

## **TERMS AND CONDITIONS**

### **1. ACCEPTANCE**

- 1.1 These terms and conditions form the agreement (**Agreement**) between Sidekick Digital Pty Ltd (ABN 13 601 872 397) (referred to as “**Sidekick**”, “**we**” or “**us**”) and the user (referred to as “**User**” or “**you**”), collectively referred to as the Parties or each a Party.
- 1.2 Sidekick owns the cloud-based software known as FlypChart (**Software**) and which is accessible at [flypchart.co](http://flypchart.co) (**Site**).
- 1.3 The User wishes to access and use the Software.
- 1.4 This Agreement sets out the terms and conditions (**Terms**) upon which Sidekick has agreed to grant the User a right to access and use the Software. These Terms are binding on any use of the Software and apply to the User from the time that Sidekick provides the User with an account to access and use the Software (**Account**).
- 1.5 By using the Software and subscribing on our Site, you acknowledge that you have read, understood, and accepted these Terms and you have the authority to act on behalf of any person or entity for whom you are using the Software, and you are deemed to have agreed to these Terms on behalf of any entity for whom you use the Software.
- 1.6 Sidekick reserves the right to make changes to these Terms at any time, effective upon the posting of modified Terms. Sidekick will make every effort to communicate these changes to the User via email prior to or shortly after the change. If the User has reasonable grounds to believe that the varied Terms will be detrimental to its rights, the User may terminate these Terms without penalty within 14 days’ of receiving the notice of the varied Terms. It is the User’s obligation to ensure that the User has read, understood and agree to the most recent Terms available on our Site.
- 1.7 These Terms incorporate the Privacy Policy and Website Terms and Conditions, in each case, as amended from time to time, which are available on the Site.

### **2. SOFTWARE AND SERVICES**

- 2.1 The Software assists Users to prepare and schedule content across selected applications including but not limited to:
  - (a) emails;
  - (b) social media posts;
  - (c) webinars;
  - (d) blog posts;
  - (e) ad campaigns; and
  - (f) other marketing content.
- 2.2 The Software is provided to the User via the Site.
- 2.3 The User will only be able access the Software by completing an online subscription.
- 2.4 Sidekick may, upon request by the User, customise the Software to meet the particular needs of the User. It is at our sole discretion, whether or not we customise the Software for you. If we agree to customise the Software for you, a separate written agreement will be entered into between Sidekick and you, outlining the terms and conditions for doing so.
- 2.5 The services provided by Sidekick includes any services relating to:
  - (a) the preparation and scheduling of marketing content of any form via any third party applications;
  - (b) collaborating with other Users; and
  - (c) the planning of marketing campaigns.(collectively the **Services**).
- 2.6 Some of the Services will require you to provide the Software with authority to enable integration with third party applications.

### **3. ONLINE SUBSCRIPTION AND ACCOUNT**

- 3.1 When you subscribe online, the Site will request that you provide personal information for subscription purposes. This personal information that we collect, and how we deal with it, is set out in the Privacy

Policy available on our Site.

- 3.2 Information that is created when you subscribe, such as log in details and passwords (**User Information**) may be stored in servers in and outside of Australia. We will take steps to ensure that User Information is kept secure and confidential, by encrypting User Information, using SSL certificates and housing data through third party providers.
- 3.3 Upon subscription, the User obtains a valid Account to use the Software which may start with a free trial. The free trial period will last for 14 days and is intended to provide new Users with an opportunity to try the Software. Eligibility for a free trial is determined solely by Sidekick. Sidekick may revoke a free trial and suspend an Account.
- 3.4 At the end of the free trial period, we will automatically charge you a fee for a subscription to the Software (**Subscription Fee**) unless you terminate your Account before the end of the free trial period.
- 3.5 The Subscription Fee amount is set out on our Site. Payment of the Subscription Fee is required for continue access and use of the Software.
- 3.6 When a user obtains a valid Account, Sidekick agrees to grant to the User a royalty free, worldwide, irrevocable, non-exclusive, non-transferable right in the form of a license to use the Software (**License**) which cannot be sub-licensed to third parties.

#### 4. PAYMENT

- 4.1 You agree to pay the Subscription Fee required to enable you to access and use the Software.
- 4.2 You will be required to make payment by way of an approved payment method. You may be required to provide your payment account details when completing your online subscription.
- 4.3 You acknowledge and agree that:
  - (a) to maintain your subscription, payment to us will be made automatically from your selected payment account;
  - (b) if we are unable to take payment from your selected payment account, we will attempt to contact you via email as soon as we become aware of the payment failure. Until payment is confirmed, your Account will be locked and you will not be able to access or use the Software.
- 4.4 If payment is not made within 14 days of the last payment date, we may lock your Account without notice to you, in which case you will not be able to access your Account or use the Software. Any of the User's data on the Account may be deleted and not recoverable.
- 4.5 If you make changes to your subscription by adding or reducing the number of external integrations with third party applications and/or volume of data posted via your Account (**Functions**), this can be activated immediately, and payment amounts will be as follows:
  - (a) if you add Functions, the Subscription Fee will increase accordingly (**Increased Fee**) and you will be billed at the Increased Fee from the next billing date;
  - (b) if you reduce Functions, the Subscription Fee will decrease accordingly (**Decreased Fee**), but the Decreased Fee will not take effect until the next billing date.

#### 5. TERMINATION

- 5.1 To terminate an Account, the User must do so via the Software.
- 5.2 The User's Account will be terminated at the end of the next billing date, and automatic payments will cease at the end of the next billing date.
- 5.3 It is the User's responsibility to retrieve all necessary data from their Account prior to termination.
- 5.4 We may terminate the Terms immediately, in our sole discretion, if:
  - (a) you commit a non-remediable breach of these Terms;
  - (b) you commit a remediable breach of these Terms and do not remedy the breach within 14 days after receiving notice of the breach;
  - (c) we reasonably suspect that you are attempting to reverse engineer the Software that is provided to you;
  - (d) we consider that a request for a License is inappropriate, improper or unlawful;
  - (e) you fail to provide us with clear or timely instructions to enable us to provide you with a License;

- (f) we consider that our working relationship has broken down including a loss of confidence and trust;
  - (g) where the User is an individual, an order for the appointment of a trustee in bankruptcy or analogous step is taken; or
  - (h) for any other reason outside our control which has the effect of compromising our ability to provide you with the required Software or License within a required timeframe.
- 5.5 On termination or completion of the Services, we may retain your documents (including copies) as required by law or regularity requirements. Your express or implied agreement to the Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 6. USER OBLIGATIONS**
- 6.1 The User warrants that all information provided to Sidekick is true, accurate and complete.
- 6.2 You acknowledge and agree that:
- (a) you are authorised to use the Software and to access any information or data that you input (**Data**) into the Software, including any Data which has been inputted into the Software by any person you have authorised to do so;
  - (b) the Software must only be used for your own lawful internal business purposes, in accordance with these Terms;
  - (c) all usernames and passwords required to access the Software are kept secure and confidential;
  - (d) if there is any unauthorised use of your passwords or any other breach of security, you will immediately notify Sidekick of such activity;
  - (e) the Software operates within the User's computing or smart device system (**End User System**);
  - (f) the reliability of the Software is dependent upon the User's configuration and implementation of the Software; and
  - (g) it is the responsibility of the User to determine that the Software meets the needs of the User and their business, and is suitable for the purposes for which the Software is used.
- 6.3 Some of the Services offered by the Software requires that you authorise the Software to enable integration with third party applications. By authorising the Software to enable integration with a third party application, you acknowledge and agree the Software:
- (a) will have access to your third party application account (**Third Party Account**)
  - (b) may use and change information stored on your Third Party Account; and
  - (c) may publish (including by email) content that is made available to the public domain through your Third Party Account.
- 6.4 You may use the Software on behalf of others or in order to provide services to others but if you do so you must ensure that you are authorised to do so and that all persons for whom or to whom services are provided comply with and accept all terms of this Agreement that apply to you.
- 6.5 Sidekick has no responsibility to any person or entity other than you and nothing in this Agreement confers, or purports to confer, a benefit on any person or entity other than you. If you use the Software on behalf of or for the benefit of anyone other than yourself, you agree that:
- (a) you are responsible for ensuring that you have the right to do so;
  - (b) Sidekick does not warrant the fitness for purpose or suitability of the Software for such third party's purposes and third parties may not rely on Sidekick for any purpose;
  - (c) you are responsible for authorising any person who is given access to your Data, and you agree that Sidekick has no obligation to provide any person or entity with access to such Data without authorisation from you and may refer any requests for access to the Data to you to address; and
  - (d) you will indemnify Sidekick, on first demand, against any and all claims, expenses, liabilities or losses arising out of in connection with Sidekick's refusal to provide any persons with access to your Data in accordance with these Terms and FlypChart making Data available to any person with authorisation from you.
- 6.6 The use of the Software is at the User's own risk.

- 6.7 You remain solely responsible for complying with all applicable laws. It is your responsibility to ensure that the storage of and access to your Data via the Software, the Site and the App comply with laws which are applicable to you, including any laws requiring you to retain records of your Data.
- 6.8 Sidekick is not responsible for any content whatsoever that is published through your Third Party Accounts.
- 6.9 Each User must have their own safeguards and back up processes in place to recover from any failures or loss of Data which might occur whilst using the Software and protecting the confidentiality of your Data with suitable management procedures, as you may see fit.

## **7. PROHIBITED USE**

- 7.1 You acknowledge and agree that you will not:
- (a) attempt to circumvent or disable the Software or any technology features or measures in the Software by any means or in any manner;
  - (b) attempt to modify, copy, adapt or reproduce the Software except as necessary to use it for normal operation;
  - (c) attempt to decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for the Software;
  - (d) distribute, encumber, sell, rent, lease, sub-license, or otherwise transfer, publish or disclose the Software to any third party (except as permitted under this Agreement);
  - (e) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Software or used in connection with the Software;
  - (f) use the Software in any manner to aid in the violation of any third party Intellectual Property, including but not limited to another's copyrights, trade secrets, and patents;
  - (g) take any action that interferes, in any manner, with Sidekick's rights with respect to the Software;
  - (h) attempt to undermine the security or integrity of Sidekick's computing systems or where the Software is hosted by a third party, that third party's computing systems and networks;
  - (i) use, or misuse, the Software in any way which may impair the functionality of the Software, Site, or other systems used to deliver the Software or impair the ability of any other user to use the Software or Site;
  - (j) attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the License for the Software is executed;
  - (k) transmit, or input into the Software or Site any files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including any content protected by copyright or trade secrets which you do not have the right to use); and
  - (l) use the Software to publish (including by email) or transmit through your Third Party Accounts any files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including any content protected by copyright or trade secrets which you do not have the right to use).
- 7.2 In addition, title, ownership rights and Intellectual Property rights in and to any content displayed on the Site or in the Software, or accessed through the Site or the Software, are the property of the applicable content owner and may be protected by applicable copyright or other law. This Agreement gives you no rights to such content.
- 7.3 You acknowledge that any breaches of this clause 7 may lead to termination of this Agreement. Further where we have a reasonable belief that you may have breached clause 7.1(l) we may terminate this Agreement.

## **8. CONFIDENTIAL INFORMATION**

- 8.1 Subject to clause 8.2, the User agrees:
- (a) not to disclose the Confidential Information to any third party at any time;
  - (b) to use its best endeavours to protect the Confidential Information from any unauthorised

disclosure;

- (c) only to use the Confidential Information for the purpose for which it was disclosed by Sidekick and not for any other purpose; and
- (d) to be responsible for and assume liability in relation to each of its employees, agents, consultants and contractors to whom Confidential Information is disclosed and ensure that they maintain the confidentiality of the Confidential Information and otherwise comply with the obligations set out in this Agreement.

8.2 The User's obligations set out in clause 8.1 do not apply to Confidential Information:

- (a) that is already in the public domain, except as a result of the actions of the User in breach of any of the Terms of this Agreement;
- (b) received from a third party, except where there has been a breach of confidence leading to its disclosure;
- (c) that must be disclosed by law, provided that the User's reveals only so much of the Confidential Information as the User is required by law to disclose and gives sufficient notice to Sidekick in order to allow Sidekick to object to, or otherwise prevent, the Confidential Information being disclosed.

8.3 This clause 8 will survive termination of this Agreement.

## **9. PRIVACY POLICY**

9.1 We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines, as set out in our Privacy Policy, which is available on our Site.

9.2 You will be taken to have read the terms of the Privacy Policy when you accept these Terms.

## **10. INTELLECTUAL PROPERTY**

10.1 Title to, and all Intellectual Property rights in the Software and the Site and any documentation relating to the Software, remain the property of Sidekick and its successors and permitted assigns. Your right to use such Intellectual Property is subject to the terms of this Agreement.

10.2 You grant Sidekick a non-exclusive, worldwide license to use any Intellectual Property, which subsists in the Data you provide in connection with the use of your Account and the provision of the Services, including copyright in any third party logos or other materials.

10.3 Any requests to or agreements with Sidekick to customise, modify and/or enhance any Software for the User, or to develop programs, software or materials related to such Software, must be documented in a written agreement and signed by the Parties. No variation to the terms of this Agreement will come into effect until it is documented in writing and signed by the Parties.

10.4 Title to and all Intellectual Property rights in any Data you input into the Software remain your property. However, your access to the Data and continued use of the Software is contingent on continued payments of your Subscription Fee.

10.5 You grant Sidekick a licence to use, copy, transmit, store, and back-up your information and Data for the purposes of enabling you to access and use the Software and for any other purpose related to provision of Services to you and the performance of our obligations under this Agreement.

10.6 It is the responsibility of the User to maintain copies of all Data, which is inputted into the Software. Although Sidekick will endeavour to prevent Data loss by making mirror copies of the Data as the Software operates as a cloud-based service, provided through third parties, Sidekick does not make any guarantees that there will be no loss of Data and does not represent or warrant that access to the Software, the Data or an Account will be available without interruption.

10.7 If the User enables third party applications for use in conjunction with the Software, the User acknowledges that Sidekick may allow the providers of those third party applications to access any inputted data as required for the interoperation of such third party applications with the Software. Sidekick is not responsible for any disclosure, modification or deletion of data resulting from any such access by third party application providers.

## **11. UPDATES AND SUPPORT**

11.1 Sidekick may update the Software (**Updates**) from time to time.

- 11.2 You acknowledge that Sidekick has no obligation to provide you with any support for Updates to the Software.
- 11.3 The Software may contain automatic communications features, which relay certain non-personally identifiable information to Sidekick or a third party in connection with the operation of the Software including for example the Software settings. Sidekick may use this information for research purposes including statistical analysis of aggregate customer behaviour.
- 11.4 Sidekick can provide support to the User. If you require technical support, please contact Sidekick at [contact@flypchart.co](mailto:contact@flypchart.co).
- 11.5 Whilst Sidekick intends that access to the Software via the Site and the App should be available on a full-time basis, it is possible that the Site or the App is unavailable due to maintenance or other development activity.
- 12. AVAILABILITY OF SITE AND SOFTWARE**
- 12.1 Where possible, Sidekick will provide notice to its Users of any maintenance or development activity in advance by email and in App notifications.
- 13. SECURITY**
- 13.1 Sidekick has implemented and will maintain security systems consisting of encryption and "firewall" technologies that are understood in the industry to provide adequate security for the transmission of such information over the internet. Sidekick does not guarantee the security of these services and Sidekick will not be responsible in the event of any infiltration of its security systems, provided that Sidekick has used commercially reasonable efforts to prevent any such infiltration. You acknowledge and agree that Sidekick is not responsible for the security of any of your information stored on third party servers and you indemnify us for any loss you may suffer as a direct result of any act or omission with respect to that third party server.
- 14. FEEDBACK AND DISPUTE RESOLUTION**
- 14.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about our Services, please contact any member of our staff.
- 14.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
- (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.
- 14.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.
- 15. LIMITATION OF LIABILITY AND DISCLAIMERS**
- 15.1 Sidekick and the User agree that Sidekick's liability for the Services provided via the Site and the Software is governed solely by the Australian Consumer Law to the extent applicable, and this Agreement.
- 15.2 Sidekick has no liability for use of the Software in countries other than Australia.
- 15.3 To the extent permitted by law, Sidekick's total liability arising out of or in connection with any breach of any of Sidekick's obligations under these Terms, or breach of any warranty implied by law, however arising, including under contract, tort, negligence, in equity, under statute or otherwise, is limited to Sidekick re-supplying the Services to you, or, at Sidekick's option, Sidekick refunding to you the amount you have paid it for the Services to which your claim relates. Sidekick's total liability to you for all damages in connection with the Services will not exceed the price paid by you under these Terms for

- the 12 months period prior to the act which gave rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made. The foregoing limitations, exclusions and disclaimers will apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.
- 15.4 We will take steps to maintain our Privacy Policy after the completion of the use of our Services and termination of this Agreement, for as long as we are required to do so by law.
- 15.5 You acknowledge that whilst Sidekick will take reasonable steps to ensure that the Software will be fit for the purposes as advertised, Sidekick gives no guarantees that:
- (a) the Software will meet your requirements as the functionality of the Software is dependent upon configuration with the End User System and other components;
  - (b) the Software will work in each of your desired use case scenarios; and
  - (c) the Software can be executed on every operating system, as it is impossible to test each variant.
- 15.6 The Software uses third party hosting services, which are provided without any sort of warranties, and Sidekick cannot ensure that these third party hosting services are provided free of defect or without interruption.
- 15.7 Sidekick does not warrant that use of the Software will be uninterrupted or error free. The operation of the Software is dependent on public telephone services, computer networks and the internet, which can be unpredictable and may from time to time interfere with the use of the Software. Sidekick accepts no responsibility for any such interference or prevention of your use of the Software.
- 15.8 All risk arising out of the use or performance of the Software remains with you. You understand and agree that the use of the Software, material or data downloaded or otherwise obtained through the use of the Software, is at your own discretion and risk and that you will be solely responsible for any infections, contaminations or damage to your computer, system or network. Sidekick is not responsible or liable for delays, inaccuracies, errors or omissions arising out of your use of the Software, any third party software or operating system.
- 15.9 To the maximum extent permitted by applicable law, Sidekick disclaims all warranties, express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose and non-infringement of third party intellectual property rights or lack of viruses, for the Software. In no event will Sidekick be liable for any consequential, incidental, indirect, special, punitive, or other damages whatsoever arising out of this Agreement, the use of or inability to use the Software, even if Sidekick has been advised of the possibility of such damages.
- 15.10 The Software is not intended for use in the operation of medical instruments, water craft, military installations, warfare equipment, industrial control systems and or SCADA systems and or robotic systems, surgical/medical application or equipment, artificial intelligence application or system, gambling/wagering system, and prototype, experimental or single product items, nuclear facilities, aircraft navigation or communications systems or air traffic control machines or any other machines in which case the failure of the Software could lead to death, personal injury or severe physical or environmental damage.
- 15.11 The User acknowledges that Sidekick may pursue any available equitable or other remedy against you as a result of a breach by the User of any provision of this Agreement.
- 15.12 The User acknowledges and agrees that Sidekick will not be liable for any non-compensatory damages including punitive, aggravated, multiple, exemplary, liquated or any other non-compensatory damages or the consequences of non-payment.
- 16. AUSTRALIAN CONSUMER LAW**
- 16.1 Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 16.2 Nothing in these Terms removes your Statutory Rights as a consumer under the ACL. You agree that our liability for Services provided to consumers is governed solely by the ACL and these Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory

Rights.

- 16.3 Except for your Statutory Rights, all material and work is provided to you without warranties of any kind, either express or implied; and we expressly disclaim all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 16.4 If you are a consumer as defined in the ACL, the following applies to you: We guarantee that the services we supply to you are rendered with due care and skill; fit for the purpose that we advertise, or that you have told us you are acquiring the services for or for a result which you have told us you wish the services achieve, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent we are unable to exclude liability; our total liability for loss or damage you suffer or incur from our services is limited to us re-supplying the services to you, or, at our option, us refunding to you the amount you have paid us for the services to which your claim relates.

#### **17. INDEMNITY**

- 17.1 You will be liable for and agree to indemnify, defend and hold us harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from: (i) any information that is not accurate, up to date or complete or is misleading or a misrepresentation; (ii) any breach of these Terms; (iii) and any misuse of the Software and/or License; from or by you, your employees, contractors or agents.
- 17.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Software and License including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 17.3 The obligations under this clause 17 will survive termination of these Terms.

#### **18. NOTICE**

- 18.1 Any notice required or permitted to be given to the User under these Terms will be addressed to the User at the email address provided by the User when requesting a License.

#### **19. RELATIONSHIP OF PARTIES**

- 19.1 Neither Party is authorised to bind the other Party in any way without prior written consent of the other Party.
- 19.2 The Parties acknowledge and agree that they will not seek to bind the other Party other than with the prior written consent of the other Party.

#### **20. RIGHTS OF THIRD PARTIES**

- 20.1 Any person or entity who is not a party to these Terms has no right to benefit under or to enforce any of these Terms.

#### **21. ASSIGNMENT**

- 21.1 This Agreement is personal to the Parties. A Party must not assign or deal with the whole or any part of its rights and/or obligations under this Agreement without the prior written consent of the other Parties.
- 21.2 Any purported dealing in breach of this clause is of no effect.

#### **22. WAIVER OR VARIATION OF RIGHTS**

- 22.1 Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right.
- 22.2 A Party is not liable to any other Party for any loss, cost or expense that may have been caused or contributed to by the failure, delay, waiver or exercise of a power or right.

#### **23. POWERS, RIGHTS AND REMEDIES**

- 23.1 Except as expressly stated to the contrary in this Agreement, the powers, rights and/or remedies of a Party under this Agreement are cumulative and are in addition to any other powers, rights and remedies of that Party. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right, or remedy that a Party may have at any time against



the other Party to this Agreement or any other person.

#### **24. FORCE MAJEURE**

24.1 If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control (Force Majeure), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders of acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

#### **25. CONSENTS AND APPROVALS**

25.1 Where this Agreement provides that a Party may conditionally or unconditionally give or withhold any consent or approval in relation to any matter in this Agreement, that Party may in its absolute discretion, and without being obliged to give reasons for doing so, withhold any consent or approval or give consent or approval conditionally or unconditionally.

#### **26. FURTHER ASSURANCE**

26.1 Each Party must from time to time and in a timely manner do all things reasonably required of it by another Party to give effect to this Agreement.

#### **27. ENFORCEABILITY**

27.1 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provisions in question will not be affected.

#### **28. COUNTERPARTS**

28.1 This Agreement may be executed in any number of counterparts and, if so, the counterparts taken together will constitute one and the same Agreement.

#### **29. ENTIRE AGREEMENT AND UNDERSTANDING**

29.1 The date of this Agreement is the date that these Terms are accepted by the User.

29.2 In respect of the subject matter of this Agreement:

- (a) this Agreement contains the entire understanding between the Parties; and
- (b) all previous oral and written communications, representations, warranties or commitments are superseded by this Agreement and do not affect the interpretation or meaning of this Agreement.

#### **30. GOVERNING LAW AND JURISDICTION**

30.1 This Agreement is governed by the laws of New South Wales and Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.

#### **31. DEFINITIONS**

**Confidential Information** includes confidential information about the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".

**Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, company names or internet domain names.

**For any questions or notice, please contact us at:**

Sidekick Digital Pty Ltd (ACN 601 872 397)  
37 McIntosh St Gordon, NSW, Australia, 2072  
Phone: 61 2 8880 0346  
Email: [contact@flypchart.co](mailto:contact@flypchart.co)

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