

Dye & Durham Customer Agreement

Background

- A. Dye & Durham Terrain Pty Ltd ABN 35 164 894 517 of Level 4, 24 - 28 Campbell Street, Haymarket NSW 2000 (**D&D**) is a provider of property, business, consumer and other information and related services, practice management software and conveyancing and legal support service; including property settlements, court searching and filing, document lodgement and stamp duty assessment.
- B. These services include providing information and services sourced from federal, state and local government departments, agencies and industry sources, and a number of services are provided by D&D as a licensed reseller of government information. These various government and other bodies require compliance with certain terms and conditions, as set out in the Information Provider Terms and Conditions.
- C. D&D agrees to provide, and the Customer agrees to purchase, certain services on the terms and conditions of this Agreement.

The parties agree

1. Definitions and Interpretation

Definitions

1.1 In this Agreement:

Act of Default means:

- (a) any breach of this Agreement including a default in payment of any Fees or unauthorised disclosure of Security Information;
- (b) where the Customer suffers an Insolvency Event or has an administrator, liquidator or receiver appointed or enters into any composition with or scheme of arrangement for the benefit of the Customer's creditors.

Affiliate means in respect of a company or other business entity, any company or other business entity Controlled by, Controlling, or under the common Control of a third party that also Controls that company or other business entity from time to time.

Agreement means this Customer Service Agreement, the schedules and any attachments to it, the Information Provider Terms and Conditions and any attachments to them, and the Order.

API means a set of functions and procedures that allow the creation of applications which access the features or data of an operating system, application, or other service.

Business Day means any day which is not a Saturday, Sunday or public holiday in Victoria or New South Wales.

Business Hours means 7.00 am – 7.00 pm Monday to Friday Australian Eastern Daylight Time (AEDT) excluding public holidays in Victoria and New South Wales.

Commencement Date means the date an Order Form has been accepted by D&D and an Order has been created.

Control means the direct or indirect power to direct or cause the direction of the management and policies of a company or other business entity, whether through ownership of fifty per cent (50%) or more of the voting interest, by contract, or otherwise (and **Controlled** and **Controlling** are to be construed accordingly).

Confidential Information means, all information relating to a Party and its Affiliates, including all information concerning the business, pricing, products, services, systems, procedures and records (in whatever form, including in electronic format) of that Party and its Affiliates, and their relationships with their customers and suppliers.

Consequential Loss means any loss, not arising naturally, that is according to the usual course of things, from the relevant breach, act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered the agreement, as the probable result of the relevant breach.

Content means the information made available to the Customer through the Services including the Information Provider Information.

Customer means the individual or legal entity (and if more than one, all of them jointly and severally) who has accepted this Agreement by placing an Order.

Customer Data means any data or information that has been provided to D&D or an Information Provider by or on behalf of the Customer or a User in relation to this Agreement, either directly or through use of the Services.

Customer Environment means the computing environment (excluding Software Product provided by D&D under this Agreement) separately procured, prepared, licensed and maintained by the Customer for the access to and use of the Services.

Direct Marketing means one to one marketing using personal details (e.g. name, address, email address), normally supported by a database, which uses one or more forms of advertising media to effect a measurable response or transaction from a person and includes, telemarketing, bulk email messaging (whether or not spam), postal canvassing and list brokering.

D&D Website means a website operated by D&D through which the Customer accesses a Service or Software Product.

Fees means the fees payable by the Customer to D&D pursuant to this Agreement including, fees connected with the use of the Services or the Software Product. D&D may change the Fees in accordance with clause 8.2.

Force Majeure Event means any:

- (a) fire, flood, earthquake or act of God;
- (b) riot, civil disorder, rebellion or revolution; and
- (c) act or omission of a third party (excluding the acts and omissions of an affected Party's Affiliates, Personnel, subcontractors and suppliers) that is beyond the reasonable control of the affected Party.

Gross Negligence means a negligent act or omission that arises as a result of a significant departure from the standard of care that would ordinarily be expected from a highly skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances as the negligent person.

GST means Goods and Services Tax within the meaning of the *Goods and Services Tax Act 1999* (Cth) from time to time as amended.

Information Provider means any government department, statutory authority, body corporate or other third party that provides services, documents, data or information to D&D, or via the Service, that may be accessed by the Customer, including those set out in the Information Provider Terms and Conditions.

Information Provider Information means information provided by an Information Provider, whether in electronic or hard copy format, that may be accessed by the Customer.

Information Provider Terms and Conditions means those terms available at [\[Insert Hyperlink\]](#) as updated from time to time in accordance with clause 12.4.

Insolvency Event means any of the following events in respect of the Customer (and if the Customer is more than one person or entity, then any of them):

- (a) a bankruptcy or winding-up proceeding is made to the relevant court;
- (b) an order is made or a resolution is passed to wind up;
- (c) an external administrator is appointed; or
- (d) a sequestration order is made for the Customer to be declared bankrupt.

Intellectual Property Rights means patents, trade marks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights; inventions, know-how, secret formulae and processes and other proprietary knowledge and information; internet domain names; rights protecting goodwill and reputation; database rights; and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world and all rights under licences and consents in respect of any of the rights and forms of protection mentioned in this definition.

Interest means the Commonwealth Bank overdraft index rate plus 2%, charged monthly or such other amount set out in an Order.

Law includes:

- (a) any treaty, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time;
- (b) the common law and the law of equity;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code, policy or standard; and
- (e) any applicable direction, policy, rule or order that is given in writing by a Regulator.

Loss includes claims, actions, proceedings, losses, damages, liabilities and costs (including legal expenses).

Order means a completed Order Form that has been:

- (a) executed by the Customer either by:

- (i) physically or electronically signing it and returning to D&D in hard or soft copy; or
 - (ii) selecting the “I Accept” (or similar) button on any D&D Website; and
- (b) accepted by D&D either in writing or by performing or providing access to the Services.

Order Form means the form prescribed by D&D to place an order for the Services (whether as part of D&D’s online session or a separate paper or electronic Order Form) that details the Services being ordered and the relevant Fees.

Party or Parties means the D&D and the Customer.

PAYG Account means a pay-as-you-go account set up by the Customer for which the Customer must nominate a credit card to pay the Fees.

Personal Information has the meaning given to it in the Privacy Laws.

Personnel means a Party’s officers, employees, contractors, subcontractors.

PP Account means a post-paid account set up by the Customer upon which the Customer will be issued periodic invoices to pay the Fees.

Price Book means the schedule of fees and charges for the Services, as provided or made available by D&D by D&D and updated from time to time in accordance with clause 8.2.

Privacy Laws means the *Privacy Act 1988* (Cth) and any applicable analogous law in any jurisdiction from time to time.

Regulator means, in relation to a Party, any statutorily recognised supervisory or government agency, body or authority having regulatory or supervisory authority over a Party’s assets, resources or business, including any organisation reporting to such bodies, to the extent that such entity has jurisdiction over that Party.

Related Bodies Corporate takes its meaning from the definition of that term in section 9 of the *Corporations Act 2001* (Cth).

Restricted Content means Content which, under applicable Law, requires the consent of a person to be given to the Customer, D&D, Software Product Licensor or Information Provider (as the case may be) for the collection, use or disclosure of such Content.

Restricted Individual means the individual whose consent, under applicable Law, is required for the collection, use or disclosure of such Restricted Content.

Security Information means the Customer’s and User’s log-in details, usernames, private keys, passwords or other access controls provided to the Customer and Users to access the Services or Software Products.

Services means any Support Services, professional services, other services and Software Products as set out in an Order.

Service Licence means the licence granted to the Customer to use the Services as set out in clause 3.2.

Service Licence Commencement Date is the commencement date for each or all of the Services set out in the Order.

Service Licence Term in relation to a Service, means the period commencing on the Service Licence Commencement Date for that Service and ending on the earlier of:

- (a) the expiry of the term for that Service set out in an Order (if any); or
- (b) the expiry of the Term.

Software Product means D&D's Proprietary software systems and system interfaces (including any SaaS services) that are licensed to the Customer for its use under the terms and conditions of this Agreement either as specified in the 'Service Licence' section of an Order Form or accessed through an API, including Updates to that Software Product.

Software Product Licensor means any third party who D&D has licensed either entirely or partly any Software Product from.

Support Services means support services provided by D&D to the Customer in respect of a Software Product in accordance with clause 6.

Term means the term of this Agreement set out in clause 9.1.

Third Party Customer means a party, other than the Customer or a User, who is a user of a Service or Software Product.

Third Party Customer Data means the data of a Third Party Customer that has been uploaded to a Service or Software Product.

Third Party Agreements means the agreements that D&D is a party to with various Information Providers and Software Product Licensors to enable the delivery of Services, Software Products and Content to D&D customers.

Update includes an updated version, major or minor release, patch, enhancement or upgrade of, the service pack for, a Software Product.

User means an individual who accesses or receives the Services through, or on behalf of, the Customer.

Value Add means any augmenting, repackaging or incorporating of the Licensee's data, or other data licensed to the Licensee, with the Licensed Data. Conversion of the Licensed Data onto different media or the translation into a different format is not Value Adding (and **Value Added** and **Value Adding** are to be construed accordingly).

Interpretation

1.2 In this Agreement:

- 1.2.1 headings are for convenience and do not affect interpretation;
- 1.2.2 references to the singular includes the plural, and to the masculine include the feminine, and in each case vice versa;
- 1.2.3 any reference to a 'person' includes any individual, company, corporation, firm partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same includes a reference to the others;
- 1.2.4 references to clause(s) and schedule(s) are references to clause(s) and schedule(s) of and to this Agreement;

- 1.2.5 where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 1.2.6 a reference to a Party includes its executors, administrators, successors and permitted assigns;
- 1.2.7 words and expressions denoting natural persons include bodies corporate, partnerships, associations, governments and governmental authorities and agencies and vice versa;
- 1.2.8 a reference to any legislation, statutory instrument or regulation must be construed in accordance with the *Acts Interpretation Act 1901* (Cth) (or the equivalent State legislation, as applicable);
- 1.2.9 any phrase introduced by the words “include”, “includes”, “including” in particular, ‘for example’ or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words; and
- 1.2.10 a reference to ‘\$’ or ‘dollars’ is a reference to Australian dollars.

2. Preliminary Provisions

- 2.1 D&D may amend or vary this Agreement at its absolute discretion at any time during the Term by:
 - 2.1.1 providing notice of the amendment or variation to the Customer, in which case the Customer’s continued use of the Services after such notice will be deemed to be acceptance of such amendment or variation; or
 - 2.1.2 requiring the Customer to accept this Agreement inclusive of such variations or amendments by clicking “/ Accept” at the time of logging on to the D&D Website or otherwise accessing the Service.
- 2.2 If D&D does amend or vary this Agreement, and the Customer does not accept a change or variation in the manner set out in clause 2.1, then either Party has the right to immediately terminate this Agreement without cause.

3. Access to the Services

Order

- 3.1 The Customer acknowledges and agrees that:
 - 3.1.1 by executing an Order Form the Customer is offering to purchase the Services from D&D on the terms and conditions of this Agreement for the duration of the Term;
 - 3.1.2 D&D is not obliged to accept the Customer’s Order Form even if the Customer has pre-paid for the Services. D&D may reject the Customer’s Order Form by refunding to the Customer any payment made by the Customer or by otherwise communicating such rejection to the Customer; and
 - 3.1.3 in the event D&D accepts the Customer’s Order Form, the Order will be fulfilled in accordance with the terms and conditions of this Agreement.

Licence to use the Services

- 3.2 D&D grants to the Customer a worldwide, non-exclusive, revocable, non-sublicensable, non-assignable licence to use or access the Services solely to the extent necessary to obtain the full benefit of the Services, and only for the number of server or user licences set out in the Order, in accordance with the conditions of this Agreement for the duration of the Service Licence Term (**Service Licence**).
- 3.3 The Customer may request to increase the number of server or user licences by submitting an additional Order Form to D&D in accordance with clause 3.1.
- 3.4 Unless otherwise specified in the relevant Order, any extension of the Service Licence Term must be agreed by the Parties in accordance with clause 3.1.

Updates

- 3.5 The provision of any Software Product under this Agreement by D&D does not place any additional obligations upon D&D (such as requiring the provision of Updates to the Software Product) other than those expressly provided under this Agreement.
- 3.6 D&D may, from time to time, announced scheduled release dates for an Update to a Service, however D&D is under no obligation to provide any Update to the Customer makes no warranty nor guarantee that any Update will be released by the scheduled release date, or released at all and accepts no liability for any delays or failure to release an Update on the scheduled release date, or at all.
- 3.7 The Service Licence extends to any Update issued by D&D during the Term provided that the Customer has paid the relevant Fees (if applicable) for that Update and/or Service.

Disclaimer of representation and warranty

- 3.8 The Customer acknowledges and agrees that D&D does not make any representation or warranty that any Information Provider Information or Content provided through any Service, Software Product or Information Provider is complete, up to date, accurate, error free or suitable for the purposes the Customer intends to use such Content.

4. Use of the Services

Use Restrictions

- 4.1 The Customer warrants, represents and undertakes that it:
- 4.1.1 will only use the Services in accordance with this Agreement;
 - 4.1.2 will comply with Service specific provisions set out in Schedule 1 of this Agreement (if applicable);
 - 4.1.3 will use the Services only for the purposes for which they were designed and only for its own internal business purposes;
 - 4.1.4 will only use the Services in accordance with any documentation supplied by D&D in respect of that Service from time to time;
 - 4.1.5 will only permit Users who have received appropriate training, including completing relevant D&D training courses or product events (where applicable) to interact with the Service;

- 4.1.6 will promptly install all Updates provided or released by D&D from time to time;
- 4.1.7 while using the Services, will abide by all applicable Law;
- 4.1.8 will comply with the terms and conditions specific to a Software Product as provided to the Customer or its Users from time to time;
- 4.1.9 will comply with any usage restrictions, including not exceeding the applicable maximum number of servers or users permitted under the Service Licence;
- 4.1.10 will not engage in aiding, assisting or allowing any person other than the Customer or its Users to use the Services;
- 4.1.11 will not resell, loan or license any Service to any other person without the prior written consent of D&D;
- 4.1.12 will only copy any Service for the purpose of backup and security;
- 4.1.13 will not tamper with, modify, disassemble, reverse-engineer or do anything to any code or database structure of any Software Product;
- 4.1.14 will not upload or distribute any corrupted files or any files that contain viruses or anything that may damage or impair the operation of the Services;
- 4.1.15 will not provide access to any code or database structure of the Software Product to any third party;
- 4.1.16 will not integrate or engage any third party to integrate any other third party software with the Software Product without obtaining D&D's prior written consent;
- 4.1.17 is responsible for the Customer Environment;
- 4.1.18 is responsible for the Customer Data and will ensure the Customer Data and its use does not and will not infringe any Intellectual Property Rights or other rights of D&D or any third party;
- 4.1.19 will not use the Services in a way that infringes any Intellectual Property Rights or other rights of D&D or any third party;
- 4.1.20 has sufficient right, title and interest to grant to D&D, D&D Affiliates, Information Providers and their Personnel all licences in relation to the Customer Data granted in this Agreement;
- 4.1.21 will not misuse Third Party Customer Data;
- 4.1.22 will not use, copy or modify Third Party Customer Data contrary to the terms and conditions of this Agreement;
- 4.1.23 if the Customer seeks Restricted Content, will only request access to or the provision of Restricted Content from D&D, a Software Product Licensor or an Information Provider if the Customer has obtained freely given and specifically informed consent of the relevant Restricted Individual for the relevant collection, use or disclosure of the Restricted Content by D&D, the Information Provider or the Software Product Licensor (as the case may be);
- 4.1.24 it will consent to general obligations or to complete certain forms as D&D, an Information Provider or a Software Product Licensor may require from time to time in order to use the Services and if the Customer refuses to do this the Customer

acknowledges and agrees that it may be denied access to some or all of the Services;

4.1.25 will not do anything with the Software Product which is inconsistent with or beyond the scope of the rights expressly granted in this Agreement; and

4.1.26 will not transfer or sub-license the Software Product, in whole or in part, without D&D's prior written consent.

4.2 The Customer must ensure that its Users and Personnel comply with all of the warranties set out in clause 4.1.

Security Information

4.3 The Customer and its Users must only access the Services by using Security Information.

4.4 The Customer and its Users must not disclose Security Information to any person other than Customer Personnel who require such Security Information for the Customer to benefit from the Services.

4.5 The Customer is liable for all Fees incurred as a result of the use of or access to the Software Product or Services using the Customer's Security Information, regardless of whether such use or access was authorised by the Customer or not.

4.6 The Customer must immediately inform D&D of the loss or exposure of any Security Information, or any unauthorised access to or misuse of the Services.

4.7 D&D reserves the right to change Security Information at any time for any reason and will provide notice of any such change to the Customer.

Limitations to Access to the Services

4.8 D&D will use its best endeavours to allow access to the Services during Business Hours, but D&D will not be liable for any Loss arising in relation to the Customer being unable to access the Services during Business Hours (or otherwise).

Customer Data

4.9 If due to inaccurate, incomplete, or out of date Customer Data, there is an error in the Content provided to the Customer, or the wrong Content is provided to the Customer, neither D&D nor any Information Provider or Software Product Licensor will be liable to the Customer for any Loss arising.

4.10 The Customer is solely responsible for the back-up of all Customer Data and D&D will have no responsibility for recovery of any lost or corrupted Customer Data.

API Keys

4.11 If requested by the Customer, D&D may in its sole discretion provide an API key or keys to the Customer to facilitate its integration with D&D APIs. The Customer must:

4.11.1 use any API key provided by D&D in every call to a D&D API to assist D&D to protect against integration having a detrimental effect on other D&D customers;

4.11.2 only provide a D&D API key to third parties with the explicit written consent of D&D. If D&D becomes aware that a D&D API key is in use with a non-certified application, without limiting any other rights or remedies D&D may have under this Agreement or applicable Law, D&D may terminate that key without notice, in which

case the Customer will be solely liable for any losses suffered as a result of that termination; and

4.11.3 not use a D&D API key in production without prior certification by D&D.

5. D&D Warranties

5.1 D&D makes no representation or warranty:

5.1.1 in respect of any hardware, software or components forming part of the Services which are obtained from third party suppliers. Any warranty on any product of a third party supplier is the warranty of that third party supplier and D&D is not a party to such warranty;

5.1.2 that any aspect of the Services is bug or error free;

5.1.3 that use of any Service will be uninterrupted;

5.1.4 that any Service will be available for use at any particular time or at all times;

5.1.5 that the Services are or will be compatible with the Customer Environment; or

5.1.6 that any Third Party Customer Data is current, accurate or complete.

5.2 D&D represents and warrants that any Software Product developed by D&D will operate predominantly in accordance with any documentation supplied by D&D to the Customer with the Software Product.

5.3 If the Customer notifies D&D in writing that it believes a Software Product does not conform with the documentation referred to in clause 5.2 in a material respect, the Customer must provide D&D with a documented example of the nonconformity and any other data D&D requires to reproduce the operating conditions in which the nonconformity occurred. Once such data has been provided to D&D then D&D must:

5.3.1 investigate the matter as soon as reasonably practicable and determine whether there is an error in the Software Product causing the nonconformity; and

5.3.2 if the nonconformity is an error which has a material effect on the use of the Software Product, correct or provide a work around for that error without additional Fee to the Customer; or

5.3.3 if D&D determines there is no such error, inform the Customer, in which event D&D is not obliged to take any further steps in relation to the purported nonconformity.

5.4 D&D is not obliged under this clause 5 to investigate or remedy any problem to the extent that such problem is caused by:

5.4.1 misuse of the Software Product by the Customer or any person that the Customer has permitted or facilitated to use the Services;

5.4.2 a fault in the Customer Environment;

5.4.3 the use of other software in conjunction with the Software Product; or

5.4.4 any failure by the Customer to meet an obligation under this Agreement.

- 5.5 If requested by the Customer and at D&D's sole discretion, D&D may investigate or remedy a problem caused by anything to which clause 5.4 applies for a Fee agreed in writing between the Parties.
- 5.6 Except as otherwise expressly provided in this Agreement, all warranties, representations, promises, conditions or statements relating to the Services or any Software Product, whether express, implied, statutory or otherwise (including warranties, representations, promises, conditions, statements as to merchantability, quality, title, interoperability, accuracy, suitability or fitness for any purpose, profitability or any other attributes with respect to the Services), to the full extent permitted by law, are hereby expressly excluded.

6. Support Services

- 6.1 Provided that the Customer has paid all applicable Fees owed to D&D in respect of this Agreement, D&D will provide remote Support Services to the Customer at no additional Fee following a request by the Customer for such Support Services.
- 6.2 As part of the Support Services, D&D will use reasonable endeavours (depending on customer demand) to ensure that D&D Personnel at the D&D customer services centre are available to the Customer via telephone, email or a D&D Website during Business Hours to log Support Service requests.
- 6.3 As part of the Support Services, D&D will use reasonable endeavours to assist rectification of errors with the Software Product and, where reasonably possible, provide a work around for the problem.
- 6.4 D&D neither warrants nor guarantees that any or all issues will be addressed, addressed in a particular timeframe or as required by the Customer.
- 6.5 D&D will only perform Support Services on the Customer's premises or otherwise on-site if agreed in writing between the Parties and subject to any additional fees included in such an agreement (which may take the form of an Order).
- 6.6 If the Customer's Support Service request involves correcting an error in the Software Product, the Customer must give D&D a documented example of the Software Product error and any other data D&D requires to reproduce the operating conditions in which the error occurred.
- 6.7 Support Services do not include remedying any problem to the extent that the problem is caused by:
- 6.7.1 use of the supported Software Product other than as expressly permitted by this Agreement;
 - 6.7.2 software maintenance services or work on the Software Product and systems performed by anyone other than for D&D;
 - 6.7.3 a fault or configuration problem in the Customer Environment;
 - 6.7.4 employment of equipment, hardware, systems or operating environment in the Customer Environment not expressly approved by D&D;
 - 6.7.5 Customer error in the use of the Software Product;
 - 6.7.6 insufficiently trained staff of the Customer using the Software Product;
 - 6.7.7 the use of other software in conjunction with the supported Software Product; or

- 6.7.8 any failure by the Customer to meet an obligation under this Agreement.
- 6.8 D&D will not be liable for any Loss incurred by the Customer as a result of problems to which clause 6.7 applies.
- 6.9 D&D may, at its sole discretion, endeavour to remedy any problem to which clause 6.7 applies, if agreed in writing between the Parties and subject to any additional fees included in such an agreement (which may take the form of an Order).
- 6.10 Examples of other services D&D may, at its sole discretion (if agreed in writing between the Parties and subject to any additional fees included in such an agreement (which may take the form of an Order)) provide include:
- 6.10.1 data reconstruction or extraction;
- 6.10.2 consultancy services;
- 6.10.3 education and training services; and
- 6.10.4 any other professional services.

7. Intellectual Property

- 7.1 The Customer acknowledges and agrees that all Intellectual Property Rights in, associated with or arising from the Services, Software Product or Content are owned or licensed by D&D (or the Information Provider as the case may be) and nothing in this Agreement transfers to the Customer any right, title or interest in the Intellectual Property Rights to the Services, Software Product or Content.
- 7.2 Where D&D changes or extends the functionality of a Service, including through the issuing of any Update or at the request of the Customer (a **Service Modification**), the Customer acknowledges and agrees that:
- 7.2.1 all Intellectual Property Rights in such Service Modification are owned or licensed by D&D and will vest in D&D (or the Software Product Licensor, as the case may be) immediately upon creation; and
- 7.2.2 the Customer hereby assigns (and procures that its Personnel will do the same) any and all rights, title and interest it may otherwise have in any Intellectual Property Rights in any Service Modification, to D&D.
- 7.3 The Customer may provide suggestions, comments or other feedback to D&D concerning the Services and other D&D offerings (collectively, **Feedback**), including in respect of the design, features, functionality, operation and release strategies of the Services and other D&D offerings. The Customer acknowledges and agrees that any such Feedback:
- 7.3.1 is provided on a voluntary basis only and the Customer will not be entitled to seek or receive any compensation in any form for Feedback;
- 7.3.2 D&D has no obligation to respond to Feedback and may incorporate Feedback into its Services and other offerings; and
- 7.3.3 the Customer hereby assigns (and procures that its Personnel will do the same) any and all rights, title and interest it may otherwise have in any Intellectual Property Rights in any such Feedback to D&D.

8. Fees

8.1 The Customer must pay the Fees:

8.1.1 at the rates set out in the Order; or

8.1.2 if not set out in the Order Form, at the rates set out:

(a) in the Price Book corresponding to the Services ordered; or

(b) on the D&D Website prior to the commencement of the provision of the Services.

8.2 Unless the Order Form includes a different mechanism regarding changes to Fees, D&D may increase Price Book rates:

8.2.1 no more frequently than twice per calendar year throughout the Term, with any such increase being effective (unless otherwise agreed under clause 8.3):

(a) from August 1st if the Price Book rates are increased on or before that date; and

(b) from such other date as determined by D&D in its sole discretion; and

8.2.2 from time to time where the increase is to reflect an increase of the pricing charged to D&D by an Information Provider for its services or access to its Content, in which case D&D will provide advance notice of such increase to the Customer where reasonably practicable.

8.3 In the event of an increase to Price Book rates under clause 8.2.1, the Customer may within fourteen (14) days of the increase becoming effective, notify D&D that the Customer wishes negotiate the increase and the parties will accordingly negotiate in good faith in respect of such increase.

8.4 Prior to the provision of the Services by D&D, the Customer must set up a PP Account or a PAYG Account with D&D.

8.5 If the Customer has set up a PP Account then:

8.5.1 D&D will invoice the Customer for Fees either monthly, or (if applicable) in accordance with payment terms set out in the Order;

8.5.2 the Customer must pay all Fees (including GST) due in respect of an invoice within fourteen (14) days of the date of such invoice or within such other period set out in the Order;

8.5.3 if the Customer fails to pay all Fees due in respect of an invoice in accordance with clause 8.5.2, then D&D may:

(a) apply Interest the unpaid Fees under such invoice; and

(b) (without limiting any of D&D's other rights and remedies under this Agreement or applicable Law) immediately deny the Customer access to any Services or Software Product (in accordance with clause 9.3) until such Fees are paid in full, including suspending the Customer's Security Information.

- 8.6 If the Customer has set up a PAYG Account then:
- 8.6.1 the Customer acknowledges and agrees that D&D will charge the Customer's credit card associated with the PAYD Account for the full Fees for the Services at the time that the Customer orders such Services; and
 - 8.6.2 D&D may undertake verification as D&D deems appropriate to confirm the validity of the Customer's registration details, including validating the Customer's email address and the functioning of the Customer's credit card.
- 8.7 The Customer will be charged the Fees for every Service accessed or purchased through a D&D Website. D&D will not provide a refund or credit in the event the Customer is unhappy with the Service or that the purchase or access was the result of an error by the Customer (including its Personnel).

9. Term and Termination

Term

- 9.1 This Agreement commences on the Commencement Date and continues until it is terminated in accordance with its terms (the Term).

Termination of this Agreement by the Customer

- 9.2 Subject to any minimum commitments set out in the Order, the Customer may terminate this Agreement in its entirety, or the Customer's receipt of a specific Service(s) set out in an Order (in which event the remainder of the Agreement will remain in force and will continue to be binding upon the Parties), by giving D&D at least thirty (30) days' prior written notice.

Termination of this Agreement by D&D

- 9.3 D&D may:
- 9.3.1 terminate this Agreement in its entirety; or
 - 9.3.2 terminate any part or parts of the Services being supplied pursuant to this Agreement, in which event the remainder of the Agreement will remain in force and will continue to be binding upon the Customer,
- at any time, for any or no reason, by giving the Customer at least thirty (30) days' prior written notice.
- 9.4 D&D may at its option, immediately:
- 9.4.1 suspend the Customer's access to the Services or any Software Product, or any part of the Services or any Software Product; or
 - 9.4.2 terminate this Agreement or any part of it,

if the Customer commits, or is reasonably suspected by D&D of committing, an Act of Default and D&D must provide written notice of such to the Customer at the time of or as soon as reasonably practicable after such termination or suspension.

- 9.5 During a period of suspension implemented under clause 9.4.1, D&D must (within a reasonable time frame) either:
- (a) terminate this Agreement or any part of this Agreement with the Customer for the Customer's Act of Default; or
 - (b) restore access to the Services or Software Product on such terms as D&D in its absolute discretion sees fit (including issuing new Security Information to the Customer and charging a reasonable reinstatement Fee to the Customer).

Effect of Termination

- 9.6 Termination of this Agreement:
- 9.6.1 will not release the Customer from liability in respect of any breach or non-performance of any obligation contained in this Agreement; and
 - 9.6.2 will not affect any rights or remedies which D&D may have otherwise under this Agreement or at law, and the Customer acknowledges and agrees that any indemnities given by it under any provision of this Agreement will survive the termination of this Agreement.
- 9.7 Upon termination of this Agreement or any Services, and subject to clause 18.14:
- 9.7.1 all Fees owed to D&D by the Customer as at the date of termination must be immediately paid to D&D;
 - 9.7.2 all of the Customer's rights to access and use the Services subject to the termination will immediately terminate without a right of refund (including the Service Licence);
 - 9.7.3 the Customer must immediately terminate all copies of any Software Product subject to the termination that are held by the Customer, Customer Affiliate or any Personnel; and
 - 9.7.4 Security Information will be revoked for any Service subject to the termination.

10. Liability

- 10.1 Any exclusions or limitations of a Party's liability in this Agreement do not apply in the case of:
- 10.1.1 that Party's:
 - (a) fraud;
 - (b) death or personal injury;
 - (c) Gross Negligence;
 - (d) reckless conduct or wilful misconduct; or

- (e) breach of clause 4.1;
 - 10.1.2 the indemnity given in clause 11;
 - 10.1.3 any other indemnity given under this Agreement; or
 - 10.1.4 any liability to the extent the same may not be excluded or limited as a matter of applicable Law.
- 10.2 D&D will not (and nor will any D&D Affiliate) be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, under or in connection with this Agreement for any Consequential Loss, even if D&D has been advised of the possibility of such loss or damage including any loss arising out of any:
- 10.2.1 inaccuracy, error or delay in any Services or Software Product;
 - 10.2.2 delays, failures, or inaccuracies in the transmission of any Services or Software Product to the Customer;
 - 10.2.3 delay or failure in or loss of access to the Services or Software Product;
 - 10.2.4 loss of data; or
 - 10.2.5 Force Majeure Event.
- 10.3 Subject to clauses 10.1 and 10.2, to the extent permissible by law, the total maximum liability of D&D and any D&D Affiliate to the Customer for all Loss sustained by the Customer in contract, tort (including negligence), breach of statutory duty or otherwise arising under or in connection with this Agreement, any Order or any of their subject matters is limited in aggregate to the greater of:
- 10.3.1 the Fees paid by the Customer to D&D in the 6 months prior to the first event giving rise to the Loss; and
 - 10.3.2 ten thousand dollars (\$10,000).

11. Indemnity

- 11.1 The Customer must indemnify and hold harmless D&D and each D&D Affiliate and each of their Personnel, any Information Provider and any Software Product Licensor (the **Indemnified Parties**) against all Loss sustained, incurred, or suffered by each Indemnified Party as a result of, or arising from, any claim, suit, demand, action or proceeding (including legal costs) by any third party where such Loss relates to or arises from:
- 11.1.1 the use of the Services or the Software Product by the Customer or any User (including any breach by the Customer, its Users or its Personnel of clause 4.1);
 - 11.1.2 reliance by the Customer or any User on information (including Customer Data and Third Party Customer Data) provided under this Agreement;
 - 11.1.3 any third party claim in respect of D&D's use of the Customer Data in accordance with this Agreement
 - 11.1.4 a breach by the Customer of clause 4.1; or
 - 11.1.5 a breach by the Customer of clause 12.3,

or is otherwise caused by any wilful, unlawful or negligent act or omission of the Customer, its Personnel, Users or subcontractors in connection with this Agreement.

11.2 The indemnity in clause 11.1 will survive the termination or expiration of this Agreement.

12. Third Party Agreements

12.1 The Customer acknowledges and agrees that:

12.1.1 D&D is a party to various Third Party Agreements; and

12.1.2 a breach of this Agreement by the Customer may cause a breach by D&D or a D&D Affiliate of one or more Third Party Agreements.

12.2 The Customer must comply with D&D security obligations contained in any Third Party Agreement in respect of Information Provider Information as notified to the Customer by D&D or an Information Provider from time to time.

12.3 The Customer undertakes, warrants and represents to comply with all obligations relevant to the Services set out in the Information Provider Terms.

12.4 D&D will only update the Information Provider Terms when such update is required by the relevant Information Provider.

13. Audit

13.1 During the Service Licence Term, and for a period of six (6) years after expiry or termination of the Service Licence Term, D&D may, with reasonable notice to the Customer, audit and inspect all records, procedures and systems of the Customer which relate to the Customer's use of the Services to verify the Customer's compliance with this Agreement (an **Audit**).

13.2 In relation to any Audit:

13.2.1 the Customer must fully cooperate with D&D; and

13.2.2 D&D will conduct the Audit in accordance with reasonable security guidelines communicated to D&D which may be applicable to the Customer's premises and systems and use reasonable measures to ensure D&D does not disrupt the business practices of the Customer.

13.3 Each Party is liable for its own costs in relation to any Audit, except where the Customer is found to have:

13.3.1 breached any obligations under this Agreement in relation to the calculation or invoicing of Fees; or

13.3.2 materially breached this Agreement,

and in either case, the Customer must, within twenty (20) Business Days of a request or invoice from D&D, reimburse D&D for the costs of the Audit, including costs associated with D&D engaging a third party auditor.

14. Privacy

- 14.1 Each Party must comply with all applicable Privacy Laws in performing its obligations under this Agreement and otherwise in connection with this Agreement.
- 14.2 Without limiting clause 14.1, the Customer must provide any notifications, obtain any consents and perform any other acts required under the Privacy Laws:
- 14.2.1 in connection with its use of the Services;
 - 14.2.2 for the Customer to transmit, disclose or otherwise make available any Personal Information to D&D; and
 - 14.2.3 for D&D to collect, use, disclose, handle or otherwise process Personal Information as required or permitted under this Agreement, including to provide the Services.
- 14.3 D&D will, in performing its obligations under this Agreement:
- 14.3.1 subject to clause 14.4 and except as required by applicable Law, collect, use, disclose, handle or otherwise process Personal Information in accordance with the Privacy Laws and for only for the purposes of:
 - (a) performing its obligations under this Agreement; and
 - (b) making improvements to the products and services offered by D&D.
- 14.4 The Customer acknowledges and agrees that:
- 14.4.1 where the Customer requires or has requested Information Provider Information, D&D may share Customer Personal Information with the relevant Information Providers;
 - 14.4.2 D&D may disclose Customer Personal Information to Information Providers or Software Product Licensors in order to:
 - (a) reconcile accounts between D&D and any Information Provider or Software Product Licensor; or
 - (b) improve the products and services offered by D&D;
 - 14.4.3 D&D may at its option (and only to the extent permitted by applicable Law, including the Privacy Laws) retain Customer Data including Customer Personal Information, for such period as D&D reasonably requires following termination or expiration of this Agreement; and
 - 14.4.4 an Information Provider or Software Product Licensor may inspect and copy information (including Customer Data) held by D&D in relation to this Agreement.

15. Anti-Bribery

- 15.1 The Customer must:
- 15.1.1 not commit, authorise or permit any action which would cause D&D or any D&D Affiliate to be in violation of any applicable anti-bribery laws or regulations; and

- 15.1.2 never offer or give, or agree to give, to any employee, representative or third party acting on D&D's behalf nor accept, or agree to accept, from any employee, representative or third party acting on D&D's behalf, any gift or benefit, be it monetary or otherwise, that could breach any Law or policy applicable to D&D.
- 15.2 Clause 15.1 applies in particular to illegal payments to government officials, representatives of public authorities or their associates, families or friends.
- 15.3 The Customer must notify D&D immediately if it:
- 15.3.1 becomes aware;
- 15.3.2 has reason to believe; or
- 15.3.3 has any specific suspicion,
- that there has been any breach of this clause 15 or there was corruption involved with regard to the negotiation, conclusion or performance of this Agreement.
- 15.4 Any breach of this clause 15 by the Customer, its employees, agents or sub-contractors (whether with or without the knowledge of the Customer) will be deemed a material breach of this Agreement, and will entitle D&D to recover from the Customer the amount of any Loss resulting from such material breach and to recover from the Customer the amount or value of any gift, consideration or commission.

16. GST

- 16.1 In this clause 16, words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as their definition in that Act.
- 16.2 Except as otherwise provided by this clause 16, all consideration payable under this Agreement in relation to any supply is exclusive of GST.
- 16.3 If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 16.4, the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.
- 16.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 16.3.

17. Confidentiality

- 17.1 Subject to clauses 17.2 and 17.3, each Party must:
- 17.1.1 treat as strictly confidential and only use the other Party's Confidential Information solely for the purposes contemplated by this Agreement;
- 17.1.2 not, without the prior written consent of the Party from whom the Confidential Information was obtained (which may be withheld in that Party's absolute discretion), publish, use or otherwise disclose to any person the other Party's Confidential Information except for the purposes contemplated by and only as expressly permitted by the terms and conditions of this Agreement;

- 17.1.3 maintain adequate security for the other Party's Confidential Information while in its possession or control, including protecting the same against any use, disclosure, access, damage or destruction which is inconsistent with the terms and conditions of this Agreement; and
- 17.1.4 not make use of the other Party's Confidential Information to the commercial, financial or competitive disadvantage of the other Party.
- 17.2 Each Party may disclose Confidential Information which it would otherwise be prevented from disclosing pursuant to clause 17.1 if, but only to the extent it can demonstrate that:
 - 17.2.1 such disclosure is required by applicable Law or by any securities exchange or regulatory or governmental body having jurisdiction over it, wherever situated (provided that any disclosure under this clause 17.2.1 must, to the extent permitted by applicable Law, not be made without prior consultation with the Party from whom the Confidential Information was obtained and must be made so as to minimise any such disclosure);
 - 17.2.2 the Confidential Information was lawfully in its possession prior to disclosure by the other Party or was independently developed (in each case, as evidenced by written records) and had not been obtained or derived from the other Party; or
 - 17.2.3 the Confidential Information has come into the public domain, other than as a result of a breach of this Agreement or any other obligation of confidence.
- 17.3 D&D may disclose Customer Confidential Information which it would otherwise be prevented from disclosing pursuant to clause 17.1 to any D&D Affiliate without notice for any reason at any time.

18. General

Notice

- 18.1 Any notice required to be given under this Agreement by the Customer to D&D must be sent to D&D's registered address, unless D&D has supplied a contact email address to the Customer, in which case such email address may be used.
- 18.2 Any notice to be given under this Agreement by D&D to the Customer, may at the sole discretion of D&D, be:
 - 18.2.1 given in writing and sent to Customer's registered address, or email address included in the Order; or
 - 18.2.2 posted on a D&D Website.
- 18.3 Notices sent by post will be deemed delivered two (2) Business Days after the day of posting.
- 18.4 Notices sent by email will be deemed delivered 24 hours after being sent, provided that the sender does not receive an 'out of office' or 'message undeliverable' (or similar) in reply.
- 18.5 Notices posted on a D&D Website will be deemed delivered immediately following the posting.

Assignment

- 18.6 D&D may assign its rights and obligations under this Agreement (or any part of it) without notice.
- 18.7 The Customer may only assign any or all of its rights and obligations under this Agreement with the prior written consent of D&D.

Relationship of the parties

- 18.8 Each of the Customer and D&D are independent contractors.
- 18.9 Nothing in this Agreement constitutes, or will be deemed to constitute, a relationship of employer and employee between the Parties, a partnership between the Parties or that either Party is the agent of the other Party for any purpose.

Entire Agreement

- 18.10 This Agreement constitutes the whole agreement between the Parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 18.11 Each Party acknowledges and agrees that it has not been induced to enter into this Agreement by any representation or warranty other than those contained in this Agreement and, having negotiated and freely entered into this Agreement, agrees that it will have no remedy in respect of any other representation or warranty except in the case of fraud.

Further assurance

- 18.12 At any time after the Commencement Date each of the Parties must, at the request and cost of the requesting Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the requesting Party may reasonably require to receive the full benefit of all the terms and conditions of this Agreement.

Variation

- 18.13 Subject to clause 2.1, this Agreement can only be varied by written agreement between the Parties.

Invalidity

- 18.14 If any provision of this Agreement is held to be illegal, void, invalid or unenforceable under the applicable Laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction is not affected, and the legality, validity and enforceability of the whole of this Agreement in any other jurisdiction is not affected.

Survival

- 18.15 On termination or expiry of this Agreement:
- 18.15.1 the obligations of confidentiality (but not the rights to use or disclose) under clause 17; and
- 18.15.2 any other provision of this Agreement which expressly or by implication is intended to come into or remain in force on or after termination or expiration of this Agreement,

will continue in full force and effect notwithstanding any such termination or expiry.

Governing Law and Jurisdiction

- 18.16 This Agreement is governed by, and must be construed in accordance with, the laws of New South Wales, Australia.
- 18.17 In relation to any legal action or proceedings to enforce this Agreement or arising out of or in connection with this Agreement, each of the Parties irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

Schedule 1 Service Specific Terms

1. **General**

- 1.1 Defined or capitalised terms in this have the same meaning as such terms used in the main body of the Agreement, unless otherwise defined in this Schedule 1. If a term is defined in a clause, such definition will only apply in respect of that clause.
- 1.2 Subject to clause 1.1 of Schedule 1, in the event that a provision of this Schedule 1 applies and is inconsistent with a provision in the main body of the Agreement, then the provision of this Schedule 1 prevails to the extent of the inconsistency.
- 1.3 To the extent that any Software Product has any terms that must be agreed to between the Customer and the Software Product Licensor, the Customer must comply with such terms and must indemnify and hold harmless D&D against all Loss sustained, incurred, or suffered by each Indemnified Party as a result of, or arising from any claim, suit, demand, action or proceeding (including legal costs) by any third party where such loss or liability relates to or arises from the Customer's breach of such Software Product Licensor terms.

2. **Conveyancing Directory**

- 2.1 The Customer must comply with the provisions of this clause 2 of Schedule 1 in the event the D&D has permitted the Customer to and use of Conveyancing Directory.

Definitions

- 2.2 The following definitions apply in respect of (and only in respect of) this clause 2 of Schedule 1:

Conveyancing Directory means the D&D Software Product called conveyancing directory.

- 2.3 If the Customer uploads, or agrees to D&D collecting and uploading, Customer Data onto Conveyancing Directory, the Customer grants to D&D, D&D Affiliates and both of their Personnel a world-wide, non-exclusive, irrevocable, perpetual, royalty-free licence to host, store, reproduce, communicate, publish, publicly perform, publicly display and distribute such Customer Data to Third Party Customers.
- 2.4 The Customer acknowledges and agrees that D&D:
 - 2.4.1 has no obligation to keep Customer Data held in Conveyancing Directory current and that the Customer is solely responsible to ensure the currency, accuracy or completeness of such Customer Data;
 - 2.4.2 is under no obligation to remove Customer Data that has been uploaded to Conveyancing Directory;
 - 2.4.3 is entitled to use Customer Data for the purposes of analysis and profiling to facilitate communication, product development, and marketing; and
 - 2.4.4 may, at its absolute direction, add or remove functionalities or features pertaining to Conveyancing Directory at any time without notice.
- 2.5 The Customer consents to Third Party Customers contacting the Customer or otherwise using Customer Data uploaded to Conveyancing Directory.
- 2.6 The Customer acknowledges and agrees that D&D takes no responsibility in respect of how Third Party Customers or other parties may exploit or use Customer Data uploaded to Conveyancing Directory and hereby releases D&D from and waives any right to any claims

that the Customer may have for the misuse of Customer Data uploaded to Conveyancing Directory.

3. Settlement Room

3.1 The Customer must comply with the provisions of this clause 3 of Schedule 1 in the event the D&D has permitted the Customer to and use of Settlement Room.

Definitions

3.2 The following definitions apply in respect of (and only in respect of) this clause 3 of Schedule 1:

Settlement Room means the D&D Software Product called Settlement Room.

3.3 D&D has provided access to and use of Settlement Room to assist the Customer to arrange and manage the preparation and collaboration of its property settlement transactions with Third Party Customers. By using Settlement Room, the Customer is able to access Third Party Customer Data to facilitate a real property settlement transaction.

3.4 The Customer acknowledges and agrees that D&D takes no responsibility for the outcome of a property settlement matter raised in Settlement Room, including where such outcome was influenced as a consequence of:

3.4.1 the actions of or delays caused by a Third Party Customer or any other party participating in or collaborating on that matter, including actions or delays caused by participants not correctly using or being inadequately trained on the functionalities Settlement Room;

3.4.2 an action taken by a participant to the matter that subsequently changes previously agreed arrangements made in respect of the matter; and

3.4.3 an action taken by a participant to the matter on the assumption that D&D is involved in the matter simply because D&D has a business relationship with one or more other participants to the matter (and for the avoidance of doubt, D&D will not participate in any matter raised in Settlement Room unless it has prior explicit authority to act).

3.5 The Customer hereby releases D&D from and waives any right to any claims that the Customer may have for any damage it may suffer as a result of the Customer using Settlement Room.

3.6 If the Customer uploads, Customer Data onto Settlement Room, the Customer grants to D&D, D&D Affiliates and both of their Personnel a world-wide, non-exclusive, perpetual, irrevocable, royalty-free licence to host, store, reproduce, communicate, publish, publicly perform, publicly display and distribute such Customer Data to Third Party Customers.

3.7 D&D may review the Customer Data to determine whether it is illegal or violates its policies and if so reasonably determined may remove or refuse to display such content or block the Customer's access to Settlement Room. However, this does not necessarily mean that D&D reviews content as a matter of course and the Customer should not assume that D&D does in fact review content. Any inaction on the part of D&D does not mean it has waived its rights under this clause 3.7 of Schedule 1 and D&D will continue to be entitled to exercise such rights at any time.

3.8 D&D will not be liable for any Loss the Customer may suffer as a result of relying on Third Party Customer Data.

- 3.9 The Customer acknowledges and agrees that D&D may, at its absolute direction, add or remove functionalities or features pertaining to Settlement Room at any time without notice.
- 3.10 The Customer must indemnify and hold harmless D&D and each D&D Affiliate and each of their Personnel (the **Indemnified Parties**) against all Loss sustained, incurred, or suffered by each Indemnified Party as a result of, or arising from any claim, suit, demand, action or proceeding (including legal costs) by any third party where such loss or liability relates to or arises from reliance by a third party on Customer Data uploaded to the Settlement Room. This indemnity will survive the termination of this Agreement.

4. SettsPlus

- 4.1 The Customer must comply with the provisions of this clause 4 of Schedule 1 in the event the Services include SettsPlus and SettsHub (or any derivative of either).

Definitions

- 4.2 The following definitions apply in respect of (and only in respect of) this clause 4 of Schedule 1:

IDSP means a DVS approved ID Service Provider.

DVS means the Australian Government's Document Verification Service.

- 4.3 The Customer acknowledges and agrees that:

4.3.1 for the purposes of DVS, D&D is an IDSP; and

4.3.2 in respect of the Customer's use of SettsPlus, all disclaimers, exclusions, limitations of liability and conditions in this Agreement will apply to the benefit of DVS and may be enforced directly by DVS or by D&D on behalf of DVS.

- 4.4 In order to use the SettsPlus Service the Customer must meet the following DVS access criteria:

4.4.1 the information the Customer is providing is Personal Information and the Customer has authority to disclose it to D&D;

4.4.2 the information the Customer has obtained for use with the SettsPlus Service is on the Customer's behalf, and not as an agent of any other person;

4.4.3 the Customer is a legal entity and has full power to adhere to these terms and conditions;

4.4.4 the Customer is carrying is carrying on business in Australia and is subject to the Australian Law;

4.4.5 the Customer is subject to the *Privacy Act 1988* (Cth) as applicable in the relevant circumstances;

4.4.6 the Customer has not been issued any information security of breach notification of the Office of the Australian Information Commissioner; and

4.4.7 any other relevant regulators have not commenced any suspensions, sanctions or any actions against the Customer.

- 4.5 The Customer agrees that in order to use the SettsHub Service. The Customer must meet the following criteria:

- 4.5.1 the information the Customer is providing is Personal Information and the Customer has authority to disclose it to D&D;
 - 4.5.2 the information the Customer has obtained for use with the SettsHub Service is on the Customer's behalf, and not as an agent of any other person;
 - 4.5.3 the Customer is a legal entity and has full power to adhere to these terms and conditions;
 - 4.5.4 the Customer acknowledges and agrees that the bank account verification does not guarantee nor does invalidate or return the ownership of such bank account;
 - 4.5.5 Customer is subject to the Privacy Act 1988 (Cth) as applicable in the relevant circumstances.
- 4.6 The Customer must indemnify and hold harmless D&D and each D&D Affiliate and each of their Personnel (the **Indemnified Parties**) against all Loss sustained, incurred, or suffered by each Indemnified Party as a result of, or arising from any claim, suit, demand, action or proceeding (including legal costs) by any third party where such loss or liability relates to or arises from the Customer's use of SettsHub or the bank account verification system.