

SchoolBench® Licence and Support Agreement

By accepting Parashift's Proposal for SchoolBench, and/or by accessing or using this Software (whichever is first), the School agrees to be bound by these terms as they appear as part of the Software from time to time

Background

- A. Parashift is in the business of supplying software, business consultancy services and software development and support services.
- B. The School has requested a licence to use the SchoolBench Software and to access the Project Services and Support Services. The School may also request Parashift provide Additional Services from time to time.
- C. Parashift agrees to provide the School a downloaded copy of the Software, to licence the Software to the School, and to provide the Services to the School, in accordance with these terms and conditions.

1. Defined terms & interpretation

1.1 Defined terms

In this Agreement:

Additional Services means additional services requested by the School which Parashift agrees to provide under clause 4.5.

Agreement means this agreement.

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

Business Day means a day that is not a Saturday, Sunday or an Australian national public holiday.

Business Hours means from 8.30am to 5.00pm (ACST) on a Business Day.

Commencement Date means the date of acceptance of these terms or the date of delivery of the Software to the School (whichever is first).

Confidential Information of a party (**Disclosing party**) means all information disclosed by the Disclosing party to the other party or otherwise acquired by the other party which is marked as confidential, treated by the Disclosing party as confidential or otherwise by its nature confidential, including:

- (a) any information relating to the business, business associates, financial affairs, products, services, suppliers or clients of the Disclosing party;
- (b) the fact that the parties will have or are having discussions and the substance of such discussions;
- (c) all notes and other records prepared by the other party based on or incorporating information referred to in paragraphs (a) or (b); and
- (d) all copies of the information, notes and other records referred to in paragraphs (a), (b) or (c),

but excluding information that:

- (e) the other party creates (whether alone or jointly with any third person) independently of the Disclosing party; or

- (f) that is public knowledge (otherwise than as a result of a breach of confidentiality by the other party or any of its permitted disclosees).

Content means the photographic images and movie file formats supported by the Software and uploaded by a User.

Damages means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis (whether incurred by or awarded against a party)) and consequential and indirect losses and damages including those arising out of any third party claim.

End users means parents/guardians of School students who facilitate Transactions to purchase Content via Parent Portal functionality of SchoolBench.

Fees and Charges has the meaning in clause 5.1.

Force Majeure Event means, in relation to a party, anything outside that party's reasonable control, including:

- (a) any act or omission of a third person (except for an act or omission of the party's Personnel);
- (b) fire, flood, earthquake, elements of nature or act of God; or
- (c) riot, civil disorder, rebellion or revolution.

Insolvency Event means any insolvency-related event suffered by a party, including where:

- (a) the party ceases to carry on business;
- (b) the party ceases to be able to pay its debts as they become due;
- (c) the party disposes of the whole or any substantial part of its assets, operations or business (other than in the case of a solvent reconstruction or reorganisation);
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of the party's assets, operations or business;
- (e) any step is taken to enter into any arrangement between the party and its creditors (other than in the case of a solvent reconstruction or reorganisation); or
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator, or other like person of the whole or part of the party's assets, operation or business.

IP Rights means all intellectual property rights, including the following rights:

- (a) patents, copyright, rights in circuit layouts, designs, moral rights, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have confidential information kept confidential;

- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist anywhere in the world (including Australia),

whether or not such rights are registered or capable of being registered.

Licence Fee has the meaning in clause 5.1(a).

Materials means any deliverable material or document:

- (a) made available by Parashift for use with the Software, including any User Manual or instructions (whether made available online or otherwise); or
- (b) created by Parashift in providing the Services.

Parashift means Parashift Pty Ltd ACN 163 535 886, notice details for which are set out in clause 17.1.

Parashift IP has the meaning in clause 3.1.

Parent Portal means the functionality within the Software by which the School may upload and publish Content for end users to view, purchase and/or download.

Permitted Purpose means:

- (a) use of the Software by a User strictly in accordance with this Agreement for the purposes of the School conducting its ordinary business;
- (b) use of the Parent Portal functionality within the Software to facilitate Transactions by end users for the purchase of Content from the School's website/IT systems; and
- (c) any other purpose described in the relevant Proposal.

Personnel means, in relation to a party, the officers, employees, contractors and agents of the party and any related body corporate of it.

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

Project Services has the meaning in clause 4.2.

Proposal means the Parashift document labelled Proposal, Quote or Scope of Work (or such other document, however labelled) detailing the Software to be licensed to the School and the Services to be performed by Parashift under this Agreement, as amended or replaced from time to time.

School means the school named and described in the Proposal as the customer.

SchoolBench means the software known as SchoolBench®, being a digital asset management solution by which the School may:

- (a) manage and store photographic images and movie files;
- (b) upload and publish Content for end users to view; and
- (c) facilitate, via the Parent Portal functionality, Transactions by end users to purchase Content from the School.

Security Vulnerability has the meaning in clause 9.3.

Services Fee has the meaning in clause 5.1(b).

Services means the Project Services (if any), the Support Services and the Additional Services (or any of them as the context requires).

Software means the SchoolBench software, as specified in the relevant Proposal.

Subscription Period means the period specified in the Proposal, or where no period is specified, the term of 12 months.

Support Services means the provision by Parashift to the School of a reasonable level of support services (by e-mail and telephone only) in respect of the Software.

Term has the meaning in clause 2.

Third Party Materials means any software, documentation, tools, materials and other items in which a third party holds IP Rights, including those:

- (a) described in the Proposal as being owned by a third party and made available under licence for this Agreement; and
- (b) delivered or made available to the School for this Agreement (including because those materials are required for or incidental to the Software or the outcome of any Services).

Transaction means any payment transaction that occurs via the Parent Portal functionality within the Software, where Content is purchased by an end user.

Transaction Fees has the meaning given in clause 5.1(c).

Update has the meaning given in clause 3.2(c).

User means the School's Personnel who have access to the Software.

User Manual means the manual provided to the School by Parashift with instructions and guidelines for using SchoolBench in the correct and authorised manner.

VPN means virtual private network.

Wilful Misconduct means any act or failure to act (whether sole, joint or concurrent) by any person or entity that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences such person or entity knew, or should have known, such act or failure would have on the safety or property of another person or entity.

1.2 Interpretation

In this Agreement and each Proposal, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
- (d) a reference to **dollar** or **\$** is to Australian currency, except as otherwise stated;

- (e) a reference to time is to time in Adelaide, Australia, except as otherwise stated;
- (f) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (k) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (n) headings are for ease of reference only and do not affect interpretation.

2. Term of the Agreement

This Agreement commences on the Commencement Date and continues for the Subscription Period, which is automatically renewable for successive periods equal to the Subscription Period, on each payment of the Licence Fee under clause 5.1, until terminated under clause 14.

3. Software licence

3.1 Licence

- (a) Subject to payment of the Licence Fee, Parashift grants to the School a non-exclusive, non-transferable, revocable licence to install, access and use the Software and any Materials (**Parashift IP**) for the Permitted Purpose during the Term and otherwise in accordance with this Agreement.
- (b) The Permitted Purpose is specific to the site specified in the Proposal, and is not limited to a particular number of Users or computers.

3.2 Access

- (a) On receipt of payment of the Licence Fee (and any other fees specified under this Agreement), Parashift will provide the School with access to the Software and the Materials, and a licence token required for Software installation and use.
- (b) The School will receive the then-current version of the Software only.
- (c) If applicable, Parashift may, from time to time, make available to the School any patch, fix, update, software or computer program produced primarily to overcome defects or errors in the Software or to extend, refine or replace existing functionality (**Update**) for the Software, free of charge. Parashift may nominate that any Update is mandatory, in which case the School must install that Update without delay.
- (d) The School acknowledges and agrees it is responsible and liable for the acts and omissions of each User in connection with the Software and this Agreement as if they were the School's own acts and omissions.

3.3 Third Party Materials

The School acknowledges that the Software incorporates Third Party Materials which are licensed to Parashift.

4. Providing Services

4.1 Parashift to provide Services

- (a) Parashift will provide Services for/in connection with the Software in the form and manner described in the Proposal and otherwise subject to this Agreement.
- (b) The Software and Services provided under this Agreement will:
 - (i) be provided with due care and skill and to a professional standard;
 - (ii) comply materially with the description provided in the Proposal; and
 - (iii) be fit for the purposes described in the Proposal.
- (c) The Personnel employed or engaged by Parashift to provide the Services will be suitably experienced and qualified to provide those Services.

4.2 Project Services

- (a) If specified by the School in the Proposal, Parashift will provide the following project-related services to the School during the Term (**Project Services**):
 - (i) installation of the Software on School hardware;
 - (ii) Active Directory and Student Management System integration (if required); and
 - (iii) initial online training in use of the Software including setting up customised taxonomy and permissions.

- (b) At its discretion, Parashift may provide the Services either onsite at the School's premises or remotely via a VPN.

4.3 Support Services

- (a) Subject to clause 4.3(b), during the Term, Parashift will provide the Support Services to the School, including advice on technical issues, via Parashift's support portal.
- (b) The School acknowledges and agrees it must use its best endeavours to provide in-house support services to all Users by its own Personnel, and to address any support issue internally using these resources before requesting assistance from Parashift. This level of in-house support will include determination and/or resolution of the School's policy and procedural issues for use of the Software, issues associated with the basics of operating/using the Software and other non-complex use questions, establishing whether technological issues with use of the Software are caused by any failure or shortcoming of the School's infrastructure, such as bandwidth/WiFi connection issues, browser security issues, user basic training issues.
- (c) Parashift will use its best endeavours to respond to issues raised by the School by the next Business Day.
- (d) The availability of Support Services is subject to the fair use requirements set out in clause 4.4.

4.4 Fair Use

- (a) Parashift seeks to protect the quality and availability of the Support Services for the benefit of all its clients/software users and to ensure that all its clients/software users receive fair and equitable access to those services. If a client places high demands on the Support Services, then this may affect the timely availability of the Support Services for other clients.
- (b) As a general guide, the School may seek and be provided with Support Services (in aggregate) up to 2 hours per month. The School's use of the Support Services beyond this amount may, in Parashift's sole discretion, be deemed to be unreasonable or excessive, having regard to the School's use of Support Services as a whole over the Term.
- (c) If Parashift determines (acting reasonably) that the School has exceeded its Support Services allowance under this clause, the provision of any further support services will be subject to clause 4.5.

4.5 Additional Services

- (a) During the Term:
 - (i) the School may request Parashift to provide it with Additional Services; or
 - (ii) Parashift may determine that a request for Support Services which exceeds the Fair Use policy is deemed a request by the School for Additional Services.

- (b) To the extent Parashift agrees to provide the Additional Services, then unless otherwise agreed in writing (including if specified in any proposal provided by Parashift), the Additional Services are provided:

- (i) subject to a support service package offered by Parashift; or
- (ii) on a "time and materials" basis at Parashift's then-prevailing standard rates.

4.6 School's obligations

To the extent required for Parashift to perform the Services described in this clause 4, the School:

- (a) must give Parashift access that it reasonably requires (including by a functional VPN) to:
 - (i) the Content (subject always to clause 8); and
 - (ii) the Users and the School's Personnel;
- (b) must, in Parashift's provision of the Services, provide unhindered, uninterrupted access to the School's hardware and systems, including to provide remote access to its computer systems in a form and manner reasonably nominated by Parashift for the purpose of Parashift providing remote support (if Parashift elects to do so); and
- (c) must ensure that the School's equipment and products used by Parashift in connection with the Services will be reasonably fit for the purposes for which they are used.

4.7 School to assist

The School must give Parashift any assistance reasonably required in order to provide the Services (excluding financial assistance), including by ensuring:

- (a) the activation (or re-activation) and availability to Parashift of a functional VPN for the duration of the Services; and
- (b) that the School has updated to and is operating the then-current version of the Software,

if requested by Parashift to do so.

4.8 Delay or failure in School performing its obligations

- (a) Any delay or failure by the School in performing its obligations under this Agreement may result in delay, inability of or refusal by Parashift to provide the Services.
- (b) If there is a delay or failure by the School in performing its obligations under this Agreement:
 - (i) Parashift is not responsible for any delay, inability or refusal to provide the Services as a consequence; and
 - (ii) if Parashift agrees to provide the Services, the School must pay any additional costs reasonably incurred by Parashift because of any delay or failure by the School in performing those obligations.

4.9 Postponement of delivery dates

If Parashift cannot meet delivery dates or other timelines specified in the Proposal, it will provide written notice to the School and the Proposal will be varied in accordance with that notice once provided.

5. Payment

5.1 Fees and Charges

The School must pay to Parashift:

- (a) the Software licence fee specified in the Proposal (**Licence Fee**);
- (b) the fees specified in the Proposal for provision of the Project Services (**Services Fee**) (if any);
- (c) the fees specified from time to time for facilitating Transactions via Parent Portal, whether on a 'per-Transaction' basis or otherwise (**Transaction Fees**) (if any); and
- (d) any other amount agreed by the parties from time to time for the provision of other Services during the Term,

(together, **Fees and Charges**).

5.2 Invoicing

- (a) Parashift may invoice the Licence Fee on or prior to the Commencement Date and then at least 30 days before each expiry date thereafter.
- (b) If a Services Fee is payable, Parashift will invoice that amount at the same time as the Licence Fee or at the time or times specified in the Proposal.
- (c) If Transaction Fees are payable, Parashift will invoice the School for payment at the times specified in the Proposal.
- (d) If a charge for:
 - (i) Support Services is payable (because the School has exceeded Fair Use policy under clause 4.4); or
 - (ii) Additional Services are payable under clause 4.5,

Parashift will invoice the School for payment on a 'time-and-materials' basis (or as otherwise agreed by the parties) on or after completion.

5.3 Payment by the School

- (a) The School must pay each invoice in full within 14 days after the date of the invoice via electronic funds transfer to the bank account nominated by Parashift in writing.
- (b) Transaction Fees are payable at the time of the Transaction, and as otherwise specified in the Proposal.

5.4 Interest on overdue amounts

- (a) If the School does not pay an invoice in full by its due date, Parashift may charge interest on any overdue amount at the rate of 2% above the prime lending rate of the Parashift's principal banker, calculated daily, from the due date until the date of payment.

- (b) The parties acknowledge and agree that any interest paid or payable under this clause 5.4 is not a penalty but a reasonable pre-estimate of the loss incurred by Parashift because of the School failing to comply with clause 5.3.

5.5 Adjustment of Fees and Charges

The School acknowledges and agrees that, on each anniversary of the Commencement Date, the Fees and Charges may increase in line with the increase in the capital city average Consumer Price Index for Australia, as published by the Australian Bureau of Statistics, over the previous year, or as otherwise notified to the School, by Parashift in writing.

5.6 Pro-rata refund

- (a) Subject to clause 11.1, if this Agreement is terminated by Parashift under clause 14.1, Parashift will provide the School with a pro-rata refund of the Licence Fee calculated by reference to the period until the next anniversary of the Commencement Date, except for any amount equal to any subscription fees paid by Parashift for Third Party Materials that are not refundable.
- (b) If this Agreement is terminated by the School under clause 14.1(a), then:
 - (i) the School must promptly remove the Software from the School's hardware; and
 - (ii) Parashift will provide the School with a full refund of the Licence Fee paid to date (subject to the School demonstrating to Parashift's reasonable satisfaction that it has complied with clause 5.6(b)(i)).

5.7 Failure to pay

If the School does not pay an amount due under this Agreement on the due date, then from that due date:

- (a) the School's access to the Software will revert to 'read only' or be suspended entirely (at Parashift's discretion); and
- (b) Parashift may immediately suspend provision of Services to the School,

until all outstanding amounts are paid. This is without prejudice to any other remedies Parashift may have in relation to this Agreement at law or otherwise.

6. Accounting and audit rights

- (a) The School must keep proper, accurate and complete books and records relating to:
 - (i) the Transaction Fees payable to Parashift under this Agreement; and
 - (ii) Transactions entered into with end users.
- (b) The School's books and records kept under clause 6(a) must contain such information as is necessary to enable the amounts due and payable to Parashift to be readily identified and audited, together with the School's compliance with this agreement.
- (c) At Parashift's written request, the School will, within 14 days, make available to Parashift (or its nominee)

during normal business hours the books and records referred to in clause 6(a) and will permit those books and records to be examined by Parashift (or its nominee).

- (d) To the extent that the audit discloses a discrepancy in the amount of Transaction Fees paid or payable to Parashift, the parties agree to remedy that discrepancy within 30 days of the discrepancy being identified.

7. Conditions of use

7.1 Conditions

The School:

- (a) will be solely responsible for the use, supervision, management and control of the Software, and must not authorise use by, or disclosure to, any persons other than the Users without Parashift's prior written consent;
- (b) must not use the Software otherwise than in accordance with the terms of this Agreement;
- (c) must (and must procure that the Users) use and access the Content in accordance with all applicable laws;
- (d) must not use the Software for any unlawful purpose;
- (e) must comply with Parashift's directions from time to time in relation to use of the Software;
- (f) must provide end users with any notice or communication required to protect Parashift's and/or the School's interests, or to give effect to this Agreement;
- (g) must maintain the minimum requirements for the operation of the Software as specified in the Materials or as otherwise notified by Parashift from time to time (including by configuring the Software and any supporting hardware or systems to have appropriate security settings, access controls and image verification processes, to give effect to this Agreement);
- (h) must ensure that Users use the Software in accordance with the User Manual or as otherwise notified by Parashift from time to time;
- (i) must not (subject only to clause 7.1(s)) alter, modify, tamper with, decompile, disassemble, reverse engineer or attempt to do any of those things to the Software, or otherwise attempt to derive the Software source code from the object code except to the extent permitted by applicable law or treaty;
- (j) must not alter, delete or interfere with any copyright, trade mark notice or other legal notice or terms of use appearing as part of the Software;
- (k) must not reverse engineer, disassemble, or decompile any software forming part of the Software, unless permitted to do so by law, and then only strictly in accordance with the provisions or terms under which that right is given by such law;

- (l) must not authorise or otherwise permit use of the Software (or any part of it) by any person who is not a User licensed to use the Software under this Agreement;
- (m) uses the Software at its own risk;
- (n) is solely responsible for the Content uploaded by a User and must ensure that it is not misleading, deceptive, fraudulent, defamatory, obscene or otherwise illegal;
- (o) warrants that it has the rights to use the Content, including to upload the Content to the Software, and that such actions will not infringe the IP Rights of any third party (including any third party photographer of any Content);
- (p) must manually verify the accuracy of any Content meta tags generated by the Software
- (q) is solely responsible for protection and back-up of the Content used in connection with the Software, and Parashift will not be liable for any resulting loss of Content to the extent such protections and back-up are not actioned by the School;
- (r) is solely responsible for obtaining parental/guardian or other third party consent for the School's use of the Content, and managing such Content within the Software; and
- (s) acknowledges and agrees that Parashift is not liable for any uploading, publication, storage or sale of Content in error by the School or resulting from the School's application and/or use of the Software (whether mistakenly, intentionally or as a result of Wilful Misconduct).

7.2 Configuration

The School may reasonably install, configure and adapt the Software for the purposes of operating and optimising the Software for its own system(s), but acknowledges and agrees that any assistance from Parashift required to remedy errors caused by the School in the course of doing so will be at the School's expense.

8. IP Rights

8.1 Ownership of Software

The parties acknowledge and agree that:

- (a) all IP Rights in the Parashift IP are owned by, or licensed to, Parashift; and
- (b) this Agreement does not transfer to the School any IP Rights in the Parashift IP, and the School must not represent that it owns those rights.

8.2 Ownership of Content

- (a) All IP Rights in all Content are owned by the School (or if not owned, then the School has obtained the owner's lawful authority to use the Content).
- (b) This Agreement does not transfer to Parashift any IP Rights in the Content, and Parashift does not represent that it owns those rights.

- (c) During the Term, the Content resides at all times on the School's hardware.
- (d) The School grants to Parashift a non-exclusive, revocable licence to use the Content during the Term solely for the purpose, and to the extent necessary, to provide access to the Software and perform the Services in accordance with the Agreement.
- (e) Parashift only has rights to access Content as set out in this Agreement, and may access Content:
 - (i) via the School's hardware systems; or
 - (ii) remotely via a VPN,
 in order to perform its obligations under this Agreement.

8.3 Modifications

If the School configures, adapts or modifies the Parashift IP under clause 7.2, or does so without Parashift's prior written consent and in breach of this Agreement, (together **Modifications**) then:

- (a) Parashift owns any IP Rights in the Modifications;
- (b) the School assigns to Parashift any copyright and other IP Rights which would, apart from this clause 8.3, have been owned by the School; and
- (c) those Modifications are included in the licence granted under clause 3.1 from when they are made, except for Modifications made to any Third Party Materials, the ownership of which will be determined in accordance with the terms under which those Third Party Materials are licensed to Parashift.

8.4 Infringement Claims relating to Parashift IP

If someone makes a claim against the School that any Parashift IP infringes their IP Rights, the School must:

- (a) give Parashift:
 - (i) notice of the claim;
 - (ii) full control over any proceedings and negotiations conducted, and full authority to reach any settlement; and
 - (iii) any assistance required by Parashift to defend the claim; and
- (b) not make a representation or public statement about the claim without first getting Parashift's written consent.

8.5 Remedy

- (a) If someone makes, or Parashift reasonably believes someone is likely to make, a claim against the School that any Parashift IP infringes their IP Rights, Parashift will at its election:
 - (i) use reasonable efforts to secure the rights for the School to use the relevant Parashift IP free of any claim or liability for infringement;
 - (ii) replace or modify the relevant Parashift IP so that the School does not infringe the rights; or

- (iii) remove the relevant Parashift IP from the Services.

- (b) To the extent permitted by law, if a claim is made that the Parashift IP infringes the IP Rights of a third party, clause 8.5(a) provides the sole and exclusive remedy of the School.

8.6 Infringement Claims relating to Content

If someone makes a claim against Parashift that any Content or a Transaction infringes their IP Rights, the School must:

- (a) release and indemnify Parashift against that claim;
- (b) if requested by Parashift to do so, take reasonable steps to defend or settle that claim (as appropriate in the circumstances);
- (c) provide all information and assistance reasonably requested by Parashift in respect to that claim;
- (d) follow any reasonable directions given by Parashift in respect to that claim, including but not limited to directions about:
 - (i) removing the relevant Content from the Software; and/or
 - (ii) reversing the relevant Transactions; and
- (e) not make a representation or public statement about the claim without first obtaining Parashift's written consent.

9. Confidential Information and privacy

9.1 Use and disclosure

Each party (**Recipient**):

- (a) must keep the Confidential Information secret and confidential;
- (b) may use Confidential Information only for the purposes of this document;
- (c) establish and maintain effective security measures to safeguard Confidential Information from access or use not authorised under this document; and
- (d) immediately notify the Disclosing party of any suspected or actual unauthorised use, copying or disclosure of Confidential Information.

9.2 Permitted disclosure

A Recipient may disclose Confidential Information of a Disclosing party:

- (a) to officers or employees of the Recipient who have a need to know for the purposes of this document (and only to the extent that each has a need to know) and before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of each Disclosing party; and
- (b) where it is required by law to do so, provided that the Recipient must before doing so:
 - (i) notify the Disclosing party;
 - (ii) give the Disclosing party a reasonable opportunity to take any steps that the Disclosing party considers necessary to

protect the confidentiality of that information; and

- (iii) notify the third person that the information is confidential information of the Disclosing party.

9.3 Software testing by School

If the School conducts testing of the Software (including testing security or other operational aspects) which identifies any potential security vulnerability with the Software requiring remedial action (**Security Vulnerability**), the School must:

- (a) immediately notify Parashift of the Security Vulnerability;
- (b) provide Parashift with any further information reasonably requested about the testing procedure used to identify the Security Vulnerability and/or the Security Vulnerability itself, to enable Parashift to further investigate and/or implement any remedial action;
- (c) treat the Security Vulnerability as Confidential Information of Parashift (to which the obligations under clause 9.1 and 9.2 apply); and
- (d) without limiting clause 9.3(c) not make any representations or statements to third parties in relation to the Security Vulnerability, without Parashift's prior written consent.

9.4 Privacy

- (a) Each party must handle any personal information (as defined in the *Privacy Act*) collected by or on behalf of a party in the course of performing its obligations under this Agreement (**Personal Information**) in compliance with the *Privacy Act*.
- (b) Without limiting clause 8.3(a), Parashift will use Content collected or otherwise accessed by it solely for the purposes of performing its obligations under this Agreement.
- (c) For the avoidance of all doubt, Parashift will not download Content to its systems (unless the School has first provided prior written consent to do so).
- (d) All Parashift Personnel are subject to an annual South Australia Police National Police Check. If the results of a Police Check demonstrate the committal of offences of a nature inconsistent with the purpose of the Software, Parashift will terminate the employment or engagement of that individual, or otherwise ensure the individual no longer has involvement in the performance of Parashift's obligations under this Agreement.

9.5 Data breach

- (a) If a party becomes aware, or reasonably suspects, that Personal Information has been subject to unauthorised access or disclosure (**Data Breach**), that party must immediately give the other party notice of the full details of the Data Breach. A party's knowledge of, or response to, any such notice, in whatever form that may take, does not

affect any other rights of that party under this Agreement or at law.

- (b) In the event of a notification of a Data Breach, the parties agree that:
 - (i) each party must, at its cost, immediately undertake an expeditious investigation of the Data Breach;
 - (ii) each party will provide all reasonable assistance to the other party; and
 - (iii) if the Data Breach is assessed by the parties as comprising an 'eligible data breach' within the meaning of the *Privacy Act*, the School will:
 - (A) be responsible for making notifications of the Data Breach in accordance with the requirements prescribed by the *Privacy Act*; and
 - (B) obtain Parashift's prior written consent to the form and content of all notifications described under paragraph (A).

10. Indemnity

- (a) The School indemnifies Parashift and its Personnel against any Damages that they may sustain or incur as a result, directly or indirectly, of:
 - (i) a breach of this Agreement by the School;
 - (ii) any loss of or damage to any property or injury to or death of any person as a result of the School's access to and/or use of the Software and the Services; or
 - (iii) any negligent, unlawful act or omission or Wilful Misconduct of the School or its Personnel in connection with this Agreement.
- (b) The indemnity in clause 10(a) does not apply to the extent that the Damages result from Wilful Misconduct, fraud or negligence of Parashift or its Personnel.

11. Limitation of liability

11.1 Australian Consumer Law

To the extent that the supply of Software and/or Services under this Agreement is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law, nothing contained in this Agreement excludes, restricts or modifies the application of the consumer guarantees or any other provision right, remedy, or liability imposed under the Australian Consumer Law, provided that (to the extent the Australian Consumer Law permits Parashift to limit its liability), liability is limited to:

- (a) in the case of services, the cost of Parashift supplying the services again or payment of the cost of having the services supplied again; and
- (b) in the case of goods, the cost of Parashift replacing the goods, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing

the goods, supplying equivalent goods or having the goods repaired.

11.2 No guaranteed access

The School acknowledges and agrees that while Parashift will make reasonable efforts to ensure availability, continuity, reliability, accuracy, currency and security of the Software, Parashift will not be liable if the Software is unavailable for any reason beyond Parashift's control, including as a result of:

- (a) telecommunications unavailability, interruption, delay, bottleneck, failure or fault;
- (b) negligent or malicious acts or omissions or Wilful Misconduct of third parties (including Parashift's third party service providers);
- (c) maintenance or repairs carried out by Parashift or any third party service provider in respect of any of the systems used in connection with the provision of the Software; or
- (d) services provided by third parties ceasing or becoming unavailable.

11.3 Limitations on performance

Without limiting clause 11.1 and 11.2, the School acknowledges and agrees that:

- (a) due to the nature of the Software and factors beyond Parashift's control, the Software may not operate free from errors or corruption at all times (including corruption of the Content);
- (b) performance of the Software will deteriorate if use of the Software exceeds the data limitations as advised by Parashift from time to time;
- (c) the facial recognition algorithm incorporated in the Software is continually being improved and 'learns' from human interaction, so it may not produce any metatag, or may produce inaccurate metatags, for certain Content;
- (d) content metatagging errors may occur from time to time (whether or not emanating from the School's systems or information), and it is the School's responsibility to verify the accuracy of all metatag data;
- (e) the accuracy of metatags created by the Software is dependent on the School using the Software in accordance with Parashift's directions, including to ensure that an individual's signature image used to benchmark that individual against the Content complies with any minimum requirements prescribed by Parashift from time to time (which at the Commencement Date are:
 - (i) an unobstructed view of the individual's face; and
 - (ii) 160 x 160 pixels);
- (f) the capabilities of the Software are limited in relation to some Content, including Content featuring unclear or blurry images, the back of an individual's head or where an individual is wearing glasses, or images that do not meet any minimum

requirements specified by Parashift from time to time; and

- (g) Parashift provides support for the Software on a best efforts basis, and does not guarantee that the Support Services will be available at any particular times.

11.4 Exclusion

Subject to clause 11.1, and to the extent permitted by law:

- (a) the Software is provided "as is" and "as available";
- (b) all conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from this Agreement;
- (c) Parashift's liability to the School arising directly or indirectly under or in connection with this Agreement, and whether arising under any indemnity, statute, in tort (for negligence or otherwise), or on any other basis in law or equity, is limited to the amount of Fees and Charges actually paid by the School under a relevant Proposal;
- (d) Parashift will have no liability whatsoever to the School for any loss, harm, Damage, cost or expense (including legal fees) in the nature of special, indirect or consequential loss or damage (including economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data); and
- (e) any liability of Parashift in respect of a claim brought against it by the School (or any third party) is reduced proportionally to the extent that any breach of this Agreement by, or negligent or fraudulent act or omission or Wilful Misconduct of, the School contributes to or causes the claim.

12. Goods and services tax

12.1 Consideration does not include GST

Unless specifically described in this Agreement as 'GST inclusive', any sum payable (or amount included in the calculation of a sum payable), or consideration to be provided, under or in accordance with this Agreement does not include any amount on account of GST.

12.2 Gross up of consideration

Where any supply to be made by one party (**Supplier**) to another party (**Recipient**) under or in accordance with this Agreement is subject to GST (other than a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply but for the application of this clause (**GST Exclusive Consideration**) shall be increased by, and the Recipient shall pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply (**GST Amount**); and
- (b) the Recipient must pay the GST Amount to the Supplier, without set-off, deduction or requirement for demand, at the earlier of:

- (i) the time that the GST Exclusive Consideration is payable or to be provided; and
- (ii) the time that the Supplier has to pay the GST in respect of that supply.

12.3 Reimbursements

If any payment to be made to a party under or in accordance with this Agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with the preceding sub-clause.

12.4 Tax invoices

Notwithstanding any other provision of this Agreement, the Recipient need not make any payment for a taxable supply made by the Supplier under or in accordance with this Agreement until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

12.5 Adjustments

If an adjustment event has occurred in respect of a taxable supply made under or in accordance with this Agreement, any party that becomes aware of the occurrence of that adjustment event must notify each other party to that taxable supply as soon as practicable, and all of those parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the Supplier first becomes aware that the adjustment event has occurred.

12.6 Interpretation

A word or expression used in this clause which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this clause.

13. Dispute resolution

13.1 No arbitration or court proceedings

A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this agreement (**Dispute**) unless it has complied with this clause 13.

13.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

13.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 13.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

13.4 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 13.3, the chairman of the Resolution Institute ABN 69 008 651 232 or the chairman's nominee will appoint a mediator.

13.5 Role of mediator

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing.

13.6 Confidentiality

Any information or documents disclosed by a party under this clause 13 must be kept confidential and may only be used to attempt to resolve the Dispute.

13.7 Costs

Each party to a Dispute must pay its own costs of complying with this clause 13. The parties to the Dispute must equally pay the costs of any mediator.

13.8 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 13.1 to 13.5. Clauses 13.6 and 13.7 survive termination of the dispute resolution process.

14. Termination

14.1 Termination for convenience

- (a) Either party may, in its absolute discretion, terminate this Agreement and/or any Proposal, by giving the other party written notice within 30 days of the Commencement Date.
- (b) If any Third Party Materials or licence rights relating to the Software or the Services granted to Parashift or otherwise made available to Parashift are materially altered, expire, are suspended or are otherwise terminated, Parashift may terminate this Agreement or any Proposal (at its election) if Parashift is no longer able to make available the Software or the relevant Services by giving the School reasonable notice in writing.

14.2 Termination with cause

A party may terminate this Agreement and/or any Proposal with immediate effect by giving the other party written notice if:

- (a) the other party breaches a term of this Agreement and fails to remedy the breach (where capable of remedy) within 14 days after receiving notice requiring it to do so;
- (b) the other party breaches a material provision of this Agreement and the breach is not capable of remedy; or
- (c) the other party suffers an Insolvency Event.

14.3 School to give notice of events

A party must give the other party written notice immediately if it suffers an Insolvency Event.

15. After termination or expiry

15.1 School's action on termination or expiry

On termination of this Agreement or any Proposal for any reason:

- (a) the licence to the Software and Materials granted under clause 3.1 ends;
- (b) the School must immediately cease using the Software and Materials, and must procure that the Users do so too;
- (c) Parashift will cease providing the applicable Services;
- (d) to the extent the School has in its possession or control copies of the Software, whether in tangible or electronic form, and whether stored on a disk or installed on its own platform or system, the School must (at Parashift's direction) either return to Parashift, or destroy, each such copy of the Software;
- (e) the School must immediately pay to Parashift all amounts due and outstanding prior to the date of termination;
- (f) the School must immediately stop using the Parashift IP and Parashift's Confidential Information, and at Parashift's option:
 - (i) return to Parashift;
 - (ii) destroy and certify in writing to Parashift the destruction of; or
 - (iii) destroy and permit Parashift to witness the destruction of,all the Parashift IP and Parashift's Confidential Information in the School's possession or control, and all notes, memoranda, correspondence, reports, summaries and other materials in which any Parashift IP exists or which in any way contains or refers to any of Parashift's Confidential Information, other than any information which the School is required to retain by law (if any).

15.2 Accrued rights and remedies

Termination of this Agreement does not affect any accrued rights or remedies of either party.

15.3 Survival

Clauses 8 (IP Rights), 9 (Confidentiality), 10 (Indemnity), 11 (Limitation of liability), 15 (After termination or expiry) and 18(n)(Governing law and jurisdiction) will survive the expiry or termination of this Agreement.

16. Force majeure

If Parashift is wholly or partially unable to provide the Software and/or the Services because of a Force Majeure Event then:

- (a) as soon as reasonably practicable after the Force Majeure Event arises, Parashift must give the School notice of the extent to which Parashift is unable to provide the Software and/or Services;

- (b) Parashift's obligation to provide the Software and/or the Services is suspended for the duration of the delay arising from the Force Majeure Event; and
- (c) any suspension of the Software and/or the Services as a result of the Force Majeure Event does not constitute a breach of this Agreement by Parashift.

17. Notices

17.1 Service of notices

A notice, demand, consent, approval or communication under this Agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or e-mail to the recipient's address for Notices specified:
 - (i) in the case of Parashift:

Level 4, 431 King William Street, Adelaide SA 5000
E-mail: contact@parashift.com.au
Phone: +61 1300 769 809
Attention: Mr Kieren Fitzpatrick; and
 - (ii) in case of the School, in the Proposal, as varied by any Notice given by the recipient to the sender.

17.2 Effective on receipt

A Notice given in accordance with clause 17.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the sixth Business Day after the date of posting (or on the 10th Business Day after the date of posting if posted to or from a place outside Australia); or
- (c) if sent by e-mail at the time and date at which the sender's email system records that the email was successfully delivered to the recipient,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

18. General

- (a) This Agreement may be altered only in writing signed by each party.
- (b) Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.
- (c) A party may only assign this Agreement or a right under this Agreement with the prior written consent of each other party.
- (d) For clarity, the terms and conditions of the Proposal form part of this Agreement. If there is any inconsistency between any of the terms of this Agreement, the Proposal and any document

referred to in or incorporated into this Agreement, the order of priority for the purposes of construction is:

- (i) clauses 1 to 18;
 - (ii) the Proposal; and
 - (iii) any other document referred to in or incorporated by reference into this Agreement.
- (e) Each party must pay its own costs of negotiating, preparing and executing this Agreement.
- (f) Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this Agreement or any transaction contemplated by this Agreement must be paid by the parties in equal shares.
- (g) This Agreement may be executed in counterparts. All executed counterparts constitute one document.
- (h) The parties' rights and obligations under this Agreement do not merge on completion of any transaction contemplated by this Agreement.
- (i) This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between them on the subject matter.
- (j) Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.
- (k) A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts continue in force.
- (l) A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- (m) Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.
- (n) This Agreement is governed by the law applicable in South Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia.