

These Terms and Conditions of Supply (**Terms**) govern the relationship between a Client and **EVOSONIC PTY LTD** ABN 17 656 815 995 of 1/2A Myer Court, Beverley, South Australia 5009 (**evoSonic**) with regard to any and all services, hardware and software as described in any sales quote, sales order, sales agreement or similar document (collectively **Quote**).

A **Quote** is subject to these Terms, and together constitute the **Agreement**. If you do not agree to the terms of the Agreement, you must not engage evoSonic to undertake any services (**Services**), nor install or use the, software (**Software**) or hardware (**Hardware**), and must promptly cease use of the Software and Hardware, and remove the Software from your systems.

You will be deemed to have accepted the Agreement if you:

- i. pay the Fees (or any part thereof);
- ii. provide the written confirmation that you accept the Quote;
- iii. instruct or direct evoSonic to commence the provision of the Services;
- iv. use or download any Software; or
- v. accept delivery and/or the receipt of the Hardware.

THE PARTIES AGREE as follows:

1. INTERPRETATION

1.1 Definitions

The following definitions will apply in this Agreement (unless the context expressly indicates otherwise):

Agreement is made up of these Terms and the Quote (including all schedules, annexures and attachments)

APPs are the Australian Privacy Principles contained in the *Privacy Act 1988* (Cth).

Business Day is a day (not Saturday or Sunday) that trading banks are open for business in Adelaide, South Australia, Australia.

Cancellation Fees means the fees outlined in a Quote payable by the Client if the Client wishes to cancel (or otherwise terminate) a Quote.

Claim means any demands, claims, proceedings, penalties, fines, loss and liability (whether criminal or civil, in contract, tort or otherwise).

Client is an entity requesting a Quote and/or purchasing Services, Software or Hardware to be supplied by evoSonic.

Client's IP is all IP owned by the Client and includes all IP in the Data.

Commencement Date means the date evoSonic is to start providing the Services, Hardware and/or Software, as outlined in a Quote (if any) or such other date as the Parties may agree in writing.

Confidential Information of a party is all technical, financial, commercial and other information (in whatever medium) of or relating to it or its business affairs, which is disclosed or available to, or observed or accessible by, the other party in connection with this Agreement which:

- (a) is marked as 'confidential', 'sensitive', 'private' or any other similar description; or
- (b) a reasonable person would (given its nature) consider confidential,

but excluding information that:

- (c) is readily available in the public domain without breach of confidentiality; or
- (d) the receiving party can establish by written records is or has been legally known to, developed by, or acquired by, that receiving party, independently of this Agreement.

Consumption Taxes means any tax or duties payable on the sale or supply of goods, services or other things and includes GST, VAT, goods and services tax, value added tax, sales tax, consumption tax or any similar impost.

Data is all information provided by the Client so evoSonic can supply the Services, Hardware and/or Software, or transmitted, received, stored, processed, generated, compiled, or modified through use, or in connection with the provision, of the Services, Hardware and/or Software.

Documentation means the documentation for the Services, Software and/or Hardware produced by evoSonic and outlined on the Website, or as otherwise made available by evoSonic to the Client (including in the form of any supplementary agreements).

End User Licence Agreement or EULA means the terms and conditions which govern the use of the Software, as set out in www.evosonic.ai/eula.

evoSonic's IP is all present and future IP created, written or otherwise brought into existence by or on behalf of evoSonic.

Fees are the fees and/or charges payable by the Client under a Quote.

Force Majeure Event means an event, or a series of related events, that is outside the reasonable control of the party affected (including, but not limited to, failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, epidemic or pandemic, terrorist attacks and wars).

Hardware means the hardware to be provided by evoSonic to the Client under this Agreement, as outlined in a Quote.

Insolvent is an entity being insolvent (under section 95A of the Corporations Act (Cth)); having an administrator, controller (per section 9 of the Corporations Act) or similar officer appointed to all or any of its property; having taken (or had taken against it) any step for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors; or suffering any event or similar event to those set out in this definition which would restrict its business operations or cause those operations to be placed under the control of a person other than its directors under the laws of its place of incorporation.

Intellectual Property, Intellectual Property Rights, or IP means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs).

Licence Fee means the fees payable by the Client under this Agreement for the licence of the Software, as outlined in a Quote.

Parties means evoSonic and the Client, and **Party** means either one of them.

Personal Information is information or an opinion about an identified or reasonable identifiable natural person (whether true or not), including personal information as defined in the *Privacy Act 1988* (Cth), collected or generated by, disclosed to, or accessed by evoSonic in connection with this Agreement.

Personnel are directors, officers, employees, professional advisers, agents or authorised subcontractors of a Party (but the Personnel of the Client do not include evoSonic).

Privacy Policy means evoSonic's privacy policy, which can be found on the Website.

Quote is a document agreed by the Parties, setting out the details of, and requirements for, a set of Services, Hardware and/or Software to be supplied by evoSonic under this Agreement from time to time.

Services means the services provided by evoSonic as outlined in more detail in a Quote.

Service Fee means the fees payable by the Client under this Agreement for the delivery of the Services, as outlined in a Quote.

Service Levels means the service levels (if any) specified in the Quote.

Software means the software applications to be provided by evoSonic under this Agreement, as outlined in a Quote, subject to the terms of the EULA.

Subsea means situated or occurring beneath the surface of the sea.

Tax includes:

- (a) any tax, levy, impost, deduction, charge, rate, withholding or duty by whatever name called levied, imposed or assessed (including, without limitation, withholding tax, employment taxes, land tax, property tax, excise duties, customs duties, goods and services tax, value added tax, sales tax, Consumption Taxes, stamp duty and transaction duties or any similar impost imposed or levied); and
- (b) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above

Terms means these terms and conditions.

Website means www.evosonic.ai.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) 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;
- (i) the word "including" (and related forms including "includes") means "including without limitation";
- (j) a reference to \$ or dollars is to Australian dollars; and
- (k) something due to be done on or by a non-Business Day must be done on or by the next Business Day.

1.3 Notice in writing

Where an action of a Party is required to be evidenced in writing under this Agreement (for example, the provision of a Party's consent or approval, etc), the Parties acknowledge and agree that email communication will satisfy such requirement for the action to be in writing.

1.4 Precedence

Unless expressly stated otherwise, this terms and conditions in the body of this Agreement prevail over those in any Quotes, schedules, annexures, or attachments to the extent of the inconsistency.

2. TERM AND TERMINATION

2.1 Period of Agreement

This Agreement will begin on the Commencement Date, unless terminated earlier in accordance with this Agreement.

2.2 Termination of a Quote

A Quote will expire at the end of the term specified in the Quote, unless:

- (a) it is terminated earlier by providing the number of days written notice as specified in the Quote; or
- (b) it is terminated for cause in accordance with clause 2.3.

2.3 Termination for cause

A Party may terminate this Agreement (in whole or with respect to particular Quotes only) with immediate effect by written notice to the other Party if the other Party:

- (a) commits a material breach of this Agreement, which is not remediable,
- (b) commits a material breach of this Agreement, which is capable of remedy, but is not remedied within 30 days after being required by notice to do so; or

- (c) becomes Insolvent.

2.4 Consequences of termination

If this Agreement is terminated in whole or with respect to particular Quotes:

- (a) termination does not affect any accrued rights or liabilities of the Parties;
- (b) the Client must pay the Fees for any Services, Hardware and/or Software provided up to the date of termination under any terminated Quote within 30 days of termination; and
- (c) subject to clause 2.4(d), any Fees paid in advance by the Client for Services, Hardware and/or Software not provided to the Client at the date of termination, must promptly be repaid to the Client.
- (d) the Client is not entitled to any refund for any Fees paid by the Client to evoSonic in respect of Services that were to be provided to the Client after the termination of the Agreement and in respect of licences of Software that were to be in effect after the termination of this Agreement.

2.5 Suspension

- (a) evoSonic may immediately suspend the Client's access to, or use of, the Software if:
 - (i) evoSonic believes that there is a significant threat to the security, integrity, functionality, or availability of the offerings or any content, data, or applications in the Software; or
 - (ii) the Client is in breach of this Agreement or the EULA;
- (b) evoSonic will use commercially reasonable efforts under the circumstances to provide the Client with notice and, if applicable, an opportunity to remedy such violation prior to any such suspension.

2.6 Cancellation Fees

- (a) If either Party cancels all or part of the Services, Software or Hardware under a Quote, the Client may be required to pay evoSonic the applicable Cancellation Fee as set out in the relevant Quote (if any).
- (b) For the avoidance of doubt, the Client will be deemed to have cancelled all or part of the Services, Software or Hardware under this Agreement (or a Quote, as the case may be), where:
 - (i) the Client terminates this Agreement in accordance with clause 2.2(a);
 - (ii) evoSonic terminates this Agreement in accordance with clause 2.3.
- (c) Any Cancellation Fee charged upon termination of this Agreement is without prejudice to any other accrued rights of evoSonic as at the date of termination.
- (d) Due to the nature of the Services, Software or Hardware, some Fees payable under this Agreement (or a Quote) are of an annual commitment (irrespective of whether the total annual Fees are divided to monthly, weekly or other periodic payments). Any Fees that are of such a nature that require an annual payment will be specified in a Quote. The Client acknowledges and agrees to indemnify evoSonic for any Fees that require an annual commitment, despite termination of this Agreement or a Quote.

2.7 Survivability

The following provisions survive termination or expiry of any Quote or this Agreement: 1 – (Interpretation); 2.4 – (Consequences of termination); 2.7 – (Survivability); 8 – (Fees); 11 – (Intellectual Property); 14 – (Confidentiality); 15 – (Privacy); 17– (Warranties and Exclusions); 18 – (Indemnities); 19 – (Liability); 16.1 – (Insurance and duty to mitigate loss); 20 – (Dispute resolution); 21 – (Notice); 23 – (General), and any other contractual provisions that by their nature are intended to survive termination or expiration of this Agreement.

3. QUOTES

3.1 Addition of a new Quote

- (a) These Terms will apply to any draft Quote unless otherwise agreed by evoSonic.
- (b) The Parties will be deemed to accept the draft Quote, if:
 - (i) the Quote is executed by the Client;
 - (ii) the Client presents evoSonic with an order form confirming the purchase of the Software, Hardware and/or Services (**Purchase Order**); or
 - (iii) the Client pays to evoSonic the fees specified in the Quote.
- (c) Once accepted, the draft Quote will be an effective Quote under this Agreement.

3.2 Purchase Order

The Parties acknowledge and agree that any terms and conditions that are provided with, incorporated into, made subject to, or otherwise referenced in a Purchase Order, shall not be binding on the Parties to the extent of any inconsistency with the terms and conditions in the Agreement.

3.3 Variations to a Quote

A variation to a Quote must be in writing and executed by both parties.

3.4 Cancellation of Quote

- (a) A Quote accepted by the Client cannot be cancelled without evoSonic's prior written consent (in its sole discretion).
- (b) No application for cancellation or delay in delivery will be considered unless made by the Client in writing to evoSonic.
- (c) evoSonic will consider an application for cancellation or delay in delivery at its sole discretion.

4. LICENCE OF SOFTWARE

4.1 Application

This clause 4 applies if the Client is purchasing Software.

4.2 Licence of Software

- (a) evoSonic grants to the Client a licence to use the Software, subject to the Terms of the EULA, in consideration for the Client paying the Licence Fees to evoSonic.
- (b) The Terms contained in this Agreement will prevail over those included in the EULA to the extent of inconsistency.
- (c) The EULA is hereby incorporated into these Terms by reference. Notwithstanding the foregoing, the EULA may be amended from time to time without amending this Agreement.
- (d) For the avoidance of all doubt, the licences of the Software under this Agreement shall immediately terminate upon termination of this Agreement. The Client must immediately cease to use the Software upon the termination of this Agreement.
- (e) Within ten (10) business days following the termination of this Agreement, the Client must irrevocably delete from all computer systems in its possession or control all copies of the Software.

5. PROVISION OF SERVICES

5.1 Application

This clause 5 only applies if the Client is purchasing Services.

5.2 Delivery of Services

The Client appoints evoSonic to provide the Services requested from time to time in a Quote, in consideration for the Client paying the Service Fees to evoSonic, and in accordance with the terms and conditions set out in this Agreement and any special conditions (if any) specified in a Quote.

5.3 Use of Subcontractors

evoSonic is permitted to use other persons to provide some or all of the Services. evoSonic is responsible for the work of any of evoSonic's subcontractors.

5.4 Failure to comply

If the Client does not provide the resources that evoSonic reasonably requires (and within a reasonable time period) to perform the Services, Hardware and/or Software, then any additional costs and expenses which are reasonably incurred by evoSonic will be paid by the Client and the Client will accept any delay in the provision of the Services, Hardware and/or Software.

6. PROVISION OF HARDWARE

6.1 Application

This clause 6 applies if the Client is purchasing Hardware.

6.2 Delivery

- (a) evoSonic will deliver Hardware purchased by the Client to the location specified in a Quote.
- (b) evoSonic reserves the right to make deliveries of any order by instalments.
- (c) The Client agrees to comply with any delivery requirements that evoSonic notifies, including (without limitation):



- (i) acknowledging and agreeing that any person at the delivery address who receives the Hardware is authorised by the Client to receive your order; and
 - (ii) ensuring that, in the case of restricted hardware, the person authorised by the Client to receive your order is over the required age as prescribed by law or as otherwise set out in these Terms.
- (d) If, due to any act, matter or thing beyond the control of evoSonic, including (without limitation):
- (i) the Client will not or does not accept delivery when the Hardware is ready for delivery; or
 - (ii) evoSonic or its agent cannot effect delivery because evoSonic or its agent considers at the time of delivery that delivery would be hazardous or would be contrary to their policies, industry practice or statutory requirements; or
 - (iii) because the Client has not provided evoSonic with appropriate instructions, documents, licences or authorisations to properly, legally and safely effect delivery of the Hardware, the Hardware will be deemed delivered, and evoSonic may store the Hardware (or organise storage of the Hardware) until actual delivery, in which case, the Client will be liable to evoSonic for all related costs, such as re-delivery charges, storage and insurance.

6.3 Return of Hardware

- (a) To the fullest extent permitted by law, no Hardware will be returned unless:
- (i) prior authorisation has been given by evoSonic in writing;
 - (ii) the Quote number is quoted on the Client's return docket;
 - (iii) the returns are initiated within five (5) Business Days after delivery of the Hardware; and
 - (iv) the reason for return is clearly stated on the Client's return docket.
- (b) Hardware returned may be subject to a handling charge of 20% of the Quote price of the Hardware and the Client will pay all return freight costs.
- (c) evoSonic and the Client agree that, to the fullest extent permitted by law, the Client will not be entitled in any circumstances to return Hardware which:
- (i) specifically state that they cannot be returned (including on the Documentation, manuals, packaging, etc);
 - (ii) are not in original saleable condition and packaging;
 - (iii) are custom-made products for the Client; or
 - (iv) evoSonic has acquired specifically for and at the request of the Client.
- (d) evoSonic is not responsible for any shipping and handling charges associated with a returned Hardware, except where the return relates to a defective product or an incomplete or incorrect order (where evoSonic is at fault).

6.4 Third Party Materials

Where the Hardware is manufactured, developed and/or supplied by a third party, the Client acknowledges and agrees that use of such Hardware will be subject to any additional terms and conditions that are provided to you by evoSonic or the relevant third party.

6.5 Title and risk

- (a) Risk in the Hardware passes to the Client on collection or delivery (as the case may) of the Hardware, and from that time the Client assumes all risk of loss and damage to the Hardware.
- (b) Notwithstanding any other provisions in the Agreement and notwithstanding that the Client may have possession of the Hardware, title to any and all Hardware supplied by evoSonic will remain with evoSonic and no legal or equitable interest or property in the Hardware whatsoever will pass to the Client until the Client has paid the Fees in full for all Hardware supplied by evoSonic under a Quote.
- (c) Until title passes from evoSonic to the Client, the Client must:
- (i) refrain from encumbering the Hardware;
 - (ii) store, mark and keep appropriate records for the Hardware so that they can at all times be identified and distinguished as the property of evoSonic; and
 - (iii) allow evoSonic full and free access to the Client's premises where the Hardware are located to retake possession of such Hardware if the Client is in any way in breach of this Agreement.

- (d) The Client indemnifies evoSonic against any claim, action, damage, loss, liability, cost, expense or payment which evoSonic suffers, incurs or is liable for in respect of evoSonic's exercise of its rights under this clause 6.4.

6.6 Security Interest

- (a) The Client acknowledges and agrees that it grants evoSonic a security interest in all Hardware to which evoSonic retains title under this Agreement.
- (b) The Client consents to evoSonic perfecting or effecting any security interest arising in connection with this Agreement by registering the security interest on any applicable security registers in any jurisdiction, in any manner it considers appropriate (for example, in Australia, on the Personal Property Securities Register in accordance with the *Personal Property Securities Act 2009 (Cth)*).
- (c) The Client agrees to do anything evoSonic reasonably requires to ensure that the security interest: (i) is enforceable, perfected and otherwise effective; and (ii) has priority over all other security interests, including (but not limited to):
 - (i) promptly sign any documents and provide all information reasonably required by evoSonic to register a security interest over the Hardware; or that evoSonic may require in connection with such registrations;
 - (ii) indemnify, and upon demand reimburse evoSonic for all expenses incurred in registering a security interest over any applicable official government register in any jurisdiction, releasing any Hardware from a security interest perfected by such registration or any other action taken by evoSonic to comply with the rules and regulations regarding any applicable official government register or to protect evoSonic's position under any applicable official government register;
 - (iii) not seeking to remove, change or register a security interest in respect of the Hardware without the prior written consent of evoSonic; and
 - (iv) notify evoSonic in writing of any proposed change to its name or address at least 7 days before the change takes effect.
- (d) The Client waives its right to receive any notice regarding a security interest generally unless the notice is required by law and cannot be excluded.

6.7 Limited Hardware Warranty

- (a) To the extent permitted by law, evoSonic warrants to the Client that the Hardware supplied under this Agreement will be free from defects in materials and workmanship under normal use and service for a period of twelve (12) months from the date of delivery to the Client (**Warranty Period**).
- (b) This limited warranty covers only defects that arise as a result of normal use of the Hardware and does not cover damage which occurs in shipment or failures which are caused by products not supplied by evoSonic or failures which result from accidents, misuse, abuse, neglect, mishandling, misapplication, alteration, modification, installation, or issues related to electrical power, servicing not authorized by the Client, usage not in accordance with product instructions, failure to perform required preventive maintenance, and problems caused by the use of parts and components not supplied by evoSonic.
- (c) Should a defect arise within the Warranty Period, the Client must notify evoSonic in writing within thirty (30) days of the defect becoming apparent. Upon receipt of such notice, evoSonic sole obligation under this warranty shall be, at evoSonic's sole discretion and to the extent permitted by law, to either repair or replace the defective Hardware, or part thereof, without charge to the Client, or to refund the purchase price paid by the Client for the defective Hardware.
- (d) This warranty does not cover products that are sold "as is" or consumables, such as batteries. The warranty is void if the Hardware's serial number has been altered or removed.
- (e) To the extent permitted by law, this limited warranty is the sole and exclusive warranty provided by evoSonic, and all other warranties, express or implied, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose are hereby disclaimed.



7. CLIENT'S OBLIGATIONS

- (a) Without limiting any other rights outlined in the Agreement or under law, the Client agrees to cooperate with evoSonic as reasonably required to allow evoSonic to carry out its duties and rights under the Agreement, including (without limitation):
 - (i) co-operate with evoSonic as evoSonic reasonably requires;
 - (ii) provide the information, documentation and facilities that evoSonic reasonably requires;
 - (iii) ensure that the Client's staff and agents cooperate with and assist evoSonic;
 - (iv) obtain and maintain all necessary licences, permits, authorisations, approvals and consents, and comply with all legal obligations, in connection with the Client's possession and use of any Services, Hardware and/or Software supplied to the Client under this Agreement;
 - (v) not at any time disclose any of the know-how, technology, information, documents or other Intellectual Property supplied by evoSonic or contained in the Services, Hardware and/or Software supplied by evoSonic, or otherwise made available to the Client;
 - (vi) notify evoSonic in writing as soon as reasonably practicable after becoming aware of any defect in Services, Hardware and/or Software supplied by evoSonic, any alleged breach of contract on evoSonic's part, any negligence or other tort on evoSonic's part, or any breach of statutory duty by evoSonic. The Client acknowledges and agrees that prompt notification may enable evoSonic to mitigate the loss or damage suffered by the Client as a result of the alleged act or omission or to assist the Client in doing so. Prompt notification may also enable evoSonic to identify defective products and services and prevent other clients from suffering loss or injury;
 - (vii) not on-sell, distribute or otherwise transfer any Hardware and/or Software, without the written consent of evoSonic; and
 - (viii) only use the Hardware and/or Software in accordance with any Documentation, directions, guidelines or manuals provided by evoSonic or the manufacturer of the Hardware and/or Software.
- (b) The Client will not charge evoSonic for the information, documentation and facilities made available by the Client.
- (c) If the Client does not provide the information, documentation and facilities that evoSonic reasonably requires (and within the time period reasonably required) to perform the Services, and/or provide the Hardware and/or Software, then any additional costs and expenses which are reasonably incurred by evoSonic will be paid by the Client and the Client will accept any delay in the provision of the Services and/or Hardware and/or Software.
- (d) The Client will not use Hardware and/or Software in Subsea applications, without the written consent of evoSonic.

8. FEES

8.1 Payment of Fees

- (a) The Fees for the Services, Hardware and/or Software are stated in the relevant Quote.
- (b) In consideration of the provision of the Services, Hardware and/or Software in accordance with this Agreement, the Client will pay evoSonic the Fees.
- (c) The Client acknowledges that, unless stated otherwise, the Fees are exclusive of any Consumption Taxes (unless stated otherwise) that may be charged by evoSonic to the Client, and therefore, evoSonic will be entitled to add on any applicable Consumption Taxes.

8.2 Payment Terms and Invoicing

- (a) evoSonic will provide the Client with a tax invoice outlining the Fees payable under this Agreement and all applicable Consumption Taxes (in accordance with applicable law).
- (b) The Client must pay evoSonic the Fees in accordance with the payment terms set out in the Quote, where no payment terms are specified, Fees must be paid within 30 days.
- (c) Invoices will be issued for Services, Hardware and/or Software in the timeframes specified in the Quote.

8.3 Pro-rated payment

In the event that part or all of Services is not completed for whatever reason, evoSonic will be entitled to charge pro rata for so much of the Services that is completed.



8.4 Cancellation Fees

Where the Client cancels all or part of the Services, Hardware and/or Software under a Quote, the Client may be required to pay evoSonic the applicable Cancellation Fee as set out in the Quote.

8.5 Payment of Invoices

- (a) The Client must pay undisputed, correctly rendered invoices in Australian dollars by electronic funds transfer to evoSonic's bank account as detailed to the Client in writing, within 14 days from the date of receipt by the Client of those invoices.
- (b) Payment is on account, and is not an admission of liability, acceptance or approval of evoSonic's performance, the value of the Services, Hardware and/or Software or that Services, Hardware and/or Software have been provided in accordance with this Agreement.

8.6 Failure to pay

- (a) If the Client does not make payment in accordance with the payment terms specified in the applicable schedules or as otherwise provided for in the Agreement, evoSonic is entitled to do any or all of the following:
 - (i) charge interest on the outstanding amount at the rate of 10% per year above the cash rate of the Reserve Bank of Australia, accruing daily;
 - (ii) require the Client to pay, in advance, for any Services, Hardware and/or Software (or any part of the Services, Hardware and/or Software) which have not yet been delivered;
 - (iii) suspend or cancel the supply of Services, Hardware and/or Software (including access to the Software);
 - (iv) not deliver any further Services, Hardware and/or Software (or any part of the Services, Hardware and/or Software);
 - (v) immediately terminate the Agreement; and
 - (vi) take out debt recovery action against the Client.
- (b) If the Customer defaults in payment of the Fees, the Client will be liable for all costs incurred by evoSonic and will indemnify evoSonic against any loss, liability, charge, expense, outgoing or payment which evoSonic suffers, incurs or is liable for in respect of the recovery of monies owing by the Customer to evoSonic.

9. TAX

9.1 Taxes and duties

- (a) To the extent required by law, this clause does not apply to the extent that the consideration is expressly stated to be inclusive of Consumption Taxes.
- (b) If any new Tax or withholding tax is introduced or is changed after the Commencement Date of this Agreement ("**Impost Change**"), the Parties will make every effort to reasonably amend arrangements to minimise any adverse effect of the Impost Change and negotiate in good faith to adjust the Fees (the "**Negotiated Position**") such that the Parties are not disadvantaged by the Impost Change. The Parties agree that the first invoice issued after agreement has been reached must reflect the necessary adjustment from the date of effect of the Impost Change and that subsequent invoices reflect the Negotiated Position.
- (c) For the avoidance of doubt, each Party is responsible for taxes imposed in respect of its income in connection with this Agreement.

9.2 Consumption Taxes

- (a) If any Consumption Taxes are payable in respect of a supply made under or in connection with this Agreement, the Client must pay to evoSonic (at the same time as payment for the supply of the Services, Software and/or Hardware is required to be made) an additional amount equal to the Consumption Taxes payable in respect of the supply.
- (b) If a payment to satisfy a claim or a right to a claim under or in connection with this Agreement (for example, for misleading or deceptive conduct or for misrepresentation or for a breach of warranty or for an indemnity or for reimbursement of any expense) gives rise to a liability to pay an amount of Consumption Tax, the payer must also pay, and indemnify the payee against the amount of that Consumption Tax.
- (c) If a Party has a claim under or in connection with this Agreement or a cost on which that Party must pay an amount of Consumption Tax, the claim is for the cost plus all Consumption.

- (d) If a Party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for any Consumption Taxes (whether that amount is separate or included as part of a larger amount).

10. DEFAULT

If the Client defaults on any of its obligations under the Agreement, in addition to any other rights at law evoSonic may have, evoSonic may take one or more of the following actions at its election:

- (a) treat the Agreement as repudiated and sue the Client for any loss and damage;
- (b) repossess any Hardware in the Client's possession in respect of which title has not yet passed to the Client;
- (c) suspend the provision of the Services;
- (d) suspend access to the Software; or
- (e) require the immediate payment by the Client of all monies owing by the Client to evoSonic under any account.

11. INTELLECTUAL PROPERTY

11.1 evoSonic's IP

- (a) Nothing in this Agreement confers on a Party any proprietary right or title to any Intellectual Property of the other Party, unless expressly stated otherwise in this Agreement.
- (b) evoSonic represents and warrants that it is the absolute legal and beneficial owner of, or that it holds a valid licence to use, evoSonic's IP.
- (c) The Client acknowledges and agrees that evoSonic's IP remains the property of evoSonic.
- (d) evoSonic grants to the Client a revocable, non-exclusive, non-transferable licence for the term of this Agreement to exercise all rights in evoSonic's IP as is necessary for the Client to enjoy the benefit of the Services, Hardware and/or Software and to use the Hardware and/or Software solely for the purposes of the business of the Client.

11.2 Client's IP

The Client grants to evoSonic a non-exclusive, non-transferable, royalty-free licence to use the Client's IP to the extent necessary for evoSonic to provide the Services, Hardware and/or Software.

11.3 Feedback

If the Client provides evoSonic with any feedback, comments or suggestions relating to the Services, Hardware and/or Software, the Client grants to evoSonic an irrevocable, non-cancellable, worldwide, royalty-free, licence to use, copy, adapt, translate, create derivative works from, sublicense or otherwise exploit in any way (including without hindrance, restriction or subject to any exercise of any person's Moral Rights) that feedback for any purpose, including to assist evoSonic to develop or improve current or future products or services.

11.4 Further action

Each Party must (at the request of the other party) execute all further documents and take such further action required to generally give effect to this clause 11, including as required to obtain, perfect, enforce, assert or defend its interests in or rights to use the Intellectual Property Rights afforded under this clause 11.

12. DATA

- (a) The Client grants evoSonic a perpetual, non-exclusive, worldwide, royalty-free irrevocable licence to use, transmit, distribute, and preserve any Data provided by the Client through the Software, in accordance with this Agreement, provided that:
 - (i) the Data is used only for the purposes of developing new services, hardware and/or software; and

- (ii) the Data does not contain any Personal Information.
- (b) The use of the Software, including all Data provided on or entered into or made available through the Software, is solely the Client's responsibility. The Client must take all reasonable steps to back-up the Data from time to time.
- (c) The Client acknowledges and agrees that when using the Software, Data may be transmitted over a medium that may be beyond the control of evoSonic. evoSonic assumes no liability for or relating to the delay, failure, interruption, destruction, or corruption of any Data or other information transmitted in connection with use of the Software.
- (d) Upon termination of this Agreement, evoSonic may delete or destroy all Data immediately without any retention period, unless agreed otherwise in writing. evoSonic has no additional obligation to continue to hold, export or return Data

13. CYBER SECURITY

- (a) The Parties acknowledge and agree that:
 - (i) the internet poses inherent cyber security risks to all users of online technology; and
 - (ii) the nature of cyber security threats are ever evolving and becoming more sophisticated and malicious over time; and
 - (iii) whilst evoSonic will use its best efforts to protect its systems from all known cyber security risks, it cannot guarantee, provides no representations or warranties, that the Client (and the Client's Data) will be protected from all cyber security threats.
- (b) The Parties acknowledge and agree that each Party must implement appropriate cyber security measures and systems, and otherwise use best endeavours to protect its Confidential Information and Data from cyber security threats.
- (c) To the maximum extent permitted by law, evoSonic disclaims all liabilities arising from any cyber security threats, including (but not limited to) loss, damage, unauthorised destruction, alteration, disclosure of, or access to any Confidential Information or Data.

14. CONFIDENTIALITY

14.1 Ownership of Confidential Information

Each Party (a **Recipient**) acknowledges that the other's (**Discloser's**) Confidential Information is, and remains, the property of the Discloser. This Agreement does not convey any proprietary or other interest in one Party's Confidential Information to the other. The Recipient must keep the Discloser's Confidential Information strictly confidential and not disclose it or allow it to become available to any third party, except as provided for in this Agreement. This obligation survives the termination of this Agreement and will continue until the information no longer constitutes Confidential Information of the Discloser.

14.2 Authorised use and disclosure of Confidential Information

- (a) The Recipient may only access and use the Discloser's Confidential Information to perform its obligations or exercise its rights under this Agreement, or with the Discloser's prior consent. The Recipient must comply with any reasonable security and safety procedures stipulated by the Discloser.
- (b) The Recipient may only disclose the Discloser's Confidential Information to its Personnel, agents and subcontractors, provided that it restricts access to, and use of, that information on a strictly need to know basis for any specific purpose for which that information was disclosed by the Discloser;
- (c) The Recipient may disclose the Discloser's Confidential Information to the extent required to comply with any law, regulation or stock exchange rule. However, the Recipient must (to the extent possible) minimise the extent of disclosure and give the Discloser prior notice with reasonable details of the proposed disclosure and the relevant Confidential Information to be disclosed.

14.3 Unauthorised Disclosure or Use of Confidential Information

Each Party acknowledges that damages are unlikely to adequately redress its breach of this clause, so a Discloser may seek injunctive or other equitable/interlocutory relief to protect its Confidential Information against breach of this clause, without proof of actual damages.

14.4 Return of Confidential Information

- (a) On termination of this Agreement, and on request of the Discloser, the Recipient must, subject to clause 14.5:
 - (i) deliver to Discloser any Discloser Confidential Information in the Recipient's possession or control that is reasonably capable of being delivered; or
 - (ii) irretrievably delete, erase or destroy all Discloser Confidential Information in the Recipient's possession or control that is not capable of delivery to the Discloser, and confirm in writing to the Discloser that it has done so.
- (b) For the avoidance of all doubt, evoSonic will be entitled to charge the Client on a time and material basis for the return Confidential Information. These fees will be disclosed in a Quote.

14.5 Retention of certain Confidential Information

Provided the Recipient continues to comply with this clause 14, the Recipient may retain any Confidential Information that:

- (a) is included in any board papers of the Recipient, or in back up tapes made in the ordinary course of its business which are not capable of ready search and deletion;
- (b) the Recipient is required by law or any regulatory requirement to retain, or needs to retain to defend itself in any proceeding being brought or threatened against it at the time the Confidential Information must be returned or destroyed;
- (c) the Recipient is required to retain for its own reasonable internal credit, risk, insurance, taxation or record-keeping purposes; or
- (d) is contained in any electronic record made in the ordinary course of the Recipient's business which is captured by automated document retention procedures designed to allow the Recipient to comply with document retention laws

15. PRIVACY

- (a) evoSonic will collect, use, disclose and otherwise treat Personal Information in accordance with the *Privacy Act 1988* (Cth).
- (b) Each party must comply with the requirements of the Australian Privacy Principles, the *Privacy Act 1988* (Cth), any other applicable laws or codes governing Personal Information.
- (c) evoSonic takes privacy seriously and any information disclosed by the Client to evoSonic in accordance with this Agreement is subject to evoSonic's Privacy Policy, which is available on: <https://www.evosonic.ai/privacy-policy>
- (d) The Privacy Policy is hereby incorporated into these Terms by reference. Notwithstanding the foregoing, the Privacy Policy may be amended from time to time without amending this Agreement.
- (e) To the extent that there is a conflict between the Privacy Policy and these Terms, the terms of the Privacy Policy shall prevail.

16. INSURANCES AND DUTY TO MITIGATE LOSS

16.1 evoSonic Insurance

evoSonic must take out and maintain all insurance from a reputable insurer that is adequate to cover all risks usually covered for the supply of the Services, Software and/or Hardware, or as otherwise required by law.

16.2 Client Insurance

The Client must take out and maintain all insurance from a reputable insurer as specified in the Quote. Where no insurance levels are specified in the Quote, the Client must take out and maintain all insurance from a reputable insurer that is adequate to cover all risks usually covered for the receipt of the Services, Software and/or Hardware, or as otherwise required by law.

17. WARRANTIES AND EXCLUSIONS

17.1 General Warranty

evoSonic warrants that it will use reasonable care and skill in supplying the Services, Hardware and/or Software under this Agreement.

17.2 Warranties in relation to Services

If evoSonic supplies the Services negligently or in material breach of this Agreement, then if requested by the Client, evoSonic will re-perform the relevant part of its obligations under this Agreement, provided that the Client's request is made within thirty (30) days of the date evoSonic completed supply of the Services.

17.3 No reliance

Each of the Parties acknowledges 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.

17.4 Exclusions

- (a) To the maximum extent permitted by law, other than the warranties expressly stated in this Agreement, evoSonic gives no warranties regarding the provision of the Services, Hardware and/or Software and all implied or imposed conditions, warranties and rights are hereby excluded, including (without limitation) warranties in relation to fitness for purpose, merchantability, and/or the Services, Hardware and/or Software being provided error free and/or in a timely manner.
- (b) Where any condition, warranty or right is implied or imposed by law and cannot be excluded, the sole liability of evoSonic for loss or damage incurred in respect of goods and/or services supplied (or agreed to be supplied) shall be limited to:
 - (i) in the case of goods, at evoSonic's option:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; and
 - (ii) in the case of services, at evoSonic's option:
 - (A) supplying the services again; or
 - (B) paying the cost of having the services supplied again.

17.5 Client Systems

- (a) evoSonic does not represent that the Services, Hardware and/or Software are fail safe and the Client acknowledges and agrees that evoSonic will not be responsible for any loss suffered as a result of use of the Services, Hardware and/or Software or any third-party products or services.
- (b) The Client acknowledges and agrees that the Services, Hardware and/or Software are not fault-tolerant and are not designed or intended for use in any hazardous environments requiring fail-safe performance or operation and that evoSonic will not be responsible for any loss suffered as a result of use of the Services, Hardware and/or Software.

17.6 Compliance with all laws

Each Party must comply at its own cost and expense with all applicable laws (including from acts, ordinances, rules, regulations, other delegated legislation, codes and the requirements).

18. INDEMNITIES

18.1 Indemnity by evoSonic

- (a) evoSonic must reimburse the Client for, and indemnify and hold them harmless against, all Claims suffered or incurred by the Client arising in connection with:
 - (i) fraud, or fraudulent misrepresentation, gross negligence, or wilful misconduct of this Agreement by evoSonic or its Personnel; and/or
 - (ii) infringement of a third party's Intellectual Property Rights arising out of any act or omission of evoSonic or its Personnel.
- (b) evoSonic will not be liable to the Client (including under this clause 18.1) to the extent that the Client's acts or omissions have contributed to the Claim and/or liability. For the avoidance of doubt, the Client has a duty to mitigate any losses arising from an act or omission of evoSonic.

18.2 Indemnity by the Client



- (a) The Client must reimburse evoSonic for, and indemnify and hold them harmless against, all Claims suffered or incurred by evoSonic in connection with or arising out of:
 - (i) fraud, or fraudulent misrepresentation, gross negligence or wilful misconduct of this Agreement by the Client or its Personnel; and
 - (ii) use of the Services, Software and/or Hardware in a manner that is not in accordance with this Agreement.
- (b) The Client will not be liable to evoSonic (including under this clause 18.2) to the extent that evoSonic's acts or omissions have contributed to the Claim and/or liability. For the avoidance of doubt, evoSonic has a duty to mitigate any losses arising from an act or omission of the Client.

19. LIABILITY

19.1 Limitation on liability

The liability of evoSonic in connection to any Claim made pursuant to the supply of Services, Hardware and/or Software under this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise will not exceed the Fees (as applicable) paid by the Client to evoSonic under this Agreement up to a maximum period of twelve (12) months.

19.2 Indirect or Consequential Loss

Neither Party is liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature (including any loss of business, loss of revenue, income, profits or anticipated savings, loss of contracts or business relationships, loss of reputation or goodwill, or loss or corruption of information or data).

19.3 Duty to mitigate loss

Notwithstanding any other provision of this Agreement, the Client acknowledges and agrees that the use of the Services, Hardware and/or Software may result in the Client or (or the Client's employee(s), agents, contractors, etc) suffering loss, damage, costs or expenses. The Client acknowledges and agrees that to at all times maintain appropriate insurance and undertake any other actions necessary to mitigate such loss, damage, costs or expenses.

19.4 Survival of obligations

The obligations accepted by evoSonic and the Client under this clause 19 survive termination or expiry of this Agreement.

20. DISPUTE RESOLUTION

20.1 Handling of Disputes

Any dispute, difference or disagreement under this Agreement (**Dispute**) must be handled under this clause. However, nothing in this clause prevents a Party seeking urgent interim or interlocutory relief from a court of law to preserve property or prevent irreparable harm. Further, if a Party fails to comply with this clause, the other Party need not comply with it before commencing proceedings in any court or tribunal of competent jurisdiction. The Parties will continue to perform the Agreement despite any Dispute, provided that either Party may exercise any of its rights under this Agreement at any time.

20.2 Initial negotiations between parties

A Party wishing to resolve a Dispute must notify the other Party describing the Dispute in sufficient detail for the other Party to adequately evaluate it (the **Dispute Notice**). The Parties must attempt to resolve any Dispute by agreement through the Client's authorised representative and evoSonic's authorised representative as detailed in a Quote.

Those discussions (and Documentation tendered in connection with them) will be solely to resolve the Dispute on a "without prejudice" basis (whether or not expressly designated).

20.3 Mediation

If those discussions fail to resolve the Dispute within thirty (30) days from receipt of the Dispute Notice, a mediator will be selected by agreement of the Parties, or failing agreement within 10 Business Days, by The Australian Commercial Disputes Centre (ACDC) under its "Guidelines for Commercial Mediation" (on the request of either Party). The Parties will then use their reasonable efforts to resolve the dispute by mediation under ACDC's "Guidelines for Commercial Mediation".

20.4 Termination of mediation

Either Party may terminate the mediation at any time on notice to the other Party and the mediator.

20.5 Costs

The Client must pay evoSonic all costs and expenses incurred by evoSonic in seeking to enforce and in enforcing evoSonic's rights under these Terms, including any legal expenses (on a full indemnity basis), debt recovery agents' fees and commissions, process server fees, company and business search fees and any other investigation fees, charges and the internal administration costs of evoSonic.

21. NOTICE

A notice, request, demand, consent or approval (**notice**) from a Party to another (**Recipient**) must be in writing, addressed to Recipient and delivered by one of the following means (deemed delivery and receipt being as specified below for each method, provided that if the provisions below would deem a notice to be delivered / received on a non-Business Day or after 4pm on a Business Day, then the notice will be deemed to have been delivered / received on the next Business Day):

- (a) delivered to Recipient's address – deemed delivered/received at date and time of delivery;
- (b) sent by registered mail to Recipient's address - deemed delivered/received on the third Business Day after posting (within Australia) or on the tenth Business Day after posting (outside Australia);
- (c) emailed to Recipient's email address (deemed delivered/received unless the sender gets a notification that the message was not received by the recipient).

The address and email address of each Party is specified in the Quote and is subject to any updates notified by either Party in writing.

22. FORCE MAJEURE

If a Force Majeure Event occurs and prevents a Party (**Affected Party**) performing its obligations, under this Agreement, that Party must promptly notify the other Party of the event, the time it started and likely duration, the extent that its obligations are affected and the measures proposed to remedy or mitigate its consequences. The Affected Party's obligations are then suspended solely to the extent it is prevented from performing them by the Force Majeure Event. The Affected Party must:

- (a) promptly take all necessary steps to remedy or mitigate the Force Majeure Event's effects, so as to resume full performance of its obligations as soon as reasonably possible; and
- (b) take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of its failure to carry out its obligations.

If the delay or failure exceeds 30 days, the other Party may immediately terminate this Agreement on notice to the Affected Party and Clause 2.3 will apply.

23. GENERAL

23.1 Entire agreement

- (a) This Agreement and the EULA contain the whole agreement between the Parties in respect of the subject matter of the Agreement.
- (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.

23.2 Amendment

- (a) evoSonic may amend these Terms from time to time by providing the Client with written notice. For the avoidance of doubt, written notice can be in the form of a new Terms uploaded on the Website.
- (b) evoSonic recommends that the Client reviews the latest version of the Terms of Use on the Website from time to time.

23.3 Assignment

- (a) Subject to clause 23.3(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.

23.4 Waiver

- (a) No failure or delay by evoSonic in exercising any right, power or privilege under this Agreement will impair the same or operate as a waiver of the same nor may 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.

23.5 Relationship

- (a) This Agreement will not constitute or imply any employment, partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.
- (b) Unless expressly stated otherwise in this Agreement, neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

23.6 Severance

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

23.7 Notices

A notice or other communication connected with this Agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by post to the address or email of the addressee as set out in this Agreement (or as otherwise notified in writing).

23.8 Law and jurisdiction

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