

AUTHORISED RESELLER TERMS

1. Definitions and Interpretations

1.1. Where commencing with a capital letter:

Accepted Purchase Order means a Purchase Order that complies with clause 5.2.

Authorised User Terms means the terms of use applicable to the Products available on activation outlined in Annexure B of the Agreement and located at harvest.technology/terms-and-conditions, as updated by Harvest from time to time.

Agreement means the Authorised Reseller Agreement of which these Authorised Reseller Terms form a part.

Approved Customer/Project means the approved customer and project that the Reseller is permitted to resell the products to within the Territory as described in Schedule 1 of the Agreement.

Authorised Signatory means the person authorised by the parties to sign the Agreement or as delegated by the Authorised Signatory by written notice to the other party.

Collection Point means the location specified in Schedule 1 of the Agreement or other location as agreed by the parties in writing from time to time.

Commencement Date means the date specified in Schedule 1 of the Agreement.

Confidential Information of a party means (whether or not in material form and whether or not disclosed before or after the execution of the Agreement) any information of whatever kind that:

- (a) is by its nature confidential; or
- (b) is designated by a party as confidential; or
- (c) the receiving party knows or reasonably ought to know is confidential,

and includes all trade secrets and know-how, financial information and other commercially valuable information of whatever description and in whatever form and, in the case of Harvest, includes Harvest's pricing of the Products and the Harvest Materials.

Country Specific Terms means the terms set out in Annexure B of the Agreement.

Default Rate means the interest rate for overdrafts charged by the Westpac Banking Corporation plus 2%, calculated on daily rests from the due date to the date of payment.

Defence Entity means:

- (a) any national, state, local, regional, territorial or municipal government and any executive, legislative, judicial or administrative body and any ministry, governmental department, other administrative division or instrumentality thereof and any commission, board, bureau, or agency, with authority, power, control or responsibility in relation to matters of defence regardless of location;
- (b) any contractor or service provider to any of the entities mentioned in sub-clause (a) above.

End Users means Reseller's customers on whose behalf Reseller purchases Products on the terms of the Agreement.

Fees means the sums payable for the Products and Services the subject of a Purchase Order as specified in Annexure A of the Agreement, as varied from time to time in accordance with clause 10.2.

Force Majeure Event means an act, event, omission, occurrence, or accident beyond the reasonable control of a party and includes:

- (a) acts of God, flood, earthquake, bushfire, windstorm or other natural disaster;
- (b) epidemic or pandemic (including, but not limited to, novel coronavirus disease 2019 and/or COVID-19 and any derivative thereof);
- (c) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (d) terrorist attack, civil war, civil commotion or riots;
- (e) nuclear, chemical or biological contamination or sonic boom;
- (f) any law or government order, rule, regulation or direction, or any action taken by a government or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition;
- (g) fire, explosion or other material accidental damage (other than in each case one caused by a breach of contract by, or assistance of, the party seeking to rely on the Force Majeure Event or companies in the same group as such party);
- (h) any labour dispute, including to strikes, industrial action or lockouts (that are not involving personnel of the Party claiming Force Majeure);
- (i) collapse of building structures.

Harvest Materials means all:

- (a) specification sheets, brochures, data sheets, sales and technical bulletins, service manuals, user manuals and product map diagrams; and
- (b) all other information relating to the general operation of the Products or related components and equipment,

whether or not in writing, that may be disclosed or provided to Reseller under the Agreement and includes the Operation Guides.

Initial Term means the initial term specified in Schedule 1 of the Agreement.

Intellectual Property means all intellectual property rights at any time recognised by law, including:

- (a) patents, copyright, circuit layout rights, trade secrets, designs, know-how, trade marks and business names, whether registered or not; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) above.

Limited Warranty has the meaning given to it in clause 12.1.

Operation Guides means the documentation and materials provided by Harvest to Reseller which contain information relating to how to install, operate and/or maintain the Products.

Our Hardware means any hardware (including any Third-Party Hardware), provided to Reseller by Harvest, as described in Annexure A of the Agreement and as varied in accordance with clause 3.5.

Our Software means the software provided by us in any format and via any channel the Intellectual Property in which is owned by Harvest, including but not limited to, software or firmware embodied in or loaded onto Our Hardware, any Downloadable Software or Software Application, or software forming part of our SaaS Products.

Price List means Harvest's list of prices as notified to the Reseller and as updated by Harvest from time to time by notice to Reseller.

Products means the Harvest products described in the Annexure A of the Agreement as varied in accordance with clause 3.5.

Purchase Order has the meaning given to it in clause 5.1.

Reseller means the company or person(s) authorised by Harvest to resell Harvest's products and services to its customers.

SaaS Products means any Products described as "Software as a service" in Annexure A of the Agreement as updated by Harvest from time to time.

Space Entity means:

- (a) any national, state, local, regional, territorial, or municipal government and any executive, legislative, judicial, or administrative body and any ministry, governmental department, other administrative division or instrumentality thereof and any commission, board, bureau, or agency, with authority, power, control or responsibility in relation to matters of space regardless of location;
- (b) any contractor or service provider to any of the entities mentioned in sub-clause (a) above.

Services means the services to be provided by Harvest to the Reseller and/or End User, including implementation, installation, network, Data Hosting, Help Desk Support, Premium Support, bandwidth, and custom development services, as specified in our Proposal, or otherwise agreed to be provided by Harvest in Schedule 3 of the Agreement.

Temporary Replacement has the meaning given to it in clause 13.5.

Territory means the territory set out in Schedule 1 of the Agreement as amended by the parties from time to time in accordance with clause 30.4.

Term means the Initial Term and any extension agreed by the parties under clause 2.2.

Terms of Use means the terms of use set out in Annexure B of the Agreement as updated by Harvest from time to time following written notice to the Reseller not less than seven days prior to activation.

Third-Party Hardware means any Hardware identified by us as third-party hardware in the Proposal or otherwise.

Trade Marks mean the trade marks set out in Schedule 1 of the Agreement and such other trade marks as the parties may from time to time agree in writing to use in relation to the Products.

Your Content means certain details about Reseller and/or End Users required to setup, configure and administer access to Our Software.

1.2. Unless the context otherwise requires:

- (a) a reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted, or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced, or novated;
 - (iii) a person includes an individual, a body corporate and a government; and
 - (iv) anything (including a right, obligation, or concept) includes each part of it; and
- (b) a word which denotes the singular denotes the plural and vice versa; and
- (c) if a word is defined, another part of speech has a corresponding meaning.

2. Term

- 2.1. The Agreement takes effect on the Commencement Date and remains in force for the Initial Term, unless terminated earlier, or extended in accordance with its terms.
- 2.2. The Agreement will automatically renew at the end of the Term for a period of 12 months unless a party provides notice in writing to terminate the agreement, at least 2 months before the end of the Term.
- 2.3. A party may request variations to the terms of the Agreement at least three months before the end of the Term. If the requested variations are not acceptable to a party, a party may terminate the Agreement in accordance with 2.2.

3. Appointment as reseller

- 3.1. Subject to clauses 3.3 and 3.4, Harvest appoints Reseller, and Reseller agrees to act, as Harvest's reseller of the Products under the Trade Marks in the Territory during the Term on the terms set out in the Agreement for the purpose of the Approved Customer/Project as outlined in Schedule 1 of the Agreement.
- 3.2. The parties acknowledge and agree that the appointment under clause 3.1 is non-exclusive and Harvest is able to sell the Products and Services or appoint other persons to resell the Products and Services under the Trade Marks in the Territory during the Term
- 3.3. Reseller's appointment under clause 3.1 excludes marketing, selling, supplying, or providing access to any Products to a Defence Entity or Space Entity without the prior written approval of Harvest..
- 3.4. Reseller must not appoint any sub-resellers under the Agreement.
- 3.5. Harvest may, by notice to Reseller from time to time, vary the Product range by introducing new products and ceasing to supply other products.
- 3.6. Without the express approval in writing by the Harvest Authorised Signatory, Reseller must:
 - (a) not directly or indirectly, export any of the Products outside the Territory and the Approved Customer/Project;
 - (b) not sell, supply, hire, transfer or distribute, or offer to sell, supply, hire, transfer or distribute, any of the Products to any person outside of the Approved Customer/Project and Territory or to any person that it knows, or has reasonable grounds for believing, will or may sell, supply, hire, transfer, distribute or export the Products outside of the Approved Customer/Project and the Territory;
 - (c) include in each agreement with any person to whom it sells or supplies the Products a prohibition in the same terms as clause 3.6(b) and a requirement in the same terms as this clause 3.6(c).
- 3.7. In addition to Harvest's rights under clause 28, any breach of clause 3.6 will entitle Harvest to suspend provision of any Products to Reseller until Harvest is satisfied, in its sole discretion, that Reseller has rectified its breach and will not further breach its obligations under that clause.
- 3.8. Reseller must inform Harvest of any inquiries for the Products by prospective customers outside the Approved Customer/Project in the Territory within 5 working days of receiving that inquiry.
- 3.9. Reseller acknowledges and agrees that it is:
 - (a) an independent purchaser and reseller of the Products; and
 - (b) neither the agent nor the representative of Harvest.

4. Basis on which Products are provided to Reseller

- 4.1. The Reseller acknowledges that Harvest makes Products and Services available for sale and/or license to the Reseller. The basis on which each Product and Services is provided to the Reseller under the Agreement will be specified in the Purchase Order.
- 4.2. The Reseller further acknowledges that:
- (a) Harvest may change the basis on which it supplies its Product and Services, including introducing new methods of supply for existing and new Products and Services; and
 - (b) Notwithstanding any other clause of the Agreement, Harvest may vary:
 - (i) the terms on which it supplies its Products and Services to the Reseller, and
 - (ii) the minimum terms which must be included in every agreement between the Reseller and the End User for the supply of the Products and Services.
 - (c) Should the basis on which a Product or Service is supplied change, any Products and Services previously supplied shall remain supplied on the existing basis until the end of the Term as stated in the Purchase Order.

5. Ordering and delivery of Products

Purchase orders

- 5.1. The Reseller must make all purchases of Products and Services by submitting Purchase Orders to Harvest in a form approved by Harvest (**Purchase Orders**). The terms of any Purchase Order form submitted by Reseller will not apply except as necessary to designate the Products and Services and quantities and other similar terms. The terms of the Agreement are deemed to apply to all Purchase Orders submitted by Reseller to Harvest.
- 5.2. Harvest will not be bound by any Purchase Order from Reseller unless Harvest has accepted the Purchase Order in writing or Harvest has issued an invoice to Reseller for the Products the subject of the Purchase Order.

Delivery and collection

- 5.3. Subject to clause 5.4, Harvest will notify the Reseller when the Products that are subject of an Accepted Purchase Order are ready at the Collection Point for collection or delivery.
- 5.4. Subject to clauses 3.7, 5.5 and 10.5(a), Reseller, or its carrier, must take delivery of the Products from the date notified by Harvest under clause 5.3.
- 5.5. If requested by the Reseller and agreed by Harvest, Harvest will arrange carriage of the Products on behalf of Reseller at Reseller's cost.

Operation Guides

- 5.6. Harvest will supply all Operation Guides for the Products.

Risk and title

- 5.7. If the Reseller is to collect the Products from Harvest, risk of loss or damage to the Products passes to Reseller on the earlier of the date on which:
- (a) the Products are collected by or on behalf of Reseller from the Collection Point;
 - (b) Reseller is notified under clause 6.6 that the Products are available for collection at the Collection Point.

- 5.8. If Harvest has agreed to arrange carriage on behalf of Reseller, risk of loss or damage to the Products passes to Reseller when the Products have been delivered to the carrier at the Collection Point.
- 5.9. Excepting Our Software, title to Our Hardware purchased by the Reseller passes to Reseller on payment to Harvest.
- 5.10. Despite title or possession passing to the Reseller or End Users in any Products, Harvest retains all intellectual property rights in and to the Products and Services, Harvest Materials and the Trade Marks in accordance with Clause 20.

6. Installation and configuration of Products

- 6.1. The Reseller and/or End User are responsible for installation and configuration of the Products in accordance with the Operation Guides and Harvest's reasonable directions, including all associated costs.

7. Orders involving Our Software

Applicability of this section

- 7.1. The following provisions apply to all Our Software provided to Reseller under the Agreement.

Inapplicability of certain sections

- 7.2. The following provisions in the Agreement do not apply to the sale of Our Software: clauses 5.3 to 5.5 inclusive, 5.7 to 5.10 inclusive, 8, 10.3(a), 11, 12, 13, 17.1 and 17.2.

Procedure

- 7.3. Harvest will make Our Software ordered by Reseller under clause 5 available by the delivery date specified in the Accepted Purchase Order subject to payment in accordance with clause 10.

Reseller's acknowledgements

- 7.4. Reseller acknowledges and agrees that the use of Our Software is subject to the applicable Software Authorised User Terms for Our Software and as specified on [harvest.technology/terms-and-conditions/](https://www.harvesttechnology.com/terms-and-conditions/).

Reseller's agreements with End Users

- 7.5. Subject to clause 9.1, in respect of each supply of Our Software, Reseller must enter into a written agreement with each End User containing, at a minimum:
 - (a) for Our Software, the mandatory terms set out in Annexure B of the Agreement;
 - (b) a term requiring the End User's employees and contractors to whom the End User intends to grant access to Our Software to agree to the applicable Software Authorised User Terms before doing so;
 - (c) a term providing that the Reseller will only grant access to those End User employees and contractors who agree to the applicable Authorised User Terms; and
 - (d) terms that are otherwise consistent with the terms of the Agreement.

The Reseller must ensure that the written agreement referred to in this clause 7.5 complies with all applicable laws in the country or state within the Territory in which the End User is based and using the Products.

8. Orders involving Our Hardware

- 8.1. The following provisions apply to all Our Hardware (except Our Software) provided to the Reseller under the Agreement.
- 8.2. Reseller must provide each End User with:
- (a) any applicable Operation Guides for Our Hardware; and
 - (b) the documentation containing the Limited Warranty for the Our Hardware .
- 8.3. Subject to clause 9.1, in respect of each sale of Our Hardware under the Agreement, Reseller must enter into a written agreement with each End User containing, at a minimum:
- (a) terms requiring the End User to:
 - (i) inspect and test Our Hardware on receipt and notify the Reseller of any defects prior to installation/use;
 - (ii) notify the Reseller of any Warranty Claim within 3 working days and co-operate with the Reseller and Harvest in the event of such a claim;
 - (iii) assist and cooperate in the event of a product recall initiated in accordance with clause 22;
 - (b) a term sub-licensing Our Software embodied in any of Our Hardware to the End User in a manner consistent with clause 20.2 for the limited purpose of allowing the End User to use Our Software in conjunction with Our Hardware for their internal business purposes;
 - (c) a term prohibiting the End User from using anyone other than Harvest (via the Reseller or otherwise) to repair, service or maintain Our Hardware or use any replacement parts not supplied or approved by Harvest; and
 - (d) terms that are otherwise consistent with the terms of the Agreement.
- 8.4. The Reseller must ensure that the written agreement referred to in clause 8.3 complies with all applicable laws in the country or state within the Territory in which Our Hardware is sold.

9. Terms mandatory in all agreements between the Reseller and End Users

- 9.1. In respect of each supply of a Product by Reseller under the Agreement, Reseller must, subject to any applicable law to the contrary, include in its written agreement with each End User terms:
- (a) equivalent to clauses 6, 19, 20.1, 20.4, 20.11 and 20.12 with any references to “Reseller” in those clauses being replaced by “End User”;
 - (b) excluding and limiting the Reseller’s liability to the maximum extent permitted by law;
 - (c) prohibiting the End User from supplying, hiring or otherwise providing access to any Products to any other entity or person not forming part of the Approved Customer/Project without the express written approval of the Harvest Authorised Signatory;
 - (d) prohibiting the End User from supplying, hiring or otherwise providing access to any Product to embargoed or sanctioned countries under United Nations Security Council (UNSC) sanctions regimes and Australian autonomous sanctions regimes, without the prior written approval of the Harvest Authorised Signatory;
 - (e) requiring the End User to consent to a novation of the written agreement between Reseller and the End User to Harvest, if requested by Harvest, in the event of:
 - (i) the termination or expiry of the Agreement; or
 - (ii) the Reseller going into liquidation, having a receiver or receiver and manager appointed to it or any part of its assets, entering into a scheme of arrangement with creditors or suffering any other form of external administration.

10. Pricing and payment terms

Product Prices

- 10.1. The prices of the Products are set out in Schedule 2 of the Agreement.
- 10.2. Reseller acknowledges that Harvest may, by providing not less than 30 days' notice, update its price list for the Products at any time. All Purchase Orders will be subject to Harvest's applicable price at the date the Purchase Order is accepted in accordance with clause **Error! Reference source not found.** Prices payable by Reseller for the Products as at the Commencement Date are set out in Annexure A of the Agreement.

Products

- 10.3. For an Accepted Purchase Order, Harvest will invoice the Reseller and Reseller must pay the Fees by the date specified on the invoice or as otherwise agreed in writing between the parties for:
- (a) Our Hardware in advance of collection/delivery; and,
 - (b) Our Software in advance as described on the Accepted Purchase Order.

Services

- 10.4. Where an Accepted Purchase Order includes Services, Harvest will invoice the Reseller for the Services and the Reseller must pay for the Services by the due date specified on the invoice or as otherwise agreed in writing between the parties.

Failure to pay

- 10.5. If Reseller fails to pay any sum due under the Agreement by the due date, Harvest may suspend:
- (a) provision of any Products the subject of an Accepted Purchased Order and retain possession of those Products until all outstanding amounts are paid by the Reseller;
 - (b) an End User's ability to use Our Software until receipt of the Fees by us where the sum due relates to Our Software;
 - (c) an End User's access to the Products;
 - (d) the Services.

Currency, Tax, Permits & Duties

- 10.6. Unless otherwise expressly stated:
- (a) All payments under the Agreement will be made in United States Dollars (USD) to an account nominated by Harvest;
 - (b) All amounts payable under the Agreement are expressed exclusive of any applicable taxes, permits, and duties.

11. Reseller's obligation to inspect the Products for defects

- 11.1. Harvest warrants that the Products will be fit for their purpose and of acceptable quality as at the date they are collected from the Collection Point in accordance with clause 5.4.
- 11.2. Within 7 days of evidenced receipt of the Products, Reseller must inspect and test the Products in accordance with the Operation Guides and notify Harvest of any Products which are not fit for their purpose or are not of acceptable quality (**Defect Notice**). If Reseller does not notify Harvest in accordance with this clause, the Products are deemed to have been accepted by Reseller.

- 11.3. A Defect Notice must include a written report prepared by the Reseller (in a format approved by Harvest) containing photographic and other evidence of the Products claimed to be unfit for purpose or not of acceptable quality.
- 11.4. Following receipt of a Defect Notice, Harvest may, on providing reasonable notice to Reseller, to the extent practical, inspect the Products the subject of the Defect Notice.
- 11.5. If Harvest determines, after receipt of a Defect Notice (whether or not there has been inspection in accordance with clause 11.4), in its sole and absolute discretion, that the Products are not fit for purpose or of acceptable quality due to an issue that arose during shipping or transport, Reseller will be responsible for the costs of replacement or repair. In all other cases Harvest will arrange for repair or replacement of Products the subject of the Defect Notice at its own cost.
- 11.6. If Reseller does not examine the Products in accordance with clause 11.2, it must pay the cost of returning any Products from the Territory which are not fit for their purpose or are not of acceptable quality if that issue could have been determined on an examination of the relevant Product in accordance with clause 11.2.
- 11.7. Any broken, defective, or damaged Products that are to be replaced by Harvest must be returned to Harvest by the Reseller.
- 11.8. Reseller will provide Harvest with all reasonable assistance and access to its premises to enable Harvest to exercise its rights under clause 11.4.

12. Warranty claims by End Users for Our Hardware

- 12.1. Harvest provides End Users with a 12-month limited warranty against defects in respect of Our Hardware, the current version of which is set out in Annexure B of the Agreement.
- 12.2. The Reseller must ensure that Harvest's 12-month limited warranty against defects referred to in clause 12.1 (as updated by Harvest from time to time) is amended to comply with all applicable laws in the country or state within the Territory in which Our Hardware is sold (**Limited Warranty**).
- 12.3. Prior to offering the limited warranty, the Reseller must provide a copy of the warranty amended in accordance with clause 12.2 to Harvest for its review and approval.
- 12.4. The Reseller is the first point of contact for all claims by End Users under the Limited Warranty and is responsible for coordinating all such claims (each a **Warranty Claim**).
- 12.5. The Reseller must immediately notify Harvest of each Warranty Claim within 72 hours, and, upon receipt of a Warranty Claim, the Reseller must within a reasonable time and no later than 48 hours:
 - (a) arrange for the inspection and testing of Our Hardware the subject of the Warranty Claim and send Harvest a written report (in a format approved by Harvest) containing photographic and other evidence of Our Hardware claimed to be defective (**Defect Notice**); and
 - (b) provide the End User replacement(s) for Our Hardware the subject of the Warranty Claim with the same or similar functionality on a temporary basis at Reseller's cost.
- 12.6. Following receipt of a Defect Notice, Harvest may, on providing reasonable notice to Reseller, to the extent practical:
 - (a) inspect Our Hardware the subject of the Defect Notice; or
 - (b) require that the Reseller send to Harvest Our Hardware the subject of the Defect Notice for Harvest to inspect Our Hardware.
- 12.7. If Harvest determines, after receipt of a Defect Notice (whether or not there has been inspection in accordance with clause 12.5(a), in its sole and absolute discretion, that the Warranty Claim:

- (a) does not satisfy the terms of the Limited Warranty, Harvest is not responsible for the costs of any repair, replacement or return of Our Hardware to the End User and Reseller must notify the End User accordingly; or
 - (b) satisfies the terms of the Limited Warranty, Harvest will arrange for repair or replacement of Our Hardware the subject of the Defect Notice at its own cost.
- 12.8. The Reseller will provide Harvest with all reasonable assistance and access to the Reseller's premises to enable Harvest to exercise its rights under clauses 12.5(a) and 12.6(a), or sending Our Hardware the subject of the Defect Notice to Harvest to enable Harvest to exercise its rights under clause 12.6(b).

13. Non-warranty repairs and maintenance for Our Hardware

- 13.1. Except for Warranty Claims (clause 12 above) and without limiting the End User's rights under applicable law, the Reseller and End User are otherwise responsible for arranging maintenance and/or repair of Our Hardware the subject of an Accepted Purchase Order in accordance with this clause.
- 13.2. Subject to clauses 13.3 and 13.4 and at Reseller's request, Harvest will repair, and provide replacements parts for, Our Hardware.
- 13.3. Reseller:
- (a) must return (or arrange for the return on behalf of any End User) Our Hardware it wishes to be repaired to an address nominated by Harvest;
 - (b) is responsible for all costs (including transport and delivery costs) associated with the return of Our Hardware to Harvest for repair, the return of Our Hardware back to Reseller following repair and the delivery and return of any Temporary Replacements in accordance with 13.3(c);
 - (c) must immediately procure the return of any Temporary Replacement(s) from the End User to Harvest following the return of the repaired Hardware to the End User by the Reseller.
- 13.4. Harvest will provide Reseller a quote for carrying out any repairs requested by the Reseller and, subject to Reseller's approval of that quote, will invoice the Reseller for any repairs, maintenance and replacement parts for Our Hardware and for any modifications of Our Hardware requested by the Reseller.
- 13.5. Subject to clause 13.3(c), to the extent possible, Harvest will provide Reseller replacement(s) for Our Hardware undergoing repair with the same or similar functionality to provide to the End User on a temporary basis (**Temporary Replacement**).
- 13.6. Notwithstanding sub-clause 13.1, Reseller and/or End User must not use any third party to repair, service or maintain Our Hardware or use any replacement parts not supplied or approved by Harvest.

14. Exclusions and limitations

- 14.1. All terms, warranties and representations not expressly stated in the Agreement, are excluded from the Agreement to the extent permitted by law.
- 14.2. To the extent that the applicable law applies to Products and Services provided by Harvest under the Agreement, Harvest's liability to the Reseller is limited to the lower of the cost of replacing the Products and Services, repairing the Products or of obtaining equivalent Products and Services.
- 14.3. Subject to clauses 11, 12 and 14.2 and Reseller's rights under applicable law, Harvest's maximum total aggregate liability under or arising out of the Agreement whether in contract, tort (including negligence) or otherwise is limited to:
- (a) in the case of Our Hardware, the Fees received by us for Our Hardware the subject of the claim;

- (b) in the case of Our Software, the subject of the claim, the Fees received by us for the month during which the event gave rise to the liability;
 - (c) in the case of Services, the Fees received by us for the Services associated with the event the subject of the claim.
- 14.4. To the maximum extent permitted by applicable law, Harvest is not liable to Reseller or any third-party under any theory of liability or in any event for any:
 - (a) lost profits, lost revenue, loss of opportunity, loss of data, loss of management time or failure to realise anticipated savings, property damage, loss of or damage to reputation or goodwill, personal injury, loss of life, accident, harm, incurred or suffered by a person; or
 - (b) special, indirect, incidental, extraordinary, exemplary, punitive or consequential damages, losses, costs, or expenses of any kind, however arising, even if we knew or should have known of the possibility of such damages, losses, costs, or expenses.
- 14.5. Harvest's liability to Reseller under or in relation to the Agreement is reduced to the extent that Reseller's acts or omissions, or those of a third party, contributed to or caused the liability.

15. Importation and sales in the Territory

- 15.1. Reseller must use its best endeavours to promote and sell the Products to the Approved Customer/Project in the Territory.
- 15.2. Reseller will be responsible for importing the Products into countries or states within the Territory outside of Australia and must bear all import clearance costs (including all taxes and duties), and all transport and insurance costs associated with importing the Products into the Territory.
- 15.3. Reseller will manage the logistics of obtaining any and all licences, permits, or authorisations, and associated costs and expenses, as may be required to import the Products in the Territory. Reseller will provide to Harvest, verification and documentation of such licences and permits, upon our request. Reseller agrees that Reseller is ultimately responsible for compliance with all local licensing laws and regulations in any jurisdiction in which imports the Products.
- 15.4. Reseller is responsible for the sales, order processing, inventory maintenance and warehousing, collection of accounts receivable and distribution of Products to Approved Customer End Users in the Territory.
- 15.5. Reseller must discharge its responsibilities as reseller set out in the Agreement:
 - (a) in a diligent manner in accordance with best industry practice and, in any event, with all reasonable skill and care and in compliance with all laws; and
 - (b) in accordance with Harvest's directions and instructions.
- 15.6. Reseller must not supply, sell or offer for sale, nor permit to be supplied, sold or offered for sale, any quantities of the Products which are not in good marketable condition.
- 15.7. All Products must be sold by Reseller under the Trade Marks.

16. Export controls and licensing

- 16.1. For projects located outside of Australia, Reseller acknowledges and agrees to comply with all applicable laws, regulations, and orders (including those imposed by the United States, the United Nations, the United Kingdom and the member states of the European Union and the European Free Trade Association) applicable to the export, re-export, transfer or resale of products or the provision of services and related technical data.

- 16.2. No Products can be used in any country where doing so is a violation of applicable law, and no Products can be used by any person or entity identified on any denied-persons list under any jurisdiction. Without limiting the foregoing, in no instance can the Products be used in an embargoed, sanctioned or otherwise restricted or contentious country, without the express written consent of Harvest (which will only be provided upon a showing that the proposed use is licensed or otherwise authorised by the applicable government authority).

17. Packaging for Products

- 17.1. Reseller must only sell the Products with labels and in packaging supplied by Harvest unless otherwise required by the law of the relevant country or state within the Territory and/or approved in writing by Harvest. Any costs and expenses arising from or associated with compliance with the laws of the relevant country or state within the Territory (including without limitation, any re-labelling and other necessary amendments) will be borne solely by Reseller.
- 17.2. Reseller must not alter, remove, or modify any labels or packaging of the Products nor affix any other labels or instructions without Harvest's prior written consent.
- 17.3. Reseller must not make any claims or representations which are:
- (a) inconsistent with the packaging or artwork approved by Harvest unless such claims or representations have been expressly approved in writing by Harvest; or
 - (b) which are false or misleading in any particular.
- 17.4. Reseller will, at its cost, be responsible for producing and distributing all promotional materials for the Products in the Territory. All promotional material must:
- (a) comply with all applicable laws and regulations;
 - (b) be in whatever language or languages Reseller considers appropriate for the Territory; and
 - (c) be approved by Harvest in advance.
- 17.5. Reseller must conduct its business as a reseller of the Products in a manner which reflects favourably at all times on the Products and the good name, goodwill and reputation of Harvest and its reputation in the Trade Marks under or in connection with which the Products are sold.

18. Records and Reports

- 18.1. The Reseller must keep accurate and complete records of all:
- (a) sales of the Products and Services, including the identity of End Users and their contact details;
 - (b) defects or faults discovered in the Products by the Reseller or which the Reseller has become aware of (including by notification from the End User), including inspection reports, manifests, Defect Notices, Warranty Claims and fault reports;
 - (c) product returns;
 - (d) End User queries, feedback, complaints, and testimonials.
- 18.2. The Reseller must provide Harvest with monthly reports in a form specified by Harvest identifying for each Product:
- (a) the industry and location of each End User of Products from Reseller; and
 - (b) the price and serial number/code of each Product sold to that End User,
- for the relevant month.
- 18.3. The Reseller must provide Harvest with any information:

- (a) and copies of all records related to any Product sale, returned Product or Warranty Claim (including, where relevant, including customer names and addresses) within 2 working days after request from Harvest;
- (b) and copies of all records related to customer complaints (including customer names and addresses) immediately upon receipt of such complaints; and
- (c) received by Reseller which is likely to be of interest, use or benefit to Harvest in relation to the Products and Services within two (2) working days after becoming aware of it.

19. Confidentiality

19.1. Each party must:

- (a) take all such reasonable precautions as may be necessary to maintain the confidentiality of the Confidential Information of the other party;
- (b) only disclose the Confidential Information of the other party to those of its employees who need to know for the purposes of the Agreement;
- (c) ensure that each employee who comes into possession of the Confidential Information of the other party has agreed to keep the Confidential Information confidential on terms similar to this clause; and
- (d) immediately on demand from the other party:
 - (i) deliver to the other party all Confidential Information of the other party which is capable of being transferred by delivery; and
 - (ii) delete permanently all Confidential Information in electronic form stored on any computer or similar facility under its control.

19.2. Without limiting clause 19.1, each party must not:

- (a) communicate or make available any Confidential Information of the other party to any person;
- (b) use the Confidential Information of the other party for any purpose other than for the purposes of the Agreement;
- (c) use the Confidential Information of the other party for its own gain or in any manner which may cause loss to the other parties; or
- (d) copy the Confidential Information,

without the prior written consent of the other party.

19.3. The parties' obligations under this clause 19 do not apply to any Confidential Information which:

- (a) a party can show was in its possession at the time of disclosure to it and was not acquired in breach of an obligation of confidence or under an obligation of confidence;
- (b) is in the public domain; or
- (c) is acquired from a third party, provided that it was not acquired by the third party unlawfully or in breach of an obligation of confidence.

20. Intellectual property

Ownership

20.1. The Reseller acknowledges that:

- (a) Harvest owns all intellectual property rights in the Products, Our Software, Harvest Materials and the Trade Marks;
- (b) the Agreement does not assign to Reseller or End Users any intellectual property rights in the Products, Our Software, Harvest Materials or the Trade Marks.

Licence of Our Software

- 20.2. Subject to payment of all fees due under the Agreement, Harvest grants to Reseller a non-exclusive, non-transferable, sub-licensable (to End Users only), revocable right to:
- (a) use the Products to comply with its obligations under the Agreement;
 - (b) sub-license Our Software to End Users in accordance with the terms of the Agreement.

Licence of Harvest Materials

- 20.3. Subject to payment of all fees due under the Agreement, Harvest grants to Reseller a royalty-free, non-exclusive, non-transferable, licence to the Harvest Materials during the Term to allow the Reseller to perform their obligations under the Agreement.

Restrictions

- 20.4. The Reseller must not, either during or after the Term:
- (a) reverse engineer or disassemble or tamper with the Products, or determine or attempt to determine or decipher any source code, algorithms, methods or techniques used or embodied in the Products;
 - (b) use or sell the Products, otherwise than as permitted under the Agreement;
 - (c) attempt to create any competitive product or any service which has features or functionality the same as or similar to the features and functionality of the Products, or copy any features, functions, graphics or interfaces of the Products;
 - (d) remove any product identification, proprietary, copyright or other notices contained in the Products;
 - (e) circumvent or disclose the user authentication or security of the Products;
 - (f) make any use of the Products or Our Software, that violates any applicable law or regulation; or
 - (g) dispute or challenge the intellectual property rights of Harvest or its licensors in and to any of the Products.

Trade Marks

- 20.5. Subject to the terms the Agreement, Harvest grants to the Reseller a non-exclusive, non-transferable, non-sublicensable, revocable, royalty-free licence during the Term and throughout the Territory to use each of the Trade Marks as a trade mark in relation to the Products and Services.
- 20.6. The Reseller must comply with all instructions notified by Harvest regarding the use of the Trade Marks.
- 20.7. The Reseller acknowledges and agrees that all goodwill associated with any Trade Mark affixed, applied to or used in relation to the Products accrues to the sole benefit of Harvest or its licensors.
- 20.8. The Reseller must not during or after the Term:
- (a) represent in any way that it owns the Trade Marks or is entitled to use the Trade Marks other than as a licensee of Harvest;
 - (b) use any of the Trade Marks in its corporate or business names;
 - (c) apply or seek to register any Trade Mark in its own name in any country;

- (d) use, or apply to register any Trade Mark that is substantially identical with, or deceptively similar to, any of the Trade Marks in any country;
- (e) dispute or contest the intellectual property rights of Harvest or its licensors in and to any of the Trade Marks; and
- (f) register a business name, company name, domain name or social media moniker that is substantially identical with or deceptively similar to any Trade Mark.

20.9. The Reseller must only use the Trade Marks in connection with the resale of Products and Services in accordance with the Agreement.

20.10. The Reseller acknowledges that, except as expressly provided in the Agreement, it will not acquire or exercise any rights with respect to the Trade Marks under any legislation in any country.

Notification of infringement

20.11. The Reseller must immediately bring to the attention of Harvest any:

- (a) infringement or possible infringement of Harvest's intellectual property rights (including infringements of its Trade Marks, or counterfeit or imitation Products); or
- (b) infringement or possible infringement of a third party's intellectual property rights by the Trade Marks or the Products,

of which the Reseller becomes aware.

20.12. Harvest has the sole right to conduct the prosecution, defence or settlement of any claim and may elect, at its discretion, not to prosecute infringements or to defend claims based on alleged infringement of third-party intellectual property rights. Reseller must, at its cost, provide all assistance reasonably requested by Harvest in protecting its rights in and to the Trade Marks and the Products or defending any claim made against it.

Our obligations regarding third-party claims

20.13. Subject to clauses 20.14 and 20.15, Harvest will:

- (a) defend the Reseller (at Harvest's expense) against all claims made against the Reseller by any third party alleging that the Reseller's resale or supply of the Products in accordance with the Agreement, infringes the intellectual property rights of that third party (**Third-Party Claim**); and
- (b) pay the costs and damages awarded based on any Third-Party Claim or the amount of any settlement Harvest enters into regarding that Third-Party Claim.

20.14. Harvest's obligations under clause 20.13 are subject to:

- (a) the Reseller promptly notifying Harvest of that Third-Party Claim (and in any event no later than seven (7) days after receiving the Third-Party Claim);
- (b) Harvest being given sole control of the defence of the Third-Party Claim; and
- (c) the Reseller providing all reasonably requested assistance for defence of the Third-Party Claim.

20.15. Harvest's obligations under clause 20.13 will not apply if the Third-Party Claim results from use of the Products in conjunction with any other hardware, software or service not provided by Harvest.

20.16. If a Third-Party Claim is made or, in Harvest's reasonable opinion, is likely to be made, Harvest may, at its expense:

- (a) procure for the Reseller the right to continue using the Products under the terms of the agreement; or

- (b) replace or modify the Products to be non-infringing without material decrease in functionality.
- 20.17. If Harvest notifies the Reseller that the options described in clause 20.16 are not reasonably available, either party may, by notice to the other, terminate the Agreement.
- 20.18. Clauses 20.13 to 20.17 set out the Reseller's sole and exclusive remedies and Harvest's entire liability to the Reseller for any Third-Party Claims.

21. Privacy

- 21.1. The Reseller acknowledges that it is responsible for handling any personal information in a manner consistent with Harvest's Privacy Policy and Data Processing Addendum, as set out in Annexure B of the Agreement, and all other applicable laws, rules, and regulations in relation to personal information Reseller provides to Harvest in connection with the agreement, including Your Content.
- 21.2. Reseller warrants that it has obtained all permissions and consents necessary for Harvest to deal with all personal information provided by Reseller to Harvest in connection with the Agreement as contemplated by the Agreement (including Your Content) and that Harvest is lawfully able to deal with that personal information as contemplated by the Agreement.
- 21.3. Reseller indemnifies Harvest in relation to any loss, damage, costs, or expenses, whether direct or indirect, it suffers or incurs as a result of Reseller's breach of clause 21.2.

22. Product recall or withdrawal in the nature of a recall

Notice

- 22.1. Each party must:
- (a) immediately notify the other party as soon as it becomes aware that any Product may be required to be recalled or withdrawn, including for safety reasons;
 - (b) if requested by the other party, and at Harvest's option:
 - (i) destroy the Product; or
 - (ii) assist, as reasonably required, in recall or withdrawal of the Product; and
 - (c) take all reasonable action in relation to the recall or withdrawal, including reasonable directions aimed at minimising resulting damage to Reseller's or Harvest's reputation.

Cost

- 22.2. Destruction, disposal, assistance or compliance in accordance with clause 22.1 must be carried out:
- (a) at Reseller's cost, if the reason for the destruction, disposal, or non-compliance was caused by Reseller; and
 - (b) at Harvest's cost, in all other circumstances.

Liability

- 22.3. Notwithstanding any other provision of the Agreement, if there is a Product recall (or withdrawal in the nature of a recall) which was caused or contributed to by Harvest, then Harvest agrees that it will reimburse to Reseller all reasonable costs incurred by Reseller in relation to the recall or withdrawal, or a proportion commensurate with the extent of Harvest's liability for the recall or withdrawal.

23. Warranties

- 23.1. The Reseller warrants that:

- (a) All of its activities performed, directly or indirectly, in connection with the Agreement, including the importation, storage, promotion, and sales of the Products and Services, will be carried out in compliance with industry best practice, and all applicable laws and regulations of the Territory;
- (b) it has all necessary approvals, permits, authorities and licences required to lawfully carry out its obligations and exercise its rights under the Agreement; and
- (c) it will not do anything detrimental to the sales of the Products and Services or to the reputation of Harvest or the Products and Services.

24. Indemnity by Reseller

24.1. The Reseller indemnifies Harvest against all damages, losses, costs, and expenses incurred by Harvest arising out of:

- (a) any breach by Reseller of the Agreement including any breach of a warranty given by Reseller under the Agreement; or
- (b) any negligent act or omission of Reseller or its employees, agents or subcontractors in any way relating to the Agreement,

except to the extent the damages, losses, costs, and expenses can be traced back and attributed to the negligence or misconduct of Harvest.

25. Insurance

25.1. The Reseller must take out and maintain a comprehensive public and product liability insurance policy to cover all sums which may become legally liable to pay in relation to the death of or bodily injury (including disease or illness) to any person, in connection with supply of the Products and Services.

25.2. Without limiting its obligations under clause 25.1, Reseller must ensure that the insurance policy taken out will be effected with a reputable insurance company with minimum cover of US\$5 million for each occurrence.

25.3. Reseller must provide Harvest with certificates of currency (or other evidence of such policies) on request.

26. Relationship of the Parties

26.1. Nothing in the Agreement creates an agency, partnership, joint venture or employment relationship between Harvest and Reseller or any of their respective employees, agents, or contractors.

26.2. Neither Reseller nor any person acting on behalf of Reseller may hold itself out as being entitled to contract or accept payment in the name of or on account of Harvest.

27. Force majeure

Event

27.1. If a party (**Affected Party**) becomes unable, wholly or in part, to carry out an obligation under the Agreement (other than an obligation to pay money) due to a Force Majeure Event, the Affected Party must give to the other party prompt written notice of:

- (a) full particulars of the Force Majeure Event; and
- (b) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.

Suspension

- 27.2. The relevant obligation, so far as it is affected by the Force Majeure Event, will be suspended during, but no longer than, the term of the Force Majeure Event.

Obligation

- 27.3. The Affected Party must use reasonable diligence to overcome or remove the Force Majeure Event as quickly as possible.

Termination

- 27.4. A party may, by giving notice to the Affected Party, terminate the Agreement if the Force Majeure Event continues for 3 months.

28. Termination

- 28.1. If a party:
- (a) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration;
 - (b) fails, within 14 days after receipt of notice, to remedy any breach of its obligations under the Agreement which is capable of remedy; or
 - (c) breaches any provision of the Agreement, which is not capable of remedy,
 - (d) acts in a manner which may injure or is likely to adversely affect the other party's reputation or interests, or
 - (e) breaches any applicable legislation or regulation relevant to the use or provision of the Products or the Services,
- the other party may, by notice, terminate the Agreement immediately.
- 28.2. On termination or expiry of the Agreement, the Reseller must:
- (a) immediately pay all amounts owing to Harvest up to and inclusive of the termination date;
 - (b) immediately stop marketing and selling the Products;
 - (c) deliver to Harvest, or to such location as Harvest directs, the Harvest Materials, Harvest's Confidential Information and all materials recording or containing the foregoing;
 - (d) permanently delete from all computer systems under the control of Reseller all Harvest Materials and Harvest's Confidential Information which is in electronic form;
 - (e) if requested by Harvest, novate any or all existing agreements between the Reseller and End Users to Harvest or a third party.
- 28.3. If the Agreement terminates in accordance with 28.1 or expires without renewal, the Reseller will novate any or all existing agreements the subject of the Agreement, between the Reseller and Approved Customer and End Users, to Harvest or a third party approved by Harvest.
- 28.4. The obligations of the parties under the Agreement that by their nature would continue beyond expiration or termination or cancellation (including clause 20.4, the warranties, indemnification obligations, confidentiality requirements and ownership and property rights) will survive any such expiration or termination.

29. Dispute resolution

Dealing with disputes

- 29.1. The parties agree that a dispute arising under the Agreement will be dealt with as follows:
- (a) the party claiming that there is a dispute will give the other party a notice (as described in clause 30.1) setting out the nature of the dispute;
 - (b) within 7 days, each party will nominate a representative not having any prior involvement in the dispute;
 - (c) the representatives will try to settle the dispute by direct negotiation between them;
 - (d) if a resolution is not reached within a further 14 days (**Negotiation Period**), the dispute must be submitted to mediation. The mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or failing agreement within 7 days of the end of the Negotiation Period, by a person authorised by the Chair of Resolution Institute or the Chair's designated representative;
 - (e) the mediation will be held in Perth, Western Australia;
 - (f) the Resolution Institute Mediation Rules current as at the date of the dispute will apply to the mediation; and
 - (g) if a resolution is not reached within 30 days of a mediator being appointed, either party may commence legal proceedings.
- 29.2. This clause does not apply to legal proceedings by either party seeking urgent interlocutory relief.

Performance of agreement

- 29.3. Except as otherwise provided in clauses 3.7 and 10.5, the parties must continue to perform their respective obligations under the Agreement where a dispute exists.

Costs

- 29.4. Each party will bear their own costs in complying with this clause 29, and the parties will share equally the cost of any mediator engaged under this clause 29.

30. Miscellaneous

- 30.1. The parties agree to comply with the Special Conditions. If there is any inconsistency between any of the Special Conditions and the terms contained in the body of the Agreement, the Special Conditions will prevail to the extent of the inconsistency.
- 30.2. The parties agree to comply with the Country Specific Terms. If there is any inconsistency between any of the Country Specific Terms and the terms contained within the body of the Agreement, the Country Specific Terms will prevail to the extent of the inconsistency.
- 30.3. A notice under the Agreement must be in writing and may be given to the addressee by delivering or sending it by pre-paid registered post to the address of the addressee, or by secure PDF via email to the nominated email address in Schedule 1 of the Agreement.
- 30.4. The Agreement may only be varied by the written agreement of the Authorised Signatories of the parties.
- 30.5. Reseller may only assign a right under the Agreement with the prior written consent of the Harvest Authorised Signatory. Reseller is deemed to have assigned its rights if the management or control of Reseller is transferred to any person other than those persons who manage or control Reseller as at the date of the Agreement.
- 30.6. The Agreement embodies the entire understanding and agreement between the parties as to its subject matter and supersedes any prior understanding or agreement between the parties.

- 30.7. Each party must promptly execute all documents and do all things that the other party from time-to-time reasonably requests to effect, perfect or complete the Agreement and all transactions incidental to it.
- 30.8. The Agreement is governed by and must be construed in accordance with the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 30.9. If any part of the Agreement is void or unenforceable that part will be severable from and will not affect the enforceability of the remaining provisions. If such a severance goes to the essence of the Agreement, either party may terminate the Agreement immediately by notice.

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