

Master Services Agreement

Terms and Conditions

Between:

Uptake Digital Pty Ltd (ABN 52 635 618 361)

of 468 Hargreaves Street, Bendigo Victoria 3550

Email: accounts@uptakedigital.com.au

(Uptake Digital)

and

(Client)

1 Appointment and Term

- (a) This Agreement shall come into effect on the date on which it is signed by the parties, or the date on which Uptake Digital begins providing the Services, whichever is earlier. The Client is deemed to have consented to the terms of this Agreement by engaging Uptake Digital after the date it has received this Agreement.
- (b) In consideration of the Client paying the Fee to Uptake Digital:
 - (i) the Client appoints Uptake Digital to provide the Services; and
 - (ii) Uptake Digital agrees to provide the Services;as set out in the Specifications and otherwise in accordance with this Agreement.
- (c) This Agreement shall last for the Fixed Term.
- (d) Should Uptake Digital continue to provide the Services or part thereof after the expiration of the Fixed Term without objection from the Client, this Agreement shall continue to govern the relationship with those amendments necessary to convert this Agreement to a month to month agreement which may be terminated by either party giving one month's written notice.

2 Performance of Services

2.1 Provision of Services

- (a) Uptake Digital is responsible for establishing and maintaining information technology systems as necessary to meet the Client's requirements as expressly set out in this Agreement for the duration of this Agreement.
- (b) Uptake Digital will provide all personnel, machinery, equipment, tools, materials, technology and expertise to perform the Services.
- (c) The Client will provide at its own cost, all software and subscription services as required to perform the Services. In the event that Uptake Digital initiates any new subscription or software programs while performing the Services, these licences will be taken out in the name of and on behalf of the Client and will remain the property of the Client.
- (d) The Client will provide appropriate space, materials, equipment and access for members of Uptake Digital's personnel to attend onsite as and when requested by Uptake Digital. The Client acknowledges that Uptake Digital is solely responsible for management of its personnel and the Client will not provide instructions to any Uptake Digital onsite personnel independently of

instructions provided to Uptake Digital as part of this Agreement.

- (e) Uptake Digital must follow all directions of the Client in respect to the performance of the Services unless it reasonably considers such directions will cause it to breach any Law by which it is bound. If any direction is outside the scope of the agreed services, then it will be managed in accordance with clause 3.6.

2.2 Recommendations

- (a) The Client acknowledges and agrees that the effective and timely provision of the Services requires the Client to implement and incorporate any recommended changes Uptake Digital makes in respect of the Client Environment (**Recommendations**). This may include technology and process enhancements.
- (b) The Client authorises Uptake Digital to conduct an audit of the Client Environment at the commencement of this Agreement and at regular intervals throughout the Agreement as Uptake Digital deems necessary to enable Uptake Digital to provide Recommendations.
- (c) The Client acknowledges and agrees that if Uptake Digital is required to perform additional services to remedy an act or omission of the Client which requires Uptake Digital to restore functionality of the Services, Uptake Digital may recover from the Client the costs incurred by Uptake Digital in performing this task. These costs are in addition to the Fees as set out in this Agreement.
- (d) To the extent permitted by Law, Uptake Digital is not responsible for any Loss incurred by the Client or any third party arising from the Client's failure to implement a Recommendation.

2.3 Site and Access Requirements

- (a) The Client must at its own expense:
 - (i) prepare and provide access to the Site prior to the supply of the Services in accordance with the reasonable directions and specifications of Uptake Digital and its suppliers;
 - (ii) provide Uptake Digital with access to the Site and the Client's personnel as and when requested by Uptake Digital;
 - (iii) supply the Items to be Provided by Client;
 - (iv) ensure the safety, health and welfare of Uptake Digital's personnel on Site and comply with all Laws applicable to the Site

including occupational health and safety laws;

- (v) ensure that the Site is maintained in good working repair and condition;
 - (vi) ensure the supply of adequate electric current and electrical and mechanical fittings at the Site;
 - (vii) ensure existing building connection frames, cables and sockets are in good working order; and
 - (viii) allow Uptake Digital Personnel to access its Site, facilities and specified equipment to perform its obligations under this Agreement.
 - (ix) If the Client fails to provide Uptake Digital with access to its Site, facilities and specified equipment as and upon request, the Client acknowledges and agrees that Uptake Digital may be unable to provide the Services adequately and in such circumstances, the Client will be in default and Uptake Digital is not liable to the Client for a failure to perform the Services.
- (b) The Client warrants that it will:
 - (i) take all reasonable precautions to safeguard its business and specifically its Client Environment, the Software and Equipment and all applicable software, hardware and data to minimise any loss or disruption, including (as applicable) implementing effective audit control, firewalls, virus checking controls, data security measures and appropriate data and software back-ups; and
 - (ii) comply with Uptake Digital's or the applicable vendor's written instructions for the access and use of all software and equipment used within the Client Environment.

2.4 Third Party Requirements

- (a) Uptake Digital may require the Client to engage third parties or provide recommendations to the Client with details of third party providers that offer products or services. The Client acknowledges that Uptake Digital, in requiring or recommending the Client engage such third party providers, makes no representations and gives no warranties regarding any third party provider products and/or services including (without limitation) that they are fit for any particular purpose. The Client further acknowledges that

any agreement with such third party providers is direct between the Client and the third party provider and that Uptake Digital is not a party to any such agreement.

- (b) The Client acknowledges and agrees that its access to and use of software may be governed by third party licence terms and the Customer is solely responsible for its compliance with such third party licence terms.

2.5 Equipment

- (a) Uptake Digital retains title in all Equipment irrespective of whether it becomes attached or affixed to the Site. The Equipment will only be affixed to the Site if it is reasonably necessary for its ordinary use. If the Equipment is attached to the Site, Uptake Digital can still remove the Equipment in accordance with this Agreement.
- (b) The Client must not part with possession of the Equipment without the prior written consent of Uptake Digital.
- (c) The Client must:
 - (i) properly operate and maintain any Equipment in accordance with the reasonable requirements and instructions of Uptake Digital;
 - (ii) ensure the Equipment is maintained in substantially good repair and condition and commissioning and that it is continuously maintained in good physical repair and condition; and
 - (iii) ensure the Equipment does not damage, hinder or unduly interfere with any other third party or their equipment.
- (d) Subject only to any negligence or contravention of applicable Laws by Uptake Digital, the Client remains solely responsible and liable for its access and use of its own equipment and software (**Client Equipment**) and indemnifies Uptake Digital against all Claims, losses, liabilities, damage and injury incurred by the Client, Uptake Digital or any third party by or as a result of use of such Client Equipment.
- (e) The Client acknowledges that unless otherwise specified in writing by Uptake Digital, the Client is responsible for ensuring any Client Equipment is properly licensed, is used in accordance with applicable Laws and is covered by an appropriate warranty and for managing any claims made under that warranty.

2.6 Hardware

To the extent Uptake Digital supplies Hardware to the Client:

- (a) Risk in the Hardware passes to the Client immediately on delivery of Hardware to the Site,
- (b) Title to the Hardware passes to the Client when the Fees have been paid in full to Uptake Digital. The Client must pay the Fees in respect of the Hardware in advance and prior to delivery, unless otherwise agreed by Uptake Digital.
- (c) Until title passes to the Client, the Client must not do anything to affect ownership of the Hardware.
- (d) Uptake Digital may register a financing statement for its security interest in the Hardware and any other Equipment on the PPSR. The Client waives its rights to receive notice under section 157(1) of the PPSA. The Client must not permit or allow any financing statement in favour of any person other than Uptake Digital for any Hardware or other Equipment for which Uptake Digital retains title.
- (e) Subject to the payment of the applicable Fees, Uptake Digital agrees to ensure the Hardware is installed and operational, in accordance with the operating manuals, at the Site and to install the Hardware on or before the installation date agreed between the parties during the Client's normal business hours.
- (f) The Hardware will be deemed to have been accepted by the Client on the fifth day following installation by Uptake Digital unless the Client advises prior to that date that it does not accept it.
- (g) The Client must obtain and maintain all necessary consents, permits, licences, registrations and approvals from any government, body corporate, landlord or entity for the Hardware to be installed, used, hired, maintained, upgraded, inspected and/or accessed at the Site by Uptake Digital or its personnel.

2.7 Software

To the extent that Uptake Digital supplies Software to the Client:

- (a) The Client acknowledges and agrees that its access to and use of such Software is governed by the third party licence terms which are direct between the Client and the licensor and the Client is solely responsible for its compliance with such third party licence terms.

- (b) The Client acknowledges and agrees that Uptake Digital, in procuring Software for the Client, makes no representations and gives no warranties in respect of the Software, including that the Software is fit for any particular purpose.

2.8 Maintenance

If scheduled maintenance is to be carried out, such maintenance will be performed during times agreed with the Client (**Maintenance Window**). If the scheduled maintenance is unable to be completed within the Maintenance Window, Uptake Digital will promptly notify the Client. If emergency maintenance is required, it may be performed at alternative times to the Maintenance Window. Uptake Digital will provide the Client with as much prior notice as is practicable in the circumstances.

2.9 Offboarding

- (a) Uptake Digital will retain in a readily retrievable format and provide promptly upon request all Intellectual Property related to the performance of the Services in such means suitable to the format of the Intellectual Property and mutually agreed upon between the Parties.
- (b) Upon termination or expiration of the Agreement, Uptake Digital will provide the Client with Off-boarding Assistance at no additional charge.
- (c) If Off-boarding Assistance exceeds Uptake Digital's standard off-boarding assistance, Uptake Digital will charge the Client for such additional assistance at its prevailing hourly rate or at such other rate mutually agreed between the parties.

3 Fees

3.1 Payment of Fees

- (a) In consideration of the provision of the Services in accordance with this Agreement, the Client will pay Uptake Digital the Fees in accordance with the Payment Terms.
- (b) The parties acknowledge that the Fees are inclusive of any GST and all other duties and taxes that Uptake Digital may be liable for pursuant to Law.
- (c) All recurring monthly invoices must be paid by credit card or direct debit.
- (d) Uptake Digital reserves the right to carry out credit checks and the Client must provide all information required to facilitate this process.

3.2 Adjustment of Fees

The Fees shall be subject to CPI adjustment on an annual basis as follows:

- (a) On 1 January each year, the Fees will be adjusted in accordance with movements in the Consumer Price Index using the following formula:

$$AF = F \times \frac{CPIB}{CPIA}$$

Where:

“AF” means adjusted fees,

“F” means fee before adjustment,

“CPIB” means the Consumer Price Index number for the September quarter immediately preceding the CPI review date, and

“CPIA” means the Consumer Price Index number for the September quarter in the year prior.

- (b) If the base of the Consumer Price Index is changed between the two comparison dates an appropriate compensating adjustment must be made so that a common base is used.
- (c) If the Consumer Price Index is discontinued or suspended, then the calculation is to be made using whatever index is substituted for it. If no other index is substituted for it, the calculation is to be made using the index or calculation which the President of the Australian Property Institute, Victorian Division (acting as an expert and not as an arbitrator), determines is appropriate in the circumstances. This determination is binding.

3.3 Third Party Fees

- (a) The Client will be liable for all fees charged by third parties in respect of the Services, payment providers, or any hardware, software, licensing or material fees recommended or required by Uptake Digital in connection with the Services.
- (b) Whilst Uptake Digital will endeavour to obtain quotes of these amounts for approval by the Client, the Client acknowledges and agrees that these fees may be subject to change and are out of the control of Uptake Digital. No variation in third party fees will relieve the Client of its obligation to pay third party fees.

- (c) The Client will also be responsible for all expenses and legal costs in respect of the registration and enforcement of Uptake Digital's interests pursuant to the PPSA.

3.4 Invoicing

- (a) Uptake Digital will provide the Client with Tax Invoices in accordance with the Payment Terms.
- (b) The Client will make payments to Uptake Digital in accordance with the Payment Terms.

3.5 Failure to pay

If the Client does not make a payment in accordance with the Payment Terms, Uptake Digital is entitled to do any or all of the following, without limitation to its other rights and remedies:

- (a) suspend performance of the Services (or any part of the Services) until the account is brought up to date;
- (b) limit the Client's access to the Services including licensing;
- (c) require the Client to pay in advance, for any Services (or any part of the Services) which have not yet been performed;
- (d) charge interest at the Interest Rate; and/or
- (e) issue a default notice in accordance with clause 9(c).

3.6 Change Requests

- (a) At any time during the course of the performance of the Services, the Client may require variations to the previously agreed terms (**Change Request**).
- (b) Uptake Digital will use all commercially reasonable efforts to promptly incorporate all Change Requests.
- (c) If a Change Request will cause a variation in the cost or time required for performance, Uptake Digital will advise the Client and provide them with the particulars and an opportunity to withdraw the Change Request. If the Change Request is confirmed by the Client, the adjustment shall be made to the Fee or delivery schedule.
- (d) Where a Change Request would otherwise result in a reduction in the Fees during the Fixed Term of this Agreement, the parties acknowledge and agree that the reduction shall not be effective as this Agreement has been costed by Uptake Digital on the basis of the Fees being payable for the entire Fixed Term.

- (e) The Client acknowledges and agrees that changes to the number of End Users and changes to the Client Environment will both be deemed to be Change Requests.

4 Defects

- (a) Where the Client discovers or alleges a Defect, the Client shall notify Uptake Digital at its earliest opportunity.
- (b) Uptake Digital must promptly remedy any Defect or reimburse the fee paid for the Services at Uptake Digital's option.
- (c) Where Uptake Digital and the Client do not agree whether a Defect has occurred, Uptake Digital must appoint an Expert to investigate and report all findings in full to both Uptake Digital and the Client.
- (d) If a Defect has occurred, Uptake Digital will pay the costs of the Expert. If a Defect has not occurred, the Client will pay the costs of the Expert.
- (e) Where there remains a dispute as to whether a Defect has occurred, this shall be referred for resolution in accordance with clause 13.
- (f) Where possible, Uptake Digital must implement corrective actions to ensure Defects do not recur.

5 Disclosure and ownership of IP

- (a) The Parties acknowledge that:
 - (i) the Client (or its associated entities or persons) owns all pre-existing Intellectual Property of the Client;
 - (ii) Uptake Digital (or its associated entities or persons) owns all pre-existing Intellectual Property of Uptake Digital;
 - (iii) Uptake Digital will own title in and to any software or equipment, for example anti-virus licences, backup licences, managed firewalls or Uptake Digital servers, used by Uptake Digital in connection with the provision of the Services;
 - (iv) Uptake Digital will own any Intellectual Property created by either party, in connection with the Services or in or connected to the performance of this Agreement, that now exists or that later comes into existence.
- (b) Uptake Digital grants the Client a perpetual, worldwide, royalty free, non-exclusive, transferrable, sub-licensable licence to use all

Intellectual Property of Uptake Digital as required to obtain the full benefit of the Services.

- (c) The Client grants to Uptake Digital a limited, royalty free, non-exclusive, non-transferrable, sub-licensable licence to use the Client's Intellectual Property for the sole purposes of performing this Agreement.
- (d) Uptake Digital undertakes that it shall not sell, licence or otherwise transfer to any party other than the Client and its permitted assigns, the Confidential Information which is proprietary to the Client.
- (e) Uptake Digital acknowledges and agrees that it may not without the prior written consent of the Client (which may be withheld in its absolute discretion) use the name and likeness of the Client and any part of the Products or Services for the advertising and promotion of Uptake Digital
- (f) The Client acknowledges and agrees that Uptake Digital may use any part of the Intellectual Property for the future business activities of Uptake Digital (including as part of the deliverables for other clients of Uptake Digital) provided that it does not contain any identifying information of the Client.
- (g) The parties will not infringe each other's Intellectual Property rights.
- (h) Each party agrees to indemnify each other fully against all liabilities, costs and expenses which the other party may incur as a result of any breach of this clause 5.
- (i) The obligations accepted by the parties under this clause 5 survive termination or expiry of this Agreement.

6 Confidentiality

- (a) Each party agrees to keep the other party's Confidential Information confidential and not deal with it in any way that might prejudice its confidentiality.
- (b) The Client and Uptake Digital acknowledge that information resulting from the activities of Uptake Digital pursuant to this Agreement will also be regarded as Confidential Information. The parties agree that their obligations in clause 6(a) extend to this category of information.
- (c) The parties' obligations in relation to the Confidential Information will continue for as long as the Confidential Information is maintained on a confidential basis by the disclosing party.

- (d) At the Termination Date, or otherwise as directed by the disclosing party:
 - (i) all Confidential Information must be returned to the disclosing party, including all copies of the Confidential Information or any extracts or summaries of the Confidential Information that the receiving party makes and any software that the receiving party creates based on the Confidential Information; and
 - (ii) the receiving party will erase and destroy any copies of any software containing or comprising the Confidential Information in its possession or under its control or that may have been loaded onto a computer in its possession or under its control.
- (e) The Confidential Information does not include information which:
 - (i) is generally available in the public domain otherwise than as a result of a breach of clause 6(a) by the receiving party; or
 - (ii) was known by the receiving party prior to the disclosing party disclosing the information to the receiving party.
- (f) Each party agrees that other party may require any of its staff or agents to sign a confidentiality agreement.
- (g) Neither party may make any public statement, verbal or written regarding the other party or the subject of this Agreement without the prior written approval of the other party, which may be withheld in its absolute discretion.
- (h) Each party agrees to indemnify the other party fully against all liabilities, costs and expenses which that other party may incur as a result of any breach of this clause 6.
- (i) Each party acknowledges that damages may be an inadequate remedy for breach of this clause 6 and that the other party may obtain injunctive relief against any breach of this clause 6.
- (j) The obligations accepted by the parties under this clause 6 survive termination or expiry of this Agreement.

7 Warranties, liability and indemnities

7.1 Uptake Digital Warranties

- (a) Uptake Digital warrants that it will:
 - (i) use reasonable care and skill in performing the Services to a professional standard as accepted within the industry, sector or profession in which Uptake Digital operates

for the type of Services provided by Uptake Digital;

- (ii) ensure the Services are fit for the purpose expressly disclosed by the Client;
 - (iii) comply with the Specifications;
 - (iv) maintain adequate security and data protection measures to safeguard the Client's information and Intellectual Property from unauthorised access and use;
 - (v) keep the Client regularly informed as to matters which it should be aware and additionally as requested by the Client; and
 - (vi) at all times comply with the Law.
- (b) If Uptake Digital performs the Services (or any part of the Services) negligently or materially in breach of this Agreement, then, if requested by the Client, Uptake Digital will promptly re-perform the relevant part of the Services or refund the fees paid by the Client for those Services at Uptake Digital's election.
- (c) The Client's request referred to in paragraph 7.1(b) must be made within 3 months of the date Uptake Digital performed the Services (or that part of the Services) that Uptake Digital is to re-perform.

7.2 Client Warranties

The Client warrants that for the duration of this Agreement:

- (a) it will:
 - (i) and where applicable will ensure that any of its staff and agents co-operate with Uptake Digital and provide all information and documentation requested by Uptake Digital;
 - (ii) provide any software, hardware, services, access, information, documentation and instructions, as Uptake Digital requires to perform the Services in a timely manner;
 - (iii) do all things necessary to enable Uptake Digital to perform its obligations under this Agreement including performing any works, providing any equipment or connecting any services as required by Uptake Digital from time to time;
 - (iv) co-operate with Uptake Digital's reasonable investigations of outages, security problems and any suspected breach of this Agreement;

- (v) not use or attempt to use the Services for any activity which breaches any Law, order, regulation or industry code of practice;
 - (vi) not distribute, store or publish any content or material that is restricted, illegal or otherwise unlawful under any applicable Law, or which is likely to be offensive or obscene to a reasonable person; and/or
 - (vii) not interfere or attempt to interfere in any manner with the functionality or proper operation of the Services;
 - (viii) maintain appropriate cyber insurance cover and notify Uptake Digital promptly if the Client's cover ceases or changes at any time during the currency of this Agreement;
 - (ix) use reasonable security precautions in light of its use of the Services;
- (b) it owns the rights or has the right to use any software, hardware, systems, IP addresses, domain names and all other items in the Client Environment; and
- (c) its Client Environment is in good working order and that it has sole responsibility for the availability and integrity of the Client Environment.

7.3 Indemnity

- (a) Each party (indemnifying party) must indemnify and hold harmless the other (indemnified party) from and against all Claims, Loss, damage, liability, injury, infringement of third party intellectual property and/or third party losses by reason of or arising out of any breach of this Agreement, any warranty given in this Agreement or otherwise as a result of the negligent act or omission of the indemnifying party or any person for whom it is responsible.
- (b) An indemnifying party shall not be obliged to indemnify the indemnified party to the extent that any liability or loss is caused by the breach of this Agreement, negligence, fraud, default, dishonesty of the indemnified party or its officers or agents.
- (c) To the extent permitted by Law, Uptake Digital's liability pursuant to this Agreement shall be limited to the amount paid by the Client in the 12 months prior to the event giving rise to the liability for which the Client is indemnified.

7.4 Limitations to Liability

- (a) To the extent permitted by Law, Uptake Digital is not responsible for any loss or damage incurred by The Client or any third party arising from:
 - (i) a Cyber Breach and the Client releases Uptake Digital and its personnel from all Claims in connection with a Cyber Breach caused or contributed to by Uptake Digital or its personnel; or
 - (ii) any act or omission of a third party which is not in accordance with Uptake Digital's instructions.
- (b) Where backup solutions are included as part of the Services, Uptake Digital's only obligation arising from a Cyber Breach is to restore such the Client Data to the last available backup. The Client agrees to take reasonable steps including obtaining cyber insurance cover where appropriate to ensure the Client Data is secure and sufficiently protected from the risk of any loss, damage or interference.

7.5 Survival of obligations

The obligations accepted by Uptake Digital and the Client under this clause 7 survive termination or expiry of this Agreement.

8 Disputes

- (a) If a dispute arises, before any proceeding is commenced the party claiming that a dispute has arisen must give 14 days' notice to the other party setting out the dispute and seeking that each party appoints senior representatives with authority to settle the dispute to engage in discussion and compromise in good faith to resolve the dispute.
- (b) If after 14 days the dispute is not resolved then it must be referred to mediation by an agreed independent mediator, or failing agreement within 7 days, a mediator appointed by the Australian Disputes Centre and the costs of the mediation shall be borne by the parties equally.
- (c) Where a mediator is appointed by the Australian Disputes Centre, the mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (the Guidelines). The terms of the Guidelines are hereby incorporated into this Agreement.
- (d) Notwithstanding the preceding provisions of this clause, Uptake Digital must continue to provide

the Services, the Client must continue to pay any undisputed portion of the Fees, and both parties must continue to perform their obligations under this Agreement pending resolution of the dispute.

- (e) Time is of the essence in resolving matters expeditiously in accordance with this clause.
- (f) Nothing in this clause will prevent either party from seeking urgent interlocutory relief.

9 Termination

- (a) During the Fixed Term, neither party may terminate this Agreement for convenience.
- (b) Following completion of the Fixed Term, either Party may terminate this Agreement by providing 90 days' written notice without need for any reason.
- (c) Either Party may terminate this Agreement by written notice to the other if the Party receiving the notification:
 - (i) fails to observe any term of this Agreement; and
 - (ii) fails to rectify the default, to the reasonable satisfaction of the notifying Party, following the expiration of 30 days' of written notice of the default being given by the notifying Party to the other Party.
- (d) Either Party may terminate this Agreement upon the happening of an Insolvency Event affecting the other party.
- (e) Upon termination of this Agreement any fees payable by the Client to Uptake Digital in respect of any period prior to the Termination Date must be paid by the Client within 7 days after the Termination Date.
- (f) Should this Agreement be terminated prior to the expiration of the Fixed Term due to default of the Client, and provided Uptake Digital is not also in default, the Client shall be liable to pay to Uptake Digital by way of liquidated damages, the Fees which would have been payable for the entire Fixed Term. It is acknowledged and agreed that this Agreement has been costed by Uptake Digital on the basis of the Fees being payable for the entire Fixed Term and that therefore this is a reasonable pre-estimate of Uptake Digital's losses in the event that such a termination occurs.
- (g) Clause 9(f) is without limitation to Uptake Digital's other remedies and actions available pursuant to this Agreement, at law or equity or otherwise.

- (h) Uptake Digital agrees to provide such information and assistance to the Client as may be reasonably required by the Client to take full possession of the Intellectual Property produced in the performance of this Agreement for a period of at least 3 months after the Termination Date or such longer period required by the Client so as to minimise any potential disruption.
- (i) Termination of this Agreement does not affect any:
 - (i) transaction properly entered into prior to termination;
 - (ii) claim by either party in respect of expenses incurred in respect of the period prior to termination; or
 - (iii) other claims which either party have against the other.

10 Non-solicitation

- (a) The Client covenants that it will not for the duration of this Agreement and for 12 months after its termination (irrespective of the basis for termination) directly, indirectly or via an intermediary, contact, offer employment to or attempt to entice away from Uptake Digital any employee, independent contractor or service provider which is at the time of the offer or was in the 12 months preceding the Termination Date, an employee, independent contractor or service provider of the Client or directly engaged by the Client in any capacity.
- (b) Should the Client breach this clause, the parties acknowledge and agree that the Client shall be liable to pay Uptake Digital liquidated damages in the sum of 3 times the annual amount payable to the employee, independent contractor or service provider by Uptake Digital. It is acknowledged and agreed that this is a reasonable pre-estimate of Uptake Digital's losses in the event that such a solicitation occurs.
- (c) Clause 10(b) is without limitation to Uptake Digital's other remedies and actions available pursuant to this Agreement, at law or equity or otherwise.

11 Notices

Notices may be provided for the purposes of this Agreement by:

- (a) Personal hand delivery to the recipient; or
- (b) Postal to the address of the recipient (noting that it will be treated as having been received on the seventh business day after posting); or

- (c) Sending an email to the recipient's nominated email address (noting that it will be treated as received when it enters the recipient's information system).

The parties addresses for service are as included at the beginning of this Agreement or as otherwise notified from time to time.

12 Relationship

- (a) The parties enter into this Agreement and intend to perform it as independent contractors and nothing in this Agreement constitutes the relationship of employer and employee between the Client and Uptake Digital or between the Client and Uptake Digital's personnel.
- (b) This Agreement will 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. It is the express intention of the Parties that any such relationships are denied.
- (c) Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

13 Force majeure

- (a) Neither Party has any liability under or may be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party.
- (b) The Party affected by these circumstances must promptly notify the other Party 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.
- (d) The Client acknowledges and agrees that the Services or components of the Services may be performed via third party telecommunications and internet service providers and that outages, performance degradations or unavailability attributable to such service providers are beyond the control of Uptake Digital and may impact Uptake Digital's ability to provide the Services. Uptake Digital will however take all reasonable steps to ensure that such service providers comply with the availability requirements of this Agreement.

14 General

14.1 Amendment

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

14.2 Assignment

- (a) Subject to paragraph 18.3(b), neither Party may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other Party.
- (b) Uptake Digital may:
 - (i) subcontract its obligations or part of its obligations under this Agreement provided that it remains liable for its performance as if Uptake Digital performed the relevant part of the Agreement;
 - (ii) assign and transfer all its rights and obligations under this Agreement, provided that the assignee undertakes in writing to Uptake Digital to be bound by the Client's obligations under this Agreement.

14.3 Entire agreement

- (a) This Agreement contains the whole agreement between the Parties in respect of the subject matter of the agreement.
- (b) Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement. Any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

14.4 Counterparts

This Agreement may be executed electronically, in any number of counterparts which together will constitute one and the same instrument and the date of the Agreement will be the date on which it is executed by the last party.

14.5 Construction

The Parties have participated jointly in the negotiation of this Agreement. In the case of any ambiguity or question of interpretation, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

14.6 Waiver

- (a) No failure or delay in exercising any right, power or privilege under this Agreement will impair the same or operate as a waiver of the same nor may 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.
- (b) The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.

14.7 Further assurance

- (a) Each Party to this Agreement must at the request and expense of the other do all things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.
- (b) The Client must sign any documents and do anything necessary to allow Uptake Digital to carry out credit checks and to register financing statements on the PPSA, including without limitation providing a certified copy of their driver's licence or other evidence of their identity acceptable to Uptake Digital.

14.8 Severance

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

14.9 Law and jurisdiction

This Agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

15 Definitions and interpretation

15.1 Definitions

In this Agreement unless the context indicates otherwise, the following words have the following meanings:

Annexure means an annexure to this Agreement.

Change of Control means where a party is acquired or merges with another organisation whereby directly or indirectly, control in excess of 50% of the party, or its business or assets is acquired by a third party, or by a

change in shareholdings, the ability to control or influence the voting of the party is changed.

Claims means all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise) including without limitation relating to personal injury, death or property damage, whether direct, indirect, Consequential or otherwise.

Client Data means all data and information relating to the Client, its operations, facilitates, customers, personnel, assets and the Client Environment in whatever form that information may exist.

Client Environment means the Client's information technology software and hardware, telecommunications, internet and other relevant infrastructure that interfaces with the Services.

Confidential Information includes any information received during the term of this Agreement, which is not publicly available and relates to any staff, agents or the Clients of the disclosing party or any processes, equipment and techniques used in the course of business of the disclosing party. This includes all information, data, drawings, specifications, documentation, source or object code, designs, construction, workings, functions, features and performance notes, techniques, concepts not reduced to material form, agreements with third parties, schematics and proposals and intentions, technical data, models, articles, reports and materials; marketing information, Client lists, financial information and business plans; sales materials, including but not limited to all quality management methods, pricing methods, sales methods and the Client's materials; all the intellectual property rights (including those exclusively owned by either party, whether owned now or developed in the future); and any other information that either party claims as confidential.

Consequential means indirect loss of profits, loss of business, depletion of goodwill, loss or corruption of data or information, pure economic loss, or any other special, indirect or consequential loss, costs, damages, charges or expenses howsoever arising.

Consumer Price Index means the consumer price index published by the Australian Government Statistician under the heading All Groups, Melbourne.

Cyber Breach means any incident in respect of the Client Environment or Client Data (including in respect of personal information held or stored by Uptake Digital on behalf of the Client) that results in:

- (a) a notifiable data breach as defined in the Privacy Act 1988 (Cth);

- (b) Client Data having been misused, interfered with, corrupted or subject to unauthorised access, modification or disclosure;
- (c) unauthorised access to Client Data, storage device or computer network in which such information is stored;
- (d) Client Data or the storage device or computer system on which such information is stored being lost or misplaced; or
- (e) any part of Client Data becoming corrupted, not accessible, incorrectly modified or deleted as a result of loss, unauthorised disclosure or unauthorised access.

Defect means:

- (a) any failure to meet the Specifications, or the terms of this Agreement, or any characteristic of a Service which hinders its usability for the express purpose notified by the Client and agreed by Uptake Digital; and/or
- (b) any violation of any Law relating to the sale and/or delivery of the Services.

End User means an employee, contractor, business partner or customer of the Client who interacts or uses the Client Environment.

Equipment means any equipment, hardware or tools used in the provision of the Services which are provided by Uptake Digital to the Client.

Expert means an independent, third party with appropriate expertise and at least 5 years' relevant experience in the area in dispute.

Fees means the amount to be paid by the Client to Uptake Digital under this Agreement, as set out in the Schedule.

Fixed Term means the period described in the Schedule.

GST Law has the same meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hardware means any hardware which Uptake Digital procures on behalf of the Client.

Insolvency Event means:

- (a) the person is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any federal or state law or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement);

- (b) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in bankruptcy, insolvency or having a similar effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such a person or any part of its property or a winding up or liquidation of such person's affairs;
- (c) the making by such person of any general assignment for the benefit of creditors, or the failure by such person generally to pay its debts as such debts become due, or the person being otherwise unable to pay its debts when they fall due;
- (d) being a natural person:
 - (i) the person dies;
 - (ii) the person becomes, or is declared to be, mentally or physically incapable of managing his or her affairs;
 - (iii) the person is or states that he or she is unable to pay all of their debts as and when they become due and payable;
 - (iv) a bankruptcy notice is issued against the person or a receiver or a trustee for creditors or a trustee in bankruptcy is appointed to any of the person's property;
 - (v) the person attempts to enter into, or convenes a meeting for the purpose of entering into, an arrangement, assignment or composition with his or her creditors; or
- (e) something having a substantially similar effect to in any of the things described in paragraphs (a) to (d) happens in connection with that person under the law of any jurisdiction.

Intellectual Property includes all inventions, improvements, discoveries, design, data, concepts, components, ideas, processes, methods, techniques, know-how, information, user documentation, pricing details, trade marks, patents, copyrights, processes, know-how, source files, registered designs or other like rights or any right to apply for registration of any of them.

Interest Rate means the rate set pursuant to the *Interest Rates Act 1983* (Vic) from time to time plus two percent, compounding monthly.

Items to be Provided by Client means the items set out in the Schedule.

Law means any law, regulation, rule, order or restriction of any governmental authority to which the Services, the Products or the delivery or performance of this Agreement is subject in any jurisdiction.

Losses means direct financial losses such as damages and legal costs, but excluding Consequential Loss.

Off-boarding Assistance means the provision of all account names and passwords to enable the Client to take possession of them. All other advice, assistance, handover and liaison with the Client or third parties is charged at Uptake Digital's then current hourly rate.

Parties means Uptake Digital and the Client, and **Party** means either one of them.

Payment Terms means when and how the Fees are to be paid by the Client to Uptake Digital under this Agreement as set out in the Schedule.

PPSA means the *Personal Property Securities Act 2009* (Cth)

PPSR means the Personal Property Securities Register maintained pursuant to the PPSA.

Schedule means the schedule to this Agreement.

Services means the services to be provided by Uptake Digital as described in Annexure A.

Site means the location for the provision of the Services as specified in the Schedule.

Specifications means the details of the Services to be provided, as set out in the Schedule.

Termination Date means the date that the termination of this Agreement becomes effective.

15.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this Agreement:

- (a) the singular includes the plural and vice versa;
- (b) a reference to an agreement includes any agreement or other legally enforceable arrangement created by it (whether the agreement is in the form of an agreement, deed or otherwise);
- (c) a reference to this Agreement includes its schedules and annexures;
- (d) a reference to a document also includes any variation, replacement or novation of it;
- (e) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;

- (f) a reference to “person” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (g) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) a reference to a time of day is a reference to Australian Eastern Standard Time;
- (i) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (j) a reference to “law” includes common law, principles of equity and legislation (including regulations);
- (k) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;

- (l) a reference to “regulations” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (m) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually; and
- (n) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually.

15.3 Other Documents

This Agreement incorporates Uptake Digital’s pricing and scope documents as updated from time to time. If there is any inconsistency between this Agreement or that document, the pricing and scope document shall prevail to the extent of the inconsistency.

Executed as an Agreement.

Date:

Executed by **Uptake Digital** in accordance with s127(1) of the Corporations Act:

Director signature

Director name

Director/secretary signature

Director/secretary name

Executed by **The Client** in accordance with s127(1) of the Corporations Act:

Director signature

Director name

Director/secretary signature

Director/secretary name