

Token Listing Agreement

Parties

- 1 The entity nominated as “Banxa” in the Schedule (**Banxa**).
 - 2 The entity nominated as “Partner” in the Schedule (**Partner**).
-

Background

- A Banxa has developed and operates a software platform through which it provides token listing services, online functionality to buy and sell Cryptocurrency and other marketplace services and solutions (**Banxa Platform**).
- B Partner wishes to list its Token on the Banxa Platform and receive the Services on the terms set out in this Agreement to enable and facilitate the trading of its Token by End Users.

The parties agree as follows

1 Definitions

1.1 Definitions

Addressee has the meaning given to that term in clause 15(a)(ii).

Affiliate means any person or entity which directly or indirectly controls, is controlled by, or is under common control of Banxa.

Agreement means this document including the Schedule.

Banxa Data means any data (including End User Data) collected, held or developed by Banxa or its Affiliates.

Banxa Indemnified Persons has the meaning given to that term in clause 12.1.

Banxa Platform has the meaning given to that term in the Background.

Business Day means a day that is not a Saturday, Sunday or public holiday in Victoria, Australia.

Change in Control means, in relation to a party, an event the occurrence of which has the effect that:

- (a) if a person Controlled the party prior to the time the event occurred, that person ceased to Control the party or another person obtained Control of the party; or
- (b) if no person Controlled the party prior to the time the event occurred, a person obtained Control of the party.

Claim means any action, cause of action, dispute, controversy, complaint, suit, litigation, proceeding, claim, demand or assessment, fine or similar charge whether arising in contract, tort or otherwise.

Commencement Date means the date set out in Item 1 of the Schedule.

Confidential Information, in relation to a Disclosing Party, means:

- (a) all information relating to the business or affairs of the Disclosing Party (including, in the case of Banxa, any Affiliate) disclosed, communicated or delivered to, learnt by, developed by or which otherwise comes to the knowledge of or into the possession of, the Receiving Party under or in connection with this Agreement; and
- (b) the terms of this Agreement (which are the Confidential Information of both parties),

but excludes any such information which the Receiving Party can establish:

- (c) is or became generally available in the public domain otherwise than through a breach of confidence;
- (d) was independently developed by the Receiving Party; or
- (e) was rightfully received by the Receiving Party from a third party who is under no obligation of confidentiality in respect of that information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the Disclosing Party.

Control and **Controlled** means that a person has, directly or indirectly:

- (a) the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in a corporation;
- (b) the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in a corporation;
- (c) the ability to appoint or remove all or a majority of the directors of a corporation;
- (d) the ability to exercise or control the exercise of the casting of a majority of the votes cast at the meetings of the board of directors of a corporation; or
- (e) any other means, direct or indirect, of dominating the decision making and financial and operating policies of a corporation.

Corporations Act means the *Corporations Act 2001* (Cth).

Cryptocurrency means cryptographic, blockchain and distributed ledger-based tokens that are supported by Banxa (as amended by Banxa in its absolute discretion from time to time). The term Cryptocurrency does not include NFTs.

Data means Partner Data and Banxa Data.

Data Breach means any:

- (a) unauthorised access to, or unauthorised disclosure of, or breach of security relating to any Data; or
- (b) loss, corruption or damage of any Data.

Disclosing Party means the party which discloses or gives access to its Confidential Information to the Receiving Party, or whose business or affairs are the subject matter of the Confidential Information.

Dispute has the meaning given to that term in clause 16(a).

Dispute Notice has the meaning given to that term in clause **Error! Reference source not found.**

Disputing Party has the meaning given to that term in clause 16(a).

End User means a person who receives the Services from Banxa through / via the Partner Platform.

End User Data means any data (including Personal Information) that is disclosed by, or relates to, an End User.

Indemnified Party has the meaning given to that term in clause 12.2.

Indemnifying Party has the meaning given to that term in clause 12.2.

Initial Term means a period set out in Item 6 of the Schedule.

Insolvency Event in relation to a party (**insolvent party**) means the happening of any one or more of the following events:

- (a) an application is made to a court for an order (which application is not set aside within twenty-one (21) days of being made), or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed;

- (b) a liquidator or provisional liquidator (or similar) is appointed;
- (c) an administrator (or similar) is appointed to it;
- (d) a controller (or similar) is appointed to it or any of its assets;
- (e) a receiver (or similar) is appointed to it or any of its assets;
- (f) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (h) it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable Law or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (i) it is taken to have failed to comply with a statutory demand (or equivalent);
- (j) it ceases to carry on business or threatens to do so; or
- (k) anything occurs under the Law of any jurisdiction which has a substantially similar effect to any of the events set out in the above paragraphs of this definition.

Intellectual Property Rights means rights in patents, database rights (including rights of extraction), brands, logos, slogans, designs, trade secrets, copyright, trademarks, service marks, domain names, whether registered or unregistered, and all rights and forms of protection of a similar nature of any of the aforesaid items or having equivalent effect in any country or jurisdiction, together with all registrations, applications, renewals and extensions of and to such rights.

Law means all laws and regulations in force and applicable to a Party in respect of its rights and obligations under this Agreement, including any order of a court of competent jurisdiction and the rules or directions of any Regulatory Authority.

Loss means any liability of any kind, loss, claim, damage, interest, fine, penalty, fee, charge, cost or expense (including reasonable and properly incurred legal and other professional fees, costs and/or expenses).

Maximum Liability Amount means the aggregate sum of fees paid by Partner under this Agreement during the twelve (12) month period immediately preceding the date upon which the applicable cause of action arises.

Notice has the meaning given to that term in clause 15(a).

Partner Data means any data (including End User Data) collected, held or developed by Partner and disclosed under this Agreement.

Partner Indemnified Persons has the meaning given to that term in clause **Error! Reference source not found.**

Partner Platform means the website, platform or facility through which Partner provides its own services and is to be integrated with the Banxa Platform under this Agreement for Banxa to provide the Services.

Personal Information has the meaning assigned to the terms “personal information,” or “personally identifiable information” under applicable Privacy Laws, and will at a minimum, mean any information, whether true or not, and whether recorded in a material form or not, relating to a natural person whose identity is apparent, or can reasonably be ascertained, from the information, or any combination of them.

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth);
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);

- (c) any and all applicable data privacy, data protection, and cybersecurity legislation, laws, rules and regulations (to the extent that such legislation, laws, rules and regulations apply to Banxa or Partner or any other recipient of Personal Information) from time to time in force in:
- (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
 - (ii) any other jurisdiction (to the extent that Banxa, Partner, or any other recipient of Personal Information, or the Personal Information processed or handed in connection with this Agreement itself is subject to the laws of that jurisdiction),
- affecting, relating to or regulating privacy, Processing or protection of Personal Information; and
- (d) any ancillary and binding rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b) and (c), as amended from time to time.

Processing means with respect to data, the use, collection, receipt, processing, storage, recording, organization, safeguarding, security, adaption, alteration, ingestion, compilation, combination, enrichment, de-identification, transfer, retrieval, access, consultation, disclosure, sharing, dissemination or destruction of such data.

Receiving Party means the party which receives, possesses or is given access to Confidential Information from the Disclosing Party.

Regulatory Authority means any governmental, regulatory authority or law enforcement department, agency, commission, board, tribunal, crown corporation or other law, rule or regulation making that any of the parties submit to or are subject to the jurisdiction of in respect of this Agreement.

Services means the token listing services provided by Banxa in accordance with Item 7 of the Schedule, as amended from time to time.

Special Conditions means any conditions set out in Item 10 of the Schedule.

Taxes means a tax, levy, duty, charge, deduction or withholding, however described, imposed by Law or a Government Agency, together with any related interest, penalty, fine or other charge.

Term has the meaning given to that term in clause 7.

Token means the token listed at Item 4 of the Schedule, being the token that Partner wishes to list on the Banxa Platform for trading by End Users.

Token Listing Fee means the fee payable by Partner to Banxa as set out in Item 8 of the Schedule.

2 Provision of Services

- (a) Banxa and/or its Affiliates acting as subcontractors of Banxa in the performance of the Services (as applicable) will provide the Services from the Commencement Date.
- (b) Banxa and/or its Affiliates acting as subcontractors of Banxa in the performance of the Services (as applicable) provision of the Services is subject to:
 - (i) the terms set out in Item 7 of the Schedule; and
 - (ii) Partner complying with its obligations under this Agreement.

3 No exclusivity

Partner acknowledges and agrees that the Services are not provided to Partner at the exclusion of any other parties and this Agreement does not constitute any intention or agreement by Banxa and/or its subcontracted Affiliates to provide the Services exclusively to Partner.

4 Representations and warranties

4.1 Mutual representations and warranties

Each party represents and warrants to the other party on the Commencement Date and on a continuing basis that:

- (a) it subsists and is properly constituted, is duly registered and remains in existence under the Laws of the jurisdiction of its incorporation and it conducts its business in compliance with applicable Laws and not in violation of the rights of any third party;
- (b) it has full power and authority to enter into, perform and observe its obligations under this Agreement;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;
- (d) the execution, delivery and performance by it of this Agreement does not and will not violate:
 - (i) any Law, authorisation, ruling, consent, judgment, order, official directive or decree of any Regulatory Authority;
 - (ii) its constitution or other constituent documents;
 - (iii) any contract, arrangement or understanding to which it is a party; or
 - (iv) any encumbrance, undertaking or document which is binding upon it or on any of its assets;
- (e) Banxa's integration with, and use of, the Partner Platform does not contravene any Laws and will not cause Banxa to contravene any Laws
- (f) its representatives have the authority to act for and on behalf of it in relation to the matters within their authority under this Agreement;
- (g) it will not do nor omit to do anything which the other party reasonably believes to be disreputable or which is capable of damaging the reputation or goodwill of the other party; and
- (h) this Agreement constitutes its legal, valid and binding obligations and are enforceable in accordance with its terms subject to any necessary stamping and registration requirements and to equitable principles and Laws generally affecting creditors' rights.
- (i) to the best of Partner's knowledge the Token is not currently classified as a security or regulated financial product under applicable Laws in jurisdictions where the Token will be supported pursuant to this Agreement.

4.2 Banxa representations and warranties

- (a) Subject to clause 4.2(b), Banxa represents and warrants to Partner on the Commencement Date and on a continuing basis that:
 - (i) it and/or its subcontracted Affiliates (as applicable) will provide the Services to a standard that would be expected of a professional organisation providing comparable services; and
 - (ii) it, and each entity to which it may subcontract its obligations, has personnel with the level of skill, knowledge, experience and ability which may be expected of a professional organisation in providing services of the nature contemplated under this Agreement.
- (b) Despite clause 4.2(a), the parties acknowledge that:
 - (i) the Services are based, in whole or in part, on the products and services provided by subcontracted Affiliates or third parties, and therefore Banxa does not represent or warrant that the Services will always function as intended and be completely error free where the operation is contingent on the provision of products and services of such Affiliates or third parties;

- (ii) the Services are provided “as is” and “as available”, with no warranties that of the Banxa Platform will always function as intended, and Banxa does not warrant that the Services including the Banxa Platform will meet all Partner’s requirements, that the operation of the Services will be uninterrupted or that the Banxa Platform is error free;
 - (iii) Banxa disclaims all warranties, express or implied, with respect to the Services including any implied warranties of merchantability or fitness for a particular purpose, to the fullest extent permissible by Law and Partner hereby irrevocably waives any rights or remedies it may otherwise have had in respect of any of the same; and
 - (iv) Banxa will use commercially reasonable endeavours to ensure the Banxa Platform functions as intended, is error free and the uptime of the functionality to buy and sell Cryptocurrency is over 99%.
- (c) The parties acknowledge that:
- (i) Banxa will not support securities, regulated or financial products in any form, and will only support the Tokens it determines from time to time (in its absolute discretion);
 - (ii) With respect to the trading of a Token, Banxa is deemed to have fulfilled its obligation in respect of a transaction upon the transfer of the traded Token to the wallet address provided by End User. It is not the responsibility of Banxa to check, confirm or authenticate such wallet address; and
 - (iii) Banxa is not responsible for acts or omissions by Partner and/or End User’s wallet provider.

4.3 Implied warranties

- (a) Unless expressly stated otherwise in this Agreement, all guarantees, warranties or other terms and conditions implied or imposed by any legislation are excluded from this Agreement to the maximum extent permitted by Law.
- (b) Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited.

4.4 Warranties separate

Each of the representations and warranties contemplated by this Agreement are to be construed independently of the others and are not limited by reference to any other representation or warranty.

4.5 Reliance

Each party acknowledges and agrees that the other party has entered into this Agreement in full reliance on the representations and warranties set out in this clause 4.

5 Partner obligations

- (a) Partner acknowledges and accepts that neither Banxa nor its subcontracted Affiliates (as applicable) is/are obliged to provide the Services to Partner if Partner does not comply with the terms and conditions in this Agreement.
- (b) Partner must provide all reasonable assistance to Banxa and/or its subcontracted Affiliates (as applicable) in:
 - (i) handling any Claim or queries raised in relation to the Services; and
 - (ii) in complying with Banxa’s payment processors’ rules, in force from time to time and as notified by Banxa.
- (c) Partner must not circumvent, attempt to circumvent, interfere, modify, tamper, reverse engineer, duplicate, mimic, use, copy, transfer, republish, remove or delete any technology of a proprietary nature, in whole or in part to which it is granted access in the provision of any of the Services, including the Banxa Platform.
- (d) If Partner suspects or becomes aware that there has been, or may be, any unauthorised use of the Services, Partner must immediately notify Banxa.

- (e) Partner must not:
- (i) remove or alter any of Banxa's or its Affiliates marks, or co-brand its own products, services or material with Banxa's or its Affiliates marks without Banxa's prior written consent; or
 - (ii) incorporate Banxa's or its Affiliates marks into Partner's marks or any similar designations, for use on or in connection with Partner's business or any of its products, services or technologies.
- (f) Partner is responsible for all Taxes payable upon, or in respect of, this Agreement or the performance of Partner's obligations under this Agreement wherever and however such Taxes arise. Any consideration or amount payable under this Agreement, including any non-monetary consideration, is exclusive of GST or VAT (as applicable).

6 Fees

6.1 Partner Fees

Partner must pay the Token Listing Fee set out in Item 8 of the Schedule.

6.2 Remittance Currency

The Remittance Currency for the purposes of payments under this Agreement is:

- (a) the currency denomination set out in Item 9 of the Schedule; or
- (b) such other currency as otherwise may be agreed in writing between Banxa and Partner from time to time.

6.3 Refunds

If Banxa, within the first three nine (9) months from the Commencement Date;

- (a) does not provide the Services; and
- (b) terminates this Agreement for convenience (in accordance with clause 8.1),

then Partner will be entitled to a refund of any Token Listing Fee paid.

7 Term

This Agreement commences on the Commencement Date and, unless otherwise terminated in accordance with this Agreement, will:

- (a) continue for the Initial Term; and
- (b) after the Initial Term, this Agreement will automatically be renewed for successive one (1) year periods unless either party gives written notice to the other party that it does not wish to renew this Agreement at least one (1) month prior to the expiry of the then current term,

(collectively, **Term**).

8 Termination

8.1 Termination for convenience

Either party may terminate this Agreement at any time and for any reason, provided thirty (30) days' prior written notice is given to the other party.

8.2 Termination for cause

Either party may immediately terminate this Agreement by giving written notice if:

- (a) the other party commits a material breach of this Agreement, provided that the breach:

- (i) is not capable of remedy; or
 - (ii) if capable of remedy, is not remedied to the non-breaching party's reasonable satisfaction within thirty (30) days of service of a notice requesting such remedy.
- (b) the other party is subject to an Insolvency Event; or
 - (c) either party reasonably believes that continuing with the Agreement will materially damage its reputation or brand.

8.3 Banxa's right to suspension and termination

Without limiting any other termination right set out in this Agreement, Banxa may at any time immediately terminate this Agreement or suspend the provision of the Services:

- (a) in the case of suspension, at any time;
 - (i) if Banxa (in its reasonable discretion) considers it is necessary to do so in the jurisdictions of Banxa's choice; or
 - (ii) if the Token is, or is deemed, or Banxa (in its sole discretion) reasonable believes the Token to be (or deemed to be), a security or regulated or financial product under any Laws in any jurisdictions to which those Laws apply.
- (b) Banxa reasonably determines that the ongoing provision of the Services would not comply with any Law and such non-compliance may result in significant adverse consequences for Banxa;
- (c) if Banxa reasonably believes this is necessary to protect the security or integrity of the Banxa Platform;

8.4 Consequences of termination

- (a) Subject to clause 8.4(b), if this Agreement is terminated for any reason:
 - (i) Banxa will cease providing the Services;
 - (ii) each party shall follow the return of Confidential Information requirements set out in clause 13.4;
 - (iii) each party shall promptly return to the other party or destroy and certify the destruction of all Confidential Information to the other party;
 - (iv) each party will remove any reference to the other party from any promotional material, agreement and website;
 - (v) Partner must promptly remove the display of the Banxa Platform on the Partner Platform and any other software, data, information or materials furnished by Banxa or its Affiliates or otherwise obtained by it through the use of the Services; and
 - (vi) each party shall remit in full all undisputed payments due or outstanding to the other party according to this Agreement accruing prior to the date of termination.
- (b) Except as set out otherwise in this Agreement, the termination of this Agreement does not affect:
 - (i) either party's rights in respect of any breach of this Agreement occurring before such termination;
 - (ii) the obligations of the parties to make a payment under this Agreement which was due before such termination; or
 - (iii) the obligations of the parties to perform any other act under this Agreement which was due before such termination.

8.5 Survival

Clauses 9 (*Limitation of liability*), 10 (*Data*), 12 (*Indemnification*), 13 (*Confidential Information*) and 14 (*Intellectual Property*) and any other provisions which are expressed to survive or by their nature impose continuing obligations on the relevant parties, separate and independent from the other obligations of the parties, will survive the termination or expiry of this Agreement.

9 Limitation of liability

9.1 Implied warranties

- (a) All express or implied guarantees, warranties, representations, or other terms and conditions relating to this Agreement or its subject matter, not contained in this Agreement, are excluded from this Agreement to the maximum extent permitted by Law.
- (b) Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited.

9.2 Indirect and consequential loss

To the extent permitted by Law, neither party shall be liable (whether arising in contract, tort (including negligence), statute, equity, indemnity or otherwise) for any:

- (a) special, incidental, punitive, consequential or indirect loss or damage (that is, loss or damage by a party that does not arise naturally (or according to the usual course of things) from a breach or other act or omission) suffered or incurred by the other party arising out of or in connection with this Agreement; and
- (b) any other damage to reputation, loss of revenue, loss of profits, loss of goodwill, loss of business, loss of contracts, loss of anticipated savings, business interruption, loss of opportunity, loss of bargain, lost computer time or lost or corrupted data, in each case regardless of whether any of these types of losses are direct, indirect or consequential,

even if that party was aware and/or informed of the possibility in advance that such losses might be incurred by the other party.

9.3 Limitation of liability

Despite anything in this clause 9, the parties acknowledge and agree that:

- (a) A party is not liable for any losses which arise directly or indirectly from:
 - (i) its compliance with an instruction from the other party in respect of the Services; or
 - (ii) any data received from the other party which was incorrect, inaccurate or incomplete or was obtained by the other party without necessary right, approval or consents; and
- (b) The aggregate liability of either party for any losses under this Agreement (however arising) or in connection with the Services is limited to the value of the Maximum Liability Amount. The foregoing limitation shall not apply to (i) a party's indemnification obligations under clause 13 (Indemnities), (ii) a breach of clause 14 (Confidentiality and publicity), or (iii) a party's gross negligence, fraud, willful, unlawful or wrongful act or omission.

10 Data

10.1 Partner Data

- (a) Subject to clause 10.5, Partner agrees to provide:
 - (i) Banxa with all Partner Data that is reasonably required for Banxa to provide the Services;
 - (ii) all End Users with a clear, conspicuous and detailed online Privacy Policy disclosing Partner's privacy and data collection protection practices and terms that complies with applicable Privacy Laws;

- (iii) Where Partner discloses Partner Data to Banxa in accordance with clause 11.1(a), Partner grants Banxa and its Affiliates a limited, non-sublicensable, revocable licence during the Term to store, collect, analyse and process all Partner Data for the purpose of providing the Services only; and
 - (iv) Banxa acknowledges that all Partner Data is and remains the property of the Partner.
- (b) Upon termination of Services or this Agreement, Banxa must destroy or return all Partner Data to the Partner upon written request by the Partner within thirty (30) days of receipt of the request .

10.2 Banxa Data

- (a) Subject to clause 11.5, Banxa may (in its absolute discretion) provide Partner with Banxa Data in connection with providing the Services.
- (b) Where Banxa discloses Banxa Data to Partner in accordance with clause 11.2(a):
 - (i) subject to the terms and conditions of this Agreement, Banxa grants Partner a limited, non-sublicensable, revocable licence during the Term to access the Banxa Data for the purposes of receiving the Services only; and
 - (ii) Partner acknowledges that all Banxa Data is and remains the property of Banxa.
- (c) Where Banxa enhances, compiles, derives or otherwise integrates Partner Data with Banxa Data, the parties acknowledge and agree that such data becomes Banxa Data.
- (d) Upon termination of Services or this Agreement, Partner must destroy or return all Banxa Data to Banxa upon written request by Banxa within thirty (30) days of receipt of the request.

10.3 Security of Data

Each party must maintain, enforce and continuously improve a security environment and safety and security procedures and administrative, technical and physical safeguards in connection with holding and protecting any Data disclosed under this Agreement, including associated systems (including procedures and safeguards against the destruction, loss, disclosure, alteration or unauthorised access or use of Data) that are no less rigorous than those maintained by each party for its own data of a similar nature and in accordance with applicable Privacy Laws and industry best practice.

10.4 Data Breach

If either party becomes aware of an actual, alleged or suspected Data Breach in relation to Partner Data (for Banxa) or Banxa Data (for Partner), that party must:

- (a) promptly notify the other party of such Data Breach;
- (b) within forty-eight (48) hours from the notification:
 - (i) conduct an investigation of such Data Breach;
 - (ii) perform a risk assessment and root cause analysis; and
 - (iii) develop an action plan to remediate the Data Breach;
- (c) remediate the effects of such Data Breach within twenty-four (24) hours from the conclusion of the investigation in clause 11.4(b)(i);
- (d) provide the other party with such assurances as the other party reasonably requests that such Data Breach will not recur; and
- (e) provide the other party with all reasonable assistance, information and documentation as the other party reasonable requests.

10.5 Compliance with Privacy Laws

Each party represents and warrants that:

- (a) where it discloses End User Data to the other party, it has the full right, authority, permissions, approvals and consents from End Users to collect and disclose all End User Data so disclosed to the other party; and
 - (b) any Data collected, held, used and disclosed are done so in accordance with Privacy Laws.
-

11 Changes to Services

- (a) From time to time, Banxa may make changes to the Services which are necessary to comply with any Law or for operational reasons.
 - (b) Partner agrees to such changes to the Services upon notification by Banxa.
-

12 Indemnities

12.1 Indemnities

Each party will defend, hold harmless and indemnify the other party and its Affiliates, directors, managers, agents, and employees (**Indemnified Persons**) against any Loss suffered or incurred by the Indemnified Persons in connection with or, as a result of, any Claim by a third party that is based on:

- (a) a breach of any Law arising out of any act or omissions of the other party or their representatives in the course of performing any of its obligations under this Agreement;
- (b) any grossly negligent, fraudulent, wilful, unlawful or wrongful act or omission of the other party or its representatives;
- (c) any injury to, or death of, a natural person and any loss of, or damage to, real or personal property of a Banxa Indemnified Person, caused or contributed to by the indemnifying party or its representatives;
- (d) any loss, damage, corruption, alteration or damage to Banxa Data or Partner Data caused by any breach of this Agreement or act or omission of the other party or its representatives, or
- (e) any claim that in the course of performing any of its obligations under this Agreement the indemnifying party infringes, misappropriates or otherwise violates any third party's Intellectual Property Rights or privacy or other rights,

except to the extent that the Loss is directly caused by the fraud, wilful misconduct, gross negligence or wrongful act or omission of the Banxa Indemnified Person.

12.2 Indemnification Procedures

- (a) The Party seeking defence and indemnity (**Indemnified Party**) will promptly (and in any event no later than thirty (30) days after becoming aware of facts or circumstances that could reasonably give rise to any Claim) notify the other Party (**Indemnifying Party**) of the Claim for which indemnity is being sought, and will reasonably cooperate with the Indemnifying Party in the defence and/or settlement thereof.
- (b) The Indemnifying Party will have the sole right to conduct the defence of any Claim for which the Indemnifying Party is responsible hereunder (provided that the Indemnifying Party may not settle any Claim without the Indemnified Party's prior written approval unless the settlement is for a monetary amount, unconditionally releases the Indemnified Party from all liability without prejudice, does not require any admission by the Indemnified Party, and does not place restrictions upon the Indemnified Party's business, products or services).
- (c) The Indemnified Party may participate in the defence or settlement of any such Claim at its own expense and with its own choice of counsel or, if the Indemnifying Party refuses to fulfill its obligation of defence, the Indemnified Party may defend itself and seek reimbursement from the Indemnifying Party.

13 Confidentiality and publicity

13.1 Restrictions on use and disclosure

- (a) The Receiving Party may only use the Confidential Information of the Disclosing Party for the purposes of performing its obligations and exercising its rights under this Agreement.
- (b) Subject to clause 13.3, the Receiving Party must keep the Disclosing Party's Confidential Information confidential.

13.2 Security measures

The Receiving Party must take reasonable steps to protect the Confidential Information of the Disclosing Party against unauthorised use or disclosure, and in any event steps at least as stringent as those used by the Receiving Party to protect its own confidential information.

13.3 Permitted disclosures

The Receiving Party may disclose the Confidential Information of the Disclosing Party:

- (a) to those of its personnel and professional advisors who need to know such Confidential Information, provided that the Receiving Party ensures that those personnel and professional advisors keep such Confidential Information confidential in accordance with this clause 14;
- (b) in the case of Banxa, to any of its Affiliates;
- (c) to the extent required by Law, provided that the Receiving Party discloses no more than the minimum amount of Confidential Information required to satisfy such Law and, before disclosing any Confidential Information, where possible provides a reasonable amount of notice to the Disclosing Party, and exhausts all reasonable steps (whether required by the Disclosing Party or not) to maintain such Confidential Information in confidence; or
- (d) with the prior written consent of the Disclosing Party.

In addition, the terms and conditions of this Agreement may be disclosed on a confidential basis to a Party's advisors, attorneys, actual or bona fide potential acquirers, investors or other sources of funding (and their respective advisors and attorneys) for due diligence purposes.

13.4 Return of Confidential Information

Upon termination of this Agreement, the Receiving Party must immediately return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control, except to the extent such Confidential Information:

- (a) needs to be retained for the purpose of actual or potential litigation or other record-keeping purposes; or
- (b) is on back-up or archival storage media, or shared storage systems such as email, and it is not practical to do so,

but, in each case, such retained Confidential Information remains subject to the obligations under this clause 13.

13.5 Right to injunctive relief

The Receiving Party acknowledges that monetary damages may not be a sufficient remedy for a breach of its obligations under this clause 13, and that the Disclosing Party will be entitled, without waiving any of its other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction if any such breach occurs.

14 Intellectual Property Rights

14.1 Ownership

Except as otherwise provided for in this Agreement, each party shall own and retain all Intellectual Property Rights subsisting in that party immediately prior to entering into this Agreement.

14.2 Limited use

Except as otherwise provided for in this Agreement, each party:

- (a) grants to the other party a royalty free non-exclusive, non-transferrable and revocable licence to access and use during the term of this Agreement its Intellectual Property Rights, solely to the extent necessary to enable that party to provide (on the part of Banxa) or receive (on the part of Partner) the Services, perform its obligations under this Agreement and neither party shall acquire any of the other's Intellectual Property Rights as a result;
- (b) agrees not to use the other Party's Intellectual Property Rights in a way that will infringe or disparage the other Party or its services or otherwise diminish or damage its goodwill; and
- (c) must obtain the written consent of the other party prior to using or referring to any trademarks, logos, copyrighted materials, business names or other similar Intellectual Property Rights of the other in any promotional materials or literature, agreements or on any website.

15 Notices

- (a) Unless expressly stated otherwise in this Agreement, a notice, consent or other communication given under this Agreement including a request, certificate, demand, consent, waiver or approval, to or by a party to this Agreement (**Notice**):
 - (i) must be in legible writing and in English;
 - (ii) must be addressed to the party to whom it is to be given (**Addressee**) at the address or email address set out in Item 5 of the Schedule;
 - (iii) must be either:
 - (A) delivered by hand or sent by pre-paid mail (by airmail if sent to or from a place outside of Australia) to the Addressee; and/or
 - (B) sent by email to the Addressee's email address; and
 - (iv) will be deemed to be received by the Addressee in accordance with clause 15(c).
- (b) If:
 - (i) a party changes its address and fails to notify the other party of this change and the new address, delivery of Notices marked to the attention of the Addressee at that new address is deemed compliant with the notice obligations under this clause; and/or
 - (ii) an individual named in clause 15(a)(a)(ii) ceases to work in the role specified or ceases to work for the Addressee and the Addressee fails to notify the other party of an alternative individual, delivery of Notices marked to the attention of an individual in the same or equivalent role at the Addressee is deemed compliant with the notice obligations under this clause.
- (c) Without limiting any other means by which the sender may be able to prove that a Notice has been received by the Addressee, a Notice is deemed to be received:
 - (i) if delivered by hand, when delivered to the Addressee;
 - (ii) if sent by post, on the 6th Business Day after the date of posting, or if to or from a place outside Australia, on the 10th Business Day after the date of posting; or
 - (iii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first, but if the delivery or receipt is on a day which is not a Business Day or is after 5.00 pm (Addressee's time) it is deemed to be received at 9.00 am on the following Business Day.

16 Dispute resolution

- (a) If any dispute between the parties (each a **Disputing Party**) arises out of or in connection with this Agreement and/or its subject matter (**Dispute**) then the Disputing Party shall follow the dispute resolution procedure set out in this clause 16.
 - (b) Any dispute, controversy or claim arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Melbourne, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one (1).
 - (c) Nothing in this clause 16 will prevent either Disputing Party from making any application for injunctive relief that it considers necessary to protect its position.
-

17 General

17.1 **Choice of law (Governing law)**

This Agreement and any Dispute will be governed by and construed in accordance with the laws of Victoria, Australia.

17.2 **Subcontracting**

Banxa may subcontract the whole or any part of its obligations under this Agreement without prior written consent of Partner, provided that:

- (a) the performance of any subcontractor will be on the same terms as this Agreement; and
- (b) Banxa is not relieved of any of its liabilities or obligations under this Agreement as a result of entering into any sub-contracts in relation to its obligations under this Agreement.

17.3 **Invalidity**

- (a) If a provision of this Agreement or a right or remedy of a party under this Agreement is invalid or unenforceable in a particular jurisdiction:
 - (i) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
 - (ii) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.
- (b) This clause is not limited by any other provision of this Agreement in relation to severability, prohibition or enforceability.

17.4 **Survival of indemnities**

Each indemnity contained in this Agreement is an additional, separate and independent obligation and no one indemnity limits the generality of another indemnity.

17.5 **Entire agreement**

This Agreement supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties about its subject matter.

17.6 **Variation**

No variation of this Agreement is effective unless made in writing and signed by each party.

17.7 **Waiver**

- (a) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.

- (b) A single or partial exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy.
- (c) Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

17.8 Cumulative rights

Except as expressly provided in this Agreement, the rights of a party under this Agreement are in addition to and do not exclude or limit any other rights or remedies provided by law.

17.9 Counterparts

- (a) This Agreement may be executed in any number of counterparts and signatures on behalf of a party may be on different counterparts.
- (b) A party may execute this Agreement or any counterpart and exchange it by email or as an electronic copy by email.

17.10 Relationship of parties

Except as expressly provided in this Agreement:

- (a) nothing in this Agreement is intended to constitute a fiduciary relationship, employment relationship, joint venture or an agency, partnership or trust; and
- (b) no party has authority to bind any other party.

17.11 Severability

Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this agreement is not affected.

17.12 Further assurances

Except as expressly provided in this Agreement, each party must, at its own expense, do all things reasonably necessary to give full effect to this Agreement and the matters contemplated by it.

17.13 Force majeure

Each party will be excused for delay in performance or non-performance of any of its obligations under this Agreement, if and to the extent that the delay or non-performance is due to causes beyond the reasonable control of such party, provided that such party has used reasonable endeavours to mitigate and remedy the situation and carries out its obligations under this Agreement in any other way that is reasonably practicable.

17.14 Third party rights

- (a) Partner acknowledges and agrees that:
 - (i) Banxa enters into this Agreement for the benefit of Banxa and its subcontracted Affiliates (either acting as subcontractors in the performance of the Services or otherwise);
 - (ii) Banxa and its subcontracted Affiliates require and rely upon Partner's acknowledgment and agreement in clause 17.14(a)(i) in order to be able provide the Services; and
 - (iii) if Affiliates are involved with the provision of Services to Partner and/or its End Users as subcontractors to Banxa, such Affiliates can derive rights from this Agreement and demand fulfilment of this Agreement in their own name, in an equal manner as Banxa may derive rights and demand fulfilment of this Agreement from Partner.
- (b) Partner acknowledges and agrees that any loss, damage, cost or liability incurred by any subcontracted Affiliate to the extent arising from any breach of this Agreement by Partner (in this clause 17.14 collectively referred to as **Group Loss**):
 - (i) will be deemed to have been incurred by Banxa; and

- (ii) will be recoverable by Banxa from Partner as if they were losses, damage, costs or liability suffered directly by Banxa.
- (c) For the purposes of this Agreement, Partner hereby irrevocably agrees that any Group Loss will not be deemed to be consequential or indirect loss, damage, cost or liability merely as a consequence of it having been suffered by a subcontracted Affiliate rather than Banxa.
- (d) If and to the extent that Banxa is not able to recover Group Loss under the provisions of clause 17.14(b) or mandates the applicable Affiliate to recover the Group Loss in its own name, then each Affiliate respectively the designated Affiliate is entitled to enforce this Agreement against Partner in its own right. Notwithstanding the creation of third-party rights, Banxa and Partner may rescind, vary or amend this Agreement or terminate it in accordance with its terms without the consent of any Affiliate.
- (e) Other than as expressly set out in this clause 17.14, nothing in this Agreement creates legal rights for, or enforceable by, any party other than Banxa or Partner.

17.15 Order of precedence

If there is a conflict or inconsistency between the documents incorporated in this Agreement then (unless otherwise expressed), the documents will be given the following order of priority (with clause 17.15(a) being the first in the order of priority) such that the conflicting provision in the document lower in the order of priority will be read down or if necessary severed to the extent necessary to resolve the conflict:

- (a) any Special Conditions;
- (b) the Schedule;
- (c) clauses 1 to 17 (inclusive) of this Agreement,

and where two documents have the same priority in this list then priority will be given to that document later in time.