

# Master Customer Agreement

Version 2.0

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## 1. About these terms and conditions

### 1.1. This Master Customer Agreement (“MCA”)

- a. This document is known as the ‘Master Customer Agreement’ [MCA].
- b. The MCA is the parent agreement which represents the master 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.
- c. Any variation to this MCA agreed between the parties will be detailed in the “Variations to the MCA” section in this document.
- 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 MCA.
- e. This MCA does not oblige the customer to purchase any Products or Services from VISITS.

### 1.2. Interpretation

- a. Defined terms 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. References to a term include its inflected forms which shall have the same meaning in this Agreement.
  - iii. A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
  - iv. A reference to a party to this MCA includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
  - v. 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.
  - vi. A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
  - vii. 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.
  - viii. A reference to dollars and \$ is to Australian currency.
  - ix. A reference to time is to Melbourne time.

## 2. Definitions

**Acceptance / Accepted** means, in relation to a Deliverable, the acceptance of that Deliverable by the Customer.

**Acceptance Criteria** means the criteria against which the Deliverables will be tested pursuant to Acceptance Tests, as described in any Statement of Work, and which may include criteria related to the confirmation that the Deliverables do not contain any Defects.

**Acceptance Tests** means the tests agreed between the Customer and VISITS described in a Statement of Work and such other tests reasonably considered by the Customer to be necessary to determine whether the Deliverables comply or perform in accordance with the applicable Specifications and includes the procedure for conducting the tests and the Acceptance Criteria.

**Actions** includes all actions, suits, causes of action, arbitrations, debts, dues, costs, expenses, claims, demands, proceedings, complaints, objections, obligations, liabilities, interest, verdicts, orders and judgments either at law or in equity or arising under a statute and whether or not the matter giving rise to those claims are known to the parties as at the date of this deed.

**Authorised Signatory** means a representative of a party with authority to enter into and execute an Agreement or a Statement of Work for and on behalf of that party.

**Change of Control** means a change in the Control of an entity from that which existed at the signing of the MCA.

**Claim** means, in relation to a party, a demand, claim, action or proceeding made or brought by or against that party, however arising and whether present, unascertained, future or contingent.

**Confidential Information** means all information of a confidential nature, in any form whether tangible or not and whether visible or not, disclosed or communicated by a party to the other, or learnt or accessed by, or to which the other party is exposed as a result of entering into an Agreement and includes, without limitation, any information (including Regulated Information) and material concerning the contractual or commercial dealings, financial details, products or services (current or proposed), pricing, designs customers, employees, internal policy, the Intellectual Property Rights of a party or dealings under an Agreement, but does not include information or material which:

- a) is already in the public domain, or enters the public domain other than due to a breach of an Agreement;
- b) can be proven to be already known by the receiving party other than through any disclosure under an Agreement;
- c) is disclosed by the receiving party with the disclosing party's prior written consent; or
- d) obtained from a source other than the disclosing party or any of its Related Bodies Corporate or authorised representatives, where that source is entitled to disclose it without an obligation of confidence.

**Consequential Loss** means an indirect, incidental or consequential Loss (not being a Loss which arises naturally as a result of a breach of an Agreement or other event giving rise to the relevant Claim) and includes a loss of opportunity or business and a loss of reputation.

**Contract Material** means any material (whether belonging to VISITS or a third party) which is developed by or on behalf of VISITS or VISITS' Personnel in the course of or in connection with the supply of the Deliverables in any form whatsoever (including electronic form) and includes without limitation all Developed Software, Deliverables, inventions, discoveries, improvements, processes, databases, models, drawings, plans, artwork, designs, logos, reports, advices, proposals and records but excludes any Intellectual Property Rights owned by VISITS in VISITS' Existing Material.

**Contract Term** means a minimum term for a Product and/or Service, which commences on the Term Start Date.

**Control** of an entity has the meaning given to that term in Section 50AA of the Corporations Act.

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

**Credit Account** means the provision of a **Credit Limit** (maximum credit available to the Customer) and **Credit Terms** (the number of calendar days following issue of the invoice in which invoices must be paid) to the Customer.

**Credit Account Balance** means the (GST inclusive) sum of all invoices for which credit has been provided plus the value of purchased (but not yet delivered or invoiced) Hardware or Software.

**Customer / Client / you** means:

- a) the entity listed in the Master Customer Agreement [MCA] or in any Agreement; or
- b) an entity or person who acquires Product or Services from VISITS.

**Customer Data** means all data and information relating to the Customer and its Related Bodies Corporate (including their operations, facilities, members, customers, clients, personnel, assets and programs) in whatever form that information may exist and whether entered into, stored in, generated by or processed as part of a Service and any other data relating to the Service, including the Customer's and its Related Bodies Corporate's Confidential Information.

**Cyber Security Event** means an occurrence of a system, service or network state indicating a possible breach of security policy, failure of safeguards or a previously unknown situation that be relevant to security.

**Cyber Security Incident** means an unwanted or unexpected Cyber Security Event, or a series of such events, that may compromise business operations or Customer Data.

**Defect** means any defect in or failure of a Deliverable including without limitation a failure of all or part of a Deliverable to comply with, or otherwise satisfy, any requirements stipulated in the Specifications.

**Deliverable** means the Products and Services supplied by VISITS to the Customer as part of an Agreement, including any Statement of Work.

**Early Termination Fee** means a fee payable by the Customer if the Customer terminates a Statement of Work prior to the expiry of a Contract term. Such fees will be outlined in the Statement of Work for the Product or Service.

**Eligible Data Breach** has the meaning set out in section 26WE of the Privacy Act 1988 (Cth).

**Existing Material** means any material of a party (whether belonging to that person or another person) which is supplied by that party to the other party in the course of providing a Deliverable and which is either:

- a) existing prior to the commencement of the Deliverable; or
- b) subsequently brought into existence other than in the course of performing that Deliverable; but excludes Licensed Software.

**Fees** means the fees payable by the Customer in accordance with the supply or Deliverables.

**Fee Schedule** means the current schedule of Hourly Rate fees, available at <https://visits.com.au/documents>

**Fixed Fee** means a fixed fee to be charged to the Customer for the provision of the specified Deliverables. Fixed Fees may be subject to conditions, which if they apply, will be detailed in the Statement of Work. Additional fees may apply where conditions are not satisfied.

**Force Majeure Event** includes the following events beyond the reasonable control of a party:

- a) earthquake, flood, fire, other inclement weather or act of nature;
- b) war or terrorism;
- c) national emergency;
- d) epidemic or pandemic;
- e) act or inaction of government or regulatory agency;
- f) a malfunction or failure of telecommunications or cloud infrastructure operated by parties other than VISITS;
- g) industrial action outside that party's own workforce; and
- h) insolvency of a material subcontractor of that party;

which directly affects that party's ability to perform its obligations arising under this Agreement and cannot be mitigated by undertaking reasonable commercial endeavours.

**GOC** means VISITS' Global Operations Centre, which includes VISITS dedicated personnel operating in VISITS controlled and operated locations outside of Australia.

**Goods** means any physical product including Hardware.

**Government Agency** means any government, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**GST** has the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

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

**Hardware** means hardware which the customer purchases outright from VISITS.

**Hourly Rate** means Services provided and charged to the Customer on a time and materials (labour) basis in accordance with the rates specified in a Statement of Work, or if no such fees are specified, as listed in the current Fee Schedule.

**Input Tax Credit** has the meaning given by the GST Law.

**Intellectual Property Rights** means all industrial and intellectual property rights of any kind including but not limited to copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semiconductor or circuit layout rights, trade, business, domain or company names, moral rights, rights in Confidential Information, know how or other proprietary rights (whether or not any of these are registered and including any application, or right to apply, for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to a party:

- a) it stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- b) it is insolvent within the meaning of section 95A of the Corporations Act;
- c) it must be presumed by a court to be insolvent by reason of an event set out in section 459C(2) of the Corporations Act;
- d) it fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
- e) it has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- f) it has a controller (within the meaning of section 9 of the Corporations Act) or similar officer appointed to all or any of its property; or
- g) it has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

**Law** means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time, whether made by a State, Territory, Commonwealth, or a local government, and includes common law and the principles of equity as applicable from time to time, and any applicable legally binding industry codes of conduct.

**Loss** means all losses, liabilities, fines, penalties, damages and claims, and all related costs and expenses (including any and all legal fees on a solicitor and client basis, and costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) but excludes any Consequential Loss.

**Managed Services** and **Managed Service Add-Ons** means the ongoing delivery of technology related Services as described in a Managed Services Agreement.

**Managed Services Agreement** means a Statement of Work specifically relating to the Managed Services VISITS agrees to provide to the Customer.

**Managed Solution** means a solution including Subscription(s) together with Service(s), supplied to the Customer on a recurring basis with monthly billing.

**Minimum Notice Period** means the minimum amount of Notice, prior to the expiry of a Contract Term, which must be given for a Statement of Work to be terminated for convenience at the end of the Contract Term.

**Notice** has the meaning given to that term in clause 18 of this MCA (Notices).

**Onboarding** means the initial Services provided prior to (or in parallel with) the commencement of a Recurring Product and/or Managed Service necessary to prepare the Product or Service for ongoing management.

**Onboarding Fee** means the fee payable for Onboarding services.

**Onboarding Recovery Fee** means a deferred Onboarding Fee which may be payable if a Statement of Work is terminated for convenience in the initial or subsequent Contract Terms, as specified in the Statement of Work for a Product or Service.

**On-Demand** means Services that are not included within the Deliverables of a Scope of Works. On-Demand Services may be provided for a separate Fixed Fee or at Hourly Rates.

**Parties** means VISITS and the Customer.

**Personal Information** has the same meaning as defined in the Privacy Act 1988 (Cth) as amended from time to time.

**Personnel** means, in relation to a party, that party's employees, officers and agents and in relation to VISITS also includes its personnel in the GOC, contractors, consultants, licensees and invitees (including their employees, officers and agents).

**Privacy Act** means the Privacy Act 1988 (Cth) and includes any guidelines issued by the Privacy Commissioner.

**Privacy Law** means any Law that applies to either of the Customer or VISITS, Australian or otherwise, and as amended from time to time, which affect privacy or any personal information (including its collection, storage, use or processing) including without limitation:

- a) the Privacy Act and corresponding Australian State privacy Laws; and
- b) any codes of conduct, directives, principles or orders made under the legislation referred to in (a) above.

**Products** means Hardware, Software, Subscriptions or Managed Solutions provided to the Customer.

**Professional Services** means Services provided to the Customer, as part of a stand-alone project, as outlined in a Statement of Work.

**Proposal** means an offer from VISITS for the supply of Products and/or Services to the Customer.

**Quotation** has the same meaning as Proposal.

**Reasonable Excuse** means any delay, outage, failure or degradation of performance attributable to:

- a) the Customer, including:
  - a. where the Customer requests that services be provided at a future time or date, despite VISITS being able to perform the work earlier,
  - b. the Customer being unavailable or untimely in responding to any reasonable request by VISITS to provide information needed to provide the Products or Services,
  - c. the actions, omissions, or negligent acts of the Customer's Personnel,
  - d. the Customer's breach of any of its obligations under the Agreement, or
  - e. failure or issues caused by the Customer's own equipment or actions.
- b) Hardware, Software or Services not supplied by VISITS or supported in a VISITS Managed Services Agreement,
- c) Planned works and outages including those relating to maintenance and changes, or

- d) Outages or degradations of any third-party software or system used by VISITS to provide the Products or Services.

**Recurring Product** means Subscription and/or Managed Solution.

**Regulated Information** means all Personal Information which VISITS receives or has access to under, or for the purpose of, or in the course of, carrying out its obligations under this Agreement.

**Related Body Corporate** has the meaning given to that term in the Corporations Act.

**Remaining Contract Value** means the product (multiple) of:

- a) The remaining Contract Term, being the number of months (in whole or part) between the date on which a Statement of Work is cancelled, and the date on which the Contract Term is due to end, and
- b) The monthly fee, which is taken to be the monthly fee payable (excluding any discounts or credits) by the client in the period immediately prior to termination of the Statement of Work.

**Scope Change** means (a) a change in the character or quality of a Deliverable required in any Statement of Work, or (b) an increase or decrease in the volume of a Deliverable required in any Statement of Work; or (c) a change to any other term of a Statement of Work.

**Secure Data Deletion** means steps to be taken by VISITS as reasonably needed to ensure accurate deletion of any Customer Data from VISITS' Systems.

**Security** means the protection of the Customer Data from unauthorised access, use, disclosure, modification, Disposal, destruction, corruption or loss in whole or in part.

**Security Requirements** for a project, are the security requirements as set out in a Statement of Work or the Specifications.

**Services** means the functions, responsibilities and obligations described in any Agreement (including a Statement of Work) or provided to the Customer On-Demand, including but not limited to technical services, consulting, project management and training.

**Software** means software which the customer purchases outright from VISITS.

**Special Conditions** means the special conditions set out in the MCA that will prevail over the specific term in the MSGA.

**Specifications** means the functional and technical specifications for the applicable Deliverable which is set out in a Statement of Work, or in the absence of a Statement of Work, in relevant correspondence between the parties.

**Statement of Work [SOW]** means a Proposal which has been executed or approved by the Customer, thereby forming an agreement for the supply of Products and/or Services by VISITS to the Customer. The Statement of Work will specify the Deliverables to be supplied to the Customer as well as any specific terms and conditions which may apply.

**Subscription** means software licensing, cloud hosting, internet services or any other technology which VISITS supplies to the Customer on a monthly subscription basis. Subscriptions do not include Services.

**Supply** has the meaning given by the GST Law.

**System** means any computer system, network or other technical infrastructure owned or operated by a party.

**Taxable Supply** has the meaning given by the GST Law.

**Taxes** means all taxes, charges, duties, levies, fees and other government imposts levied, assessed or collected, including any related fine or penalty (excluding GST).

**Tax Invoice** has the meaning given by the GST Law.

**Term Start Date** means the date on which monthly billing commenced for a Recurring Product or Managed Service. (For example, if a Customer executes a Statement of Work on 15<sup>th</sup> June, and the first invoice for recurring products indicates that fees relate to the period 1<sup>st</sup> July – 31<sup>st</sup> July, the Term State Date is taken to be 1<sup>st</sup> July).

**Third Party** means any person who is not a VISITS Related Body Corporate or a Customer Related Body Corporate.

**Use** includes install, run, copy, distribute, support, maintain and anything reasonably incidental to such activities.

**VISITS / we / us / our** means VISITS Pty Ltd, ABN 15 089 406 477

**VISITS Store / Store** means the website located at <http://store.visits.com.au> through which you can purchase Products and Services.

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### 3. Products and Services

**3.1** VISITS provides a broad range of Products and Services, including but not limited to:

- a. Managed Services and Managed Service Add-Ons
- b. Professional Services
- c. On-Demand Services
- d. Subscriptions
- e. Managed Solutions
- f. Hardware and Software

#### 3.2. Terms and Conditions for Products and Services

- a. In addition to this MCA which applies to all Products and Services, individual Products and Services may have additional terms and conditions:
  - i. Managed Services are subject to a **Managed Services Agreement**.
  - ii. Hardware and Software purchases, and the VISITS Store are subject to the **Agreement for Hardware and Software Sales** available at: <https://visits.com.au/documents>
  - iii. Subscription purchases are subject to the **Agreement for Subscriptions** available at: <https://visits.com.au/documents>
  - iv. Other Products and Services may have terms and conditions listed in their Statement of Work [SOW].
- b. If any Agreement or SOW in Clause 3.2.a contains a term or condition that contradicts a term or condition in this MCA, the term or condition in this MCA takes precedence.

#### 3.3. Purchase Orders

- a. To approve the purchase of a Product or Service from VISITS, we require that you provide a purchase order signed by an Authorised Signatory of the Customer. The purchase order can be in the form of:
  - i. An electronic or physical signature on 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.

#### 3.4. Service Standards

- a. VISITS will provide Services with due care, skill and diligence expected of a professional, skilled, competent and experienced consultant specialising in the field, and in compliance with any applicable Specifications, Laws, standards and procedures.

### **3.5. Subcontracting**

- a. VISITS may engage subcontractor(s) to assist in the provision of Deliverables.
- b. In engaging subcontractor(s), VISITS is not relieved of any of its obligations or liabilities 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.
- c. VISITS will provide the Customer with details of subcontractor(s) on request.

### **3.6. Hourly Rate Fees**

- a. Unless expressly stated in the SOW, all Professional and On-Demand Services are provided at Hourly Rates.
- b. Where a Deliverable is to be provided at Hourly Rates, any indicative hours listed in the SOW are for budget purposes only and you will be billed for actual time performed, which may be higher or lower than the indicative hours, provided VISITS uses reasonable endeavours to inform you in advance if the time is expected to materially exceed the indicative hours (or price) previously communicated to you.

### **3.7. Professional Services**

- a. For Professional Services, VISITS will outline the Deliverables to be provided in a SOW.
- b. Any variation to the Deliverables will be considered a Scope Change for which an additional SOW will be required.
- c. A SOW may specify specific payment arrangements. If no payment arrangement is specified, VISITS reserves the right to issue invoices as any time.
- d. VISITS is entitled to vary any Fixed Fee and/or have a reasonable extension of time (through the provision of an additional SOW 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:
  - i. a Scope Change;
  - ii. an assumption listed in a SOW turning out not to be true or accurate, or a risk listed in a SOW being realised;
  - iii. the Client not meeting obligations under the SOW;
  - iv. rescheduling of the Professional Services by the client without reasonable notice; or
  - v. the act of omission of any third party other than any Personnel of VISITS.
- e. Acceptance
  - i. VISITS agrees to take reasonable endeavours to test that any solution delivered as part of a SOW 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 SOW, VISITS and the Customer will perform their testing in a manner each party deems appropriate for the nature of the Deliverables.
  - iv. Unless a SOW provides alternative processes or timeframes:
    - (a) Any Defect identified by the Customer must be notified to VISITS in writing within ten (10) Business Days from VISITS advising the Customer that a Deliverable has been completed.
    - (b) VISITS will correct any Defects and advise the Customer once complete. The Customer agrees to perform user acceptance testing and advise VISITS within five (5) 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 3.7.e.iv(b) will continue to apply until the Defect is resolved.
    - (c) 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 3.7.e.iv or (c) the Customer has not notified VISITS of an ongoing Defect in accordance with clause 3.7.e.iv(b).

## **4. Fees and Payments**

### **4.1. Pricing**

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

### **4.2. Credit Account**

- a. VISITS may issue the Customer with a Credit Account, which will specify the Credit Limit and Credit Terms.
- b. The issuing of a Credit Account requires that the customer complete an "Application for Credit Account" and agree to the Credit Account Agreement.
- c. VISITS reserves the absolute right to refuse, withdraw or vary the Customer's Credit Account at any time if the Customer is in breach of the Credit Account or this MCA.

### **4.3. Payment**

- a. Subject to clause 4.5, 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.

### **4.4. 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 SOW; and
  - ii. the Customer can ascertain the 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 SOW; and
  - iv. the invoice complies with GST Law.
- b. A Tax Invoice does not need to contain serial numbers (which may not be known at the time of invoice) or other identifying information, although this information can be provided separately or at a later date if required.

### **4.5. 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 at least 7 days prior to the due date; 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 16 (Dispute Resolution)
- b. If it is subsequently agreed between the parties or determined under clause 16 (Dispute Resolution) that payment of some or all of the disputed amount should be made by the Customer, the Customer will pay the agreed amount within two (2) business days.

### **4.6. Overdue Accounts and Late Fees**

- a. Notwithstanding that VISITS will seek to avoid such actions, should the Customer fail to pay the Fees in accordance with clause 4.3, VISITS is entitled at its discretion to:
  - i. apply interest charges at a rate equal to 1% per calendar month (pro-rata) on any overdue amount; and/or
  - ii. suspend or restrict the supply of Products and/or Services (including suspending or restricting the supply of individual Product(s) or Service(s) whilst continuing to supply others); and/or
  - iii. refer the matter for resolution under clause 16 (Dispute Resolution); and/or
  - iv. take any such actions that VISITS believes necessary to recover the outstanding debts.
- b. If VISITS has not previously provided Notice of its intention to act in accordance with Clause 4.6.a in the preceding 6 months, VISITS is required to provide the Customer with a minimum of seven (7) days' notice prior to taking such actions. Otherwise, VISITS can take any action in Clause 4.6.a without notice.
- c. Any suspension or restriction will cease immediately (or if works are required to reinstate services, at the earliest possible time) on you rectifying the overdue accounts.

## **5. Termination**

### **5.1. Termination of Individual Product and Services**

- a. The terms and conditions relating to the termination of individual Products and Services (for cause or convenience) can be found in their respective SOW.
- b. Unless expressly stated otherwise, termination of any SOW will not affect the validity of any other existing SOW (provided they are not also terminated), which will each continue in accordance with their respective terms until their termination or expiry.

### **5.2. Expiry of this MCA**

- a. As the parent agreement, this MCA is ongoing until:
  - i. All SOW's have been terminated in accordance with their respective terms and conditions,
  - ii. The parties have met all obligations on termination of the SOW's (including payment of Fees and return of confidential information); and
  - iii. This MCA is terminated by either party by giving 30 days' Notice.

### **5.3. Termination for Change of Control**

- a. Either party may terminate this MCA and any SOW (in whole or in part) by giving the other party thirty (30) days written notice, if the other party undergoes a Change of Control and the acquiring entity (or new controlling entity):
  - i. is a direct competitor of the non-acquiring party; or
  - ii. is subject to an insolvency event or has received an enforceable undertaking, infringement notice or regulatory sanction from the ACCC, ASIC, APRA, OAIC or ATO in the last 3 years; or
  - iii. has directors or officers convicted of offences relating to fraud, corruption or dishonesty within the last 10 years.

### **5.4. Termination for Cause**

- a. Either Party may terminate this MCA and any SOW immediately upon written notice to the other Party if the other Party is in Material Breach of this MCA.
- b. With respect to clause (a), a Material Breach shall be deemed to mean:
  - i. The party being subject to an Insolvency Event.
  - ii. The party having breached Intellectual Property Rights or Confidentiality as outlined in Clauses 9 and Clauses 10, and that breach has, or is reasonably likely to have, a material adverse effect on the other party.
- c. Termination under this clause shall be without prejudice to any other rights or remedies available to the terminating Party under this Agreement or at law.

### **5.5. Consequences of Termination**

- a. Termination of this MCA or a SOW 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 MCA or a SOW.
- b. On expiry or termination of this MCA or a SOW 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, including any applicable termination fees as outlined in a Statement of Work.
    - (b) VISITS must refund any amounts paid by the Customer in excess of those due in accordance with Clause 5.5.b.i(a), unless a SOW 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.

### **5.6. Property**

- a. On expiry or termination of this Agreement or a SOW:
  - 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;

## 6. Changes to an Agreement

### 6.1. Changes to this MCA

- a. No amendment or variation of this MCA is valid or binding unless made in writing and executed by both parties.

### 6.2. Changes to a SOW

- a. Unless a SOW otherwise permits changes (for example: annual price indexation):
  - i. No amendment or variations to an active SOW is valid or binding during a Contract Term unless made in writing and executed by both parties.
  - ii. We may amend or vary an active SOW at the end of a Contract Term by providing no less than 90 day's written notice.
- b. Amendments or variations to a SOW that does not impact a current Product or Service (for example, changes to a SOW that will only affect future Hardware purchases) can be made at any time providing that VISITS provides written notice of such changes prior to the Customer issuing a new Purchase Order for the Product or Service.

## 7. Staff

### 7.1. Personnel

- a. **Personnel**, in relation to a party, means that party's employees, officers and agents and in relation to VISITS also includes its personnel in the GOC, contractors, consultants, licensees and invitees (including their employees, officers and agents).
- b. 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.
- c. 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.

### 7.2. Non-solicitation

- a. Neither party will, without the prior written consent of the other party, directly solicit or offer employment or a contract to any person who, within the preceding six (6) months:
  - i. acted as an Account Manager, Service Delivery Manager or held another role or responsibility for managing the commercial or operations relationship between the Parties; or
  - ii. performed consulting, engineering, service desk, project delivery of IT support work in connection with any Deliverables; or
  - iii. was a primary point of contact between the parties; or
  - iv. had regular directional operational or service-related interactions.
- b. A party who has suffered damages due to a breach of clause 7.2.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 (a) is not a person described in clause 7.2.a 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.

## 8. GST and Taxes

### 8.1. 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.

## **8.2. 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 8.2 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.

## **8.3. 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.

## **8.4. 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.

## **8.5. 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.

## **9. Intellectual property and moral rights**

### **9.1. Intellectual Property Rights in Contract Material**

- a. Except as otherwise expressly set out in a SOW, 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.

### **9.2. 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.

## **10. Confidentiality and Customer Data**

### **10.1. 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.

## 10.2. 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 10.2.b.i or 10.2.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.

## 10.3. 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. store and host Customer Data in Australia. Where VISITS' GOC Personnel (outside Australia) require access to Customer Data to deliver the Services, VISITS will take reasonable steps to ensure GOC Personnel handle personal information in accordance with the APPs and cannot copy or transfer Customer Data outside of 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.

## 10.4. 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.

## 10.5. Artificial Intelligence

- a. VISITS will not use Customer Data to train public AI models.
- b. VISITS may use AI-enabling tools (example: Service Desk automation, report generation) but will not disclose Customer Data except as necessary to deliver the Services and subject to confidentiality and compliance with the Australian Privacy Principles [APP] contained within the Privacy Act 1988 (Cth).

## 10.6. 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 10.5.a.

### **10.7. Eligible Data Breaches**

- a. In the event of any Eligible Data Breach relating to the Customer Data 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.

### **10.8. Confidentiality continues**

- a. The obligation of confidentiality under this clause 10 (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.

## **11. 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) 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.
    - (c) cyber liability insurance with a minimum cover of \$5m;
    - (d) insurance against any liability which may arise under Law, including any relevant workers or accident compensation legislation, in accordance with Law; and
  - ii. provide current evidence as may reasonably be requested by the Customer that it complies with this clause.

## 12. Publicity

- a. VISITS **may 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.
- b. VISITS **may**, unless otherwise advised by the Customer in writing, communicate the relationship with the Customer directly with prospective clients of VISITS during the sales process or in sales collateral provided to the prospect.

## 13. Liability

### 13.1. VISITS liability

- a. Subject to clause 13.3, 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 in the preceding 12 calendar months.
- 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.

### 13.2. 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) is limited to the Fees paid and properly due and payable by the Customer under this Agreement in the preceding 12 calendar months.

### 13.3. Unlimited liabilities

- a. Clause 13.1 (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 14.1.a.i, 14.1.a.ii, 14.1.a.iii, 14.1.a.iv or 14.1.a.vi.

### 13.4. Consequential Loss

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

## 14. Indemnities

### 14.1. 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 9);
  - ii. a breach of VISITS obligations under this Agreement relating to Confidentiality and Customer Data (clause 10);
  - 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.

### 14.2. 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 14.1;

- 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.

### **14.3. Claims relating to Deliverables**

- a. Without prejudice to the Customer's rights under 14.1 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.

### **15. 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.

### **16. 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 16.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 16.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.

### **17. Assignment or novation**

- a. Each party may assign or novate this Agreement or any SOW (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.

## 18. 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](mailto:adam.feldman@visits.com.au)  
and cc to: [accounts@visits.com.au](mailto: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.

## 19. Relationship of parties

### 19.1. 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.

### 19.2. 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.

## 20. Other Terms and Conditions

### 20.1. 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.

### 20.2. 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.

### **20.3. 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.

### **20.4. 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.

### **20.5. 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.

### **20.6. 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.

### **20.7. Counterparts**

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

### **20.8. 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.