Master Agreement

Digistorm Products - Version 2.2 – 22 February 2024

1   Background

1.1   This Agreement incorporates the Order Document.

1.2   This Agreement is entered into between:

(a)   either:

(i)   Digistorm Pty Ltd (ACN 153 005 264) located at 2019 Gold Coast Highway, Miami, Qld 4220 where the Organisation is located in all jurisdictions other than the United States of America and its territories and possessions ("**USA**"); or

(ii)   Digistorm, LLC located at c/- Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801 where the Organisation is located in the USA;

("**we/us/our**")

and

(b)   the Organisation noted in the Order Document ("**you/your**").

1.3   This Agreement governs your use of the Products.

1.4   You accept this Agreement by executing or in any way accepting an Order Document.

2   Grant of Licence

2.1   We hereby grant to you a Licence to use the Product and Materials in the Territory on and subject to the terms and conditions of this Agreement.

2.2   Where the Product requires access to the CMS, we shall also provide you a login to the CMS.

2.3   Where required for the Product, we provide the Hosting Space per user. We will charge you for an amount of storage in excess of the Hosting Space at the amount reasonably determined by us.

3   Costs

3.1   In consideration for the Licence to the Product and any other goods and/or services to be provided by us to you under or in conjunction with the Order Document and this Agreement,

you shall pay to us the Costs on the dates and/or at the intervals specified in the Order Document.

3.2 Unless otherwise stated on the Order Document, the payment term for any payment is that period as noted on the invoice issued by us for the relevant payment.

3.3 To the extent that there is a change in Costs during the Term prior to a payment date as provided under clause 3.1 due to the selection of a Plan Option, the Costs will be prorated from the date the Plan Option is accepted until the following payment date.

4   Duration

4.1 The Agreement takes effect for the Product from the Order Start Date for the Order Term.

4.2 Subject to the terms and conditions of this Agreement, the Licence for the Product shall continue for the Order Term.

4.3 This Agreement shall automatically renew and continue for the Further Term following the expiration of the Order Term (or Further Term, as the case may be) unless either party gives to the other, written notice at least 90 days before the expiration of the Order Term (or Further Term, as the case may be) that they do not intend to renew this Agreement.

4.4 We may provide to you from time to time with copies of any amendments to the Materials which may be issued by us during the Order Term.

4.5 You must not copy the Materials except where necessary to enable proper use of the Product in the manner reasonably contemplated by the Licence.

5   Delivery

5.1 On the Delivery Date for the Product, we will deliver the Product as the case may be depending on the Product and as outlined on the Order Document.

5.2 Where you require remote delivery of the Product via the internet, you understand and accept any inherent risks associated with a connection over the internet and the manner specified by you and you indemnify us from and against any harm caused as a result of you requiring delivery in accordance with this clause.

5.3 Where you require physical onsite delivery at your place of business and you are located outside of a 100km radius of our principal place of business, then you shall reimburse us for any travel costs incurred, including but not limited to plane tickets and accommodation.

5.4 You must conduct all of your own acceptance testing procedures.

5.5 The parties have agreed to the Additional Requirements and the Costs associated with the Additional Requirements, to be delivered (where specified on the Order Document) in accordance with the timeframe specified alongside each Additional Requirement.

5.6 The Product will at all times be hosted by us or an affiliate of ours, on a server (or servers) connected to the internet.

6   Plan Options

6.1   A Plan Option may be offered by us to you during the Product Term and will be governed by this Agreement.

6.2   A Plan Option will be deemed to be accepted and form part of this Agreement when you or an Administrator confirms and electronically signs the Plan Option through the software.

6.3   You acknowledge and agree that an Administrator has the authority to accept a Plan Option pursuant to clause 6.2 and the acceptance of a Plan Option will be binding upon you.

7   Maintenance of Products

7.1   We may from time to time provide Updates or Upgrades to the Product. You must implement such Updates or Upgrades in respect of all current and future users.

7.2   Where the Product is a Custom Product, the following subclauses apply:

(a)   on each Redesign Event and where this Agreement continues for a Further Term each of at least the same period of time as the initial Order Term, we will undertake a Redesign of the Custom Product free of charge and deliver the revised Custom Product to you in accordance with the Redesign by replacing the previous publicly viewable Custom Product on the hosted server; and

(b)   where a Buyout Fee is included on the Order Form, after the Order Term only, you may pay us the Buyout Fee to purchase an irrevocable licence to the Intellectual Property Rights in the Custom Product (other than those associated with the CMS) ("**Website Licence**"), with the Website Licence limited to:

(i)   use of the Custom Product, either hosted by us (or an affiliate of ours) or a third party, for the same purpose as it was previously designed and hosted; and

(ii)   no further Updates, Upgrades or any form of maintenance will be undertaken or provided by us, and you will bear all costs associated with updating, upgrading and maintaining the Custom Product.

Where the Custom Product will be hosted by us, you must continue to pay the Costs associated with the hosting of the Custom Product.

8   Your obligations

8.1   Third Party Software

(a)   You warrant to us that you have obtained all necessary consents for us to interface or otherwise interoperate the Product or Deliverables with the Third Party Software and your internal systems. Upon our request, you must immediately provide a copy of such authorisation from the owner of the Third Party Software.

(b)   You shall ensure that all information and data is correctly and accurately entered into any record management system and/or Third Party Software used by you that interfaces with the Product or Deliverables. You are responsible for the accuracy and currency of all your information and data accessible from the Third Party Software and/or internal systems. You acknowledge that the Product or Deliverables do not

perform any verification procedure in relation to information from Third Party Software and/or other software utilised by you.

(c)   You shall not permit any Upgrade or Update to the Third Party Software and/or your internal systems (and shall disable any such automatic update function), which interface or otherwise interoperate with the Product, without our prior written authorisation. If you permit any Upgrade or Update in breach of this clause, you acknowledge that the Product or Deliverables may cease to function and release and indemnify us against any loss or claim arising therefrom.

(d)   Should any Product or Deliverables cease working with the Third Party Software and/or your internal systems for any reason other than as a result of an act or omission by us, then we shall charge our usual hourly rate to assist you in making the Product or Deliverables operational with the Third Party Software and/or your internal systems.

(e)   As the internet is a collection of differing and competing technologies, formed by interconnected computers, there is no single standard for the manner in which information is exchanged between these computers. Additionally, the internet was not built to be anonymous. Accordingly, any information exchanged over the internet, even where encrypted, is inherently subject to risk. As no two (2) single computer applications or software are built the same, when interoperating with Third Party Software, we do not guarantee the security of any data sent between the Product or Deliverables and any of the Third Party Software and/or your internal systems.

(f)   You must not reverse assemble or reverse compile or reverse engineer the Product or Deliverables or any part of the Product or Deliverables.

8.2   Application Store Approval

(a)   Where the Product is to be distributed by an Application Store, this clause 8.2 will apply.

(b)   Before the Product is delivered, you must:

(i)   have created a developer account with each Application Store you require distribution of the Product through; and

(ii)   have taken all such necessary steps to activate your developer account to the point that you are able to upload or otherwise provide the Product for approval by the third party and subsequent distribution through the Application Store.

(c)   Once the Product has been uploaded to the Application Store you are solely responsible for the Product approval and continued maintenance of the developer account, including providing any Updates or Upgrades for approval on the Application Store.

(d)   During the Order Term, we will make such modifications to the Product as required by the Application Store owner.

(e)   As each Application Store is operated and controlled by an independent third party and subject to the policies of those third parties (which change from time to time), we

do not make any warranty or representation to you as to approval success of the Product, including any Updates or Upgrades, with any Application Store.

(f)   We may, without recourse, suspend yours (or your end-users') access to the Product if you (or any of your end-users') is not using the most current version of the Product following any Update or Upgrade.

9   Use of the Product

9.1   You must (and you must ensure users) when using the Product:

(a)   only authorise such additional users as noted in the Order Document to use and access the Product (where applicable);

(b)   only use or attempt to use the Product functionality "as is";

(c)   not attempt to access or control the server on which the Product is hosted, except through the client interface or as the Product otherwise provides;

(d)   comply with the current editions of all Materials provided by us from time to time;

(e)   comply with any operational guidelines or emergency directions issued by us;

(f)   promptly report to us any errors, defects or malfunctions experienced or observed in the Product, in as much detail as possible;

(g)   not do anything calculated to damage or impair the Product or the server on which the Product is hosted;

(h)   not purport to grant any interest in, sub-licence of or derivative right to use the Product except as permitted by this Agreement;

(i)   not do anything that is detrimental to us, our business, our officers, employees, distributors or agents; and

(j)   comply with all laws.

9.2   You undertake that:

(a)   you will not allow or suffer any user account for the Product to be used by more than one individual user unless it has been reassigned in its entirety to another individual user, in which case the prior user shall no longer have any right to access or use the Product;

(b)   each user shall keep a secure password for their use of the Product, that such password shall be changed no less frequently than once per year and that each user shall keep its password confidential;

(c)   if you become aware that account access details for the Product are in unauthorised hands, you must:

(i)   change any compromised access password immediately;

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<tr><td>(ii)</td><td>take any other step reasonably necessary to ensure that no-one suffers harm as a result;</td></tr>
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(d)   you will keep its computer system, network and internet connectivity secure and confidential in accordance with good computer security practice; and

(e)   you will make regular backups of all data which you enter into or use with the Product.

9.3   You acknowledge and agree that:

(a)   the Product is provided "as is" as it appears on the server hosted by us;

(b)   as the Product is provided over the internet and that the internet poses significant security and virus threats;

(c)   any data transmitted to and from your computer systems to the server on which the Product is hosted may not be secure or free from interruption;

(d)   you must ensure for each user that their device is regularly updated with anti-virus software;

(e)   we may be required from time to time to access the Product and database associated with the Product to ensure ongoing maintenance and continued service and you consent to such access by us without notice;

(f)   you cannot resell or sub-licence the Product;

(g)   we do not provide service levels or uptime for the Product and that scheduled maintenance, emergencies or unscheduled outages may occur from time to time which may leave the Product unavailable or with limited functionality;

(h)   access to and use of the Product may be impaired or prevented by a variety of factors that are beyond our control, for instance defects in computer systems and problems with internet connectivity between you and the server hosting the Product and we are not responsible for any such things or their effects; and

(i)   we may from time to time, but are not obliged to, back up data that is entered into the Product by you ("Licensee Data"), as part of undertaking a whole system back up of the Product. You acknowledge and agree in respect of the Licensee Data:

(i)   that you consent to us holding and accessing the Licensee Data for this purpose; and

(ii)   that you must otherwise ensure that you regularly back up to another location, not being the Product, the Licensee Data. You release us from any liability in respect of the Licensee Data and the loss thereof from your actions in not undertaking a back up of the Licensee Data.

9.4   You are prohibited from posting or transmitting to or from the Product any material:

(a)   that is threatening, defamatory, obscene, indecent, seditious, offensive, pornographic, abusive, liable to incite racial hatred, discriminatory, menacing,

scandalous, inflammatory, blasphemous, in breach of confidence, in breach of privacy or which may cause annoyance or inconvenience; or

(b) for which you have not obtained all necessary licences, consents and/or approvals; or

(c) which constitutes or encourages conduct that would be considered a criminal offence, give rise to civil liability, or otherwise be contrary to the law of or infringe the rights of any third party, in any country in the world; or

(d) which is technically harmful (including, without limitation, computer viruses, logic bombs, Trojan horses, worms, harmful components, corrupted data or other malicious software or harmful data).

9.5 You must not (and must cause that each user must not) use the Product:

(a) in any way that breaches any applicable local, national or international law or regulation;

(b) in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect;

(c) for the purpose of harming or attempting to harm minors in any way; or

(d) to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam).

9.6 We shall fully co-operate with any law enforcement authorities or court order requesting or directing us to disclose the identity or locate anyone posting any material in breach of the above rules on acceptable conduct.

9.7 You will not (and must cause that each user will not):

(a) use or launch any automated system, including, "robots," "spiders," or "offline readers," that sends more request messages to our servers in a given period of time than a human can reasonably produce in the same period by using a conventional browser;

(b) use the Product in any manner that damages, disables, overburdens, or impairs any of our websites or interferes with any other party's use of the Product;

(c) attempt to gain unauthorised access to the Product;

(d) access the Product other than through the Product interface; or

(e) use the Product for any purpose or in any manner that is unlawful or prohibited by this Agreement.

10 Payment Service

10.1 Where the Product incorporates or otherwise utilises a Payment Service, this clause applies.

10.2 You agree to comply with the Merchant Terms of Service published by the Payment Service.

10.3   You agree that the fees from each transaction processed through use of the Product may be paid directly to us by the Payment Service. Where this occurs, we will remit those fees immediately to you on receipt of cleared funds in our bank account.

10.4   You acknowledge and agree that we may be paid a commission from the Payment Service.

10.5   You acknowledge that the Payment Service, as a third party, may from time to time renew and revise its terms and conditions of service. You must continually inform yourself of the Merchant Terms of Service and your acceptance of those terms.

11   Personal information

11.1   You acknowledge that we will collect Personal Information in providing the Product or Deliverables and all Personal Information will be handled in accordance with our Privacy Policy as published from time to time at www.digistorm.com.au/privacy-policy/.

11.2   Each party agrees to notify the other if it becomes aware of a breach or possible breach of any obligations required by either party in accordance with the laws of the Jurisdiction ("**Privacy Laws**"), and to co-operate with the other to assist in meeting any notification obligations under the Privacy Laws in the Jurisdiction.

11.3   Where you collect Personal Information from a citizen of the European Economic Area and that citizen is subject the GDPR ("GDPR Data"), then you must in all respects comply with the GDPR, including but not limited to:

(a)   our data protection addendum, by signing and return same to us;

(b)   acknowledging that you are the 'controller' of the GDPR Data for the purposes of the GDPR;

(c)   acknowledging that we is the 'processor' of the GDPR Data for the purposes of the GDPR;

(d)   if you collect GDPR Data of a person under the age of 16 years ("Minor"), you must ensure you obtain the express consent of the parent or guardian to the Minor to the collection, storage and process of the GDPR Data of the Minor;

(e)   you obtaining the express consent for the GDPR Data to be transferred outside of the European Economic Union to Australia;

(f)   you obtaining express consent for the GDPR Data to be lawfully used, processed and transferred in accordance with this Agreement; and

(g)   where 'special categories of data' are collected by you, implementing sufficient security controls and technological measures to handle and deal with that data in accordance with the GDPR.

11.4   If a third party alleges infringement of its Personal Information under the Privacy Laws and/or the GDPR, we may take measures necessary to prevent the infringement of a third party's rights from continuing.

11.5   We may unilaterally change this Agreement to meet the laws and requirements of any Jurisdiction in respect of Personal Information, as a result of your use of any Product or

Deliverables and/or data associated with or uploaded to the Product or Deliverables either directly or indirectly in a jurisdiction.

12 Confidentiality

12.1 The parties shall:

(a) keep confidential all Confidential Information, the terms of this Agreement and any Order Document, information and technical data disclosed by the other provided that each party shall have the right to disclose such information to its employees insofar as it is necessary for them to know the information for the use of the licences granted herein; and

(b) not use any of the Confidential Information, disclosures or other information or technical data, except for the purposes of the licences granted herein and on the terms of this Agreement.

12.2 Notwithstanding the provisions of clause 12.1 a party may disclose information if and to the extent that:

(a) such disclosure is forced by laws, regulations or orders;

(b) the information is generally available in the public domain except where that is a result of a disclosure in breach of this Agreement or any Order Document; and

(c) the party can prove that it knew the information before it was disclosed to it by the other party.

13 Warranties

13.1 Save for those express warranties provided in this Agreement to the maximum extent permitted by law, we do not give an express warranty of any kind in relation to Product, Deliverables, Material and/or services supplied under this Agreement.

13.2 We do not warrant that the Product, Deliverables, Material and/or any Additional Requirements will be free of bugs, errors or viruses.

13.3 Each party, at the Order Date, warrants to the other that:

(a) they have the full corporate power to execute, deliver and perform their obligations under this Agreement;

(b) the Agreement constitutes a legal, valid and binding obligation on each party, enforceable in accordance with its terms by appropriate legal remedy; and

(c) each party has all licences, authorisations, consents, approvals and permits required by applicable laws to perform its obligations under the Agreement.

14 Indemnity

14.1 You shall promptly advise us in writing of any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, charges and expenses which may be

brought or claimed against you or us arising out of the use of the Product or Deliverables and/or Third Party Software by you, your servants or agents.

14.2   Except to any extent caused by us, you hereby release, indemnify and agree to keep us indemnified against any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs (including solicitor and client costs), charges and expenses arising out of the use of the Product, Deliverables, Third Party Software and Additional Requirements by you, your employees, third parties servants and agents, including for any breach of the Privacy Laws and/or GDPR.

14.3   We are not liable to you or any third party under this Agreement or under general law to the extent that any loss or damage is caused or contributed to by:

(a)   your negligence or the negligence of a third party to you;

(b)   any breach by you of the terms and conditions of this Agreement or any other applicable laws, regulations or rules in the Jurisdiction;

(c)   the use of the Product or Deliverables in conjunction with any other software not approved in writing by us for use with the Product or Deliverables;

(d)   the use of the Product or Deliverables in a manner or for a purpose not disclosed by you to us prior to the Order Start Date or a date noted in an Order Document; or

(e)   any virus or similar occurrence which adversely affects us, or the Product or Deliverables which was caused by you or your access facilities.

14.4   Neither party shall in any circumstances be liable to the other party or any third party for any consequential, special, indirect, exemplary or punitive losses or any other loss of profit, revenue, goodwill, savings or data, whether arising in contract, tort (including negligence), equity or otherwise, regardless of whether the party was advised of such losses in advance.

14.5   You warrant to us that you acquire the goods or services under this Agreement, not for personal, domestic or household use or consumption. You acknowledge that our liability is limited for a failure to comply with any consumer guarantees under the Australian Consumer Law (other than where to do so would otherwise cause all or part of this clause to be void) to, at our option, in the case of goods, repairing or replacing the goods or paying the cost of having the goods repaired or replaced, and in the case of services, re-supplying the services or paying the cost of having the services re-supplied. Except to the extent provided by the foregoing sentence or prohibited by the Australian Consumer Law (whether applied as a law of the Commonwealth or any State or Territory of Australia or other applicable law), all statutory warranties conferred in relation to the supply of goods or services to you under these terms are hereby excluded.

14.6   Our aggregate liability to you arising under or in connection with this Agreement, in a calendar year, will not exceed the amount of the fees paid by you under this Agreement in that calendar year.

14.7   You fully release us from any claim, cost, expense, liability or damage incurred by you as a result of us suspending access of any user to the Product or Deliverables in accordance with the terms and conditions of this Agreement, or from you not undertaking a back up of the data you or your users input into the Product or Deliverables.

14.8   Where the Product incorporates or otherwise utilises a Payment Service, you indemnify us against any "chargeback" made by the Payment Service under its Merchant Terms of Service and to make good the damage suffered by us by reason of any "chargeback" that is made.

15   Termination

15.1   This Agreement may be terminated by either party giving written notice to the other party if the other party commits any breach of any provision of this Agreement and has failed to remedy such breach within thirty (30) days of receipt of written notice requiring it to do so.

15.2   We may terminate this Agreement at any time and without reasons, by giving thirty (30) days written notice to you.

15.3   Notwithstanding clause 15.1 or 15.2, we may by notice in writing to you immediately terminate this Agreement in any of the following circumstances:

(a)   you or any of your employees, agents, contractors or other persons under your control or direction:

(i)   does or attempts to reverse assemble, compile or engineer any part of the Product or Deliverables; or

(ii)   attempts to data mine the Product and/or Products and/or Deliverables;

(b)   your developer account for any Application Store is suspended or terminated; or

(c)   you suffer an Insolvency Event.

15.4   Any termination of this Agreement under this clause shall be without prejudice to the rights of the party terminating to seek and obtain damages for any breach of this Agreement by the other party.

16   Effect of termination

16.1   Immediately on termination of this Agreement, you shall deliver up to us the Product or Deliverables (or we may terminate your access to the Product or Deliverables) and the Materials (including all copies) and all other documents and materials in its possession relating to the Product or Deliverables and Intellectual Property and will do such further things as may be reasonably required by us to protect our right, title and interest in the Product or Deliverables and Intellectual Property.

16.2   On the termination of this Agreement any and all fees previously paid shall remain our property and you shall not make a claim in respect of them and you shall further pay to us any other fee accrued and due but unpaid as at the date of the termination or expiration.

16.3   On your default of any obligation in this Agreement or upon the termination of this Agreement, including your failure to pay any monies due in the time specified, we shall have the right to:

(a)   immediately suspend and/or terminate your access (including access by your end-users) to the Product or Deliverables, including changing any assigned password or both; and

(b)   request any Application Store to remove the Application.

16.4   We will delete the data you or your users have inputted into the Product or Deliverables 30 days after this Agreement is terminated or in the timeframe noted in the data protection addendum (if applicable).

17   Intellectual property

17.1   We shall at all times own and retain all right, title, interest and Intellectual Property rights in and to the Product or Deliverables and the Materials.

17.2   The parties warrant that nothing in this Agreement affects any transfer or assignment of ownership of any Intellectual Property Rights in the Product or Deliverables or any content uploaded to or generated through the Product or Deliverables by you and your authorised users.

17.3   You acknowledge and warrant that you will not remove any copyright notices in the Materials or the Product or Deliverables, including the Object Code and/or Source Code of the Product or Deliverables or other items provided by us to you.

17.4   You must immediately inform us of any breach of the Product or Deliverables system or security you become aware of and must provide details of the breach to us sufficient for us to recreate and/or remedy the breach.

17.5   In the event you learn of any infringement or threatened infringement of any of the Intellectual Property rights licensed under this Agreement or any common law passing-off by reason of imitation of get-up or otherwise, you must notify us in writing giving particulars of the infringement.

18   Licence to use Branding

18.1   You grant to us a non-exclusive and non-transferable licence to use the Branding for the purpose of delivering the Product or Deliverables and Materials.

18.2   You hereby irrevocably consent to us dealing with the Moral Rights in the Branding for the purposes of developing and delivering the Product or Deliverables and any Additional Requirements.

18.3   You release us from any claim, action, costs and/or liability in relation to any act or omission done in respect of or in dealing with the Branding.

18.4   The rights and entitlements obtained by us under this Agreement may be exercised in all the states and territories of Australia and worldwide.

18.5   We may utilise your Branding for promotion with third parties.

19   Exchange of data between Products

You acknowledge that we have developed multiple Products and each Product is a separate product. Where you use more than one (1) Product under different Order Documentation, any data as entered into any of the Products may be shared with other Products and you consent to the exchange and transfer of this data.

20   Notices

20.1   Any notice under this Agreement must be in writing and:

(a)   given to us at: legal@digistorm.com; or

(b)   given to you at the Notified Email Address.

20.2   Any notice given under clause 20.1 will be deemed as served on the Business Day after successful transmission from the server of the sender.

20.3   The parties agree that all agreements, notices, disclosures and other communications that are provided electronically, satisfy any legal requirement that such communications be in writing, including for the purposes of clause 20.1.

21   Taxes

21.1   The Costs and any other fees under this Agreement exclude any taxes or duties payable in respect of the Products in the Jurisdiction. To the extent that any such taxes or duties are payable by us, then you must pay to us the amount of such taxes or duties in addition to any Costs or other fees owed under this Agreement. Notwithstanding the foregoing, if you have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed, you may provide us with such exemption information, and we will use reasonable efforts to provide you with invoicing documents designed to enable you to obtain a refund or credit from the relevant revenue authority in the Jurisdiction, if such a refund or credit is available.

22   Dispute Resolution

22.1   **(Informal resolution)**: In the event that a dispute shall arise between the parties in respect of this Agreement, then the parties agree to use their best endeavours to resolve such dispute within a period of 60 days from the time any party gives to the other party notice in writing of the dispute. All negotiations pursuant to this clause will be confidential and treated as a compromise and settlement negotiations for the purposes of all rules and codes of evidence of applicable legislation.

22.2   **(Arbitration)**:

(a)   Where a dispute is not resolved in accordance with clause 22.1 ("**Unresolved Dispute**"), then a dispute shall be referred to and finally resolved either by the Courts of the State of Queensland, Australia or by arbitration administered by the Resolution Institute in Australia at our sole discretion, provided if any Unresolved Dispute is commenced by you, you shall give us not less than 14 days' notice in writing of your intention to commence proceedings, and we must exercise our election in writing within 14 days of receiving that notice.

(b)   Any arbitration commenced at the Resolution Institute in Australia shall be conducted under the Arbitration Rules of the Resolution Institute in force when the Unresolved Dispute is submitted to the Resolution Institute. The substantive law to be applied in the arbitration shall be the law of Queensland, Australia. There shall be one arbitrator, the language of the arbitration shall be English and the place of the arbitration shall be the city of Brisbane in the State of Queensland, Australia.

(c)   The parties are bound to the decision or award of any Court or arbitrator to any Unresolved Dispute.

23   General

23.1   **(Waiver)**: Any waiver or forbearance in regard to the performance of this Agreement shall operate only if in writing and shall apply only to the specified instance, and shall not affect the existence and continued applicability of the terms of it thereafter.

23.2   **(Entire Agreement)**: The Order Documentation together with this Agreement and its relevant parts for the Product or Deliverables embodies all the terms binding between the parties and replaces all previous representations or proposals not embodied herein.

23.3   **(Assignment)**: You must not assign all or any of your rights hereunder without our prior written consent, which consent we may grant in our absolute discretion. We may in our discretion assign all or any of our rights hereunder.

23.4   **(Jurisdiction)**: This Agreement will be governed by and construed in accordance with the applicable laws of the Queensland, Australia, without giving effect to the principles relating to conflicts of laws. Each party irrevocably agrees that any legal action, suit or proceeding arising out of or related to this Agreement must be brought exclusively in, and will be subject to the service of process and other applicable procedural rules of Queensland, Australia, and each party irrevocably submits to the exclusive jurisdiction of the courts in Queensland, Australia, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party.

23.5   **(Vienna Sale Convention)**: The *United Nations Convention on Contracts for the International Sale of Goods* does not apply to this Agreement or to any individual contract, including an Order Document, concluded within the framework of this Agreement.

23.6   **(Uniform Commercial Code)**: The *Uniform Commercial Code* and its variants as adopted by the states and territories of the United States of America do not apply to this Agreement or to any individual contract, including an Order Document, concluded within the framework of this Agreement.

23.7   **(Amendments)**: This Agreement may not be varied except in writing signed by the parties.

23.8   **(Severability)**: If any provision of this Agreement is held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation the validity and enforceability of the remaining provisions shall not be thereby affected.

23.9   **(Further Agreements)**: Each party shall execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as shall be necessary to give effect to this Agreement.

23.10   **(Charges)**: All stamp duties and governmental charges arising out of or incidental to this Agreement shall be the responsibility of and payable by you.

24   Definitions & Interpretation

24.1   Defined Terms

In this document:

Additional Requirements means the additional requirements set out in the Order Document relevant to the noted Product, that you have requested of us in delivering the Product, including our Costs for those additional requirements.

Administrator means any user labelled as administrator of the Product.

Agreement means this master agreement.

Application Store means the software distribution platforms provided by third parties, such as Apple, Inc and Google, LLC, allowing consumers to purchase and download and install the Product to their internet connected device.

Branding means your name, design, symbol, colour or colour combinations, marks, image, logo, fonts, get-up or any other feature that identifies or makes you distinctive.

Business Day means any day other than a Saturday, Sunday, public or bank holiday in the Jurisdiction.

Buyout Fee means the one off fee applicable to a Product, if noted on the Order Form.

CMS means the content management system, accessible by us, that acts as an intermediary gateway between the Product (where applicable) and the Third Party Software and systems, including a record management system.

Confidential Information means any documentation or information marked as confidential and all other information received or developed by either party in the course of its association with the other party, which is not publicly available and relates in any way to each party's respective business or financial information and all Processes, equipment and techniques used by each party in the course of each party's business including but not limited to Intellectual Property Rights, trade secrets, ideas, concepts, know-how and marketing information such as customer lists, financial information and business plans.

Costs means:

(a)   those fees and charges outlined on the Order Document; and

(b)   any variance to the fees and charges as a result of selecting a Plan Option.

Custom Product means a Product that requires customisation to your requirements to incorporate the Branding as noted in an Order Document.

Delivery Date means the date, if any, noted on the Order Document that we will deliver the Product to you.

Deliverables means any product, service and/or item to be delivered by us to you, that is not a Product, as specified in an Order Document.

Further Term(s) means the further period of time this Agreement is to continue for following the expiration of the Order Term (or Further Term as the case may be), being that period as noted on the Order Document in the column 'Further Term (months)' from the Product table.

GDPR means General Data Protection Regulation, Regulation (EU) 2016/679 of the European Union.

Hosting Space means 1 gigabyte of storage space.

Insolvency Event includes bankruptcy, administration compromise, arrangement, amalgamation, reconstruction, winding up, dissolution and assignment for or compromise with creditors, and 'insolvent' will be construed accordingly.

Intellectual Property Rights includes but is not limited to:

(a)   patents, copyright, rights in circuit layouts, registered designs, trade marks (whether registered or at common law);

(b)   Object Code and Source Code of the Products;

(c)   Processes;

(d)   the right to have the Confidential Information kept confidential; and

(e)   any application or right to apply for registration of any of those rights.

Jurisdiction means the jurisdiction of us as determined in accordance with clause 1.2 of this Agreement.

Licence means the non-exclusive and non-transferable licence for the Order Term in the Territory given to you to:

(a)   use the Product; and

(b)   use the Materials relevant to the Product; and

in accordance with any Special Conditions prescribed on the Order Document.

Materials means the documentation of all of or any of our instructions, manuals, training materials, guides, commentary, listing and other materials for use in conjunction with the Product, if any.

Merchant Terms of Services means the terms and conditions applying to the Payment Service chosen and utilised by you to process payments on the Product.

Moral Rights means:

(a)   a right of attribution of authorship; or

(b)   a right not to have the authorship falsely attributed; or

(c)   a right of integrity of authorship.

Notified Email Address means your primary email address noted on the Order Document and as updated by notice to us in accordance with this Agreement.

Object Code refers to the encoded program scripts that a computer can execute after the Software program is compiled from its Source Code.

Order Document means either the Order Form or Work Order (as applicable and relevant).

Order Form means an ordering document or online order specifying the Products to be provided in accordance with this Agreement that is entered into between you and us.

Order Start Date means the date next to the Product on the Order Document that this Agreement commences on.

Order Term means the period, represented in calendar months noted on the Order Document, relevant to the Product.

Payment Service means the third party merchant utilised to process payments on the Product.

Personal Information means:

(a)   information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

(b)   information or a document that relates to the affairs or personal particulars of another person (such as a company or a business); or

(c)   which is otherwise defined under any Privacy Law,

which is received or learnt by a party from any source as a consequence of or in the performance of its rights and obligations under this agreement.

Plan Option means an optional upgrade or downgrade to the features and capabilities of the Product.

Processes includes technologies, products, devices, processes or techniques.

Product means that product or those products from the Products noted on the Order Document and includes a Plan Option (if applicable).

Products means those products and services listed and described on our website from time to time.

Redesign means a revision of a Custom Product to incorporate any revised Branding and in accordance with any mockup and/or wireframe prepared by us, which you may only revise once.

Redesign Event means where this Agreement continues, each period of time equal to the Order Term, following the Order Term and including at the commencement of the first Further Term.

> *By way of example, where the Order Term is three (3) years, a Redesign Event will occur once each subsequent three (3) years where this Agreement continues.*

Special Conditions means those conditions, if any, specified on the Order Document.

Source Code means the high level programming language used to create the software programs forming the Products before the program is compiled into encoded program scripts ("**Object Code**") that the computer can execute.

Territory means the country in which you are located.

Third Party Software means the software that you have obtained for use in your business and which you require to interoperate with the Product, not being the Products, as identified in the Order Document.

Update refers to a software product release to any one or more Products containing error corrections and minor enhancements and includes any corrections and updates to the associated Materials.

Upgrade refers to a software product release to any one or more Products containing significant functional enhancements and feature additions that is made commercially available by us and includes any corrections and updates to the associated Materials.

Work Order means any document, proposal, email or online order, other than an Order Form, specifying the Deliverables to be provided by us to you, in accordance with any Work Order Conditions and this Agreement and which has been approved by you.

Work Order Conditions means the terms, including Costs, that the Deliverables will be delivered in accordance with as outlined on a Work Order.

24.2   Interpretation

In this Agreement, except to the extent the context otherwise requires:

(a)   the singular includes the plural and vice versa and a gender includes other genders;

(b)   a reference to a party is to be construed as a reference to a party to this Agreement;

(c)   a reference to a party to this Agreement or any other document or agreement includes its successors and permitted assigns;

(d)   where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;

(e)   a reference to a document or agreement including this Agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;

(f)   in the interpretation of this Agreement, headings are to be disregarded;

(g)   a reference to a statute, ordinance, code or other law or section or schedule of a statute, ordinance, code or other law includes all statutory instruments or regulations issued under any of them and any statutory modification or re-enactment, or substitution, of any of them;

(h)   where a party comprises of two (2) or more persons, an agreement or obligation to be performed or observed by that party binds those persons jointly and severally and a reference to that party includes a reference to any one or more of those persons;

(i) references to 'dollar', '$' and to any amount not otherwise designated is to be construed as a reference to the currency of the Jurisdiction.

(j) a reference to 'writing' includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words in a permanent and visible form; and

(k) if any day appointed or specified by this Agreement for the payment of any money or the doing of any act, matter or thing falls on a day which is not a Business Day in the Jurisdiction, then the day so appointed or specified is deemed to be the next day which is a Business Day.

24.3 Products

Unless otherwise provided on the Order Document:

(a) the Product and access to Material are purchased as subscriptions by way of Licence;

(b) additional licences for the Product may be added during an Order Term at the same pricing as the underlying Product pricing ('Additional Product'), prorated for the portion of Order Term applicable to the Product remaining at the time the Additional Product licences are added; and

(c) any Additional Product licences will terminate on the same date as the underlying Product.

24.4 Deliverables

(a) The Deliverables are provided and delivered to you in accordance with and on the terms noted in the Order Document and Work Order Conditions.

(b) The Work Order Conditions and this Agreement apply to all Deliverables.

(c) The consideration for the Deliverables is the Costs as noted in the Work Order Conditions.

(d) The term applicable to the Deliverables is that as noted in the Work Order Conditions.

(e) We will not maintain or monitor the Deliverables unless stated on a Work Order.

24.5 Purpose

(a) The purpose of this Agreement (**Purpose**) is:

(i) to grant to you a licence right only to use certain Products as noted on the Order Document for the Order Term; and

(ii) to specify the terms and conditions that must be complied with by you in its use of and limited licence to the Products or Deliverables, including your payment obligations for each Product or Deliverables.

(b) In order to achieve the Purpose, you must strictly comply with the terms of this Agreement, and act in a way that is consistent with us being the owner of all of the Products or Deliverables, provided notice is given to us of any change.

(c)   To assist achieve the Purpose, you acknowledge that this Agreement provides flexibility for and gives the power to us to exercise a discretion or vary some contractual obligations where it is reasonably necessary to protect or enhance the Products or Deliverables or otherwise meet legal requirements in other jurisdictions where the Products or Deliverables may be offered or used by you.

24.6   Special Conditions

The Special Conditions:

(a)   modify and vary the other provisions of this Agreement; and

(b)   prevail to the extent of any discrepancy or inconsistency with any other part of this Agreement.