

Master IT Services Agreement (MSA)

Parties

Otto	Party	Milan Industries Group Pty Ltd t/as Otto IT
	ACN	642 190 967
	Address for service of notices	PO Box 84 Northcote VIC 3070
	Otto Representative	Milan Rajkovic
	Tel	1300 022 735
	Email	notices@ottoit.com.au

Customer	Party	_____
	ACN	_____
	Address for service of notices	_____ _____
	Customer Representative	_____
	Tel	_____
	Email	_____

Background

- A. Customer requires information technology-related services from time to time.
- B. Otto has agreed to accept Work Orders from Customer to provide the relevant Services and Deliverables on the terms and conditions of this Agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context requires otherwise:

Work Order means any quote and/or proposal provided by Otto to the Customer for the purpose of providing products or services to the customer;

Agreement means this Modular Master IT Services Agreement, including any Work Order, schedule, annexure, and exhibit to it;

Analytics Data has the meaning under clause 12.4;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in [e.g. Melbourne, Victoria, Australia];

Change means any:

- (a) changes to the scope of the Services or Deliverables;
- (b) changes to the amount of time estimated to be necessary to provide the Services or Deliverables;
- (c) changes in Fees; and

- (d) other amendments, variations and changes to the Agreement or a Work Order;

Change Proposal means a proposal in respect of a Change setting out:

- (a) full details of the activities required to implement the proposed Change including any specifications, special conditions and any amendments to this Agreement or a Work Order required as a result of the proposed Change;
- (b) a timetable for the implementation of the Change;
- (c) a statement of the estimated cost of implementing the Change; and
- (d) the impact, if any, of the Change on the Fees;

Claim means actions, suits, causes of action, proceedings, claims or demands;

Commencement Date means the date this Agreement is executed by both parties;

Confidential Information means the terms of this Agreement and each Work Order, and information of every kind and form (including written and oral) that is treated or designated by the Discloser as confidential and marked confidential and which is disclosed by the Discloser or otherwise comes to the knowledge of the other party in connection with this Agreement. Information or material is not Confidential Information for the purposes of this Agreement if it:

- (a) is in the public domain prior to its disclosure by the Discloser;
- (b) enters the public domain other than as a result of an unauthorised disclosure by the Recipient, or by a third party who has obtained such information from a party;
- (c) is disclosed to the Recipient party by a third party who is lawfully entitled to disclose such information or material to the Recipient party on a non-confidential basis; or
- (d) is rightfully known by the Recipient prior to the date of its disclosure by the Discloser;

Customer Data means:

- (a) all Data provided by Customer to Otto under this Agreement or any Work Order in relation to the Services; and
- (b) any Personal Information incorporated into any of the Data described in paragraph (a);

Customer Environment means telecommunications, networks, systems and any other facilities (including any connection, hardware, software, web services, third party content or software or equipment) used, or required, by or on behalf of Customer to interface with, or for accessing and making use of the Services;

Data means all data of any kind (including Personal Information) that Otto is required to generate, collect, process, store or transmit under this Agreement or any Work Order;

Data Breach means:

- (a) in respect of any Customer Data that is not Personal Information, any part of the Customer Data becomes corrupted, not accessible, incorrectly modified or deleted, or otherwise the integrity or reliability of the Data is not maintained; or

- (b) in respect of any Customer Data that is Personal Information:
- (i) that the Personal Information is or may have been misused, interfered with, corrupted or subject to unauthorised access, modification or disclosure;
 - (ii) that there has been unauthorised access to the system, storage device or computer network in which such Personal Information is stored; or
 - (iii) that the Personal Information, or the storage device or computer system on which such Personal Information is stored, is lost or misplaced;

Delay means an event or circumstance that delays or will likely delay Otto from meeting a Time Requirement;

Deliverable means any materials, or item required to be completed, developed or supplied under this Agreement or a Work Order, including any hardware, plant, equipment and/or software licences to be supplied;

Developed IP means Intellectual Property Rights created or developed by or on behalf of Otto to meet the requirements under this Agreement or a Work Order, or otherwise in the course of providing the Services or Deliverables;

Discloser means the party that discloses Confidential Information;

Dispute has the meaning under clause 17.1;

End Date means the date that is 12 months from the Commencement Date;

Equipment means any equipment, hardware or tools forming part of the Services which are provided by Otto to Customer;

Extension Period means 12 months;

Fee means the fees and other charges payable by Customer in connection with this Agreement as identified in a Work Order;

Force Majeure Event means any:

- (a) fire, flood, earthquake, cyclone, or act of God;
- (b) riot, civil disorder, rebellion or revolution;
- (c) war or terrorist act;
- (d) epidemic or pandemic (whether declared or undeclared) or other public health emergency; or
- (e) other similar cause beyond the reasonable control of the non-performing party;

GST means any tax, levy, charge or impost implemented under the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

Hardware means any hardware which Customer independently procures from Otto under a Work Order;

Insolvency means the happening of any of the following events:

- (a) an order is made that a body corporate be wound up;
- (b) an order appointing a liquidator or provisional liquidator in respect of a body corporate is made;
- (c) except to reconstruct or amalgamate while solvent on terms consented to by the other party acting reasonably, a body corporate

enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;

- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the other party acting reasonably or is otherwise wound up or dissolved;
- (e) a body corporate is or states that it is insolvent;
- (f) as a result of the operation of applicable law, a body corporate is taken to have failed to comply with a statutory demand;
- (g) a body corporate is, or makes a statement from which it may be reasonably deduced by the other party that the body corporate is, the subject of an insolvency event under applicable law;
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate;
- (i) a resolution is passed to appoint an administrator or an administrator is appointed to a body corporate; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;

Introduction Fee has the meaning under clause 18.4B

Invoicing Terms means the terms set out in the Work Order;

IP Claim means any third party claim that the Services or Deliverables, or their use in accordance with this Agreement infringes or violates any third party's Intellectual Property Rights;

Key Personnel means Otto's Personnel that are specified in a Work Order as 'Key Personnel' or who are otherwise responsible for the performance of key roles or tasks under this Agreement;

Liability means any costs, expenses (including legal costs on a full indemnity basis), losses, damages, charge, compensation, amounts paid on advice of legal advisers to compromise or settle a claim, taxes, outgoings or other payments;

Location means the location for the provision of the Services, as specified in the relevant Work Order;

Loss means Liabilities, losses, damages, costs and expenses arising out of a right under this Agreement or a cause of action in connection with this Agreement, including breach of contract, tort (including negligence) and any other common law, equitable or statutory cause of action, except to the extent limited or excluded under this Agreement;

Payment Terms means the terms set out in the Work Order;

Personnel means, in relation to a party, the officers, employees, agents and subcontractors of that party. The Personnel of Customer does not include Otto, and the Personnel of Otto includes any subcontractors and their Personnel;

Personal Information has the meaning set out under the Privacy laws;

Pre-existing IP means Intellectual Property Rights subsisting in any material either party provides or makes available to the other party under or in connection with this Agreement or a Work Order, or which is created or developed independently from this Agreement or a Work Order, but excludes any Developed IP;

Privacy laws means the *Privacy Act 1988* (Cth) and the Australian Privacy Principles;

Recipient means the party receiving Confidential Information from the Discloser;

Representative means the nominated Personnel from each of the parties specified in the Work Order;

Review Date means July 1 each year during the Term;

Services means the services that Otto is required to perform under this Agreement from time to time pursuant to a Work Order, and except to the extent expressly excluded, includes all things, resources, services and tasks which are reasonably necessary for or incidental to provision of those services;

Services Schedule means the schedule setting out the specific terms and conditions applicable to the relevant Services, as set out in Schedule 2 or Schedule 3 (as applicable);

Software means any software forming part of the Services that is provided by Otto to Customer;

Tax Invoice has the meaning set out in the GST Act;

Term means the term of this Agreement, as described in clause 2.1, including any Extension Period;

Time Requirement means any timeframes, due dates, milestones, and any other time requirements set out in the applicable Work Order;

Third Party Supplier means a person that supplies services or products to Customer from time to time;

Work Order means a document setting out the Services to be performed, the applicable commercial terms applicable to those Services, and the applicable Services Schedule; and

Work Order Term means the duration specified in the Work Order.

1.2

Interpretation

In this Agreement, unless the context requires otherwise:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) a reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Agreement includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;

- (i) the expression **at any time** includes reference to past, present and future time and performing any action from time to time;
- (j) an agreement, representation or warranty by two or more persons binds them jointly and severally and is for the benefit of them jointly and severally;
- (k) a reference to an item is a reference to an item in the schedule to this Agreement;
- (l) a reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Agreement;
- (m) a reference to a clause described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this Agreement means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (n) when a thing is required to be done or money is required to be paid under this Agreement on a day which is not a Business Day, the thing must be done and the money paid on the immediately preceding Business Day; and
- (o) a reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

1.3

Order of precedence

- (a) This Agreement consists of the following parts:
 - (i) the Work Order(s);
 - (ii) the applicable Services Schedule(s);
 - (iii) the terms of this Agreement; and
 - (iv) any schedules, annexures or attachments to the Work Order(s).
- (b) In the event of any inconsistency between the parts of this Agreement, the part listed earlier in clause 1.3(a) above prevails to the extent of that inconsistency.

2. Term

2.1 Term

This Agreement commences on the Commencement Date and continues until the End Date, unless terminated earlier in accordance with clause 18 or 19.

2.2 Extension Periods

The Term will automatically extend for each Extension Period unless either party gives the other party at least 90 days' written notice prior to the end of the then-current Term of its intention not to extend the Term the Extension Period, in which case this Agreement will expire at the end of the then-current Term.

3. Work Order

3.1 General

Customer may request, and Otto may agree, to provide Services and Deliverables by executing a Work Order in accordance with this clause 3.

3.2 Development of Work Order

- (a) Customer may from time to time notify Otto of Customer's requirements in respect of the required Services and Deliverables, and request Otto to submit a draft Work Order for the supply of those Services and Deliverables.
- (b) Customer may by notice to Otto:

- (i) reject the draft Work Order;
- (ii) meet and negotiate in good faith with Otto the content of the draft Work Order; or
- (iii) accept the draft Work Order.

3.3 Execution of Work Order

- (a) If Customer accepts a draft Work Order, the parties will execute that draft Work Order.
- (b) Each Work Order executed by the parties will form part of this Agreement.
- (c) All Services or Deliverables under this Agreement must be provided pursuant to an executed Work Order. Otto will not be obliged to provide any Services or Deliverables to Customer without an executed Work Order.

4. Change Control

4.1 Proposing a Change

Either party may propose a Change to this Agreement or to any Work Order by submitting a notice to the other party describing the proposed Change in enough detail to enable initial consideration of the impact of that Change.

4.2 Agreeing a Change

- (a) Within 14 days of the date of the notice under clause 4.1 (or such other period as the parties may agree), Otto must submit a Change Proposal to Customer.
- (b) If Customer wishes to discuss or negotiate the Change Proposal, then each party's Representatives must meet to discuss the Change Proposal (with both parties to act reasonably and in good faith);
- (c) If Customer:
 - (i) rejects the Change Proposal;
 - (ii) within 30 days (or such longer period as the parties may agree) of notifying Otto of its wish to discuss or negotiate the Change Proposal, is unable to agree on a Change Proposal with Otto; or
 - (iii) does not respond within the timeframe set out in the Change Proposal,
 then the Change Proposal will have no effect and each party must continue to perform the Agreement and the Work Order in accordance with its unvaried terms.
- (d) Nothing in this Agreement requires Otto to agree to a Change in respect of any Services, including the replacement of the Services or the addition of new Services. Otto is not required to give reasons for declining a Change.

5. Performance standards and other obligations

5.1 Quality and standards

- Otto must, and ensure that each of its Personnel and subcontractors will:
- (a) perform all of its obligations under this Agreement promptly, with the skill, due care and prudence reasonably expected of skilled and experienced suppliers; and
 - (b) use all reasonable endeavours to ensure that its performance of Services and Deliverables

meets any specifications set out in the Work Order in all material respects.

5.2 Compliance with laws

Otto must:

- (a) ensure that all Services and Deliverables supplied under this Agreement comply with all applicable laws; and
- (b) ensure that it has and enforces occupational health and safety policies and management systems, and safe work practices and procedures as required by relevant laws.

6. Personnel and Subcontracting

6.1 Key Personnel

- (a) In respect of each role, function or activity that is assigned to a Key Personnel, Otto will use all reasonable endeavours to ensure that that role, function or activity is carried out by that Key Personnel.
- (b) If any of the Key Personnel becomes or will become unavailable, Otto will replace such persons with other Personnel with equivalent skills, qualifications and experience.

6.2 Subcontracting

- (a) Otto may subcontract the performance of all or any part of its obligations under this Agreement.
- (b) Otto acknowledges and agrees that it will be liable for the subcontractor's acts and omissions in relation to this Agreement, and such appointment does not relieve Otto from any of its obligations under this Agreement.

7. Customer's Obligations

7.1 General

Customer will at its own cost:

- (a) promptly issue all consents, approvals, or acceptances necessary for Otto to access the Customer Environment under this Agreement where required; ;
- (b) obtain and maintain all authorisations, licences, approvals, permits, and other certifications necessary to fulfil its obligations under this Agreement;
- (c) obtain, maintain and operate the Customer Environment for the duration of the Term;
- (d) provide Otto and its Personnel with access to the Customer Environment for the purpose of performing its obligations under this Agreement or as otherwise agreed by the parties; and
- (e) ensure that the Customer Environment complies with the specifications set out in the applicable Work Order and that the Customer implements any Recommendations from Otto in relation to the Customer Environment.

7.2 Security

Customer must:

- (i) maintain and operate an appropriate level of security for its Customer Environment;
- (ii) ensure there is no unauthorised access to the Services;
- (iii) not cause harm or damage to the Services;
- (iv) not use the Services in any manner that may breach a third party's rights, including infringing a third party's Intellectual Property Rights; and

- (v) notify Otto immediately of any unauthorised access to the Services, including any loss or misuse of Confidential Information.
- (b) Customer must take appropriate data security measures in relation to the Customer Data within its Customer Environment, having regard to the nature of the Customer Data, including:
 - (i) using appropriate firewall and encryption technologies;
 - (ii) applying latest security patches and updates to the Customer Environment;
 - (iii) disabling any unnecessary ports in the Customer Environment; and
 - (iv) conducting regular security audits.

7.3 Customer dependencies

Customer agrees and undertakes to:

- (a) do all things necessary to enable Otto to perform its obligations under this Agreement including performing any works, providing any equipment or connecting any services as reasonably required by Otto from time to time;
- (b) provide Otto and its Personnel with access to the Customer's premises, the Customer Environment, and the Customer's Personnel as and when reasonably requested by Otto;
- (c) provide Otto with all information and documentation as reasonably requested by, or as otherwise necessary for Otto;
- (d) co-operate with Otto's reasonable investigations of outages, security problems and any suspected breach of this Agreement; and
- (e) implement and incorporate any recommended changes in respect of the Customer Environment which Otto reasonably requires to ensure the effective and timely provision of the Services.

7.4 Compliance with laws

Customer will:

- (a) not commit, cause or allow any breach (or do anything which might put Otto) of any law, regulation, government direction or industry standard or code using the Services;
- (b) comply with all laws applicable to the Customer, including any data retention laws;
- (c) not use or attempt to use the Services or Deliverables for any activity which breaches any law, order, regulation or industry code of practice; and
- (d) not distribute, store or publish any content or material that is restricted, illegal or otherwise unlawful under any applicable law, or which is likely to be offensive or obscene to a reasonable person.

8. Time Requirements

8.1 Time Requirements

Otto will use commercially reasonable endeavours to comply with the Time Requirements.

8.2 Delays

If there is any act or omission by Customer or its Personnel or a failure or delay by Customer or its Personnel to comply with its obligations under this Agreement that results in a Delay in Otto providing any Services in accordance with a Time Requirement:

- (a) Otto will not be liable for that Delay; and
- (b) Otto will be entitled to:
 - (i) charge the Customer for any additional time spent at Otto's then current time and materials rates and for all costs and expenses incurred as a result of the Delay; and
 - (ii) a reasonable extension of time to a Time Requirement proportionate to the period of the Delay.

9. Fees

9.1 Fees

- (a) Otto will provide the Services in return for the Customer complying with this Agreement and paying the Fees in accordance with this Agreement.
- (b) Fees payable to Otto by the Customer may be varied on each Review Date. The variation shall be calculated in accordance with Consumer Price Index, based on the increase in the Australian Bureau of Statistics' "All Groups Consumer Price Index Weighted Average of Eight Capital Cities" index. The variation will be effective from the Review Date to which it applies, and Otto will provide confirmation in writing.
- (c) During the Term and in addition to its rights under clause 9.1(b), Otto may increase the Fees on written notice to the Customer as follows:
 - (i) following any increase in the costs of providing the Services as result of any change or increase in costs passed on by any Third Party Suppliers. Any increase in Fees under this clause must be done on a cost pass through basis and must not exceed the increase applied by the Third Party Suppliers. Where able to do so, on request, Otto will provide the Customer with reasonable written evidence verifying the Third Party Supplier's increase; and
 - (ii) following any material increase in the costs of providing the Services as a result of any material change or increase in the costs of labour, insurance or such other internal cost to Otto in addition to any significant change to economic conditions. Any increase in Fees under this clause must be done on a cost pass through basis where possible having regard to the actual increase in the costs of providing the Services.

9.2 Invoicing and Payment

- (a) Otto must submit a Tax Invoice for all Fees in accordance with the Invoicing Terms.
- (b) Subject to clause 9.2(a), Customer will pay each undisputed, correctly rendered Tax Invoice within thirty (30) Business Days from the date the invoice is received by Customer.

9.3 Disputed Tax Invoices

If Customer reasonably disputes any item on any Tax Invoice in whole or in part, Customer will be required to pay the undisputed portion of the Tax Invoice.

Customer will promptly notify Otto of its reasons for disputing certain items of the Tax Invoice. Customer and Otto will use all reasonable endeavours to settle the dispute at their earliest possible convenience in accordance with clause 17. If the dispute is resolved and the parties agree, or if it is determined by a court of law, that any portion of the dispute amount is payable by Customer, then Customer will pay that portion to Otto within thirty (30) Business Days of resolution of the dispute.

9.4 Overdue amounts

- (a) If any amount payable to Otto under this Agreement has not been paid by Customer by the due date for payment, Otto may:
 - (i) charge interest on the amount outstanding at the rate of 5% above the overdraft index rate charged by the National Australia Bank;
 - (ii) suspend performance of this Agreement; or
 - (iii) terminate all or any Work Orders.
- (b) Customer remains liable for any and all payments due in relation to the Services during any period of suspension.

10. Confidential Information

10.1 Obligation to maintain confidentiality

The Recipient must:

- (a) treat the Confidential Information as secret and confidential;
- (b) maintain proper and secure custody of the Confidential Information;
- (c) not use Confidential Information for any purpose other than the exercise of its rights or the performance of its obligations pursuant to this Agreement, without the prior written consent of the Discloser; and
- (d) only disclose the Confidential Information to its Personnel and advisers who have been made aware of the terms on which that Confidential Information is to be maintained and who have entered into legally binding confidentiality obligations that extend to that Confidential Information.

10.2 Acknowledgements

The Recipient:

- (a) acknowledges that the Confidential Information remains the property of the Discloser at all times and except as expressly set out in this Agreement, no proprietary or other interest in the Confidential Information is conveyed to the Recipient or any of its Personnel;
- (b) acknowledges that disclosure of any Confidential Information in breach of this clause 10 may cause irreparable harm to Discloser for which damages alone may not be a sufficient remedy; and
- (c) consents to the grant of injunctive relief to restrain any breach of, or specific performance to compel the Recipient to perform its obligations under this clause 10, as a remedy for any breach or threatened breach of this clause 10 and in addition to any other remedies available to the Discloser.

10.3 Compelled disclosure

Each party may disclose the other party's Confidential Information if required by law. However, if possible, it

must inform the other party first and use reasonable endeavours to limit the terms of that disclosure as reasonably requested.

10.4 Publicity

Otto may publicly announce that it is or has undertaken work for Customer, including on its website and in its marketing materials, unless Customer gives Otto reasonable notice in writing.

11. Intellectual Property Rights

11.1 Pre-existing IP

- (a) Each party (or its licensors) will retain ownership of its respective Pre-existing IP.
- (b) Each party grants to the other party a non-exclusive, royalty free licence to use, reproduce, modify and adapt its Pre-existing IP only to the extent necessary for the purpose of:
 - (i) performing its obligations or exercising its rights under this Agreement and Work Order; and
 - (ii) in the case of Customer, receiving the full benefit of Services (including through use of the Deliverables) and exercising its rights in the Developed IP.

11.2 Developed IP

- (a) Unless otherwise specified in a Work Order, ownership of all Developed IP vests in Otto immediately on creation.
- (b) To the extent that the right, title and interest in the Developed IP does not automatically vest in Otto on creation, Customer assigns and agrees to assign all right, title and interest in and to the Developed IP to Otto.
- (c) Otto grants to Customer a licence to use, reproduce, modify and adapt the Developed IP on the same terms as the rights granted under clause 11.1(b).

12. Customer Data

12.1 Provision of Customer Data

If and to the extent that Customer Data is provided by the Customer to Otto for the provision of the Services, the Customer will be solely responsible for the content, accuracy and completeness of all Customer Data.

Subject to the terms of this Agreement, the Customer:

- (a) must ensure that the Customer Data is fully compatible with the Services;
- (b) will, subject to any agreement between the parties, be solely responsible for the creation, posting, updating and maintenance of the Customer Data; and
- (c) will be solely responsible for the accuracy and appropriateness of all the Customer Data created by the Customer using the Services.

12.2 Access to and use of Customer Data

Otto:

- (a) may access and use the Customer Data at any time for the purposes of this Agreement (including for reporting purposes);
- (b) reserves the right to remove any Customer Data that it reasonably considers is not compliant with or is otherwise incompatible with the Services;
- (c) is not obliged to review or monitor Customer Data used by the Customer in conjunction with the Services; and

- (d) at the Customer's cost, may assist the Customer in resolving any compliance or compatibility issues between its Customer Data and the Services.

12.3 Security

Without limiting the Customer's obligations under clause 12.1, Otto will take commercially reasonable steps within its control to:

- (a) protect Customer Data (including Personal Information) to which Otto has access in connection with this Agreement against unauthorised access, use, modification or disclosure; and
- (b) ensure the security of Customer Data (including Personal Information) to which Otto has access in connection with this Agreement by maintaining security systems and procedures that comply with established industry practice.

12.4 Analytics

Notwithstanding anything to the contrary in this Agreement, Otto may monitor, analyse and compile information based on and/or related to Customer's use of the Services in an aggregated, de-identified format (**Analytics Data**). Customer acknowledges that Otto will own all Analytics Data on creation.

13. Privacy

13.1 Compliance with Privacy laws

In performing its obligations under this Agreement, each party will comply with all Privacy laws in respect of any Personal Information collected, accessed, used, disclosed and otherwise handled by that party under or in connection with this Agreement.

13.2 Specific requirements

- (a) Without limiting clause 13.1, Customer will:
 - (i) notify its customers, clients or other individuals to whom Personal Information it collects relates of any matter prescribed by any Privacy laws in relation to the collection, use, disclosure, handling and storage of their Personal Information, including the transfer and disclosure of and use such Personal Information by Otto in accordance with this Agreement;
 - (ii) ensure that any Personal Information transferred or disclosed to Otto is collected fairly and reasonably, and is complete, accurate and up to date;
 - (iii) notify Otto immediately upon becoming aware of any breach of any Privacy law in relation to any Personal Information transferred or disclosed to Otto under this Agreement;
 - (iv) only disclose Personal Information in its control to Otto if:
 - (A) Customer is authorised by applicable Privacy laws, including any privacy policy, privacy code or privacy collection notice of Customer, to collect, use, disclose, handle or store the Personal Information in the manner required by this

Agreement so that Otto may lawfully collect, use, disclose, handle or store the Personal Information in order to comply with its obligations or exercise its rights under this Agreement; and

- (B) Customer has informed and has obtained the consent of the individual to whom the Personal Information relates that in order to provide goods or services to them it might be necessary for Customer to disclose their Personal Information to a third party, including to a third party located outside of Australia.

- (b) Customer acknowledges and agrees that Otto is under no obligation to:

- (i) withhold any Personal Information or related data, documentation or other records from any government agency with apparent authority to seek delivery or access to such Personal Information or data, documentation or other records; or
- (ii) refuse to provide any such government agency such Personal Information or data, documentation or other records.

- (c) Otto will provide:

- (i) reasonable assistance to Customer, at Customer's cost:
 - (A) to resolve any complaint alleging a breach of Privacy laws;
 - (B) to assist with the exercise of a person's individual rights under the Privacy laws; or
 - (C) to comply with the obligations under Privacy laws; and
- (ii) all necessary information and reasonable cooperation, at Customer's cost, to assist Customer to comply with its data breach notification obligations under the applicable Privacy laws.

13.3 Data Breaches

At Customer's cost Otto will provide:

- (a) reasonable assistance to the Customer:
 - (i) to resolve a complaint alleging a breach of Privacy laws; or
 - (ii) to comply with Customer's obligations under Privacy laws; and
- (b) provide all necessary information and reasonable cooperation to assist Customer to comply with its reporting and notification obligations under the applicable Privacy laws.

14. PPSA

14.1 Application

- (a) Customer acknowledges that Otto's interest under this Agreement is a Security Interest for the purposes of the PPSA and:

- (i) that Security Interest relates to the Equipment and all proceeds of any kind; and
 - (ii) this Agreement is a security agreement for the purposes of the PPSA.
- (b) Customer consents to Otto effecting a registration on the PPSA (in any manner Otto considers appropriate) in relation to any Security Interest arising under or in connection with this Agreement.

14.2 Registration

- (a) If required by Otto, Customer must pay all costs associated with the registration, maintenance and withdrawal of any Security Interest on the PPSR which secures Customer's obligations under any agreement with Otto.
- (b) Customer waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- (c) Customer must do all things (including signing any document) and provide all information necessary to enable Otto to perfect and maintain the perfection of any and each Security Interest granted to Otto by Customer.
- (d) For the purposes of this clause 14, Customer irrevocably appoints Otto to be its attorney with power to do all things necessary or expedient including entering into any documents deemed necessary by it to give effect to Customer's obligations under this Agreement.
- (e) If Chapter 4 of the PPSA applies to the enforcement of a Security Interest arising under or in connection with this Agreement, Customer agrees the following provisions of the PPSA will not apply to the enforcement of that Security Interest:
 - (i) section 95 (Secured party must give notice of removal of accession), to the extent that it requires Otto to give Customer a notice;
 - (ii) section 96 (When a person with an interest in the whole may retain accession);
 - (iii) subsection 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor);
 - (iv) section 125 (Obligation to dispose of or retain collateral);
 - (v) section 130 (Notice of disposal of collateral), to the extent that it requires Otto to give Customer a notice;
 - (vi) paragraph 132(3)(d) (Secured party to give statement of account – statement of account following disposal);
 - (vii) subsection 132(4) (Secured party to give statement of account – statement of account if no disposal);
 - (viii) section 142 (Entitled persons may redeem collateral); and

- (ix) section 143 (Entitled persons may reinstate security agreement).

- (f) Where a person is a controller in relation to the Equipment, the parties agree that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Equipment by that controller.
- (g) Notices or documents required or permitted to be given to Customer for the purposes of the PPSA must be given in accordance with the PPSA.

15. Warranties

15.1 Mutual warranties

Each party represents and warrants to the other party that:

- (a) it has the power and authority to enter into and perform its obligations under this Agreement and that the execution of this Agreement by it has been duly and validly authorised by all necessary corporate action;
- (b) its obligations under this Agreement are valid and binding and enforceable against it in accordance with their terms; and
- (c) it does not rely upon any warranty, statement or representation made or given by or on behalf of any party.

15.2 Otto's warranties

Otto represents and warrants to Customer that:

- (a) the Services and Deliverables will:
 - (i) comply, in all material respects, with the requirements set out in this Agreement and the applicable Work Order; and
 - (ii) be performed a timely and professional manner by suitably qualified Personnel;
- (b) it has the right to grant the licences set out in this Agreement; and;
- (c) it will comply with all laws applicable to Otto.

15.3 Non-excludable rights

- (a) Otto's goods and services come with guarantees that cannot be excluded under the Australian Consumer law.
- (b) For major failures with the service, Customer is entitled (at its option):
 - (i) to cancel its service contract with Otto; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value.
- (c) If a failure with the goods or a service does not amount to a major failure, Customer is entitled to have the failure rectified in a reasonable time. If this is not done, Customer is entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion.
- (d) To the extent permitted by law and subject to this clause 15.3, Otto excludes all conditions, warranties and terms not expressly set out in this Agreement. Where applicable law provides any consumer guarantee, condition or warranty which cannot be excluded, Otto's liability for any breach of such consumer guarantee, condition or warranty will be limited to the extent permitted by applicable

law to, at its option to the provision of the entitlements set out in this clause 15.3.

16. Indemnity and Liability

16.1 Indemnity by Otto

- (a) Subject to clause 16.1(b), Otto indemnifies Customer and will keep Customer indemnified from and against any award of damages against it in favour of the claimant under an IP Claim.
- (b) The indemnity in clause 16.1(a) is conditional on Customer:
 - (i) using the Services in accordance with and within the scope of this Agreement;
 - (ii) promptly notifying Otto in writing after receiving notice of any such IP Claim;
 - (iii) not making any admissions to the third party claimant or its representatives in relation to the IP Claim;
 - (iv) granting Otto the sole control of the defence of any action regarding the IP Claim and all negotiations for its settlement; and
 - (v) providing reasonable assistance to Otto in Otto's defence or settlement of the IP Claim.
- (c) If in Otto's reasonable judgment any IP Claim, or threat of an IP Claim, is likely to materially interfere with Customer's use of the Services, Otto will consult with the Customer, and Otto will have the option, in its sole discretion, to:
 - (i) substitute functionally equivalent non-infringing Services;
 - (ii) modify the Services to make them non-infringing; or
 - (iii) obtain for Customer at Otto's expense the right to continue using the infringing Services,
 provided that if Otto cannot achieve any of the remedies in the preceding paragraphs on a reasonable commercial basis, it may by written notice, require Customer to cease using the Services (or component of the Services), and refund a pro-rata portion of the Fees for such period of time in which Customer is unable to use the Services (or the relevant component of the Services).
- (d) Otto will have no indemnity obligation for any IP Claim resulting or alleged to result from:
 - (i) any combination, operation, or use of any Services with any programs or facilities not supplied by Otto or not specified in writing by Otto;
 - (ii) use of the Services other than in accordance with this Agreement or Otto's written instructions;
 - (iii) inclusion or use of Customer Data;
 - (iv) any modification of the Services by a party other than Otto if such infringement would have been avoided in the absence of such modifications;
 - (v) failure by Customer to adopt an updated version of any software

where the update would have avoided or reduced the infringement.

- (e) To the extent permitted at law, this clause 16.1 states Otto's entire liability and Customer's sole and exclusive remedy for all IP Claims.

16.2 Indemnity by the Customer

The Customer indemnifies Otto, its Personnel, and its affiliates against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from:

- (a) the Customer's use of the Services contrary to this Agreement;
- (b) the Customer's breach of any third party right, including without limitation any Intellectual Property Rights or privacy rights, or any law; or
- (c) any claim arising as a consequence of the Customer Data including any content of the Customer Data or the circumstances of the collection of the Customer Data.

16.3 Proportionate Liability

To the extent permissible by law, a party's Liability under the Agreement (including under an indemnity) is reduced proportionately to the extent that such Liability is caused or contributed to by the other party or its Personnel.

16.4 Limitation of liability

- (a) To the maximum extent permitted by law, the aggregate liability of Otto (whether under statute, in contract or in tort, including for negligence, or otherwise) for Liability suffered or incurred by Customer in connection with this Agreement is limited to the amount equal to the lesser of:
 - (i) the Fees paid under this Agreement in the 12 months prior to the incident giving rise to the Liability; or
 - (ii) \$50,000.
- (b) To the extent permitted by law, Otto is not responsible for any loss or damage incurred by Customer or any third party and Customer releases Otto and its Personnel from all Claims in connection with:
 - (i) a use of the Services in combination with materials or services not supplied to Customer by Otto;
 - (ii) any failure by the Customer to properly implement a Recommendation;
 - (iii) a Data Breach, irrespective of whether caused or contributed to by Otto or its Personnel, including but not limited to, any statutory fines or penalties;
 - (iv) Customer's failure to comply with its obligations under this Agreement (including use of Software, Equipment or Hardware other than as reasonably contemplated, and relocation of Software or Equipment); faults, malfunction or defect in any third party products or services;
 - (v) modifications of the Services or Deliverables other than as authorised by Otto; or

- (vi) telecommunications or power failure or fault or defective network or internet connection affecting Customer, or affecting Otto provided that Otto is unable to reasonably mitigate through its business continuity and disaster plan.

- (c) Unless otherwise specified in a Work Order, Otto's only obligation arising from a Data Breach is to attempt restoration of Customer Data to the last available backup.

16.5 Indirect Loss

To the extent permitted by law, neither party is liable whether in tort (including for negligence), contract, breach of statutory duty, misrepresentation, restitution or otherwise for indirect loss of profits, loss of business, depletion of goodwill, loss or corruption of data or information, or pure economic loss, or for any other special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement.

16.6 Duty to Mitigate

Each party must use all reasonable endeavours to mitigate its liability.

17. Dispute Resolution

17.1 Notice

A party claiming that a dispute has arisen out of or in connection with this Agreement (**Dispute**) must as soon as reasonably practicable give notice to the other party specifying the nature of the Dispute and the parties will submit themselves to the dispute resolution procedure set out in this clause 17.

17.2 Initial process

If a Dispute arises between the parties in relation to this Agreement, then:

- (a) the parties will attempt to resolve the Dispute informally between themselves;
- (b) if the parties are unable to resolve the dispute informally, a party may refer the matter in writing to the Representative of each party for resolution;
- (c) the Representative of each party, with full authority to resolve the Dispute, must meet and use reasonable endeavours to resolve the Dispute within seven days after the notice of the Dispute is given;
- (d) where a Dispute is not resolved by the Representatives it must be referred to appropriately senior Customer and Otto Representatives, who will meet to use their best endeavours to resolve the Dispute within seven days of the meeting between the Representatives; and
- (e) the parties will bear their own costs of dealing with any Dispute.

17.3 Formal steps

- (a) If the Dispute is not resolved under clause 17.2 within ten (10) Business Days after the Dispute is referred to the Chief Executive Officer or equivalent officer of Customer and Otto (or their respective delegates), then the parties must try to resolve the Dispute by mediation:
 - (i) to be held in Melbourne, Australia;
 - (ii) administered by the Australian Disputes Centre; and

- (iii) in accordance with the Australian Disputes Centre Guidelines for Commercial Mediation. These Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.

- (b) If the Dispute is not settled within thirty (30) Business Days after the end of mediation, then either party may initiate legal proceedings.

17.4 Dispute resolved by negotiation

If a Dispute is resolved under clause 17.2 or 17.3, each party must do anything (including execute any document) reasonably required by the other party to give effect to the agreed resolution of the Dispute.

17.5 Continuing compliance

Notwithstanding this clause 17, the parties will, until resolution of the relevant Dispute, continue to comply with their obligations under this Agreement save that Customer is not required to pay any disputed amounts.

18. Termination

18.1 Termination for convenience

Either party may terminate this Agreement or a Work Order for convenience by giving the other party no less than ninety (90) Business Days' notice in writing.

18.2 Termination for cause

- (a) This Agreement may be terminated at any time during the Term immediately by a party if the other party:
 - (i) is in material breach of any of its obligations under this Agreement and it has not rectified the breach within twenty (20) Business Days from receiving written notice requiring it to do so;
 - (ii) is no longer able to perform its obligations under this Agreement due to a change in law which prevents that party from performing its obligations under this Agreement; or
 - (iii) suffers an Insolvency event.
- (b) Without limiting paragraph (a), Otto may terminate this Agreement or Work Order, or suspend the Services, if Customer fails to make payment and has not rectified the non-payment within seven (7) Business Days from receiving written notice to do so.

18.3 Consequences of expiry or termination

- (a) Upon expiry or termination of this Agreement or a Work Order for any reason:
 - (i) where Customer terminates this Agreement or a Work Order under clause 18.1, Customer must pay for any unavoidable costs or expenses (including any pre-paid subscriptions, Hardware and licences) incurred by Otto as a result of the early termination;
 - (ii) all amounts due and payable to Otto, whether or not invoiced, including any Fees for Services and Deliverables provided or performed as at the date of termination become a debt due and payable on the date of termination;

- (iii) Customer must return all Equipment to Otto within thirty (30) Business Days of expiry or termination;
- (iv) Otto will, upon request, provide Customer with reasonable assistance to transfer the obligations of Otto to Customer or a replacement Third Party Supplier in accordance with clause 20; and
- (v) each party must promptly return or destroy (and erase all electronic copies of) the other party's Confidential Information, as directed by the other party.

18.4 Non-solicitation

- a) Each party agrees not to directly or indirectly solicit, recruit or make an offer of employment to the Personnel of the other party during the Term without the prior written consent of the other party and for a period of:
 - I. 12 months;
 - II. six months; or
 - III. three months,
 following expiration or termination of the Agreement.
- b) To avoid doubt, nothing in this clause prevents a party from employing the other party's Personnel as a result of that Personnel responding to a public notice in the absence of solicitation, provided that the employing party may be required to pay AUD\$30,000 for introduction of the other party's Personnel (Introduction Fee).

18.5 Survival of rights

Termination or expiry of this Agreement will not affect the rights of the parties which have accrued before the termination or expiry date.

18.6 Expiry or termination of Work Orders

The termination or expiry of a Work Order will not affect the continuation of any other Work Order or this Agreement, unless the other Work Order or this Agreement is terminated simultaneously or expires.

18.7 Survival

Clauses 1, 10, 12, 13, 14, 16, 17, 18, 19, 20, 21 and any other provisions which by their nature are intended to survive termination or expiry, will survive termination or expiry of this Agreement for any reason.

19. Force Majeure

19.1 General

- (a) Each party releases the other from any liability for any failure to perform its obligations under this Agreement (other than an obligation to pay money) which is due to the occurrence of any Force Majeure Event.
- (b) Neither party is liable for any delay or failure to perform its obligations under this agreement if the delay is due to Force Majeure.

19.2 Procedure for Force Majeure Events

- (a) If a delay or failure of a party to perform its obligations is caused or anticipated due to a Force Majeure Event, the performance of that party's obligations will be suspended for the duration of that event.
- (b) If a party is prevented from or substantially impaired in performing its obligations due to a

Force Majeure Event for a period exceeding sixty (60) Business Days, either party may immediately terminate this Agreement on written notice to the other party.

20. Disengagement and transition out

20.1 Transition-out

At the reasonable request of the Customer, Otto will provide to Customer with assistance and Services reasonably requested for a period of time after the expiry or termination of this Agreement or a Work Order (provided that the period does not exceed six (6) months) as set out in a Work Order, to facilitate the orderly transfer of responsibility for the supply of Services and Deliverables to a replacement Third Party Supplier appointed by Customer.

20.2 Payment of Fees

Otto will charge, and Customer will pay for the assistance and Services on a time and materials basis at the rates set out in the relevant Work Order. Customer acknowledges and agrees that Customer will continue to pay for any Services being provided by or on behalf of Otto to Customer during transition out in accordance with this Agreement.

21. General provisions

21.1 Costs

Each party must pay its own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) that party performing any action in complying with any liability arising,

under this Agreement, or any agreement or document executed or effected under this Agreement, unless this Agreement provides otherwise.

21.2 GST

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this Agreement, the recipient must pay to the supplier an amount (**GST Amount**) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.
- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This clause is subject to any other specific agreement regarding the payment of GST on supplies.

21.3 Assignment

Customer may not assign or transfer its rights and obligations under this Agreement without the prior written consent of Otto. Otto may assign, transfer or novate its rights and obligations under this Agreement without the prior written consent of Customer.

21.4 Notices

- (a) Any notice may be served by delivery in person, by post or email to the address or number of the recipient specified in this

- clause or most recently notified by the recipient to the sender.
- (b) Any notice to or by a party under this Agreement must be in writing and signed by either:
- (i) the sender or, if a corporate party, an authorised officer of the sender; or
 - (ii) the party's solicitor.
- (c) Any notice is effective for the purposes of this Agreement on delivery to the recipient before 4.00 pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00 am on the next day following delivery or receipt.

21.5 Governing law and jurisdiction

- (a) This Agreement is governed by and construed under Victoria, Australia law.
- (b) Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in Victoria, Australia.
- (c) By execution of this Agreement, each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this clause in relation to both itself and its property.

21.6 Amendments

Otto may amend this Agreement at any time by providing at least 30 days prior written notice. If Customer does not agree to such amendment, Customer may terminate this Agreement on 30 days' notice in writing. If Customer agrees or does not object to the amendment within the 30 day notice period, Customer will accept or be deemed to accept, as the case may be, the amendment.

21.7 Pre-contractual negotiation

This Agreement:

- (a) expresses and incorporates the entire agreement between the parties concerning its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties concerning that subject matter or any term of that agreement.

21.8 Further assurances

Each party must execute any document and perform any action necessary to give full effect to this Agreement, whether before or after performance of this Agreement.

21.9 Continuing performance

- (a) The provisions of this Agreement do not merge with any action performed or document executed by any party for the purposes of performing this Agreement.
- (b) Any representation in this Agreement survives the execution of any document for the purposes of, and continues after, performance of this Agreement.
- (c) Any indemnity agreed by any party under this Agreement:
 - (i) constitutes a liability of that party separate and independent from any

other liability of that party under this Agreement or any other agreement; and survives and continues after performance of this Agreement.

(ii)

21.10 Waivers

Any failure by a party to exercise any right under this Agreement does not operate as a waiver. The single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

21.11 Remedies

The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by law.

21.12 Severability

Any clause of this Agreement which is invalid in any jurisdiction, is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining clauses of this Agreement or the validity of that clause in any other jurisdiction.

21.13 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute the same document. The counterparts of this Agreement may be executed electronically and delivered by electronic means by either party to the other party, and the receiving party may rely on the receipt of such document so executed and delivered by electronic means as if the original had been received.

Schedule 1 – Managed Services Terms and Conditions

Attached

Schedule 2 – Project Services Terms and Conditions

Attached