Tall Bob Terms of Service Agreement

1. Definitions & Interpretation

1.1. Definitions

Analytics Services means the compilation, analysis and generation of the Product Data and Reports by the Software which is delivered to the Client via the Platform
Business Day means a day which is not a Saturday, Sunday, bank holiday or public holiday in Melbourne, Victoria;
Claim means, in relation to a party, a demand, claim, action or proceeding made or brought by or against that party, however arising and whether present, unascertained, future or contingent.
Client means the entity outlined in the Schedule including and any business entity directly or indirectly controlling or being under common control or direct or indirect control of the Client;
Client Account means the Client's account for Services with Tall Bob;
Client Campaign means the distribution of Client Content to the Database via the Platform;
Client Content means the video, images, documents, text content, sender identification uploaded by the Client to the Platform in accordance with this Agreement;
Commencement Date means the date set out in Schedule 1;
Communications Services means the uploading, hosting, distribution of messages and Content to the Database or otherwise.
Confidential Information means all information of a confidential nature, in any form whether tangible or not and whether visible or not, disclosed or communicated by a party to the other, or learnt or accessed by, or to which the other party is exposed as a result of entering into this Agreement and includes, without limitation, any information (including Regulated Information) and material concerning the contractual or commercial dealings, financial details, products or services (current or proposed), customers, employees, internal policy, the Intellectual Property Rights of a party or dealings under this Agreement, but does not include information or material which:
(a) is already in the public domain, or enters the public domain other than due to a breach of this Agreement;
(b) can be proven to be already known by the receiving party other than through any disclosure under this Agreement; or
(c) obtained from a source other than the disclosing party or any of its Related Members or authorised representatives, where that source is entitled to disclose it without an obligation of confidence.
Credit means the amount of funds credited to the Client Account;
Customer means each person who is included in the Database;
Database means the database of mobile phone numbers, email addresses or other contact details relating to the Customers which are to receive the Client Content distributed via Communications Services;
Early Termination Fee means the sum calculated as follows – 45% of the average monthly amount we have invoiced you from the commencement of this Agreement until the date of termination multiplied by the number of remaining months (or any part thereof) of the Term;
Engagement Consultant Fees means the fees charged by Tall Bob to the Client in respect of Engagement Consultant Services as detailed in Schedule 1;
Engagement Consultant Services means the services to be provided by the Engagement Consultant as detailed in the Appendix;
Fees means all fees charged by Tall Bob to the Client in relation to the Services including Setup Fees, Platform Fees (if applicable), Usage Fees and Engagement Consultant fees;
Force Majeure Event includes the following events beyond the reasonable control of a party:
(a) act of nature;

(b) war or terrorism;
(c) national emergency;
(d) epidemic;
(e) change of legislation, regulation, legal process or access to facilities, infrastructure or information controlled by a third party relating to the supply of the Services in any particular state, country or territory which may (in the opinion of the non-performing party, acting reasonably) materially adversely affect the supply or use of the Platform or Services; or
(f) other cause similar to the events described in this definition and beyond the reasonable control of the non-performing party,
(g) act or inaction of government or regulatory agency; and
(h) industrial action outside that party's own workforce.

GST has the meaning given by the GST Law;

GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999, or, if that Act does not exist for any reason, means any Act or regulation imposing or relating to the imposition or administration of a goods and services tax in Australia;

Hosting Services means the hosting and storing on, and streaming from, Tall Bob's servers of the Client Content in accordance with this Agreement;

Inclusions means the Communications Services included with the payment of the Platform Fee each month as set out in the Schedule;

Input Cost means any sms costs or expenses incurred by Tall Bob as a result of any services that Tall Bob receives from third parties in order to provide the Services;

Invoice means an invoice issued by Tall Bob to the Client in respect of amounts owing to Tall Bob under this Agreement;

Insolvency Event means an event by which a party is:
(a) declared bankrupt;
(b) rendered insolvent;
(c) placed in or under receivership, receivership and management, liquidation or official management or administration;
(d) wound up or a resolution is made for the winding-up;
(e) made subject to any arrangement, assignment or composition (otherwise than as a result of voluntary corporate reconstruction); or
(f) subject to any other event that has similar effect to any of the events described in (a) to (e) in this definition.

Intellectual Property Rights means all industrial and intellectual property rights of any kind including but not limited to copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semi conductor or circuit layout rights, trade, business, domain or company names, moral rights, rights in Confidential Information, know how or other proprietary rights (whether or not any of these are registered and including any application for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world. Intellectual Property has a corresponding meaning;

Law means any principle in common law or equity and any requirement under any legislation, rule, instrument, code of practice, ordinance or by law, present or future;

Liabilities means Claims, losses, damages, liabilities (direct and indirect), costs or expenses of any kind and however arising, including legal costs (on a full indemnity basis), penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

Minimum Term means the period commencing on the Commencement Date and expiring after the time period set out in Schedule 1;

Personal Information has the meaning in the Privacy Act.

Personnel of a party means officers, employees, agents and contractors of that party.

Platform means the platform accessible at www.tallbob.com and related domains, mobile applications, application programming interfaces, webservers and desktop applications, which enable the Client to receive the Services;

Platform Fee means the fee payable by the Client in consideration for the Platform Services;

Platform Services means the following services to be provided by Tall Bob to the Client via the Platform:
(a) Hosting Services;
(b) Analytics services;
(c) Communications Services; and

(d) Support Services;

Privacy Law means any Law, Australian or otherwise, which affect privacy or any personal information (including its collection, storage, use or processing) including:

(a) the Privacy Act 1988 and includes any guidelines issued by the Office of the Australian Information Commissioner and corresponding Australian State privacy Laws; and

(b) any codes of conduct, directives, principles or orders made under the legislation referred to in (a) above.

Privacy Policy means Tall Bob's privacy policy which can be found at https://tallbob.com/privacy-policy/

Product Data means the data produced from the Services in respect of various metrics relating to a Client Campaigns;

Regulated Information means all Personal Information and any other information or opinion, whether true or untrue, and whether or not recorded in material form, about any entity other than an individual which a party received or has access to under, or for the purpose of or in the course of carrying out its obligations under this Agreement;

Related Member has the meaning of 'related body corporate' as that term is defined in the Corporations Act 2001 (Cth).

Renewal Period means the period this Agreement is extended as set out in Schedule 1;

Report means a report generated by the Software in respect of various Product Data;

Service Issue means any failure, error or defect in the provision of the Services by, or on behalf of, Tall Bob but excludes failures, errors or defects arising from, caused by or contributed to by the Client's acts or omissions or Third Party Issues;

Services means the services to be provided by Tall Bob to the Client from time to time;

Setup Fees means the services to be performed by Tall Bob and its personnel to set up the Client Account;

Software means the software program owned and used by Tall Bob to provide the Services;

SPAM Laws means any Law, Australian or otherwise, which affect commercial electronic messages (including content, distribution and the rights of recipients) in the country or jurisdiction in which the Communications Services are to be received by a Customer, including without limitation:

(a) the SPAM Act 2003 and includes any guidelines issued by the Australian Communications and Media Authority (or other governing body); and

(b) any codes of conduct, directives, principles or orders made under the legislation referred to in (a) above;

Support Services means the services to be performed by Tall Bob as reasonably required and provide on-going email and phone support to the Client in regard to its use of the Platform (on the basis of a 12 hour response time);

Supply has the meaning given by the GST Law;

Taxes means all taxes, charges, duties, levies, fees and other government imposts levied, assessed or collected, including any related fine or penalty (excluding GST);

Tax Invoice has the meaning given by the GST Law;

Term means the period from the Commencement Date until the later of:

(a) expiry of the Minimum Term; and

(b) an extension of the Term in accordance with clause 3(c),

unless this Agreement is terminated earlier in accordance with clause 9;

Third Party Issues means the acts of a party which are outside of the reasonable control of Tall Bob or any of its sub-contractors;

Upgrade means any enhancement or improvement to the Software, functionality of the Platform or the Services which may be made available to the Client as and when they are released;

Usage Credit means the non-refundable value of Usage fees set out in Schedule 1 that can be utilised without being charged to the Client. Unused Usage Credit expires at the end of each month.

Usage Fees means the fees and costs to be paid by the Client in consideration for the provision of Communications Services in excess of the Usage Credit as set out in Schedule 1;

User means each Personnel of the Client nominated by the Client to have a User Account;

User Account means a sub-account under the Client's Account through which a User is authorised to access and use the Services in accordance with this Agreement;

1.2. Interpretation

(a) Headings are for convenience only and do not affect interpretation.

(b) The singular includes the plural, and vice versa.

(c) Mentioning anything after includes, including or similar expressions, does not limit what else might be included.

(d) A reference to:
- (i) a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (ii) a clause, schedule, annexure or exhibit is a reference to a clause of or a schedule, annexure or exhibit to this Agreement;
- (iii) an agreement or document is a reference to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document;
- (iv) a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (v) legislation or to a provision of legislation includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (vi) dollars and $ is to Australian currency; and
- (vii) notice is to notice in writing (including any visible means of reproduction of words in a tangible or permanently viable form).

2. Services

(a) Subject to the Client's compliance with the terms of this Agreement, Tall Bob grants to the Client a non-exclusive and non-transferable right to use the Services during the Term on the terms set out in this Agreement. This right cannot be transferred, assigned or sublicensed without the prior written consent of Tall Bob.

(b) The Client agrees to use Tall Bob on an exclusive basis for SMS messaging for the Term.

(c) The Client acknowledges and agrees that this Agreement and the Privacy Policy will govern the relationship between the Client and Tall Bob and the Client's use of the Services.

3. Term

(a) This Agreement commences on the Commencement Date and terminates on expiry of the Term.

(b) This Agreement cannot be terminated during the Minimum Term (if applicable) other than in accordance with clause 9.

(c) Unless this Agreement is terminated in accordance with clause 9, on expiry of the then-current Term, the Term of the Agreement will be automatically extended for the Renewal Period on the same terms as were applicable prior to the extension of the Term.

4. Fees

(a) In consideration for the provision of the Services during the Term, the Client must pay to Tall Bob the Fees in accordance with this clause 4.

(b) All Fees shall be paid to Tall Bob in accordance with Schedule 1.

(c) Tall Bob will provide a Tax Invoice to the Client in respect of the Fees.

(d) If the Client pays on a pre-paid basis as outlined in Schedule 1
- (i) the Client is responsible for purchasing Credits in advance with such funds to be held by Tall Bob and only to be applied in accordance with this Agreement. Any Credits are non-refundable.
- (ii) Any recurring fees shall be automatically charged to the card details provided on the Platform

(e) Any additional services requested of Tall Bob by the Client, including but not limited to customized development, additional Engagement Consultant services, integration with platforms, trials will be invoiced to the Client as agreed by the Parties at the time.

(f) Any Invoice issued by Tall Bob to the Client in respect of amounts owing under this Agreement is to be paid the earlier of the period stipulated on the invoice or 14 Business Days of the date of the invoice.

(g) If Tall Bob's Input Costs materially increase, Tall Bob may after providing 30 Business Days written notice, vary this Agreement to the extent reasonably required to pass through the increased costs to the Client.

(h) Where any amounts owed by the Client are outstanding after the due date specified in the relevant Invoice and Tall Bob provides 30 Business Days written notice of its intention, Tall Bob may, at its sole discretion, do any or all of the following:

(i) suspend the Services;

(ii) charge interest of 1.5%per month on all outstanding amounts owed by the Client, calculated on and from the due date for payment until the outstanding amount (including interest) is paid in full; and

(iii) exercise any other rights Tall Bob may have in respect of the Client's breach of this Agreement.

5. Intellectual Property

(a) The Client acknowledges and agrees that all Intellectual Property Rights in, or associated with, the Software, the Platform and the Services are vested in Tall Bob and, unless otherwise provided in this Agreement, no right, title or interest in the Software, the Platform or the Services (or the Intellectual Property Rights associated with the Software, the Platform or the Services) is assigned, conveyed or transferred to the Client or any User under this Agreement and the Client hereby assigns to Tall Bob any rights it may have (now or in the future) in any Intellectual Property Rights in and to any updates, enhancements, improvements, developments and modifications to or of the Software, the Platform and the Services (or any Intellectual Property Rights arising in connection with the provision of the Services).

(b) Except to the extent permitted by applicable Law, the Client will not, and will ensure that the Client's Personnel will not (in whole or part):

(i) adapt, disassemble, reverse engineer or de-compile, the Software;

(ii) transfer or re-export the Software in violation of any applicable export restriction;

(iii) copy, modify, transmit, rent, lease, sub-license, publish or otherwise exploit or distribute the Software to any person; and

(iv) apply or register or attempt to register any Intellectual Property Rights in or associated with the Software in any form or format whatsoever;

(v) use the Software for any purpose whatsoever in breach of any law or regulation or in a manner or for any purpose or which constitutes violation or infringement of the rights of any person, firm or company (including but not limited to rights under Privacy Law and Intellectual Property Rights); and

(vi) misuse the Software by knowingly introducing viruses, trojans, worms, logic bombs or other similar malicious malware to Tall Bob's website.

(c) The Client must immediately notify Tall Bob upon becoming aware of any circumstances which breach, or may potentially breach, this clause 5.

(d) Tall Bob acknowledges and agrees that no right, title or interest in the Client Content is assigned, conveyed or transferred to Tall Bob under this Agreement and Tall Bob hereby assigns to the Client any rights it may have (now or in the future) in any Intellectual Property Rights in and to any updates, enhancements, improvements, developments and modifications to or of the Client Content (or any Intellectual Property Rights arising in connection with modification of the Client Content).

(e) The Client grants to Tall Bob a non-exclusive, transferable, royalty-free, fully paid up license to encode, transcode, reproduce, adapt, stream, store, copy and publish the Client Content and Database, in any jurisdiction, for the term of this Agreement, to the extent necessary and for the express purpose of the provision of the Services in accordance with this Agreement.

(f) The Client grants Tall Bob the right to archive any Client Content if required for the purpose of a dispute, legal proceeding or investigation.

6. Security and Privacy

(a) The Client must not allow any person other than an authorised User to access the Platform or use the Services. The Client acknowledges and agrees that it is responsible for all activity that occurs

on the Platform in respect of the Client's Account or any User Account, irrespective of whether the User of the User Account has been authorised by the Client to undertake such activity, and accordingly, the Client must safeguard and keep records of the Users, User Accounts and Personnel to whom the login details of the Client Account are disclosed. If the Client becomes aware of unauthorised access to the Client Account or a User Account, the Client must immediately change the password to the Client Account or User Account (as applicable) and notify Tall Bob immediately.

(b) The Client is solely responsible for ensuring that it has the relevant permissions, services and facilities required to upload the Client Content to the Platform in the correct size and format. Tall Bob is not liable for any failure, delay or fault in the Client Content being uploaded to the Platform or if the Client Content is unintentionally deleted from the Platform once uploaded. Tall Bob will promptly notify the Client if it becomes aware of any Client Content that has not been uploaded correctly, contains a bug or has been deleted and any disruptions to the upload process. The Client agrees that the Client is responsible for backing up all Client Content and Tall Bob will not be liable for any losses suffered by the Client as a result of Client Content no longer being available on the Platform.

(c) The Client must not, and must ensure that its Personnel do not, use the Platform or the Services:

(i) to distribute any content which contains material which is sexual, racist, defamatory, libelous, fraudulent, vulgar, discriminatory or otherwise inappropriate in nature. The Client acknowledges that such content will be considered to be harassment of the Customer;

(ii) to distribute content which contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorised access to any system, data, password or other information of a Customer, Tall Bob or any third party;

(iii) to distribute any Client Content to any Customer who has not consented to receiving such Client Content or who has previously unsubscribed from any Client Database;

(iv) to distribute any Client Content to any Customer whose Personal Information cannot be lawfully used by the Client (under statute or otherwise) for the purpose of receiving the Client Content; or

(v) in any manner which contravenes any applicable law, including without limitation, Privacy Laws and SPAM Laws or infringes the rights of a third party.

(d) Tall Bob warrants that all Client Content, Databases, Product Data and any other Personal Information provided by the Client to Tall Bob in the course of providing the Services will be handled by Tall Bob in accordance with:

(i) this Agreement, the Privacy Policy and all applicable Privacy Laws; and

(ii) the best practice administrative, physical and technical safeguards for the protection of the security, confidentiality and integrity of the data which may be audited from time to time by the Client upon reasonable notice.

(e) Subject to the confidentiality obligations under this Agreement, Tall Bob may retain and use the anonymised Product Data for the purposes of aggregating such data with the relevant data of Tall Bob's other clients to generate industry benchmark or case study reports from time to time. For the avoidance of doubt, unless agreed otherwise by the Client, nothing in this clause 6 permits Tall Bob to disclose any information that would identify the Client or any individual included in the Database, as the subject of the data included in such reports.

(f) The Client acknowledges and agrees that if at any time circumstances arise which would reasonably be expected to compromise the security of the Platform or the provision of the Services, Tall Bob may suspend all or part of the Services immediately and until security has been restored. In such an event, Tall Bob and the Client must use their best endeavours to resolve such issues in order to reinstate the Services at the earliest possible opportunity.

7. Warranties and Acknowledgements

(a) The Client acknowledges and agrees that:

(i) the Services rely on services provided by third parties, including without limitation, telecommunications companies and mobile network aggregators, and Tall Bob will not

be liable for any failure or defect in the Services directly or indirectly caused by, or resulting from, a failure, defect or technical constraint relating to the services provided by a third party supplier;

(ii) the Platform may be subject to technical maintenance, Upgrades and Service Issues which may temporarily affect the Client's access to the Platform or the Services. Where a Service Issue affects the Client's access to the Platform, the Client must immediately report this to Tall Bob, providing sufficient information to enable Tall Bob to resolve, or arrange for the investigation of the Service Issue;

(iii) whilst Tall Bob will endeavour to ensure the accuracy of the Product Data and Reports, Tall Bob makes no warranty or representation regarding the accuracy of the Product Data or the Reports; and

(iv) it is the Client's responsibility to ensure that the Client Content and the Database are uploaded to the Platform in the correct format and that Tall Bob will not be liable for any charges incurred by the Client as a result of, or relating to, misuse of the Platform, an error or defect in the Client Content or the Database which was directly or indirectly caused by the Client.

(b) The Client warrants that:

(i) the Client has, or will have, all rights, consents and authorisations, and has paid any applicable royalties or fees, required to upload, publish, broadcast or modify the Client Content, or any part of the Client Content (such as music, images or video), including the right to authorise Tall Bob to do such things, and that the use of the Client Content by the Client or Tall Bob in accordance with this Agreement will not infringe upon the copyright, trademark or other rights of third parties;

(ii) the Client has the right and authority to enter into, and perform its obligations under, this Agreement and to use the Database for the purposes contemplated under this Agreement; and

(iii) the Client has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms.

(c) Tall Bob warrants that:

(i) the Services will be fit for the purpose of conducting Client Campaigns and have the performance and functionality described in Tall Bob's promotional, technical, operational and user materials, and any additional, related written information provided to the Client;

(ii) all Services provided under this Agreement will be performed in a professional manner and in conformity with the professional standards or such equivalent for comparable services in the industry;

(iii) Tall Bob has the right and authority to enter into, and perform its obligations under, this Agreement;

(iv) Tall Bob has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms; and

(v) this Agreement constitutes legal, valid and binding obligations and subject to any stamping and registration is enforceable in accordance with its terms.

(d) The Client acknowledges that Tall Bob has entered into this Agreement in reliance on the warranties given by the Client under this Agreement.

(e) Tall Bob excludes:

(i) all express and implied warranties, terms, conditions and guarantees in relation to the Services other than the warranties provided in this Agreement; and

(ii) all liability for consequential or economic loss or damage which may arise in respect of the Services or otherwise in relation to this Agreement, or in respect of other equipment or property, or for loss of profit, business, revenue, goodwill or anticipated savings,

except to the extent that each may not be excluded under applicable law.

(f) Subject to clause 7(j), Tall Bob's liability under this Agreement is limited to at Tall Bob's option to:

(i) re-performance of the Service again (as applicable); or

(ii) payment of the cost of having the Service re-performed again (as applicable); or

(iii) 30% of the Fees paid to Tall Bob during the 12 month period preceding the event giving rise to the liability.

(g) Any warranty, term, condition or guarantee given by Tall Bob which is not excluded under this Agreement will not apply if the Platform or anything relating to the provision of the Services:
  (i) has been altered, subjected to abnormal or unusual physical or electrical stress or environmental conditions, misused, or negligently handled or operated, except by Tall Bob; or
  (ii) has not been operated, used or maintained in accordance with instructions made available by Tall Bob.

(h) The Client must comply with all laws, rules and regulations applicable to the country or jurisdiction applicable to its use of the Services.

(i) The Client agrees to indemnify, keep indemnified and hold harmless Tall Bob and its affiliates, resellers, directors, officers, employees, and agents, from and against all Liabilities suffered in connection with, or relating to:
  (i) a claim by a third party in respect of the Client Content or the Client's use of the Services;
  (ii) a breach of the Client's obligations or warranties under clauses 5, 6 or 7 by the Client or its Personnel, and further agrees that Tall Bob may:
    (A) suspend the Services if, and for so long as, Tall Bob reasonably suspects that a breach of any of these provisions has occurred; or
    (B) apply for injunctive relief in any court of competent jurisdiction in addition to such other remedies available to Tall Bob either at law or in equity in respect of a breach of any of these provisions.

8. Confidentiality

(a) Each Party agrees that the Confidential Information of the other Party may only be used for the purpose of furthering the business relationship between the Parties in accordance with this Agreement.

(b) Each Party must not disclose any Confidential Information of the other Party other than:
  (i) to the extent necessary to enable the Party to exercise or deal with its rights or obligations under this Agreement or to conduct its business generally, provided the recipient of the Confidential Information agrees to act consistently with this clause;
  (ii) to officers, employees, subcontractors, legal and other advisers and auditors of any Party or related body corporate of a Party, provided the recipient of the Confidential Information agrees to act consistently with this clause; or
  (iii) with the consent of the other Party.

9. Termination

(a) The Parties may terminate this Agreement by mutual agreement in writing.

(b) This Agreement may be terminated by the Client:
  (i) Immediately upon Tall Bob suffering an Insolvency Event; or
  (ii) where Tall Bob fails to remedy a material breach of its obligations under this Agreement after the Client has given Tall Bob 20 Business Days written notice of the breach; or
  (iii) on expiry of the Minimum Term (if applicable) or Term where the Client has given Tall Bob written notice of its intention to terminate no later than 20 Business Days prior to the expiry of the Minimum Term or Term; or
  (iv) within 14 days if Tall Bob increases the Fees in accordance with Clause 4(g).
  (v) at any time with 30 days notice during the Term then you will be required to immediately pay us the Early Termination Fee (other than if you terminate the Contract pursuant to clauses 9(b)(i), 9(b)(ii), 9(b)(iii). You acknowledge and agree that any liability to pay us an Early Termination Fee does not prejudice any other right we may have to claim damages as a result of the termination;

(c) This Agreement may be terminated by Tall Bob:
  (i) immediately upon the Client suffering an Insolvency Event;
  (ii) where the Client fails to remedy:
    (A) any breach of its payment obligations under this Agreement after Tall Bob has given the Client 5 Business Days written notice of the breach; or

(B) a material breach of its obligations (other than its payment obligations) under this Agreement after Tall Bob has given the Client 20 Business Days written notice of the breach; or

(iii) upon Tall Bob giving the Client 20 Business Days notice.

(d) To the extent that a party's delay or inability to perform under this Agreement is due to the existence of a Force Majeure Event, the affected obligations of that party under this Agreement will be suspended from the date on which the affected party notifies the other party of the Force Majeure Event until the passing of that Force Majeure Event. A party must take all reasonable steps to minimise any disruption to and resume the performance of its affected obligations.

(e) If substantially all of a party's obligations under this Agreement are suspended by a Force Majeure Event under clause 9(d) by more than 40 Business Days, either party may elect to terminate this Agreement without penalty, or the parties may enter into discussions to modify the affected obligations by variation of this Agreement.

(f) Upon termination of this Agreement:

(i) the Client must cease all use of the Platform and the Services and agrees that Tall Bob will not be liable for any Liability suffered by the Client as a result of the Client being prohibited from accessing the Platform upon termination of the Agreement;

10. GST

(a) All amounts payable to a party under this Agreement are expressed as exclusive of GST.

(b) If any Supply made by Tall Bob to the Client under this Agreement is a taxable Supply, then in relation to any consideration payable by the Client to the Tall Bob in relation to the Supply, Tall Bob is entitled to recover from the Client, concurrently with the payment of that consideration, an additional amount equal to the GST payable in respect of the Supply, on the basis that the value of the taxable supply is the amount payable for the taxable Supply excluding any GST.

11. Dispute resolution

(a) If a Dispute arises, a party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with this clause 11 except where the party seeks urgent interlocutory relief.

(b) The Party claiming that a Dispute has arisen must give written notice to the other Party specifying the details of the Dispute (**Dispute Notice**).

(c) On receipt of the Dispute Notice by the other Party (**Dispute Date**), the Parties must use their best endeavours to resolve the Dispute expeditiously and in good faith using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.

(d) If, within 10 Business Days of the Dispute Date (or such further period as agreed in writing by them), the Parties do not resolve the Dispute or do not agree as to:

(ii) the dispute resolution technique and procedures to be adopted;

(iii) the timetable for all steps in those procedures; and

(iv) the selection and compensation of the independent person to be engaged to conduct the dispute resolution process, either party may request the President of the Institute of Arbitrators and Mediators Australia to nominate and appoint a mediator who is to act in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation Rules.

(e) If the Dispute is not settled within 20 Business Days of the submission to mediation (unless such period is extended by agreement of the Parties), the Parties agree that the mediator appointed pursuant to clause 11(d) may submit the Dispute to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Arbitration Rules.

(f) The parties agree that:

(i) To the extent possible, each party must continue to comply with its obligations under this Agreement until the Dispute is resolved; and

(ii) In the absence of manifest error, the decision of an arbitrator appointed in accordance with this Agreement is binding on the parties.

12. Miscellaneous

(a) The Client must not assign or novate this Agreement, in whole or part, without obtaining the prior written consent of Tall Bob.

(b) The covenants, conditions and provisions of this Agreement which are intended or capable of having effect after the expiration or termination of this Agreement (including provisions relating to warranties, privacy, confidentiality, indemnities, liability and Intellectual Property) must remain in full force and effect following any expiration or termination of this Agreement.

(c) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a Party to this Agreement:

- (i) must be in legible writing and in English addressed and marked “urgent” as shown below:
  - (A) if to the Tall Bob, to the office or postal or email address shown on the most recent written correspondence sent on behalf of the Tall Bob to a representative of the Client;
  - (B) if to the Client, to the office or postal or email address shown on the most recent written correspondence sent on behalf of the Client to a representative of the Tall Bob; or
  - (C) as specified to the sender by any Party by notice;
- (ii) where the sender is a company, must be signed by an officer of the sender;
- (iii) is regarded as being given by the sender and received by the addressee:
  - (A) if by delivery in person, when delivered to the addressee;
  - (B) if by post within Australia, 3 Business Days from and including the date of postage;
  - (C) if by post to an address outside Australia or from outside Australia to an address inside Australia, 6 Business Days from and including the date of postage; or
  - (D) if sent by email, upon receipt of a non-automated response confirming receipt of the email, but if the delivery or receipt is on a day which is not a Business Day it is regarded as received at 9.00 am on the following Business Day.

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

(e) If any provision of this Agreement:

- (i) is or becomes void, voidable, illegal or unenforceable in its terms; and
- (ii) would not be void, voidable, illegal or unenforceable if:
- (iii) some words were omitted; or
- (iv) where it is capable of being read down, it were read down, then those words are severed and that provision will be read down accordingly (as applicable) and the rest of the Agreement will continue in full force and effect.

(f) This Agreement may be executed in several counterparts which together constitute the same document. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by PDF file shall be effective as delivery of a manually executed counterpart of this Agreement.

(g) Any document comprising this Agreement which is required to be duly signed or executed by a Party is not binding on any Party unless one or more counterparts of that document have been duly executed by, or on behalf of, all persons named as a party to the document.

(h) This Agreement embodies the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes any prior negotiation, arrangement, understanding or agreement with respect to the subject matter of any term of this Agreement. A variation of any term of this Agreement must be in writing and signed by all of the Parties.

(i) All rights and remedies available to a party under this Agreement are cumulative and not exclusive of any other rights or remedies at Law.

(j) Each party must do all things necessary (including executing documents) to give full effect to this agreement and the transactions contemplated by this Agreement.

(k) Time is of the essence in this Agreement.