

**Streamvision agrees to perform the Services requested by the Client on the terms and conditions set out below. Words in *ITALICS* are defined at clause 32.1 below.**

## 1. Quotations & Acceptance

- 1.1 The Client is taken to have entered into an Agreement with Streamvision in accordance with the Contract Documents if the Client:
  - (a) clicks the "acceptance button" through Streamvision's website,
  - (b) signs via digital signature, or
  - (c) signs a hard copy of this Agreement.
- 1.2 The Client shall be deemed to have accepted these terms and conditions and the Quotation and entered into an agreement with Streamvision if the Client:
  - (a) gives or continues to give Streamvision instructions to carry out the Works or supply of the Goods after receiving the Quotation, or
  - (b) verbally accepts the Quotation.
- 1.3 Notwithstanding Clause 1.2, Streamvision may insist on the Client accepting the Quotation and these terms and conditions by one of the methods identified in clause 1.1.
- 1.4 Despite the Client at any time providing, referring to, submitting or otherwise using or purporting to use any standard form terms and conditions other than these terms and conditions, such terms and conditions will not form part of, or be incorporated into, the Agreement.

## 2. When Clauses Apply

- 2.1 Clauses 7.7, 14.6, 19.3, 29.1 and 30.1 shall apply to the Agreement unless or to the extent the Quotation expressly specifies otherwise.
- 2.2 Clauses 10 and 13.2 shall only apply in circumstances where the Quotation specifies that Support Services will be provided.
- 2.3 Clauses 7, 8, 9 and 20 shall only apply in circumstances where the Quotation specifies a supply of Goods.

## 3. Deposit

- 3.1 The Deposit shall be the amount identified as the Deposit in the Quotation or, if no amount is stated, 60% of the Contract Price.
- 3.2 The Client shall pay to Streamvision the Deposit the next Business Day after the Agreement is entered into.

## 4. Accuracy of Contract Documents

- 4.1 All Contract Documents, including any Variations are taken to form part of the Agreement.
- 4.2 Any agreement to vary the Agreement must be in writing signed by or on behalf of each party to the Agreement.
- 4.3 If either party becomes aware of any error, ambiguity or inconsistency in or between the Contract Documents, or any detail not being given, that party shall give the other party written notice detailing the problem. The Client must within two (2) Business Days of receiving a notice or becoming aware of a problem, give written instructions as to how Streamvision is to proceed with the Works, Services and/or supply the Goods.
- 4.4 In the event that the Client refuses or fails to give written instructions to Streamvision within two (2) Business Days of a notice pursuant to Clause 4.3, the Client authorises Streamvision to determine the required detail necessary to resolve the error, ambiguity or inconsistency, however, Streamvision shall not be obliged to act under that authority.
- 4.5 If the required detail, as determined by the Client or Streamvision necessitates a change to the scope of the Works, Services and/or supply of the Goods, the Client shall be deemed to have requested a Variation and the procedure at Clause 14 shall apply.

## 5. Commencement & Performance of Services & Supply of Goods

- 5.1 Streamvision shall carry out and complete the Works and/or supply the Goods in accordance with the Agreement.
- 5.2 The Client and Streamvision agree that the items referred to as Exclusions in the Quotation, if any, are excluded from the Agreement.
- 5.3 The Client warrants that the Site will comply with any occupational health and safety laws and any other relevant safety standards or legislation.
- 5.4 Streamvision shall not be required to commence the Works and/or supply the Goods until the Client has:
  - (a) paid the deposit, if any, in accordance with clause 3,
  - (b) provided Streamvision with all information requested to the carry out of the Works or the Services, and
  - (c) carried out all Set-Up Requirements notified to the Client by Streamvision.
- 5.5 If Streamvision attends the Site to commence the Works and the Client has failed to satisfy either or both clauses 5.4(b) or 5.4(c), then there shall be a deemed Variation and Streamvision shall be entitled to the following if the failure results in the Works not being able to be undertaken and completed on that day:
  - (a) payment of Streamvision's reasonable expenses incurred in attending the Site, and
  - (b) \$280.00 per hour plus GST for each employee of Streamvision who has attended the Site to undertake the Works, with a maximum daily rate of \$2,240.00 plus GST.
- 5.6 Subject to clauses 5.4, 15 and 16, Streamvision shall carry out the Works within a reasonable time and as far as reasonably possible by the date for completion specified in the Quotation, if any.

## 6. Site Possession, Access, Services & Materials

- 6.1 The Client warrants that it has exclusive possession of the Site to carry out the Works and the Services. The Client must provide clear and free all weather access to the Site for delivery of materials and performance of the Works. Streamvision shall not be liable for any loss or damage to the Site unless such damage was reasonably avoidable and caused by Streamvision's negligence.
- 6.2 The Client must not:
  - (a) hinder access or possession of the Site for the purposes of carrying out the Works,
  - (b) hinder the progress of the Works and/or supply the Goods, or
  - (c) make inquiry of, issue directions to, or give instructions to, Streamvision's employees or subcontractors. Communications must only be with Streamvision's nominated person.
- 6.3 All materials delivered to Site by Streamvision and not required for the Works will remain the property of Streamvision.

## 7. Delivery & Inspection of Goods

- 7.1 Delivery of the Goods is taken to occur when:
  - (a) Streamvision or Streamvision's nominated carrier delivers the Goods to the Site or address or third party nominated by the Client even if the Client is not present at the address, or
  - (b) the Client or its nominated carrier takes possession of the Goods.
- 7.2 Streamvision shall make reasonable efforts to deliver the Goods to the Client or its designated agent in accordance with any agreement between the parties, or in the absence of any specific agreement, within a reasonable time, but shall not be liable for:
  - (a) any failure to deliver or delay in delivering the Goods for any reason,
  - (b) any damage or loss due to unloading or packaging (unless risk in the Goods had not passed to the Client at the relevant time),
  - (c) any damage to property caused upon entering premises to deliver the Goods, unless caused by Streamvision's negligent act or omission.
- 7.3 The Client shall accept delivery of the Goods even if late. In the event that the Client fails to take delivery of the Goods at the time of delivery the Client shall reimburse Streamvision for any costs incurred by the failure and Streamvision shall be entitled to charge a reasonable fee for redelivery and/or storage of the Goods.
- 7.4 The Client must inspect the Goods on delivery. The Client must notify Streamvision in writing within seven (7) days of delivery and setting out full details of all relevant matters if:
  - (a) the Goods are damaged, faulty or defective in any way,
  - (b) the Goods do not comply with any description by which they were sold and/or specified to in the Quotation, or
  - (c) there is any discrepancy in quantity.
- 7.5 The Client must notify Streamvision in writing of any other defect in the Goods as soon as reasonably possible after any such defect becomes apparent.
- 7.6 Where a notice is given under clauses 7.4 or 7.5 the Client shall allow Streamvision to inspect the Goods.
- 7.7 Notwithstanding any other clause, where the Goods or any part of the Goods are second hand, Streamvision makes no warranty in relation to the quality or suitability of the second hand Goods for any purpose and the Client:
  - (a) acknowledges that it has had a reasonable opportunity to inspect the second hand Goods prior to delivery, and
  - (b) accepts the second hand Goods with any faults, damage and/or missing parts or components.

## 8. Passing of Risk

- 8.1 The risk in the Goods will pass to the Client:
  - (a) where the Services include the installation of the Goods or any particular Goods, upon completion of that part of the Services that relates to the installation or each installation, and
  - (b) in all other cases, upon the earlier of: (i) the delivery of the Goods to the Client or its agent (including all risks associated with unloading), and (ii) the passing of title to the Goods to the Client.
- 8.2 Notwithstanding clause 8.1(a), if the Client directs Streamvision to deliver the Goods to an unattended location the Goods shall be left at the Client's sole risk and responsibility. In the event that such Goods are lost, damaged or destroyed the replacement of the Goods shall be at the Client's expense.
- 8.3 Where Streamvision retains ownership pursuant to clause 9 of Goods in respect of which risk has passed to the Client, the Client must maintain adequate insurance in relation to the Goods and provide evidence of such insurance to Streamvision on request.

## 9. Retention of Title

- 9.1 Notwithstanding the delivery of Goods, until the Client has paid all monies payable to Streamvision under the Agreement in cleared funds:
  - (a) the legal and equitable title to the Goods will remain with Streamvision,
  - (b) a fiduciary relationship will exist between the Client and Streamvision, and
  - (c) the Client agrees to hold the Goods as bailee for Streamvision and keep the Goods separate and in good condition.
- 9.2 Unless the Goods have become fixtures, until ownership of the Goods passes to the Client:
  - (a) the Client shall not charge or grant any encumbrance over the Goods,
  - (b) the Client must return the Goods to Streamvision on request, and
  - (c) Streamvision may without demand retake possession of the Goods.
- 9.3 For the purposes of recovering possession of the Goods and without limiting the generality of this clause 9, the Client irrevocably authorises and licenses Streamvision and its servants and agents to enter any premises where Streamvision believes the Goods may be stored and to take possession of the Goods.

## 10. Support Services

- 10.1 The Client agrees to provide remote connection to allow Streamvision, or Streamvision's supplier or network providers, to access the Services and the Client will be responsible for any associated site cost for this link, and for obtaining any necessary authorities, consents or other approval. If the Client does not provide a remote connection for Streamvision, or Streamvision's supplier or network providers, to access the Services, then Streamvision shall be entitled to payment of its reasonable costs and expenses in sending an employee to the Site to perform the Support Services and a deemed Variation will arise.
- 10.2 Streamvision will supply the Support Services to the Client from the date specified in the Quotation on the terms and conditions of this Agreement.
- 10.3 The Support Services shall not include the diagnosis and rectification of any fault resulting from:
  - (a) the improper use, operation or neglect of the Services by the Client,
  - (b) the failure by the Client to maintain any necessary environmental conditions of the Services which Streamvision advised,
  - (c) the failure by the Client to implement recommendations in respect of solutions to faults previously advised by Streamvision within a reasonable time, and
  - (d) the use of the Services by the Client for a purpose for which all or any of the Services were not designed.
- 10.4 Streamvision may, upon request by the Client, provide Support Services notwithstanding that the fault results from any of the circumstances described in Clause 10.3, but such services will incur an additional fee and the Client shall be deemed to have requested a Variation and the procedure at Clause 14 shall apply.
- 10.5 The Client shall be deemed to have requested a Variation and the procedure at Clause 14 shall apply if the Client fails to comply with reasonable requests for information or refuses to perform basic tasks under Streamvision's instruction to assist in diagnosing of an incident or fault in the Services, and where such failure results in Streamvision incurring expenditure or loss, or where Streamvision have dedicated resources to the relevant Support Services which are unable to be reallocated.
- 10.6 Streamvision shall not be required to provide Support Services outside of Streamvision's Normal Business Hours.
- 10.7 Notwithstanding clause 10.6, Streamvision may, at the Client's request, provide Support Services outside of Streamvision's Normal Business Hours, but such services will incur an additional fee and the Client shall be deemed to have requested a Variation and the procedure at Clause 14 shall apply.
- 10.8 Notwithstanding any other term of the Agreement, Streamvision shall be entitled to cancel the Support Services and shall not be liable to the Client for any loss or damages arising from, or connected in any way to, the cancellation in circumstances where Streamvision recommended an Upgrade, and the Client failed or refused to obtain the Upgrade.

## 11. The Client's Obligations & Restrictions

- 11.1 The Client must:
  - (a) comply with the User Guides and training provided by Streamvision at all times,
  - (b) not breach any restrictions of the use of the Services identified by Streamvision,
  - (c) not use the Services on any unauthorised device,
  - (d) not re-broadcast, re-supply or re-distribute any part of the Services or any related content transmitted to any person, or permit any person to do so in a location other than at the Site,
  - (e) comply with any laws or direction by any Authority relating to the Services,
  - (f) co-operate with Streamvision and Streamvision's service providers including but not limited to allowing entry onto the Site and access to the System for audit purposes, and
  - (g) only use the Services in the normal course of the Client's business.
- 11.2 The Client has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Services in whole or in part.
- 11.3 The Client may not use the Services other than as specified in the Quotation without the prior written consent of Streamvision, and the Client acknowledges that additional fees may be payable on any change of use approved by Streamvision.
- 11.4 The Client may not use any information provided by Streamvision or its network suppliers or obtained by the Client to create any software whose expression is substantially similar to that of the Services nor use such information in any manner which would be restricted by any copyright subsisting in it.

## 12. Alterations to System

- 12.1 The Client acknowledges that the Services and the supply thereof rely on rights granted by Streamvision's licensors and is subject to change. Streamvision may at any time by notice in writing to the Client make alterations to the Services or change, implement or impose additional restrictions on the Services or particular content, impose or change restrictions on the viewing of the Services or particular programmes, including but not limited to restrictions on any recording, playing back or viewing and the Client agrees to abide by those restrictions.

## 13. Payment

- 13.1 Streamvision may issue an invoice in respect of the Works, the Services or the Goods supplied by Streamvision on or after:
  - (a) the dates, periods or milestones specified in the Quotation, if any,
  - (b) the date of delivery of the Goods or any part of the Goods,
  - (c) the 14<sup>th</sup> and 28<sup>th</sup> days of each calendar month in which any Works or Services were supplied, and
  - (d) when in Streamvision's opinion the Works have reached the stage of Practical Completion.
- 13.2 Streamvision may issue an invoice for the Monthly Fee on or after:
  - (a) the dates, periods or milestones specified in the Quotation, if any, or
  - (b) the end of each in which the Support Services were available to the Client as identified in the Quotation.
- 13.3 Streamvision may serve an invoice on the Client by any method that it is entitled to give notice under the Agreement.
- 13.4 The Client must pay an invoice within the period of time specified in the invoice or, if no time is specified, within seven (7) days of service of the invoice on the Client.

## 14. Variations

- 14.1 A Variation occurs if:
  - (a) the Agreement deems a Variation,
  - (b) the Client requests Streamvision to perform a Variation and subsequently Streamvision performs the Variation in accordance with the Client's direction, or
  - (c) the Client and Streamvision agree in writing to a Variation, including Agreement as to the price of the Variation.
- 14.2 The price of a Variation is payable progressively as the Variation is performed and is due at the same time as the next invoice after it is carried out unless a different time is agreed.

- 14.3 If the Client has requested Streamvision to perform a Variation and Streamvision has provided the Client with a cost proposal in respect of the Variation, unless the cost proposal is rejected by the Client in writing within two (2) Business Days, the amount of the cost proposal is deemed to be the price of the Variation for the purposes of clause 14.1(b).
- 14.4 If there is insufficient time to calculate the price of a Variation, or this Agreement deems a Variation, the price of the Variation will be charged to the Client at Streamvision's hourly rates and/or reasonable costs plus the usual profit margin.
- 14.5 There shall be a deemed Variation if:
- the requirements of any statutory or other Authority necessitate a change to the Works, the Services or the Support Services such Variation being those to Works, Services or Support Services required to effect that change,
  - additional Works, Services or Support Services are required, or the Works, the Services or the Support Services are required to be performed in a manner or using equipment not anticipated, and
  - after the Agreement is made; (i) a statutory or other Authority introduces or increases any tax, charge, levy or other regulation or any requirement that affects the Works, the Services or the Support Services that causes any increase in the costs of same, or (ii) Streamvision's wages is affected by a change to an Industry Award.
- 14.6 The Client acknowledges that the Contract Price and the Monthly Fee has been agreed on the basis of Streamvision performing the Works, the Services or the Support Services during Streamvision's Normal Business Hours. Streamvision will be entitled to a Variation if the Works, the Services or the Support Services are required to be carried out outside Streamvision's Normal Business Hours.
- 14.7 Notwithstanding any other clause herein, Streamvision is under no obligation to carry out any deemed Variation or Variation requested by the Client.

## 15. Acknowledgement of Possible Delays

- 15.1 The Client acknowledges that completion of the Works and/or the supply of the Services may be suspended by Streamvision pursuant to clause 16 or delayed by any cause beyond the control of Streamvision including: (a) a Variation or a request by the Client for a Variation; (b) an act of God, fire, explosion, earthquake or civil commotion; (c) any weather condition that, in the reasonable opinion of Streamvision, prevents the Works from being carried out in the usual manner; (d) an industrial dispute; (e) anything done or not done by the Client; (f) delays in getting any approvals; (g) the delay in the supply of materials; and (h) the Client failing to have the Site ready for the Works to be carried out at the time so agreed.
- 15.2 Streamvision shall not be liable for the failure to perform the Works and/or supply the Services to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by Streamvision because of a circumstance referred to in clause 15.1.
- 15.3 Where the costs of the Works have increased due to any delay beyond the control of Streamvision, there shall be a deemed Variation and Streamvision shall be entitled to a reasonable increase in the Contract Price.

## 16. Suspension

- 16.1 If the Client is in breach of the Agreement, Streamvision may suspend all or any part of the Works, the Services or the Support Services in connection with any other contract or contracts made with the Client to which these terms and conditions apply and must promptly give to the Client written notice of the suspension and details of the breach.
- 16.2 Streamvision must recommence the carrying out of the Works, the Services or the Support Services within a reasonable time after the Client remedies the breach and gives Streamvision written notice of that fact.
- 16.3 Streamvision may suspend or downgrade the Services if:
- there is a Force Majeure Event,
  - it is necessary for Streamvision or Streamvision's service providers to repair or maintain the Services, or
  - Streamvision is unable to supply the Services because Streamvision's supplier network services and/or content is unavailable or becomes unavailable.
- 16.4 If the Services has been suspended or downgraded under this clause when the reason for the suspension or downgrade has been resolved Streamvision will promptly recommence the Services.
- 16.5 Streamvision shall not be liable to the Client for any loss or damage arising from or in any way connected to a suspension or downgrade under this clause, including but not limited to loss of profits of the Client.

## 17. Dispute Resolution

- 17.1 The parties must attempt to resolve any dispute or claim arising out of or under the Agreement by negotiation in good faith before either party commences any litigation in relation to the dispute or claim. Accordingly, if a party considers that a dispute or claim has arisen under the Agreement they must give written notice to the other party adequately setting out and providing details of the dispute.
- 17.2 Streamvision and the Client must meet within ten (10) Business Days of the giving of a notice pursuant to clause 17.1 to attempt to resolve the dispute or claim or to agree on methods of doing so. The parties must be represented at the meeting by a person with authority to agree to a resolution of the dispute.
- 17.3 If the dispute is resolved the parties must write down the resolution and sign it.
- 17.4 The parties agree that anything done or said in the negotiations cannot be revealed in any other proceedings.
- 17.5 Nothing in this clause prevents either party from commencing urgent injunctive or interlocutory proceedings in a competent Court.

## 18. Default & Termination of Contract

- 18.1 Without limiting clause 18.2, a party may terminate the Agreement if:
- the other party is in default of the Agreement,
  - the non-defaulting party has served notice in writing on the party setting out details of the default and stating that the party will be entitled to terminate the Agreement unless the default is remedied within a specified time of not less than 14 days,
  - the party fails to remedy the default within 14 days of receiving a notice under clause 18.1(b), or such longer period as may be specified in the notice, and
  - the non-defaulting party serves written notice of termination whilst the default remains unsatisfied.
- 18.2 If the Client fails to pay any money under the Agreement within seven (7) days of the due date for payment:
- Streamvision may terminate the Agreement by notice in writing to the Client,
  - Streamvision shall be entitled to interest on the outstanding amount at the rate of 2.5% per calendar month calculated daily from the due date for payment and compounding monthly on the first day of each month until payment is received,
  - may without notice sell any Goods that Streamvision has recovered pursuant to clause 9 on such terms and in such manner as it determines and, after deducting all expenses incurred, shall offset such proceeds from the balance owing from Streamvision,
  - the Client shall indemnify Streamvision from and against all costs and disbursements incurred or payable by Streamvision in connection with the recovery of monies owing by Streamvision (including, without limitation, legal fees on an indemnity basis, collection agency costs and bank dishonour fees), and
  - Streamvision may cancel all or any part of the Services in connection with any other contract or contracts made with the Client to which these terms and conditions apply whereafter all amounts payable by the Client to Streamvision shall become payable immediately.

## 19. Warranties & Representations

- 19.1 Except as expressly provided to the contrary in the Contract Documents, all representations, warranties, guarantees and conditions in relation to the Works, the Services, the Support Services or the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- 19.2 If the Client is aware (or should be aware) that the Services or the Goods are for a particular purpose or are required to possess particular or uniform characteristics, the Client agrees to clearly specify that purpose or those characteristics in writing.
- 19.3 The Client warrants that it has made its own enquiries in relation to the suitability of the Works, the Services and the Goods and has not relied on any representation made by Streamvision in relation to their suitability for any particular purpose.

## 20. Return of Goods

- 20.1 Subject to any applicable statute, unless Streamvision agrees otherwise in writing, Streamvision will only accept a return of the Goods if:
- the Client has complied with clauses 7.4 and 7.5,
  - Streamvision acting reasonably has agreed that the Goods are defective and not reasonably capable of repair,
  - the Goods are returned at the Client's expense and within a reasonable time, and
  - the Goods are returned, as far as possible, in the same condition as the Goods were delivered.
- 20.2 If Streamvision agrees in its absolute discretion to accept the return of any non-defective Goods, the Client shall:
- indemnify Streamvision in relation to any freight expense, and
  - if required by Streamvision, pay handling fees of up to 10% of the price of the Goods returned.

## 21. Limitation of Liability & Indemnity

- 21.1 Streamvision does not guarantee continuous or fault-free Services.
- 21.2 Streamvision's liability to the Client (and any party claiming through the Client against Streamvision) for any claim for loss or damage (including legal expenses), whether arising in contract, tort or otherwise, in connection with the Agreement shall be as follows:
- where the liability relates to the supply of the Services, Streamvision's liability shall be limited to the lesser of the costs of: (i) supplying the Services again, or (ii) payment of the costs of having the Services supplied again,
  - where the liability relates to the supply of the Goods, Streamvision's liability shall be limited to the lesser of the cost of: (i) replacement of the Goods or the supply of equivalent goods, (ii) repair of the Goods, (iii) payment of the costs of replacing the Goods or acquiring equivalent goods, or (iv) payment of the costs of having the Goods repaired, or
  - where the liability relates to the supply of the Support Services, Streamvision's liability shall be limited to the lesser of the costs of: (i) supplying the Support Services again, or (ii) payment of the costs of having the Support Services supplied again.
- 21.3 Notwithstanding any other term of the Agreement but subject to any applicable statute, Streamvision shall not be liable for any defect, fault or damage to the Goods of any nature whatsoever:
- in respect of which notice was not provided in accordance with clauses 7.4 or 7.5, or
  - resulting from or caused or contributed to in any way by: (i) the Client failing to properly maintain or store the Goods after delivery, (ii) the Client using the Goods for any purpose other than that for which the Goods were designed, (iii) the Client continuing to use the Goods after any defect became apparent or ought reasonably to have become apparent, (iv) the Client failing to follow any instructions or guidelines provided by Streamvision or the manufacturer of the Goods, or (v) fair wear and tear or any accident or act of God.
- 21.4 To the maximum extent permitted by the law, Streamvision excludes all liability for any:
- errors, mistakes or inaccuracies in information,
  - any errors, downgrades, suspensions or interruptions in the Client's use or enjoyment of the Services,
  - personal injury or property damage as a result of the Works, the Services and/or supply of Goods, and
  - negligent act or omission on the part of Streamvision and any employee or contractor engaged by Streamvision.
- 21.5 Streamvision shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the Works, the Services, the Support Services or the supply of the Goods, including without limitation, loss of profits, damage to reputation, loss of revenue or loss of staff.
- For the purpose of this clause "consequential loss" includes:
- loss or damage not arising naturally, or according to the usual course of things, from the relevant event giving rise to that loss or damage, whether or not that loss may reasonably have been or supposed to have been in the contemplation of the parties as at the date this Agreement, as a probable result of the relevant event,
  - indirect, economic, special or consequential loss, and
  - loss in the nature of loss of profits, revenue, data, production, opportunity or use even if the relevant loss may reasonably have been or was supposed to have been in the contemplation of the parties as at the date of the Agreement, as a probable result of the relevant event.
- 21.6 The Client indemnifies Streamvision against all loss or damage suffered or incurred by Streamvision in connection with:
- any breach of this Agreement by the Client, its officers and employees,
  - a claim by a customer of the Client, or any like person arising out of or in connection with the use or provision of or inability to access the Services,
  - the Client's (or the Client's customer's) use of, access to or transmission of any content using the Services, and
  - any breach of or non-compliance with the restrictions on the use of the Services identified in this Agreement, in the User Guides or by Streamvision.

## 22. Personal Property Security

- 22.1 In this clause "amendment demand", "attaches", "financing statement", "financing change statement", "security agreement", "security interest" and "verification statement" have the meanings given to them by the PPSA.
- 22.2 The Client hereby charge the Goods and all of their respective personal property as security for the performance by the Client of the Client's obligations under the Agreement.
- 22.3 The Client acknowledges and agrees that:
- the Agreement constitutes a security agreement for the purposes of the PPSA,
  - a security interest exists in all goods (and their proceeds) previously supplied by Streamvision to the Client (if any) and in all present and after acquired property – no exceptions,
  - the Client has received or will receive value and that Streamvision has not agreed to postpone the time the security interest attaches, and
  - where Streamvision has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.
- 22.4 The Client shall:
- promptly sign all documents and provide any further information that Streamvision may reasonably require to register a financing statement or financing change statement in relation to a security interest granted to Streamvision under the Agreement or any other document required to be registered under the PPSA,
  - notify Streamvision in writing of any intention to change the Client's business practices to include the sale or leasing of goods of like kind to the Goods (or any part thereof) in the ordinary course of the Client's business, and
  - on demand reimburse Streamvision for all costs and expenses incurred in registering a financing statement or financing change statement.
- 22.5 The Client must not, without Streamvision's prior written consent:
- register or permit to be registered a financing statement or financing change statement in favour of a third party, or
  - register or cause to be registered a financing change statement in respect of a security interest granted under the Agreement,
  - issue or permit any other person to issue an amendment demand to Streamvision unless all monies payable by the Client under the Agreement have been received by Streamvision in cleared funds.
- 22.6 Any requirement under the PPSA on the part of Streamvision to give a notice to the Client shall not, to the extent that the requirement may be contracted out of (including, without limitation, under Section 115(1) of the PPSA), apply to the Agreement. Further, to the extent that the Client may waive the right to receive a notice under the PPSA (including, without limitation, notice in relation to a verification statement under Section 157(1) of the PPSA), the Client waives that right.
- 22.7 The Client irrevocably authorises and licenses Streamvision to enter upon the Client's property or premises, without notice, and without being in any way liable to the Client, if Streamvision has cause to exercise any of Streamvision's rights under Section 123 of the PPSA, and the Client shall indemnify Streamvision from all claims made by any third party as a result of such exercise.
- 22.8 Streamvision and the Client agree to treat information of the kind referred to in Section 275(1) of the PPSA as confidential. Neither Streamvision or the Client will disclose, send or make available any of the information referred to in Section 275(1) of the PPSA to any person except as required by law or the Agreement.
- 22.9 Streamvision and the Client acknowledge and agree that clause 22.8 constitutes a confidentiality agreement pursuant to Section 275(6) of the PPSA.

## 23. Real Property Security

- 23.1 The Client hereby charges all their right, title and interest in any real property or other assets capable of being charged that they, or any of them, own or hereafter own either solely or jointly, in favour of Streamvision as security for the performance of the Client's obligations pursuant to the Agreement and authorises Streamvision to register a Caveat over the title of any such property in the event of a default by the Client under the Agreement.
- 23.2 The Client shall indemnify Streamvision from and against all costs and disbursements incurred or payable by Streamvision in connection with exercise of Streamvision's rights under clause 23.1 (including, without limitation, legal fees on a solicitor-client basis, stamp duty and registration fees).

## 24. Intellectual Property & Competition

- 24.1 Where Streamvision has designed, drawn or developed unique and/or original designs or drawings in connection with the Services or any Goods, copyright in such designs or drawings shall vest in Streamvision.
- 24.2 The Client agrees not to modify, design, manufacture or be involved in any service or business that is in direct competition with Streamvision while this Agreement remains in force and for a period of 24 months following its termination or expiration.
- 24.3 Without limiting the general law, the Client must not pass off or use in any way Streamvision's branding or name and must not hold itself out as having authority to act on behalf of Streamvision unless prior written consent is provided by Streamvision.
- 24.4 The Client warrants that Streamvision is entitled to use all documents and drawings provided by the Client for the purposes of performing the Services and that such use will not infringe any third party's intellectual property rights.
- 24.5 The Client shall indemnify Streamvision from and against all claims and all losses and damages incurred by Streamvision as a consequence of any claim against Streamvision for infringement of a third party's intellectual property rights in

- connection with the carrying out the *Services* or supply of the *Goods* in accordance with a document that is; supplied by, prepared under the instruction of, or prepared from sketches provided by, the *Client*.
- 24.6 The *Client* authorises *Streamvision* to use any documents, designs, drawings or goods that *Streamvision* has created for the *Client* including photographs thereof for the purposes of marketing *Streamvision's* business or entry into any competition.
- ## 25. Subcontracting & Assignment
- 25.1 *Streamvision* may subcontract the whole or any part of the *Services* or the *Support Services* but remains responsible for same.
- 25.2 *Streamvision* may assign the *Agreement* to any person. In the event of the assignment the *Client* may, if it has reasonable grounds to believe that the assignee will not comply with the *Agreement*, within seven (7) days of receiving notice of the assignment terminate the *Agreement* by 30 days written notice to *Streamvision* whereafter the termination will be effective unless the assignment is withdrawn.
- ## 26. Cancellation
- 26.1 Notwithstanding any other clause herein *Streamvision* may cancel any agreement to which these terms and conditions apply at any time before the *Works* are commenced or *Goods* delivered by giving written notice to the *Client* whereafter any deposit or other amount paid by the *Client* shall become immediately repayable to the *Client*. *Streamvision* shall not be liable for any consequential loss or damage in relation to any such cancellation.
- 26.2 If the *Client* purports to cancel the *Agreement*, without limiting any other right available to *Streamvision*, the *Client* shall be liable to *Streamvision* for any and all loss or damage suffered by *Streamvision* in connection with the cancellation including, without limitation, loss of profit in respect of the *Works*, the *Services*, the *Support Services* and supply of the *Goods* and/or loss of profits in respect of orders and opportunities foregone as a result of the scheduling of the *Works*.
- 26.3 *Streamvision* may also cancel the *Client's* use of the *Services* and/or the *Support Services* and terminate this *Agreement* if:
- Streamvision's* supplier network agreement(s) for the *Services* is terminated for any reason, or
  - Streamvision* is required to by law, or to comply with an order, instruction or the request of an *Authority*, emergency services organisation or any other competent authority.
- ## 27. Privacy Act 1988 (Cth)
- 27.1 The *Client* consents to *Streamvision* obtaining a Credit Report from a credit reporting agency in relation to the *Client* for the purpose of:
- assessing the creditworthiness of the *Client*, and
  - the collection of payments that are overdue in respect of commercial credit.
- 27.2 The *Client* agrees that *Streamvision* may exchange information about the *Client* with those credit providers either named as trade referees by the *Client* or named in a Credit Report issued by a credit reporting agency for the following purposes:
- to assess an application for commercial credit by the *Client*,
  - to notify other credit providers of a default by the *Client*,
  - to exchange information with other credit providers, where the *Client* is in default with other credit providers, and
  - to assess the creditworthiness of the *Client*.
- 27.3 The *Client* consents to *Streamvision* using any personal information collected by *Streamvision* for the following purposes or as required by law:
- the performance of the *Works*, the *Services*, the *Support Services* and/or supply of *Goods*,
  - the marketing of the supply of *Goods*, the *Works*, the *Services*, the *Support Services* by *Streamvision*,
  - the analysing, verifying and checking of the *Client's* credit and/or payment status in relation to the performance of the *Works*, the *Services*, the *Support Services* and/or supply of *Goods*,
  - the processing of any payment instructions, direct debit facilities and/or credit facilities requested by the *Client*, and
  - enabling the daily operation of the *Client's* account and/or the collection of amounts outstanding in the *Client's* account in relation to the performance of the *Works*, the *Services*, the *Support Services* and/or supply of *Goods*.
- 27.4 *Streamvision* may give information about the *Client* to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the *Client*, or
  - allow the credit reporting agency to create or maintain a credit information file containing information about the *Client*.
- ## 28. Confidentiality
- 28.1 The parties agree to keep confidential, and to not disclose the other's *Confidential Information* except where necessary under this *Agreement*, including where the information is requested by *Streamvision's* supplier or licence holder for the provision of the *Services* or the *Support Services*, or when it's required by law, an *Authority* or a recognised stock exchange.
- 28.2 Each party will not and will ensure that its officers, employees and Related Bodies Corporate do not:
- disclose any of the other party's *Confidential Information* to any other person without the prior written consent of the other party, or
  - use all or any of the other party's *Confidential Information*,
    - otherwise than for the purposes of this *Agreement*, or
    - for its own benefit.
- 28.3 Each party acknowledges, agrees and undertakes that:
- it will take all reasonable precautions to maintain the confidentiality to prevent the disclosure or use of the other party's *Confidential Information*,
  - it will immediately notify the other party of any unauthorised disclosure or use of the other party's *Confidential Information* of which it becomes aware and will take all steps which the other party may reasonably require in relation to such unauthorised disclosure or use,
  - in the case of any uncertainty, treat all information as if it were *Confidential Information* of the other party unless and until the other party agrees in writing that the information is in the public domain, and
  - unless otherwise expressly authorised by the other party in writing, it will not directly communicate with any company that the other party introduces or whose identity it otherwise becomes aware of directly or indirectly as a result of this or any other agreement.
- 28.4 Upon the written request of a party, at its own expense, the other party will immediately deliver to the first mentioned party all records and materials (and copies of those records and materials) containing or embodying the first mentioned party's *Confidential Information* that are in the possession of the other party, its employees and any person to whom the other party has disclosed all or any of the first mentioned party's *Confidential Information* (whether or not with the consent of that party).
- 28.5 A party will not be bound to keep confidential any information if and to the extent that:
- the other party has authorised in writing the disclosure of the information, or
  - the information is disclosed by the other party to its professional advisers who have agreed to keep confidential the first mentioned party's *Confidential Information*.
- 28.6 Each party acknowledges that it does not rely upon any warranties, information given or representations made as to the other party's *Confidential Information*.
- 28.7 Each party, and its representatives, employees, contractors and agents make no representations or warranties as to the standard or quality of that party's *Confidential Information* and the other party acknowledges that it has made and relies upon its own enquiries and thorough inspection of all matters pertaining to the other party's *Confidential Information*.
- 28.8 Upon termination of this *Agreement* a party's right to use the other party's *Confidential Information* ceases and the other party must, and must procure that any person having access to such information (including its officers, employees, representatives and agents) immediately, at the first mentioned party's option:
- return to the first mentioned party,
  - destroy and certify in writing to the first mentioned party the destruction of, or
  - destroy and permit a representative of the first mentioned party to witness the destruction of, all of the other party's *Confidential Information* in its possession or control.
- ## 29. Applicable Local Taxes
- 29.1 The *Contract Price*, the *Monthly Fee* and all other monies payable by the *Client* pursuant to the *Agreement* are exclusive of *Applicable Local Taxes*.
- 29.2 If *Streamvision* incurs a liability to pay *Applicable Local Taxes* in connection with a supply to the *Client* pursuant to the *Agreement*, the consideration that the *Client* must pay to *Streamvision* for the supply is increased by an amount equal to the *Applicable Local Taxes* liability that *Streamvision* incurs in making the supply and the amount of the *Applicable Local Taxes* liability is payable at the same time and in the same manner as the consideration in respect of the supply is payable.
- 29.3 *Streamvision* shall provide the *Client* with a tax invoice for any *Applicable Local Taxes* included in any payment made pursuant to the *Agreement*.

## 30. Notices

- 30.1 The parties agree that email shall be the primary method of contact and communication in relation to any matters arising under the *Agreement*.
- 30.2 A notice is deemed to have been given or serviced if the notice is:
- delivered by hand to the other party,
  - posted by ordinary prepaid mail to the other party's address (including a Post Office Box) stated in the *Quotation* on the second *Business Day* following the date of posting,
  - sent by facsimile transmission to the parties' facsimile number stated in the *Quotation* upon receiving confirmation of delivery of the transmission, or
  - sent by email to the parties' email address stated in the *Quotation* upon receiving confirmation of delivery of the email without error.

## 31. General

- 31.1 Payments may only be made by cash, bank cheque, electronic funds transfer or credit card (unless *Streamvision* agrees otherwise in relation to a payment). The *Client* agrees to pay a surcharge equal to 2.5% in respect any payment made via credit card.
- 31.2 The *Client* may not; (a) set off against or deduct from any monies payable under the *Agreement* any sums owed or claimed to be owed by *Streamvision* to the *Client*, or (b) withhold payment of any invoice because the invoice or part of it is in dispute.
- 31.3 The *Agreement* embodies the whole agreement between the parties relating to the subject matter of the *Agreement* and supersedes any and all oral and written negotiations and communications by or on behalf of any of the parties.
- 31.4 The terms in the *Agreement* may not be varied, waived, discharged or released, except with the prior written consent of the parties.
- 31.5 No right under the *Agreement* is waived or deemed to have been waived in relation to any particular instance unless in writing and signed by the party waiving the right. A party does not waive its right under the *Agreement* by granting an extension of time or any other forbearance to another party.
- 31.6 The *Agreement* shall be governed by and construed pursuant to the laws of the State or Territory in which the *Quotation* is received. The parties irrevocably submit to the jurisdiction of the Courts of that State or Territory in connection with any dispute relating to the *Agreement*. The parties further agree that the Court of competent jurisdiction located closest to *Streamvision's* principal place of business in the relevant State or Territory shall be the appropriate Court for the hearing of any claims in connection with this *Agreement*.
- 31.7 The parties agree that a construction of the *Agreement* that results in all provisions being enforceable is to be preferred to a construction that does not so result.
- 31.8 If, despite the application of clause 31.7, a provision of the *Agreement* is illegal or unenforceable:
- if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
  - in any other case, the whole provision is severed, and the remainder of the *Agreement* continues in force.

## 32. Definitions & Interpretation

- 32.1 In these terms and conditions:
- "*Agreement*" means the agreement between the *Client* and *Streamvision* arising from the *Client's* acceptance of the *Quotation*,
  - "*Applicable Local Taxes*" means all government, state and other taxes, including value added taxes for goods and services and includes, but is not limited to GST;
  - "*Authority*" means the Local Government, State or Federal Government, or any Government agency that has power to affect the *Services*,
  - "*Business Day*" means any day other than Saturdays, Sundays or public holidays;
  - "*Client*" means the party named as the *Client* or customer in the *Quotation*,
  - "*Confidential Information*" means all information of a party ("*Owner*") of a confidential nature, which the other party ("*Recipient*") first becomes aware, whether before or after the date of this *Agreement*, either through disclosure by the *Owner* to the *Recipient* or otherwise through the *Recipient's* involvement with the *Owner*. *Confidential Information* may be written, graphic, oral or in any other form and includes the terms of this *Agreement*; lists of current and/or prospective customers; all customer details; sales and marketing information; details (including source code and design details) of any originally authored software; financial and accounting details; information which a party knows or ought to know is confidential to the other party; and all other commercially sensitive information relation to a party and any business owner or operated by that party, but excludes information which is already in the public domain or which a party is bound by law to disclose,
  - "*Contract Documents*" means these terms and conditions, the *Quotation* and the specifications, if any, specified in the *Quotation*,
  - "*Contract Price*" means the amount or rates stated as the price in the *Quotation* for the *Works* and *Services*,
  - "*Exclusions*" means the exclusions described in the *Quotation*,
  - "*Force Majeure Event*" affecting a party means any event outside that party's reasonable control, and includes failure or fluctuation in any electrical power supply, failure of air conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that party and its own Personnel), materials or labour shortage, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission of any third party or any failure of any equipment owned or operated by any third party, including any *Authority*,
  - "*Goods*" means any equipment, goods and other parts and components to be supplied by *Streamvision* as part of or in connection with the *Services* or otherwise described in the *Contract Documents*,
  - "*GST*" has the same meaning as given to it in the *A New Tax System (Goods and Services Tax) Act 1999*,
  - "*Monthly Fee*" means the amount or rates stated as the monthly price in the *Quotation* for the *Support Services*,
  - "*Normal Business Hours*" means Monday to Friday, 9.00 am to 5.00 pm Australian Eastern Standard Time, unless the *Quotation* specifies or *Streamvision* agrees in writing otherwise;
  - "*PPSA*" means the *Personal Property Securities Act 2009* (Cth),
  - "*Practical Completion*" means when the *Services* are complete except for minor omissions and defects that do not prevent the *Services* from being reasonably capable of being used for their usual purpose,
  - "*Quotation*" means the proposal, if any, provided by *Streamvision* to the *Client* in respect of the *Services* and/or the *Goods*,
  - "*Services*" means the *Services* described in the *Contract Documents* and includes *Variations* but excludes the *Exclusions*,
  - "*Set-Up Requirements*" means the requirements which *Streamvision* notifies the *Client* must be undertaken to the *Site*, including the *Client's* hardware, cabling or server, prior to the *Services* commencing,
  - "*Site*" means the address at which the *Services* are to be carried out as specified in the *Quotation* or otherwise,
  - "*Streamvision*" means *Streamvision Pty Limited* ACN 147 601 947, its successors and assigns,
  - "*Support Services*" means the services as outlined in the Schedule to this *Agreement*,
  - "*Upgrade*" means the upgrade of the *Client's* computer or other hardware or server,
  - "*User Guides*" means the operational or instructional guidelines or manuals that *Streamvision* provides to the *Client* by way of either hard-copy, soft-copy or oral instruction to assist the *Client* in the use of the *Services* and/or the *Goods*;
  - "*Variation*" means to vary the *Services* or the supply of the *Goods* by; carrying out additional *Services*, supplying additional *Goods*; omitting any part of the *Services* or changing the scope of the *Services*, and
  - "*Works*" means the works that *Streamvision* need to carry out at the *Site* to allow the *Client* access to and use of the *Services*.
- 32.2 In the *Agreement*, unless otherwise indicated by the context: (a) the singular includes the plural and vice versa; (b) a reference to one gender includes a reference to all other genders; (c) headings to clauses are included for the sake of convenience only and will not affect the interpretation of the clauses to which they relate; (d) references to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any orders, regulations, instruments or other subordinate legislation made under the relevant statute; (e) the word person means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not; (f) the *Agreement* will bind each party's legal personal representatives, successors and assigns; and (g) where a party comprises two (2) or more persons the rights and obligations of such persons pursuant to the *Agreement* will ensue for the benefit of and bind each of them jointly and severally.