TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

1 Application of these terms and conditions

1.1 Please read the following terms and conditions carefully before executing the relevant proposal, quotation or statement of work (or combination of these documents) ("**Scope Document**") which has been provided to you by The Good Guys Discount Warehouses (Australia) Pty Ltd ABN 48 004 880 657 trading under registered business name "The Good Guys Commercial" ("**The Good Guys**").

1.2 By signing the relevant Scope Document, the customer named in the Scope Document ("**the Client**") agrees, declares and acknowledges that the Client has read and understood these terms and conditions for the supply of Services ("**Terms and Conditions**") and acknowledges that these Terms and Conditions, together with the relevant Scope Document, form the legally binding agreement (the "**Agreement**") between the Client and The Good Guys pursuant to which The Good Guys will provide the Services to the Client.

1.3 All references to the "Agreement" in these Terms and Conditions incorporate and apply to the relevant Scope Document. To the extent of any inconsistency between these Terms and Conditions and the relevant Scope Document, the terms of the Scope Document will prevail over the conflicting provisions in these Terms and Conditions.

2 Definitions

In this Agreement:

Additional Services has the meaning given in Clause 11.1;

Authorised Person means:

(a) a Related Body Corporate of the Recipient;

(b) a legal adviser of the Recipient; or

(c) an officer or employee of the Recipient or any entity referred to in paragraphs (a) or (b) above;

who has a specific need to have access to the Confidential Information for the Specified Purpose;

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the Fair Trading Act 1999 (Vic);

Business Day means a day on which trading banks are open for business in Melbourne, Victoria, except a Saturday, Sunday or public holiday;

Client's Material means all Material provided by or on behalf of the Client to The Good Guys for the purposes of this Agreement;

Client's Representative means the Client's nominated representative specified in the Scope Document;

Confidential Information means the terms of this Agreement and information made available by or on behalf of one party (the "**Discloser**") to the other ("the **Recipient**"), both before and after the day the Scope Document is executed, which relates directly or indirectly to past, present or future operations of the Discloser or any Related Body Corporate of the Discloser and which is marked or designated as "confidential", "proprietary" or some similar designation, or which a reasonable person would recognise as being confidential or proprietary considering the nature of the information and the circumstances of its disclosure;

Consumer has the meaning given to it in the Australian Consumer Law;

Consumer Guarantee means a guarantee pursuant to any of Subdivision A and Subdivision B of Division 1 of Part 3-2 of the Australian Consumer Law;

Consumer Services means services of a kind ordinarily acquired for personal, household or domestic use or consumption, as that expression is used in section 3 of the Australian Consumer Law;

Contract Material means all Material created or developed by or on behalf of a party (including by a party's employees, agents and subcontractors) under or in connection with this Agreement or in relation to the Services, but excluding the Client's Material and The Good Guys' Material;

Demand means any action, claim or demand made for Losses, compensation or any other relief;

Discloser has the meaning given in the definition of Confidential Information;

End User Licence Agreement means the licence agreement governing the use of certain Software between the Client and the owner of that Software;

GST includes any replacement or subsequent similar tax;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (*Cth);

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade names, logos, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967;

The Good Guys' Material means any Material independently created by or on behalf of The Good Guys, and includes without limitation The Good Guys' background processes, methodologies and tool-kits;

The Good Guys' Representative means The Good Guys' nominated representative specified in the Scope Document;

Losses means losses, liabilities, damages, costs, charges and expenses;

Material means material in whatever form, including without limitation documents, specifications, reports, products, equipment, information, data, graphic layouts, images and software;

Premises means the premises to which or at which the Services are to be provided for the Client;

Recipient has the meaning given in the definition of Confidential Information;

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth);

Scope Document has the meaning given in Clause 1.1;

Services means the services set out in the Scope Document (or as otherwise agreed by the parties from time to time) which are to be provided in accordance with, and subject to, the provisions of this Agreement;

Software means any software that is manufactured, licensed or owned by a third party (other than the Client or The Good Guys), the use of which is subject to that third party's End User Licence Agreement; and

Specified Purpose means the provision of the Services by The Good Guys to the Client.

3 Interpretation

In this Agreement, unless expressly stated otherwise:

3.1 a reference to this Agreement or another instrument includes any variation or replacement of either of them;

3.2 a reference to this Agreement includes all schedules and attachments to it;

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

3.4 the singular includes the plural and vice versa;

3.5 the word “person” includes an individual, firm, corporation, body corporate, joint venture, unincorporated association, trust, government and governmental and local authority;

3.6 a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;

3.7 a reference to a monetary amount is in Australian dollars;

3.8 when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;

3.9 a reference to a clause, term, or party is a reference to a clause or term of, or party to this Agreement;

3.10 a promise on the part of 2 or more persons binds them jointly and severally;

3.11 a reference to a thing (including any right) includes any part of that thing; and

3.12 headings are for convenience only and do not affect the interpretation of this Agreement.

4 Term

This Agreement commences on the date the Scope Document is signed by both the Client and The Good Guys and continues:

4.1 for the period specified in the Scope Document (unless terminated in accordance with the terms of this Agreement); or

4.2 if no period is specified in the Scope Document, until terminated in accordance with the terms of this Agreement.

5 Appointment

The Client appoints The Good Guys to supply the Services to the Client subject to the terms and conditions of this Agreement.

6 Pricing

The Client shall, in accordance with the fee schedule set out in the Scope Document (or as otherwise agreed in writing by the Client and The Good Guys from time to time), pay for the Services provided by The Good Guys.

7 Payment

7.1 The Good Guys shall invoice the Client for the Services as set out in the Scope Document.

7.2 The Good Guys must ensure that each invoice:

(a) is a valid Tax Invoice (as defined in the GST Act) for GST purposes; and

(b) states the Client unique order number(s), date of issue of invoice, the Services provided by The Good Guys and the price including GST.

7.3 Payment for the Services supplied by The Good Guys to the Client must be made without deduction unless otherwise agreed. If at any time the Client disputes an amount payable to The Good Guys, the Client will pay the disputed amount and the dispute will be resolved in accordance with Clause 25. If the dispute is resolved in favour of the Client, the Client will first set-off the disputed amount paid pursuant to this clause against any monies then due and payable to The Good Guys as at the date the dispute is resolved or should there be no monies due, the amount will thereafter be held by The Good Guys to the credit of the Client against future amounts payable by the Client to The Good Guys.

7.4 The amount shown on the invoice shall be paid by the Client within the timeframe specified in the Scope Document. If the Scope Document is silent with respect to the timeframe for payment, the amount shown on the invoice must be paid by the Client within 30 days after the end of the month of the date of the invoice.

7.5 Each amount payable by the Client under this Agreement in respect of a “taxable supply” (as defined in the GST Act) by The Good Guys is a GST exclusive amount and the Client must, in addition to that amount and at the same time, pay the GST due in respect of that supply.

7.6 Payment shall be deemed to have been made:

(a) if cash is tendered - on the date it is tendered;

(b) if a credit card is tendered - on the date upon which the credit is authorised by The Good Guys' bankers; and

(c) if a cheque or other negotiable instrument is tendered or payment is made by direct debit - on the date upon which such cheque, other negotiable instrument or direct debit is cleared by The Good Guys' bankers.

7.7 The Good Guys is entitled in its absolute discretion to set-off any credits that may appear in the Client’s account with The Good Guys against any other amounts owed by, or debts of, the Client to The Good Guys.

7.8 In the event that payment for an invoice is not received by the due date, The Good Guys reserves the right to charge the Client interest at the Default Interest Rate from the due date for payment, in respect of the total amount which is overdue. Interest will accrue on a daily basis until all monies owing are paid in full.

8 Warranties and Supply of Services

8.1 Each party represents and warrants to the other that:

(a) it is duly constituted as a corporation under the *Corporations Act 2001* (Cth); ands

(b) it has the full right, power and authority to execute and perform this Agreement.

8.2 The person executing the Scope Document on behalf of the Client warrants that they are duly authorised to execute this Agreement.

8.3 The Good Guys represents and warrants to the Client that:

(a) the Services will:

(1) be rendered with due care and skill; and

(2) comply with all applicable laws and regulations; and

(b) The Good Guys will use reasonable endeavours to supply the Services in the way and within the time specified in the Scope Document; and

(c) The Good Guys will not do anything which brings the Client into disrepute.

8.4 If the Client is a Consumer and is purchasing Services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Client acknowledges that neither The Good Guys nor any person purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in the Scope Document or this Agreement in relation to the fitness of the Services for any particular purpose or in relation to any Services provided by The Good Guys or any other matter.

8.5 In respect of the Services supplied under this Agreement, subject to Clause 8.6, if the Client is a Consumer and is purchasing Services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability of The Good Guys for loss, however caused (including by the negligence of The Good Guys), suffered or incurred by the Client because of a failure to comply with a Consumer Guarantee is limited to The Good Guys (at its election):

(a) resupplying the Services; or

(b) paying the cost of having those Services resupplied.

8.6 Clause 8.5 does not apply if it is not fair and reasonable for The Good Guys to rely on it or if the Services are Consumer Services.

9 Access to Premises

9.1 To the extent that Services are performed on the Client's Premises, the Client grants to The Good Guys the right to enter the Premises and further grants The Good Guys a licence to provide the Services within the Premises.

9.2 To the extent that Services are provided to the Client on property other than the Client's Premises, it shall be the Client's responsibility to secure, at its own cost and prior to the commencement of provision of any Services, any necessary rights of entry, licences, permits or other permissions necessary for The Good Guys to provide Services at such locations.

9.3 The Client shall provide The Good Guys with any passwords or keys (virtual or otherwise) and access to the Client's systems that The Good Guys requires in order to provide the Services to the Client.

9.4 The Good Guys shall not be liable for delay in performance or non-performance of any term or condition of this Agreement directly or indirectly arising from the Client's denial to The Good Guys of full and free access to the Client's systems, personnel or Premises as required by this Agreement.

10 Client responsibilities

10.1 In relation to the Client's receipt of the Services under this Agreement, the Client must:

(a) perform any Client obligations specified in the Scope Document; and

(b) cooperate fully and act reasonably and in good faith to assist in the timely progress and fulfilment of The Good Guys' obligations pursuant to this Agreement including, but not limited to:

(1) providing The Good Guys, in a timely manner, with all Client information, data and documentation reasonably required by The Good Guys to deliver the Services;

(2) complying with all applicable laws and regulations; and

(3) to the extent required in the Scope Document, assigning specific managerial, technical and user personnel as reasonably requested by The Good Guys to participate in essential activities relating to the

Services. The Client will ensure that all such personnel have the appropriate skills and experience to perform their functions.

10.2 The Client must ensure that all The Good Guys' personnel, agents or subcontractors are sufficiently trained in and aware of the Client's specific policies and procedures (including workplace health and safety requirements) to the extent necessary and applicable prior to them commencing work at the Premises.

10.3 The Client warrants that all information provided by the Client to The Good Guys in relation to its hardware, software and service requirements, the Premises and its existing systems is accurate and complete. To the extent permitted by law, The Good Guys accepts no liability for loss or damage arising directly or indirectly from:

(a) any integration or connectivity between any goods or Services and the Client's existing processes, products, materials or systems which is not expressly contemplated in the Scope Document; or

(b) the provision of incomplete or inaccurate information by the Client.

10.4 The Client is responsible for ensuring that it has adequate protection in place in the Client's systems to prevent circulation of computer programs or attacks from the Client's computer or network (such as viruses, worms, trojans and malicious programs and denial of service attacks).

10.5 If the Client's failure to comply with the Client's obligations set out in this Agreement prevents or delays The Good Guys from meeting its obligations to the Client, then:

(a) the time for performance of The Good Guys' relevant obligations will be extended for a period of time that is equal to the additional amount of time taken by the Client to perform the Client's interdependent obligations;

(b) where The Good Guys is required to incur additional costs as a result of the Client's failure or delay, The Good Guys may charge the Client those additional costs; and

(c) to the extent that the Client's failure causes The Good Guys to breach this Agreement, The Good Guys will not be liable for that breach or its consequences.

11 Additional Services

11.1 The Client may, from time to time, request The Good Guys to provide the Client with services which are different from, or in addition to, the Services (**Additional Services**).

11.2 Following a request by the Client under Clause 11.1, The Good Guys will prepare as soon as possible (and in any event within 20 Business Days) a written proposal which indicates whether The Good Guys is able and willing to provide those Additional Services to the Client. That proposal will:

(a) include The Good Guys' proposed amendments (if any) to the Scope Document or any other part of this Agreement as a result of the Additional Services;

(b) respond to any requests for information the Client gives to The Good Guys at the time of requesting the Additional Services; and

(c) state the price at which the Additional Services would be provided.

11.3 Following the Client's receipt of The Good Guys' proposal under Clause 11.2, the Client may confirm that it:

(a) accepts The Good Guys' proposal, in which case the parties will proceed in accordance with Clause 11.4;

(b) wishes to negotiate the terms of The Good Guys' proposal, in which case The Good Guys may elect to (but is not obliged to) negotiate in good faith and seek

to agree the terms of the proposal with the Client (including the price and terms on which the Additional Services will be provided, and on any amendments to this Agreement (including the Scope Document) as a result of the Additional Services); or

(c) rejects The Good Guys' proposal.

11.4 If agreement is reached for Additional Services, the parties will effect a variation to this Agreement, in accordance with Clause 27.2, to incorporate the Additional Services and any amendments to this Agreement. From the date of execution of the variation by both parties, the Additional Services will form part of the Services and the prices for the Additional Services will constitute fees payable in accordance with the terms set out in Clause 6. Until such agreement is reached, The Good Guys is under no obligation to provide the Additional Services.

11.5 For the avoidance of doubt, any change to the scope of work or assumptions specified in a Scope Document shall be managed in accordance with the provisions of this Clause 11. The Client acknowledges that changes to any of the assumptions relating to the Services and/or the Client's requirements agreed to by the parties in the relevant Scope Document may affect the ability of The Good Guys to deliver the Services in accordance with any agreed milestones and in such event the parties shall work together in good faith to minimise the impact of the change. The Good Guys shall have no liability for any delays or increased costs in the delivery of the Services which result directly from changes to any of the assumptions specified in the Scope Document.

12 Goods

12.1 To the extent that the Client purchases any goods from The Good Guys, the sale of those goods to the Client by The Good Guys will be governed by the separate "Terms and Conditions of Sale" given to the Client by The Good Guys in respect of those goods, not this Agreement.

13 Insurance

13.1 The Good Guys must effect and maintain each of the insurances specified in the Scope Document (if any).

13.2 Upon the Client's request, The Good Guys will provide the Client with certificates of currency as evidence of the insurances required to be effected and maintained by The Good Guys in accordance with this Clause 13.

14 Service Level Agreements

14.1 The Good Guys must use its reasonable endeavours to achieve any applicable Service Level Agreements set out in the Scope Document (**SLAs**) at all times in the performance of its obligations under this Agreement.

14.2 In the event that The Good Guys fails to meet an SLA, the Client may request senior managers of The Good Guys to attend a management meeting in which case those managers must meet with the Client's management to discuss in good faith:

(a) the areas in and reasons why the SLA is not being met; and

(b) the actions and timeline proposed to address that failure.

15 Relationship

15.1 Nothing in this Agreement constitutes a relationship of employer and employee, principal and agent, joint venture or partnership between the Client and The Good Guys.

15.2 Unless otherwise agreed by the parties in the Scope Document, The Good Guys may subcontract the performance of this Agreement or any part of this Agreement.

15.3 Notwithstanding the appointment of a subcontractor, The Good Guys shall remain primarily responsible to the Client for the performance, fulfilment and observance of its obligations under this Agreement as if any such subcontracting had not occurred.

16 Limitations and exclusions

16.1 Subject to Clause 16.2, and except to the extent to which such liability cannot be excluded or limited pursuant to an applicable law (including, without limitation, the Australian Consumer Law), if the Client is a Consumer and is purchasing services which are not of a kind ordinarily acquired for personal, domestic or household use or consumption:

(a) in no event shall either party, in connection with this Agreement or otherwise in relation to the Services, be liable to the other party or its Related Body Corporates (or the officers, directors, employees or shareholders of any of them) in contract (including under any warranty or indemnity or any other breach, actual or anticipatory, including repudiation), tort (including negligence), equity, restitution, under statute or regulation, under any other legal cause or action, claim or right, or otherwise for any: (1) loss of profits; (2) loss of revenue; (3) loss of anticipated savings; (4) loss of business opportunity; (5) loss of data; (6) loss of goodwill or reputation; (7) special loss; or (8) punitive or exemplary damages; and

(b) each party's total aggregate liability to the other party and any of the other party's Related Body Corporates (and the officers, directors, employees and shareholders of any of them), in connection with this Agreement or otherwise in relation to the Services (excluding liability to pay the fees), whether in contract, tort (including negligence), under statute or otherwise, is limited to the lesser of $500,000 and the total amount of the fees paid (or payable) by the Client to The Good Guys pursuant to this Agreement in the 12 month period immediately preceding the event giving rise to such liability.

16.2 Nothing in this Agreement shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Australian Consumer Law) which cannot by law be excluded, restricted or modified.

17 Force Majeure

17.1 The Good Guys will not be or deemed to be in default or breach of any contract or this Agreement as a result of the effects of force majeure. Force majeure will include any cause beyond the reasonable control of The Good Guys (such as, without limitation, an act of God, fire, explosion, unusual or extreme weather conditions, terrorism, war, revolution, any other unlawful act against public order or authority, civil disturbance, an industrial dispute including strike or other labour disturbances, a government restraint, a shortage or unavailability of raw materials, production capacity or transportation, actions or failures by third party suppliers, power cuts, internet failures, technical failures or issues, cable damage, cyber attack, viruses, malware or security breach).

17.2 The Good Guys will not be liable for any loss incurred as a result of delay or failure to observe the terms of this Agreement due to the effects of force majeure.

18 Occupational health and safety

18.1 Each party agrees to comply with all occupational health and safety requirements specified in any applicable law in connection with the performance of the Services.

18.2 If a party has any concerns regarding occupational health and safety, the parties will meet to discuss any such concerns and will act in good faith to address those concerns.

19 Intellectual Property

19.1 The Client's Material remains the Client's property. The Good Guys acknowledges that The Good Guys does not own any Intellectual Property Rights in the Client's Material. The Client grants The Good Guys a non-exclusive, non-transferable, irrevocable, royalty-free, sub licensable and perpetual licence to use and reproduce the Client's Material for the purpose of The Good Guys performing its obligations under this Agreement.

19.2 The Good Guys' Material remains The Good Guys' property. The Client acknowledges that the Client does not own any Intellectual Property Rights in The Good Guys' Material. The Good Guys grants the Client a non-exclusive, non-transferable, irrevocable, royalty-free, sub licensable and perpetual licence to use and reproduce The Good Guys' Material for the purpose of the Client performing its obligations under this Agreement.

19.3 Subject to Clause 19.5, all Intellectual Property Rights in any Contract Material will be owned by the party developing such Contract Material.

19.4 A party may not use the other party's logo or trademarks for any purpose without the other party's prior written consent and subject to any conditions that party may impose.

19.5 The Client acknowledges and agrees that the Client's use of, and its rights and obligations in respect of, any Software supplied to the Client by The Good Guys in connection with the Services is governed by the applicable End User Licence Agreement for that Software.

19.6 The Client shall comply with the terms of any End User Licence Agreement relating to the Software, and will indemnify and hold harmless The Good Guys against any loss, damage, cost, expense incurred by The Good Guys arising from or in connection with a breach by the Client of the terms of the End User Licence Agreement.

19.7 The Client agrees that it must not reverse engineer, modify, disassemble, decompile or create derivative works from the Goods and/or Services.

20 Client Data, Personal Information, Backup and Disaster Recovery Services, Hardware repairs, Excess Internet Usage

20.1 As between the Client and The Good Guys, the Client shall own all data and personal information provided by, or relating to, the Client.

20.2 Each party shall, at all times, comply with the provisions of the *Privacy Act 1988* (Cth) in relation to any personal information provided by, or relating to, the other party.

20.3 Unless otherwise agreed in the Scope Document, The Good Guys has no obligation to the Client under this Agreement, and will not, provide backup management or disaster recovery services and hardware repairs including manufacturer warranty services, or pay for excess Internet usage charges which the Client may incur as a result of the provision of the Services by The Good Guys.

21 Confidentiality and announcements

21.1 A party must not, without the prior written approval of the other party (not to be unreasonably withheld), use the other party's name or any trade name or trade mark belonging to the other party in press releases or in any form of advertising, provided that this Clause does not prevent The Good Guys from using the Client's name in connection with the delivery of the Services in the ordinary course of business.

21.2 The Recipient must, except to the extent permitted under this Agreement, or with the prior written consent of the Discloser:

(a) only use the Confidential Information for the Specified Purpose;

(b) hold the Confidential Information in strict confidence and not disclose the Confidential Information or cause or permit the disclosure of the Confidential Information;

(c) keep the Confidential Information so that it is protected from any unauthorised access, use, copying, reproduction or disclosure which is inconsistent with this Agreement; and

(d) promptly notify the Discloser if it suspects, or becomes aware of, any unauthorised use or disclosure of the Confidential Information.

21.3 Provided that:

(a) the Recipient informs the Authorised Person that the Confidential Information is confidential and subject to the terms of this Clause 21; and

(b) such disclosure is necessary for, and is solely for, the Specified Purpose,

the Recipient may disclose Confidential Information to an Authorised Person.

21.4 The Recipient must:

(a) procure that each Authorised Person strictly observes all of the Recipient's obligations under this Agreement as if those obligations were imposed on the Authorised Person; and

(b) ensure that no Authorised Person does anything which, if done or omitted to be done by the Recipient, would be inconsistent with this Clause 21.

21.5 The provisions of Clauses 21.2 - 21.4 do not apply to Confidential Information:

(a) which is in the public domain, other than as a result of a breach of this Clause 21 or any other obligation of confidentiality;

(b) which at the time of first disclosure to the Recipient by the Discloser, or any person engaged by the Discloser, was already in the lawful possession of the Recipient; or

(c) received in good faith by the Recipient from a person (other than a Discloser or any person engaged by the Discloser) legally entitled to possess that information and provide it to the Recipient.

21.6 Nothing in this Clause prevents the Recipient or an Authorised Person disclosing any Confidential Information to the extent (but only to the extent) that such disclosure is required to be made by law or any relevant regulatory authority or stock exchange.

22 Solicitation

The Client acknowledges and agrees that during the term of this Agreement and for a period of one year following the termination of this Agreement, the Client will not (without the prior written consent of The Good Guys), individually or in conjunction with others:

22.1 directly or indirectly solicit or recruit any of The Good Guys' employees or subcontractors; or

22.2 induce or influence any of The Good Guys' employees or subcontractors to discontinue or reduce the scope of their business relationship with The Good Guys.

23 Termination

23.1 Either party may terminate this Agreement with immediate or later effect by giving notice to the other party if:

(a) that other party breaches any material term of this Agreement (other than a trivial breach causing no material harm) capable of remedy and fails to remedy the breach within 30 days after receiving notice requiring it to do so;

(b) that other party breaches any material term of this Agreement (other than a trivial breach causing no material harm) which is not capable of remedy; or

(c) if any step or event referred to in Clause 23.2 is taken by, or occurs to, the other party (whether or not notified).

23.2 A party must notify the other party immediately if:

(a) it suspends payment of its debts generally or is, or becomes, unable to pay its debts when they are due or is, or becomes, unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth);

(b) it enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;

(c) it ceases, or threatens to cease, to carry on business;

(d) a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of its assets or undertakings, an application or order is made for the winding up or dissolution of it, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of it, except for the purpose of an amalgamation or reconstruction which has the other party's consent;

(e) it takes or suffers any other action in consequence of debt including giving notice to its creditors or any of them that it has suspended or is about to suspend payment or is unable to pay its debts or any distress, execution or other process has been levied upon the whole or any part of its assets;

(f) a proposal or threat to do any of the above acts or things is made in respect of it; or

(g) an event happens to it analogous to an event specified in sub-clauses 23.2(a) to (f), including an event to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied.

23.3 Either party may terminate this Agreement for convenience by giving 60 days prior written notice to the other party.

24 Consequence of Termination

24.1 Clauses 7, 8, 15.3, 16, 21, 24, 25, 26 and 27 of this Agreement survive termination, together with any provisions necessary to give effect to those clauses.

24.2 The termination of this Agreement will be without prejudice to any accrued right or remedy of a party in relation to any breach of, or default under, this Agreement by the other party occurring prior to termination.

25 Disputes

25.1 Nothing in this Clause 25 prevents a party seeking urgent injunctive or similar interim relief from a court.

25.2 Subject to Clause 25.1, each party must follow the procedures in this Clause 25 with respect to any dispute arising out of or in connection with this Agreement before starting court proceedings.

25.3 If a dispute arises out of or in connection with this Agreement, the Client's Representative and The Good Guys' Representative will first attempt to resolve it as appropriate.

25.4 If a party considers that a dispute has still not been resolved under Clause 25.3, that party must promptly send a notice to the other party (**Dispute Notice**) setting out a full description of the dispute.

25.5 Once a Dispute Notice has been given under Clause 25.4, the executive management of each party (or their nominee or delegate) must meet and attempt to resolve the dispute in good faith.

25.6 If a dispute is not resolved within 60 calendar days of the issue of the Dispute Notice, or any longer time the parties may agree, either party may commence or initiate appropriate legal proceedings.

25.7 Each party must continue to perform this Agreement despite the existence of a dispute or any proceedings under this clause, except if the dispute renders it impossible to do so.

26 Notices

26.1 A party notifying or giving notice under this Agreement must notify in writing; directed to the address specified by that party in the Scope Document (or as altered by notice) and hand delivered or sent by prepaid post or emailed to that address.

26.2 A notice given in accordance with Clause 26.1 will be taken to have been received:

(a) if hand delivered, on delivery;

(b) if sent by prepaid post, 3 Business Days after the date of posting (or 8 days after posting if posted to or from a place outside Australia); or

(c) if sent by email, unless the party sending the email knows or reasonably ought to suspect that the email was not delivered to the addressee's domain specified in the email address notified for the purposes of this Clause, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

27 General

27.1 This Agreement is governed by the laws of Victoria, Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, Australia.

27.2 Subject to any terms implied by law (including, without limitation, the Consumer Guarantees under the Australian Consumer Law), unless The Good Guys otherwise agrees in writing, this Agreement constitutes the only terms which shall apply to Services supplied to the Client pursuant to a Scope Document.

27.3 This Agreement may not be varied except in writing signed by the parties.

27.4 A provision of, or a right, discretion or authority created under, this Agreement may not be waived except in writing signed by the party granting the waiver.

27.5 A failure or delay in exercise, or partial exercise, of a power, right, authority, discretion or remedy arising from a breach of, or default under this Agreement does not result in a waiver of that right, power, authority, discretion or remedy.

27.6 A party may not assign its rights under this Agreement without the consent of the other party.

27.7 Each party must pay its own costs and expenses in respect of the negotiation, preparation, execution, delivery and registration of this Agreement and any other agreement or document entered into or signed pursuant to this Agreement.

27.8 Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

27.9 A reference in this Agreement to "includes" or "including" means includes, without limitation and including, without limitation, respectively.

27.10 No term or condition of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision.

27.11 The Good Guys' policy on the collection, use and disclosure of customers' personal information is set out in its **Privacy Policy** which forms part of this Agreement.

27.12 **End User Licence Agreements**

(a) The Services may require the Client to agree to an End User Licence Agreement. The Client acknowledges and agrees that The Good Guys may not be able to provide the Services unless the Client agrees to any applicable End User Licence Agreements.

(b) The Client undertakes that it will comply with the terms of any End User Licence Agreements to which it is bound.

27.13 **Use of the Services**

(a) Except as otherwise set out in the Scope Document, and subject to payment of the Fees in accordance with these terms and conditions, the Client is granted a limited, non-exclusive, non-transferable right during the Term to use the Services solely for internal business purposes.

(b) All Services are subject to the exclusions, assumptions, limitations and use restrictions stated in the Scope Document, any End User Licence Agreement and the Service Documentation.

(c) The Client is responsible for maintaining the security of its login credentials used to access the Services.

(d) The provision of the Services to the Client may be suspended if the Client:

(1) fails to comply with the terms of the Scope Document, after being given reasonable written notice to comply (provided that no prior written notice is required if the breach is material and may cause imminent harm to the Services or other users or a breach of any applicable laws);

(2) uses the Services in an unlawful manner; or

(3) does anything that may cause damage to, or compromise the stability, function or security of, the Services, or that interferes with any other user or violates The Good Guys' Intellectual Property Rights.

27.14 **Changes to Services**

(a) The Client acknowledges and agrees that The Good Guys may, at any time, modify, update and/or substitute (Change) all or part of the Services, including due to new technologies or new legislation, or where a subcontractor changes the terms upon which they supply any part of the original Services.

(b) If such Change materially alters the performance or functionality of the original Services, The Good Guys will notify the Client of the Change and provide the Client with the option to terminate the relevant Services within 30 days from the notice of the Change.

(c) If the Client elects not to terminate the Services in accordance with Clause 27.14(b) , The Good Guys and the Client will negotiate in good faith to renegotiate the Scope Document, including a reduction in the fees for any Services that have reduced in scope, specifications or standard.

27.15 **Credit Limit**

(a) The grant of any credit facility and/or the nomination of any credit limit is an indication only of The Good Guys' intention at that time and The Good Guys may vary, reduce or withdraw any credit facility at any time and without any liability to the Client or any other person or entity. The Client agrees to pay on demand all sums owing in connection with this credit facility if the credit facility is withdrawn. The Client acknowledges that The Good Guys may make additional periodic credit checks on the Client to ensure the Client remains credit worthy.

(b) When any order is placed or a quote is accepted by the Client, the Client shall inform The Good Guys of any facts which might reasonably be expected to affect any decision to accept the order and/or grant credit. Any failure to do so shall be deemed to create an inequality of bargaining position, the taking of an unfair advantage of The Good Guys and to be unconscionable, misleading and deceptive.

27.16 **Monitoring and Access**

(a) The Client agrees that The Good Guys may electronically monitor the Client's access and use of the Services for such purposes as ensuring compliance with the Scope Document and these terms and conditions.

(b) The Good Guys will advise the Client of the nature of the monitoring capabilities over the Services and associated systems.