

# TERMS & CONDITIONS

THE PARTIES AGREE AS FOLLOWS:

## 1. Engagement

### Engagement

- 1.1. The Company hereby appoints the Reseller as the reseller of the Software throughout the Territory, and the Reseller hereby accepts that engagement subject to the terms and conditions of this Agreement.

### Commencement and Duration

- 1.2. This Agreement shall commence on the Commencement Date and shall continue for a period of [twelve (12) months] from the Commencement Date (Term), unless otherwise terminated under clause 17).
- 1.3. Prior to the expiration of the Term, the parties shall have the right but not the obligation to extend the Term for a further period as mutually agreed between the parties in writing.

## 2. Non-exclusivity

- 2.1. During the Term, the parties acknowledge and agree that the supply, marketing and sale of the Software shall be non-exclusive and does not restrict the Company or any Affiliate of the Company from contracting with any other person or entity for the distribution, performance or delivery of products which are the same as, in the nature of, competitive with, or similar, incidental, ancillary or related to, the Software.

## 3. Grant of Reseller Business & Licence

- 3.1. The Company grants to the Reseller and the Reseller accepts a non-exclusive right to market, promote, and sell the Software to Customers of the Reseller throughout the Territory for the duration of the Term.

### Licence

- 3.2. Subject to the further terms and conditions set out in this Agreement, the Company grants a temporary, non-transferable, non-assignable, non-exclusive licence to the Reseller in the Territory to use the Software and the Company's Trade Marks solely in connection with the marketing, promotion and sale of the Software throughout the Territory for the duration of the Term and to perform its obligations under this Agreement and for no other purpose.

## 4. Success of Reseller

- 4.1. The Reseller acknowledges that the success of the Reseller in marketing and selling the Software depends upon the ability and efforts of the Reseller.
- 4.2. The Reseller hereby acknowledges that neither the Company (whether by itself, Affiliates, officers, Resellers or agents) nor any other person has guaranteed, represented or warranted that the Reseller will succeed in marketing or selling the Software or any other product or service of the Company.
- 4.3. The Reseller further hereby expressly acknowledges that it has not been induced to enter this Agreement by reason of any representations, promises, guarantees or warranties of any kind by the Company, Affiliates, officers, resellers and agents or any other person other than as are contained in this Agreement and that the Company would not have entered this agreement had the Reseller not provided this acknowledgement.

## 5. Obligations

### Company Obligations

- 5.1. The Company shall:
- act dutifully and in good faith;
  - comply with all applicable laws, rules and regulations of any governmental or regulatory authority in connection with its promotion and sale of the Software;
  - perform its obligations under this Agreement in an timely and professional manner;
  - use all reasonable endeavours to maintain the availability of the Software.
  - provide the Reseller with such reasonable technical and marketing information, training and support and assistance as the Reseller may consider necessary to enable the Reseller to perform its obligations under this Agreement. In particular, the Company shall:
    - ensure that the Reseller and its sales representatives are provided with all current promotional documentation and brochures relating to the Software to assist with promotion of the Software;
    - at its discretion, share with the Reseller any other quantitative or qualitative research carried out by the Company from time to time as reasonably requested by the Reseller; and
    - at its discretion, share with the Reseller such

descriptive literature, advertising materials, technical manuals and sales promotional materials concerning the Software as the Company may, from time to time, have available for such purposes;

- f. The parties acknowledge that the Company is not involved in the actual transaction between the Reseller and a Customer.

## Reseller Obligations

5.2. Throughout the duration of the Term and any extension thereof, the Reseller must:

- a. sell Software at prices equal or greater to the most recent Price List provided to the Reseller by the Company as further set out in Schedule 2;
- b. pay the Fees to the Company upon the Company issuing the Reseller with an invoice for the Fees.
- c. in all of its dealings in connection with or pursuant to this Agreement, give reasonable consideration and weight to the interests of the Company and will conduct its business in a manner that will reflect favourably on the Company, the Software and any other product or service of the Company;
- d. work with the Company in good faith to develop business opportunities to market, advertise and otherwise promote the Software and other products and services of the Company, which the Company may create from time to time;
- e. complete any training related to the Software, or other products and services of the Company, that the Company reasonably requires;
- f. further and preserve the goodwill and reputation of the Company or its Affiliates and the Software;
- g. honestly and faithfully account to the Company in respect of all financial matters arising under or in connection with this Agreement and/or the marketing and sale of the Software or any other products or service of the Company;
- h. otherwise owe and observe the same fiduciary duties and obligations to the Company that an agent owes to his principal;
- i. not make false promises, misrepresent or otherwise wrongfully induce Customers to purchase the Software and agrees to indemnify the Company in respect of any false promises, misrepresentations or wrongful inducements made by the Reseller in respect of the Software, or any other products or service of the Company;
- j. not directly or indirectly, alone or in conjunction with any other person or entity, actively seek or solicit customers or accounts for the Software outside the Territory;
- k. not use the Relevant IP in any way that could damage the reputation of the Company or the goodwill or the Intellectual Property Rights associated with the Relevant IP or to support any

activities outside of the scope of the business;

- l. unless permitted by law or as otherwise expressly permitted in this Agreement, the Reseller, its Affiliates and Representatives must not, nor must the Reseller, its Affiliates and Representatives authorise any third person to:
  - i. reproduce, copy, download, scrape, store, publish, transmit, transfer, communicate, distribute, disseminate, sell, rent, lend or otherwise use the Software, in any form or by any means;
  - ii. make the Software available to any person other than a Customer;
  - iii. convert material downloaded from the Software into an electronic format other than the one in which it was supplied;
  - iv. modify, translate, reverse engineer, decompile, disassemble, create derivative works based on, or copy the Software or otherwise attempt to discern the source code of the components of the Software or reproduce all or any portion of the said components;
  - v. remove, alter, circumvent or tamper with any trade marks, copyright notices, copyright protection devices, disclaimers or other legal notices;
  - vi. combine the whole or any part of the data available on the Software with any other software, data or material;
  - vii. store or use any part of such data in an archival database or other searchable database except as forming part of any work product;
  - viii. where applicable, remove any proprietary notices, labels or marks on the Software; or
  - ix. post the Software to any location that is electronically accessible to the general public, including, but not limited to: electronic bulletin boards, web sites, and ftp sites.

## Trade Marks

5.3. The Reseller acknowledges the Company's exclusive right, title and interest in the Trade Marks and trade names, whether registered or not, copyrights, patents and patent applications, trade secrets and know-how which the Company may have at any time created, adopted, used, registered, or been issued in Australia or in any other location in connection with the Company's business or the Software and Reseller shall not do, or cause or permit to be done, any acts or things contesting or in any way impairing or tending to impair any portion of the Company's right, title, and interest in and to the Trade Marks, trade names, patents and patent applications, copyrights, trade secrets and know-how. Any approval by the Company for the Reseller to use any Trade Marks, trade names, patents or patent applications, copyrights, trade secrets and

know-how in connection with the distribution and sale of the Software shall be a temporary permission, uncoupled with any right or interest, and without payment of any fee or royalty charge for such use.

- 5.4. Upon request by the Company, the Reseller will place trade mark, copyright and patent notices in its Marketing Materials for the Company's Software. The Company reserves the right to review the Reseller's marketing and sales materials prior to their publication or use. No rights shall inure to the Reseller as a result of any such use or reference, and all such rights, including goodwill shall inure to the benefit of and be vested in the Company.
- 5.5. Upon termination of this Agreement for any reason, and subject to the provisions as contained in clause 17, the Reseller will cease using the Company's Trade Marks as allowed in this clause and shall immediately take all appropriate and necessary steps to:
- a. remove and cancel any listings in public records, other directories, the Internet and elsewhere that would indicate or would lead the public to believe that the Reseller is the representative of the Company (or any of its Affiliates) or the Company's (or any of its Affiliates') Software or services; and
  - b. cancel, abandon or transfer (as reasonably requested by the Company) any Software licenses, trade name filings, trade mark applications or registrations or other filings with the governments of the Territory (whether or not such filings were authorised by the Company) that may incorporate the Company's Trade Marks or any marks or names confusingly similar to the Company's Trade Marks. Upon the Reseller's failure to comply with this paragraph, the Company may make application for such removals, cancellations, abandonments or transfers in the Reseller's name. The Reseller shall render assistance to and reimburse the Company for expenses incurred in enforcing this paragraph.

#### No alterations

- 5.6. The Reseller shall not, without the Company's prior written consent, alter, or add to, or apply or attach anything to, the Software.

#### Compliance with Laws and Certifications

- 5.7. In connection with its obligations under this Agreement, the Reseller agrees to comply with all federal, state, local and foreign laws in the Territory, constitutions, codes, statutes and ordinances of any governmental authority that may be applicable to the Reseller, its activities under this Agreement or the Company's Software, including all applicable taxation laws and regulations. The Reseller agrees to take all such further acts and execute all such further documents as the Company reasonably may request in connection with such compliance.

- 5.8. The Reseller shall obtain, at its own expense, such approvals, consents, certifications, permits and other authorisations, including all approvals as are required to qualify the Software for sale and use to respective Territories for all purposes, both governmental and non-governmental (collectively, the "Approvals"), as soon as is reasonably practicable. The Company agrees to reasonably cooperate with Reseller to obtain such Approvals.

#### Comply with Directions

- 5.9. The Reseller shall comply with all reasonable directions of the Company from time to time in relation to the promotion and sale of the Software, including in particular those matters set out in the Annual Business plan (i.e. proposed annual sales, customer pricing, promotional calendars and spend, and trade marketing activities). Such reasonable directions of the Company shall include discussions on marketing efforts and proposed programs to be implemented to improve the distribution and/or sales of the Software in the Territory.

### 6. Fees and Payment Terms

#### Reseller Activation Fee

- 6.1. The Reseller shall pay the Company a one-time Reseller Activation Fee for the initial configuration, setup, and provisioning of the Software for the Reseller's use, in the amount set out in Schedule 1 attached hereto.

#### Licence Fee

- 6.2. The Reseller shall pay the Company the Licence Fee for the Software provided by the Company in accordance with this Agreement in the amount set out in Schedule 1.

#### Per-User Agent Fee

- 6.3. The Reseller shall pay the Company a Per-User Agent Fee for each authorised end-user or agent accessing the Software under a Reseller account, in the amount set out in Schedule 1.

#### AI Usage Fee

- 6.4. The Reseller shall pay the Company an AI Usage Fee based on the usage of AI-powered features by the Reseller and its customers within the Software. The AI Usage Fee shall be calculated in accordance with the pricing model and rates set out in Schedule 1.

### 7. Payment Terms

- 7.1. Recurring Fees will be invoiced during the last week of the prior month and debited on or around the fifth (5th) day of each month, or the next available Business Day, and will continue to be debited for the duration of the Term.
- 7.2. Fees are exclusive of GST. Should GST be applicable, the Reseller agrees to pay GST in addition to any fees specified in this Agreement where applicable.

## 8. Customer Service and Product Service Enquiries

- 8.1. The Company will provide customer service to the Reseller by email or phone, during normal business hours of 8:30am — 5:30pm AEST/AEDT to the contact names listed in Part 1 of the Engagement Form or another person nominated by the Reseller.
- 8.2. Should a Customer have any queries regarding the Software, the Reseller acknowledges and agrees that it shall be responsible for attending to any Customer enquiries pertaining to the Software (excluding servicing of the Software).

## 9. Warranties

- 9.1. The Company and the Reseller represent and warrant to each other that as at the date of this Agreement:
- the recitals of this Agreement are true and correct;
  - it has the power and authority to enter into this Agreement and perform and observe the obligations imposed on that party by this Agreement;
  - the execution of this Agreement and performance of the matters and transactions contemplated in this Agreement does not constitute a breach or contravention of any law, regulation, by-law or any agreement binding on the warrantor or its assets; and
  - it has such permits, licenses, consents and authorities as may be necessary or desirable for it to have in connection with the performance and observance of its obligations under this Agreement.

## Company Disclaimer

- 9.2. Except as provided in this Agreement, the Company makes no other warranty, promise or obligation with respect to the Software, its use or performance. The Company disclaims any warranty, promise or obligation that the Software shall be fit for any particular use or purpose, regardless of whether such use or purpose is made known to the Company or not.

## 10. Inspection of Records

- 10.1. The Company and the Reseller shall keep accurate records of all of their activities as reasonably necessary to determine their compliance with the terms and conditions of this Agreement, including accounting records, customer sales records and governmental filings. The Reseller shall retain such records for at least a five (5) year period following their creation or preparation. During the term of this Agreement and for a period of eighteen (18) months thereafter, the Company shall have the right to inspect and audit such records.

## 11. New Software

- 11.1. If at any time during the Term of this Agreement, the Company desires to introduce any new products or software for sale into the Territory, the Company shall not be obliged to offer such new products or software to the Reseller for sale, and any such offer shall be solely at the discretion of the Company. In the event that the Reseller is offered any new products or software to sell throughout the Territory, such new products or software will be added as Software under this Agreement.

## 12. Reseller must not separately Deal

- 12.1. The Reseller shall not attempt to sell, transfer, franchise or otherwise deal with the Software or any other products or services of the Company other than as permitted by this Agreement.

## 13. Resale

- 13.1. The Reseller shall not in any way represent itself as the Company, nor bind the Company to any contractual terms with a customer of the Reseller. In performance of its obligations under this Agreement, it is understood that the Reseller and Company are independent contractors.

## 14. Intellectual Property Rights

### Pre-Existing IP

- 14.1. A party's ownership of, or any right, title or interest in, any Intellectual Property Rights in an item which exists prior to the date of this Agreement will not be altered, transferred or assigned by virtue of this Agreement.

### Relevant IP

- 14.2. The Reseller acknowledges and agrees that it is not acquiring any Intellectual Property Rights (other than the Licence) in or to the Relevant IP and the Trade Marks, information or material (including Confidential Information) relating to the Software.
- 14.3. The Reseller acknowledges and agrees that any Company Data that is captured, collected and/or shared as a part of providing the Software:
- is the Company's intellectual property, and the Reseller has no proprietary right, title to, or interest in the Company Data pertaining to the Software; and
  - the Company shall, in its absolute discretion, be entitled to use the Company Data for any purpose as determined by the Company in its absolute discretion.
- 14.4. The Reseller acknowledges and agrees that it must not take any step to invalidate or prejudice the Company's title thereto or to any Relevant IP owned by a third party and licensed by the Company to the Reseller under this Agreement. When using the Software, the Reseller must comply with the law including, without limitation, copyright laws.

- 14.5. The Reseller acknowledges and agrees that the Company has entered into this Agreement in reliance on the assumption that the Reseller's utilisation of the Software will not infringe the Intellectual Property Rights of a third-party.
- 14.6. This Licence is not a sale. Title, copyright and any other rights in the Relevant IP will remain with the Company or its Affiliates (where applicable). Unauthorised copying of the Software or failure to comply with the above restrictions will result in automatic termination of this Agreement.
- 14.7. Nothing in this Agreement affects the ownership of Moral Rights in the Software.

#### Reseller Data

- 14.8. The Company acknowledges and agrees that any Reseller Data that is captured, collected and/or shared with the Company during the Term is the Reseller's intellectual property, and the Company has no proprietary right, title to, or interest in the Reseller Data unless otherwise specified in clause 14.9 and 14.10 below, but the Reseller grants or will procure for the Company a right to use the Reseller Data for the purposes of this Agreement or as otherwise agreed between the parties acting reasonably.

#### Anonymised Reseller Data

- 14.9. Notwithstanding clause 14.8 above:
- the Reseller acknowledges and agrees that any Reseller Data that is captured, collected and/or shared with the Company shall be used by the Company for machine learning purposes, and such Reseller Data obtained shall be anonymised and aggregated in a way that is not identifiable to any one reseller or Customer of the Reseller (Anonymised Reseller Data); and
  - the Company shall be entitled to retain all right, title, interest and ownership of any Anonymised Reseller Data for the Company's continued use following termination of this Agreement for any reason or no reason at no additional charge to the Company, and the Reseller waives any right, entitlement or interest to the Anonymised Reseller Data.

#### Use of Trade Marks

- 14.10. The Reseller shall conform to the reasonable requirements of the Company in relation to the use of the Trade Marks on the Software and in all related promotional and advertising materials. Any goodwill or other benefit derived as a result of any use of any of the Company's Trade Marks shall inure to the sole benefit of the Company.

- 14.11. The Reseller shall not, at any time during or after the Term:

- claim any right, title, or interest in or to, attempt to register in any jurisdiction, or do anything that may adversely affect the validity or enforceability of, any of the Trade Marks; and/or
- adopt, register or use in any manner whatsoever any name, mark, logo, title, expression, word, device, symbol, or combination thereof, which in any way imitates, resembles, dilutes, or is similar to any of the Trade Marks. Furthermore, at the Company's reasonable request and expense, the Reseller shall do all things necessary to assist the Company in the protection of its Trade Marks in the Territory.

#### Reseller's obligations

- 14.12. The Reseller shall not at any time challenge the validity of any of, or assert any rights inconsistent with, the Company's Intellectual Property Rights. Infringement; and Infringement by Third Parties
- 14.13. The Reseller shall promptly bring to the knowledge of the Company any infringement or threatened infringement of any of the Company's Intellectual Property Rights or any passing off of the Software. Any legal proceedings issued by the Company in respect of such infringement or threatened infringement shall be conducted at the Company's discretion and expense.

#### Infringement by Third Parties

- 14.14. The Reseller will cooperate fully with and assist the Company in its efforts to protect the Company's Intellectual Property Rights within the Territory and shall exercise reasonable diligence to detect and shall advise the Company if the Reseller has knowledge of any infringement of any patents, trade marks, copyrights or other intellectual property rights owned or used by the Company.

#### 15. Confidential Information; No Reverse Engineering

- 15.1. Save for the reasonable needs (to be agreed expressly) of marketing and selling of the Software, the Company and the Reseller must at all times keep confidential all information that is not available in the public domain generally about the Software during the Term and thereafter use its best endeavours to do so. The Company and Reseller expressly acknowledge their reciprocal duty of confidentiality to one another.
- 15.2. Neither party shall without the prior written consent of the other party (during and after termination of this Agreement) use or disclose to any other person any Confidential Information of the other party, except as is required to allow a party to perform its obligations or exercise its rights under this Agreement.

15.3. Nothing shall though prevent a party from disclosing information to those of its officers and Resellers reasonably required to have the same in order for such party to perform its obligations under this Agreement, provided that such party shall procure that such officers and Resellers comply with the provisions of this clause; to its solicitors, accountants, surveyors, insurers and other professional advisors; and as is required to be disclosed by a party by an order of any court of competent jurisdiction or in connection with any proceedings of any such court or otherwise by force of law or regulation having the force of law or the rules of any regulatory authority.

15.4. Each party shall on demand and on termination of this Agreement surrender to the other all documents, notes and memoranda relating to such Confidential Information in its possession or in the possession of its Resellers agents and sub-contractors save to the extent that is reasonable to enable that party to retain evidence of its proper performance of this Agreement.

15.5. Each party undertakes that, save as may be required by law or any regulatory authority, neither it nor any of its Resellers, agents or contractors shall make, or cause to be made, (whether to the public, press, Resellers, customers, the Company or otherwise) any media statement, announcement, communication or other disclosure whatsoever, whether written or oral, in relation to the other party to this Agreement, the existence of this Agreement or any matter referred to in this Agreement without the other's written approval of its contents.

#### **No Reverse Engineering**

15.6. During the Term of this Agreement and thereafter, neither the Reseller, nor the Reseller's employees, independent contractors, nor other agents shall:

- a. reverse engineer, decompile or otherwise disassemble the Company's Software from the Software itself or from any other information made available to them; or
- b. otherwise use any of the Confidential Information or Company provided training to support, maintain or otherwise service a third party's Software or services.

15.7. This clause 15 will survive termination of this Agreement.

#### **16. Suspension or modification of the Software**

16.1. The Company may discontinue or revise any or all aspects of the Software at its sole discretion and without prior notice to take account of (for example but without limitation) changes in law or circumstance relating to the Software.

16.2. The Company may suspend access to the Software, in whole or in part, until further notice, with immediate effect:

- a. to periodically maintain or improve the Software and related systems;
- b. to comply with any order, instruction or request of any government, any emergency services organisation, or other competent judicial, administrative or regulatory authority; or
- c. if the Company believes that the Software may be used in such a way as may constitute a breach of this Agreement.

16.3. The Company shall use its best endeavours to minimise disruption to the use of the Software.

#### **17. Termination**

##### **Termination for Breach**

17.1. If:

- a. either party fails to comply with any of the terms of this Agreement and does not remedy such breach (if the same is capable of remedy) within fifteen (15) Business Days of receipt of a written notice from the other party giving full particulars of the said breach and requiring it to be remedied; or
- b. either party commits an Insolvency Event;
- c. the other party may, without prejudice to any of its other rights or remedies, terminate this Agreement by notice in writing to the other party giving thirty (30) days' notice. For the avoidance of doubt, in the event of breach of this Agreement by the Reseller, any obligation of the Company to pay any trail fees to the Reseller pursuant to the terms of this Agreement shall immediately cease from the date of expiration of the notice period.

##### **Termination with notice**

17.2. Either party may, without limitation to its rights under clause 17.1, terminate this Agreement at any time by giving ninety (90) days written notice to the other party.

##### **Effect of termination**

17.3. Upon termination of this Agreement for any reason, the Reseller shall:

- a. cease operating as Reseller of the Company's Software or identify itself as having any other working, partner or other relationship with the Company; and
- b. return all written material, manuals, documentation, hardware and software concerning the Company, the Software, or any other software and services of the Company.

17.4. Notwithstanding clause 17.3, in circumstances where this Agreement is terminated by the Company, the Company agrees to work with the Reseller in good faith to ensure that any Customers continue to derive the benefit of the Software (or any other product or service of the Company) without any disruption, interference or delay, for a period of either:



- a. twelve (12) months from the date the Company terminates the Agreement; or
- b. for the remainder of the Customer contract for the Software, whichever is the lesser (collectively, the "End-User Term").

17.5. The Reseller shall, upon demand in writing by the Company, provide the Company with details of any Customer that wishes to continue to use the Software following termination as contemplated in this clause, including details evidencing the remaining timeframe left on any Customer contract with the Reseller, so that the Company and the Reseller can in good faith, determine the applicable End-User Term.

17.6. The Reseller acknowledges and agrees that where a Customer wishes to continue to use the Software upon termination of this Agreement for the applicable End-User Term, the Fees, as contemplated in clause 6 and Schedule 1, will continue to be paid to the Company for as long as a Customer continues to use the Software or any other product or service of the Company. In those circumstances, the Reseller shall continue to honour the reporting obligations as stipulated in clause 17.5 above.

17.7. At the end of the End-User Term, where a Customer wishes to continue to use the Software, the Company may, but is in no way obligated, to continue to provide on-going support and maintenance to the Reseller in return for an Additional Fee, with such amount to be determined by the Company in its absolute discretion and conveyed to the Reseller in writing.

17.8. The Company shall have no liability to the Reseller by reason of any termination by the Company. The Reseller shall indemnify and hold harmless the Company from and against any and all liability, loss, damages and costs (including reasonable solicitors' fees) arising out of any Claim by the Reseller or any third party standing in the right of the Reseller to any right of entitlement contrary to the express terms of this clause.

## **18. Force majeure**

18.1. Neither the Company nor the Reseller shall be liable to the other for any delay in or failure to perform an obligation or covenant under this Agreement (except for a delay or a failure to pay money owed) due to a Force Majeure Event, provided that the party claiming a Force Majeure Event defence notifies the other in writing within ten (10) calendar days of the commencement of the condition preventing its performance and its intent to rely thereon to extend the time for its performance of this Agreement.

## **19. Assignment**

### **Assignment - Reseller**

19.1. The Reseller shall have no right to assign any of its rights or delegate its obligations under this Agreement without the prior written consent of the Company. Any

assignment or delegation attempted without such written consent shall be void and of no legal effect whatsoever. This Agreement shall be binding upon the parties' respective successors and permitted assigns.

## **Change in effective control - Company**

19.2. Any transfer in the capital of the Company or any holding company of the Company which results in a change in the effective ownership or control of the Company does not require the consent of the Reseller and shall not affect any terms or validity of this Agreement.

## **20. Relationship of the parties**

20.1. The Reseller's relationship with the Company during the Term shall be that of an independent contractor and does not create any joint venture or agency relationship between with the Company, or the relationship of employee and employer between the Parties. Neither Party is authorised to make decisions to bind the other Party.

20.2. The Reseller has no power to assume or create any obligation on behalf of the Company except as expressly provided in this Agreement. All contracts and other obligations undertaken by the Reseller shall be undertaken by the Reseller on its own behalf and shall not involve any financial or other responsibility on the part of the Company. Neither the Reseller or the Company shall have any right to enter into any contracts or commitments in the name of, or on behalf of the other or to bind the other in any respect whatsoever, except as expressly provided in this Agreement.

## **21. Liability**

21.1. Each of the parties must take reasonable steps to mitigate any Claim for any damages.

21.2. Neither party will not be liable to the other for any loss or damage whatsoever suffered, or that may be suffered (including but not limited to direct, economic and consequential loss) as a result of any act or omission by either party, in the performance of any duty, obligation or function under this Agreement or in any way arising out of it being party to or in connection with this Agreement.

## **22. Indemnity and Liability**

22.1. The Reseller indemnifies the Company and its officers, directors, agents and personnel from and against all losses, Claims, demands, suits, actions, proceedings, penalties, liabilities, costs and expenses (including without limitation legal fees and expenses), of whatever kind arising from:

- a. death of or injury to any person to the extent caused by the conduct of Reseller, its officers, directors, agents or personnel;

- b. damage to or loss or destruction of any real or tangible property to the extent caused by the conduct of Reseller, its officers, directors, agents or personnel; and
- c. any third-party Claims or allegations against the Company, arising out of a breach by the Reseller of its obligations under this Agreement.

22.2. The Company will not be liable to the Reseller for any loss or damage whatsoever suffered, or that may be suffered (including but not limited to direct, economic and consequential loss) as a result of any act or omission by the Company, in the performance of any duty, obligation or function under this Agreement or in any way arising out of its being party to or in connection with this Agreement.

## 23. Insurances

23.1. The Reseller shall maintain during the Term insurance coverage consistent with industry standards, and shall, upon reasonable request provide to the Company, certificates of currency as requested from time to time.

## 24. Privacy

24.1. Each party must ensure that all of its dealings with Personal Information in connection with this Agreement comply with applicable Privacy Laws.

## 25. Dispute resolution

25.1. The parties agree:

- a. to attempt in good faith to resolve any dispute between them in connection with any matter arising out of this Agreement;
- b. any agreement reached between the parties must be reduced to writing and will be binding on the parties;
- c. where a dispute cannot be resolved informally as between the parties, and a period of ten (10) Business Days has elapsed, the parties must seek to agree on the procedural rules and timetable for resolving the dispute through mediation; and
- d. such mediation is to occur by the appointment of a suitable mediator appointed by the parties, or in the absence of agreement, a mediator appointed by the New South Wales Bar, or any entity which replaces it.

25.2. The parties otherwise agree to submit to the jurisdiction of the Courts of Queensland and, if applicable, the Commonwealth of Australia, in the event a dispute arising from this Agreement cannot be resolved.

## 26. Notices

26.1. Any notice or other document to be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by registered post or any other registered postal service; or email to the address

of the party appearing on the Agreement. Any notices relating to disputes shall not be given by email or other electronic means.

26.2. Any such notice or other document shall be deemed to have been received by the addressee three (3) Business Days following the date of dispatch of the notice or other document by post or, where the notice or other document is given by email or other electronic media, simultaneously with the transmission. To prove the giving of a notice or other document, it shall be sufficient to show that it was dispatched.

## 27. General

### Further assurances

27.1. Each party must (at its own expense, unless otherwise provided in this Agreement) promptly execute and deliver all such documents, and do all such things, as any other party may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

### Construction

27.2. The headings or titles preceding the text of the clauses and sub-clauses are inserted solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement.

### Third Parties

27.3. This Agreement is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

### Waiver

27.4. No delay, neglect or forbearance by either party in enforcing against the other any provision of this Agreement will be a waiver, or in any way prejudice any right, of that party.

### Costs

27.5. Except as expressly provided in this Agreement, each party must pay its own costs in connection with the negotiation, preparation, execution and performance of this Agreement.

### Amendment

27.6. This Agreement may only be amended by a written document signed by the parties.

### Cumulative rights

27.7. Except as expressly provided for in this Agreement, the rights of a party under this Agreement are in addition to and do not exclude or limit any other rights or remedies provided by law.



## The Company's Rights

27.8. Any express statement or exercise of a right of the Company under this Agreement is without prejudice to any other right of the Company stated in this Agreement or arising at law.

## Severability

27.9. Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement is not affected.

## Entire Agreement

27.10. This Agreement contains the whole Agreement between the parties in respect of the subject matter of the Agreement. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

## Counterparts

27.11. This Agreement may be executed in any number of counterparts, each of which is an original and which together will have the same effect as if each party had signed the same document.

## Electronic exchange

27.12. Delivery of an executed counterpart of this Agreement by facsimile, or by email in PDF or other image format, will be equally effective as delivery of an original signed hard copy of that counterpart. If a party delivers an executed counterpart of this Agreement:

- a. it must also deliver an original signed hard copy of that counterpart, but failure to do so will not affect the validity, enforceability or binding effect of this agreement; and
- b. in any legal proceedings relating to this Agreement, each party waives the right to raise any defence based upon any such failure.

## Governing law and jurisdiction

27.13. This Agreement and any dispute or Claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws applicable in New South Wales, Australia and the parties agree to submit to the exclusive jurisdiction of the courts of New South Wales.

## 28. Definitions and Interpretation

### 28.1. Definitions

In this Agreement, unless the context otherwise requires:

**Additional Fee** means any additional charge or fee that is not included in the Fees but may be payable by the Reseller to the Company for the ongoing support and maintenance for the Software as contemplated in clause 17.7, and which fees can be amended by the Company from time to time in its absolute discretion.

**Affiliate** means any entity that Controls, is Controlled by, or is under common Control with such entity.

**Agreement** means this non-exclusive reseller agreement between the parties and any Schedules contained herein.

**AI Usage Fee** means the fees payable to the Company based on the usage of AI-powered features by the Reseller and its customers within the Software, calculated in accordance with the pricing model and rates as set out in Schedule 1 and payable on the terms specified in clause 6.

**Annual Business Plan** means the Company and Reseller's mutual review of the conditions of the marketplace, Reseller's efforts to achieve sales and its results. For the avoidance of doubt, such Annual Business Plan shall cover such matters as may be agreed between the parties acting reasonably.

**Authorised Representative** means any representative that is authorised by the Company and the Reseller to enter into legally binding agreements on behalf of the Company and the Reseller.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in Brisbane, Australia are open for business.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whatsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Company Data** means any and all data relating to the Software provided to the Reseller by the Company, or that becomes available to the Reseller as a consequence of its use of the Software including data embedded in the Software, images acquired, analytics, metrics and reports or any other insights derived by using the Software.

**Commencement Date** means the date of this Agreement.

**Confidential Information** means information of every kind:

- a. which includes, but is not limited to, the Software, the Company Data, Reseller Data, strategies, forecasts, projects, plans, documents and financial information of a party including, marketing information, computer records, software, trade secrets, drawings, designs, plans, concepts not reduced to product form and all other documents, records and information of a party which is of a confidential nature, including past, current or future affairs of either party and which, from its nature and content is or would reasonably be expected to be confidential; and
  - b. which is the property of that party or any Affiliate or representative of that party; and
- a. is disclosed in writing, orally or by any other means by that party or by any person on that party's behalf to the party or an employee, officer or agent of the other party; or
  - b. comes to the knowledge of the other party or an employee, officer or agent of the other party by any means,

- c. but does not include information which is or becomes generally available to the public (other than as a result of the wrongful disclosure by a party or any Affiliate of the party).

**Control** means, in relation to an entity, the power to directly or indirectly:

- a. have or acquire an ownership interest in more than 50% of the total votes which might be cast in a meeting of shareholders, board of directors or other governing body of that entity; or
- b. control the membership of the board of directors or other governing body of the entity.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Customer** means any customer of the Reseller that has placed an order with the Reseller for the purchase of Software with the Reseller.

**Fees** means the fees to be paid to the Company by the Reseller being the Reseller Activation Fee, the Licence Fee, the Per-User Agent Fee, and/or the AI Usage Fee, as selected in Part 5 of the Engagement Form and as further set out in clause 6 and Schedule 1.

**Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

- a. acts of God, flood, storm, drought, earthquake or other natural disaster;
- b. epidemic or pandemic, including any industrial action or circumstances where there is Government enforced prohibition due to COVID-19 or any other pandemic or epidemic restricts the parties from fulfilling their obligations of this Agreement ;
- c. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d. nuclear, chemical or biological contamination or sonic boom;
- e. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; and
- f. collapse of buildings, breakdown of plant or machinery, fire, explosion or accident.

**GST** has the same meaning given to that expression in the GST Law.

**GST Law** means A New Tax System (Software and Services Tax) Act 1999 (Cwlth).

**Insolvency Event** means any of the following:

- a. a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- b. a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;
- c. an application or order is made for the winding up

or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;

- d. an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) days;
- e. a controller or analogous person is appointed in respect of any property of a person;
- f. a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- g. a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- h. a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members or a moratorium involving any of them; or
- i. anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

**Intellectual Property Rights** means the registered trademarks, designs, patent and copyrights and any and all intellectual and industrial property rights throughout the world whether vested or contingent, including rights of any kind (whether registered or unregistered) in or relating to:

- a. inventions, technological innovations, discoveries and novel designs, protected formulae, formulations, trade secrets, recipes, processes, know-how, operating systems, whether or not registered or registrable as patents, innovation patents (or any similar or analogous rights) or designs, including developments or improvements of equipment, technology, business methods or techniques, illustrations, photographs;
- b. literary works, artistic works and any other works and subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the works and subject matter, subsist anywhere in the world;
- c. trade marks and service marks, including goodwill in the business concerned in the relevant goods and/or services; and
- d. trade, business, company names or internet domain names,
- e. irrespective of when or where such thing is created or developed.

**Licence** means the licence granted in clause 3.1.

**Licence Fee** means the monthly fees payable to the Company for the sale of the Software as specified in Schedule 1 and on the terms specified in clause 6.

**Marketing Materials** means any materials including any in-person seminars and webinars, brochures, instructional or educational material, advertising literature, user and training manuals, videos, online tutorials, templates, tools, procedures, guides, diagrams and such other materials provided to the Reseller by the Company from time to time to be used in marketing the Software and in providing Customers with information about the Software or otherwise to assist the Reseller to accomplish the purposes of this Agreement.

**Moral Rights** means the rights of attribution, the right against false attribution and the right of integrity of authorship as defined in the Copyright Act 1968 (Cth); Personal Information is defined in the Privacy Laws.

**Per-User Agent Fee** means the recurring fees payable to the Company for each authorised end-user or agent accessing the Software under a Reseller account, as set out in Schedule 1 and payable on the terms specified in clause 6.

**Price List** means the price list for the Software set out in Schedule 2, or as amended from time to time by the Company in its absolute discretion.

**Privacy Laws** means:

- a. the Privacy Act 1988 (Cth);
- b. any legislation (to the extent that such legislation applies to the Company or the Reseller or any other recipient of Personal Information) from time to time in force in any:
  - i. Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); or
  - ii. non-Australian jurisdiction (to the extent that the Company, the Reseller or any Personal Information is subject to the laws of that jurisdiction),
  - iii. affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of data; and
- c. any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments having the force of law, made or issued thereunder, as amended from time to time.

**Pricing** means the Company's pricing for the Software made available for sale by the Reseller, and which pricing may be amended by the Company from time to time in its absolute discretion upon giving the Reseller not less than forty-eight (48) hours' notice in writing.

**Relevant IP** means all Intellectual Property Rights in the Software, Company Data and any related documentation or information provided by the Company in connection with the Software, Company Data and this Agreement.

**Reseller Activation Fee** means the one-time fee payable to

the Company by the Reseller for the initial configuration, setup, and provisioning of the Software for the Reseller's use, as set out in Schedule 1 and payable on the terms specified in clause 6.

**Reseller Data** means any and all data that is captured, collected, or generated by the Reseller in the course of its operations under this Agreement, including but not limited to customer information, sales data, marketing insights, and any other proprietary information collected or developed by the Reseller, excluding data that is otherwise defined as Company Data.

**Software** means the Company's proprietary software for building and deploying domain-specific enterprise resource (ER) AI agents that integrate seamlessly with SAP environments, included in the Relevant IP and includes, systems and updates, mathematical codes, binary or source code, object code, Company Data, programs, routines and other functions associated with the Business of SMB, including data management, cloud-based data, analytics outputs, operating systems, software patches, updates, fixes, add-on components, and/or web services. Term has the meaning given to in Part 4 of the Engagement Form.

**Territory** means Australia together with any other countries or regions that the parties agree shall be included in the Territory from time to time by agreement in writing.

**Trade Marks** means trademarks, trade names, logos, design marks, service marks, service names, trade dress, and brand names of the Company.

All other capitalised terms shall have the meaning given to them at the front of this Agreement.

## 28.2. Interpretation

In the interpretation and application of this agreement, unless the context otherwise requires:

- a. a reference to a background note or recital, clause, schedule, annexure, attachment or exhibit is to a background note or recital, clause, schedule, annexure, attachment or exhibit of or to this Agreement.
- b. in calculating any period of time commencing from a particular day, the period commences on the following day and the following day counts as part of that period.
- c. where an expression, word or phrase is given a particular meaning, then other parts of speech based on that expression, word or phrase and other grammatical forms of that expression, word or phrase, have corresponding meanings.
- d. the rule of interpretation which sometimes requires that a document be interpreted to the disadvantage of the party which put the document forward, does not apply.
- e. a reference to this Agreement or any other agreement, arrangement or document, includes any variation, novation, supplementation or replacement of them.

- f. where an expression is defined anywhere in this Agreement, it has the same meaning throughout.
- g. a reference to any gender includes all genders.
- h. headings are for convenience of reference only and do not affect interpretation.
- i. a mention of anything after include, includes or including, does not limit what else might be included.
- j. a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and also any subordinate legislation issued under, that legislation or legislative provision.
- k. a reference to dollars or \$ is to an amount in Australian currency.
- l. the singular includes the plural and vice versa.
- m. a reference to any party to this Agreement or to any other document or arrangement, includes that party's legal personal representatives, substitutes (including, without limitation, any person taking by novation), successors and permitted assigns.
- n. a reference to a person includes a body corporate, partnership, joint venture, incorporated or unincorporated association, authority, State, government, or government or quasi-government body.
- o. the above background notes, and any schedule, annexure, attachment or exhibit, and the description of the parties, all form part of this Agreement.
- p. a reference to anything (including any amount) is a reference to the whole or any part of it (except that nothing in this provision excuses a party from performing the whole of an obligation just because they have performed part of the obligation).
- q. an agreement, representation or warranty by or in favour of two or more persons, binds or is for the benefit of all of them jointly and each of them individually.
- r. binds or is for the benefit of all of them jointly and each of them individually.