

SIAX COMPUTING SOLUTIONS PTY LTD
ABN: 80 105 471 887
CLIENT SERVICES MASTER AGREEMENT_{v2}

1) SCOPE OF SERVICES

The Company agrees to assist the Client with professional services (*the Services*) as set forth in the applicable Statements of Work, Work Order Requests, Managed Services Agreements, Scope of Works or other documents (each referred to generically herein as "Services Documents") that may be executed from time-to-time by both parties to this Agreement. To be effective, each Services Document (if any) shall, subject to the remainder of this paragraph, when executed by both parties, be deemed a part of, and governed by the terms of, this Agreement. Each Services Document is enforceable according to the terms and conditions contained therein, and in the event of a conflict between this Agreement and any Services Document, the Services Document shall prevail in respect of all matters specifically dealt with therein. The Company shall perform all the Services in accordance with the relevant industry best practices, as well as those service levels explicitly described in any relevant Services Document.

2) GENERAL RESPONSIBILITIES OF THE PARTIES

- a) Subject to the foregoing the Client appoints the Company to supply the Services to the Client subject to the terms and conditions of this Agreement and the relevant Services Document(s).
- b) At the request of the Client the Company may agree to provide additional services under this Agreement on a case by case basis under one or more additional Services Documents. Unless otherwise agreed in writing, any additional services will be provided at the Time and Materials Rates on any additional terms and conditions set out in the relevant additional Services Documents.
- c) At the request of the Client the Company may agree to provide additional services under this Agreement on a case by case basis and on a Time and Materials basis. Unless otherwise agreed in writing, standard services rates valid on the date of request will be used.

3) PAYMENT

- a) Unless otherwise stated in a Services Document, Payment is due within thirty (30) days from the invoice date for Services from the Company. For prepaid fees or fees paid pursuant to a service plan, payment must be made in advance of work performed, unless other arrangements are agreed upon in the relevant Services Document.
- b) Late payments shall be subject to an administration fee on the unpaid invoice amount(s) (or parts thereof) until and including the date payment is received, at the rate of 1.5% per month. The Client shall be liable for all reasonable fees and costs incurred in collection of balances past due including but not limited to collection fees, filing fees and legal costs.
- c) If there is a dispute about whether an amount set out in an invoice is payable, the Client will pay the disputed amount and when the dispute is resolved, if it is resolved in favour of the Client, the Client will first set-off the disputed amount paid pursuant to this clause against any monies then due and payable to the Company as at the date the dispute is resolved or should there be no monies due, the amount will thereafter be held by the Company to the credit of the Client against future amounts payable by the Client to the Company
- d) The price for the supply of the Services specified in the Services Document is the Contract Price.
- e) The Contract Price for the Services specified in the Services Document, includes without limitation:
 - i) costs and expenses of the Company in supplying the Services;
 - ii) all costs and expenses of the Company in complying with this Agreement and any relevant Services Document; and
 - iii) all charges for materials required to be provided by the Company or third parties, or services required to be performed in order to fulfill the Client's obligations under this Agreement.
- f) The Company will charge the Client the Time and Materials Rates for any Services requested by the Client and agreed to be provided by the Company which are specified as 'out-of-scope' in the Services Document or for any ad-hoc requirements that are in addition to those required under any Services Document.

- g) The Company will be entitled to charge the Client the amounts specified in clause 3(f) regardless of whether the parties have entered into a Services Document in respect of the additional services.
- h) The Company will, on an annual basis, review the Contract Prices and the Time and Materials Rates and the Company may, at its absolute discretion vary such prices by providing written notice to the Client.
- i) The Contract Price and the Time and Materials Rates are exclusive of duties and taxes and the Client must pay all duties and taxes in connection with the Services.

4) GST

- a) To the extent that a party (**supplying party**) makes a taxable supply and the consideration for that supply is either non-monetary, or expressly stated to be exclusive of GST, the party that is liable to provide the consideration (**receiving party**) will also pay an amount equal to the GST payable by the supplying party in respect of the consideration to be provided for the taxable supply.
- b) The receiving party's obligation to pay the GST component of any consideration under this Agreement is subject to receiving a valid tax invoice, at or before the time of payment of the consideration.
- c) If one party is to indemnify or reimburse another party (**payee**) for any loss or expense incurred by the payee, the required payment does not include any amount which the payee (or any entity that is in the same GST group as the payee) is entitled to claim as an input tax credit, but will be increased under clause 4(a) if the payment is consideration for a taxable supply.
- d) If any regulatory changes to the GST system directly or indirectly affect the net dollar margin of the Company in respect of any supply made under or in accordance with this Agreement, the consideration (excluding GST) payable for the supply will be reduced in accordance with guidelines issued by the Australian Competition and Consumer Commission pursuant to Part VB of the Trade Practices Act 1974 (Cth) so that the Company's net dollar margin in respect of the supply is not increased and the Company must provide upon request reasonable evidence to demonstrate that it has complied with this clause 4(d).
- e) Interpretation of GST Terms in this Agreement:
 - i) Capitalised terms used in this clause 4, not defined elsewhere in this Agreement have the meaning given to them in the A New Tax System (Goods and Services) Tax Act 1999 (Cth), unless the context makes it clear that a different meaning is intended; and
 - ii) Consideration includes non-monetary consideration, in respect of which the parties will agree on a reasonable market value.

5) FORMATION OF CONTRACT

- a) A Services Document constitutes a contract; each Services Document incorporates by reference the general contractual terms of this Agreement (as applicable and unless stated otherwise in that Services Document) in the manner set forth in clause 1 above.
- b) Any purported addition to or modification of any provision of this Agreement contained in any Services Document will not be binding on the parties unless such addition or modification has been made in accordance with clause 26b ('Variation') following.

6) TERM

The Term shall continue for the period specified in the Agreement and will be automatically extended for additional periods of the same duration unless either party gives notice in writing to the other party terminating the Agreement by invoking the appropriate provisions set out in Clause 18 ("Termination").

7) CHANGE CONTROL

- a) The Company is entitled to make minor alterations to the Services that do not:
 - i) adversely affect the function or performance of the Services;
 - ii) change the functionality or performance of the Services; or
 - iii) cause the Services to cease to comply with their intended purpose under the terms of this Agreement.
- b) From time to time a party may propose variations in or changes to the Services under a Services Document using the procedures set out in this clause 7.
- c) The Client may propose a variation in or a change to the Services under a Services Document by delivering a written notice to the Company describing the proposal. The Company will, within 10 Business Days after receipt of such notice, provide to the Client an estimate in writing of the time and cost involved in implementing the variation or change. The cost will be based on the Contract Price and/or Time and Materials Rates current at the time of the Company's receipt of the Client's proposal.
- d) The Company may also propose a variation in, or change to, the Services under a Services Document by providing the Client with a written notice describing the proposal together with an estimate of the time and cost involved in implementing the variation or change. The cost will be based on the Contract Price and/or the Time and Materials Rates current at the time of the Company's proposal.
- e) Within 10 Business Days after receipt of an estimate from the Company, the Client will confirm in writing to the Company whether it wishes to proceed with the Company's proposal or not to proceed with the Company's proposal. If the Client confirms that it requires a response from the Company, or requires the Company to proceed with the Company's proposal, as the case may be, the Company must provide a response or confirmation of the Company's proposal as soon as possible by preparing and delivering to the Client a written document in respect of such variation (**Change Control Document**).
- f) Acceptance of a Change Control Document
 - i) If the Client accepts the Change Control Document, then the relevant Services Document will be amended to give effect to the changes described in that Change Control Document.
 - ii) No variation in or change to the Services under a Services Document will be effective until both parties have executed a Change Control Document. Until the parties have executed the Change Control Document, the original scope of work will remain unaffected and the Company shall perform its obligations in accordance with the original agreed Services Document.

8) PERFORMANCE OF SERVICES

- a) Standards for performance : In performing its obligations under this Agreement and any Services Document, the Company will use reasonable endeavors to:
 - i) work (and ensure its employees, officers, agents and Subcontractors, and the employees, officers, agents and contractors of its Subcontractors) with the Client in an efficient and co-ordinated manner;
 - ii) perform its obligations in an efficient, professional and cost effective manner;
 - iii) overcome any delays (howsoever caused) in performing this Agreement;
 - iv) comply with the reasonable instructions, guidelines or procedures specified by the Client; and
 - v) ensure that its employees, when dealing with persons, are courteous and polite and do nothing that is prejudicial to the goodwill, commercial reputation or overall public image of the Client.
- b) The Client may request in writing that the Company promptly remove any individual Company personnel who is not performing the Services in a reasonably satisfactory manner or who, in the Client's reasonable opinion, is not suitable to perform the Services due to conduct. The Company will replace such personnel as soon as possible. The Client agrees:
 - i) not to exercise its right to request removal unreasonably;
 - ii) to provide the Company with 5 Business Days' written notice of the Client's intent to exercise its right to request removal; and

- iii) provide the Company with an opportunity to rectify the cause of the Client's dissatisfaction, provided that the Client is entitled to require immediate removal for conduct that has caused, or is likely to cause, material loss or damage to the Client's assets, reputation or injury to its personnel, agents or contractors.

9) SERVICE LEVEL AGREEMENTS (SLAs)

- a) The Company will use its reasonable endeavors to comply with each of the SLAs.
- b) If the Company fails to perform to the standard required by a SLA, the Client may require the Company to submit to the Client, within the period specified by Client but being not less than 14 days, a Remedial Plan, and the Company shall commence implementation of the Remedial Plan within a further 14 days thereafter.

10) CLIENT RESPONSIBILITIES

- a) In relation to the Client's receipt of the Services under this Agreement, the Client must:
 - i) appoint the Client's Representative to provide liaison with the Company and provide the Company with any necessary or relevant information and make decisions or obtain decisions from others expeditiously;
 - ii) maintain daily backup of its systems (except to the extent that daily backups are included in the Services to be provided by the Company in a Services Document);
 - iii) allow the Company to install, operate and maintain system diagnostic computer software on its system as required for the Company to provide the Services;
 - iv) provide the Company with at least 30 days' prior written notice of any changes to its system or relocation of same which are to be made by the Client or any third party. The Client acknowledges that such changes may result in a change to the Services Document and, if so, the parties must follow the procedures set out in clause 7 (Change Control) in respect of such change to the Services;
 - v) provide the Company with all reasonable support and information as required by the Company to provide the Services;
 - vi) make available to the Company the Client's personnel, as reasonably required and agreed between the parties, to permit the Company to perform the Services. The Client will also provide the Company with:
 - (1) the facilities, utilities and other items, reasonably required for housing, maintaining and operating the system;
 - (2) the office space, computer resources, materials, facilities and other support necessary for the Company to provide the Services as specified by the Company; and
 - (3) a permanent or VPN based communications link including software and licensing for remote support and monitoring purposes,
 - vii) ensure that all of the Client's work facilities made available meet occupational health and safety guidelines;
 - viii) provide the Company with reasonable access to the Premises and to the system to provide the Services;
 - ix) ensure that the Client's personnel attend any scheduled training or demonstration provided by the Company;
 - x) ensure that the Client validly and rightfully holds licenses for all of the software in the system at all times and the Client must ensure that it complies with the terms and conditions of all such licenses; and
 - xi) perform such Client obligations as specified in a Services Document.
- b) If the Client's failure to comply, or the Company's delay in complying, with the Client's obligations set out in this Agreement prevents or delays the Company from meeting its obligations to the Client, then:
 - i) the time for performance of the Company's relevant obligations will be extended for a period of time that is equal to the additional amount of time taken by the Client to perform the Client's interdependent obligations;
 - ii) where the Company is required to incur additional costs as a result of the Client's failure or delay, the Company may charge the Client those additional costs; and

- iii) to the extent that the Client's failure causes the Company to breach this Agreement, the Company will not be liable for that breach or its consequences.

11) **BACKUP & DISASTER RECOVERY SERVICES**

- a) If the backup management option is included in a Services Document, then Client data is backed up, as agreed between the Client and the Company, to provide protection of the Client's data in the event certain data, files or systems, in whole or in part, require restoration. This only provides data protection and does not in any way constitute the provision of disaster recovery services.
- b) Unless otherwise agreed in a Services Document, the Company has no obligation to, and will not, provide disaster recovery services to the Client under this Agreement.

12) **OCCUPATIONAL HEALTH AND SAFETY**

Each party agrees to comply with all occupational health and safety requirements specified in any relevant and applicable law in connection with the performance of the Services. If a party has any concerns regarding occupational health and safety, the parties will meet to discuss any such concerns and will act in good faith to address such concerns.

13) **AUTHORISED CONTACT PERSON**

The Client shall designate one or more authorised contact person(s) (each, an "**Authorised Contact**") with whom the Company will conduct Service-related communications. The Client's initial Authorised Contact(s) are to be identified at the commencement of this Agreement. Likewise, the Client may designate one or more Authorised Contacts with respect to individual Services Documents at commencement. Each Authorised Contact shall be a point of contact for the Company, and shall be authorised to provide, modify and approve, on Client's behalf, work direction, Services Documents, and Change Orders. The Client understands and agrees that the Company shall be permitted to act upon the direction and apparent authority of each Authorised Contact, unless and until Company receives written notice from the Client (as described below) that an Authorised Contact is no longer authorised to act on Client's behalf. If during the Term of this Agreement, the Client wishes to add or remove an Authorised Contact, or modify an Authorised Contact's information or authority, the Client must notify the Company in writing of the change(s) including (in the event of the addition of an Authorised Contact) the Authorised Contact's name, address, email address and telephone number.

14) **ACCESS TO PREMISES**

To the extent that Services are performed on the Client's premises (**Premises**), the Client hereby grants to the Company the right of ingress and egress over the Premises and further grants the Company a license to provide the Services described in any Services Document within the Premises. To the extent that Services are provided to the Client on property other than the Premises, it shall be the Client's responsibility to secure, at the Client's own cost, prior to the commencement of provision of any Services, any necessary rights of entry, licenses, permits or other permissions necessary for the Company to provide Services at such location(s). The Client shall provide the Company with any passwords or keys (virtual or otherwise) that the Company requires in order to provide the Services to Client. The Company shall not be liable for delay in performance or nonperformance of any term or condition of this Agreement directly or indirectly resulting from the Client's denial to the Company of full and free access to the Client's systems and components thereof, or the Client's denial to the Company of full and free access to the Client's personnel or Premises pursuant to this Agreement.

15) **WARRANTIES; LIMITATIONS OF LIABILITY**

- a) Any (**Third Party Products**) shall be provided to the Client "as is". The Company shall use reasonable efforts to assign all warranties (if any) for the Third Party Products to the Client, but will have no liability whatsoever for such third party products. All Third Party Products are provided without any warranty whatsoever as between the Company and the Client, and the Company shall not be held liable as an insurer or guarantor of the performance or quality of Third Party Products.

- b) The Company assumes no liability for failure of equipment or software or any losses resulting from such failure.
- c) Action, whether in contract, tort or negligence, shall subject to the provisions of clause 20 (Confidentiality) following, in no event shall either party be liable for any special, indirect, exemplary or consequential damages, or for lost revenue, loss of profits, savings, or other economic loss arising out of or in connection with this agreement, any services document(s) or any services performed or parts supplied hereunder, any loss or interruption of data, technology or services, or for any breach hereof or for any damages caused by delay in furnishing services under this agreement or any statement(s) of work even if such party has been advised of the possibility of such damages. Each party's aggregate liability to the other for damages from any and all causes whatsoever and regardless of the form of be limited to the amount of the aggrieved party's actual direct damages not to exceed the amount of fees paid by client to company for the services during the three (3) months immediately prior to the date on which the cause of action accrued. It is understood and agreed that the costs of hardware or software (if any) provided to client under this agreement shall not be included in the calculation of the limitation of damages described in the preceding sentence.

16) **INDEMNIFICATION**

Each party (an "**Indemnifying Party**") hereby agrees to indemnify, defend and hold the other party (an "**Indemnified Party**") harmless from and against any and all loss, damage, cost, expense or liability, including reasonable legal fees, (collectively referred to here as "**Damages**") that arise from, or are related to the negligent or reckless acts or omissions, or intentional wrongful misconduct of the Indemnifying Party and/or the Indemnifying Party's employees or subcontractors, and from any Damages arising from or related to the Indemnifying Party's unrectified, material breach of this Agreement. The Indemnifying Party further agrees to indemnify, defend, save and hold harmless the Indemnified Party, its officers, agents and employees, from all Damages arising out of any alleged infringements of copyright, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the Services, provided however, that such Damages are the direct result of the Indemnifying Party's actions and not due to the Indemnified Party's fault, in whole or in part.

17) **COPYRIGHTS AND OTHER INTELLECTUAL PROPERTY**

Ownership and licenses of materials:

- a) All materials owned by or licensed to the Client which have been supplied by the Client to the Company during this Agreement will remain the sole property of the Client and will be returned to the Client by the Company on the Client's request and in any event on termination or expiry of this Agreement. The Client grants the Company a license to use and reproduce the Client's materials provided by the Client to the Company for the purpose of the Company performing its obligations under this Agreement.
- b) Subject to clause 17(c), Intellectual Property Rights in respect of any materials which the Company has developed solely for the Client under this Agreement (**Work Product**) will be assigned to, and vest in, the Client once complete payment of all related charges and fees have been received by the Company.
- c) Any Intellectual Property Rights that subsist in the Work Product that:
 - i) were developed by the Company prior to the Commencement Date;
 - ii) are developed independently of this Agreement;
 - iii) are licensed to the Company by a third party; or
 - iv) are developed by the Company for use by more than one of its Clients,are excluded from the definition of Work Product and will not be assigned to the Client.
- d) Subject to receipt of payment in full of all charges and fees related to the Work Product, the Company grants the Client a non-exclusive, non-transferable right to use and reproduce the exclusions from the Work Product specified in clause 17(c), solely for the Client's internal business use.
- e) The Client grants the Company a non-exclusive, perpetual, royalty-free, fully-paid, irrevocable and unlimited license to use, reproduce and adapt the Work Product for the supply of services by the Company to third parties.
- f) Intellectual property indemnity

- i) Under this Agreement, the (**Provider**) will be providing the (**Recipient**) with the materials referred to in clause 17(a) and the Recipient will be providing the Provider with the Work Product. Each party agrees to provide the following indemnity to the other in relation to the materials referred to in clause 17(a) or the Work Product (the **Provided Materials**).
- ii) Subject to the remainder of this clause, the Provider will defend the Recipient against any claim brought by a third party alleging that the Recipient's use of the Provided Materials in accordance with this Agreement infringes any Intellectual Property Rights of a third party (a **Claim**), and pay any resulting court-awarded damages or settlement to which the Provider consents in writing.
- g) If any Claim is brought against the Recipient, the Recipient must:
 - i) notify the Provider as soon as practicable of the Claim;
 - ii) give the Provider the option to conduct the defence of the Claim, including negotiations for settlement;
 - iii) provide the Provider with reasonable assistance in conducting the defence of the Claim;
 - iv) not make any admissions in relation to the Claim without the Provider's prior written consent;
 - v) permit the Provider to obtain for the Recipient the right to continue using the Provided Materials; and
 - vi) use its best endeavors to mitigate any damages the Recipient suffers as a result of the Claim,
 and the Provider is not liable under clause 17f(ii) to the extent that any failure by the Recipient to do so prejudices the Provider's ability to defend any Claim or causes the Recipient to suffer any additional damages or losses.
- h) The Provider is not liable under clause 17f(ii) to the extent that the infringement arises from:
 - i) modifications to the Provider Materials made by anyone other than the Provider;
 - ii) use of the Provided Materials in combination with other software, hardware or materials not provided by the Provider;
 - iii) use of the Provided Materials for a purpose other than that for which they were supplied; or
 - iv) compliance with any directions, information or specifications provided by the Recipient.
- i) If any Claim is brought against the Recipient, and the Provider is unable to:
 - i) modify or replace the Provided Materials to make them non-infringing; or
 - ii) obtain for the Recipient the right to continue using the Provided Materials,
 on terms that the Provider believes to be commercially reasonable, the Provider may terminate this Agreement with immediate effect by giving the Recipient 20 Business Days' prior written notice of such termination.
- j) To the maximum extent permitted by law, this clause sets out the sole and exclusive obligations of the parties, and the sole and exclusive remedies of the parties, in relation to any infringement of third party Intellectual Property Rights.
- v) the Client may terminate this Agreement for no cause in its absolute discretion on 90 Business Days notice to the Company.
- b) *Termination for insolvency.* Either party may, by written notice, terminate this Agreement if the other party suffers an Insolvency Event, with immediate effect.
- c) *Effect of termination.* Termination of this Agreement does not affect:
 - i) any liabilities or obligations of either party arising:
 - (1) before such termination; or
 - (2) out of the events causing such termination; or
 - ii) any damages or other remedies to which a party may be entitled under this Agreement, at law, in equity or otherwise; or
 - iii) clauses 3 (Payment), 15 (Warranties; Limitations of Liability), 17 (Copyrights and Other Intellectual Property), 18(c) (Effect of termination), 19 (Transition-out), 20 (Confidentiality), 23 (Solicitation), 21 (Privacy) and any other obligations which are expressed to or, by their nature, survive expiry or termination of this Agreement.
- d) *Equipment Removal.* Upon termination of this Agreement for any reason, the Client shall provide the Company with access, during normal business hours, to the Client's premises (or any other locations at which the Company-owned equipment is located) to enable the Company to remove all Company-owned equipment from such premises (if any).

19) TRANSITION-OUT

- a) In the event this Agreement is terminated for any reason whatsoever, all Client data held by the Company shall be returned to the Client in a commercially reasonable manner and time frame, not to exceed fifteen (15) calendar days following the date of request of the return of such data by the Client. The data shall be returned in a comma separated value (*i.e.*, CSV) format, unless another industry-standard format is mutually agreed upon by the parties. In the event that the Client requests the Company's assistance to transition to a new service provider, the Company shall do so provided that:
 - i) all fees due and owing to the Company under this Agreement are paid to the Company in full prior to the Company providing its assistance to the Client, and
 - ii) the Client agrees to pay the Company its then-current hourly rate for such assistance, with upfront amounts to be paid to the Company as agreed upon between the parties. The Company shall have no obligation to store or maintain any Client data in the Company's possession or control beyond the last to occur of fifteen (15) calendar days following the termination of this Agreement or the date on which the Company fully discharges its obligations regarding return of client data under this sub-clause 18(a). The Company shall be held harmless for and indemnified by the Client against any and all claims, costs, fees, or expenses incurred by either party that arise from, or are related to, the Company's deletion of Client data beyond the time frames described in this Section.
- b) If the Client exercises its right to terminate this Agreement, then the Client may prepare a transition-out plan and deliver that transition-out plan (**Transition-Out Plan**) to the Company for its approval which shall not be unreasonably withheld;
- c) The Transition-Out Plan must, without limitation, include a timeline showing a work breakdown structure, schedule, milestones and deliverables; and
- d) The Company will:
 - i) do all things reasonably necessary to ensure the continuity of the Services during the transition period specified in the Transition-Out Plan;
 - ii) provide the Client with all assistance reasonably necessary to ensure the orderly hand over of the task of provision of the Services to the Client or its nominee;
 - iii) provide the Client with such other services as are specified in the Transition-Out Plan; and
 - iv) perform any transition-out services in consideration for an agreed price based on the requirements of the Transition-Out Plan.
- e) To the extent that the Client or a third party has assumed responsibility for the Services and the transition-out services in respect of those Services have been completed under this clause 18, this Agreement and all applicable Services Documents terminate immediately in respect of those Services.

18) TERMINATION

- a) Without limiting any other right of termination at law or otherwise, the Company may, by written notice, terminate this Agreement with immediate effect:
 - i) if the Client breaches a provision of this Agreement and does not remedy that breach within 20 Business Days after the date on which the Company provides the Client with a written notice identifying the breach and requesting that it be remedied; or
 - ii) if the Client breaches a provision of this Agreement and that breach, in the Company's reasonable opinion, cannot be remedied.
 Without limiting any other right of termination at law or otherwise, the Client may, by written notice, terminate this Agreement with immediate effect:
 - iii) if the Company breaches a provision of this Agreement and does not remedy such breach within 20 Business Days after the date on which the Client provides the Company with a written notice identifying the breach and requesting that it be remedied; or
 - iv) if the Company breaches a provision of this Agreement and such breach cannot be remedied;
 or

- f) *Impact*. Termination of a Services Document shall not act as a termination of any other Services Document or as a termination of this Agreement as a whole. Termination of this Agreement, however, shall act as a termination of all Services Documents then pending, unless the parties agree otherwise in writing.
- g) *No Liability*: Unless expressly stated in this Agreement, neither party shall be liable to the other party or any third party for any compensation, reimbursement, losses, expenses, costs or damages (collectively, "Damages") arising from or related to, directly or indirectly, the termination of this Agreement for any reason, or for Damages arising from or relating to the Company's disclosure of information pursuant to any valid legal request with which the Company is required to comply. This waiver of liability shall include, but shall not be limited to, the loss of actual or anticipated profits, anticipated or actual sales, and of expenditures, investments, or commitments in connection with such party's or any third party's goodwill or business.

20) CONFIDENTIALITY

- a) **Obligation of confidentiality**
 - i) Each party must retain in confidence, and require its personnel to retain in confidence, the Confidential Information of the other party. The receiving party must only use the Confidential Information to perform its obligations or exercise its rights under this Agreement.
 - ii) The receiving party must retain Confidential Information in as secure a manner as is reasonably possible, but in any event no less secure than the receiving party retains its own Confidential Information.
 - iii) Confidential Information will remain the sole property of the disclosing party and must not be disclosed to any third party without the prior express written consent of the disclosing party (except solely to consultants who are bound by a written agreement with the receiving party to maintain the confidentiality of such Confidential Information in a manner consistent with this Agreement).
- b) **Permitted Disclosure**
 - i) The receiving party
 - (1) may only disclose the Confidential Information of the disclosing party to the receiving party's personnel to the extent necessary for such personnel to perform their duties in relation to the receiving party's obligations under this Agreement; and
 - (2) shall ensure that its personnel to whom Confidential Information has been disclosed keep that information confidential and do not do anything which, if done by the receiving party, would be a breach by the receiving party of its confidentiality obligations under this Agreement.
 - ii) A party will not be considered to be in breach of clause 19 (a) (Obligation of confidentiality) if the Confidential Information is disclosed in compliance with an applicable law or court order, provided that the other party is given reasonable advance notice of such law or order and an opportunity to prevent or limit such production.
- c) **Return of Confidential Information**
 - i) Each party agrees:
 - (1) at the request of the disclosing party; or
 - (2) when the confidential Information of the disclosing party is no longer required for the purpose referred to in clause 20a (i) (Obligation of confidentiality),
 to return or destroy within a reasonable period of time, all Confidential Information however stored or recorded, including but not limited to all documents and other materials containing Confidential Information of the disclosing party in the possession or under the power or control of the receiving party or its personnel or subcontractors (provided however that one copy of the Confidential Information may be retained by the Client solely for archival purposes).
- d) **Damages insufficient**
 - i) Notwithstanding any other provisions of this Agreement or of any Services Documents, each party acknowledges that damages may not be a sufficient remedy for any breach of its obligations of confidentiality under this clause and each party is entitled to seek specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the other party, in addition to any other remedies available at law.

- e) **Duration of obligation**
 - i) The obligations of confidentiality under clause 20(a) (Obligation of confidentiality) expire on the fifth anniversary of the date of termination or expiry of this Agreement.

21) PRIVACY

- a) The Company will ensure that when it collects, uses, discloses or transfers Personal Information in the course of performing its obligations under this Agreement it complies with the Privacy Act 1988 (Cth).
- b) Without limiting clause 21(a) but subject to clause 21(c), the Company will:
 - i) only use Personal Information provided to it under this Agreement for the purpose of performing its obligations under this Agreement or as required by law;
 - ii) not disclose Personal information provided by the Client to the Company under this Agreement without the Client's prior written consent or unless required by law;
 - iii) ensure that no person engaged by the Company who has access to any Personal Information provided to it under this Agreement uses, discloses or retains such Personal Information, except for the purpose of performing that person's duties of engagement;
 - iv) take all reasonable steps to protect any Personal Information provided to it under this Agreement from misuse and loss and from unauthorised access, modification or disclosure;
 - v) comply with the Client's reasonable requests concerning:
 - (1) the security, use and disclosure of Personal Information provided to the Company under this Agreement;
 - (2) access to and correction of any such Personal Information by the individual to whom it relates; and
 - (3) any complaints about the handling of such Personal Information;
 - vi) notify the Client as soon as reasonably practicable after the Company becomes aware that it may be required by law to use or disclose any Personal Information provided to it under this Agreement, and provide all reasonable assistance the Client requests to resist, object to or limit such use or disclosure;
 - vii) notify the Client as soon as reasonably practicable after the Company becomes aware of any breach of this clause; and
 - viii) on termination or expiry of this Agreement for any reason, destroy or otherwise deal with any Personal Information provided to the Company under this Agreement in accordance with the Client's reasonable instructions.
- c) The Company may use the Client's Personal Information for purposes that are related to providing the Client with the Services and which the Client might reasonably expect the Company to use that information for, including:
 - i) for billing purposes;
 - ii) undertaking market and product analysis based on the Client's use of the Services; and
 - iii) receiving and disclosing Personal Information or documents about the Client from or to credit providers or credit reporting agencies for purposes permitted under the Privacy Act 1988 (Cth).

22) MEDIA RELEASES

Either party may, with the written approval of the other party which will not be unreasonably withheld, issue a media release stating the existence of a Services Document, and relating or referring to its general terms, or a promotional offer, advertising literature or the like, concerning the subject matter of a Services Document. To obtain the written approval prior to issuing any media release the following procedure will be followed:

- a) the party seeking approval will submit a draft media release to the other party;
- b) the party seeking approval will attach to the draft media release a list of all persons to whom the media release will be distributed;
- c) the other party will, within 3 Business Days after receiving the draft media release, notify the party seeking approval in writing whether the media release has been approved, approved subject to conditions, or rejected.

23) SOLICITATION

Each party agrees not to do any of the following without first obtaining the prior written consent of the other party:

- a) The Client acknowledges and agrees that during the term of this Agreement and for a period of one (1) year following the termination of this Agreement, the Client will not:
 - i) individually or in conjunction with others, directly or indirectly solicit, induce or influence any of the Company's employees or subcontractors to discontinue or reduce the scope of their business relationship with Company, or
 - ii) recruit, solicit or otherwise influence any employee or agent of the Company to discontinue such employment or agency relationship with the Company.

In the event that the Client violates the terms of the restrictive covenants in this clause 23 (Solicitation) the parties acknowledge and agree that the damages to the Company would be difficult or impracticable to determine, and agree that in such event, as the Company's sole and exclusive remedy therefore, the Client shall pay the Company as liquidated damages and not as a penalty an amount equal to fifty percent (50%) percent of the total of that employee's or subcontractor's base remuneration (including any signing bonus) payable by the Client and any other entity related to the Client.

24) INSURANCE

- a) The Company will at its cost take out and maintain during the term of this Agreement policies of:
 - i) professional indemnity insurance, each for cover of not less than \$1 million per claim and \$2 million in the aggregate, as well as;
 - ii) public liability insurance; and product liability insurance, each for cover of not less than \$10 million per claim and in the aggregate, as well as;
 - iii) workers compensation insurance, as per statutory requirements,(collectively referred to herein as "the Insurance Policies") in respect of liability or loss which may be incurred or suffered in connection with the performance or purported performance of the Company's obligations under this Agreement.
- b) The Company will:
 - i) ensure that the Insurance Policies are taken out with reputable insurers;
 - ii) not cancel any of the Insurance Policies without notifying the Client in writing;
 - iii) on request by the Client, provide to the Client evidence of the Company's compliance with its insurance obligations and a certificate of currency for the Insurance Policies.

25) FORCE MAJEURE

The Company shall not be liable to the Client for delays or failures to perform its obligations under this Agreement or any Services Document because of circumstances beyond its reasonable control. Such circumstances include, but shall not be limited to, any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, disputes or differences with work persons, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, acts of God, or any other events beyond the reasonable control of the Company.

26) GENERAL

- a) *Entire Agreement.* This Agreement constitutes the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.
- b) *Variation.* No variation of this Agreement is effective unless made in writing and signed by each party.
- c) *Relationship of the parties.* Except as expressly provided in this Agreement:
 - i) nothing in this Agreement is intended to constitute a fiduciary relationship or an agency, partnership or trust; and
 - ii) no party has authority to bind any other party.
- d) *Severability.* Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement shall not be affected.

- e) *Waiver.*
 - i) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
 - ii) A single or partial exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.
- f) *Cumulative rights.* Except as expressly provided in this Agreement, the rights of a party under this Agreement are in addition to and do not exclude or limit any other rights or remedies provided by law.
- g) *Assignment, novation and other dealings.*
 - i) The Company may, at any time by notice to the Client, assign, novate or transfer in whole or in part its rights and obligations under this Agreement to any Company Affiliate and to the extent necessary to give effect to such assignment, novation or transfer the Client hereby consents to such assignment, novation or transfer. Without limiting the foregoing, should the Company request it to do so, the Client agrees to execute any agreement or other document to record or evidence its consent to any such novation, assignment or transfer.
 - ii) Subject to clause 26g(i), neither party may assign or novate this Agreement or otherwise deal with a benefit of it or a right under it, or purport to do so, without the prior written consent of the other party.
- h) *Costs, expenses and duties.* Except as expressly provided in this Agreement, each party must pay its own costs and expenses associated with the negotiation, preparation and execution of this Agreement and any other instrument executed under this Agreement.
- i) *Communications*
 - i) An approval, consent or other communication under this Agreement is only effective if it is:
 - (1) in writing and in legible English, signed by or on behalf of the party giving it;
 - (2) addressed to the party to whom it is to be given;
 - (3) either:
 - (a) sent by pre-paid mail (by airmail, if the addressee is overseas) or delivered to that party's address; or
 - (b) sent by fax to that party's fax number, or
 - (c) sent by Email.
 - ii) An email, approval, consent or other communication under this Agreement is, in the absence of earlier receipt, regarded as given and received:
 - (1) if it is delivered, on deliver at the address of the relevant party;
 - (2) if it is sent by mail, on the third Business Day after the day of posting, or if to or from a place outside of Australia, on the seventh Business Day after the day of posting; or
 - (3) if it is sent by fax, at the time and on the day it was successfully sent; or
 - (4) if it is sent by email, at the time and on the day it was successfully sent;provided that, if a notice, approval, consent or other communication under this Agreement is given and received on a day that is not a Business Day or after 5.00 pm on a Business Day, it is regarded as being given and received at 9.00 am on the next Business Day.
 - iii) Governing law and jurisdiction - This Agreement will be governed by the laws of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the Courts of Victoria.

27) INTERPRETATION

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

- a) headings are for convenience only and do not affect the interpretation of this Agreement;
- b) the singular includes the plural and vice versa;
- c) words that are gender neutral or gender specific include each gender;
- d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

- e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- f) a reference to
 - i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - iii) a party includes its successors and permitted assigns;
 - iv) a document includes all amendments or supplements to that document;
 - v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this agreement;
 - vi) this agreement includes all schedules and attachments to it;
 - vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgement, rule of common law or equity or a rule of an applicable financial market and is a reference to that law as amended, consolidated or replaced;
 - viii) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - ix) a monetary amount is in Australian dollars;
- g) an agreement on the part of two or more persons joins them jointly and severally;
- h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- i) in determining the time of day, where relevant to this Agreement, the relevant time of day is:
 - i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - ii) for any other purpose under this Agreement, the time of day in the place where the party required to perform an obligation is located;
- j) no rule of construction applies to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or any part of it; and
- k) if there is any conflict between the body of this Agreement and its schedules and/or attachments, the terms of the main body of this Agreement will prevail except as expressly otherwise provided herein.

28) DEFINITIONS

The following words have these meanings in this Agreement and in any Services Document unless the contrary intention appears:

Affiliate means the ultimate holding company of a party, and any direct or indirect subsidiary or related entity of such ultimate holding company.

Agreement means this Client Services Master Agreement.

Authorised Contact has the meaning given to that term in clause 13.

Business Day means a day on which banks are open for business in the Country, State or Territory in which the Services are being provided excluding Saturdays, Sundays and public holidays in that Country, State or Territory.

Change Control Document has the meaning given to that term in clause 6(e).

Commencement Date means the date specified as such in the General Details Schedule.

Company means **SIAX Computing Solutions Pty Ltd** ABN: 80 105 471 887 that maintains an office for business at Unit 1, 2-10 Hallam South Road HALLAM VIC 3803

Client means the entity which procures product or services from the Company.

Confidential Information of a party means all information of that party or any of its Affiliates (regardless of form) which:

- a) is confidential or can reasonably be inferred to be confidential from the circumstances in which it is disclosed;
- b) is disclosed or observed by the receiving party in connection with the performance of this Agreement or any Services Document whether before, on or after the date of this Agreement and whether by the disclosing party or any other person,

but does not include information which:

- c) is in or comes into the public domain otherwise than by disclosure in breach of this Agreement or an obligation of confidence owed to a party;

- d) at the time of first disclosure to or observation by the receiving party, was already in the lawful possession of that party; or
- e) is disclosed to, or observed by, the receiving party from a party entitled to disclose it.

Contract Price means the price for Services as set out in the Pricing Schedule and varied as permitted or required under this Agreement.

Client's Representative means the person or persons nominated as such in writing by the Client from time to time, being at the date of this Agreement the person or persons designated in the General Details Schedule.

Damages has the meaning given to that term in clause 16.

Dispute means any dispute or disagreement arising out of, relating to or in connection with this Agreement, including any dispute arising out of, relating to or in connection with the existence, formation, breach or termination of this Agreement or any claim in contract, tort, or in equity or pursuant to any statute.

Force Majeure has the meaning given to that term in clause 25 (Force Majeure).

General Details Schedule means the Schedule called "General Details Schedule" attached to the front of this Agreement.

Indemnifying Party has the meaning given to that term in clause 16.

Initial Period means the period specified as such in the General Details Schedule.

Insolvency Event means the occurrence of any one or more of the following events in relation to a party:

- a) an order is made or an effective resolution is passed for winding up or dissolution without winding up (other than for the purposes of solvent reconstruction or amalgamation) of that party and the order or resolution remains in effect for a continuous period of 7 Business Days;
- b) a receiver, receiver and manager, official manager, administrator, provisional liquidator, liquidator, or like official is appointed over the whole or substantial part of the undertaking and property of that party and the appointment remains in effect for a continuous period of 7 Business Days;
- c) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of that party;
- d) that party is unable to pay its debts as and when they fall due;
- e) that party becomes insolvent or is deemed to become insolvent under any applicable law; or
- f) that party ceases to carry on business or threatens to do so.

Insurance Policies has the meaning given to that term in clause 24(a).

Intellectual Property Rights means all rights in relation to patents, copyrights, designs, trademarks, trade secrets, know-how, semiconductor or circuit layout rights, business or company names, confidential information and all other intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967, including any right to register those rights, whether created before, on or after the date of this Agreement, existing in any country and in all cases for the duration of those rights.

Personal Information means all information about a person that is 'personal information' as defined in the Privacy Act 1988 (Cth).

Premises means the place at which Services will be carried out or equipment will be stored, and may include a Client premises, a Company premises or a third party premises.

Pricing Schedule means the Schedule called "Pricing Schedule" attached to the relevant Services Document.

Provided Materials has the meaning given to that term in clause 17f(ii)

Provider means the Client.

Recipient means the Company.

Remedial Plan means a remedial plan specifying the process and timetable to be followed by the Company to remedy the failure to achieve a SLA.

Services means the managed services, professional services (fixed or time and materials), and consulting to be performed by the Company under this Agreement, the details of which are set out in a Services Document.

Service Level Agreements or SLAs means service levels used for measuring the Company's performance of its obligations under this Agreement, the details of which are set out in a Services Document.

Services Document means Statement of Works, Work Order Requests, Managed Services Agreements and Scope of Works.

Subcontractors means persons engaged by the Company to assist in the performance of the Services unless inconsistent with the terms and context of this Agreement.

Third Party Products means any third party products provided to the Client pursuant to this Agreement, including but not limited to third party hardware, software, peripherals and accessories

Time and Materials Rates means the rates for calculating the fees for the Services on a time and materials basis, as set out in the Pricing Schedule.
Transition-Out Plan has the meaning given to that term in clause 19(b).
Work Product has the meaning given to that term in clause 17(b)