

## General Terms

### 1 SaaS and Implementation Services

- (a) These General Terms apply to and form part of the Service Order Form executed between the SaaS Provider and Customer.
- (b) Subject to the Customer paying the Fees, SaaS Provider agrees to provide the SaaS for the Term and the provision of the Implementation Services, as detailed in the Service Order Form, in accordance with this Agreement.

### 2 Master Agreement

#### 2.1 Additional Products and Services

This Agreement is a master agreement under which the Customer may increase the scope of the SaaS or purchase additional Products or Implementation Services from time to time by agreeing to a Purchase Order or Quote with the SaaS Provider in accordance with this clause 2.

#### 2.2 Purchase Orders

The Customer may purchase:

- (c) additional Products;
  - (d) an increase in the scope of the Use Restrictions; or
  - (e) additional Implementation Services on a time and materials basis;
- by agreeing to a subsequent Purchase Order with the SaaS Provider, from time to time during the Term. Upon the signing of the Purchase Order by both parties it will become a valid and binding Purchase Order for the provision of Services under the Agreement.

#### 2.3 Quotes

- (a) Customer may also from time to time request the SaaS Provider to submit a Quote for ad hoc consultancy services made available by SaaS Provider under this Agreement.
- (b) The SaaS Provider, may, within its entire discretion, submit an online electronic Quote for the provision of such services to the Customer.
- (c) Each Quote will be submitted under and subject to the terms and conditions of this Agreement, and unless specified otherwise in the Quote it will remain valid for a period of 30 days from the date it is submitted.
- (d) The Customer may but is not obliged to accept any such Quote by duly signing the Quote and returning it to the SaaS Provider within the 30 day validity period.
- (e) Upon the SaaS Provider's receipt of the duly signed Quote from the Customer, it will become a valid and binding Purchase Order for the provision of Services under the Agreement.

#### 2.4 General Terms

- (a) These General Terms apply to the Service Order Form entered into between the Customer and the SaaS Provider and form an integral part of the Agreement.
- (b) If applicable, in Annexure C of the Service Order Form, the parties may mutually agree to changes to these General Terms. Any such changes to these General Terms which are agreed in Annexure C of the Service Order Form will take precedence over these General Terms.
- (c) These General Terms apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate (e.g. by including additional terms on any purchase order), or which are implied by law, trade custom, practice or course of dealing.

### 3 Implementation Services

#### 3.1 Initial Implementation

Implementation Services for the initial implementation will be specified in Annexure B of the Service Order Form. The parties may also agree to subsequent Purchase Orders for additional Implementation Services as set out in clause 2.2 above.

#### 3.2 Customer Responsibilities

- (a) Unless otherwise specified, the Fees for Implementation Services are calculated on a time and materials basis, payable monthly in arrears, and any total figures given are estimates only.
- (b) The Customer agrees to cooperate with SaaS Provider and provide SaaS Provider with information and assistance reasonably necessary to enable SaaS Provider to provide the Implementation Services, including promptly reviewing documents provided by SaaS Provider and responding to requests for information adequate and appropriately qualified personnel available to perform its responsibilities.

#### 3.3 Assumptions/exclusions

The Fees for the Implementation Services are based upon the following assumptions and exclusions which will apply to the provision of the Implementation Services:

- (a) If the Customer wishes to postpone or cancel any specific pre-scheduled Implementation Services, the Customer must provide SaaS Provider with at least 10 Business Days' notice prior to the scheduled start date for such Services, failing which SaaS Provider will charge the Customer for any resulting loss to SaaS Provider (at the applicable daily rates which would have been payable for those Services), provided that SaaS Provider will use reasonable commercial endeavours to mitigate any such loss.
- (b) The Implementation Services will be provided remotely, unless otherwise agreed in writing. Where Implementation Services are provided by a combination of onsite and offsite/remote work, SaaS Provider will liaise with the Customer to ensure all onsite and offsite work is agreed in advance.
- (c) All changes to the Implementation Services are to be managed by the project managers or primary consultant of SaaS Provider and the Customer, via an agreed change control procedure where all changes are negotiated and mutually agreed in a written change request under the Agreement.
- (d) All Implementation Services and any subsequent consulting services are calculated and charged on a daily basis and performed on Business Days.
- (e) Any out of hours consulting activity outside of a Business Day or any consulting activity of more than 8 hours duration on any day, that is requested by the Customer, will incur a surcharge of 100% of the standard daily rate (in addition to the daily rate) pro-rated on a per hour basis. For any 'on-call' or 'standby' Implementation Services requested by the Customer, the Fees will be determined based upon the requirements for the Services.
- (f) The Implementation Services do not include integration with any 3rd party system not already specified in the Service Order Form or relevant Purchase Order.

#### 3.4 Travel and Expenses

In addition to the Fees, the Customer agrees to pay any travel and other out of pocket expenses incurred by SaaS Provider as follows:

- (a) Provided that the relevant travel is agreed in advance with the Customer, SaaS Provider will invoice Customer for all reasonable travel expenses incurred in carrying out the Implementation Services (including, without limitation, airfares, accommodation, mileage, daily allowances and parking);
- (b) SaaS Provider will make all travel arrangements unless otherwise agreed in writing; and
- (c) the Customer agrees to pay Fees for time spent travelling to and from the Customer's premises where this exceeds 60 minutes each way.

### 4 Access and Use of SaaS

- (a) Subject to the Customer's compliance with the Use Restrictions and payment of Fees, SaaS Provider grants the Customer a non-exclusive, non-transferable, non-sublicensable right to access and use the SaaS and Documentation for the Customer's internal business purposes during the Term.
- (b) The SaaS will be made available in accordance with the SaaS Service Levels from the date it goes live in a production environment.
- (c) SaaS Provider agrees to ensure that, except to the extent required to supply Support Services, Customer Data will be stored in Australia.
- (d) The Customer must:
  - (i) perform its responsibilities under the Service Order Form and any subsequent Purchase Order;
  - (ii) not copy, decompile, modify or reverse engineer the SaaS;
  - (iii) use the SaaS only as permitted by this Agreement;
  - (iv) not engage in Prohibited Conduct or in breach of any applicable law;
  - (v) ensure only Permitted Users access and use the SaaS, and that Permitted Users comply with these terms in their access and use of the SaaS; and
  - (vi) not resupply, sell or rent the use of, or results of the use of, the SaaS, to anyone outside its organisation unless they are Permitted Users.
- (e) The Customer agrees that SaaS Provider may suspend or reduce access to the SaaS on notice to the Customer if the Customer does not comply with clause 4(d), and in the case of a non-compliance with clause 4(d) which can be remedied, if the Customer fails to remedy that non-compliance within 30 days of receiving notice from SaaS Provider requiring it to do so.

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- (f) The Customer is responsible for obtaining and maintaining the hardware, software, telecommunications, systems and internet access reasonably necessary to receive and use the SaaS. The Customer acknowledges and agrees that it may not be able to access the SaaS and the SaaS may not function as intended if it does not comply with this clause.

### 5 Support Services and Updates/New Releases

- (a) As part of the SaaS Fee, SaaS Provider will provide the Support Services to support the SaaS for the Term.
- (b) SaaS Provider may:
- make changes to the SaaS from time to time, including by making updates and centrally installing new releases, that do not materially reduce the functionality of the SaaS; and
  - offer new functionality or updates that are not part of the standard SaaS or Products (as detailed in Annexure A of the Service Order Form or amended in subsequent Purchase Orders) for an additional charge.

### 6 Warranties

- (a) SaaS Provider warrants that:
- the SaaS will function materially in accordance with the Specifications during the Term from the date it goes live in a production environment;
  - the Services will be performed with due care and diligence; and
  - it will comply with the Privacy Act as it relates to it providing the SaaS.
- (b) Subject to the above warranty, SaaS Provider makes no representation and gives no warranty that the SaaS will be free from errors and defects, meet any specific requirement or be fit for any purpose not set out in the Specifications.
- (c) The Customer warrants that the Customer has all necessary consents required under the Privacy Act to provide SaaS Provider with any Personal Information which forms part of the Customer Data or the Customer Material, including for SaaS Provider to provide it to SaaS Provider's cloud hosting platform provider (Microsoft Azure).

### 7 Fees and Invoicing

- (a) The Customer must pay the Fees and expenses to SaaS Provider in accordance with this clause. All Fees, prices and expenses in this Agreement or in any Purchase Order are exclusive of all taxes, duties, charges or such other additional sums including, without limitation, GST, purchase or value added tax, withholding tax, excise tax, import and other duties, unless expressly provided otherwise in clause 15 below.
- (b) SaaS Provider will invoice the Customer from time to time for the Fees and the expenses incurred by the SaaS Provider as specified in clause 3.4 above.
- (c) Subject to clause 7(d), the Customer must pay an invoice issued under clause 7(b) within **30 days** after the date of issue of the invoice.
- (d) If there is a dispute about whether a Fee is payable, the Customer may withhold the disputed amount, but must promptly (within 15 days of the relevant invoice date of issue) raise the disputed amount with SaaS Provider in accordance with clause 16 and pay all undisputed amounts.
- (e) The SaaS Fee will increase by CPI each year.
- (f) If the Customer fails to pay any amount payable under this Agreement (except a Fee the subject of a genuine dispute under clause 7(d) above), SaaS Provider may:
- charge Interest on that amount; and
  - suspend the provision of the Services provided the relevant amount is more than **60 days** overdue and SaaS Provider has provided 7 days' prior written notice of the suspension.

### 8 Term and Termination

#### 8.1 Term

This Agreement commences on the Commencement Date and continues for the Initial Period and each Rollover Period unless terminated earlier in accordance with this clause 8.

#### 8.2 Termination at end of Initial Period or Rollover Period

Each party may terminate this Agreement at the end of the Initial Period or subsequent Rollover Period, by giving at least 3 months' notice in writing to the other party prior to the end of the Initial Period or Rollover Period, in which case this Agreement will terminate on expiration of the Initial Period or the then current Rollover Period, as the case may be.

#### 8.3 Termination for breach

A party may terminate this Agreement immediately on notice to the other party if the other party:

- commits a material breach of this Agreement and, in the case of a material breach which can be remedied, fails to remedy that material breach within 30 days of receiving notice requiring it to do so; or
- suffers an Insolvency Event.

#### 8.4 Effect of termination or expiry

On termination or expiry of this Agreement:

- the Customer's right to use the SaaS ceases and the Customer must immediately stop using the SaaS;
- the Customer may purchase Transition Out Services from the SaaS Provider, at the SaaS Provider's then current daily rate for such Transition Out Services, by mutually agreeing to a Purchase Order with the SaaS Provider and paying all fees for such Transition Out Services in advance to the SaaS Provider.
- the Customer will pay all Fees incurred or payable up to the effective date of the termination or expiry of this Agreement (subject to resolution of a genuine dispute under clause 7(d) above); and
- except as required by law, each party must, at the direction of the other party, either return or destroy all Confidential Information of the other party (excluding Customer Data which shall be made available for extraction in accordance with 8.4(b)) in its care, custody or control.

### 9 Intellectual property

#### 9.1 SaaS Provider Material

The Customer agrees that all Intellectual Property Rights:

- in the SaaS, Products, Documentation, and SaaS Provider Material, (including all modifications and derivations thereof); and
- otherwise created by or on behalf of SaaS Provider in the course of performing the Services,

are owned by SaaS Provider or its licensors.

#### 9.2 Customer Material

- Intellectual Property Rights in the Customer Material remain the property of the Customer.
- The Customer grants to SaaS Provider a non-exclusive, global licence (including the right to sublicense), to use and exercise the Intellectual Property Rights in any Customer Material to the extent required for SaaS Provider to provide the Services to the Customer during the Term.

#### 9.3 Publicity

- Subject to clause 9.3(b) and without limiting the confidentiality obligations in clause 10, each party must not, and must ensure that its employees, officers or agents do not, make any public statement (including on social media) or disclose to the media any information regarding the other party, this Agreement or the SaaS or otherwise use the name, trademarks or logos of the other party without the prior written consent of the other party.
- The Customer agrees that SaaS Provider may refer to the Customer as its customer (using its name and logo) and provide a brief factual description of SaaS supply under this Agreement and Customer's name in a list of customer references; in proposals to third parties; in public announcements; and on its website.

#### 9.4 New IP

All Intellectual Property Rights that are developed, created or come into existence in the course of or in connection with the SaaS, Documentation, SaaS Provider Material and/or Services ("**New IP**") will vest in and be owned absolutely by SaaS Provider on and from creation. The Customer hereby assigns to SaaS Provider all rights it has in such Intellectual Property Rights to give effect to this clause 9.4.

### 10 Confidential Information

- Each party agrees to keep confidential, and not to use or disclose any Confidential Information of the other party, other than as permitted by this Agreement or with the prior written consent of the other party.
- A party may disclose Confidential Information if required to do so by applicable law, or under compulsion of law by a court or government agency or by any regulator or by the rules of any relevant stock exchange, provided that the disclosing party:
  - discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
  - before disclosing any information, gives a reasonable amount of notice to the other party and takes all reasonable steps (whether

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- required by the other party or not) to maintain such Confidential Information in confidence.
- (b) Clause (a) does not apply to Confidential Information:
- (i) that is in the public domain other than as a result of a breach of this Agreement or other obligation of confidence; or
  - (ii) that is already known by, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.
- (c) Each party may use Confidential Information of the other party and disclose Confidential Information of the other party to its directors, agents, professional advisors, employees, contractors and permitted sub-contractors in each case solely for the exercise of rights or the performance of obligations under this Agreement and provided such information is disclosed subject to confidentiality obligations no less onerous than this Agreement. The recipient party will remain liable for any breach of these confidentiality obligations by any party it discloses to in accordance with this clause.

### 11 Privacy and Data Security Requirements

- (a) Customer and SaaS Provider agree to comply with the Privacy Act, as applicable, under this Agreement.
- (b) Each party agrees to keep in place appropriate processes and operational measures to protect against unauthorised or unlawful processing of Personal Information and against accidental loss or destruction of, or damage to Personal Information, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures.
- (c) SaaS Provider confirms that it has obtained certification to ISO 27001:2013 Information Security Management Systems and throughout the Term, SaaS Provider agrees it will maintain and comply with the data security requirements set forth in the relevant Policies of the SaaS Provider.
- (d) If SaaS Provider becomes aware of:
- (i) any breach of its data privacy or security requirements under this Agreement;
  - (ii) unauthorised access to, unauthorised disclosure of, or destruction, loss or misuse of any Personal Information of the Customer; or
  - (iii) data or security breach which relates to or could affect Personal Information of the Customer; (collectively, "Security Incident");
- the SaaS Provider must:
- (iv) promptly (and in any event within 36 hours) notify the Customer in writing and disclose in such notice all information relevant to the Security Incident, including details of how the Security Incident is being investigated and the mitigation and remedial steps put in place and those to be put in place; and
  - (v) regularly (and in any event no less than every 72 hours) provide the Customer with all further information which becomes known to it about the Security Incident; and
  - (vi) dedicate appropriate resources to investigate the Security Incident;
  - (vii) take appropriate steps to mitigate the scope of the Security Incident, as well as the damage, loss, and any other negative consequences resulting from the Security Incident; and
  - (viii) where the Customer requests in writing, reasonably cooperate with Customer in the resolution of the Security Incident and provide applicable details of the Security Incident required for any communication required of Customer by the Privacy Act.

### 12 Limitation of liability

- (a) Subject to 12(c), the aggregate maximum liability of each party under or in connection with this Agreement (whether in contract, tort (including negligence) or statute is limited to the Fees paid or payable by Customer to SaaS Provider under this Agreement in the 12 months prior to the initial claim.
- (b) Neither party is liable for any Consequential Loss arising out of or in connection with this Agreement.
- (c) Nothing in this Agreement operates to limit or exclude:
- (i) liability that cannot by law be limited or excluded;
  - (ii) liability of a party under clause 13 (Indemnity);

- (iii) liability of a party for breach of the other's Intellectual Property Rights; and
  - (iv) liability for breach of clause 10 (Confidentiality); and
  - (v) any applicable rights conferred by applicable Consumer Law, subject to clause 12(d).
- (d) If SaaS Provider is liable to Customer in relation to a failure to comply with a guarantee that applies under Consumer Law, that cannot be excluded, the SaaS Provider's total liability to Customer for that failure is limited to, at the option of the SaaS Provider:
- (i) in the case of services, the resupply of the services or the payment of the cost of resupply; and
  - (ii) in the case of goods, the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired.

### 13 Indemnity

#### 13.1 Customer indemnity

Subject to SaaS Provider complying with clause 13.3, the Customer indemnifies SaaS Provider from any amount awarded in favour of the third party by the final judgment of a court of competent jurisdiction in a claim by a third party that use of the Customer Material by SaaS Provider, infringes the Intellectual Property Rights of that party in Australia.

#### 13.2 SaaS Provider indemnity

Subject to the Customer complying with clause 13.3, SaaS Provider indemnifies the Customer from any amount awarded in favour of the third party by the final judgment of a court of competent jurisdiction in a claim by a third party that the use of the SaaS by the Customer in accordance with this Agreement infringes the Intellectual Property Rights of that party in Australia.

#### 13.3 Conditions of indemnity

The party indemnified under clause 13.1 or 13.2 (subject to compliance with this clause 13.3) must:

- (a) promptly notify the other party and provide the other party with reasonable assistance and all information available to the indemnified party;
- (b) permit the other party to conduct the defence or settle the claim;
- (c) take all reasonable steps to mitigate all loss or damage related to the claim; and
- (d) not make any statement or admission in relation to the claim.

### 14 Force majeure

Other than the Customer's obligation to pay Fees, a party will not be:

- (a) in breach of this Agreement as a result of; or
  - (b) liable for,
- any failure or delay in the performance of that party's obligations under this Agreement to the extent that such failure or delay is caused by a Force Majeure Event.

### 15 GST

- (a) Any words capitalised in this clause 15 and not already defined in clause 21 have the meaning given to those words in the GST Act.
- (b) Except under this clause 15, the consideration for a Supply made under or in connection with this Agreement does not include GST.
- (c) If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
  - (i) the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this Agreement for that Supply); and
  - (ii) the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.
- (d) Where a Tax Invoice is given by the GST Act Supplier, the GST Act Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office or NZ Inland Revenue Department, as the case may be.
- (e) Where a Supply made under or in connection with this Agreement is a Progressive or Periodic Supply, this clause 15 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

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### 16 Dispute Resolution

- (a) The parties agree that if a dispute arises out of or in connection with this Agreement (“**Dispute**”), the party raising the Dispute must notify the other party (“**Dispute Notice**”).
- (b) A representative from each party will first meet to try and resolve the Dispute by negotiation within 14 days of receipt of the Dispute Notice.
- (c) If the parties do not resolve the Dispute by negotiation within 14 days, then a senior executive of each party will meet and attempt to resolve the Dispute within a further 30 days.
- (d) If the Dispute has not been resolved within 60 days of the Dispute Notice, then the parties may agree to refer the Dispute to mediation by an accredited mediator they agree on (and absent agreement by a mediator appointed by the Chair of the Resolution Institute). The Resolution Institute Mediation Rules shall apply to the mediation.
- (e) If a Dispute is not resolved under the process in clauses 16(a) to (d), the Dispute must be:
  - (i) submitted to arbitration in accordance with, and subject to, the UNCITRAL Arbitration Rules;
  - (ii) administered by the Resolution Institute; and
  - (iii) conducted by 1 arbitrator, in the English language in Sydney, Australia or Auckland, New Zealand (as applicable).
- (f) An award made under clause 16(e) is final and binding on the parties and may be entered into by any court of competent jurisdiction.
- (g) Nothing in this clause 16 prevents a party from applying to a court of competent jurisdiction for injunctive or other urgent interlocutory relief.

### 17 Applicable Law

- (a) This Agreement is governed and construed in accordance with the laws of New South Wales, Australia.
- (b) Subject to clause 16, each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia or New Zealand (as applicable) and courts competent to hear appeals from those courts (exclusively for the purposes contemplated by clauses 16(f) and 16(g)).

### 18 Assignment and novation

- (a) A party must not assign or novate all or part of the party’s rights and obligations under this Agreement without the prior written consent of the other party, which consent must not to be unreasonably withheld or delayed.
- (b) Notwithstanding clause 18(a), Customer may assign, transfer or novate this Agreement, in whole or in part, on written notice to the SaaS Provider, in connection with a machinery of government change, including if, by operation of law, the Customer is reconstituted into a new body, agency or legal entity, or the functions or operations of the Customer, relevant to this Agreement, are transferred to a different government body, agency or legal entity.
- (c) Notwithstanding clause 18(a), SaaS Provider may assign, transfer or novate this Agreement, in whole or in part, on written notice to the Customer, to a related or unrelated person in connection with a sale or transfer of all or substantially all of the membership interest, shares or assets of the SaaS Provider to a third party, provided that the assignee, transferee or novatee (as appropriate) agrees, as a condition to such assignment, transfer or novation to assume all of the SaaS Provider’s obligations under this Agreement.

### 19 Insurance

- (a) The SaaS Provider must, at its own expense, take out and maintain from a reputable insurance company:
  - (i) public liability insurance for an insured amount of \$5 million per occurrence and \$10 million in the aggregate;
  - (ii) professional indemnity insurance for an insured amount of \$5 million per occurrence and \$10 million in the aggregate;
  - (iii) third party cyber liability insurance for an insured amount of \$5 million per occurrence and in the aggregate; and
  - (iv) workers compensation insurance as required by law.

### 20 General

- (a) The Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- (b) Each provision of this Agreement will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be

severed and the remainder will be read and construed as if the severable provision had never existed.

- (c) Any notice or approval required by or contemplated by this Agreement must be in writing and delivered, posted or emailed to the other party at the address or e-mail address (as applicable) provided for them in this Agreement, as updated from time to time by written notice to the other party.
- (d) SaaS Provider may update the Support Services Schedule, Specifications or its Policies from time to time. The SaaS Provider will not change the Support Services Schedule, Specifications or its Policies in a manner that materially reduces the scope of the SaaS or its obligations under this Agreement.
- (e) Other than to the extent set out in clause 20(d) above, any variation or amendment to this Agreement must be in writing and executed by the parties.
- (f) The Agreement represents the parties’ entire agreement, and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing, relating to its subject matter.
- (g) Termination of this Agreement will not affect clauses 8.4, 9, 9, 10 and 12 or any provision of this Agreement which is expressly or by implication intended to come into force or continue on or after the termination.
- (h) A right under this Agreement may only be waived in writing signed by the party granting the waiver and is effective only to the extent specifically set out in the waiver.
- (i) Each party must comply with all applicable laws in the performance of their respective obligations and exercise of their rights under this Agreement, including meeting its own legal compliance requirements.
- (j) The SaaS Provider must ensure that it does not have any Modern Slavery practices taking place in the supply chains of its business and must notify the Customer as soon as practicable after becoming aware of any actual or suspected Modern Slavery in a supply chain which has a connection with the supply of the Services under this Agreement. Throughout the Term, SaaS Provider agrees it will maintain and comply with its relevant Policies on Modern Anti-Slavery.
- (k) The SaaS Provider will maintain and follow the Business Continuity Plan.

### 21 Definitions and Interpretation

#### Definitions

In this Agreement:

“**Agreement**” means the Service Order Form, the General Terms, any Purchase Order and any documents incorporated by reference into those documents.

“**Anniversary Date**” means the anniversary of the Commencement Date.

“**Business Day**” means a normal working day representing 8 hours within the applicable time zone of the Customer, that is not a Saturday, Sunday, or a public holiday in the capital city of the Customer’s state or territory (as identified in the address in the Service Order Form).

“**Business Continuity Plan**” means the Attekus Business Continuity Plan available [here](#).

“**Commencement Date**” means the date specified as such in the Service Order Form.

“**Confidential Information**” of a party means the terms of this Agreement and any information:

- (a) relating to the business and affairs of that party;
- (b) relating to the customers, clients, employees, sub-contractors or other persons doing business with that party;
- (c) which is by its nature confidential;
- (d) which is designated as confidential by that party;
- (e) which the other party knows is confidential; or
- (f) which would reasonably be expected to be treated as confidential

and includes all trade secrets, knowhow, financial information, business dealings and other commercially valuable information of that party, and in the case of SaaS Provider, includes SaaS Provider Material and the Fees, and in the case of the Customer, includes the Customer Material.

“**Consequential Loss**” means: loss of revenue; loss of goodwill; loss of reputation; consequential loss; loss of profits; indirect loss; loss of bargain; special loss; loss of actual or anticipated savings; wasted expenditure and lost opportunities, including opportunities to enter into arrangements with third parties.

“**Consumer Law**” means the applicable consumer law, and in Australia means the Australian Consumer Law (as set out in schedule 2 to the Competition and Consumer Act 2010 (Cth)) (“**ACL**”); and in New Zealand means the NZ Fair Trading Act 1986 or Consumer Guarantees Act 1993 (NZ) (“**CGA**”).

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“CPI” means the percentage change in the All Groups Consumer Price Index (CPI) (weighted average of eight (8) capital cities) for the 12 month period most recently published by the Australian Bureau of Statistics (ABS) prior to the relevant Anniversary Date.

“Customer” means the party specified as the ‘Customer’ in the Service Order Form.

“Customer Data” means any data input by the Customer or its Permitted Users into the SaaS.

“Customer Material” means the Customer Data and any Material provided by or to which access is given by the Customer to SaaS Provider for the purposes of this Agreement.

“Documentation” means any training material (final version) in any form provided by SaaS Provider to the Customer in connection with the SaaS.

“Fees” means the fees specified in the Service Order Form and any Purchase Order agreed between SaaS Provider and the Customer, as varied in accordance with this Agreement.

“Force Majeure Event” means any occurrence or omission outside a party’s reasonable control including:

- (a) a physical natural disaster including fire, flood, lightning or earthquake;
- (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
- (c) epidemic, pandemic or quarantine restriction;
- (d) any act of terrorism or terrorism related event;
- (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
- (f) law taking effect after the date of this Agreement;
- (g) disruption or unavailability of the internet;
- (h) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party’s subcontractors;
- (i) failure of a utility service provider to SaaS Provider; and
- (j) a delay or other impact resulting from a Force Majeure Event affecting the other party.

“General Terms” means these terms and conditions headed General Terms which form an integral part of the Service Order Form entered into between SaaS Provider and Customer, together with the Support Services Schedule, Specifications, and any Policies attached to these General Terms or incorporated by reference.

“GST Act” means A New Tax System (Goods and Services Tax) Act 1999 (Cth) in Australia, and the Goods and Services Tax Act 1985 NZ in New Zealand, as applicable.

“GST Act Supplier” means the entity making the Supply.

“Implementation Services” means the implementation services described in the Annexure B of the Service Order Form and any subsequent Purchase Order.

“Initial Period” means the initial period specified in the Service Order Form.

“Insolvency Event” means any voluntary or involuntary proceeding, process, appointment or application under any law relating to insolvency, reorganisation, winding-up, or composition or adjustment of debts, including, without limitation, winding-up, liquidation, bankruptcy, statutory bankruptcy (as the case may be) provisional liquidation, receivership, administration, provisional supervision, company voluntary arrangement, suspension of payment under court supervision or any other analogous proceedings in any jurisdiction.

“Intellectual Property Rights” means all existing and future industrial and intellectual property rights, in Australia, New Zealand and throughout the world, and includes any copyright, moral right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder’s right, trade secret, knowhow, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of such rights.

“Interest” means interest on any payment owing under this Agreement calculated:

- (a) at the rate which is 2% in excess of the published Australia and New Zealand Banking Group Limited variable interest rate for personal loans or, if lower, the maximum rate permitted by applicable law; and
- (b) daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant interest.

“Material” means any material including documents, equipment, reports, technical information, studies, plans, charts, drawings, software, schemas calculations, tables, schedules and data stored by any means.

“Modern Slavery” has the meaning set out in the Modern Slavery Act 2018 (Cth).

“Permitted Users” means the permitted users of the Customer specified in the Service Order Form, as varied in accordance with this Agreement.

“Personal Information” has the meaning given to that term in the Privacy Act.

“Policies” means the SaaS Provider’s following policies:

- (a) Attekus Information Security Policy: available [here](#).
- (b) Attekus Data Breach and Incident Response Plan: available [here](#).
- (c) Attekus Infrastructure Security Policy: available [here](#).
- (d) Attekus Modern Anti-Slavery: available [here](#).

“Privacy Act” means the *Privacy Act* in New Zealand (including the Privacy Principles thereunder) and the *Privacy Act 1988* (Cth) in Australia, as applicable, and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued there under, as amended from time to time.

“Products” means the software products and modules of those products, as the case may be, specified in the Service Order Form or as may be additionally agreed under clause 2, being the generally available release of each Product as at the date of purchase and all patches, bug fixes, modifications and subsequent versions provided to the Customer by SaaS Provider.

“Progressive or Periodic Supply” means a Taxable Supply that satisfies the requirements of section 156(5) GST Act.

“Prohibited Conduct” means using, or permitting others to use, the SaaS:

- (a) for any fraud or illegal activity;
- (b) to, or attempt to, circumvent any security measures or otherwise gain unauthorised access to or interfere with any third party’s online resources or systems;
- (c) to distribute, view or create any material that is or may be pornographic, defamatory, unlawful or obscene;
- (d) to distribute unsolicited emails to third parties including bulk unsolicited emails;
- (e) in a way that infringes SaaS Provider’s or any third party’s Intellectual Property Rights.

“Purchase Order” means a purchase order or Quote mutually agreed by the parties in accordance with clause 2 above, for any of the following: the purchase of additional Products, an increase in the scope of the SaaS, additional Implementation Services or other ad hoc consultancy services made available by the SaaS Provider.

“Quote” means an online quote which is submitted electronically by the SaaS Provider to the Customer in accordance with clause 2 above, for the provision of ad hoc consulting services.

“Rateable Properties” means all commercial and residential properties collectively that are assessed by the Customer’s rating system as attracting one or more rates or any other charges (for example, water).

“Resolution Institute” means the Resolution Institute Pty Ltd ACN 008 651 232, and any successor organisation.

“Rollover Period” means the rollover period specified in the Service Order Form or any other extension to the Term mutually agreed in writing between the parties.

“SaaS” means the Software as a Service described in Annexure A of the Service Order Form, and any additional Software as a Service purchased under a Purchase Order in accordance with clause 2 above (if applicable).

“SaaS Fee(s)” means the fee specified as such in the Service Order Form.

“SaaS Provider” means **Attekus Pty Ltd** trading as **Attekus** of Level 13 Suite 1A, 465 Victoria Ave, Chatswood NSW 2067 or **Attekus NZ Limited**, as applicable.

“SaaS Provider Material” means any Material created in the course of performing the Services, or which is otherwise provided by or to which access is given by SaaS Provider for the purposes of this Agreement including the SaaS and the Products, but excluding the Customer Data.

“Security Incident” has the meaning as set out in clause 11(d) above.

“Service Levels” means the SaaS Provider’s standard service levels for the SaaS and Support Services, as appropriate, set out in the Support Services Schedule.

“Service Order Form” means the relevant Service Order Form executed between the SaaS Provider and Customer, including Annexures A, B and C (as applicable) attached to the Service Order Form, which these General Terms form an integral part of.

“Services” means all services (including the SaaS and Implementation Services) as specified in the Service Order Form, a Purchase Order or otherwise agreed by the parties in writing.

“Specifications” means the functional specifications for the Products forming part of the SaaS, available [here](#), as updated by SaaS Provider from time to time.

“Support Services” means the Support Services for the Products specified in the Support Services Schedule.

## General Terms

“**Support Services Schedule**” means the Support Services Schedule attached to these General Terms containing the description of the SaaS Provider’s standard Support Services and the Service Levels for the SaaS and Support Services, as updated by SaaS Provider from time to time.

“**Term**” means the term contemplated by clause 8.1.

“**Transition Out Services**” means the provision of one or more Business Days of consulting services by the SaaS Provider to make the Customer Data available to the Customer in ‘bacpac’ file format, or other file format, as determined by the SaaS Provider, and as set out in clause 8.4 above.

“**Use Restrictions**” means the limitations on the Customer’s rights to use and access to the SaaS and the Products, including the limits on the maximum volume of Rateable Properties, Permitted Users or other metrics and restrictions specified in Clause 4(d) above and Annexure A of the Service Order Form, as may be amended from time to time by the parties in writing.

### Precedence

In the event of any inconsistency or conflict between the documents constituting the Agreement, the documents ranked higher in the following list will take precedence to the extent of the inconsistency:

- (a) the Service Order Form;
- (b) the Annexure A to the Service Order Form;
- (c) the Annexure B to the Service Order Form, if applicable;
- (d) the Annexure C to the Service Order Form, if applicable;
- (e) these General Terms (excluding any documents incorporated into it);
- (f) the Specifications;
- (g) the Support Services Schedule attached to and incorporated into these General Terms;
- (h) any subsequent Purchase Orders entered between into between the parties from time to time; and
- (i) any other documents attached to or specifically incorporated into the Agreement other than as set out above, including any Policies incorporated by reference.

## Support Services Schedule

Support Services			
<p>This Support Services Schedule forms part of and is subject to the Agreement for the provision of SaaS, entered into between the SaaS Provider and the Customer.</p> <p>Capitalised terms in this schedule have the meanings given in the Agreement.</p> <p><b>The following standard Support Services are included in the SaaS:</b></p> <p>SaaS Provider's provision of:</p> <ul style="list-style-type: none"> <li>(a) Security patches</li> <li>(b) Critical bug fixes</li> <li>(c) New features &amp; enhancements</li> <li>(d) Access to SaaS Provider's Support team for technical troubleshooting.</li> </ul> <p>Access to the following Support Services:</p> <ul style="list-style-type: none"> <li>(a) Online Support Tool – Service Desk. Customer will be assigned login credentials to lodge and review service requests. These will be attended to during Support Business Hours;</li> <li>(b) Online Knowledge Base – Customer will be assigned login credentials to access self-help articles, available at all times; and</li> <li>(c) Phone – calls to the SaaS Provider's support team will be attended to during Support Business Hours.</li> </ul> <p><b>*Support Business Hours'</b> means between 8:00am and 6:00pm AEDT on Business Days.</p>			
Support Service Levels			
<p>SaaS Provider aims to meet the following target response and resolution times for priority levels assigned to incident cases in the production environment of the Product ('<b>Incident</b>'). Targets are not available for non-production environments.</p> <p>SaaS Provider will use commercially reasonable efforts to comply with the stated target response and resolution times but will not be held liable should specified targets not be met.</p>			
Priority Level- Incident	Definition	Target Response Time*	Target Resolution Time*
Priority 1	<p>An Incident that causes the Product to not be Available to Customer. There is no possible alternative or workaround.</p> <p><b>Guidelines for determining Priority 1 Incidents are:</b></p> <ul style="list-style-type: none"> <li>(a) Production environment of the Product is completely unavailable;</li> <li>(b) Critical business activities are severely impacted that impacts all users and/or system usage activities; or</li> <li>(c) The Incident is causing a material and verified Security Incident</li> </ul>	4 hours	1 day
Priority 2	<p>An Incident that causes significant Product functionalities to be severely impacted or Customer is not able to access or use significant Product functionalities. There is no possible alternative or workaround.</p> <p><b>Guidelines for determining Priority 2 Incidents are:</b></p> <ul style="list-style-type: none"> <li>(a) Customer core business activities are severely limited;</li> <li>(b) Degraded Product performance is having a serious negative impact on Customer business activity;</li> <li>(c) Adversely impacts a significant number of Customer users and/or Product usage activities;</li> <li>(d) Adversely impacts the Customer's ability to meet near-term deadlines.</li> </ul>	1 day	5 days
Priority 3	<p>An Incident that causes a loss of functionality of the Product, where important functionalities of the Product are impacted. There is a procedural workaround that exists.</p> <p><b>Guidelines for determining Priority 3 Incidents are:</b></p> <ul style="list-style-type: none"> <li>(a) Some applications or features of the Product are not operating in accordance with the Specifications;</li> <li>(b) Degraded Product application performance is having a moderate negative impact on Customer business activities;</li> <li>(c) There is an Incident which would be classified as a Priority 2 Incident, however there is a procedural workaround that has been produced or exists;</li> <li>(d) A case that has been reduced to a Priority 3 due to a workaround being produced.</li> </ul>	3 days	Next Release of Product
Priority 4	<p>A minor Incident where limited functionalities of the Product are impacted. There is a procedural workaround that exists.</p> <p><b>Guidelines for determining Priority 4 are:</b></p> <ul style="list-style-type: none"> <li>(a) The Incident has a limited or low impact on Customer business activity;</li> <li>(b) Documentation issues are experienced;</li> <li>(c) Incidents that are not defined within Critical, Urgent or High priorities above.</li> </ul>	5 days	A future release of the Product
<p><b>* Target Response Times and Target Resolution Times</b> are stated to be during <b>Support Business Hours</b> (as defined in Support Services section above). For the purposes of Target Response Times and Target Resolution Times, '<b>1 day</b>' is a period of 24 hours of a Business Day.</p> <p><b>*Target Response Time</b> is the time, during our Support Business Hours, which Customer can expect to receive acknowledgment of the Incident and investigation to begin from the Support Services team.</p> <p><b>*Target Resolution Time</b> is the time, during Support Business Hours, which SaaS Provider aims to deliver a technical fix, data fix, an alternative or procedural workaround, or advise of a software correction (excluding time elapsed between information requests to Customer).</p>			
<p><b>Support Service / Service Level - Assumptions (Customer Responsibilities) and Exclusions:</b></p> <ul style="list-style-type: none"> <li>(a) All Service Levels rely on sufficient information being supplied to the SaaS Provider's support team to be able to read, understand and triage the request before making contact.</li> <li>(b) All requests relating to system configuration of the Products, including advice on configuration is not included in the Support Services, will be forwarded to the SaaS Provider's implementation services team and an additional Fee may apply.</li> </ul>			

(c) For all Incidents relating to access to the Product, the Customer must first contact its internal system and/or network provider to eliminate internal issues causing access issues before submitting a Support Service request with SaaS Provider.	
(d) All Incidents caused by Customer's or any third party's equipment, services or APIs are excluded from Support Services.	
<b>SaaS Service Levels</b>	
<b>1. Availability</b>	SaaS Provider aims to provide the Customer with <b>99.5%</b> Availability of the Products for each month of the Term.
<b>2. Definitions</b>	(a) <b>'Available' / 'Availability'</b> means that the Products are accessible on the production environment by the Customer over the internet.
<b>3. Scheduled Maintenance</b>	SaaS Provider performs scheduled maintenance on the SaaS (including maintenance related to the Products and other equipment and materials used for providing the SaaS) from time to time. SaaS Provider will use reasonable efforts to inform Customer in advance of any such SaaS interruptions and their anticipated duration.
<b>4. Excusing Events</b>	<p>Any delay, downtime, unavailability, latency, service degradation, response delay or similar event or occurrence, will not constitute a failure to meet these Service Levels where that event is caused by or related to any of the following:</p> <ul style="list-style-type: none"> <li>(a) scheduled maintenance of the Services, or any other scheduled downtime agreed to by the parties;</li> <li>(b) the Customer's act or omission or an act or omission of a third party for which the Customer is responsible, including failure to supply accurate, complete, and timely information when requested;</li> <li>(c) a Force Majeure Event;</li> <li>(d) failure of the Customer's infrastructure or Internet link to the Services;</li> <li>(e) any operating system, database, application or other code or materials not provided by SaaS Provider, including configuration issues;</li> <li>(f) any act or omission of a third party or that is not caused by SaaS Provider or the SaaS Infrastructure Provider (for example, hacking, denial of service attacks and the introduction of viruses); and</li> <li>(g) compliance with any applicable law or requirements of governmental agencies that adversely affect SaaS Provider's ability to provide the SaaS.</li> </ul>