

OUR CUSTOMER TERMS CLOUD SERVICES – NETO

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OUR CUSTOMER TERMS

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Certain words are used with the specific meanings set out below or in the General Terms section of Our Customer Terms.

1 ABOUT THE NETO SOLUTION SECTION

- 1.1 This is the Neto solution section of Our Customer Terms.
- 1.2 Provisions in other parts of the Cloud Services section also apply. See section one of the General Terms of the Cloud Services section at <https://www.telstra.com.au/customer-terms/business-government/cloud-services> for more detail on how the various parts of the Cloud Services section are to be read together.
- 1.3 Unless you have entered into a separate agreement with us which excludes them, the General Terms section of Our Customer Terms also applies. See section one of the General Terms of Our Customer Terms at <http://www.telstra.com.au/customer-terms/business-government/index.htm> for more detail on how the various sections of Our Customer Terms are to be read together.

2 NETO

Neto is not available for purchase by new customers from 22 May 2018. Existing customers can continue on their applicable terms until further notice.

What is the Neto solution?

- 2.1 Neto is an e-Commerce solution for retailers, wholesalers and eBay traders, allowing businesses to develop and maintain online stores and point of sale registers that can scale to meet their growing needs.

Eligibility

- 2.2 To be able to use the Neto solution, you must accept and comply with the Neto terms of Service available below (“Neto Terms of Service”).
- 2.3 Neto is available through the Telstra Apps Marketplace. To use the Telstra Apps Marketplace, you need an internet connection, and need to create an account in the Telstra Apps Marketplace. You also need to meet any minimum system requirements required to use the Telstra Apps Marketplace.
- 2.4 The Telstra Apps Marketplace part of the Cloud Services section of Our Customer Terms (available at <https://www.telstra.com.au/customer-terms/business-government/cloud-services>) governs your use of the Telstra Apps Marketplace.

3 SERVICE FEATURES

- 3.1 The full description of the Neto application and its features is set out on Neto’s website (<https://www.neto.com.au>) and in the Neto Terms of Service.

4 SERVICE LEVELS

- 4.1 The service levels for the Neto solution are set out in the Neto Terms of Service.

5 PLANS AND CHARGES

- 5.1 On and from 25 August 2016, the Neto solution is available in six casual plans:

- (a) Neto XS (Point of Sale only);
- (b) Neto S (Point of Sale or Online Store);
- (c) Neto M (Point of Sale or Online Store); and
- (d) Neto L (Point of Sale or Online Store),

as set out in the Telstra Apps Marketplace.

- 5.2 Before 25 August 2016, the Neto solution was available in three casual plans: Neto Standard, Neto Premium and Neto Ultimate.
- 5.3 The Telstra Apps Marketplace sets out the following for each plan: pricing, minimum requirements, user numbers and cost to purchase additional users.
- 5.4 We charge you for each month in advance for your Neto solution.

Termination

- 5.5 Your service will continue on a month to month basis. There is no minimum term and you may cancel your Neto solution at any time by using the Telstra Apps Marketplace, but you need to give us 30 days notice to cancel your Neto solution. You are still required to pay the charges for your Neto solution during the notice period.

Additional Services

- 5.6 You may also add additional services to your Neto solution from time to time, including through the Telstra Apps Marketplace.
- 5.7 If so indicated in your application form for the relevant additional services, you own all intellectual property rights in all deliverables we or our third party service providers create for and provide to you as part of those additional services that you order under clause 5.6 (**Developed IP**). We will assign all our right, title and interest in the Developed IP to you to give effect to that ownership (if relevant).
- 5.8 If ownership is passed to you under clause 5.7, you grant us a non-exclusive, royalty-free and sublicensable licence to use and adapt the Developed IP for the purpose of providing you the Neto solution and any additional services you have acquired under clause 5.6. You acknowledge and agree that:

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- (a) we may sublicense the rights granted to us under this clause 5.8 to our third party service providers; and
- (b) our third party service providers may sublicense to their contractors any rights we may have granted to them in accordance with clause 5.8(a),

for the purpose of providing the Neto solution or any additional services to you.

- 5.9 Except as set out in clauses 5.7 and 5.8, we or our licensors own all intellectual property rights in the Neto solution and any materials created in the performance of the Neto solution (including any additional services).
- 5.10 You may cancel any of the additional services at any time but you need to give us 30 days notice. If you cancel your additional services, you may still continue using your Neto solution until you cancel it too.

6 ADDITIONAL TERMS

- 6.1 You acknowledge that we rely on a third party service provider to supply the Neto solution to you. You must comply with the terms in clause 6.2 or 6.3 below, which we are required by our third party service provider to impose on you.
- 6.2 For customers who sign up to a Neto solution on and from 25 August 2016:

GENERAL TERMS & CONDITIONS

1. Plan
 - 1.1. The Merchant subscribes to the Plan and in so doing agrees upon and accepts these General Terms & Conditions.
 - 1.2. These General Terms & Conditions prevail over the Plan to the extent of any inconsistency.
 - 1.3. The Merchant warrants the Plan meets the Merchant's needs at the Commencement Date and for the duration of the Term.
 - 1.4. The Merchant may change Plans at any time using the SaaS or otherwise with the consent of Neto and the Merchant shall pay any additional Service Fees or charges from the start of the next billing period.
2. Hosting
 - 2.1. Neto shall Host the Merchant Website on the Network.
 - 2.2. Neto shall maintain the Network and Host the Merchant Website in accordance with Good Industry Practice. Neto may update the Network at any time and in such manner as it thinks fit.
 - 2.3. Neto shall use reasonable endeavours to ensure the Network and Hosting Service is available at least 99.9% of the time in each calendar month during the term of the Contract, except where:
 - (a) Neto has suspended the Service because the Merchant is in default of the Contract (e.g. for non-payment of an invoice);
 - (b) factors outside Neto's reasonable control disrupt the Network (e.g. a DDoS attack or third party system failure);
 - (c) Neto conducts Scheduled Maintenance or Remedial Maintenance.

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2.4. If the Network and/or Hosting Service is not available at least 99.9% of the time in each calendar month or part thereof during the term of the Contract, Neto shall refund to the Merchant, for each period of 30 minutes that the Network and Hosting Service not available ('Downtime'), 5% of the Service Fees paid by the Merchant for that calendar month up to but not exceeding 100% of the Service Fees for the calendar month. Downtime shall be measured from the time it is reported by the Merchant to Neto until the Network and Hosting Service are restored and the Merchant Website is able to transmit and receive data again. This shall be the Merchant's sole entitlement in the event of Downtime. The Merchant accepts that occasionally Downtime arises and agrees it shall not be entitled to any other compensation or payment by Neto for or in respect of Downtime (howsoever caused).

2.5. Neto does not guarantee or warrant any search engine optimisation or ranking for the Merchant Website.

3. Access

3.1. The Merchant shall access the SaaS via the internet.

3.2. The Merchant shall use the Login Codes to access the SaaS.

3.3. The Merchant shall configure the SaaS to its requirements using the features and functionality made available through the Neto SaaS platform. Neto may assist with but is not responsible for configuration of the SaaS for the Merchant.

3.4. The Merchant shall keep the Login Codes strictly confidential and secure from third parties.

3.5. Neto may access the SaaS, Merchant Website, Data and any Service at any time for any reason without the prior consent of the Merchant and without giving prior notice to any person for doing so.

4. Use

4.1. The Merchant is licensed to use, and shall use, the SaaS, Hosting Service and the Merchant Website only for the Authorised Use.

4.2. The Merchant shall only permit its officers and employees who are Authorised Users to use the SaaS and Hosting Service.

4.3. The Merchant shall permit no more than the Number of Users to access and use the SaaS and Hosting Service at any time.

4.4. The Merchant shall comply with the Acceptable Use Policy.

4.5. The Merchant acknowledges and accepts Neto's Privacy Policy and Telstra's Privacy Policy (available at Telstra.com).

4.6. The Merchant shall adopt Neto's prescribed policies for the Merchant Website.

5. Data and Content

5.1. The Merchant is solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership all Data and Content uploaded, collected or otherwise Hosted and/or processed on the Merchant Website by the SaaS.

5.2. The Merchant authorises Neto, and warrants that Neto is authorised (including by any relevant third parties) to access and manipulate Data if in Neto's sole opinion that is reasonably necessary to provide the Services.

5.3. The Merchant warrants and shall ensure that it complies in all respects with the Privacy Act.

6. Website Front-End Templates

6.1. The Merchant shall supply the Website Front-End Template to Neto or shall acquire its Website Front-End Template from Neto or from any third party.

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6.2. If the Merchant supplies the Website Front-End Template to Neto, the Merchant shall be solely responsible for its appearance, functionality, performance and operation.

7. Professional Services

7.1. Neto may at the request of the Merchant provide Professional Services in accordance with these General Terms & Conditions.

7.2. Neto shall provide Professional Services in accordance with the stages and milestones agreed in writing with the Merchant.

7.3. If the Merchant requires any variations to Professional Services described herein (including but not limited to changing the scope of such services, changing Acceptance Testing criteria, or changing stages or milestone dates for completing any Work), the Merchant shall submit an application to Neto to make the variations and shall include full details of the variations requested. Upon receipt of such application, Neto shall prepare and provide the Merchant with a quotation outlining the costs of the variation and any additional conditions for accepting and performing the variation required by Neto. The Merchant shall accept or reject the quotation within the time limits prescribed therein or, if the quotation is not expressed to lapse or expire on a particular date, within 7 days of receipt of the quotation from Neto. Upon acceptance of the quotation by the Merchant, the Professional Services shall be varied as set out therein.

7.4. Professional Services shall be completed when they are fully performed and all stages and/or milestones and Acceptance Testing therefor are passed. Upon completion of the Professional Services, Neto shall be under no obligation to provide additional Professional Services. In particular Neto shall be under no further obligation to maintain and repair, update, upgrade or add to any Work completed or created hereunder.

8. Intellectual Property

8.1. Neto owns all Intellectual Property in the SaaS.

8.2. The Merchant licenses, and warrants that Neto is authorised, to use, copy, modify, configure and integrate the Data, Content and Website Front-End Templates supplied by the Merchant for the purposes of these General Terms & Conditions.

8.3. Neto licenses the Merchant to use the SaaS and the Work for the Merchant Website in accordance with these General Terms & Conditions.

8.4. Nothing herein disclaims, abrogates, alienates or affects Neto's subsisting and continuing moral rights in the SaaS or the Work.

8.5. The Merchant shall not copy, hack, alter or disseminate the SaaS, Hosting Service or Network in any way, nor allow any third party to do so.

8.6. The Merchant agrees Neto may suspend or terminate the Services if any infringement of a third party's Intellectual Property occurs or is alleged in connection with the Merchant Website.

9. Risk

9.1. The Merchant uses the SaaS, Hosting Service and Network solely at its own risk.

9.2. The Merchant warrants that it has obtained its own independent professional and technical advice, or has decided not to do so, prior to entering these General Terms & Conditions and that it shall use the Services hereunder freely and voluntarily without duress or pressure to do so from Neto.

10. Back Up and Disaster Management

10.1. The Merchant shall regularly back up the Website Front-End Templates and all Data associated with these Website Front-End Templates in accordance with Good Industry Practice.

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10.2. The Merchant shall implement and maintain a disaster management plan for its business and shall be solely responsible for rectifying any events which interrupt with the Merchant's ability to access and use the SaaS, Hosting Service or Merchant Website pursuant hereto.

11. DDoS

11.1. If the SaaS, Hosting Service or the Merchant Website is the target of a DDoS or any other electronic attack or threat, Neto may, at any time and without giving prior notice to any person, take such protection and/or mitigation measures as it in its sole discretion considers reasonably necessary, including:

- (a) suspending the SaaS, the Merchant Website or any other Service;
- (b) moving the SaaS, Merchant Website and/or Data to a quarantine server;
- (c) implementing access control lists; and/or
- (d) applying IP address filtering and/or blocking.

11.2. If Neto takes any such measures, it may continue them until such time as the attack or threat is considered by Neto (in its absolute discretion) to be eliminated, avoided or otherwise dealt with.

12. Support

12.1. Neto shall provide the Merchant with:

- (a) Help Desk Support for the SaaS and Hosting Service;
- (b) Scheduled Maintenance;
- (c) Remedial Maintenance.

12.2. Neto may also provide the Merchant with Help Desk Support for the Merchant Website.

12.3. The Merchant may access Help Desk Support via any email address, phone number, website or other contact method designated by Neto.

12.4. Neto shall use its best endeavours to respond to any Help Desk Support enquiries or reports in a timely manner but is otherwise not bound to respond or to rectify any defects, errors, threats or other issues arising within any particular timeframe.

13. Service Fees

13.1. The Merchant shall pay the Service Fees set out in the Plan and as otherwise agreed in writing between the parties.

13.2. Neto may vary the Service Fees at any time by serving not less than one (1) month's prior written notice of the same upon the Merchant and giving the Merchant an opportunity to terminate hereunder prior to the expiry of that notice period if the Merchant does not accept the varied Service Fees. The Merchant shall not be entitled to any compensation or other remedy in the event of termination hereunder. Upon the expiry of the notice period, if the Merchant has not terminated, the Merchant shall be deemed to have accepted the varied Service Fees as notified by Neto.

13.3. Neto may block and/or suspend the provision of or access to the Services and SaaS if any Service Fees are unpaid or become overdue (whether in whole or in part).

13.4. Neto may at its sole discretion recommence or restore the provision of or access to the Services if any overdue invoice for Service Fees is paid.

13.5. The Merchant acknowledges and agrees that it may take up to 48 hours for any Service to be recommenced or restored.

13.6. The Merchant shall pay Service Fees by credit card, electronic funds transfer, direct debit, or in any other manner agreed by Neto. Where payment is made or taken by credit card, Neto shall be entitled to add a surcharge of up to two and one half percent (2.5%) of the total amount due under any invoice.

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13.7. Neto may pass on and charge the Merchant any fees, levies or charges it incurs as a result of any credit card, direct debit, cheque or similar payment transaction failing or being declined.

13.8. Unless otherwise stated, Service Fees are exclusive of GST. The Merchant shall, in addition to Service Fees, pay Neto the amount of the GST. The Merchant shall be entitled to a tax invoice for its payments for Services.

13.9. The Merchant must not deduct or set-off any money owing to it or any money which the Merchant reasonably anticipates will become owing to it by Neto from any money due to Neto under these General Terms & Conditions.

14. Errors and omissions

14.1. Neto shall use its best endeavours to rectify at its cost any material errors or omissions in the Services provided hereunder promptly whenever such an error or omission is found in the course of execution of the Services. An error or omission is material if Neto determines in its absolute discretion (acting reasonably) that it is not minor and prevents the Services from satisfying the Merchant's specifications, any Legislative Requirements and/or the standards of Good Industry Practice.

14.2. Notwithstanding the foregoing, Neto shall not be liable to rectify any errors or omissions caused or partly caused directly or indirectly by or arising from:

- (a) any misinformation provided by the Merchant;
- (b) any direction given by the Merchant;
- (c) any conduct of the Merchant or any third party;
- (d) any undue duress, pressure or influence exerted by the Merchant upon Neto or its officers, employees, agents or subcontractors; or
- (e) any accident, act of God, fire, flood, war, act of violence, terrorism or similar occurrence beyond Neto's reasonable control.

14.3. The Merchant shall submit all claims for rectification to Neto in writing promptly upon discovering them.

15. Limitation of liability

15.1. To the extent permitted by law, and without limiting the foregoing subject always to the Competition and Consumer Act, the Australian Consumer Law, and the Fair Trading Acts of each State and Territory in Australia, Neto does not warrant either the quality or standard of the Services provided hereunder, or the design, performance, use, utility, fitness for purposes or merchantable or acceptable quality of any software, service, product or thing for any particular purpose or at all, other than to the extent expressly represented in these General Terms & Conditions or in any documentation prepared and supplied by Neto to the Merchant hereunder and to the extent implied or required by law.

15.2. Neto may, at its option, choose to satisfy any claim for rectification of any defect or omission in the Services by either:

- (a) resupplying the Services at Neto's cost; or
- (b) paying a third party approved by Neto to resupply the Services or to supply replacement Services hereunder,

upon which Neto shall be fully and effectually released and discharged from any further obligations in relation to such claim.

15.3. In no case shall the value of a claim by the Merchant for rectification of any defect or omission (as assessed and determined by Neto, acting reasonably) exceed the total value of the Services Fees paid by the Merchant under these General Terms & Conditions up to the date the claim is made, and all damage or expense over and above such amount shall be the responsibility of the Merchant.

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15.4. Neto shall not be liable to the Merchant for any delay or delays in the provision of the Services.

15.5. Neto shall not be liable to compensate the Merchant for any delay in either replacing or remedying an actual or alleged defect or omission or in properly assessing or responding to a claim.

15.6. Neto shall be under no liability whatsoever to the Merchant for any indirect, special or consequential loss and/or damage (including loss of profit, loss of revenue or other economic loss) suffered by the Merchant arising out of or in connection with any Services or any defect or omission arising under these General Terms & Conditions.

15.7. The Merchant shall give Neto reasonable access to any premises or property (including to devices via screen sharing) required for Neto to fully and properly investigate and assess any and all claims hereunder.

15.8. Neto may decline any claim which does not comply with these General Terms & Conditions, or which is not covered by these General Terms & Conditions, or which is made for Services that are found not to be defective by Neto, in which case Neto may give notice to the Merchant that the claim is declined and the Merchant shall be responsible for Neto's reasonable costs of receiving, processing, assessing and declining the Merchant's claim. Neto may invoice the Merchant any such costs incurred by it and the Merchant shall promptly pay the invoice within seven (7) days of the date of the invoice.

16. Default & consequences of default

16.1. Without prejudice to Neto's other remedies at law or in equity, Neto shall be entitled to immediately suspend or terminate the supply of the Services in the event that:

- (a) any Service Fees are not paid when due; or
- (b) the Merchant breaches these General Terms & Conditions; or
- (c) the Merchant becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, administrator, liquidator (provisional or otherwise) or similar person is appointed in respect of the Merchant or any asset of the Merchant.

16.2. Neto will not be liable for any loss or damage the Merchant suffers because Neto has exercised its rights under this clause.

16.3. If Neto terminates these General Terms & Conditions under clause 16.1, Neto may pursue the Merchant for damages for breach or specific performance or both.

16.4. Neto's rights and entitlements hereunder are in addition to the rights which Neto may have at law or in equity.

16.5. If the Merchant defaults in payment of any Service Fees, the Merchant shall indemnify Neto from and against all costs and disbursements incurred by Neto in pursuing the debt including legal costs on a solicitor and own Merchant basis and Neto's collection agency costs.

16.6. Interest on overdue Service Fees shall accrue daily from the date when payment becomes due, until the date of payment, at the rate or rates prescribed from time to time under Sections 58 and 59 (as applicable) of the Civil Proceedings Act 2011 (Qld) and such interest shall be calculated and invoiced monthly and shall be payable immediately upon invoicing by Neto.

16.7. If any account remains overdue after thirty (30) days, then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200) shall

be levied for administration fees which sum shall become immediately due and payable.

17. Termination for convenience

17.1. Either party may terminate these General Terms & Conditions, with or without giving any reasons for doing so, by giving not less than 30 days' written notice to the other party, and upon giving such notice these General Terms & Conditions shall terminate at the expiry of the 30 days.

17.2. Neto may at Neto's option suspend the provision of the Services at any time after notice of termination is given by either party.

17.3. Neither party shall be liable to the other party for any loss or damage whatsoever arising from termination under clause 17.1.

17.4. The termination of these General Terms & Conditions by either party is without prejudice to any other right or remedy which they may have against each other at law or in equity.

18. General indemnity

18.1. To the fullest extent permitted by law, the Merchant shall indemnify and keep indemnified Neto from and against any and all losses, loss of profits, claims, damages, actions, suits, demand, costs (including reasonable legal costs and disbursements on a full indemnity basis), interest, charges and expenses of any kind whatsoever, which Neto shall or may suffer or incur or be called upon to suffer or incur by virtue of:

(a) any default or breach hereunder by the Merchant;

(b) any unlawful, negligent, fraudulent or indictable act or omission of the Merchant or any of its officers, employees or agents;

(c) the use or misuse of any Services by the Merchant; or

(d) any Content or Data uploaded, processed or posted by the Merchant using the SaaS or otherwise on the Merchant Website or any other website of the Merchant,

except to the extent of any contributory negligence by Neto.

18.2. The Merchant shall pay any and all indemnified amounts to Neto within 7 days of receiving a written demand for the same.

19. Representations

19.1. The Merchant represents and warrants that at the date of acceptance of these General Terms & Conditions by the Merchant and at all times until these General Terms & Conditions are fully performed and completed:

(a) the Merchant is not bankrupt and is not insolvent or in receivership or under administration, official management or liquidation and has not entered into an arrangement with its creditors;

(b) the Merchant is able to carry on its business and perform its obligations under these General Terms & Conditions;

(c) the Merchant is adequately insured with a reputable insurer against all risks which a prudent person carrying on its business would insure against;

(d) there are no legal proceedings, actions, prosecutions or investigations threatened, pending or commenced against the Merchant or the directors or shareholders of the Merchant;

(e) all corporate authorisations and approvals necessary to enable it to enter into these General Terms & Conditions have been obtained and remain in full force and effect;

(f) all governmental requirements, authorisations, approvals and licenses which are necessary for the Merchant to legally carry on its business are in full force and effect; and

(g) it has not withheld from Neto any document, information or other fact material to the decision of Neto to enter into these General Terms & Conditions or to supply Products or provide credit to the Merchant.

19.2. The Merchant must immediately notify Neto if any of the aforementioned representations, warranties and covenants cease to be true and correct.

20. Security for payment

20.1. The Merchant grants Neto a security interest and a charge and a general lien over all Website Front-End Templates, Data and Content (including domain keys and codes therefor) (“Collateral”) it has supplied to Neto to secure payment of the Service Fees in accordance with these General Terms & Conditions and the provisions of the Personal Property Securities Act (“PPSA”).

20.2. Neto agrees to take a security interest and a charge and a general lien over the Collateral and shall register its security interest on the Personal Property Securities Register (“PPSR”).

20.3. The Merchant shall do all such things necessary to perfect Neto’s security interest hereunder.

20.4. Neto may retain and withhold possession of any Collateral to enforce its right to payment hereunder.

20.5. The Merchant authorises under section 275(7)(c) of the PPSA the disclosure of information by a secured party under section 275(4) of the PPSA in response to any request for information from an interested person pursuant to sections 275(1) to (3) of the PPSA.

20.6. The Merchant will not without written notice to Neto, change its name or initiate any change to any documentation registered under the PPSA in relation to these General Terms & Conditions.

20.7. Neto undertakes to maintain the accuracy of the registered security interest and may remove the registration when the Merchant has paid all amounts owed to Neto in relation to the Services.

21. Credit checking

21.1. Neto may obtain from a credit reporting agency a credit report about the Merchant.

21.2. Neto may exchange information about the Merchant with credit reporting agencies, credit providers and trade referees to assess the Merchant’s credit worthiness and to notify third parties of any defaults hereunder.

21.3. The Merchant consents to Neto being given a consumer credit report to collect overdue payment on commercial credit under section 21H of the Privacy Act.

21.4. The Merchant agrees that personal credit information provided may be used and retained by Neto to provide products, market Neto’s products and services (including the Services), process payments hereunder and maintain the Merchant’s account/s with Neto.

21.5. Neto may disclose information about the Merchant and/or its directors, officers and shareholders pursuant to any request by a third party for any reference or report concerning that person or entity. The Merchant shall indemnify Neto for any claim arising from such disclosure hereunder.

21.6. Neto may give credit reporting agencies personal information about an application for a Credit Account, but only the kinds of information allowed by the Privacy Act.

22. Force majeure

22.1. Neto will not be liable for any failure or delay in the performance of its obligations under these General Terms & Conditions to the extent such failure or delay is caused by a Force Majeure Event.

22.2. If a Force Majeure Event arises, Neto shall use reasonable endeavours to promptly advise the Merchant of the details of the Force Majeure Event and its likely effect on the performance of Neto’s its obligations hereunder,

and Neto shall take all steps reasonably necessary to recommence performance of the affected Services and minimise any delay caused by the Force Majeure Event.

23. Dispute resolution

23.1. If a dispute arises out of or relates to these General Terms & Conditions, the breach, termination, validity or subject matter of these General Terms & Conditions, or any claim in tort, in equity or pursuant to any domestic or international statute or law, then subject always to clause 23.6 the parties to the Agreement and to the dispute expressly agree to endeavour in good faith to settle the dispute by mediation administered by a mediator appointed under the Mediation and Conciliation Rules of the Institute of Arbitrators and Mediators of Australia as in existence at the time written notice is received by the parties.

23.2. A party claiming that a dispute has arisen must give written notice to the other parties to the dispute specifying the nature of the dispute.

23.3. On receipt of the notice specified in clause 23.2, the parties to the dispute must within seven (7) days of receipt of notice seek to resolve the dispute.

23.4. If the dispute is not resolved within the said seven (7) days or within such further period as the parties agree, then the parties must mediate the dispute and adopt the provisions of, and the procedures noted in, the Mediation and Conciliation Rules of the Institute of Arbitrators and Mediators of Australia, being the Rules in existence at the date of the notice specified in clause 23.2.

23.5. The terms of the Mediation and Conciliation Rules of the Institute of Arbitrators and Mediators of Australia, being the Rules in existence at the date of the notice specified in clause 23.2, are hereby deemed incorporated into these General Terms & Conditions.

23.6. Notwithstanding the foregoing, Neto shall always have the right to institute legal proceedings in any court of competent jurisdiction in order to collect payments due to Neto by the Merchant whether under these General Terms & Conditions or any other agreement, without first being required to undergo mediation or arbitration.

23.7. This clause 23 survives termination or expiration of these General Terms & Conditions.

24. General

24.1. These General Terms & Conditions prevail over any terms of trade or terms and conditions of supply or of acquisition of goods or services provided or submitted by the Merchant or agreed to by Neto to the extent of any inconsistency between them.

24.2. The parties contract hereunder independently and at arm's length. Nothing herein constitutes either party a partner, joint venturer, agent or employee of the other party.

24.3. Each party warrants, states and represents that the party has entered these General Terms & Conditions with full knowledge of the responsibilities of the party under it, with full knowledge of the effect of these General Terms & Conditions on the party's financial position, after either obtaining or electing not to obtain independent legal and accounting and taxation advice on the terms and subject matter of these General Terms & Conditions, and without any reliance on any other party in respect thereof.

24.4. If any provision of these General Terms & Conditions shall be invalid, illegal or unenforceable, that provision shall be severed from these General Terms & Conditions and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired in any way.

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24.5. All notices required to be given by the Merchant under these General Terms & Conditions must be given in writing, addressed to Neto at its registered office, in the English language, signed by the Merchant (or its duly authorised attorney or representative), and dated the date on which it was signed. Neto may give notices to the Merchant in any form Neto thinks fit and, without limiting the foregoing, if Neto publishes a notice or any content on the Neto Website then the Merchant is deemed to have received that notice and notice of that content on and from the date of publication. The Merchant shall check and monitor and keep updated with all notices and content published on the Neto Website.

24.6. Neto may license or sub-contract all or any part of its rights and obligations without the Merchant's consent. Neto may also at its sole discretion transfer or assign all or any part of its rights and obligations hereunder to any third party without the Merchant's consent.

24.7. The Merchant shall not transfer or assign all or any part of its rights and obligations hereunder without first obtaining the prior written consent of Neto.

24.8. The Merchant shall give Neto not less than fourteen (14) days prior written notice of any proposed change of ownership or control of the Merchant, or any change in the Merchant's name, or any other change in the Merchant's details (including but not limited to, changes in the Merchant's address, facsimile number, or business practice). The Merchant shall be liable for any loss incurred by Neto as a result of the Merchant's failure to comply with this requirement. In addition, any such change in ownership or control of the Merchant shall be deemed hereunder to constitute a transfer or assignment of the Merchant's rights and obligations hereunder to the person or entity take on or taking over such ownership or control, which change shall not be undertaken without first obtaining the prior written consent of Neto.

24.9. Neto shall not be required to notify the Merchant of, or obtain the Merchant's consent to, any change or proposed change of ownership or control in Neto.

24.10. Neto reserves the right to review these General Terms & Conditions at any time. If, following any such review, there is to be any change to these General Terms & Conditions, then that change will take effect from one (1) month after the date on which Neto notifies the Merchant of such change. The Merchant may not change or amend these General Terms & Conditions without Neto's prior written agreement.

24.11. Personal information about the Merchant may be used and retained by Neto for the provision of products or services, the marketing of products or services, credit checking, maintenance of the Merchant's account/s with Neto, processing any payment instructions or direct debit or credit facility, and debt collection, as well as for any other purposes as may be agreed between the parties or required by law from time to time.

24.12. The failure by Neto to enforce any provision of these General Terms & Conditions shall not be treated as a waiver of that provision, nor shall it affect Neto's right to subsequently enforce that provision.

24.13. Any party signing or executing or otherwise accepting these General Terms & Conditions on behalf of the Merchant as the Merchant's director, officer, attorney or representative hereby warrants, states and represents in his or her personal capacity that he or she is duly authorised and permitted to do so by the Merchant and by law.

24.14. Subject to any written agreement to amend the terms hereof, these General Terms & Conditions constitute the sole and entire agreement between the parties with respect to its subject matter. No warranties,

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representations, guarantees or other terms or conditions of any kind not contained and recorded in these General Terms & Conditions are of any force or effect.

24.15. These General Terms & Conditions and any contract to which they apply shall be governed by the laws applicable in Queensland and are subject to the jurisdiction of the courts of Queensland. All legal proceedings in relation to these General Terms & Conditions shall be instituted and held in Brisbane in the State of Queensland, Australia.

25. Definitions and interpretation

25.1. In these General Terms & Conditions:

(a) Acceptable Use Policy means Neto's Acceptable Use Policy published on the Neto Website from time to time.

(b) Acceptance Testing means testing of the performance and functionality of Work using criteria agreed in writing between the parties or, in the absence of such agreement, as determined by Neto (acting reasonably) from time to time.

(c) Authorised Use means the use for which a Service is provided as stated in the Plan or as otherwise notified by Neto to the Merchant from time to time.

(d) Authorised Users means the persons or entities who may use the Service as stated in the Plan or as otherwise notified by Neto to the Merchant from time to time.

(e) B@SE means Neto's templating language for Website Front- End Templates.

(f) Merchant Website means the Merchant's website Hosted by Neto using the SaaS and incorporating the Website Front-End Template, Data and Content.

(g) Commencement Date means the first day of the Term.

(h) Content means any text, data, images, graphics, animations or other information or material or content to be published on the Merchant Website from time to time.

(i) Data means information or data of any kind and includes Content.

(j) DDoS means a distributed denial of service attack.

(k) Devices means the plant, equipment and devices used by the Merchant or its authorised users to access and use the SaaS, including any and all software and source code installed thereon.

(l) Force Majeure Event means any circumstance not within the reasonable control of Neto, to the extent that the circumstance, or its effect upon Neto, could not have been avoided, prevented or circumvented despite the exercise of reasonable diligence by Neto. Without limiting the foregoing, such circumstance shall include fire, sea accident, failure of machinery, or other accident, ice hindrance, flood, water shortage, or other natural disaster, vehicle or tonnage shortage or other traffic disturbance, strike, lockout, blockade, riot, revolution, mobilization or state of war, currency problems, import restrictions, or other government action.

(m) Good Industry Practice means, in relation to any work or task required to be performed by a party, the practices, methods, specifications and standards of safety, design and performance which are generally expected of competent and experienced professionals who perform the same or similar work or tasks in the same or similar industry or profession.

(n) Help Desk Support means help desk support provided at the time and in the manner published by Neto from time to time.

(o) Hosting means storing the Website on the Network and making it available on the internet, and Host and Hosted have corresponding meanings.

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- (p) Intellectual Property means circuit layout rights, copyrights, patent rights, trademark rights, design rights, get up, know-how, trade secrets, source code, software and any and all other forms of Intellectual Property, wheresoever and howsoever arising, whether registered or unregistered, anywhere in the world.
- (q) Legislative Requirement includes a requirement imposed by law, including to obtain any governmental or judicial approval or consent, to give a notice, to pay a fee charge or penalty, and to perform and act or omissions.
- (r) Login Codes means login codes and authentication criteria provided by Neto to access the SaaS.
- (s) Neto Website means Neto's website at <https://www.neto.com.au/> or such other address notified by Neto to the Merchant from time to time.
- (t) Network means hardware, software and network infrastructure owned by or licensed to Neto for the provision of the Services.
- (u) Plan means the SaaS and Hosting Service plan agreed between Neto and the Merchant.
- (v) Privacy Policy means Neto's Privacy Policy published on the Neto Website from time to time.
- (w) Professional Services means professional services to be provided by Neto to the Merchant pursuant to the Plan or as otherwise agreed in writing between the parties. Without limiting the foregoing, they may include:
- (i) migrating Data to or from the Merchant Website;
 - (ii) programming and/or incorporating custom or bespoke features or functionality in the Merchant Website;
 - (iii) training Merchant staff and representatives; and
 - (iv) consultancy and advisory services.
- (x) Remedial Maintenance means unscheduled maintenance or rectification of the SaaS and/or the Network by Neto at Neto's absolute discretion.
- (y) SaaS means Neto's software platform for Hosting the Merchant Website under the Plan.
- (z) Scheduled Maintenance means scheduled maintenance and service of the SaaS and/or the Network by Neto at Neto's absolute discretion.
- (aa) Service Fees means the fees described in the Plan.
- (bb) Services means SaaS, Hosting and Professional Services.
- (cc) Term means the period during which the Merchant is bound by these General Terms & Conditions.
- (dd) Website Front-End Template means each HTML file that determines the layout and/or functionality of the Merchant Website.
- (ee) Work means the website features or functionality, software, data, compilation, integration, improvement, development or advance, creation or any other outcome or result achieved by Neto or arising from the provision of Professional Services.
- 25.2. In these General Terms & Conditions, except where the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) a gender includes other genders;
 - (c) another grammatical form of a defined term has a corresponding meaning;
 - (d) a reference to 'writing' or 'in writing' includes electronically via email, website or other digital communication.
 - (e) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, these General Terms &

Conditions, and a reference to these General Terms & Conditions includes any schedule or annexure;

(f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

(g) a reference to a party is to a party to these General Terms & Conditions, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;

(h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

(i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and

(j) headings are for ease of reference only and do not affect interpretation.

6.3 For customers who signed up to a Neto solution before 25 August 2016:

Definitions and Interpretation

1.1 In these Terms unless the subject matter or context requires otherwise, the following words and expressions shall have the meanings respectively assigned to them below:-

1.1.2 "we" or "us" mean Neto E-Commerce Solutions Pty Ltd A.B.N. 91 147 118 and our directors, officers, employees and agents;

1.1.3 "you" mean the person or entity who uses the Software and accepts our hosting and support services and include your directors, officers, employees and agents, as the case may be;

1.1.3 "Content" means information, material, content, language, imagery, links or other similar things;

1.1.4 "the Contract" means the agreement formed between you and us by your use of the Software and the acceptance of the Service and our support services identified in clause 5 in accordance with these Terms;

1.1.5 "the Documentation" means the operating manuals and other printed materials relating to the Software including but not limited to users' manuals, programming manuals, modification manuals, flow charts, drawings and software listings, which are designed to assist or supplement the understanding or application of the Software;

1.1.6 "Force Majeure" means any circumstances beyond our or your reasonable control including but not limited to storm, tempest, fire, lightning, above average levels of rainfall, flood, other inclement weather, earthquake, volcanic eruption, acts of God or enemies, declared or undeclared war, piracy, riot, sabotage, terrorism, civil disturbance, power failure, shortage of fuel, labour dispute, strike, lock-out, other industrial disturbance, Denial of Service ("DOS"), Distributed Denial of Service ("DDOS") attack, third party provider outages, cable cuts and material changes in the law but excludes the inability, for whatever reason, to make any payments in accordance with these Terms;

1.1.7 "GST" means the goods and services tax as provided by the GST law;

1.1.8 'GST Act' means the *A New Tax System (Goods and Services Tax) Act 1999* as it stands from time to time;

1.1.9 "GST law" means the GST Act and associated legislation including without limitation delegated legislation; "the Installation Date" means the date of installation of the Software on our equipment;

1.1.10 "Intellectual Property Rights" mean any copyright rights, trade mark rights, design rights, patent rights, semiconductor or circuit layout rights or any proprietary rights similar to any of the aforesaid rights;

1.1.11 "notice" means a written notice, consent, approval, direction, order or other communication;

1.1.12 "post" and "posting" means posting, uploading, contributing, submitting, transmitting, publishing or otherwise disseminating;

1.1.13 "TAM" means the Telstra Apps Marketplace;

1.1.14 "the Pricing Schedule" means the list of our fees, charges and costs published on TAM;

1.1.15 "the Service" means our managed hosting service to host the Software on our website identified in clause 4;

1.1.16 "the Software" means our software program marketed under the name The Neto E-commerce Suite or any other name which replaces that name from time to time;

1.1.17 "these Terms" mean these Terms of Use;

1.2 A reference to:-

1.2.1 one gender includes the other genders; and

1.2.2 the singular includes the plural and the plural includes the singular.

1.3 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

1.4 A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision.

1.5 Headings in these Terms are used for convenience only and are to be disregarded in the interpretation of these Terms.

2. Supply of the Software etc and Payments

2.1 We will supply and install the Software on our equipment on the Installation Date.

2.2 You must use the Service, which we provide to host the Software.

2.3 You must select one of the plans identified in the Pricing Schedule.

3. Licence to use Software

3.1 We hereby grant you a non-exclusive, limited, non-transferable licence to use the Software on a monthly basis subject to payment of all moneys payable under these Terms by you to us until such time as the Contract is terminated in accordance with clause 13.

3.2 You acknowledge that there is no transfer of title or ownership to you of the Software or the Documentation or any modifications, updates or new releases of the Software or the Documentation.

3.3 You may only use the Software in accordance with the normal operating procedures which we notify to you.

3.4 The Software may only be used pursuant to these Terms at the location agreed by us for delivery and installation of the Software.

3.5 The Software may not be used on equipment other than equipment approved by us save that at your sole risk it may be used on alternative equipment if:

3.5.1 the approved equipment is temporarily inoperable due to malfunction, maintenance or change of installation site with our approval; or

3.5.2 we have otherwise given our consent in writing to such alternate use.

3.6 Except to the extent specified to the contrary in these Terms, we will not be obliged to support the Software, whether by providing advice, training, error-correction, modifications, updates, new releases or enhancements or otherwise.

3.7 You must not copy, alter, modify or reproduce the Software except to the extent otherwise authorised by these Terms or as expressly authorised under Part III Division 4A of the Copyright Act 1968 (Cth).

3.8 You must not copy or reproduce the Software or the Documentation by any means or in any form without our prior written consent.

3.9 You must not merge all or any part of the Software with any other software without our prior written permission, which we may withhold in our absolute discretion.

3.10 If you modify or alter the Software with our permission:-

3.10.1 you will be solely responsible for the costs associated with the modifications or alterations and the costs arising out of the investigation of the effects of the proposed modifications or alterations; and

3.10.2 you must indemnify and keep us indemnified from and against all and any losses, loss of profits, claims, damages, actions, suits, demands, costs (including reasonable legal costs and disbursements on a full indemnity basis), interest, charges and expenses of any kind whatsoever which we may suffer or incur or be called upon to suffer or incur if such modifications or alterations infringe any Intellectual Property Rights of a third person.

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3.11 The Software as modified or altered will remain our property in all respects, whether modified by you, us or a third party and whether or not authorised pursuant to these Terms. Specifically, you must, if required by us, assign to us all Intellectual Property Rights arising out of any modifications to the Software made by you and you must procure the assignment to us of all Intellectual Property Rights arising out of any modifications to the Software made by any third party at your direction.

3.12 These Terms shall apply to the Software as modified or altered.

3.13 You must on demand by us execute and procure any third party to execute all such documents and perform all such other acts as are necessary in order to give effect to clause 3.11.2.

3.14 We will not be obliged to provide any support services in respect of the Software which has been modified by you but may at our sole discretion elect to do so.

3.15 You must not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the Software.

3.16 You will be solely responsible for the use, supervision, management and control of the Software and the Documentation.

3.17 You must ensure that the Software and the Documentation are protected at all times from theft, misuse, damage, destruction or any form of unauthorised use.

3.18 We may from time to time update the Software for many reasons including but not limited to:-

3.18.1 maintaining security compliance;

3.18.2 fixing bugs or problems in previous versions of the Software; and

3.18.3 enhancing functionality or features.

3.19 We will not be liable to you for any costs arising from the effect any update may have on any code which is not provided by us and for any modifications to any such code to restore functionality.

3.20 In addition to any other remedies available to us under these Terms or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Software will entitle us to any available equitable remedy against you.

4. Our Managed Website Hosting service

4.1 We will provide the Service to you.

4.2 You must:-

4.2.1 comply with any additional terms and conditions of use (apart from those contained in these Terms) which may apply to the Service and which we notify you of from time to time and also any reasonable directions which

we give you from time to time regarding its use. If any such additional terms and conditions are unacceptable to you, you will be entitled to terminate the Contract pursuant to clause 13.1;

4.2.2 keep secret and secure your identification and log-in information for accessing and using the Service;

4.2.3 keep confidential and not disclose to anyone any information belonging to us; and

4.2.4 ensure that our remote access to your systems is not blocked or prevented in any way.

4.3 You must not post any Content on or through your website:-

4.3.1 unless you hold all necessary rights, licences and consents to do so;

4.3.2 that would cause you or us to breach any law, regulation, rule, code or other legal obligation; or

4.3.3 that would bring us and the Service into disrepute.

4.4 You will be personally and solely responsible and liable for all Content which you post on or through your website and with regard to your interactions with other persons.

4.5 You must not post Content on or through your website that:-

4.5.1 promotes racism, hatred, bigotry, blasphemy, discrimination, encourages violence against any person or groups or any illegal or unlawful activities;

4.5.2 is abusive, offensive, obscene, vulgar, harmful, threatening, harassing, sexually explicit, defamatory, fraudulent or otherwise unlawful or objectionable;

4.5.3 is inaccurate, misleading or false and if any Content which you post subsequently becomes inaccurate, misleading or false, you must promptly notify us and make all necessary corrections;

4.5.4 infringes or violates another person's legal and moral rights including but not limited to Intellectual Property Rights and rights of privacy and publicity;

4.5.5 you do not have a right to post including but not limited to Content which you are prohibited by law or under contractual or fiduciary relationships (such as insider information and proprietary and confidential information) from posting or which infringes the trade secret or proprietary rights of any person;

4.5.6 contains viruses, Trojan horses, worms, time bombs, computer codes, files or programs designed to interrupt, destroy or limit the functionality of any computer software or other harmful or disruptive mechanisms or devices which may cause financial or other loss to us and others;

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4.5.7 constitutes phishing, trolling, junk mail or which breaches any legislation relating to spam emails or which amounts to similar unlawful conduct; and

4.5.8 is otherwise unlawful.

4.6 Notwithstanding clause 4.5, you must specifically not use the Service in any way:-

4.6.1 for any illegal or fraudulent activities including activities which may breach any legislation relating to intellectual property matters, discrimination, criminal activities, defamation or otherwise;

4.6.2 which is likely to interfere with or disrupt our or other internet users' or their service providers' activities and their respective computers or other hardware or software including but not limited to sending, distributing, publishing, reproducing and spreading computer worms, Trojans, viruses, unsolicited mass emails, promotions, advertisements, announcements or other material constituting spam and any other matters which are similar to any of the aforesaid things;

4.6.3 to send obscene, indecent, harassing, offensive or threatening emails; and

4.6.4 to access another person's computer or network without written authorisation.

4.7 You agree to assume and accept all risk when using the Service.

4.8 You must not post on or through your website any Content that may be considered to be in competition to our business.

4.9 We will notify you and you consent to, prior to removing any Content which we in our absolute discretion believe may be unlawful or not permitted under these Terms or which any third party requests us to remove on what we believe, in our absolute discretion, to be reasonable grounds.

4.10 We will make a full backup of your website files daily for website restoration purposes only and will retain that backup for a period of thirty (30) days after which that backup will be deleted from our servers. You will be responsible for keeping your own backup of website files on your own equipment. If data is lost due to your act or omission, we will use reasonable endeavours to recover lost data from the most recent backup archive at the fee charged by us for that service.

4.11 If you exceed your permitted bandwidth or storage space under the plan you have elected to subscribe to, you must either:-

4.11.1 upgrade the plan you have subscribed to and pay us the difference in the Monthly Licence and Hosting Fee between the new plan and the previous plan; or

4.11.2 purchase additional bandwidth or storage space at the fee charged by us for the same.

4.12 If you elect to install or seek our assistance in connection with the installation of third party software, you:-

4.12.1 must pay us the fee charged by us for assisting you with the installation of the third party software;

4.12.2 represent and warrant to us that you have or will have the right to use and install that third party software, that you have paid or will pay any relevant fees pertaining thereto and that the third party software does not infringe the intellectual property rights of any person; and

4.12.3 agree to indemnify and keep us indemnified from and against all and any losses, loss of profits, claims, damages, actions, suits, demands, costs (including reasonable legal costs and disbursements on a full indemnity basis), interest, charges and expenses of any kind whatsoever (Loss) which we may suffer or incur or be called upon to suffer or incur as a result of assisting you with the installation of the third party software, except where the Loss arises as a result of our negligence or unlawful act or omission.

4.13 If your website is the target of a Distributed Denial of Service Attack (“DDoS”) or any similar attack or threat, you agree to:-

4.13.1 we using reasonable endeavours in taking such mitigation measures including but not limited to taking your website offline, moving it to a quarantine server, implementing access control lists (“ACL”), IP filtering and IP blocking as we, in our absolute discretion, consider to be necessary, with or without prior notice to you, and without we becoming liable in any way to you for any consequential loss, delay, disruption or interruption of service; and

4.13.2 any mitigation measures taken by us remaining in place until your website experiences at least forty eight (48) hours of continuous non-malicious “normal” traffic.

4.14 Any confidential information belonging to you including but not limited to inventory information and images entered by you or your customers on your website is and will remain your property.

4.15 If your website contains links to websites of third parties including but not limited to advertisers which are not under our control (“Third Party Sites”), you agree that :-

4.15.1 we will not be responsible or liable for any content or for any updates or changes to Third Party Sites and any content posted on such Third Party Sites;

4.15.2 all dealings between you and the operators and owners of any Third Party Sites are at your risk; and

4.15.3 to the full extent permitted by law, we will not be liable for any claims, losses or damages of any kind which you may directly or indirectly incur by dealing with the operators and owners of any Third Party Sites.

4.16 Our payment terms are contained in our invoices. Any invoice which is not paid in full by the due date will result in access to your website being blocked until

the full amount of the invoice is paid. If your website is blocked for non-payment of an account within our specified payment terms it may take up to forty eight (48) hours for your website to be unblocked.

5. Service Levels

5.1 We will use reasonable endeavours to make our network available for at least ninety nine point nine per centum (99.9%) of the time in each month (twenty four (24) hours per day) except where any of the following performance issues apply:-

5.1.1 where factors outside our reasonable control disrupt the network;

5.1.2 where your act or omission or any act or omission of any third party not associated with us disrupts our network e.g. where there is a DDoS attack on your website or on another person's website hosted on the same server;

5.1.3 where the disruption is caused by your equipment or a third party's equipment;

5.1.4 where the disruption is caused by an software issue beyond our control;

5.1.5 where the disruption results from our scheduled maintenance and/or updating programs in respect of the Software, the website and our network.

5.2 For the avoidance of any doubt, the measurement of network availability expressly excludes downtime caused by any of the performance issues identified in clauses 5.1.1 to 5.1.5 inclusive.

5.3 In this clause 5.3, "Network Downtime" exists when your website is unable to transmit or receive data and you report such downtime to us via our support ticket system.

5.3.1 Network Downtime will be measured from the time we receive the support ticket from you to the time when the website is once again able to transmit and receive data.

5.3.2 If, subject to clause 5.2, network availability is less than ninety nine point nine per centum (99.9%) in a month, we will refund to you for each period of thirty (30) minutes of Network Downtime, five per centum (5%) of the Monthly Licence and Hosting Fee paid by you to us for that period up to but not exceeding one hundred per centum (100%) of the Monthly Licence and Hosting Fee paid by you to us for that period.

6. Search Engine Rankings

6.1 You acknowledge that as the popularity of a website in any major search engine is determined by a number of factors outside our control, we do not guarantee any search engine rankings.

6.2 We will, upon your request, in our absolute discretion, provide you with limited advice on how you may improve your search ranking.

6.3 Apart from the limited advice provided by us pursuant to clause 6.2, if you require us to provide search engine optimisation services, we will provide such services at the fee charged by us for that service.

7. Credit Card Processing and Sensitive information

7.1 If you choose to store credit card information or other sensitive information on your website, you do so at your own risk and we do not accept any liability for any loss suffered by you in respect thereof.

7.2 You must use a strong security protocol such as Secure Socket Layer to safeguard your sensitive cardholder data over networks.

8. Solicitation

8.1 You must not during the period of two (2) years after the Contract ends for whatever reason, solicit, interfere with or entice or endeavour to solicit, interfere or entice away from us any of our employees, contractors or agents.

8.2 In the event of you committing a breach of clause 8.1, you agree to pay us on demand liquidated damages consisting of an amount equal to all costs incurred by us in engaging a new permanent employee, contractor or agent, as the case may be, and all temporary support costs incurred or liable to be incurred by us in the interim pending we permanently filling the position.

9. Assignment and Subcontracting

9.1 Your rights, duties and obligations under the Contract are personal to you and may not be assigned or disposed of by you in any manner whatsoever.

9.2 We may assign our rights and obligations under the Contract without your consent if we obtain from the assignee a deed in your favour whereby the assignee agrees to be bound by the Contract as if the assignee were named in these Terms as the other contracting party with you in place of us.

9.3 You must accept the deed identified in clause 9.2 in full satisfaction and discharge of our obligations under these Terms insofar as the same remain to be performed.

9.4 We may subcontract all or any part of our obligations under these Terms without your consent.

10. Force Majeure

10.1 Notwithstanding any other provision in these Terms, neither you nor we will be liable for any failure to fulfil any provision in these Terms if such fulfilment is delayed, prevented, restricted or interfered with as a result of Force Majeure.

10.2 If you are unable to perform your obligations or we are unable to perform our obligations due to Force Majeure, you or we, as the case may be, must:-

10.2.1 notify the other as soon as reasonably practicable of any delay; and

10.2.2 use reasonable efforts to resume performance in accordance with these Terms as soon as possible.

10.3 If Force Majeure continues for more than one (1) month, either you or we may terminate these Terms forthwith by giving to the other a notice of termination in accordance with clause 13.1.

11. Liability

11.1 To the full extent permitted by law, we exclude all liability in respect of loss of data, interruption of business or any consequential or incidental damages, except where we have been negligent in our performance of the Service.

11.2 To the full extent permitted by law, we exclude all representations, warranties or terms (whether express or implied) other than those set out in these Terms.

11.3 These Terms must be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions or obligations. If such legislation applies, to the extent possible and permitted, we limit our liability in respect of any claim, at our option:-

11.3.1. in the case of goods to:-

11.3.1.1 the replacement of the goods or the supply of equivalent goods;

11.3.1.2 the repair of the goods;

11.3.1.3 the payment of the cost of replacing the goods or of acquiring equivalent goods; or

11.3.1.4 the payment of having the goods repaired, and

11.3.2 in the case of services to:-

11.3.2.1 the supply of the services again; or

11.3.2.2 the payment of the cost of having the services supplied again.

11.3.3 Subject as aforesaid and otherwise to the full extent permitted by law, our liability to you for all loss or damage suffered or incurred by you from any breach by us of these Terms will be limited for each claim to the payments (excluding GST) made by you to us in respect of the Monthly Licence and Hosting Fees in the preceding period of twelve (12) months commencing on the date when your claim first arose less all amounts already paid or payable to you during that period for any other claims made by you hereunder.

12. Indemnity

12.1 To the full extent permitted by law, you must indemnify and keep us indemnified from and against all and any losses, loss of profits, claims, damages, actions, suits, demands, costs (including reasonable legal costs and disbursements on a full indemnity basis), interest, charges and expenses of any kind whatsoever which we may suffer or incur or be called upon to suffer or incur by virtue of:-

12.1.1 you have been negligent in your use of the Service

12.1.2 a breach of these Terms of Use;

12.1.3 a breach of the rights of any third party; or

12.1.4 or any violation by you of any applicable laws, rules or regulations.

13. Termination

13.1 Either you or we may at any time terminate the Contract upon giving at least one (1) month's prior written notice to the other without being obliged to give any reason therefor and the Contract will end at the expiry of that period.

13.2 Either you or we may terminate the Contract, effective upon the delivery of written notice of such termination to the other, if:-

13.2.1 either you or we fail to pay the other any moneys payable hereunder within fourteen (14) days of receipt of a written demand for payment of the said moneys from the other; or

13.2.2 there is a continued and material breach by the other of any of these Terms, provided that you or we have given the other seven (7) days prior written notice of such breach, the other has not remedied the breach within a reasonable period thereafter and it is possible for the other to take such remedial action;

13.2.3 there is an irremediable breach by the other of any of these Terms; or

13.2.4 the other becomes insolvent, is generally not paying its debts as such debts become due, makes an assignment for the benefit of creditors or, if a corporation, shall go into administration or liquidation (otherwise than for the purpose of reconstruction or amalgamation) or has presented against it a petition for its winding up or does or omits to do any act matter or thing which constitutes a ground for a court to order that it be wound up or, if an individual, commits an act of bankruptcy or is made bankrupt.

14. Consequences of Termination

14.1 Any termination of the Contract is without prejudice to your rights against us or our rights against you in respect of any antecedent breach or non-observance of any of these Terms.

14.2 To the full extent permitted by law, any termination of the Contract by us will not entitle you to a refund of the whole or any part of any fees or other money paid by you to us.

14.3 We will allow you a reasonable period of time following termination of the Contract to download your data before we remove your website and its contents from our servers.

14.4 You must pay to us upon demand all fees and other moneys payable by you to us under these Terms, which as at the date of termination of the Contract is or becomes due and payable by you to us.

14.5 You must return the Software and the Documentation to us immediately on demand upon the termination of the Contract for whatever reason.

15. Notices

15.1 Any notice or other communication given by either you or us under these Terms:-

15.1.1 must be in writing and for this purpose email will constitute writing;

15.1.2 may, in addition to any other method of service by law, be sent by email to any email address of the addressee shown in any correspondence or documents between the addressee and the sender and for this purpose you and we consent to this method of communication for the purposes of any legislation governing this method of communication; and

15.1.3 will be treated as given and received if sent by email before 3.00 p.m. on a day which is not a Saturday or Sunday or a holiday in the place of receipt, on the day it is sent and otherwise on the next day at the place of receipt provided that the sender requests a delivery receipt for the email and receives a mail system delivery report giving the date and time of delivery.

15.2 Any notice sent or delivered in accordance with clause 15.1 will be treated as validly given to and received by the addressee notwithstanding that the addressee is absent from the place to which it is sent.

15.3 Any notice from either you or us may be given and signed by your lawyer or our lawyer, as the case may be, and any notice to you or us may be given to your lawyer or our lawyer, as the case may be, by any of the methods listed in this clause 15 to the lawyer's business address or facsimile number.

16. General

16.1 If a provision of these Terms is invalid or unenforceable it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions.

16.2 You must at your expense and we must at our expense do everything reasonably necessary to give full effect to these Terms.

16.4 These Terms survive the termination of the Contract to the extent permitted by law.

16.5 These Terms will bind your and our successors in title.

16.6 None of your or our rights under these Terms will be waived or deemed to be waived except by notice in writing signed by you or by us to the other waiving the right and any such waiver by either you or us will not prejudice either your or our rights in respect of any subsequent breach of these Terms.

16.7 Apart from in clauses 13.2.1 and 13.2.2, time is not of the essence in these Terms.

16.8 The Contract and these Terms will be governed by and construed in accordance with the laws of the State of Queensland and the Commonwealth of Australia and each party hereby agrees to submit all disputes arising between them to the Brisbane Registry of any such Queensland or Commonwealth court as is competent to hear the matter.

17. Privacy

17.1 Except as required by law, you have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Personal Information you provide to us using the Service.

17.2 Both we and Telstra will treat your Personal Information in accordance with our respective Privacy Policies. You acknowledge that the Service uses data transmissions over the public internet and except as required by law, neither we nor our Telstra will be responsible for any loss, destruction, alteration or disclosure of Personal Information caused by any third party whose services are used only incidentally and without our direct involvement (for instance, third party network providers over whose networks internet traffic is transported).

17.3 To the extent we are required to process Personal Information in connection with the Service, and in addition to the matters set in each of our Privacy Policies:

17.3.1 you grant us and Telstra a licence to collect, store and use the your Personal Information for the purposes of providing the Service;

17.3.2 you consent to us and Telstra to receive, share and disclose Personal Information arising from use of the Service with telecommunications or other third party service providers used in conjunction with the Service;

17.3.3 you confirm you are entitled to disclose the relevant Personal Information to us and Telstra so that we may lawfully use, process and disclose the Personal Information to perform the Service;

17.3.4 you must ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and disclosure by us and our third party service provider as required under the Privacy Act;

17.3.5 you must comply with your obligations under our and Telstra's Privacy Policy, the Privacy Act and any other applicable law in relation to the Personal Information disclosed to us in connection with your use of the Service.

17.4 Our Privacy Policy is available at <https://www.neto.com.au/privacy-policy> and the Telstra Privacy Policy is available at <https://www.telstra.com.au/privacy/privacy-statement>