

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. **"Affiliate"** means any person or entity that controls, is controlled by, or is under common control with a party to this MSA. The term "control" as used in the immediately preceding sentence means the right to exercise, directly or indirectly, more than fifty percent of the voting rights attributable to the shares, partnership interests, membership shares, or similar evidence of ownership of an entity.
- 1.2. **"Application"** means the **software program, service platform** or solution suite supplied by PEISO and identified in the applicable Sales Order.
- 1.3. **"Customer Data"** means the data created, delivered or input by Customer or its Users into the Application or Service for the purpose of using an Application or facilitating Customer's use of an Application.
- 1.4. **"Documentation"** means user documentation and/or video(s) that describes the principles of the operation or functionality of the applicable Application and that are embedded with such Application (*e.g.*, on-line help files).
- 1.5. **"Non-User-Based Application"** means an Application that is made available to Customer on a basis other than a per-User basis.
- 1.6. **"Professional Services"** means any and all software implementation, training, configuration, data migration, consulting and professional services performed by or on behalf of PEISO for Customer subject to the terms this MSA and as detailed in a Sales Order or Statement of Work.
- 1.7. **"Services"** means each SaaS (Software as a Service) Platform, Application, Support Services, and Professional Services, collectively.
- 1.8. **"Statement of Work" or "SOW"** means the ordering document for purchases of Professional Services, including any addenda thereto, that are executed by the parties. Upon execution, each SOW is governed by this MSA and made a part of the Agreement.
- 1.9. **"Subscription Fees"** means any fees relating to Services and Application (including fees for Enhanced Support Services, User Subscriptions and fees for exceeding Scope Limitations).
- 1.10. **"Subscription Term"** means the period that Customer has the right to use the Services as they pertain to each Application as set forth in the applicable Sales Order, including the Initial Term and any Renewal Terms.
- 1.11. **"Support Services"** means availability, ongoing maintenance and technical support services provided by PEISO for the applicable Application or Service in accordance with the maintenance and support terms set out in Exhibit B (the **"Support Agreement"**).
- 1.12. **"Users"** means individuals who are authorised by Customer to use the applicable Application or Services, for whom subscriptions to such Application have been purchased (in the case of User-Based Applications), and who have been supplied PEISO-issued user identifications and passwords by Customer. "Users" may include, but is not limited to, Customer's employees, consultants, contractors and agents.
- 1.13. **"Virus"** means any computer code, programming instruction or set of instructions that is intentionally and specifically constructed with the ability to damage, corrupt, destroy, interfere with or otherwise adversely affect computer programs, data files or hardware without the consent or intent of the computer user and whether its operation is immediate or delayed including willfully, negligently or without knowledge of its existence. This definition includes, but is not limited to, self-propagating programming instructions commonly called viruses, trojans or worms.
- 1.14. **"Critical Break"** refers to a significant failure or defect in the technology platform that fundamentally impairs its ability to perform as specified in the contract.

2. USE OF THE APPLICATION OR SERVICE

- 2.1. Statement of works. Customer's right to use any particular Application or Services is only valid during the period that both the applicable SOW and the applicable Subscription Term are in effect.
- 2.2. Use of the Application. Subject to the terms and conditions of the Agreement, PEISO hereby grants to Customer, and Customer hereby accepts from PEISO, a limited, non-exclusive, revocable, non-transferable, non-sublicensable right during the applicable Subscription Term as follows:
 - 2.2.1. for each User-Based Application, to allow Users to use the Application specified on the applicable Sales Order solely in connection with Customer's internal business operations;
- 2.3. Use of the Documentation. Subject to the terms and conditions of the Agreement, PEISO hereby grants to Customer a limited, non-exclusive, revocable, non-transferable (except as permitted in Section 14.2 (*Assignability*)), non-sublicensable license during the applicable Subscription Term to reproduce, without modification, and internally use a reasonable number of copies of the Documentation solely in connection with Users' use of the applicable Application in accordance with this MSA.

3. OWNERSHIP

- 3.1. The Services. Except for licenses provided hereunder, as between PEISO and Customer, PEISO and its licensors retain all right, title, and interest to: (i) all software, products, works, and other intellectual property created, used, or provided by PEISO for the purposes of the Agreement, including, but not limited to, each Application, Service and all Documentation; and (ii) all modifications, adaptations and derivatives of, and improvements to, each Application, Service and all Documentation and any other part of the Services (created by either party). Customer shall and hereby makes all assignments necessary to provide PEISO such ownership rights. Customer's sole right to the Services is as set forth in the Agreement.
- 3.2. Customer Data. All rights, title and interest in and to Customer Data are and shall remain the property of Customer. Subject to the terms of the Agreement, Customer hereby grants to PEISO throughout the term of the Agreement, and after the term solely as reasonably necessary for any of PEISO's post-termination obligations to Customer, the

rights to use, reproduce, store, distribute, modify, publicly display and perform, cache, and transmit Customer Data via the applicable Application solely to the extent reasonably necessary to provide the Services or any portion thereof.

- 3.3. Improvements Feedback. If Customer provides any feedback to PEISO concerning the functionality and performance of any Application or Services (including identifying potential errors and improvements) (the "Improvement **Feedback**"), Customer hereby assigns to PEISO all right, title, and interest in and to such Improvement Feedback, and PEISO is free to use that Feedback without payment or restriction and it shall be deemed to be a derivative work of the Application or Service. Improvement Feedback expressly excludes Customer Data.

4. CUSTOMER'S RESPONSIBILITIES

- 4.1. Account Credentials. Customer is solely responsible for maintaining the confidentiality of the administrator and User logon user identifications, passwords and account information.
- 4.2. Compliance and Use. Customer shall:
 - 4.2.1. be solely responsible for its Users' compliance with this the Agreement;
 - 4.2.2. be solely responsible for the accuracy, quality, integrity and legality of Customer Data provided to PEISO and of the means by which Customer acquired such Customer Data;
 - 4.2.3. be responsible for the results obtained from the processing of Customer Data provided to PEISO, including any conclusions drawn from such processing;
 - 4.2.4. use commercially reasonable efforts to prevent unauthorised access to or use of each Application, apply all relevant Virus protection updates and all Documentation and immediately notify PEISO in writing of any such unauthorised access or use or violation by Customer or its Users of the Agreement;
 - 4.2.5. use each Application only in accordance with the Documentation and/or support video(s);
 - 4.2.6. comply with all applicable laws and government regulations; and
 - 4.2.7. cooperate and assist with any actions taken by PEISO to prevent or terminate unauthorised use of each Application or any Documentation.
- 4.3. Use Restrictions. Except as (i) otherwise explicitly provided in this MSA, or (ii) may be allowed by applicable law which is incapable

of exclusion by agreement between the parties, Customer may not, and will not permit or authorize third parties to:

- 4.3.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Applications or Documentation in any form or media or by any means; or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Applications; or
- 4.3.2. access all or any part of the Applications or Documentation in order to build a product or service that competes with the Services or the Documentation;
- 4.3.3. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Applications, Services or Documentation, or otherwise make the Applications or Documentation available to any third-party (e.g., as a service bureau);
- 4.3.4. circumvent or disable any security or other technological features or measures of the Applications;
- 4.3.5. make the Services available to anyone other than Users;
- 4.3.6. use the Applications to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
- 4.3.7. use the Services to store or transmit malicious code;
- 4.3.8. interfere with or disrupt the integrity or performance of the Services or third-party data contained therein; or
- 4.3.9. attempt to gain unauthorized access to the Applications or related systems or networks.
- 4.4. Product-Specific Terms. If Customer uses an Application that has additional terms and conditions specific to such Application, such product-specific terms and conditions shall be set forth on SOW attached hereto and incorporated herein by reference, and Customer agrees to comply with such additional terms and conditions to the extent applicable.

5. MAINTENANCE AND SUPPORT SERVICES

- 5.1. Standard Support Services. During the Subscription Term and as part of Customer's payment of the Subscription Fees, PEISO's standard Support Services shall be provided in

accordance with the Support Agreement and subject to the terms of this MSA.

6. PROFESSIONAL SERVICES

- 6.1. Scope and SOW. For an additional fee, Customer may elect to purchase Professional Services, including, without limitation, with respect to the Application, customization, on-site support and maintenance, and consulting services related to defects caused by issues other than the Application. For each request for Professional Services hereunder, the parties shall execute a Statement of Work. A SOW may be a separate document executed by the parties or may be incorporated into a Sales Order. Each SOW will specify the fees, scope of work and specific terms of the project(s) or Professional Services to be performed by PEISO.
- 6.2. Travel Expenses. Any and all pre-approved travel expenses, including reasonable transportation, lodging and meal expenses incurred in relation to the provision of the Professional Services will be reimbursed by Customer and are in addition to the specified Professional Services fees. If Customer cancels or reschedules a Professional Services visit less than seven (7) days prior to the scheduled visit, Customer will pay all of PEISO's travel (such as hotel, flight) cancellation and change fees related to such visit. PEISO, in its sole discretion, may waive some or all of such cancellation or rescheduling fees.

7. PAYMENT AND FEES

- 7.1. Fees. Customer will pay PEISO the fees and any other amounts owing under the Agreement, as specified and in the currency set out in the applicable SOW, plus any applicable sales, use, excise, or other taxes. Unless otherwise specified in the applicable SOW, in the case of a Venue-Based Application, all amounts payable to PEISO under the Agreement are based on the number of Venue Subscriptions purchased on the applicable SOW and not on actual usage, and such number of Venue Subscriptions are non-cancellable and non-refundable prior to the end of the relevant subscription term, unless a store is closed for operation permanently..
- 7.2. Renewal Fees. Upon the expiration of the Initial Term or a Renewal Term (as defined in Section 8.2), PEISO may increase the Service fees, no more than 7% including CPI, any Subscription Fees and Enhanced Support Services fees, or charge any new fees, by giving Customer notice (which may be by email) of any such increases at least thirty (30) days' prior to the end of the applicable Initial Term or the then-current Renewal Term (as

defined in Section 8.2) as may be detailed in an updated Sales Order. Customer will only be entitled to discounts granted for a multi-year commitment if the applicable Renewal Term is for a period equal to or greater than such multi-year commitment. Any other discounts offered for the Initial Term do not apply to Renewal Terms unless expressly provided in the applicable Sales Order.

- 7.3. Invoices and Payment Terms. The Subscription Fees will be invoiced and/or charged to CC in the account portal(s) and are paid in advance. Fees for Professional Services will be invoiced upon execution of the applicable SOW. Customer will pay all amounts due within seven (7) days of the date of the applicable invoice. Customer acknowledges that Subscription Fees for Renewal Terms are due on or by the first day of such Renewal Term. If Customer reasonably and in good faith disputes all or any portion of any invoice, Customer shall notify PEISO in writing of its objection within fourteen (14) days from the date of the applicable invoice, provide a detailed description of the reasons for the objection, and pay the portion of the invoice which is not in dispute. If Customer does not object in a timely manner, the amount invoiced shall be conclusively deemed correct by the parties.

Payment methods:

For professional Services

- (1) Bank transfer

For Peiso account subscriptions

- (1) Direct Debit

- 7.4. Late Payments. PEISO reserves the right for any undisputed amount not paid when due to charge interest accrued at a rate of 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded monthly from the date due until the date paid.
- 7.5. Taxes. If a GST is imposed in Australia and has application to supply (including, without limit, the supply of software or any services or the supply of any goods, services, other rights, benefits or other things) made under or in connection with this MSA, then PEISO may, in addition to the Fees and any other amounts payable pursuant to this MSA, recover from the Customer an additional amount on account of GST, such amount to be calculated by multiplying the value of the fee and the

other amounts payable by the Customer for the relevant supply by the prevailing GST rate.

8. TERM, RENEWAL AND TERMINATION

- 8.1. Agreement Term. This MSA will commence upon the Effective Date and continue until the Subscription Term for each Sales Order has expired or is otherwise terminated in accordance with the terms of the applicable Sales Order unless this MSA is terminated earlier as set forth herein.
- 8.2. Sales Order Term. The term for each Sales Order shall commence on the effective date of the applicable Sales Order. The initial term shall be a fixed term of two (2) years or month to month (the “**Initial Term**”). The term of each Sales Order will automatically renew for successive periods equal to the length of the Initial Term or any other successive period(s) to which the parties agreed pursuant to the applicable Sales Order (each, a “**Renewal Term**”), unless a party provides written notice sixty (60) days in advance of the expiry of the Initial Term or then-current Renewal Term of its desire to amend the duration of the Renewal Term or terminate the Sales Order.
- 8.3. SOW Term. Each SOW will be in effect for the time period specified on the applicable SOW.
- 8.4. Termination for Material Breach. Either party may immediately elect to terminate the Agreement or a Sales Order or SOW if: (i) the other party breaches any material term or condition of the Agreement or the applicable SOW and fails to cure the breach within thirty (30) days after receiving written notice of the breach, or (ii) if the other party becomes subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors by providing written notice. At the aggrieved party’s election, such termination will apply only to the applicable Sales Order or SOW and related Services for a particular Application and not to Sales Orders for or SOWs related to other Applications governed by this MSA. Termination of the Agreement will terminate any then-outstanding Sales Orders and SOWs. In the event of termination as a result of Customer’s failure to comply with any of its obligations under this MSA, Customer shall be obligated to pay for Subscription Fees and fees for Professional Services rendered. Termination of the Agreement or any Sales Order or SOW

shall be in addition to and not in lieu of any equitable remedies available to PEISO.

8.5. Critical Break/ Product Failure includes scenarios such as:

- 8.5.1. Severe System Outages: Extended downtime that prevents users from accessing the platform, affecting business operations.
- 8.5.2. Data Loss or Corruption: Incidents where user data is lost or rendered unusable, violating data integrity guarantees.
- 8.5.3. Security Breaches: Major vulnerabilities that lead to unauthorized access or data breaches, undermining the security commitments outlined in the agreement.
- 8.5.4. Failure to Meet Performance Standards: Consistent and substantial failure to meet agreed-upon performance metrics (e.g., speed, capacity, or reliability).
- 8.5.5. Inability to Support Key Features: The platform's failure to deliver essential functionalities that are critical for the parties involved.

A critical break triggers the termination of the agreement without penalty.

8.6. Suspension. PEISO reserves the right, in addition to any of its other rights or remedies, to suspend performance of the Services, without liability to Customer, upon occurrence of the following events:

- 8.6.1. upon written notice to Customer if Customer's account is thirty (30) days or more overdue for payment (except with respect to charges then under reasonable and good faith dispute), until PEISO receives all amounts due; or
- 8.6.2. immediately upon PEISO's good-faith belief that the Customer is breach of its obligations under this MSA where such breach adversely impacts the performance or security of the Services, PEISO's systems or data, or violates applicable law.

Such suspension shall not place PEISO in breach of its obligations to provide the Services in accordance with the Agreement and shall not relieve Customer from paying the fees in accordance with the terms of the Agreement. Customer's Instance will not be restored if reconnection to the Services takes place after sixty (60) days from the date of suspension. As used in this Section 8.5, "Instance" means the database within the Services for Customer to manage Customer Data.

8.7. Transition Assistance. Following the termination of the applicable SOW, provided Customer makes a written request within

fourteen (14) days before the effective date of termination and subject to the then-current Professional Service fees on a time and materials basis, PEISO may offer transition assistance, which may include, to the extent practicable, an export of Customer Data from the applicable Application or Service, on a fee for service basis.

8.8. Post-Termination Obligations. If Customer terminates a SOW for material breach by PEISO, PEISO shall refund Customer any prepaid Subscription Fees for the unused portion of the Services. If PEISO terminates a SOW for material breach by Customer, (a) Customer will pay to PEISO any fees or other amounts that have accrued prior to the effective date of the termination pursuant to each such Sales Order or SOW, including, without limitation, any unpaid fees for the unused portion of the Services. Upon expiration or termination of the Agreement for any reason, (a) except as expressly set forth in this MSA, any and all liabilities accrued prior to the effective date of the termination will survive, and (b) with respect to a terminated Sales Order, Customer will provide PEISO with a written certification signed by an authorised Customer representative certifying that all use of the applicable Application and Documentation ordered pursuant to the applicable Sales Order(s) by Customer has been discontinued.

8.9. Survival. Sections 3 (Ownership), 4 (Customer's Responsibilities), 7.1 (Fees), 7.3 (Invoices and Payment Terms), 7.4 (Late Payments), 7.5 (Taxes), 8.6 (Transition Assistance), 8.7 (post-termination Obligations), 8.8 (Survival), 9 (Confidentiality), 10 (Copyright and Intellectual Property), 11.2 (Disclaimers), 12 (Indemnification), 13 (Limitations of Liability), 15 (General) and Customer's obligations arising under SOW, if any, shall survive the termination or expiration of the Agreement.

9. CONFIDENTIALITY

9.1. Definition. As used herein, "Confidential Information" means all confidential information disclosed by or otherwise obtained from a party ("Disclosing Party") to or by the other party ("Receiving Party"), whether orally, visually or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's "Confidential Information" includes Customer Data. PEISO's "Confidential Information" includes each Application, all Documentation and the product of all Services and PEISO's financial, security, architectural or similar

information. "Confidential Information" of each party shall include the terms and conditions of the Agreement as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by or on behalf of such party.

- 9.2. **Protection of Confidential Information.** Each party agrees to maintain Confidential Information in confidence and not to disclose it or any portion of it, except to its and its Affiliates' employees and consultants who have a need to know such Confidential Information and are bound by obligations of confidentiality similar to those herein, for a period of three (3) years after the expiration or termination of the Agreement, at which time the Confidential Information will be purged, using the same care and discretion to avoid disclosure, publication, or dissemination of the Confidential Information as it uses with its own confidential or proprietary information, but in no event less than reasonable care. Notwithstanding the foregoing, neither party shall have liability to the other with regard to any Confidential Information that: (a) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available; (b) is known by the Receiving Party at the time of receiving such information, as evidenced by its records; (c) is hereafter furnished to the Receiving Party by a third party having the legal right to do so and without restriction on disclosure; (d) is independently developed by the Receiving Party without the aid, application or use of the Confidential Information; or (e) is required to be disclosed by law or court order; provided, that the Receiving Party shall provide reasonable advance notice to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

Copyright and Intellectual Property

- 9.3. The Customer acknowledges that all copyright and all other proprietary and intellectual property rights in the Application, and the medium on which it runs including magnetic media, are owned by and at all times remain the property of PEISO or are duly licensed by it from one of its associated

entities (as that term is defined in section 50AAA of the Corporations Act) or its related entities (as that term is defined in section 9 of that Act) or its related bodies corporate (as that term is defined in section 50 of the Corporations Act).

- 9.4. PEISO warrants to the Customer that the Application does not infringe any intellectual property rights of any third party. PEISO indemnifies the Customer from all actions and claims arising out of or incidental to any actual or alleged infringement of copyright or other intellectual property right in or to the Application.
- 9.5. **Ownership of Intellectual Property.** The parties acknowledge and agree that all the intellectual property comprised in the Application is the absolute property of PEISO or duly licensed by it and that the Customer's right to use it will immediately cease upon the expiration or termination of this MSA.

10. WARRANTIES

- 10.1. **Mutual Warranties.** Each party represents and warrants to the other that:
- 10.1.1. this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; and
- 10.1.2. no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of the Agreement.
- 10.2. **PEISO Disclaimers.** Subject to PEISO's obligation to comply with the Support Agreement, PEISO:
- 10.2.1. does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Client through the Services will meet the Customer's requirements; and
- 10.2.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over the Customer's or public communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 10.3. **PEISO Additional Warranty.** PEISO warrants that it has and will maintain all necessary licences, consents and permissions necessary for the performance of its obligations under the Agreement.

- 10.4. **Customer Additional Warranty.** Customer warrants that it has (or in the case of its future customer activities, will obtain) and will maintain all necessary licences, consents and permissions necessary for PEISO, its contractors and agents to perform their obligations under the Agreement.
- 10.5. **General Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SERVICES ARE PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

11. INDEMNIFICATION

- 11.1. **Indemnification by PEISO.** PEISO shall defend Customer against any claim, demand, suit, or proceeding ("Claim") made or brought against Customer by a third party alleging that the use of any Application or Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify Customer for any damages finally awarded against Customer, and for reasonable attorney's fees incurred by, Customer in connection with any such Claim; provided, that Customer (a) promptly gives PEISO written notice of the Claim; (b) gives PEISO sole control of the defence and settlement of the Claim (provided that PEISO may not settle any Claim unless the settlement unconditionally releases Customer of all liability); and (c) provides to PEISO all reasonable assistance, at PEISO's expense.
- 11.2. **Exclusions from Obligations.** PEISO will have no obligation under this Section 11 for any infringement or misappropriation to the extent that it arises out of or is based upon (a) use of an Application or Service in combination with other products or services if such infringement or misappropriation would not have arisen but for such combination; (b) use of an Application by Customer for purposes not intended or outside the scope of the license or service description granted to Customer herein; (c) Customer's failure to use an Application or Service in accordance with instructions provided by PEISO, if the infringement or misappropriation would not have occurred but for such failure; or (d) any modification of an Application or Service not made or authorised in writing by PEISO where

such infringement or misappropriation would not have occurred absent such modification.

- 11.3. **Mitigation of Infringement Action.** If Customer's use of any Application or Service is, or in PEISO's reasonable opinion is likely to become, enjoined or materially diminished as a result of a proceeding arising under Section 11.1 (*Indemnification by PEISO*), then PEISO will either: (a) procure the continuing right of Customer to use the Application or Service; (b) replace or modify the Application or Service in a functionally equivalent manner so that it no longer infringes; or if, despite its commercially reasonable efforts, PEISO is unable to do either (a) or (b), PEISO will (c) terminate Customer's right with respect to the Application or Service and refund to Customer all unused Subscription Fees pre-paid by Customer with respect to such Application or Service.
- 11.4. **Limited Remedy.** This Section 11 states PEISO's sole and exclusive liability, and Customer's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third-party intellectual property rights by any Application or Service.
- 11.5. **Indemnification by Customer.** Customer shall defend save and hold harmless PEISO against any Claim made or brought against PEISO by a third party alleging that Customer Data, or Customer's use of the Services in violation of this MSA, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify PEISO for any damages finally awarded against, and for reasonable attorney's fees incurred by, PEISO in connection with any such Claim; provided, that PEISO (a) promptly gives Customer written notice of the Claim; (b) gives Customer sole control of the defence and settlement of the Claim (provided that Customer may not settle any Claim unless the settlement unconditionally release PEISO of all liability); and (c) provides to Customer all reasonable assistance, at Customer's expense.
- 11.6. **Contributory Negligence.** If the joint, concurring, comparative or contributory fault, negligence or willful misconduct of the parties gives rise to damages for which either party is entitled to indemnification under this MSA, then such damages shall be allocated between the parties in proportion to their respective degrees of fault, negligence or willful misconduct contributing to such damages and such indemnification shall be adjusted accordingly.

12. LIMITATIONS OF LIABILITY.

13.1 General Limitations; Exclusions. Except as expressly and specifically provided in this MSA all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this MSA. However, nothing in this MSA excludes or limits the liability for:

- 12.1.1. death or personal injury caused by either party's negligence;
- 12.1.2. either party's fraud or fraudulent misrepresentation;
- 12.1.3. liability arising out of Customer's breaches of Section 4 (*Customer's Responsibilities*);
- 12.1.4. liability arising out of Customer's breaches of Section 7 (*Payment and Fees*);
- 12.1.5. either party's indemnity obligations; or
- 12.1.6. any other liability which cannot lawfully be excluded or limited.

12.2. Indirect Damages. Subject to Section 12.1 (*General Limitations; Exclusions*), in no event shall either party be liable in contract, tort (including negligence for breach of statutory duty) or otherwise howsoever for: (a) any direct or indirect loss of profit; or (b) direct or indirect loss of business; or (c) direct or indirect loss of goodwill or depletion in goodwill; or (d) direct or indirect loss of contracts; or (e) direct or indirect loss of revenues; or (f) direct or indirect loss or corruption of data or information; or (g) direct or indirect loss of anticipated savings; or (h) direct or indirect pure economic loss; or (i) any indirect increased costs or expenses; or (j) any special, indirect or consequential loss or damage of any nature whatsoever, whatever the cause thereof arising out of or in connection with the Agreement even if the other has been advised of the possibility of such damages.

12.3. Cap on Liability. Subject to Section 12.1 (*General Limitations; Exclusions*) and 12.2 (*Indirect Damages*), to the maximum extent permitted by law, PEISO's total liability to the Customer in connection with this MSA is limited to the amount paid by the Customer to PEISO under this MSA.

12.4. Independent Allocations of Risk. Each provision of this MSA that provides for a limitation of liability, warranty or exclusion of liability for damages is designed at allocating the risks under this MSA in relation to the available insurance. Such risk assessment is reflected in the pricing offered to Customer and is an essential element of the bargain between the parties.

13. PUBLICITY

The Customer provides consent for Peiso to use the business name and logo of the customer in marketing materials and in provision of the Peiso APP. Notwithstanding the foregoing, (i) each party shall be permitted to disclose any details regarding this relationship to the extent required by law, and (ii) subject to Customer's brand guidelines, PEISO may include Customer name and logo, in PEISO's customer lists so long as Customer is listed along with PEISO's other customers of the Services.

14. GENERAL

14.1. Relationship. PEISO will be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of the Agreement.

14.2. Assignability. Neither party may assign performance of the Agreement or any of its rights or delegate any of its duties under the Agreement without the prior written consent of the other. Notwithstanding the preceding sentence, each party may assign the Agreement without the other party's prior written consent in the case of a merger, acquisition or other change of control only where the assignee is not a direct competitor of the other party, or to an Affiliate, and in such event the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14.3. Subcontractors. PEISO may utilize subcontractors or other third parties to perform certain duties under the Agreement so long as PEISO remains responsible for all of its obligations under the Agreement.

14.4. Notices. Any notice or report required or permitted to be given or made under this MSA by either party will be in English, in writing and be deemed to have been fully given and received (i) when delivered personally; (ii) when sent by confirmed facsimile; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of such receipt; or (v) to the extent expressly permitted in this MSA, one (1) day after being sent via email. Notices will be sent to the parties at the addresses set forth in this MSA or such other address as a party may specify in writing to the other. All notices to PEISO must be made to the address listed below and all notices to Customer must be made to the mailing or email address of Customer's primary contact with PEISO.

PEISO notice address:

ATTN: General Counsel
Unit 3, 63-71 Boundary
Road, North Melbourne.
VIC 3051

PEISO may broadcast notices or messages through the applicable Application or by posting notices or messages on PEISO's web site to inform Customer of changes to the Services, or other matters of importance; PEISO shall inform Customer of such broadcast by e-mail.

- 14.5. **Force Majeure.** Neither party shall be liable in damages or have the right to terminate the Agreement or any SOW for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including but not limited to acts of God, government restrictions (including the denial or cancellation of any export of other necessary license), wars, threats of or acts of terrorism, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected (including mechanical, electronic, internet service provider or communications failure).
- 14.6. **Dispute Resolution.** The parties will attempt to resolve all disputes, claims, or controversies arising under or related to the Agreement or its subject matter or any right or obligation created by the Agreement (each, a "Dispute") through good faith negotiations conducted by the representatives of the parties designated below. The party asserting the Dispute will give prompt written notice to the other party describing the Dispute in reasonable detail. If the Dispute has not been resolved within thirty (30) days after commencing such negotiations, then the parties may resolve the Dispute through judicial action.
- 14.7. **Governing Law.** The Agreement shall be governed by the laws of Queensland, without reference to conflict of laws principles. Any legal or equitable action that arises out of or in connection with (directly or indirectly) this Agreement shall be brought in the applicable Federal or State court located in the State of Queensland, and each Party hereby irrevocably waives any right that they have or may have in the future to object to such selection of venue, including, without limitation, an objection based on an assertion that such venue constitutes an inconvenient forum.
- 14.8. **Waiver.** The waiver by either party of any breach of any provision of the Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with the

Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of the Agreement.

- 14.9. **Severability.** Should any term and condition of the Agreement be declared illegal or otherwise unenforceable, it shall be severed from the remainder of this MSA, or the relevant portion of the Agreement, without affecting the legality or enforceability of the remaining portions of the Agreement.
- 14.10. **Counterparts.** Each portion of the Agreement (e.g., this MSA, each SOW) may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing the Agreement, a facsimile copy or a ".pdf" image delivered via email of an executed copy of any such portion of the Agreement signed by an authorised signatory (manuscript signature or using electronic signature) will be deemed an original.
- 14.11. **Entire Agreement.** This MSA and the exhibits or attachments, if any, constitutes the entire agreement between the parties hereto regarding Customer's use of each Application and receipt of all Services and supersedes and replaces all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the provision and use of the Services. In the event of a conflict between the terms and conditions of the MSA and any SOW, the terms and conditions of the MSA shall prevail except to the extent the conflict pertains to product or service description (e.g., type, quantity, usage volume) or pricing information, in which case the terms of the, as applicable, shall prevail. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of the Agreement. The Agreement may be changed only by a written agreement signed by an authorised signatory of the party against whom enforcement is sought. PEISO will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to the Agreement (whether or not it would materially alter the Agreement) that is proffered by Customer in any receipt, purchase order, acceptance, confirmation, correspondence, or otherwise, unless PEISO specifically agrees to such provision in writing and it is signed by an authorized agent of PEISO.

- 14.12. Anti-Corruption. Each party agrees and acknowledges that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the other party's employees, contractors or agents in connection with the Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If either party learns of any violation of the above restriction, such party will use reasonable efforts to promptly notify the other party.
- 14.13. Export Compliance. The Services and derivatives thereof may be subject to export laws and regulations. Each party represents that it is not named on any government denied-party list. Customer shall not permit Users to access or use any Application or Service in a U.S. or UK embargoed country (including, without limitation, Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. or UK export law or regulation.
- 14.14. Technical Data. Customer shall not provide to PEISO any Technical Data as that term is defined in the International Traffic in Arms Regulations ("ITAR") at 22 CFR 120.10. Customer shall certify that all information provided to PEISO has been reviewed and scrubbed so that all Technical Data and other sensitive information relevant to Customer's ITAR regulated projects has been removed and the information provided is only relevant to bug reports on PEISO's products.

