

1. SUBSCRIPTION AGREEMENT

This subscription agreement sets out the terms and conditions on which Deputec provides its Customers and their Authorised Users with access to and the use of the Deputec Application. This Agreement applies to both Trial Subscription and Paid Subscription Customers and their Authorised Users.

By choosing to register with Deputec, the Customer represents and acknowledges that it has read, understood and agreed to be bound by the terms and conditions of this Agreement. If you enter into this Agreement as an agent, officer, employee or other representative of a Customer, you and the Customer warrant to Deputec that you are duly authorised to enter into this Agreement on behalf of the Customer.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Agreement, unless the contrary intention appears, the following words have the following meanings:

Additional Fee	means any fee payable by the Customers to Deputec for the provision of any Additional Services, charged at a rate as agreed between the parties and in addition to the Fees.
Additional Services	means any additional, customised or customisable services which Deputec may provide at the request of its Customers, for an Additional Fee, at any time and from time to time, and includes without limitation, the provision of consulting, customisation, implementation, training, integration or any other services as well as Subscription Fees payable under clause 5.4(c)(ii)(A) and 5.4(c)(iii).
Agreement	means this subscription agreement and the terms and conditions contained therein and includes the Rate Sheet, Statement of Works and any notices published on the Deputec Website or on the Customer Installation at any time and from time to time.
Annual Subscription	means an annual Paid Subscription in respect of which the Subscription Fees are paid annually.
Annual Subscription Period	means, in respect of an Annual Subscription, the annual period of a Paid Subscription that has been invoiced in advance.
Authentication Credential	means the username and password or any other means of authentication which an Authorised User must use to gain access to the Deputec Application.

Authorised Users	means any employees, officers, agents, contractors or any other representatives of the Customer, its subsidiaries or other related entities who are issued with an Authentication Credential in accordance with this Agreement.
Business Day	means a day, which is not a Saturday, Sunday or gazetted public holiday, on which banks are open for trading in Sydney, New South Wales.
Claim	means any claim, cause of action, Liability, demand, request, requisition, notice, direction, allegation, action, proceeding, damage or judgment arising in any manner and at any time, and whether present, immediate, unascertained, future or contingent whether at law, in equity, under statute or otherwise, including a claim from or relating to a breach of the Agreement.
Commencement Date	means the date a Customer first register online or otherwise with Deputec or otherwise confirms its acceptance of this Agreement.
Confidential Information	<p>includes:</p> <ul style="list-style-type: none"> (a) in respect of Deputec: <ul style="list-style-type: none"> (i) the contents of this Agreement, the Rate Sheets, the Statement of Works, the Documentation and any other information regarding the Deputec Application; (ii) all trade secrets, confidential operations, processes or dealings relating to Deputec or its customers, suppliers, finances, affairs, management, operations, operational know-how, sales, marketing or any categories of information related to Deputec, including without limitation the Intellectual Property; (iii) any personal information relating to the officers, partners, employees, agents, contractors or clients of Deputec; (iv) any other information disclosed by Deputec that: <ul style="list-style-type: none"> (A) is identified as being confidential; or (B) would be apparent to a reasonable person that such information was disclosed in confidence by a Deputec; (b) in respect of a Customer: <ul style="list-style-type: none"> (i) the Customer Data; and (ii) any other information disclosed by the Customer

in connection with the Subscription Services and Additional Services (if any) that is:

- (A) is identified as being confidential; or
- (B) would be apparent to a reasonable person that such information was disclosed in confidence by a Deputec; and

and includes any information provided or obtained on or before the Commencement Date but does not include information which is in or has become part of the public domain, other than as a result of a breach of this Agreement or an obligation of confidence, or information which a party proves was independently acquired or developed without breaching any of the obligations set out in this Agreement.

Consequential Loss	means in relation to a breach of this Agreement, any indirect loss (including, without limitation, loss of production, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements or liability to third parties) resulting from such breach.
Customer	means the person who registers to use the Deputec Application, any party identified as the customer on any registration, order or other similar form or document submitted to Deputec and includes Enterprise Customers.
Customer Data	means all information or communications (whether relating to the Customer or its Authorised Users or otherwise) uploaded to the Deputec Application by or on behalf of a Customer or its Authorised Users.
Customer Installation	means the installation program of the Deputec Application made available by Deputec to its Customers which may vary from time to time through a nominated URL published or provided by Deputec to its Customers.
Deputec	means Deputec Pty Ltd ACN 133 632 327, a company incorporated in Australia.
Deputec Application	means any version (as applicable) of the employee scheduling, time and attendance, task management, business procedure management, payroll integration, workplace social media services and other online software applications made available by Deputec for use by its Customers and their Authorised Users from time to time and includes (where applicable) the Customer Installation.

Deputec Infrastructure	means the computer servers or other hardware used by Deputec in connection with its provision of the Subscription Services and Additional Services (if any).
Deputec Website	means the website with the URL www.deputy.com and any other website which Deputec may use or provide to its Customers for use at any time and from time to time.
Documentation	means any manuals, guides, reference materials or other similar documents, written or otherwise, provided by Deputec or made available by to its Customers in respect of the Deputec Application.
Enterprise Customer	means a Customer that is issued with a Statement of Works or is determined to be an Enterprise Customers at any time and from time to time at Deputec's sole and absolute discretion.
Enterprise Customer Service Guarantee	means the service level guarantee applicable only to Enterprise Customers and are as described in clause 12.8 and schedule 1.
Fair Use Policy	means the policy, as described in clause 9, which governs the use of the SMS Services, Deputec Application, Deputec Website, Deputec Infrastructure or any other services, application and infrastructure provided or supplied by Deputec.
Fees	means any fees or other amounts payable by a Customer to Deputec for any services provided pursuant to this Agreement, and includes without limitation the Subscription Fee, the Optional Usage Fee and the Additional Fee.
Force Majeure Event	<p>means a strike, lockout, riot, industrial action, fire, storm, tempest, act of God, material shortage, any outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority, any government law, regulation, restraint or requirement, or any other cause beyond the reasonable control of Deputec and includes, without limitation, the following:</p> <ul style="list-style-type: none"> (a) an outage or impairment of the hosting and any other services provided to Deputec by Amazon Web Services Inc.; (b) an outage or impairment of the messaging and other services provided to Deputec by Intercom R&D; and (c) other internet, telecommunications or utility outage or impairment which is beyond the reasonable control of Deputec.

Government Authority	means (as appropriate) any: <ul style="list-style-type: none"> (a) federal, state or local government; (b) department of any federal, state or local government; (c) any court or administrative tribunal; or (d) statutory corporation or regulatory body.
Improvement	means any addition, modification, alteration, development, new use or other changes to the Deputec Application which may apply at any time and from time to time by Deputec with the aim to improve the accuracy, usefulness, functionality, efficiency, cost effectiveness and any other improvements on the Deputec Application.
Indirect Tax	means a goods and services tax, a value added tax, a consumption tax or a tax of a similar kind which may apply.
Initial Term	has the meaning given to it in the Statement of Works.
Insolvency Event	in respect of a Customer, means the happening of any of these events: <ul style="list-style-type: none"> (a) an order is made, or the person passes a resolution, for its winding up; (b) an application is made to a court for its winding up and the other party is not satisfied, in its sole discretion and acting reasonably, that the application is highly likely to be set aside; (c) an administrator is appointed to the person; (d) the person resolves to appoint a controller or analogous person to the person or any of the person's property and; (e) an application is made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property and the other party is not satisfied, in its sole discretion and acting reasonably, that the application is highly likely to be set aside; or (f) an appointment of the kind referred to in subparagraph (a) is made (whether or not following a resolution or application); (g) a person holding security takes possession of greater than 10.00% of the person's property (by value); (h) the person is taken to have failed to comply with a

statutory demand under section 459E of the *Corporations Act 2001* (Cth) or its equivalent in other jurisdictions and the Company is not satisfied, in its sole discretion and acting reasonably, that any subsequent winding up application is highly likely to be set aside;

- (i) the person suspends payments of its debts, ceases (or threatens to cease) to carry on all or a material part of its business, states that it is unable to pay its debts or is or becomes otherwise insolvent;
- (j) the person is taken by applicable law to be (or if a court would be entitled or required to presume that the person is) unable to pay its debts or otherwise insolvent;
- (k) the person dies, ceases to be of full legal capacity or otherwise become incapable of managing its own affairs for any reason;
- (l) the person takes any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth) or its equivalent in other jurisdictions);
- (m) the person takes any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
- (n) any analogous event.

Intellectual Property

means all present and future rights to intellectual property including any inventions and improvements, trademarks, designs, copyright, any corresponding property rights under the laws of any jurisdiction and any rights in respect of an invention, discovery, trade secret, secret process, know-how, concept, idea, information, process, data or formula as well as any patents and patent applications, copyrights and all brand names and business names as may be developed or registered now or in the future by Deputec, whether registered or unregistered and includes, without limitation:

- (a) the Customer Installation;
- (b) the Deputec Application;
- (c) the Deputec Instructure;
- (d) the Deputec Website;
- (e) any Documentation; and
- (f) any Improvements.

Liability	means any liability, loss, cost, expense, obligation, debt, damage, charge, penalty, outgoing or payment.
Loss	means any loss, including any damage, claim, action, liability, cost, expense, charge, penalty, outgoing or payment and legal costs and expenses on a full indemnity basis however arising and includes Consequential Loss.
Monthly Subscription	means a monthly Paid Subscription in respect of which the Subscription Fees are paid monthly.
Non-Enterprise Customer	means each Customer that is not an Enterprise Customer.
Online Technical Support	means the receipt of and response to any online technical support queries submitted by the Customer or its Authorised Users in respect of the use and operation of the Deputec Application.
Optional Usage Fee	means the then current fees payable for the subscription of optional features available on the Deputec Application (for example, SMS fees), the rate at which is specified in the Rate Sheet, which may be varied at any time and from time to time.
Paid Subscription	includes different types of subscription to varying levels of access to the Deputec Application and the Subscription Services which is made available by Deputec to its Customers in consideration for the Subscription Fees, the content of which may be varied at any time and from time to time.
Payment Facility	means any credit card, bank card, bank account or other payment facility, details for which are provided by the Customer to Deputec in respect of the payment of the Fees.
Rate Sheet	means the then current pricing documentation made available to Customers on the Deputec Website or Customer Installation or provided to by Deputec its Customers, the content of which may be varied at any time and from time to time.
SMS Services	means the SMS messaging service made available by Deputec for use by its Customers and their Authorised Users from time to time.
Standard Establishment	means the standard version or implementation of the Deputec Application provided by Deputec
Statement of Works	means the document titled 'Statement of Works' in the form of a quotation for works or a similar form of document issued by Deputec to its Enterprise Customers, the content of which vary from time to time.

Subscription Fee	means the then current subscription fee payable by a Customer in respect of a Paid Subscription, at a rate specified at the domain: https://www.deputy.com/pricing or in the case of Enterprise Customers, the rate specified in the Rate Sheet, which may vary at any time and from time to time.
Subscription Services	means the services provided by Deputec to its Customers as described in clause 4.
Subscription Type	means the type of subscription which a Customer may subscribe to with Deputec and includes: <ul style="list-style-type: none"> (a) Trial Subscription; (b) all types of Paid Subscription; and (c) any other subscriptions type which Deputec may offer at any time and from time to time, and the Subscription Services related to the Subscription Type.
Support Hours	means the hours in which Deputec will provide any applicable support services to the Customer, as published on the Deputec Website or the Customer Installation and updated by Deputec from time to time.
Support Services	means the support services in respect of the use of Deputec Application as described in clause 10.
Tax	means any taxes, rates, levies imposts, duties or other charges assessed or payable to any Government Authority and includes any additional taxes, interest, penalties, charges, fees or other amounts imposed on or in respect of any of the above.
Term	has the meaning given to it in clause 3.
Third Party Application	means any product, service, system, application or internet site integrated or interfaced with the Deputec Application which may be owned or operated by a Third Party Provider which is used by a Customer or its Authorised User in connection with the Deputec Application.
Third Party Provider	means any third party that provides support, technology and/or other products or services that may be used by a Customer or its Authorised User in connection with the Deputec Application.
Trial Subscription	means the limited trial access to the Deputec Application which Deputec makes available to Customers free of charge.

Unacceptable Content means any content which, in Deputec's reasonable opinion, is obscene, offensive, upsetting, defamatory, illegal or inappropriate, infringes or appears to infringe the intellectual property rights of any person or contravenes or appears to contravene any applicable laws, regulations or codes of conduct.

2.2 Interpretation

In this Agreement, unless the subject or context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender includes every other gender;
- (c) a reference to a party or person includes a reference to that party or person, its successors, substitutes (including, but not limited to, a party or person taking by novation), executors, administrators and assigns;
- (d) a reference to anything or matter is a reference to the whole and any part of it;
- (e) a reference to a group of persons or parties is a reference to any two or more of them jointly and to each of them individually;
- (f) a reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this Agreement;
- (g) where any clause contains sub-clauses, paragraphs or sub-paragraphs, each sub-clause, paragraph and sub-paragraph however called will be read and construed separately and independently of each other;
- (h) where any word or phrase is given a definite meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (i) a reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof;
- (j) the word 'person' includes a corporation, trust, individual and or any other entity;
- (k) where under or pursuant to this Agreement or anything done under this Agreement the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing must be done on the immediately succeeding Business Day;
- (l) a reference to this Agreement or other document includes any variation, novation or replacement of or supplement to any of or supplemental to any of them from time to time;
- (m) a reference to a document includes any agreement in writing, certificate, notice or other instruction of any kind;
- (n) "writing" and related expressions includes all means of reproducing words in a tangible and permanently visible form;

- (o) headings are inserted for guidance only and do not affect the interpretation of this Agreement; and
- (p) no rule or construction applies to the disadvantage of a party because this Agreement was prepared by (or on behalf of) that party.

3. TERM

This Agreement commences on the Commencement Date and will continue to apply until it is terminated in accordance with clause 15. For the avoidance of doubt, the terms and conditions of this Agreement continue to apply regardless of any changes in the type of subscription which may be varied at any time and from time to time.

4. SUBSCRIPTION SERVICES

4.1 Provision of Subscription Services

For the duration of the Term, Deputec grants a non-exclusive, non-transferable (except as expressly provided in this Agreement), limited licence to the Customer and its Authorised Users to access and use:

- (a) the Standard Establishment of the Deputec Application, but does not include any customisation beyond the scope of the Standard Establishment;
- (b) the level of access to the Deputec Application commensurate with and appropriate for their Subscription Type;
- (c) the Documentation; and
- (d) the Support Services,

subject to the terms of use displayed on the Deputec Website at the time of use and this Agreement.

4.2 Additional Services

- (a) Deputec may, at the request of a Customer and for an Additional Fee, provide Additional Services to a Customer. Unless expressly agreed otherwise, any Additional Services will be provided on the terms and conditions of this Agreement.
- (b) A Customer wishing to obtain Additional Services must provide a written request to Deputec no later than fifteen (15) Business Days before the intended commencement date of the Additional Services.
- (c) If a Customer's request for Additional Services is accepted, Deputec will endeavour to provide the Customers with a notice containing a schedule of the Additional Fee (**Fee Schedule**) before the commencement of the Additional Services.
- (d) A Customer is taken to have accepted the Fee Schedule if the Additional Services has already commenced at the request of the Customer or the Fee Schedule is not disputed within three (3) Business Days of receipt.
- (e) Additional Services are offered by Deputec at its sole and absolute discretion and

nothing in this clause 4.2 obliges Deputec to provide any Additional Services requested by a Customer.

5. SUBSCRIPTION TYPE

5.1 Trial Subscription

A Customer who registers with Deputec on the Deputec Website or via an authorised application marketplace will first be automatically subscribed for the Trial Subscription. A Customer on a Trial Subscription is provided with limited access to the Deputec Application, designed to provide it with an opportunity to trial the features before subscribing.

5.2 Paid Subscription

A Customer who wishes to gain access to more features of the Deputec Application or add additional Authorised Users may choose to subscribe to one or more of the Paid Subscription levels on the Deputec Website and may add additional Paid Subscriptions at any time and from time to time. The Subscription Fee and the applicable features of Subscription Services are published and made available on the Deputec Website. Access to and features available on the Deputec Application may differ between various Paid Subscription levels.

5.3 Enterprise Customers

A Customer who wishes to subscribe as an Enterprise Customer will be issued with a Statement of Works, which contains the Subscription Fee and the features of the Subscription Services.

5.4 Changing Subscription Types

- (a) A Customer may:
 - (i) subscribe for any Subscription Type and may subscribe for more than one Subscription Types at any one time; and
 - (ii) request to change its Subscription Type at any time and from time to time by making a request via any change request method nominated by Deputec from time to time (which may include a request using the Deputec Application, email or online help) (**Notice of Change**), subject to this clause 5.4.
- (b) Where Customer wishes to make changes in respect of a Monthly Subscription and intends to:
 - (i) reduce their level of subscription to a subscription with fewer available features, the Customer must provide Deputec with a Notice of Change no less than 5 days prior to the end of the then current month and the changes will take effect at the start of the next month;
 - (ii) reduce their level of subscription to a subscription with fewer permitted Authorised Users, the Customer must provide Deputec with a Notice of Change prior to the effective date of the change and will only be required to pay a reduced Subscription Fee for each permitted Authorised User that is removed from the subscription as follows; the Subscription Fee multiplied by the number of days from the start of the month until the effective date of the

change, divided by the number of days in that month and, for the avoidance of doubt, the full Subscription Fee remains payable in respect of all other permitted Authorised Users;

- (iii) increase their level of subscription to a subscription with more permitted Authorised Users, the Customer must provide Deputec with a Notice of Change prior to the effective date of the change and must pay a pro-rata proportion of the monthly Subscription Fee per additional permitted Authorised User calculated as; the monthly Subscription Fee multiplied by the number of days from the effective date of the change until the end of the then current month, divided by the number of days in that month, and the amount payable will be an Additional Fee; and/or
 - (iv) increase their level of subscription to a subscription with more features, the Customer must provide Deputec with a Notice of Change prior to the effective date of the change and must pay an amount per permitted Authorised User calculated as; the difference between the two Subscription Fees for the Subscription Types, multiplied by the number of days from the effective date of the change until the end of the then current month, divided by the number of days in that month, and the amount payable will be an Additional Fee.
- (c) Where a Customer wishes to make changes in respect of an Annual Subscription and:
- (i) reduce their level of subscription to a subscription with fewer permitted Authorised Users or fewer features, the Customer must provide Deputec with written notice of the changes no less than 14 days before the expiration of the then current Annual Subscription Period and the changes will take effect on and from the expiration of the then current Annual Subscription Period;
 - (ii) increase their level of subscription to a subscription with more permitted Authorised Users, the Customer must provide Deputec with a Notice of Change prior to the effective date of the change and may elect to either:
 - (A) pay a pro-rata proportion of the annual Subscription Fee per additional permitted Authorised User calculated as; the annual Subscription Fee multiplied by the number of days from the effective date of the change until the end of the then current Annual Subscription Period, divided by 365, and the amount payable will be an Additional Fee; or
 - (B) subscribe for an additional Monthly Subscription in respect of the additional permitted Authorised Users; and/or
 - (iii) increase their level of subscription to a subscription with more features, the Customer must provide Deputec with a Notice of Change prior to the effective date of the change and must pay an amount per permitted Authorised User calculated as; the difference between the two Subscription Fees for the Subscription Types, multiplied by the number of days from the effective date of the change until the end of the then current Annual Subscription Period, divided by 365, and the amount payable will be an Additional Fee,

and thereafter, the amount payable annually in respect of the Annual Subscription

will be the Subscription Fee payable for that Subscription Type.

- (d) Where a Customer wishes to change from a Monthly Subscription to an Annual Subscription, the Customer must provide Deputec with no less than 5 days written notice prior to the effective date of the change and the change will take effect at the end of the then current month.
- (e) Where a Customer wishes to change from an Annual Subscription to a Monthly Subscription, the Customer must provide Deputec with no less than 14 days written notice prior to the effective date of the change and the change will take effect at the end of the then current Annual Subscription Period.

5.5 Features may vary

Deputec may, at any time and from time to time, amend, vary or remove any of the features, functions and other benefits made available to the Customers and its Authorised Users in respect of the Deputec Application as it sees fit without any prior notice to the Customers.

5.6 Deputec retains sole discretion

The Customer agrees and acknowledges that Deputec retains the sole and absolute discretion regarding any of the features, functions and other benefits made available to the Customers and its Authorised Users in respect of the Deputec Application. Nothing in this Agreement requires Deputec to provide or maintain any features, functions or other benefits in respect of the Deputec Application. The Customer also acknowledges and agrees that nothing in this Agreement limits Deputec's right to discontinue or alter any such features, functions or other benefits at any time and from time to time.

5.7 Additional features

A Customer with a Paid Subscription may request additional features or functions, support, updates or other services to be provided by Deputec as an Additional Service and these Additional Services will be provided pursuant to clause 4.2. Deputec may publish or otherwise make available the additional features or functions, support, updates or other services on the Deputec Website, which may be varied from time to time.

6. THIRD PARTY APPLICATIONS

The Customer acknowledges and agrees that the Deputec Application may interact with Third Party Applications, require Third Party Applications or Third Party Providers to be used when utilising certain features or functionality in the Deputec Application. Where such Third Party Applications or Third Party Providers are used, the Customer acknowledges and agrees that:

- (a) Deputec makes no representations or warranties relating to the Third Party Providers or the Third Party Applications;
- (b) the Third Party Providers and Deputec are not partners, joint venturers, representatives or agents of each other;
- (c) the inclusion of any link to or integration with any Third Party Application does not constitute or imply any affiliation with, or sponsorship, endorsement or approval by Deputec of the Third Party Provider or Third Party Application;

- (d) the Customer agrees to and must abide by, and must ensure that each Authorised User agrees to and abides by, any obligations imposed upon it by such Third Party Provider, and Deputec may notify the Customer of such obligations;
- (e) access to Third Party Applications is at the Customer's risk and Deputec will not be responsible for any Loss that may result from the Customer's use of any Third Party Application, even if the Third Party Application may interface with the Deputec Application, or that Deputec may have provided installation or integration services with respect to the Third Party Application;
- (f) the Third Party Providers may have practices, terms and policies, including those relating to privacy or data security, that are different from those of Deputec and Deputec is not responsible for any these practices, terms and policies and specifically disclaims any liability for any of them;
- (g) Deputec makes no representations or warranties regarding the Third Party Applications or the Third Party Providers. Without limiting the above, Deputec does not make any representations or warranties regarding the availability or timing of any availability of any interface between the Deputec Application and any Third Party Applications;
- (h) the Customer will maintain a direct, independent contractual relationship with all Third Party Providers in relation to the Customer's access to or use of the Third Party Applications; and
- (i) Deputec is not responsible for and has no obligation to provide the Customer with any assistance or support in relation to the functioning or operation of the Third Party Applications.

7. AUTHENTICATION CREDENTIALS

7.1 Provision of Authentication Credentials

Upon request from the Customer from time to time, Deputec will provide the Customer with Authentication Credentials in order for the Authorised Users to access the Deputec Application.

7.2 Special Requirements for Authentication Credentials in use by customer infrastructure

If the Customer implements an Authentication Credential in a system or Third Party Application with the result that such a system is an Authorised User (**Authorised System**), the Customer will implement the Authorised System such that any person accessing the Deputec Application via the Authorised System can be accurately identified to Deputec upon its request, and the date, time and nature of such person's access to the Deputec Application via the Authorised System can likewise be accurately identified to Deputec.

7.3 Obligations of the Customer in relation to the Authentication Credentials

The Customer must:

- (a) ensure that each Authentication Credential is securely maintained and used only by the Authorised User to whom the Authentication Credential has been issued;

- (b) comply with any policies, guidelines or other requirements issued by Deputec from time to time in any way relating to Authentication Credentials;
- (c) immediately notify Deputec and take immediate steps to disable an issued Authentication Credential if:
 - (i) an Authorised User ceases to be employed by, contracted to, or otherwise authorised to use the Deputec Application by the Customer;
 - (ii) an Authentication Credential is lost, stolen, missing or is otherwise compromised; or
 - (iii) the Customer becomes aware of any breach of the provisions of this Agreement by the Authorised User, in which case the Authentication Credentials will be suspended until such time the breach is remedied to Deputec's satisfaction;
- (d) not transfer or allow to be transferred Authentication Credentials between or amongst Authorised Users or other individuals or systems and take all reasonable steps to ensure that Authentication Credentials are not transferred;
- (e) conduct regular checks to ensure the integrity of all issued Authentication Credentials, including regularly cross checking its list of Authorised Users with such list maintained by Deputec and provided to the Customer; and
- (f) periodically reset Authentication Credentials as and to the extent required by Deputec from time to time.

7.4 Management of Authentication Credentials

Deputec reserves the right at any time and from time to time to change and/or revoke any Authentication Credentials and will provide the Customer with a written notice of the change or revocation.

8. CUSTOMER'S RESPONSIBILITIES AND OBLIGATIONS

8.1 Customer's responsibilities

The Customer will be responsible for:

- (a) uploading all Customer Data into the Deputec Application and ensuring all Customer Data is true and accurate;
- (b) the day to day use of the Deputec Application;
- (c) obtaining all consents, permits or approvals necessary to upload the Customer Data into the Deputec Application, store the Customer Data on the Deputec Infrastructure and otherwise use the Deputec Application;
- (d) ensuring that the use of the Deputec Application by the Customer and each of its Authorised Users and the uploading and storage of the Customer Data complies with all applicable laws, regulations or codes of conduct;

- (e) satisfying itself that the Deputec Application is compatible with its own hardware, software and internet and network capabilities and maintaining all hardware, software, Third Party Applications and other technology necessary to be able to access and use the Deputec Application;
- (f) ensuring that it maintains back up or alternate systems for use if the Deputec Application is unavailable or is otherwise unable to be used by the Customer;
- (g) ensuring no Unacceptable Content is uploaded to the Deputec Application or stored in the Deputec Infrastructure; and
- (h) any acts or omissions committed by the Authorised Users or the other employees, officers, contractors or representatives of the Customer or any of its related parties in relation to the Deputec Application.

8.2 Customer obligations

8.2.1 The Customer must:

- (a) use the Deputec Application only for its internal business purposes;
- (b) only use and copy the Documentation to the extent necessary to use the Deputec Application;
- (c) comply with any policies regarding the use of the Deputec Application which Deputec may notify of its Customer from time to time (notification of which may be made available or accessible on the Deputec Website or through the Customer Installation), including without limitation, Deputec's Fair Use Policy; and
- (d) ensure that each Authorised User is either an employee or contractor of the Customer who has all authority, permissions or other approvals required to be able to access and use the Deputec Application.

8.2.2 The Customer must not, cannot and will not:

- (a) use the Deputec Application in any way or for any purpose other than as contemplated by this Agreement;
- (b) build a competitive product or service or build a product or service using similar ideas, features, functions or graphics of the Deputec Application;
- (c) permit any person other than the Authorised Users to use the Deputec Application and ensure that those Authorised Users, in using the Deputec Application, comply with the terms and conditions of this Agreement as if they were the Customer;
- (d) modify, adapt, translate, reverse engineer, decompile, disassemble or copy all or any part of the Deputec Application;
- (e) attempt to circumvent or break any encryption, decryption or other security device or technological protection measure contained in the Deputec Application;
- (f) send or store material containing software viruses, worms, trojan horses or other harmful computer code, files, scripts, agents or programs;

- (g) interfere with or disrupt the integrity or performance of the Deputec Application or the data contained therein;
- (h) attempt to gain unauthorised access to the Deputec Application, Deputec Infrastructure or its related systems or networks;
- (i) create internet "links" to or from the Deputec Application, or "frame" or "mirror" any content forming part of the Deputec Application other than on the Customer's own intranets or otherwise for its own internal business purposes;
- (j) distribute any part of the Deputec Application for commercial purposes or otherwise sublicense or resell the Deputec Application;
- (k) create derivative works from all or any part of the Deputec Application;
- (l) transfer, assign, rent, lease, lend, sell or dispose of all or any part of the Deputec Application or any compilation derived from the Deputec Application or otherwise commercially exploit or make the Deputec Application;
- (m) make any part of the Deputec Application publicly available; or
- (n) attempt or allow its Authorised Users or any other third parties to do or attempt to do any of the above.

8.3 Access to Customer's system

The Customer acknowledges and agrees that, throughout the Term, the Customer grants Deputec the right and permission to access (including by remote access) the Customer Installation and the computer systems of the Customer used to access the Customer Installation, including but not limited to, to provide support services to the Customer and to monitor the use of the Deputec Application by the Customer. The Customer must do all things reasonably requested by Deputec to ensure Deputec has such the required access during the Term.

9. FAIR USE POLICY

9.1 Unreasonable Use

For the purpose of this clause 9, **Unreasonable Use** includes, without limitation, the following:

- (a) messages sent through the SMS Services are sent to recipients other than those who are bona fide employees, contractors or associates of the Customer whose details have been entered into in the Customer Data;
- (b) the number of messages sent through the SMS Services per day exceeds the number of employees registered on the Customer Data;
- (c) Deputec determines in its sole discretion that the cost of providing the SMS Services exceed 10% of the monthly Subscription Fee;
- (d) using the Deputec Application (including the SMS Services):
 - (i) for any activity that breaches any law and regulations or in a manner other

than those intended for the Subscription Services;

- (ii) to transmit, publish or make available material that is offensive, abusive, indecent, pornographic or confidential (or promote others to engage in such acts);
 - (iii) in a way that infringes the rights of other persons, including to defame, harass, injure, menace or abuse any person or property or violate any person's privacy, to infringe any person's intellectual property rights or incite hatred against any person;
 - (iv) to send unsolicited data to third parties for any purpose;
 - (v) in a way that will interfere with, interrupt, manipulate, bypass or degrade the Deputec Application, the integrity of the Deputec Infrastructure or any network or equipment of another person; and
- (e) *for Customers on Trial Subscription only*: the messages sent through the SMS Services exceed 250 messages per day.
- (f) any acts or activities which are similar in nature.

9.2 Policy application

Deputec's Fair Use Policy applies to all Customers and all Subscription Types and is intended to ensure that the availability of the Deputec Application to all Customers and that the Deputec Application is not subject to an Unreasonable Use. Deputec reserves the right to vary the terms of the Fair Use Policy at any time and from time to time without notice. The Customer must not engage in any Unreasonable Use of all or any part of the Deputec Application and must ensure that there is no Unreasonable Use of the Deputec Application by the Customer.

9.3 Failure to comply with Fair Use Policy

The Customer acknowledges and agrees that, if Deputec, at its sole discretion, determines the Customer's use of the Deputec Application is in breach of this Fair Use Policy, Deputec has the right to, at its sole and absolute discretion, do any of the following:

- (a) give a notice or warning requesting the Customer to stop certain activities or conduct or take steps to remedy the breach;
- (b) immediately suspend or limit the Customer's access to the Deputec Application without notice;
- (c) terminate this Agreement in accordance with clause 15; and/or
- (d) charge the Customer an Optional Usage Fee for its use of the SMS Services in accordance with clause 12.1.

10. SUPPORT

10.1 Online Technical Support

For the duration of the Term and only for Customers who are eligible for Online Technical Support, Deputec will use its best commercial endeavours to provide the Customer and its Authorised Users with Online Technical Support during the Support Hours.

10.2 Support procedures

To be eligible for the Online Technical Support:

- (a) the Subscription Type which the Customer currently subscribes for is eligible for Online Technical Support; and
- (b) the Customer and its Authorised Users must comply with all support procedures or directions which Deputec may have from time to time.

10.3 No obligations to provide other services

The Customer acknowledges that the support service described in clause 10.1 is the only support services Deputec will provide to the Customer as part of the Subscription Services. The Customer acknowledges that nothing in the Agreement imposes an obligation on Deputec to develop, release or install for the Customer any updates, upgrades, patches, bug fixes, new releases or new versions in respect of the Deputec Application (**Updates**), provided however that if Deputec does develop or release any Updates, a Customer must use the Updates provided.

11. DOCUMENTATION

- (a) Deputec may, at any time and from time to time, amend, vary or update the Documentation and Deputec will notify and make the revised Documentation available to the Customers as soon as practicable.
- (b) When using the Deputec Application, the Customer agrees that it must refer to the most recent version of the Documentation provided or made available by Deputec.
- (c) The Customer also agrees that it must promptly return to Deputec or destroy any superseded versions of the Documentation in accordance with Deputec's directions or instructions.

12. FEES AND EXPENSES

12.1 Fees

For the duration of the Term, any Customer who subscribes for:

- (a) a Paid Subscription must pay to Deputec the Subscription Fee applicable to that Paid Subscription;
- (b) any optional features available on the Deputec Application must pay to Deputec any Optional Usage Fees which may be applicable; and
- (c) any Additional Services must pay to Deputec any Additional Fee which may be applicable, and

all payments must be made in accordance with clause 12.2.

12.2 Payment Facility

Any Customers who wish to subscribe for a Paid Subscription must, before the commencement of the subscription, provide Deputec with details of its Payment Facility and duly authorise Deputec to direct debit the Fees from its Payment Facility in accordance with clause 12.3 below.

12.3 Invoices and payment

Where payments are made by a Customer to Deputec and not through an authorised third party application marketplace, Deputec will:

- (a) in respect of a Monthly Subscription, at the end of each calendar month, issue the Customer with a tax invoice for the Subscription Fees, Optional Usage Fees and Additional Fees (if applicable) payable by the Customer (**Monthly Tax Invoice**) for the preceding month; and
- (b) in respect of an Annual Subscription:
 - (i) on or before the Commencement Date and each anniversary of the Commencement Date, issue the Customer with a tax invoice for the Subscription Fees (if applicable) payable by the Customer (**First Annual Tax Invoice**) for the following year; and
 - (ii) at the end of each calendar month, issue the Customer with a tax invoice for the Optional Usage Fees and Additional Fees (if applicable) payable by the Customer (**Second Annual Tax Invoice**) for the preceding month; and
- (c) deduct payment of the amount payable on the Monthly Tax Invoice, First Annual Tax Invoice and/or Second Annual Tax Invoice, as applicable (**Tax Invoice**), from the nominated Payment Facility at any time within three days of the date of issue of the Tax Invoice.

12.4 Failure to pay

12.4.1 If a Customer makes payments through the Payment Facility and not an authorised third party application marketplace and any amount cannot be deducted from the Payment Facility at the time specified in clause 12.3 and the Customer fails to rectify any non-payment of amounts due to Deputec under this Agreement within 7 days, then (without prejudice to Deputec's other rights):

- (a) Deputec may charge the Customer interest on all outstanding amounts at an interest rate of 1.5% per month, calculated daily, and will accrue from the first day on which such amounts become overdue until the outstanding amount (including all interest) has been paid in full; and
- (b) Deputec may issue a notice to the Customer stating that the Tax Invoice is overdue (**Overdue Notice**). If Deputec does not receive payment of the relevant Fees within 3 days from the date of the Overdue Notice, Deputec may cease to provide the Subscription Services and any Additional Services and may disable the Customer's and any of its Authorised User's access to the Deputec Application until such time as the outstanding amount (together with any interest) is paid in full.

12.4.2 Deputec will not be liable for any Loss suffered by the Customer as a result of Deputec exercising its rights under this clause 12.4.

12.5 Fee changes

Subject to clause 12.6, Deputec may, at any time and from time to time, change any Fees it may charge its Customers. In doing so, it will:

- (a) promptly notify the Customers by notice in writing to the Customer for any change in the Optional Usage Fees, which will be effectively on notification; or
- (b) provide the Customers with at least 30 days written notice with respect any changes to the Subscription Fees or any other Fees specified in the Rates Sheet, which will be effective 30 days from the date of the written notice,

and any written notice made pursuant to this clause will be effectively provided if Deputec publishes in a visible location the changes on the Deputec Website or the Customer Installation.

12.6 Third party fees

Where a Customer registers to use the Deputec Application through an authorised third party application marketplace and makes payment to or through that third party application marketplace in respect of its use of the Deputec Application, variations in the Fees payable will be governed by the terms relating to changes of fees contained in the agreements as between the Customer and the third party application marketplace provider, if any.

12.7 Changes to subscriptions

- (a) If the Customer notifies Deputec that it wishes to subscribe for a higher Paid Subscription level, then (unless otherwise agreed by Deputec) the new Subscription Fee is payable on the date that Deputec activates the new subscription level and the Customer will be notified of such date.
- (b) If the Customer notifies Deputec that it wishes to subscribe for a lower Paid Subscription level, then the Customer will be required to pay existing Subscription Fee until the expiry of the five day notice period specified in clause 5.4(b).

12.8 Third party agreements

This Agreement governs the relationship between Customers and Deputec and, for the avoidance of doubt, does govern or vary any agreement, contract or other arrangement between the Customers and third parties. The payment of the Subscription Fees or other amounts to Deputec is without prejudice to amounts that may otherwise be payable to third parties, including without limitation fees payable by a Customer in respect of any authorised third party application marketplace.

13. ENTERPRISE CUSTOMER SERVICE GUARANTEE

This clause 12.8 applies only to a Customer that is an Enterprise Customer and not otherwise.

13.1 Service availability

Deputec provides a guarantee to its Enterprise Customers that its Service Availability during any given month will be at least the Minimum Availability Percentage specified in Schedule 1. **Service Availability** is calculated as the total number of minutes in the month, minus the total number of minutes of planned or unplanned downtime, divided by the total number of minutes in the month, with the remaining fraction expressed as a percentage.

13.2 Support availability

Deputec support personnel are available 24 hours a day, 7 days a week, every day of the year, throughout the contract period. Support personnel are available via chat on the Deputec application or website, or on the following phone numbers:

- (a) USA - 855-633-7889
- (b) UK - 7732 576799
- (c) Australia - 1 300 337 889
- (d) Rest of world - +1 855 633 7889

13.3 Response and Resolution Times

The median response time for support will be maintained at or around 5 minutes. Depending on the nature of the issue, Deputec also provides Guaranteed Response and Resolution Times, which may differ depending on the type of incidents and the differing levels of severity. Guaranteed Response and Resolution Times are specified in Schedule 1.

13.4 Notification and escalation procedures

The Customer must notify Deputec of the issue by contacting support and indicating a severity level for the issue reported. In the event that the issue is not resolved within the Guaranteed Response and Resolution Times, the Customer should immediately notify Deputec by email at escalation@deputy.com and request for an escalation of the matter.

13.5 Reporting

In the event any Sev1-3 issues occur during a month, or any Sev4 issues remain unresolved beyond Guaranteed Response and Resolution Times at the end of a calendar month, Deputec will provide a detailed report of the incidence no later than the 14th day of the following month. If requested by the Customer, Deputec will provide a conference bridge dedicated to any specific incident, where interested parties can track the progress of resolution.

14. UNACCEPTABLE CONTENT

14.1 Request to remove content

If Deputec, in its reasonable opinion, believes that Unacceptable Content has been uploaded into the Deputec Application or is being stored on the Deputec Infrastructure, Deputec may request the Customer immediately to disable access to and remove the Unacceptable Content.

14.2 Deputec may remove content

If the Customer does not respond within five (5) days of receiving the request made under clause 14.1, Deputec has the right, but is not obliged to, disable access and remove any Unacceptable Content from the Deputec Application and/or Deputec Infrastructure without further notice to the Customer and Deputec may seek reimbursement from the Customer for any reasonable costs incurred by Deputec in doing so.

14.3 No obligation to monitor

Nothing in this clause 14 imposes an obligation on Deputec to monitor or screen the Deputec Application, Deputec Infrastructure or their contents for any Unacceptable Content and Deputec will not be responsible for any Unacceptable Content uploaded but not removed.

15. TERMINATION

15.1 Termination with notice – Enterprise Customer

After the expiry of the Initial Term, an Enterprise Customer may terminate this Agreement at any time by giving written notice to Deputec no less than four (4) weeks before the proposed termination date, but not otherwise.

15.2 Termination with notice – all other Customers

A Non-Enterprise Customer may terminate this Agreement at any time by giving written notice to Deputec no less than four (4) weeks before the proposed termination date.

15.3 Termination by Deputec

Deputec may terminate this Agreement at any time by giving written notice to a Customer no less than four (4) weeks before the proposed termination date.

15.4 Immediate termination

Without limiting clauses 15.1 and 15.2, a party may immediately terminate this Agreement at any time without notice if:

- (a) a party materially breached this Agreement and has failed to rectify such breach within seven (7) Business Days of notice provided by the other party;
- (b) a party commits a breach of this Agreement which is incapable of being remedied;
- (c) a party suffers an Insolvency Event or bankruptcy; or
- (d) a Force Majeure Event occurs and continues for more than 28 Business Days.

16. CONSEQUENCES OF TERMINATION

16.1 Effect of Termination

Upon termination of this Agreement:

- (a) the Customer must immediately:
 - (i) cease using and ensure that each of its Authorised Users ceases using the

Deputec Application;

- (ii) pay to Deputec all Fees, expenses or other amounts payable to Deputec under this Agreement which have accrued or are otherwise payable at the date of termination;
 - (iii) return to Deputec any Documentation in the Customer's possession or control; and
 - (iv) provide to Deputec with written confirmation that it has completed its obligations under this clause 16(a).
- (b) Deputec will return to the Customer all Customer Data stored on the Deputec Infrastructure in such format as Deputec may, at its sole discretion, see fit; and
- (c) Deputec may cease to provide any Subscription Services or Additional Services and may disconnect the Customer's access to the Deputec Application and disable all Authentication Credentials.

16.2 No refunds

Except where this Agreement is terminated as a result of a breach by Deputec or as required by law, the Customer is not entitled to any refund of all or part of the Fees paid but not used (whether in respect of the number of Authorised Users or length of use of the Application or otherwise) and on termination and in all other circumstances Deputec is entitled to retain all Fees and amounts paid by the Customer, whether in advance under and Annual Subscription or otherwise.

16.3 Rights on Termination

Any termination of this Agreement is without prejudice to the rights of one party against the other party in respect of any acts or omissions under this Agreement prior to termination, or in respect of any sums that remain outstanding at the time of termination.

17. CHANGES TO TERMS

Notwithstanding any other provision of this Agreement, Deputec may, in its sole discretion, modify any of the terms and conditions contained in this Agreement, at any time, with consent of the Customer or by notifying the Customer at its last nominated email address notified to Deputec in writing or by posting the new agreement on the Deputec Website. If the Customer gives consent, the amendments are effectively immediately. If the Customer does not give consent and the terms are modified by notifying the Customer at its nominated email address or by posting the terms on the Deputec Website, the Customer may terminate this Agreement at any time within fourteen (14) days of the earlier of the date that the new agreement is posted on the Deputec Website or emailed to the Customer. The Customer's continued use of the Deputec Application after this period is irrevocable and unconditional acceptance of the new agreement and its terms by the Customer.

18. CONFIDENTIALITY

18.1 Access

Deputec, its Customers and their Authorised Users may, from time to time, receive, become

aware of, develop, create, generate or be given access to Confidential Information of another party in the course of or incidental to exercising its rights or performing obligations under this Agreement.

18.2 Non-disclosure obligations

Where a party (**Recipient**) receives Confidential Information from the other party in respect of this Agreement or otherwise in relation to the Subscription Services, the Recipient agrees and warrants that it must:

- (a) hold the Confidential Information in trust and confidence;
- (b) not, during the operation of this Agreement or at any time thereafter, use, disclose, copy or reproduce the Confidential Information for any purpose other than to perform this Agreement, except expressly permitted under this clause 17; and
- (c) use its best endeavours to establish and maintain effective security measures to safeguard the Confidential Information from unauthorised use or disclosure of any of the Confidential Information by third parties; and
- (d) ensure that its officers, employees, agents comply with this clause 18.2.

18.3 Permitted Disclosure

Notwithstanding clause 18.2, the Recipient is expressly permitted to use or disclose Confidential Information to the extent necessary to:

- (a) give effect to the operation in this Agreement;
- (b) comply with any law, binding directive of a regulator, a Government Authority or a court order; or
- (c) obtain professional advice in relation to matters arising under or in connection with this Agreement.

18.4 Promotion and marketing

The Customer agrees and expressly permits the disclosure of its name and its relationship with Deputec for any advertising, marketing or other commercial activities which Deputec may undertake in promoting the Deputec Application and its services. In doing so, the Customer agrees and acknowledges that Deputec may disclose the Subscription Services and any Additional Services which the Customer may subscribe to, from time to time, as Deputec sees fit.

18.5 Survival

The obligation imposed by this clause 17 survives termination of this Agreement.

19. INTELLECTUAL PROPERTY

19.1 Limited rights

The Customer's rights in the Deputec Application will be limited to those expressly granted in this Agreement. Deputec reserves all rights and licences in and in relation to the Deputec Application not expressly granted to the Customers in this Agreement.

19.2 Ownership of Intellectual Property

- (a) All Intellectual Property, however created, is the sole and absolute property of Deputec and may not be used, sold or modified by the Customers, its Authorised Users or any third parties in any circumstances whatsoever other than to exercise their rights or fulfil their obligations under this Agreement.
- (b) The Customer agrees and acknowledges that:
 - (i) nothing in this Agreement grants the Customer any ownership of or rights in respect of the Intellectual Property, whatsoever; and
 - (ii) any Intellectual Property created by, for, on behalf of or otherwise vested in the Customer during the Term is unconditionally and irrevocably assigned to Deputec immediately when the Intellectual Property is created and the Customer agrees to do all things and execute all documents as is reasonably necessary to effect such assignment.

19.3 Use of Intellectual Property

- (a) For the duration of the Term, Deputec grants to the Customer and its Authorised Users a limited, non-exclusive and revocable licence to use the Intellectual Property solely to the extent necessary for the Customer to exercise its rights under this Agreement.
- (b) The licence referred to in clause 19.3(a) will continue for the duration of the Term which may be revoked by Deputec at any time for any or no reason.

19.4 Customer Data

- (a) All Customer Data however created, are the sole and absolute property of the Customer.
- (b) The Customer grants to Deputec a non-exclusive, irrevocable licence to use, reproduce and otherwise exploit the Customer Data for the purposes of providing the Subscription Services and the Additional Services to the Customer and for any purposes which Deputec considers are ancillary to its provision of the Subscription Services or Additional Services or are otherwise necessary for the proper operation of the Deputec Application.

19.5 Trade Marks

Except otherwise permitted in clause 18.4, nothing in this Agreement grants either party any ownership of or rights to use the trademarks of the other party and each party must not, cannot and will not, adopt, register or attempt to register or use any trademarks which are identical or deceptively similar to the trademarks owned by the other party.

19.6 Survival

The obligation imposed by this clause 19 survives termination of this Agreement.

20. SECURITY OF DEPUTEC APPLICATION

20.1 Deputec's obligations

- (a) Deputec will use all reasonable commercial endeavours to protect the security and safety of all Customer Data and any other Confidential Information stored on the Deputec Infrastructure, including the implementation and maintenance of reasonably adequate and current data protection and virus screening procedures and technologies.
- (b) Deputec agrees to use firewalls and other technology generally used in the trade to prevent unauthorised third party access to its computer systems storing Customer Data and available encryption technology generally used in the trade to prevent unauthorised third party access to Customer Data transmissions.
- (c) Nothing in this clause 20.1 constitutes a representation or warranty by Deputec that Customer Data storage or transmission will be inaccessible to unauthorised third parties. Deputec will notify Retailer of any such unauthorised access to Customer Data promptly following Deputec's detection, or upon becoming aware of, such unauthorised access.

20.2 Limitation of liabilities

The Customers acknowledges that regardless of the security precautions taken, no physical, internet or other electronic transmission or storage of data can be fully secure or error free. Deputec does not accept any liabilities and will not be liable to the Customer or any affected third parties for any Losses suffered by them as a result of or arising from:

- (a) any computer viruses being transferred to or obtained by the Customer, its Authorised Users or any other third parties as a result of their use of the Deputec Application;
- (b) any hacking into or other similar attacks on the Deputec Application or the Deputec Infrastructure; or
- (c) any other data security issues in respect of the Deputec Application or the Deputec Infrastructure,

which are beyond the reasonable control of Deputec, having implemented the protection procedures and technologies referred to in clause 20.1.

21. NO BACK UP RECORDS

The Customer acknowledges that Deputec does not provide back up or other similar services in respect of the Customer Data and the Customer is responsible for implementing its own back up and data retrieval procedures in respect of the Customer Data.

22. SUBCONTRACTORS

The Customer agrees and acknowledges that Deputec may subcontract the performance of all or part of its obligations under this Agreement or assign of any of its rights under this

Agreement to any subcontractor of its choice without the Customer's consent and on such terms and conditions as Deputec sees fit from time to time. The Customer further acknowledges that any fees payable by Deputec to its subcontractors may be calculated as a percentage of all or part the Fees payable by the Customer to Deputec under this Agreement.

23. NOTICES AND OTHER COMMUNICATIONS

23.1 Services and Notice

A notice, demand, consent, approval or communication under this Agreement (**Notice**) must be:

- (a) in writing and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address as set out in the Customer Data or Deputec Website as relevant.

23.2 Effective on receipt

A Notice given in accordance with this clause 23 is taken to have been served:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the fifth Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within 8 business hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5:00pm on a Business Day, the Notice is taken to be received at 9:00am on the next Business Day.

24. WARRANTIES

24.1 No warranties

Deputec does not warrant or guarantee that:

- (a) the Deputec Application will meet the Customer's requirements and expectations;
- (b) the Deputec Application will be compatible with, or capable of being used on or in connection with, the Customer's computer and communications systems;
- (c) the Customer's access to the Deputec Application will be uninterrupted or error free; or
- (d) the Deputec Application will be accurate, reliable or fit for any particular purpose.

24.2 Customer's warranty

The Customer acknowledges and warrants that:

- (a) relied on its own skill and judgment in the choosing to use the Deputec Application;
- (b) it has satisfied itself that the Deputec Application is fit for all the purposes which the Customer requires it for;
- (c) it has not relied on any representation of Deputec in entering into this Agreement other than those expressly stated on the Deputec Website and/or in this Agreement;
- (d) it has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform or cause to be performed its obligations under this Agreement; and
- (e) this Agreement constitutes a legal, valid and binding obligation on it, enforceable in accordance with its terms by appropriate legal remedy.

25. LIMITATION OF LIABILITY

25.1 Warranty disclaimer

To the fullest extent allowed under applicable law, Deputec disclaims all express, implied and statutory warranties with regard to the Deputec Application and Deputec Infrastructure including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

25.2 Internet performance disclaimer

Deputec does not and cannot control the flow of data via the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt the internet. Deputec will use commercially reasonable efforts to remedy and avoid such events, but cannot guarantee that such events will not occur. Accordingly, Deputec disclaims any liability resulting from or relating to such events.

25.3 Commencement of Claims

A Customer may not make a Claim for breach of this Agreement by Deputec unless it has given written notice to Deputec of the general nature of the claim in question within three (3) months after the Customer became aware or ought to have become aware of such a Claim. A Customer will be barred from raising any Claims not made in accordance with this clause.

25.4 Duty to mitigate

If a Customer becomes aware of any fact, circumstance or matter which is reasonably likely (whether alone or with any other possible fact, circumstance or matter) to lead to a Claim on the part of Deputec in respect of a breach of this Agreement by Deputec, the Customer must take reasonable steps to mitigate any loss which may give rise to such a Claim against Deputec.

25.5 Maximum liability

The maximum aggregate liability of Deputec for or in connection with its breaches of the Agreement is the greater of:

- (a) the total amount of the Subscription Fees and Additional Fees (if any) paid by the Customer to Deputec under this Agreement; or
- (b) if no Subscription Fees or Additional Fees have been paid, an amount of AUD \$100.

25.6 No claim for Consequential Loss

A Customer agrees and acknowledges that Deputec is not liable for any Consequential Loss (however caused) suffered or incurred by the Customer arising out of or in respect of any breach of this Agreement by Deputec. This exclusion applies even if Deputec knew or ought to have known of the Consequential Loss suffered or may be suffered.

26. INDEMNITY

The Customer must indemnify and hold Deputec harmless against any Loss suffered or incurred or likely to be suffered or incurred, directly or indirectly resulting from:

- (a) any breach of this Agreement by the Customer, including any breach in respect of which Deputec may exercise a right to terminate;
- (b) the Customer, its Authorised Users or any other person's use or access of the Deputec Application;
- (c) the Customer or its Authorised Users causing or procuring any Unacceptable Content being uploaded into the Deputec Application or stored on the Deputec Infrastructure;
- (d) the Customer or its Authorised Users causing or procuring:
 - (i) the upload of any Customer Data into the Deputec Application;
 - (ii) the storage of any Customer Data on the Deputec Infrastructure; or
 - (iii) otherwise using the Deputec Application,in a way which is contrary to or infringes any applicable law, including privacy law, of any applicable jurisdiction;
- (e) the Customer Data being stored or displayed on the Deputec Application; or
- (f) any negligent or unlawful acts of the Customer, its related entities or their Authorised Users, employees, officers, contractors or representatives,

unless the Loss is a direct result of Deputec's breach of this Agreement or any unlawful act carried out by Deputec.

27. TAX

27.1 Indirect Tax

- (a) The consideration expressed to be payable under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include any Indirect Tax unless otherwise specified.

- (b) To the extent that any supply made under or in connection with this Agreement is subject to any Indirect Tax, the Indirect Tax exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which Indirect Tax is imposed in respect of the supply, and is payable at the same time as the time the consideration is paid.

27.2 Withholding Taxes

If the Customer is required by law to make any deduction or withholding for any Taxes from any consideration payable to Deputec under this Agreement, the Customer will be responsible for the payment of the Taxes and that the Customer must:

- (a) deduct or withhold the amount of Taxes from the payment as required by law (**Deducted Amount**);
- (b) promptly pay the Deducted Amount to the relevant Government Authority within time frame required and otherwise in accordance with the relevant law;
- (c) promptly provide to Deputec the original receipt, certificate or other evidence of payment of the Deducted Amount; and
- (d) promptly pay to Deputec an additional amount equal to the Deducted Amount such that Deputec receives the full amount of the consideration owing to it.

28. DISPUTE RESOLUTION

28.1 Dispute resolution procedure

If a party believes that there is a dispute regarding this Agreement or the Subscription Services, it must not commence court proceedings (unless urgent interlocutory relief) without first complying with the following dispute resolution procedure:

- (a) the party must give notice in writing to the party in dispute (together, the **Disputing Parties**) specifying:
 - (i) the nature of the dispute;
 - (ii) the outcome required by the party; and
 - (iii) the action the party believes will settle the dispute,**(Dispute Notice)**.
- (b) Upon receipt of a Dispute Notice, the Disputing Parties shall use their best efforts and endeavours to resolve the dispute by mutual negotiation;

28.2 Mediation

- (a) If the Disputing Parties are unable to resolve a dispute within twenty (20) Business Days (or within a longer period agreement in writing by them) of receipt of a Dispute Notice, either party may serve a notice on the other requiring the Disputing Parties to refer the dispute to a mediator and to participate in the mediation (**Mediation**

Notice). If the Disputing Parties are unable to determine within fifteen (15) Business Days of receipt of a Mediation Notice referred to in this clause:

- (i) the procedures to be adopted in the mediation; and
- (ii) the timetable for all the steps in those procedures; and
- (iii) the identity and fees of the mediator,

the President of the Law Society of New South Wales or his representative will appoint the mediator and determine all procedural matters in relation to the mediation.

- (b) The Disputing Parties must attend the mediation and make a determined and genuine effort to resolve the dispute.

28.3 Costs

The Disputing Parties must bear its own costs of complying with this clause and the Disputing Parties must bear equally the costs of any mediator engaged.

28.4 Court Action

Nothing in this clause 28 prevents a party taking any court action where the proceedings are to seek urgent injunctive, interlocutory or declaratory relief in respect of a dispute to preserve property or rights or to avoid any losses, costs, charges, claims, liabilities or expenses which are not compensatable in damages.

29. GENERAL PROVISIONS

29.1 Binding effect of this Agreement

This Agreement binds the parties to it and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of them.

29.2 Entire Agreement

This Agreement, including the Rate Sheet, Statement of Works, constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties or their respective officers, employees or agents.

29.3 No adverse construction

Nothing in this Agreement is to be interpreted against a party solely on the grounds that the party put forward the Agreement or a relevant part of it.

29.4 Force Majeure

If a party is prevented, hindered or delayed from performing its obligations under this agreement by a Force Majeure Event, then as long as that situation continues, that party will be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation will be extended accordingly. If a party is affected by a Force Majeure Event it will immediately give the other party a notice of its occurrence and its effect or likely effect, and use all reasonable endeavours to minimise

the effect of the Force Majeure Event and to bring it to an end.

29.5 Assignment

The Customer may not assign or otherwise deal with any of its rights or obligations under this Agreement without the prior written consent of Deputec. Deputec may assign, novate or otherwise deal with all or part its rights under this Agreement at any time and from time to time, which will be effective immediately upon Deputec notifying its Customers of the assignment or novation.

29.6 Partial invalidity

In the event that any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, then such provision shall be severed from this Agreement. In all other respects, the remaining provisions of this Deed shall remain in full force and effect.

29.7 Attorneys

Each person who executes this Deed on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this Deed under that power.

29.8 Rights, remedies additional

Any rights and remedies that a person may have under this Agreement are in addition to and do not replace or limit any other rights or remedies that the person may have.

29.9 Waiver

The failure by a party to enforce at any time or for any period any one or more of the terms and conditions of this Agreement shall not be a waiver of those rights nor of the right at any time subsequent to enforce all of the terms and conditions of this Agreement. A waiver of any power or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that power or right; and
- (b) is effective only to the extent set out in that written waiver.

29.10 Survival

The obligations under this Agreement are of indefinite duration, and will survive termination or cessation of this Agreement (however occurring).

29.11 Joint and several

An agreement warranty representation or obligation which binds or benefits two or more persons under this Agreement binds or benefits those persons jointly and separately.

29.12 Costs

Each party will bear its own costs with respect to the negotiation and preparation of this Deed,

and the implementation of the transactions contemplated by this Deed.

29.13 Governing law

This Agreement will be construed and interpreted in accordance with the laws of the state of New South Wales, Australia and each party submits to the nonexclusive jurisdiction of courts of that jurisdiction.

Schedule 1: Enterprise Customer Service Guarantee

CLAUSE	TERM	DEFINITION
Clause 13.1	Minimum Availability Percentage	99.3%

Severity	Response Time	Resolution Time	
		Workaround	Root Cause Fix
Sev1/Downtime	15 minutes	2 hours	24 hours
Sev2	15 minutes	12 hours	72 hours
Sev3	15 minutes	24 hours	1 week
Sev4	1 hour	48 hours	2 weeks

- Sev1/Downtime** means a majority of users cannot access Deputec or start/end shifts.
- Sev2** means a majority of admin users cannot publish schedules or approve timesheets, or a minority of users cannot start/end shifts
- Sev3** means a minority of admin users cannot publish schedules or approve timesheets.
- Sev4** means a majority of users is inconvenienced, but can still start/end shifts, publish schedules and approve timesheets.