

CUSTOMER TERMS AND CONDITIONS

INTRODUCTION

- A. Power Port Pty Ltd ("Power Port") is an independent Australian company focused on providing a range of marketing and lead generation services via its Website to help mortgage brokers retain their existing borrower customers, and to gain new business through repeat business and new referrals.
- B. Power Port's services ("Services") enable you, as a mortgage broker, to create, launch and manage email campaigns for the distribution of email newsletters and e-cards to your nominated subscribers.
- C. These terms and conditions govern the use of the Services by you and your agents and employees.
- D. The Services may not be used for sending unsolicited email (commonly called "spam" or "junk mail").
- E. By clicking the 'ACCEPT' button on the Terms and Conditions page of the Registration Form, or by logging in to the Website at any time, you accept these terms and conditions.

OPERATIVE PROVISIONS

1 Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

"Address-Harvesting Software" means software that is specifically designed or marketed for use for searching the internet for electronic addresses, or collection, compiling, capturing or otherwise harvesting those electronic addresses.

"Agreement" means these terms and conditions as amended and published on the Website by Power Port from time to time, as well as:

- (a) the Email Privacy Policy;
- (b) any guidelines, rules or operating policies that Power Port may establish and publish on the Website from time to time; and
- (c) any other provisions incorporated into these terms and conditions by express or implied reference.

"Business Day" means any day on which banks are open for business in Brisbane, Queensland, Australia.

"Business Hour" means from 9.00 am to 5.00 pm on any Business Day, by local time in Sydney, New South Wales, Australia.

"Email Campaign" means each transmission of an email newsletter or e-card to Subscribers on your Mailing List.

"Email Privacy Policy" means Power Port's email privacy policy, as published on the Website.

"Fee Schedule" means the schedule of Service Fees published on the Website from time to time.

"GST" has the meaning set out in the GST Act.

"GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“*Link*” means an electronic address on a webpage or in an email.

“*Mailing List*” means your list of Subscribers on the Website.

“*Power Port*” means Power Port Pty Ltd ACN 105 677 290 ABN 12 105 677 290 of 30 Fuller Street, Collaroy Plateau, New South Wales, Australia.

“*Prohibited Content Policy*” means the content contained in Power Port’s Prohibited Content Policy as published on the Website from time to time.

“*Registration Form*” means the registration form for use of the Services as published on the Website from time to time.

“*Service Fees*” means the fees published in the Fee Schedule.

“*Services*” means Power Port’s services available via the Website enabling you to send Email Campaigns every second month on dates nominated by Power Port and notified to you from time to time.

“*Software*” means software, documentation or data related to the Services.

“*Subscribers*” means persons whom you subscribe via the Website to receive Email Campaigns.

“*Unsubscribe Link*” means a Link that allows Subscribers to remove themselves from your Mailing List.

“*Unsubscribe Request*” means a request by a Subscriber to unsubscribe from your Mailing List, whether by use of the Unsubscribe Link or otherwise.

“*Website*” means Power Port’s website at www.powerport.com.au.

“*You*” and “*you*” means each person who accepts this Agreement with Power Port, either by clicking the “ACCEPT” button on the Terms and Conditions page of the Registration Form, by logging in to the Website at any time and from time to time, or by any other means whether verbally, electronically, in hardcopy writing or by conduct.

1.2 *Interpretation*

In the interpretation of this Agreement, unless the context otherwise requires:

- (a) singular includes plural and vice versa;
- (b) any gender includes each other gender;
- (c) a reference to a person includes a reference to an individual, corporation, incorporated or unincorporated association, trust, partnership, and governmental or quasi-governmental department, council, agency, authority or other body;
- (d) a reference to writing includes any means of representing or reproducing words, figures, drawings or symbols in a visible, tangible form, in English;
- (e) a reference to any currency or amount of dollars or cents is a reference to Australian currency and Australian dollars and cents;
- (f) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;

- (g) a reference to any party includes a reference to each of its staff and successors and permitted assigns, as well as any liquidator, provisional liquidator, receiver, manager or administrator duly appointed under the Corporations Law, any person authorised to act on its behalf under power of attorney, and any other person duly authorised in writing to act on its behalf in respect of any of the purposes or provisions of this Agreement;
- (h) a reference to a clause, sub-clause, paragraph, sub-paragraph, recital, schedule, annexure or exhibit is a reference to a clause, sub-clause, paragraph, sub-paragraph, recitals schedule, annexure and exhibit of this Agreement;
- (i) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Agreement or that other agreement or document;
- (j) a reference to "conduct" includes any omission and any representation, statement or undertaking, whether or not in writing;
- (k) mentioning anything after "include", "includes" or "including" does not limit what else might be included;
- (l) headings are used for ease of reference and convenience only and are not to be construed as forming any part of this Agreement; and
- (m) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning.

2 Provision of the Services

- 2.1 Subject to the full and proper performance of this Agreement by you, Power Port must make the Services available to you on the terms and conditions of this Agreement and the Email Privacy Policy.

3 Conditions on use of Services

- 3.1 *Registration Form:* You must complete and submit the Registration Form as a precondition and in order to use the Services. You must provide true, accurate, current and complete information about yourself as requested in the Registration Form.
- 3.2 *Payment of Service Fees:* The Services are provided subject to full and proper payment of the Service Fees in accordance with this Agreement.
- 3.3 *Security of account, passwords etc:* You are responsible for maintaining the security of your account, passwords and files, and for all uses of your account and of the Services in your name.
- 3.4 *Compliance with anti-spam laws:* You must not use the Services for the sending of unsolicited email (commonly called "spam"). You represent, covenant and warrant that you will use the Services only in compliance with this Agreement, the Spam Act 2003 (Cth) and all other applicable laws (including but not limited to policies and laws related to spamming, privacy, obscenity, or defamation). You must not access or otherwise use third-party mailing lists in connection with preparing or distributing unsolicited email to any third party. Without limiting the foregoing, you agree:
 - (a) not to send or cause to be sent, or authorize the sending of, an Email Campaign to a non-existent email address;
 - (b) not to upload any Mailing List or other Subscriber information or data to the Website if you have reason to believe or suspect that the Mailing List or Subscriber information or data contains or might contain fictitious names or contact information (including fictitious email addresses) and that any email addresses in fact do not exist or are not operational or have been obtained from a supplier which used or uses Address-Harvesting Software.

- 3.5 *Ordinary course of business only:* The Services must be used for your internal business (which includes civic or charitable) purposes only and solely in the ordinary course of your business.
- 3.6 *No timesharing or service-bureau usage:* You must not use the Services or any Software for timesharing or service-bureau purposes or otherwise for the benefit of a third party.
- 3.7 *Compliance with laws:* The Services may only be used for lawful purposes. Transmission or solicitation of any material that violates Australian federal, state or other laws that may apply in this jurisdiction or your local area is prohibited.
- 3.8 *No export of Services or technical data:* You may not remove or export from Australia or allow the export or re-export of the Services, or any direct product of the Services, including technical data, in violation of any restrictions, laws, or regulations of Australia or any other applicable country.
- 3.9 *Consents and authorisations:* You must not use the Services unless you have obtained and hold all necessary governmental, judicial and third party consents and approvals (including consents and approvals required by any lender, mortgage manager, mortgage originator, or insurer under any mortgage management, mortgage origination, insurance or other contract), whether required by law, a court or tribunal or the terms and conditions of any contractual agreement or security, which are required for the purpose of entering into and performing your obligations under this Agreement.
- 3.10 *Email Privacy Policy:* You must adopt and comply at all times with the Email Privacy Policy, the terms of which are incorporated into this Agreement by reference.
- 3.11 *Prohibited Content Policy:* You must comply at all times with the Prohibited Content Policy, the terms of which are incorporated into this Agreement by reference.

4 Payment of Service Fees

- 4.1 *Liability for payment:* You are liable to pay the Service Fees once you have completed and submitted the Registration Form. You are responsible for paying Service Fees for all Email Campaigns sent using the Services, regardless of whether delivery of any email messages to their intended recipients is prevented or blocked by any third party.
- 4.2 *Payment by credit card:* Service Fees are payable either monthly or yearly in advance on the terms and conditions set out in the Fee Schedule, which terms and conditions form part of this Agreement by reference. Service Fees billed monthly are direct debited from your nominated credit card account. Payment for Services must be made by a valid credit card accepted by Power Port. If the monthly payment option is selected or if you have previously provided your credit card for payment, you authorise Power Port to charge your credit card for such amounts on a regular monthly basis beginning immediately upon the completion and submission of the Registration Form. If Power Port is for any reason unable to effect automatic payment via your credit card, Power Port must attempt to notify you and your Power Port account may be disabled until payment is received.
- 4.3 *Basis of calculating Service Fees:* Service Fees are based on the number of Subscribers in your Power Port account at the monthly anniversary of your registration, and any price changes are applied pro rata for the remainder of the contract period. Service Fees are payable regardless of whether or not you use the Services.
- 4.4 *Fee Schedule:* You are responsible for reviewing the Fee Schedule from time to time and remaining aware of the Fees charged by Power Port. The Fee Schedule, including Subscriber levels, prices and payment terms and conditions, is subject to change at any time in Power Port's absolute discretion. Power Port must attempt to notify you prior to the effective date of any change to the Fee Schedule.
- 4.5 *Service Fees payable in Australian dollars:* Service Fees are payable in Australian dollars unless agreed otherwise in writing by Power Port.
- 4.6 *No refunds:* Any and all amounts paid for the Services are not refundable.

- 4.7 **GST:** An amount payable by a party under this Agreement, in respect of a supply by the other party which is a taxable supply, unless expressed to represent the price of the supply, represents the GST-exclusive value of the supply and the recipient of the supply must, in addition, pay to the supplier the GST payable in respect of the supply. If a party is required under this clause to pay any GST to the other party, the other party must deliver a tax invoice to the first party upon payment of the GST to the other party.

5 Content of Email Campaigns

- 5.1 **Customizing Email Campaigns:** You may customize your Email Campaigns in accordance with the options for article and format selection made available on the Website from time to time. You agree that Power Port may select default customisations for Email Campaigns and that Power Port may notify you of a deadline for you to customize your Email Campaigns prior to sending each Email Campaign to the Subscribers on your Mailing Lists. If you do not customize any Email Campaign by that deadline, you authorise Power Port to send the Email Campaign with its default customisations to the Subscribers on your Mailing List at the time of sending.
- 5.2 **Author contact information:** For every email message sent in connection with the Services, you acknowledge and agree that Power Port may automatically add an identifying footer stating "Powered by Power Port" and/or "Compiled for [your name] by Power Port Pty Ltd. Power Port Pty Ltd and authors of articles can be contacted via [your name]" or a similar message.
- 5.3 **Advertising Power Port:** You agree to cooperate with and provide reasonable assistance to Power Port in promoting and advertising the Services.

6 Required Links in Email Campaigns

- 6.1 **Unsubscribe Links:** You acknowledge and agree that Power Port will ensure that every email message that you send in connection with the Services contains an Unsubscribe Link together with a statement, presented in a clear and conspicuous manner, that the Subscriber may use the Unsubscribe Link for that purpose.
- 6.2 **Links to remain operational for 30 days:** Power Port will ensure that each Unsubscribe Link must remain operational for at least 30 days after the date on which you send the message. You must not remove, disable or attempt to remove or disable the Unsubscribe Link.
- 6.3 **Processing Unsubscribe Requests:** You acknowledge and agree that Power Port will monitor, correct and process unsubscribe requests within 10 days of their receipt, and will update the email addresses to which messages are sent through your Power Port account.
- 6.4 **No fee for use of Links:** You must not directly or indirectly charge or levy a fee or premium, or attach any condition or requirement, to or for the use of any Unsubscribe Link, and you acknowledge that Power Port will not do so.
- 6.5 **Consequences of breach:** Power Port, at its own discretion, may immediately disable your access to the Services without refund if it believes in its sole discretion that you have violated any of the terms of this clause 6.

7 Mailing List rules

- 7.1 **Permission-based lists only:** You must only import, access or otherwise use lists of Subscribers that have given their consent to the use of their details in connection with the Services (often called "permission-based lists"). You must not use any list of persons that has been purchased from a third party (often called "purchased lists"). You must not import, access or otherwise use third-party mailing lists in connection with preparing or distributing unsolicited email.
- 7.2 **No emails to distribution lists, newsgroups or spam email addresses:** You must not send any emails to distribution lists, newsgroups or spam email addresses. You must not import, access or otherwise use any distribution, newsgroup or spam email addresses in your Mailing Lists or in any way connection with the Services.

- 7.3 *Power Port templates:* You must not copy a Power Port template and use any email newsletter or email birthday card designs for purposes other than sending emails through the Services.
- 7.4 *No address-harvesting software:* You must not supply, acquire or use Address-Harvesting Software in connection with the Services. You must not supply, acquire or use an electronic address list that has been produced using Address-Harvesting Software.
- 7.5 *Subscriber complaints:* Emails that you send through the Service may generate abuse complaints from recipients. As a matter of privacy, Power Port cannot share with you the email addresses of those who complain about your email campaign. You are responsible for ensuring that your email campaigns do not generate a number of abuse complaints in excess of industry norms. Power Port, in its sole discretion, may determine whether your level of abuse complaints is within industry norms, and its determination is final, binding and conclusive for all purposes under this Agreement.
- 7.6 *Consequences of breach:* Power Port, at its own discretion, may immediately disable your access to the Services without refund if it believes in its sole discretion that you have violated any of the terms of this clause 7.

8 **Protection of Power Port Software**

- 8.1 *No software licence:* This is an Agreement for Services, and you are not granted a license to any software by this Agreement.
- 8.2 *No infringement of Software etc:* You must not, directly or indirectly:
- (a) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the Services or any Software;
 - (b) remove any proprietary notices or labels from the Services or any Software, modify, translate, or create derivative works based on the Services or any Software; or
 - (c) copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Software.
- 8.3 *EC Council Directive on the Legal Protection of Computer Programs:* If you are using the Services in any country in the European Community, the prohibition against modifying, translating, reverse engineering, decompiling, disassembling or creating derivative works based on the Services or the Software does not affect your rights under any legislation implementing the E.C. Council Directive on the Legal Protection of Computer Programs.

9 **Protection of Power Port name and logo**

- 9.1 *Non-use of Power Port name and logos:* You acknowledge and agree that the Services and the Power Port company names and logos and all related product and service names, trade marks, design marks and slogans, are the property of Power Port or its affiliates or suppliers (collectively, the "Marks").
- 9.2 *No authority to use Marks:* You are not authorised to use any of the Marks in any advertising, publicity or any other commercial manner without the prior written consent of Power Port.
- 9.3 *No title or ownership of Marks:* Your use of the Services confers no title or ownership in the Services, the Software or the Marks and is not a sale of any rights in the Services, the Software or the Marks.

10 Protection of your data

- 10.1 *Use of personal information about you:* In using the varied features of the Services, you may provide certain information (such as name, contact information, or other registration information) to Power Port. Power Port may use this information and any technical information about your use of the Services to tailor its presentations to you, facilitate your movement through the Services, or communicate separately with you.
- 10.2 *Non disclosure of your personal information:* Power Port must not provide your information to companies that you have not authorised for such disclosure unless required by law or if you are terminated from Power Port due to unsolicited commercial email being sent from your Power Port account.
- 10.3 *Property in your data:* All your data whether or not uploaded to the Website is and remains at all times your property.
- 10.4 *Licence to use your data to provide Services:* You give Power Port an indefinite, non-exclusive, transferable licence to use your personal information and data for the purposes of providing the Services subject to all applicable contractual, privacy and other legal regulations.

11 Protection of Mailing Lists

- 11.1 *Power Port's restricted use of Mailing Lists:* Power Port must not use your Mailing List or any other information about your Subscribers or customers for any purposes other than those intended with the Services. Power Port must not share or disclose your Subscriber or customer information with any other parties unless required by law.
- 11.2 *Non disclosure of Mailing Lists:* Power Port must keep your Mailing Lists and Subscriber information strictly confidential and must not disclose them to any third party unless required by law.
- 11.3 *Property in Mailing Lists:* All data in any Mailing List whether or not uploaded to the Website is and remains at all times your property.
- 11.4 *Licence to use Mailing Lists to provide Services:* You give Power Port an indefinite, non-exclusive, transferable licence to use your Mailing Lists and the data contained in your Mailing Lists for the purposes of providing the Services subject to all applicable contractual, privacy and other legal regulations.

12 Non-competition by Power Port

- 12.1 *Restraint of trade:* Without limiting any other restraint in this Agreement, Power Port hereby agrees and undertakes not to use any information or data in your Mailing Lists to solicit or canvass goods or services that are similar to those provided by you to Subscribers or to any other third parties, except to the extent that your services are similar to the Services.
- 12.2 *Area of restraint:* The restraint in clause 12.1 applies worldwide and on the internet.
- 12.3 *Term of restraint:* The restraint in clause 12.1 applies for the term of this Agreement and for a period of 36 months after this Agreement is terminated.
- 12.4 *Capacity of restraint:* The restraint in clause 12.1 binds Power Port acting either alone or in partnership or association with another person, as principal or agent or representative of any person, as member or shareholder or debenture holder or note holder or holder of any other security, as trustee of or as a consultant or adviser to any person, or in any other capacity.

13 Privacy Act

- 13.1 *Your compliance with NPPs:* You warrant and agree to opt in and comply at all times with the terms of the Privacy Act 1988 (Cth) and the National Privacy Principles under that Act in relation to the way you collect, use and handle personal information about any third party, including without limitation data in any Mailing List used in connection with the Services. You hereby indemnify Power Port, and agree to keep Power Port indemnified, from and against any loss or damage incurred by Power Port as a consequence of any breach of the Privacy Act or the National Privacy Principles, or any claim relating to such actual or alleged breach.
- 13.2 *Power Port's compliance with NPPs:* Power Port represents that it has opted in to comply with the terms of the Privacy Act 1988 (Cth) and the National Privacy Principles under that Act in relation to all personal information that it collects, uses and handles from or relating to you or any other third parties, including without limitation data in any Mailing List used in connection with the Services.

14 Termination

- 14.1 *Termination by you:* You may terminate this Agreement at any time by contacting and notifying Power Port. There are no refunds for any fees paid.
- 14.2 *Termination by Power Port:* Power Port may terminate this Agreement or the Services, disable your account or put your account on inactive status, in each case at any time with or without cause, and with or without notice. Power Port has no liability to you or any third party because of such termination or action.
- 14.3 *Deletion of data following termination:* Power Port must delete any of your archived data within 30 days after the date of termination. After termination, you are required to process all Unsubscribe Requests within 30 days of your last email campaign. Power Port must provide upon request the list of Unsubscribe Requests from your last campaign. All sections of this Agreement that by their nature should survive termination will survive termination, including, without limitation, ownership, warranty disclaimers and limitations of liability.
- 14.4 *Inactive accounts:* If your account is classified (at Power Port's sole discretion) as inactive for over 120 days, Power Port has the right to permanently remove your Subscriber data. Power Port will attempt to contact you prior to taking any permanent removal actions.

15 Your warranties:

- 15.1 *Legal capacity:* You warrant that you have full legal capacity to enter into and perform all your duties and obligations under this Agreement.
- 15.2 *Individual's warranties:* If you are an individual, you warrant that:
- (a) you are at least 18 years of age;
 - (b) you are neither insolvent nor bankrupt; and
 - (c) you and/or your estate, assets and liabilities are not under the control of a trustee or administrator appointed pursuant to any laws relating to mental health.
- 15.3 *Company warranties:* If you are a body corporate or company, you warrant that:
- (a) you are not insolvent and are not in receivership, receivership and management, administration or liquidation; and
 - (b) you have entered into this Agreement with the prior approval of your board of directors.

15.4 *Consents and authorisations:* You warrant that you have obtained all necessary governmental, judicial and third party consents and approvals (including consents and approvals required by any lender under any mortgage management, origination or other contract), whether required by law, a court or tribunal or the terms and conditions of any contractual agreement or security, which you are required to obtain for the purpose of entering into and performing your obligations under this Agreement.

15.5 *Subscriber consents:* You warrant that you have obtained the express consent of each Subscriber to the collection and use of their personal information in your Mailing Lists for the purposes of Email Campaigns under this Agreement.

16 Power Port's disclaimers on use of Services

16.1 *Use at own risk:* Use of the Services and any reliance by you upon the Services, including any action taken by you because of such use or reliance, is at your sole risk.

16.2 *No warranty as to availability:* Power port does not warrant that the Services will be uninterrupted or error free, nor does it make any warranty as to the results that may be obtained from use of the Services.

16.3 *Disclaimer of statutory warranties:* The Services are provided "as is" and Power Port disclaims to the maximum extent permitted by law all warranties, express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose and non-infringement.

16.4 *Limitation of available remedies:* Your sole and exclusive remedy for any failure or non-performance of the Services is for Power Port to use commercially reasonable efforts to adjust or repair the Services.

17 Limitation of liability

17.1 *Exclusion of liability:* To the maximum extent permitted by law, under no circumstances and under no legal theory, tort, contract, or otherwise, is Power Port or any of its underlying service providers, business partners, information providers, account providers, licensors, officers, directors, employees, distributors or agents (collectively referred to for purposes of this section as "Power Port") liable to you or any other person for any loss or damages, whether direct, indirect, special, incidental, cover, reliance or consequential damages, even if Power Port is or has been informed of the possibility of such damages, or for any claim by any other party.

17.2 *Limitation of liability:* In the event that Power Port is found to be liable to you for damages from any cause whatsoever, and regardless of the form of the action (whether in contract, tort (including negligence), product liability or otherwise), the liability of Power Port to you is to the maximum extent permitted by law limited to the amount you paid for the Services. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so this limitation and exclusion may not apply to you.

18 Your indemnity to Power Port for use of Services

18.1 *Indemnity for breach etc:* You hereby indemnify and hold harmless Power Port and its partners, third-party suppliers and providers, licensors, officers, directors, employees, distributors and agents against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable legal fees) in connection with any claim or action that arises from an alleged breach of this Agreement or otherwise arising from or relating to your use of the Services.

18.2 *Indemnity for unauthorised use of Subscriber data:* Without limiting clause 18.1, you hereby indemnify and hold harmless Power Port and its partners, third-party suppliers and providers, licensors, officers, directors, employees, distributors and agents against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and reasonable legal fees) in connection with any claim or action that arises from any unauthorised use or publication of a Subscriber's personal information or data in connection with the provision of the Services.

18.3 *Damages:* In addition, you acknowledge and agree that Power Port has the right to seek damages when you use the Services for unlawful purposes, in an unlawful manner, and/or in a manner inconsistent with the terms of this Agreement, and that such damages may include, without limitation, direct, indirect, special, incidental, cover, reliance and/or consequential damages.

- 19 *Monitoring by Power Port:* Although Power Port has no obligation to monitor any information or content provided by you or your use of the Services, Power Port may do so and may remove any such content or prohibit any use of the Services it believes may be (or is alleged to be) in violation of this Agreement.
- 20 General**
- 20.1 *Relationship:* No agency, partnership, joint venture, or employment is created as a result of the Agreement, and you do not have any authority of any kind to bind Power Port in any respect whatsoever.
- 20.2 *Costs:* In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover its costs and legal fees from the other party.
- 20.3 *Multiple parties:* If any party consists of more than one person then the liability of those persons in all respects under this Agreement is a joint liability of all of those persons and a liability of each of those persons severally.
- 20.4 *Amendment:* Power Port may amend or modify this Agreement and may discontinue or revise any or all other aspects of the Services in its absolute and sole discretion, by publishing updated versions of the Agreement on the Website or by providing notice to you. All such changes become effective immediately upon the publication of the amended or modified Agreement on the Website or on the date of receipt of notice (as applicable).
- 20.5 *No waiver:* No failure to exercise and no delay in exercising any right, power or remedy under this Agreement operates as a waiver. Nor does any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- 20.6 *Entire Agreement:* Subject to clause 20.4, this Agreement constitutes the sole and entire agreement between the parties. No warranties, representations, guarantees or other terms or conditions of any kind not contained and recorded in this Agreement are of any force or effect.
- 20.7 *Severability:* If any provision of this Agreement is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions are and continue to be valid and enforceable in accordance with their terms.
- 20.8 *Assignment:* Your rights and obligations under this Agreement are personal. You cannot assign, charge or otherwise deal with, nor attempt or purport to deal with, your rights and obligations under this Agreement without the prior written consent of Power Port. Power Port may assign, charge or otherwise deal with its rights and obligations under this Agreement in its absolute discretion.
- 20.9 *Notices:*
- 20.9.1 Each notice given under this Agreement must be typed or in legible writing, must be in the English language, and must be addressed to the party at that party's email, postal or delivery address notified to the other party from time to time, or to a facsimile machine located at its delivery address (as applicable).
- 20.9.2 Each notice given under this Agreement may only be served personally, by prepaid post, by facsimile transmission or by email. In that regard:
- (a) Subject to clause 20.9.3, if a notice given under this Agreement is served personally, it is deemed to be served the day it is served.
 - (b) Subject to clause 20.9.3, if a notice given under this Agreement is served by prepaid post, it is deemed to be served two Business Days after posting.
 - (c) If a notice given under this Agreement is served by facsimile or email transmission within Business Hours, it is deemed to be served when the facsimile machine or email server (as applicable) through which it was sent produces a report indicating a successful transmission of the notice.

(d) If a notice given under this Agreement is served by facsimile or email transmission outside Business Hours, it is deemed to be served at the commencement of the next Business Hour after the time when the facsimile machine or email server through which it was sent produces a report indicating a successful transmission of the notice.

20.9.3 If delivery or receipt is outside Business Hours, the notice is taken to have been given during Business Hours on the next Business Day.

20.10 *Governing law:* This Agreement is governed by and construed in accordance with laws applicable in the State of New South Wales, Australia. Each party submits to the respective jurisdictions (including, where applicable, the non-exclusive jurisdictions) of the courts of New South Wales, Australia, as well as all other Australian courts or tribunals having jurisdiction over laws applicable in the State of New South Wales, Australia. Any proceedings in respect of any cause of action arising under this Agreement must be instituted, heard and determined in a court of competent jurisdiction in New South Wales, Australia.

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