

CLIENT SERVICES TERMS AND CONDITIONS

These Terms and Conditions (**Terms**) apply in respect of the Services We are engaged to provide to You, and which are to be read in conjunction with the Quote or Order Form (however onboarded) and the End User Licence Agreement (**Related Agreements**). Where there is any inconsistency between the Related Agreements and these Terms, these Terms will prevail to the extent of the inconsistency.

For the purposes of these Terms, unless the context otherwise requires:

- A. any reference to “We, Us, Our, Provider” is a reference to FireHawk Systems Pty Ltd ACN 620 266 962 of 2/100 Victoria Street, Taree NSW 2430;
- B. any reference to “You, Your, Client” is a reference to the party or parties that have engaged Us to provide Services as set out in the Quote or Order Form; and
- C. certain capitalised terms used in these Terms have the meaning given to them in clause 15.1.

These Terms together with the Related Agreements, and any appendices constitute the terms of Our engagement to provide the Services to You (**Agreement**). References to the “Agreement” in these Terms is a reference to either or both the Terms and the Related Agreements, as the context requires. By accepting these Terms, You acknowledge and agree to be bound by its terms.

1. SERVICES

1.1 Services provided by the Provider

- a. For the Term and in consideration for the Fees, We will provide the Services to You.
- b. Subject to any agreement to the contrary, the services that We will deliver to You are limited to the Services. If You request Us to provide other specific services, they will be the subject of a separate Quote or Order Form and thus separate Fees.
- c. The Services may be amended from time to time as agreed in writing by the Parties.

1.2 Cloud Storage

We utilise cloud storage providers in the provision of the Services

1.3 Standard of Services

- a. The Services must be performed by such employees or agents that the Provider may choose as most appropriate to carry out the Services.
- b. Unless agreed otherwise in writing by the Parties, the Client acknowledges and agrees that time is not of the essence for:
 - i. any dates or times when the Services are due to be performed;
 - ii. the length of time that the Services will take to perform; and
 - iii. any date or time when the Services will be completed by.

1.4 Service limitations

The Provider will use reasonable efforts in providing the Services, however other than as set out in this Agreement, to the fullest extent permitted at law:

- a. **Defects and Interruptions:** the Provider does not warrant or guarantee the Services or Deliverables will be uninterrupted or error free, and does not take any responsibility for defects or interruptions to the Services caused by:
 - i. misuse or user error;
 - ii. variation or modification to the Deliverables by the Client or any third party;
 - iii. the Client’s software, equipment, or network;
 - iv. the delays, action or inaction of any third party;
 - v. the delays, action, operation, inaction, or failure of any third party service, software, or equipment; or
 - vi. any Force Majeure Event;

- b. **Fitness for Purpose:** the Provider does not warrant or guarantee the Services or Deliverables for fitness of purpose, client satisfaction, performance, or compatibility;
- c. **Business Activity:** the Provider does not represent or warrant that the Client will achieve any particular result from the Services in terms of increased activity, search engine ranking, or revenue;
- d. **Accepted Data Formats:** the Provider may refuse to accept any Client Materials that do not meet its Accepted Data Specifications;
- e. **Backup and Disaster Recovery:** the Provider is not responsible for any backup or disaster recovery services, and any hosting services it may provide;
- f. **Security:** the Provider will take reasonable precautions in providing the Services, but is not responsible for any security breach or related loss associated with any Services;
- g. **Legal Review:** the Client is responsible for ensuring that any Deliverables comply with applicable laws and advertising standards. Where the Provider provides logo design or brand identity services, it cannot guarantee that its designs are eligible for trade mark protection; and
- h. **Specific Exclusions:** the Provider provides no services in relation to the Specific Exclusions under this Agreement.
- i. **Service Limitations applicable to Web Development Services:**

- i. **Concept Work:** where the Provider provides design services under this Agreement, the Provider includes, as Deliverables, the number of concept designs as set out in the Scope of Services. Provided the Provider has met the Scope of Services, the Fees are payable whether or not the Client elects to proceed with a specific design concept;
- ii. **Domain Name Availability:** where the Provider is instructed to procure a domain name on the Client’s behalf, the Provider does not guarantee and is not responsible for domain name availability;
- iii. **Supported Browsers and Operating Systems:** where the Provider provides website design or development services under this Agreement, the Provider will design for current released browser and operating system versions only. However, the Provider does not guarantee the provided website will display correctly on all browsers on all devices (but will in any event build the website to be responsive). For clarity’s sake, ‘current’ means current as at the Commencement Date;
- iv. **Integration:** the Provider does not guarantee or represent that the Deliverables will integrate with any particular third party hardware, software, or environment; and
- v. **Transition Out:** the Provider does not provide any transition out services under this Agreement. The Client may request, and at the Provider’s discretion it may provide transition out/handover services, however such services will be offset out in a Quote or Order Form .

1.5 Variations to the Scope of Services

- a. The Client may request changes to the Scope of Services and the Provider will:
 - i. make reasonable efforts to accommodate the Client’s request, but is not obliged to accept the requested changes; and
 - ii. advise the Client of any additional costs and timetabling for implementing the requested changes.
- b. If the Client accepts the additional costs and timetabling for implementing the requested changes, the Provider will invoice the Client for the additional costs, payable prior to delivery.

- c. This Agreement will then continue to apply to the Services as amended.

1.6 Out-of-Scope Services

- a. The Provider may at its discretion, upon request by the Client, provide Out-of-Scope Services. For clarity's sake, this expressly includes any meetings and any rounds of amendments requested in addition to those set out in the Scope of Services.
- b. The same standards, warranties, inspection rights and indemnities apply to Out-of-Scope Services as apply to the Services.
- c. The Provider will charge the Out-of-Scope Fee for any Out-of-Scope Services it provides.
- d. The Provider may vary the Out-of-Scope Fee at any time, by 30 days' Written Notice. Any change will apply only to Out-of-Scope Services requested and performed after the effective date of the change.

1.7 Urgent Services

- a. The Provider reserves the right to charge a Rush Fee for services which the Client:
 - i. requests to be performed urgently; and
 - ii. requests to be performed outside of Business Hours.
- b. The Provider may vary the Rush Fee at any time, by 1 one day Written Notice. Any change will apply only to urgent or out of hours services requested and performed after the effective date of the change.

1.8 Changes to Services

Technology and business environments are constantly evolving and the Provider may make adjustments to the Services to ensure that the Client continues to receive the best possible results. However, the Provider will give the Client reasonable notice of any changes, and ensure that any replacement services are of the same standards as the original.

1.9 Warranties

The Provider warrants that it and every person who provides the Services on its behalf is competent and has the necessary skills, qualifications, permits and licences to provide the Services.

2. SCOPE OF SERVICES

The services offered under these Terms will be limited to the Services as described in the Quote or Order Form.

3. TERM

- a. This Agreement commences on the Commencement Date and continues for the Term, unless terminated earlier:
 - i. in accordance with clause 11; or
 - ii. as agreed otherwise in writing by the Parties.
- b. Unless agreed otherwise in the Quote or Order Form, once the Term ends, this Agreement will automatically continue until either Party provides 30 days' written notice of its intent to terminate. In the event that the Client terminates Our services within the Term, the Client agrees that it will be liable for and pay the Fees for the balance remaining of the Term.

4. DELIVERY AND ACCEPTANCE

4.1 Delivery

- a. The Provider is responsible for providing the Services and the Deliverables.
- b. The Services and Deliverables will be provided to the Client on or by the Completion Date, or otherwise as set out in the Quote or Order Form.
- c. The Services and Deliverables may be varied or added to as agreed by the Parties from time to time, in writing. Any variation or addition to the Deliverables shall be clearly indicated (including the additional or different Fees to be paid by the Client).

- d. Subject to this clause 4.1 and the licence granted under clause 8.2, the Client has no right of access to any work in progress prior to its delivery, and no rights in any Deliverable until acceptance of that Deliverable under clause 4.2 and payment in full of all Fees applicable to that Deliverable. This clause expressly includes any drafts, concepts, mock-ups, and prototypes the Provider may provide to the Client.
- e. Unless expressly stated in this Agreement, delivery dates are a guide only and the Provider does not guarantee any fixed deadlines for the delivery of Services or Deliverables.
- f. The Provider is not responsible for delays caused by:
 - i. the Client's delay in providing instructions, access, or Client Materials necessary to undertake the Services;
 - ii. the delays, action or inaction of any third party (including the Client's contractors);
 - iii. the delays, action, operation, inaction, or failure of any third-party service, software, or equipment;
 - iv. changes in the Services (whether requested by the Client, or required to cater for changes in technology or other circumstances);
 - v. any Force Majeure Event; or
 - vi. the Provider exercising its rights under clause 11.1(a),

and if any of these events causes a delay, the Provider may, by Written Notice to the Client, extend the delivery date by the same length of time or any greater period as it deems reasonably necessary.

4.2 Acceptance

- a. If applicable, any training, workshop, or presentation forming part of the Services is deemed accepted upon provision of those Services.
- b. The following applies to any Deliverable not covered by clause 4.2(a):
 - i. upon delivery of a Deliverable, it is the Client's responsibility to review and test the Deliverable to confirm that it meets the Client's requirements;
 - ii. the Client may give the Provider Written Notice within 14 days of delivery if they consider that the Deliverable contains a Defect, clearly identifying the ways in which it does not meet the agreed Scope of Services. If the Provider agrees that the Deliverable contains a Defect (determined at the Provider's sole discretion) the Provider may correct the identified Defects to meet the agreed specifications, and re-present the Deliverable to the Client within 14 days (or any other period agreed between the parties);
 - iii. the parties may repeat the process in clauses 4.2(b)(i) to 4.2(b)(ii) until the Deliverable meets the Client's requirements, however this will be considered Out-of-Scope Services;
 - iv. the Deliverable is deemed to be accepted if the Client confirms that it accepts the Deliverable, or if the Provider does not receive a Written Notice under clause 4.2(b)(ii) within 14 days; and
 - v. the parties acknowledge that delayed acceptance of a Deliverable will impact upon the delivery timeframe of all future Deliverables. As such, deadlines for all Deliverables will be extended by the same duration as final acceptance is delayed.
- c. Any changes that the Client requests to a Deliverable once it has been deemed accepted (including changes to content) will be treated as Out-of-Scope Services, and the Provider reserves the right to charge the Out-of-Scope Fee to those services.

5. SUPPORT SERVICES

- a. General Support and Maintenance Services will only be offered to the Client upon the Client requesting such services from the Provider by lodging a support ticket. It is at the Provider's discretion to charge Support Fees depending on the scope of the services, the urgency of the request, and the resources appointed for providing such services.
- b. Customisation Services will only be offered to the Client upon the Client requesting such services from the Provider. For clarity, the Provider will retain full ownership over all Customised Works.

6. FEES, BILLING AND PAYMENT TERMS

6.1 Payments

- a. In consideration of the provision of Services in accordance with this Agreement, the Client will pay the Provider the Fees.
- b. The Client must pay the Provider the Fees by the due date set out in each invoice, unless otherwise agreed in writing by the Parties.
- c. All invoices related to FireHawk CRM (**CRM Invoice**) are immediately due and payable and will be issued in advance. The Provider will issue an invoice for any Upfront Fees upon the Client signing this Agreement. The Provider will not commence the Services until it has received any Upfront Fees in cleared funds.
- d. If payment of a CRM Invoice does not occur within 14 days of the due date, the Provider may, at its absolute discretion, charge interest on the overdue amount at an interest rate equal to 10%. Such charges will be calculated on a monthly basis beginning one day after the due date of the invoice.
- e. The Provider may, at its absolute discretion, charge other reasonable costs in relation to recovering overdue payments in accordance with clause 6.1d).
- f. The Client must pay 50% deposit (**Deposit**) for any services or products (other than CRM) as set out in a Quote or Order Form. All Deposits are non-refundable once the Provider commences work as set out in a Quote or Order Form.
- g. The Provider will issue an invoice for any Balance prior to the delivery of the Deliverables. For clarity, the Balance for services such as designing software applications or websites will be due prior to an application or website going 'live' to the public unless specified otherwise in the Quote or Order Form.
- h. If the Client receives marketing services as part of the Services, the Client may be required to pay a monthly retainer in advance. The Provider will then deduct its invoices from any retainer amount based on the monthly spend amount set out in the Quote or Order Form.
- i. In addition to the Fees above, the Client must pay the following fees for additional services requested and provided (if applicable), which may be charged at the Provider's sole discretion:
 - i. any Out of Scope Fees for Out-of-Scope Services requested and performed under clause 1.6;;
 - ii. any Rush Fees for Services requested and performed under clause 1.7;
 - iii. where pre-agreed in email form, any expenses the Provider incurs on your behalf in the course of performing the Services, at cost plus;
 - iv. any Support Fees for General Support and Maintenance Services and Customisation Services requested under clause 5; and
 - v. where pre-agreed, any licence fees for third party Intellectual Property or materials to be incorporated into the Services, at cost as specified in the Engagement Form.

- j. If the Client receives marketing services as part of the Services, any further rounds of revisions for a particular ad variation may incur an additional fee that will be added to the Clients' next invoice. The Provider will notify the Client and obtain written approval prior to incurring the additional fees.

6.2 Further payment provisions

- a. The Client is responsible for and must reimburse the Provider for any transaction, processing, dishonour or charge-back fees issued by a financial institution or payment gateway in the course of making payment.
- b. All fees are exclusive of GST. If any GST is imposed on a supply under this Agreement, the Client must pay the GST amount in addition to the Fees. The Provider will itemise any applicable GST on each Tax Invoice.

6.3 Fee disputes

- a. If the Client reasonably believes that an invoice contains an error, and the Client wishes to dispute an invoice, it must:
 - i. notify the Provider before the due date of the invoice;
 - ii. pay all undisputed fees on the invoice; and
 - iii. provide detailed information about any disputed fees.
- b. The Provider will not suspend or terminate any Services for non-payment of the disputed fees while the dispute is being investigated.

6.4 Default in Payment

- a. If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in the Agreement, the Provider is entitled to:
 - i. charge interest on the outstanding amount at the Law Society of New South Wales Contract Default Rate as at the date of the unpaid invoice, accruing daily;
 - ii. require the Client to pay, in advance, for any Services (or any part of the Services) which have not yet been performed;
 - iii. return any of the Deliverables and Intellectual Property of the Provider provided as part of the Services;
 - iv. immediately suspend work of any or all Services;
 - v. postpone any delivery date or go-live date, or suspend any hosting, accounts, or server access relevant to the Services;
 - vi. retain a lien over all equipment, materials, data and work in progress, including those owned by the Client in the Provider's possession and control; and
 - vii. cease performing any further Services (or any part of the Services).
- b. When making a payment the Client must quote relevant reference numbers and the invoice number.

CLIENT'S OBLIGATIONS AND WARRANTIES

7.1 General Obligations

The Client agrees to:

- a. supply clear instructions regarding the scope and specifications of the Services, and respond to any questions about the scope and specifications of the Services promptly and clearly;
- b. respond in a timely manner if the Provider brings an issue to the Client's attention in relation to the Client's software, equipment, data or network that affects the operation of the Services;
- c. provide all Client Materials, channel page log in details, copy suggestions, images, branding files, documents, equipment, data or information necessary to provide the Services and specified in the Scope of Services or as agreed between the parties from time to time;

- d. keep the Provider informed of any information or event relevant to the Services, including, but not limited to, details of any changes to key personnel, access codes or any equipment or software;
- e. provide the Provider with unique administrator level login details and passwords, and remote access to the Client's network (where reasonably necessary) so that the Provider can carry out the Services. If the Client is unable to provide the Provider with unique administrator level login details and passwords, the parties will negotiate an alternative arrangement;
- f. provide the Provider on request with copies of all necessary software licences, licence keys and original media, to enable the Provider to carry out the Services; and
- g. not do anything to damage the Provider good standing, integrity, or reputation. Any disputes must be handled in accordance with clause 13.

7.2 Obligations applicable to marketing services

If the Client is receiving marketing services as part of the Services, the Client agrees to:

- a. provide access to all marketing platforms ;
- b. provide correct access (FTP/cPanel/CMS and others relevant) logins to its website or communicate these details before commencing work;
- c. provide channel page log in details;
- d. provide suggested keywords for ad targeting and ad copy;
- e. disclose any keywords that are excluded from targeting;
- f. share all creative assets and branding guidelines with the Provider;
- g. disclose any non-brand approved terminology and jargon; and
- h. give feedback to the Provider if required to progress the Services.

7.3 Obligations applicable to content creation services

If the Client is receiving content creation services as part of the Services, the Client agrees to:

- a. provide a completed brief or briefing session with proper detail on the content required;
- b. provide photograph and/or video samples and suggestions;
- c. approve any Deliverables within 3 Business Days of delivery;
- d. if required, provide:
 - i. branding files;
 - ii. existing imagery; and
 - iii. a Client representative on any shoot days (if applicable);

7.4 General warranties

The Client warrants and undertakes that:

- a. it and its representatives have all necessary licences and legal right(s) to permit and authorise the Provider to provide the Services;
- b. providing the Services in accordance with the Client's directions will not contravene applicable laws, including the *Copyright Act 1968* (Cth), *Trade Marks Act 1995* (Cth) and *Competition and Consumer Act 2010* (Cth);
- c. it is authorised to grant the licence in clause 8.1(b);
- d. it and all of its employees and contractors maintain prudent and comprehensive insurance policies; and
- e. it will provide adequate assurances of the warranties in clause 7.4(a) to 7.4(d), including providing copies of any licences or insurance policies upon request.

8. INTELLECTUAL PROPERTY

8.1 Client Materials

- a. The Client (or where applicable, any third-party owner) retains ownership of all relevant Intellectual Property

rights in the Client Materials and such rights are not assigned or transferred to the Provider.

- b. The Client grants the Provider (and its employees, contractors and agents, as applicable) an irrevocable, royalty-free, perpetual licence to use, copy, modify and adapt any Intellectual Property in the Client Materials as reasonably necessary to provide the Services.

8.2 License to test

For the duration of this Agreement and subject to its terms, the Provider grants the Client a royalty free, non-exclusive licence to use any Intellectual Property in any Deliverables the Provider provides, only as necessary for the Client to fulfil its obligations under clause 4.2.

8.3 Third party materials

- a. The Provider may incorporate third party materials in a Deliverable as necessary to provide the Services. Use of third party materials may be subject to creative commons or open source licensing terms, or such third party licensing terms as notified, and may not be the same terms as those set out in clauses 8.4 to 8.6.
- b. The Client acknowledges and agrees that it is the Client's responsibility to maintain any licences for third party materials after completion of the Services.

8.4 Ownership of Intellectual Property

The parties agree that all Intellectual Property rights in:

- a. photography, videography or any other material developed by the Provider under this Agreement; and
- b. any improvements, modifications or enhancements to the Deliverables and any other material developed by the Provider in the course of providing the Services, will vest in and are owned by the Provider upon creation, even if based on the Client's new feature request or user feedback.

8.5 License

- a. Subject to clauses 8.5(b) and 8.5(c) and receipt of full payment for the corresponding Services and Deliverables, the Provider grants the Client a limited, nonexclusive, perpetual, royalty-free licence to use the Provider Intellectual Property to the extent that it is incorporated as part of the Services and Deliverables under this Agreement.
- b. The licence granted under clause 8.5(a):
 - i. may not be sub-licensed except as reasonably necessary for the Client to maintain any Deliverables; and
 - ii. is not transferable or assignable without the Provider's written consent.
- c. Without limiting the Client's rights at law, and subject to any conflicting rights granted by this Agreement, the Client must not, without the Provider's written consent:
 - i. use the Intellectual Property in the Deliverables other than for the Permitted Purpose;
 - ii. sell, sublicense, rent, lease, lend, modify, alter, translate, reproduce, transmit, distribute, adapt, or edit any part of the Deliverables;
 - iii. reverse engineer, decompile or disassemble any part of the Deliverables, or disclose the algorithmic nature or describe any part of the Source Code or inner workings of any part of the Deliverables;
 - iv. combine or incorporate the Deliverables in any program or system;
 - v. copy the Deliverables, in whole or in part;
 - vi. use any Deliverable in any way which is not in accordance with its specifications and this Agreement;
 - vii. use any Deliverable for any unlawful purpose; or
 - viii. authorise any other party to do any of the acts in this clause 8.5(c).

8.6 Design Credits

- a. The Provider, its designers and developers (as applicable) expressly retain their moral rights in all Deliverables and other materials provided under this Agreement. The Client must ensure that such works are not subjected to any treatment which is prejudicial to the Provider's reputation and does not infringe the moral rights of the author(s).
- b. Subject to clause 8.6(c), the Provider reserves the right to include and require the Client to retain:
 - i. a discreet link and logo of the Provider in the footer of any website crediting the Provider as the website creator; and
 - ii. the Provider's name or logo discreetly on any printed work crediting the Provider as the designer.
- c. The Client may request that the Provider remove the design credit set out in clause 8.6b, and the Provider may consent to such request at its sole discretion, and may charge a fee to do so.
- d. The Provider reserves its right to remove the design credit set out in clause 8.6b prior to termination of any hosting services it is providing to the Client, whether under this Agreement or a separate agreement.

8.7 Publicity rights

For the term of this Agreement, and subject to the Client's ongoing right of revocation by 30 days' Written Notice, the Client grants the Provider, and its contractors and agents, a non-exclusive licence to:

- a. use the Client's logo, trade marks and other branding rights to market or promote its services;
- b. display, link to, or promote the Client's business as part of its portfolio; and
- c. publish general case studies describing the Services and Scope of Services (but excluding disclosure of the Fees) for marketing and promotional purposes.

9. CONFIDENTIALITY

9.1 Obligation to maintain confidentiality

Each Party must (subject to clause 9.2):

- a. keep Confidential Information confidential; and
- b. not use or permit any unauthorised use of Confidential Information.

9.2 Exceptions to confidentiality

Clause 9.1 does not apply where:

- a. the Confidential Information is in, or comes into, the public domain (other than by a breach of these Terms);
- b. the Party who owns the Confidential Information has provided written consent to the disclosure of the Confidential Information;
- c. the disclosure is required by law;
- d. the disclosure is required to comply with the terms of these Terms, provided that the relevant Party ensures that the recipient of the Confidential Information complies with the terms of clause 9.1; or
- e. the disclosure is to a professional adviser for the purpose of obtaining advice on these Terms, provided that the relevant Party ensures that the professional advisor complies with the terms of clause 9.1.

9.3 Return of Confidential Information

At the termination of this Agreement, and express request of the Client:

- a. all Confidential Information must be returned to the Client, including all copies of the Confidential Information or any extracts or summaries of the Confidential Information that the Provider makes and any software that the Provider creates based on the Confidential Information; and
- b. the Provider must erase and destroy any copies of any software containing or comprising the Confidential Information in the Provider's possession or under the

Provider's control or that may have been loaded onto a computer possessed or controlled by the Provider.

WARRANTIES, LIABILITY, AND INDEMNITIES

- a. The Provider makes no warranty that the Services will guarantee any increase in traffic, sales, business activities, profits or any other form of improvement for the Client's business or any other purpose. The Client will indemnify the Provider for any damages or losses arising from or as a consequence of the provision of the Services.
- b. The Provider warrants that it will use reasonable care and skill in performing the Services to the standard generally accepted within the profession in which the Provider operates for the type of Services provided by the Provider.
- c. The Provider must have adequate insurance policies.
- d. The Client must indemnify and hold harmless the Provider from and against all Claims and Losses arising from loss, damage, liability, injury to the Provider, its employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of any information supplied by the Client and for any breaches of personal data privacy.
- e. If the Client is receiving marketing services as part of the Services, the Client warrants that it has the right to use the materials and assets provided to the Company for digital advertising purposes in all of the territories and countries targeted in the digital ads.
- f. Each of the Parties acknowledge that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.
- g. The Provider only accepts liability to the Client as set out in this clause, or as required by consumer or other laws that cannot be excluded by contract.
- h. To the fullest extent allowable at law:
 - i. indirect, special, pure economic or Consequential Loss (whether arising under contract or tort) are expressly excluded under this Agreement;
 - ii. all Services are provided under this Agreement on an 'as is' basis and all warranties that may be implied by law or statute (other than those set out in this Agreement) are excluded;
 - iii. the Provider's liability, under this Agreement is limited to (at the Provider's election):
 - A. supplying the Services again; or
 - B. payment of the cost of having the Services supplied again;
 - C. a refund of the amount the Client has paid the Provider for those Services.
- i. Despite any other provision to the contrary, the Provider's total liability and the total liability in connection with this Agreement regardless of the cause of action, will not in any circumstances exceed the maximum value equal to the total fees received by the Provider from the Client under this Agreement.

SUSPENSION AND TERMINATION

11.1 Client default and suspension

- a. The Provider may suspend the Services at any time and give the Client a Notice of Default if:
 - i. the Client fails to make any payment when due, or any payment is dishonoured or subject to chargeback;
 - ii. the Client fails to comply with its obligations under clause 7;
 - iii. the Client does not contact/respond to requests by email or telephone within ten (10) working days;

- iv. the Client's instruction deviate from the Scope of Services agreed and refuses to pay additional fees for those additional services;
 - v. the Client fails to provide content and or any additional information requested by the Provider within reasonable timeframes provided; and
 - vi. in the Provider's reasonable opinion the Client's data, network, software or equipment may be causing damage to any person or property.
- b. Suspension of services under this clause:
- i. does not affect the Client's liability to make payment; and
 - ii. will immediately end when the issue giving rise to the suspension is remedied.

11.2 Termination

- a. Either Party may terminate this Agreement immediately, by Written Notice if the other Party:
- i. breaches any provision of this Agreement and fails to remedy that breach within fourteen (14) Business Days after receiving written notice requiring it to do so; or
 - ii. if the other Party is the subject of an Insolvency Event; or
 - iii. if the other Party is charged with a criminal offence; or
 - iv. if the other Party is threatened with the institution of legal proceedings or sued by any person or third party.
- b. On termination of this Agreement, the Client must:
- i. pay for all Services provided up to the date of termination, and for all expenditure falling due for payment after the date of termination from commitments reasonably and necessarily incurred by the Provider for the performance of the Services prior to the date of termination; and
 - ii. immediately return all Deliverables and Confidential Information.

12. NON-SOLICITATION

You and your Affiliates must not during the Term and for a period of twelve (12) months after the Term:

- a. entice away or attempt to entice away any of the Provider's:
- i. employees;
 - ii. contractors, or;
- b. engage or employ any person for a period of twelve (12) months after the person ceases to be engaged or employed by the Provider:
- i. in a senior capacity; or
 - ii. otherwise,

without the Provider's prior written consent.

13. DISPUTE RESOLUTION

13.1 Informal dispute resolution

The Parties agree that in case of a dispute arising from this Agreement, they will first attempt to informally negotiate a settlement or resolution of the dispute by contacting the other Party in writing and informing the other Party in a comprehensive way of the grounds of the dispute.

13.2 Mediation

- a. If the dispute cannot be resolved under clause 13.1, either Party may give the other Party a Written Notice that they intend to arrange mediation.
- b. The parties must refer the dispute to an independent mediator within 21 days of the Written Notice.
- c. If the Parties cannot agree on a suitable mediator, either Party may contact the Law Society of New South Wales and request that they provide a mediator.
- d. The costs of the mediation must be paid by the parties in equal shares.

13.3 Legal proceedings

No Party may commence court proceedings unless the dispute remains unresolved after 28 days from the date of the Written Notice provided under clause 13.2.

GENERAL

14.1 Force majeure

- a. Neither Party has any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from a Force Majeure Event.
- b. The Party affected by such circumstances must promptly notify the other Party in writing when a Force Majeure Event causes a delay or failure in performance and when they cease to do so.
- c. If Force Majeure Event continues for a continuous period of more than 6 months, either Party may terminate this Agreement by written notice to the other Party.

14.2 Amendments

This Agreement may be amended by the Provider from time to time, and the Provider will endeavour to give the Client notice of such amendments.

14.3 Assignment

- a. Subject to clause 14.3(b), neither Party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party.
- b. A Party may assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under this Agreement.

14.4 Entire Agreement

- a. This Agreement contains the whole Agreement between the Parties in respect of the subject matter of Agreement and supersedes and replaces any prior written or oral Agreements, representations, or understandings between them relating to such subject matter.
- b. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

14.5 Waiver

- a. No failure or delay by the Provider in exercising any right, power or privilege under this Agreement will impair the same or operate as a waiver of the same nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- b. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

14.6 Survival

Clauses 5, 7, 8, 9, 10, 11, 12, 13 and 14 survive the expiry or termination of this Agreement.

14.7 Relationship between the Parties

- a. This Agreement does not constitute or imply any partnership, joint venture, agency, fiduciary relationship, or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.
- b. Neither Party may, nor represent that it has, any authority to make any commitments on the other Party's behalf.

14.8 Further assurance

Each Party to this Agreement must at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.

14.9 Severance

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement. It will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

14.10 Announcements

- a. Subject to clause 14.10(b), no Party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure it furnishes all the Parties with a copy of such announcement or information and obtains the approval of such persons to its terms.
- b. No Party shall be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

14.11 Notices

- a. A notice or communication provided under this Agreement must be:
 - i. in writing; and
 - ii. addressed and delivered to the intended recipient in person, by post or by email (where an email address has been provided) in accordance with the notice details last provided by the recipient.
- b. A Party can update their notice details at any time by written notice to the other Parties.
- c. A notice or communication is taken to be received:
 - i. if provided in person, when delivered;
 - ii. if provided by post:
 - A. in Australia, to an Australian address, the third Business Day after posting; or
 - B. in any other case, on the tenth Business Day after posting;
 - iii. if provided by email sent before 5pm on a Business Day, then on the Business Day that it is sent; or
 - iv. if provided by email after 5pm on a Business Day, then on the following Business Day.

14.12 GST

- a. Unless otherwise provided, all amounts expressed within this Agreement are exclusive of GST.
- b. If a Party (**Supplier**) is obliged under the GST Law to pay an amount of GST for a taxable supply made by the Supplier to another Party (**Recipient**) under this Agreement, the Recipient must pay the Supplier an amount equal to the GST payable on the supply.

14.13 Law and jurisdiction

This Agreement takes effect, is governed by, and shall be construed in accordance with the laws from time to time in force in New South Wales, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

14.14 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be considered an original, but all of which will constitute one and the same instrument.

14.15 Electronic signature

The Parties agree that this Agreement may be executed electronically in accordance with the *Electronic Transactions Act 2001* (NSW) and the *Electronic Transactions Act 1999* (Cth).

14.16 Costs and expenses

Each Party must pay its own costs and expenses (including legal costs) in connection with the negotiation, preparation, finalisation, and execution of this Agreement.

14.17 Merger

The rights and obligations of the Parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

DEFINITIONS AND INTERPRETATION

15.1 Definitions

In these Terms, unless the context requires otherwise:

Accepted Data Specifications	means the required format of the Client Materials as specified by the Provider (if any).
Affiliate	means in relation to a Party: <ol style="list-style-type: none"> a. a person that controls or is controlled by that Party; and b. a Related Body Corporate of that Party.
Agreement	means together the Quote or Order Form and these Terms, this agreement and all schedules, annexures and attachments included in this agreement, as amended pursuant to its terms.
Balance	means the balance of any Fees owing, after payment of the Upfront Payment.
Bankruptcy Act	means the <i>Bankruptcy Act 1966</i> (Cth).
Business Day	means a day (other than a Saturday, Sunday, or public holiday) that banks are open for general banking business in Sydney, New South Wales.
Client Materials	means all data and Intellectual Property, owned and provided by the Client, including its logo and branding.
Cloud Storage Provider	means any cloud storage provider used by the Provider, including but not limited to Google Cloud Platform.
Commencement Date	means the earlier of: <ol style="list-style-type: none"> a. the date that the Client asks the Provider to complete the Services; or b. the date that the Client accepts this Agreement.
Completion Date	means the earlier of: <ol style="list-style-type: none"> a. completion of the Services; or b. 24 months from the Commencement Date, unless otherwise set out in the Quote or Order Form.
Confidential Information	includes financial information, Intellectual Property and information or documentation which: <ol style="list-style-type: none"> a. is disclosed to the recipient in connection with this Terms (whether before or after the Commencement Date); b. relates to: <ol style="list-style-type: none"> i. the business, assets, or affairs of a Party or any of its Affiliates; ii. the business, assets, or affairs of a Party or any client of a Party; or iii. the subject matter or any transactions contemplated by these Terms; and
Consequential Loss	is prepared or produced under or in connection with these Terms. includes, without limitation, data loss, loss of opportunity, loss of anticipated profits or savings, expenses incurred through default or breach, wasted

Corporations Act Defect	overheads, loss of contract, loss of business, loss of production, loss of use, loss of goodwill, and all other pure economic loss, and disappointment, distress, stress, and inconvenience. means the <i>Corporations Act 2001</i> (Cth). means an issue with a Deliverable, which: <ul style="list-style-type: none"> a. results in the Deliverable not substantially meeting the agreed specifications in the Scope of Services; b. materially adversely affects the performance of the Deliverable, with reference to its intended purpose at the Commencement Date; and c. is not attributable to incompatibility with third party software or hardware. 	Information	includes information whether of a technical, commercial or any other nature provided directly or indirectly in oral, electronic or documentary form or by way of models, biological or chemical materials or other tangible form or by demonstrations and whether before, on or after the date of this Agreement.
CRM Invoice	means the Tax Invoice issued for the Services provided in relation FireHawk customer relationship management app and as described in clause 6.1c).	Insolvency Event	means any of the following events: <ul style="list-style-type: none"> a. a controller (as defined in the Corporations Act) is appointed to the Party, or over any of the property of the Party; b. the Party becomes bankrupt; c. a controlling trustee is appointed to the Party, or over any of the property of the Party; d. the Party or the Party's property becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt agreement under part IX Bankruptcy Act; e. the Party is unable to pay its debts when they become due and payable; f. the Party ceases to carry on business; or g. any event happens in Australia or any other country or territory in respect of a Party that is similar to any of the events or circumstances referred to in this definition.
Customisation Services	means any services which involves tailoring the Software, or any website, and other systems to meet the unique needs and requirements of the Client.	Intellectual Property	Any event that takes place as part of a solvent reconstruction, amalgamation, merger, or consolidation, on terms approved in writing by the other Party beforehand and in compliance with those terms is excluded from this definition. includes all intellectual property, including copyright, inventions, patents (including patent applications), trade marks (whether registered or not), designs (whether registered or not), multimedia, eligible circuit layout rights, domain name licences, know-how, trade secrets, and includes the right to register any intellectual property rights.
Customised Works	means any Intellectual Property developed from the Customisation Services.	Losses	means all losses including financial losses, damages, legal costs, and other expenses of any nature.
Deliverable	means the deliverables set out in the Quote or Order Form (if any).	Notice of Default	means a Written Notice that: <ul style="list-style-type: none"> a. states that it is a notice of default; b. specifies the default with sufficient detail and particulars; c. gives a reasonable deadline by which the default must be remedied, of not less than 5 Business Days.
Deposit	has the meaning provided in clause 6.1c).	Order Form	means the form provided to you, setting out the Services to be delivered to the Client by the Provider, dated on or around the Commencement Date.
End User Licence Agreement	means the Company's end user licence agreement for access and use of the Software.	Out-of-Scope Fee	means the Provider's out of scope fee, as set out in the Quote or Order Form (if applicable).
Fees	means the rates for the Services as set out in the Quote or Order Form, or otherwise as agreed in writing between the parties.	Out-of-Scope Services	means all services that are not included in the Scope of Services.
Force Majeure Event	means any of the following: <ul style="list-style-type: none"> a. an act of God; b. war, terrorism, riot, insurrection, vandalism or sabotage; c. strike, lockout, ban, limitation of work or other industrial disturbance; or d. law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application, which is <ul style="list-style-type: none"> a. unforeseen by the affected party; b. is beyond the control of the affected party; and c. occurs without the fault or negligence of the affected Party. 		
General Support Services and Maintenance Services	means support services such as bug fixing and troubleshooting software installation issues and resolving configuration conflicts.		
GST	has the meaning given to that term in the GST Law.		
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).		

Parties	means the Provider and the Client, and Party means either one of them as the context implies.
Permitted Purpose	means for receipt of the Services.
Software Quote	means the Provider's CRM.
Quote	means the quotation provided to a funeral industry Client that specifies the cost, payment terms and details of the Services.
Rush Fee	means the fee the Provider may charge the Client in accordance with clause 1.7 (if applicable).
Scope of Services	means the specifications for the Services to be performed under this Agreement as set out in the Quote or Order Form.
Services	means the services set out in the Quote or Order Form.
Source Code	means the collection of computer instructions written in human readable computer language used to control compilation, installation, and execution of the corresponding Deliverable (if applicable).
Support Fees	means any fees payable for General Support and Maintenance Services and/or Customisation Services.
Specific Exclusions	means any specific exclusions as noted in the Scope of Services.
Tax Invoice	has the meaning given to that term in the GST Law.
Term	means the period from the Commencement Date to the Completion Date.
Terms / Terms and Conditions	means these terms, or otherwise as the context implies.
Upfront Fees	means any upfront payment due for the Deliverables as set out in the Quote or Order Form.
Written Notice	has the meaning given to it by clause 14.11.

15.2 Interpretation

- a. In this Agreement, unless the context requires otherwise: words importing any gender include every gender;
- b. words importing the singular number include the plural number and vice versa;
- c. words importing persons include firms, companies, and corporations and vice versa;
- d. references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to this Agreement;
- e. reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- f. any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- g. the headings to the clauses and schedules of this Agreement are not to affect the interpretation;
- h. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- i. the word "including" (and related forms including "includes") shall be understood as meaning "including without limitation".