



silent
PARTNER



The Silent Partner General Terms and Conditions

Definitions

“TSP” : The Silent Partner Pty Ltd (ABN 68 087 675 367) and includes its directors, employees, sub-contractors and agents.

“Customer” : any individual or entity (including a corporation, partnership, trust or any other form of legal entity whatsoever) and their employees, agents, contractors and invitees.

“Terms” : these Terms and Conditions of Service which govern the access and use of all services and products offered by TSP.

“Agreement” : the agreement of service between the Customer and TSP, in accordance with these Terms

“Services” : the products or services provided by TSP.

1 Introduction

1.1 These Terms govern the access and use of all services and products offered by TSP. These Terms constitute as a legally binding agreement between TSP and any Customer that accesses or otherwise uses or receives any TSP Services.

1.2 The Customer must register with TSP before receiving any of the TSP Services. By registering with TSP the Customer agrees to be bound by this agreement.

1.3 These terms apply whether you access the services we offer via our website, a portal we may allow you to access, a mobile phone application or any other medium that enables you to access any TSP Services or offerings.

1.4 The TSP Fair Use Policy, TSP Privacy Policy, TSP Free Trial Terms and Conditions, TSP Standard Fees and Charges, and any other guidelines, rules or operating policies that TSP

may nominate as included in this agreement via TSP website or other associated websites or materials from time to time also form part of the Terms.

1.5 The Services are available only to persons who can form legally binding contracts under applicable law. Including but without limiting, individuals under the age of 18 are not able to use TSP Services.

2 Commencement of Agreement

2.1 This Agreement shall commence on the date the Customer registers with TSP, or when the customer begins to use the Services, whichever is earlier.

2.2 The Customer agrees that they have provided true, accurate, current and complete information about the Customer's self as requested in the registration process. This is including but not limited to the Customer's mobile number, email address and ABN.

2.3 By registering with TSP, the customer agrees to enter into a Minimum Term of Service of 30 days, or one calendar month whichever is longer, and thereafter on a month to month basis until terminated in accordance with these Terms.

3 Free Trial

3.1 A TSP Free Trial is bound by the conditions set out in these Terms as well as the terms set out on the [The Silent Partner Free Trial Terms and Conditions](#) ("**Free Trial Terms**")

3.2 Subject to these Terms and the terms set out in the Free Trial Terms, TSP may provide to the Customer a trial period of TSP Services. The trial period shall commence on Customers registration with TSP and will expire within a number of days specified by TSP, which period may be extended or shortened by TSP in its discretion.

3.3 Customer agrees and acknowledges that the scope and details of a Trial Service will be determined at TSP discretion.

3.4 The Trial Service is not applicable for prior customers of TSP, casual Customers or new Customers that require TSP Services for promotional or advertising campaigns.

3.5 TSP may terminate the Trial Service at any time for any reason or no reason. Without limiting the foregoing, TSP may terminate the Trial Service upon expiration of the Trial Service Term, exceeding the included usage credit (as per Free Trial Terms), or commencement of any TSP Paid Services (as defined in Section 4 below). After the termination of the Trial Service, Customer will need to purchase a TSP Paid Service in order to continue to receive services from TSP. Any portion of the Trial Usage Credit not used prior to termination of the Trial Service will be forfeited and may not be used in connection with any TSP Paid Services.

4 Services

a) Call Answering Services (“CAS”)

4a.1 Where the Customer subscribes to a call answering service, TSP shall

- a) make available for use by the Customer a local telephone number as required by the Customer;
- b) where requested to physically answer inbound telephone calls in the name of the Customer or as otherwise specified and process the calls in a manner as specified by the Customer.
- c) where requested to receive inbound fax calls, receive faxes electronically and proceed to process the fax in a manner as specified by the Customer.
- d) where requested to divert inbound telephone calls to another service, proceed to divert these calls electronically to the service as specified by the Customer.
- e) Upon termination of this agreement, TSP retains the licence over the telephone and fax numbers for use as TSP sees fit. Landline numbers remain the property of TSP and are unable to be ported away. 1300/1800 numbers may be ported to another carrier after 52 weeks of service.

4a.2 TSP reserves the right to change the Virtual Number allocated to the Customer at any time. While all reasonable endeavours will be taken to avoid changing the Virtual Number, should TSP be required to change the Virtual Number the customer will be provided with seven (7) days notice of the change of number. TSP will not be liable for any loss, cost or expense the Customer may incur resulting from the change.

4a.3 Forwarding Phone Numbers. Some TSP Offerings may involve the forwarding of calls or messages to phone numbers specified by Customer (“Forwarding Telephone Numbers”). Customer represents that all Forwarding Telephone Numbers are under Customer’s direct control, and Customer will not direct TSP to forward calls or messages to any phone numbers not under Customer’s direct control. In addition, the Customer acknowledges and agrees that TSP will have the right to refuse to forward calls and messages to any telephone number in TSP’s discretion, in which case Customer will need to provide a different telephone number to receive forwarded calls and messages.

b) Message and Reminder Service (“MRS”)

Where the Customer subscribes to have messages taken resulting from inbound calls, TSP shall;

- a) respond to inbound callers as a representative of the Customer and, to the best of its ability, take messages on behalf of the Customer.
- b) to the best of its ability, make all endeavours to be fair and reasonable to ensure the highest quality and accuracy of messages taken on behalf of the Customer.

- c) deliver all messages to the Customer in a manner as specified by the Customer (emails or SMS).

Where the Customer subscribes to have messages generated and forwarded as part of a reminder service, TSP shall;

- a) take all reasonable steps to contact the recipient of the reminder, where the reminder is to be done by way of physical phone call.
- b) take all reasonable steps to contact deliver the recipient of the reminder, via a third party service provider, where the reminder is to be done electronically (email or SMS)
- c) The Customer acknowledges that where Third Party service providers are used as part of the reminder service, from time to time there may be delays in accessing the services or receiving reminder messages (emails or SMS) and to the extent permitted by law, TSP excludes all liability in contract, tort (including negligence) or otherwise relating to or resulting from messages or reminders taken on behalf of the Customer and for any loss incurred by the Customer directly or indirectly including without limitation as a result of or arising out of any delays, failures or inaccuracies in the transmission of messages or reminders regarding appointments.

c) Calendar Management Services (“CMS”)

4c.1 Where the Licensee subscribes to a Calendar Management Service, TSP shall:

- a) respond to inbound callers as a representative of the Licensee and create, edit, confirm or delete calendar events on behalf of the Licensee,
- b) to the best of its ability, make all endeavours fair and reasonable to ensure the highest quality and accuracy of all calendar event related activities.
- c) maintain that the creating, editing, amendment or deletion of a calendar event constitutes an event

4c.2 Where TSP undertakes to manage calendars on behalf of the Licensee, as part of Calendar Management Subscription, TSP utilises a web-based hosted instance of a third party software product.

d) Licence Of Address Services (“LOA”)

4d.1 This Agreement does not create a tenancy or any other right of possession of any premises or location, but subscription to licence the use of TSP’s office address as the Customers business address.

4d.2 The Customer can only use the TSP address as their business address. They do not have the authority or permission to use the TSP address as their registered place of business for ASIC or other Government Registrations.

4d.3 **Service of Legal Documents.** TSP will not be liable to the Customer in any respect whatsoever in relation to any kind of service of legal documents to the Customer by TSP

Services. This includes, without limitation, documents that have been posted to the Customer via TSP premises or in respect of document left at such premises. This exclusion of liability applies, whether or not the service is considered to be valid in accordance with any law of any kind.

4d.4 Where the Customer has agreed to pay a licence fee for the use of the TSP's office address, TSP:

- agrees to make available to the Customer its office address and grants permission to the Customer the use this office address for the purpose of passing off this address as that of the Customer.
- agrees to represent the Customers nominated business or company name from this address
- agrees to accept mail and parcels on behalf of the Customer's nominated business or company name. Parcels will be held at no charge for a period of two business days or part thereof. Parcels held for any period over this time may be subject to storage and handling fees as per the TSP Standard Fees and Charges.
- The Silent Partner reserves the right to refuse receipt of any parcel based on the size, contents or other
- The forwarding of packages for the Customer, unless arranged and paid for directly by the Customer, must be paid in full by an EFT transfer before The Silent Partner will allow the goods to be released

4d.5 Where the Customer has NOT agreed to pay a licence fee, or has terminated their licence for the use of the TSP's office address, and the Customer is found to be passing off TSP's office address as that of the Customer TSP shall:

- reject any mail or parcels delivered to TSP's office address
- not represent TSP's office address as that of the Customer.
- seek damages and compensation from the Customer

e) Meeting Room Services

4e.1 The Customer acknowledges and agrees that they are solely responsible for the acts and omissions of their employees, agents, contractors and invitees while they access or use any premises made available by TSP.

4e.2 Where applicable:

- a) TSP makes available during business hours meeting rooms for use by the Customer and guests of the Customer.
- b) Where a meeting room is booked for a half day, this shall mean from 9am until 1pm or from 1pm until 5:30pm.
- c) Where the Customer, guests or Customers representative request (subject to availability) to extend the term of meeting room hire, the Customer shall be charged for each 30min or part thereof.

- d) Weekend and after-hours usage of the meeting rooms may be available on an individual request basis. After hours surcharge applies as detailed in TSP's Schedule of standard fees and charges.

f) General

- a) Business Hours are defined as Monday to Friday, 8:30am to 5:30pm AEST, excluding all National public and bank holidays
- b) Calls transferred are subject to call rates as Standard Rates Charges table
- c) Meeting room usage is Schedule of Fees Charges
- d) Your facsimile service includes fax mail. We receive and send your faxes via email.
- g) Terms and conditions detailed in this licence agreement are in conjunction with the offers / product and service features detailed in the individual virtual office services PDF documents.
- h) All prices in this agreement do not Inc. GST. GST is to be added.
- i) Fair Use Policy applies to all services provided by TSP. TSP reserves the right to charge additional fees where usage is deemed excessive or unreasonable.

5 Fair Use of Services

5.1 In connection with its use of TSP Offerings, Customer will at all times comply with TSP's fair use policy ("Fair Use Policy"). Under the Fair Use Policy TSP may shorten or end the Service Term of the Customer with immediate effect should it determine, at its absolute discretion, that the Customer's usage is in any way unreasonable. Such policy may be amended by TSP from time to time.

6 Fees

6.1 All fees and charges not found on the TSP website or other associated websites or materials, are outlined on [The Silent Partner Standard Fees and Charges](#).

6.2 The fees for each of the Services shall be as specified as part of the Service Registration.

6.3 All prices quoted in the Terms, published to the TSP website, or other associated websites or materials including but not limited to any communication from TSP employees are exclusive of GST and any other applicable taxes.

6.4 All fees are payable in AUD

6.5 The charges for each TSP paid service may include:

- a) **Recurring Service Fees:** charged monthly and in advance, that do not vary based on Customers usage of the TSP Service (“**Recurring Service Fee**”) and include a certain number of consumables depending on Service Tier and/or
- b) **Consumables:** Incremental additional charges that have incurred based on Customers usage of a TSP service during the previous bill cycle, charged as per TSP Standard Fees and Charges. Eg excess inbound call charges, call transfer charges, messages sent via sms.

6.6 Customers will be required to maintain a prepaid credit for Recurring Services Fees. As such all Subscription Charges are billed for one calendar month in advance, on or around the anniversary date of account registration.

6.7 Consumables shall be charged in arrears each month as per the TSP Schedule of Standard Fees and Charges.

6.8 Where the Recurring Service Fee is advertised as a weekly fee the Customer will be billed a monthly fee. This is calculated as $(52 \times (\text{weekly fee})) / 12$

6.9 A one off “Establishment Fee” in accordance with TSP Schedule of Standard Fees and Charges shall be charged for the establishment of each account.

6.10 **Discounts.** If TSP grants to Customer any discount for any Selected Paid Service, such discount will be applied as a separate charge in credit and will apply only during the period specified by TSP (“**Discount Period**”). After expiry of the Discount Period the charges set forth in the TSP Standard Fees and Charges will be applied without such discount. Any discount or waiver must be agreed in writing by TSP

6.11 Except as set forth in Section 6, the Customer will not be entitled to any refunds or credits for any amounts previously paid, and any charges previously incurred by the Customer will remain payable by Customer.

6.12 **Optimisation Guarantee.** During the first three (3) months of service TSP may review the Service activity on the Customer Account, and should it be determined the Customer would be better suited to a different service Plan, TSP may credit the original fees and charges for the service to that date (within the first three months of service) and will recharge the period at the new service rate. This is only done at the request of the customer.

7 Plan Changes

7.1 Customers may request a change to Recurring Service Fees at any point, however all change requests must be made in writing by emailing support@silentpartner.com.au. If TSP approves such a request the following will apply:

- a) Change to Recurring Service Fee will commence the next business day (unless Customer and TSP agree otherwise) and

- b) Where the change is applied in the middle of the bill cycle (ie not on the account anniversary date), the Customer will receive an adjustment invoice which will comprise of:
 - i) A credit of the original Recurring Service Fee
 - ii) Charges in advance for the new Recurring Service Fee, prorated for the remainder of the bill cycle.

7.2 Where the change is applied in the middle of the bill cycle (ie not on the account anniversary date), the new Recurring Service fee and inclusions shall be prorated for the remainder of the billable period and shall offer an equivalent percentage of included value.

7.3 Customers are limited to one Service Fee change request per bill cycle.

8 Invoices and Payment

8.1 Invoices shall be produced on or around the anniversary date of the activation of the account. Where the anniversary date falls on the 28th, 29th, 30th or 31st day of the month the invoice date will be the first day of the month.

8.2 Terms of payment is strictly 7 days from the date of invoice unless stated otherwise.

8.3 The effective payment date shall be the date where cleared funds are available in TSP's bank account.

8.4 Late or non-payment of invoices shall attract a late payment fee. The late payment fee shall be calculated as being five percent (5%) per calendar month charged daily on any amount outstanding with a minimum late payment fee of \$20.

8.5 All fees payable must be paid either by Credit Card or by Direct Debit from Customers bank account ("**Preferred Payment**"). By providing TSP with the Preferred Payment details, the Customer authorises TSP to charge all payments owing to this Preferred Payment.

8.6 The Customer must ensure that sufficient funds are available in the nominated account to meet a drawing on it's due date. Should a payment be declined by the Customers financial institution or Credit Card issuer then an appropriate Dishonor Fee (determined at TSP sole discretion and as per the Standard Fees) will be applied to the Customers account, payable on their next invoice.

8.7 The Customer must ensure that the authorisation given to draw the fees on the nominated account is identical to the signing instructions held by the financial institution or credit card issuer. It is the Customers responsibility to advise TSP if the nominated account is transferred or closed.

8.8 The Customer must arrange a suitable alternative payment method if the nominated arrangements are cancelled either by the Customer or their nominated financial institution or credit card issuer.

8.9 All fees paid to TSP for the Services are non-refundable.

8.10 In the event that invoices are not paid by the due date, TSP reserves the right to take any or all of the following actions, until payment is received

- Accrue and charge late payment fees
- Block or divert all inbound calls
- Reject mail or parcels.
- Suspend all services
- Issue the debt to a collection agency
- List the Account Holder with Public Credit Check agencies.

Any expense and or costs of disbursements incurred by TSP to recover any outstanding monies, including debt collection agency fees and legal costs plus 15% shall be paid by the Customer

9 Security Deposit and Bond

9.1 For Australian applicants a Bond of a minimum of \$100 may be charged on the account and shall be retained by TSP as security for the term of this agreement. When the Customer is based outside of Australia, the Bond amount charged is a minimum of \$500 or at the discretion of TSP.

9.2 TSP reserved the right to charge the bond at any point of the Account lifecycle should the account be deemed to be of unreasonable risk

9.3 The bond, less any outstanding charges, shall be returned in not less than 60 days of the date of termination of this agreement.

9.4 The Silent Partner reserves the right to appropriate the Bond for any monies owing or damages incurred at any time.

10 Service Suspension

10.1 TSP is entitled to suspend the provision of Services at its sole discretion for reasons including but not limited to:

- a) If any charge submitted by TSP to a Customers Nominated Payment Method is declined or initially accepted but subsequently reversed, or if any amount payable is not otherwise paid when due.
- b) Should TSP have reason to believe the Customer has breached any of the Terms or if there has been unauthorised access or use of any TSP Service in the Customer's name.

10.2 TSP may charge an Account Re-Activation Fee (as per Standard Fees) to re-activate the Service following a suspension.

10.3 While your service is suspended any or all Services with TSP will no longer be active. This includes, without limitation, that any calls made to your Virtual Number will not engage, any mail received at the TSP premises will not be forwarded to the Customer until such time as the Account is paid in full.

10.4 TSP takes no responsibility for any damages caused to Customer as a result of suspension of Services.

10.5 Should the Customer Account remain suspended for greater than 7 days, TSP will terminate the service as per section 10 of this agreement.

11 Termination of Agreement

11.1 Either party with written notice may terminate this Agreement with 30days notice or immediately should payment terms not be adhered to.

11.2 TSP reserves the right to terminate the service at any time by sending a notice of termination to the email address provided upon registration with TSP, or as subsequently updated. TSP further reserves the right to terminate the Service immediately and without notice, if:

- a) there is a violation of this Agreement
- b) The customer has breached any applicable laws
- c) In the event of the death of the Account Holder, or should the Customer cease trading, become bankrupt or insolvent, or if an administrator, liquidator or receiver is appointed in relation to the Customer, or if there is reasonable concern the Customer will be unable to pay for TSP Services.

TSP will have no liability to the Customer or any third party because of such termination.

11.3 If TSP terminates the Service as per 10.2 of these Terms, no refund will be issued even if the Customer has unused and pre-paid Service Fees.

11.4 Effect of Termination:

- a) Subscription Charges. TSP will have no obligation to refund any Subscription Charges paid by the Customer for any Selected Paid Service upon any termination thereof.
- b) TSP will retain the Customers data for no less than thirty (30) days after the date of termination, after which time TSP may delete any of the customers archived data.
- c) Phone Calls and Messages: Following termination of any TSP Service, TSP will not be responsible in any way for answering calls, taking or delivering messages, making

or managing appointments or performing any other activities in connection with such TSP Service.

- d) Licence of Address: Following termination of the Licence of Address Service, the Customer will no longer have the right to use the TSP Address, and as such must remove from all branding, website or other associated websites or materials. Any mail items received after the termination will be marked as "Returned To Sender" with no notice to the Customer.
- e) Portal Access: Upon termination of all TSP Services, TSP may terminate Customer's Account and Customer's TSP Portal access thereto.

11.5 If the Customer does not utilise the Services for more than 350 days, TSP may at its sole discretion suspend operation of any Services. Customer will then have 30 days after the suspension of their services to utilise the Services or TSP may terminate the service.

12 Service Delivery

12.1 TSP does not take any responsibility for any inbound calls, including, without limitation, any inbound calls from telemarketers or promotional companies, callers who misdialed, or callers who do not leave messages. Such calls qualify as inbound calls and may result in Usage Charges as per the applicable Service Plan.

12.2 TSP does not take any responsibility for any received fax pages, including, without limitation, any faxes received from telemarketers or promotional companies, senders who misdialed, or blank pages. Such faxes qualify as a received page and may result in Usage Charges as per the applicable Service Plan.

12.3 To the maximum extent permitted by law, TSP does not warrant that the Services will be uninterrupted, accurate or error free, nor warrant the results that may be obtained from the use of the Services. TSP will make every reasonable attempt to ensure an accurate and uninterrupted service.

12.4 TSP reserves the right to terminate calls received for, and refuse service to guests of the Customer in the instance of inappropriate treatment of TSP employees. This includes but is not limited to verbal abuse, inappropriate language used or inappropriate conduct directed towards employees of TSP.

13 Obligations of the Customer

13.1 **Information.** Customer represents that all information provided by Customer to TSP is accurate, up-to-date and complete at the time it is provided to TSP. This is including, without limitation, all contact information, business details, instructions for TSP and Customers Payment Details. Customer will update all such information so that it remains accurate, up-to-date and complete at all times.

13.2 The Customer acknowledges that they are responsible for the content of any and all Services, including any information, data or software utilised to provide to send using the

Services. TSP is under no obligation to monitor the content provided by the Customer or the Customer's use of the Services. TSP may do so, and may remove any such content, not use or prohibit the use of the Services should they believe to be (or is alleged to be) in breach of this agreement.

13.3 Change of Ownership / Particulars. The Customer will notify TSP no later than fourteen (14) days after any change of ownership, management, change in its particulars, any alteration or additions to shareholders, directors or management, and any change, alteration, or addition in the licensee's internal structure and or senior management

13.4 Compliance with Laws. Customer will at all times comply with all applicable laws and regulations in connection with the use of TSP Service. Customer will not use TSP Services to engage in, or encourage or assist others to engage in, any illegal or fraudulent activities (including but not limited to policies and laws related to spamming, fraud, privacy, obscenity or defamation).

13.5 Customer will not, and will have no right to:

- a) Sell, resell or otherwise provide TSP Services to third parties, or use or exploit any TSP Services or Offerings for the purpose of selling or providing to third parties the benefit of any TSP Offerings or any products or services that are similar to any of TSP Offerings.
- b) Overburden, disable or otherwise disrupt any TSP Services or interfere with any other customers use of TSP Services
- c) Obtain or attempt to obtain any materials or information regarding TSP Services through any means not intentionally made available or provided by TSP.

13.6 Customer will indemnify, defend and hold harmless TSP from and against all liabilities, damages and costs (including settlement and attorneys' fees) arising out of any breach by the Customer of this section 12 or any third party claim relating to any of Customers products, services or businesses.

13.7 Prohibited Conduct. The Customer will not, directly or indirectly, copy, replicate or reproduce any aspect of the Services or Software which are related to this Agreement. The Customer agrees not to reverse engineer, decompile, disassemble, or otherwise attempt to discover any Software used as part of the Services, remove any proprietary notices or labels from the Services or any Software, reproduce or copy the Software or the Services or any part thereof, modify, translate, or create derivative works based on the Services or any Software, or copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Software.

13.8 The Customer must not use the Services to distribute illegal contests, pyramid schemes, chain letters, multi-level marketing campaigns, or any other prohibited material.

13.9 The Customer must not use the Services, or otherwise associate with the Services, anything that links with, displays or is suggestive of nudity, obscene content, gambling

related content, pay day lender related content, pharmaceutical related content, illegal software, viruses, or to distribute any other content that we deem inappropriate.

14 Third Party Service Providers

14.1 Customer acknowledges that Customers use of TSP Services may also involve the use of the services of one or more third parties and that such a use may be subject to separate policies and terms of use, including fees or such third parties. TSP does not assume, and will not have any liability or responsibility to the Customer or any other person for any such third party services.

14.2 The Customer acknowledges that all personal information they provide to TSP has been collected with the relevant individuals consent that TSP may store the personal information on servers operated by third parties, and the Customer warrant that TSP has obtained the consent of the relevant individuals for the storage and transmission of their data in this manner.

14.3 The Customer acknowledges that where Third Party service providers are used, from time to time there may be delays in accessing the services or receiving messages (emails or SMS) and to the extent permitted by law, TSP excludes all liability in contract, tort (including negligence) or otherwise relating to or resulting from messages taken on behalf of the licensee and for any loss incurred by the licensee directly or indirectly including without limitation as a result of or arising out of any:

- a) delays,
- b) failures or
- c) inaccuracies in the transmission of messages/events/ reminders for appointments.

14.4 Where TSP undertakes to deliver messages and/or reminders by SMS or Email, TSP utilises the services of third party service providers.

15 Law

15.1 The licensee and TSP agree that these terms and conditions of credit shall be governed and construed in accordance with the laws of the State of New South Wales and the parties agree to submit to the jurisdiction of the Courts of that State.

15.2 Force Majeure - TSP will not be liable by reason of the failure in the performance of obligations under these Terms by reason of strikes, riots, fires, explosions, acts of God, war, governmental action, or any other cause that is beyond TSP reasonable control.

15.3 Customer acknowledges and agrees that Customer's use of the TSP offerings is at the Customer's sole risk. To the maximum extent permitted by applicable law, the TSP Services are provided "as is" and "as available," with all faults and without warranty of any kind, and TSP expressly disclaims all representations and warranties (whether express, implied, statutory or otherwise) regarding any TSP offerings or any other aspects of this agreement,

including, without limitation, any warranties of title, satisfactory quality, non-infringement of third party rights, accuracy, quiet enjoyment, merchantability or fitness for a particular purpose, and any warranties arising out of any industry custom or course of dealing. Without limiting the foregoing, TSP makes no representations or warranties regarding the quality, accuracy or content of any information or messages received on behalf of customer, and TSP does not warrant that any TSP offering will be free of mistakes, defects or inaccuracies, will be available without interruption, or will meet customer's requirements.

15.4 To the extent not prohibited by applicable law, and regardless of the theory of liability (contract, tort or otherwise), in no event will (a) TSP be liable under or in connection with this agreement for any indirect, special, incidental, consequential, exemplary or punitive damages, or any damages for business interruption or loss of revenues, profits, business or data, even if TSP knew or should have known of the possibility of such damages, or (b) TSP's aggregate liability under or in connection with this agreement exceed the total of all amounts paid by Customer to TSP for the TSP Offerings giving rise to liability applicable to the Paid Service Terms during which the events giving rise to liability occurred.

16 Amendments and Variations

16.1 TSP may from time to time, change these Terms, and any other terms and or conditions appearing on the TSP website(s) that may be referred to in these Terms.

16.2 TSP may update these Terms in respect to pricing, the Services offered as a whole, the Services offered as part of any package or any other matter as determined by TSP sole discretion.

16.3 All such changes become effective upon posting of the revised Terms on the TSP website or other associated websites or materials. The Customers continued use of the services will constitute the Customer's acceptance of the variation to the Terms, Agreement and Services.

16.4 TSP may change or modify the fees charged, as per the TSP Standard Fees and Charges, from time to time. Such revisions may include, without limitation, changes to the amounts of the Recurring Service Fee or Consumables for TSP Services, changes to the usage allowances included in the pricing plans, or discontinuation of pricing plans.

16.5 All such changes become effective upon posting to the TSP website or other associated websites or materials, except any such revisions that affects an existing Customer Service Plan which will apply no less than thirty days (30) from the date which TSP provides notice of such revision to the Customer. The Customers continued use of the services will constitute the Customer's acceptance of the variation to the Agreement or the Services.

16.6 Where the Customer has signed for a Service Fee that TSP will cease to offer, the Customer is entitled to remain on that Service Fee until such time where TSP will notify them otherwise. Upon notice of discontinuation of Service Fee, the Customer will have no less

than thirty days (30) from the date which TSP provides notice to select a new Service Fee. Should the Customer not select a new Service Fee in this time TSP will assign a Service Fee as similar to the discontinued fee where possible, otherwise the Customer will be advised of the end of Service.

17 Warranties, Disclaimers and Remedies

17.1 The Customer shall use the Services, and rely on the Services at their own risk.

17.2 To the maximum extent permitted by law, TSP does not warrant that the Services will be uninterrupted, accurate or error free, nor warrant the results that may be obtained from the use of the Services. The Services are provided on an “as is” basis and to the extent permitted by law TSP disclaims all warranties, express or implied, in relation to the Services including (but not limited to) implied warranties of merchantability, fitness for a particular purpose and non-infringement.

17.3 TSP makes no guarantee that the Services will be rendered properly, including to the extent applicable, nor that the technologies or technology platforms utilised by TSP (particularly where they are licensed from third parties) function in accordance with either representations made by TSP or where applicable as represented by the third parties. TSP makes every reasonable attempt to ensure its technologies and technology platforms follow generally accepted industry standards.

17.4 The Customer’s sole and exclusive remedy for any failure or non-performance of the Services shall be for TSP to use commercially reasonable efforts to adjust or repair the Services, or where such adjustment, remedy or repair is not feasible, for TSP to either (at its sole discretion) perform the Services again or provide the Customer with a refund for the amount the Customer actually paid to TSP for the relevant Services.

18 Other

18.1 **Privacy.** Information collected by TSP from Customer may be used by TSP in accordance with TSP Privacy Policy as available on the TSP website and as may be amended from time to time. The Customer agrees to regularly review the TSP Privacy Policy.

18.2 **Privacy Act.** The licensee, albeit an individual, sole trader, partnership, joint venture or corporate, its directors, hereby authorize and unconditionally grant its consent to TSP to obtain from a credit reporting agency or other person or company, information and / or reports concerning it from time to time during the continuance of its license arrangement, so as to assist TSP in respect to commercial credit matters, and for collecting overdue payments. The licensee authorizes and consents to TSP obtaining and disclosing information about its creditworthiness to and from credit reporting agencies and credit providers (including identity particulars, and details of overdue payments) who have or are or intending to enter into some commercial or business dealings with it and / or grant credit to it. For the purposes of this paragraph, “report” and “information” include any credit report

originating from a credit reporting agency or any other record or information that has any bearing on the licensee's credit worthiness, credit standing credit history credit capacity and personal information

18.3 No agency, partnership, joint venture or employment is created as a result of the Agreement and the Customer does not have any authority to bind TSP in any respect whatsoever.

18.4 In any action or proceeding to enforce Terms, TSP is entitled to recover its costs and attorneys' fees.

18.5 Rights not expressly granted - All rights not expressly granted are reserved.