



Master Services Agreement

Between: ABSH Computers Pty Ltd
(ACN 079 883 980) of Unit 7, 42 Global Drive,
Tullamarine, VIC 3042 (**We, us, our**); and
The customer as set out on the relevant Quote (**You, your**)

www.absh.com.au

1 BACKGROUND

We provide a range of information technology products and services that you may wish to acquire from time to time. This Master Services Agreement sets out terms and conditions which will apply when you engage us to provide these services to you. Additional terms specific to the relevant Services provided by us may also be set out in the Individual Service Terms and/or Quote.

2 INDIVIDUAL SERVICE TERMS, QUOTES AND INDIVIDUAL SERVICE CONTRACTS

2.1 Individual Service Terms

The Individual Service Terms detail the specific Services we can provide, the scope and exclusions for the Services we provide and any specific terms and conditions that apply to the provision of those Services (in addition to the terms in this Master Services Agreement).

2.2 Quotes

You can request the provision of Services by approving any Quote that we submit to you in respect of the Services. Any approved Quote is a request for the provision of the Services only and a binding contract between the parties for the provision of the relevant Services will only be formed when we confirm the provision of the Services to you in writing or commence providing the Services to you (whichever occurs first) (**Service Provision Acceptance**). At any time prior to our commencement of the provision of the Services, we can cancel any Quote or Individual Service Contract that the Quote relates to by written notice to you (provided that we will refund any fees paid by you in advance for Services not provided under that Quote or Individual Service Contract).

2.3 Individual Service Contracts

If Service Provision Acceptance occurs, a binding contract for the provision of the relevant Services (**Individual Service Contract**) will be created between the parties comprising of:

- (a) the Quote;
- (b) the relevant Individual Service Terms; and
- (c) this Master Services Agreement.

Each Individual Service Contract constitutes a binding agreement between the parties which is separate from, and independent of, any other Individual Service Contracts.

Under this Master Services Agreement, you may also ask us to provide General Services from time to time. Where we provide General Services, a binding contract for the provision of those General Services will be formed on the earlier of the date that we agree to provide the General Services or the date we commence providing the General Services to you. The Individual Service Contract for the provision of the General Services will be formed on the terms of this Master Services Agreement and any other document agreed between the parties in respect of the provision of the General Services. Unless agreed otherwise, General Services will be provided on a time and materials basis in accordance with our then current hourly rates.

2.4 Order of Priority

If there is any inconsistency between any of the documents which make up an Individual Service Contract, the following order of precedence will apply to the extent of the inconsistency (unless expressly stated otherwise in an Individual Service Contract):

- (a) the Quote;
- (b) Individual Service Terms; and
- (c) this Master Services Agreement.

2.5 Authorised Signatory

Any person who signs or otherwise accepts a Quote or signs or otherwise agrees to this Master Services Agreement or an Individual Service Contract on behalf of you warrants to us that they are authorised on behalf of you to do so and to bind you to the relevant Quote, Master Services Agreement or Individual Service Contract.

3 TERM

3.1 Term of Master Services Agreement

This Master Services Agreement commences on the MSA Commencement Date and will continue until terminated under clause 13.

3.2 Term of each Individual Service Contract

- (a) Under the Master Services Agreement, the parties can enter into Individual Service Contracts for the provision of Services.
- (b) Where an Individual Service Contract is entered into, the provision of Services and the other obligations of the parties under that Individual Service Contract commences on the relevant Service Commencement Date and will continue for any applicable Minimum Service Period (unless the Individual Service Contract is terminated earlier in accordance with its terms). For any Individual Service Contracts that are for one-off or non-going supplies, the provision of Services and the other obligations of the parties under that Individual Service Contract commences on the Service Commencement Date and ends (unless the Individual Service Contract is terminated earlier in accordance with its terms) on completion of the supply of the relevant Services.
- (c) Unless specified otherwise in the Individual Service Terms or a Quote, at the expiry of the Minimum Service Period, each Individual Service Contract will automatically renew for a Renewal Term, unless a party provides written notice to the other at least 30 days prior to the expiry of the Minimum Service Period that the Individual Service Contract will not be renewed and will instead expire at the end of the Minimum Service Period. During any such Renewal Term, either party may elect not to renew the Individual Service Contract for any further Renewal Terms by providing notice of non-renewal no less than 30 days prior to the expiry of the then current Renewal Term.
- (d) If an Individual Service Contract is renewed pursuant to clause 3.2(c), the provisions of the Individual Service Contract will continue in effect throughout the Renewal Term (subject to any adjustment of Fees pursuant to clause 9.1(b)).

4 SERVICES

4.1 Provision of Services

- (a) For each Individual Service Contract, during the relevant Service Period, we will provide the Services to you on the terms and conditions of the Individual Service Contract.
- (b) We will provide the Services:
 - (i) during the hours of 8:30am – 5:30pm (Melbourne time) on a Business Day, unless otherwise specified in the Individual Service Contract; and
 - (ii) at the location specified in the Individual Service Contract or, if no location is specified, at locations as we (acting reasonably) determine are appropriate for the provision of the Services.
- (c) We are only required to provide support or other Services to you that are specifically identified in the Individual Service Contract and we do not have any general obligations or responsibilities to provide support, back up, security or other services not specifically identified in the Individual Service Contract.

4.2 Additional Services

- (a) Subject to clause 4.2(b), the scope of the Services that we are required to provide under an Individual Service Contract will be limited to the specific services set out in the Individual Service Contract.
- (b) Where you request, and we agree, we may also provide Additional Services in connection with an Individual Service Contract.
- (c) Unless otherwise agreed by the parties in writing, any Additional Services will be provided on the terms and conditions of the relevant Individual Service Contract, provided that the fees payable by you for such Additional Services will be the fees we notify you of (which notice we will provide promptly after you request those Additional Services and, where practicable (subject to clause 4.2(b)), before providing those Additional Services).

5 OUR OBLIGATIONS AND RESPONSIBILITIES

5.1 General Obligations

During the relevant Service Period we will:

- (a) perform our obligations under the Individual Service Contract using reasonable skill and care;
- (b) ensure our obligations under the Individual Service Contract are performed by experienced and skilled personnel; and
- (c) notify you of any material difficulties that we encounter in relation to the provision of the Services.

5.2 Service Levels

- (a) During the Service Period, we will use reasonable endeavours to ensure that in providing the Services we meet or exceed any service levels which are specified in the relevant Quote or Individual Service Terms.
- (b) If we fail to meet any service levels, you will be entitled (as your sole remedy in respect of such failure) to any service level credits or other specific service level remedies set out in the relevant Quote or Individual Service Terms.

5.3 Privacy and Security

- (a) Where we are in possession of, or otherwise have access to, your Personal Information in connection with the performance of our obligations pursuant to an Individual Service Contract, we must:
 - (i) comply with all applicable Privacy Laws in relation to our collection, use or disclosure of such Personal Information;
 - (ii) ensure that we only allow access to such Personal Information to our employees, agents, contractors or other representatives as is necessary for us to comply with our obligations under the Individual Service Contract; and
 - (iii) notify you as soon as practicable if we become aware that any disclosure or use of such Personal Information by us or our employees, agents, contractors or other representatives may have been made in contravention of any Privacy Law or the Individual Service Contract.
- (b) Except as set out under clause 5.3(a) or as expressly set out in an Individual Service Contract, we will only be required to comply with any policy, direction or instruction provided by you regarding the collection, storage, use, deletion, disclosure or management of Personal Information or any of Your Data or implement any particular data protection and security measures and procedures, if separately agreed to by us in writing.
- (c) Each party will comply with its obligations under the Privacy Act 1988 (Cth) in respect of any actual or suspected Data Breach. Each party will keep the other party informed if it intends to notify any relevant regulator or impacted individual of an actual or suspected Data Breach.

6 YOUR OBLIGATIONS AND RESPONSIBILITIES

During the Service Period you must:

- (a) perform in an effective and timely manner any tasks or activities and provide any information or other inputs that are reasonably necessary for us to be able to perform the Services;
- (b) provide us with all reasonable and timely access to your facilities, premises, information, personnel, data and equipment (including Your Systems) to enable us to perform the Services;
- (c) comply with our reasonable and lawful directions in relation to the Services;
- (d) comply with all laws, agreements, guidelines, rules and regulations concerning your use of the Services and the services provided by third parties including any applicable acceptable use policies and terms of service;
- (e) provide us with all information or assistance we reasonably require to provide the Services (including relevant information from any current or previous service provider to you);
- (f) provide timely decisions and approvals requested by us;
- (g) ensure that all data and information that is provided to us by you, or on your behalf, is complete, accurate and not misleading;

- (h) obtain any third party consents or approvals that we require to perform the Services (including the rights to use or access relevant third party software or services);
- (i) only use and copy the Documentation to the extent necessary to use and receive the Services, use only the most recent version of the Documentation provided by us and follow our instructions regarding the return or destruction of any superseded versions of the Documentation;
- (j) nominate two people as your representatives who will be authorised to bind you in all matters relating to the Services, until you give us notice to the contrary. You must ensure that at least one of your representatives is contactable at all reasonable times; and
- (k) promptly notify us of any change of circumstances or in previously supplied information, that is likely to materially affect the Services or the provision of them.

6.2 Security and Third Party Access

- (a) You are responsible for maintaining the confidentiality of any login account details used in or in connection with the Services including all usernames and passwords.
- (b) Where a third party uses any of your accounts, as between you and us, you will be liable for costs incurred as a result of that third party's access regardless of whether such use was authorised by or otherwise with the knowledge or consent of us.
- (c) If we suspect that the security of your account details have been compromised, we may suspend the Services in accordance with clause 13.1.

6.3 Equipment

- (a) Any material issues which relates to the age, configuration, implementation or condition of any supported equipment may be brought to the attention of either party by the other party.
- (b) Where, in our reasonable opinion, any such equipment requires additional support or support beyond the scope of the obligations of us under an Individual Service Contract due to its age, configuration, implementation or condition, we reserve the right in our sole discretion to cease support of that item of equipment until the issues with the equipment are addressed or alternative arrangements for the support of that equipment can be agreed.
- (c) You acknowledge that we will not be liable to you for any faults or other issues in respect of the Services to the extent caused by the age, configuration, implementation or condition of any such equipment.

7 DELAY

You acknowledge that if the performance of any Services is prevented or delayed as a result of:

- (a) any issue with Your Systems which we are not responsible for rectifying in accordance with the Individual Service Contract;
- (b) the failure of any third party, including Your Vendors, to perform any obligations they have to you or to cooperate with us or any other act or omission of a third party;
- (c) you failing to provide feedback, approvals or other decisions or inputs that we reasonably request in a timely manner;
- (d) any suspension of the Services under clause 9.4(b) or 13.1;
- (e) if we are required to provide the Services in circumstances other than those expressly or reasonably anticipated in the Individual Service Contract;
- (f) any act or omission by you or your officers, employees, agents, contractors or suppliers; or
- (g) a Force Majeure Event,

then the dates for performance of the Services as set out in the Individual Service Contract or as otherwise agreed will be modified as we reasonably consider necessary to reflect the impact of the delay. We will not be liable to you for any Claim or Loss suffered or incurred by you as a result of the delay and we will be entitled to invoice you for any additional costs reasonably incurred by us as a result of the delay. We will use reasonable endeavours to avoid and mitigate any delays in respect of the provision of the Services, however we do not warrant that Services will be free of delays.

8 THIRD PARTY VENDORS

8.1 Your Vendors

You acknowledge and agree that:

- (a) you must secure the performance by third parties, including Your Vendors, of any obligations those third parties have to you which impact upon our ability to perform the Services (except to the extent securing the performance by those third parties is expressly stated in the Individual Service Terms or Quote to be the responsibility of us as part of the Services);
- (b) you are responsible for entering into any agreement with Your Vendors for the provision of goods and services to you from Your Vendors (except to the extent entering into such agreements is expressly stated to be the responsibility of us as part of the Services); and
- (c) you must comply with the terms of any agreement which you have entered into with Your Vendors and, to the extent that it is relevant to the provision of the Services by us, provide us with a copy of any agreement which You have entered into with Your Vendor.

8.2 Our Vendors

You acknowledge and agree that:

- (a) we may engage Our Vendors to provide certain goods and services to enable us to provide the Services to You;
- (b) you may be required to comply with terms and conditions imposed by Our Vendors in respect of such goods and services, which terms and conditions may be set out in the Individual Service Terms or otherwise notified to you by us from time to time;
- (c) if Our Vendor increases the fees or costs which they charge us then we are entitled to increase the Fees payable by you to reflect the amount of that increase; and
- (d) if Our Vendor varies or changes the terms and conditions upon which they provide any goods or services to us then we are entitled to vary the terms of any relevant Individual Service Contract to reflect the change made by Our Vendor.

9 FEES

9.1 Fees Payable

- (a) During the Service Period, you agree to pay to us the Fees and any other amounts payable to us under an Individual Service Contract.
- (b) In addition to any other Fee increase or variation rights set out in the Quote or the Individual Service Terms or as set out in clause 8.2(c), we may increase the Fees by providing no less than 30 days written notice to You during any Renewal Term. We can also increase the Fees at any time on written notice to you to pass on any increases imposed on us by Our Vendors. If such increase would result in the total Fees payable by you for that Service being increased by greater than 10%, you can terminate the relevant Individual Service Contract on a without penalty basis by providing 30 days written notice of termination to us (provided that you must still pay for all Services provided by us up to the date of termination).

9.2 Expenses

In addition to the Fees, you agree to pay any out of pocket expenses reasonably incurred by us in providing the Services (including travel and other third party out of pocket costs), provided that we will obtain your written approval for any such expenses.

9.3 Payment Terms

Fees will be payable by you in accordance with the payment terms specified in the Individual Service Terms or, where no payment terms are specified, the relevant Fees must be paid by you in advance, before we will have any obligations to provide the Services.

9.4 Failure To Pay

If you fail to pay the Fees or any other amounts due to us under an Individual Service Contract or otherwise under this Master Services Agreement then (without prejudice to our other rights):

- (a) we may charge you interest on all amounts overdue at the interest rate which is fixed from time to time under section 2 of the *Penalty Interest Rate Act 1983* (Vic), which will accrue and be chargeable from the first day on which such amounts become overdue until we receive effective payment of all such amounts (including all interest); and
- (b) we may issue a notice to you stating that the relevant amount is overdue and that we may suspend the provision of Services if the overdue amount is not paid in full (**Overdue Notice**). Without limiting our other rights, if we do not receive payment of the relevant overdue amount within 7 days of the date of the Overdue Notice, we may cease providing the Services until such time as the overdue amount is paid in full (together with any interest). We will not be liable for any Loss suffered by you as a result of us exercising our rights under this clause 9.4(b).

10 GST

10.1 Definitions and Interpretation

Words and expressions used in this clause 10 which are not defined in this Master Services Agreement, but which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**), have the meaning given to them in the GST Act.

10.2 Consideration Does Not Include GST

The consideration for any supply made under or in connection with this Master Services Agreement does not include an amount for GST, unless it is expressly stated in the Master Services Agreement to be inclusive of GST.

10.3 Recovery of GST

If GST is or becomes payable on any supply made under or in connection with this Master Services Agreement (not being a supply for which the consideration is expressly stated to be inclusive of GST), the party required to provide the consideration for the supply must pay, in addition to and at the same time as the consideration is provided, an amount equal to the amount of GST on the supply.

10.4 Adjustment of Amount Recovered for GST

If the amount for GST recovered by a party under clause 10 differs from the amount of GST payable by the party or its representative member on the supply, the amount of the difference must be paid to or refunded by the party (as the case requires).

10.5 Reimbursement or Indemnity Payments

If a party is required under this Master Services Agreement to reimburse or indemnify another party for any amount incurred by the other party, the amount to be reimbursed or paid by the party will be the amount incurred reduced by an amount equal to any input tax credit that the other party or its representative member is entitled to claim for the amount incurred and increased by the amount of any GST payable in respect of the reimbursement or payment.

11 INTELLECTUAL PROPERTY

11.1 Your Materials

You own and will retain ownership of all of your Intellectual Property in respect of Your Materials and nothing in this Master Services Agreement grants us ownership of any such Intellectual Property. To the extent necessary for us to be able to provide the Services to you and otherwise comply with our obligations under an Individual Service Contract, you grant us a non-exclusive licence to use and reproduce Your Materials, provided that any such use or reproduction must be for the purpose of providing the Services to you or complying with our other obligations under the Individual Service Contract. You are responsible for obtaining any third party licences or consents necessary for us to be able to make such use or reproduction of Your Materials.

11.2 Our Materials

The parties acknowledge and agree that we own all Intellectual Property in Our Materials, the Developed Materials, the Deliverables, the Documentation, and all Improvements to any of the above. To the extent that any such Intellectual Property is owned by or vests in you, you assign such Intellectual Property to us immediately on it being created. You must do all things reasonably required by us from time to time to perfect the assignment of the Intellectual Property under this clause 11 or to otherwise give effect to this clause 11, including executing any documentation reasonably required by us.

11.3 Third Party Materials

You acknowledge that where Deliverables or other Materials supplied to you by us include Third Party Materials, the use of those Third Party Materials may be subject to licence terms or other restrictions, as set out in the relevant Individual Service Contract or otherwise notified to you by us.

11.4 Licence to You

Solely to the extent necessary for you to be able to receive the Services and use the Deliverables for your internal business purposes during the relevant term of the Individual Service Contract, we grant you a non-transferable, non-exclusive licence to use and reproduce Our Materials, the Developed Materials, the Deliverables and the Documentation as supplied to you by us. Upon final payment of all amounts due under the Individual Service Contract or this Master Services Agreement, the licence granted under this clause 11.4 will become perpetual and irrevocable. Pending payment of such amounts, the licence granted under this clause 11.4 can be revoked by us giving written notice of revocation to you where you fail to pay an amount payable under the Individual Service Contract or this Master Services Agreement when due and you do not remedy such breach within 7 days of being provided with notice of the breach by us. Where the Services involve or include supplying Third Party Materials to you and you fail to pay any amounts payable to us for such Third Party Materials and you do not remedy such breach within 7 days of being provided with notice of the breach by us, we can revoke or suspend your rights to use such Third Party Materials.

12 SAFETY

If any of our employees, officers, contractors or representatives attend any premises owned or controlled by you (**Premises**) in connection with the provision of any Services then you agree that:

- (a) You are responsible for all aspects of health and safety at the Premises and for conducting health and safety risk assessments of the Premises and must:
 - (i) comply with all applicable laws, regulations, codes of practice and guidelines concerning the health, safety and welfare of people at work (**OH&S Laws**) including ensuring appropriate consultation with other duty holders under OH&S Laws in relation to any work occurring at the Premises;
 - (ii) do all things necessary to ensure that its agents, officers, employees and contractors comply with all OH&S Laws and reasonable directions provided by you about managing risks to health and safety;
 - (iii) provide us with access to such documentation as may be necessary to establish your compliance with OH&S Laws and the requirements of this clause; and
 - (iv) provide us with reasonable access to the Premises to allow us to monitor your compliance with the health and safety requirements of this clause and OH&S Laws;
- (b) without limiting clause 12(a), you must eliminate risks to health and safety at the Premises so far as is reasonably practicable and, if it is not reasonably practicable to eliminate risks to health and safety, reduce those risks as is reasonably practicable;
- (c) You must verbally notify us immediately in the event of:
 - (i) any incident or injury that occurs involving any of our employees, officers, contractors or representatives and provide us with copies of any documentation that is created or produced as a result of or relating to such incident or injury, including but not limited to incident reports; and
 - (ii) any notices issued by a regulatory authority about the systems of work and/or plant at the Premises relevant to the attendance of any employee, officer, contractor or representative of ours at the Premises; and
- (d) You indemnify us for any claim, including in relation to any injury, illness or death, arising out of or in connection with a breach by you of the OH&S Laws or this clause 12.

13 TERMINATION AND SUSPENSION

13.1 Suspension

We may temporarily suspend or restrict any Service or any part of a Service:

- (a) if we reasonably need to do so to comply with any law or an order or direction of any regulatory or law enforcement body;
- (b) if we reasonably believe the suspension is required to address any security risks or risks to the performance, stability or security of our services;
- (c) if we reasonably believe the Services are being used for any purposes that breach any applicable laws;
- (d) if you are in material breach of the Individual Service Contract or this Master Services Agreement and you fail to comply with a written notice requiring you to remedy such breach by the date specified in that notice; or
- (e) in accordance with any other suspension rights set out in this Master Services Agreement or any Individual Service Terms.

13.2 Termination of Master Services Agreement

Either party may terminate this Master Services Agreement by providing not less than 30 days written notice of termination to the other party if:

- (a) a period of no less than 12 months from the MSA Commencement Date has elapsed; and
- (b) there are no then current Individual Service Contracts in effect under this Master Services Agreement.

13.3 Your Termination of a Individual Service Contract

You may, by written notice to us, terminate an Individual Service Contract with effect from the provision of such notice if:

- (a) we fail to comply with any written notice issued by you requiring us to remedy a material breach, non-observance or non-performance of our obligations under the Individual Service Contract within 10 Business Days of our receipt of the notice, where such breach, non-observance or non-performance is within our reasonable control; or
- (b) we are the subject of an Insolvency Event.

13.4 Termination by Us

We may, by written notice to you, terminate this Master Services Agreement and (at the election and discretion of us) any or all Individual Service Contracts with effect from the provision of such notice if:

- (a) you fail to pay any Fees or other amounts payable by you under an Individual Service Contract within 7 days of the due date for payment;
- (b) you fail to comply with any written notice that we issue requiring you to remedy a material breach, non-observance or non-performance of your obligations under this Master Services Agreement or any Individual Service Contract within 10 Business Days of you receiving the notice;
- (c) you commit a material breach of this Master Services Agreement or any Individual Service Contract which is incapable of remedy;
- (d) you or any of your officers breach any applicable law, fail to comply with an industry regulation or are sanctioned by a regulatory body that has jurisdiction over you;
- (e) you cease or there is a material risk that you will cease carrying on business;
- (f) you use a Service for any unauthorised purposes, any criminal purposes or in a way that fails to comply with any applicable laws; or
- (g) you are the subject of an Insolvency Event.

13.5 Consequences of Termination or Expiry

- (a) Upon termination or expiry of an Individual Service Contract or this Master Services Agreement taking effect:
 - (i) you must immediately pay to us all Fees, expenses or other sums payable to us under the Individual Service Contract or this Master Services Agreement which have accrued or are payable as at the date of termination or expiry;
 - (ii) if the Individual Service Contract is terminated prior to the end of the Minimum Service Period, you must (other than where the Individual Service Contract is terminated under clause 13.2) immediately pay to us:
 - (A) where a Termination Fee is specified in the relevant Individual Service Contract as being payable, the amount of the Termination Fee; and
 - (B) where no Termination Fee is specified, balance of any Fees which would have been payable by you from the date of termination to the end of the Minimum Service Period; and
 - (iii) we cease to have any obligations under the Individual Service Contract with respect to the provision of Services; and
 - (iv) we may provide transition out assistance or services where requested by you and agreed by us, however you acknowledge that this may require upfront payment of our fees for providing transition out assistance or services.
- (b) Termination or expiry of an Individual Service Contract or this Master Services Agreement does not affect any accrued rights or remedies of any party.
- (c) The termination or expiry of an Individual Service Contract or this Master Services Agreement does not operate to terminate any rights or obligations under the Individual Service Contract or this Master Services Agreement that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned.
- (d) Termination of an Individual Service Contract will not by itself result in termination of other Individual Service Contracts. Termination of this Master Services Agreement will also not by itself result in termination of the Individual Service Contracts.

14 CONFIDENTIALITY

14.1 Confidentiality Obligations

Where a party (**Recipient**) receives Confidential Information from the other party under an Individual Service Contract in connection with the Services, the Recipient must:

- (a) keep the Confidential Information confidential;
- (b) subject to clause 14.2, not use, disclose or reproduce the Confidential Information for any purpose other than the purposes of the Individual Service Contract; and
- (c) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure.

14.2 Permitted Disclosure

Notwithstanding clause 14.1, the Recipient may use or disclose Confidential Information to the extent necessary to:

- (a) comply with its obligations under the Individual Service Contract or this Master Services Agreement;
- (b) comply with any law, binding directive of a regulator or a court order;
- (c) comply with the listing rules of any securities exchange on which its securities are listed; or
- (d) obtain professional advice in relation to matters arising under or in connection with the Individual Service Contract or this Master Services Agreement.

14.3 Promotion and Marketing

You agree that, for the purposes of our promotion and marketing we are entitled to notify others of our relationship with you and our provision of the Services to you.

15 NON SOLICITATION OF EMPLOYEES

During the Service Period and for a period of 12 months following termination or expiration of the relevant Individual Service Contract, you must not directly or indirectly solicit for employment or contract any of our employees, contractors or suppliers, or otherwise encourage any of our employees, contractors or suppliers to end their employment or other similar relationship with us, without the prior written consent of us. If you breach this clause and an employee of ours leaves our employment due to that breach, you agree to pay us a recruitment fee equal to the solicited/engaged employee's last annual gross taxable remuneration package as compensation. You agree this is a genuine estimate of the loss and damage that would be suffered by us if you breach this clause.

16 SUBCONTRACTORS

You agree and acknowledge that we may subcontract the performance of any of our obligations or the exercise of any of our rights under an Individual Service Contract or this Master Services Agreement as we consider appropriate from time to time, provided always that we will remain liable to you for the performance of the Services notwithstanding any such sub-contracting.

17 LIABILITY

17.1 Australian Consumer Law

If you are a Consumer and we supply PDH Services to you, we acknowledge that you may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Services supplied by us and nothing in this Master Services Agreement or any Individual Service Contract should be interpreted as attempting to exclude, restrict or modify the application of any such rights.

17.2 Non PDH Services

If you acquire the Services from us as a Consumer and the relevant Services are non PDH Services, then our liability to you in connection with any breach of the Consumer Guarantees in respect of those Services is, at our option, limited to:

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

17.3 Limitation of Liability

Subject to clauses 17.1, 17.2, 17.4, 17.5, and 17.6 and to the extent permitted by law, our aggregate liability, whether arising under statute, in contract, tort (including negligence) or otherwise in respect of all your Losses and Claims in connection with an Individual Service Contract is limited to the amount of the Fees paid by you to us under that Individual Service Contract during the 12 month period prior to our receipt of notification of the relevant Loss or Claim. Without limiting the above, where a Claim or Loss relates to a Service or part of a Service provided by one of Our Vendors, we will only be liable to you for amounts in respect of such Claim or Loss that we can and do recover from Our Vendor.

17.4 Consequential Loss

Neither party will be liable for any Consequential Loss (however caused) suffered or incurred by the other party in connection with the Services or any Individual Service Contract. This clause applies even if the party knew or ought to have known that the relevant Consequential Loss would be suffered.

17.5 Reduction in Liability

To the extent permitted by law, in the event of contributory negligence by you, our liability to you under or in connection with an Individual Service Contract will be reduced proportionately to the extent, if any, to which any of your acts or omissions have caused or contributed to the relevant Loss that you have suffered or incurred.

17.6 Commencement of Claims

Any Claim that you make against us for Loss however caused or suffered by you in connection with an Individual Service Contract must be made within two years of you becoming entitled to make the Claim and any Claim not made within this period is absolutely barred.

18 DISPUTE RESOLUTION

18.1 Dispute

If any dispute or difference arises between the parties as to the construction of any Individual Service Contract or as to any matter or thing of whatever nature arising under or in connection with an Individual Service Contract, then such dispute or difference will, unless resolved within 30 Business Days of the date upon which notice of the dispute or difference is given by a party, be submitted to mediation in accordance with clause 18.2. Before submitting a dispute to mediation, the parties will undertake in good faith to use all reasonable endeavours to settle the dispute expeditiously.

18.2 Mediation Procedure

The mediation procedure will be as follows:

- (a) a party may start mediation by serving a mediation notice on the other party within 10 Business Days of the expiration of the 30 Business Day period referred to in clause 18.1;
- (b) the notice must state that a dispute has arisen and identify what the dispute is;
- (c) the parties must jointly appoint a mediator and, if the parties fail to agree on the appointment within 5 Business Days of service of the mediation notice under clause 18.2(a), either party may apply to the Resolution Institute (ACN 008 651 232) to appoint a mediator;
- (d) once the mediator has accepted the appointment the parties must comply with the mediator's instructions;
- (e) the mediation will be held in Melbourne, Victoria, Australia in accordance with the mediation rules of the Resolution Institute (ACN 008 651 232); and
- (f) if the dispute is not resolved within 30 Business Days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.

18.3 Mediation Costs

The mediator may fix the costs for mediation which must be paid equally by the parties.

18.4 Terms of Settlement

If the dispute is settled, all parties must sign the terms of agreement on which the dispute is settled and these terms are binding on the parties.

18.5 Confidentiality

The mediation is confidential and statements made by the mediator or the parties and discussions between the parties as part of the mediation, cannot be used in legal proceedings.

18.6 Injunctive Relief

This clause is without prejudice to or limitation to the rights of a party to seek urgent injunctive relief against the other party at any time.

18.7 Right to Suspend and Terminate

This clause 18 does not affect any rights to suspend or terminate Services or the Agreement under clause 13 or pursuant to any other rights of termination contained in the Agreement.

18.8 Parties to Continue and Perform

Notwithstanding the existence of a dispute (but subject to clause 18.7), each party must continue to perform its obligations under the Agreement.

19 NOTICE

19.1 General

Unless the Individual Service Contract expressly states otherwise, a notice, consent, approval, waiver or other communication (**notice**) in connection with an Individual Service Contract must be in writing and signed by the sender or a person authorised by the sender.

19.2 When Effective

A notice given under clause 19.1 will be deemed to be received:

- (a) if hand delivered, at the time of delivery;
- (b) if sent by pre paid post, three Business Days after the date of posting or seven Business Days after the date of posting if posted to or from a place outside Australia; or
- (c) if sent by electronic message, when the sender receives an automated message confirming delivery or eight hours after the message has been sent (as recorded on the device from which the sender sent the message) unless the sender receives an automated message that the electronic message was not delivered or the sender knows or reasonably should know that there is a network failure and accordingly knows or suspects that the electronic message was not delivered, unless a notice is received after 5.00 pm on a Business Day in the place of receipt or at any time on a non Business Day, in which case, that notice is deemed to have been received at 9.00 am on the next Business Day.

19.3 Addresses for Notices

Any notice given in connection with an Individual Service Contract may be given to the address as set out on the relevant Quote or such other address for notices a party may notify the other party of in writing from time to time.

20 PPSA

- (a) Words and expressions used in this clause 20 which are not defined in this Master Services Agreement but are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the meaning given to them in the PPSA;
- (b) You acknowledge that;
 - (i) the supply of products or services by us under this Master Services Agreement or an Individual Service Contract (**products or services**) creates a registrable security interest under the PPSA in the products or services and the proceeds of the products or services and that you have not agreed to postpone the time for attachment of that security;
 - (ii) the security interests created under this agreement attach to the products or services and the proceeds of the products or services in accordance with the PPSA;
 - (iii) value has been given for the creation of the security interests; and
 - (iv) where we have other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply.
- (c) We are not obliged to act in any way to dispose of or to retain any products or services which have been seized by us or any person nominated by us under our rights under the PPSA;
- (d) Without limiting anything else in this agreement, you consent to us effecting a registration on the Personal Property Securities Register (**PPSR**) in relation to any security interest created by or arising in connection with, or contemplated by, this Master Services Agreement or an Individual Service Contract, including in relation to any products or services. You agree to promptly do all things necessary to ensure that any security interest created under this agreement is perfected and remains continuously perfected, our priority position is preserved or secured and any defect in any security interest, including registration, is overcome;
- (e) You must promptly take all reasonable steps which are prudent for your business under or in relation to the PPSA (including doing anything reasonably requested by us for that purpose in relation to the products or services);
- (f) You must indemnify and on demand reimburse us for all expenses incurred in the registration and enforcement of any rights arising out of any of our security interests;

- (g) You must not change your name, ACN, ABN, address or contact details without providing prior written notice to us and must not register a financing change statement or a change demand covering the products or services without our prior written consent;
- (h) You must not without our prior written consent, sell, lease, sublicence, assign, dispose of, create a security interest in, mortgage or part with possession of the products or services or any interest in them (or purport or attempt to purport to do any of those things) or permit any lien over the products or services;
- (i) You must notify us as soon as you become aware if any personal property which does not form part of the products or services becomes an accession to the products or services or if any of the products or services are situated outside Australia or, on request by us, of the present location or situation of the products or services;
- (j) You must keep full and complete records of the products or services;
- (k) You must authorise us to apply any money we receive from you towards debts, charges and expenses in any priority we determine in our sole discretion for whatever reason, including in order to maintain the security interest created by this Master Services Agreement;
- (l) You must immediately return the products or services if requested to do so by us following non payment of any amount owing to us by you or following breach of any other obligation to us by you;
- (m) To the extent that the PPSA permits, you waive your rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA;
- (n) You may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if we have given prior written consent.

21 GENERAL PROVISIONS

21.1 Governing Law

Each Individual Service Contract and this Master Services Agreement will be construed and interpreted in accordance with the laws of the state of Victoria, Australia and each party submits to the non-exclusive jurisdiction of courts of that jurisdiction.

21.2 Assignment

- (a) Subject to clauses 16, a party must not assign or otherwise deal with any of its rights, interests or obligations under an Individual Service Contract without the prior written consent of the other party;
- (b) We may assign or novate this Master Services Agreement and any or all Individual Service Contract as part of or in connection with any solvent restructure or any sale of our assets, business or operations or any equity interest in us. We will endeavour to provide you with prior notice before doing so.

21.3 Entire Agreement

Each Individual Service Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties or their respective officers, employees or agents.

21.4 Force Majeure

If a party is prevented, hindered or delayed from performing its obligations under an Individual Service Contract by a Force Majeure Event, then as long as that situation continues, that party will be excused from performance of the obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the obligation will be extended accordingly. If a party is affected by a Force Majeure Event it will immediately give the other party a notice of its occurrence and its effect or likely effect, and use all reasonable endeavours to minimise the effect of the Force Majeure Event and to bring it to an end. This clause 21.4 does not apply to any obligation of you to pay the Fees or other amounts payable to us under the Individual Service Contract.

21.5 Waiver and Variation

An Individual Service Contract will not be varied except by a document in writing signed by the parties. No failure to exercise or delay in exercising any right given by or under an Individual Service Contract to a party constitutes a waiver and the party may still exercise that right in the future.

21.6 Severability

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

21.7 Relationship

The relationship between the parties is and will remain that of independent contractors, and nothing in any Individual Service Contract will constitute the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.

21.8 Counterpart

This Master Services Agreement may be signed in any number of counterparts. All counterparts executed separately when taken together constitute one agreement and counterparts executed separately may be consolidated into a single document.

22 DEFINITIONS AND INTERPRETATION

22.1 Definitions

In this Master Services Agreement, unless the context otherwise requires:

- (a) **Additional Services** means any services that are requested by you or otherwise provided by us in respect of an Individual Service Contract which are outside the scope of the Services required to be provided by us under the relevant Individual Service Contract.
- (b) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.
- (c) **Business Day** means a day on which trading banks are open for business in Melbourne, other than a Saturday or a Sunday or a public holiday.
- (d) **Claim** means a claim, action, proceeding, judgment or demand made or brought by or against a party, however arising and whether present, unascertained, future or contingent.
- (e) **Confidential Information** means any information provided by a party to the other party (whether provided before or after execution of this Master Services Agreement) in connection with the Services, this Master Services Agreement or any Individual Service Contract (and in the case of us includes the Documentation) but does not include information which is in or becomes part of the public domain, other than through a breach of this Master Services Agreement or an Individual Service Contract or of an obligation of confidence, or information which a party proves was independently acquired or developed without breaching any of the obligations set out in this Master Services Agreement or an Individual Service Contract.
- (f) **Consequential Loss** means:
 - (i) all Loss beyond the normal measure of damages; and
 - (ii) all indirect Loss, Loss of revenue, Loss of reputation, Loss of profits, Loss of actual or anticipated savings, Loss of bargain, lost opportunities, including opportunities to enter into arrangements with third parties, Loss of use, cost of capital or costs of substitute goods, facilities or services.
- (g) **Consumer** has the meaning given in section 3 of the Australian Consumer Law.
- (h) **Consumer Guarantee** means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.
- (i) **Data Breach** means unauthorised access, unauthorised disclosure or loss of personal information.

- (j) **Deliverables** means any documentation, work product or other items supplied to you by us, including any Deliverables set out in an Individual Service Contract.
- (k) **Developed Materials** means any Materials developed or created by us in the course of providing the Services.
- (l) **Documentation** means any manuals, guides, reference materials, training materials or other similar documents in any form made available by us to you in connection with or as a result of the provision of the Services.
- (m) **Fees** means the fees payable by you for:
 - (i) the provision of the Services, as specified in the relevant Quote or Individual Service Terms (or if none are specified, the then current standard fees of us for the Services, as notified to You by us); and
 - (ii) the provision of any Additional Service as determined in accordance with clause 4.2(c), as may be increased in accordance with clause 9.1(b) or any other fee adjustment rights set out in an Individual Service Contract.
- (n) **Force Majeure Event** means the occurrence of an event or circumstances beyond the reasonable control of the party affected by it, including war (declared or undeclared), civil commotion, military action, or an act of sabotage, strike, lockout or industrial action, storm, tempest, fire, flood, earthquake or other natural calamity or an ongoing internet or telecommunications outage or impairment.
- (o) **General Services** means products or services that we provide to you on an ad hoc, one off or other similar basis.
- (p) **Improvement** means all improvements, enhancements, modifications, adaptations and extensions, whether being capable of patent or other Intellectual Property protection or otherwise and whether made or conceived by either party.
- (q) **Individual Service Terms** means any document attached to, or provided by us with, a Quote which sets out a description of the Services the subject of the Quote and any terms and condition upon which we will provide those Services.
- (r) **Individual Service Contract** has the meaning given to it in clause 2.3.
- (s) **Insolvency Event** means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.
- (t) **Intellectual Property** means all rights conferred under statute, common law or equity in any jurisdiction, whether existing now or in the future and whether or not registered or registrable, in relation to trade marks, copyright, patents, patentable inventions, designs, trade secrets and database rights, together with the right to apply for the registration or grant of any such intellectual property.
- (u) **Loss** means any loss, liability, cost, claim, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and whether direct loss or Consequential Loss.
- (v) **Master Services Agreement** means this master services agreement.
- (w) **Materials** means all materials and includes, without limitation, documents, software programs, source code, object code, executable code, specifications, tools, methodologies, processes, techniques, analytical frameworks, algorithms, processes, products, documentation, abstracts and summaries of any of these in any format.
- (x) **Minimum Service Period** means the Minimum Service Period or other initial term during which we will provide the Services to you, as specified in the relevant Quote. Where no Minimum Service Period or other initial term is specified, it will be 12 months from the relevant Service Commencement Date.
- (y) **MSA Commencement Date** means the Date the Quote is signed or otherwise accepted by you.
- (z) **Our Materials** means any Materials which we developed or acquired prior to the date of this Master Services Agreement or any Materials which are developed or acquired by us independently of the arrangements under this Master Services Agreement or an Individual Service Contract.

- (aa) **Our Vendor** means any third party that provides support, technology and/or other products or services that are supplied by us to you as part of the Services, including any third party telecommunications or data providers or third party providers of software or hardware resold by us.
- (bb) **Personal Information** means information that is personal information for the purposes of the Privacy Laws.
- (cc) **PDH Services** means services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.
- (dd) **Privacy Laws** means the *Privacy Act 1988* (Cth).
- (ee) **Quote** means any quote, proposal or other similar document that we provide to you in respect of the proposed provision of any Services.
- (ff) **Renewal Term** means the renewal term set out in the Individual Service Terms or Quote. Where none is specified, the Renewal Term will be an ongoing renewal for consecutive periods of 12 months each.
- (gg) **Services** means the services or products to be provided by us to you under an Individual Service Contract or this Master Services Agreement, as set out in the Individual Service Contract and also includes any Additional Services we provide under an Individual Service Contract or this Master Services Agreement and any General Services.
- (hh) **Service Commencement Date** means the commencement date for an Individual Service Contract specified in the relevant Quote (or where no date is specified, the date we commence providing the Service to You).
- (ii) **Service Period** means the period of time during which we provides Services to you, including the Minimum Service Period and any renewal period under clause 3.2(c).
- (jj) **Termination Fee** means any early termination or other similar fee set out in an Individual Service Contract.
- (kk) **Third Party Materials** means any Materials supplied or licensed by a party other than you or us.
- (ll) **Your Background IP** means any Intellectual Property which you developed or acquired prior to the date of this Master Services Agreement or any Intellectual Property which is developed or acquired by you independently of the arrangements under this Master Services Agreement or an Individual Service Contract.
- (mm) **Your Data** means the data and other information uploaded to Your Systems by or on behalf of you or otherwise owned or controlled by you from time to time and which we have access to, or is otherwise provided, for the purposes of performing our obligations under an Individual Service Contract.
- (nn) **Your Materials** means any Materials provided to us by you under or in connection with an Individual Service Contract.
- (oo) **Your Vendors** means any third party (other than us) who you engage to provide information technology or other services to you.
- (pp) **Your Systems** means the computer servers, applications, hardware, technological services and infrastructure and other information technology systems (including cloud or SaaS applications) used by you from time to time.

22.2 Interpretation

In this Master Services Agreement, headings are inserted for convenience only and do not affect the interpretation of this Master Services Agreement and, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (d) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trustee, a trust, an association (whether incorporated or not), a government and a government authority;
- (e) all monetary amounts are in Australian dollars, unless otherwise stated and a reference to payment means payment in Australian dollars; and
- (f) no provision of this Master Services Agreement or an Individual Service Contract will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Master Services Agreement or an Individual Service Contract or the inclusion of the provision in the Master Services Agreement or an Individual Service Contract.



Master Services Agreement

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