

Master Services Agreement

Digital Pacific (also referred to as "our", "us", "we") agrees to provide the Services to the Customer (also referred to as "you", "your") on the following terms.

1 Services

1.1 Services

- (a) Digital Pacific will provide the Services to the Customer in accordance with the terms of this Agreement from the Start Date to the End Date.
- (b) Digital Pacific warrants that it will use reasonable care and skill in performing the Services.
- (c) Digital Pacific warrants that it will perform the Services in compliance with all applicable laws.

2 Change Control

2.1 Customer request

- (a) Customer may request a Change, by giving a Change Request to Digital Pacific.
- (b) Digital Pacific must promptly consider any Change Request received.
- (c) Changes are effected if agreed by the parties and are taken to be an amendment of this Agreement.
- (d) Fees for additional services will be charged at Digital Pacific's then applicable time and materials rates, or otherwise as agreed between the parties.

2.2 Digital Pacific requested Changes

- (a) Digital Pacific may seek a Change by giving Customer a Digital Pacific Change Notice. Subject to clause 2.2(b), any variation will be effective at the end of the Digital Pacific Change Notice period.
- (b) If the Change will deprive Customer of more than an insubstantial benefit of the Services, Customer may give Digital Pacific notice of that fact within 10 days of the Digital Pacific Change Notice. If Digital Pacific receives such a notice from Customer and is unable to agree with Customer an acceptable alternative within 20 days of the date of the Digital Pacific Change Notice:
 - (i) Digital Pacific may notify Customer that Digital Pacific elects not to make the Change; or
 - (ii) if Digital Pacific does not issue Customer with notice that it elects not to make the Change within 25 days of the date of the Digital Pacific Change Notice, Customer may:

- (A) continue to use the Services and the Change will be effective 30 days after the date of the Digital Pacific Change Notice; or
- (B) Customer may terminate the Agreement immediately by giving Digital Pacific notice prior to the date which is 30 days from the date of the Digital Pacific Change Notice. Digital Pacific will provide Customer with a pro-rated refund of any Fees that have been paid in advance for Services that will not be provided (after deducting any monies owed by Customer to Digital Pacific), and such payment will be Digital Pacific's entire liability and Customer sole remedy in connection with such Change and/or termination.

3 Confidentiality

A party may only use the Confidential Information of the other party for the purposes of this Agreement, and must keep (and must procure that its associates keep) the existence and terms of this Agreement, any transaction contemplated by this Agreement and any other Confidential Information of the other party confidential, except where:

- (a) the information is public knowledge (but not because of a breach of this Agreement);
- (b) the party has independently created the information;
- (c) the information was available to the party on a non-confidential basis prior to disclosure by the other party;
- (d) the information becomes known to the party without restriction from a third party who, to the party's knowledge, was not prohibited from disclosing the information, or had the right to disclose it;
- (e) disclosure is required by law (but only to the minimum extent required to comply), provided however, that the party shall provide prompt notice to the other party of any potential disclosure and will use its reasonable efforts to prevent disclosure of such information; or
- (f) disclosure is made to a representative of a party who must know the information for the purposes of this Agreement and on the basis that the person keeps the information confidential at least to the same standard as required under this Agreement.

4 Intellectual Property Rights

4.1 Customer's Intellectual Property Rights

- (a) The Customer's Intellectual Property Rights in its data, information and materials remains the exclusive property of the Customer (and its licensors) and is not assigned or transferred to Digital Pacific under this Agreement.
- (b) The Customer warrants that possession, use or access to the Customer's Intellectual Property Rights by Digital Pacific, its Related Bodies Corporate and their respective contractors, in accordance with this Agreement will not infringe the Intellectual Property Rights or other rights of any third party.
- (c) If Customer provides Digital Pacific with any of its Intellectual Property Rights, it grants Digital Pacific a non-transferable, non-exclusive, royalty-free licence to use, host, cache, transmit, copy, and adapt the Intellectual Property Rights solely for the purpose of performing its obligations under this Agreement.
- (d) The Customer must indemnify Digital Pacific and its Representatives from all Claims that any information, application, or other material supplied by the Customer to Digital Pacific or transmitted, installed, or stored by the Customer in connection with the Services infringes the Intellectual Property Rights of a third party.

4.2 Digital Pacific's Pre-Existing IP

- (a) All Pre-Existing IP remains the exclusive property of Digital Pacific (and its licensors) and is not assigned or transferred to the Customer under this Agreement.
- (b) If Digital Pacific provides the Customer with any Pre-Existing IP, it grants to the Customer a non-transferable, non-exclusive, non-sublicensable, royalty-free licence to use the Pre-Existing IP solely for its own internal business purposes and to obtain the benefit of the Services.

4.3 Open Source Code

If the Services include or Digital Pacific provides any Open Source Code to Customer, that Open Source Code is subject to its open source license. If there is any inconsistency between the terms of that open source licence and this Agreement, the open source licence prevails to the extent of the inconsistency.

4.4 Created IP

Digital Pacific owns all right, title and interest in the Created IP. Digital Pacific grants to the Customer a non-transferable, non-exclusive, non-sublicensable, royalty-free licence to use the Created IP solely for its own internal business purposes and to obtain the benefit of the Services.

4.5 References

- (a) Customer agrees that Digital Pacific may reference Customer and the parties relationship under the Agreement in its marketing presentations, marketing materials, customer lists, websites, discussions with prospective resellers and customers, and industry/financial analysts.
- (b) Customer agrees that Digital Pacific may use Customer's trademarks, logos, get up or other branding solely for the purposes under paragraph (a).

5 Privacy

5.1 Privacy

- (a) Each party must comply with the requirements of any Privacy Law applicable to it.
- (b) Customer warrants that it has obtained the express informed consent from each individual about whom Digital Pacific will obtain Personal Information from Customer in connection with this Agreement, for Digital Pacific, its Representatives and their permitted successors, assignees and sublicensees to use that individual's Personal Information in any manner that may be reasonably contemplated by this Agreement and/or is stated in Digital Pacific's privacy policy (as available on Digital Pacific's website), including a transfer interstate and/or overseas as may be contemplated in its privacy policy.

6 Obligations

6.1 Customer's obligations

- (a) During the performance of the Services, the Customer will:
 - (i) co-operate with Digital Pacific as Digital Pacific reasonably requires and promptly make any decisions needed by Digital Pacific to perform the Services;
 - (ii) provide complete and accurate information and documentation in a timely manner that Digital Pacific reasonably requires;
 - (iii) make available to Digital Pacific such Facilities (without charge) as Digital Pacific reasonably requires;
 - (iv) provide Digital Pacific with access to any third-party software, operating systems and hardware, as is required for Digital Pacific to perform the Services;
 - (v) comply with all applicable laws relating to the Services;

- (vi) use the Services in accordance with the Acceptable Use Policy;
 - (vii) ensure it has backup copies of all data that it provides to Digital Pacific and has procedures in place to regularly backup its data; and
 - (viii) appoint a contact person with relevant technical expertise and knowledge of the Customer's information technology network, systems, and environment authorised to be the main point of contact with Digital Pacific in relation to the delivery of the Services.
- (b) Digital Pacific is not liable for any Loss or failure to perform its obligations under this Agreement to the extent that it was caused or contributed to by the Customer. Customer acknowledges and agrees that that a failure to perform its obligations may result in delays in the provision of the Services.

6.2 Customer premises

If Digital Pacific performs any Services at the Customer's premises, Digital Pacific must ensure that its Representatives comply with the reasonable security procedures and standards notified to it by Customer.

7 Fees

7.1 Fees

- (a) Unless otherwise stated in the Payment Terms, the Customer will pay Digital Pacific the Fees monthly in arrears for the Services provided in the previous calendar month.
- (b) Digital Pacific will provide the Customer with a tax invoice in accordance with the GST Law in relation to the Fees. Any tax invoice that has not been disputed by Customer within 3 months of the date of issue is deemed to be accurate in the absence of fraud or manifest error.
- (c) Payment of the Fees must be made by the Customer within 14 days of the date of invoice.
- (d) Digital Pacific may pro rate invoices so that they are billed to coincide with the first or last day of calendar months and/or provide a single billing date for multiple Services.

7.2 Taxes

- (a) The Fees are exclusive of GST. Customer must pay any applicable GST at the same time the Fees are due.
- (b) Where one party must pay or reimburse the other party for any loss or expense incurred by the other party, the required payment will be reduced by the

amount of any input tax credit the other party is entitled to claim in respect of that loss or expense.

- (c) All payments under this Agreement must be made without deduction for any Taxes, unless required by law. If Customer is required by law to make such a deduction, it must pay an equal amount to the relevant government agency in accordance with applicable law and provide all relevant information to Digital Pacific.

7.3 Disbursements

Customer must reimburse Digital Pacific for pre-approved reasonable costs and expenses incurred by Digital Pacific in performing the Services.

7.4 Interest on late payments

If the Customer does not pay Fees by the due date, Digital Pacific may:

- (a) charge interest on the outstanding amount at a rate of 4% per year above the Reserve Bank of Australia cash rate target, accruing daily;
- (b) require the Customer to pay, in advance, for any Services (or any part of the Services) which have not yet been performed; and
- (c) at its option not perform any further Services or part of the Services.

7.5 Payment without set-off

All Fees, Taxes or other amounts due by Customer to Digital Pacific under this Agreement must be paid to Digital Pacific without any set-off, counter-claim, deduction or withholding to the maximum extent permitted by law.

7.6 Fee increases

- (a) Digital Pacific may increase the Fees for the Services by the higher of 3% and CPI, once per calendar year, by giving 30 days' notice to the Customer.
- (b) Digital Pacific may at any time increase the Fees as a result of an increase in fees charged by Digital Pacific's contractors, suppliers, and service providers. If Digital Pacific increases the Fees in accordance with this clause, Digital Pacific must provide the Customer 30 days' notice (including by posting notice on the Website). If Digital Pacific increases the Fees by more than 15% in aggregate (as calculated in USD) in any 12 month period, the Customer may terminate this Agreement by giving Digital Pacific 30 days' written notice, such notice to be given within 15 days of receipt of notice of the proposed increased Fees.

7.7 Customer responsibilities

Customer is responsible for:

- (a) any international transaction and foreign exchange fees it incurs in paying the Fees; and
- (b) ensuring that the net amount received by Digital Pacific is equal to the amount due in the currency set out in the applicable tax invoice.

7.8 Payment method

Customer irrevocably authorises Digital Pacific to charge Fees and Taxes that are due under this Agreement using any payment method that Customer has used to pay any amount under this Agreement or for which Customer has provided payment details to Digital Pacific.

8 Liability and indemnities

8.1 Implied terms

- (a) Except as expressly provided in the Agreement and subject to any Non-excludable Condition, all conditions, warranties and terms implied by law are excluded from this Agreement.
- (b) Digital Pacific does not warrant that:
 - (i) the Services will be error free, free of faults, or uninterrupted;
 - (ii) any backup copies of Customer's data will be complete or accurate;
 - (iii) the Services or any information, software or other material distributed or accessed through the Services is free of viruses, worms, trojan horses, hackers, other persons having access to Digital Pacific's systems without Digital Pacific's consent or other harmful or malicious software; or
 - (iv) the Services will meet Customer requirements, other than as expressly set out in this Agreement.

8.2 Limitation of liability

- (a) Except for liability in relation to breach of any Non-excludable Condition, the maximum aggregate liability of Digital Pacific for claims in contract, negligence, equity, and every other basis is limited to the Fees paid by the Customer to Digital Pacific for the Services that are the subject of the claim in the 12 months immediately prior to the event which first gave rise to the claim.
- (b) Digital Pacific's total liability to the Customer for a breach of any Non-excludable Condition (other than a Non-excludable Condition that by law cannot be limited) is limited, at Digital Pacific's option to any one of resupplying, replacing or repairing, or paying the cost of resupplying, replacing or repairing the goods in respect of which the breach occurred, or supplying

again or paying the cost of supplying again, the services in respect of which the breach occurred.

8.3 Consequential loss

Except for liability in relation to breach of any Non-excludable Condition, both parties exclude all liability for loss of profits, revenue, savings, goodwill, business, opportunity, data or any other consequential or indirect loss arising out of or in connection with this Agreement.

9 Suspension and termination

9.1 Term

This Agreement will end on the date the applicable Work Order has expired or has terminated in accordance with its terms.

9.2 Termination rights

Either party may terminate this Agreement immediately by giving notice in writing to the other party if the other party:

- (a) materially breaches this Agreement and fails to rectify the breach within 14 days of written notice; or
- (b) is subject to an Insolvency Event.

9.3 Consequences of termination

On termination of this Agreement:

- (a) the Customer must pay for all Services provided up to the date of termination and all other fees payable in respect of the Service that has been terminated;
- (b) the accrued rights of each party is not limited or affected;
- (c) neither party is discharged from any liability which has been incurred by that party prior to termination of the Agreement;
- (d) Digital Pacific may enter the Customer's site at a reasonable time and take possession of its equipment, resources, Intellectual Property Rights, and other property;
- (e) Digital Pacific may delete any Customer data stored on any Digital Pacific storage media; and
- (f) on written request, a party may be required to return or certify in writing that it has destroyed, all copies and partial copies of the other party's Confidential Information or any material that includes the other party's Intellectual Property Rights.

9.4 Suspension

- (a) Without limiting Digital Pacific's rights to terminate this Agreement in accordance with clause 9.2, Digital Pacific may immediately and without notice to Customer suspend all or part of the Services if:
- (i) Digital Pacific is required to do any repair, maintenance, or servicing in relation to the Services (or an interconnected supplier is required to undertake such work), provided that Digital Pacific will use reasonable endeavours to resume the Services as soon as reasonably practicable;
 - (ii) if Customer does or allows to be done anything, which Digital Pacific reasonably believes is detrimental to the operation of Digital Pacific, other users of the Services, any networks or data centre, or any third party's business, facilities or services including the Services;
 - (iii) it is reasonably required to reduce or prevent fraud, illegality or interference within the Digital Pacific network or other third-party networks;
 - (iv) Digital Pacific is required to comply with an order, instruction or request of or by a government agency, authority, the ACMA, emergency services or other competent authority;
 - (v) if Customer materially breaches this Agreement and the breach is unremedied;
 - (vi) Digital Pacific reasonably believes that Customer is in breach, or anticipated breach, of an acceptable use policy in a material way; or
 - (vii) there is an Emergency.
- (b) Where Digital Pacific suspends the Services, it will provide Customer with written notice advising Customer of the suspension, the reason for the suspension and the steps that Customer is required to take prior to the Service being resumed (if applicable).
- (c) If Digital Pacific suspends the Services under this clause 9.4, Customer will remain liable for all Fees throughout the period of suspension and a reactivation Fee may be payable prior to resuming the Services.

10 Dispute resolution

10.1 Dispute resolution

- (a) If any bona fide dispute arises between the parties under or in relation to this Agreement, before commencing any action or court proceeding, the party raising the dispute must give the other party a

Dispute Notice. Each party must then nominate a senior representative with authority to resolve the dispute and those representatives must meet within 10 days of receipt of the date of the Dispute Notice to attempt to resolve the dispute in good faith.

- (b) If the dispute is not resolved within 20 days from the date of receipt of the Dispute Notice, either party may commence any action or court proceeding in relation to the dispute.
- (c) Nothing in this clause 10.1 prevents either party from commencing any proceeding for urgent interlocutory relief.

11 General

11.1 Force majeure

- (a) Digital Pacific is not liable under or deemed in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond its reasonable control, including natural disaster, war, unauthorised or illegal access to environments, networks, or data centres, pandemic, epidemic, strike, third party supplier failure, earthquake, flood, or riot.
- (b) If Digital Pacific is affected by such circumstances it must promptly notify the Customer in writing when such circumstances cause a delay or failure in performance and when they cease to do so.
- (c) If such circumstances continue for a continuous period of more than 3 months, either party may terminate this Agreement by written notice to the other party.

11.2 Amendments

This Agreement may only be amended in writing signed by duly authorised representatives of the parties.

11.3 Assignment

Customer may not assign or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written consent of Digital Pacific which will not be unreasonably withheld. Digital Pacific may assign, transfer, or novate any of its rights, remedies, powers, duties and obligations under this Agreement to a Related Body Corporate, without the consent of the Customer.

11.4 Updates to Master Services Agreement

This Master Services Agreement may be updated by Digital Pacific from time to time. Such updates will become binding on the Customer on the date an Agreement is renewed.

11.5 Entire agreement

This Agreement contains the whole agreement between the parties in respect of its subject matter and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

11.6 Inconsistency

If there is any inconsistency between a Work Order, Service Terms, and this Master Services Agreement, the earlier document listed prevails to the extent of the inconsistency.

11.7 Waiver

No failure or delay by a party in exercising any right, power or privilege under this Agreement will impair the same or operate as a waiver of the same nor will any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.

11.8 Indemnities continuing

Each indemnity contained in this Agreement is a continuing obligation notwithstanding any settlement of account, or the occurrence of any other thing, and it is not necessary for the indemnified party to incur expense or make payment before enforcing or making a claim under an indemnity.

11.9 Resources

The Services will be performed by such Representatives of Digital Pacific that it may choose as most appropriate to perform the Services.

11.10 Agency, partnership etc

This Agreement does not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement.

11.11 Further assurance

Each party to this Agreement must at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement.

11.12 Severance

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement.

11.13 Survival

Clauses 3, 4, 7, 8, 9, 10, and 11 survive termination of this Agreement, together with any other term which by its nature is intended to do so.

11.14 Announcements

- (a) Subject to clause 4.5 and 11.14(b), neither party shall issue or make any public announcement or disclose any information regarding this Agreement unless prior to such public announcement or disclosure it furnishes all the parties with a copy of such announcement or information and obtains the approval of such persons to its terms.
- (b) No party shall be prohibited from issuing or making any such public announcement or disclosing such information if it is necessary to do so to comply with any applicable law or the regulations of a recognised stock exchange.

11.15 Counterparts

This document may be executed in any number of counterparts. Each counterpart is an original, but the counterparts together are one and the same instrument.

11.16 Notices

- (a) Any notice that is to be given under the Agreement must be in writing and signed by the person giving the notice. Any notice must be hand delivered, sent by prepaid post, or emailed, to the recipient's address or email address as set out in the Agreement.
- (b) Any notice sent in accordance with the Agreement is deemed to have been received if:
 - (i) hand delivered, on the date of delivery;
 - (ii) if sent by pre-paid post, within 5 Business Days after the date of posting; and
 - (iii) if emailed, 4 hours after the email was sent unless the sender receives an automated message that the delivery failed.

11.17 Law and jurisdiction

This Agreement takes effect, is governed by, and shall be construed in accordance with the laws from time to time in force in New South Wales, Australia. The parties submit to the exclusive jurisdiction of the courts of New South Wales, Australia.

12 Definitions and interpretation

12.1 Definitions

In this Agreement:

- (a) **Agreement** means this Master Services Agreement, the applicable Work Order, and the applicable Service Terms.
- (b) **Acceptable Use Policy** means the acceptable use policy posted at <https://www.digitalpacific.com.au/about/agreements/acceptable-use-policy/> as updated from time to time.
- (c) **Business Day** means a day that which banks are open for business excluding Saturdays, Sundays and public holidays in New South Wales, Australia.
- (d) **Business Hours** means 8:30am – 5:30pm, Monday to Friday, on Business Days.
- (e) **Change** means a change to this Agreement, including the Services, Deliverables, Fees, or End Date.
- (f) **Change Request** means a written request for a Change including by email or through any support ticket process made available by Digital Pacific.
- (g) **Claims** means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise).
- (h) **Confidential Information** means all confidential, non-public or proprietary information exchanged between the parties before, on or after the date of this Agreement relating to the business, technology or other affairs of the provider of the information.
- (i) **CPI** means the then most recent annual change in the consumer price index, Australia (all groups) as published by the Australian Bureau of Statistics.
- (j) **Created IP** means all Intellectual Property Rights that are created, developed, or provided to Customer by Digital Pacific in relation to this Agreement, including software, tools, know-how, methodologies, equipment or processes.
- (k) **Customer** means the customer set out in a Work Order.
- (l) **Dispute Notice** means written notice of a dispute setting out the details of the dispute and the required remedy.
- (m) **Emergency** means any event or circumstance which in the reasonable opinion of Digital Pacific endangers or threatens to endanger the safety or health of any person or destroys or damages or threatens to destroy or damage any part of any environment, network, or data centre.
- (n) **End Date** means the end date set out in a Work Order.
- (o) **Facilities** means working space, computer equipment, access to the internet and the Customer's computer network, systems, and environment.
- (p) **Fees** means the fees set out in a Work Order.
- (q) **GST** means the Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (r) **GST Law** means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (s) **Insolvency Event** means a party being unable to pay its debts when they are due, the bankruptcy, liquidation or winding up, the appointment of a trustee, controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or the entering into a scheme, debt agreement, or arrangement with creditors, or analogous event.
- (t) **Intellectual Property Rights** includes trademarks, patents, copyrights, processes, know-how, registered designs or other like rights or any right to apply for registration of any such rights.
- (u) **Digital Pacific** means the Digital Pacific entity set out in the applicable Work Order.
- (v) **Digital Pacific Change Notice** means a written notice issued by Digital Pacific to Customer seeking a Change, giving at least 30 days' notice.
- (w) **Losses** mean all losses including financial losses, damages, legal costs and other expenses of any nature.
- (x) **Master Services Agreement** means this master services agreement.
- (y) **Non-excludable Condition** means an implied condition or warranty the exclusion of which from a contract would contravene any statute (including the Competition and Consumer Act 2010 (Cth)) or cause any part of this Agreement to be void.
- (z) **Open Source Code** means any software code that is licensed under a license that is generally accepted to be an open source license, including GPL.
- (aa) **Payment Terms** means the payment terms set out in a Work Order.

- (bb) **Personal Information** means any information or data that is subject to any Privacy Law.
- (cc) **Pre-Existing IP** means any material that contains any of Digital Pacific's Intellectual Property Rights or works, items, or systems created by or the property of a third party or Digital Pacific or which is modified, developed, or enhanced in the provision of the Services or created independently from the provision of the Services.
- (dd) **Privacy Law** means any law, regulation or common law which governs the use of information that is about, identifies or can be used to identify, any identifiable individual, or which is generally understood in the relevant jurisdiction to protect an individual's privacy and/or to govern the collection, use, disclosure or transmission of Personal Information or data.
- (ee) **Related Body Corporate** has the meaning given to it by the Corporations Act 2001.
- (ff) **Representatives** mean the employees, agents, contractors of a party, and those of any Related Body Corporate.
- (gg) **Services** means the services set out in a Work Order.
- (hh) **Service Terms** means the terms applicable to a specific type of Services incorporated into a Work Order.
- (ii) **Start Date** means the start date set out a Work Order.
- (jj) **Taxes** includes any GST, sales taxes, duties, withholding taxes, levies, tariffs, imposts or other charges levied by any federal, state or local government in Australia or elsewhere, that arise out of or in connection with the Services or the Agreement, and any interest, penalties or liabilities incurred on such amounts, but excludes taxes based on the net income of Digital Pacific.
- (kk) **Work Order** means the work order, order form, online order, or other document which sets out the Services the Customer agreed to buy.
- (d) no rule of construction applies to the disadvantage of a party because that party prepared this Agreement or any part of it; and
- (e) the word "including" (and related forms including "includes") shall be understood as meaning "including without limitation".

12.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) words importing the singular number include the plural number and vice versa;
- (b) references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to this Agreement;
- (c) headings are for convenience only;