

matX Agreement



Creating substantial value
from sustainable practice

1 Parties and agreement

1.1 Parties

This Agreement is between you, our customer (referred to as “you” or “your”) and **Maxen Consulting Group Pty Ltd (ABN 62 615 741 869)**, its successors and assignees (referred to as “**matX.com.au**”) and collectively the “**Parties**”. This Agreement is available at www.matx.com.au.

1.2 Agreement

This Agreement forms the agreement under which **matX.com.au** provides you with the **matX Services** (defined below). Please read this Agreement carefully. If you any questions, please contact **matX.com.au** using the contact details.

1.3 Definitions

The definitions and interpretation section in this Agreement are set out in **clause 26 (Definitions and interpretation)**.

2 The Exchanges

2.1 E-commerce platform

- (a) **matX.com.au** provides an e-commerce platform based on circular economic principles with the aim to keep goods and materials (the **Goods**) in use and ideally where they provide optimum value.
- (b) **matX.com.au** has:
 - (i) a public Exchange (**Public Exchange**);
 - (ii) private Exchanges (**Private Exchange**); and
 - (iii) business Exchanges (**Business Exchange**),together known as (the **Exchanges**) on which to list Goods.
- (c) **matX.com.au** lets a Seller Listing (as defined below) to cascade from one Exchange to another if unsold.
- (d) **matX.com.au** allows Sellers (as defined below) to choose which Exchange or Exchanges they list Goods on and the priority of the Exchanges.
- (e) For each Exchange, the time advertised, purchase mechanism and cost can be varied by the Seller.
- (f) **You** may advertise your business in the **matX.com.au** Directory.

2.2 Process

- (a) You get to create and invite members to join Private and/or Business Exchanges.
- (b) You can be invited to join existing Exchanges.
- (c) You can list Goods on the Public Exchange and any Exchange you are a member of (**Seller**).
- (d) Buyers can only see listed Goods and purchase or acquire Goods from the Public Exchange and any Exchange you are a member of (**Buyers**).
- (e) In this Agreement, **you** also means (as applicable):
 - (i) the person or entity registered with **matX.com.au** as either a Buyer or Seller; or
 - (ii) the individual accessing or using the Exchanges.
- (f) If you are using the Exchanges on behalf of your employer or a business entity, **you**, in your individual capacity, represent and warrant that you are authorised to act on

behalf of your employer or the business entity and to bind the entity and the entity’s personnel to this Agreement.

- (g) **matX.com.au** provides the Exchanges to **you** (including hosting and maintaining the Exchanges), to assist Buyers and Sellers to form contracts for the provision of Goods, and provide promotional opportunities for Sellers (together the **matX Services**).

- (h) You understand and agree that **matX.com.au** only makes available the Exchanges and the **Matx Services**. **matX.com.au** is not party to any agreement entered into between a Buyer and a Seller and **matX.com.au** has no control over the conduct of Sellers, Buyers or any other users of the Exchanges.

3 Process

Buyers and Sellers may enter into written agreements in relation to the Goods. To the extent there is inconsistency between any additional terms and conditions and this Agreement, this Agreement will prevail.

4 Listings

4.1 Process

- (a) A Seller wanting to list Goods posts an accurate and complete description of the Goods on one of their Exchanges. A Seller may choose to set the listing to cascade through a series of their Exchanges if unsold (**Seller Listing**).
- (b) A Buyer wanting to acquire Goods from their Exchanges can view or be actively alerted by **matX.com.au** to view Seller Listings.
- (c) A Buyer may request Goods described in a Seller Listing by sending a request through the Exchange. The request is an offer from the Buyer to the Seller to buy the Goods described in the Seller Listing (**Purchase Request**).

4.2 Seller terms

Sellers must include all additional terms and conditions relating to their Goods in the relevant Seller Listing or must clearly state that there are additional terms and conditions. By sending a Purchase Request, a Buyer is accepting the additional terms and conditions of the relevant Seller.

4.3 Seller Confirmation

- (a) By accepting a Purchase Request, the Seller confirms that it is legally entitled to and capable of supplying the Goods described in the Purchase Request.
- (b) The Seller does not have to accept a Buyer’s offer, even if it is the highest bid.

5 Accounts

5.1 Registering

- (a) You must register on **matX.com.au** and create an account (**Account**) to access the Exchanges’ features.

- (b) You must provide basic information when registering for an Account including your business name, contact name and email address and you must choose a username and password.
- (c) The username you choose must :
 - (i) be offensive or in other ways insulting; or
 - (ii) contain characteristics which belong to a third party, including names of famous persons, or personal names to which you do not own the rights.

5.2 Profile

- (a) Once you have registered an Account, your Account information will be used to create a profile which you may then curate.
- (b) You agree to provide accurate, current and complete information during the registration process and regularly update such information to keep it accurate, current and complete.

5.3 Your Account

- (a) Your Account is personal and you must not transfer it to others, except with matX.com.au's written permission.
- (b) You are responsible for keeping your Account details and your username and password confidential and you will be liable for all activity on your Account, including purchases made using your Account details. You agree to immediately notify matX.com.au of any unauthorised use of your Account.
- (c) matX.com.au may make access to and use of certain parts of the Exchanges subject to conditions or requirements, including identity verification, cancellation history, quality of the Goods, threshold of reviews.

6 Communication

- (a) matX.com.au may contact you via the Exchanges using in-Account notifications, or via off-Exchange communication channels, such as text message or email.
- (b) Buyers and Sellers can communicate privately offline using the listed contact details.

7 Fees

7.1 Listing

- (a) It is free to register an Account on matX.com.au, for other users to review content including all Seller Listings on the Public Exchange and Exchanges in which they are a member.
- (b) matX.com.au will charge the service fees (including any third party payment processing fees) as set out on the Exchanges (**Listing Fee**).
- (c) To the extent permitted by law, our Listing Fee is non-refundable.

7.2 General

- (a) matX.com.au provides a number of payment methods on the Exchanges, including matX.com.au's third party payment processors, currently Stripe. The payment method you choose may be subject to additional terms and conditions imposed by the applicable third party payment processor. By making payment through a third party payment processor, you accept the applicable terms and conditions.
- (b) In the absence of fraud or mistake, all payments made are final. If you make a payment by debit card or credit card, you warrant that the information you provide to matX.com.au is true and complete, that you are authorised to use the debit card or credit card to make

the payment, that your payment will be honoured by your card issuer, and that you will maintain sufficient funds in your account to cover the payment.

7.3 Buyer and Seller payment and refunds

The cancellation, exchange, variation or refund of any Goods offered on the Exchanges are strictly a matter between the relevant Buyer and Seller.

8 Subscriptions (only applicable to matX Business Exchanges)

8.1 Trial

- (a) Your subscription (**Subscription**) may begin with a free trial. The free trial period of your Subscription will last for the period specified on your matX Order Form. matX.com.au determines free trial eligibility in matX.com.au's sole discretion and matX.com.au may limit eligibility to prevent free trial abuse. matX.com.au reserves the right to revoke the free trial and suspend your Account at any time in the event that matX.com.au determines that you are not eligible.
- (b) If you do not cancel during the free trial period, matX.com.au will charge your chosen payment method for the Subscription you have chosen and its corresponding Subscription fee (**Subscription Fee**) on the day your free trial ends.
- (c) If you do not pay the Subscription Fee as per relevant matX Order Form at the end of the free trial period, your access to Subscription benefits will finish at the end of the free trial.

8.2 Payment for Subscription

- (a) Each matX Order Form commences on the matX Order Form Start Date and ends on the matX Order Form End Date as (**matX Order Form Term**).
- (b) Any renewal process for an matX Order Form Term is set out in the matX Order Form.
- (c) To the extent permitted by law, the Subscription Fee is non-refundable and non-cancellable once paid.
- (d) After any trial periods, the Subscription Fee will be charged upfront on a monthly basis for month to month Subscription and upfront on a yearly basis for annual Subscription on the calendar day corresponding to when you created your Account (**Subscription Payment Date**). In some cases, your Subscription Payment Date may change, for example, if payment is unable to be processed or if your Subscription began on a day not contained in a given month.
- (e) If you do not cancel your Subscription renewal in accordance with the cancellation clause below, it will be renewed as per the terms on the relevant matX Order Form. matX.com.au will notify you 30 days prior to the end of the current Subscription term.
- (f) matX.com.au may modify matX.com.au's Subscriptions and the Subscription Fees from time to time. For month to month Subscription, any price changes will apply to you no earlier than 30 days following notice to you. For annual Subscription, the price changes will apply to you no earlier than the start of your renewed Subscription. The notice may be provided at any time via email or via notification to your Account. If you do not agree to the price change, you may cancel your Subscription in accordance with the cancellation clause below.

8.3 Upgrading or downgrading your Subscription

- (a) You may upgrade or downgrade your Subscription (for example, change the number of Authorised Users) at any time by sending matX.com.au an email. The payment method linked to your Account will automatically be charged the Subscription Fee for your new Subscription tier on the Payment Date on which the upgrade or downgrade becomes effective.
- (b) The upgrade or downgrade will apply to the next month if you upgrade or downgrade your Subscription at least 5 business days before the next Payment Date.
- (c) If you upgrade or downgrade less than 5 business days before the next Payment Date, the upgrade or downgrade will become effective for the following month.
- (d) If you need to upgrade is urgent, please send matX.com.au an email and matX.com.au may upgrade your Subscription prior to the Payment Date on which the upgrade was due to become effective. matX.com.au may organise for the payment method linked to your Account to be charged the pro-rata Subscription Fee for your new Subscription tier.

8.4 Cancelling Subscription

- (a) You may cancel your Subscription at any time by sending matX.com.au an email.
- (b) The cancellation will apply to the next month for month to month Subscriptions or the next year for annual Subscriptions if you cancel your Subscription at least 5 business days before the next Payment Date.
- (c) If you cancel your Subscription less than 5 business days before the next Payment Date, you will be charged the Subscription Fee on the next Payment Date and the cancellation will become effective for the following month for month to month Subscriptions or the next year for annual Subscriptions.

8.5 APIs

matX.com.au may use third party services, for example Google Maps APIs (APIs). Your use of those APIs is subject to the relevant providers' terms and conditions.

9 Acceptance

9.1 Acceptance

You accept this Agreement by:

- (a) if applicable, signing this Agreement; or
- (b) clicking a box indicating acceptance on an Exchange; or
- (c) creating an Account; or
- (d) accessing or using the matX Services; or
- (e) if applicable, signing and returning a matX Order Form matX (applicable for matX Business Exchanges).

9.2 Authority

By accepting this Agreement, you warrant:

- (a) to matX.com.au that you have reviewed this Agreement, and you understand them and will use the matX Services in accordance with them;
- (b) to us that you have the legal capacity to enter into a legally binding agreement;
- (c) to us that you have the authority to act on behalf of any person or entity for whom you are using the matX Services and you are deemed to have agreed to this Agreement on behalf of any entity for whom you use the matX Services; and

- (d) to matX.com.au that you have all hardware, software and services which are necessary to access and use the matX Services.

10 Licence and restrictions on use

10.1 Licence

In consideration for payment of the Fees, matX.com.au grants you a non-exclusive, non-transferable, non-sublicensable, personal and revocable licence to access and use matX Services for the matX Order Form Term or if you have signed up via an Exchange, the period set out on the Exchange (**Licence**).

10.2 Licence Restrictions

You must not (and must ensure your Authorised Users do not) access or use the matX Services except as permitted by the Licence and you must not and must not permit any other person to:

- (a) use the matX Services in any way which is in breach of any applicable Laws or which infringes any person's rights, including Intellectual Property rights;
- (b) use the matX Services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
- (c) use the matX Services in any way that damages, interferes with or interrupts the supply of the matX Services;
- (d) introduce malicious programs into our hardware and software or Systems, including viruses, malware, worms, trojan horses and e-mail bombs;
- (e) reveal your Account's password to others or allow others to use your Account (other than Authorised Users);
- (f) use the matX Services to carry out security breaches or disruptions of a network. Security breaches include accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
- (g) use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the matX Services;
- (h) send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages or use the matX Services in breach of any person's privacy (such as by way of identity theft or "phishing"); or
- (i) use the matX Services to circumvent user authentication or security of any of matX.com.au's networks, accounts or hosts or those of matX.com.au's members or suppliers.

10.3 You must obtain necessary approvals

For matX.com.au to provide the matX Services to you, you must promptly obtain and provide to matX.com.au any required licences, approvals or consents necessary for matX.com.au's performance of the matX Services.

11 Authorised Users (only applicable to matX Business Exchanges)

11.1 Authorised Users

If set out in a matX Order Form, you agree that the Licence permits you to access and use the matX Services in accordance with the number of Authorised Users, as set out in that matX Order Form.

12 Third Parties

12.1 Third Party Inputs

You acknowledge and agree that:

- (a) the provision of the matX Services may be contingent on, or impacted by, third parties, other customers' use of matX.com.au's services, suppliers, other subcontractors (**Third Party Inputs**); and
- (b) despite anything to the contrary, to the maximum extent permitted by law, matX.com.au will not be responsible, and will have no Liability, for any default or breach of this Agreement or law, if such default or breach was caused or contributed to by any Third Party Inputs.

12.2 Interoperability with Third Party Inputs

- (a) You acknowledge that the matX Services include certain optional functionality that may interface or interoperate with third party software or services.
- (b) To the extent that you choose to use such functionality and they are not a part of the matX Services, you are responsible for:
 - (i) the purchase of;
 - (ii) the requirements; and
 - (iii) the licensing obligations, related to the applicable third party software and services.
- (c) It is your responsibility to ensure these requirements are met in order for you to benefit from the specific functionality made available to you.

13 Setup Service (only applicable to matX Business Exchanges)

If applicable, matX.com.au will provide the Setup Service.

14 Development

14.1 Continuous Improvement

You may request changes to the scope, functionality or nature of the matX Services or the elements of the Software used to provide the matX Services by notifying matX.com.au. matX.com.au will incorporate suitable requests into its continuous improvement process at matX.com.au's absolute discretion.

14.2 Development Services

If you require any changes to the scope, functionality or nature of the matX Services or the elements of the Software used to provide the matX Services or any bespoke customisations to the matX Services, you must notify matX.com.au of the changes you require.

14.3 Scoping

Following notification, at matX.com.au's discretion, matX.com.au may provide you with written notice in the form of a statement of work covering:

- (a) the changes required to the matX Services and the development services required in respect of such changes (**Development Services**); and
- (b) the fees required for matX.com.au to undertake such Development Services (**Development Fee**).

14.4 Statement of Work for the Development Services

If you agree to the changes to the matX Services, the Development Services and the Development Fees then, subject to the Parties signing a statement of work and this Agreement, matX.com.au will provide the Development Services to you in consideration for payment of the Development Fee.

15 Support Services (only applicable to matX Business Exchanges)

15.1 Support

During the matX Order Form Term or the period set out on an Exchange, matX.com.au will provide you with technical support services as set out in the matX Order Form.

16 Privacy

16.1 Privacy Act

matX.com.au will at all times comply with the Privacy Act, and in relation to Customer Data that contains or is Personal Information, matX.com.au will only use this Customer Data in the manner permitted by this Agreement and the Privacy Act.

16.2 Your obligations

- (a) You are responsible for the collection, use, storage and otherwise dealing with Personal Information related to your business and all matters relating to the Customer Data.
- (b) You must and must ensure that all of your Personnel and Authorised Users comply, with the requirements of the Privacy Act in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with this Agreement.
- (c) Without limiting this **clause 16 (Your obligations)**, you must:
 - (i) notify Authorised Users, Personnel, or other natural persons from whom Personal Information is collected about any matter prescribed by the Privacy Act in relation to the collection, use and storage of their Personal Information;
 - (ii) ensure that any Personal Information transferred to matX.com.au is complete, accurate and up to date; and
 - (iii) notify matX.com.au immediately upon becoming aware of any breach of the Privacy Act that may be related to the use of the Personal Information under this Agreement.
- (d) Without limiting this **clause 16 (Your obligations)**, you may only disclose Personal Information in your control to matX.com.au if:
 - (i) you are authorised by the Privacy Act to collect the Personal Information and to use or disclose it in the manner required by this Agreement;
 - (ii) you have informed the individual to whom the Personal Information relates, that it might be necessary for you to disclose their Personal Information to third parties and you have obtained their consent to do so; and
 - (iii) where any Personal Information is Sensitive Information, you have obtained the specific consent to that disclosure from the individual to whom the Sensitive Information relates.

17 Fees and payment

17.1 Fees

You must pay matX.com.au any Fees and any other amounts payable to matX.com.au under this Agreement in accordance with the Payment Terms.

17.2 Failure to pay invoices

If any payment has not been made in accordance with the Payment Terms, matX.com.au may (in matX.com.au's absolute discretion):

- (a) immediately cease or suspend the provision of the matX Services, and recover as a debt due and immediately payable from you any additional costs of doing so;
- (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 5% per month, calculated daily and compounding monthly, on any such amounts unpaid after the due date; and
- (c) engage debt collection services and/or commence legal proceedings in relation to any such amounts.

17.3 Recommencement of services

If you rectify such non-payment after the matX Services have been suspended, then matX.com.au will recommence the provision of the matX Services as soon as reasonably practicable.

17.4 Payment

You must pay matX.com.au the Fees and any other amount payable to matX.com.au under this Agreement, without set off or delay, via credit card or any other payment method set out in the matX Order Form or on an Exchange.

17.5 Fees

The Fees are subject to change upon 30 days' notice from matX to you and will apply to the next billing cycle. Such notice may be provided at any time by posting the changes on the Exchanges, via email or via a notification to your Account.

17.6 GST

All Fees exclude GST. You are responsible for all taxes, levies or duties imposed by taxing authorities in your own country, and you will be responsible for payment of them. matX.com.au has no responsibility to them on your behalf.

18 Intellectual Property Rights

18.1 matX.com.au's Intellectual Property

All Intellectual Property in the Software, matX Services and all Intellectual Property developed, adapted, modified or created by matX.com.au or matX.com.au's Personnel (including in connection with this Agreement, the Software and the matX Services and any machine learning algorithms output from the matX Services) is and will remain owned exclusively by matS.com.au or matX.com.au's third party service providers.

18.2 Obligations

You must not, without matX.com.au's prior written consent:

- (a) copy or use, in whole or in part, any of matX.com.au's Intellectual Property;
- (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of matX.com.au's Intellectual Property to any third party;
- (c) reverse assemble, reverse engineer, reverse compile or enhance the matX Services;
- (d) breach any Intellectual Property Rights connected with the Software or the matX Services, including altering or modifying any of matX.com.au's Intellectual Property;
- (e) cause any of matX.com.au's Intellectual Property to be framed or embedded in another website;
- (f) create derivative works from any of matX.com.au's Intellectual Property;
- (g) resell, assign, transfer, distribute or make available the matX Services to third parties;
- (h) "frame", "mirror" or serve any of the matX Services on any web server or other computer server over the Internet or any other network;
- (i) alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers or any other means of identification used on or in relation to the matX Services or Software.

18.3 Non identifying analytics

Despite anything to the contrary in this Agreement or elsewhere, matX.com.au may monitor, analyse and compile statistical and performance information based on and/or related to your use of the matX Services, in an aggregated and anonymised format (**Analytics**). You agree that matX.com.au may make such Analytics publicly available, provided that it:

- (a) does not contain identifying information; and
- (b) is not compiled using a sample size small enough to make the underlying Customer Data identifiable.

18.4 Rights in Analytics

matX.com.au and matX.com.au's licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content provided in connection with the Analytics, including all Intellectual Property rights in the foregoing.

18.5 Your Intellectual Property

As between you and matX.com.au:

- (a) all Customer Data is and remains your property; and
- (b) you retain any and all rights, title and interest in and to the Customer Data, including all copies, modifications, extensions and derivative works.

18.6 Licence

You grant matX.com.au a limited licence to copy, transmit, store and back-up or otherwise access the Customer Data during the Agreement Term solely to:

- (a) supply the matX Services to you (including to enable you and your Personnel to access and use the matX Services);
- (b) diagnose problems with the matX Services;
- (c) enhance and otherwise modify the matX Services; and
- (d) develop other matX Services, provided matX.com.au de-identifies the Customer Data,

as reasonably required to perform matX.com.au's obligations under this Agreement.

18.7 Your Data and compliance

- (a) You must, at all times, ensure the integrity of the Customer Data and that your use of the Customer Data is compliant with all Laws.
- (b) You represent and warrant that:
 - (i) you have obtained all necessary rights, releases and permissions to provide all your Customer Data to matX.com.au and to grant the rights granted to matX.com.au in this Agreement; and
 - (ii) the Customer Data (and its transfer to and use by matX.com.au) as authorised by you, under this Agreement does not violate any Laws (including those relating to export control and electronic communications) or rights of any third party, including any Intellectual Property rights, rights of privacy, or rights of publicity; and
 - (iii) any use, collection and disclosure authorised in this Agreement is not inconsistent with the terms of any applicable privacy policies.

18.8 Data

matX.com.au assumes no responsibility or Liability for the Customer Data. You are solely responsible for the Customer

Data and the consequences of using, disclosing, storing or transmitting it.

19 Liability

19.1 Liability

Despite anything to the contrary, to the maximum extent permitted by law:

- (a) the maximum aggregate Liability arising from or in connection with this Agreement (including the matX Services or the subject matter of this Agreement) will be limited to, and must not exceed in the aggregate for all claims the total amount of Fees you paid to matX.com.au in the 12 month period directly preceding the date on which such Liability arose; and
- (b) matX.com.au will not be liable to you for any Consequential Loss,

whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

19.2 Exclusions to Liability

Despite anything to the contrary, to the maximum extent permitted by law, matX.com.au will have no Liability, and you waive and release matX.com.au from and against, all Liability (whether under statute, contract, negligence or other tort, indemnity, or otherwise) arising from or in connection with any:

- (a) loss of, or damage to, any property or any injury to or loss to any person;
- (b) failure or delay in providing the matX Services;
- (c) breach of this Agreement or any Laws; or
- (d) the Computing Environment,

where caused or contributed to by any:

- (e) Force Majeure Event;
- (f) a fault, defect, error or omission in the Computing Environment or Customer Data; or
- (g) act or omission of you, your related parties, Authorised Users, Personnel or any third party (including customers, end users, suppliers, providers or subcontractors),

and, in any event, any error, omission or lack of suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the matX Services.

19.3 Indemnity

To the maximum extent permitted by law, you indemnify and continue to indemnify matX.com.au against all Liability matX.com.au suffers or incurs arising from or as a consequence of a breach of **clause 16 (Privacy)**, **clause 18 (Intellectual Property Rights)**, **clause 23 (Confidential Information)** and your Authorised Users' use of the matX Services contrary to this Agreement, including from any claim relating to the Customer Data.

20 ACL

20.1 ACL

- (a) Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the matX Services by matX.com.au to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- (b) matX Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the matX Services, you are entitled:
 - (i) to cancel this Agreement with matX.com.au; and

- (ii) to a refund for the unused portion, or to compensation for its reduced value.

- (c) You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the matX Services rectified in a reasonable time and, if this is not done, to cancel this Agreement and obtain a refund for the unused portion of this Agreement.
- (d) If the ACL applies to you as a consumer, nothing in this Agreement excludes your Statutory Rights as a consumer under the ACL. You agree that matX.com.au's Liability for the matX Services provided to an entity defined as a consumer under the ACL is governed solely by the ACL and this Agreement.
- (e) Subject to your Statutory Rights, matX.com.au excludes all express and implied warranties, and all material, work and services (including the matX Services) are provided to you without warranties of any kind, either express or implied, whether in statute, at Law or on any other basis.
- (f) This **clause 20.1 (ACL)** will survive the termination or expiry of this Agreement.

20.2 Acknowledgement

You acknowledge and agree that:

- (a) you are responsible for all users using the matX Services, including your Personnel and any Authorised Users; and
- (b) your use of the matX Services and any associated programs and files at your own risk;
- (c) the technical processing and transmission of the matX Services, including your Customer Data, may be transferred unencrypted and involves:
 - (i) transmissions over various networks; and
 - (ii) changes to conform and adapt to technical requirements of connecting networks or devices;
- (d) matX.com.au may use third party service providers to host the matX Services. If the providers of third party applications or services cease to make their services or programs available on reasonable terms, matX.com.au may cease providing any affected features without Liability or entitling you to any refund, credit, or other compensation;
- (e) the matX Services may use third party products, facilities or services. matX.com.au does not make any warranty or representation in respect of the third party products, facilities or services;
- (f) matX.com.au does not guarantee that any file or program available for download and/or execution from or via the matX Services is free from viruses or other conditions which could damage or interfere with Customer Data, hardware or software with which it might be used;
- (g) matX.com.au is not responsible for the integrity or existence of any Customer Data on the Computing Environment, network or any device controlled by you or your Authorised Users; and
- (h) matX.com.au may pursue any available equitable or other remedy against you if you breach any provision of this Agreement.

21 Termination

21.1 Mutual Termination

The Parties may terminate this Agreement by:

- (a) closing their matX.com.au account; or

- (b) emailing matX.com.au (applicable for matX Business Exchanges).

21.2 Termination for cause of this Agreement or matX Order Forms

To the extent permitted by law, either Party may terminate this Agreement and any affected matX Order Form, if the other Party:

- (a) has breached a material term of this Agreement or a matX Order Form and has failed to remedy such breach within 20 Business Days of receiving notice to do so, subject to any other express right of termination;
- (b) ceases operation without a successor; or
- (c) is subject to an Insolvency Event.

21.3 Termination for failure to pay (only applicable to matX Business Exchanges)

matX.com.au may terminate a matX Order Form by providing you with 5 Business Days' notice, in matX.com.au's sole discretion, if you fail to pay an invoice within 30 days of the invoice payment date.

21.4 Effect of termination

On termination of this Agreement or a matX Order Form:

- (a) you must cease using the matX Services and matX.com.au will cease to provide the matX Services;
- (b) you agree that any payments made are not refundable;
- (c) you must pay for all matX Services provided under this Agreement including matX Services which have been performed and have not yet been invoiced to you, and all other amounts due and payable under this Agreement, including under an indemnity, within 5 Business Days of termination;
- (d) you must promptly return (where possible) or delete or destroy (where not possible to return), matX.com.au's Confidential Information and Intellectual Property, and/or documents containing or relating to matX.com.au's Confidential Information and Intellectual Property;
- (e) matX.com.au must promptly return (where possible) or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property unless matX.com.au is required by Law or regulatory requirements to retain such information;
- (f) for the avoidance of doubt, any provisions of this Agreement that by their nature survive the termination of this Agreement will remain in force after this Agreement Term; and
- (g) matX.com.au may remove Customer Data within one month of the date of termination or expiry of this Agreement.

21.5 Remove Customer Data

You must, within 1 month of the date of termination or expiry of this Agreement or relevant matX Order Form, copy all Customer Data and matX.com.au will allow you access to the matX Services during this time solely for that purpose. After this time, matX.com.au will be entitled to permanently delete all Customer Data on the matX Services.

21.6 Disengagement services

On termination of this Agreement, matX.com.au may offer to provide you with disengagement support services at our then current rates, and such disengagement support services must be agreed in writing by the Parties.

21.7 Accrued rights

The accrued rights, obligations and remedies of the Parties are not affected by the termination of this Agreement or an matX Order Form.

22 General Warranties

22.1 Our warranties

matX.com.au warrants and agrees that:

- (a) matX.com.au is properly constituted and have the right and authority to enter into this Agreement;
- (b) matX.com.au will provide the matX Services in accordance with all applicable Laws; and
- (c) matX.com.au will use reasonable effort to ensure all of matX.com.au's obligations under this Agreement will be carried out:
 - (i) by suitably competent and trained Personnel; and
 - (ii) in an efficient and professional manner.

22.2 Your warranties

You warrant and agree that:

- (a) there are no legal restrictions preventing you from agreeing to this Agreement or matX Order Form;
- (b) you are not subject to an Insolvency Event;
- (c) you will cooperate with matX.com.au and provide matX.com.au with all assistance, resources, data, people, information, facilities, access and documentation that is reasonably necessary to enable matX.com.au to perform the matX Services, and as otherwise requested by matX.com.au, from time to time, and in a timely manner;
- (d) all information and documentation that you provide to matX.com.au in connection with this Agreement is true, correct and complete and that matX.com.au will rely on such information and documentation in order to provide the matX Services;
- (e) you will inform matX.com.au if you have reasonable concerns relating to matX.com.au's provision of the matX Services under this Agreement, with the aim that the Parties will use all reasonable efforts to resolve your concerns;
- (f) you are responsible for obtaining any consents, licences, authorities and permissions from other parties necessary for the matX Services to be provided in accordance with this Agreement, at your cost, and for providing matX.com.au with the necessary consents, licences, authorities and permissions;
- (g) you will maintain the confidentiality and security of any of your Account details or passwords;
- (h) if applicable, you hold a valid ABN which has been advised to matX.com.au; and
- (i) if applicable, you are registered for GST purposes.

23 Confidential Information

23.1 Confidential

Each Party (**Recipient**) must keep confidential, and not disclose, any Confidential Information of the other Party (**Discloser**) except:

- (a) where permitted by this Agreement;
- (b) with the prior written consent of the Discloser;
- (c) where the Confidential Information is received from a third party, except where there has been a breach of confidence;

- (d) on a confidential, “needs to know” basis to the Recipient’s Personnel, auditors, insurers, agents and professional advisors; or
- (e) where the Recipient is compelled to do so by Law, provided that it gives the other Party written notice prior to disclosure.

23.2 Use

The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed and in connection with this Agreement.

24 GST:

24.1 Taxable supply

If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.

24.2 Adjustment events

If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this **clause**, an adjustment note issued (if required), and any payments to give effect to the adjustment must be made.

24.3 Payments

If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.

24.4 GST terminology

The terms “**adjustment event**”, “**consideration**”, “**GST**”, “**input tax credit**”, “**recipient**”, “**supplier**”, “**supply**”, “**taxable supply**” and “**tax invoice**” each has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

25 General

25.1 Assignment

Neither Party may assign, transfer or otherwise deal with all or any of its rights or obligations under this Agreement without the prior written consent of the other Party. Any purported dealing in breach of this clause is of no force or effect.

25.2 Delay

- (a) If the provision of the matX Services depends upon or includes the provision of information, materials, consents or approvals by you or your Personnel, or requires your cooperation, action or response (or that of your Personnel), you must provide that information, cooperation and those materials, consents or approvals in a timely manner.
- (b) If you breach this obligation, matX.com.au will be entitled to an extension of time in respect of any deadline or milestone to the extent of the delay caused by you and matX.com.au will have no Liability for a failure to perform the matX Services caused by you.
- (c) If matX.com.au is delayed from performing its obligations due to such a circumstance for a period of at

least two months, matX.com.au may terminate this Agreement with you by giving you five Business Days’ notice in writing.

25.3 Disputes and notices

- (a) Neither Party may commence court proceedings relating to any dispute arising from, or in connection with, this Agreement without first meeting with a senior representative of the other Party to seek (in good faith) to resolve that dispute (unless that Party is seeking urgent interlocutory relief or the dispute relates to compliance with this provision).
- (b) Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to the Party at the address in the matX Order Form or on the Party’s Account. A Party may change its notice details by written notice to the other Parties. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 44 business days in the case of post, or at the time of transmission in the case of transmission.

25.4 Entire agreement

This Agreement contains the entire understanding between the Parties and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

25.5 Conflicting terms

This Agreement is made up of the following documents (in order of priority):

- (a) this document;
- (b) any matX Order Form (applicable for matX Business Exchanges); and
- (c) any additional terms and conditions as set out on the Exchanges.

25.6 No Exclusivity

The matX Services will be provided to you on a non-exclusive basis.

25.7 Feature sets

matX.com.au reserves the right at any time and from time to time to change or remove features of the matX Services provided that, where there is any material negative alteration to the functionality of the matX Services in accordance with this **clause**, matX.com.au will provide you with 20 Business Days’ notice and you may terminate this Agreement and matX Order Forms by written notice without Liability to matX.com.au.

25.8 Overseas access

The matX Services may be accessed in Australia and overseas. matX.com.au makes no representation that the matX Services complies with the Laws (including Intellectual Property laws) of any country outside of Australia. If you access the matX Services from outside Australia, you do so at your own risk and are responsible for complying with the laws in the place you access the matX Services.

25.9 Publicity

With your prior written consent, matX.com.au may use advertising or publicly announce that matX.com.au has undertaken work for you, including in website testimonials and in matX.com.au’s marketing material.

25.10 Subcontracting

matX.com.au may engage subcontractors to perform the matX Services on matX.com.au’s behalf. Despite this, matX.com.au

retains responsibility for all matX.com.au's obligations under this Agreement.

25.11 Waiver

Any failure or delay by a Party in exercising a power or right (either wholly or partly) in relation to this Agreement does not operate as a waiver or prevent a Party from exercising that power or right or any other power or right. A waiver must be in writing.

25.12 Severance

If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions.

25.13 Counterparts

This Agreement may be executed in any number of counterparts that together will form one instrument.

26 Definitions and interpretation

26.1 Definitions

Unless defined in an matX Order Form or on an Exchange the following words will mean:

ACL is defined in **clause 20** (*ACL*);

Account is defined in **clause 5.1** (*Registering*);

Agreement means this Agreement, any matX Order Forms and any terms and conditions set out on an Exchange;

Analytics is defined in **clause 18.3** (*Non identifying analytics*);

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in the Victoria;

Business Hours means 9am to 5pm on a Business Day;

Computing Environment means your computing environment including all hardware, software, information technology and telecommunications services and Systems;

Confidential Information includes confidential information about a Party's business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential" but does not include any information which is in the public domain other than through a breach of confidence. matX.com.au's Confidential Information includes matX.com.au's Intellectual Property including the Software. Your Confidential Information includes Customer Data;

Consequential Loss includes any indirect, incidental or consequential loss, loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any remote, abnormal or unforeseeable loss, loss of use and/or loss or corruption of data or any loss or damage relating to business interruption, or otherwise, suffered or incurred by a person, arising out of or in connection with this Agreement (whether involving a third party or a Party to this Agreement or otherwise);

Customer Data means the information, logos, documents and other data inputted by you, your Personnel or Authorised Users into the Software or stored by the matX Services or generated

by the matX Services as a result of your use of the matX Services;

Development Fees is defined in **clause 10.3** (*Scoping*);

Development Services is defined in **clause 10.3** (*Scoping*);

Exchange is defined in **clause 2.1** (*E-commerce platform*);

Fees means the fees set out in any matX Order Form, Development Fees, Subscription Fees, Setup Fees and any fees as set out on an Exchange;

Force Majeure Event means an event which is beyond a Party's reasonable control including a fire, storm, flood, earthquake, explosion, accident, act of the public enemy, terrorist act, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, transportation embargo, and strike by employees of a third person;

Insolvency Event means the occurrence of any one or more of the following events in relation to either Party:

- (a) it is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable Laws;
- (b) an application or order is made for its winding up, bankruptcy or dissolution or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
- (c) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the Laws of any relevant jurisdiction is appointed in respect of it or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 10 Business Days;
- (d) a controller is appointed in respect of any of its property;
- (e) it is deregistered under the Corporations Act or other legislation or notice of its proposed deregistration is given to it;
- (f) a distress, attachment or execution is levied or becomes enforceable against it or any of its property;
- (g) it enters into or takes action to enter into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (h) a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of it or its property;
- (i) a petition for the making of a sequestration order against its estate is presented and the petition is not stayed, withdrawn or dismissed within 10 Business Days or it presents a petition against itself; or
- (j) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the relevant Party;

Intellectual Property includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, customer names or internet domain names. Our Intellectual Property includes the Software;

Laws means acts, ordinances, regulations, rules, code and by-laws of the Commonwealth or any state or territory and includes the *Privacy Act* and the *Spam Act 2003* (Cth);

Liability means any loss, liability, cost, payment, damages, debt or expense (including reasonable legal fees);

Licence is defined in **clause 10.1** (*Licence*);

Party means either party to this Agreement;

Personal Information is defined in the Privacy Act;

Personnel means, in relation to a Party, the officers, employees, contractors, sub-contractors and agents of that Party;

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

matX Order Form Start Date means the start date for the relevant matX Order Form as set out in the matX Order Form;

matX Order Form Term is defined in clause **Error! Reference source not found.** (*Error! Reference source not found.*);

matX Services means our Software as described on the Exchanges and the matX Order Form (if applicable) as amended by any Development Services and any other services provided to you under this Agreement;

Sensitive Information is defined in the Privacy Act;

Setup Service means (if applicable) the services as described in a matX Order Form to set up the matX Services.

Setup Fees means the setup fees set out in the matX Order Form or on an Exchange;

Software means the software used to provide any of the matX Services, and includes any instructions in hard copy or electronic form and any update, modification or release of any part of that software after this Agreement is entered into by the Parties;

Subscription Fees means (if applicable) the fees as set out in the matX Order Form or on an Exchange;

System means all hardware, software, networks and other IT systems used by a Party from time to time, including a network; and

Third Party Inputs is defined in **clause 0** (*Authorised Users*).

Executed as an agreement for and on behalf of **Maxen Consulting Group Pty Ltd** (ABN: 62 615 741 869) by its duly authorised representative:

✕

Signature

Name (PRINT)

Date: / /

27 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (d) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (e) the word "**month**" means calendar month and the word "**year**" means 12 months;
- (f) the words "**in writing**" include any communication sent by letter or email or any other form of communication capable of being read by the recipient;
- (g) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (h) the word "**includes**" and other similar words mean "**includes without limitation**";
- (i) a reference to \$ or dollars refers to the currency of Australia from time to time;
- (j) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body that performs most closely the functions of the defunct body; and
- (k) no **clause** will be interpreted to the disadvantage of a Party merely because that Party drafted the **clause** or would otherwise benefit from it.

Executed as an agreement for and on behalf of

[Other party full legal name] (ABN: *[other party abn]*) by its duly authorised representative:

✕

Signature

Name (PRINT)

Date / /