

# Terms

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## 1. Acceptance

- (a) This Agreement is between Lockshine Pty Ltd t/a Yarno ABN 99 604 720 210, its successors and assignees, (referred to as **we, us** or **our**), and you, our client as described in the Proposal signed between the Parties (referred to as **you** or **your**), and collectively the Parties.
- (b) You have requested our Services. You agree and accept that these terms and conditions (**Terms**) and the Proposal form the Agreement under which we will supply the Services to you.
- (c) In the event of any inconsistency between:
  - (1) the Proposal; and
  - (2) these Terms,the document listed higher in the above list will take precedence to the extent of the inconsistency.
- (d) You accept this Agreement by:
  - (1) signing and returning the Proposal we provide to you;
  - (2) confirming by email that you accept the Proposal; or
  - (3) making part or full payment for the Services.

## 2. Term

- (a) This Agreement commences on the date you accept the Agreement in accordance with clause 1(d) and continues for the Term.

## 3. Consulting Services and Accounts

- (a) As part of the Consulting Services, we will create an administrator account or accounts for you (Account), in order for you and your Authorised Users to access and use the Services. You must ensure that any information you provide to us, or we request from you as part of the Account set up process is complete and accurate.
- (b) We will provide you with certain Account details (such as a username(s) and password(s)) when we create an Account for you. It is your responsibility to keep your Account details confidential. You are responsible for all activity on your Account, including activity by Authorised Users and for ensuring that any activities on your Account comply with this Agreement.
- (c) You must provide us with access to your premises for us to conduct a site visit and gap analysis, and you must provide us with access to your key stakeholders for us to conduct our training. You must provide and maintain a safe working environment for us and our Personnel when accessing your premises and facilities.
- (d) You agree that we are a software as a service provider and we are not responsible for the management or administration of your Account.

## 4. Timeframes

- (a) If we provide you with estimated timeframes to perform the Services, we will use our reasonable endeavours to perform the Services in accordance with the timeframes we provide.

## 5. SaaS Licence

- (a) In consideration for payment of the Investment Amount(s), we grant you a non-exclusive, non-transferable (except with our written permission), non-sublicensable (except as otherwise permitted under this Agreement), personal and revocable licence to access and use the SaaS Services for business purposes for the Term (**SaaS Licence**).
- (b) You agree that the SaaS Licence permits you to access and use the SaaS Services in accordance with the number of Authorised Users and Included Questions, as set out in the Proposal.
- (c) You may, at any time during the Term, increase the number of Authorised Users by submitting a request to us via email and we shall apply new fees (and support fees if relevant) which will be applicable as of the effective date of the increase of the number of Authorised Users.
- (d) You may also, at any time during the Term, request to increase the number of Included Questions on your Account. You may submit a request to us via email and we will provide you with a quote to provide the additional Included Questions to you. If you agree to the quote, we will invoice you and once the invoice is paid, we will provide you with the additional Included Questions.
- (e) You may reduce the number of Authorised Users provided that you give us written notice of such reduction. You will not be entitled to any refund, credit or receive any compensation for the reduction in the number of Authorised Users.
- (f) No refunds, credit or any compensation will be provided if you reduce the number of Included Questions on your Account. If you do not provide us with sufficient content for us to create the number of Included Questions on your Account, then you agree that we may apply the time we would have spent developing your Included Questions to providing you with other Services.

## 6. Restrictions

- (a) You must not (and must ensure your Authorised Users do not) access or use the SaaS Services except as permitted by the SaaS Licence and you must not and must not permit any other person to:
  - (1) use the SaaS Services in any way which is in breach of any applicable Laws or which infringes any person's rights, including Intellectual Property rights;
  - (2) use the SaaS Services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
  - (3) use the SaaS Services in any way that damages, interferes with or interrupts the supply of the SaaS Services;
  - (4) introduce malicious programs into our hardware and software or Systems, including viruses, worms, trojan horses and e-mail bombs;



- (5) reveal your Account's password to others or allow others to use your Account (other than Authorised Users); and
- (6) use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the SaaS Services.

## 7. Third Parties

- (a) You acknowledge and agree that:
  - (1) the provision of the Services may be contingent on, or impacted by, third parties, end users, suppliers, other subcontractors (**Third Party Inputs**); and
  - (2) despite anything to the contrary, to the maximum extent permitted by law, we will not be responsible, and will have no Liability, for any default or breach of this Agreement or law, if such default or breach was caused or contributed to by any Third Party Inputs.
- (b) This clause will survive the termination or expiry of this Agreement.

## 8. Development Services

- (a) If, during the Term, you require any changes to the scope, functionality or nature of the SaaS Services or the elements of the Software used to provide the SaaS Services or any bespoke customisations to the SaaS Services, you must notify us of the changes you require. Following notification, at our discretion, we may provide you with written notice in the form of a statement of work covering (i) the changes required to the Software, (ii) the development services required in respect of such changes (**Development Services**) and (iii) the fee for required for us to undertake such Development Services (**Development Fee**). If you agree to the changes to the SaaS Services, the Development Services and the Development Fee then, subject to this Agreement, we will provide the Development Services to you in consideration for payment of the Development Fee.

## 9. Support Services

- (a) During the Term, we will provide you with support services as set out in the Proposal.

## 10. Privacy

- (a) You acknowledge and agree that you are responsible for the collection, use, storage and otherwise dealing with Personal Information related to your business and all matters relating to the Data.
- (b) You will comply and ensure that all of your Personnel and Authorised Users comply with the requirements of the Privacy Act in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with this Agreement.
- (c) Without limiting clause 10(a), you must:
  - (1) notify your Authorised Users, Personnel, or other natural persons from whom Personal Information is collected about any matter prescribed by the Privacy Act in relation to the collection, use and storage of their Personal Information;

- (2) ensure that any Personal Information transferred to us is complete, accurate and up to date; and
  - (3) notify us immediately upon becoming aware of any breach of the Privacy Act that may be related to the use of the Personal Information under this Agreement.
- (d) Without limiting clause 10(a), you may only disclose Personal Information in your control to us if:
- (1) you are authorised by the Privacy Act to collect the Personal Information and to use or disclose it in the manner required by this Agreement;
  - (2) you have informed the individual to whom the Personal Information relates, that in order to enable them to use the Services, it might be necessary for you to disclose their Personal Information to a third party and you have obtained their consent to do so; and
  - (3) where any Personal Information is Sensitive Information, you have obtained the specific consent to that disclosure from the individual to whom the Sensitive Information relates.
- (e) To the extent the Notifiable Data Breaches scheme under Part III C of the Privacy Act (Notifiable Data Breaches Scheme) applies to us, if we become aware of a Data Incident, we will:
- (1) notify you of the Data Incident by telephone or email;
  - (2) retain system logs and other information that may be relevant to the Data Incident, or to assessing the cause or impact of the Data Incident;
  - (3) provide all information we deem relevant to the Data Incident reasonably requested by you for the purpose of investigating the Data Incident; and
  - (4) immediately take all action reasonably necessary to:
    - (A) mitigate the impact of the Data Incident (including to restore or recover any lost data); and
    - (B) prevent any repeat of the Data Incident in the future.
- (f) If we suspect that a Data Incident has occurred, we will, within 30 days, prepare an assessment to determine whether there are reasonable grounds to believe that a Data Incident has occurred.
- (g) Where you suspect that a Data Incident has occurred, we will, within 30 days of receiving notice from you that you suspect that a Data Incident has occurred, prepare an assessment to determine whether there are reasonable grounds to believe that a Data Incident has occurred, and the costs of such assessment must be paid by you.
- (h) If we believe a Data Incident has occurred, we will provide notice to the Office of the Australian Information Commissioner (OAIC) of such Data Incident in accordance with the Notifiable Data Breaches Scheme and we will be the sole Party to notify the individuals who are likely to be at risk of serious harm arising from the Data Incident. Alternatively, where we do not have the contact details of affected individuals, we will provide you with a statement to provide to affected individuals.

## 11. Warranties

- (a) We warrant and agree that:
- (1) we are properly constituted and have the right and authority to enter into this Agreement;
  - (2) we will provide the Services in accordance with all applicable Laws;

- (3) we will use reasonable effort to ensure all of our obligations under this Agreement will be carried out:
  - (A) by suitably competent and trained Personnel;
  - (B) in an efficient and professional manner; and
  - (C) with the standard of diligence and care normally employed by duly qualified persons performing obligations similar to our obligations under this Agreement.

(b) You warrant and agree that:

- (1) there are no legal restrictions preventing you from agreeing to this Agreement;
- (2) you are not subject to an Insolvency Event;
- (3) you will cooperate with us and provide us with all assistance, resources, data, people, information, facilities, access and documentation that is reasonably necessary to enable us to perform the Services, and as otherwise requested by us, from time to time, and in a timely manner;
- (4) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete and you acknowledge and agree that we will rely on such information and documentation in order to provide the Services;
- (5) you will inform us if you have reasonable concerns relating to our provision of Services under this Agreement, with the aim that the Parties will use all reasonable efforts to resolve your concerns;
- (6) you are responsible for obtaining any consents, licences, authorities and permissions from other parties necessary for the Services to be provided in accordance with this Agreement, at your cost, and for providing us with the necessary consents, licences, authorities and permissions;
- (7) you will maintain the confidentiality and security of any of your Account details or passwords;
- (8) if applicable, you hold a valid ABN which has been advised to us; and
- (9) if applicable, you are registered for GST purposes.

## 12. Payment

- (a) You must pay us the Investment Amount(s), for the Services you have requested, and any other amount payable to us under this Agreement in accordance with the Payment Terms.
- (b) Subject to (i) us advising you of the cost of expenses in writing before they are incurred and (ii) you pre-approving the expenses in writing, you acknowledge and agree that you will reimburse us on demand at the actual cost for any expenses reasonably incurred by us relating to the provision of the Services.
- (c) Any payments of Investment Amount(s) are non-refundable.
- (d) If any payment has not been made in accordance with the Payment Terms, we may (in our absolute discretion):

- (1) immediately cease providing the Services to you or suspend the provision of the Services, and recover as a debt due and immediately payable from you any additional costs of doing so;
  - (2) charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 5% per month, calculated daily and compounding monthly, on any such amounts unpaid after the due date;
  - (3) engage debt collection services and/or commence legal proceedings in relation to any such amounts; and/or
  - (4) report you to any independent credit data agencies.
- (e) If you rectify such non-payment after the Services have been suspended, then we will recommence the provision of the Services as soon as reasonably practicable.

## 13. Intellectual Property Rights

### Our Intellectual Property

- (a) All Intellectual Property developed, adapted, modified or created by us or our Personnel (including in connection with this Agreement, the Software and the Services) is and will remain owned exclusively by us or our third party service providers.
- (b) You must not, without our prior written consent:
- (1) copy or use, in whole or in part, any of our Intellectual Property;
  - (2) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of our Intellectual Property to any third party;
  - (3) reverse assemble, reverse engineer, reverse compile or enhance the SaaS Services;
  - (4) breach any Intellectual Property Rights connected with the Software or the Services, including altering or modifying any of our Intellectual Property;
  - (5) cause any of our Intellectual Property to be framed or embedded in another website; or creating derivative works from any of our Intellectual Property;
  - (6) resell, assign, transfer, distribute or make available the SaaS Services to third parties;
  - (7) "frame", "mirror" or serve any of the SaaS Services on any web server or other computer server over the Internet or any other network;
  - (8) alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers or any other means of identification used on or in relation to the SaaS Services or Software;
- (c) Notwithstanding anything to the contrary in this Agreement or elsewhere, we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Services, in an aggregated and anonymized format (**Analytics**). You agree that we may make such Analytics publicly available, provided that it:
- (1) does not contain identifying information;
  - (2) is not compiled using a sample size small enough to make the underlying data identifiable.

- (d) We and/or our licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content provided in connection with the Analytics, including all Intellectual Property rights in the foregoing.

## Your Intellectual Property

- (a) As between you and us, (i) all Data is and remains your property, and (ii) you retain any and all rights, title and interest in and to the Data, including all copies, modifications, extensions and derivative works thereof.
- (b) **Licence:** You grant us a limited licence to copy, transmit, store and back-up or otherwise access the Data during the Term solely to:
- (1) supply the Services to you (including to enable you and your Personnel to access and use the Services);
  - (2) diagnose problems with the SaaS Services;
  - (3) enhance and otherwise modify the Services;
  - (4) develop other services, provided we de-identify the Data; and
  - (5) as reasonably required to perform our obligations under this Agreement.
- (c) **General:** You must, at all times, ensure the integrity of the Data and that your use of the Data is compliant with all Laws. You represent and warrant that: (i) you have obtained all necessary rights, releases and permissions to provide all your Data to us and to grant the rights granted to us in this Agreement; and (ii) the Data and its transfer to and use by us, as authorised by you under this Agreement does not violate any Laws (including those relating to export control and electronic communications) or rights of any third party, including any Intellectual Property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorised in this Agreement is not inconsistent with the terms of any applicable privacy policies.
- (d) We assume no responsibility or Liability for the Data. You are solely responsible for the Data and the consequences of using, disclosing, storing or transmitting it.
- (e) This clause will survive termination or expiry of this Agreement.

## 14. Confidential Information

- (a) Each Party (**Recipient**) must keep confidential, and not disclose, any Confidential Information of the other party (**Discloser**) except:
- (1) where permitted by this Agreement;
  - (2) with the prior written consent of the Discloser;
  - (3) where the Confidential Information is received from a third party, except where there has been a breach of confidence
  - (4) on a confidential, "need to know" basis to the Recipient's Personnel, auditors, insurers, agents and professional advisors; or
  - (5) where the Recipient is compelled to do so by Law, provided that it gives the other party written notice prior to disclosure.

- (b) The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed and in connection with this Agreement.
- (c) This clause will survive termination or expiry of this Agreement.

## 15. Liability

- (a) Despite anything to the contrary, to the maximum extent permitted by law:
  - (1) our maximum aggregate Liability arising from or in connection with this Agreement (including the Services or the subject matter of this Agreement) will be limited to, and must not exceed in any Contract Year, the total amount of Investment Amount(s) paid by you to us in the prior Contract Year; and
  - (2) we will not be liable to you for any Consequential Loss, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.
- (b) Despite anything to the contrary, to the maximum extent permitted by law, we will have no Liability, and you waive and release us from and against, all Liability (whether under statute, contract, negligence or other tort, indemnity, or otherwise) arising from or in connection with any:
  - (1) loss of, or damage to, any property or any injury to or loss to any person;
  - (2) failure or delay in providing the Services; or
  - (3) breach of this Agreement or any Laws, where caused or contributed to by any:
    - (4) event or circumstance beyond our reasonable control;
    - (5) a fault, defect, error or omission in your Computing Environment or Data; or
    - (6) act or omission of you, your related parties, Authorised Users, Personnel or any third party (including customers, end users, suppliers, providers or subcontractors),and, in any event, any error, omission or lack of suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Services.
- (c) To the maximum extent permitted by law, you indemnify and continue to indemnify us against all Liability we suffer or incur arising from or as a consequence of a breach of clause 10 (Privacy), clause 13 (Intellectual Property), from any claim relating to the Data or from your use (or your employees', contractors' or agents' use) of the content we provide to you (**Content**).
- (d) Certain legislation, including the Australian Consumer Law (**ACL**) in the Competition and Consumer Act 2010 (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to our provision of our services which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in this Agreement attempts to exclude, restrict or modify your Statutory Rights as a consumer under the ACL. Any and all other warranties or conditions which are not guaranteed by the ACL are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in this Agreement.
- (e) You acknowledge and agree that:





- (1) you are responsible for all users using the Services, including your Personnel and any Authorised Users;
  - (2) you use the Services and any associated programs and files at your own risk;
  - (3) the technical processing and transmission of the Services, including your Data, may be transferred unencrypted and involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices;
  - (4) we may use third party service providers to host the Services. If the providers of third party applications or services cease to make their services or programs available on reasonable terms, we may cease providing any affected features without Liability or entitling you to any refund, credit, or other compensation;
  - (5) the Services may use third party products, facilities or services. We do not make any warranty or representation in respect of the third party products, facilities or services;
  - (6) we do not guarantee that any file or program available for download and/or execution from or via the Services is free from viruses or other conditions which could damage or interfere with Data, hardware or software with which it might be used;
  - (7) we are not responsible for the integrity or existence of any Data on the Computing Environment, network or any device controlled by you or your Authorised Users; and
  - (8) we may pursue any available equitable or other remedy against you if you breach any provision of this Agreement.
- (f) The Content we develop for you is based on the material and information you provide to us and we rely on you providing (and you warrant that you provide) accurate and up to date material and information. The Content is not comprehensive, it is for general information purposes only and it is not a substitute for tailored workplace health and safety policies, and safe work practices such as the use of PPE. We make no representation or warranty as to the accuracy and completeness of the Content and we make no guarantee that the Content will assist you in complying with applicable workplace health and safety laws.
- (g) This clause will survive termination or expiry of this Agreement.

## 16. Termination and Early Termination

- (a) The Parties may terminate this Agreement by mutual signed agreement.
- (b) To the extent permitted by law, either Party may terminate this Agreement, if the other Party:
  - (1) has breached a material term of this Agreement and has failed to remedy such breach within 20 Business Days of receiving notice to do so, subject to any other express right of termination;
  - (2) ceases operation without a successor; or
  - (3) is subject to an Insolvency Event.
- (c) We may terminate this Agreement by providing you with five Business Days' notice, in our sole discretion, if you fail to pay an invoice within 30 days of the invoice payment date.
- (d) On termination of this Agreement:
  - (1) you must cease using the Services and we will cease to provide the Services to you;

- (2) you agree that any payments made are not refundable to you;
  - (3) you must pay for all Services provided under the Agreement including Services which have been performed and have not yet been invoiced to you, and all other amounts due and payable under this Agreement;
  - (4) you agree to promptly return (where possible) or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property;
  - (5) we agree to promptly return (where possible) or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property unless we are required by Law or regulatory requirements to retain such information.
- (e) You must, within one month of the date of termination or expiry of this Agreement, copy all your Data on the SaaS Services and we will allow you access to the SaaS Services during this time solely for the purposes of such copy. After this time, we will be entitled to permanently delete all Data on the SaaS Services.
- (f) **Early termination:** If you terminate this Agreement before the expiry of the Initial Term or any Renewal Term, or if we terminate this Agreement for your breach, we may charge, and you must pay us the Cancellation Fee.
- (g) You acknowledge that we have expended significant time and effort to provide you with access to the Services including onboarding and training your Authorised Users and administrators, setting up accounts, producing content (if set out in the Proposal) and other professional services. You acknowledge and agree that the payment of the Cancellation Fee is in accordance with this Agreement and does not constitute a penalty, is a genuine pre-estimate of the losses suffered or incurred by us as a consequence of the early termination of this Agreement, and is in addition and without limitation to any of our other rights or entitlements.
- (h) The accrued rights, obligations and remedies of the Parties are not affected by the termination of this Agreement.
- (i) This clause will survive termination or expiry of this Agreement.

## 17. General

- (a) Our Services will be provided to you on a non-exclusive basis.
- (b) We reserve the right at any time and from time to time to change or remove features of the SaaS Services provided that, where there is any material alteration to the SaaS Services in accordance with this clause, we will provide you with 20 Business Days' notice.
- (c) **GST:**
- (1) **Taxable supply:** If GST is payable on any supply made under these Terms, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.

- (2) **Adjustment events:** If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued (if required), and any payments to give effect to the adjustment must be made.
- (3) **Payments:** If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.
- (4) **GST terminology:** The terms “adjustment event”, “consideration”, “GST”, “input tax credit”, “recipient”, “supplier”, “supply”, “taxable supply” and “tax invoice” each has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (d) **Subcontracting:** We may engage subcontractors to perform the Services on our behalf.
- (e) **Publicity:** With your prior written consent, we may use advertising or publicly announce that we have undertaken work for you, including in website testimonials and in our marketing material.
- (f) **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under this Agreement if such delay is due to any Force Majeure Event. We will provide you with prompt notice of the occurrence of any Force Majeure Event. If we are delayed from performing our obligations due to such a circumstance for a period of at least two months, we may terminate our agreement with you by giving you five Business Days' notice in writing.
- (g) **Disputes:** Neither Party may commence court proceedings relating to any dispute arising from, or in connection with, this Agreement without first meeting with a senior representative of the other Party to seek (in good faith) to resolve that dispute (unless that Party is seeking urgent interlocutory relief or the dispute relates to compliance with this provision).
- (h) **Notices:** Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed the Party at the address in the Proposal. A Party may change its notice details by written notice to the other Parties. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission.
- (i) **Delay:** If the provision of the Consulting Services or other Services depends upon or includes the provision of information, materials, consents or approvals by you or your Personnel, or requires your cooperation, action or response (or that of your Personnel), you will provide that information, cooperation and those materials, consents or approvals in a timely manner. If you breach this obligation, we will be entitled to an extension of time in respect any deadline or milestone to the extent of the delay caused by you and we will have no Liability for a failure to perform the Services caused by you.
- (j) **Waiver:** Any failure or delay by a Party in exercising a power or right (either wholly or partly) in relation to this Agreement does not operate as a waiver or prevent a Party from exercising that power or right or any other power or right. A waiver must be in writing.
- (k) **Relationship of Parties:** This Agreement are not intended to create a partnership, joint venture or agency relationship between the Parties. Nothing in this Agreement gives a Party authority to bind the other Party in any way.

- (l) **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions.
- (m) **Assignment:** You may not assign, transfer or otherwise deal with all or any of your rights or obligations under this Agreement without our prior written consent. Any purported dealing in breach of this clause is of no force or effect.
- (n) **Entire agreement:** This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- (o) **Amendment:** This Agreement may only be amended by written instrument executed by both Parties.
- (p) **Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.
- (q) **Governing law:** The Agreement is governed by the laws of New South Wales. You irrevocably and unconditionally submit to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waive any rights to object to proceedings being brought in those courts.
- (r) This clause will survive termination or expiry of this Agreement.

## 18. Definitions and interpretation

### (a) Definitions

Unless defined in the Proposal, the following words will mean:

**Account** has the meaning given in clause 3(a);

**ACL** has the meaning given in clause 15(c);

**Agreement** means these Terms and the Proposal we provide to you;

**Authorised User** means a user permitted to use the SaaS Services;

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales;

**Business Hours** means 9am to 5pm AEST on a Business Day;

**Cancellation Fee** is set out in the Proposal;

**Claim** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence), in equity or statute or otherwise, for indirect, special, Consequential Loss;



**Computing Environment** means your computing environment including all hardware, software, information technology and telecommunications services and Systems;

**Confidential Information** includes confidential information about a Party's business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential" but does not include any information which is in the public domain other than through a breach of confidence. Our Confidential Information includes our Intellectual Property including the Software. Your Confidential Information includes the Data;

**Consequential Loss** includes any indirect, incidental or consequential loss, loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any remote, abnormal or unforeseeable loss, loss of use and/or loss or corruption of data or any loss or damage relating to business interruption, or otherwise, suffered or incurred by a person, arising out of or in connection with this Agreement (whether involving a third party or a Party to this Agreement or otherwise);

**Consulting Services** means the services as described in the Proposal;

**Contract Year** means the 12 month period commencing on: (i) the Commencement Date; and (ii) each subsequent anniversary of the Commencement Date, during the Term.

**CPI** means the weighted average of the All Groups Price Index Numbers for the eight capital cities of the states and territories of Australia published from time to time by the Australian Bureau of Statistics or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia;

**Data** means the information, documents and other data inputted by you, your Personnel or Authorised Users into the Software or stored by the SaaS Services or generated by the SaaS Services as a result of your use of the SaaS Services;

**Data Incident** means any actual or suspected:

- (1) breach of our obligations relating to protection of Personal Information under this Agreement;
- (2) suspected (by us) unauthorised access to, or unauthorised disclosure of, any Personal Information;
- (3) suspected (by us) loss of Personal Information, including where Personal Information is damaged or corrupted so that it becomes unusable,

where, as determined by us, the access or disclosure is likely to result in serious harm to one or more individuals and we have not been able to prevent the likely risk of serious harm with remedial action;

**Development Fee** has the meaning given in clause 8(a);

**Development Services** has the meaning given in clause 8(a);

**Force Majeure Event** means an event which is beyond a Party's reasonable control including a fire, storm, flood, earthquake, explosion, accident, act of the public enemy, terrorist act, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, transportation embargo, and strike by employees of a third person other than a subcontractor of a Party, but in each case, only if and to the extent that the non-performing Party is without fault in causing the event, and the event, or its effect could not have been prevented by reasonable precautions;

**Included Questions** means the number of questions we create for you as part of the Services;

**Insolvency Event** means the occurrence of any one or more of the following events in relation to either Party:

- (1) it is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable laws;
- (2) an application or order is made for its winding up, bankruptcy or dissolution or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
- (3) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of it or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 10 Business Days;
- (4) a controller is appointed in respect of any of its property;
- (5) it is deregistered under the Corporations Act or other legislation or notice of its proposed deregistration is given to it;
- (6) a distress, attachment or execution is levied or becomes enforceable against it or any of its property;
- (7) it enters into or takes action to enter into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (8) a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of it or its property;
- (9) a petition for the making of a sequestration order against its estate is presented and the petition is not stayed, withdrawn or dismissed within 10 Business Days or it presents a petition against itself; or
- (10) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the relevant Party.

**Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, customer names or internet domain names. Our Intellectual Property includes the Software;

**Investment Amount(s)** means the investment amounts/fees set out in the Proposal under 'investment options';



**Laws** means acts, ordinances, regulations, rules, code and by-laws of the Commonwealth or any state or territory and includes the Privacy Act and the Spam Act 2003 (Cth);

**Liability** means any loss, liability, cost, payment, damages, debt or expense (including reasonable legal fees);

**Package** means either our orange, teal, orange plus or teal plus packages for you to access and use the SaaS Service;

**Party** means either party to this Agreement;

**Personal Information** has the meaning given in the Privacy Act;

**Personnel** means, in relation to a Party, the officers, employees, contractors, subcontractors and agents of that Party;

**Privacy Act** means the *Privacy Act 1988* (Cth);

**Proposal** means the proposal document we provide to you setting out our Services;

**SaaS Licence** has the meaning given in clause 5(a);

**SaaS Service** means our Software as a service as described in a Proposal [as amended by any Development Services];

**Sensitive Information** has the meaning given in the Privacy Act;

**Services** mean the services, functions and responsibilities provided by us to you as specified in the Proposal;

**Software** means the software used to provide any of the Services, and includes any instructions in hard copy or electronic form and any update, modification or release of any part of that software after this Agreement is entered into by the Parties;

**Statutory Rights** has the meaning given in clause 15(c);

**System** means all hardware, software, networks and other IT systems used by a Party from time to time, including a network;

**Term** has the meaning given in clause 1(b); and

**Third Party Inputs** has the meaning given by clause 7(a)(1).

## (b) Interpretation

In this Agreement, unless the context otherwise requires:

- (1) the singular includes the plural and vice versa;
- (2) headings are for convenience only and do not affect interpretation;

- (3) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (4) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (5) the word "month" means calendar month and the word "year" means 12 months;
- (6) the words "in writing" include any communication sent by letter or email or any other form of communication capable of being read by the recipient;
- (7) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (8) includes and similar words mean includes without limitation;
- (9) a reference to \$ or dollars refers to the currency of Australia from time to time;
- (10) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body that performs most closely the functions of the defunct body; and
- (11) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it.