

Online Now Pty Ltd

TERMS OF USE (“the TOU”)

1 YOUR ACCEPTANCE IS REQUIRED BEFORE PROCEEDING

- 1.1 YOU (A CUSTOMER OR USER) WILL BE SUPPLIED BY ONLINE NOW PTY LTD (**Online Now** or **ON**), WITH ACCESS TO AND/OR USE OF SERVICES STRICTLY SUBJECT TO YOUR ACCEPTANCE OF THESE ONLINE NOW TERMS OF USE (**the TOU**). In the TOU, **ON Services** refers to any software, hosted or other services supplied by Online Now, and may include a “customer account” and/or “user account” as defined in the TOU.
- 1.2 BEFORE YOU ACCESS OR USE ANY ON SERVICES, IT IS IMPORTANT THAT YOU READ, UNDERSTAND, AND AGREE TO THE TOU.
- 1.3 BY PROCEEDING TO ACCESS OR USE ANY ON SERVICES, YOU ACKNOWLEDGE AND AGREE TO BE BOUND BY THESE ONLINE NOW TERMS OF USE INCLUDING ANY VARIATIONS AS MENTIONED BELOW.

2 VARYING THE TOU

- 2.1 We may change the TOU from time to time without notice to you. It is important that you regularly review the most up to date version of the TOU, as it will be the terms upon which you access or use our software and services at any time.
- 2.2 The most recent version of the TOU can be seen at www.onlinenow.com.au/tou/tou.pdf. Bookmark this page to conveniently review the TOU.
- 2.3 When we vary the TOU, if you have an Online Now Account which enables you to login to an ON Service, we will include text to inform you of the change when you next login to your account after we vary the TOU.

3 VIOLATIONS OF THE TOU AND OTHER RIGHTS

- 3.1 Please help Online Now to enforce the TOU and keep our servers clean. If you see anything hosted by Online Now that seems to violate the TOU or any other person’s rights, please send details to abuse@onlinenow.com.au.

4 THE ONLINE NOW SITE, CUSTOMER ACCOUNTS, USER ACCOUNTS

- 4.1 In the TOU, **customer** means a natural person, company, partnership or other legal entity who (or whose representative) who we believe has agreed to pay Online Now’s fees and other charges for any ON Services; and **user** means a natural person who accesses or otherwise uses any ON Services.
- 4.2 The **Online Now Site** (available currently from www.onlinenow.com.au) may enable a person to obtain access to ON Services, after registering and obtaining:
 - (a) a **customer account** – which is an account for a customer; and
 - (b) a **user account** – which is an account for a user to access ON Services, and is associated with a customer account (there is often more than one user account registered for each customer account).
- 4.3 To obtain a customer account, you must complete the applicable forms accessible from the Online Now Site, including all required personal information (this will include information for at least one user account associated with the customer account).
- 4.4 In addition, Online Now may provide ON Services to people who login to a user account, and require personal information about those users in order to provide ON Services to customers with customer accounts and users accessing ON Services with associated user accounts. We treat all personal information submitted to us in accordance with our Privacy Policy, which is available online for you to read or print out. To see our Privacy Policy go to www.onlinenow.com.au/privacy.

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- 4.5 IF YOU HAVE ACCESS TO A CUSTOMER ACCOUNT THEN YOU MUST NOT USE YOUR ACCESS TO THE ACCOUNT OR YOUR USER ACCOUNT IN ANY WAY UNLESS YOU ARE EXPRESSLY AUTHORISED TO DO SO BY THE CUSTOMER TO WHOM THE CUSTOMER ACCOUNT RELATES – THIS INCLUDES VARYING EXISTING ARRANGEMENTS OR CREATING NEW ARRANGEMENTS FOR ONLINE NOW TO PROVIDE ON SERVICES TO THE APPLICABLE CUSTOMER AND ANY PERSON USING AN ASSOCIATED USER ACCOUNT.
- 4.6 Online Now reserves the right to require that each customer account be at all or any times:
- (a) linked to a valid payment method, which can be used to pay Online Now by recurring direct debit or credit transaction; and
 - (b) the subject of an authorisation form acceptable to Online Now which provides for Online Now to be paid in accordance with the TOU - for example, a direct debit or credit card authorisation from the account owner or card holder, which irrevocably authorises and directs the relevant financial institution of the customer to pay Online Now for ON Services in accordance with the TOU).
- 4.7 Using the Online Now Site, a user may access:
- (a) an issue tracker where they can log issues they are encountering with ON Services - issues are reviewed by ON and a response provided to the user, AND YOU ACKNOWLEDGE AND AGREE THAT ONLINE NOW OFFERS NO WARRANTY OR GUARANTEE THAT IT WILL RESOLVE OR TAKE A PARTICULAR TIME TO RESOLVE ANY ISSUES YOU IDENTIFY WITH ON SERVICES;
 - (b) Order information for open and recently completed orders linked to the applicable customer account;
 - (c) Invoice information including the ability to download previous invoices (Online Now may but is not required to keep invoices available for more than 12 months);
 - (d) Payment information - when made, amount paid;
 - (e) A tool to update/manage their details including user ID name and password;
 - (f) A tool to receive messages and alerts from the ON system regarding the associated account and ON Service(s);
 - (g) Information relating to the ON Service, its features as well as applicable billing and administrative processes
 - (h) A tool to send messages to ON with any queries otherwise not captured by the other means available through the Online Now Site

5 REGISTRATION DATA: YOUR OBLIGATIONS

- 5.1 As a person who receives, or applies to receive from Online Now, a customer account, a user account, other hosted software or services or ON Services, or any other goods or services we may supply from time to time, **you** agree to:
- (a) submit only true, accurate, current and complete information about yourself as prompted by the Online Now Site's registration procedure or as otherwise requested by Online Now (**the Registration Data**); and
 - (b) maintain and regularly update the Registration Data to keep it true, accurate, current and complete. This includes an obligation on you to notify us immediately if there is a change, and to modify the Registration Data to reflect the new situation (for example, if you are no longer employed by a customer of Online Now, you may lose registered user access to the Online Now Site or ON Services).
- 5.2 As part of the Registration Data, you must provide us with personal, technical, financial, and other information required by the registration process at the Online Now Site, to allow us to determine whether to enable your application or continue to allow access to the relevant (existing) account.
- 5.3 If you provide any information to us or through the Online Now Site, including any Registration Data, that is untrue, inaccurate, not current, not updated as it becomes outdated or incomplete or inaccurate, or we suspect that you have provided such information to us, we may suspend or terminate your user account and/or the associated

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customer account and/or any other user account associated with the customer account and/or refuse any and all current or future use of the Online Now Site, ON Services or any part.

- 5.4 You consent to us contacting you via the contact details you provide to us for any reason we consider appropriate, which includes to verify that the information we have received from you is accurate (but we are not obliged to so verify any information we receive).
- 5.5 Some ON Services are intended to facilitate a customer making Content available to third parties specified by the customer (**End Users**).
- 5.6 Each customer is responsible for ensuring that it does not grant access to any ON Service (including any Content using an ON Service) to any person including an End User without first ensuring the person accepts and agrees to be bound by the End User License Agreement published or otherwise provided by Online Now as applicable to the ON Service (**EULA**).
- 5.7 Unless otherwise notified by Online Now, the EULA applicable to each ON Service is the form attached at the end of the TOU.

6 ORDERS, FEES AND BILLING

- 6.1 In the TOU, **the Online Now Fee Schedule** refers to a list of ON's fees and charges for the applicable ON Services as published from time to time by Online Now.
- 6.2 All orders submitted by to Online Now using ON Services are processed by us as reasonably possible, which may often be within 24 hours of the order being submitted, but you acknowledge that *Online Now provides no warranty and does not guarantee a minimum time for to process any order.*
- 6.3 You agree that Online Now is entitled to charge the customer specified for each customer account in accordance with the Online Now Fee Schedule.
- 6.4 The customer agrees to pay Online Now's charges in accordance with the Online Now Fee Schedule.
- 6.5 For any existing ON Service agreement, Online Now may vary the Online Now Fee Schedule by notice to the affected customer. If the customer is not willing to accept the variation, then the customer may terminate the agreement with effect from commencement of the variation.
- 6.6 Unless otherwise expressly specified in the Online Now Fee Schedule, all ON Services are supplied on the following conditions:
 - (a) The minimum billing period is one month and there is no pro-rata charging (or refund of charges paid in advance) where a customer terminates a service before any specific billing period has expired.
 - (b) Fees and any other charges for ON Services are payable at least one billing period in advance.
 - (c) For the purposes of calculating fees and any other charges for an ON Service, **a month** starts at the beginning of the day on that date in a calendar month when Online Now first agrees to supply the ON Service – except if this results in a day after the 28th of the month, in which case the month starts on the first day of the following calendar month – and ends at midnight on the day before the same date in the next calendar month.
 - (d) Each new ON Service (for example, each separate web site hosted by Online Now and associated with a customer account) has its own billing period.
 - (e) Online Now is entitled to invoice separately for each ON Service in accordance with the applicable billing period – including if one customer has several ON Services.
 - (f) Where an existing ON Service is varied by adding any matter during the applicable billing period (for example, a feature or function not originally chosen for the ON Service by you), and there is an additional fee applicable to the supply of that matter (for example, the monthly fee for the ON Service is higher when that feature or function is included), then Online Now may charge the additional fee applicable to the ON Service for the entire billing period. For example, if the billing period for an

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ON Service is one month and starts on the 11th of the month, and a feature is added on the 20th of a month: then, the fees payable to Online Now for the ON Service are calculated as if the additional feature were provided for the full month starting on the 11th.

- (g) Online Now will take a snapshot of an ON Service associated with a Registered Customer at midnight of the last day of the applicable billing period for the ON Service (**Configuration Snapshot**). The Configuration Snapshot is not intended to include any change orders that are in progress but not yet completed at that time.
- (h) Each invoice issued by Online Now for a monthly billing period for an ON Service will cover:
 - (1) the charge in advance for the coming billing period, based on the Configuration Snapshot;
 - (2) a charge in arrears for any variations (additional items and features only – no refunds are made in respect of deletions) applied during that billing period (and consequently not charged in advance in the previous invoice issued by Online Now for that ON Service),and Changes not yet completed when the Configuration Snapshot is taken are to be included in the billing cycle for a succeeding billing period.
- (i) In the TOU, **Taxes** includes goods and services tax, value added tax and all other taxes, duties, imposts, withholding amounts *and other applicable revenue deductions, payments or withholdings*.
- (j) All amounts in currency refer to Australian dollars excluding any Taxes.
- (k) In addition to fees and other charges calculated in accordance with the Online Now Fee Schedule, the customer must also pay any Taxes that are payable by law relating to the supply of goods or services by Online Now.
- (l) Online Now invoices are usually payable both by direct electronic payment methods and immediately upon issue of the invoice by Online Now's systems. In other cases, Online invoices are payable within 14 days of the date on the invoice.

7 CONTENT SUPPLIED BY USER/CUSTOMERS

- 7.1 Each user is responsible for ensuring the legality, accuracy, quality and standard of all content and other data provided by the user to Online Now or uploaded using the user's user account or any ON Services (**Content**), including ensuring that the Content:
 - (a) does not breach any Law, regulation or Advertising Standard;
 - (b) is not defamatory or indecent;
 - (c) is not false, misleading or deceptive or likely to mislead or deceive; and
 - (d) complies with all applicable content guidelines of all relevant telecommunications carriers and Internet Service Providers,and the customer with which the user's account is linked must also ensure the user complies with the above obligations.
- 7.2 Despite any other provisions, Online Now may at any time without notice (and without any liability to the customer or user linked to the ON Service or any other person), modify, suspend or terminate any ON Service which provides access to any Prohibited Content.
- 7.3 Each user warrants that all right, title and interest in the Content is owned or lawfully licensed to the user or the customer with which the user's user account is linked.
- 7.4 You grant Online Now the right (including the right to sublicense) to use, reproduce, adapt, distribute or communicate to the public the Content solely to make the Content available through the ON Services.
- 7.5 You will keep Online Now indemnified against any claim, expense, cost, loss or damage received, suffered or incurred by Online Now which determines or alleges that the use by Online Now of Content constitutes an infringement of another person's Intellectual Property Rights. If Online Now wishes to claim under this indemnity it may (but is not obliged to):
 - (a) notify the you of any infringement, suspected infringement or alleged infringement (Claim) of another person's copyright;

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- (b) give you the option to conduct the defence of the Claim (including negotiating any settlement or compromise at any stage);
- (c) at your cost, provide you with reasonable assistance in conducting any defence of the Claim; and
- (d) permit you to: (i) modify, alter or substitute the Content, at your cost, so that it is not infringing; (ii) procure for Online Now the right to use the material as contemplated under the relevant agreement with you free from any claim; or (iii) otherwise obtain the rights to perform its obligations under the relevant agreement with you.

8 FAILING TO PAY FOR AND REACTIVATING ONLINE NOW SERVICES

- 8.1 If any Online Now invoice is not paid by the date due in accordance with the TOU, then Online Now may but is not required to do any of the following:
- (a) notify the customer by email to the address in the Registration Data for the customer;
 - (b) give the customer a short 'grace' period (for example, not more than 5 business days) to pay the invoice;
 - (c) suspend or terminate any or all ON Services linked to the customer account (in addition to the ON Services to which the invoice relates);
 - (d) continue to allow the customer account to be accessed by linked user accounts in order to allow payments to be made to Online Now;
 - (e) maintain (and Online Now may delete) all ON Services linked to the applicable customer account, including all content uploaded by the customer or users;
 - (f) charge interest on the balance of all amounts due but unpaid by the customer to Online Now (interest to be compound interest, calculated daily from the due date to the date paid at the rate prescribed from time to time as payable in respect of unpaid judgments for monetary sums issued by the Supreme Court of New South Wales) and also all legal and other costs of claiming or recovering payment; and
 - (g) consider itself to be relieved of all further obligations to the customer and to consider all or any of its agreements with the customer terminated.
- 8.2 If Online Now suspends or terminates an ON Service and later re-activates the ON Service in whole or part, the customer must pay ON a reactivation fee. Unless otherwise specified in the Online Now Fee Schedule, the reactivation fee for an ON Service is equal to the fees payable for one billing period for those ON Services.

9 REFUND POLICY

- 9.1 It is the policy of Online Now not to refund any amount, including amounts paid in advance for ON Services, except where there is a legal obligation to do so which cannot lawfully be excluded.
- 9.2 Where Online Now cannot exclude an obligation to refund an amount, Online Now is obliged to refund not more than the lowest amount required by law.

10 ONLINE NOW INFORMATION NOT TO BE DISCLOSED

- 10.1 You may receive or have already received a user ID and password to access a user account (some user accounts allow access to a customer account) or other information via the Online Now Site.
- 10.2 By using your user ID and password to login via the Online Now Site, you may be able to access information and/or content (including without limitation information about Online Now, ON Services and content we make accessible to our customers' personnel and customers) being information/or content that is not made generally accessible to the public (**Online Now Information**). You agree that:
- (a) you are responsible for maintaining the confidentiality of your password and account and all ON Information you receive, and you must not disclose any of that information to any person for any purpose unless permitted under the TOU;

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- (b) except where required by law, or where the ON Information is generally available other than by a breach of the TOU, you may disclose the ON Information you receive only to a person employed by your same employer, and only where:
 - (1) the person has first agreed to use and keep the ON Information confidential as required under this Schedule; and
 - (2) the person needs to know the information in order to determine whether or not your employer will purchase goods or services from us;
- (c) you acknowledge that we charge for access to certain ON Information by reference to authorised user numbers; and we will suffer losses and damage where you allow any other person to access or receive any of the ON Information except as allowed under the above provisions in the TOU;
- (d) you must not use the ON Information except to determine whether or not to purchase goods or services from us, or to access training information or services we provide to you and for which your employer has paid us an amount agreed with us (in that case, other legal provisions will apply, and these TOU are not intended to reduce our rights under those provisions);
- (e) you are fully responsible for all activities that occur under your password or account and must immediately notify Online Now in writing of any unauthorised use of your password or account or any other breach of security of which you become or ought to have become aware; and
- (f) except as expressly authorized by Online Now, you must not create more than one user account at the Online Now Site.

11 MODIFYING ONLINE NOW SERVICES

11.1 YOU ACKNOWLEDGE AND AGREE THAT:

- (a) Online Now makes no representations and gives no guarantee that an ON Service will be available, or will continue to be available, for any period of time; and
- (b) Online Now reserves the right to modify any ON Service to the maximum extent permitted by law, which may include a right to:
 - (1) refuse to provide an ON Service at all - for example, if Online Now receives a judicial or other legally compelling order to cease providing the ON Service, ON will comply with its legal obligations, or if Online Now's cost basis or commercial priorities alter for any reason;
 - (2) modify an ON Service (including any Content made available using an ON Service) in any way that is otherwise lawful - for example, if Online Now supplies an ON Service to host a web site for a customer, and receives a notice that one page of the hosted web site is an unlawful infringement of copyright due to Content from the customer's user accounts, then Online Now might in some situations be in a position to decide to take down the objectionable page and leave other pages in the web site unchanged.

12 INFORMATION AT THE ONLINE NOW SITE AND LINKED SITES

- 12.1 We make no representations as to the accuracy of the information presented at or via the Online Now Site that has not expressly originated with us. Unless the information is noted as expressly originating with us, the information presented at or via the Online Now Site is deemed for the purposes of the TOU not to originate with us. Online Now does not prepare the content of information that is contained on sites that are linked to the Online Now Site (***the Linked Sites***). We take no responsibility for the content or any other aspect of Linked Sites. Any links at the Online Now Site are for information only, and are not an endorsement of the content at the Linked Sites.
- 12.2 YOU AGREE THAT YOU MUST EVALUATE, AND BEAR ALL RISKS ASSOCIATED WITH THE USE OF ALL INFORMATION AT OR ACCESSIBLE FROM THE ONLINE NOW SITE AND THE LINKED SITES, INCLUDING ANY RELIANCE ON THE ACCURACY, COMPLETENESS, OR USEFULNESS OF IT.

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- 12.3 By using the Online Now Site you agree that to the extent permitted by law Online Now and any of its subsidiary or related or affiliated companies or any of their employees or agents are not responsible to you or any other person for:
- (a) the accuracy or otherwise of the information displayed or omitted from the Online Now Site or Linked Sites;
 - (b) any person's reliance on information available or omitted from the Online Now Site or Linked Sites;
 - (c) any loss in connection with the use of the Online Now Site or any Linked Site.

13 DEALINGS WITH THIRD PARTIES

- 13.1 Each customer, user and End User acknowledges and agrees with Online Now that:
- (a) all communications or dealings with, or participation in promotions of, third parties found at or via the Online Now Site or any ON Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and the relevant third parties
 - (b) Online Now is not responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such third parties in, on or through the ON Services.

14 ONLINE NOW'S PROPRIETARY RIGHTS

- 14.1 Except as expressly provided in the TOU, ON and the customer each acknowledges and agrees that: (a) it does not receive any rights to use the Intellectual Property Rights of the other party; (b) neither party may use or permit others to use the Intellectual Property Rights of the other party for any purpose, including promotional purposes, without the prior written approval of that other party; (c) any Intellectual Property Rights (including a compilation under the Copyright Act 1968) created by Online Now in the provision of the ON Services or from the Software vests exclusively with Online Now.
- 14.2 You acknowledge and agree that:
- (a) the Online Now Site and any necessary software used in connection with the Online Now Site and to provide the ON Services (**the Software**) contain proprietary and confidential information that is protected by applicable intellectual property and other laws; and
 - (b) the information presented to you via the Online Now Site is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws.
- 14.3 Except as expressly authorised by Online Now in writing, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Online Now Site or the Software, in whole or in part.
- 14.4 Online Now grants you a personal, non-transferable and non-exclusive right and license to use the Software as made available to you by Online Now using the ON Services, solely for the purpose of using the functionality described in relation to each ON Service which you are authorised to use or access (for example, some ON Services provide tools allowing our customer to change the appearance of a web site we host for the customer, and some ON Services facilitate ecommerce transactions or communication via email/newsletter with users who register with a web site we host for the customer – but features offered with and by ON Services change from time to time as notified by Online Now; provided that you do not (and do not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software. Online Now may terminate the license in this clause 14.4 at any time without cause or notice to you (for example, but without limitation, Online Now will normally do so if we cease to supply an ON Service).
- 14.5 You agree not to access the Online Now Site by any means other than through the home page interface that is provided by Online Now for use in accessing the site

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www.onlinenow.com.au. You must have our prior written permission to link to any information in the Online Now Site.

15 DISCLAIMER OF WARRANTIES, EXCLUSIONS AND LIMITATIONS

- 15.1 You expressly understand and agree that, to the maximum extent legally permitted:
- (a) ONLINE NOW EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND IN RELATION TO USE OF THE ONLINE NOW SITE AND ON SERVICES AND INFORMATION ACCESSIBLE FROM THE ONLINE NOW SITE AND ON SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT; AND
 - (b) your use of the Online Now Site and ON Services are at your sole risk;
 - (c) the Online Now Site and ON Services are provided on an "as is" and "as available" basis; and
 - (d) ONLINE NOW MAKES NO WARRANTY THAT:
 - (1) THE ONLINE NOW SITE OR ANY ON SERVICES WILL MEET YOUR REQUIREMENTS;
 - (2) THE ONLINE NOW SITE OR ANY ON SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE;
 - (3) RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE ONLINE NOW SITE OR ANY ON SERVICES WILL BE ACCURATE OR RELIABLE;
 - (4) THE QUALITY OF ANY PRODUCTS, SERVICES, OR INFORMATION PURCHASED OR OBTAINED BY YOU THROUGH THE ONLINE NOW SITE OR ANY ON SERVICES WILL MEET YOUR EXPECTATIONS; AND
 - (5) ANY ERRORS IN THE SOFTWARE, THE ONLINE NOW SITE OR ANY ON SERVICES WILL BE CORRECTED;
 - (e) any material downloaded or otherwise obtained through the use of the Online Now Site is done at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of any such material;
 - (f) no advice or information, whether oral or written, obtained by you from Online Now or through or from the Online Now Site shall create any warranty not expressly stated in the TOU.
- 15.2 You understand and agree that, subject to the TOU, Online Now, its related corporations and the officers, employees and agents of each is not liable for any damages, economic or other loss or damage whether direct, indirect, incidental, special, consequential or exemplary and even if Online Now has been advised of the possibility of such damages, arising out of any breach of any implied or express term, condition or warranty or suffered as a result of the negligence of any of them (including without limitation loss of profits, goodwill, use, data or other intangible losses) or in respect of:
- (a) the use of, or the inability to use the Online Now Site or any ON Services;
 - (b) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into via or from the Online Now Site or any ON Services;
 - (c) unauthorised access to or alteration of your transmissions or data;
 - (d) any reliance of any third party in relation to any ON Services; or
 - (e) any other matter relating to the Online Now Site or any ON Services.
- 15.3 Some States do not allow the exclusion of certain provisions or the limitation or exclusion of liability (for example, for incidental or consequential damages), so some of the limitations in the TOU may not apply to you.
- 15.4 To the maximum extent legally permitted, the liability of Online Now for any breach of a provision which must be implied into the TOU (for example, by the Trade Practices Act 1974 which applies in Australia) is limited (at the option of Online Now) to the supply of the

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- services again or the payment of the cost of having the services supplied again; or the supply of the goods again or the payment of the cost of having the goods supplied again.
- 15.5 To the maximum extent legally permitted, the total liability of Online Now in respect of an ON Service in any period of 12 months (starting from any date) will not exceed the total actually received by Online Now from the customer for supplying that ON Service for that 12 month period.

16 TRADE MARK INFORMATION

- 16.1 The Online Now name and distinctive Online Now logo are trade marks of Online Now and the other trade marks which appear at the Online Now Site or are displayed using the ON Services are the properties of third parties (***the Trade Marks***). You agree not to display or use or link to the Online Now name and distinctive Online Now logo or the Trade Marks in any manner without prior permission from Online Now or the relevant third party owner.
- 16.2 Online Now is in no way affiliated with or authorised by the owners of the Trade Marks.

17 COPYRIGHT

- 17.1 We respect the intellectual property of others, and we ask our customers and their users and End Users to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, please let us know.
- 17.2 When using the Online Now Site you may provide us with information about yourself or other matters. Subject to our Privacy Policy in relation to personal information under the Privacy Act 1988 (Cth), you grant us rights to use in any way or otherwise exploit all of this information, and all information derived or generated from it, in all existing or future media. These rights include without limitation the right to search the information, and, consistent with our privacy policy, to modify repackage or market it to anyone for any reason. As used in this paragraph, ***information*** includes but is not limited to data, text, photographs, drawings, sound recordings, feedback, and any other information or data displayed or presented by you on or in respect of your use of the Online Now Site.

18 TERRITORIAL RESTRICTION, GOVERNING LAW AND JURISDICTION

- 18.1 The Online Now Site and ON Services are provided for access only by users located within or who agree to be subject to the laws of the Commonwealth of Australia (***the Territory***) and the personal jurisdiction of the Courts of New South Wales.
- 18.2 Online Now expressly does not authorise any person to access the Online Now Site, any ON Services, or any part of them, from any location outside the Territory.
- 18.3 The TOU and the relationship between you and Online Now shall be governed by the laws of the Territory and the State of New South Wales (***NSW***) without regard to its conflict of law provisions.
- 18.4 You and Online Now agree to submit to the personal and non-exclusive jurisdiction of the courts located within NSW.

19 GENERAL/MISCELLANEOUS

- 19.1 The TOU constitute the entire agreement between you and Online Now, and governs your use of the Online Now Site and ON Services, superseding any prior agreements between you and Online Now. You also may be subject to additional terms and conditions that may apply when you use affiliate services, or third party content/data, software or hardware.
- 19.2 Headings in the TOU are for convenience only and do not affect interpretation.
- 19.3 The failure of Online Now to exercise or enforce any right or provision of the TOU must not be treated as a waiver of the right or provision.
- 19.4 If any provision of the TOU is found by a court of competent jurisdiction to be invalid, then the provision is deemed deleted but the court should try to give effect to the parties' intentions as reflected in the provision, and the other provisions of the TOU remain in full force and effect.

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- 19.5 You agree that regardless of any statute or law to the contrary, except to the extent that this would be unlawful (and then only to the minimum extent to become lawful), any claim or cause of action against Online Now or any of our officers, employees, or agents arising out of or related to use of the Online Now Site or the TOU must be filed within one year after the claim or cause of action arose, or be forever barred.
- 19.6 You agree that there is no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship between Online Now and any customer or user simply by virtue of the Online Now Site or creation or use of a customer or user account at or by means of the Online Now Site.
- 19.7 Your rights and obligations (including those of each customer and each user) under the TOU are personal and may not be assigned or dealt with in any way without the permission of Online Now, and permission may be withheld in Online Now's absolute discretion.