

Commercial Agreement

THIS AGREEMENT is made

between

Professional Advantage Pty Ltd. ("PA"), an Australian company with its principal office at
Level 6, 124 Walker Street, North Sydney, 2060; ABN39 051 792 593;

and

XXX ("Client"), with its principal office at XXXXX XXXX, ABN XX XXX XXX XXX

Date

XXXX

1. PREAMBLE

- 1.1 PA is an IT solutions provider of information technology Products and Services.
- 1.2 Client engages PA to procure or subscribe to one or more Products or Services.

2. DEFINITIONS

- 2.1 **"Agreement"** means these terms and conditions along with Appendices A to G attached hereto, any Statement of Work signed by both parties, any Change Request signed by both parties, and signed by both parties, and any schedules that accompany such additional order and have been approved in writing by both parties.
- 2.2 **"Available"** means access to a Cloud Platform which is operational and accessible over the Internet using a computer that is not part of the Cloud Platform.
- 2.3 **"Cancellation Fee"** means the fees associated with terminating Professional Services calculated in accordance with Clause 6.4.3, Clause 6.4.4d), or Clause 6.4.5e) as applicable.
- 2.4 **"Change Request"** has the meaning given to that term in Clause 3.4 below.
- 2.5 **"Client Data"** means all data and information (including Confidential Information) relating to Client and its operations, facilities, personnel, assets, products, sales and transactions in whatever form whether entered, stored, generated or processed as part of the Managed Services, and includes:
 - 2.5.1 database in which such data or information is stored; and
 - 2.5.2 documentation or records related to such data or information.
- 2.6 **"Client Materials"** means tools, instructions, specifications, or other materials provided by Client to PA.
- 2.7 **"Cloud Platform"** means the provision of the Microsoft Azure environment by PA, used to operate a deployment of Products, which may be accessed by the Client during Planned Service Hours.
- 2.8 **"Cloud Provider"** means the online Microsoft Azure environment that are established, operated and maintained by Microsoft Corporation ("Microsoft").

- 2.9 **“Confidential Information”** has the meaning given to that term in Clause 13 below.
- 2.10 **“Customisations”** means changes, modifications, amendments to PA Products.
- 2.11 **“Down Time”** means any period of time where the Cloud Platform is not Available.
- 2.12 **“Initial Service Period”** has the meaning given to that term in Clause 7 below.
- 2.13 **“Intellectual Property Rights”** means:
- 2.13.1 any patent, trade mark, trade name, business name, company name, copyright, registered design or other design right, eligible layout and any corresponding property or right under the laws of any jurisdiction throughout the world, together with any right to apply for the grant or registration of the same; and
- 2.13.2 any rights in any jurisdiction in the world in respect of an invention, discovery, trade secret, data, algorithm, or formula.
- 2.14 **“License”** means the license granted by PA to Client pursuant to Clause 4 below, on the terms set out in this Agreement.
- 2.15 **“License Maintenance”** means, in the case of Perpetual Licenses, entitlement to subsequent versions of PA Products and Third Party Products named in the Appendix A and G, released after the Original Use Date, provided the subsequent version is currently a Supported Version.
- 2.16 **“License Maintenance Fees”** means the periodic fee required to maintain the License Maintenance entitlement.
- 2.17 **“Managed Services”** means the services and tools ancillary to the Cloud Platform, provided by PA to the Client and which are required to operate and maintain the Cloud Platform or any other mutually agreed services rendered to support the Client’s environment
- 2.18 **“Managed Services Fees”** means the fees associated with a contracted period, during which PA provides the Client with Managed Services as defined in Appendix D.
- 2.19 **“Original Use Date”** means the date on which Client first utilises the Products in production mode.
- 2.20 **“PA Business Hours”** means the hours between 9:00 am and 5.00pm Australian Eastern Daylight Time (“AEDT”), Monday to Friday, excluding Australian National public holidays (“Public Holidays”).
- 2.21 **“PA Products”** means the version of software applications developed by PA.
- 2.22 **“Payment Terms”** means the requirement to pay any invoice within 14 days of receipt of such invoice, unless otherwise agreed in writing.
- 2.23 **“Perpetual License”** means the Product software license the Client purchases to use in perpetuity.
- 2.24 **“Perpetual License Fees”** means the fees associated with a Perpetual License.
- 2.25 **“Planned Service Hours”** for the Cloud Platform means 24 hours per day.
- 2.26 **“Products”** means: PA Products, Third-Party Products or a Cloud Platform. Products may be procured as a Perpetual License or as a Subscription.
- 2.27 **“Professional Services”** means the provision of consulting and development activities, including configuration work. This may include but is not limited to project management, business analysis, training, technical configuration, IT Infrastructure engineering.
- 2.28 **“Public Software Version”** means a generally available variant of the Products made available by PA to the market.
- 2.29 **“Scheduled Down Time”** means a period of Down Time that is agreed between PA and Client.

- 2.30 **“Services”** means services provided by PA, including but not limited to Professional Services, Managed Services, and Support.
- 2.31 **“Statement of Work” (“SOW”)** means any document that describes any work to be performed. The document can be in a form such as a project scope agreement, statement of work, engagement letter, solution design document or development order.
- 2.32 **“Subscription”** means Products that are purchased on a rental basis, with payments made on a regular basis.
- 2.33 **“Subscription Fees”** means the fees associated with a Subscription, including fixed, variable or usage fees associated with consumption of services (such as storage, bandwidth traffic, etc).
- 2.34 **“Support”** means help desk services for Products.
- 2.35 **“Support Cases”** are distinct support calls initiated by the Client.
- 2.36 **“Support Fees”** means the fees associated with a provision of Support. The fees are as specified in 6.5.1.
- 2.37 **“Support Hours”** means the hours between 9:00am and 5:00pm AEDT, Monday to Friday, excluding Public Holidays”.
- 2.38 **“Supported Version”** means a Products version for which Support are offered by PA. For PA Products PA will provide twelve months’ notice that a version will no longer be supported.
- 2.39 **“Third Party Product”** means any product other than PA Product, produced by a third-party vendor and their use is governed by product-specific license agreements.

3. Engagement

- 3.1 The provision of Products, and their use by the Client, and Services from PA are governed by this Agreement.
- 3.2 Products may be deployed either on-premise or cloud service.
- 3.3 PA shall provide Services to Client as described in any written form such as a SOW, that has been signed by the parties and unless stated to be fixed, these Services are provided on a time and materials basis. The final signed version of any SOW shall be incorporated into this Agreement by reference.
- 3.4 Client may request changes to the Services under any SOW by submitting a written request to PA (each, a “Change Request”). Upon receipt of any Change Request, if the Change Request is feasible, PA shall determine the additional time, cost and other resources that would be required in order to implement such Change Request, and then submit to Client a version of the Change Request that includes this information. No Change Request shall be binding on either party until it has been signed by both parties.
- 3.5 Professional Services may be provided either at a Client site or off-site, at PA’s discretion, except as otherwise agreed in writing by the parties.

4. Grant of License

- 4.1 Subject to the Client complying with the terms of this Agreement, PA grants to the Client a non-

exclusive, worldwide License for the Term to use the Products and related documentation as may be more fully described in Appendix F to this Agreement.

4.2 Use Restrictions

4.2.1 General. Appendix A shall set forth any special restrictions on the use of the Products by Client (hereafter, the "Use Restrictions") such as the maximum of named users.

4.2.2 Copies. The Client shall not be permitted to make any copies of the Products, in any form, however, Client shall be entitled to make a copy of any data generated based on the Client inputs, whether such data is in a html or pdf form, or otherwise, into the Products.

4.2.3 Sublicense. The Client shall not sublicense, rent or lease any portion of the Products.

4.2.4 Export. The Client shall adhere to any export controls applicable to the Software as a Service under the U.S. Export Administration Regulations.

4.3 Future licenses. In the event the Client acquires new Products or additional licenses for a previously acquired Product, the new acquisitions will be licensed under the same terms and conditions herein by the Parties executing additional Appendix(s) as may be necessary for each new transaction. Each set of Appendix(s) together with the terms and conditions of this Agreement, shall constitute one combined agreement.

5. Software Updates

5.1 For Products in respect of which the Client has paid the relevant License Maintenance Fees and Subscription Fees, PA will, from time to time, supply at no additional charge new software versions and upgrades as they are made available. The Client is also entitled to receive software updates, patches and fixes at no additional charge.

5.2 Any Services associated with installation and/or upgrading of software, including the re-application or modification of customisations are provided on a standard chargeable time and materials basis, except as set out in this Agreement or otherwise agreed in writing by the parties.

6. Fees, Payment

6.1 General

6.1.1 All amounts paid pursuant to this Agreement are payable in Australian Dollars (AUD) and are non-refundable.

6.1.2 All charges, or other amounts charged by PA under this Agreement do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Client is responsible for paying all Taxes associated with Client's purchases hereunder. If PA has the legal obligation to pay or collect Taxes for which Client is responsible under this clause, PA will invoice Client and Client will pay that amount unless Client provides PA with a valid tax exemption certificate authorised by the appropriate taxing authority. For clarity, PA is solely responsible for taxes assessable against PA based on PA income, property and employees.

- 6.1.3 Travel charges will be charged for on-site visits to Client premises, subject to prior agreement.
- 6.1.4 PA may refuse and withhold provision of Services or access to a Cloud Platform where Client account is not maintained within Payment Terms.
- 6.1.5 Any amounts overdue by 30 days or more may be charged interest at the lesser of 2% per month and the highest rate permitted by applicable law. Client will be liable for all reasonable collection and legal costs incurred by PA in relation to amounts duly charged and invoiced by PA in accordance with this Agreement.
- 6.1.6 Any amounts due in respect of this Agreement may not be offset against any other claims Client may have against PA.

6.2 **Perpetual License Fees and License Maintenance Fees**

- 6.2.1 All Perpetual License Fees and License Maintenance Fees must be paid in advance.
- 6.2.2 Cancellation or termination of any part of this contract does not entitle the Client to any refund of Perpetual License Fees.
- 6.2.3 When the Client chooses to cancel the License Maintenance, either separately or as part of terminating this Agreement as envisaged in Clause 7, before the software license renewal date, the cancellation is deemed to be at the next renewal date and PA is not liable to pay any refund for the unexpired period.

6.3 **Subscription Fees and Managed Services Fees**

- 6.3.1 Subscription Fees and Managed Services Fees must be paid in advance and in any event prior to the commencement of the Subscription or Managed Services period.
- 6.3.2 PA reserves the right to pass on any cost increases from Third Party Product providers or Cloud Platform providers. These increased costs are payable in accordance with the Payment Terms.
- 6.3.3 PA will invoice, on a monthly basis, any Cloud Platform usage fees associated with the consumption. These usage fees are payable within Payment Terms.
- 6.3.4 **Subscription Cancellation:** The Client acknowledges and agrees that each Subscription is purchased for a fixed, non-cancellable commitment period as specified in the applicable Project Scope Agreement, Order Form or Statement of Work ("Commitment Term"). Fees for the Commitment Term are payable in advance (unless otherwise agreed in writing) and are non-refundable, except where required by law. The Client may cancel a Subscription at any time by providing written notice to PA; however, such cancellation shall not relieve the Client of its obligation to pay all Fees due and payable for the entire Commitment Term. Cancellation shall take effect only at the end of the Commitment Term or, where applicable, at the next renewal date, and PA shall have no obligation to refund any portion of Fees already paid. For the avoidance of doubt, the cancellation of a Subscription does not automatically terminate this Agreement.**Managed Services Cancellation:** When the Client chooses to cancel the Managed Services, either separately or as part of terminating this Agreement as permitted in Clause 7, before the renewal date of the applicable Subscription, the cancellation is deemed to be effective at the next renewal date and PA is not liable for any refund for the unexpired period. All amounts due to the end of the Initial Service Period or the Subsequent Service Period remain payable. For the avoidance of doubt the cancellation of any Managed Service does not automatically terminate this

6.4 **Professional Services**

- 6.4.1 All Professional Services are provided on a fee for service basis at prevailing rates, except as otherwise set out in this Agreement or set out in the applicable SOW. Time and materials invoices for Professional Services shall be issued weekly in arrears. Fixed price invoices are issued upon completion of the relevant milestone.
- 6.4.2 PA reserves the right to amend rates from time-to-time. The rate rates quoted in any SOW will not change during the delivery of that SOW unless otherwise agreed in writing.
- 6.4.3 Where Client cancels any Subscription with PA, the provision of Services, after the effective Subscription cancellation date, will increase the rate by 10% for all Services provided on or after the effective Subscription cancellation date, whether provided on a time and materials or fixed price basis.
- 6.4.4 **Cancellation of Professional Services - time and materials base project:**
 - a) All unpaid invoices not subject to any bone fide dispute are due and payable within Payment Terms.
 - b) Any services rendered to date but not yet invoiced are payable within Payment Terms.
 - c) Any withheld amounts or retentions pertaining to work done are immediately due and payable. Any amounts not yet invoiced are, on presentation of an invoice, deemed to be properly invoiced.
 - d) For the avoidance of doubt the cancellation of Professional Services does not automatically terminate this agreement. Termination of this Agreement is as per Clause 7.
- 6.4.5 **Cancellation of Professional Services - fixed price project:**
 - a) All unpaid invoices not subject to any bone fide dispute are due and payable within Payment Terms.
 - b) All achieved milestones not yet invoiced are due and payable within Payment Terms.
 - c) Any services rendered to date but not yet invoiced are payable within Payment Terms.
 - d) Any withheld amounts or retentions pertaining to work done are immediately due and payable. Any amounts not yet invoiced are, on presentation of an invoice, deemed to be properly invoiced.
 - e) For the avoidance of doubt the cancellation of Professional Services does not automatically terminate this agreement. Termination of this Agreement is as per Clause 7.
- 6.4.6 **Cancellation of Professional Services – ad hoc service bookings.** If a Client cancels a Professional Service booking the following cancellation fees will apply:
 - a) Less than 5 business days' notice, 50% cancellation fee
 - b) Less than 2 business days' notice, 100% cancellation fee
 - c) Cancellation fee will not exceed 5 days' worth of consulting.

6.5 **Support**

- 6.5.1 Support Fees must be paid in advance.

- 6.5.2 On cancellation of Support, PA is not liable to any refund in respect of Support paid.
- 6.5.3 For the avoidance of doubt the cancellation of Support does not automatically terminate this agreement. Termination of this Agreement is as per Clause 7.

7. Term and Termination

- 7.1 The initial term of this Agreement is set out in the Appendix A (the "Initial Service Period").
- 7.2 Following the expiry of the Initial Service Period, this Agreement shall renew automatically for additional consecutive terms of twelve months each (each, a "Subsequent Service Period") unless either party notifies the other party in writing at least ninety (90) calendar days prior to expiry of the Initial Service Period or current Subsequent Service Period, as applicable, that it does not wish to renew upon expiry of the Initial Service Period or current Subsequent Service Period, as applicable, in which case this Agreement (and all Subscriptions under this Agreement) shall terminate upon the expiry of such period. For the avoidance of doubt, in the event that Client terminates this Agreement in accordance with this Clause 7.2, upon the expiry of the Initial Service Period or any Subsequent Service Period, Client shall not be liable for any Cancellation Fee in relation to the Subscriptions that terminate at the same time.
- 7.3 In the event of any material breach of any term or provision of this Agreement by either party, the non-breaching party may terminate this Agreement by written notice if the breaching party fails to cure the breach within 30 days of receiving written notice of such breach from the non-breaching party; provided, however, that if such breach is incapable of being rectified, the non-breaching party may terminate the Agreement by giving 30 days written notice to the breaching party.
- 7.4 Client may, at any time, terminate this Agreement for the Client's convenience and without liability, except for any applicable Cancellation Fee, by providing 90 days written notice. Upon receipt of written notice from Client of such termination for Client's convenience, PA shall cease operations as directed by Client and, except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders, and enter into no further subcontracts or purchase orders. PA shall be entitled to receive payment for work executed, and costs incurred by reason of such termination, in accordance with the applicable SOW or as otherwise agreed in writing by the parties.
- 7.5 Upon expiry or termination of this Agreement, Client must (within 30 days of expiry or termination) deliver to PA any Confidential Information of PA in Client's possession or, if requested by PA destroy or erase all copies of the same. Any Confidential Information of Client in PA's possession will be returned to Client or, if requested by Client, PA will destroy or erase all copies of the same.
- 7.6 Either party may terminate this Agreement immediately upon written notice to the other party if the other party becomes insolvent or is the subject of a proceeding in bankruptcy, is placed in receivership, or enters into an arrangement for the benefit of its creditors.
- 7.7 Client shall be responsible for payment of all Services rendered prior to the effective date of termination.
- 7.8 PA may terminate this Agreement immediately with written notice if any invoice is unpaid for a period greater than 30 days following its due date. This Clause 7.8 shall not apply in the event

- that any unpaid amount is subject to an ongoing dispute in good faith between the parties.
- 7.9 PA reserves the right to suspend the provision of Services if the Client engages any other party for the same or substantially the same Services provided by PA in terms of this Agreement where such other Party interferes with PA's ability to deliver the Services under this Agreement.
- 7.10 Upon expiry or termination of a Subscription for a Cloud Platform, Client may request PA deliver to Client an extraction of any Client Data within 30 working days of expiry or termination. Any Professional Services associated with extraction, preparation or delivery of Client Data will be charged on a time and materials basis unless otherwise agreed in writing or set out in the applicable SOW.

8. Warranty, Representation and Disclaimer

- 8.1 PA represents that: (i) it has the authority to enter into this Agreement; (ii) it will comply with all applicable law; and (iii) to the best of its knowledge, PA Products and Services do not and will not violate the Intellectual Property Rights of any third party, provided, however, that PA expressly disclaims any warranty relating to infringement resulting from PA's use of Client Materials and provided, further, that the foregoing warranty shall not apply to the extent that Client or any of its respective agents make modifications to any aspect of the results of the Services.
- 8.2 Client represents that: (i) it has the authority to enter into this Agreement; (ii) it will comply with all applicable law; (iii) it has or has obtained the right to permit PA to supply the Products, Services contemplated by this Agreement; and (iv) in entering into this Agreement it has relied upon its own experience, skill and judgement to evaluate the Products, Services and that it has satisfied itself as to the suitability of the Products, Services to meet its requirements.
- 8.3 PA warrants that any Services provided under this Agreement shall (i) be performed with due care, skill and diligence, in a timely and professional manner by qualified professional personnel, (ii) conform to the standards generally observed in the industry for similar services and (iii) in the case of Professional Services, meet the requirements set out in the applicable SOW.
- 8.4 Notwithstanding anything to the contrary hereunder, PA warrants that the PA Products do not contain any coding, time bomb or back door that would enable PA to disable the code for any reason, with the exception of a security key.
- 8.5 PA warrants that it has taken reasonable steps to test any software and/or media supplied by it or used by it in the performance of this Agreement for Computer Viruses. Based upon such testing, PA warrants and represents that, to the best of its knowledge, such software and media is free from any Computer Virus at the time it is provided to Client. "Computer Virus" is defined as a computer program attached to or a section of code hidden within the software or media that performs a function unauthorised by the software's documentation and which is designed to adversely affect the computer or software systems of any user of the Products.
- 8.6 Except as expressly provided herein, the Products and Services are provided as-is. PA does not warrant that Products or Services will be fit-for-purpose, accurate, complete or error-free. There are no warranties which extend beyond those expressed in this Agreement.

9. Indemnification

- 9.1 Except to the extent such violation arises from PA's reliance on Client's instructions or specifications or where Client or any of their respective agents modify any aspect of the results of the Services, in which case Client shall indemnify PA in accordance with Clause 9.3 below, PA agrees to indemnify, hold harmless and defend Client from and against any and all judgments, liabilities, damages, losses, expenses and costs (including, but not limited to, court costs and legal fees) incurred by Client which relate to the violation of any third party's Intellectual Property Rights arising in the provision of Services or PA Products, provided the Client i) has given prompt written notice to PA of such claim, ii) gives PA sole control of the defence and settlement of the claim against the Client, and iii) gives PA all reasonable assistance at PA's expense.
- 9.2 In the event of any infringement or claimed infringement of a third party's Intellectual Property Rights, Client will, as soon as reasonably practicable but in no event more than thirty (30) days of receiving such claim, notify PA in writing of the claim or action for which such indemnity applies. PA will be entitled at its option to undertake the defence of any such claim or action and permit Client to participate therein at Client's own expense.
- 9.3 Client agrees to indemnify, hold harmless and defend PA from and against any and all judgments, liabilities, damages, losses, expenses and costs (including, but not limited to, court costs and legal fees) incurred by PA and for which PA provides notice to Client within thirty (30) days of such claim which relate to the violation of any third party's Intellectual Property Rights arising in connection with the provision of Professional Services where such violation arises from PA's reliance on Client's instructions or specifications or where Client or any of their respective agents modify any aspect of the results of the Services.
- 9.4 For the avoidance of doubt PA is not responsible for and provides no indemnity in respect of any Third Party Products.

10. Limited Liability

- 10.1 To the full extent allowed by applicable law, the parties mutually waive all claims and rights of recovery against each other for any special, exemplary, consequential or indirect damages related to this Agreement or otherwise in connection with the PA Products or the Services. Consequential and indirect damages include (i) loss of data, use, income, anticipated profits on unperformed work or other contracts or projects, (ii) loss of business, goodwill or reputation or (iii) other consequential or indirect damages as defined by applicable law. This Clause 10.1 shall not apply to liability of either party (i) arising under Clause 9.1 or Clause 9.3 or (ii) arising from such party's fraud, gross negligence or wilful misconduct.
- 10.2 Under any State or Federal Law when implied conditions and warranties cannot be expressly excluded, PA limits its liabilities (i) in the case of services, to the supplying of the services again, or the payment of the cost of having the services supplied again at the discretion of PA and (ii) in the case of goods, to the resupply of the goods.
- 10.3 To the full extent allowed by applicable law, PA's total liability to Client for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to this Agreement from any cause or causes of action including but not limited to PA's negligence, strict liability, breach of contract or breach of warranty shall not exceed the amount of the fees paid by Client to PA under this Agreement during the previous 12 month period in which such claim

arises. This Clause 10 shall not apply to liability of PA for (i) any claim by a third party relating to infringement of such third party's Intellectual Property Rights or (ii) fraud, gross negligence or wilful misconduct, (iii) death or personal injury; (iv) damage to, or loss of, tangible property; or (v) breach of the confidentiality and privacy provisions.

11. Intellectual Property and Privacy

- 11.1 All rights in any intellectual property relating to the PA Products and Services, related documentation, or background material remain the property of PA.
- 11.2 PA retains all rights to intellectual property created in connection with its performance of Services hereunder or elsewhere.
- 11.3 Where the Client has paid a Perpetual License Fee, and subject to this clause PA grants to the Client a non-exclusive, perpetual, license to use the Intellectual Property Rights in the PA Products and any Services provided to the Client for its own internal purposes. For the avoidance of doubt, the Client is not entitled to exploit the intellectual property referred to in this clause.
- 11.4 In the case of Subscriptions, PA grants a license to use the Intellectual Property Rights in the PA Products and any Services provided to the Client for its own internal purposes including but not limited to all reports, analyses, plans, summaries, recommendations, instructions or presentations prepared by PA, and the information contained therein provided that all Fees and other amounts duly invoiced by PA, are paid in accordance with this Agreement. For the avoidance of doubt, the Client is not entitled to exploit the intellectual property referred to in this clause.
- 11.5 Nothing in this Agreement shall prevent PA from utilising any general know-how, techniques, ideas, concepts, algorithms, inventions, or other knowledge acquired or developed during the performance of this Agreement, on behalf of itself and its future clients, and PA may perform the same or similar services for others, provided that, in all cases, any Confidential Information of Client, including any proprietary or trade secret information of Client, is treated in accordance with the non-disclosure provisions of the Agreement or in terms of any separate non-disclosure agreement or similar instrument between the parties, as applicable.
- 11.6 All Client data stored within the Products or its related components remains the property of Client. Client warrants that any logo or copyright material supplied by it to PA are its own and may only be used with its authorisation. PA accepts no responsibility for the accuracy or protection of Client Data except to the extent imposed by privacy legislation. The Client warrants that it has complied with all such legislation and will continue to ensure it does so.

12. Privacy Notice

- 12.1 PA will comply and will ensure that all its representatives comply with applicable privacy law in respect of all personal information collected, used, disclosed and otherwise handled by them under or in connection with this Agreement.
- 12.2 Subject to applicable privacy law, PA may use Client information to provide Client with information relating to PA or promotional details about Products, Services that may be of interest

to Client, unless Client instructs PA in writing that it is not to be contacted for those purposes. Should Client no longer wish to receive information such as this, please notify PA using the contact details in section 12.3.

- 12.3 If Client has any questions or feedback about privacy, or wish to make a complaint about the way in which PA has handled Client personal information, contact PA as follows:
- (i) privacy@pa.com.au;
 - (ii) +61 2 9919 8900;
 - (iii) The Privacy Officer, Level 6, 124 Walker Street, North Sydney, 2060

13. Confidentiality

- 13.1 Each party to this Agreement (each, a “Recipient”) shall protect and keep confidential all non-public information disclosed by the other party (each a “Discloser”) and identified as confidential by the Discloser (“Confidential Information”), and shall not, except as may be authorised by Discloser in writing, use or disclose any such Confidential Information for a period of three (3) years from the completion, termination or abandonment of the Agreement. Upon termination or completion of this Agreement, Recipient shall return to Discloser all written materials which contain any Confidential Information. The obligations of confidentiality shall not apply to any information which: (i) was previously known to Recipient; (ii) is or becomes publicly available, through no fault of Recipient; (iii) is disclosed to Recipient by a third party having no obligation of confidentiality to Discloser; (iv) is independently developed by Recipient; or (v) is required to be disclosed as a matter of law.
- 13.2 Notwithstanding anything to the contrary in this Agreement, Recipient may disclose any Confidential Information of Discloser to (i) Recipient’s affiliates, (ii) the directors, officers and employees of Recipient and its affiliates, who have a genuine need to know such Confidential Information for the purpose of Recipient performing its obligations or exercising its rights under this Agreement, and who are subject to confidentiality obligations that apply to such Confidential Information and are at least as stringent as those contained in this Agreement, and (iii) Recipient’s legal advisors and auditors.
- 13.3 Both parties acknowledge that any use or disclosure of the other party’s Confidential Information in a manner inconsistent with the provisions of the Agreement may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the non-disclosing party may request injunctive or other equitable relief seeking to restrain such use or disclosure notwithstanding anything to the contrary in Clause 19.1 below.

14. Independent Contractor Status

- 14.1 The parties hereto are independent contractors. Nothing in this Agreement shall be deemed to create any form of partnership, principal-agent relationship, employer-employee relationship, or joint venture between the parties hereto.

15. Solicitation

- 15.1 Both parties agree not to hire or attempt to hire employees or subcontractors of the other party without prior written consent, during the term of this Agreement and during the one (1) year

period commencing upon completion, termination, expiry or abandonment of this Agreement. If consent is provided, then the 'hiring' party agrees to pay the other party a recruitment fee equivalent to four months of the salary package as compensation unless otherwise agreed in writing. This restriction also applies for a period of 12 months from the date of resignation/termination of any employee or subcontractor.

16. Delays

- 16.1 Neither party shall be liable for delays caused by fire, accident, labour dispute, war, insurrection, riot, act of government, act of God, epidemic or pandemic or any other cause reasonably beyond its control; but each party shall use all reasonable efforts to minimise the extent of any such delay. PA shall not be liable to Client (or Client's customers) for any delay in performance or any failure in performance hereunder caused in whole or in part by reasons beyond the control of PA and resulting from Client's failure to furnish in a timely manner information, equipment, or materials necessary to provide the Cloud Platform or perform the Services.

17. Amendments

- 17.1 Changes to this Agreement need to be agreed in writing by both parties. Any SOW that has been signed by both parties is part of this Agreement, and any Change Request that has been signed by both parties is part of the applicable SOW.

18. Assignment

- 18.1 Neither party may assign its rights or obligations hereunder (except to subsidiaries or affiliates) without prior written consent of the other party, which consent will not be unreasonably withheld. All legal and other costs associated with such an assignment will be borne by the party requesting the assignment.

19. Arbitration and Governing Law

- 19.1 This Agreement shall be governed by and construed in accordance with the laws of the New South Wales, Australia without regard to the choice of law or conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 19.2 Any dispute, controversy, cause of action, or claim, of any kind or nature whatsoever, whether legal or equitable, including, but not limited to, claims sounding in contract, torts or products liability and claims based upon alleged violations of consumer protection laws, which arise out of or relate to (1) this Agreement, or the breach, termination or invalidity of this Agreement, (2) installation, modification or use of the Service, or (3) any services rendered in connection with the use of the Service shall be finally and exclusively settled by arbitration in accordance with the Australian Disputes Centre Mediation Guidelines in effect on the date of this Agreement by one (1) mediator appointed in accordance with such rules. The place of arbitration shall be Sydney, Australia. Judgment upon the award of the arbitrators may be entered in any court having jurisdiction thereof. This Clause 19.2 shall not prevent either party from seeking emergency injunctive relief in any court having jurisdiction.

- 19.3 A party claiming that a dispute has arisen must give written notice to the other party specifying

the nature of the dispute.

20. General

20.1 Audit rights

20.1.1 PA may, at its own expenses and upon at least 10 business days written notice, conduct an audit of the Client's records only to the extent necessary to assess whether or not Client is complying with the license terms in respect of this Agreement. Unless required by Law, PA will carry out no more than one audit in any 12 month period.

20.2 No waiver

20.2.1 No term of this Agreement shall be deemed waived and no breach or default excused unless such waiver or excuse shall be in writing and signed by the Party issuing the same. The waiver by a Party of a breach or default by the other Party in any of the provision of the Agreement or any SOW shall not be construed as a waiver of any succeeding breach of the same or other provisions; nor shall any delay or omission on the part of either Party to exercise or avail itself of any right, power or privilege that is has or may have hereunder, operate as a waiver of any breach or default by the other Party.

20.3 Precedence

20.3.1 The various documents comprising this Agreement are intended to be read together. If, however, there is any conflict or ambiguity in interpretation between such documents, the documents are to be read in the following order of precedence (i.e. (a) has the highest order of precedence) to the extent required to resolve such conflict or ambiguity:

- a) These terms and conditions;
- b) any Change Request that has been signed by both parties;
- c) any SOW that has been signed by both parties;
- d) any additional order that has been signed by both parties;
- e) any appendices forming part of this Agreement, including but not limited to Appendices A, B, C, D, E, F and G attached hereto on the date first shown above.

20.4 Power to enter into this Agreement

20.4.1 Each party represents and warrants that, its representatives are properly authorised and have full power to enter into this Agreement on behalf of such party and such party has the full power to carry out its obligations thereunder.

20.5 Machine Learning Models Disclaimer

20.5.1 The Products may allow integration with, or utilization of, machine learning models, statistical algorithms, or other analytical tools developed, selected, or adopted by Client ("Models"). Client acknowledges and agrees that (i) all Models are created, obtained, or deployed at Client's sole discretion and risk, (ii) Client remains solely responsible for the selection, accuracy, training, validation, operation, and results of any Models, and (iii) PA does not develop, endorse, warrant, or represent that any Model, whether recommended, referenced, or used in connection with the Products, is accurate,

reliable, compliant, or fit for any particular purpose. To the maximum extent permitted by law, PA disclaims any and all liability arising from or related to Client's use of any Models within or in connection with the Products.

20.6 **Supremacy of Agreement Terms**

20.6.1 The parties acknowledge and agree that this Agreement governs the commercial terms and conditions applicable to the provision and use of the Product and shall prevail over any inconsistent or conflicting provisions contained in any “shrink wrap” or “click wrap” agreements that may accompany, be embedded in, or otherwise appear upon installation or use of the Product. For the avoidance of doubt, nothing in this clause is intended to amend, modify, or supersede the licensing terms applicable to the Product, and this clause expressly excludes and shall not apply to any Microsoft “shrink wrap” or “click wrap” agreements, which shall continue to govern the use of Microsoft products in full force and effect..

21. Appendices

The following appendices are included as part of this Agreement:

Appendix	Title
A	Schedule of Products, Subscriptions & Services
B	License Maintenance
C	Support
D	Managed Services
E	Professional Services
F	Supporting Reference Documentation

22. Approval

Signed for CLIENT by an authorised officer:	Signed for PA by an authorised officer:
Signature:	Signature:
Print Name:	Print Name:
Title:	Title:
Date:	Date:

Appendix A: Schedule of Products and Services

1. Description of what this Agreement covers - Template

Reference to any Project Scope Agreement or other Proposal by PA

Commencement Date for Initial Service Period

Commencement Date is the date upon which client agrees to any Project Scope Agreement or other written instructions (including email) from Client to PA.

Initial Service Period is 12 months from date of this Agreement.

Appendix B: License Maintenance

1. Preamble

- 1.1 This Appendix only applies where the Client has purchased a Software Perpetual License and has paid the annual License Maintenance Fees.,

2. License Maintenance

- 2.1. For Products which the Client has purchased a Software Perpetual License the client must have paid the relevant License Maintenance Fees for the current period, the third-party vendor or PA will from time to time, provide at no additional charge, a new Public Software Version.
- 2.2. The charge for any Professional Services associated with the installation and/or upgrading of Products, and the re-application or modification of Customisations, will be based on current standard rates as amended from time to time.
- 2.3. Failure to renew and pay License Maintenance Fees (a lapse of the License Maintenance entitlement) at least 5 working days before the License Maintenance renewal date constitutes a termination of the License Maintenance entitlement. To reinstate a lapsed License Maintenance entitlement will require the Client to either 1) pay for all License Maintenance Fees not paid during the period of lapse plus a reinstatement fee calculated as 20% of all the lapsed fees plus any additional third-party vendor based fees, or 2) purchase new Perpetual Licenses at current list price.

Appendix C: Support

PA's Support Service Level Guide is published online and may be amended from time to time:

<https://www.pa.com.au/about/policies/support-service-level-guide/>

Appendix D: Managed Services

1. Preamble

- 1.1 This Appendix only applies where the Client has purchased a Managed Services and has paid the annual Managed Services Fees
- 1.2 Client will access the Cloud Platform using an internet connection, browser, and remote desktop services technologies.
- 1.3 PA will maintain availability to the Cloud Platform in accordance with service levels published by the Cloud Provider at <https://azure.microsoft.com/en-au/support/legal/sla/>.
- 1.4 PA will provide services to manage the Cloud Platform. (and / or on premise hardware infrastructure).
- 1.5 The Client will not engage any other party to provide Services to client.
- 1.6 Client shall not self-implement any changes to Cloud Platform.

2. Cloud Provider terms

- 2.1 The Cloud Platform is subject to the Cloud Providers terms and conditions which are published and updated at <https://azure.microsoft.com/en-au/support/legal/>.

3. Acceptable usage policy

- 3.1 Neither Client, nor those that access the Cloud Platform through Client, may use the Cloud Platform:
 - 3.1.1 In breach of any Cloud Provider Agreements published at <https://azure.microsoft.com/en-au/support/legal/>
 - 3.1.2 in a way prohibited by law, regulation, governmental order or decree;
 - 3.1.3 to violate the rights of others;
 - 3.1.4 to try to gain unauthorised access to or disrupt any service, device, data, account or network;
 - 3.1.5 to spam or distribute malware;
 - 3.1.6 in a way that could harm the Cloud Platform or impair anyone else's use of it; or
 - 3.1.7 in any application or situation where failure of the Cloud Platform could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.
- 3.2 Violation of the terms in this section may result in suspension of the Cloud Platform. PA will suspend the Cloud Platform only to the extent reasonably necessary and after providing reasonable notice in the circumstances. Unless PA reasonably believes an immediate suspension is required, PA will provide reasonable notice before suspending the Cloud Platform.

4. Managed services

The following services are included in Managed Services provided by PA:

- 4.1 PA will be the sole holder of elevated (administrator) access credentials for all server and database components.

- 4.2 Manage software applications that monitor server, database, and Products 24 hours per day, 7 days per week.
- 4.3 Notify the Client of appropriate issues arising from the use of the Cloud Platform.
- 4.4 Manage anti-virus technology to monitor unauthorised access to the Cloud Platform.
- 4.5 Maintain a 'least privilege' approach to infrastructure access.
- 4.6 Schedule backups of the database information that is stored within the Cloud Platform as agreed with the client. This Agreement does not include backups of Client Data held outside the Cloud Platform.
- 4.7 Carry out maintenance, updates and enhancements to the Cloud Platform during planned Scheduled Down Time.
- 4.8 Assist in establishing connectivity to the Cloud Platform from the Client's IT network.
- 4.9 Manage user administration within the Cloud Platform.
- 4.10 Restore data from backups upon demand from the most recent successful backup. Data restoration requests are billable on a time and materials basis.

5. Client Responsibilities

- 5.1 Nominate an IT administrator for ongoing co-ordination with the PA Managed Services team.
- 5.2 Setup, configure, and maintain Client-side connectivity compatible with PA's Cloud Provider.
- 5.3 Notify PA of unusual business events which may affect the operation of the Cloud Platform at least 15 days prior to their upcoming occurrence. This includes but is not limited to the planned installation of additional technology which may interact with the Cloud Platform, significant changes to Products (upgrades, reconfigurations, etc.), and expectations of notable increases in load on the Cloud Platform.
- 5.4 Not configure or adapt the Products in the manner that causes performance degradation to the Cloud Provider environment.
- 5.5 Client must notify PA of all elevated credentials to the Cloud Platform obtained by Client.
- 5.6 Client must promptly notify PA if Client is unable to access the Cloud Platform.

Appendix E: Professional Services

1. Statement of Work

- 1.1 In the event of a conflict between the terms and conditions of this Agreement and a SOW, this Agreement will supersede the SOW.
- 1.2 PA will provide Professional Services to Client as described in written form. Standard Service fees are:
 - 1.2.1 PA reserves the right to amend rates from time-to-time giving 30 days notice, no more than twice per annum.
 - 1.2.2 Payment Terms – 14 days net from date of invoice.
 - 1.2.3 Minimum Charges:
 - 1.2.3.1. Minimum charge of 8 hours for on-site work.
 - 1.2.3.2. Minimum charge of 1 hour for remote services work.
 - 1.2.3.3. Billed in minimum 30-minute increments after minimum charge.
 - 1.2.3.4. Weekend, Public Holiday or out of hours.
- 1.3 Professional Services performed on a weekend, Public Holiday or out of hours will be charged at double rates. Out of hours is deemed to be outside PA Business Hours.

2. Travel charges

- 2.1. Unless otherwise agreed in a SOW, travel charges will be charged on the following basis:
 - 2.1.1. Metropolitan travel: For local travel requests, the travel charge is based on the travel time for the requested consultant to and from their home office and the requested location based on 50% of the standard consulting rate. The fee is in lieu of charging any expenses.
 - 2.1.2. Non-metropolitan travel: For interstate or overseas travel, PA will pass on expenses at cost plus the travel time based on 50% of the standard consulting rate.

Appendix F: Supporting Reference Documentation

1.1 Documents Reference and Supporting this Agreement

1.1 .
