

## 1. SUBSCRIPTION AGREEMENT

This subscription agreement sets out the terms and conditions on which Deputy provides its Customers and their Authorised Users with access to and the use of the Deputy Application. This Agreement applies to both Trial Subscription and Paid Subscription Customers and their Authorised Users.

By choosing to register with Deputy, the Customer represents and acknowledges that it has read, understood and agreed to be bound by the terms and conditions of this Agreement. If you enter into this Agreement as an agent, officer, employee or other representative of a Customer, you and the Customer warrant to Deputy that you are duly authorised to enter into this Agreement on behalf of the Customer.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

In this Agreement, unless the contrary intention appears, the following words have the following meanings:

<b>Additional Fee</b>		means any fee payable by the Customers to Deputy for the provision of any Additional Services, charged at a rate as agreed between the parties, including the Subscription Fees payable under clauses 5.4(c)(ii)(A) and 5.4(c)(iii).
<b>Additional Services</b>		means any additional, customised or customisable services which Deputy may provide at the request of its Customers, for an Additional Fee, at any time and from time to time, and includes without limitation, the provision of consulting, customisation, implementation, training, integration or any other additional services.
<b>Administrator Email Address</b>		any email address in relation to which the Customer has provided 'System Administrator' level access within the Deputy Application, whether or not that level of access has been renamed by the Customer.
<b>Agreement</b>		means this subscription agreement and the terms and conditions contained therein and includes the Rate Sheet, Statement of Works and any notices published on the Deputy Website or on the Customer Installation at any time and from time to time.
<b>Annual Subscription</b>		means an annual Paid Subscription in respect of which the Subscription Fees are paid annually.
<b>Annual Subscription Period</b>		means, in respect of an Annual Subscription, the annual period of a Paid Subscription that has been invoiced in advance.

<b>Authentication Credential</b>	means the username and password or any other means of authentication which an Authorised User must use to gain access to the Deputy Application.
<b>Authorised User Data</b>	means all information stored in the Deputy Application in respect of an Authorised User's individual Deputy profile.
<b>Authorised User</b>	means any current or former employees, officers, agents, contractors or any other representatives of the Customer, its subsidiaries or other related entities who have been issued with an Authentication Credential in accordance with this Agreement irrespective of whether their account to access the Deputy Application is active and irrespective of whether they are acting in the capacity of the Customer.
<b>Business Day</b>	means a day, which is not a Saturday, Sunday or gazetted public holiday, on which banks are open for trading in Sydney, New South Wales.
<b>Claim</b>	means any claim, cause of action, Liability, demand, request, requisition, notice, direction, allegation, action, proceeding, damage or judgment arising in any manner and at any time, and whether present, immediate, unascertained, future or contingent whether at law, in equity, under statute or otherwise, including a claim from or relating to a breach of the Agreement.
<b>Commencement Date</b>	means the date a Customer first registers online or otherwise with Deputy or otherwise confirms its acceptance of this Agreement.
<b>Confidential Information</b>	includes: <ul style="list-style-type: none"> <li>(a) in respect of Deputy, its subsidiaries and other affiliates: <ul style="list-style-type: none"> <li>(i) the source code, look and feel and any other information regarding the Deputy Application not referenced elsewhere in this subparagraph (a) and which is not generally available to the public;</li> <li>(ii) the contents of this Agreement, the Rate Sheets, the Statement of Works, and the Documentation;</li> <li>(iii) all trade secrets, confidential operations, processes or dealings relating to Deputy or its customers, suppliers, finances, affairs, management, operations, operational know-how, sales, marketing or any categories of information related to Deputy, including without limitation the Intellectual Property;</li> </ul> </li> </ul>

- (iv) any other information disclosed by Deputy that:
    - (A) is identified as being confidential; or
    - (B) would be apparent to a reasonable person that such information was disclosed in confidence by a Deputy;
- (b) in respect of a Customer:
  - (i) the Customer Data, other than Authorised User Data; and
  - (ii) any information disclosed by the Customer in connection with the Subscription Services and Additional Services (if any) that is:
    - (A) is identified as being confidential; or
    - (B) would be apparent to a reasonable person that such information was disclosed in confidence by a Deputy; and
- (c) Confidential Information includes any information provided or obtained on, before or after the Commencement Date but does not include information which is in or has become part of the public domain, other than as a result of a breach of this Agreement or an obligation of confidence or other legal obligation, or information which a party proves was independently and lawfully acquired or developed without breaching any of the obligations set out in this Agreement or other legal obligation.

**Consequential Loss** means in relation to a breach of this Agreement, any indirect loss or damage (including, without limitation, loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements or liability to third parties) resulting from such breach, together with punitive and exemplary damages.

**Customer** means the person who registers to use the Deputy Application, any party identified as the customer on any registration, order or other similar form or document submitted to Deputy and includes Enterprise Customers.

**Customer Data** means all information or communications (whether relating to the Customer or its Authorised Users or otherwise) uploaded to the Deputy Application by or on behalf of a Customer or its Authorised Users.

<b>Customer Installation</b>	means the installation program of the Deputy Application made available by Deputy to its Customers which may vary from time to time through a nominated URL published or provided by Deputy to its Customers.
<b>Data Controller</b>	has the meaning given to the term 'controller' in the Data Protection Legislation.
<b>Data Processor</b>	has the meaning given to the term 'processor' in the Data Protection Legislation.
<b>Data Protection Legislation</b>	means (i) Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data (the " <b>General Data Protection Regulation</b> "); and (ii) any other legislation in force from time to time in the European Union applicable to the parties relating to either or both privacy or the Processing of Personal Data.
<b>Data Subject</b>	has the meaning give to that term in the Data Protection Legislation.
<b>Deputy</b>	means Deputec Pty Ltd ACN 133 632 327, a company incorporated in Australia.
<b>Deputy Application</b>	means any version (as applicable) of the employee scheduling, time and attendance, task management, business procedure management, payroll integration, workplace social media services and other online software applications made available by Deputy for use by its Customers and their Authorised Users from time to time and includes (where applicable) the Customer Installation.
<b>Deputy Infrastructure</b>	means the computer servers or other hardware used by Deputy in connection with its provision of the Subscription Services and Additional Services (if any).
<b>Deputy Website</b>	means the website with the URL <a href="http://www.deputy.com">www.deputy.com</a> and any other website which Deputy may use or provide to its Customers for use at any time and from time to time.
<b>Documentation</b>	means any manuals, guides, reference materials or other similar documents, written or otherwise, provided by Deputy or made available by to its Customers in respect of the Deputy Application.
<b>EEA</b>	means the European Economic Area.
<b>Enterprise Customer</b>	means a Customer that is issued with a Statement of Works or is determined to be an Enterprise Customers at any time and from time to time at Deputy's sole and absolute discretion.

<b>Enterprise Customer Service Guarantee</b>	means the service level guarantee applicable only to Enterprise Customers and are as described in clause 13 and Schedule 1.
<b>Fair Use Policy</b>	means the policy, as described in clause 9, which governs the use of the SMS Services, Deputy Application, Deputy Website, Deputy Infrastructure or any other services, application and infrastructure provided or supplied by Deputy.
<b>Fees</b>	means any fees or other amounts payable by a Customer to Deputy for any services provided pursuant to this Agreement, and includes without limitation the Subscription Fee, the Optional Usage Fee and the Additional Fee.
<b>Force Majeure Event</b>	<p>means a strike, lockout, riot, industrial action, fire, storm, tempest, act of God, material shortage, any outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority, any government law, regulation, restraint or requirement, or any other cause beyond the reasonable control of Deputy and includes, without limitation, the following:</p> <ul style="list-style-type: none"> <li>(a) an outage or impairment of the hosting and any other services provided to Deputy by Amazon Web Services Inc.;</li> <li>(b) an outage or impairment of the messaging and other services provided to Deputy by Intercom; and</li> <li>(c) other internet, telecommunications or utility outage or impairment which is beyond the reasonable control of Deputy.</li> </ul>
<b>Government Authority</b>	<p>means (as appropriate) any:</p> <ul style="list-style-type: none"> <li>(a) federal, state or local government;</li> <li>(b) department of any federal, state or local government;</li> <li>(c) any court or administrative tribunal; or</li> <li>(d) statutory corporation or regulatory body.</li> </ul>
<b>Improvement</b>	means any addition, modification, alteration, development, new use or other changes to the Deputy Application which may be made at any time and from time to time by Deputy with the aim to improve the accuracy, usefulness, functionality, efficiency, cost effectiveness and any other improvements on the Deputy Application.
<b>Indirect Tax</b>	means a goods and services tax, a sales or use tax, a value added tax, a consumption tax or a tax of a similar kind which may apply.

<b>Initial Term</b>	has the meaning given to it in the Statement of Works.
<b>Insolvency Event</b>	<p>in respect of a Customer, means the happening of any of these events:</p> <ul style="list-style-type: none"> <li>a) the Customer becoming the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation;</li> <li>b) an assignment for the benefit of creditors;</li> <li>c) suspending payments of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or otherwise becoming insolvent;</li> <li>d) any analogous event.</li> </ul>
<b>Intellectual Property</b>	<p>means all present and future rights to intellectual property including any inventions and improvements, trademarks, designs, copyright, any corresponding property rights under the laws of any jurisdiction and any rights in respect of an invention, discovery, trade secret, secret process, know-how, concept, idea, information, process, data or formula as well as any patents and patent applications, copyrights and all brand names and business names as may be developed or registered now or in the future by Deputy or any of its subsidiaries or other affiliates, whether registered or unregistered and includes, without limitation:</p> <ul style="list-style-type: none"> <li>a) the Customer Installation;</li> <li>b) the Deputy Application;</li> <li>c) the Deputy Infrastructure;</li> <li>d) the Deputy Website;</li> <li>e) any Documentation; and</li> <li>f) any Improvements.</li> </ul>
<b>Liability</b>	means any liability, loss, cost, expense, amount due, debt, damage, charge, penalty, and any other obligation, and whether fixed or contingent.
<b>Loss</b>	means any loss (direct and Consequential Loss), damage, claim, action, liability, cost, expense, charge, penalty, and legal costs and expenses on a full indemnity basis however arising.
<b>Monthly Subscription</b>	means a monthly Paid Subscription in respect of which the Subscription Fees are paid monthly.

<b>Non-Enterprise Customer</b>	means each Customer that is not an Enterprise Customer.
<b>Online Technical Support</b>	means the receipt of and response to any online technical support queries submitted by the Customer or its Authorised Users in respect of the use and operation of the Deputy Application.
<b>Optional Usage Fee</b>	means the then current fees payable for the subscription of optional features available on the Deputy Application (for example, SMS fees), the rate at which is specified in the Rate Sheet, which may be varied at any time and from time to time.
<b>Paid Subscription</b>	includes different types of subscription to varying levels of access to the Deputy Application and the Subscription Services which is made available by Deputy to its Customers in consideration for the Subscription Fees, the content of which may be varied by Deputy at any time and from time to time.
<b>Personal Data</b>	has the meaning given to that term in the Data Protection Legislation.
<b>Payment Facility</b>	means any credit card, bank card, bank account or other payment facility, details for which are provided by the Customer to Deputy in respect of the payment of the Fees.
<b>Rate Sheet</b>	means the then current pricing documentation made available to Customers on the Deputy Website or Customer Installation or provided by Deputy to its Customers, the content of which may be varied at any time and from time to time.

<b>Restricted Transfer</b>	means: (a) a transfer of Personal Data from the Customer to Deputy; or (b) an onward transfer of Personal Data from Deputy to another sub-processor (or between two establishments of Deputy), in each case, where such transfer would be prohibited by the Data Protection Legislation in the absence of the appropriate safeguards such as the Standard Contractual Clauses to be established under clause 21.4(a) below. For the avoidance of doubt: (a) without limitation to the generality of the foregoing, the parties to this Agreement intend that transfers of Personal Data from the UK to the European Union or from the European Union to the UK, following any exit by the UK from the European Union shall be Restricted Transfers for such time and to such extent that such transfers would be prohibited by UK Data Protection Legislation or EU Data Protection Legislation (as the case may be) in the absence of appropriate safeguards such as the Standard Contractual Clauses to be established under clause 21.4(a) below; and (b) where a transfer of Personal Data from one country to another country is of a type authorised by the Data Protection Legislation in the exporting country for example in the case of transfers from within the European Union to a country or scheme (such as the US Privacy Shield) which is approved by the European Commission as ensuring an adequate level of protection or any transfer which falls within a permitted derogation, such transfer shall not be a Restricted Transfer for the purposes of this Agreement.
<b>Security Incident</b>	means any accidental or unlawful destruction, loss or alteration of Personal Data, or any unauthorised disclosure of or access to Personal Data.
<b>Services</b>	means Subscription Services, SMS Services and Additional Services.
<b>SMS Services</b>	means the SMS messaging service made available by Deputy for use by Customers and their Authorised Users from time to time.
<b>Standard Contractual Clauses</b>	means: a) the standard contractual clauses for the transfer of Personal Data to Data Processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C(2010) 593, as updated, amended, replaced or superseded from time to time by the European Commission which are hereby populated and entered into pursuant to this Agreement; or b) where required from time to time by a Supervisory Authority for use with respect to any Restricted Transfer, any other set of contractual clauses or other similar mechanism approved by such Supervisory Authority or by the Data Protection Legislation for use in respect of such Restricted Transfer, as updated, amended, replaced or superseded from time to time by such Supervisory Authority or the Data Protection Legislation.



<b>Standard Establishment</b>	means the standard version or implementation of the Deputy Application provided by Deputy.
<b>Statement of Works</b>	means the document titled 'Statement of Works' in the form of a quotation for works or a similar form of document issued by Deputy to its Enterprise Customers, the content of which vary from time to time.
<b>Subscription Fee</b>	means the then current subscription fee payable by a Customer in respect of a Paid Subscription, at a rate specified at the domain: <a href="https://www.deputy.com/pricing">https://www.deputy.com/pricing</a> or in the case of Enterprise Customers, the rate specified in the Rate Sheet, which may vary at any time and from time to time.
<b>Subscription Services</b>	means the services provided by Deputy to its Customers as described in clause 4.
<b>Subscription Type</b>	<p>means the type of subscription which a Customer may subscribe to with Deputy and includes:</p> <ul style="list-style-type: none"> <li>(a) Trial Subscription;</li> <li>(b) all types of Paid Subscription; and</li> <li>(c) any other subscriptions type which Deputy may offer at any time and from time to time,</li> </ul> <p>and the Subscription Services related to the Subscription Type.</p>
<b>Supervisory Authority</b>	means: (a) an independent public authority which is established by a European Member State pursuant to Article 51 of the General Data Protection Regulation; and (b) any similar regulatory authority responsible for the enforcement of the Data Protection Legislation.
<b>Support Hours</b>	means the hours in which Deputy will provide any applicable support services to the Customer, as published on the Deputy Website or the Customer Installation and updated by Deputy from time to time.
<b>Support Services</b>	means the support services in respect of the use of Deputy Application as described in clause 10.
<b>Tax</b>	means any taxes, rates, levies imposts, duties or other charges assessed or payable to any Government Authority and includes any additional taxes, interest, penalties, charges, fees or other amounts imposed on or in respect of any of the above.
<b>Term</b>	has the meaning given to it in clause 3.

<b>Third Party Application</b>	means any product, service, system, application or internet site integrated or interfaced with the Deputy Application which may be owned or operated by a Third Party Provider which is used by a Customer or its Authorised User in connection with the Deputy Application.
<b>Third Party Provider</b>	means any third party that provides support, technology and/or other products or services that may be used by a Customer or its Authorised User in connection with the Deputy Application.
<b>Trial Subscription</b>	means the limited trial access to the Deputy Application which Deputy makes available to Customers free of charge.
<b>Unacceptable Content</b>	means any content which, in Deputy's reasonable opinion, is obscene, offensive, upsetting, defamatory, illegal or inappropriate, infringes or appears to infringe the intellectual property rights of any person or contravenes or appears to contravene any applicable laws, regulations or codes of conduct.

## 2.2 Interpretation

In this Agreement, unless the subject or context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender includes every other gender;
- (c) a reference to a party or person includes a reference to that party or person, its successors, substitutes (including, but not limited to, a party or person taking by novation), executors, administrators and assigns;
- (d) a reference to any thing or matter is a reference to the whole and any part of it;
- (e) a reference to a group of persons or parties is a reference to any two or more of them jointly and to each of them individually;
- (f) a reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this Agreement;
- (g) where any clause contains sub-clauses, paragraphs or sub-paragraphs, each sub-clause, paragraph and sub-paragraph however called will be read and construed separately and independently of each other;
- (h) where any word or phrase is given a definite meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (i) a reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof;
- (j) the word 'person' includes a corporation, limited liability company, partnership, trust, governmental agency or entity, individual and/or any other entity or organization;

- (k) where under or pursuant to this Agreement or anything done under this Agreement the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing must be done on the immediately succeeding Business Day;
- (l) a reference to this Agreement or other document includes any variation, novation or replacement of or supplement to any of or supplemental to any of them from time to time;
- (m) a reference to a document includes any agreement in writing, certificate, notice or other instruction of any kind;
- (n) “writing” and related expressions includes all means of reproducing words in a tangible and permanently visible form or in an electronic or machine readable form; and
- (o) headings are inserted for guidance only and do not affect the interpretation of this Agreement.

### **3. TERM**

The term of this Agreement (Term) commences on the Commencement Date and will continue to apply until it is terminated in accordance with clause 15. For the avoidance of doubt, the terms and conditions of this Agreement continue to apply regardless of any changes in the type of subscription which may be varied at any time and from time to time.

### **4. SUBSCRIPTION SERVICES**

#### **4.1 Provision of Subscription Services**

For the duration of the Term, Deputy grants a non-exclusive, non-transferable (except as expressly provided in this Agreement), limited licence to the Customer and its Authorised Users to access and use:

- (a) the Standard Establishment of the Deputy Application, but does not include any customisation beyond the scope of the Standard Establishment;
- (b) the level of access to the Deputy Application commensurate with and appropriate for their Subscription Type;
- (c) the Documentation; and
- (d) the Support Services,

subject to the terms of use displayed on the Deputy Website at the time of use and this Agreement.

#### **4.2 Additional Services**

- (a) Deputy may, at the request of a Customer and for an Additional Fee, provide Additional Services to a Customer. Unless expressly agreed otherwise, any Additional Services will be provided on the terms and conditions of this Agreement.
- (b) A Customer wishing to obtain Additional Services must provide a written request to

Deputy no later than fifteen (15) Business Days before the intended commencement date of the Additional Services.

- (c) If a Customer's request for Additional Services is accepted, Deputy will endeavour to provide the Customers with a notice containing a schedule of the Additional Fee (**Fee Schedule**) before the commencement of the Additional Services.
- (d) A Customer is taken to have accepted the Fee Schedule if the Additional Services have already commenced at the request of the Customer or the Fee Schedule is not disputed within three (3) Business Days of receipt.
- (e) Additional Services are offered by Deputy at its sole and absolute discretion and nothing in this clause 4.2 obliges Deputy to provide any Additional Services requested by a Customer.

## **5. SUBSCRIPTION TYPE**

### **5.1 Trial Subscription**

A Customer who registers with Deputy on the Deputy Website or via an authorised application marketplace will first be automatically subscribed for the Trial Subscription. A Customer on a Trial Subscription is provided with limited access to the Deputy Application, designed to provide it with an opportunity to trial the features before subscribing.

### **5.2 Paid Subscription**

A Customer who wishes to gain access to more features of the Deputy Application or add additional Authorised Users may choose to subscribe to one or more of the Paid Subscription levels on the Deputy Website and may add additional Paid Subscriptions at any time and from time to time. The Subscription Fee and the applicable features of Subscription Services are published and made available on the Deputy Website. Access to and features available on the Deputy Application may differ between various Paid Subscription levels.

### **5.3 Enterprise Customers**

A Customer who wishes to subscribe as an Enterprise Customer will be issued with a Statement of Works, which contains the Subscription Fee and the features of the Subscription Services.

### **5.4 Changing Subscription Types**

- (a) A Customer may:
  - (i) subscribe for any Subscription Type and may subscribe for more than one Subscription Types at any one time; and
  - (ii) request to change its Subscription Type at any time and from time to time by making a request via the Deputy Application (for Non-Enterprise Customers only) or by the Deputy Application, email or online help (for Enterprise Customers only) (**Notice of Change**), subject to this clause 5.4.
- (b) Where Customer wishes to make changes in respect of a Monthly Subscription and intends to:

- (i) reduce their level of subscription to a subscription with fewer available features, the Customer must provide Deputy with a Notice of Change no less than 5 days prior to the end of the then current month and the changes will take effect at the start of the next month;
  - (ii) reduce their level of subscription to a subscription with fewer permitted Authorised Users, the Customer must provide Deputy with a Notice of Change prior to the effective date of the change and will only be required to pay a reduced Subscription Fee for each permitted Authorised User that is removed from the subscription as follows; the Subscription Fee multiplied by the number of days from the start of the month until the effective date of the change, divided by the number of days in that month and, for the avoidance of doubt, the full Subscription Fee remains payable in respect of all other permitted Authorised Users;
  - (iii) increase their level of subscription to a subscription with more permitted Authorised Users, the Customer must provide Deputy with a Notice of Change prior to the effective date of the change and must pay a pro-rata proportion of the monthly Subscription Fee per additional permitted Authorised User calculated as; the monthly Subscription Fee multiplied by the number of days from the effective date of the change until the end of the then current month, divided by the number of days in that month, and the amount payable will be an Additional Fee; and/or
  - (iv) increase their level of subscription to a subscription with more features, the Customer must provide Deputy with a Notice of Change prior to the effective date of the change and must pay an amount per permitted Authorised User calculated as; the difference between the two Subscription Fees for the Subscription Types, multiplied by the number of days from the effective date of the change until the end of the then current month, divided by the number of days in that month, and the amount payable will be an Additional Fee.
- (c) Where a Customer wishes to make changes in respect of an Annual Subscription and:
- (i) reduce their level of subscription to a subscription with fewer permitted Authorised Users or fewer features, the Customer must provide Deputy with written notice of the changes no earlier than one calendar month and no less than 14 days before the expiration of the then current Annual Subscription Period and the changes will take effect on and from the expiration of the then current Annual Subscription Period;
  - (ii) increase their level of subscription to a subscription with more permitted Authorised Users, the Customer must provide Deputy with a Notice of Change prior to the effective date of the change and may elect to either:
    - (A) pay a pro-rata proportion of the annual Subscription Fee per additional permitted Authorised User calculated as; the annual Subscription Fee multiplied by the number of days from the effective date of the change until the end of the then current Annual Subscription Period, divided by 365, and the amount payable will be an Additional Fee; or

- (B) subscribe for an additional Monthly Subscription in respect of the additional permitted Authorised Users; and/or
  - (iii) increase their level of subscription to a subscription with more features, the Customer must provide Deputy with a Notice of Change prior to the effective date of the change and must pay an amount per permitted Authorised User calculated as; the difference between the two Subscription Fees for the Subscription Types, multiplied by the number of days from the effective date of the change until the end of the then current Annual Subscription Period, divided by 365, and the amount payable will be an Additional Fee,
- and thereafter, the amount payable annually in respect of the Annual Subscription will be the Subscription Fee payable for that Subscription Type.
- (d) Where a Customer wishes to change from a Monthly Subscription to an Annual Subscription, the Customer must provide Deputy with no less than 5 days written notice prior to the effective date of the change and the change will take effect from the first day of the then current month.
  - (e) Where a Customer wishes to change from an Annual Subscription to a Monthly Subscription, the Customer must provide Deputy with no earlier than one calendar month and no less than 14 days written notice prior to the effective date of the change and the change will take effect at the end of the then current Annual Subscription Period.

## **5.5 Features may vary**

Deputy may, at any time and from time to time, amend, vary or remove any of the features, functions and other benefits made available to the Customers and its Authorised Users in respect of the Deputy Application as it sees fit without any prior notice to the Customers.

## **5.6 Deputy retains sole discretion**

The Customer agrees and acknowledges that Deputy retains the sole and absolute discretion regarding any of the features, functions and other benefits made available to the Customers and its Authorised Users in respect of the Deputy Application. Nothing in this Agreement requires Deputy to provide or maintain any features, functions or other benefits in respect of the Deputy Application. The Customer also acknowledges and agrees that nothing in this Agreement limits Deputy's right to discontinue or alter any such features, functions or other benefits at any time and from time to time.

## **5.7 Additional features**

A Customer with a Paid Subscription may request additional features or functions, support, updates or other services to be provided by Deputy as an Additional Service and these Additional Services will be provided pursuant to clause 4.2. Deputy may publish or otherwise make available the additional features or functions, support, updates or other services on the Deputy Website, which may be varied from time to time.

## **6. THIRD PARTY APPLICATIONS**

The Customer acknowledges and agrees that the Deputy Application may interact with Third Party Applications or require Third Party Applications or Third Party Providers to be used when

utilising certain features or functionality in the Deputy Application. Where such Third Party Applications or Third Party Providers are used, the Customer acknowledges and agrees that:

- (a) Deputy makes no representations or warranties relating to the Third Party Providers or the Third Party Applications;
- (b) the Third Party Providers and Deputy are not partners, joint venturers, representatives or agents of each other;
- (c) the inclusion of any link to or integration with any Third Party Application does not constitute or imply any affiliation with, or sponsorship, endorsement or approval by Deputy of the Third Party Provider or Third Party Application;
- (d) the Customer agrees to and must abide by, and must ensure that each Authorised User agrees to and abides by, any obligations imposed upon it by such Third Party Provider, and Deputy may notify the Customer of such obligations;
- (e) access to Third Party Applications is at the Customer's risk and Deputy will not be responsible for any Loss that may result from the Customer's use of any Third Party Application, even if the Third Party Application may interface with the Deputy Application, or even if Deputy may have provided installation or integration services with respect to the Third Party Application;
- (f) the Third Party Providers may have practices, terms and policies, including those relating to privacy or data security, that are different from those of Deputy and Deputy is not responsible for any these practices, terms and policies and specifically disclaims any liability for any of them;
- (g) Deputy makes no representations or warranties regarding the Third Party Applications or the Third Party Providers. Without limiting the above, Deputy does not make any representations or warranties regarding the availability or timing of any availability of any interface between the Deputy Application and any Third Party Applications;
- (h) the Customer will maintain a direct, independent contractual relationship with all Third Party Providers in relation to the Customer's access to or use of the Third Party Applications; and
- (i) Deputy is not responsible for and has no obligation to provide the Customer with any assistance or support in relation to the functioning or operation of the Third Party Applications.

## **7. AUTHENTICATION CREDENTIALS**

### **7.1 Provision of Authentication Credentials**

Upon request from the Customer from time to time, Deputy will provide the Customer with Authentication Credentials in order for the Authorised Users to access the Deputy Application.

### **7.2 Special Requirements for Authentication Credentials in use by customer infrastructure**

If the Customer implements an Authentication Credential in a system or Third Party Application with the result that such a system is an Authorised User (**Authorised System**), the Customer will implement the Authorised System such that any person accessing the Deputy

Application via the Authorised System can be accurately identified to Deputy upon its request, and the date, time and nature of such person's access to the Deputy Application via the Authorised System can likewise be accurately identified to Deputy.

### **7.3 Obligations of the Customer in relation to the Authentication Credentials**

The Customer must:

- (a) ensure that each Authentication Credential is securely maintained and used only by the Authorised User to whom the Authentication Credential has been issued;
- (b) comply with any policies, guidelines or other requirements issued by Deputy from time to time in any way relating to Authentication Credentials;
- (c) immediately notify Deputy and take immediate steps to disable an issued Authentication Credential if:
  - (i) an Authorised User ceases to be employed by, contracted to, or otherwise authorised to use the Deputy Application by the Customer;
  - (ii) an Authentication Credential is lost, stolen, missing or is otherwise compromised; or
  - (iii) the Customer becomes aware of any breach of the provisions of this Agreement by the Authorised User, in which case the Authentication Credentials will be suspended until such time the breach is remedied to Deputy's satisfaction;
- (d) not transfer or allow to be transferred Authentication Credentials between or amongst Authorised Users or other individuals or systems and take all reasonable steps to ensure that Authentication Credentials are not transferred;
- (e) conduct regular checks to ensure the integrity of all issued Authentication Credentials, including regularly cross checking its list of Authorised Users with such list maintained by Deputy and provided to the Customer; and
- (f) periodically reset Authentication Credentials as and to the extent required by Deputy from time to time.

### **7.4 Management of Authentication Credentials**

Deputy reserves the right at any time and from time to time to change and/or revoke any Authentication Credentials and will provide the Customer with a written notice of the change or revocation.

## **8. CUSTOMER RESPONSIBILITIES AND OBLIGATIONS**

### **8.1 Customer responsibilities**

The Customer will be responsible for:

- (a) uploading all Customer Data into the Deputy Application and ensuring all Customer Data is true and accurate;



- (b) the day to day use of the Deputy Application;
- (c) obtaining all consents, permits or approvals necessary to upload the Customer Data into the Deputy Application, store the Customer Data on the Deputy Infrastructure and otherwise use the Deputy Application;
- (d) ensuring that the use of the Deputy Application by the Customer and each of its Authorised Users and the uploading and storage of the Customer Data complies with all applicable laws, regulations or codes of conduct;
- (e) satisfying itself that the Deputy Application is compatible with its own hardware, software and internet and network capabilities and maintaining all hardware, software, Third Party Applications and other technology necessary to be able to access and use the Deputy Application;
- (f) ensuring that it maintains back up or alternate systems for use if the Deputy Application is unavailable or is otherwise unable to be used by the Customer;
- (g) ensuring no Unacceptable Content is uploaded to the Deputy Application or stored in the Deputy Infrastructure; and
- (h) any acts or omissions committed by the Authorised Users or the other employees, officers, contractors or representatives of the Customer or any of its related parties in relation to the Deputy Application.

## **8.2 Customer obligations**

### **8.2.1 The Customer must:**

- (a) use the Deputy Application only for its internal business purposes;
- (b) only use and copy the Documentation to the extent necessary to use the Deputy Application;
- (c) comply with and ensure that its Authorised Users comply with the terms and conditions of this Agreement and any policies regarding the use of the Deputy Application which Deputy may notify of its Customer from time to time (notification of which may be made available or accessible on the Deputy Website or through the Customer Installation), including without limitation, Deputy's Fair Use Policy; and
- (d) ensure that each Authorised User is either an employee or contractor of the Customer who has all authority, permissions or other approvals required to be able to access and use the Deputy Application.

### **8.2.2 The Customer must not, cannot and will not:**

- (a) use the Deputy Application or any other Intellectual Property in any way or for any purpose other than as contemplated by this Agreement;
- (b) use any Intellectual Property or Confidential Information of Deputy or any of its subsidiaries or other affiliates, or otherwise breach any other legal obligation, to build a competitive product or service or build a product or service using similar ideas, features, functions or graphics of the Deputy Application;

- (c) permit any person other than the Authorised Users to use the Deputy Application and ensure that those Authorised Users, in using the Deputy Application, comply with the terms and conditions of this Agreement as if they were the Customer;
- (d) modify, adapt, translate, reverse engineer, decompile, disassemble or copy all or any part of the Deputy Application;
- (e) attempt to circumvent or break any encryption, decryption or other security device or technological protection measure contained in the Deputy Application;
- (f) send or store material containing software viruses, worms, trojan horses or other harmful computer code, files, scripts, agents or programs;
- (g) interfere with or disrupt the integrity or performance of the Deputy Application or the data contained therein;
- (h) attempt to gain unauthorised access to the Deputy Application, Deputy Infrastructure or its related systems or networks;
- (i) create internet "links" to or from the Deputy Application, or "frame" or "mirror" any content forming part of the Deputy Application other than on the Customer's own intranets or otherwise for its own internal business purposes;
- (j) distribute any part of the Deputy Application for commercial purposes or otherwise sublicense or resell the Deputy Application;
- (k) create derivative works from all or any part of the Deputy Application;
- (l) transfer, assign, rent, lease, lend, sell or dispose of all or any part of the Deputy Application or any compilation derived from the Deputy Application or otherwise commercially exploit or make the Deputy Application;
- (m) make any part of the Deputy Application publicly available in violation of this Agreement or other legal obligation; or
- (n) attempt or allow its Authorised Users or any other third parties to do or attempt to do any of the above.

### **8.3 Access to Customer's system**

The Customer acknowledges and agrees that, throughout the Term, the Customer grants Deputy the right and permission to access (including by remote access) the Customer Installation and the computer systems of the Customer used to access the Customer Installation, including but not limited to, to provide support services to the Customer and to monitor the use of the Deputy Application by the Customer. The Customer must do all things reasonably requested by Deputy to ensure Deputy has such the required access during the Term.

## **9. FAIR USE POLICY**

### **9.1 Unreasonable Use**

For the purpose of this clause 9, **Unreasonable Use** includes, without limitation, the following:

- (a) messages sent through the SMS Services are sent to recipients other than those who are bona fide employees, contractors or associates of the Customer whose details have been entered into in the Customer Data;
- (b) the number of messages sent through the SMS Services per day exceeds the number of employees registered on the Customer Data;
- (c) Deputy determines in its sole discretion that the cost of providing the SMS Services exceed 10% of the monthly Subscription Fee;
- (d) using the Deputy Application (including the SMS Services):
  - (i) for any activity that breaches any law and regulations or in a manner other than those intended for the Subscription Services;
  - (ii) to transmit, publish or make available material that is offensive, abusive, indecent, pornographic or confidential (or promote others to engage in such acts);
  - (iii) in a way that infringes the rights of other persons, including to defame, harass, injure, menace or abuse any person or property or violate any person's privacy, to infringe any person's intellectual property rights or incite hatred against any person;
  - (iv) to send unsolicited data to third parties for any purpose;
  - (v) in a way that will interfere with, interrupt, manipulate, bypass or degrade the Deputy Application, the integrity of the Deputy Infrastructure or any network or equipment of another person; and
- (e) *for Customers on Trial Subscription only*: the messages sent through the SMS Services exceed 250 messages per day.
- (f) any acts or activities which are similar in nature.

## 9.2 Policy application

Deputy's Fair Use Policy applies to all Customers and all Subscription Types and is intended to ensure that the availability of the Deputy Application to all Customers and that the Deputy Application is not subject to an Unreasonable Use. Deputy reserves the right to vary the terms of the Fair Use Policy at any time and from time to time without notice. The Customer must not engage in any Unreasonable Use of all or any part of the Deputy Application and must ensure that there is no Unreasonable Use of the Deputy Application by the Customer.

## 9.3 Failure to comply with Fair Use Policy

The Customer acknowledges and agrees that, if Deputy, at its sole discretion, determines the Customer's use of the Deputy Application is in breach of this Fair Use Policy, Deputy has the right to, at its sole and absolute discretion, do any of the following:

- (a) give a notice or warning requesting the Customer to stop certain activities or conduct or take steps to remedy the breach;

- (b) immediately suspend or limit the Customer's access to the Deputy Application without notice;
- (c) terminate this Agreement in accordance with clause 15; and/or
- (d) charge the Customer an Optional Usage Fee for its use of the SMS Services in accordance with clause 12.1.

## **10. SUPPORT**

### **10.1 Online Technical Support**

For the duration of the Term and only for Customers who are eligible for Online Technical Support, Deputy will use its best commercial endeavours to provide the Customer and its Authorised Users with Online Technical Support during the Support Hours.

### **10.2 Support procedures**

To be eligible for the Online Technical Support:

- (a) the Subscription Type which the Customer currently subscribes for is eligible for Online Technical Support; and
- (b) the Customer and its Authorised Users must comply with all support procedures or directions which Deputy may have from time to time.

### **10.3 No obligations to provide other services**

The Customer acknowledges that the support service described in clause 10.1 is the only support services Deputy will provide to the Customer as part of the Subscription Services. The Customer acknowledges that nothing in the Agreement imposes an obligation on Deputy to develop, release or install for the Customer any updates, upgrades, patches, bug fixes, new releases or new versions in respect of the Deputy Application (**Updates**), provided however that if Deputy does develop or release any Updates, a Customer must use the Updates provided.

## **11. DOCUMENTATION**

- (a) Deputy may, at any time and from time to time, amend, vary or update the Documentation and Deputy will notify and make the revised Documentation available to the Customers as soon as practicable.
- (b) When using the Deputy Application, the Customer agrees that it must refer to the most recent version of the Documentation provided or made available by Deputy.
- (c) The Customer also agrees that it must promptly return to Deputy or destroy any superseded versions of the Documentation in accordance with Deputy's directions or instructions.

## **12. FEES AND EXPENSES**

### **12.1 Fees**

For the duration of the Term, any Customer who subscribes for:

- (a) a Paid Subscription must pay to or as directed by Deputy the Subscription Fee applicable to that Paid Subscription;
- (b) any optional features available on the Deputy Application must pay to or as directed by Deputy any Optional Usage Fees which may be applicable; and
- (c) any Additional Services must pay to or as directed by Deputy any Additional Fee which may be applicable, and

all payments must be made in accordance with clause 12.2.

## **12.2 Payment Facility**

Any Customers who wish to subscribe for a Paid Subscription must, before the commencement of the subscription, provide Deputy with details of its Payment Facility and duly authorise Deputy and Deputy's designee (if any) to direct debit the Fees from its Payment Facility in accordance with clause 12.3 below.

## **12.3 Invoices and payment**

Where payments are made by a Customer to Deputy and not through an authorised third party application marketplace, Deputy will:

- (a) in respect of a Monthly Subscription, at the end of each calendar month, issue the Customer with an invoice (or valid tax invoice if the Customer is an Australian tax resident) for the Subscription Fees, Optional Usage Fees and Additional Fees (if applicable) payable by the Customer (**Monthly Invoice**) for the preceding month; and
- (b) in respect of an Annual Subscription:
  - (i) on or before the Commencement Date and each anniversary of the Commencement Date, issue the Customer with an invoice (or valid tax invoice if Customer is an Australian tax resident) for the Subscription Fees (if applicable) payable by the Customer (**First Annual Invoice**) for the following year; and
  - (ii) at the end of each calendar month, issue the Customer with an invoice (or valid tax invoice if Customer is an Australian tax resident) for the Optional Usage Fees and Additional Fees (if applicable) payable by the Customer (**Second Annual Invoice**) for the preceding month; and
- (c) deduct payment of the amount payable on the Monthly Invoice, First Annual Invoice and/or Second Annual Invoice, as applicable (**Invoice**, from the nominated Payment Facility at any time within three days of the date of issue of the Invoice.

## **12.4 Failure to pay**

- 12.4.1 If a Customer makes payments through the Payment Facility and not an authorised third party application marketplace and any amount cannot be deducted from the Payment Facility at the time specified in clause 12.3 and the Customer fails to rectify any non-payment of amounts due to Deputy under this Agreement within 7 days of the payment due date, then

(without prejudice to Deputy's other rights):

- (a) Deputy may charge the Customer interest on all outstanding amounts at an interest rate of 1.5% per month, calculated daily, and will accrue from the first day on which such amounts become overdue until the outstanding amount (including all interest) has been paid in full; and
- (b) Deputy may issue a notice to the Customer stating that the Invoice is overdue (**Overdue Notice**). If Deputy does not receive payment of the relevant Fees within 3 days from the date of the Overdue Notice, Deputy may cease to provide the Subscription Services and any Additional Services and may disable the Customer's and any of its Authorised User's access to the Deputy Application until such time as the outstanding amount (together with any interest) is paid in full.

12.4.2 Deputy will not be liable for any Loss suffered by the Customer as a result of Deputy exercising its rights under this clause 12.4.

## **12.5 Fee changes**

Subject to clause 12.6, Deputy may, at any time and from time to time, change any Fees it may charge its Customers. In doing so, it will:

- (a) promptly notify the Customers by notice in writing to the Customer for any change in the Optional Usage Fees, which will be effectively on notification; or
- (b) provide the Customers with at least 30 days written notice with respect any changes to the Subscription Fees or any other Fees specified in the Rates Sheet, which will be effective 30 days from the date of the written notice,

and any written notice made pursuant to this clause will be effectively provided if Deputy publishes in a visible location the changes on the Deputy Website or the Customer Installation.

## **12.6 Third party fees**

Where a Customer registers to use the Deputy Application through an authorised third party application marketplace and makes payment to or through that third party application marketplace in respect of its use of the Deputy Application, variations in the Fees payable will be governed by the terms relating to changes of fees contained in the agreements as between the Customer and the third party application marketplace provider, if any.

## **12.7 Third party agreements**

This Agreement governs the relationship between Customers and Deputy and, for the avoidance of doubt, does govern or vary any agreement, contract or other arrangement between the Customers and third parties. The payment of the Subscription Fees or other amounts to Deputy is without prejudice to amounts that may otherwise be payable to third parties, including without limitation fees payable by a Customer in respect of any authorised third party application marketplace.

## **13. ENTERPRISE CUSTOMER SERVICE GUARANTEE**

This clause 13 applies only to a Customer that is an Enterprise Customer and not otherwise.

### 13.1 Service availability

Deputy provides a guarantee to its Enterprise Customers that its Service Availability of the Deputy Application during any given month will be at least the Minimum Availability Percentage specified in Schedule 1. **Service Availability** is calculated as the total number of minutes in the month, minus the total number of minutes of planned or unplanned downtime where the Deputy Application is wholly unavailable, divided by the total number of minutes in the month, with the remaining fraction expressed as a percentage.

In the event that Deputy fails to deliver the Service Availability in accordance with Schedule 1 in any given month, Deputy shall credit the Enterprise Customer the amounts equivalent to the amounts calculated in accordance with the table below on the subsequent invoice:

Variation from Minimum Availability Percentage (rounded to nearest 0.1%)	Service Credit (% of Monthly Fee)
0 to -1%	10%
-1.1% to -2%	20%
-2.1% to -3%	35%
-3.1% to -5%	50%
-5.1% or more	100%

The Customer acknowledges and agrees that the Service Credits provided by Deputy under the Clause 13.1 represent a genuine pre-estimate of the loss suffered by the Customer arising from any Service Availability failure and the Customer has no additional remedy or recourse by way of damages or any other loss against Deputy.

### 13.2 Support availability

Deputy support personnel are available 24 hours a day, 7 days a week, every day of the year, throughout the contract period. Support personnel are available via chat on the Deputy application or website, or on the following phone numbers:

- (a) USA - 855-633-7889
- (b) UK - 7732 576799
- (c) Australia - 1 300 337 889
- (d) Rest of world - +1 855 633 7889

### 13.3 Response and Resolution Times

The median response time for support will be maintained at or around 5 minutes. Depending on the nature of the issue, Deputy also provides Guaranteed Response and Resolution Times, which may differ depending on the type of incidents and the differing levels of severity. Guaranteed Response and Resolution Times are specified in Schedule 1.

#### **13.4 Notification and escalation procedures**

The Customer must notify Deputy of the issue by contacting support and indicating a severity level for the issue reported. In the event that the issue is not resolved within the Guaranteed Response and Resolution Times, the Customer should immediately notify Deputy by email at escalation@deputy.com and request an escalation of the matter.

#### **13.5 Reporting**

In the event any Sev1-3 issues occur during a month, or any Sev4 issues remain unresolved beyond Guaranteed Response and Resolution Times at the end of a calendar month, Deputy will provide a detailed report of the incident no later than the 14th day of the following month. If requested by the Customer, Deputy will provide a conference bridge dedicated to any specific incident, where interested parties can track the progress of resolution.

### **14. UNACCEPTABLE CONTENT**

#### **14.1 Request to remove content**

If Deputy, in its reasonable opinion, believes that Unacceptable Content has been uploaded into the Deputy Application or is being stored on the Deputy Infrastructure, Deputy may request the Customer immediately to disable access to and remove the Unacceptable Content.

#### **14.2 Deputy may remove content**

If the Customer does not respond within five (5) days of receiving the request made under clause 14.1, Deputy has the right, but is not obliged to, disable access and remove any Unacceptable Content from the Deputy Application and/or Deputy Infrastructure without further notice to the Customer and Deputy may seek reimbursement from the Customer for any reasonable costs incurred by Deputy in doing so.

#### **14.3 No obligation to monitor**

Nothing in this clause 14 imposes an obligation on Deputy to monitor or screen the Deputy Application, Deputy Infrastructure or their contents for any Unacceptable Content and Deputy will not be responsible for any Unacceptable Content uploaded but not removed.

### **15. TERMINATION**

#### **15.1 Termination with notice – Enterprise Customer**

After the expiration of the Initial Term, an Enterprise Customer may terminate this Agreement at any time by giving written notice to Deputy no less than four (4) weeks before the proposed termination date, but not otherwise. Clauses 8, 12, 16, 19, 25, 26, 27, 28, 29, 30.2, 30.3, 30.4, 30.5 and 30.6 herein, as well as any other clauses of the Agreement that, either explicitly or by their nature, must remain in effect even after termination of the Agreement, shall survive termination or expiry.

#### **15.2 Termination with notice – Non-Enterprise Customer**



This Agreement will continue to apply until terminated by either the Non-Enterprise Customer or Deputy in accordance with this Agreement. The Non-Enterprise Customer may terminate the Agreements at any time from within the Deputy Application. To learn how to terminate a Deputy account, the Customer should contact Deputy through 1300 DEPUTY or [www.deputy.com](http://www.deputy.com). Clauses 8, 12, 16, 19, 25, 26, 27, 28, 29, 30.2, 30.3, 30.4, 30.5 and 30.6 herein, as well as any other clauses of the Agreement that, either explicitly or by their nature, must remain in effect even after termination of the Agreement, shall survive termination or expiry.

### **15.3 Termination by Deputy**

Deputy may terminate this Agreement without cause at any time by giving written notice to a Customer no less than four (4) weeks before the termination date specified by Deputy in its written notice; provided, however, as to Trial Subscriptions, Deputy may immediately terminate a Trial Subscription at any time without cause and without notice.

### **15.4 Immediate termination**

Without limiting clauses 15.1, 15.2 and 15.3, a party may immediately terminate this Agreement at any time if:

- (a) the other party materially breached this Agreement and has failed to rectify such breach within seven (7) Business Days of notice provided by the other party;
- (b) Customer breaches its obligations with regard to Intellectual Property, or a party commits a breach of this Agreement which is incapable of being remedied;
- (c) the other party suffers an Insolvency Event or bankruptcy; or
- (d) a Force Majeure Event occurs and continues for more than 28 Business Days.

## **16. CONSEQUENCES OF TERMINATION**

### **16.1 Effect of Termination**

Upon termination of this Agreement:

- (a) the Customer must immediately:
  - (i) cease using and ensure that each of its Authorised Users ceases using the Deputy Application;
  - (ii) pay to Deputy all Fees, expenses or other amounts payable to Deputy under this Agreement which have accrued or are otherwise payable at the date of termination;
  - (iii) return to Deputy any Documentation in the Customer's possession or control; and
  - (iv) provide Deputy with written confirmation that it has completed its obligations under this clause 16.1(a).
- (b) Deputy will, upon request from a Customer but only where such request is made

before the date of termination, return to the Customer all Customer Data stored on the Deputy Infrastructure, other than the Authorised User Data, in such format as Deputy may, at its sole discretion, see fit; and

- (c) Deputy may cease to provide any Subscription Services or Additional Services and may disconnect the Customer's access to the Deputy Application and disable all Authentication Credentials.

## **16.2 No refunds**

In the case of Annual Subscriptions and except where this Agreement is terminated as a result of a breach by Deputy or as required by law, the Customer is not entitled to any refund of all or part of the Fees paid but not used (whether in respect of the number of Authorised Users or length of use of the Application or otherwise) and on termination and in all other circumstances Deputy is entitled to retain all Fees and amounts paid by the Customer.

## **17. CHANGES TO TERMS**

Notwithstanding any other provision of this Agreement, Deputy may, in its sole discretion, modify any of the terms and conditions contained in this Agreement, at any time, with consent of the Customer or by notifying the Customer at any Administrator Email Address or by posting the new agreement on the Deputy Website. If the Customer gives consent, the amendments are effectively immediately. If the Customer does not give consent and the terms are modified by notifying the Customer by email or by posting the terms on the Deputy Website, the Customer may terminate this Agreement at any time within fourteen (14) days of the earlier of the date that the new agreement is posted on the Deputy Website or emailed to the Customer. The Customer's continued use of the Deputy Application after this period is irrevocable and unconditional acceptance of the new agreement and its terms by the Customer.

## **18. CONFIDENTIALITY**

### **18.1 Access**

Deputy, its Customers and their Authorised Users may, from time to time, receive, become aware of, or be given access to Confidential Information of the other party (or of a subsidiary or other affiliate of Deputy) in the course of or incidental to exercising its rights or performing obligations under this Agreement.

### **18.2 Non-disclosure obligations**

Where a party (**Recipient**) receives Confidential Information from the other party in respect of this Agreement or otherwise, the Recipient agrees and warrants that it must:

- (a) hold the Confidential Information in trust and confidence;
- (b) not use, disclose, copy or reproduce the Confidential Information for any purpose other than to perform this Agreement, except expressly permitted under this clause 18; and
- (c) use its best endeavours to establish and maintain effective security measures to safeguard the Confidential Information from unauthorised use or disclosure; and

- (d) ensure that its officers, employees, and agents comply with this clause 18.2.

### **18.3 Permitted Disclosure**

Notwithstanding clause 18.2, the Recipient is expressly permitted to use or disclose Confidential Information to the extent necessary to:

- (a) give effect to the operation in this Agreement;
- (b) comply with any law, binding directive of a regulator, a Government Authority or a court order; or
- (c) obtain professional advice in relation to matters arising under or in connection with this Agreement.

### **18.4 Promotion and marketing**

The Customer agrees and expressly permits the disclosure of its name and its relationship with Deputy for any advertising, marketing or other commercial activities which Deputy may undertake in promoting the Deputy Application and its services. In doing so, the Customer agrees and acknowledges that Deputy may disclose the Subscription Services and any Additional Services which the Customer may subscribe to, from time to time, as Deputy sees fit.

### **18.5 Survival**

The obligation imposed by this clause 18 survives termination of this Agreement for sixty (60) months following the termination of this Agreement; provided, however, to the extent the Confidential Information is a trade secret, the restrictions and obligations concerning the use and disclosure of Confidential Information shall continue for such longer period as such remains a trade secret. The software computer programs, code and algorithms of Deputy and its subsidiaries and other affiliates are trade secrets.

## **19. INTELLECTUAL PROPERTY**

### **19.1 Limited rights**

The Customer's rights in the Deputy Application will be limited to those expressly granted in this Agreement. Deputy reserves all rights and licences in and in relation to the Deputy Application not expressly granted to the Customers in this Agreement.

### **19.2 Ownership of Intellectual Property**

- (a) All Intellectual Property, however created, is the sole and absolute property of Deputy and may not be used, sold or modified by the Customers, its Authorised Users or any third parties in any circumstances whatsoever other than to exercise their rights or fulfil their obligations under this Agreement.
- (b) The Customer agrees and acknowledges that:
  - (i) nothing in this Agreement grants the Customer any ownership of or rights in respect of the Intellectual Property, whatsoever; and

- (ii) any Intellectual Property created by, for, on behalf of or otherwise vested in the Customer during the Term is unconditionally and irrevocably assigned to Deputy immediately when the Intellectual Property is created and the Customer agrees to do all things and execute all documents as is reasonably necessary to effect such assignment.

### **19.3 Use of Intellectual Property**

- (a) For the duration of the Term, Deputy grants to the Customer and its Authorised Users a limited, non-exclusive, non-transferable and revocable licence to use the Intellectual Property solely to the extent necessary for the Customer to exercise its rights under this Agreement.
- (b) Subject to the other provisions of this Agreement, the licence referred to in clause 19.3(a) will continue for the duration of the Term, which license may be suspended by Deputy at any time for any or no reason.

### **19.4 Customer Data**

All Customer Data, other than Authorised User Data, however created, are the sole and absolute property of the Customer. Notwithstanding any other provision of this Agreement, the Customer grants to Deputy and its subsidiaries and other affiliates a non-exclusive, irrevocable and perpetual licence to use, reproduce and otherwise exploit and search the Customer Data:

- (a) for the purposes of providing the Subscription Services and the Additional Services to the Customer and for any purposes which Deputy considers are ancillary to its provision of the Subscription Services or Additional Services or are otherwise necessary for the proper operation of the Deputy Application;
- (b) in accordance with Deputy's Privacy Policy <https://www.deputy.com/au/privacy-policy>;
- (c) for the purposes of contacting Authorised Users in relation to and providing to Authorised Users the Services and/or any service offering outside of the Deputy Application subject always to clauses 21.2(b), 21.5(b) and 21.6(c) of this Agreement;
- (d) to determine whether any Customer Data or use of the Deputy Application by Customer or its Authorised Users is illegal or violates this Agreement; and/or
- (e) to generate statistical or other information used by Deputy (or its subsidiaries or affiliates) or provided to third parties directly or indirectly through incorporation in a database, marketing list, report or otherwise; however any use of the Customer Data under this subsection will be in an aggregate or statistical composite form and combined with other similar information, and will not specifically identify Customer or any of its employees or clients. This authorized use, and the right to keep backup copies of Customer Data, continues after the termination or expiration of this Agreement.

### **19.5 Trade Marks**

Except otherwise permitted in clause 18.4, nothing in this Agreement grants either party any ownership of or rights to use the trademarks of the other party and each party must not,

cannot and will not, adopt, register or attempt to register or use any trademarks which are identical or deceptively similar to the trademarks owned by the other party.

## **20. SECURITY OF DEPUTY APPLICATION**

### **20.1 Deputy's obligations**

- (a) Deputy will use all reasonable commercial endeavours to protect the security and safety of all Customer Data and any other Confidential Information stored on the Deputy Infrastructure, including the implementation and maintenance of reasonably adequate and current data protection and virus screening procedures and technologies.
- (b) Deputy agrees to use firewalls and other technology generally used in the trade to prevent unauthorised third party access to its computer systems storing Customer Data and available encryption technology generally used in the trade to prevent unauthorised third party access to Customer Data transmissions.
- (c) Nothing in this clause 20.1 constitutes a representation or warranty by Deputy that Customer Data storage or transmission will be inaccessible to unauthorised third parties. Deputy will notify Customer of any such unauthorised access to Customer Data promptly following Deputy's detection, or upon becoming aware of, such unauthorised access.

### **20.2 Limitation of liabilities**

The Customer acknowledges that regardless of the security precautions taken, no physical, internet or other electronic transmission or storage of data can be fully secure or error free. Deputy does not accept any liabilities, and neither Deputy nor any Deputy subsidiary or affiliate will be liable to the Customer or any affected third parties for any Losses suffered by them as a result of or arising from:

- (a) any computer viruses being transferred to or obtained by the Customer, its Authorised Users or any other third parties as a result of their use of the Deputy Application;
- (b) any hacking into or other similar attacks on the Deputy Application or the Deputy Infrastructure; or
- (c) any other data security issues in respect of the Deputy Application or the Deputy Infrastructure,

which are beyond the reasonable control of Deputy, having implemented the protection procedures and technologies referred to in clause 20.1.

## **21. DATA PROTECTION**

### **21.1 Personal Data**

Deputy recognises that Customer Data may include the Personal Data of Authorised Users based in the European Union to which the Data Protection Legislation applies. Details of the processing activities carried out by Deputy, the types of Personal Data processed, and the Authorised Users concerned are further specified in Annex A to this Agreement. The

obligations under clauses 21.3-21.7 shall only apply to the parties where the Data Protection Legislation is engaged in respect of Deputy's processing of Personal Data of Authorised Users in the European Union.

## **21.2 Use of Personal Data**

The parties acknowledge that:

- (a) except as set out in clause 21.2(b), Deputy shall act as a Data Processor in respect of its processing of any Personal Data of Authorised Users provided to Deputy for the purpose of Deputy providing the Services; and
- (b) notwithstanding clause 19.4, Deputy may act as a Data Controller in connection with the processing of Personal Data of Authorised Users to:
  - (i) comply with its own obligations under applicable law and regulations and to establish, exercise or defend legal claims;
  - (ii) contact Authorised Users in relation to and provide to Authorised Users the Services and/or any service offering outside of the Deputy Application;
  - (iii) improve the Deputy Application for all Authorised Users; and/or
  - (iv) process such Personal Data in any other context which requires Deputy to determine the purposes and means of such processing.

## **21.3 Deputy's obligations as Data Processor**

The parties acknowledge that Deputy will be a Data Processor when it processes Personal Data pursuant to clause 21.2(a) and accordingly Deputy shall, in respect of such processing:

- (a) process the Personal Data only on the documented instructions of the Customer (including the terms of this Agreement);
- (b) use Personal Data only for the purpose of providing the Services;
- (c) implement appropriate technical and organisational measures to protect the security of Personal Data processed by Deputy in performance of the Services, and to protect Personal Data against unauthorised or unlawful processing, accidental or unlawful destruction and damage or accidental loss, alteration, unauthorised disclosure, or access;
- (d) take reasonable steps to ensure that it has appropriate policies and processes in place in relation to employees or agents which have access to Personal Data disclosed to Deputy by the Customer under this Agreement, and ensure that such employees or agents are appointed as persons in charge of the processing and are under confidentiality obligations;
- (e) notify the Customer without undue delay by written notice with all relevant details reasonably available of any Security Incident;
- (f) on termination of this Agreement, return to the Customer or, at the Customer's option, put beyond use, any Personal Data provided to Deputy by the Customer under

this Agreement subject to any requirement on Deputy to retain any Personal Data to comply with applicable laws or any actual or possible legal claims and save to the extent that Deputy proceeds or continues to act as a Data Controller in relation to the processing of Personal Data pursuant to clause 21.2(b));

- (g) make available to the Customer and any Supervisory Authority all necessary information regarding Deputy's data processing activities unless providing this information would be in breach of the Data Protection Legislation;
- (h) on the Customer's written request for an audit of such processing, Deputy shall elect to either:
  - I. co-operate with and make available to the Customer and any Supervisory Authority all necessary information regarding Deputy's data processing activities and allow the Customer on at least 30 days' notice to audit Deputy's compliance with the obligations set out in this clause 21.3 by requesting information about and inspecting the premises, facilities and equipment used by Deputy to process Personal Data of Authorised Users, during normal business hours, and provided such access does not cause any interruption to Deputy's day-to-day business activities; or
  - II. audit the technical and organizational measures described in clause 21.3(c) as soon as reasonably practicable. This audit: (a) will be performed by third party security professionals (qualified auditor) at Deputy's selection; (b) will result in the generation of an audit report ("**Deputy Audit Report**"), which will be the confidential information of Deputy or its subprocessor(s); and (c) may be performed for other purposes in addition to satisfying this clause. Deputy will provide the Customer with a confidential copy of the Deputy Audit Report so that the Customer can reasonably verify Deputy's compliance with its obligations under this clause 21.3(h) within 14 days of completion of the Deputy Audit Report by the selected qualified auditor.

and Deputy may charge the Customer any reasonable costs it incurs in complying with a request made by the Customer under this clause 21.3(h);

- (i) provide reasonable assistance to the Customer (at the Customer's expense) with undertaking an assessment of the impact of processing the Personal Data, and with any consultations with a data protection authority, if and to the extent an assessment or consultation is required to be carried out under the Data Protection Legislation; and
- (j) to the extent that Deputy engages any sub-processor, it shall remain fully liable to the Customer for the performance of any obligations carried out by the sub-processor on the Customer's behalf and ensure that: (a) there is a written agreement in place with such sub-processor which contains terms and conditions which are substantially equivalent to the terms and conditions set out in this Agreement; (b) make available to the Customer the names and other details of the sub-processors, including before appointing a new sub-processor or changing an existing sub-processor; and (c) maintain a list of sub-processors which it shall make available to the Customer on request.

#### **21.4 Restricted Transfers**

The parties acknowledge that Deputy will be a Data Processor of Personal Data pursuant to clause 21.2(a) and accordingly:

- (a) the Customer, as transferor (and, for the purposes of populating the Standard Contractual Clauses, "**data exporter**"), and Deputy on behalf of itself and each sub-processor that it engages as transferee (and for the purposes of populating the Standard Contractual Clauses, "**data importer**") hereby enter in to the Standard Contractual Clauses, in respect of any Restricted Transfer, which terms shall take precedence over any in this Agreement. The content of Annex B and Annex C shall be deemed populated and incorporated into the Standard Contractual Clauses in Appendix 1 and Appendix 2 respectively as required to give effect to its terms;
- (b) the Standard Contractual Clauses shall come into effect on the later of:
  - (i) the data exporter becoming a party to them;
  - (ii) the data importer becoming a party to them; or
  - (iii) commencement of a Restricted Transfer; and
- (c) Deputy warrants and represents that, before the commencement of any Restricted Transfer to a sub-processor, Deputy's entry in the Standard Contractual Clauses under clause 21.4(a) as agent for and on behalf of that sub-processor will have been duly and effectively authorised (or subsequently ratified) by that sub-processor.

#### **21.5 Deputy's obligations as Data Controller**

The parties acknowledge that Deputy will be a Data Controller when it processes Personal Data pursuant to clause 21.2(b) and accordingly Deputy shall, in respect of such processing:

- (a) comply with all of its legal obligations under the Data Protection Legislation which arise in connection with its processing of such Personal Data, including in relation to providing fair processing information to the Authorised Users;
- (b) process such Personal Data only for purposes compatible with providing the Services to the Customer (save to the extent that Deputy has (i) provided fair processing information to Authorised Users in relation to another purpose; and (ii) legitimised its processing of Personal Data for another purpose either by obtaining consent from the relevant Authorised User or using an alternative method of legitimise such processing in accordance with Data Protection Legislation); and
- (c) not do or permit to be done anything within its knowledge or control which may cause or otherwise result in the Customer being in breach of the Data Protection Legislation.

#### **21.6 Customer's obligations**

Notwithstanding clause 8.1, the Customer shall:

- (a) comply at all times with the Data Protection Legislation, including (but not limited to) when the Customer discloses Personal Data to Deputy under this Agreement and provide Deputy with such cooperation, assistance and information as Deputy may reasonably request to comply with its obligations under the Data Protection Legislation;



- (b) ensure that any instructions it issues to Deputy comply with the Data Protection Legislation;
- (c) without prejudice to the generality of clause 21.6(a) above, provide all necessary fair processing information to relevant Authorised Users, and take all other appropriate steps, to ensure the provision of Personal Data to Deputy (including for the disclosure of Personal Data outside of the EEA) complies with the Data Protection Legislation and to enable Deputy lawfully to process such Personal Data for the purpose of providing the Services (but not, for the avoidance of doubt, to enable Deputy to process Personal Data of Authorised Users for the purposes of providing and contacting such Authorised Users in relation to any service offering outside of the Deputy Application) without any further consent, approval or authorisation, and, on Deputy's request from time to time, the Customer shall consult, and comply with, any reasonable requests of Deputy's in relation to the same;
- (d) if requested by Deputy, promptly provide evidence that the Customer has provided all necessary notices to and obtained all necessary consents from or otherwise legitimised the processing of Personal Data by Deputy for the purpose of providing the Services;
- (e) ensure that any Personal Data provided to Deputy is limited to what is necessary in order for Deputy to provide the Services and such Personal Data is accurate and up-to-date to the best of the Customer's knowledge at the time that it is provided to Deputy;
- (f) use all reasonable endeavours to promptly notify Deputy upon becoming aware that Personal Data has become inaccurate or out of date; and
- (g) not do or permit to be done anything within its knowledge or control which may cause or otherwise result in Deputy being in breach of the Data Protection Legislation.

## **21.7 Obligations of the parties**

Each party shall:

- (a) deal promptly and in good faith with all reasonable and relevant enquiries from the other party relating to its processing of Personal Data under this Agreement; and
- (b) if it receives any complaint, notice, request, or communication from a regulator (including any Supervisory Authority), an Authorised User or third party which relates to the other party's processing of Personal Data under this Agreement or a potential failure to comply with the Data Protection Legislation, without undue delay forward such complaint, notice, request, or communication to the other party and provide the other party with reasonable cooperation and assistance in relation to the same.

## **22. NO BACK UP RECORDS**

The Customer acknowledges that Deputy does not provide back up or other similar services in respect of the Customer Data and the Customer is responsible for implementing its own back up and data retrieval procedures in respect of the Customer Data. Deputy will maintain a 7 day rotating backup of Customer Data solely for the purpose of disaster recovery. Upon termination of this Agreement, Customer Data and/or backups of the Customer Data may, at the discretion of Deputy, be deleted from the Deputy Application.

## **23. SUBCONTRACTORS**

The Customer agrees and acknowledges that Deputy may subcontract the performance of all or part of its obligations under this Agreement or assign of any of its rights under this Agreement to any subcontractor of its choice without the Customer's consent and on such terms and conditions as Deputy sees fit from time to time. The Customer further acknowledges that any fees payable by Deputy to its subcontractors may be calculated as a percentage of all or part the Fees payable by the Customer to Deputy under this Agreement.

## **24. NOTICES AND OTHER COMMUNICATIONS**

### **24.1 Services and Notice**

A notice, demand, consent, approval or communication under this Agreement (**Notice**) is only effective if it is:

- (a) in writing and signed by a person duly authorised by the sender; and
- (b) if sent to the Customer, hand delivered or sent by reputable overnight delivery service to the Customer's address as set out in the Customer Data, or via email to any Administrator Email Address; and
- (c) if sent to Deputy, hand delivered or sent by reputable overnight delivery service to Deputy's CFO at Deputy's then current ASIC registered address in Australia.

### **24.2 Effective on receipt**

A Notice given in accordance with clause 24.1 is taken to have been served:

- (a) if hand delivered, on delivery;
- (b) if sent by reputable overnight delivery, on the day of delivery by the reputable overnight delivery service; and
- (c) if sent by email, on the day of delivery of the email

but if the delivery, receipt or transmission is not on a Business Day or is after 5:00 pm on a Business Day, the Notice is taken to be received at 9:00am on the next Business Day.

## **25. WARRANTIES**

### **25.1 No warranties**

To the extent permitted by law, Deputy does not warrant or guarantee:

- (a) that the Deputy Application will meet the Customer's requirements and expectations;
- (b) that the Deputy Application will be compatible with, or capable of being used on or in connection with, the Customer's computer and communications systems;
- (c) that the Customer's access to the Deputy Application will be uninterrupted or error free;

- (d) that the Deputy Application will be accurate, reliable or fit for any particular purpose;
- (e) anything that Deputy does not expressly warrant in this Agreement or in the Statement of Work.

EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE STATEMENT OF WORK, DEPUTY MAKES NO EXPRESS WARRANTY WITH REGARD TO THE DEPUTY APPLICATION AND/OR THE DEPUTY INFRASTRUCTURE AND/OR THE SUBSCRIPTION SERVICES AND/OR ANY OTHER SERVICE.

TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, DEPUTY DISCLAIMS ALL IMPLIED AND STATUTORY WARRANTIES WITH REGARD TO THE DEPUTY APPLICATION, DEPUTY INFRASTRUCTURE, THE SUBSCRIPTION SERVICES AND ANY AND ALL OTHER SERVICES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES RELATED TO THIRD-PARTY EQUIPMENT, MATERIAL, SERVICES OR SOFTWARE.

CERTAIN LAWS IMPLY TERMS AND CONDITIONS INTO CONTRACTS FOR THE SUPPLY OF GOODS OR SERVICES THAT CANNOT BE EXCLUDED (FOR EXAMPLE, THAT SERVICES MUST BE PROVIDED WITH DUE CARE AND SKILL AND FIT FOR ANY SPECIFIED PURPOSE) ("NON-EXCLUDABLE CONDITION"). IN THE EVENT THAT A TERM, CONDITION OR WARRANTY IS IMPLIED BY LAW INTO THIS AGREEMENT AND DEPUTY BREACHES THAT NON-EXCLUDABLE CONDITION, DEPUTY'S LIABILITY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

## **25.2 Customer's warranty**

The Customer acknowledges and warrants that:

- (a) relied on its own skill and judgment in the choosing to use the Deputy Application;
- (b) it has satisfied itself that the Deputy Application is fit for all the purposes which the Customer requires it for;
- (c) it has not relied on any representation of Deputy in entering into this Agreement other than those expressly stated on the Deputy Website and/or in this Agreement;
- (d) it has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform or cause to be performed its obligations under this Agreement; and
- (e) this Agreement constitutes a legal, valid and binding obligation on it, enforceable in accordance with its terms by appropriate legal remedy.

## **26. LIMITATION OF LIABILITY**

### **26.1 Internet performance disclaimer**

Deputy does not and cannot control the flow of data via the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt the internet. Deputy will use commercially reasonable efforts to remedy and avoid such events but cannot guarantee that such events will not occur. Accordingly, Deputy disclaims any liability resulting from or relating to such events.

## **26.2 Commencement of Claims**

A Customer may not make a Claim for breach of this Agreement by Deputy unless it has given written notice to Deputy of the general nature of the claim in question within three (3) months after the Customer became aware or ought to have become aware of such a Claim and in any event within six (6) months immediately following any termination of this Agreement. A Customer will be barred from raising any Claims not made in accordance with this clause. This clause does not and shall not be deemed to toll or extend any statute of limitations.

## **26.3 Duty to mitigate**

If a Customer becomes aware of any fact, circumstance or matter which is reasonably likely (whether alone or with any other possible fact, circumstance or matter) to lead to a Claim on the part of Deputy in respect of a breach of this Agreement by Deputy, the Customer must take reasonable steps to mitigate any Loss which may give rise to such a Claim against Deputy.

## **26.4 Maximum liability**

The maximum aggregate liability of Deputy for or in connection with its breaches of the Agreement is the greater of:

- (a) the total amount of the Subscription Fees and Additional Fees (if any) paid by the Customer to Deputy under this Agreement in the 12 months immediately preceding the breach; or
- (b) if no Subscription Fees or Additional Fees have been paid, an amount of AUD \$500.

## **26.5 No claim for Consequential Loss**

A Customer agrees and acknowledges that Deputy is not liable for any Consequential Loss (however caused) suffered or incurred by the Customer arising out of or in respect of any breach of this Agreement by Deputy. This exclusion applies even if Deputy knew or ought to have known of the Consequential Loss suffered or may be suffered.

## **27. INDEMNITY**

The Customer shall and hereby does indemnify and hold Deputy harmless against any Loss suffered or incurred or likely to be suffered or incurred, directly or indirectly resulting from:

- (a) any breach of this Agreement by the Customer, including any breach in respect of which Deputy may exercise a right to terminate;
- (b) the Customer, its Authorised Users or any other person's use or access of the Deputy Application;
- (c) the Customer or its Authorised Users causing or procuring any Unacceptable Content being uploaded into the Deputy Application or stored on the Deputy Infrastructure;
- (d) the Customer or its Authorised Users causing or procuring:
  - (i) the upload of any Customer Data into the Deputy Application;
  - (ii) the storage of any Customer Data on the Deputy Infrastructure; or

(iii) otherwise using the Deputy Application,

in a way which is contrary to or infringes any applicable law, including privacy law, of any applicable jurisdiction;

(e) the Customer Data being stored or displayed on the Deputy Application; or

(f) any negligent or unlawful acts of the Customer, its related entities or their Authorised Users, employees, officers, contractors or representatives,

unless the Loss is a direct result of Deputy's breach of this Agreement or any unlawful act carried out by Deputy.

## **28. TAX**

### **28.1 Indirect Tax**

(a) The consideration expressed to be payable under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include any Indirect Tax unless otherwise specified.

(b) To the extent that any service supplied under or in connection with this Agreement is subject to any Indirect Tax, the Indirect Tax exclusive consideration otherwise payable for that service is increased by an amount equal to that consideration multiplied by the rate at which Indirect Tax is imposed in respect of the supply, and is payable at the same time as the time the consideration is paid.

### **28.2 Withholding Taxes**

If the Customer is required by law to make any deduction or withholding for any Taxes from any consideration payable to Deputy under this Agreement, the Customer will be responsible for the payment of the Taxes and that the Customer must:

(a) deduct or withhold the amount of Taxes from the payment as required by law (**Deducted Amount**);

(b) promptly pay the Deducted Amount to the relevant Government Authority within time frame required and otherwise in accordance with the relevant law;

(c) promptly provide to Deputy the original receipt, certificate or other evidence of payment of the Deducted Amount; and

(d) promptly pay to Deputy an additional amount equal to the Deducted Amount such that Deputy receives the full amount of the consideration owing to it.

## **29. DISPUTE RESOLUTION**

### **29.1 Dispute resolution procedure**

If a party believes that there is a dispute regarding this Agreement or the Subscription Services, it must not commence court proceedings (unless permitted by below clause 28.4) without first complying with the following dispute resolution procedure:

- (a) the party must give notice in writing to the other party in dispute (together, the **Disputing Parties**) specifying:
  - (i) the nature of the dispute;
  - (ii) the outcome required by the party; and
  - (iii) the action the party believes will settle the dispute,**(Dispute Notice)**.
- (b) Upon receipt of a Dispute Notice, the Disputing Parties shall use their best efforts and endeavours to resolve the dispute by mutual negotiation;

## **29.2 Mediation**

- (a) If the Disputing Parties are unable to resolve a dispute within twenty (20) Business Days (or within a longer period agreed in writing by them) of receipt of a Dispute Notice, either party may serve a notice on the other requiring the Disputing Parties to refer the dispute to a mediator and to participate in the mediation (**Mediation Notice**). If the Disputing Parties are unable to determine within fifteen (15) Business Days of receipt of a Mediation Notice referred to in this clause:
  - (i) the procedures to be adopted in the mediation; and
  - (ii) the timetable for all the steps in those procedures; and
  - (iii) the identity and fees of the mediator,
 the President of the Law Society of New South Wales, Australia or his representative will appoint the mediator and determine all procedural matters in relation to the mediation.
- (b) The Disputing Parties or their designated representatives must attend the mediation and make a determined and genuine effort to resolve the dispute.

## **29.3 Costs**

The Disputing Parties must bear its own costs of complying with this clause and the Disputing Parties must bear equally the costs of any mediator engaged.

## **29.4 Court Action**

Nothing in this clause 29 prevents a party taking any court action where the proceedings are to seek t injunctive, interlocutory or declaratory relief in respect of a dispute to preserve property or rights or to avoid any irreparable losses, costs, charges, claims, liabilities or expenses.

# **30. GENERAL PROVISIONS**

## **30.1 Binding effect of this Agreement**

This Agreement binds the parties to it and any executor, administrator, transferee, successors and assigns, liquidator or trustee in bankruptcy appointed in respect of them, subject to clause

30.5.

### **30.2 Entire Agreement**

This Agreement, including the Rate Sheet and Statement of Works, constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties or their respective officers, employees or agents.

### **30.3 No adverse construction**

Nothing in this Agreement is to be interpreted against a party solely on the grounds that the party put forward the Agreement or a relevant part of it.

### **30.4 Force Majeure**

If a party is prevented, hindered or delayed from performing its obligations under this agreement (money payments excepted and Customer's obligations with respect to Deputy's Intellectual Property excepted) by a Force Majeure Event, then as long as that situation continues, that party will be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation will be extended accordingly. If a party is affected by a Force Majeure Event it will immediately give the other party a notice of its occurrence and its effect or likely effect, and use all reasonable endeavours to minimise the effect of the Force Majeure Event and to bring it to an end.

### **30.5 Assignment**

The Customer may not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of Deputy. Deputy may assign, novate or otherwise deal with all or part its rights under this Agreement at any time and from time to time, which will be effective immediately upon Deputy notifying its Customers of the assignment or novation.

### **30.6 Partial invalidity**

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, then such provision shall be severed from this Agreement. In all other respects, the remaining provisions of this Agreement shall remain in full force and effect.

### **30.7 Attorneys**

Each person who executes this Agreement on behalf of a party under a power of attorney or other authority warrants that he or she has no notice of the revocation of that power or authority or of any fact or circumstance that might affect his or her authority to execute this Agreement under that power or other authority.

### **30.8 Rights, remedies additional**

Any rights and remedies that a person may have under this Agreement are in addition to and do not replace or limit any other rights or remedies that the person may have; provided, however, Customer agrees to look solely to Deputy for recovery of any claim that Customer has with regard to the Deputy Application and services provided or to be provided by Deputy.

### **30.9 Waiver**

The failure by a party to enforce at any time or for any period any one or more of the terms and conditions of this Agreement shall not be a waiver of those rights nor of the right at any time subsequent to enforce all of the terms and conditions of this Agreement. A waiver of any power or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in that written waiver.

### **30.10 Joint and several**

An agreement warranty representation or obligation which binds or benefits two or more persons under this Agreement binds or benefits those persons jointly and separately.

### **30.11 Governing law**

If the Customer is a tax resident of the United States of America, this Agreement will be construed and interpreted in accordance with the laws of the State of Georgia, USA. In all other situations, this Agreement will be construed and interpreted in accordance with the laws of the state of New South Wales, Australia and each party submits to the exclusive jurisdiction of courts of that jurisdiction.



## **ANNEX A**

### **DETAILS OF DATA PROCESSING ACTIVITIES CARRIED OUT BY DEPUTY**

#### **Subject matter and duration of the processing of Personal Data**

The subject matter and duration of the processing of the Personal Data are set out in the Agreement.

#### **Data Subjects**

The Personal Data processed concern the following categories of Data Subjects:

- Authorised Users

#### **Categories of data**

The Personal Data processed contain the following categories of Personal Data:

- Name;
- Phone number;
- D.O.B;
- Gender;
- Credit card details or other billing information
- Email address;
- Home and business postal addresses;
- Profile photo;
- Contacts;
- Social networking information
- Log data

#### **Special categories of data (if appropriate)**

The Personal Data processed contain the following special categories of Personal Data:

None

#### **Processing operations**

The Personal Data processed will be subject to the following basic processing activities:

The nature and purpose of the processing of the Personal Data are set out in the Agreement. Deputy may also transfer Personal Data to the data recipients specified in the Agreement to the extent permitted under the Agreement.

## **ANNEX B**

### **POPULATION OF APPENDIX 1 OF THE STANDARD CONTRACTUAL CLAUSES**

#### **Data Exporter**

The data exporter is the Customer.

#### **Data Importer**

The data importer is Deputy.

#### **Data Subjects**

The Personal Data processed concern the following categories of Data Subjects (Authorised Users):

This section is deemed to be populated with the content of the section headed "Data Subjects" in Annex A to this Agreement.

#### **Categories of data**

The Personal Data processed contain the following categories of Personal Data:

This section is deemed to be populated with the content of the section headed "Categories of data" in Annex A to this Agreement.

#### **Special Categories of data (if appropriate)**

The Personal Data processed contain the following special categories of data:

This section is deemed to be populated with the content of the section headed "Special Categories of data (if appropriate)" in Annex A to this Agreement.

#### **Processing operations**

The Personal Data processed will be subject to the following basic processing activities:

This section is deemed to be populated with the content of the section headed "Processing operations" in Annex A to this Agreement.

## **ANNEX C**

### **POPULATION OF APPENDIX 2 OF THE STANDARD CONTRACTUAL CLAUSES**

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4.4 and 5(c) of the Standard Contractual Clauses:

The data importer implements a variety of technical and organisational security measures set out at the following link: <https://www.deputy.com/au/security-features>

## Schedule 1: Enterprise Customer Service Guarantee

CLAUSE	TERM		DEFINITION																						
Clause 13.1	Minimum Availability Percentage		99.3%																						
Clause 13.3	Guaranteed Response and Resolution Times	<table><tr><th rowspan="2">Severity</th><th rowspan="2">Response Time</th><th colspan="2">Resolution Time</th></tr><tr><th>Workaround</th><th>Root Cause Fix</th></tr><tr><td>Sev1/Downtime</td><td>15 minutes</td><td>2 hours</td><td>24 hours</td></tr><tr><td>Sev2</td><td>15 minutes</td><td>12 hours</td><td>72 hours</td></tr><tr><td>Sev3</td><td>15 minutes</td><td>24 hours</td><td>1 week</td></tr><tr><td>Sev4</td><td>1 hour</td><td>48 hours</td><td>2 weeks</td></tr></table>		Severity	Response Time	Resolution Time		Workaround	Root Cause Fix	Sev1/Downtime	15 minutes	2 hours	24 hours	Sev2	15 minutes	12 hours	72 hours	Sev3	15 minutes	24 hours	1 week	Sev4	1 hour	48 hours	2 weeks
Severity	Response Time	Resolution Time																							
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Sev3	15 minutes	24 hours	1 week																						
Sev4	1 hour	48 hours	2 weeks																						
	Sev1/Downtime	means a majority of users cannot access Deputy or start/end shifts.																							
	Sev2	means a majority of admin users cannot publish schedules or approve timesheets, or a minority of users cannot start/end shifts																							
	Sev3	means a minority of admin users cannot publish schedules or approve timesheets.																							
	Sev4	means a majority of users is inconvenienced, but can still start/end shifts, publish schedules and approve timesheets.																							