
Engagis Master Service Agreement

Effective from July 2017

BACKGROUND

- A. Engagis provides a range of Hardware, Software and Services (“Products”) to Clients.
 - B. The Client wishes receive Products from Engagis.
 - C. These Master Terms set out the terms and conditions upon which Engagis provides these Products.
 - D. The SOW’s set out the various Products being provided from Engagis to the Client and specify any specific terms and conditions which apply to a particular Product.
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OPERATIVE PROVISIONS

1. Definitions and interpretation

1.1. Definitions

The following terms are defined in this Agreement:

Agreement means this agreement, any annexures, schedules and items, including any SOW’s;

Background IP means, in respect of the relevant party, Intellectual Property Rights owned by, or proprietary to that party (or third party – as applicable) prior to this Agreement being entered into;

Business Day means a day that is not a Saturday, Sunday or a day on which registered banks are not open for business in New South Wales;

Claim means any claim, action, demand, cost, loss damage or proceeding (including legal costs on a solicitor client basis);

Commencement Date means the date specified in Item 1 of Schedule 1;

Completion Date means the date specified in Item 2 of Schedule 1;

Confidential Information includes any information marked as confidential and any information received or developed by a party during the term of this Agreement, regardless of its form, which is by its nature confidential, marked as confidential or known to be confidential;

Consequential Loss includes any indirect, special, economic or consequential loss including loss of revenue, profit, goodwill, or opportunity, loss or corruption of data, regardless of whether Engagis knew or ought to have known about the possibility of the loss;

Contract Number means the contract number in Item 6 of Schedule 1;

Deliverable means each deliverable or milestone in a SOW which is specified to be a deliverable;

Defect means any Deliverable or part of a Deliverable which does not meet the specification or performance criteria of the Deliverable;

Fee(s) means the amount or rates set out in the SOW and includes Software Fees, Maintenance Fees, Hosting Fees, third party charges or any other fees specified;

Force Majeure means a matter outside of Engagis's control and includes, but is not limited to, act of God, war or other hostilities, fire, flood, strike, lock-out, delays in transport, breakdown in machinery, restrictions or prohibitions or any other acts by any government or semi government agency, and any reliance on third parties or suppliers (including but not limited to telecommunications carriers or internet service providers) to perform their contractual or other obligations.

Further Term means the further term (if any) specified in Item 3 of Schedule 1;

GST means the goods and services tax payable under the GST Legislation;

GST Law means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and related legislation;

Hardware means any Hardware specified in the SOW's;

Insolvent or Insolvency has the same meanings under the Corporations Act 2001;

Intellectual Property means any and all intellectual property throughout the world, whether subsisting now or in the future, including rights of any kind in inventions (including patent rights), copyright, rights in circuit layouts, registered designs, registered and unregistered trade marks (including service marks), trade secrets, know-how and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields or any application or right to apply for registration of any of those rights, but does not include Moral Rights;

Moral Rights has the meaning given to it in the Copyright Amendment (Moral Rights) 2000 (Cth) and includes rights of integrity of authorship, rights of attribution of authorship and similar rights that exist or may come to exist anywhere in the world;

"New Release" means software produced primarily to extend, alter or improve the Software by providing additional functionality or performance enhancement (whether or not defects in the Software are also corrected) while still retaining its original designated purpose.

Parties means the Client and Engagis, and Party shall mean either one of them;

PPSA means the Personal Property Securities Act 2009;

Product means any Hardware, Software or Service purchased or intended to be purchased by the Client from Engagis under this Agreement;

Site means any specific website or digital platform to be created by Engagis for the Client under any SOW, including the website, microsite, landing page, banner advertisement and/or competition form.

SOW means the Statements of Work(s) set out in Schedule 2;

Related Body Corporate has the same meaning as it has in the Corporations Act 2001 (Cth);

Engagis's Personnel means any person(s) that Engagis designates to perform Services on its behalf;

Scope Change means a scope or creative change at the request of the Client to Engagis;

Services means the services more particularly set out in an SOW;

Software means the software supplied, developed or enhanced by Engagis to the Client under a SOW and which continues to be used in the performance of the Services. This definition also includes any Update or New Release which Engagis may provide the Client.

Specifications means the specifications set out in the SOW's;

"Update" means software (which may be known as a 'hot-fix' or 'patch') which has been produced primarily to overcome defects in, or to improve the operation of, the Software without significantly altering the Software (and whether or not the Software has also been extended, altered or improved by providing additional functionality or performance enhancement).

Warranty Period means the warranty period for the number of days specified in the SOW.

1.2. Interpretation

In this Agreement the following rules of interpretation apply unless the contrary intention appears:

- (a) Headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) The singular includes the plural and vice versa, and any gender includes any other gender;
- (c) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) The words “such as”, “including”, “particularly” and similar expressions are not used as nor are intended to be interpreted as words of limitation;
- (e) When the day on which something must be done is not a Business Day, that thing must be done on the next Business Day;
- (f) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it;
- (g) A reference to:
 - (i) a person includes a natural person, partnership, joint venture, government or governmental agency, trust, estate, association, corporation or other body corporate;
 - (ii) a party includes its successors and permitted assigns;
 - (iii) a document includes all amendments or supplements to that document;
 - (iv) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment of this Agreement;
 - (v) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (vi) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
 - (vii) a monetary amount is in Australian dollars.

2. Parties

The parties are set out in Schedule 1.

3. Master Terms

These Master Terms apply to all Products set out in the SOW's. For the purpose of clarity, these Master Terms and the SOW's override any purchase orders or other standard form of agreement which are intended to be incorporated by reference.

4. SOW's

- (a) The Products to be provided by Engagis to the Client are as set out in the SOW's. Included in the SOW's are:
- (i) the Software, Hardware and Services to be provided;
 - (ii) the scope of the Services provided,
 - (iii) any terms specific to the Products;
 - (iv) any Deliverables;
 - (v) the fees for the services, the commencement date and end date, and any special conditions which apply (including, any variations to standard SOW's as specified in the "Special Conditions" section of the relevant SOW).
- (b) From time to time, Engagis may agree to provide additional Products by adding SOW's to these Master Terms. The relevant SOW will reference the contract number of these Master Terms.
- (c) In the case of Scope Changes, these will be agreed in writing between the parties, which may be evidenced by a fresh SOW, which will replace the existing SOW, from the date the changes are agreed.

5. Order of Precedence

If there is any inconsistency between these Master Terms and a SOW, the order of precedence, from highest to lowest is:

- (a) Any special condition in the SOW;
- (b) The remainder of the SOW's; an
- (c) These Master Terms.

6. Term

6.1. Commencement

This Agreement will start on the Commencement Date and will continue until the Completion Date, unless terminated earlier or extended in accordance with the terms of this Agreement.

6.2. Further Term

- (a) Engagis may, in its sole discretion, by notice in writing to the Client at any time prior to the Completion Date, extend the term of this Agreement for the Further Term.
- (b) If the Agreement is extended in this way, the terms and conditions of this Agreement will continue to apply during the extended period until the expiry of the Further Term
- (c) If the Client continues to engage the services of Engagis after the expiry of this Agreement, without providing a formal notice of extension, then this Agreement will continue on a month to month basis and may be terminated by either party providing three (3) months' written notice to the other.

7. Supply of Services

7.1. Engagis Obligations

- (a) Engagis will provide the Client with the Services set out in the SOW [s].
- (b) Engagis will provide the Services in accordance with the timing requirements specified in the SOW[s].
- (c) Engagis will provide the Services in accordance with the Service Levels specified in the SOW[s].
- (d) Engagis may sub-contract the provision of the Services under this Agreement with the prior written consent of the Client, which may not be unreasonably withheld. The Client acknowledges that the Engagis business model uses a number of contractors and consultants, and this is not to be considered "sub-contracting" under this Agreement.
- (e) The Services will be delivered during the hours, and at the location specified in the SOW's, or if not specified, at a location in Engagis's opinion is the most appropriate location for the provision of Services.
- (f) Engagis will rectify any Defect within the Warranty Period. Otherwise, any service level credit or rebates specified in the SOW's are the sole remedy of the Client in relation to a deficiency or failure in service levels.

7.2. Standard and scope of performance

- (a) Engagis will use personnel who have the necessary skills, experience and expertise to perform the Services.
- (b) Engagis will perform the Services in accordance with the scope set out in the SOW[s].

7.3. Client obligations

The Client must:

- (a) Provide free access to the Client's premises at the times required by Engagis, to provide a safe workplace for Engagis staff, and provide the resources Engagis reasonably require to provide the Services;
- (b) Comply with our directions in relation to the Services;
- (c) Comply with all laws in relation to the Services;
- (d) Ensure that any Site does not:
 - (i) cause any nuisance to any person, and
 - (ii) breach any law or contain material which is defamatory, offensive, abusive or illegal at any place where it will be viewed; and
 - (iii) contain material that the Client does not have the right to put on the Site or otherwise expose Engagis to any liability of any nature to a third party;
- (e) ensure that all safeguards are taken to ensure that any content supplied to Engagis does not contain any virus or have any impact on the systems security of Engagis's property (including its servers)

7.4. Delays

Engagis uses its reasonable endeavours to meet deadlines and milestones set out in the SOW's. However, Engagis will not be liable in respect of any delay or failure to provide Services if it results, directly or indirectly, from any of the following:

- (a) The Client's failure to comply with clause 7.3,
- (b) Any third party action or inaction;
- (c) A failure of software, hardware or other services which are not provided by Engagis under this Agreement.

7.5. Force Majeure

In the case of Force Majeure,

- (a) Engagis's obligation to provide services is suspended until the force majeure is resolved, with no penalty to apply, or liability to arise, in relation to either party;
- (b) Any key dates in the SOW's are pushed out in accordance with the number of days the Force Majeure event duration; and
- (c) Engagis is not otherwise liable to the Client in relation to any delay to the provision of Services.

8. Software

8.1. Software Terms

The terms of delivery and other terms relating to Software are covered in the relevant SOW.

8.2. Third party software

- (a) If software licensed by third parties is provided to the Client, the Client must fully comply with the terms of the licence. The Client indemnifies Engagis against any loss, damage, claim, liability or demand incurred by Engagis arising directly or indirectly as a result of the Client's breach of a third party licence.
- (b) If the Client integrates Software with third party software without Engagis's consent, the Client acknowledges that third party software may interrupt or interfere with the interoperability requirements of Engagis. In such cases, Engagis may cease providing the relevant Product and the Client will not be entitled to any refund, credit or other form of compensation.

9. Supply of Hardware

- (a) The supply of any Hardware is set out in the SOW's.
- (b) Risk in the Hardware passes to the Client upon delivery of the Hardware to the Client. Title in the Hardware passes to the Client upon payment in full.
- (c) For the avoidance of doubt, Engagis retains Title in the Hardware until it has been paid in full. This ownership applies even in cases where you have installed Hardware, or it has been commingled.
- (d) Engagis must deliver the Hardware as contemplated in the SOW's. However, if the specified hardware is or becomes unavailable, Engagis may provide alternative hardware that can fulfil the same functionality and performance as the original hardware.

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- (e) On request by the Client, the Client must provide Engagis with any technical information or literature relating to the Hardware.
 - (f) Engagis will use reasonable endeavours to procure the warranty offered by the manufacturer is passed onto the Client. Engagis provides no additional warranty, representation or guarantee as to the hardware, as to its fitness for purpose, merchantability or otherwise.
 - (g) Engagis may enter the Client's premises where Hardware is located and you provide Engagis with an irrevocable licence to enter Premises for this purpose, in the following situations;
 - (i) The Client becomes Insolvent, or
 - (ii) the Client fails to pay any amount due and payable for any Hardware or Equipment, and this amount remains outstanding for more than 14 days; or
 - (iii) Engagis terminates these Master Terms or the specific SOW's to which the Hardware relate.
 - (h) If Engagis enforces its rights under clause (e) above, Engagis will not be liable for any cost, damage expense, loss or other claim as a direct or indirect result of this action. The Client acknowledges that these terms are reasonable.
 - (i) Engagis may enter the Client's premises for the purpose of inspecting any Hardware, upon reasonable notice.
 - (j) In the case of leased Hardware, the Client must comply with the terms of the Managed Services Master Agreement which relates to the Hardware in the form substantially attached to this Agreement (if any) in the Annexure.

10. Fees

- (a) The Fees for the Products are set out in the Sow's. Fees may be set fees or determined at a time and materials rate.
- (b) Engagis must issue an invoice in accordance with the GST Legislation which includes any information requested by Engagis.
- (c) The Client will pay the invoice 30 days after receipt of the invoice.
- (d) Unless Engagis have agreed to fix fees, Engagis may adjust its fees upon 30 days written notice to the Client.
- (e) If Engagis perform work which is not covered by specific SOW's, the fees which will be charged will be on our time and material rates for similar Services.
- (f) In the case of pre-paid fees as specified in a SOW, Engagis will not provide services under SOW's until these fees have been pre-paid. Pre-paid fees are not refundable.

- (g) In the case of out of pocket expenses, the parties agree that these expenses must be approved in writing by the Client and Engagis will supply reasonable evidence, such as a tax invoice, substantiating the expense.
- (h) We will invoice you in accordance with any payment schedule specified in the SOW's.
- (i) The Client must remit payment for each invoice by the due date specified on the invoice or otherwise specified by Engagis (acting reasonably).
- (j) In the case of overdue payments, we may charge interest on the overdue amount at 2% above Engagis's current bank rate, accruing monthly, from the date the invoice is overdue, and Engagis may also withhold providing Services under any SOW's without penalty.
- (k) If Engagis is required to attempt to recover the amount as referred to in paragraph (j) above, the Client must pay and indemnify Engagis for all costs and expenses incurred, including legal expenses on a solicitor/client basis.

11. Taxation

11.1. Payment of GST

- (a) Unless specified otherwise, the Fees payable under this Agreement do not include GST.
- (b) If GST is payable on any supply made by a party under or in connection with this Agreement, the consideration provided (or to be provided) for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply (the "GST Amount").
- (c) The party making the supply must promptly provide a tax invoice or receipt, in an approved form for GST purposes, for any supply for which the party making the supply may recover GST.
- (d) If a party has incurred a cost on which GST is payable, that party may claim the cost plus GST, unless the party is entitled to an input tax credit in respect of such GST.
- (e) Any GST Amount must be paid at the same time and in the same manner as the consideration on which the GST Amount is calculated. However, the party receiving the supply is not required to pay the GST Amount until seven days after receiving a tax invoice.

11.2. Registration and ABN

- (a) Each party warrants that at the time any supply is made under this Agreement on which GST is payable, that party is registered under the GST Legislation.

12. Intellectual Property

- (a) Engagis owns its Background IP and the Client owns its Background IP.
- (b) Except where specified in the SOW's otherwise, Engagis owns any and all Intellectual Property Rights in any materials including software that is supplied or licensed to you, including software designed or created or modified under this agreement.
- (c) The Client is granted a perpetual, royalty free irrevocable non-exclusive licence to use the Intellectual Property Rights referred to in clause 12(b), for the purpose of its business.
- (d) To the extent required to perform its obligations under this Agreement, Engagis is granted a perpetual, royalty free irrevocable non-exclusive licence to use the Intellectual Property Rights of the Client.
- (e) This clause 12 will survive the termination or expiry of this Agreement.

13. Confidentiality

- (a) Each party agrees that during the term of this Agreement, and at all times after the Termination Date, that:
 - (i) it will not disclose the Confidential Information of the other party to any third party (unless express written consent has been provided) to the disclosure;
 - (ii) it will not make any copies of the Confidential Information without the other party's prior written consent;
 - (iii) it will not use the Confidential Information for its own benefit or the benefit of any third party;
 - (iv) it will only use the Confidential Information for any purpose expressly agreed to;
 - (v) it will use best endeavours to protect the Confidential Information from any unauthorised disclosure;
 - (vi) it will not challenge the other party's ownership of the Confidential Information; and
 - (vii) it will notify the other party if it becomes obliged to disclose any part of the Confidential Information.
- (b) The obligations set out in clause 13(a) do not apply to Confidential Information:
 - (i) that is in the public domain (except as a result of the other party's breach of this Agreement); or
 - (ii) that must be disclosed by law.
- (c) Each party will immediately notify the other party if there has been a breach, or if it suspects that there has been a breach, of confidentiality of the Confidential Information and will provide

any assistance requested by the other party to investigate any breach or suspected breach of the confidentiality of the Confidential Information and to mitigate the damage or potential damage caused by the breach.

- (d) The parties agree that upon termination or expiry of this Agreement or upon request by the other party, whichever is sooner, it will immediately and at its cost:
 - (i) deliver to that party all Confidential Information; and
 - (ii) delete all electronic versions of the Confidential Information.
- (e) The Client agrees to fully indemnify and hold harmless Engagis against all damage, losses, liabilities, claims, costs and expenses which Engagis may incur directly or indirectly as a result of any breach of this clause 13 by the Client.
- (f) The Client acknowledges and agrees that damages may be inadequate compensation for breach of the obligations contained in this clause 13.

14. Insurances

- (a) The Client shall effect and at all times maintain all the following insurance:
 - (i) public liability insurance for a minimum of an amount of \$20 million for each occurrence;
 - (ii) any other insurances required by Engagis from time to time.
- (b) Engagis will provide workers compensation insurance for Engagis's Personnel.

15. Warranties and indemnities

- (a) The Client warrants that it has not relied on any statement, written or verbal, other than those expressly stated in this Agreement.
- (b) In the case of Engagis, any representation, warranty, undertaking, guarantee or condition that is implied by legislation, is, to the extent it is able to be, expressly excluded to the fullest extent.
- (c) Engagis does not warrant that the goods and services it provides will be free from faults errors or interruptions.
- (d) Engagis is not liable for data loss under any circumstances.
- (e) Neither party is liable to the other party for any Consequential Loss.
- (f) Engagis's maximum aggregate liability under this Agreement is limited to the amount equal to the Fees you have paid us under the relevant SOW(s) for the previous year.
- (g) The Client indemnifies Engagis, its employees and agents, against all loss, Claims, costs, expenses or other liability which Engagis incurs or suffers arising from the Client's breach of these Master Terms or SOW's, or the Client's willful, unlawful or negligent act or omission.

(h) The obligations under this clause 15 will survive termination of this Agreement.

16. Termination

16.1. Engagis Termination

- (a) Engagis may immediately terminate this Agreement by written notice to the Client, if:
- (i) the Client commits serious or persistent breaches of any provision of this Agreement which are incapable of being remedied to the Engagis's reasonable satisfaction;
 - (ii) the Client breaches a provision of clause 13 (Confidentiality) or 15 (Warranties and Indemnities);
 - (iii) the Client fails to remedy, to Engagis's reasonable satisfaction, a breach of any provision of this Agreement within fourteen (14) days of receiving a notice from Engagis requiring the breach to be remedied;
 - (iv) the Client fails to pay an invoice within 30 days of it being due;
 - (v) the Client becomes, or in the reasonable opinion of Engagis, is in jeopardy of becoming, subject to any form of Insolvency; or
 - (vi) the Client ceases carrying on its business.
- (b) Breach of a SOW is deemed to be a breach of these Master Terms, and this Agreement. Termination does not affect Engagis's right of action with respect to any breach by the Client prior to the termination.
- (c) Engagis may, instead of exercising its rights under clause 16.2(a), suspend performance under the Agreement.
- (d) Any special payment provisions relating to Termination are specified in the SOW[s].

16.2. Client Termination

- (a) The Client may terminate this Agreement if Engagis persistently breaches Service Level(s) and fails to remedy the breaches with 30 days of receiving a notice specifying the breach to be cured. Upon termination, Engagis retains all monies already paid under the Agreement.
- (b) If the Client terminates a SOW before its expiry, the Client must pay the exit fee in accordance with the SOW. The Client acknowledges that the exit fee is a reasonable preestimate of our loss arising from early termination and is without prejudice to any other rights Engagis may have against the Client.

16.3. Termination on Completion Date

Unless this Agreement has been terminated earlier in accordance with this Agreement, this Agreement will come to an end on the Completion Date or at the expiry of any Further Term.

16.4. Obligations on termination

- (a) Upon expiry or termination of this Agreement for any reason, or at any other time at Engagis's request:
 - (i) the Client must, at its cost, immediately return to Engagis the following items in its possession or control:
 - A. all Confidential Information;
 - B. copies or extracts of Confidential Information; and
 - C. all property belonging to Engagis, including all documents, records, papers, reports, disks, data, equipment and other material.

17. PPSA Provisions

- (a) If Engagis has a "security interest", under the PPSA, then Engagis is entitled to register its interest under the PPSA.
- (b) For this purpose, the Client must do all things, and sign all document, Engagis requires in order to register, enforce or otherwise perfect its security interest under the PPSA, and to exercise Engagis's rights in connection with the security interest.
- (c) Any terms defined in the PPSA which are used in this Agreement are incorporated by reference.

18. Notices

- (a) In this agreement, Notices include any approvals, consents, instructions, orders, directions, statements, requests and certificates or other communications that may be given, or are required to be given, under this agreement.
- (b) Unless expressly stated otherwise in this agreement, all Notices:
 - (i) must be:
 - A. in writing;
 - B. signed - if the party is a company, then the Notice must be signed by a director or solicitors; and
 - C. left at the address specified in Schedule 1 for the relevant party (or such other address as notified in writing from time to time), sent by prepaid ordinary post, sent by email, or given in any other way permitted by law; and

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- (ii) take effect from the time they are received unless a later time is specified.
- (c) A Notice given in accordance with clause (b) takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, six (6) Business Days after the date of posting (or seven (7) Business Days after the date of posting if posted to or from a place outside Australia); or
 - (iii) if sent by email, upon successful transmission of the email, but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

18.1. Dispute Resolution

The Parties agree to follow the following procedure provided in this clause 19, prior to the commencement of any legal proceedings (except for legal proceedings for urgent interlocutory relief) in respect of any dispute arising under this Agreement). A Party claiming there is a dispute will notify the other Party in writing, setting out the nature of the dispute.

- (a) The Parties will attempt to resolve the dispute through direct negotiation, including by referring the matter to each Party's respective Chief Executive Officers, or another representative of a similar level of seniority. If the dispute cannot be settled by the Parties within 10 Business Days from the date of the notice referred to above in clause 18.1(a) the Parties will refer the dispute to mediation by a person appointed for that purposes by agreement between the Parties, or failing agreement, a person appointed by the President of the Law Institute of Victoria. The cost of mediation entered into under this clause 18.1(a) will be borne equally by the Parties.
- (b) Any determination to a dispute referred to a mediator appointed under this clause will be binding on the Parties.

19. General

- (a) **Set off:** Engagis may at any time set off any amount owing to the Client against any liability or amount owing to Engagis by the Client whether such liability or amount arises under this Agreement or otherwise.
- (b) **Non-solicitation:** The Client agrees that it will not canvass, solicit or entice, employ, induce or attempt to employ, induce, solicit or entice away from Engagis any employee, contractor or client of Engagis either during the Term or for a period of 12 months after the date of expiry or termination of this Agreement.
- (c) **Continuing clauses:** Clauses 1 (Definitions and Interpretation), 12 (Intellectual Property), 13 (Confidentiality), 15 (Warranties and Indemnities), 16.4 (Obligations on Termination), and this clause 18.1 (General Provisions) shall survive termination of this Agreement.
- (d) **Variation:** A provision of this Agreement or a right created under it may not be varied except in writing with the consent of each of the parties to this Agreement.

- (e) **Waiver:** In no event shall any delay, neglect or forbearance on the part of any Party in enforcing any provision of this Agreement be, or deemed to be, a waiver thereof or a waiver of any other provision or shall in any way prejudice any right of that party under this Agreement.
- (f) **Severability:** If any provision of this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, prohibited by law or judged by a court to be unlawful, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.
- (g) **Entire agreement:** This Agreement contains the whole agreement between the parties in respect of the subject matter of this Agreement and supersedes and replaces any prior written or oral agreements, representations or understandings between the Parties relating to such subject matter. In the event of any inconsistency between those documents, the terms of this Agreement shall prevail.
- (h) **Delay:** No failure or delay by Engagis in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege.
- (i) **Rights and remedies:** The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.
- (j) **Assignment by Client:** The Client cannot assign, whether in whole or part, or otherwise transfer the benefit of this Agreement, or any rights or obligations hereunder, without the prior written consent of Engagis (which may be withheld in its absolute discretion).
- (k) **Relationship:** This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.
- (l) **Further assurance:** Each party to this Agreement shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of this Agreement or to make it easier to enforce.
- (m) **Governing law:** This Agreement is governed by and construed and interpreted in accordance with the laws of New South Wales. The parties irrevocably submit to the exclusive jurisdiction of the courts New South Wales.
- (n) **Costs:** Each party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.
- (o) **Counterparts:** This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same agreement.

Schedule 1 – Terms

1. Commencement Date	[DD/MM/YY]
2. Completion Date	[DD/MM/YY]
3. Further Term	[insert number of years if there is to be a further term]
4. Engagis Details	<p>Name:</p> <p>ACN:</p> <p>Address: _____</p> <p>_____</p> <p>Contact:</p> <p>Phone:</p> <p>Email:</p>
5. Client Details	<p>Name:</p> <p>ACN:</p> <p>Address: _____</p> <p>_____</p> <p>Contact:</p> <p>Phone:</p> <p>Email:</p>
6. Contract Number	

Schedule 2 – SOW's

Services

[Insert a description of services to be provided here.]

Specification

[means the specific Services to be provided by the Client under this Agreement [when such Services will be provided, the length of time they will take to perform and the human and other resources and facilities which are to be supplied by the Client.

Fees

[Include fees, if a rate is used to determine fees, also insert a method for calculating those fees]

Software SOW's

Hardware SOW's

Annexure – Managed Services Master Agreement