

Master Services and Goods Agreement

Version 2.1

Dated: 1st May 2022

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1. About these terms and conditions

1.1. This Master Services and Goods Agreement (“MSGA”)

- a. This document is known as the ‘Master Services and Goods Agreement’ [MSGA], and states the standard terms and conditions under which VISITS agrees to supply Deliverables to the Customer, and upon which the Customer agrees to procure those Deliverables from VISITS.
- b. The MSGA is part of the Agreement with the Customer. The documents that form the Agreement are:
 - i. this MSGA;
 - ii. the Master Customer Agreement [MCA];
 - iii. applicable Specific Product Terms;
 - iv. applicable Managed Services Agreement;
 - v. applicable Statement of Works;
 - vi. Standard Terms and Conditions on the VISITS Store;
 - vii. the Dictionary.
- c. Any variation to the MSGA agreed between the parties will be specified in the MCA.
- d. In the absence of a signed MCA, in executing a Proposal or otherwise accepting Deliverables from VISITS, the Customer acknowledges that they agree to the terms and conditions contained in this MSGA.
- e. If any document that is part of the Agreement (as listed in clause 1.1.b) contains a term or condition that contradicts a term or condition in another document that is part of the Agreement (with the exception of those varied by clause 1.1.c), the term or condition for the document that is listed first in clause 1.1.b will apply.
- f. You may download the latest version of these documents (other than the Managed Services Agreement and Statement of Works) from our website at <https://visits.com.au/documents> and from our store at <https://store.visits.com.au>

1.2. Interpretation

- a. In the Agreement, terms that are defined in the Dictionary will start with a capital letter.
- b. Headings are for convenience only and do not affect interpretation.
- c. The following applies unless the context requires otherwise.
 - i. The singular includes the plural, and the converse also applies.
 - ii. A gender includes all genders.
 - iii. If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - iv. A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - v. A reference to a clause, annexure or schedule is to a clause of, or annexure or schedule to this Agreement.
 - vi. A reference to an agreement or document (including a reference to this MSGA) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this MSGA or that other agreement or document.
 - vii. A reference to a party to this MSGA or another Agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
 - viii. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
 - ix. A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
 - x. A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
 - xi. A reference to dollars and \$ is to Australian currency.
 - xii. A reference to time is to Melbourne time.

1.3 When does the MSGA start and finish?

- a. The MSGA commences on the Effective Start Date and is ongoing until terminated by either party in accordance with clause 6 of this MSGA.

1.4. Changes to the Agreement where approval is required

- a. Except for changes described in clause 1.5, no amendment or variation of this MSGA is valid or binding unless made in writing and executed by both parties.
- b. Except for changes described in clause 1.5, no amendment or variation of Specific Product Terms or a Managed Services Agreement is valid or binding during any Initial Term or Extension Term, unless made in writing and executed by both parties.
- c. Except for changes described in clause 1.5, no amendment or variation to a Statement of Works or associated pricing is valid or binding during any Initial Term or Extension Term, unless made in writing and executed by the Customer.

1.5. Changes to the Agreement where no approval is required

- a. We may change the terms and conditions of Specific Product Terms, a Managed Services Agreement, Statement of Works or associated pricing on the provision of a minimum 30 days' written notice:
 - i. At the expiry of the Initial Term or any subsequent Extension Terms; or
 - ii. where the Specific Product Terms, Statement of Works or Managed Services Agreement stipulates that such changes are permitted (eg: in the case of annual price increases or vendor price changes); or
 - iii. where the change has no detrimental impact on the Customer (eg: adding new features to a Product); or
 - iv. where the change is a correction which does not alter the meaning, obligations or Deliverables contained within the Agreement (eg: correction of spelling).
- b. We may make changes to the MSGA or other parts of the Agreement in limited circumstances where we are permitted or required to do so by law, such as changes to taxation, competition or privacy laws.

2. Products and Services – General

2.1. Purchase Orders

- a. If the Customer requires VISITS to supply Products and/or Services, the Customer will provide a purchase order to VISITS by;
 - i. electronically or physically signing a Proposal provided by VISITS; or
 - ii. issuing VISITS with a purchase order which clearly acknowledges approval of the Proposal; or
 - iii. issuing VISITS with an email which clearly acknowledges approval of the Proposal.
- b. The Customer must ensure that only Authorised Signatories of the Customer issue purchase orders in accordance with clause 2.1.a.

2.2. Minimum Volume / Spend

- a. This MSGA does not operate to oblige the Customer to purchase any Products or Services or any volume of Products or Services from VISITS.
- b. Unless otherwise indicated in a Statement of Work, a Minimum Spend applies to a Statement of Work.

2.3. Access to premises, systems and equipment

- a. The Customer will grant (or procure the grant of, as applicable) to VISITS' Personnel reasonable access to the Customer's premises and systems in order for VISITS to provide the Deliverables in a Statement of Work.

2.4. Pricing

- a. Unless otherwise specified, all prices on the VISITS Store, in a Proposal, Statement of Works or Fee Schedule are exclusive of GST.

3. Products

3.1. Products - General

- a. Warranties
 - i. Products provided by VISITS are covered only by the manufacturers' warranty. VISITS' entire responsibility with respect to warranties for Products is to pass on to Customer the benefit of any such manufacturers' warranties to the extent it is permitted and possible to do so.
 - ii. Details of the manufacturer's warranty for individual Products are available from the manufacturer's website or on request, from VISITS and are subject to change in accordance with the manufacturer's own terms and conditions.
 - iii. Software is not warranted by VISITS under this Agreement. Such Software are warranted in accordance with the relevant licence agreements governing their use.
- b. Licences
 - i. Certain Products (including those containing Software) may be subject to licence requirements or other restrictions. Where applicable, Customer agrees to be bound by any such terms and conditions and/or restrictions and shall indemnify VISITS for any liability suffered by it arising from Customer's breach of such terms, conditions and/or restrictions.
 - ii. Such terms, conditions and restrictions (including software licence agreements and cloud subscriptions) may be packaged with the relevant Product, may be separately provided to Customer for execution or may require digital acceptance by Customer. Customer agrees to use the Product in accordance with the terms and conditions of the relevant licence agreement or other applicable terms, conditions and/or restrictions.

3.2. Products - Hardware and Software

Unless otherwise stated in a Specific Product Term or Statement of Work, or agreed in writing;

- a. Delivery
 - i. Delivery Dates are estimates and are subject to availability and supply of Hardware and Software from our vendors and distributors.
 - ii. If the Customer fails or refuses to take delivery of Hardware or Software, then in addition to all other rights and remedies available to VISITS, additional fees may be charged to the Customer to recover costs (including Product and Service related costs) of redelivering, restocking, returning or cancelling the Hardware or Software as applicable.
 - iii. If Authority to Leave ('ATL') is selected at checkout or otherwise nominated by you, delivery will be deemed to have occurred after goods are delivered and left at the location specified by the Customer.
 - iv. The Customer must inspect all Products upon delivery and within seven (7) days of delivery, give VISITS written notice at orders@visits.com.au if the Product delivered is not the same Product that was ordered. Failing such notice and to the extent permitted by law, the Products will be deemed to have been Accepted by the Customer
- b. Invoicing
 - i. In the case of Hardware, an invoice will be issued to the client and dated at the earlier of:
 - (a) If the Hardware is to be drop-shipped directly to the Customer from our supplier, when VISITS receives notification that the Hardware has been shipped;
 - (b) If the Hardware is to be sent by courier or picked-up directly from our supplier, when the item leaves our supplier;
 - (c) When the Hardware is shipped to you from our warehouse;
 - (d) Where the Hardware requires configuration or installation by VISITS, when the Hardware is released from our warehouse to our technical team.
 - ii. In the case of Software an invoice will be issued to the client and dated at the earlier of:
 - (a) The software license is provided to VISITS or the Customer by the software vendor;
 - (b) The software license is provisioned in the Customer's name.
- c. Partial Deliveries
 - i. VISITS may make partial deliveries of Hardware and Software and issue separate invoices for each delivery in accordance with clauses 3.2.b
- d. Refunds, Returns and Cancellations

- i. Refunds, returns and cancellations are governed by VISITS' Refund Policy, which is available at the bottom of the VISITS Store website at <https://store.visits.com.au>
- e. VISITS Store
 - i. Additional terms and conditions apply to purchases made through the VISITS Store. Refer to the terms and conditions at the bottom of the VISITS Store website at <https://store.visits.com.au>

3.3. Products – Subscriptions and Managed Solutions [Recurring Products]

Unless otherwise stated in a Specific Product Term or Statement of Work, or agreed in writing;

- a. Commencement Date
 - i. Onboarding / implementation fees will be invoiced on execution of the Statement of Work.
 - ii. Recurring monthly fees will commence once the Recurring Product is provisioned for the Customer. The provisioning date (and therefore the date on which billing commences) may be prior to the Recurring Product being made available to the Customer, due to a number of factors such as the need to configure or test the Recurring Product prior to deployment.
- b. Minimum Term
 - i. Unless otherwise stated in a Specific Product Term or Statement of Work, Recurring Products have
 - (a) An Initial Term of twelve (12) months;
 - (b) An Extension Term of one (1) month; and
 - (c) A Minimum Notice Period of one (1) month.
 - ii. Extension Terms automatically apply at the expiry of the Initial Term or any Extension Term, unless the Customer has terminated the Statement of Work by providing the Minimum Notice Period.
- c. Pro-Rata Charges
 - i. When you procure a new Recurring Product for the first time, a Pro-rata invoice will be issued for the first month.
 - ii. In subsequent months, changes to quantities will not be Pro-rated. This means that in months where you increase the quantity, you may receive free use of the additional quantity for the remainder of the billing period, and vice-versa for reductions in the quantity; and
 - iii. If the Recurring Product is cancelled, a Pro-rata credit for the last month will not be issued.
- d. Quantities
 - i. Where a Recurring Product is based on a defined quantity (for example, per end-user), the billed quantity will automatically be adjusted by VISITS each month to reflect the current quantity in use by the Customer.
 - ii. The method of calculation of such quantities will be specified in the Specific Product Terms or Statement of Work, or otherwise agreed between the Customer and VISITS in writing.
- e. Pricing
 - i. Except where permitted in a Specific Product Term or Statement of Work, or otherwise agreed by both parties in writing, pricing is fixed during the Initial Term and any Extension Terms.
 - ii. VISITS may modify pricing by providing the customer with notice in writing a minimum 30 days prior to the expiry of the Initial Term or any Extension Term, in which case, the amended pricing takes effect at the end of the Initial Term or Extension Term.

4. Services

4.1. Services – General

- a. Standards
 - i. VISITS will provide all Services with due care, skill and diligence expected of a professional, skilled, competent and experienced consultant specialising in the particular field, and in compliance with any applicable Specifications, Laws, standards and procedures.
 - ii. VISITS will meet or exceed any Service Levels specified in a Managed Services Agreement or Statement of Work, except to the extent that the failure, delay or other breach arises from, or is contributed to, a Reasonable Excuse.
- b. Commencement
 - i. The Services contained in a Statement of Work or Managed Services Agreement will commence at an agreed date following execution of the Proposal or Managed Services Agreement by the Customer.

- c. Quantities
 - i. Where a Service is based on a defined quantity (for example, per end-user), the billed quantity will automatically be adjusted by VISITS each month to reflect the current quantity in use by the Customer.
 - ii. The method of calculation of such quantities will be specified in the Managed Services Agreement, Specific Product Terms or Statement of Work, or otherwise agreed between the Customer and VISITS in writing.
 - iii. Fixed Fee services are limited to the defined quantities being billed.
- d. Subcontracting
 - i. VISITS may engage subcontractor(s) to assist in meeting any of its obligations under this Agreement (including any Deliverables).
 - ii. In engaging subcontractor(s), VISITS is not relieved of any of its obligations or liabilities under this Agreement and remains liable to the Customer for the acts, defaults and neglect of any subcontractor or any employee or agent of the subcontractor as if they were the acts, defaults or neglect of VISITS.

4.2. Managed Services

- a. Where applicable, the Deliverables, fees and any specific additional terms and conditions for Managed Services will be outlined in a Managed Services Agreement.

4.3. Professional Services

- a. Statement of Work
 - i. VISITS will outline the Deliverables to be provided in a Statement of Work.
 - ii. Any variation to the Deliverables will be considered a Scope Change for which an additional Statement of Work will be required.
- b. Fees
 - i. Fees may be quoted as Fixed Fee, Hourly Rate or a combination of both corresponding to different phases or components of the Professional Services.
 - ii. Unless expressly stated in the Statement of Work, all Professional Services will be performed at Hourly Rates.
 - iii. Where a Deliverable is to be provided at Hourly Rates, any indicative hours listed in the Statement of Work are for budget purposes only and you will be billed for actual time performed, which may be higher or lower than the indicative hours.
 - iv. Unless otherwise stated in a Statement of Work, the Statement of Work and associated fees are fixed for 30 days from the date of proposal.
 - v. A Statement of Work may specify specific payment arrangements which apply to the professional services. If no payment arrangement is specified, VISITS reserves the right to issue invoices as any time during the Professional Services including progress invoices.
 - vi. VISITS is entitled to vary any Fixed Fee and/or have a reasonable extension of time (through the provision of an additional Statement of Work which the Customer must not unreasonably refuse to accept) where we need to perform additional Professional Services or experience higher costs or expenses due to:
 - (a) a Scope Change;
 - (b) any assumption listed in a Statement of Work turning out not to be true or accurate;
 - (c) any risk listed in a Statement of Work being realised;
 - (d) the Client not meeting obligations under the Service Agreement or Statement of Work;
 - (e) rescheduling of the Professional Services by the client without reasonable notice;
 - (f) the act of omission of any third party involved in the Professional Service;
 - (g) A Force Majeure Event.
- c. Acceptance
 - i. VISITS agrees to take reasonable endeavours to test that any solution delivered as part of a Scope of Work is working as designed.
 - ii. The Customer agrees to perform user acceptance testing in a timely manner.
 - iii. Unless specific Acceptance Tests are specified in a Statement of Work, VISITS and the Customer will perform their testing in a manner each party deems appropriate for the nature of the Deliverables.
 - iv. Any Defect identified by the Customer must be notified to VISITS in writing within five (5) Business Days from VISITS advising the Customer that a Deliverable has been completed.
 - (a) VISITS will correct any Defects and advise the Customer once complete. The Customer agrees to perform user acceptance testing and advise VISITS within two (2) Business Days if the Customer believes the Defect is still present. If the Defect is not resolved, the Customer should again advise

VISITS of the ongoing Defect in writing, and this clause 4.3.c.iv(a) will continue to apply until the Defect is resolved.

- (b) A Deliverable is deemed to have been Accepted by the Customer if (a) the Customer advises in writing that the Deliverable has been Accepted, (b) the Customer has not notified VISITS of a Defect in accordance with clause 4.3.c.iv or (c) the Customer has not notified VISITS of an ongoing Defect in accordance with clause 4.3.c.iv(a).

4.4. On Demand Services

- a. On Demand services will apply to all Services provided to the Client by VISITS that is not otherwise included within the Fixed Fee component of an Agreement (including a Statement of Work).
- b. On Demand services are charged on the basis of all time spent irrespective on the outcome.
- c. Where indicative/estimated hours are provided for On Demand services, these are for budget purposes only and you will be billed for actual time performed, which may be higher or lower than the indicative hours.
- d. Service Levels do not apply to On Demand Services.
- e. VISITS may issue an invoice at any time for On Demand services, including but not limited to (a) at the completion of the work, (b) monthly and/or (c) progress invoices if the work is ongoing.

4.5. Personnel Services

- a. Where applicable, the Deliverables, fees and any specific additional terms and conditions for Personnel Services will be outlined in a Statement of Work.

5. Fees and Payments

5.1. Credit Account

- a. VISITS may issue the Customer with a Credit Account, which will specify the Credit Limit, Credit Terms and other terms and conditions under which credit will be provided to the Customer.
- b. VISITS reserves the absolute right to refuse, withdraw or vary the Customer's Credit Account at any time in the event that the Customer is in breach of this Agreement.
- c. Should the Customer's Credit Account Balance reach the Credit Limit, the provision of further products and/or services may be temporarily halted. To continue with the provision of products and/or services, the customer will need to pay outstanding invoices (even if not yet due) and/or make a prepayment to reduce the Credit Account Balance below the Credit Limit.
- d. The Fees associated with Hardware and/or Software will be added to the Credit Account Balance on acceptance of a Proposal.

5.2. Payment

- a. Subject to clause 5.4, the Customer shall pay the Fees in respect of the supply of a Deliverable by the due date on receipt of a correct and valid Tax Invoice.

5.3. Invoices

- a. A Tax Invoice is correct and valid if:
 - i. the invoice amount is correctly calculated and due for payment in accordance with a Statement of Work; and
 - ii. the Customer is able to ascertain the items of Products and Services to which the invoice relates and the amount payable in respect of each item (in accordance with how the Fees are outlined in the Statement of Work); and
 - iii. where the invoice relates to a variable fee (such as Hourly Rate charges), the invoice is accompanied by a statement setting out in appropriate detail the calculation of the amounts shown in the invoice so that they can be determined to be in accordance with the provisions of a Statement of Work; and
 - iv. the invoice complies with GST Law.
- b. To remove any doubt, a valid invoice for Products for the purposes of clause 5.3.a.ii:
 - i. Does not need to contain any information relating to how those Products will be used or allocated after their supply (eg: does not need to indicate asset tag numbers or who the Products are being allocated to).
 - ii. Does not need to list serial numbers (these may not be known to VISITS at the time of invoice). However, where the Client requires serial numbers, VISITS will endeavour to provide these as early as possible by

either sending an updated invoice containing the serial numbers (all other details including the due-date remaining unchanged) or by supplying a list of serial numbers to the Client separately.

5.4. Objection to invoiced amount

- a. If the Customer, in receipt of an invoice, has a bona fide objection to the amount claimed in any invoice, the Customer must:
 - i. notify VISITS of the objection; and
 - ii. pay the amount of the invoice less the amount in dispute, by the due date; and
 - iii. it may refer the matter for resolution under clause 20 (Dispute Resolution)
- b. If it is subsequently agreed between the parties or determined under clause 20 (Dispute Resolution) that payment of some or all of the disputed amount should be made by the Customer, the Customer will pay the undisputed amount within two (2) business days.

5.5. Overdue Accounts and Late Fees

- a. Should the Customer fail to pay the Fees in accordance with clause 5.2, VISITS is entitled to apply interest charges at a rate equal to 2% above the current Australian Taxation Office General Interest Charge (GIC) annual rate, calculated and compounded daily, and
- b. Notwithstanding that VISITS will seek to avoid such actions, VISITS at its discretion reserves the right to:
 - i. suspend the supply of Products and/or Services (including suspending the supply of particular Product(s) or Service(s) whilst continuing to supply others) without prior notice; and/or
 - ii. refer the matter for resolution under clause 20 (Dispute Resolution); and/or
 - iii. take any such actions that VISITS believes necessary to recover the outstanding debts.

6. Termination

6.1. Expiry of the MSGA

- a. The MSGA is ongoing until:
 - (a) all Statements of Work have been terminated in accordance with clauses 6.2, 6.3, 6.4 or 6.5; and
 - (b) the parties have met all obligations on termination (including payment of Fees and return of confidential information); and
 - (c) this MSGA is terminated by either party by giving 30 days' Notice.

6.2. Termination by the Customer for breach

- a. The parties agree that the following events constitute events of default for which the Customer may terminate this Agreement in whole or in part (including any Statement of Work) at any time by giving Notice to VISITS:
 - i. VISITS commits a material breach of this Agreement that cannot be remedied; or
 - ii. VISITS commits a material breach of this Agreement that is capable of remedy and VISITS fails to remedy that breach within 60 days following receipt of notice requiring it to do so; or
 - iii. VISITS is the subject of or suffers an Insolvency Event.
- b. Failure to achieve Service Levels does not constitute a material breach and is compensated by Service Level Credits.

6.3. Termination by the Customer for Change of Control

- a. The Customer may terminate this Agreement in whole or in part (including any Statement of Work) upon giving to VISITS thirty (30) days' notice if:
 - i. all or a substantial part of the assets of VISITS are acquired by, or transferred into the control of, an entity reasonably determined by the Customer to be of poor financial standing or unfit to meet VISITS obligations set out in this Agreement.

6.4. Termination by the Customer for Convenience

- a. The Customer may terminate any Statement of Work at the expiry of the Initial Term or any subsequent Extension Term by giving VISITS the Minimum Notice Period.
- b. The Customer may terminate any Statement of Work during the Initial Term or any subsequent Extension Term by giving VISITS 60 days' Notice and payment of any Early Termination Payment.

6.5. Termination by VISITS

- a. VISITS may terminate this Agreement in whole or in part (including any Statement of Work) for breach if the Customer fails to pay an undisputed overdue invoice within 30 days of receiving written notice of failure to pay the invoice in accordance with the payment terms set out in this Agreement and VISITS' intention to terminate the Agreement for that failure to pay.

6.6. Statements of Work

- a. Unless expressly stated otherwise, termination of any specific Statement of Work will not affect the validity of any other existing Statements of Work (provided they are not also terminated), which will each continue in accordance with their respective terms until their termination or expiry.

7. Consequences of Termination

7.1. Fees

- a. Termination of this Agreement or a Statement of Work for any reason does not release the Customer from the obligation to pay any monies to VISITS which were due before or after termination of the Agreement or a Statement of Work.
- b. On expiry or termination of this Agreement or a Statement of Work for any reason:
 - i. the parties agree that within fourteen (14) days from the date of expiry or termination:
 - (a) the Customer must pay any amounts due relating to Deliverables supplied up to the date of expiry or termination, any Early Termination Payments (if applicable) and any identifiable, unavoidable future costs that are unable to be mitigated by VISITS using their best endeavours;
 - (b) VISITS must refund any amounts paid by the Customer in excess of those due in accordance with Clause 7.1.b.i(a), unless a Statement of Work expressly states that the amounts paid are non-refundable;
 - (c) The Customer must permit VISITS to enter the Customer's site on reasonable notice during a Business Day to take possession of its equipment, resources and Intellectual Property Rights.

7.2. Property

- a. On expiry or termination of this Agreement or a Statement of Work:
 - i. each party will return (or at the other party's option, destroy and certify the destruction of) any of the other party's property (including any Confidential Information or any Customer Data in the case of the Customer) in its possession or control;

7.3. VISITS to Provide Transition Services

- a. In the event of the expiry or termination of this Agreement or a Statement of Work for any reason, VISITS will
 - i. At no cost to the Customer, return to Customer any Customer equipment held by VISITS, remove VISITS' equipment from the Customer's sites and remove or delete any Customer data or software held or hosted by VISITS.
 - ii. At the Customer's request and at the Customer's cost, provide the Customer with transition services and post-termination assistance in good faith in order to enable Customer or an alternative third-party service provider to continue the provision of Deliverables fluently and without disruption and/or to ensure orderly running of the Deliverables during the transition period.

8. Services excluded from Fixed Fees

- a. The following Services are excluded from Fixed Fees under any Agreement (including a Statement of Work and a Managed Services Agreement);
 - i. All labour including, but not limited to, investigation, technical services, incident management, problem management, recovery, reconfiguration, reporting, communication and project management relating to:
 - (a) a Cyber Security Event and/or Cyber Security Incident; or
 - (b) intentional or malicious damage caused by the Customer, whether the damage is to physical equipment, software, data or configuration; or

- (c) all environmental damage including but not limited to fire, flood, water, heat, natural disaster, building damage or electrical damage.
- b. Where VISITS is requested or required to provide Services listed in clause 8.a, Hourly Rate fees will be charged to the client, irrespective of whether VISITS has advised the client of such fees in advance.

9. Personnel

9.1. Personnel

- a. VISITS must ensure that Personnel are suitably skilled, experienced and qualified for the relevant task or responsibility they are performing, and take all reasonable precautions to ensure Personnel are of good character.
- b. The Customer will allocate and provide VISITS with adequate Personnel and resources to enable VISITS to deliver the Services in a timely and efficient manner.

9.2. Non-solicitation

- a. Neither party will, without the prior written consent of the other party, directly solicit or offer employment or a contract to:
 - i. any Personnel of the other party; or
 - ii. a person who was formerly Personnel of the other party within six months after that person leaves the employment of, or ceases its contract with, that party.
- b. A party who has suffered damages due to a breach of clause 9.2.a by the other party may issue an invoice to the other party equal to 20% of the expected annual salary package (inclusive of superannuation) and such invoice is payable prior to the person commencing work for the other party.
- c. This restriction does not:
 - i. preclude recruiting an employee who has been made redundant;
 - ii. preclude recruiting an employee who has (a) had no material involvement in any aspect of the Deliverables **and** (b) independently and without prompting responds to a genuine, public job advertisement placed by that party; or
 - iii. apply from six months after termination or expiry of this Agreement.

10. GST and Taxes

10.1. Definitions

- a. Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST Law (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) shall have the same meaning in this clause.
- b. Any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST Group of which that party is a member. Any reference to input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST Group of which that party is a member.

10.2. Recovery of GST

- a. If GST is payable, or notionally payable, on a Supply made under or in connection with this Agreement, the party providing the consideration for that Supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that Supply (the GST Amount). Subject to the prior receipt of a Tax Invoice, the GST Amount is payable at the same time that the other consideration for the Supply is provided. If a Tax Invoice is not received prior to the provision of that other consideration, the GST Amount is payable within thirty (30) days from the end of the month in which the Tax Invoice is dated. This clause 10.2 does not apply to the extent that the consideration for the Supply is expressly stated to be GST inclusive or the Supply is subject to reverse charge.

10.3. Liability net of GST

- a. Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it shall be reduced by any Input Tax Credit entitlement, or notional Input Tax Credit entitlement, in relation to the relevant cost, expense or other liability.

10.4. Adjustment events

- a. If an adjustment event occurs in relation to a Supply made under or in connection with this Agreement, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties. VISITS must give the Recipient an adjustment note within seven (7) days of becoming aware of any adjustments, or otherwise as required by the Recipient.

10.5. Taxes

- a. If any Taxes are required by Law or regulation to be withheld from any payment for any goods or services provided by VISITS under this Agreement, the Customer will deduct those Taxes from the amount payable and remit them to the relevant taxing authority. the Customer will provide to VISITS details of any Taxes so remitted in accordance with the taxation law.

11. Intellectual property and moral rights

11.1. Intellectual Property Rights in Contract Material

- a. Except as otherwise expressly set out in a Statement of Work, all Intellectual Property Rights in the Contract Material will vest in VISITS upon creation.
- b. VISITS grants to the Customer a licence for the term of each Deliverable to use the Intellectual Property Rights in VISITS' Contract Materials to the extent necessary for the Customer to exercise its rights and fulfil its obligations under this Agreement and each Deliverable.

11.2. Intellectual Property Rights in Existing Material

- a. Unless otherwise expressly stated in this Agreement, no Intellectual Property Rights in the Existing Material of either party is assigned or otherwise transferred.
- b. VISITS grants to the Customer, and the Customer grants to VISITS, a licence for the term of each Deliverable to use the Intellectual Property Rights in each other's Existing Materials to the extent necessary for each party to exercise its rights and fulfil its obligations under this Agreement and each Deliverable.

12. Confidentiality and Customer Data

12.1. Confidential Information

- a. The parties acknowledge that the Confidential Information of the other is valuable to it. Each party undertakes to keep the Confidential Information of the other secret and to protect and preserve the confidential nature and secrecy of that Confidential Information.
- b. A party may only use or reproduce the Confidential Information of the other party for the purposes of performing its obligations or exercising its rights under this Agreement.

12.2. Disclosure of Confidential Information

- a. A party must:
 - i. not disclose the Confidential Information of the other party to any person except as permitted by this Agreement;
 - ii. not make, assist or permit any person (including its authorised representatives) to make any unauthorised use, disclosure or reproduction of the other party's Confidential Information; or
 - iii. provide reasonable assistance to the other party in relation to any action which that other party may take to protect the confidentiality of its Confidential Information under this Agreement.
- b. A party may disclose Confidential Information of the other party:
 - i. to its Personnel or professional advisors requiring access to the information in connection with this Agreement; or
 - ii. to any person with the prior written consent of the other party; or
 - iii. to the extent required by Law or any regulations of any Government Agency or stock exchange having authority, subject to it giving the other party reasonable notice of any proposed disclosure (if permitted by Law) to enable that other party to seek a protective order or other remedy to prevent or limit the disclosure.
- c. The disclosing party must ensure that any person to whom Confidential Information is disclosed under clauses 12.2.b.i or 12.2.b.ii is bound by an obligation of confidentiality and the terms and conditions herein in respect of that Confidential Information on terms consistent with the provisions of this clause.

12.3. The Customer Data

- a. The Customer Data is and will remain the property of the Customer at all times. Except as required by Law, VISITS must:
 - i. ensure that the Customer Data is stored and hosted in Australia;
 - ii. ensure that the Customer Data is accessed only by authorised VISITS Personnel;
 - iii. not use Customer Data for any purpose other than directly in relation to the performance of its obligations under this Agreement;
 - iv. not, and must ensure that its Personnel will not, sell, commercially exploit, let for hire, assign rights in or otherwise dispose of any Customer Data; and
 - v. not make any Customer Data available to a third party other than an approved subcontractor and then only to the extent necessary to enable the approved subcontractor to perform its part of VISITS' obligations under this Agreement.

12.4. Data security

- a. VISITS must establish and maintain safeguards against the unauthorised access, destruction, loss or alteration of, or interference with, Customer Data in the possession or control of VISITS that:
 - i. are consistent with and no less rigorous than those maintained by the Customer to secure that data; and
 - ii. comply with all applicable Laws and any procedures specified by the Customer concerning data security.
- b. VISITS must return the Customer Data to the Customer immediately on termination or expiration of this Agreement or on request by the Customer at any time. If and when directed to do so, such return of the Customer Data may require Secure Data Deletion from VISITS' Systems.
- c. VISITS must notify the Customer immediately and comply with all directions of the Customer if VISITS becomes aware of the contravention of any of the Customer data security requirement.

12.5. Regulated Information and privacy

- a. VISITS must, in respect of any Regulated Information:
 - i. comply at all times with Privacy Law, any privacy policy or code adopted by the Customer from time to time and any reasonable directions of the Customer notified to VISITS in connection with the disclosure or handling of any Regulated Information;
 - ii. only use or disclose Regulated Information for the purpose of fulfilling its obligations under this Agreement;
 - iii. not transfer or disclose any Regulated Information outside Australia, or allow any person outside Australia to access, view or receive any Regulated Information (other than VISITS staff in the GOC), without the prior written consent of the Customer;
 - iv. ensure that the Regulated Information held by it is protected against misuse, loss, unauthorised access, interference, modification or disclosure;
 - v. co-operate with any reasonable requests or directions of the Customer concerning the security, use and disclosure of Regulated Information, or the rights of individuals to access and correct such Regulated Information and in the case of any investigation or potential investigation by the Office of the Australian Information Commissioner (or an equivalent privacy regulator of another local or foreign jurisdiction), closely and urgently cooperate with all requests and directions of the Customer;
 - vi. as soon as reasonably practicable, notify the Customer if it becomes aware that a disclosure of Regulated Information covered by this Agreement is required by Law (including under the applicable Privacy Law); and
 - vii. as soon as reasonably practicable notify the Customer if it becomes aware of a breach of this clause 12.5.

12.6. Eligible Data Breaches

- a. In the event of any Eligible Data Breach that gives rise to an obligation to notify the Office of the Australian Information Commissioner or any customer of the Customer of such breach, the Customer will be the party responsible for the notification and VISITS may not, without the Customer's written consent, notify or otherwise contact any regulator or any customer of the Customer in relation to the Eligible Data Breach unless required by law to do so; and
- b. If required by Law to do so, will notify the Customer in advance of making notification to the Office of the Australian Information Commissioner and provide a reasonable opportunity to the Customer to correct any errors of fact or make the notification.

12.7. Confidentiality continues

- a. The obligation of confidentiality under this clause 12 (Confidentiality and Customer Data) is a continuing obligation and remains in force during the term of this Agreement and afterwards for a period of seven years.

13. Insurance

- a. VISITS will:
 - i. at its own expense, obtain and maintain the insurance policies with a reputable insurer with coverage limits as set out below:
 - (a) public liability and product insurance with a minimum cover of \$20 million per claim;
 - (b) insurance against any liability which may arise under Law, including any relevant workers or accident compensation legislation, in accordance with Law; and
 - (c) professional indemnity insurance covering the liability of VISITS for all professional services provided by VISITS and VISITS' Personnel under the Agreement with a minimum cover of \$5 million per claim.
 - ii. provide current evidence as may reasonably be requested by the Customer that it complies with this clause.

14. Publicity

- a. Unless otherwise advised by the Customer in writing, VISITS **may** communicate the relationship with the Customer in sales collateral and sales processes with prospective clients of VISITS or when responding to a request for proposal.
- b. VISITS must not publicly promote the relationship with the Customer on VISITS' website, in social media or through media releases without the prior written approval of the Customer.

15. Title and risk

15.1. Title in Products

- a. For the purposes of this section, the terms financing change statement, financing statement, Purchase Money Security Interest, Personal Property Securities Register, Security Interest and verification statement have the meanings given in the Personal Property Securities Act 2009 (Cth) (PPSA).
- b. Except as expressly provided herein, title in and ownership of all Products will remain with VISITS until VISITS has received payment in full for the Statement of Work containing those Products.
- c. Customer hereby acknowledges that until payment for the Products and Services and any other amounts owed to VISITS has been received in full by VISITS, VISITS' Security Interest in the Products automatically attaches to and extends to the proceeds of sale of the Products if sold by Customer.
- d. Customer hereby consents to VISITS registering on the Personal Property Securities Register ("PPSR") any and all Security Interests granted by or pursuant to this agreement. Customer agrees to do, at Customer's own expense, all things necessary, including executing all documents and providing all relevant information, and otherwise co-operating fully with VISITS to enable VISITS to register and maintain a financing statement on the Personal Property Securities Register in order to ensure that VISITS has a perfected Security Interest in relation to all Security Interests created by or pursuant to this agreement and where applicable, a Purchase Money Security Interest in respect of the goods.
- e. Customer must not grant any other Security Interests in the Products which would rank equally with, or in priority to, a Security Interest held by VISITS over those Products under this agreement except with the prior written consent of VISITS.
- f. As between debts owed to VISITS secured by Purchase Money Security Interests and other debts, VISITS will be entitled to apply monies received from Customer against other debts first at its sole discretion and despite any direction from Customer to the contrary.
- g. If VISITS exercises a right, power or remedy in connection with this agreement, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless VISITS states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.
- h. If Customer sells, disposes of or otherwise deals with Products or any part thereof before full payment has been received by VISITS, Customer must advise VISITS in writing, at such times as VISITS may request, specifying full details of the Products sold, disposed of, utilised or otherwise dealt with.

- i. Customer acknowledges that in the case of software Products, any refusal or failure to pay may result in cancellation of the licence to use the software Product.
- j. Customer agrees that the provisions of this section apply despite any arrangement under which VISITS grants credit to Customer.

15.2. Risk in Products

- a. Risk in all Products supplied under a Statement of Work will transfer to Customer immediately upon:
 - i. Delivery of the Product to the Customer or into Customer's custody or control;
 - ii. Collection by Customer's nominated carrier or agent; or
 - iii. Collection by Customer from VISITS' or VISITS' carrier or agents' depot.

15.3. Title and Risk in Services

- a. Subject to clause 11 (Intellectual property and moral rights), title to and risk in that Service passes to the Customer upon payment being made in full for the relevant Statement of Work containing that Service.

16. Liability

16.1. VISITS liability

- a. Subject to clause 16.3, to the extent permitted by Law, the aggregate liability of VISITS for Loss sustained by the Customer in connection with this Agreement (including any and all Statements of Work) (whether under statute, in contract or in tort, including for negligence, or otherwise), is limited to the Fees paid and properly due and payable by the Customer under this Agreement during the relevant Contract Year.
- b. Essential Basis: You acknowledge and agree that VISITS' limited liability under this clause forms an essential basis of this Agreement and have been relied on by both of us, and that absent this limitation of liability, the terms and conditions of this Agreement and the fees applicable to VISITS' Products and Services would be substantially different.

16.2. Customer liability

- a. To the extent permitted by Law, the aggregate liability of the Customer for Loss sustained by VISITS in connection with this Agreement (whether under statute, in contract or in tort, including for negligence, or otherwise) during any Contract Year is limited to the Fees paid and properly due and payable by the Customer under this Agreement during the relevant Contract Year.

16.3. Unlimited liabilities

- a. Clause 16.1 (VISITS liability) does not apply in respect of any liability or Losses arising under, or in connection with, any of the indemnities set out in clauses 17.1.a.i, 17.1.a.ii, 17.1.a.iii, 17.1.a.iv or 17.1.a.vi.

16.4. Consequential Loss

- a. In no event shall either party be liable to anyone for any Consequential Loss.

17. Indemnities

17.1. VISITS indemnities

- a. VISITS agrees to indemnify, hold harmless and, if required by the Customer, defend the Customer and its Related Bodies Corporates, officers, directors, employees, agents, successors and assigns (those indemnified) from and against all Losses suffered or incurred with respect to:
 - i. Third Party Claims relating to the Services or this Agreement alleging a breach of Intellectual Property Rights (clause 11);
 - ii. a breach of VISITS obligations under this Agreement relating to Confidentiality and Customer Data (clause 12);
 - iii. a breach of any Law by VISITS or its Personnel in connection with the Agreement or any Deliverables;
 - iv. fraud, theft, wilful default or misappropriation of property or funds by VISITS or its Personnel;
 - v. the negligent acts or omissions of VISITS or its Personnel;
 - vi. any death or personal injury caused or contributed to by any act or omission of VISITS or its Personnel; and

- vii. any events or occurrences for which VISITS is required to effect and maintain insurance under this Agreement.

17.2. Procedure regarding indemnified Claims

- a. the Customer:
 - i. will, as soon as reasonably practicable, notify VISITS if it wishes to make any Claim for which it is indemnified under or in connection with clause 17.1;
 - ii. to the extent permitted by Law and at the sole expense of VISITS, may, on leave being granted, permit VISITS to conduct the defence or settlement of any Claim; and
 - iii. will, if requested by VISITS but at VISITS' sole expense, provide VISITS with reasonable assistance in conducting the defence of any Claim.

17.3. Claims relating to Deliverables

- a. Without prejudice to the Customer's rights under 17.1 or at Law, if a Claim relates to an alleged or actual infringement by a Deliverable of the rights of another person VISITS must, as soon as practicable, at its sole expense, either:
 - i. ensure or procure a continuing lawful right for the Customer to use the relevant Deliverable (or component thereof); or
 - ii. replace, modify or re-perform the Deliverable with equivalent functionality and performance which complies with the relevant Specifications.

18. Force Majeure

- a. To the extent that a party's delay or inability to perform under this Agreement is due to the existence of a Force Majeure Event, the affected obligations of that party under this Agreement will be suspended until the passing of that Force Majeure Event subject to that party:
 - i. notifying the other party of the Force Majeure Event; and
 - ii. taking all reasonable steps to minimise any disruption to and resume the performance of its affected obligations.

19. Governance

19.1. Regular review

- a. Each party will nominate a Relationship Manager to manage the working arrangements between the parties under each Statement of Work.
- b. During the Term, the Relationship Manager of each party will convene and attend regular review meetings or teleconferences between the parties to address any operational matters and facilitate the implementation of any potential process, Deliverable or Service improvement under this Agreement.

20. Dispute resolution

- a. In the event of any dispute between the parties under or in connection with this Agreement (including any Statement of Work), except where a party seeks urgent interlocutory relief, the parties will:
 - i. within seven (7) days (or such other period agreed between the parties) of a party providing notice of a dispute to the other party, ensure that the Customer's Contract Manager meets with VISITS Account Manager with a view to resolving the dispute; then
 - ii. if the dispute is not resolved, within seven (7) days (or such other period agreed between the parties) of that meeting, the Customer' CEO (or other C-Level Executive) will meet with VISITS' CEO with a view to resolving the dispute; then
 - iii. if the dispute remains unresolved within twenty-eight (28) days (or such other period agreed between the parties) of provision of the notice of dispute or within seven (7) days (or such other period agreed between the parties) of the date of the last meeting under clause 20.a.ii, whichever is the earlier, then the parties will refer the dispute to mediation to be conducted by the Australian Commercial Disputes Centre in accordance with its then current mediation rules and guidelines for resolution within ten (10) days (or such other period agreed between the parties); then

- iv. if the dispute remains unresolved at the expiry of the ten (10) day mediation period referred to in clause 20.a.iii, (or such other period agreed between the parties), either party will be entitled to commence court proceedings in relation to the dispute.
- b. If a dispute is referred to mediation:
 - i. any meetings organised will be held in Melbourne or such other place as may be agreed by the parties;
 - ii. the parties agree to pay costs as directed by the mediator; and
 - iii. both parties may be represented by qualified legal practitioners.
- c. Despite the existence of a dispute, each party must continue to perform its obligations under this Agreement (including any Statement of Work), except where an invoice is disputed, the Customer may withhold payment of the disputed amount until the dispute is resolved.

21. Assignment or novation

- a. Each party may assign or novate this Agreement or any Statement of Work (in whole or in part):
 - i. to a Related Body Corporate at any time without consent; or
 - ii. to any other third party approved by the other party which approval must not be unreasonably withheld or delayed.

22. Notices

- a. Any notice, demand, consent or other communication (a Notice) given or made under this Agreement:
 - i. must be in writing and signed by a person duly authorised by the sender;
 - ii. must be delivered to the intended recipient by hand or by prepaid post (if posted to an address in another country, by registered airmail) or email to the email address below or address last notified by the intended recipient to the sender:
 - (a) to the Customer: The Contract Owner nominated in the Master Customer Agreement
 - (b) to VISITS: adam.feldman@visits.com.au
and cc to: accounts@visits.com.au
 - iii. will be taken to be duly given or made:
 - (a) in the case of delivery in person, when delivered;
 - (b) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (c) in the case of delivery by email, on the first to occur of:
 - receipt by the sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the email address stated above;
 - the time that the Notice enters an information system which is under the control of the recipient; and
 - the time that the Notice is first opened or read by the recipient, but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

23. Relationship of parties

23.1. Independent contractor

- a. Each party is acting in the capacity of independent contractor. This Agreement or any Statement of Work does not constitute any partnership, trust, agency, joint venture or employment relationship between the parties.

23.2. No obligation

- a. Neither party has the authority to act, contract or to incur any obligation or responsibility on behalf of the other party except as provided in this Agreement or by virtue of a properly executed power of attorney.

24. Other Terms and Conditions

24.1. Entire agreement

- a. This Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

24.2. Surviving provisions

- a. The covenants, conditions and provisions of this Agreement (including any Statement of Work) which are intended or capable of having effect after the expiration or termination of this Agreement or any Statement of Work (including provisions relating to warranties, indemnities, liability, licences and Intellectual Property) will remain in full force and effect following any expiration or termination of this Agreement or any Statement of Work.

24.3. No waiver

- a. No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

24.4. Severability of provisions

- a. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

24.5. Further assurances

- a. Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

24.6. Remedies cumulative

- a. The rights, powers and remedies of a party under this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

24.7. Counterparts

- a. This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

24.8. Governing law and jurisdiction

- a. This Agreement is governed by the law of Victoria. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.