

Smartlox Terms and Conditions of Sale

Version: 1.0

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PART A – Agreement

1. Definitions

In these Terms, the capitalised terms defined below have the following meanings:

Australian Consumer Law means the Australian Consumer Law contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Charges means the charges for the supply of the Products and Services as set out in a Quote.

Confidential Information means any information provided by a party or any of its employees, agents, related companies or representatives to the other party or any of its employees, agents, related companies or representatives, or otherwise obtained by the other party, before or after the Effective Date. It includes:

- (a) all Intellectual Property, confidential business information, formulas, designs, drawings, plans, specifications, manufacturing instructions, documents, records, financial information, reports, technical information and forecasts;
- (b) the Smartlox Material;
- (c) Smartlox Software;
- (d) the Customer Material; and
- (e) the terms and conditions of this Agreement and each Quote.

Customer means the customer organisation identified in the Quote.

Customer Material means any information, data and content captured or generated by the Products or Services, or disclosed or provided by the Customer or its Users (including Customer PI), any materials created by Customer and provided to Smartlox in the course of performing this Agreement and any modifications to such materials including data sets from Customer's operations, reports, designs, drawings, specifications and any specific items listed in a Quote.

Customer PI means any Personal Information provided or made available by or on behalf of the Customer or its personnel (including users) to Smartlox, or that is inputted into the Smartlox Software or Services.

Customer Responsibilities means facilities, services, resources or other items that Customer is responsible for providing in order for Smartlox to provide the Products and

perform the Services, as set out in a Quote.

Data Breach means that there has been:

- (f) unauthorised access to or disclosure of any Customer Material; or
- (g) a loss of any Customer Material where unauthorised access to or disclosure of the data is likely to occur or have occurred, and without limiting the above, includes an Eligible Data Breach as defined in the Privacy Act.

Data Security Schedule means Schedule 1 setting out the data security measures taken by Smartlox.

Defect means any defect or deficiency in any Product supplied by Smartlox in accordance with an Agreement and which does not conform with the published specifications for that Product but excludes any defect that arises due to any of the matters set out in clause 8.8.

Delivery means completion of delivery of an order for a Product to a Site.

Documentation means documents about the Products or Services provided by Smartlox from time to time including specifications, installation and operating instructions and guidelines, Product and warranty manuals and any specific items listed in a Quote or Schedule.

Effective Date means for each Quote, the date the Customer accepts (or is deemed to accept) the Quote.

Force Majeure Event means an event or circumstance (or combination of events and circumstances) beyond the reasonable control of the party affected, including, fire, storm, flood, earthquake, atmospheric disaster, acts of God, epidemic, pandemic, public health emergency, quarantine restriction, explosion, accident, act of public enemy, war, rebellion, insurrection, sabotage, terrorism, strike, labour dispute, labour shortage, failure or delay in transportation, security incidents (such as denial of service, malicious codes and any other form of cyber-attack), shortage of or failure to obtain from any third party sufficient power feedstock, utilities, equipment, raw materials and/or similar or different contingency, breakdown of or accident to plant or equipment, breach of contract or acts on the part of any third party or act (including Laws, regulations, failure to provide or revocation of any approvals, permits or other authorisations of any government, public authority or agency whether national, municipal or otherwise) or any other event, whether similar or dissimilar to those identified above.

GST has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Incoterms means the International Commercial Terms applicable to the supply of Products as set out in a Quote or as otherwise notified to the Customer by Smartlox.

Infringement Claim means any claim made against the Customer alleging that any part of the Smartlox Material, or Smartlox Software or the Customer's authorised use of the Smartlox Material or Smartlox Software infringes any third party's Intellectual Property Rights.

Intellectual Property or **Intellectual Property Rights** includes copyright, trademark, design, patents (whether registered or not), trade, business or company names, domain names, or other proprietary rights, Confidential Information or any rights to registration of such rights existing in Australia or elsewhere and whether created before on or after the Effective Date.

Laws means all laws and regulations, by-laws, orders, awards and proclamations, common law and equity (if applicable) and Government authority requirements, guidelines, consents, certificates, licences, permits and approvals with which a party is legally required to comply.

Managed Service Provider means a Customer who uses the Products as a managed service provider of the Smartlox Software in the services it provides to its customers.

Order Year means each period of 12 months from the Effective Date of each Quote.

Parts means any detachable, interchangeable or other part of a Product as set out in a list of parts supplied or available for supply by Smartlox as published by Smartlox (including on its website) from time to time.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information is true or not; and (b) whether the information or opinion is recorded in material form or not.

PPS Law means the *Personal Property Security Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and any amendment made at any time to any other legislation as a consequence of a PPS Law.

Privacy Act means the *Privacy Act 1988* (Cth).

Product means the product/s described in a Quote (including Parts and Used Product) to be supplied by Smartlox to the Customer.

Professional Services means the services to be provided by Smartlox in addition to the Support Services, such as training, customisation, configuration, and similar services as specified in a Quote.

Quote means a quote provided by Smartlox to the Customer for the supply of Products or Services, and which may be in the form of an online quote, an email from Smartlox to the Customer or a paper form provided by Smartlox to the Customer to be signed by the Customer.

Reseller means a Customer who is a reseller of the Products.

Schedule means a schedule to these Terms.

Services means collectively the Support Services, Subscription Services and Professional Services to be provided by Smartlox as set out in a Quote.

Site means the Customer's site location specified in a Quote or otherwise notified by the Customer to Smartlox.

Site Specific Requirements means any Laws or local site requirements, compliance

specifications or other specific requirements that are required in order for the Product to be delivered to, and installed and operated at the Site, including specific items set out in a Quote or a Schedule.

Smartlox means Smartlox Pty Ltd (Australian Company Number 657 862 318) of 5/1 Moore Street, Canberra, ACT 2601 AUSTRALIA.

Smartlox Material means (a) any materials owned or licensed by Smartlox, including relating to the design and operation of the Product and Documentation, and developed before or during (or independently of) this Agreement, such as Smartlox methodologies, policies and procedures; (b) any reports or material generated by the Products; about the performance of the Products or created while performing the Services; (c) any modifications to such materials including where developed under an Agreement; or (d) know how retained by Smartlox's personnel or contractors.

Smartlox Software means all Smartlox developed and configured mobile and web applications that are required to support the delivery of the Services, including all updates and modifications to this software, hosted by Smartlox (itself or through its third-party hosting providers, from time to time).

Subscription Period means the period for which the Customer subscribes to receive the Subscription Services and Support Services as set out in a Quote.

Subscription Services means access to the Smartlox Software hosted by Smartlox as set out in a Quote.

Support Services means the technical and user support services for the Smartlox Software, including error corrections and upgrades as further described in clauses 12.2 and 12.3.

Taxes means all taxes, customs duties, levies, imposts, fines or similar governmental assessments, including goods and services taxes, value added taxes and sales taxes, imposed by any jurisdiction and the interest and penalties on them.

Terms means these Terms and Conditions of Sale including any Schedules.

TP Products means any Product manufactured and supplied by a third-party manufacturer to Smartlox (for on-supply to the Customer), as described in a Quote.

Used Product means any Product that is supplied second-hand, is or has been refurbished or which is otherwise not new and not in original packaging, as described in a Quote.

User means each person who has access to, uses or operates the Products and Services purchased and managed by the Customer including where they are a Managed Service Provider, including the Customer's employees, invitees, agents and subcontractors.

Warranty Period means: (a) for Used Products – nil; and (b) for TP Products or other Products – 12 months from delivery (unless the Quote specifies a different period).

2. Agreement Structure

- 2.1. These Terms are issued by Smartlox.
- 2.2. Details of the Smartlox Products and Services, Charges, Subscription Period and any other commercial terms governing the supply of Products and Services by Smartlox will be set out in a Quote issued to the Customer.
- 2.3. These Terms apply to any supply of Products and Services by Smartlox to the Customer as set out in a Quote.

3. Quotes

- 3.1. Smartlox will issue a Quote to the Customer, which may be withdrawn by Smartlox at any time before the Customer accepts the Quote.
- 3.2. The Customer is deemed to have accepted a Quote when it: (a) clicks to accept the Quote through an online link; (b) confirms acceptance by email; (c) signs the Quote; (d) requests Smartlox to provide the Products or Services without the parties having signed another agreement; (e) receives the Products or Services without the parties having signed another agreement; or (f) pays any Charges for the Products or Services without the parties having signed another agreement, whichever comes first.
- 3.3. Each time the Customer accepts (or is deemed to accept) a Quote, it creates a separate binding agreement (**Agreement**) comprising: (a) that Quote; (b) these Terms; and (c) any Schedules to these Terms. If there is a conflict between these documents, the one higher in the list in the preceding sentence prevails.
- 3.4. The Agreement will prevail over any terms that the Customer seeks to impose in relation to the purchase of Products or Services from Smartlox in any document issued by the Customer (including any terms in the Customer's purchase order).
- 3.5. Unless a Quote says otherwise, accepting one Quote does not oblige the Customer to order, or for Smartlox to supply, any Products or Services under a separate Quote; and the prices and other commercial terms of Products and Services may vary between Quotes.
- 3.6. Unless a Quote says otherwise, each Agreement is non-exclusive and does not restrict Smartlox from selling Products or Services to other customers, or restrict the Customer from buying similar products or services from other suppliers.

4. Cancellation and Variations

- 4.1. The supply of Products can only be cancelled by the Customer where:
 - (a) the Products have not yet been delivered, or if they have been delivered, the Product is returned to Smartlox (at the Customer's cost) in an undamaged state and in the original packaging;
 - (b) Smartlox consents to the cancellation in writing; and
 - (c) the Customer pays to Smartlox
 - (i) any cost or expenses incurred by Smartlox for goods already manufactured or procured, or expenses already committed, or additional costs to be incurred,

overhead costs and loss of profit from other orders foregone as a result of the cancellation of the Customer's Quote; and

- (ii) any delivery or shipping costs incurred by Smartlox (if any) in respect of the relevant Product.

4.2. An Agreement may be varied only by both parties agreeing in writing. This includes the Customer seeking to modify or reschedule its order for Products or Services (including changing delivery dates). Smartlox may impose conditions before accepting the Customer's request, including that the Customer pays for goods already manufactured or expenses already committed, or additional costs to be incurred, overhead costs and loss of profit from other orders foregone as a result of the scheduling of the Customer's Quote.

4.3. Smartlox is entitled to an extension of time for the provision of the Products or Services equal to the delay caused by the Customer's request for a variation.

PART B – Products

5. Supply of Products and Delivery

5.1. Smartlox agrees to supply the Customer with the Products in accordance with the terms of the Quote.

5.2. The Customer is responsible for ensuring that the Site is adequately prepared for the Product to be delivered including any Site Specific Requirements.

5.3. The Customer authorises Smartlox to deliver the Product to the address as provided by the Customer to Smartlox when accepting the Quote.

5.4. Smartlox will use all commercially reasonable efforts to deliver the Product to the Site in accordance with the Delivery timeline set out in a Quote, however the Customer acknowledges that these dates are estimates only, based on current production schedules at the Effective Date.

5.5. The Customer may not: refuse to take delivery of the Product; claim damages; or terminate this Agreement or any Quote because of late delivery. Smartlox is not liable for any failure or delay in delivery to the extent it is caused or contributed to by the Customer's failure to comply with its obligations under this Agreement, any Customer variation, or any Force Majeure event.

6. Risk and Title

6.1. Risk of loss of, or damage to the Product will pass to the Customer in accordance with the Incoterms. Insurance for Product in transit will be in accordance with the Incoterms.

6.2. Property and title in Products do not pass to the Customer until all Charges due and payable for those Products have been fully paid.

6.3. Where Products are supplied by Smartlox to the Customer without payment in full, the Customer:

- (a) is a bailee of the Products until property in them passes to the Customer;

- (b) irrevocably appoints Smartlox to be its attorney to do all acts and things necessary to ensure the retention of title to Products including the registration of any security interest in favour of Smartlox with respect to the Products under applicable Laws;
- (c) must be able upon demand by Smartlox to separate and identify as belonging to Smartlox Products supplied by Smartlox from other goods which are held by the Customer;
- (d) must not allow any person to have or acquire any security interest in the Products;
- (e) agrees that Smartlox may repossess the Products if payment is not made within 28 days (or such longer time as Smartlox may, in its complete discretion, approve in writing) of the supply of the Products; and
- (f) grants an irrevocable licence to Smartlox or its agent to enter the Customer's premises in order to recover possession of Products pursuant to this clause. The Customer indemnifies Smartlox for any damage to property or personal injury which occurs as a result of Smartlox entering the Customer's premises.

6.4. Despite clause 6.3, where the Customer is a Reseller or Managed Service Provider, they may transfer, sell or dispose of Products to a third party in the ordinary course of business, provided that:

- (a) where the Customer is paid by a third party in respect of Products including New Products, the Customer holds the whole of the proceeds of sale, less any GST, on trust for Smartlox in a separate account, until all amounts owed by the Customer to Smartlox have been paid; or
- (b) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to Smartlox upon Smartlox giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints Smartlox as its attorney.

6.5. Where Products are supplied by Smartlox to the Customer without payment in full of all moneys payable in respect of the Products and any Services provided by Smartlox in respect of those Products, the Customer acknowledges that Smartlox has a right to register and perfect a personal property security interest.

6.6. If:

- (a) a PPS Law applies or commences to apply to this Agreement, or any transaction contemplated by it, or Smartlox determines (based on legal advice) that this is the case; and
- (b) in Smartlox's opinion, the PPS Law:
 - (i) does or will adversely affect Smartlox's security position or obligations; or
 - (ii) enables or would enable Smartlox's security position to be improved without adversely affecting the Customer,

then Smartlox may give notice to the Customer requiring the Customer to do anything (including amending this Agreement or a Quote) that in Smartlox's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph 6.6(b)(i) or improve the security position as contemplated in paragraph 6.6(b)(ii). The Customer must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in Smartlox's opinion Smartlox's security position or obligations under or in connection with this Agreement have been or will be materially adversely affected, Smartlox may by further notice to the Customer terminate this Agreement or relevant Quotes. If this occurs, the Customer must immediately pay to Smartlox any money the Customer owes to Smartlox.

7. Defects and Returns

- 7.1. The Customer must notify Smartlox in writing of any visible defects, quantity shortages or incorrect Product deliveries within five business days (in the Customer's location) of Delivery to the Site, otherwise the Customer is deemed to have waived any rights to return Products on the basis of visible defects, shortages or incorrect deliveries.
- 7.2. The Customer may only return a Product as expressly set out in the warranty in clause 8 and Smartlox is not required to accept a return unless the Customer requests in writing and Smartlox consents in writing to the return (including by email).
- 7.3. If the Customer is located in Australia, nothing in this clause affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

8. Product Warranties

- 8.1. Subject to the rest of these Terms, Smartlox warrants to the Customer that during the Warranty Period:
 - (a) all Products (other than Used Products) will operate in accordance with their published specifications for the duration of the Warranty Period; and
 - (b) for TP Products, it will pass to the benefit of the Customer any warranty provided by the manufacturer or distributor of the TP Product, for the Warranty Period specified in the Quote.

- 8.2. The warranties given by Smartlox under this clause 8 do not extend to warrant that the Products:
- (a) will meet the Customer's requirements or be fit for the Customer's purpose (unless such purpose was conveyed to Smartlox in writing prior to the supply);
 - (b) will operate uninterrupted;
 - (c) will be secure and free from any vulnerability, corruption, virus attack, interference, hacking or other security intrusions or cyber threats;
- and, further to the above, the Customer acknowledges and agrees that by using the Products, it does so at its own risk and subject to the limitations set out in this clause 8.
- 8.3. Subject to clause 8.10 below, the warranties given by Smartlox under this clause 8 do not extend to the supply of any Used Products. If Smartlox supplies any Used Product then, unless Smartlox otherwise agrees in writing, it is sold on an "as-is where-is" basis and Smartlox accepts no liability for any Defect or otherwise in the Used Product.
- 8.4. Notwithstanding any other clause in these Terms and where Smartlox is liable under any warranty (whether express or implied), the liability of Smartlox under the warranty does not exceed the Charges paid or payable for the Product or Service which is the subject of the warranty claim.
- 8.5. Where there is a Defect in any Product provided by Smartlox and that Defect arises during the Warranty Period, then Smartlox must (at its election and cost) either repair, replace or pay for the cost of repairing or replacing the Product. To avoid doubt but subject to clause 8.10 below, if a Defect arises outside of the Warranty Period, this clause does not apply.
- 8.6. To submit a warranty claim, the Customer must:
- (a) notify Smartlox in writing within 30 days of the date that the Defect is identified;
 - (b) state in the notice the date that the Product was received and activated, the Product serial number, the Product identification number and the nature of the alleged Defect; and
 - (c) (where requested by Smartlox) return the Product to Smartlox or make the Product available to Smartlox for inspection and evaluation.
- 8.7. Where Smartlox accepts the warranty claim, it must comply with sub-clause 8.4 above as soon as reasonably practicable after acceptance. If Smartlox replaces the Product with a new Product, clause 8.9(a) applies in respect of the new Product and title in the defective Product immediately passes to Smartlox (and the Customer must do all things necessary to ensure the transfer of title of the defective Product to Smartlox).
- 8.8. Smartlox is not liable for any breach of the warranties under this Agreement to the extent it is caused or contributed to by the Customer's acts or omissions (including failure to comply with its obligations under this Agreement) or any Force Majeure event.
- 8.9. Where clause 8.4 applies, the Warranty Period for the Product is:

- (a) if the Product is replaced with a new Product – the same as the original Warranty Period; and
 - (b) if the Product is repaired – at the expiry of the original Warranty Period.
- 8.10. If the Customer is located in Australia and is a consumer under the Australian Consumer Law, the Customer may be entitled to certain consumer rights that cannot be limited or excluded. Subject to this, the warranties in this clause 8 are the only warranties given by Smartlox about the Products and to the fullest extent allowed by Law, Smartlox excludes all other warranties, express or implied.
- 8.11. Any warranty given under this clause 8 is given to the Customer only and is not transferrable. If the Product is subsequently on-sold by the Customer to a third party, the warranty ceases to apply and must not be transferred by the Customer to the third party.

9. Customer Responsibilities for Products

In addition to and without limiting any other term of the Agreement:

- (a) The Customer is responsible for the Customer Responsibilities;
- (b) the Customer is responsible for installing all Products unless otherwise specified in the Quote;
- (c) the Customer must not alter, modify or copy any Product;
- (d) the Customer warrants that it will use and operate the Products in a safe manner, for the purpose for which they were intended and in accordance with any Laws, Regulations, Documentation or instructions provided by Smartlox; and
- (e) the Customer acknowledges that a failure to perform its responsibilities will void its warranty rights and may negatively impact the performance of the Products.

PART C – Professional Services

10. Supply of Professional Services

- 10.1. Smartlox agrees to provide the Professional Services set out in the applicable Quote.
- 10.2. In supplying the Professional Services, Smartlox must:
- (a) perform the Professional Services an efficient and professional manner and in accordance with generally accepted professional and business practices;
 - (b) provide suitably qualified, experienced and competent personnel to carry out the Professional Services;
 - (c) comply with all Laws and reasonable directions of the Customer in the provision of the Professional Services; and
 - (d) where on a Customer Site, comply with all policies and procedures relating to safety, health and personal conduct of the Customer that Smartlox has been notified of.

- 10.3. If an Agreement is for the provision of Professional Services, Smartlox grants to the Customer a non-exclusive, non-transferable right and licence to use and access any Smartlox Material disclosed to the Customer for the sole purpose of getting the full benefit of the Professional Services.

11. Customer Responsibilities for Professional Services

In addition to any specific items listed in a Quote, the Customer must, in relation to any Professional Services:

- (a) be responsible for any Customer Responsibilities;
- (b) if Customer provides Smartlox (or its subcontractors) with use of, or access to, sites, materials, systems or facilities owned or controlled by Customer:
 - (i) ensure that such facilities provide a safe working environment;
 - (ii) notify Smartlox personnel of any policies relating to safety, health and personal conduct which may apply at the site; and
 - (iii) grant to Smartlox all rights and licenses that are necessary for Smartlox (or its subcontractors) to perform Smartlox's obligations under the Agreement;
- (c) provide Smartlox with any documents or information reasonably necessary for Smartlox to perform the Professional Services;
- (d) plan and execute any testing required for the Professional Services; and
- (e) comply with all Laws and reasonable directions of Smartlox in relation to the provision of the Professional Services.

PART D – Subscription Services

12. Supply of Subscription Services

- 12.1. Smartlox agrees to provide to the Customer the Subscription Services set out in the applicable Quote.
- 12.2. Smartlox will provide the Customer with the Support Services as part of the Subscription Services as follows:
- (a) Smartlox will provide technical support for the Users to log queries, issues or errors with the Smartlox Software.
 - (b) Support requests may be lodged online 24 hours a day, seven days a week, using Smartlox's then-current support processes.
 - (c) Smartlox's technical support call centre provides telephone support during the hours of 9am to 5pm on business days in Canberra, Australia (or such longer hours as notified by Smartlox from time to time).

- (d) Smartlox will use all commercially reasonable endeavours to process support requests, issue trouble ticket tracking numbers, if necessary, determine the source of the problem and respond to the Customer within a reasonable time (depending on the severity of the issue).
- 12.3. In order for Smartlox to provide the Support Services, the Customer, including where the Customer is a Managed Service Provider, is responsible for:
- (a) ensuring its Users have enough knowledge and experience of software products for proper interaction with Smartlox technical staff regarding support services, including authority to implement remedial actions as instructed by Smartlox;
 - (b) giving Smartlox documentation, details and assistance with respect to any reported errors to enable Smartlox to reproduce and verify the same as an error; and
 - (c) providing support for data integration tools and processes developed or maintained by the Customer or third parties in order to connect the Smartlox Software to the Customer's other software and databases.
- 12.4. Smartlox shall maintain and update the Smartlox Software including applying all regularly scheduled error corrections, software updates and any upgrades which Smartlox develops and releases generally to users of the generally available core Smartlox Software product. Smartlox shall use all reasonable endeavours to avoid unscheduled downtime to the Smartlox Software for software maintenance.
- 12.5. Subject to the terms of the Agreement, Smartlox grants to the Customer, its Users and any customers of a Managed Service Provider, a non-exclusive, nontransferable right during the Subscription Period set out in the Quote to:
- (a) configure, access and use the Smartlox Software subject to the restrictions in the relevant Quote; and
 - (b) access and use the Documentation.
- 12.6. When using the Smartlox Software, the Customer must:
- (a) use the Smartlox Software solely for the Customer's internal business purposes, including as a Managed Service Provider or Reseller as applicable;
 - (b) comply with any usage restrictions (such as the number of Users or client access licences) set out in these Terms or a Quote;
 - (c) use the Smartlox Software only in accordance with the Documentation, the Quote and these Terms; and
 - (d) not interfere with or disrupt the integrity, operation, or performance of the Smartlox Software or the use or enjoyment of it by others.

- 12.7. The Customer shall not, and shall not permit its Users (or where the Customer is a Managed Service Provider or Reseller, its customers' Users) or others under its control, to do (or attempt to do) the following:
- (a) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share or otherwise make any portion of the Smartlox Software available for access by third parties (unless expressly authorised by the Agreement);
 - (b) use the Services to develop or operate products or services which perform the same or similar functions, in competition with the Smartlox Software;
 - (c) modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of the Smartlox Software;
 - (d) reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about the Smartlox Software without consent, unless and then only to the extent expressly permitted by applicable law;
 - (e) use the Services in a way that infringes the rights of a third party, including relating to contract, intellectual property or privacy;
 - (f) bypass or breach any security device or protection used for or contained in the Smartlox Software or Documentation or, without prior written approval from Smartlox, conduct any vulnerability or penetration testing on the Smartlox Software;
 - (g) use the Services to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or circumvent or disclose the user authentication or security of the Smartlox Software; or
 - (h) grant, or purport to grant, any security interest to any third party over the Smartlox Software.
- 12.8. The Customer agrees that Smartlox may collect, use, and disclose quantitative data derived from Customer's use of the Smartlox Software for its business purposes, including industry analysis, benchmarking, analytics, and product development (including algorithm training and machine learning), provided that all data will be in aggregate and deidentified form only and must not identify Customer or its Users or include any Customer PI.

13. Ownership of Customer Material and Smartlox Material

- 13.1. The Customer retains ownership and all Intellectual Property Rights in Customer Material, and grants to Smartlox a perpetual, worldwide, royalty-free, non-exclusive, non-transferable licence to use, copy and modify the Customer Material, solely to the extent necessary for Smartlox to supply the Services or as otherwise allowed under these Terms, and subject to clause 18 (Confidentiality).
- 13.2. Smartlox retains all ownership and Intellectual Property Rights in Smartlox Material and Smartlox Software. Smartlox grants to the Customer a perpetual, worldwide, royalty-free, non-exclusive, non-transferable licence to use, copy and modify the Smartlox Material, solely to the extent necessary for the Customer to use the Products and receive the benefit of the Services, and subject to clause 18 (Confidentiality).

- 13.3. The Customer must not sub-license the Smartlox Material to any third party except:
- (a) to the Customer's employees or contractors, or a related body corporate of Customer (subject to the same restrictions as the licence granted to Customer); or
 - (b) with Smartlox's prior written consent.
- 13.4. Without limiting the above, any Intellectual Property Rights created by Smartlox in performing a Quote is, and remains, Smartlox's property, and no manufacture to Customer's specifications entails ownership or conveyance to the Customer of any Intellectual Property Rights in any Smartlox Material including any design or methodologies of the Product.

14. Data Security

- 14.1. When providing the Subscription Services, Smartlox will comply with the Data Security Schedule with respect to any Customer Material.
- 14.2. The Customer acknowledges that it is impossible to guarantee against security or data breaches, third party unauthorised access, intrusion or attack, the introduction of viruses or harmful code, or similar events (**Security Breaches**). Accordingly, Smartlox is only liable to the Customer for any Security Breaches, or for any loss or corruption of data (including where arising in connection with any third party hosting) where Smartlox has failed to comply with its obligations under the Data Security Schedule. In such events Smartlox's liability will be limited in accordance with clause 21. In any event, Smartlox is not responsible or liable for:
- (a) the acts and omissions of any third-party hosting provider; and
 - (b) any illegal intrusion, denial of service attack, attacker or hacker or any other intrusion that could not reasonably have been prevented or avoided using industry standard measures to protect against unauthorised access.

15. Subscription Services Term

- 15.1. The Subscription Period begins on the start date specified in the Quote and continues until terminated in accordance with clause 15 (or under clause 24.3) (or if an end date is specified in a Quote, that date).
- 15.2. The Customer may terminate the Subscription Services by giving Smartlox 30 days' written notice, however it acknowledges that if it terminates under this clause 15.2, there will be no refund of any pre-paid Charges.
- 15.3. Either party may terminate the Subscription Services immediately by written notice if the other party:
- (a) is in material breach of its obligations under the Agreement and:
 - (i) does not remedy the breach within two weeks of receiving a written notice specifying the breach and requiring it to be remedied; or
 - (ii) the breach cannot be remedied; or

- (b) is the subject of an insolvency event, including going into liquidation, having an administrator or receiver 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, or other event that reasonably indicates that there is a significant risk that it is or will become unable to pay its debts as they fall due.

PART D – General

16. Charges and Payment

- 16.1. The Customer will pay Smartlox the Charges for the Products and Services as set out in each Quote.
- 16.2. Smartlox will issue invoices at the times or milestones set out in the relevant Quote. Unless otherwise agreed in the Quote, the Customer will pay each invoice within 14 days of receiving it, in the currency specified in the invoice.
- 16.3. If the Customer fails to pay an invoice by its due date, then Smartlox may, by giving the Customer at least two weeks' notice: (a) suspend the supply of any other Products or Services (under this Agreement or any other agreement); (b) revoke the right to use the Smartlox Software and/or the licence to the Smartlox Material; and (c) charge interest (payable by the Customer on demand) on the outstanding amount at 10% per year calculated on a daily basis from the original due date for payment.

17. Taxes

- 17.1. Unless otherwise stated by Smartlox in writing, all Charges or other consideration to be provided under or in accordance with a Quote are stated exclusive of Taxes.
- 17.2. The Customer shall be responsible for, and bear Taxes associated with its purchase of, payment for, access to or use of the Product or Services. Taxes shall not be deducted from the payments to Smartlox, except as required by law, in which case the Customer shall increase the amount payable as necessary so that after making all required deductions and withholdings, Smartlox receives and retains (free from any Tax liability) an amount equal to the amount it would have received had no such deductions or withholdings been made.
- 17.3. Where applicable, any GST payable on the supply of the Products and/or Services is to be paid by the Customer in addition to the Charges and on the receipt by the Customer of a tax invoice from Smartlox.

18. Privacy

- 18.1. The Customer is solely responsible for determining the suitability of the Products and Services for Customer's business and complying with any privacy and data protection regulations, laws or conventions applicable to the Customer Material, and Customer's use of the Products and Services (which, for Customers in Australia, includes the Privacy Act).
- 18.2. When supplying Products or performing Professional Services, Smartlox will, and will ensure that its personnel, comply with the Privacy Act and its Privacy Policy available at <https://smartlox.io/privacy-policy/>
- 18.3. The Customer will, and will ensure that its personnel, comply with its local privacy and data protection regulations and laws (which, for Customers in Australia, includes the Privacy Act) in respect of any Personal Information collected, held, used or disclosed by it in connection with any Professional Services being provided by Smartlox.
- 18.4. The Customer must comply with any privacy or other laws in the jurisdiction where Customer or its Users use the Products which regulate the use of the Products, or the collection or use of Personal Information relating to Users, or the provision of Services.
- 18.5. The Customer is responsible for ensuring that its Users give informed consent (which may be pursuant to Customer's pre-existing workplace policies) for the Customer, where the Customer is a Reseller or Managed Service Provider, its customers and Smartlox to:
 - (a) use the Products to identify and track when, where, and for how long Users use a Product;
 - (b) collect, use and disclose Customer Material and Personal Information;
 - (c) provide the Services; and
 - (d) otherwise exercise their rights and perform their obligations under an Agreement.
- 18.6. In addition to clauses 18.1 to 18.5, where Smartlox is providing Subscription Services:
 - (a) For the Subscription Period, each party will, and will ensure that its personnel, comply with the Privacy Act in respect of Personal Information collected, held, used or disclosed by it in connection with the Subscription Services.
 - (b) Without limiting paragraph (a), Smartlox will:
 - (i) hold and use any Customer Material only for the purpose of performing the Subscription Services;
 - (ii) only disclose, or provide third party access to, any Customer Material in accordance with the Agreement or with the written consent of the Customer;
 - (iii) co-operate with any reasonable requests or inquiries made by Customer about the management of Customer PI by or on behalf of Smartlox in connection with the Agreement; and

- (iv) only disclose, store, export or transfer Customer Material to a country outside Australia or the USA with Customer's prior written consent.
- (c) Without limiting paragraph (a), the Customer warrants that it has obtained all consents required by Laws to be obtained from affected individuals to permit Customer to provide the Customer PI to Smartlox and for Smartlox to use, process, transfer and disclose such Personal Information as authorised by the Agreement.
- (d) Where the Customer is a Managed Service Provider:
 - (i) the Managed Service Provider warrants that it has obtained all consents required by Laws from its customers to access Personal Information of its customers' personnel and for the Managed Service Provider to use, process, transfer and disclose this Personal Information in accordance with any agreement it has with its customers; and
 - (ii) the Managed Service Provider is liable for its use of any Personal Information or other data of its customers and their personnel.

19. Confidentiality

- 19.1. Where a party (**recipient**) receives Confidential Information from the other party (**discloser**) in the course of performing this Agreement, the recipient must:
- (a) keep the information confidential;
 - (b) not use, disclose or reproduce the information for any purpose other than the purposes of this Agreement; and
 - (c) ensure that its employees, agents and representatives do not do, or omit to do anything, which if done or omitted to be done by it, would breach this clause.
- 19.2. The recipient must establish and maintain effective security measures to protect the information from unauthorised access, use, copying or disclosure and must immediately notify the disclosing party of any potential, suspected or actual unauthorised use, copying or disclosure of it.
- 19.3. Notwithstanding clause 19.1, the recipient may use or disclose the information to the extent necessary to comply with any Law, binding directive of a regulator or a court order or to obtain professional legal, insurance or accounting advice in relation to this Agreement.
- 19.4. Clause 19.1 does not apply to Confidential Information which:
- (a) is in or becomes part of the public domain other than through breach of an obligation of confidence;
 - (b) is required to be disclosed by law or the requirements of a regulatory body (including a stock exchange), or for use in legal proceedings regarding this Agreement;
 - (c) was known to the recipient at the time of disclosure, unless such knowledge arose through breach of an obligation of confidence; or

(d) is acquired from a third party who was entitled to disclose it.

19.5. Subject to its obligations at law, the recipient must immediately on demand, or on completion or termination of this Agreement, either (at the option of the discloser) return to the discloser or destroy any documents in its possession, power or control containing Confidential Information.

19.6. Despite this clause 18, the Customer agrees to allow Smartlox to publicly reference it as a customer of Smartlox, and to use the logo of the Customer on its website or social media accounts. Where any written copy about the Customer is proposed to be used, Smartlox will provide this to the Customer for approval (which must not be unreasonably held) prior to publishing it.

20. Indemnity

- 20.1. Smartlox will indemnify the Customer from, and defend them against, any Infringement Claim, except that Smartlox will not be responsible for alleged infringement that is due to Customer Material or the use of the Smartlox Software contrary to the terms of the Agreement.
- 20.2. If the Customer is prohibited from using the Smartlox Software because of an Infringement Claim covered by Smartlox's indemnification obligations under clause 20.1, then Smartlox will, at its sole expense and option, either: (a) obtain for Customer the right to use the allegedly infringing portions of the Smartlox Software; (b) modify the allegedly infringing portions of the Smartlox Software so as to render them non-infringing without substantially diminishing or impairing their functionality; or (c) replace the allegedly infringing portions of the Smartlox Software with non-infringing items of substantially similar functionality. If Smartlox determines that none of these remedies is commercially reasonable, then either party may terminate the Subscription Services, and in such case, Smartlox will provide a prorated refund to the Customer for any prepaid Charges received by Smartlox under the Agreement that corresponds to the unused portion of the Subscription Period. The remedy set out in this clause 20.2 is Customer's sole and exclusive remedy for any Infringement Claim.
- 20.3. The Customer will indemnify Smartlox from, and defend them against any claim by a third party to the extent arising from or related to: (a) use of the Smartlox Software by the Customer or its Users in violation of the Agreement, the Documentation or applicable Law; or (b) the nature or content of the Customer Material, or the use by Smartlox of the Customer Material as authorised by the Customer under the Agreement.
- 20.4. In respect of any claim to which clause 20.1 or 20.3 applies, the indemnifying party will indemnify against: (a) all damages, costs, and legal fees finally awarded with respect to the claim; (b) all out-of-pocket costs (including reasonable legal fees) reasonably incurred in the defence of the claim (other than legal fees and costs incurred without the indemnifying party's consent after it has accepted defence of such claim); and (c) all amounts the indemnifying party agrees to pay to any third party in settlement of the claim.
- 20.5. The parties' respective indemnification obligations above are conditional on: (a) the indemnified party giving the indemnifying party prompt written notice of the claim, except that the failure to provide prompt notice will only limit the indemnification obligations to the extent the indemnifying party is prejudiced by the delay or failure; (b) the indemnifying party being given full and complete control over the defence and settlement of the claim (as long as the settlement does not include any payment of any amounts by or any admissions of liability, whether civil or criminal, on the part of any of the indemnified parties); (c) the relevant indemnified parties providing assistance in connection with the defence and settlement of the claim, as the indemnifying party may reasonably request; and (d) the indemnified parties' compliance with any settlement or court order made in connection with the claim.

21. Liability

- 21.1. To the fullest extent permitted by Law, Smartlox's liability for a breach of the Agreement, including any warranties, is limited, at Smartlox's option, to:
- (a) In the case of Product: repairing or replacing the Product or paying the cost of supplying equivalent product;

- (b) In the case of Services: providing the Services again or paying the cost of supplying equivalent services.
- 21.2. Where Smartlox is found to be liable for any act or omission in connection with the supply of the Products or Services (regardless of the form of action, whether in contract, tort including negligence, pursuant to statute or otherwise) Customer agrees that, Smartlox shall only be liable up to the following total and cumulative caps (subject to the exceptions in clause 21.3):
- (a) for claims arising out of or in connection with:
- (i) any wrongful use or disclosure of Customer Material or Customer PI, including a breach of clause 18 (Privacy), clause 14 (Data Security) or the Privacy Act; or
- (ii) any breach of clause 19 (Confidentiality) with respect to Customer Material,
- a cap equal to three times the Charges paid by the Customer under the Quote under which the claim is being made in the Order Year in which the event giving rise to the claim occurred. This cap applies to all claims relating to all events which occur in the same Order Year.
- (b) for all claims not covered by paragraph (a), a cap equal to the total Charges for the Product or Services paid by the Customer to Smartlox under the Quote under which the claim is being made, in the Order Year in which the event giving rise to the claim occurred. This cap applies to all claims relating to all events which occur in the same Order Year.
- 21.3. The caps in clause 21.2 do not limit Smartlox's liability for: (a) personal injury or tangible property damage caused by negligence; (b) losses caused by fraud or fraudulent misrepresentation; (c) any breach of clause 19 (Confidentiality) relating to Confidential Information which is not Customer Material or Customer PI; or (d) under the indemnity in clause 20.1.
- 21.4. Each party shall have no liability to the other party (including under an indemnity) for any loss of profits, loss of goodwill, lost opportunity or any other special, punitive, economic, indirect or consequential loss or damage.
- 21.5. Each party's liability under an Agreement (including any indemnity given in clause 20) shall be reduced proportionately to the extent the other party's acts or omissions (including any failure to comply with its obligations under this Agreement) causes or contributes to, directly or indirectly, the loss or damage for which a party is liable.
- 21.6. Nothing in this Agreement excludes, restricts or modifies any terms, conditions or warranties or Smartlox's liability for them which are imposed or implied by any statute, including in Australia, the Australian Consumer Law and which by statute cannot be excluded, restricted or modified. Limitations and exclusions are made only to the extent that Smartlox may legally do so.

22. Disclaimer

The Customer acknowledges and agrees that:

- (a) To the extent allowed by Law, all information, specifications and samples provided by Smartlox in relation to the Products or Services are approximations only and, where the Customer is located in Australia, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Products or Services will not entitle the Customer to reject the Products upon delivery, or to make any claim in respect of them.
- (b) Any advice, recommendation, information, assistance or service given by Smartlox in relation to Products or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given; but to the extent allowed by Law, it is provided without any warranty of accuracy, appropriateness or reliability, and Smartlox does not accept any liability or responsibility for any loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (c) It is responsible for reviewing the Product, including its specifications, and deciding whether it meets its requirements, including any Site Specific Requirements, Customer Responsibilities and compliance with any applicable Laws.
- (d) It is responsible for ensuring the Products are only used in accordance with any specifications and certifications applicable to the Product and only in a compatible environment.
- (e) Even with the Product installed and operating correctly, use of the Products and Services is at the Customer's risk, and the Customer and its Users retain responsibility for using the Products safely.

23. Insurance

23.1. Smartlox will arrange and maintain at its cost:

- (a) Public and Product Liability Insurance for at least AUD\$20,000,000 in the aggregate;
- (b) Professional Indemnity Liability Insurance for at least AUD\$1,000,000 in the aggregate; and
- (c) Cyber Liability Insurance for at least AUD\$1,000,000 in the aggregate.

23.2. Smartlox will provide a certificate of currency for the insurance policies listed above on request from the Customer.

24. Force Majeure

24.1. Provided it has complied with clause 24.2, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly. Nothing in this clause 24 shall relieve a party from any obligation to pay money under this Agreement.

24.2. The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

24.3. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three, the party not affected by the Force Majeure Event may terminate the impacted Quotes by giving one weeks' written notice to the Affected Party.

25. Compliance with Laws

25.1. Each party agrees to comply with all Laws which apply to its performance of the Agreement.

25.2. Without limiting clause 25.1 each party:

- (a) represents that it has implemented and will continue to implement policies and procedures to foster compliance with:
 - (i) anti-corruption and anti-bribery Laws applicable to it, (which, for Smartlox and Customers in Australia, include the *Criminal Code Act 1995* (Cth));
 - (ii) Laws prohibiting modern slavery (which, for Smartlox and Customers in Australia, includes the *Modern Slavery Act 2018* (Cth));
- (b) Agrees that if it identifies an occurrence or risk of non-compliance with the above laws in its own operations or within its supply chains, it will immediately take reasonable and appropriate steps to rectify that occurrence or mitigate that risk, including by way of implementing additional internal processes or actions to prevent similar occurrences; and
- (c) Must promptly notify the other party of any breach of the above laws related to the performance of this Agreement.

26. General

- 26.1. Smartlox may subcontract its obligations under an Agreement, provided always that Smartlox remains responsible to Customer for the performance of its obligations.
- 26.2. Each party may assign its rights and obligations under this Agreement to: (a) a related body corporate; or (b) a purchaser of all or substantially all the assets and business of that party. Any other assignment requires the written consent of the other party.
- 26.3. This document contains everything the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this document was executed, except as permitted by law.
- 26.4. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- 26.5. No variation or waiver of this Agreement and no terms and conditions put forward by Customer or referred to in Customer's purchase orders or other document Customer gives to Smartlox will have any effect unless expressly agreed in writing by both parties.
- 26.6. When interpreting this Agreement, words like *including, for example, such as* or similar expressions are to be interpreted without limitation.
- 26.7. This document does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties. No party is liable for an act or omission of another party, except to the extent set out in this document.
- 26.8. If a clause or part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.
- 26.9. A notice or other communication required or permitted to be given by one party to another must be in writing to the address in the relevant Quote (or to the party's registered office) and delivered personally, sent by pre-paid mail to the address of the addressee; or sent by email to the email address of the addressee specified in the relevant Quote. A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the third business day after posting; or if sent by email before 4 pm on a business day at the place of receipt, on the day it is sent and otherwise on the next business day at the place of receipt.
- 26.10. This document is governed by the law of the Australian Capital Territory. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

Schedule 1 – Data Protection

1. Smartlox will provide reasonable information and assistance to Customer, on reasonable request, in connection with the way that Smartlox collects, stores or deals with Customer Material.
2. Smartlox will provide reasonable information and assistance to Customer, on request, to assist the Customer in responding to or resolving any complaint, investigation or request by an individual or regulator under the Privacy Act, where such complaint, investigation or request concerns Customer Material stored or processed by or on behalf of Smartlox.
3. Smartlox will use Customer Material only:
 - (a) for the purpose of performing its obligations under the Agreement;
 - (b) for any additional purposes instructed by Customer; and
 - (c) as otherwise expressly provided in the Agreement.
4. Smartlox will store Customer Material in Australia, the USA or other location as set out in a Quote and will not transfer such Customer Material to another country.
5. Smartlox will implement and maintain reasonable and appropriate technical and organisational measures, procedures and practices, as appropriate to the nature of the Customer Material, that are designed to protect the security, confidentiality, integrity and availability of the Customer Material and protect it from unauthorised access.

As at the Effective Date, Smartlox:

- (a) Utilizes Tier-One Hosting Providers certified for SOC 2 and ISO 27001 for data storage.
- (b) Encrypts personal data during transit and at rest.
- (c) Pseudonymizes or encrypts personal data when not necessary to link to individuals.
- (d) Stores personal data in logically separate database partitions.
- (e) Implements cybersecurity processes, including anti-virus protection, malware scans, firewalls, DDOS protection, and software patches.
- (f) Has enabled multi-factor authentication (MFA) for enhanced security.
- (g) Regularly updates software to address security vulnerabilities.
- (h) Has established effective backup and disaster recovery procedures.
- (i) Ensures continuous availability of data through redundant storage media backups.
- (j) Enforces a strong password policy and minimum password standards.
- (k) Enforces password requirements for accessing sensitive/personal data.
- (l) Applies access rights to personal data based on individualised logins and minimal administrators.
- (m) Ensures monitoring and logging do not contain personal data.
- (n) Conducts necessary DPIAs and implements measures to mitigate identified risks.
- (o) Maintains comprehensive data protection policies and processes, reflecting the organisation's commitment to data privacy and compliance.
- (p) Has established an Information Security Policy encompassing the organisation's approach to data protection, roles, responsibilities, and accountability for data handling.
- (q) Implements Business Continuity Plans for incident handling and response in the event of a data breach or security incident.
- (r) Has established backup policies and procedures to ensure data integrity and availability in case of incidents.
- (s) Conducts regular risk assessments of data processing activities and implement appropriate controls to mitigate identified risks.
- (t) Has defined clear roles and responsibilities within the organisation regarding data processing to ensure employees are aware of their obligations.

- (u) Has established approval mechanisms for data processing activities to ensure compliance with Privacy Act principles.
 - (v) Conducts regular employee training on security awareness and data protection practices.
 - (w) Performs periodic audits to evaluate the effectiveness of security measures and identify areas for improvement.
 - (x) Conducts reviews and audits of data processing procedures to ensure privacy law compliance.
 - (y) Performs due diligence checks on sub-processors to verify they have adequate safeguards for personal data protection.
6. Smartlox will maintain a response and crisis communication program that is reasonably designed to detect, contain, respond and recover from a Data Breach.
7. If Smartlox becomes aware of a Data Breach, Smartlox will:
- (a) take steps to minimise the Data Breach;
 - (b) take appropriate measures to secure the affected data and prevent a recurrence of the Data Breach;
 - (c) provide reasonable information to the Customer about its remediation efforts and make any applicable notifications to a regulator;
 - (d) to the extent available to Smartlox, provide Customer with reasonable details of the Data Breach, including a description of the data subject to the Data Breach and date and time of the Data Breach; and
 - (e) take appropriate steps to remediate the root cause(s) of the Data Breach and give Customer a summary of the results of the investigation and any remediation efforts taken by Smartlox.