

REGISTER NOW SERVICES AGREEMENT

The use of the online shopping cart and payment service known as "*Register Now*" which is provided by **REGISTER NOW PTY LTD** - Australian Company Number 120 251 489 ("**Register Now**") is governed by the terms and conditions set out below ("**this Agreement**"). Without limiting the way in which you may be bound by this Agreement, by signing a document agreeing to be bound by this Agreement, by clicking a button on your computer screen indicating your acceptance of this Agreement, or by proceeding to use the Services you (the "**Client**") will be deemed to have accepted and will be bound by this Agreement.

This Agreement only applies to the use of the Services by the Client. It does not apply to a person acting in the capacity of a Customer. Customers must enter into a separate agreement with Register Now, a copy of which may be found here <http://www.registernow.com.au/PaymentTerms.aspx>.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following terms will have the following meanings, unless the context otherwise requires:

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| Account | means an online account with Register Now |
| Additional Services | has the meaning given in clause 2.1(e) |
| Alternate payment method | means a method of payment (other than payment by credit card) which is accepted by Register Now from time to time |
| Amendment Date | has the meaning given in clause 20.1 |
| Charity | means a charitable organisation with which Register Now has reached an agreement to collect funds for |
| Client | means the person so identified in this Agreement as the "Client" |
| Client Works | means any logo, artwork or other works which the Client supplies to Register Now for inclusion in the Purchase Page |
| Confidential Information | means all information of a confidential or sensitive nature in relation to Register Now or the Client, including, without limitation, information relating to the Services and their underlying processes and technology and information relating to the business of Register Now |
| Customer | means a customer or member of the Client who makes payment for a Ticket, Merchandise, Membership Fees or a Donation via the Purchase Page |
| Customer Information | has the meaning given in clause 12.1 |
| Customer Payment | has the meaning given in clause 5.1 |

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| Donation | means, as the context requires, a donation by a Customer to a Client in respect of an Event, or alternatively a Donation by a Customer to a Charity, which Register Now agrees to collect pursuant to this Agreement |
| Event | means an event held by the Client including, but not limited to, any concert, stage show, conference, social event, aquatic event, triathlon, fun run, community event or award presentation |
| Fees | has the meaning given in clause 7.1 |
| Fundraising Fee | means any fee or commission charged by Register Now from time to time to a Charity in respect of Donations made through the Services and which are paid to the Charity by Register Now |
| Fundraising Laws | means the laws of each State and Territory in Australia which govern fundraising for Charities by third parties and which include, without limitation, the following legislation (as amended or replaced from time to time): the <i>Fundraising Act 1998 (VIC)</i> , the <i>Charitable Fundraising Act 1991 (NSW)</i> , the <i>Collections Act 1966 (QLD)</i> , the <i>Charitable Collections Act 1946 (WA)</i> , the <i>Charitable Collections Act 2003 (ACT)</i> , the <i>Collections for Charities Act 2001 (TAS)</i> and the <i>Collections for Charitable Purposes Act 1939 (SA)</i> |
| Indemnified | has the meaning given in clause 17 |
| Intellectual Property Rights | means all intellectual property rights of any type whatsoever throughout the world including without limitation all rights which subsist in copyright, patent rights, trade mark rights, designs, circuit layouts, plant breeder rights, know-how and trade secrets irrespective of whether or not such rights are registered or able to be registered |
| Membership Fees | means any fees payable by a Customer to be a member of a club, sporting club, organisation, association or collection of people managed by the Client |
| Merchandise | means merchandise or other goods sold by the Client in relation to an Event or in relation to any other thing, in respect of which Register Now agrees to process the sales for pursuant to this Agreement |
| Services | means the services provided by Register Now which are described in clause 2.1 |
| Portal | means Register Now's online portal with which Clients can access their Accounts and view information provided by Register Now |

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| Purchase Page | means a purchasing web page or series of web pages on which Customers may purchase and/or pay for Tickets and/or Merchandise and/or Membership Fees and/or Donations |
| Register Now | means REGISTER NOW PTY LTD Australian Company Number 120 251 489 |
| Taxes | means any applicable duties, sales taxes, GST, VAT or other taxes which may be levied in respect of a transaction contemplated by this Agreement |
| Ticket | means a ticket or other right of entry to an Event for which Register Now agrees to process the sales for in accordance with this Agreement |
| Transaction Costs | means the following transaction costs incurred by Register Now or payments made by Register Now on behalf of the Client or amounts which Register Now may now or in the future become liable for in respect of the provision of the Services: <ul style="list-style-type: none"> (a) any Taxes which Register Now is required to pay or withhold in respect of amounts payable by Register Now to the Client or in respect of amounts collected by Register Now on behalf of the Client; (b) any amounts paid by Register Now on behalf of the Client to third parties (including, without limitation, any Taxes); (c) any refunds paid under clause 9; and (d) credit card charge backs levied in respect of amounts previously collected by Register Now from Customers or other third parties |
| Works | means any deliverable, item or thing embodied as a result of or by the Services and includes, without limitation, the Purchase Page, any software, content, data, Customer Information or other information displayed to or used by the Client or a Customer in their use of the Services |

1.2 In the interpretation of this Agreement, unless the contrary intention appears:

- (a) a reference to this Agreement means a reference to an agreement between Register Now and the Client on the terms and conditions of this document and includes an amendment or supplement to, or replacement or novation of this Agreement;
- (b) the words "includes" or "including" mean "includes without limitation" or "including without limitation";

- (c) a reference to a person includes a reference to a corporation, firm, association or other entity, and vice versa;
- (d) the singular includes the plural and vice versa;
- (e) a reference to any gender includes a reference to all other genders;
- (f) a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions;
- (g) an agreement, representation or warranty made by two or more persons is made by them jointly and by each of them severally;
- (h) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- (i) headings are inserted for convenience only and do not affect the interpretation of this Agreement.

2. ENGAGEMENT OF REGISTER NOW

2.1 The Client hereby engages Register Now to provide one or more of the following services in accordance with this Agreement ("**Services**"):

- (a) provision of a Purchase Page on which Customers of the Client may purchase or make payments for one or more of the following:
 - (i) Tickets to Events held by the Client;
 - (ii) Merchandise in respect of those Events or in respect of the Client;
 - (iii) Membership Fees for the Client;
 - (iv) Donations payable to one or more Charities, which the Client selects from a list of Charities for which Register Now collects Donations; and/or
 - (v) Donations payable directly to the Client;
- (b) processing and collection of the Customer Payments for Donations, Membership Fees, Tickets and Merchandise purchased or paid for by Customers;
- (c) payment of the Customer Payments to the Client (other than Customer Payments which relate to Donations to Charities, which will be paid to the Charity), less amounts payable to Register Now by the Client under this Agreement;
- (d) processing of refunds payable to Customers where required under **clause 9** below; and
- (e) any other goods and services in addition to the above which are separately agreed between the parties in writing ("**Additional Services**").

2.2 The Customer will be responsible for specifying via the Portal or other process nominated by Register Now, the particular Services which the Customer requires

Register Now to provide including specifying the actual Tickets and Merchandise to be sold and the Membership Fees or Donations to be paid by Customers. If the Client is promoting Donations to Charities to its Customers, then the Client must select the specific Charities, from the list of Charities provided in the Portal from time to time by Register Now.

- 2.3 The actual Services specified by the Customer are at all times subject to Register Now's written approval. Register Now will only be obligated to provide the actual Services which it agrees to. Register Now may refuse to provide any part of the Services including the sale of specific Tickets, Merchandise or to solicit particular Membership Fees or Donations.
- 2.4 The Client acknowledges that it is responsible for providing the correct information to Register Now when it specifies the Services that it requires including Event information and pricing of Merchandise, Membership Fees, Donations and Tickets.
- 2.5 The Client acknowledges and agrees that this Agreement relates to the Services only. Register Now has no obligations whatsoever in relation to the quality, quantity, delivery, use or enjoyment by the Customer of any Event, Merchandise, activities arising from payment of Membership Fees or any Donations.

3. ACCOUNT SETUP

- 3.1 The Client agrees to create an Account with Register Now in order for Register Now to provide the Services.
- 3.2 The Account will be created using Register Now's online sign up process, or any other method specified by Register Now from time to time.
- 3.3 The Account will permit the Client to login to the Portal to manage the Account and other details involving the Client's relationship with Register Now.
- 3.4 The Client agrees to keep confidential and secure any username or password used to access the Account.
- 3.5 The Client warrants that all information provided to Register Now in the setup of the Account is true and correct in every detail.
- 3.6 The Client agrees that it will only use the Account and the Portal for the purposes of using the Services and for no other purpose.
- 3.7 Register Now will only permit the opening of Accounts by persons who are at least 18 years old. If a person under the age of 18 wishes to use the Services, then their parent or legal guardian will need to open the Account in their name, and delegate the use of the Account under their supervision to the relevant minor.

4. THE PURCHASE PAGE

- 4.1 Register Now will provide the Client with a Purchase Page which Customers may use to pay for Tickets, Merchandise, Membership Fees and/or Donations.
- 4.2 The Client may incorporate the Purchase Page into the Client's website. The Client will however comply with all technical requirements of Register Now in relation to the use of

the Purchase Page as part of the Client's website. Although the Purchase Page may be incorporated as part of the Client's website, the actual Purchase Page will be hosted on Register Now's servers and will contain a URL of Register Now.

- 4.3 The Client will only customise the Purchase Page where permitted in writing by Register Now and only in accordance with Register Now's instructions provided from time to time. The Client acknowledges that a failure to comply with Register Now's guidelines in relation to the customisation and use of the Purchase Page may cause errors in the Purchase Page and result in a failure of the provision of the Services.
- 4.4 Register Now may as part of any Additional Services, where separately agreed between the parties, customise the Purchase Page on behalf of the Client.

5. PROCESSING PURCHASES AND PAYMENTS

5.1 If a Customer makes a payment for any Ticket, Merchandise, Membership Fee or Donation through the Purchase Page, then subject to the Customer providing correct credit card details, name and address and any other information or security requirements required by Register Now from time to time, Register Now will charge the Customer for the following amounts ("**Customer Payment**"):

- (a) the full price of the Tickets and/or Merchandise purchased by the Customer (including any Taxes);
- (b) the amount of any Membership fee and/or Donation paid by the Customer;
- (c) any delivery charges or delivery fees imposed by Register Now or the Client on the delivery of any Tickets or Merchandise purchased by the Customer;
- (d) any booking fees imposed by Register Now;
- (e) any Taxes which may be levied on the payment for the Tickets, Merchandise, Membership Fees or Donations made by the Customer; and
- (f) any other fees and charges of Register Now or the Client imposed by Register Now or the Client on the Customer at the time of purchase.

5.2 The Customer Payment will be collected from the Customer by:

- (a) charging the Customer's credit card for the full amount of the Customer Payment; or
- (b) where separately agreed by the parties in writing, processing the payment using an Alternate Payment Method.

5.3 The Client acknowledges and agrees that the Customer Payment may not be collected from a Customer if:

- (a) the Customer provides incorrect credit card details or fails to provide any other information required by Register Now from time to time in relation to validating the Customer's identity, security, fraud prevention or any other information required by a third party to complete the transaction;

- (b) the Customer fails to comply with any requirements specified by Register Now from time to time in relation to the processing of payments using an Alternate Payment Method;
- (c) the Customer's credit card provider or the person who otherwise honours payments made by the Customer via his or her credit card fails to pay Register Now the full amount of the Customer Payment or the provider of the Alternate Payment Method fails to pay Register Now the full amount of the Customer Payment;
- (d) the Client fails to comply with one or more of its obligations arising under this Agreement;
- (e) the Services are temporarily unavailable due to any routine or emergency maintenance required to any software or hardware which Register Now uses to provide the Services;
- (f) the Services are suspended pursuant to **clause 11**; or
- (g) an event contemplated by **clause 16.2** occurs.

6. DELIVERY

- 6.1 The Client may via the Portal, obtain a report setting out the payments made by Customers in respect of Tickets, Merchandise, Membership Fees and Donations which reflects the records held by Register Now's payment processing software (although if required by Fundraising Laws or Register Now's agreements with Charities, information about Donations to Charities may not be displayed). If for any reason the Portal becomes unavailable for a lengthy period of time then Register Now will email this report to the Client on a weekly basis until such time as the Portal again becomes available.
- 6.2 The Client will be responsible for monitoring via the Portal the number of Tickets sold for an Event and will be responsible for ensuring that an Event is not oversold.
- 6.3 In the case of where Tickets are to be provided to Customers (as distinct from where a Customer is sold a mere right of entry to which no physical Ticket is provided), then unless otherwise agreed between the parties, Register Now will deliver Tickets to Customers via electronic means which may include, without limitation, displaying the Tickets onscreen for Customers to print, emailing a copy of the Tickets to the Customers, ~~or~~ delivery of the Tickets to Customers via SMS, or delivery of Tickets to Customers via a smartphone application.
- 6.4 Register Now will deliver a receipt to the Customer in respect of their purchase via electronic means which may include, without limitation, displaying the receipt on screen for the Customer to print or emailing the receipt to the Customer.
- 6.5 The Tickets provided by Register Now will entitle a Customer to entry to the Event but may not entitle the Customer to a particular seat at the Event. Where separately agreed between Register Now and the Client in writing, Register Now will allocate individual seats at the Event to each Ticket purchased by a Customer in accordance with a seating plan agreed to between the Client and Register Now. The allocation of seats may occur in accordance with algorithms and methods of allocation specified by Register Now from time to time.

6.6 Subject to this **clause 6**, the Client will be responsible for the delivery and supply to Customers of Merchandise and any other goods purchased by Customers. Register Now will have no obligation or responsibility to deliver or supply Merchandise or such goods to Customers.

7. REGISTER NOW FEES

7.1 The Client agrees to pay Register Now:

(a) the following fees and charges ("**Fees**"):

- (i) Register Now's fees and charges which Register Now advises the Client will apply from time to time in relation to the provision of the Services. Such fees and charges may be specified by Register Now on its website, by notice to the Client or separately agreed between Register Now and the Client in writing; and
- (ii) any other amounts which the Client is obligated to pay to Register Now pursuant to this Agreement; and

(b) all Transaction Costs.

7.2 The amount of the Fees and Transaction Costs payable by the Client will be calculated and determined by Register Now. In the absence of any manifest error, Register Now's calculation of the Fees and Transaction Costs will be conclusive and final.

7.3 Unless expressly stated by Register Now to the contrary, the Fees and Transaction Costs payable are expressed to be exclusive of all Taxes. Upon payment of the Fees and Transaction Costs, the Client will pay Register Now an additional amount to ensure that after the deduction of any Taxes levied in respect of the Fees or Transaction Costs, Register Now receives no less than the amount of the Fees and Transaction Costs.

7.4 Where the Tickets, Merchandise or other goods or services are provided at no cost by the Client to its Customers, Register Now's Fees may comprise of a fixed fee per transaction or other amount as agreed between the parties.

7.5 The Fees and Transaction Costs will be paid in accordance with **clause 8**.

8. CUSTOMER PAYMENTS AND FEES

8.1 Unless separately agreed between the parties in writing, the Customer Payments received by Register Now from Customers will be paid into Register Now's own bank account. ~~All Donations to Charities must be collected by Register Now into its bank account.~~

8.2 If the Customer Payments are received by Register Now into its bank account then, subject to **clause 8.3**:

- (a) within **7 days** (or such longer period specified by Register Now from time to time) following the end of a calendar month, Register Now will pay the Client the amount of the Customer Payments received from each Customer during that calendar month, less:

- (i) any Fees payable by the Client to Register Now in relation to Register Now's provision of the Services; and
 - (ii) any Transaction Costs; and
 - (b) if the amount of the Customer Payments held by Register Now in its bank account are not sufficient to pay the entire amount of the Fees and Transaction Costs owing to Register Now (as provided for under **clause 8.2(a)**), then any amount of the Fees and Transaction Costs which remain unpaid after deduction from the Customer Payments pursuant to **clause 8.2(a)**, will be due and payable to Register Now within **7 days** of the date of an invoice of Register Now requesting payment.
- 8.3 If a Customer Payment constitutes a Donation to a Charity, then the Customer Payment will not be paid by Register Now to the Client, but will instead ~~by~~be paid by Register Now to the relevant Charity, less any Transaction Costs charged or incurred by Register Now and any Fundraising Fee charged by Register Now, in accordance with a separate agreement between Register Now and the Charity.
- 8.4 If any Customer Payments are not received by Register Now into its bank account, then the Client will pay Register Now's Fees and Transaction Costs within **7 days** of the date of an invoice of Register Now requesting payment.
- 8.5 Within **7 days** following the end of a calendar month, Register Now will provide a report to the Client showing all payments for the Tickets, Merchandise, Membership Fees or Donations made by each Customer during that calendar month (although if required by Fundraising Laws or Register Now's agreements with Charities, information about Donations to Charities may not be made available). The report may be provided by email or made available in the Portal.
- 8.6 For the avoidance of doubt, invoices may be provided by Register Now via the Portal.

9. PROCESSING OF REFUNDS

- 9.1 Subject to **clause 9.2**, the Client will be primarily responsible for processing all refunds of any payments by Customers for Donations paid to the Client, for Tickets, Merchandise and Membership Fees.
- 9.2 Register Now may however refund an amount paid to it by a Customer if:
- (a) Register Now is required by law or reasonably considers that it is required by law to do so;
 - (b) Register Now, at its sole discretion, determines that issuing a refund to the Customer will avoid any dispute or increased costs to Register Now;
 - (c) Register Now otherwise issues the refund to the Customer in accordance with any refund policy specified by Register Now from time to time or in accordance with any agreement between Register Now and the Customer;
 - (d) the order placed by the Customer is found to be fraudulent;
 - (e) the Customer placed a duplicate order in error;

- (f) in the case of a Donation to a Charity, Register Now is unable for any reason to pay the Donation to the Charity, and the Customer and Register Now agree in these circumstances for Register Now to refund the Donation to the Customer;
 - (g) the Customer requests a refund before having received the Tickets or Merchandise; or
 - (h) in Register Now's sole opinion, Register Now considers that it is likely that the Customer Payment will result in a credit card charge back.
- 9.3 Register Now's determination as to whether a refund is required by **clause 9.2** is final and conclusive and may not be challenged by the Client.
- 9.4 For the avoidance of doubt, the amount of any refunds and credit card charge backs paid or incurred by Register Now, will be reimbursed by the Client or alternatively deducted from the amount of any Customer Payments payable by Register Now to the Client pursuant to **clause 8**.
- 9.5 The right of Register Now to process a refund as provided for in this **clause 9** is in addition to and not in substitution for any refund policy notified by Register Now to the Client from time to time. If there is any conflict between this **clause 9** and the refund policy then the refund policy will prevail to the extent of the conflict.

10. CHARITY DONATIONS

10.1 Selection of Charities

- (a) The Client must not solicit Donations for Charities, or conduct fundraising activities for Charities, by using the Services, other than:
 - (i) for one or more of the Charities nominated by Register Now from time to time; and
 - (ii) in accordance with Fundraising Laws.
- (b) The Client must ensure that prior to commencing its fundraising activities for a Charity, that:
 - (i) it takes all necessary steps to ensure its own compliance with Fundraising Laws; and
 - (ii) the Charity in question has no objection to the nature of the proposed activity and, if required by Fundraising Laws or Register Now's agreements with the Charity, the Charity has in fact approved of the Client's fundraising activity.
- (c) The list of Charities for which the Client may conduct fundraising activities via the Services will be selected by Register Now from time to time. Register Now may add or withdraw Charities from this list at any time in its sole and absolute discretion.

- (d) Register Now makes no warranties or representations whatsoever in relation to any Charity, the activities of the Charity or the uses which the Charity will make of any Donations.

10.2 Provision of Client information to Charities

- (a) The Client will provide Register Now with all information about the Client which Register Now reasonably requests from time to time, and which Register Now considers it requires to comply with Fundraising Laws, or with its agreements with Charities.
- (b) Register Now may be required by Fundraising Laws and by its agreements with Charities to forward the Client's contact information, and other information about the Client to each Charity for which the Client raises funds. The Client confirms its agreement to Register Now providing this information to the relevant Charity.

10.3 Fundraising Fee

- (a) The Client acknowledges that Register Now collects a Fundraising Fee in respect of all Donations made to Charities.
- (b) The Client acknowledges that it will not be entitled to any payment or commission for funds raised for Charities.

10.4 Suspension of fundraising activities

Register Now may at any time, in its sole and absolute discretion, and for any reason:

- (a) refuse to allow the Client to conduct any fundraising activity via the Services on behalf of one or more specific Charities; and/or
- (b) suspend or terminate the Client's fundraising activities via the Services in respect of any one or more Charities, or in respect of all Charities. Where this occurs, Register Now will determine in its sole and absolute discretion whether it pays the Donations made by Customers to the relevant Charity or alternatively refunds those amounts to Customers.

11. SUSPENSION OF THE PAYMENT SERVICES

11.1 Without limiting any of Register Now's rights under this Agreement, Register Now may suspend the Client's use of the Services at any time, with or without notice to the Client if:

- (a) Register Now reasonably considers that the Client has breached any of its obligations to Register Now under this Agreement;
- (b) the Client is using the Services to sell Tickets or Merchandise to an Event, to solicit Donations in respect of an Event or to procure Membership Fees for a particular association or purpose, which in Register Now's sole and absolute opinion is offensive, immoral, unethical or is likely to bring Register Now into disrepute;

- (c) the Client is using its Account or the Services for illegal means (including, without limitation, in breach of Fundraising Laws) or in a manner which Register Now in its sole discretion considers offensive, unlawful, harassing, libellous, defamatory, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable; or
- (d) in Register Now's sole and absolute opinion, the provision of the Services to the Client is resulting in an unreasonable load on Register Now's servers or Register Now's other services.

11.2 The Client agrees:

- (a) Register Now may suspend the Services where permitted under **clause 11.1** at any time including without limitation, following the release for sale by the Client of Tickets and/or Merchandise or payment of the Membership Fees or Donations;
- (b) in addition to the powers of Register Now described in **clause 11.1**, Register Now may suspend the Services at any time or for any reason, with or without notice to the Customer or the Client. Such suspension under this **clause 11.2(b)** will however not occur during the period commencing from the advertised release by the Client of Tickets or Merchandise in respect of a particular Event and concluding on the staging of the Event;
- (c) Register Now's suspension of the Services may, in Register Now's sole discretion, apply to only some of the Services and/or for a fixed or indefinite period of time; and
- (d) Register Now may in its sole discretion reactivate the Services for the Client at any time following their suspension.

12. **PRIVACY**

- 12.1 Register Now will collect personal information of Customers including their name, contact details and payment details (including, without limitation, credit card details) ("**Customer Information**"). Register Now will pass on to the Client the name and contact details of each Customer, together with a description of the Tickets, Merchandise, Membership Fees or Donations to the Client (but not necessarily information relating to Donations to Charities which may be withheld), but Register Now will not pass on payment information.
- 12.2 The Client agrees that it will only use the Customer Information for the purposes of this Agreement and for the purposes of interacting with Customers in relation to their purchase of Tickets and Merchandise or their payment of any Membership Fees or Donation. Unless separately agreed between the Customer and the Client, the Client must not use the Customer Information for any other purpose.
- 12.3 Each party warrants to the other party that they will comply with all privacy laws and data protection laws (including, without limitation, the *Privacy Act 1988 (Cth)*) in relation to the storage, use and transfer of Customer Information.

- 12.4 Register Now's policies on the use, storage and disclosure of personal information by Register Now is otherwise set out in its Privacy Policy which is located here <http://www.registernow.com.au/Privacy.aspx>.

13. RELATIONSHIP OF THE PARTIES

Register Now acts as the limited agent of the Client only for the purposes of processing Customer Payments as provided for in this Agreement. Apart from this limited agency, the Client acknowledges that Register Now is an independent service provider and contractor of the Client and is not the partner, agent or employee of the Client. Apart from Register Now's limited agency, neither party has the power to bind the other in relation to any obligation owing to a third party. The Client agrees that any agreement for the sale of Tickets and Merchandise or for the soliciting of Membership Fees or Donations will be between the Client and the Customer and that Register Now will only be obligated to process the Customer Payment of the Customer in accordance with this Agreement.

14. GENERAL OBLIGATIONS OF THE CLIENT

The Client agrees that:

- (a) It will not directly or indirectly require any Customer to pay a surcharge, fee, or contemporaneous finance charge for choosing to pay via credit card;
- (b) it will not use the Services for any illegal or fraudulent purpose or for any purpose other than the payment of Tickets, Merchandise, Membership Fees or Donations;
- (c) it will comply with all laws which must be complied with in relation to the payment and supply of Tickets and Merchandise to Customers, and will comply with Fundraising Laws in respect of soliciting Donations for Charities;
- (d) it will comply with any export restrictions which may apply to the export of Tickets or Merchandise to locations outside Australia or the territory in which the Client is located;
- (e) it warrants that it will not, by engaging Register Now to provide the Services, place Register Now in breach of any law or obligation owing to a third party;
- (f) it will not undertake any act or cause any omission which will bring Register Now, its brand or its other customers and clients into disrepute;
- (g) it will not use the Services in a manner that may lead to the suspension of the Services under **clause 11.1**;
- (h) it will provide Register Now with all information requested by Register Now which Register Now requires to provide the Services; and
- (i) it will undertake all tasks reasonably requested of it by Register Now which are necessary to enable Register Now to provide the Services.

15. TERM AND TERMINATION

- 15.1 This Agreement will commence on the date that it is entered into by the parties and will terminate upon the provision of **7 days** written notice of termination by one party to the other. Such notice may be given via the Portal or in the case of the Client, by the Client electing to terminate their Account via functionality contained in the Portal.
- 15.2 This Agreement may be terminated by a party immediately on written notice to the other party if:
- (a) the other party is in default or breach of this Agreement; and
 - (b) the party has provided the defaulting party with **7 days** written notice of the default or breach and where the breach or default is capable of rectification, the defaulting party fails to rectify the breach or default within the period of the notice.
- 15.3 Upon the termination of this Agreement:
- (a) Register Now will within **7 days** following termination, withdraw the use of the Services from the Client and cease to process any payment of Tickets, Merchandise, Membership Fees or Donations;
 - (b) Register Now may withhold a reasonable amount of the Customer Payments payable to the Client (with such amount to be determined by Register Now in its sole discretion) on account of credit card charge backs, refunds, payments due to third parties on behalf of the Client or other Transaction Costs which may be incurred by Register Now following termination;
 - (c) Register Now will pay to the Client any Customer Payments collected from Customers in accordance with **clause 8**, less any amounts withheld by Register Now under **clause 15.3(b)** and less any amounts (including Fees and Transaction Costs) owing to Register Now by the Client under this Agreement; and
 - (d) within **12 months** following termination of this Agreement, Register Now will pay to the Client the amount withheld under **clause 15.3(b)** less any portion of that amount used by Register Now to satisfy refunds, credit card charge backs, payments due to third parties or other Transaction Costs incurred by Register Now on behalf of the Client which are incurred by Register Now following termination.
- 15.4 **Clauses 7, 9, 12, 13, 15.3, 16, 17, 18 and 19**, and the Client's obligations under **clause 10**, and each other provision of this Agreement capable of having effect after termination will survive the execution, delivery and termination of this Agreement and the performance of all obligations under this Agreement and will not merge on termination.

16. LIMITATION OF LIABILITY AND IMPLIED TERMS

- 16.1 The Client acknowledges that Register Now has made no warranties that the Services will be error free.
- 16.2 The Client agrees that Register Now will not be liable or responsible for any failure in, or delay to, the provision of the Services or in Register Now complying with its obligations

under this Agreement where such failure or delay has arisen as a direct or indirect result of:

- (a) fire, earthquake, storm, flood, hurricane, inclement weather or other act of God, war, terrorism, explosion, sabotage, industrial accident or an industrial strike;
- (b) denial of service attacks, telecommunications failure, hardware failure or the failure of software provided by a third party to function in accordance with its specifications;
- (c) a significant demand is placed on Register Now's services which is above the usual level of demand and which results in a failure of Register Now's software and hardware to function correctly;
- (d) the failure of any third party (including without limitation, any bank or other financial organisation) to fulfil any obligations to Register Now; or
- (e) any other circumstances or event similar to the above which are beyond the reasonable control of Register Now.

16.3 The Client acknowledges that Register Now has not made and will not make any express or implied warranties in relation to the Services or any other goods or services provided by Register Now under this Agreement, other than those warranties contained in this Agreement. Subject to **clauses 16.5 and 16.6**, any term that would be implied into this Agreement, including without limitation any condition or warranty, is hereby excluded.

16.4 Subject to **clauses 16.5 and 16.6**, the Client agrees that Register Now will not be liable in respect of any claim by the Client (whether contractual, tortious, statutory or otherwise) for any direct, special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, revenue or data arising out of or in connection with the provision of the Services or the provision of any other goods or services under this Agreement and whether as a result of any breach or default, by Register Now. The maximum liability of Register Now under this Agreement for any and all breaches of this Agreement, and for any negligence in relation to this Agreement, will not exceed the amount of the Fees paid for the Services by the Client.

16.5 If the *Competition and Consumer Act 2010* (Cth) (or analogous legislation) applies to this Agreement and permits the limitation of liability for breach of warranty implied by statute, the liability of Register Now is limited, at the option of Register Now, to:

- (a) in the case of goods, any one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services:

- (i) the supplying of the services again; or
- (ii) the payment of the cost of having the services supplied again.

16.6 Any of the terms and conditions of this Agreement which limit or exclude any term, condition or warranty, express or implied, or the liability of Register Now will apply to the extent permitted by law and will not be construed as excluding, qualifying or limiting the Client's statutory rights or remedies arising by virtue of the breach of any implied term of this Agreement where such exclusion, qualification or limitation would be prohibited by statute.

17. CLIENT INDEMNITY

The Client indemnifies Register Now, its agents, officers and employees ("**Indemnified**") against any loss, cost, expense or damage (including legal costs on a full indemnity basis) which the Indemnified suffer or incur as a direct or indirect result of:

- (a) any breach of the Client's obligations and warranties given under **clauses 14** or **18.4**;
- (b) any act of the Client described in **clauses 11.1(b)** and **11.1(c)**; or
- (c) any other breach of this Agreement by the Client.

18. INTELLECTUAL PROPERTY

18.1 The Client acknowledges that Register Now is the owner of all Intellectual Property Rights which subsist in the Works. The Client acknowledges that it has no Intellectual Property Rights in the Services or in any Works.

18.2 Apart from the extent permissible under the *Copyright Act 1968* (Cth), the Client must not copy or reproduce the Works or disassemble, modify or reverse engineer the Works.

18.3 Subject to the payment of the Fees and Transaction Costs, and for the sole purpose of providing the Services, Register Now grants to the Client a non-exclusive, non-transferable, royalty-free licence to incorporate the Purchase Page into the Client's website but to make no other use of the Purchase Page. Such licence will terminate upon the termination of this Agreement.

18.4 Nothing in **clause 18.1** is intended to transfer ownership to Register Now of any Intellectual Property Rights in the Client Works which the Client or a third party were the owner of at the time of their supply to Register Now. The Client warrants that it has the necessary rights in the Intellectual Property Rights in the Client Works to permit Register Now to incorporate the Client Works into the Purchase Page. The Client hereby grants Register Now a worldwide, royalty free, non-exclusive licence to incorporate and publish the Intellectual Property Rights in the Client Works as part of the Purchase Page.

19. CONFIDENTIALITY

19.1 Each party will keep confidential the Confidential Information of the other party and will only use that Confidential Information for the purposes of this Agreement.

- 19.2 A party may only disclose or use Confidential Information of the other party:
- (a) where the Confidential Information used or disclosed is in the public domain (other than through a breach of this Agreement);
 - (b) where the disclosure is required by law but only to the extent of that requirement;
 - (c) where the disclosure is made to the other party's employees or contractors solely for the purposes of this Agreement and only where such employees or contractors are under an obligation of confidentiality on terms no less restrictive than this **clause 19**; or
 - (d) where the Confidential Information is disclosed to the party's legal or professional advisors solely for the purposes of seeking advice and only where such advisors are under an obligation of confidentiality on terms no less restrictive than this **clause 19**.

20. MISCELLANEOUS

- 20.1 Register Now may amend the terms and conditions of this Agreement at any time. Such amendments will take effect from the date of their notification to the Client ("**Amendment Date**"). The Client agrees that without limiting the ways in which it may be bound by such amendments, it will be deemed to have agreed to such amendments by making use of or accessing the Services after the Amendment Date.
- 20.2 If required by Register Now, the Client will procure that its directors and other officers provide a guarantee and indemnity (in a form specified by Register Now) to secure the Client's performance of its obligations under this Agreement.
- 20.3 Unless otherwise requested in writing by the Client, Register Now may use the Client's corporate identity (if applicable) as part of promoting the Services and Register Now's other software in the market place.
- 20.4 Any notice given under this Agreement must be in writing and must be signed by the party or its agent giving the notice. A notice may also be provided without the requirement of signature if it is provided via the Portal. A notice is taken to be received:
- (a) in the case of a notice sent via the Portal, at the time it is sent;
 - (b) in the case of a notice delivered by hand, when so delivered;
 - (c) in the case of a notice sent by pre-paid post, on the third day after the date of posting;
 - (d) in the case of a notice sent by facsimile, upon the receipt by the sender of a transmission report from the despatching facsimile machine which confirms that the facsimile has been successfully sent; or
 - (e) in the case of a notice sent by email, upon the receipt by the sender of a confirmation from the recipient or the recipient's email server that the email has been received by the recipient.

- 20.5 This Agreement supersedes all prior representations, arrangements, understandings and agreements between the parties relating to the subject matter of this Agreement and sets forth the entire and exclusive agreement and understanding between the parties relating to the subject matter of this Agreement.
- 20.6 A provision of or a right created under this Agreement may not be waived except in writing signed by the party or parties to be bound by the waiver. No single or partial exercise by any party of any right, power or remedy under this Agreement will preclude any other or further exercise of that or any other right, power or remedy. The rights, powers or remedies provided in this Agreement are cumulative with and not exclusive of any rights, powers or remedies provided independently of this Agreement.
- 20.7 If any provision of this Agreement is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this Agreement to the intent that the invalid or unenforceable provision will be treated as severed from this Agreement.
- 20.8 Register Now may assign its rights and novate or transfer obligations which arise under this Agreement. The Client must not assign, novate or otherwise transfer its rights or obligations under this Agreement without the prior written consent of Register Now (which may be withheld).
- 20.9 The parties acknowledge and agree that no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or part of it.
- 20.10 This agreement is governed by, and must be construed in accordance with, the laws of the State of Victoria, Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Victoria, Australia and their Courts of Appeal.