

BLUEQ TERMS OF USE

BlueQ provides the BlueQ Application, an online qualification and credential management system. Users may access and use the BlueQ Application by registering to use the BlueQ Application as an individual user or when invited or requested to register by an organisation of whom they are, or may become, an employee, volunteer, agent, contractor, member or other representative.

This document along with any notices posted by BlueQ on the BlueQ Website from time to time sets out the terms and conditions which apply where a person registers to use the BlueQ Application as a User and BlueQ provides the BlueQ Application Services to the User.

By accepting or otherwise confirming acceptance of these terms of use the User agrees that they have read, understood and will be bound by these terms of use.

1. Definitions and interpretation

1.1 Definitions

In these terms of use, unless the context otherwise requires:

- (a) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.
- (b) **BlueQ** means Clasity Pty Ltd (ACN 168 177 259) of 10/28 Down Street, Collingwood, Victoria 3066.
- (c) **BlueQ Application** means the qualification, credential and digital record creation, sharing, management, storage, verification and compliance software applications made available by BlueQ to the User from time to time.
- (d) **BlueQ Application Services** means the services described in clause 3.2.
- (e) **BlueQ User Documentation** means any manuals, guides, reference materials or other similar documents in any form made available by BlueQ to the User in connection with the BlueQ Application.
- (f) **BlueQ Systems** means the computer servers or other hardware or systems used by BlueQ in connection with its provision of the BlueQ Application Services.
- (g) **BlueQ Website** means the website located at <https://blueq.com.au> or the website located at such other URL that BlueQ notifies the User of from time to time.
- (h) **Commencement Date** means the date the User checks the 'I accept' box and submits an application for their BlueQ Application account or otherwise confirms the User's acceptance of these terms of use electronically.
- (i) **Confidential Information** means any information provided by a party to the other party (whether provided before or after the Commencement Date) in connection with the BlueQ Application or the BlueQ Application Services and in the case of BlueQ, includes the BlueQ User Documentation and any other information regarding the BlueQ Application but does not include information which is in or becomes part of the public domain, other than through a breach of these terms of use or of an obligation of confidence, or information which a party proves was independently acquired or developed without breaching any of the obligations set out in these terms of use.
- (j) **Consequential Loss** means:
 - (i) all indirect and consequential Loss;
 - (ii) all Loss beyond the normal measure of damages; and
 - (iii) all Loss of revenue, Loss of data, Loss of reputation, Loss of profits, Loss of actual or anticipated savings, Loss of bargain, lost opportunities, including opportunities to enter into arrangements with third parties, Loss of use, cost of capital or costs of substitute goods, facilities or services.
- (k) **Consumer** has the meaning given in section 3 of the Australian Consumer Law.
- (l) **Consumer Guarantee** means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.
- (m) **Data** means all information, images, Documents and other data (whether relating to the User or an Organisation) uploaded to the BlueQ Application by or on behalf of the User or an Organisation.

- (n) **Documents** means any qualification, credentials, certificates, certification, record of compliance, record of training or achievement, record of inspection or examination, record of attendance, means of identification, assessment, licence, permit, approval, consent or other record or document about a person or an Organisation which is issued by a person, including an educational institution or Government Authority and, for the avoidance of doubt, includes (where relevant) criminal history record checks, working with children checks, passports, visas and immunisation records.
- (o) **Force Majeure Event** means the occurrence of an event or circumstances beyond the reasonable control of the party affected by it, including war (declared or undeclared) civil commotion, military action, or an act of sabotage, strike, lockout or industrial action, storm, tempest, fire, flood, earthquake or other natural calamity or an ongoing internet or telecommunications outage or impairment.
- (p) **Government Authority** means any governmental, semi-governmental, municipal, statutory, judicial or quasi-judicial authority, department, agency, body, entity, organisation, commission or tribunal. It also includes any self-regulatory organisation established under statute and any securities exchange.
- (q) **Improvement** means any modification, alteration, development, new use or other change to the BlueQ Application which makes it more accurate, more useful, more functional, more efficient, more cost effective or in any other way preferable.
- (r) **Intellectual Property** includes all patents, designs, copyright, trade marks or circuit layout rights and any right to apply for the registration or grant of any of the above.
- (s) **Loss** means any loss, liability, cost, claim, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and whether direct loss or Consequential Loss.
- (t) **Organisation** means any person who:
 - (i) has been granted access to the BlueQ Application by BlueQ; and
 - (ii) who the User has been linked to in the BlueQ Application as a current or prospective employee, volunteer, agent, contractor, member or other representative.
- (u) **Password** means the username and password or other means of authentication which the User is required to provide in order to be able to access the BlueQ Application.
- (v) **PDH Services** means services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.
- (w) **User** means each person who registers to use the BlueQ Application as an individual user.
- (x) **Term** means has the meaning given in clause 2.
- (y) **Third Party Application** means any product, service, system, application or internet site integrated or interfaced with the BlueQ Application that is owned or operated by a Third Party Provider, and that is used by the User in connection with the BlueQ Application.
- (z) **Third Party Provider** means any third party that provides support, technology and/or other products or services that are used by the User in connection with the BlueQ Application.
- (aa) **Unacceptable Content** means any content which, in BlueQ's reasonably held opinion, is obscene, offensive, upsetting, defamatory, illegal or inappropriate, infringes or appears to infringe the intellectual property rights of any person or contravenes or appears to contravene any applicable laws, regulations or codes of conduct (including any codes of conduct or policies of an Organisation).
- (bb) **User Content** means any and all content uploaded to the BlueQ Application by or on behalf of the User, including any Data or Documentation uploaded to the BlueQ Application by or on behalf of the User.

1.2 Interpretation

In these terms of use, headings are inserted for convenience only and do not affect the interpretation of these terms of use and, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- (c) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (d) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trustee, a trust, an association (whether incorporated or not), a government and a government authority or agency; and
- (e) no provision of these terms of use will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the terms of use or the inclusion of the provision in the terms of use.

2. Term

BlueQ's provision of the BlueQ Application Services commences on the Commencement Date and will continue until terminated in accordance with clause 11.

3. BlueQ Application Services

3.1 Provision of BlueQ Application Services

During the Term BlueQ will provide the BlueQ Application Services to the User on the terms and conditions set out in these terms of use.

3.2 BlueQ Application Services

The BlueQ Application Services will consist of BlueQ:

- (a) providing the User with access to and use of the BlueQ Application during the Term; and
- (b) providing the User with access to and use of the BlueQ User Documentation during the Term.

4. BlueQ Application

4.1 Support services

The User acknowledges and agrees that nothing in these terms of use imposes obligations on BlueQ to provide any services to the User in respect of the BlueQ Application other than the BlueQ Application Services including (without limitation) technical support, training or maintenance services.

4.2 BlueQ may vary

BlueQ may vary the features, functions and other benefits available to the User in respect of the BlueQ Application and BlueQ Application Services at any time and without any requirement to provide prior notice to the User.

4.3 BlueQ retains discretion

- (a) The User acknowledges and agrees that BlueQ retains the sole discretion regarding the features, functions and other benefits of the BlueQ Application and nothing in these terms of use requires BlueQ to provide or maintain any features, functions or other benefits in respect of the BlueQ Application.
- (b) The User also acknowledges and agrees that nothing in these terms of use limits BlueQ's right to suspend, discontinue, alter or limit access to any such features, functions or other benefits from time to time.

5. Third Party Applications

The User acknowledges that the BlueQ Application may interact with Third Party Applications or require Third Party Applications or Third Party Providers be used to provide particular features or functionality. The User acknowledges that access to such Third Party Applications or services and any support for such Third Party Applications or services may need to be obtained directly from the relevant Third Party Provider at the User's cost. BlueQ does not make any representations or warranties regarding any such Third Party Applications or services and will not be responsible for any issues in respect of Third Party Applications or services or any Loss suffered by the User in connection with any Third Party Applications or services or the User's dealings with Third Party Providers.

6. Passwords

- (a) The User will be responsible for setting the Passwords for their BlueQ Application account.
- (b) The User must:

- (i) ensure that Passwords set by the User complies with best practice regarding the strength and security of passwords;
 - (ii) ensure that each Password is securely maintained and used only by the User;
 - (iii) comply with any policies, guidelines or other requirements issued by BlueQ from time to time in any way relating to Passwords;
 - (iv) immediately notify BlueQ and take immediate steps to change their Password if their Password is lost, stolen, missing or is otherwise compromised or if BlueQ recommends the Password be changed; or
 - (v) periodically reset Passwords as and to the extent required by BlueQ from time to time.
- (c) BlueQ reserves the right at any time and from time to time to change and/or revoke Passwords by providing the User with written notice.

7. User responsibilities and obligations

7.1 User responsibilities

The User will be responsible for:

- (a) the day to day use of the BlueQ Application;
- (b) uploading all User Content to the BlueQ Application;
- (c) obtaining all consents, authorisations, permits or approvals necessary:
 - (i) for BlueQ and its personnel to access, use and disclose the User Content as contemplated in these terms of use;
 - (ii) for the User Content to be uploaded into the BlueQ Application;
 - (iii) for the User Content to be stored on the BlueQ Systems;
 - (iv) for BlueQ to disclose the User Content to third parties as contemplated or permitted by these terms of use; and
 - (v) to otherwise access and use the BlueQ Application as contemplated by these terms of use;
- (d) ensuring that it has all licences, certifications, authorisations, permissions or other approvals required to be able to access and use the BlueQ Application;
- (e) ensuring all User Content is complete, current, accurate and not misleading and does not infringe the Intellectual Property rights of any person;
- (f) satisfying itself that the BlueQ Application is compatible with its own hardware, software and internet and network capabilities and maintaining all hardware, software, Third Party Applications and other technology necessary to be able to access and use the BlueQ Application;
- (g) ensuring that the use of the BlueQ Application by the User and the uploading and storage of the User Content complies with all applicable laws, regulations or codes of conduct (including the *Privacy Act 1988* (Cth) and any other applicable privacy laws); and
- (h) ensuring that it maintains back up or alternate systems for use if the BlueQ Application is unavailable or is otherwise unable to be used by the User.

7.2 User obligations

The User must:

- (a) access and use the BlueQ Application only for its own personal or internal business purposes in accordance with these terms of use;
- (b) only use and copy the BlueQ User Documentation to the extent necessary to use the BlueQ Application and receive the BlueQ Application Services;
- (c) provide all co-operation, assistance, system access and other inputs or assistance reasonably requested by BlueQ in relation to the provision of the BlueQ Application Services;

- (d) comply with all policies regarding the use of the BlueQ Application which BlueQ notifies the User of from time to time (which notification may be provided by BlueQ making the relevant policies accessible via the BlueQ Website);
- (e) not use the BlueQ Application in any way or for any purpose other than as permitted by these terms of use;
- (f) comply with the *Privacy Act 1988* (Cth) and any other privacy laws, regulations and codes when using the BlueQ Application or doing anything permitted by, or in connection with, these terms of use;
- (g) not modify, adapt, translate, reverse engineer, de-compile, disassemble or copy all or any part of the BlueQ Application;
- (h) not attempt to circumvent or break any encryption, decryption or other security device or technological protection measure contained in the BlueQ Application;
- (i) not upload to the BlueQ Application any viruses, bugs, worms, trojan horses, harmful codes or any other form of defect or contaminant which could cause temporary or permanent damage to or will otherwise impair or harm or cause the malfunction of the BlueQ Application or the software or hardware of BlueQ or any third party;
- (j) not distribute any part of the BlueQ Application, BlueQ User Documentation of BlueQ Application Services for commercial purposes or otherwise sub-licence or resell the BlueQ Application, BlueQ User Documentation or BlueQ Application Services;
- (k) not create derivative works from all or any part of the BlueQ Application;
- (l) not transfer, assign, rent, lease, lend, sell or otherwise dispose of all or any part of the BlueQ Application or any compilation derived from the BlueQ Application;
- (m) not make any part of the BlueQ Application publicly available;
- (n) not upload or post any Unacceptable Content to the BlueQ Application or otherwise make Unacceptable Content accessible via the BlueQ Application; and
- (o) not upload or post any Data or Documentation about any person (including the Organisation) other than the User, unless the User:
 - (i) is the parent or guardian of that person; or
 - (ii) has the express consent of that person to upload or post the Data or Documentation.

8. Data and User Content

8.1 Accuracy, disclosure and verification of Data and User Content

- (a) The User acknowledges and agrees that:
 - (i) BlueQ may disclose, and the User consents to the disclosure of, User Content and other Data to:
 - (A) other persons who are granted access to the BlueQ Application, including Organisations;
 - (B) Government Authorities or other third parties to seek to verify the accuracy of the relevant User Content or Data; and
 - (C) any person who the User, through the BlueQ Application, consents to BlueQ sharing the User Content or other Data with;
 - (ii) BlueQ or an Organisation may, with the prior consent of the User, allow User Content and other Data to become publicly accessible (including through the publication of an internet link with no access restrictions);
 - (iii) the accuracy of any verification of User Content and other Data performed by BlueQ using information available from any publicly available databases or systems (including databases or systems made available by Government Authorities or other third parties) will be limited to the information contained in that database or system;
 - (iv) if BlueQ believes that any Data or other User Content is not accurate, current or complete then BlueQ may, but is not required to, update or vary that Data or other User Content. The User

acknowledges and agrees that BlueQ is not liable for any loss or damage suffered by the User as a result of BlueQ updating or varying Data or User Content under this clause 8.1(a);

- (v) the requirements and conditions to be met for any User Content or Data (including any Documents) to be verified by BlueQ or an Organisation will be determined by BlueQ or the Organisation (as applicable) in its sole discretion, notwithstanding any requirements which may be provided for under any law or regulation;
 - (vi) BlueQ does not control, is not responsible for and provides no warranty as to the availability, accuracy, currency or completeness of the User Content and other Data or any information or Documentation that uses or is derived from the User Content, other Data or content in databases or systems made available by Government Authorities or other third parties, and
 - (vii) the User must not make any claim against BlueQ in respect of the User Content and other Data (including use of the User Content or other Data by an Organisation) or otherwise seek to hold BlueQ responsible for the provision, content, accuracy or reliability of the User Content and other Data.
- (b) The User acknowledges and agrees that, for such period of time as the User is linked to an Organisation, that Organisation may be able to:
- (i) access, use and store the User Content and may retain copies of such User Content even after such time as the Organisation is linked to that User;
 - (ii) upload to the BlueQ Application Data which is about, or otherwise linked to, the User;
 - (iii) issue a record of the Documents held by the User;
 - (iv) issue a record of the persons (which may include the User) who hold a specified Document;
 - (v) issue a record of the Documents held by the Organisation;
 - (vi) issue their own Documents to the User; and
 - (vii) specify compliance requirements which the Organisation requires the User to meet or achieve, such as the holding of specific Documents.
- (c) The User is responsible for:
- (i) verifying that any User Content and other Data which it is able to access via the BlueQ Application is accurate, current and complete (including Data about the User which may be uploaded to the BlueQ Application by an Organisation);
 - (ii) ensuring that any Data about the User which is accessible via the BlueQ Application remains accurate, current and complete;
 - (iii) ensuring that any Data which is uploaded to the BlueQ Application by or on behalf of the User is accurate, current and complete; and
 - (iv) its use of the User Content and other Data.

8.2 Back ups and archiving

- (a) The User acknowledges that:
- (i) BlueQ does not provide back up, archiving, record keeping or other similar services in respect of the User Content and other Data and the User is responsible for implementing and maintaining its own back up, archiving, record keeping and data retrieval procedures in respect of the User Content and other Data; and
 - (ii) BlueQ shall not be held liable for any Loss which the User may suffer as a result of any User Content and other Data been deleted, destroyed or otherwise lost (including where such User Content and other Data is deleted by an Organisation).
- (b) Notwithstanding clause 8.2(a), the User acknowledges and agrees that, subject to any applicable laws which may require the return, deletion or destruction of the User Content and other Data:
- (i) BlueQ may, after the Term, keep and maintain copies of the User Content and other Data; and

- (ii) an Organisation can (unless you have a different arrangement with the Organisation) keep and maintain copies of the User Content and other Data in respect of the User that the Organisation had access to as a result of the User being linked to that Organisation.

8.3 Availability of Data

The User acknowledges that:

- (a) subject to any applicable laws, BlueQ is under no obligation to delete, destroy or otherwise make unavailable any User Content or other Data including, without limitation, upon the termination of the provisions of the BlueQ Application Services; and
- (b) BlueQ may make available to an Organisation any User Content and other Data which is linked, about or otherwise connected to that Organisation even after the termination of the provision of the BlueQ Application Services.

8.4 Privacy

BlueQ will collect, handle and store information (including User Content and any other Data) in accordance with the BlueQ privacy policy (a copy of which can be found here: <https://blueq.com.au/docs/legal/privacy-policy.pdf>) and collection notice (a copy of which can be found here: <https://blueq.com.au/docs/legal/privacy-collection-notice.pdf>), or by requesting a copy from BlueQ.

9. BlueQ User Documentation

The User must use only the most recent version of the BlueQ User Documentation provided by BlueQ, and must follow BlueQ's instructions concerning the return or destruction of any superseded versions of the BlueQ User Documentation.

10. Unacceptable Content

10.1 BlueQ can notify User

If BlueQ reasonably believes that any Unacceptable Content has been uploaded into the BlueQ Application, is accessible using the BlueQ Application or is being stored on the BlueQ Infrastructure, BlueQ may request the User either to remove the Unacceptable Content or disable access to the Unacceptable Content.

10.2 BlueQ can take action

BlueQ will have the right (but not the obligation) to remove Unacceptable Content from the BlueQ Application or BlueQ Systems or disable access to Unacceptable Content where the User has not complied with a BlueQ request under clause 10.1 within five days of the date of the request.

10.3 No obligation to monitor

Nothing in these terms of use imposes obligations on BlueQ to monitor the BlueQ Application for Unacceptable Content or otherwise monitor or screen User Content (or any other Data) for Unacceptable Content.

11. Termination

11.1 Suspension

BlueQ reserves the right to at any time (and without any obligation to provide prior notice to the User) suspend the User's access to the BlueQ Application or any part of the BlueQ Application.

11.2 Organisation's Account

The User acknowledges and agrees that if the User is granted access to an Organisation's account in the BlueQ Application, BlueQ may at any time and for any reason suspend or terminate the User's access to the Organisation's account.

11.3 Termination without cause

- (a) Either party may terminate BlueQ's provision of the BlueQ Application Services at any time and without cause by providing the other party with written notice of termination.
- (b) The Customer may provide written notice under this clause 11.3 by:
 - (i) sending notice by email to support@blueq.com.au; or
 - (ii) clicking on the cancellation or other similar button (if any) located within the BlueQ Application.

11.4 Termination with cause

- (a) Without limiting clause 11.3, BlueQ may, by written notice to the User, terminate BlueQ's provision of the BlueQ Application Services with immediate effect:
 - (i) if the User fails to comply with any written notice issued by BlueQ requiring the User to remedy a breach, non-observance or non-performance of the User's obligations under these terms of use within 7 days of receiving that notice from BlueQ;
 - (ii) if the User commits a breach of these terms of use which BlueQ considers is incapable of remedy; or
 - (iii) if the User uses the BlueQ Application in any way which BlueQ considers may damage the reputation, brand or goodwill of BlueQ or the BlueQ Application.
- (b) Without limiting clause 11.3, the User may, by written notice to BlueQ, terminate BlueQ's provision of the BlueQ Application Services with immediate effect in accordance with clause 19.7.

11.5 Consequences of termination

Upon termination of BlueQ's provision of the BlueQ Application Services:

- (a) the User must immediately:
 - (i) cease using the BlueQ Application; and
 - (ii) return to BlueQ any BlueQ User Documentation in the User's possession or control; and
- (b) BlueQ ceases to have any obligations under these terms of use with respect to the provision of BlueQ Application Services and may disconnect the User's access to the BlueQ Application and disable all Passwords.

11.6 Obligations continuing following termination

The termination of these terms of use does not operate to terminate any rights or obligations under these terms of use that by their nature are intended to survive termination or expiration, including the parties' rights and obligations under clauses 1, 11.5, 11.6, 12, 13, 16, 17, 18 and 19, and those rights or obligations remain in full force and binding on the party concerned.

12. Confidentiality

12.1 Confidentiality obligations

Where a party (**Recipient**) receives Confidential Information from the other party under these terms of use or otherwise in connection with the BlueQ Application Services, the Recipient must:

- (a) keep the Confidential Information confidential;
- (b) subject to clause 12.2, not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of these terms of use; and
- (c) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.

12.2 Permitted disclosure

Notwithstanding clause 12.1, the Recipient may use or disclose Confidential Information to the extent necessary to:

- (a) perform its obligations or exercise its rights under these terms of use (including, in the case of BlueQ, for the purposes of providing the BlueQ Application Services);
- (b) comply with any law, binding directive of a regulator or a court order;
- (c) comply with the listing rules of any securities exchange on which its securities are listed; or
- (d) obtain professional advice in relation to matters arising under or in connection with these terms of use.

12.3 Promotion and marketing

The User agrees that, for the purposes of promoting and marketing BlueQ and the BlueQ Application, BlueQ is entitled to:

- (a) notify others of BlueQ's relationship with the User and BlueQ's provision of the BlueQ Application Services to the User; and
- (b) contact the User (including by email), including for the purpose of promoting the services of BlueQ or the commercial partners of BlueQ.

13. Intellectual Property

13.1 BlueQ's Intellectual Property

- (a) The User acknowledges that nothing in these terms of use grants the User any ownership of or rights in respect of the Intellectual Property in the BlueQ Application or any BlueQ User Documentation, any Intellectual Property in any materials created as a result of the performance of the BlueQ Application Services or any Intellectual Property in any Improvements to the BlueQ Application or BlueQ User Documentation created in connection with these terms of use.
- (b) Any Intellectual Property in respect of the BlueQ Application or BlueQ User Documentation (including any Improvements) which is created by or vests in the User during the Term is assigned to BlueQ immediately upon the Intellectual Property being created or vesting in the User and the User agrees to do all things and execute all documents as is reasonably necessary to effect such assignment.
- (c) During the Term BlueQ grants the User a limited, non exclusive and revocable licence to use the Intellectual Property referred to in clause 13.1(a) solely to the extent such use is necessary for the User to receive the BlueQ Application Services. Unless revoked earlier by BlueQ, the licence granted under this clause 13.1(a) terminates immediately upon the end of the Term.

13.2 User Intellectual Property

- (a) BlueQ acknowledges that, as between BlueQ and the User, the User will retain ownership of its Intellectual Property in respect of the User Content.
- (b) The User grants BlueQ a non-exclusive, irrevocable, royalty free licence to reproduce and otherwise exploit the User Content for the purposes of:
 - (i) providing the BlueQ Application Services to the User; and
 - (ii) providing access and use of the BlueQ Application to any Organisation,or for any purposes which BlueQ considers are ancillary to its provision of the BlueQ Application Services or BlueQ Application or are otherwise necessary for the proper operation of the BlueQ Application.

13.3 Trade marks

Nothing in these terms of use grants the User any ownership of or rights to use the trade marks of BlueQ and the User must not adopt, register or attempt to register or use any trade marks which are identical or deceptively similar to the trade marks owned by BlueQ.

14. Security of BlueQ Application

14.1 BlueQ's obligations

BlueQ will take all reasonable steps to ensure the security and safety of the User Content, Data and other information stored on the BlueQ Systems, including by implementing and maintaining reasonable and current data protection and virus screening procedures and technologies.

14.2 BlueQ's liability

Provided BlueQ complies with its obligations under clause 14.1, BlueQ will not be liable for any Loss suffered by the User which arises out of or in connection with:

- (a) any computer viruses being transferred by or obtained as a result of the use of the BlueQ Application;
- (b) any hacking into or other similar attacks on the BlueQ Application or the BlueQ Systems; or
- (c) any other data security issues in respect of the BlueQ Application or the BlueQ Systems.

14.3 Updates

The User acknowledges and agrees that nothing in these terms of use imposes obligations on BlueQ to develop, release or install for the User any updates, upgrades, patches, bug fixes, new releases or new versions in respect of the BlueQ Application (**Updates**), provided however that if BlueQ does develop or release any Updates, it may require that all such Updates be used by the User.

15. Personnel and subcontractors

- (a) BlueQ reserves the right to determine which of its employees, agents, contractors or other representatives will be assigned to perform the BlueQ Application Services and to replace or reassign those personnel during the Term.
- (b) The User agrees and acknowledges that BlueQ may subcontract the performance of any of its obligations or the exercise of any of its rights under these terms of use (including obligations to provide the BlueQ Application Services) to any sub-contractor without the User's consent and on such terms and conditions as BlueQ deems fit from time to time.

16. Warranties

Subject to clauses 17.1 and 17.2 BlueQ does not warrant or guarantee that:

- (a) the BlueQ Application will be compatible with, or capable of being used on or in connection with the User's computer and communications systems;
- (b) the User's access to the BlueQ Application will be uninterrupted or error free;
- (c) the BlueQ Application and User Content or other Data will be accurate, reliable or fit for any particular purpose; or
- (d) the User will derive any particular benefits from the provision of the BlueQ Application Services.

17. Liability

17.1 Australian Consumer Law

If the User is a Consumer and BlueQ supplies PDH Services to the User, BlueQ acknowledges that the User may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Services supplied by BlueQ and nothing in these terms of use should be interpreted as attempting to exclude, restrict or modify the application of any such rights.

17.2 Non PDH Services

If the User acquires the BlueQ Application Services from BlueQ as a Consumer and the relevant BlueQ Application Services are non PDH Services, then BlueQ's liability to the User in connection with any breach of the Consumer Guarantees in respect of those BlueQ Application Services is, at BlueQ's option, to:

- (a) the supplying of the relevant services again; or
- (b) the payment of the cost of having the relevant services supplied again.

17.3 Liability capped

Subject to clauses 17.1, 17.2 and 17.5 and notwithstanding any other provision of these terms of use, the maximum aggregate liability of BlueQ for any Loss or claim, however caused or arising, suffered by the User in connection with these terms of use and the supply of the BlueQ Application Services is limited to the amount of AUD \$1000. The limitation set out in this clause 17.3 is an aggregate limit for all claims or Loss, whenever made.

17.4 Commencement of claims

Any claim by the User against BlueQ for Loss however caused or suffered by the User in connection with these terms of use and the supply of the BlueQ Application Services must be made within one year of the User becoming entitled to make the claim and any claim not made within this period is absolutely barred.

17.5 Consequential Loss

Neither party will be liable for any Consequential Loss (however caused) suffered or incurred by the other party in connection with these terms of use and the supply of the BlueQ Application Services. This clause applies even if the party knew or ought to have known that the relevant Consequential Loss would be suffered.

18. Indemnity

The User must indemnify and keep BlueQ indemnified against any Loss which arises directly or indirectly out of:

- (a) any breach of these terms of use by the User including any breach in respect of which BlueQ exercises a right to terminate;
- (b) the User in any way accessing or using the BlueQ Application;
- (c) any Unacceptable Content being uploaded into the BlueQ Application, stored on the BlueQ Systems or accessible using the BlueQ Application;
- (d) any failure by the User to obtain any consent, authorisation, permit or approval required for BlueQ to provide the BlueQ Application Services, including rights to use the BlueQ Application, User Content or any other Data;
- (e) the uploading of the User Content and any other Data into the BlueQ Application, storage of any User Content and any other Data on the BlueQ Systems or use of the BlueQ Application by the User or its Authorised Users which does not comply with privacy or other laws of any applicable jurisdiction;
- (f) the User Content and any other Data being stored or displayed on the BlueQ Application;
- (g) the User infringing the Intellectual Property of a third party (including any Organisation); or
- (h) any negligent or unlawful acts of the User,

except to the extent the relevant Loss arises as a direct result of any breach of these terms of use by BlueQ or any negligent or unlawful act of BlueQ or any of its personnel.

19. General provisions

19.1 Governing law

These terms of use will be governed by and construed exclusively under the laws of the State of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of courts of that jurisdiction.

19.2 Assignment

The User may not assign or otherwise deal with any of its rights or obligations under these terms of use without the prior written consent of BlueQ. BlueQ may assign, novate or otherwise deal with its rights under these terms of use at any time effective immediately upon BlueQ notifying the User of the assignment or novation.

19.3 Entire agreement

These terms of use and any notices posted by BlueQ on the BlueQ Website from time to time constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties or their respective officers, employees or agents.

19.4 Relationship between parties

These terms of use do not create a relationship of employment, agency, partnership or joint venture between the parties.

19.5 Force Majeure

- (a) If a party is prevented, hindered or delayed from performing its obligations under these terms of use by a Force Majeure Event, then as long as that situation continues, that party will be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation will be extended accordingly.
- (b) If a party is affected by a Force Majeure Event it will immediately give the other party a notice of its occurrence and its effect or likely effect, and use all reasonable endeavours to minimise the effect of the Force Majeure Event and to bring it to an end.

19.6 Waiver

No failure to exercise or delay in exercising any right given by or under these terms of use to a party constitutes a waiver and the party may still exercise that right in the future.

19.7 Variation

- (a) BlueQ may vary these terms of use by providing written notice to the User of the variation and such variation shall become effective from the date upon which the User agrees to the variation.
- (b) The User acknowledges and agrees that:
 - (i) until the User confirms that it agrees to the variation, BlueQ may suspend the provision of BlueQ Application Services to the User and/or may suspend the Users access to the BlueQ Application; and
 - (ii) if the User does not agree to a variation, it can terminate this Agreement by providing notice under clause 11.3.

19.8 Notices

Except as expressly provided otherwise in these terms of use, any notice, consent, approval, waiver or other communication in connection with these terms of use may be given by a party by electronic communication to any email address provided by the other party. Such messages will be deemed to be received one hour after the electronic communication is recorded as being sent by the device from which the sender sent that electronic communication, unless the sender knows or could reasonably be expected to know that an electronic communication system has failed and as a result, the electronic communication was not received.

19.9 Severability

If any provision of these terms of use is invalid or not enforceable in accordance with its terms in any jurisdiction, it is to be read down, if possible, so as to be valid and enforceable and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these terms of use or affecting the validity or enforceability of that provision in any other jurisdiction.