

Master Services Agreement



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Change Log

| Date | Changes |
|------------|--|
| 10-11-2022 | <ul style="list-style-type: none">• Online version first published |
| 29-11-2023 | <ul style="list-style-type: none">• Formatting amendments.• Changes to 1.3 – Term. Removed references to expiry of Master Services Agreement.• Adjusted mentions of ‘this’ agreement to reflect ‘the’ agreement, meaning the combination of schedules, statements of work, quotes and the Master Services Agreement.• Added clause 1.26 - Master Services Agreement Version Changes to outline effect of changes in version of the Master Services Agreement.• Updated references. |

The Agreement outlines core terms of any services provided by **Resolution Technology Pty Ltd ABN 16 138 534 148** Trading as **RES. Business IT**

These terms apply to your engagement of RES. Business IT (“RES Business IT” or “we” or “our” or “us”)

Subject to Clause 1.3, these terms continue to apply for all sale of products, and delivery of services for which we are or may, in the future, be engaged, unless otherwise agreed in writing between the parties.

These are the terms and conditions of supply of the Services. It replaces and supersedes any previous agreements, correspondence understandings or other communications between the parties, whether written or oral, relating to the same or similar subject matter.



1 Terms and Conditions

1.1 Background

- 1.1.1 RES. Business IT is involved in providing the Goods and Services described in the Agreement.
- 1.1.2 The Customer has engaged RES. Business IT to provide the Goods and Services to it in accordance with the terms and conditions set out in the Agreement.
- 1.1.3 The Customer accepts this engagement on the terms and conditions set out in the Agreement.

1.2 Definitions and Interpretation

- 1.2.1 The following definitions apply to the Agreement and all Schedules which are executed to form a binding Service ("Associated Schedule(s)")
 - (a) **Agreement:** means:
 - i. this Master Services Agreement inclusive of any associated Schedule(s), Statements of Work, Quotes, or other accepted proposals;
 - ii. any attachments; and
 - iii. any other document that is expressly incorporated by way of reference.
 - (b) **Approved Expenses:** means the approved expenses referred to in item 8 of the Associated Schedule(s).
 - (c) **Associated Schedule(s):** means a subset of the Master Services Agreement which Goods and Services are offered by the Supplier and are detailed and accepted by the Customer as a unique piece of work.
 - (d) **Australian Consumer Law:** has the meaning given to it under the *Competition and Consumer Act 2010* (Cth) as implemented under the *Fair-Trading Act 1989* (Qld).
 - (e) **Business Day:** means any day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland or in the city or suburb where the Goods and Services are to be supplied.
 - (f) **Claim:** includes any claim, action, demand, application, proceeding, judgment, enforcement hearing and enforcement order.
 - (g) **Commencement Date:** means the date of commencement of any schedule, quote, or other agreement between the Customer and RES. Business IT.
 - (h) **Confidential Information:** means any information which by its nature is confidential, is received on the express or implied understanding that it is confidential, or is marked as being confidential, and may include:
 - i. information about processes and policies, commercial operations, financial arrangements or affairs;
 - ii. the terms of the Agreement;
 - iii. Records,but does not include:
 - iv. information that is publicly known for reasons other than as a result of a breach of the Agreement; or
 - v. any other information that is received through a third party and which is not governed by an obligation of confidence.
 - (i) **Contact Person:** means the RES. Business IT nominated Customer representative as described in item 11 of the Associated Schedule(s). The Customer's nominated representative is described in item 12 of the Associated Schedule(s).
 - (j) **Customer:** means the Customer as described in item 1 of the Associated Schedule(s) and as the context requires, includes any employee, officer, agent, contractor or sub-contractor of the Customer or a (Customer Name) Group Entity.



- (k) **Existing Material:** means any material which contains Intellectual Property Rights in existence before the Commencement Date.
- (l) **Expiry Date:** means three (3) years from the Commencement date.
- (m) **Force Majeure Event:** means any event beyond the reasonable control of the affected party which:
- i. adversely affects that party's ability to meet any obligation under the Agreement; and
 - ii. could not be mitigated or prevented by reasonable due diligence or precautionary measures adopted by the affected party,
- and may include natural disasters or acts of god, health pandemics, acts of terrorism, deliberate vandalism, riots, civil disturbance, industrial disputes and strikes (other than strikes involving the affected party or its employees, officers, agents, contractors or sub-contractors).
- (n) **Goods:** means goods sold by RES. Business IT to the Customer under the Agreement.
- (o) **GST:** means goods and services tax imposed through GST Law.
- (p) **GST Law:** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), any regulations passed under this Act, or any statutory instrument amending, consolidating or replacing it.
- (q) **RES. Business IT:** has the meaning given to it in item 2 of the Associated Schedule(s) and as the context requires, includes any employee, officer, agent, contractor or sub-contractor of RES. Business IT.
- (r) **Intellectual Property Rights:** means all registered and unregistered rights in Australia and throughout the world for:
- i. copyright;
 - ii. trademarks or service marks;
 - iii. designs;
 - iv. patents;
 - v. semiconductors or circuit layouts;
 - vi. source codes and object codes;
 - vii. trade, business or company names;
 - viii. indications of source or appellations of origin;
 - ix. trade secrets;
 - x. know-how and confidential information;
 - xi. the rights to registration of any of the above; and
 - xii. the right to bring an action for infringement of any of the above;
- but excludes Moral Rights.
- (s) **Loss:** includes (and is not limited to) any direct loss, liability, tax, prohibition, penalty, fine or expense but does not include any indirect or consequential loss.
- (t) **Moral Rights:** means the moral rights conferred under the *Copyright Act 1968* (Cth), including the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed;
- (u) **New Material:** means Intellectual Property Rights any material that come into existence through the provision of Goods and Services under the Agreement.
- (v) **Optional Conditions:** when detailed in the Associated Schedule(s) means special conditions which apply to certain kinds of Goods and Services including Managed Services
- (w) **Personal Information:** means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained, from the information or opinion.
- (x) **Purchase Price:** with respect to Goods means:
- i. a fixed amount; or



- ii. in the case of Goods that are to be supplied by unit or in volume, the method of calculation relied on to determine the total price, as described in the investment section of the associated schedule(s)
- (y) **Reasonable Refusal:** for Goods means the Goods:
 - i. are faulty or defective;
 - ii. are not of an acceptable quantity or quality; or
 - iii. do not comply with the relevant description.
- (z) **Records:** means all material including but not limited to books, documents, information, computer software, equipment, and data stored by any means disclosed, or made available in connection with the performance of the Agreement.
- (aa) **RES. Business IT Systems:** means:
 - i. RES. Business IT owned and managed Customer Relationship Management (CRM) and IT Service Management (ITSM) tools utilised to facilitate the delivery of Goods and Services
 - ii. File storage solutions owned and operated by RES. Business IT used to facilitate delivery of Goods and Services
 - iii. Operational tools and solutions utilised to facilitate the delivery of Goods and Services
- (bb) **Services:** means:
 - i. the services described in the Associated Schedule(s); and
 - ii. any tasks connected with performing the Services,and includes any individual service items that are requested in writing by the Customer during the Term.
- (cc) **Service Fee:** with respect to services means the amount or method of calculation included in the Associated Schedule(s).
- (dd) **Specifications:** means any technical or other specification related to the manufacture and/or use of the Goods or the provision of Services, as made available at the time of purchase.
- (ee) **Statement of Work:** means a subset of the Master Services Agreement which Goods and Services are offered by the Supplier and are detailed and accepted by the Customer as a unique piece of work.
- (ff) **Term:** means the period running from the Commencement Date till the Expiry Date.

1.2.2 In the Agreement unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa;
- (b) all dollar amounts refer to Australian currency, exclusive of GST;
- (c) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (d) a reference to an individual or person includes a corporation or other legal entity;
- (e) a reference to "consent" means prior written consent;
- (f) clause headings have been included for convenience only and are not intended to affect the meaning or interpretation of the Agreement;
- (g) if any expression is defined, other grammatical forms of that expression will have corresponding meanings; and
- (h) if a party includes two or more persons, the Agreement will bind each of them severally;
- (i) any reference to 'notice' under the Agreement means written notice; and
- (j) if there is inconsistency between the various parts that form the Agreement, priority will be determined according to the following:
 - i. special conditions outlined in the Associated Schedule(s) (if applicable);
 - ii. the Master Services Agreement (Terms and Conditions);
 - iii. any applicable Optional Conditions;



- iv. the Associated Schedule(s) or any other such document used (in whole or in part) to create this Master Services Agreement;
- v. any other attachments; and
- vi. any other document incorporated by way of reference.

1.3 Term

- 1.3.1 The Agreement commences on the Commencement Date and continues until the Expiry Date, unless earlier terminated in accordance with its terms (Initial Term).
- 1.3.2 The Customer must notify RES. Business IT in writing at least three months before the expiration of the Initial Term (Written Notice) of its desire to extend the Agreement for a further one (1) year term (Further Term). RES. Business IT may accept or reject the Written Notice in its sole and absolute discretion.
- 1.3.3 The following conditions apply to the extension of the Agreement in accordance with clause 1.3.2;
 - (a) any variation to the Service Fees as reasonably required by RES. Business IT; and
 - (b) any other variations agreed by the parties.
- 1.3.4 The term of each Schedule and/or Statement of Work commences on the date that RES. Business IT and the Customer execute the Schedule and/or Statement of Work and continues for the duration of the term specified in the Schedule and/or Statement of Work unless terminated earlier in accordance with the terms of the Agreement.

1.4 Provision of Services

- 1.4.1 This clause 1.4 applies when the Agreement involves RES. Business IT providing Services to the Customer.
- 1.4.2 RES. Business IT must:
 - (a) ensure that all Services are provided at times, at intervals and in accordance with any reasonable instructions given by the Customer;
 - (b) make proper investigations and enquiries to inform itself of the Customer needs in relation to the Services; and
 - (c) ensure that due care, professional skill, expertise and diligence is exercised in connection with the Services.
- 1.4.3 RES. Business IT warrants that:
 - (a) all services will be provided to a high quality and professional standard;
 - (b) all persons engaged to carry out the Services on its behalf are competent, and have the necessary and appropriate qualifications, licenses, admissions, memberships, skills and expertise to successfully perform the Services; and
 - (c) all Services will be carried out in accordance with any deliverables agreed to by the parties.
- 1.4.4 The Customer also agrees to:
 - (a) do all things and execute all documents;
 - (b) provide such information and assistance reasonably required (including outlining and explaining any performance obligations in connection with service items); and
 - (c) pay any applicable Service Fees,to ensure the Services can be properly performed by RES. Business IT.



1.5 Sale of Goods

- 1.5.1 Clause 1.5 applies when the Agreement involves a sale or supply of Goods by RES. Business IT to the Customer.
- 1.5.2 RES. Business IT agrees to supply Goods to the Customer in accordance with this Clause 1.5.
- 1.5.3 Within fourteen days of receiving the Goods from RES. Business IT, the Customer must:
- (a) carry out a physical inspection of the Goods; and
 - (b) notify RES. Business IT if the Goods do not comply with the description, conditions or warranties set out in the Agreement.
- 1.5.4 To the fullest extent permitted by law, the Goods are accepted by the Customer within thirty business days of:
- (a) the Customer collecting the Goods from RES. Business IT; or
 - (b) RES. Business IT delivering the Goods to the Customer,

1.6 Payment and Review

Payment

- 1.6.1 Subject to clause 1.7 (GST), upon the receipt of a valid and correctly rendered tax invoice and in consideration for the Services provided under the Agreement, the Customer will:
- (a) pay RES. Business IT the Service Fee/Purchase Price; and
 - (b) reimburse RES. Business IT for any expenses that are Approved Expenses.

Approved Expenses

- 1.6.2 For Approved Expenses that are not otherwise specified on the Commencement Date, the Customer:
- (a) must pay all Approved Expenses that are reasonably and properly incurred by RES. Business IT under the Approved Amount
 - (b) for all Approved Expenses that are over the Approved Amount:
 - i. must give its prior written approval to all expenses to be incurred by RES. Business IT while performing the Services before they are actually incurred; and
 - ii. will not be liable to reimburse RES. Business IT for any Approved Expenses over the Approved Amount expenses unless prior written approval is granted.

Method of Payment

- 1.6.3 Subject to paragraph 1.6.4 being satisfied, the Service Fee/Purchase Price will be payable by the Customer:
- (a) at times and at intervals described in the Associated Schedule(s); or
 - (b) if no timeframes and intervals are included in the Associated Schedule(s), at monthly intervals and in arrears.
- 1.6.4 The Service Fee/Purchase Price will be calculated by using the total amount or method of calculation included in or referred to in the Associated Schedule(s).
- 1.6.5 The Customer is not obliged to pay RES. Business IT for any part of the Goods and Services until:
- (a) RES. Business IT has given the Customer a correctly rendered tax invoice compliant with GST Law; and



- (b) Acceptance as per criteria as documented in a schedule of work or product provision have been met. In absence of specific acceptance terms documented in an agreed schedule, the terms as outlined in sections 1.4 or 1.5 shall apply
- 1.6.6 All invoices submitted by RES. Business IT must:
- (a) describe (or be accompanied by documents which describe) the particular goods or service items to which the invoice relates;
 - (b) include the name of the Contact Person and any file reference number for the Customer (if applicable);
 - (c) separately itemises any Approved Expenses with supporting written approval (if applicable); and
 - (d) having regard to clause 1.7 (GST) must be in a format which specifically identifies any GST payable to enable to the Customer to claim an input tax credit.
- 1.6.7 Upon receiving a correctly rendered invoice, the Customer may ask RES. Business IT to provide further information about certain service items to help the Customer to determine whether or not a particular amount is payable.
- 1.6.8 RES. Business IT must promptly respond to any requests received under paragraph 1.6.7 by providing such information reasonably requested by the Customer.
- 1.6.9 If the invoice is incorrect, the Customer must notify RES. Business IT within 14 days after receiving any invoice the Customer classifies as incorrect.
- 1.6.10 If the invoice is correct, the Customer must pay a correctly rendered tax invoice:
- (a) within 14 days of the invoice date, or in line with the agreed payment terms as outlined within the Associated Schedule(s);
 - (b) in accordance with, in the specified Payment Intervals in the Associated Schedule(s); or
 - (c) if additional information is requested under paragraph 1.6.7, within 14 days of the Customer receiving that additional information.
- 1.7 GST**
- 1.7.1 Terms used in this clause have the meaning given to them in GST Law and all amounts payable under the Agreement are excluding GST.
- 1.7.2 Where the Goods and Services provided under the Agreement are:
- (a) a taxable supply; and
 - (b) the consideration for that supply excludes GST,
- the recipient must pay an amount equal to the GST in addition to the consideration payable for the supply.
- 1.7.3 The amount of GST will be calculated at the prevailing GST rate.
- 1.7.4 If the GST rate is varied, the consideration payable for any supply under the Agreement will be varied to reflect the change of rate and any reduction in any other tax, duty or statutory charge connected with the rate change.
- 1.7.5 Where GST applies to a supply made under the Agreement, the supplier will deliver to the recipient a valid tax invoice or adjustment note at, or before the time payment for the supply is required.
- 1.7.6 If an adjustment event occurs in connection with any taxable supply made under the Agreement:
- (a) the amount payable by the recipient will be recalculated to reflect the adjustment event; and



- (b) payment for the adjustment event will be made by the recipient to the supplier or by the supplier to the recipient (as the case requires).

1.7.7 Where a party is required under the Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits for the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

1.8 Conflict of Interest

1.8.1 RES. Business IT warrants that:

- (a) to the best of its knowledge; and
- (b) on and from the Commencement Date,

it does not and will not have any undisclosed conflicts of interest which otherwise affect the provision of Goods and Services under the Agreement.

1.8.2 RES. Business IT must also take all reasonable steps to ensure it does not engage in any activity or obtain any interest which conflicts with, or adversely affects its ability to provide the Goods and Services fairly and independently.

1.8.3 If any actual or proposed conflicts of interest arises during the Term because of work intended to be undertaken by RES. Business IT for any third party, RES. Business IT must notify the Customer of:

- (a) the conflict of interest; and
- (b) any risks associated with the conflict,

and seek the Customer's approval to carry out these works before it begins doing so.

1.9 Intellectual Property

1.9.1 Title to, and ownership of all Intellectual Property Rights in New Material developed through Services performed under the Agreement, will vest in the party nominated in the Associated Schedule(s) upon its creation.

1.9.2 Paragraph 1.9.1 does not affect the ownership of any Existing Material belonging to another party that is used in connection with performing the Services under the Agreement.

1.9.3 For Existing Material, each party grants the other a perpetual, non-exclusive, non-transferable, royalty free licence to use Existing Material belonging to the other party for purposes related to:

- (a) performing the Services under the Agreement and achieving any purpose of the Customer which forms the basis for providing of any service items; and
- (b) developing any New Material which may result from the performance of those Services under the Agreement.

1.9.4 Each party warrants that it owns, or is legally authorised to use all Existing Material provided by it that used in connection with performing the Services.

1.9.5 RES. Business IT also grants the Customer a perpetual, non-exclusive, non-transferable, royalty-free licence to use any Existing Material belonging to or relied on by RES. Business IT that is incorporated into New Material developed under the Agreement to:

- (a) use, reproduce and adapt the Existing Material for its own use;
- (b) perform any other act in relation to copyright subsisting in the Existing Material (including infringing any Moral Rights in the Existing Material);



- (a) manufacture, sell, hire, exploit or commercialise any product or process connected with the New Material; and
- (b) provide any service or licence to any third party.

1.9.6 This clause survives the expiry or early termination of the Agreement.

1.9.7 To remove doubt, each party warrants that all employees, officers, agents, contractors or sub-contractors involved in delivering any of the Services will be bound by this clause.

1.10 Confidential Information

1.10.1 Parties must ensure that Confidential Information is kept confidential and is not disclosed to any person except:

- (a) to its employees, officers, agents, contractors and sub-contractors to the extent needed for the performance of the Agreement;
- (b) where disclosure is authorised or required by law;
- (c) with the disclosing party's consent; or
- (d) in the case of the Customer, to a (Customer Name) Group Entity.

1.10.2 Each party must:

- (a) ensure that all Confidential Information is kept secure;
- (b) ensure that all Confidential Information is only used for purposes directly related to the provision and use of Goods and Services, and only the relevant purpose for which it is originally disclosed;
- (c) immediately notify the other party if it becomes aware of any breach of this clause, or if a disclosure of Confidential Information is required by law;
- (d) if requested by the disclosing party:
 - i. deliver or destroy all documents, records or files in its possession or control which contain Confidential Information in accordance with the disclosing party's instructions; or
 - ii. obtain from its officers, employees, agents and sub-contractors a deed of confidentiality in a form acceptable to the Customer.

1.10.3 To remove doubt, each party warrants that:

- (a) all employees, officers, agents, contractors or sub-contractors involved in the provision or receipt of Goods and Services under the Agreement will be bound by this clause; and
- (b) they will immediately notify the other party upon discovering there has been a breach of this clause.

1.11 Personal Information

1.11.1 This Clause 1.11 applies if:

- (a) RES. Business IT (in providing the Goods and Services under the Agreement) will in any way deal with Personal Information for the Customer; or
- (b) the Goods and Services under the Agreement will involve:
 - i. the transfer of Personal Information from the Customer; or
 - ii. the provision of services to a third party for the Customer.

1.11.2 Unless authorised by law, RES. Business IT must:

- (a) not disclose Personal Information without the prior written consent of the Customer;
- (b) ensure that access to Personal Information is restricted to those persons who require access in order to perform their duties under the Agreement;



- (c) not transfer or store any Personal Information outside of Australia without the prior written consent of (Customer Name);
- (d) ensure that its employees, officers, agents, contractors and sub-contractors comply with the same obligations imposed on RES. Business IT under this clause;
- (e) fully and promptly cooperate with the Customer to enable the Customer to respond to any applications or privacy complaints which require access to, or amendment of, a document containing a person's Personal Information;
- (f) immediately notify the Customer if RES. Business IT becomes aware of any unlawful use or disclosure of Personal Information in its possession or control;
- (g) comply with such other privacy and security measures required by the Customer as reasonably advised in writing from time to time; and
- (h) if requested by the Customer, promptly return or destroy any record, document or file which contains Personal Information in accordance with the Customer's instructions upon the expiry or termination of the Agreement.

1.11.3 RES. Business IT must also:

- (a) ensure its employees, officers, agents, contractors and sub-contractors are bound by this clause; and
- (b) immediately notify the Customer and all necessary reporting agencies as necessary in accordance with the Privacy Act 1988 (Privacy Act), as revised in February 2018.

1.12 Security and Access

1.12.1 RES. Business IT must, when using the Customer's premises, facilities or other resources belonging to the Customer:

- (a) comply with the Agreement; and
- (b) comply with the Customer's rules, directions, policy and procedures, including those relating to security or workplace health and safety and data security, and
- (c) will immediately notify all necessary reporting agencies as outlined in the Privacy Act 1988 (Privacy Act), as revised in February 2018.

1.13 Data Security

1.13.1 When involved in the provision of Goods and Services that include the management, maintenance, storage and transfer of Customer data held within RES. Business IT Systems (as defined in clause 1.2.1(aa)) used to facilitate delivery of the stated Goods and Services, RES. Business IT agrees that it will:

- (a) do all things reasonably necessary to ensure the Customer data is secure within these systems; and
- (b) immediately upon discovery notify the Customer if there has been a breach of data security within the RES. Business IT systems and will do all things reasonably necessary to remedy the breach, and
- (c) will immediately notify all necessary reporting agencies as outlined in the Privacy Act 1988 (Privacy Act), as revised in February 2018.



- 1.13.2 It is not the responsibility of RES. Business IT to protect and manage Customer data, nor report any breaches, where the Customer, or a Customer representative has stored, used, accessed, manipulated, copied or transferred data contrary to company policy, applicable laws and/or or in contrast to the best practice methodology as described on the Office of the Australian Information Commissioner (OAIC) website.

1.14 Suspensions and Variations to Services

- 1.14.1 Subject to this Clause 1.14 and Clause 1.19 (Force Majeure), the Customer may at any time and by giving notice, ask RES. Business IT to:
- (a) temporarily suspend all or any part of the Goods and Services to be provided under the Agreement;
 - (b) recommence all or any part of the Goods and Services that were temporarily suspended; or
 - (c) vary the scope as to the provision of the Goods and Services by:
 - i. increasing the volume of any part of the Goods and Services or by asking RES. Business IT to perform additional work; or
 - ii. changing the character or content of any part of the Goods and Services.
- 1.14.2 Upon receiving a notice under Clause 1.14.1, RES. Business IT must notify the Customer of whether it accepts or rejects the Customer's request for suspension or variation (whether it be with or without conditions) and explain the reasons in support of the decision, including any proposed amendment to the Service Fee/Purchase Price which will be calculated using the applicable method of calculation for the Goods and Services at the relevant time.
- 1.14.3 RES. Business IT also reserves the right to adjust the Service Fee/Purchase Price when additional Goods and Services become necessary where:
- (a) the Customer has requested that additional works to be performed;
 - (b) there is inconsistency between the Customer's actual requirements and the requirements as scoped under the Associated Schedule(s) and the Customer is the source of the inconsistency; and
 - (c) there are other variables which have resulted in the need for additional works, including:
 - i. any failure, damage or misuse of the Goods and Services by the Customer or any third party engaged by the Customer;
 - ii. any rectification works which become necessary because of Customer fault;
 - iii. any act or omission by the Customer or any third party engaged by the Customer, which invalidates any consumer warranties and/or statutory warranties under the Australian Consumer Law;
 - iv. not complying with any specifications, instructions for use or professional advice that is provided in connection with the Goods and Services;
 - v. functionality impairments and disruptions that arise with the Customer's hardware, software or other equipment for which RES. Business IT is not responsible;
 - vi. functionality impairments and disruptions which arise through damage, power shortages or another failure for which RES. Business IT is not responsible;
 - vii. unreasonable delays in providing the instructions needed to provide the Goods and Services by the Customer;
 - viii. the nature and complexity of the works materially different from those agreed to under the Agreed Schedule(s);
 - ix. other works which fall outside the scope of the Agreed Schedule(s) but become reasonably necessary including Customer training;
 - x. unexpected or unusual issues in connection with the Goods and Services.
 - xi. the Customer has not accepted reasonable recommendations from RES. Business IT designed to reduce disruptions, support effective delivery of the Goods and Services, or reduce the likelihood of stated risks negatively impacting either RES. Business IT or the Customer



- 1.14.4 Any proposed variation agreed by the parties in accordance with Clause 1.14.2 and Clause 1.14.3 must be effected by completing a formal variation to contract, and must be signed by both parties

1.15 Limitation of Liability

- 1.15.1 To the fullest extent permitted by Law RES. Business IT will not be liable for any indirect, incidental, special, or consequential damages (including, without limitation, damages for interruption of services, loss of business, loss of profits, loss of revenue, loss of data, or loss or increased expense of use the customer or any third party incurs), whether in an action in contract, warranty, tort (including, without limitation, negligence), or strict liability, even if RES. Business IT has been advised of the possibility of such liabilities.
- 1.15.2 RES. Business IT is not responsible for damages that occur as a result of the use of any third-party services, software or hardware which are employed either by The Customer, or, by RES. Business IT in the course of delivering the stated products or services.
- 1.15.3 In no event will the amount the customer may recover under the Agreement exceed the total payments made to RES. Business IT by the customer pursuant to the Agreement in the immediately preceding twelve (12) months.
- 1.15.4 To the fullest extent permitted by Law, the Customer indemnifies RES. Business IT from all Loss resulting from any Claim, and which arises because the Customer, or any third party engaged by the Customer:
- (a) damages any equipment, hardware and software (IT Systems) belonging to RES. Business IT that is in the Customer's possession or control;
 - (b) causes data loss or a severe functionality disruption which renders RES. Business IT's IT Systems fully or partially inoperable through:
 - i. any wilful act or negligence;
 - ii. not complying with any specifications, instructions for use or professional advice provided by RES. Business IT with respect to the Goods and Services;
 - iii. any virus that is uploaded onto RES. Business IT's IT Systems and which is proven to originate from the Customer IT Systems, the Customer or any third party engaged by the Customer;
 - iv. any breach of data security which is caused by the Customer, or any third party engaged by the Customer, or which originates from the Customer IT Systems; or
- 1.15.5 The limitations set forth in this section shall not apply to personal injury or damage to tangible property caused by the wilful misconduct or gross negligence of RES. Business IT.
- 1.15.6 RES. Business IT's liability under this clause will be proportionately reduced to the extent that the Customer's officers, employees, agents or contractors contribute to the Loss that is the subject of the Claim.

1.16 Insurances

- 1.16.1 RES. Business IT agree to maintain the following insurance and values for the duration of the Agreement:
- (a) workers' compensation insurance under the *Workers' Compensation and Rehabilitation Act 2003 (Qld)*;
 - (b) public liability insurance valued at \$10 million (one claim or occurrence);
 - (c) products liability valued at \$10 million (one per policy period); and
 - (d) professional indemnity valued at \$2 million (one per policy period).



- 1.16.2 RES. Business IT must also ensure that any contractor or sub-contractors engaged by it to assist in the provision of the Goods and Services are also insured as show in Clause 1.16.1
- 1.16.3 RES. Business IT reserve the right to on-charge the Customer should the Customer request additional liability limit(s) over and above the amounts stated in Clause 1.16.1. Any such on-charging is limited to the monthly premium increase between the limits shown in Clause 1.16.1, and the new premiums charged to bring the liability limit(s) in line with Customer requirements.
- 1.16.4 If the Customer has any special insurance requirements for resources that may be engaged under schedules attached to the Agreement, the customer is responsible for;
- (a) acquiring and maintaining the appropriate insurances to cover the RES. Business IT resources; or
 - (b) providing RES. Business IT with sufficient notice of such requirement such that it may be reasonably obtained at a competitive price. The Customer will be responsible for bearing the cost of any such additional insurances

1.17 Termination

- 1.17.1 The Customer may only terminate the Agreement by giving written notice to RES. Business IT if:
- (a) RES. Business IT breaches a material term of the Agreement that cannot be remedied;
 - (b) RES. Business IT breaches any other term of the Agreement that is not remedied within 90 days of RES. Business IT receiving written notice from the Customer about the breach;
 - (c) RES. Business IT:
 - i. becomes bankrupt or insolvent;
 - ii. becomes subject to any form of external administration;
 - iii. enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
 - iv. is wound up either voluntarily or involuntarily, or
- 1.17.2 RES. Business IT may terminate the Agreement by giving written notice if:
- (a) the Customer breaches a material term that cannot be remedied; or
 - (b) the Customer breaches any other term of the Agreement that is not remedied within 90 days of the Customer receiving written notice from RES. Business IT about the breach.
- 1.17.3 Termination of the Agreement will not:
- (a) affect any claim or action either party may have against the other by reason of any prior breach of the Agreement; or
 - (b) relieve either party of any obligation under the Agreement which survives its early termination or expiry.
- 1.17.4 Should a services schedule or statement of work expire and not be expressly terminated by the Customer it will continue indefinitely on a quarter by quarter basis and you must provide us with 90 days notice to cancel the service.
- 1.17.5 If the Customer terminates a schedule prior to its expiry, then the Customer must pay us within 14 days of invoice, the equivalent of the Monthly Service Fee multiplied by the number of months remaining in the service schedule or statement of work.
- 1.17.6 On termination we may:
- (a) repossess any of our property in the possession, custody or control of the Customer;
 - (b) retain all moneys paid to RES. Business IT under the service schedule or statement of work



- (c) provide the Customer with an invoice for all unpaid fees and expenses and any costs incurred by RES. Business IT as a result of termination; and
- (d) pursue any additional or alternative remedies provided by law.

1.17.7 Termination of services schedules and individual statements of work are subject to additional terms outlined in the relevant schedule and / or statement of work.

1.18 Dispute Resolution

1.18.1 The parties agree that in the event that any dispute arises out of or in connection with the Agreement ("Dispute"), the party raising the Dispute must notify the other party ("Dispute Notice").

1.18.2 The Contact Person(s) will first meet to try and resolve the Dispute by negotiation within 14 days of receipt of the Dispute Notice.

1.18.3 If the parties do not resolve the Dispute by negotiation within 14 days, then a senior executive of each party will meet and attempt to resolve the Dispute within a further 30 days.

1.18.4 If the Dispute has not been resolved within 60 days of the Dispute Notice, then the parties may agree to refer the Dispute to mediation by an accredited mediator they agree on (and absent agreement by a mediator appointed by the Chair of the Resolution Institute). The Resolution Institute Mediation Rules shall apply to the mediation.

1.18.5 If a dispute is not resolved under the process set out above, then the dispute must be:

- (a) submitted to arbitration in accordance with, and subject to, the UNCITRAL Arbitration Rules;
- (b) administered by the Resolution Institute; and
- (c) conducted by one arbitrator, in the English language in the location of Brisbane, Australia.

1.18.6 An award made under this clause is final and may be entered into by any court of competent jurisdiction.

1.18.7 Each Party must bear its own costs of endeavouring to resolve and of resolving a Dispute and the Parties must bear equally the costs of any third party engaged.

1.18.8 Despite the existence of the Dispute, the Service Provider and the Client must continue to act in accordance with and perform their obligations in accordance with this Contract.

1.18.9 Nothing in this clause will prevent either Party from seeking injunctive or interlocutory relief at any time.

1.19 Force Majeure

1.19.1 If a Force Majeure Event occurs:

- (a) the Party affected by the Force Majeure Event will notify the other Party as soon as practicable of the Force Majeure Event and the extent to which that Party is unable to comply with its obligations;
- (b) the obligations of a Party under this Contract will be suspended to the extent that it is wholly or partially precluded from complying with its obligations under this Contract by the Force Majeure Event;
- (c) the affected Party will use all reasonable diligence and endeavours seek to remedy, avoid or overcome the Force Majeure Event as quickly as is practicable and otherwise seek to minimise any delays which may result from the Force Majeure Event; and
- (d) the affected Party will promptly on the cessation of the Force Majeure Event notify the other Party of the cessation and recommence performance of its obligations under this Contract.



1.19.2 This clause does not extend to an obligation to make a payment.

1.20 Notices

1.20.1 Any notice, request, notification, consent or approval (notice) under the Agreement must be in writing and may be sent by prepaid postage, email or delivered by hand to the following respective addresses:

- (a) for the Customer – using details as set out in the Associated Schedule(s);
- (b) for RES. Business IT – as set out in Item 16 of the Associated Schedule(s), or at such other address as a party may subsequently give notice of to the other.

1.20.2 A notice will be deemed to be given:

- (a) if posted - two days after the date of posting;
- (b) if delivered - on the date of delivery; or
- (c) if emailed - on the date of the email;

1.20.3 Notwithstanding paragraphs 1.20.1 and 1.20.2, any fax or email that is received after 5:00 pm will be deemed to be given on the next business day.

1.21 Miscellaneous

1.21.1 Entire Agreement: The Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements and agreements between the parties.

1.21.2 No Partnership, Joint Venture, Employment or Agency: The parties agree that:

- (a) the relationship under the Agreement is one of principal and contractor; and
- (b) they are not in partnership or joint venture with each other; and
- (c) they will not represent themselves or allow themselves to be represented as a partner or joint venturer, employee or agent of the other party.

1.21.3 Delay not to constitute waiver: Any failure by a party at any time to enforce a clause of the Agreement, or any forbearance, delay or indulgence granted by a party to the other, will not constitute a waiver of the party's rights.

1.21.4 Waiver to be in writing: No provision of the Agreement will be deemed to be waived unless that waiver is in writing and signed by the waiving party.

1.21.5 Waiver limited to specific occasion: A waiver by a party of a breach of any provision under the Agreement will not operate as a waiver of any subsequent breach of the same provision or as a waiver of any other provision.

1.21.6 Governing law: The Agreement is governed by the laws of Queensland and each party submits to the jurisdiction of the courts of Queensland.

1.21.7 Compliance with all laws: RES. Business IT must comply with all relevant laws in the performance of the Services.

1.21.8 Severability: If any part of the Agreement is determined to be invalid, unlawful or unenforceable for any reason, then to the full extent permitted by law:

- (a) the offending provision will be severed from the rest of the Agreement; and
- (b) the remaining terms and conditions will continue to be valid and enforceable.



- 1.21.9 Further Assurances: RES. Business IT must do all things and execute all documents reasonably required by the Customer to give effect to the Agreement.
- 1.21.10 Assignment: RES. Business IT may not assign or novate its interest in the Agreement without the prior written consent of the Customer.
- 1.21.11 Records: RES. Business IT must keep and maintain Records of all Goods and Services provided in accordance with good professional practice.

1.22 Respectful Behaviours

- 1.22.1 Both the Customer and RES. Business IT agree, in execution or receipt of services described in this Master Service Agreement, all Personnel will be expected to always:
 - (c) act in a manner that is non-threatening, courteous and respectful; and
 - (d) comply with any instructions, policies, procedures or guidelines issued by either party regarding acceptable workplace behaviour.

1.23 Safe Working Environment

- 1.23.1 The Customer warrants that with respect to activity performed within a customer operated environment that;
 - (a) The physical environment will be safe;
 - (b) Staff will be adequately inducted to sites and any required safety standards and procedures;
 - (c) Any required safety equipment will either be provided, or reasonable notice of the requirements will be provided in advance of the planned works;
 - (d) Safety standards will be monitored and enforced by the Customer;
 - (e) Any safety incidents involving a RES. Business IT representative will be reported to RES. Business IT immediately.

1.24 Employee and Contractor Enticement

- 1.24.1 For the initial term of this Master Services Agreement, and for a period of six (6) months following the completion date, without the prior written consent of RES. Business IT, the Customer shall not, either directly or indirectly, solicit or entice away (or seek or attempt to entice away) from the employment any person employed or contracted to RES. Business IT.
- 1.24.2 Unless written consent is provided to the Customer by RES. Business IT, the Customer agrees that compensation for such enticement, including any transition fees otherwise payable by RES. Business IT to another party for Contractor services, and/or any other reasonable costs incurred by RES. Business IT as a result of Customer enticement action(s), will become payable by the Customer.

1.25 Supplier Recommendations

- 1.25.1 From time to time, the Supplier, during delivering services under this Master Services Agreement, may communicate to the Customer recommendations, which highlight a risk, or a number of risks, carrying the potential to cause harm within the environment or business. In this instance, RES. Business IT may request the Customer to remediate any such risk, to prevent further risk or harm to that of the Customer, or the Supplier.
- 1.25.2 Should the Customer not take the recommended steps to remediate risks identified in Clause 1.25.1, the Supplier may:
 - (a) take action to reduce the level of service provided until such risk(s) are remedied;



- (b) may reduce or remove any service guarantees that may otherwise form part of the services, and/or
- (c) refuse further support in respect to the services until such time as the risk(s) are remediated.

1.25.3 The Customer may request further clarification of identified risks from the Supplier, or any other third-party as necessary. In this instance, the Supplier agrees to provide as much input as necessary to assist the Customer, to the point the Supplier deems that all available options for remediation have been provided.

1.26 Master Services Agreement Version Changes

1.26.1 From time to time, this Master Services Agreement will be amended with a new version published online.

1.26.2 The change log included with this document outlines key changes.

1.26.3 The version of this document that was published at the time of executing a Schedule, Quote, or any other type of Agreement with RES. Business IT constitutes the Master Terms applicable to the specific Agreement, as defined in Clause 1.2.

1.26.4 On request, RES. Business IT will provide the version of this document which was current and applicable at the execution of an Agreement.

1.27 Clauses Surviving Termination

1.27.1 The following clauses will survive termination or expiration of the Agreement:

- (a) clause 1.9: Intellectual Property;
- (b) clause 1.10: Confidential Information;
- (c) clause 1.11: Personal Information;
- (d) clause 1.15: Limitation of Liability, and;
- (e) clause 1.16: Insurances;
- (f) clause 1.24; Employee and Contractor Enticement;