



## MASTER SERVICES AGREEMENT – TERMS AND CONDITIONS

### Background

- A. We offer SaaS integration solutions for customers that rely on a variety of different SaaS platforms and apps to function.
- B. Under this Agreement, we provide you with the Services in connection with those SaaS integration solutions.

### Disclosures

**Please read this Agreement carefully prior to accepting this Agreement. By accepting this Agreement, you agree that:**

- if this Agreement expresses a time within which the Services are to be provided, such time is an estimate only, and creates no obligation on us to provide the Services by that time;
- Early Termination Charges may be payable by you in the event that you exercise a right to terminate for convenience with respect to a Service Order;
- on termination of this Agreement, to the maximum extent permitted by law, you will pay us for any third party charges or expenses to which we are committed, including without limitation any charges imposed on us by such third parties arising from the cancellation;
- a Service Order may be subject to an automatic renewal process, subject to us notifying you in advance;
- subject to your Consumer Law Rights, you have not relied on any representations or warranties made by us prior to entering this Agreement that are not included in this Agreement;
- subject to your Consumer Law Rights, we will not refund any amounts paid by you;
- subject to your Consumer Law Rights, we will not be liable for any loss or damage caused by the Computing Environment, any Third Party Inputs, events beyond our reasonable control (including Force Majeure Events), and Consequential Loss; and
- subject to your Consumer Law Rights, our Liability for the supply of the Services will be limited to, at our discretion to Services or the repayment of the Price paid by you to us.

**This Agreement does not intend to limit your rights and remedies at law, including any of your Consumer Law Rights.**

### 1 Acceptance

- 1.1 Where a Service Order is agreed between the Parties and that Service Order expressly incorporates the terms of this Agreement, this Agreement is binding on the Parties in connection with that Service Order.

- 1.2 You accept this Agreement by signing and returning any subsequent Service Orders, including by email or any electronic executions platform acceptable to us.

### 2 Commencement of the Services

- 2.1 We will commence providing the Services within a reasonable time after the later of:
  - (a) the SO Commencement Date for the relevant accepted Service Order;
  - (b) to the extent the Fees are required in advance, when we receive payment in full of the Fees;
  - (c) you providing us with any information that we require in order to provide the Services to you; and
  - (d) the satisfaction of any other conditions precedent contemplated by this Agreement or a Service Order.

### 3 Service Orders

- 3.1 Each Service Order that expressly incorporates these terms by reference is subject to, and will be governed by, this Agreement and any other conditions agreed to by the Parties in writing. To the extent of any ambiguity or discrepancy between an Service Order and this Agreement, the terms of the Service Order will prevail.

### 4 Services - General

- 4.1 In consideration of your payment of the Fees, we will perform the Services:
  - (a) in accordance with this Agreement; and
  - (b) in accordance with all applicable Laws.
- 4.2 If this Agreement expresses a time within which the Services are to be provided, we will use reasonable endeavours to provide the Services by such time, but you agree that:
  - (a) such time is an estimate only, and creates no obligation on us to provide the Services by that time; and
  - (b) our performance of the Services (including delivery of any Deliverable) is subject to you providing us with any information that we require in order to provide the Services to you.

### 5 Advisory Services

- 5.1 We will provide advisory services as particularised in the relevant Service Order (**Advisory Services**).
- 5.2 If agreed and as described in any Service Order, we will provide security audit support by assisting with security documentation requests, security interviews

and validation of security standards such as PCI, DSS as reasonably required (**Security Compliance Assistance**).

- 5.3 You acknowledge and agree that our Services, including any Security Compliance Assistance provided, are not legal advice, business risk advice or financial advice. For the avoidance of doubt, we cannot advise on compliance with Laws, including Privacy Laws and it is solely your responsibility to seek such advice from a qualified legal advisor and to prepare all legal documentation, including a privacy policy and any privacy notices and/or consents.
- 5.4 We will provide the Advisory Services, including Security Compliance Assistance if relevant, in a proper and professional manner in accordance with generally accepted industry standards and practices.

## 6 Managed Services

### Support Services

- 6.1 We will provide the Service Desk and remote application support as particularised in the relevant Service Order (**Support Services**).
- 6.2 In order for you to receive the Support Services, an Authorised User must place a request via the Service Desk (**Support Request**). We agree to respond to any such Support Request on a timely basis, noting that we use a severity rating system to prioritise requests and we will respond to more urgent requests first (as determined by us at our sole discretion).
- 6.3 Our supply of the Support Services is subject to an Authorised User supplying to us any information we require about what you have done in response to any issue and any consents, licences, authorisations, permissions or similar which we reasonably require to respond to the Support Request.
- 6.4 In the event that a Service Order expressly states that we will provide onsite Support Services, we will send one or more of our Personnel (the **Provided Personnel**) to your premises on the agreed days and during the agreed hours, and you agree:
- (a) that you are responsible for coordinating, supervising and instructing the Provided Personnel's performance of the Support Services while they are on your premises;
  - (b) to provide the Provided Personnel with all the necessary access to any relevant Systems;
  - (c) to provide the Provided Personnel with a safe working environment, free from harm;
  - (d) to comply with all relevant safety Laws and if necessary provide the Provided Personnel with a comprehensive safety induction for the premises where the Provided Personnel is providing the Support Services; and
  - (e) to have adequate insurance to cover:
    - (1) loss or damage to your property or the property of any other persons which may be operated, used or handled by the Provided Personnel;

- (2) death or personal injury (to your Personnel or any other person) caused or contributed to or by the Provided Personnel while providing Support Services; and
  - (3) all other insurances as may be required by Law.
- (f) When providing our Support Services, we will record our time during the provision of those Support Services. If at any time, the time we record exceeds the hours of Support Services ordered by you in the current Service Order (**Support Hours**), we will notify you and then charge you for the additional services provided in excess of the Support Hours in accordance with the schedule of rates to be provided by us. These services will form part of the Support Services and any additional fees will form part of the Fees.
- (g) In respect of any third party software support we provide, you are solely responsible for:
- (1) the purchasing and/or licensing of any third party software; and
  - (2) any requirements and obligations, including obtaining or providing relevant consents and permissions in connection with any third party software.

### IT Security

- 6.5 If agreed and as described in any Service Order, we will assist you with security in connection with your Systems (**IT Security Services**).
- 6.6 Any IT Security Services may include the provision of Third Party Software Licence(s) for security software (which will be dealt with under a separate agreement). We provide no warranty regarding the effectiveness of any Third Party Software Licence(s) for IT security purposes and we cannot guarantee that our IT Security Services will be effective in stopping all security threats or attacks.
- 6.7 The obligations of the Parties with respect to security, privacy and data breaches are set out in clauses 15 and 16. The provision of any IT Security Services does not in any way alter the obligations set out in such clauses.

## 7 Integration Services

- 7.1 We will provide integration services in connection with licences or products that we resell or support (**Nominated Integration Products**) as particularised in the relevant Service Order (**Integration Services**).
- 7.2 In connection with the Integration Services, you agree to:
- (a) comply with our reasonable requests and directions; and
  - (b) provide all assistance, information, documentation, access, facilities, authorities, consents, licences and permissions reasonably necessary to enable us to comply with our obligations under this Agreement or at Law.

7.3 We will provide the Integration Services in a proper and professional manner in accordance with generally accepted industry standards and practices.

7.4 You acknowledge and agree that:

- (a) you are solely responsible for the purchase and/or licensing of any Nominated Integration Products;
- (b) you are solely responsible for any requirements and obligations, including obtaining or providing relevant consents and permissions in connection with any Nominated Integration Products; and
- (c) all Nominated Integration Products will be subject to the terms and conditions that apply to those Nominated Integration Products.

## 8 Authorised Users

8.1 You agree that your access to and use of some parts of the Services must be in accordance with the number of Authorised Users (where applicable), as set out in the relevant Service Order.

8.2 You may, at any time, request an increase in the number of maximum Authorised Users by submitting this request to us via the Service Desk. To the extent possible, we will implement the increase in Authorised Users subject to you agreeing to any additional fees, which will form part of the Fees. If we are unable to implement the increase, we will notify you of the reason for our refusal.

## 9 Service Levels

9.1 This clause 9 only applies where, and to the extent that, a Service Order specifies Service Levels apply (**SLA Nominated Services**).

9.2 We will endeavour to provide SLA Nominated Services in accordance with the Service Levels.

9.3 Subject to the terms of this Agreement, if we fail to meet any Service Level, the terms as outlined in the Service Order will apply.

## 10 Variations

10.1 You may request a variation or change to the Services, including the timing for the provision of the Services (**Variation**), by providing written notice (including by email) to us, with details of the Variation (**Variation Request**). We will not be obliged to comply with a Variation Request unless we accept the Variation Request in writing. The Parties agree to comply with this Agreement as varied by any Variation Request accepted in writing.

10.2 If we consider that any instruction or direction from you constitutes a Variation, then we will not be obliged to comply with such instruction or direction unless a Variation Request has been issued and accepted by us in accordance with clause 10.1.

10.3 Any Variation will apply within a reasonable time after our acceptance of your Variation Request, and if applicable, any increase to the Fees will be charged on a pro-rata basis if such increase occurs during the then-current Fee period.

## 11 Payment

11.1 We will invoice you for the Fees for the Products and/or Services as outlined in any subsequent Service Order; and you must pay the amount in the invoice (and any other amount due and payable to us under this Agreement), using the payment method set out in the invoice, within 14 days of the date of the invoice, or as otherwise agreed between the Parties (the "Payment Terms").

11.2 You agree to pay us the Fees, all pre-approved Expenses and any other amounts payable to us under this Agreement, in accordance with the Payment Terms.

11.3 If any payment has not been made in accordance with the Payment Terms, the amount becomes a debt due and immediately payable to us and we may (at our absolute discretion):

- (a) after a period of 10 Business Days, cease or suspend the provision of the Services, and recover as a debt due and immediately payable from you, our additional costs of doing so; and/or
- (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date for payment in accordance with the Payment Terms.

11.4 If you rectify such non-payment within a reasonable time after the Services have been suspended, then we will recommence the provision of the Services as soon as reasonably practicable.

11.5 To the extent that a Service Order provides for a Renewal Term, you agree that we may vary the Fees that apply to that Renewal Term by providing written notice to you of such variation. Where we provide this notice, the new Fees will take effect on and from the beginning of the Renewal Term. If you do not agree to any Fee variation:

- (a) you agree to notify us in writing within 20 Business Days of receiving such written notice from us; and
- (b) following receipt of such notice by us, the Parties will use all reasonable endeavours to work together to resolve the matter.

11.6 If:

- (a) you have provided us with the notice in accordance with clause 11.5(a); and
- (b) the Parties are unable to resolve the matter pursuant to clause 11.5(b),

you may elect to terminate the Service Order prior to the commencement of the Renewal Term and in which case, clause 23.4 will apply.

## 12 Confidential information

12.1 Each Receiving Party agrees:

- (a) not to disclose the Confidential Information of the Disclosing Party to any third party;

- (b) to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and
- (c) to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.

12.2 The obligations in clause 12.1 do not apply to Confidential Information that:

- (a) is required to be disclosed in order for the Parties to comply with their obligations under this Agreement;
- (b) is authorised to be disclosed by the Disclosing Party;
- (c) is in the public domain and/or is no longer confidential, except as a result of a breach of this Agreement; or
- (d) must be disclosed by Law or by a regulatory authority, including under subpoena.

12.3 Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 12. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 12.

12.4 This clause 12 will survive the termination of this Agreement.

### 13 Intellectual Property Rights

#### Our Intellectual Property Rights

13.1 As between the Parties, you acknowledge and agree that we own all Intellectual Property Rights in:

- (a) Our Materials; and
- (b) the New Materials;

and as between the Parties these Intellectual Property Rights will at all times vest, or remain vested, in us. Nothing in this Agreement constitutes a transfer or assignment of such Intellectual Property Rights. To the extent that ownership of these Intellectual Property Rights does not automatically vest in us, you agree to do all acts necessary or desirable to assure our title to such rights.

13.2 Subject to payment of the Fees, we grant you a non-exclusive, perpetual, worldwide, non-sublicensable and non-transferable right and licence, to use any New Materials, solely for the purposes for which they were developed and as otherwise contemplated by this Agreement.

13.3 You agree that we may use Feedback in any manner which we see fit and no benefit will be due to you as a result of any use by us of any Feedback.

13.4 In the use of any Intellectual Property Rights in connection with this Agreement, you agree that you must not (and you must ensure that your Personnel do not) commit any Intellectual Property Breach. Where you reasonably suspect that such a breach may have occurred including where you become aware of a claim or potential claim of infringement of third party

Intellectual Property Rights, you must notify us immediately.

#### Your Intellectual Property Rights

13.5 As between the Parties, we agree that you own all Intellectual Property Rights in Your Materials.

13.6 You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, to use Your Materials, solely for the purposes for which they were developed and for the performance of our obligations under this Agreement, and as otherwise contemplated by this Agreement.

13.7 If you or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with this Agreement, you agree to (and agree to ensure that your Personnel) consent to our use or infringement of those Moral Rights.

#### Your Data

13.8 As between you and us:

- (a) all Your Data is and remains your property; and
- (b) you retain any and all rights, title and interest in and to Your Data, including all copies, modifications, extensions and derivative works.

13.9 You grant us a limited licence to use, copy, transmit, store and back-up or otherwise access Your Data during the Term (and for a reasonable period after the Term), to:

- (a) supply the Services to you (including to enable you and your Personnel to access and use the Services);
- (b) develop other services, provided we de-identify Your Data; and
- (c) as otherwise reasonably required to perform our obligations under this Agreement.

13.10 You acknowledge and agree that:

- (a) except to the extent that the provision of Managed Services under a Service Order contemplates otherwise, we are not responsible for the integrity or existence of any data on the Computing Environment, network or any device controlled by you, your Personnel or any Authorised Users; and
- (b) we assume no responsibility or Liability for Your Data. You are solely responsible for Your Data and the consequences of using, disclosing, storing or transmitting it. It is your responsibility to backup Your Data.

13.11 You represent, warrant, acknowledge and agree that:

- (a) you have obtained all necessary rights, releases and permissions to provide or have Your Data provided to us and to grant the rights granted to us in this Agreement;
- (b) Your Data (and its transfer to and/or use, collection, storage or disclosure by us as contemplated by this Agreement) does not and will not violate any Laws (including those relating to export control and electronic communications) or the rights of any third party, including any Intellectual Property Rights, rights

of privacy, or rights of publicity; and

- (c) the operation of the Services is reliant on the accuracy and completeness of Your Data, and the provision by you of Your Data that is inaccurate or incomplete may affect the use, output and operation of the Services.

13.12 This clause 13 will survive termination or expiry of this Agreement.

#### 14 Analytics

14.1 Despite anything to the contrary, 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 anonymised format (**Analytics**).

14.2 You agree that we may make such Analytics publicly available, provided that it:

- (a) does not contain identifying information; and
- (b) is not compiled using a sample size small enough to make the underlying Your Data identifiable.

14.3 We, and our licensors own all right, title and interest in and to the Analytics and all related software, technology, documentation and content used or provided in connection with the Analytics, including all Intellectual Property Rights in the foregoing.

14.4 This clause 14 will survive termination or expiry of this Agreement.

#### 15 Privacy

15.1 For the purposes of this clause, **Personal Information** and **Sensitive Information** have the meanings given in the *Privacy Act 1988* (Cth), and also include any similar terms as defined in any other Privacy Laws applicable to you.

15.2 You must, and must ensure that your Personnel at all times comply with the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any Privacy Laws or other Laws applicable to you in respect of all Personal Information collected, used, stored or otherwise dealt with under or in connection with this Agreement (**Privacy Laws**).

15.3 Without limiting this clause 15, you must ensure that:

- (a) you have collected, used, stored and otherwise dealt with Your Data in accordance with all Privacy Laws; and
- (b) we are capable of collecting, using, storing and otherwise dealing with Your Data, in the manner contemplated by this Agreement, without infringing any third party rights or violating any Privacy Laws.

15.4 Without limiting this clause 15, you agree to only disclose Your Data, to the extent it contains Personal Information if:

- (c) you are authorised by Privacy Laws to collect the Personal Information and to use or disclose it in the manner required by this Agreement;
- (d) you have informed the individual to whom the Personal Information relates, that it might be necessary to disclose the Personal Information

to third parties; and

- (e) 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.

15.5 We agree to handle any Personal Information you provide to us, solely for the purpose of performing our obligations under this Agreement, and in accordance with any applicable Laws and our Privacy Policy.

#### 16 Security Incidents

16.1 Each Party will take reasonable steps to secure Your Data while it is in their possession from loss, unauthorised use, access or disclosure.

16.2 If either Party becomes aware of or reasonably suspects that a security incident has occurred such that Your Data has or may have been compromised (for example, by loss, misuse, unauthorised access or disclosure) (each a **Security Incident**), that Party must promptly notify the other Party. If we consider that responding to the Security Incident is within scope we will remediate the Security Incident, to the extent that this is operationally, commercially and technically feasible to do so. If we consider that responding to the Security Incident is out of scope we will notify you of this and at your discretion you may issue a variation request in accordance with clause 10.

16.3 You agree that we may suspend the Services where a Security Incident has or may have occurred and this is considered necessary or prudent (as determined by us, at our sole discretion) to address or deal with the Security Incident.

16.4 You will be solely responsible for complying with any notification obligations you may have under the notifiable data breaches scheme in Part IIIC of the *Privacy Act 1988* (Cth) or any similar data breach notification scheme applicable to you.

#### 17 Our obligations

We agree:

- (a) that we are properly constituted and have the right and authority to enter into this Agreement;
- (b) that we will use reasonable efforts to ensure all of our obligations under this Agreement will be carried out by suitably competent and trained Personnel; and
- (c) that all pre-existing Intellectual Property Rights in the Services (with the exception of the property rights in any Third-Party Inputs) will be owned, held or licensed by us.

#### 18 Your obligations

##### What you need to provide

18.1 Without limiting your other obligations under this Agreement, in order to facilitate our provision of the Services, you must and you agree to cooperate with us and provide all assistance, information, documentation, access, facilities, authorities, consents, licences and permissions reasonably necessary to enable us to comply with our obligations under this Agreement or at Law, at your cost, including to:

- (a) permit our Personnel to have reasonable access to your premises and environment for the purposes of supplying the Services, free from harm or risk to health or safety;
- (b) ensure that we have full and unhindered access to any Systems relevant to the Services during business hours or as contemplated to deliver the Services in accordance with this Agreement; and
- (c) permit our Personnel to have access to any reasonable computing, office productivity software tools, telecommunication, email and internet facilities necessary for the purposes of supplying the Services; and
- (d) other than as expressly permitted by this Agreement, not cause or permit any software or hardware provided or managed as part of the Services to be altered, repaired, serviced or moved except by the authorised seller, an authorised repairer, the manufacturer or persons approved by us.

#### Your warranties

#### 18.2 You warrant, represent and agree:

- (a) you have the legal capacity to enter into a legally binding agreement;
- (b) there are no legal restrictions preventing you from entering into this Agreement;
- (c) that you have reviewed and understand the terms of this Agreement and will use the Services in accordance with them, our reasonable requests or requirements, and all applicable Laws;
- (d) you will be responsible for the use of any part of the Services (including by your Personnel), and you must ensure that no person uses any part of the Services to break any Law or infringe any person's rights (including Intellectual Property Rights and privacy rights) or in any way that damages, interferes with or interrupts the supply of the Services;
- (e) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete and that we will rely on such information and documentation in order to provide the Services;
- (f) you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services are or will be fit or suitable for your particular purposes) or any Third Party Inputs, unless expressly stipulated in this Agreement;
- (g) you have not made any representations or warranties to any third parties that could be construed as being representations or warranties from us in relation to the Services or any other matter;
- (h) any programs and files associated with the Services are used at your own risk;
- (i) 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 Personnel;

- (j) the Services are provided to you solely for your benefit and you will not (or you will not attempt to) disclose, or provide access to, our Services to third parties (except as contemplated in this Agreement) without our prior written consent;
- (k) you are not and have not been the subject of an Insolvency Event;
- (l) if applicable, you hold a valid ABN which has been advised to us; and
- (m) if applicable, you are registered for GST purposes.

18.3 To the extent contemplated, this clause 18 will survive termination or expiry of this Agreement.

### 19 Australian Consumer Law

19.1 Certain legislation, including the ACL, and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of our services which cannot be excluded, restricted or modified (**Consumer Law Rights**).

19.2 Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- (a) to cancel your service contract with us; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage.

If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

19.3 If the ACL applies to you as a consumer, nothing in this Agreement excludes your Consumer Law Rights as a consumer under the ACL. You agree that our Liability for the Services provided to an entity defined as a consumer under the ACL is governed solely by the ACL and this Agreement.

19.4 Subject to your Consumer Law Rights, we exclude all express and implied warranties, and all material, work and services (including the Services) are provided to you without warranties of any kind (including as to fitness for purpose), either express or implied, whether in statute, at Law or any other basis.

19.5 This clause 19 will survive termination or expiry of this Agreement.

### 20 Third Party Inputs

20.1 You agree that the Services may include Third Party Inputs that interface, or interoperate, with the Services, including third party software, hardware or services and that the provision of the Services may be contingent on, limited to or impacted by.

20.2 You must comply with our instructions and directions, whether written or verbal, in relation to the use of any Third Party Inputs. Where we provide you with any terms and conditions for use of these Third Party

Inputs, you agree that you will comply with these and are liable for any damages and/or loss that we incur as a result of any non-compliance by you.

## 21 Limitations on liability

- 21.1 Despite anything to the contrary, to the maximum extent permitted by law:
- (a) neither Party will be liable for any Consequential Loss;
  - (b) a Party's liability for any Liability under this Agreement (including as part of any indemnity) will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure to mitigate that Liability; and
  - (c) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to us resupplying the Services to you or, in our sole discretion, to us repaying you the amount of the Fees paid by you to us in respect of the supply of the relevant Services to which the Liability relates.
- 21.2 This clause 21 will survive termination or expiry of this Agreement.

## 22 Exclusions to liability

- 22.1 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability, caused or contributed to by, arising from or connected with:
- (a) the Computing Environment;
  - (b) you, your Personnel's acts or omissions, including any instructions provided by you;
  - (c) any use or application of the Services by a person or entity other than you, or other than as reasonably contemplated by this Agreement;
  - (d) any event outside of our reasonable control (including a Force Majeure Event, and a fault, defect, error or omission in the Computing Environment or Your Data);
  - (e) any work, services, goods, materials or items which do not form part of the Services (as expressed in this Agreement), or which have not been provided by us; and/or
  - (f) any Third-Party Inputs.
- 22.2 This clause 22 will survive termination or expiry of this Agreement.

## 23 Termination

- 23.1 Either Party may terminate this Agreement at any time by giving 30 days' notice in writing to the other Party.
- 23.2 A Service Order may specify Early Termination Charges that are payable by you to us in the event that you exercise your right under clause 23.1, and to the extent that it does, you agree that any such compensation:
- (a) is reasonable having regard to our commercial interests;

- (b) is commensurate with the loss we will suffer as a result of the early termination; and
- (c) does not constitute a penalty for early termination.

- 23.3 This Agreement will terminate immediately upon written notice by a Party (**Non-Defaulting Party**), if:
- (a) the other Party (**Defaulting Party**) breaches a material term of this Agreement or the relevant Service Order and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
  - (b) the Defaulting Party is unable to pay its debts as they fall due.
- 23.4 Upon expiry or termination of this Agreement:
- (a) we will immediately cease providing the Services;
  - (b) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under this Agreement;
  - (c) upon request by us, you agree to promptly return (where possible), or delete or destroy (where not possible to return), any information, documentation or Intellectual Property owned by us that is in your possession or control, subject to clause 13.

- 23.5 Where this Agreement is terminated by us pursuant to clause 23.3 you agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination.
- 23.6 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.
- 23.7 We will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to this Agreement constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of this Agreement.
- 23.8 This clause 23 will survive the termination or expiry of this Agreement.

## 24 GST

- 24.1 Unless specified otherwise, all amounts in this Agreement are exclusive of GST.
- 24.2 If GST is payable on any supply made under this Agreement, 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.
- 24.3 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.

24.4 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.

24.5 The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 25 General

25.1 **Amendment:** This Agreement may only be amended by a written instrument executed by the Parties.

25.2 **Assignment:** Subject to clause 25.3, A Party must not assign or deal with the whole or any of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

25.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with this Agreement, to a debt collector, debt collection agency, or other third party.

25.4 **Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.

25.5 **Disputes:** You agree to notify us should you have concerns relating to our performance of the Services. A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

25.6 **Email:** You agree that we are able to send electronic mail to you and receive electronic mail from you. You release us from any Liability you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.

25.7 **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.

25.8 **Exclusivity:** The Services will be provided to you on a non-exclusive basis.

25.9 **Force Majeure:** A Party will not be liable for any delay or failure to perform its obligations under this Agreement if such delay or failure is caused or contributed to by a Force Majeure Event. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under this Agreement.

25.10 **Further assurance:** You agree to promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and your obligations under it.

25.11 **Governing law:** This Agreement is governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

25.12 **Illegal Requests:** We reserve the right to refuse any request for or in relation to any Services that we deem inappropriate, unethical, unreasonable, illegal or otherwise non-compliant with this Agreement.

25.13 **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 2 Business Days in the case of post, or at the time of transmission in the case of transmission by email (or, where the time of transmission is not on a Business Day, 9am on the next Business Day).

25.14 **Publicity:** You agree that we may advertise or publicise the broad nature of our provision of the Services to you, including on our website or in our promotional material.

25.15 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.

25.16 **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.

## 26 Definitions

In this Agreement, unless the context otherwise requires:

- capitalised terms have the meanings given to them in this Agreement or the relevant Service Order;



- **we, us, our or Restack** means Restack Technology Pty Ltd ABN 74 651 840 756; and
- **you or your** means the party that accepted the terms of this Agreement in accordance with clause 1; and:

**ACL or Australian Consumer Law** means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

**Advisory Services** has the meaning given to it in clause 5.1.

**Authorised User**, if applicable, means a user permitted to access and use some or all of the Services, as further particularised in a Service Order.

**Agreement** means these terms and conditions, all schedules, annexures and attachments included, or referred to, in this agreement. In the context of a Service Order, "Agreement" has the same meaning but includes the terms of the Service Order.

**Attachment** means the attachment to this Agreement.

**Business Day** means a day on which banks are open for general bank business in New South Wales, excluding Saturdays, Sundays and public holidays.

**Commencement Date** means the date that this Agreement is accepted by you in accordance with clause 1.

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

**Confidential Information** includes information which:

- is disclosed to the Receiving Party in connection with this Agreement at any time;
- is prepared or produced under or in connection with this Agreement at any time;
- relates to the Disclosing Party's business, assets or affairs; or
- relates to the subject matter of, the terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

**Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. The Parties acknowledge and agree that your obligation to pay us the Fees and any other amounts due and payable by you to us under this Agreement will not constitute "Consequential Loss" for the purposes of this definition.

**Consumer Law Rights** has the meaning given in clause 19.1.

**Deliverable** means a deliverable or output delivered to you as part of the Services.

**Disclosing Party** means the party disclosing Confidential Information to the Receiving Party.

**Early Termination Charge** means the amount payable by you to us in the event that you exercise your right under clause 23.1, as provided for in a Service Order.

**End Date** means the date that this Agreement is terminated in accordance with its terms.

**Expenses** means any disbursements, travel costs, accommodation costs and third-party costs, reasonably and directly incurred by us or our Personnel for the purpose of the provision of the Services.

**Feedback** means any idea, suggestion, recommendation or request by you or any of your Personnel or your customers, whether made verbally, in writing, directly or indirectly, in connection with the Services.

**Fees** means the price set out in a Service Order, as relevant, as adjusted in accordance with this Agreement.

**Force Majeure Event** means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

**Insolvency Event** means any of the following events or any analogous event:

- a Party disposes of the whole or any part of the Party's assets, operations or business other than in the ordinary course of business;
- a Party ceases, or threatens to cease, carrying on business;
- a Party is unable to pay the Party's debts as the debts fall due;
- any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Party's assets, operations or business;
- any step is taken for a party to enter into any arrangement or compromise with, or assignment for the benefit of, a Party's creditors or any class of a Party's creditors; or
- any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of a Party's assets, operations or business.

**Intellectual Property** means any copyright, registered and unregistered trade marks, designs (whether or not registered or registrable), domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Intellectual Property Breach** means any breach whether directly or indirectly by you (or any of your Personnel) of any of our Intellectual Property Rights (or any breaches of third-party rights including any Intellectual Property Rights of third parties), including using or exploiting our Intellectual Property for purposes other than as expressly stated in this Agreement (including, without limitation, using our Intellectual Property for commercial purposes or on-selling our Intellectual Property to third parties). Intellectual Property Breach would include:

- (a) copying, modifying, adapting, translating, creating a derivative work of, reverse engineering, reverse assembling, disassembling or decompiling the Services (or any part of the Services) or otherwise attempting to discover any part of the source code of the Services;
- (b) using any unauthorised, modified version of the Services, including (without limitation) for the purpose of building similar or competitive software or for the purpose of obtaining unauthorised access to the Services;
- (c) using the Services in a web-enabled form for the purposes of third-party analysis or view via the internet or other external network access method;
- (d) renting the use of the Services to any third parties;
- (e) taking any action that may compromise or jeopardise our Intellectual Property Rights in the Services or otherwise;
- (f) removing or defacing any confidentiality, copyright or other proprietary notice placed on the Services; or
- (g) using the Services in any way that involves service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing.

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

**IT Security Services** has the meaning given in clause 6.5.

**Laws** means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any person with the authority to bind the relevant Party in connection with this Agreement or the provision of the Services, and includes the *Privacy Act 1988* (Cth) and the *Spam Act 2003* (Cth).

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise;

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);

**New Materials** means all Intellectual Property developed, adapted, modified or created by or on behalf of us or you or any of your or our respective Personnel in connection with this Agreement and the Services, whether before, during or after the date of this Agreement, (including any Deliverable and any machine learning algorithms output from the Services) but excluding Your Data, Our Materials and Your Materials).

**Nominated Integration Products** has the meaning given to in clause 7.1.

**Our Materials** means all work, models, processes, technologies, strategies, materials, information, documentation and services that we may provide to you under this Agreement, and which may contain material which is owned by or licensed to us, and is protected by Australian and international laws.

**Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents.

**Provided Personnel** has the meaning given in clause 6.4.

**Payment Terms** are in accordance with the payment terms specified in clause 11.1, or otherwise documented within a Service Order

**Privacy Laws** means the *Privacy Act 1988* (Cth) and in respect of you, any other privacy laws, regulations or binding codes applicable to you.

**Privacy Policy** means our privacy policy, available at <https://restack.technology/privacy-policy>.

**Receiving Party** means the party receiving Confidential Information from the Disclosing Party.

**Renewal Term** means the period for which the Services under a Service Order are renewed, in accordance with the terms of the Service Order.

**Security Compliance Assistance** has the meaning given in clause 5.2.

**Services** means the services detailed in a Service Order.

**Service Desk** means our ad-hoc information technology support in response to information technology enquiries and issues concerning your business and submitted via a process as notified by us from time to time.

**Service Order** means an order for the supply of the Services, issued by us in accordance with clause 3.

**Services** means the services that we agree to perform under this Agreement, as further particularised in a

Service Order, including any Deliverables, as may be adjusted in accordance with this Agreement.

**SLA Nominated Services** has the meaning given in clause 9.1.

**SO Commencement Date** means the date on which the provision of Services commences under a Service Order.

**SO Term** means the term of a Service Order, commencing on a the SO Commencement Date and continuing until:

- (a) the date specified in the Service Order;
- (b) if no date is specified, the date when the provision of the Services is completed; or
- (c) the date the Service Order is terminated in accordance with its terms,

whichever occurs first.

**Support Hours** has the meaning given in clause 6.4(f).

**Support Request** has the meaning given in clause 6.2.

**Support Services** has the meaning given in clause 6, as further particularised in a Service Order.

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

**Third Party Inputs** means third parties or any goods and services provided by third parties, including customers, end users, suppliers, transportation or logistics providers or other subcontractors which the provision of the Services may be contingent on, or impacted by.

**Variation** has the meaning given in clause 10.1.

**Variation Request** has the meaning given in clause 10.1.

**Your Data** means the information, materials, logos, documents, qualifications and other Intellectual Property or data inputted by you and your Personnel into the Services or stored by or generated by your use of the Services, including any Personal Information collected, used, disclosed, stored or otherwise handled in connection with this Agreement.

**Your Materials** means all work, models, processes, technologies, strategies, materials, information, documentation and services (including Intellectual Property), owned, licensed or developed by or on behalf of you or your Personnel before the Commencement Date and/or developed by or on behalf of you or your Personnel independently of this Agreement (but excluding Your Data).