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# Xenai Digital Terms of Service

Date 5 December 2023

These Terms of Service (**Terms**) govern your access to and use of our services, including our consultancy services, software and hosting (collectively, the **Services**). By using the Services you agree to be bound by these Terms.

## 1 Services

- 1.1 Xenai Digital will provide the Services in accordance with these Terms.
- 1.2 Xenai Digital will perform all Services:
  - (a) in accordance with the Statement of Work for that particular engagement, including any applicable timelines and/or any such timelines as may be subsequently agreed in writing between Xenai Digital and the Client;
  - (b) with all reasonable care, skill and diligence, in a proper, professional and timely manner; and
  - (c) in compliance with all applicable Laws.
- 1.3 Xenai Digital makes no representation or warranty that:
  - (a) the Services will be defect or error free;
  - (b) Client's use of the Services will be error-free, uninterrupted or compatible with Client's equipment and software configurations;
  - (c) any Services will be fit for the Client's purpose; or
  - (d) use of any Service will improve the financial performance or profitability of Client or any other party

## 2 Client Responsibilities

- 2.1 Client agrees that it will:
  - (a) ensure all information provided by it to Xenai Digital is to the best of its knowledge, accurate and complete;
  - (b) not withhold any information or material in its possession or control the absence of which might materially and adversely affect the supply of the Services;
  - (c) not direct Xenai Digital to do, or omit to do, anything which may cause Xenai Digital or its personnel to breach any Laws;
  - (d) hold all authorisations, permits and licences required to be held by Client under applicable Laws to receive and utilise the Services; and
  - (e) comply with the requirements of all Laws of any kind applying to Client and the receipt and utilisation of the Services.
- 2.2 Where the Client is to supply Xenai Digital with data, information or documents to allow Xenai Digital to facilitate the provision of the Services, Client must provide data, information or documents that are accurate and provide the data, information or documents in the manner and form specified by Xenai Digital. If Client fails to comply with this clause, Xenai Digital may, at its election, either delay performance of the Services, not perform the Services at all or charge additional fees at its then prevailing rates to reflect the additional cost and/or effort of performing the Services.
- 2.3 Client will be responsible for providing and maintaining its own internal facilities and equipment (including terminal, software, modem and telecommunication facilities) necessary for Client to access any part of the Services.
- 2.4 Client acknowledges and agrees that Xenai Digital's ability to provide the Services is dependent on Client's compliance with this clause 2 and Xenai Digital will not be liable for any delay or failure in providing the Services that is caused or contributed to by:
  - (a) the late or inadequate supply of information or other documentation by Client;
  - (b) the non-performance of Client's obligations under clause 2; or
  - (c) Client change in its requirements for the Service.
- 2.5 Client acknowledges and agrees that if it requires access to the Software as part of the Services, each Authorised User will be required to accept and abide by the Xenai Digital End User Licence Agreement for that Software, and that Client remains liable to Xenai Digital for any breach by an Authorised User of an End User Licence Agreement.

## 3 Fees and payment

- 3.1 Client agrees to pay Xenai Digital the fees and any expenses (if applicable) in the manner set out in the applicable Statement of Work (**Fee**).

- 3.2 Unless otherwise provided in an invoice or agreed by Xenai Digital in writing, invoices must be paid within thirty (30) days after the date of invoice, time being of the essence.
- 3.3 Invoices for any pre-paid hours subscription plan will be issued at the beginning of each calendar quarter.
- 3.4 In respect of each Statement of Work, on and from 1 July of each year:
  - (a) if there is an increase in the CPI over the twelve (12) month period ending 31 March of that year, the fees and hourly rates may be increased by an amount equivalent to the increase in the CPI over that twelve (12) month period; and
  - (b) if there is a decrease in the CPI over the twelve (12) month period ending 31 March of that year, the fees and hourly rates will stay the same.
- 3.5 If any invoice is disputed in good faith by Client, Client must give written notice to Xenai Digital of the dispute, which must include the reasons for the dispute (**Dispute Notice**), no less than seven (7) days before the due date of the invoice. After this date, all invoices will be final.
- 3.6 If Client has issued a Dispute Notice by the due date for payment, Client may withhold only those amounts that are directly related to disputed elements of the invoice.
- 3.7 Xenai Digital and Client will use reasonable endeavours to resolve any invoice dispute within thirty (30) days after a Dispute Notice is issued. Any payment to be made following resolution is to be paid within seven (7) days after such resolution.
- 3.8 If Xenai Digital and Client are unable to resolve the dispute under clause 3.7 within thirty (30) days, the dispute is to be resolved in accordance with the procedure set out in clause 14.

#### 4 Late payment

If Client fails to pay Xenai Digital any amount payable when due, then:

- (a) all money owing to Xenai Digital by Client becomes immediately payable;
- (b) Xenai Digital may suspend the performance of all Services;
- (c) Client must pay, in addition to the amount outstanding, interest at the rate equal to the cash rate target published by the Reserve Bank of Australia plus an additional 5% pa on the amount outstanding for each day during which the default continues; and
- (d) Client must pay all reasonable expenses incurred by Xenai Digital in recovering any money owing, including, but not limited to, all expenses of any legal proceeding and all reasonable attorneys' fees incurred in connection with such action.

#### 5 Taxes

- 5.1 Client must reimburse Xenai Digital for all sales, use, transfer, privilege, excise or other taxes and all duties (**Value Added Tax**), whether international, national, state or local, however designated, which are levied or imposed by reason of the transactions contemplated under these Terms, a Statement of Work, excluding income taxes on profits which may be levied against Xenai Digital.
- 5.2 Without limiting clause 5.1, all consideration provided for any taxable supply under a Statement of Work is exclusive of Value Added Tax unless the contrary is clear. The amount of that consideration must be increased by an additional amount equal to the Value Added Tax on that taxable supply, and Xenai Digital must supply Client with a tax invoice that complies with the legal requirements relating to invoices and that Value Added Tax.
- 5.3 If an amount of consideration under any Statement of Work is calculated as specific compensation or reimbursement for an expense, loss or liability of a supplier the consideration must be calculated after excluding any amount for which the supplier is entitled to an input tax credit as recipient of the item to which the expense loss or liability relates.
- 5.4 If at any time an adjustment is made or required to be made between a party and the relevant taxing authority on account of any amount paid as any form of taxation under any Statement of Work:
  - (a) a corresponding adjustment must be made;
  - (b) adjustment notes must be issued; and
  - (c) any payment must be made between Xenai Digital and Client as may be necessary to give effect to the adjustment.

#### 6 Confidentiality

- 6.1 In the course of performing their responsibilities under these Terms, and any Statement of Work, both Xenai Digital and Client acknowledge that they may be exposed to or acquire Confidential Information of each other. Both Xenai Digital and Client agree:

- (a) to hold such information in strictest confidence;
  - (b) not to copy, reproduce, sell, assign, license, market, transfer, give or otherwise disclose such information to third parties;
  - (c) not to use such information for any purpose whatsoever, without the express written permission of the other, except for the performance of obligations under these Terms or any Statement of Work, or as otherwise agreed; and
  - (d) to advise each of their employees, agents and representatives of their obligations to keep such information confidential and to procure compliance by such parties in respect of the same.
- 6.2 Each party must use reasonable efforts to assist the other party in identifying and preventing any unauthorised use or disclosure of the other party's Confidential Information.
- 6.3 Each party agrees to notify the other immediately if it learns or has reason to believe that any person who has had access to the other party's Confidential Information has violated or intends to violate these Terms or any Statement of Work, and to reasonably cooperate with the other party in seeking injunctive relief and/or other available remedies against any such person.
- 6.4 The confidentiality obligations set out in this clause 6 do not extend to information that:
- (a) is, as of the time of its disclosure or which after its disclosure becomes, part of the public domain through a source other than the receiving party and in a manner not in violation of the disclosing party's proprietary rights;
  - (b) was known to the receiving party as at the time of its disclosure and was not stated to be or noted as confidential;
  - (c) is independently developed by the receiving party without reference to the disclosing party's Confidential Information;
  - (d) is subsequently learned from a third party not under a confidentiality obligation to the disclosing party and was not stated to be or noted as confidential; or
  - (e) is required to be disclosed under a duly authorised subpoena, court order or government authority, provided that the receiving party (insofar as it is able by law) gives prompt written notice to the disclosing party prior to such disclosure, so that the disclosing party may seek a protective order or other appropriate remedy. If a protective order or other remedy is not obtained, the receiving party agrees to disclose only that portion of the Confidential Information which is required by law or order.
- 6.5 Each of Xenai Digital and Client acknowledge that any breach of a party's obligations arising under this clause 6, may give rise to irreparable damage to the other party and that such breach may be inadequately compensable in damages. Accordingly, either party, reasonably believing the other party to be in breach of its obligations under this clause 6 may seek and obtain injunctive relief or other equitable remedies against such breach or threatened breach, in addition to any other legal remedies which may be available. Each of Xenai Digital and Client agree that the covenants contained in this clause are necessary for the protection of legitimate business interests of owners of the Confidential Information and are reasonable in scope and content.

## **7 Privacy**

- 7.1 Both Xenai Digital and Client must comply with the Privacy Laws.
- 7.2 Client warrant that:
- (a) any Personal Information that it discloses to Xenai Digital under these Terms, a Statement of Work has been collected in accordance with the Privacy Laws;
  - (b) the individual to whom the information relates has been made aware of the recipient's identity, of how to contact the recipient, and of the other matters of which the recipient is required to inform a person about whom it collects information under the Privacy Laws; and
  - (c) Xenai Digital is authorised to collect the information for the disclosure and use the information for the purpose of these Terms, a Statement of Work.
- 7.3 In relation to any Personal Information disclosed by a party under these Terms, a Statement of Work, the recipient must:
- (a) not use, disclose, store, transfer or handle the information except in accordance with the Privacy Laws;
  - (b) only use or disclose the information for a purpose connected with these Terms, a Statement of Work, or as required by law;

- (c) co-operate with any reasonable request or direction of the discloser which relates to the protection of the information or the exercise of the functions of any privacy regulator under the Privacy Laws; and
  - (d) ensure that access by its personnel is limited to people required to access that information for the purposes of these Terms, a Statement of Work, and that they comply with the requirements of this clause 7 and the Privacy Laws.
- 7.4 Each party must promptly inform the other in writing of any complaint that it receives concerning the use, disclosure, storage, transfer or handling of Personal Information and comply with any reasonable direction of the other in relation to a complaint concerning the use, disclosure, storage, transfer or handling of Personal Information.

## **8 Intellectual Property Rights**

- 8.1 The Client acknowledges and agrees that Xenai Digital and/or its licensors own all Intellectual Property Rights to any of the Software and Services, including any developments, changes, modifications and updates. Client must not claim any right or title to use the Services except as permitted under these Terms or a Service Order. Client must not dispute or challenge the entitlement of Xenai Digital to the Software or join any third parties to challenge or contest the validity of the Software.
- 8.2 The Client must not do, omit to do, attempt to do, or allow anyone to do anything that infringes Xenai Digital's Intellectual Property Rights, including:
- (a) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute any part or all of the Software in any form or media or by any means; or
  - (b) decompile, disassemble, reverse engineer or otherwise reduce to human-perceivable form any part or all of the Software, except with Xenai Digital's prior written consent, or as expressly permitted by non-excludable laws.
- 8.3 If there is any Claim by a third party against the Client that the use of the Software will infringe any Intellectual Property Rights of the third party, then Xenai Digital will indemnify the Client in respect of the Claim, subject to:
- (a) the Client notifying Xenai Digital as soon as reasonably possible of the Claim and no later than 10 Business Days of being notified of the Claim by the third party;
  - (b) Xenai Digital, Xenai Digital's third party supplier, or their chosen representative being given full control to direct the defence and settlement of the Claim;
  - (c) the Client making reasonable efforts to mitigate the Losses associated with the Claim; and
  - (d) the Client providing Xenai Digital with all reasonable assistance and information required by Xenai Digital or the third party supplier in relation to the defence and settlement of the Claim.
- 8.4 In the event of a Claim for Intellectual Property Rights infringement against Xenai Digital which affects the provision of the Services, Xenai Digital may modify, limit, suspend or cancel the provision of any Services or materials, if required, in response to the Claim.
- 8.5 The indemnity in clause 8.3 does not apply to the extent that the Claim arises:
- (a) as a result of any modifications to the Services not made by Xenai Digital or its licensors;
  - (b) through Xenai Digital's compliance with the Client's specifications and instructions;
  - (c) as a result of the Client or Authorised User's use of any version of the Services other than the most recent unaltered version made available by Xenai Digital, if such infringement would have been avoided by the use of such most recent unaltered version; or
  - (d) is caused or contributed to by the Client, their employees, agents, representatives, other personnel or Authorised Users.
- 8.6 If required by Xenai Digital, the Client agrees to execute, or cause any Authorised Users to execute, all documentation necessary in order for Xenai Digital to perfect or protect its Intellectual Property Rights in relation to any of the Services.
- 8.7 Client retains all Intellectual Property Rights held by Client in any information, content and documentation provided by Client to Xenai Digital. However, Client irrevocably grants Xenai Digital a royalty free licence to use, reproduce and create derivative works based on that information, content and documentation as needed to perform the Services.

- 8.8 Unless otherwise agreed to in a Statement of Work, upon payment in full of all Fees pursuant to a Statement of Work, Xenai Digital grants Client a non-transferable, irrevocable, perpetual licence to use the Deliverables for the Client's own business purposes.

## **9 Indemnity**

The Client indemnifies Xenai Digital against all Claims or Losses suffered or incurred by Xenai Digital that are caused by, or arise from:

- (a) any breach of these Terms, a Statement of Work by the Client or its agent(s);
- (b) any negligent or unlawful act or omission by the Client, its agent(s) or any Authorised Users; or
- (c) any unauthorised access to, or use of, the Software or Services by a third party that is not authorised to access or use, the Software or Services.

## **10 Limitation on liability**

- 10.1 Nothing in these Terms or any Statement of Work is or should be interpreted as an attempt to modify, limit or exclude terms, guarantees or warranties which are imposed by statute and which cannot be modified, limited or excluded.
- 10.2 Xenai Digital excludes to the extent permitted by law all other terms, guarantees conditions and warranties which might be implied into these Terms, any Statement of Work, including but not limited to any warranties arising from a course of dealing, usage or trade practice.
- 10.3 Subject to clause 10.1, if Xenai Digital is liable to Client for a breach of a term, condition, guarantee or warranty implied into these Terms or any Statement of Work by statute, that liability is limited to the supplying of the Services again or the payment of the cost of having the Services supplied again.
- 10.4 Client does not rely on any representation, warranty, guarantee or other provision made by Xenai Digital or on its behalf which is not expressly stated in these Terms or a Statement of Work.
- 10.5 Subject to clauses 10.1, 10.3 and 10.6, the maximum aggregate liability of Xenai Digital to Client in respect of any one claim or series of connected claims under these Terms or any Statement of Work whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, breach of warranty, under an indemnity or otherwise is limited to the Fees paid to Xenai Digital by the Client under the Statement of Work which is the subject of the claim or claims.
- 10.6 Xenai Digital is not liable for any economic loss, loss of revenue, loss of saving on overheads, loss arising from business interruption, loss of data, loss of business opportunities, loss of goodwill or loss of profits whether direct, indirect, general, special or consequential from any cause, even if Xenai Digital has been advised of the possibility of such damages or loss.
- 10.7 Any claims for loss or damage by Client against Xenai Digital must be made within two (2) years after the occurrence of the event giving rise to the loss or damage.
- 10.8 Xenai Digital and Client must each use reasonable efforts to mitigate any potential damages or other adverse consequences arising from or related to the Services.

## **11 Client Premises and Facilities**

- 11.1 If Xenai Digital is given access to any of Client's facilities or systems to enable it to provide the Services, Xenai Digital:
- (a) will take reasonable care in accessing those facilities and systems, including all hardware, software and applications and will observe all reasonable security procedures and work practices as notified by Client to Xenai Digital; and
  - (b) will not unreasonably interfere with or disrupt those facilities or systems.
- 11.2 If Services are to be provided at the Client premises, Client must:
- (a) provide, at its own expense, the level of power, heating and air-conditioning necessary to maintain the environment at the Client premises for the provision and utilisation of the Services;
  - (b) provide a safe place of work and comply with all Laws and regulations relating to working conditions at the Client premises; and
  - (c) ensure that full insurance is in place to cover any death, personal injury or loss incurred by any Xenai Digital personnel.

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- 11.3 If the performance of the Services requires access to any Client premises, Client must allow Xenai Digital's personnel continuous and reasonable access to the Client premises to the extent reasonably determined by Xenai Digital to be appropriate to perform the Services.

## **12 Force Majeure**

Except for any payment obligations, neither party is liable for any delay or failure to perform any of its obligations under these Terms, any Statement of Work to the extent that the delay or failure is caused by reason of Force Majeure.

## **13 Suspension**

- 13.1 Xenai Digital may suspend the supply or performance of any or all Services at any time without notice to the Client and has no obligation to allow Client to access and use of a system:
- (a) if the Client becomes insolvent, is dissolved or liquidated, makes a general assignment for the benefit of its creditors, files or has filed against it, a petition in bankruptcy, or has a receiver appointed for a substantial part of its assets;
  - (b) has failed to pay any invoice issued by Xenai Digital by its due date;
  - (c) in the event of a claim of Intellectual Property Rights infringement as referred to in clause 8.4; or
  - (d) if Xenai Digital or a third party supplier reasonably suspects that the Client is in breach of any of their obligations under these Terms or a Statement of Work.
- 13.2 To the maximum extent permitted by law, Xenai Digital excludes all liability to the Client if the Services are suspended under this clause.

## **14 Dispute Resolution**

- 14.1 Where a party claims that a dispute has arisen under or in relation to these Terms or a Statement of Work, it must give written notice to the Representative of the other party specifying the nature of the dispute. The Representatives of each party must then endeavour to resolve the dispute.
- 14.2 If the Representatives cannot resolve the dispute within fourteen (14) days after receipt of the notice given under clause 14.1, the dispute must be referred to the managing director or chief executive officer of each party.
- 14.3 If the managing directors or chief executive officers cannot resolve the dispute within fourteen (14) days after the dispute is referred under clause 14.2, the dispute must be submitted to mediation administered by ACDC.
- 14.4 The mediator must be selected from a panel suggested by ACDC. Each of Xenai Digital and Client must ask the ACDC to appoint the mediator if they cannot agree on who it should be. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation and must be held in Sydney, unless otherwise agreed by both Xenai Digital and Client.
- 14.5 Nothing in this clause 14 prohibits a party from seeking injunctive relief from a court of competent jurisdiction if a breach or prospective breach of these Terms by the other party which would cause irreparable harm to the first party.

## **15 Subcontracting**

Xenai Digital may subcontract some or all of its obligations under a Statement of Work to one or more third-parties. Xenai Digital remains responsible to Client for the performance of its obligations despite any subcontract and is liable to Client for the acts, defaults and negligence of each of the subcontractors, or personnel of each subcontractor as if they were the acts, defaults or negligence of Xenai Digital.

## **16 Assignment**

- 16.1 A Statement of Work may not be assigned, sublicensed or otherwise transferred by Client, whether by operation of law or otherwise, without Xenai Digital's prior written consent, such consent not to be unreasonably withheld or delayed.
- 16.2 Xenai Digital may, at any time, novate, assign or transfer part or all of its rights and obligations under these Terms, or any Statement of Work to any third party and to the extent required Client consents to the novation, assignment or transfer. Client agrees to enter into a novation, assignment or transfer agreement on terms specified by Xenai Digital.

## 17 General

- 17.1 These Terms together with each Statement of Work (as applicable) constitutes the entire understanding between the Xenai Digital and Client and supersedes all previous and contemporaneous communications, representations, or agreements with respect to Xenai Digital's supply, and Client's access and use, of the Services.
- 17.2 Neither party is an agent, legal representative, partner, joint venturer, franchisee, employee, or servant of the other party hereto for any purpose. Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, or to represent the other party in any capacity.
- 17.3 If any provision of these Terms, or a Statement of Work is held to be unenforceable, Xenai Digital and Client agree to substitute the affected provision with an enforceable provision that approximates the intent and economic effect of the affected provision.
- 17.4 If any one or more of the provisions of these Terms or a Statement of Work are for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction or a panel of arbitrators, the remaining provisions of these Terms or Statement of Work (as applicable) will be unimpaired and will remain in full force and effect. For purposes of resolving the matter before any such court or arbitral panel the invalid, illegal or unenforceable provision will be revised by such court or panel (ie, "blue pencilled") as necessary to become a valid, legal and enforceable provision which comes closest to the intent of Xenai Digital and Client underlying the invalid, illegal or unenforceable provision.
- 17.5 These Terms or a Statement of Work will not be varied, except by agreement in writing signed by Xenai Digital and Client.
- 17.6 No failure or delay of either party in exercising any right, power, or privilege under these Terms, a Statement of Work (and no course of dealing between Xenai Digital and Client) operates as a waiver or any such right, power of privilege. No waiver of any default on any one occasion constitutes a waiver of any subsequent default. No single or partial exercise of any right, power, or privilege precludes the further or full exercise of such right, power of privilege.
- 17.7 These Terms and each Statement of Work may and all matters regarding the interpretation and/or enforcement of each of them, are governed exclusively by the laws in force in New South Wales, Australia. Xenai Digital and Client submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 17.8 Client represents and warrants that the person or persons that signs any Statement of Work on Client's behalf is duly authorised and has the legal capacity to do so, and that such execution binds the Client to the terms of that Statement of Work (as applicable), including these Terms.

## 18 Defined Terms and Interpretation

### 18.1 Definitions

In these Terms:

**ACDC** means the Australian Commercial Disputes Centre Limited.

**Authorised User** means an authorised user of any Services, authorised by the Client, and approved by Xenai Digital.

**Business Day** means:

- (a) for the purposes of receiving a notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the notice is to be received; and
- (b) for any other purpose, a day on which the banks are open for business in Sydney other than a Saturday, Sunday or public holiday.

**Claim** means any claim, action, proceeding or investigation of any nature or kind, and includes the allegation or threat of a claim.

**Client** means the party identified as Client in the Statement of Work (as applicable).

**Confidential Information** is any non-public information of a party or its customers which the party identifies as confidential or which would reasonably be regarded as confidential and includes without limitation information relating to the party's Intellectual Property Rights, organisational structure, financial position, personnel, policies and business strategies.

**CPI** means the Consumer Price Index published by the Australian Bureau of Statistics from time to time or the index officially substituted for it and if no such index is available, such published price index agreed by the parties acting reasonably.

**Client Data** means any data, information, content or other material which is uploaded by the Client or Authorised Users via the Software, but does not include any information, content or material that Xenai Digital has provided to the Client or any Authorised User.

**Deliverables** means any items created, developed or generated by Xenai Digital specifically for use by Client only and delivered to Client in connection with the Services.

**Xenai Digital** means Xenai Digital Pty Ltd ABN 54673228727.

**Dispute Notice** has the meaning given to it in clause 3.5.

**Fee** has the meaning given to it in clause 3.1.

**Force Majeure** means any event caused by occurrences beyond a party's reasonable control, including, but not limited to, acts of God, fire or flood, war, terrorism, pandemic, system malfunction, governmental regulations, policies or actions enacted, or any labour, telecommunications or other utility shortage, outage or curtailment.

**Intellectual Property Rights** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, trade marks, know-how, confidential information, patents, inventions and discoveries and all other rights (including moral rights) resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Laws** means any laws, codes, guidelines and the like, including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles and requirements, statutory rules of an industry body, statutory and mandatory codes of conduct, writs, orders, injunctions, judgments, generally accepted accounting principles and industry-wide non-statutory rules or obligations in force or as applicable from time to time.

**Loss** includes any loss, damage, cost, charge, liability (including tax liability) or expenses (including legal costs and expenses).

**Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

**Privacy Laws** means any privacy, data security or data protection Laws applicable in the jurisdiction in which the Services are being provided or received.

**Representative** means any director, officer, employee or agent appointed by a party as its representative as set out in a Statement of Work.

**Services** means the services provided by Xenai Digital to Client.

**Software** means the software developed and owned by Xenai Digital or any third party that is used in connection with the Services in the future.

**Statement of Work** means a statement of work agreed by the parties for provision of Services by Xenai Digital to Client .

## 18.2 Interpretation

In these Terms, the following rules of interpretation apply unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any party to these Terms or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect interpretation; and
- (g) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these Terms or any Statement of Work or any part of it.



