deceptive, and the Customer has prior to entry into the Contract provided to, and not withheld from, the Company any information concerning the Customer, its experience or expertise which might reasonably be supposed to be material to the Company in determining whether or not to provide the Services and/or Goods or the price at which or the terms on which the Company would be prepared to provide the Services and/or Goods. This specifically includes a requirement that the Customer provide a copy of all of its HSE and organisation requirements and details of the Induction Courses.

4.3 Software supply excluded

This clause 4 does not apply to the supply of Software.

5. Warranty for Goods and Services

5.1 Correction of deficient Services

Upon receipt of a notice from the Customer Representative during the Term of any deficiency in the Services (except for a defect in any of the Goods in respect of which clauses 5.2, 5.3 and 5.4 apply), the Company must assess if there has been a deficiency and if in its reasonable opinion there has been a deficiency then correct such deficiency (including by way of providing such additional services necessary to correct such deficiency) at no cost to the Customer.

5.2 Warranty of Goods

The Company warrants each of the Goods against a defect in manufacturing which becomes apparent during the Warranty Period.

5.3 Commencement of Warranty Period

In respect of each of the Goods, the Warranty Period will commence on and from the date that each of the Goods is received at the Delivery Point by the Customer.

5.4 Rectification of defects

Upon receipt of a notice from the Customer Representative of any defect in any of the Goods during the Warranty Period due to a defect in manufacture then:

- (a) Defective equipment, which is returned to the factory of Environdata will be repaired or replaced at its option, free of charge, provided that the faults are solely due to a defect in manufacturing;
- (b) Damage caused by misuse, accident, abuse, faulty installation, mishandling or damage in transit is not covered by warranty;
- (c) Freight costs, to and from the factory, will be charged to the Customer.
- (d) Environdata reserves the right to apply handling charges or inspection charges in the case of Goods improperly returned as defective, and/or being in warranty, and
- (e) Environdata reserves the right to reject any claim if, in its opinion, the Goods have been subjected to misuse or neglect.

Note: Tips on electronic relative humidity sensors, filters, batteries and bearings are all consumable items and are excluded from this warranty.

5.5 Software supply excluded

This clause 5 does not apply to the supply of Software.

6. Not Used

7. Representatives

7.1 Supply

The Goods and Services must be supplied by the Company in accordance with the Contract and in accordance with any reasonable directions of the Customer Representative pursuant to the provisions of the Contract.

7.2 Customer Representative

The Customer Representative is responsible for giving directions for and on behalf of the Customer as provided in the Contract and the Customer Representative will have full power to legally bind the Customer in respect of all matters arising out of the Contract.

7.3 Company Representative

The Company Representative is responsible for liaising with the Customer Representative.

8. Delivery, Title and Risk

8.1 Delivery

The Company must arrange at the Customer's cost for the Goods and/or Services (if applicable) to be delivered to the Delivery Point.

The Company shall use its best endeavours to deliver by the Delivery Date but the Company shall not be liable for late delivery of any of the Goods or Services.

8.2 Title

Full unencumbered title to each of the Goods will pass to the Customer upon the Customer making payment in full to the Company for each of the Goods.

For the sake of clarity, title will pass for each individual Good at the relevant time.

8.3 Risk

Risk in each of the Goods will pass to the Customer upon shipment of the Goods from the relevant factory. It is the Customer's responsibility to insure the Goods for transit for the Delivery.

9. Contract Price

9.1 Contract Price to be exclusive.

The Contract Price means the aggregate amount payable (excluding Indirect Transaction Taxes payable in accordance with clause 11) by the Customer to the Company in relation to the Services and/or Goods pursuant to clauses 3.1 and 11.

9.2 Variation

- (a) The Company agrees to supply the Services to the Customer in accordance with this agreement at the Contract Price.
- (b) The Company may vary the Contract Price if there are increased costs in any one or more of the following:
 - (i) raw materials;
 - (ii) freight;
 - (iii) labour and overheads;
 - (iv) additional time on site for whatever reason, including attending Induction Courses, and HSE and organisation requirements of the Customer, and
 - (v) fluctuation in the currency exchange rate.

9.3 Currency fluctuations

- (a) Without limiting clause 9.2(b), where the Contract Price is specified to be in AUD, the Company reserves the right to issue a revised Contract Price where there is a decrease of 1% or more of the AUD against the relevant overseas currency from where the Goods are imported by the Company, when measured against the daily foreign exchange rate available to the Company.
- (b) The Company may issue a revised Contract Price at any time from the date of this Contract to the date of actual full payment for the Goods by the Customer.
- (c) If the Company exercises its rights under this clause 9.2, it will give the Customer seven (7) days from notification of the revised Contract Price to exercise a right to cancel this Contract provided the Customer pays any costs reasonably incurred by the Company.

9.4 Custom Import Duties

- (a) Unless otherwise specified, the Contract Price is exclusive of any custom import duties payable by the Company in respect of import of any Goods by the Company into Australia.
- (b) If the Contract Price is specified to be inclusive of any such custom import duties for Goods supplied by the Company then if there is any change in the dutiable classification or effective rate of the applicable custom import duties the Contract

Price will be adjusted to pass through the effect of the change to the Customer and the Customer must pay the adjusted Contract Price.

9.5 Greenhouse gas emissions

The Company is entitled to be reimbursed by the Customer for any amount that the Company pays or is liable to pay as a result of the Company, or a Related Body Corporate of the Company, being required by a law to surrender tradeable permits or to pay a Tax as a consequence of:

- (a) the emission of greenhouse gases in the course of supplying the Services or producing any Goods supplied under the Contract; or
- (b) supplying the Services and/or Goods.

10. Taxes

10.1 Taxes (including Indirect Transaction Taxes)

- (a) All amounts payable under or in connection with the Contract, (including any amount by way of reimbursement, indemnity, damages or otherwise) are exclusive of Indirect Transaction Taxes, unless expressed otherwise in the Quotation or special conditions.
- (b) If Indirect Transaction Taxes are payable on a supply, transfer or sale (**supply**) made under or in connection with the Contract, and if the Party making that supply (**the Company**) is liable, under the applicable law, to pay or collect and remit, the Indirect Transaction Taxes to the appropriate Government Agency, the Party receiving that supply (**recipient**) shall pay to the Company an additional amount equal to the Indirect Transaction Taxes payable by the Company in respect of the supply. The recipient must pay the additional amount to the Company on the date when the Contract Price (or part thereof) is provided to the Company (subject to a Tax Invoice being received prior to payment date). This subclause does not apply to the extent that the consideration for the supply is expressed to be inclusive of Indirect Transaction Taxes.
- (c) The Company shall ensure that each invoice it presents to the recipient in respect of any Indirect Transaction Taxes is a Tax Invoice.
- (d) Any reference in:
 - (i) the Contract to a cost, expense or other liability (**Cost**) incurred by a Party; or
 - (ii) the calculation of consideration or of any indemnity, reimbursement or similar amount to a Cost,

must exclude the amount of any Input Tax Credit entitlement of that Party in relation to that Cost.

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- (e) Each Party will take all reasonable steps to cooperate with and provide all necessary assistance to the other Party to ensure, so far as possible, that the Taxes treatment is accepted by the relevant Government Agency, including the provision of invoices, proof of payment, proof of source and/or origination and other documentation for this purpose.

10.2 Withholding Taxes

- (a) If a Party (**payer**) is required by any applicable law to make a deduction or withholding from a payment to the other Party (**payee**) for or on account of any Taxes, the payer is entitled to make that deduction or withholding unless the payee provides the payer with valid documentation (received prior to the date when the payment is to be made) showing to the satisfaction of the payer that an exemption applies. If the payer is required by law to deduct or withhold, then the payer shall use its best endeavours to furnish the payee with all receipts, proof of payment and other relevant documentation for all deductions and withholding Taxes so paid to the relevant Government Authority. For the avoidance of doubt, the payer will not be liable to pay any amount to the payee on account of an amount deducted or withheld in accordance with this clause.
- (b) Where a payment is made without a deduction or withholding for or on account of Taxes and such a deduction or withholding was required by any applicable law, the payee shall reimburse the payer for, or otherwise pay to the payer, the amount that should have been withheld or deducted within 14 days of receiving an official receipt (or certified copy) or other documentation evidencing the amount that was required to have been withheld or deducted.

10.3 Not Used

10.4 Survival

This clause will continue to apply after expiration or termination of the Contract.

11. Payments to Company

11.1 Method of payment

Unless otherwise provided in the Contract, all payments required to be made to the Company by the Customer pursuant to the Contract in relation to the supply of the Services and/or Goods must be made in the currency specified in the Quotation by electronic funds transfer into the Company's nominated bank account. If no currency is specified then it shall be treated as Australian Dollars unless proven to the contrary.

11.2 Tax Invoices

- (a) The Company must, unless otherwise agreed with the Customer, render a Tax Invoice to the Customer in relation to the supply of the Services and / or Goods at the end of each month during the period in which the Services and / or Goods are supplied and calculated by reference to the prices, fees or other amounts specified in the Quotation.

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- (b) A Tax Invoice must contain the following information:
- (i) the number of the Quotation to which the Tax Invoice relates; and
 - (ii) a description of the Services and/or Goods provided in the period covered by the Tax Invoice.

11.3 Payment of Tax Invoices

Subject to clauses 11.4 and 18.2(b), the Customer must pay to the Company the amount shown on the Tax Invoice within the Company's payment terms as specified or 30 days of the date of the Tax Invoice whichever is the earlier.

11.4 Disputed Tax Invoices

If the Customer disputes any amount shown on a Tax Invoice, it will notify the Company within a reasonable time and in the notice will specify why it disputes any amount.

11.5 Errors or exceptions in invoicing

Without limiting clause 11.3, if the Company discovers or is advised of any errors or exceptions relating to its invoicing, the Company and the Customer will jointly review the nature of the errors or exceptions, and, if appropriate, take prompt corrective action and the relevant person shall adjust the relevant Tax Invoice or refund overpayments or pay shortfalls.

12. Packing, Despatch and Transport

12.1 Customer responsible

The Customer is responsible, at its cost, for packing and transporting the Goods to the Site unless otherwise stated in the Quotation.

12.2 Where Customer to arrange transport

If, pursuant to the terms of the Contract, the Customer is obliged to arrange transport of all or some of the Goods, then the Company must notify the Customer Representative of the details of those Goods ready for despatch in sufficient time to enable transport to be arranged.

12.3 Preparation for transport

The Company must pack and protect all Goods ready for despatch having regard to methods of carriage and handling through which they will pass whilst being transported to the Site.

12.4 Notification of despatch dates

The Company must notify the Customer Representative promptly of the date of despatch of each item and the estimated date of arrival at the Site.

13. Health, Safety and Environment

13.1 Application of clause

This clause 13 applies to the extent the Company or any of its Personnel are required to be on, or near the vicinity of, the Site for the purposes of the Services.

13.2 Compliance with health, safety and environmental laws, policies and standards

The Company agrees to comply, and to ensure that its Personnel comply, with:

- (a) the Customer's HSE and organisation requirements provided that the Customer has provided the Company and its Personnel with the Customer's HSE and organisation requirements, and
- (b) all relevant health, safety and environmental legislation and laws in force from time to time.

14. Access to Site

14.1 Access

Without limiting this clause 14, the Customer will grant to the Company access to the Site on and from the date of the Contract, or such other date as stipulated in the Contract, and the Company must give the Customer Representative reasonable notice before commencing the Services on the Site.

14.2 No exclusive possession

The Company acknowledges that nothing in the Contract confers on it exclusive possession of the Site and that it will only be granted access to the Site to the extent necessary or incidental for the supply of the Goods and Services.

15. Force Majeure

15.1 Notice of Force Majeure

A Party will not be liable for any delay or failure to perform any of its obligations under the Contract (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract, it gives a notice to the other Party that complies with clause 15.2.

15.2 Force Majeure notice

A notice given under clause 15.1 must:

- (a) specify the obligations the Party cannot perform;
- (b) fully describe the Force Majeure;
- (c) estimate the time during which the Force Majeure will continue; and

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- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

15.3 Obligation to remedy and mitigate

The Party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure must:

- (a) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
- (b) take all action reasonably practicable to mitigate any Liabilities suffered by the other Party as a result of its failure to carry out its obligations under the Contract.

16. Service, Software and Software Licensing

16.1 Definitions

In clauses 16 and 17:

New Releases means any new versions of the Software that contain significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Envirodata Documents means standard documents (including user guides and manuals, if any) that describe the features and functions of the Software or Services in a hard copy, electronic or online format (and may include documents from Envirodata, any of its suppliers and the manufacturers of the Software).

Software means the software provided under this Contract to be installed and/or used on your Environment.

Specifications means those requirements and specifications (including but not limited to hardware, device, computer, operating system, network, program, code, file, apps or other software or anything else) required by you to utilise the Software.

Virus means any thing or device (including any software, code, file or program) which may:

- (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
- (b) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by rearranging, altering or erasing the program or data in whole or part or otherwise); or
- (c) adversely affect the user experience, including worms, Trojan horses, viruses and other similar things or devices but does not include any code, mechanism or device that is included in the Software by Envirodata for the purpose of managing the licensed use of the Software.

Your Data means your data and your authorised user's input for the purposes of using the Software and/or Services.

Your Environment means your computer system and network (including all devices, machines, equipment not limited to computers, computer hardware and software, information technology, telecommunications, internet and other relevant infrastructure that interfaces with the Services and Software).

16.2 Envirodata's obligations

- (a) Envirodata will use its best endeavours to ensure that any warranty provided with the Software will be transferred to you subject to the terms stated in the manufacturer's warranty.
- (b) Envirodata warrants that its entry into and performance of its obligations under this Contract will not infringe the rights of any third party or cause you to be in breach of any obligations to a third party.

16.3 Your obligations

- (a) You agree to:
 - (i) observe all requirements imposed on you by this Contract and the Software licence;
 - (ii) ensure that your staff co-operate fully with Envirodata's personnel;
 - (iii) supply Envirodata's personnel with information and documents that they reasonably request, including passwords, details and data;
 - (iv) make available to Envirodata's personnel such office and administrative facilities as are reasonably necessary for the proper performance of the Services while they are working at premises owned or controlled by you;
 - (v) grant Envirodata's personnel access to your location(s) and your Environment (including relevant passwords and/or data) reasonably required by Envirodata to perform Envirodata's obligations under this Contract;
 - (vi) ensure that adequate security and Virus checking procedures are in place in relation to any computer facilities to which Envirodata's personnel are provided access;
 - (vii) arrange the timely and competent input of third parties where, in Envirodata's reasonable opinion, this is required in order to assist the resolution of a problem affecting the provision of the Services;
 - (viii) obtain and maintain all third party consents, licences and rights required in order to allow Envirodata to perform the Services in relation to software not supplied by Envirodata;

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- (ix) at all times remain responsible for your Environment, including but not limited to system administration, security, maintaining portals and links, back-ups, restores and recovery actions;
 - (x) ensure all users use the Services and Software in accordance with the terms of this Contract and you will be responsible and liable for any user's breach;
 - (xi) in the event of a default by you under this Contract, irrevocably authorise Environdata and its personnel to have access to your location(s) and your Environment (including all relevant passwords, details and/or data) and the Goods at all reasonable times to enable Environdata to enforce its rights on termination or otherwise, including but not limited to:
 - (A) limiting, restricting, disabling, cancelling or removing your use of the Software;
 - (B) disabling or deleting the Software;
 - (C) copying or deleting any data relevant to your use of the Software (so far as it relates to your default); and
 - (D) any act or thing necessary or incidental to Environdata's rights under this clause.
 - (E) Environdata shall, at its absolute discretion, be entitled to do any or all of the above in a manner that is temporary or permanent or a combination thereof.
- (b) You warrant to Environdata:
- (i) that you own the rights or have the right to use any devices, machines, equipment, software, hardware, systems, IP addresses, domain names and other items in your Environment;
 - (ii) that your Environment is in good working order and that you have sole responsibility for the legality, availability, reliability, integrity and accuracy of your Environment;
 - (iii) to take all reasonable precautions to safeguard your business and specifically your Environment, the Software and all software and data to minimise potential loss or disruption, including (as applicable) implementing effective audit control, working methods, firewalls, Virus checking controls and data security measures including appropriate data and software back-ups; and
 - (iv) to follow the manufacturer's written instructions for the Software.
- (c) You:

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- (i) must let Environdata know of any defect in the operation of the Software as soon as you become aware of the defect; and
 - (ii) agree Environdata may supply the Services remotely.

16.4 Your use of the Services and Software (and duration)

- (a) Environdata is supplying the Software to you on the basis:
 - (i) of an end user licence agreement, and
 - (ii) at all events, the duration of the licence is dependent on you not breaching this Contract and the availability of the Software from time to time, and
 - (iii) You acknowledge and agree Environdata and any manufacturer (if it is a different person) may discontinue the Software and/or support of the Software at any time and Environdata shall not be liable to you for any such discontinuance (or any consequence of that).
- (b) You will not use the Services or Software in connection with the operation of nuclear facilities, air traffic control, life support systems or where the use or failure could lead to death, personal injury or environmental damage/ contamination.
- (c) You will not access, store, distribute or transmit any Viruses or any material during the course of your use of the Services and Software that:
 - (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (ii) facilitates illegal activity;
 - (iii) promotes violence;
 - (iv) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity;
 - (v) causes damage or injury to any person or property; or
 - (vi) infringes or otherwise promotes or facilitates the infringement the Intellectual Property Rights of any person.
- (d) The following uses of the Services and Software are, without limitation, expressly prohibited:
 - (i) sending unsolicited mail messages;
 - (ii) harassment, whether through language, or the frequency or size of messages;
 - (iii) the unauthorised use, or forging of mail header information;

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- (iv) creating, forwarding or promoting "chain letters" or "pyramid schemes" of any type;
 - (v) using the Services or Software for any illegal or illicit purpose; and
 - (vi) storing, sending or handling illegal or illicit material.
- (e) You may, subject to clause 16.4(f):
- (i) use one copy of the Software where "use" means storing, loading, installing, executing or displaying the Software for your own internal purposes; and
 - (ii) make a reasonable number of back-up copies of the Software and Envirodata Documents to support the permitted use, provided all copies include the third party manufacturer's copyright notice as it appears in the original copy of the Software provided.
- (f) You agree not to:
- (i) copy, modify, create derivative works from, download, display, transmit the Software, Envirodata Documents or Services except as expressly permitted by this Contract and to the extent and in the circumstances permitted by law;
 - (ii) decompile, reverse engineer, disassemble or otherwise reduce any part of the Software, Envirodata Documents or Services to human-readable form nor permit any third party to do so;
 - (iii) access all or any part of the Software, Envirodata Documents or Services to build a product or service which competes with the Software, Envirodata Documents or Services; or
 - (iv) license, deal, sell, rent, lease, transfer, assign, distribute, disclose, or otherwise commercially exploit or make the Software, Envirodata Documents or Services available to any third party except any authorised users.
- (g) You will use reasonable endeavours to prevent any unauthorised access to, or use of, the Software, Envirodata Documents or Services and, in the event of any such unauthorised access or use, promptly notify Envirodata in writing, while taking all necessary remedial steps.

16.5 Your Data

- (a) In the event of any loss or damage to your Data caused by Envirodata's negligence, your sole and exclusive remedy is for Envirodata to use reasonable commercial efforts to restore your lost or damaged Data from the latest back-up of that Data. Envirodata is not responsible for any loss, destruction, alteration or disclosure of your Data caused by you or any third party.

16.6 Software Support inclusions

- (a) Where applicable, Environdata will provide the Software support (if any) in accordance with this Contract.
- (b) Software support consists of:
 - (i) phone and email support for Software on Business Days during Business Hours;
 - (ii) certain on-site support, either by technician or remote access, as Environdata deems necessary to ensure the Software remains in substantial conformity to the Specifications;
 - (iii) Environdata providing licence updates, patches, service packs and other minor updates to you when they are available to Environdata. A charge may be payable by you for this. You agree these will only be provided for periods Environdata considers commercially viable, and
 - (iv) when New Releases are available to Environdata, Environdata making them available to you. You agree these New Releases will only be provided for periods Environdata considers commercially viable. You are responsible for ensuring that any New Releases are compatible with and suitable for your requirements.

16.7 Service exclusions

- (a) Unless otherwise agreed in writing, Environdata has no liability for, and is not required to provide, Services under this Contract if they relate to:
 - (i) Services outside of Business Days during Business Hours;
 - (ii) damage due to external causes outside Environdata's control, including accident, disaster, electrical fault, power surges, lightning, internet connection fault, vandalism or burglary;
 - (iii) you not following Environdata or the manufacturer's written instructions for the Software and/or Services;
 - (iv) unauthorised repairs of damage caused by unauthorised personnel installing or modifying the Software or the Goods;
 - (v) you or a third party's abnormal use of the Software or the Goods and/or any repair or damage caused by such misuse;
 - (vi) any malfunction or specific requirement of any device, machine, equipment, item of hardware or other software that you have linked to the Software;
 - (vii) correction or errors in any other software not supplied by Environdata or other relevant third party manufacturer;
 - (viii) your Data being lost or damaged;

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- (ix) your changing your Environment (other than as agreed in writing);
 - (x) where you have not installed or maintained any error correction, current licence updates or New Releases supplied or made generally available by Environdata or other relevant third party manufacturers;
 - (xi) repair necessitated by a Virus or denial-of-service attack (or similar) in your Environment;
 - (xii) the Software demonstrating a fault for which the third party manufacturer has not or does not intend to release a correction;
 - (xiii) where you customise the Software (when customisations are not permitted under its licence terms);
 - (xiv) any other services not included in the Services; and
 - (xv) high safety required use. The Software and the Goods and Services are designed and manufactured for general commercial use and are NOT designed for, developed or manufactured for use where high safety is required (to prevent personal injury, death or other high risk dangers). These are specifically excluded (including without limitation nuclear reaction control, airflight control, mass transport control, medical life support and missile launch control / weapon systems).
- (b) Environdata may at its option provide some or all of the services stated in clause 16.7 for an additional charge.
 - (c) Environdata will not be liable to you in contract or tort or on any other legal basis for any Liabilities.

16.8 IPR and licensing

- (a) The ownership of the IPR in any item that exists before the commencement of this Contract will not be transferred or assigned from one party to the other party merely by virtue of that item's use by the other party under this Contract.
- (b) Subject always to your compliance with this clause 16.8 and any relevant Software licence, Environdata grants you, a non-exclusive and non-transferable licence to use the Software for your internal business purposes.
- (c) You agree to not copy, reproduce, export or deal in the Software and/or Environdata Documents or any part of them in any way except as expressly permitted by this Contract and to the extent and in the circumstances permitted by law.
- (d) If Software or Environdata Documents contain any items in which IPR are owned by a third party, then Environdata warrants you will be entitled to use them for the purpose contemplated under this Contract without having to obtain consent from that third party, except where you are required to enter into a third party software licence and you have been informed of that requirement.

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- (e) You agree not to remove, alter or obliterate any IPR or proprietary notice or other notice required by national legislation or regulation on any Software supplied by Envirodata.

16.9 Infringement of IPR

- (a) Envirodata will indemnify you against any final judgement, award or settlement made against you in respect of any Software or Envirodata Documents suspected and/or alleged to infringe someone else's Australian IPRs subject to you:
 - (i) notifying Envirodata in writing of the alleged infringement as soon as reasonably practicable;
 - (ii) making no admissions about the alleged infringement;
 - (iii) allowing Envirodata to conduct the defence of any alleged infringement and providing Envirodata reasonable assistance; and
 - (iv) agreeing the indemnity will not apply if the infringement is due to your abnormal use or misuse of the Software or Envirodata Documents.
- (b) If any Software or Envirodata Documents are held, or in Envirodata's reasonable opinion are likely to be held, to be an infringement, Envirodata will, at its expense and option do one or more of the following:
 - (i) procure the right for you to continue using the Software or Envirodata Documents;
 - (ii) modify or amend the Software or Envirodata Documents to circumvent any infringement; or
 - (iii) replace all or part of the Software or Envirodata Documents with software and/or documents of a similar capability.
- (c) To the full extent permitted by law, the remedies stated in clause 16.9 constitute your sole remedies and Envirodata's sole liability with respect to any infringement.
- (d) Your rights under this clause 16.9 and Envirodata's indemnity will not apply to any Software or Envirodata Documents where the infringement claim arises from:
 - (i) your use of the Software or Envirodata Documents in combination with any third party product (including software) not approved by Envirodata;
 - (ii) modification of the Software or Envirodata Documents by you or a third party without Envirodata's written approval; or
 - (iii) the use of the Software or Envirodata Documents other than as contemplated in this Contract, including any documents supplied with the Software or Envirodata Documents, or operating instructions provided by Envirodata.

16.10 Limitation of Liability

In relation to the supply of the Software clauses 4 and 5 do not apply.

To the extent permitted by law:

- (a) all conditions, terms and warranties which are not expressly provided for in this Contract are excluded in relation to the supply of the Software and any Services connected therewith, and
- (b) the Company's Liability is limited (at the Company's election) to one of the following:
 - (i) replacing the Software; or
 - (ii) repairing of the Software; or
 - (iii) the cost of replacing the Software; or
 - (iv) the cost of repairing the Software, and
- (c) the Company is not liable to the Customer for any Liabilities arising out of or in connection with the supply of the Software and any Services connected therewith including, any negligent act or omission or misconduct on the Company's part; and
- (d) the Customer indemnifies the Company for any and all Liabilities arising out of or in connection with the supply of the Software and any Services connected therewith.

Company where used in this clause specifically includes all of its Personnel.

17. Accept or Decline Software Install Protocol

17.1 You need to read clause 16 carefully before installing, downloading or using the Software.

By clicking on the "I Accept" button, installing, downloading and/or using the Software, you agree to the terms and conditions of clause 16.

If you do not agree to all of the terms and conditions of clause 16, promptly click on the "Decline" or "I Do Not Accept" button, cancel the installation or downloading, or destroy or return the Software and accompanying documentation to Environdata.

YOU AGREE THAT YOUR USE OF THE SOFTWARE ACKNOWLEDGES THAT YOU HAVE READ CLAUSE 16, UNDERSTAND IT, AND AGREE TO BE BOUND BY IT.

18. Default

18.1 Default Notice

If either party breaches any term of the Contract, the innocent party may serve a notice of default (**Default Notice**) on the defaulting party containing the information specified in clause 18.2.

18.2 Default Notice requirements

A Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 30 days (or a shorter period if justifiable) after service of the Default Notice on the defaulting party or state that the breach is incapable of remedy; and
- (b) state that if the breach is not remedied within the period specified in the Default Notice or is incapable of remedy, then the innocent party may by further notice to the defaulting party do one or more of the following:
 - (i) elect wholly or partly to suspend payment under the Contract until the breach has been remedied;
 - (ii) take such action as necessary to cure the breach (the cost of such action so taken being recoverable from the defaulting party as a debt due);
 - (iii) terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**); or
 - (iv) take such other or additional action available at law.

18.3 Obligations upon termination

If an innocent party gives notice pursuant to clause 18.2(b)(iii), the Contract is terminated from the Cancellation Date and the defaulting party must:

- (a) If applicable, cease supply of the Services in accordance with, but only to the extent specified in, the Default Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all the Goods;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (d) take any other action reasonably required in relation to the termination.

19. Dispute Resolution

19.1 Dispute

In the event of any Dispute, a Party may give to the other Party a Dispute Notice specifying the Dispute and requiring its resolution under this clause 19.

19.2 Dispute Representatives to seek resolution

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).

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- (b) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may commence legal proceedings in an appropriate court to resolve the matter.

19.3 Performance of obligations during Dispute

During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.

19.4 Urgent interlocutory relief

Nothing in this clause 19 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

20. Confidentiality

20.1 Obligation of confidentiality

The Parties undertake to each other and agree:

- (a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Goods and Services; and
- (b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the supply of the Goods and Services,

unless the prior written consent of the other Party to do so has been obtained.

20.2 Exceptions

Clause 20.1 does not apply to:

- (a) information after it becomes generally available to the public other than as a result of the breach of this clause 20 or any other obligations of confidence imposed on the Parties; or
- (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange.

20.3 Breach of consent

The breach of any of the conditions contained in a consent granted pursuant to clause 20.1 will be deemed to be a breach of the Contract.

20.4 Indemnity

Each Party indemnifies the other, and must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this clause 20 by that Party or its Personnel.

20.5 Additional obligations

The obligations in this clause 20 are in addition to and do not diminish the obligations of the Parties in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

20.6 Return of Confidential Information

If requested by a Party, whether prior to or after the expiry or earlier termination of the Contract, the other Party must promptly deliver all Confidential Information in their custody, possession or control.

20.7 Survival of clause

This clause 20 will survive the termination of the Contract.

21. Intellectual Property Rights

21.1 Company Intellectual Property Rights

The Customer acknowledges that the Company retains ownership of the Intellectual Property Rights of the Company used or created under the Contract and/or in the provision of the Services and the Customer can only deal with such IPR as provided for in the Contract.

22. Notices

22.1 Form of Notices

Any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract:

- (a) must be in writing;
- (b) must, where given by a Party, be signed or authorised by a Representative; and
- (c) may be delivered by prepaid post, by hand, or by email to the Party to whom the Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

22.2 Notices deemed given

A Notice will be taken to be duly given:

- (a) in the case of delivery by hand, when delivered;

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- (b) in the case of delivery by post, 5 Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); or
 - (c) if the Communication is sent by email, then it is deemed to be received at the time and on the date it was noted as sent by the computer of the sender except in the case it was received after 5pm then it will be deemed received the next Business Day, unless in any case a message indicating it was not received is noted or received by the sender's computer (then it will be deemed not received).

For the purposes of this Clause 22.2 " Business Day" and time shall be a reference to the relevant jurisdiction where the receiver has its place of business.

23. Costs

23.1 Each Party to bear its own costs

Each Party must bear its own costs arising out of:

- (a) the negotiation, preparation and execution of the Contract; and
- (b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

24. Status of Company

24.1 Independent contractor

At all times during the Term, and in the provision of the Services, the Company is an independent contractor and will not act as, or be or be regarded as, an agent or employee of the Customer, and the Supplier and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Customer by virtue of their status as an employee.

25. Privacy and Data Protection

25.1 Personal information

Each Party agrees to comply with their obligations under the *Privacy Act* in respect of Personal Information obtained by or disclosed to them pursuant to the Contract.

25.2 Warranty

Each Party warrants to the other Party that it has complied with the *Privacy Act* in obtaining any Personal Information disclosed by it pursuant to the Contract.

25.3 Data protection and use etc

25.4 In addition to its obligations under the *Privacy Act*, the Parties agree to:

- (a) only Process the Personal Information for the purposes of the Contract;

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- (b) not disclose the Personal Information to any other person without the other Party's prior written consent, unless the disclosure is required by law;
 - (c) immediately notify that the disclosure of the Personal Information may be required by law;
 - (d) put into place and maintain appropriate technical and organisational measures against unauthorised and/or unlawful Processing of the Personal Information;
 - (e) put into place and maintain appropriate technical and organisational measures against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to the Personal Information; and
 - (f) take all necessary steps to ensure that its Processing of the Personal Information will be fair and lawful.

25.5 Subject to the above and any law to the contrary, Envirodata shall not have any Liability to the Customer or any End User in relation to any:

- (a) data loss, encryption, mis-encryption, corruption, manipulation, error, miscalculation, misinterpretation or mis-interpolation (whether by use of data, the Software or any website of Envirodata or other way (for example use of a third party website));
- (b) Virus, cybersecurity attack or incident (on any website or in relation to any data) not directly caused by Envirodata;
- (c) failure by Envirodata to:
 - (i) monitor, maintain, update or repair:
 - (A) any of its websites, and/or
 - (B) any Software, or
 - (C) any data, or
 - (ii) maintain functions on a website,
 - (iii) ensure content is not interrupted or error free, or defects corrected, or
 - (iv) the website or server is free of Viruses and bugs etc.
- (d) issues concerning accuracy, currency, completeness, quality, reliability, availability or the application of any data,
- (e) fitness for purpose or use by You (unless specifically agreed to otherwise by Envirodata in writing with You),
- (f) breach of any Intellectual Property Rights of any person by Envirodata, You or any other person,

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- (g) failure to notify the Customer or any End User of any of the above (either in a timely way or at all), or
 - (h) use of (or inability to use) any website provided by Environdata.

25.6 Survival of clause

This clause 25 will survive the termination of the Contract.

26. Waiver

A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

27. Further Assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

28. Severability

28.1 Severability

Any provision of the Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

28.2 Negotiation in good faith

Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

29. Governing Law

The Contract is governed by the laws of Queensland, Australia. Each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction in Queensland, Australia in connection with matters concerning the Contract.