



TERMS AND CONDITIONS

Relating to:

Dashboard Insights

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TERMS AND CONDITIONS relating to Dashboard Insights (the **CMS**)

BETWEEN

1. **THE COMPANY DESCRIBED AS DASHBOARD INSIGHTS IN THE SUBSCRIPTION PROCESS (Dashboard Insights);**
2. **THE COMPANY AND THE PERSON NAMED AND DESCRIBED AS THE CUSTOMER IN THE SUBSCRIPTION PROCESS (the Customer)**

RECITALS

- A. Dashboard Insights is a website developer.
- B. Dashboard Insights owns the CMS and all Intellectual Property Rights in respect of the CMS (together, **Dashboard Insights' Property**).
- C. The Customer owns the goodwill and other fixed assets used in the operation of the Customer's Business.
- D. Dashboard Insights has agreed to grant to the Customer from the Commencement Date a licence for the Customer and the Customer's Users to access and use the CMS (but not any Intellectual Property Rights in respect of the CMS) in the conduct of the Customer's Business and on the terms of this Agreement.
- E. The Customer has agreed to grant to Dashboard Insights the right to use the Customer's name, logos, images and other related intellectual property (the **Customer's Image**) within the CMS and on Dashboard Insights' website in respect of advertising Dashboard Insights' business, products and services.

OPERATIVE PART

1. GRANT OF LICENCE

- (a) Dashboard Insights permits, and shall continue to permit, the Customer and the Customer's Users to access and use the CMS for the Term in the conduct of the Customer's Business (and only in the conduct of the Customer's Business) and to enjoy the advantages and benefits of the CMS in the conduct of the Customer's Business (and only in the conduct of the Customer's Business) (collectively such rights are referred to as the **Licence**) on and subject to the terms and conditions contained in this Agreement.
- (b) The components of the CMS that the Customer and the Customer's Users have a right to access and use are set out in the categories described in the Subscription Process (each a **Licence Category**);
- (c) The Customer must only access and use the CMS in accordance with:
 - (i) the Licence Category to which the Customer is subscribed to under the Licence; and
 - (ii) any terms of use that may be incorporated into the CMS.
- (d) At the Commencement Date, the Customer subscribes and agrees to the Licence Category set forth in the Subscription Process; however, the Parties may agree in writing for the Customer to subscribe to a different Licence Category at any time during the Term and for

the remainder of the Term. Such change in subscription takes effect on the first day of the month following such agreement.

- (e) Nothing in the Licence constitutes the Customer as the owner of Dashboard Insights' Property nor is the Licence to be construed as a transfer of Dashboard Insights' Property or other assets of Dashboard Insights, it being the intention of the Parties that Dashboard Insights remains the owner of Dashboard Insights' Property subject only to the right of the Customer (and the Customer's Users) to enjoy the benefits and advantages of the CMS (but not any Intellectual Property Rights in respect of the CMS) during the Term.
- (f) The Customer permits, and shall continue to permit, Dashboard Insights to use the Customer's Image within the CMS and on Dashboard Insights website in respect of advertising Dashboard Insights' business, products and services. The Customer may at any time with 2 weeks' prior written notice to Dashboard Insights revoke Dashboard Insights' right to use the Customer's Image in this manner.

2. NON-EXCLUSIVE LICENCE

- (a) Nothing in this Agreement:
 - (i) confers upon the Customer or the Customer's Users the exclusive right or grant to Dashboard Insights' Property; or
 - (ii) imposes any obligation on Dashboard Insights to deal exclusively with the Customer with respect to Dashboard Insights' Property; or
 - (iii) restricts Dashboard Insights from granting other licences or rights to or in respect of Dashboard Insights' Property to other persons on any terms.
- (b) The Customer acknowledges that Dashboard Insights may at any time grant rights identical or similar to the Licence on such terms and conditions as may be agreed between Dashboard Insights and that other person.

3. TERM AND RENEWAL OF LICENCE

- (a) The Licence shall be granted for, and shall determine at the end of, the Term unless renewed in accordance with this Agreement.
- (b) Unless terminated in accordance with this Agreement, at the expiry of the Term, the Licence shall automatically be renewed for a further term of the same length as the term set forth in the Subscription Process.
- (c) Dashboard Insights may terminate the Licence at any time with 1 month's written notice to the Customer.
- (d) The Customer may terminate the Licence at any time by providing Dashboard Insights with 1 month's written notice prior to expiry of the Term.

4. ADDITIONAL SERVICES

- (a) In addition to the Licence, Dashboard Insights may, but is not required to, offer to the Customer additional services in relation to the CMS such as creating substantive content and reports (the **Additional Services**).
- (b) Such Additional Services will be charged out by Dashboard Insights to the Customer as specified under Additional Services Fee in the Subscription Process and must be paid in accordance with Clause 5.

5. FEES

- (a) The Customer must pay the Establishment Fee to Dashboard Insights in immediately available funds as specified by the Establishment Fee Payment Date in the Subscription Process;
- (b) The Customer must also pay to Dashboard Insights in immediately available funds:
 - (i) the Recurring Licence Fee by the Recurring Licence Fee Payment Date;
 - (ii) all accrued Additional Services Fee (if any),on each Recurring Fee Payment Date, (together, the **Recurring Licence Fee**).
- (c) Without prejudice to the rights, powers and privileges of Dashboard Insights under any other term of this Agreement or the law, if the Customer fails to pay the Monthly Recurring Fees within 14 days of the Recurring Fee Payment Date, Dashboard Insights may at its absolute discretion, and with or without notice, suspend, block or terminate:
 - (i) the Customer's access to and use of the CMS; and/ or
 - (ii) any User Account,and Dashboard Insights is not liable to the Customer, the Customer's Users or any other person for any loss, cost or damages arising from such suspension, blocking or termination.
- (d) Dashboard Insights may in its absolute discretion, increase any of the Recurring Fees, ~~every 6 months from the initial Commencement Date~~ set forth in the Subscription Process by way of ~~1 month's prior~~ written notice to the Customer.

6. LICENCEE UNDERTAKINGS

- (a) The Customer must:
 - (i) use the CMS only in the manner prescribed by Dashboard Insights;
 - (ii) provide Dashboard Insights with all information and permissions (including APIs) requested by Dashboard Insights (the **Requested Information**) and to the extent that the Customer fails to provide such Requested Information, the Customer acknowledges and agrees that:

- (A) it may not be possible for Dashboard Insights to provide all available functions of the CMS to the Customer; and
 - (B) Dashboard Insights is not liable to the Customer, or any other person for any loss, cost or damages arising from such inability to provide all available functions of the CMS to the Customer.
- (iii) advise Dashboard Insights immediately of any infringement, potential infringement, Claim or challenge of the rights of Dashboard Insights in Dashboard Insights' Property by a third-party, and take all reasonable action to stop or prevent further infringement;
 - (iv) ensure that in carrying on the Customer's Business or accessing or using the CMS, the Customer and the Customer's Users do not infringe the Intellectual Property Rights of any person; and
 - (v) use reasonable endeavours to assist Dashboard Insights in any application to register Dashboard Insights' Property.
- (b) The Customer must not, without the prior written consent of Dashboard Insights:
- (i) register or seek to register any of Dashboard Insights' Property;
 - (ii) cause any of Dashboard Insights' Property to be prejudicially affected or contested;
 - (iii) make any alterations to Dashboard Insights' Property or work around any technical limitations in the CMS;
 - (iv) interfere with or inhibit the authorised use of Dashboard Insights' Property by any other person;
 - (v) do anything that will diminish the name or reputation of Dashboard Insights or its business or Dashboard Insights' Property;
 - (vi) allow a third-party application to connect and read data from the CMS other than as described in this Agreement or approved by Dashboard Insights;
 - (vii) reverse engineer, decompile or disassemble the CMS, except and only to the extent that applicable law expressly permits, despite this limitation;
 - (viii) access or use the CMS for any illegal or unauthorised purpose, or upload any information that is in breach of any confidentiality or privacy obligation, copyright, trade mark or other intellectual property or proprietary rights of any person, entity or organisation;
 - (ix) access and use the CMS through any other interface than provided by Dashboard Insights and must not use the CMS for any malicious means, or abuse, harass, threaten, intimidate or impersonate any other person, entity or organisation;
 - (x) contest or oppose or assist any other person to contest or oppose any application for registration of Dashboard Insights' Property as trade marks or as business or company names;

- (xi) assert that it owns Dashboard Insights' Property or assert any Intellectual Property Right related to Dashboard Insights' Property (including registering a business name or establishing a company with a name or identity similar or akin to or to be confused with the CMS).

- (c) If Dashboard Insights wishes to:
 - (i) modify, update or alter the CMS or use one or more additional or substitute marks; or
 - (ii) modify the corporate colours, uniform, any part of the CMS and any other design, appearance and operation attributes of the CMS,

the Customer must accept such modification, update or discontinuance and Dashboard Insights is not liable to the Customer or any other person for any loss, cost or damages arising from any change under this Clause 6(c).

7. TERMINATION

The Licence will terminate:

- (a) in accordance with Clauses 3(c) or 3(d);
- (b) at Dashboard Insights' absolute discretion:
 - (i) if the Customer commits a breach of any of its obligations under this Agreement and that breach continues for not less than 14 days after service by Dashboard Insights of a notice in writing requiring the Customer to remedy the breach;
 - (ii) if the Customer breaches any provision of this Agreement that is not capable of remedy;
 - (iii) if the Customer suffers an Insolvency Event or Critical Event;
 - (iv) if the Customer commits any act which, in the reasonable opinion of Dashboard Insights, brings the business or name of Dashboard Insights or Dashboard Insights' Property into disrepute;
 - (v) if the Customer purports to assign, transfer, Encumber, subcontract or declare trust over the CMS or any of its rights or obligations under this Agreement; or
 - (vi) if the Customer is the subject of a takeover by or merger with another person, or there is a change of either the legal or beneficial shareholding or the effective control of the ownership or the management of the Customer unless the Customer has previously sought Dashboard Insights' approval and Dashboard Insights has given its approval in writing prior to the change.

8. EFFECT OF TERMINATION OR EXPIRY OF TERM

- (a) On termination of the Licence under Clause 7 and/ or expiry of the Term:

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- (i) the Customer and the Customer's Users shall have no further right to access or use the CMS;
 - (ii) User Data may not be recoverable and it is the Customer's and the Customer's Users' responsibility to ensure the User Data is backed-up or replicated before termination.
- (b) If Dashboard Insights terminates this Agreement, the Customer must pay Dashboard Insights such of the Monthly Recurring Fees as have properly accrued up to the date of termination.
 - (c) If the Licence is terminated for any reason part way through a month, any Recurring Licence Fee paid in advance for that month remains the property of Dashboard Insights and shall not be pro-rated, refunded or otherwise paid back to the Customer and the Customer has no rights, powers or privileges to make a claim against Dashboard Insights for such amount.
 - (d) Termination of this Agreement does not affect any accrued right or liability of Dashboard Insights nor will it affect the coming into force or the continuation in force of any provision of this Agreement that is expressly or by implication intended to come into or continue in force on or after the termination.
 - (e) At the expiration of the Term (including an early termination), the Customer must return to Dashboard Insights copies of all books, records, accounts and documents relating to Dashboard Insights' Property or any other matter relating, directly or indirectly, to the performance by the Customer of its obligations under this Agreement.
 - (f) Clauses 1(f), 2, 6, 8, 11, 12, 15, 16, 17, 18, 21, 23 and 24 shall survive termination of this Agreement, the Licence and/ or expiry of the Term.

9. THIRD-PARTY CONNECTORS

- (a) The CMS may allow the Customer and the Customer's Users to connect to various Third-Party Connectors and import Third-Party Data.
- (b) Any agreement with a Third-Party Connector is solely between the Customer (or the Other User, as the case may be) and the applicable Third-Party Connector and may be governed by other terms of use or agreements that apply.
- (c) The CMS functions as a mere portal between the Third-Party Connector, the Customer and the Customer's Users.
- (d) In relation to a Third-Party Connector, the Customer and the Customer's Users:
 - (i) are responsible for and must have the authority to import Third-Party Data from the Third-Party Connector; and
 - (ii) are responsible for any content that they create, transmit, distribute or display while using the CMS that is based on Third-Party Data.

10. THIRD-PARTY SUPPLIERS

The Customer acknowledges and agrees that:

- (a) Dashboard Insights may use and engage Third-Party Suppliers; and
- (b) The Third-Party Suppliers include Microsoft Azure who can be contacted via its respective websites.

11. CONSENT TO THE COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

- (a) In order to provide access to and use of the CMS (including all functionality), Personal Information of the Customer and the Customer's Users may be:
 - (i) collected, held, used and disclosed between Dashboard Insights, the Customer, the Customer's Users, Third-Party Suppliers and Third-Party Connectors;
 - (ii) disclosed to Dashboard Insights' Conduits who may be located overseas and Google Analytics or other analytics providers who may store this information across a large multiple of countries (to which it is impracticable to name each one); and
 - (iii) be disclosed to Third-Party Connectors who may be located overseas; albeit, it is impracticable to name in which overseas countries they may be located (as this is dependent upon which, if any, Third-Party Connectors Dashboard Insights and the Customer's Users choose to use),

(together, the **Disclosure and Use of Personal Information**).
- (b) The Parties acknowledge that:
 - (i) the collection of Tax File Number Information is authorised by taxation law, including the *Tax Agent Services Act 2009* (Cth), *Taxation Administration Act 1953* (Cth), *Income Tax Assessment Act 1936* (Cth) and *Income Tax Assessment Act 1997* (Cth);
 - (ii) the Disclosure and Use of Personal Information is reasonably necessary and relevant for Dashboard Insights and Third-Party Suppliers to provide access to and use of the CMS to the Customer and the Other Users;
 - (iii) declining to quote a tax file number is not an offence and it is the Customer's and the Customer's Users' choice whether to provide Personal Information; however, if the Personal Information is not provided, it may not be possible for Dashboard Insights to provide all available functions of the CMS to the Customer and the Customer's Users ; and
 - (iv) further information on the collection, holding, use and disclosure of Personal Information can be found in the privacy policy of Dashboard Insights which is available by link on Dashboard Insights' website. This further information includes how a party may access their Personal Information, seek its correction, complain

about a breach of the *Australian Privacy Principles* and how such complaint will be handled.

- (v) The Customer consents to the Disclosure and Use of Personal Information as set out in this Clause 11.

12. PRIVACY

Each Party shall comply with all privacy obligations under any law or regulation.

13. USAGE RESPONSIBILITY

- (a) The Customer will be responsible for:
 - (i) its, conduits and the Customer's Users, access to and use of the CMS including:
 - (A) all activity that results from such access and usage; and
 - (B) who of the Customer's Users may access and use the CMS;
 - (ii) maintaining the security and passwords of any User Account.

14. TECHNICAL SUPPORT AND MALFUNCTIONS

- (a) Dashboard Insights will attempt to promptly address (during normal business hours) all technical issues that arise in connection with the CMS; however, Dashboard Insights will not be liable for any loss suffered as a result of any partial or total breakdown of the CMS or any technical malfunctions resulting in an inability to use the CMS (either in whole or in part).
- (b) The Customer agrees that Dashboard Insights' support team may access any User Account and the CMS from time to time in order to diagnose and fix problems.

15. INDEMNITY

The Customer must indemnify Dashboard Insights and its Conduits (**Indemnified Persons**) from all direct and indirect Claims that are suffered or incurred by any of the Indemnified Persons as a result, whether directly or indirectly from:

- (a) the access to and use of the CMS by the Customer and the Customer's Users;
- (b) the Customer allowing or otherwise providing a Licensee's Conduit or any other person with access to and use of the CMS, a User Account, User Data or Third-Party Data;
- (c) loss or damage to any User Data or Third-Party Data;
- (d) the Disclosure and Use of Personal Information or any other disclosure or use of personal information (including any breach of a privacy law or regulation by the Customer or any Other User);
- (e) any matter referred to in Clause 16(b);

- (f) any matter referred to in Clause 16(d);
- (g) any Additional Services;
- (h) any breach of this Agreement by the Customer or its Conduits;
- (i) Dashboard Insights' use of the Customer's Image; and
- (j) any act, matter or thing done, permitted or omitted to be done by Customer or its Conduits in relation to Dashboard Insights' Property, the Licence or the Customer's Business.

16. LIMITATION OF LIABILITY

- (a) The CMS is provided on an "as is" and "as available" basis, and the Customer's and the Customer's Users' access to and use of the CMS is at their sole risk.
- (b) Dashboard Insights does not warrant that:
 - (i) the CMS will meet the Customer's or the Customer's Users' specific requirements;
 - (ii) the CMS will be uninterrupted, timely, secure, or error-free;
 - (iii) the results that may be obtained from the use of the CMS will be accurate or reliable;
 - (iv) the quality of any products, services, information, or other material purchased or obtained by the Customer or the Customer's Users through the CMS will meet their expectations; and
 - (v) any errors in the CMS will be corrected.
- (c) On behalf of itself and the Third-Party Suppliers, Dashboard Insights excludes any other warranties that may be implied or otherwise apply under statute or otherwise under applicable law, to the maximum extent permitted by law.
- (d) The Customer acknowledges and agrees that:
 - (i) the acts, failures, faults, negligence or omissions of Third-Party Suppliers and Third-Party Connectors are outside of Dashboard Insights' control, and Dashboard Insights does not accept, and shall not be liable for, any Claim suffered or incurred by the Customer, the Customer's Users or any other person as a result of any act, failure, fault, negligence or omission of any Third-Party Supplier or Third-Party Connector;
 - (ii) for the avoidance of doubt, a failure for the purpose of Clause 16(d)(i) includes a failure by a Third-Party Connector or a Third-Party Supplier to:
 - (A) provide any required product, service, data or other thing; or
 - (B) comply with all privacy laws and regulations; and

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- (iii) Dashboard Insights does not monitor, control or assume any liability associated with Third-Party Data and cannot be responsible for any Third-Party Data's quality, accuracy, nature and/ or ownership, or any loss of or damage thereto.
- (e) Other than as provided by this Clause 16 or the law, Dashboard Insights does not accept, and shall not be liable for, any direct and indirect Claim suffered or incurred by the Customer, the Customer's Users or any other person as a result, whether directly or indirectly from:
 - (i) the access to and use of the CMS by the Customer and the Customer's Users;
 - (ii) the access to and use of the CMS by the Customer and its Conduits;
 - (iii) the Customer allowing or otherwise providing a Customer's Conduit or any other person with access to and use of the CMS, a User Account, User Data or Third-Party Data;
 - (iv) loss or damage to any User Data or Third-Party Data;
 - (v) any negligent or other act or omission by that Dashboard Insights or its Conduits in respect of the performance or non-performance by it of this Agreement;
 - (vi) the Disclosure and Use of Personal Information or any other disclosure or use of personal information (including any breach of a privacy law or regulation by the Customer or any Other User); and
 - (vii) any matter referred to in Clause 16(b);
 - (viii) any matter referred to in Clause 16(d)
 - (ix) any Additional Services; and
 - (x) Dashboard Insights' use of the Customer's Image.
- (f) Subject to Clauses 16(a) to 16(e), the liability of Dashboard Insights for a breach of a provision of this Agreement, or any negligent or other act or omission by that Dashboard Insights or its Conduits in respect of the performance or non-performance by it of this Agreement, is limited to the recovery by the Customer of Loss or Damage less any amount of Excluded Loss or Damage relating to the Customer in respect of that breach, act or omission.
- (g) The Customer waives any right it may have, or may subsequently have, to claim against Dashboard Insights or its Conduits for any Consequential Loss or Damage arising in respect of the performance or non-performance by Dashboard Insights or any act or omission of it or its Conduits in respect of the performance or non-performance of this Agreement.
- (h) The Customer releases and forever discharges Dashboard Insights and its Conduits from Claims in respect of or comprising Consequential Loss or Damage however arising (including, without limitation, at law, in equity or pursuant to statute) which it may now have, or but for the presence of this Clause 16(h), may at any time subsequently have against any of them which arises in respect of the performance or non-performance of this Agreement.

- (i) In this Clause 16:
 - (i) **Loss or Damage** means any loss, damage, cost, liability or expense however incurred other than Consequential Loss or Damage;
 - (ii) **Consequential Loss or Damage** means any indirect loss, damage, cost, liability or expense and includes consequential loss, expectation loss, loss of profits and other heads of loss recognised at law or equity which are not direct;
 - (iii) **Excluded Loss or Damage** means Loss or Damage suffered or incurred by the Subcontractor as a result of, or to the extent contributed to by, any act or omission by that Party or its Conduits.

- (j) Pursuant to section 64A of Schedule 2 of the *Competition and Consumer Act 2010* (Cth), Clause 16(k) applies in respect of the goods or services supplied under this Agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, but Clause 16(k) will not apply if the Customer establishes that reliance on it would not be fair and reasonable.

- (k) Liability for breach of a condition or warranty implied into this document by the *Competition and Consumer Act 2010* (Cth) (other than a condition or guarantee implied by sections 51, 52 or 53 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) is limited:
 - (i) in the case of goods, to any one of the following as determined by the seller of the goods:
 - (A) the replacement of the goods or the supply of equivalent goods; or
 - (B) the payment of the cost of replacing the goods or acquiring equivalent goods; and

 - (ii) in the case of services, to any one of the following as determined by the seller of the goods:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.

17. CONFIDENTIALITY AND PUBLICITY

17.1. Confidentiality Obligations

- (a) The Customer agrees in relation to Dashboard Insights' Confidential Information:
 - (i) to use Dashboard Insights' Confidential Information only for the purposes of the Customer's Business; and

 - (ii) to keep Dashboard Insights' Confidential Information confidential and not disclose it or allow it to be disclosed to any third-party except:
 - (A) with the consent of Dashboard Insights; or

- (B) to Conduits or advisers of the Customer and of the Customer's Associates who have a need to know (and only to the extent that each has a need to know) and are aware that Dashboard Insights' Confidential Information must be kept confidential,

and the Customer must take or cause to be taken reasonable precautions necessary to maintain the secrecy and confidentiality of Dashboard Insights' Confidential Information.

- (b) Dashboard Insights agrees in relation to Customer's Confidential Information:
 - (i) to use the Customer's Confidential Information only for the purposes of Dashboard Insights' business; and
 - (ii) to keep the Customer's Confidential Information confidential and not disclose it or allow it to be disclosed to any third-party except:
 - (A) with the consent of the Customer; or
 - (B) to Conduits or advisers of Dashboard Insights and of Dashboard Insights' Associates who have a need to know (and only to the extent that each has a need to know) and are aware that the Customer's Confidential Information must be kept confidential,

and Dashboard Insights must take or cause to be taken reasonable precautions necessary to maintain the secrecy and confidentiality of the Customer's Confidential Information.

17.2. Exceptions to Confidentiality Obligations

The obligations of confidentiality under this Agreement do not extend to information that (whether before or after this Agreement is made):

- (a) is disclosed to the Party (the **CI Recipient**) under or in relation to this Agreement, but at the time of disclosure is rightfully known to or in the possession or control of the CI Recipient and not subject to an obligation of confidentiality on the CI Recipient;
- (b) is public knowledge (otherwise than as a result of a breach of this Agreement); or
- (c) is required by law to be disclosed and the CI Recipient required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure and to limit, as far as reasonably possible, the extent of the disclosure.

17.3. Confidentiality Obligations on Termination of Deed

On expiry of the Term (including a termination of this Agreement):

- (a) the Customer must:
 - (i) continue to keep confidential all Dashboard Insights' Confidential Information; and

- (ii) at Dashboard Insights' option, return to Dashboard Insights or destroy and certify the destruction of Dashboard Insights' Confidential Information; and
- (b) Dashboard Insights must:
 - (i) continue to keep confidential all the Customer's Confidential Information; and
 - (ii) at the Customer's option, return to the Customer or destroy and certify the destruction of the Customer's Confidential Information, or otherwise deal with the Customer's Confidential Information in accordance with the law.

The rights and obligations of the Parties set out in this Agreement with respect to confidential information survive termination of this Agreement.

17.4. Publicity

No Party will make a public announcement relating to any of the matters provided for or referred to in this Agreement or any ancillary matter without the prior written consent of the other Party (which consent may not be unreasonably withheld) unless such public announcement is required by law, by an order of a court of competent jurisdiction or by stock exchange rules.

18. DISPUTE RESOLUTION

- (a) A Party must not start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement unless it has complied with this Clause 18.
- (b) All disputes or differences which shall at any time hereafter arise between two or more of the Parties (the **Disputants**) in respect of the construction or effect of this Agreement or the rights, duties and liabilities of the Disputants hereunder or any matter or event connected with or arising out of this Agreement shall be initially referred on notice to each other Party.
- (c) Each Disputant may give notice to the other that the provisions of this Clause 18 are to apply to any dispute arising between the Disputants as to any matter arising out of or in connection with this Agreement.
- (d) The notice referred to in Clause 18(c) shall include a summary of the issues in dispute and notification of a time within a period of 10 Business Days beginning 4 Business Days after the service of the notice, and a place in Melbourne, Victoria at which the representatives of the Disputants (which may include a Disputant) are to meet to try to resolve the dispute.
- (e) The representatives of the Disputants shall meet at the time and place specified in the notice to try to resolve the dispute and shall, if necessary, continue to negotiate for 2 consecutive Business Days unless they otherwise agree to reconvene.
- (f) If the dispute has not been resolved by the representatives of the Disputants by the end of the meeting then either Party may within 10 Business Days thereafter apply to the Law Society of Victoria to appoint a neutral adviser to assist in a further attempt by the Parties in good faith to resolve the dispute by structured negotiations. Such person shall act as an expert not as an arbitrator and will be entitled to appoint such technical expert or experts as he considers necessary to assist him in seeking to resolve the matter referred to him.

- (g) If the Parties fail to appoint a neutral adviser within the 10 Business Days period referred to in Clause 18(f) above or the Parties fail to reach agreement in the structured negotiations within 20 Business Days of the neutral adviser being appointed, then any dispute may be referred to a court of competent jurisdiction. Neither Party shall be deemed to be precluded from taking such interim formal steps as may be considered necessary to protect such Party's position while the mediation or other procedure is pending or continuing.
- (h) The costs of the neutral adviser shall be borne equally by the Parties in dispute.

19. ACKNOWLEDGEMENTS AND WARRANTIES

19.1. Due Incorporation and Due Power Warranty

Each Party that is a company severally represents and warrants to all other Parties that it is a company duly incorporated and validly existing under the laws of the jurisdiction of its incorporation and has all requisite powers to own property and has the necessary power to bind itself in the manner contemplated by this Agreement and to make, deliver and perform this Agreement and to become bound thereby.

19.2. Enforceability Warranty

Each Party severally represents and warrants to each other Party that this Agreement has been validly made and delivered by it and constitutes the valid, binding and enforceable obligations of it in accordance with its terms, subject to the discretionary authority of a court in granting equitable remedies and all applicable bankruptcy and insolvency laws.

19.3. Trustee Warranties

Each Party that enters into this Agreement in its capacity as trustee of a trust (in each case, the Trust) severally represents and warrants to each other Party that:

- (a) it is, without restriction or condition, empowered by the trust deed (the Trust Deed) of the Trust to enter into and perform its obligations under this Agreement;
- (b) the Trust was validly created and is in existence;
- (c) it was and continues to be validly appointed as trustee of the Trust;
- (d) it is the sole trustee of the Trust;
- (e) no vesting date has been determined under the Trust Deed;
- (f) it has an unrestricted right of indemnity out of the Trust's assets;
- (g) it is not in default under any of the provisions of the Trust Deed and entry into this Agreement will not cause such a default.

19.4. Customer's Image Warranty

The Customer represents and warrants to Dashboard Insights that:

- (a) it is the owner of all rights (including intellectual property rights) in respect of the Customer's Image; and
- (b) use of the Customer's Image by Dashboard Insights under this Agreement does not infringe upon the rights (including intellectual property rights) of any other third-party.

19.5. Knowledge Covenant

Each Party hereby covenants that it has read as has made itself fully aware of the content and legal effect of this Agreement (including having obtained or had the reasonable opportunity to obtain independent legal advice in relation thereto).

19.6. No Reliance

Each Party severally agrees that no other Party makes any representation or warranty to any other Party other than as expressly referred to in this Agreement and each Party enters into this Agreement entirely on the basis of its own investigations and decisions and not in reliance on any act or representation made by any other Party.

20. NO PARTNERSHIP, AGENCY OR TRUSTEESHIP

- (a) Nothing in this Agreement or in the making or performance of its terms shall constitute any Party the partner or agent of any other Party and no trusteeship shall be implied as between any of the Parties. Nothing contained or implied in this Agreement will create or constitute, or be deemed to create or constitute, a partnership between the Parties (or any of them) for the purposes of any *Partnership Act*, the *Income Tax Assessment Acts* or any other law of any jurisdiction. The rights, duties, obligations and liabilities of the Parties under this Agreement are several and not joint or collective. Each Party will be individually responsible only for its obligations as specified in this Agreement.
- (b) The Customer shall not hold itself out in any way as an agent, employee, director, related body corporate, trustee or partner of Dashboard Insights.

21. GST

21.1. GST Gross-Up

If a Party (the supplier) is required to pay GST in respect of a supply made under or in connection with (including by reason of a breach of) this Agreement, the recipient of the supply must (in addition to any other payment for, or in connection with, the supply) pay to the supplier an amount equal to such GST (GST gross-up).

21.2. GST Invoice

If a GST gross-up is payable, then the supplier must give the recipient a tax invoice for the supply.

21.3. Payment

- (a) Provided a tax invoice has been given, the GST gross-up must be paid by the recipient:

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- (b) if any monetary consideration is payable for the supply, at the same time and in the same manner as such monetary consideration;
- (c) if no monetary consideration is payable for the supply within 10 Business Days after the day on which the tax invoice is given.

21.4. Reimbursements

If any payment to be made to a Party under or in connection with this document is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that Party, then the amount of the payment must be reduced by the amount of any input tax credit to which that Party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with Clause 21.1.

21.5. Adjustments

If an adjustment event has occurred in respect of a supply made under or in connection with this document, any Party that becomes aware of the occurrence of that adjustment event must notify the other Party as soon as practicable, and the Parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply, or any refund of GST (or part thereof), is paid no later than 20 Business Days after the supplier first becomes aware that the adjustment event has occurred.

21.6. Definitions

- (a) Terms used in this Clause 21 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act.
- (b) In this Clause 21, a reference to a payment includes any payment of money and any form of consideration other than payment of money.
- (c) In this document, all references to payments and obligations to make payments, including all references to compensation (including by way of reimbursement or indemnity), are, but for the operation of this Clause 21, exclusive of GST.

22. NOTICES

Any notice to be given or served upon any of the Parties hereunder may, without prejudice to any other mode of service, be served by:

- (a) posting the same in a registered prepaid letter to such Party at its address listed in this Agreement and shall be deemed to have been duly received in the ordinary course of post;
or
- (b) emailing the same to such Party at its email address listed in this Agreement and shall be deemed to have been duly received when a delivery confirmation report is received by the sender which records the time that the email was delivered to the addressee's email address.

23. GENERAL PROVISIONS

23.1. Entire Agreement

This Agreement records the entire agreement between the Parties as to its subject matter and supersedes all prior agreements, arrangements and understandings.

23.2. No Amendment

No amendment or modification of, nor addition to, the provisions of this Agreement shall be binding unless it is in writing and executed by all the Parties.

23.3. Waiver

- (a) A Party's failure or delay to exercise a power or a right does not operate as a waiver of that power or right.
- (b) The exercise of a power or right does not preclude its future exercise or the exercise of any other power or right.
- (c) No waiver of any power or right under this Agreement shall be effective unless it is in writing.

23.4. Reading Down

Where a provision of this Agreement would otherwise be unenforceable, illegal or void, the effect of that provision shall, so far as is possible, be limited and read down such that it is not unenforceable, illegal or void.

23.5. Severance

Subject to Clause 23.4:

- (a) each word, phrase, sentence, subparagraph, paragraph, sub-clause, clause or other provision (provision) of this Agreement is severable;
- (b) if a court determines that a provision is unenforceable, illegal or void, the court may sever that provision which becomes inoperative; and
- (c) such severance shall not affect any other provision of this Agreement.

23.6. Non-merger

None of the terms or conditions of this Agreement, or any act, matter or thing done under or by virtue of this Agreement or any other agreement, instrument or document, or judgment or order of any court or judicial proceeding, will operate as a merger of any of the rights and remedies of the Parties under this Agreement, and those rights and remedies will at all times continue in force.

23.7. Assignment

The Customer must not assign, transfer, subcontract, sub-franchise, declare itself a trustee of, create any Encumbrance in respect of or dispose of, the CMS, the Licence or any of its rights and interests under this Agreement except with the prior written consent of Dashboard Insights.

23.8. Costs

Except as otherwise provided by this Agreement, each Party is responsible for its own costs in relation to the negotiation, preparation, making and performance of this Agreement.

23.9. Stamp Duty

Stamp duty (if any) incurred by the Customer in relation to this Agreement shall be borne by the Customer.

23.10. Set Off

Dashboard Insights may at any time apply any money that the Customer may owe Dashboard Insights towards the satisfaction of any sum of money that Dashboard Insights owes the Customer. The Customer may not set off any amounts.

23.11. Time of the Essence

In this Agreement, time shall be of the essence.

23.12. Further Assurance

Each Party shall do all things and execute all documents necessary to give full effect to this Agreement and to fulfil the intent of this Agreement.

23.13. Counterparts

This Agreement may be executed in any number of counterparts, all of which, when taken together, shall constitute this Agreement.

23.14. Governing Law

This Agreement shall be governed and construed in accordance with laws of the State of Victoria and the Commonwealth of Australia and each of the Parties submit to the non-exclusive jurisdiction of the courts of that State and any proceedings brought in the Federal Court of Australia must be instituted in its Melbourne Registry.

24. CONSTRUCTION

24.1. Definitions

In this Agreement, expressions have the same meanings given to them in the Recitals and the Subscription Process and:

Agreement means the agreement between Dashboard Insights and the Customer in respect of the CMS comprising the terms and conditions which are set out in this document and the Subscription Process;

Associate in relation to a person means:

- (a) any spouse and children and grandchildren of that person;
- (b) any parent, grandparent, uncle, aunt, niece or nephew of that person;
- (c) any related body corporate of that person;
- (d) the trustee of a trust controlled by that person and in respect of which that person is a beneficiary or potential beneficiary;
- (e) any person who would be an associate of that person under Section 318 of the *Income Tax Assessment Act 1936*;

Business Day means a day on which Australian banks are open for general banking business in Melbourne, Victoria excluding a Saturday, Sunday or public holiday;

Claim means any duty, obligation, responsibility, action, cause of action, potential cause of action, proceeding, suit, judgement, right, claim, demand, cost, expense, loss, damage or liability of whatsoever nature (including, without prejudice to the generality of the foregoing, any claim for costs, interest, contribution, indemnity or legal fees);

Commencement Date means the date in which these Terms and Conditions have been accepted by the Customer;

Conduit means, in relation to a person, the officers, employees, agents, consultants, sub-contractors or representatives of that person;

Critical Event means the occurrence of any one or more of the following events in relation to a person: that person dying or ceasing to be of full legal capacity or otherwise becoming incapable of managing his or her own affairs for any reason;

Content Management System means Dashboard Insights Business Dashboards made available as a web-based content management system (CMS).

Customer's Business means the provision of accounting and taxation advice and services;

Customer's Confidential Information means all information, forms, know-how, specifications, processes, statements, formulae, trade secrets, drawings and data (and copies and extracts made of or from that information and data) concerning:

- (a) the Customer's and the Customer's Users' access to and use of the CMS;
- (b) the Customer's Business;
- (c) the operations, transactions and dealings of the Customer; or

- (d) the organisation, finance, clients, markets, suppliers and intellectual property rights of the Customer

which is not in the public domain (except by the failure of the Customer to perform and observe its covenants and obligations under this Agreement);

Customer's Users means the Customer's Conduits;

Dashboard Insights' Confidential Information means all information, forms, know-how, specifications, processes, statements, formulae, trade secrets, drawings and data (and copies and extracts made of or from that information and data) concerning:

- (a) Dashboard Insights' Property;
- (b) the Licence;
- (c) the operations, transactions and dealings of Dashboard Insights; or
- (d) the organisation, finance, clients, markets, suppliers and Intellectual Property Rights of Dashboard Insights,

which is not in the public domain (except by the failure of Dashboard Insights to perform and observe its covenants and obligations under this Agreement) and includes the content of this Agreement;

Date of Execution means the latter of the dates upon which each party executes the Subscription Process;

Encumber means to mortgage, pledge, charge, assign as security, indemnify, guarantee or otherwise encumber and Encumbrance shall be construed accordingly;

Establishment Fee means the pricing presented and agreed to by the Customer as part of during the Subscription Process;

Establishment Fee Payment Date means the date automatically set upon acceptance of these Terms and Condition in which payment of the **Establishment Fee** will be processed;

Financial Year means a year ending on 30 June in each year for the period of this Agreement and includes:

- (a) the period which commences on the Commencement Date and ends on the following 30 June; and
- (b) the period which commences on the 1 July immediately prior to the Termination Date and ends on the Termination Date;

Head Entity Account means the head administrative account for a Customer under which the Customer and its Conduits will access and use the CMS;

Insolvency Event means the occurrence of any one or more of the following events in relation to a person: being in liquidation or provisional liquidation or under administration, having a controller (as defined in the *Corporations Act*) or analogous person appointed to it or any of its property, being

taken under section 459F(1) of the *Corporations Act* to have failed to comply with a statutory demand, being unable to pay or stopping or suspending or threatening to stop or suspend payment of its debts or being otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in a person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act*), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event of any of the foregoing events;

Intellectual Property Rights means all intellectual and industrial property rights throughout the world owned or enjoyed by Dashboard Insights including rights in respect of or in connection with:

- (a) confidential information;
- (b) trade secrets;
- (c) specialised knowledge;
- (d) copyright;
- (e) inventions (including all forms of patents, whether issued or pending);
- (f) trade marks and service marks;
- (g) trade name;
- (h) designs and circuit layouts;
- (i) program/ data code;
- (j) know-how,
- (k) any code, log-in, alias or password;
- (l) social media;
- (m) any internet domain name (and related domain or subdomain services), IP address, URL or email address; or
- (n) goodwill,

whether arising before or after the Commencement Date, whether registerable or otherwise and whether registered or unregistered and includes any right to registration. It also includes any such Intellectual Property Rights that are registered, or identified, in the name of any other person whether or not ostensibly held on trust for Dashboard Insights;

License means access to the Content Management System subject to user limits specified throughout the Subscription Process;

Party means a party to this Agreement;

Personal Information has the meaning given to it in the *Privacy Act 1988* (Cth) and includes Sensitive Information and Tax File Number Information;

Recurring Licence Fee means the fee set forth in the Subscription Process or such other recurring licence fee set out in the Subscription Process applicable to the Licence Category and the Term to which the Customer is subscribed at the time;

Recurring Fee Payment Date means the date automatically set, upon acceptance of these Terms and Conditions, in which payment of the **Recurring Licence Fee** will be processed;

Related Body Corporate has the meaning given to it in the *Corporations Act 2001* (Cth); **Sensitive Information** has the meaning given to it in the *Privacy Act 1988* (Cth);

Subscription Process means the subscription order executed by Dashboard Insights and the Customer in respect of the CMS;

Tax File Number Information has the meaning given to it in the *Privacy Act 1988* (Cth);

Term means the term set forth in the Subscription Process commencing on the Commencement Date, and any renewed term;

Termination Date means the date on which this Agreement is terminated;

Third-Party Connector means a third-party data source that a Customer and the Customer's Users may connect to via the CMS and view or import data from (for example, Xero, QuickBooks Online, Salesforce or Dropbox);

Third-Party Data means any data imported by the Customer or the Customer's Users from a Third-Party Connector;

Third-Party Supplier means a third-party used by Dashboard Insights to provide necessary hardware, software, security, networking, connectivity, functionality, storage and related technology required to provide and maintain the CMS;

User Account means any user account (or other method of access) for the Customer or the Customer's Users in respect of the CMS and includes a Head Entity Account; and

User Data means any content, information or data the Customer and the Customer's Users may have on or in respect of the CMS and includes Third-Party Data.

24.2. Interpretation

In this document, unless a contrary intention appears:

- (a) the Recitals are true and correct in every material particular and are deemed to form part of this Agreement **BUT** any fact or matter referred to in those Recitals that is inconsistent with any term or provision appearing in this Agreement shall be read as subject to that term or provision;
- (b) a reference to a Clause is a reference to a clause of this Agreement;
- (c) words or expressions given meaning in the Recitals have the same meaning in the body of this document;

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- (d) a reference to a person includes a reference to a corporation or partnership and to a person in the capacity as a trustee;
- (e) words or expressions importing the singular include the plural and vice versa;
- (f) words or expressions importing a gender include the other gender;
- (g) words or expressions denoting individuals include corporations, firms, unincorporated bodies, government authorities and instrumentalities;
- (h) a reference to a Party includes that Party's successors and permitted assigns;
- (i) where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning;
- (j) any heading, index, table of contents or marginal note is for convenience only and does not affect the interpretation of this document;
- (k) a provision of this document shall not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this document or the inclusion of the provision in this document;
- (l) a reference to this document or another document includes that document as amended, varied, novated, supplemented or replaced from time to time;
- (m) a reference to legislation or a provision of legislation includes:
 - (i) all regulations, orders or instruments issued under the legislation or provision; and
 - (ii) any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
- (n) a reference to a payment in immediately available funds refers to cash, a bank cheque the drawer of which is an Australian bank, a telegraphic transfer of cleared funds or a direct credit of cleared funds;
- (o) any Subscription Process, recitals, schedule or annexure form part of this document and have effect as if set out in full in the body of this document;
- (p) a reference to dollars or \$ is a reference to Australian dollars;
- (q) references to day, month, quarter and year mean a calendar day, month, quarter and year respectively;
- (r) references to include and including are to be construed without limitation;
- (s) all numerical information used and calculations made under this document will be, as far as practicable, to an accuracy of 4 decimal places, or such greater accuracy as may be necessary to ensure that financial calculations are correct to the nearest cent.