

KLUGO SERVICES AGREEMENT

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ATTENTION! THE FOLLOWING AGREEMENT WILL BE LEGALLY BINDING ON THE CUSTOMER UPON EXECUTION OF AN APPLICABLE STATEMENT OF WORK. THE CUSTOMER SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE EXECUTING THE STATEMENT OF WORK.

If the hyperlink location of this agreement (the "Agreement") is referenced in a statement of work (as defined below) signed by both an authorised representative of the procuring party (the "Customer") and Klugo Pty Ltd ABN 74 615 875 520 , including its successors and assignees ("Klugo"); or is referenced in an agreement between Klugo and the Customer, then the services (as defined below) procured by the Customer shall be subject solely to the terms and conditions of this Agreement.

BACKGROUND:

- A. Klugo has the necessary qualifications, experience and abilities to provide the services to the Customer.
- B. Klugo will provide the Services to the Customer on the terms and conditions set out in this Agreement.

IN CONSIDERATION OF the matters described in this Agreement and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Customer and Klugo (each a "Party" and collectively the "Parties") agree as follows:

1. Scope of Services

- 1.1. Subject to the terms and conditions of this Agreement, Klugo will provide the Customer with services as set forth in the applicable statements of work (each, a "Statement of Work" or "SOW") executed by the Parties.
- 1.2. From time to time, the Parties may enter into Statements of Work that specify services to be provided to the Customer thereunder (the "Services").
- 1.3. Each Statement of Work will include, at a minimum (i) a description of the Services to be provided and any deliverables and/or materials to be provided to the Customer (each, a "Deliverable"); (ii) the scope of the Services; and (iii) the applicable fees and payment terms for such Services, if not elsewhere specified.
- 1.4. All Statements of Work shall be deemed part of and subject to this Agreement.

- 1.5. If technical services are incorporated in a Statement of Work, the functionalities outlined as 'technical services' are general requirements and do not represent a technical design specification. Definitions of complete and detailed requirements will be confirmed prior to development.
- 1.6. Klugo can reject a request for work if it reasonably believes that the work is outside of the types of services normally provided by Klugo.

2. Confidential Information and Intellectual Property

- 2.1. For the avoidance of doubt, 'confidential information' means any information about a Party, its operations, products, data, ideas, technology, payment details, business, structure, programs, methods, operating procedures, activities, products and services, financial, accounting, marketing and technical information, customers/suppliers acquired by the other Party, including prospective customers and supplier information, (or any of its employees or agents) and all other information acquired whilst, or as a result of, performing or using the Services which is not in the public domain, other than as a result of a breach of confidence and includes all information irrespective of whether it has been reduced to a tangible form and irrespective of whether it has been marked in writing as 'confidential' (Confidential Information).
- 2.2. For the avoidance of doubt 'intellectual property' includes but is not limited to (a) all present and future rights to intellectual property including inventions and improvements, trade marks (whether registered or common law trade marks), patents, designs, copyright, any corresponding property rights under the laws of any jurisdiction; (b) all rights in respect of Confidential Information, an invention, discovery, trade secret, secret process, know-how, concept, idea, information, process, data, formula or work product; and (c) all work product developed in whole or in part by Klugo while providing the Services under this Agreement (Intellectual Property).
- 2.3. Klugo shall own all rights, titles and interests in the Deliverables and related Intellectual Property rights, excluding any Confidential Information provided to Klugo by the Customer for the sole purpose of enabling Klugo to provide the Services to the Customer.
- 2.4. Klugo shall have the right to use any such Customer Confidential Information solely for the purpose of providing the Services to the Customer.
- 2.5. Deliverables are deemed to be Klugo's Confidential Information and the Customer may not reverse engineer, decompile, disassemble, translate, copy, reproduce, display, publish, create derivative works of, assign, sell, lease, rent, license, sublicense or grant a security interest in all or any portion of the Deliverables.
- 2.6. Subject to the terms and conditions of this Agreement, and during the term of this Agreement, Klugo hereby provides the Customer with a limited, non-exclusive, non-transferable and terminable license to use the Deliverables solely for the Customer's internal operations in connection with its authorised use of the Service.
- 2.7. Notwithstanding any other provision of this Agreement:

- 2.7.1. (i) nothing in these terms and conditions shall be construed to assign or transfer any Intellectual Property rights in the proprietary tools, libraries, know-how, techniques and expertise ("Tools") used by Klugo to develop the Deliverables, and to the extent such Tools are delivered with or as part of the Deliverables, they are licensed, not assigned, to Customer, on the same terms as the Deliverables or as otherwise mutually agreed upon by the Parties in writing; and
- 2.7.2. (ii) the term "Deliverables" shall not include the Tools. Tools are Klugo's Confidential Information.
- 2.8. The Parties agree that they will not use, disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Parties have obtained, except as authorised by the other Party or as otherwise provided for in this Agreement.
- 2.9. The Customer must not use Klugo's Intellectual Property in any publishing or advertising by the Customer without the prior written consent of Klugo, which may be withheld in Klugo's absolute discretion.
- 2.10. The Customer agreed to provide information, including any Intellectual Property to Klugo to enable Klugo to provide the Services. The Customer (a) warrants that they have all the necessary rights to provide the Intellectual Property to Klugo; (b) grants Klugo a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable license to use the Intellectual Property in any way Klugo may require to provide the Services to the Customer; and (c) consents to any act or omission which would otherwise constitute an infringement of the Customer's moral rights. For the avoidance of doubt 'moral rights' means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the Copyright Act 1968 (Cth).
- 2.11. The obligations under this clause will survive the termination of this Agreement.

3. Delivery of Services

- 3.1. Klugo will perform the Services with due care and skill.
- 3.2. Any item or activity not specifically included in an applicable SOW is deemed outside the scope of Services.
- 3.3. The Customer is responsible for setting the scope and determining the priority amongst objectives in order to make effective use of the Services.
- 3.4. The Customer agrees that the Customer's personnel have the necessary authority to make decisions on business practices.
- 3.5. Services outlined in the applicable SOW will be provided remotely in English (whether verbally or in writing), with communication via telephone, email and web-conference software from Klugo's own facilities.
- 3.6. If onsite services are incorporated into the SOW, the schedule for any onsite services will be determined between Klugo and the Customer upon the commencement of Services and may incur additional fees and expenses.

- 3.7. The Customer shall not film or record delivery of the Services or Klugo materials without first obtaining the prior written consent of Klugo, which may be withheld in Klugo's absolute discretion.
- 3.8. Any and all hours outside normal business hours and/or in excess of ten (10) hours per day per Klugo resource or fifty (50) hours per week per Klugo resource require the prior written consent of Klugo.
- 3.9. Both Parties shall use commercially reasonable efforts to attend all scheduled meetings. The repeated cancellation of meetings may result in the provision of Services being delayed and additional fees and expenses being charged. The Customer indemnifies Klugo against any such delay or expense which arises as a result of the Customer's actions or inactions.
- 3.10. The Customer is solely responsible for determining the suitability of the Services and the Customer's reliance on the Services is at its own risk. To the extent permitted by law Klugo accepts no responsibility and will not be liable for any harm, loss and/or damage that is occasioned to the Customer or a third party as a result of any advice, information or recommendation made available to the Customer during the provision of Services.
- 3.11. Klugo will apply its reasonable endeavours to meet any agreed delivery time specified in the SOW, meeting a timetable is not a condition of this Agreement and Klugo is not, and will not be liable for any delay, loss or damage, however arising, if the Services are not delivered in accordance with agreed delivery times.

4. Customer Responsibilities

- 4.1. The Customer will make available to Klugo a person (Administrator) for the purpose of providing access to the Customer's system(s).
- 4.2. The Customer acknowledges and agrees to provide Klugo with prompt and adequate responses to its requests for information and other requests relating to the Services.
- 4.3. The Customer is responsible for separately procuring, at its own expense, all necessary rights for its and/or Klugo's use of the Customer's or third-party technology that must be used to provide the Services.
- 4.4. The Customer acknowledges that use of third-party technology and/or services not already licensed or purchased by the Customer may require additional licenses and fee(s) that must be obtained separately by the Customer from the specific third-party provider of such technology and/or services prior to the commencement of Services.

5. Ownership and Data

- 5.1. All data provided by the Customer to Klugo to enable Klugo to provide the Services (the "Input Data"), and all data provided by Klugo to the Customer as part of the Services (the "Output Data") and other information generated by Klugo in the course of providing Services to the Customer under this Agreement are and will remain the property of the Customer.
- 5.2. Klugo will not use Input Data, Output Data or other information generated or obtained in the course of providing the Services for any purposes other than those set out in this Agreement without the prior written consent of the Customer.
- 5.3. Upon termination of this Agreement, the Customer will have the right to retrieve from Klugo all Input Data, Output Data or other information generated or obtained by Klugo in the course of providing Services pursuant to this Agreement, except data which forms part of Klugo's Confidential Information and/or Intellectual Property, and Klugo will facilitate such retrieval. The costs associated with such retrieval will be borne by the party which terminates the Agreement.
- 5.4. To enable Klugo to provide the Services promptly and efficiently, the parties accept the following additional responsibilities:
 - 5.4.1. The Customer is responsible for the accuracy of Input Data provided to Klugo.
 - 5.4.2. On receipt of Output Data from Klugo, the Customer will check all corresponding Input Data and promptly advise Klugo of any errors.
 - 5.4.3. Upon being notified of an error by the Customer, Klugo agrees to promptly reprocess the relevant Input Data, the cost of re-processing to be borne by the party responsible for the error.
 - 5.4.4. The parties will work together to ensure that the Customer's staff are adequately trained to provide the Input Data required by Klugo to provide the Services.

6. Variation Process

- 6.1. If either Party requests a variation to the scope, Deliverables or the Services described in a Statement of Work, the party seeking the variation shall propose the applicable variations by written notice.
- 6.2. Within forty-eight (48) hours of receipt of the written notice, each Party's project leader shall meet, either in person or via telephone conference, to discuss and agree upon proposed variations.
- 6.3. Klugo will prepare a variation order describing the proposed variations to the Statement of Work and the applicable change in fees and expenses, if any (each, a "Variation Order").
- 6.4. Variation Orders are not binding unless and until they are executed by both Parties.
- 6.5. Executed Variation Orders shall be deemed part of, and subject to, this Agreement.
- 6.6. If the Parties disagree about the proposed variation, the parties shall promptly escalate the variation request to their respective senior management officers for resolution.

7. Term and Termination

- 7.1. The term of this Agreement (Term) shall commence on the effective date of this Agreement, or SOW referencing this Agreement and shall continue in effect until terminated as provided herein.
- 7.2. Each SOW shall commence on the date it is last signed, and shall expire upon completion of the Services set forth in the applicable SOW.
- 7.3. Upon execution of a SOW by both Parties, the SOW and this Agreement cannot be terminated, except as otherwise explicitly stated in the SOW or this Agreement.
- 7.4. Either Party may terminate this Agreement for convenience upon providing the other Party with thirty (30) days' written notice, if and only if there are no active SOWs.

8. Pricing and Payment Provisions

- 8.1. The Customer shall pay the fees and expenses as specified in the SOW.
- 8.2. The pricing set forth in the SOW represents the fees for Services set forth in the SOW.
- 8.3. The Customer acknowledges that the SOW price is based solely on the information provided to Klugo and the assumptions documented in the SOW and includes only the Services set forth in the SOW.
- 8.4. Any requirement(s) or additional hours and Services not included in a SOW or items not contemplated will be considered outside scope and will be handled in accordance with clause 6 of this Agreement.
- 8.5. Except as otherwise set forth in a SOW Klugo shall issue tax invoices to Customer for Services monthly in arrears. Payment shall be made in Australian currency within seven (7) days from the invoice date.
- 8.6. Klugo may charge the Customer a late fee for failures to make payments by the date required under the tax invoice calculated daily using a rate that is 4% over the Australian Reserve Bank of Australia's cash rate, from the date that the payment first becomes due, to the date that the payment is received by Klugo, both dates inclusive.
- 8.7. For the avoidance of doubt 'tax Invoice' means an invoice that is in a form that complies with A New Tax System (Goods and Services Tax) Act 1999 (Cth). GST means the Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

9. Travel

- 9.1. Where a consultant is required to carry out Services at the Customer's premises or at a location nominated by the Customer (provided the premises and/or locality is within the city of the consultant's ordinary place of residence), Klugo may charge zone travel fees which includes travel time from the Klugo office for that city as itemised in the applicable Statement of Work.

- 9.2. Where a consultant is required to travel interstate to carry out Services at the Customer's premises or at a location nominated by the Customer, reasonable travel and living expenses required in connection with delivering the Services will be incurred and invoiced to the Customer as per the Klugo travel policy in addition to the Services fee.
- 9.3. The Customer acknowledges that the main consulting office for Klugo is in Adelaide, South Australia.

10. Force Majeure

- 10.1. Neither Party shall be liable for any loss or delay (including those arising from a failure to perform the Services or discharge obligations under a SOW) resulting from any force majeure event, including, but not limited to, acts of god, fire, natural disaster, terrorism, labour stoppage (other than those involving Klugo employees), internet service provider failures or delays, civil unrest, war or military hostilities, criminal acts of third parties, and any payment date or delivery of Services shall be extended to the extent of any delay resulting from any force majeure event.

11. Subcontracting

- 11.1. Klugo's relationship with the Customer pursuant to this Agreement will be that of an independent contractor.
- 11.2. Neither Party will have any authority to bind the other, to assume or create any obligation, to enter into any agreements, or to make any warranties or representations on behalf of the other Party.
- 11.3. Nothing in this Agreement shall be deemed to create any agency, partnership or joint venture relationship between the parties.
- 11.4. Except as otherwise provided by this Agreement, each Party is solely responsible for all of its employees and agents and its labour cost and expenses and for any and all claims, liabilities or damages or debts of any type whatsoever that may arise on account of each Party's activities or those of its employees or agents in the performance of this Agreement.
- 11.5. Klugo reserves the right to use third parties (who are under a covenant of confidentiality with Klugo), including, but not limited to, offshore subcontractors to assist with the Services, including, without limitation, any data migration, configuration, implementation and custom code development processes. Third parties who are not Klugo's employees or Klugo's director contractors (Third Parties) will be the Customer's responsibility. Klugo will not be responsible for the services provided by Third Parties.

12. Consumer Law and Limitation of Liability

- 12.1. To the extent permitted by law, it is understood and agreed that Klugo will not be liable to the Customer, or any agent, associate of the Customer or third party claiming through the Customer, for any mistake or error in judgment or for any act or omission done in good faith and believed to be within the scope of authority conferred or implied by this Agreement.
- 12.2. Neither Party will be liable to the other Party for any claims for damages including claims for consequential or economic loss or loss of profits arising from or as a result of termination of this Agreement in accordance with the terms and conditions of this Agreement or a Statement of Work.
- 12.3. To the extent permitted by law, if Klugo becomes liable to the Customer in any manner whatsoever for a breach in relation to the supply of any defective goods and/or services (or services provided in relation to the defective goods), then Klugo's liability will be limited solely to the price paid by the Customer for such goods and/or services or the cost of their repair or resupply, whichever Klugo determines at its sole discretion.
- 12.4.

13. Marketing

- 13.1. Unless the Customer specifically refuses permission, a general description of the work undertaken for the Customer, the name of the Customer and a general overview press release (if applicable) will be used in Klugo's general marketing information to indicate to prospective customers the type of work undertaken by Klugo for the Customer.

14. Non-Solicitation

- 14.1. To the extent permitted by law, during the Term and for a period of twelve (12) months following termination or expiration of the Agreement, the Customer agrees that it will not directly solicit the engagement or employment of any of the employees or contractors of Klugo who have been engaged in the provision of Services, without written permission of Klugo.

15. Dispute Resolution

- 15.1. Each Party agrees that before it seeks mediation, arbitration, litigation or any other form of Dispute resolution, it shall provide written notice to the other Party of the specific issues in dispute (and referencing the specific portions of any contract between the Parties which are allegedly being breached) (Initial Notice).
- 15.2. Within thirty (30) days after issuing an Initial Notice, knowledgeable executives of the Parties shall hold at least one meeting (in person or by video or tele-conference) for the purpose of attempting in good faith to resolve the dispute.

- 15.3. Except as provided herein, any and all disputes, claims or controversies (“Disputes”) arising out of or relating to this Agreement shall be submitted to mediation before arbitration or any other form of legal relief may be instituted.
- 15.4. Mediation may be commenced by a Party by providing a written request for mediation setting forth the subject of the Dispute and the relief requested. The Parties will cooperate in selecting a single mediator and scheduling a mediation, which should take place within forty-five (45) days following a request for mediation.
- 15.5. The Parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation, arbitration or litigation, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law.
- 15.6. The dispute resolution procedures contained in this clause shall not apply prior to a Party seeking a provisional remedy related to claims of misappropriation or ownership of Intellectual Property, trade secrets or Confidential Information.
- 15.7. The mediator shall be accredited by Australian Mediator Standards Board and be experienced with technology disputes. The Parties agree that they will participate in the mediation in good faith and share equally in its costs. The mediation shall take place in Melbourne Victoria Australia.

16. Order of Precedence

- 16.1. Any inconsistency in any documents relating to the Agreement shall be resolved by giving precedence in the following order:
- 16.1.1. (i) the terms and conditions of this Agreement;
- 16.1.2. (ii) the text appearing in the applicable Statement of Work; and
- 16.1.3. (iii) other documents, exhibits and attachments which accompany such Statement of Work or this Agreement.

17. General Provisions

- 17.1. Any notice required or permitted to be given by either Party to the other Party under this Agreement will be in writing addressed to the other Party at their nominated address as itemised in the SOW, this Agreement or any other ancillary document. Any notice may be sent by standard post or email, and the notice will be deemed to have been served on the expiry of forty-eight (48) hours in the case of post, or at the time of transmission in the case of transmission by email.
- 17.2. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.
- 17.3. It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

- 17.4. This Agreement shall inure to benefit and bind the Parties hereto, their successors and assigns, but neither Party may assign this Agreement without written consent of the other Party, except to a related entity or the successor of all or substantially all of the assignor's business or assets to which this Agreement relates.
- 17.5. It is the intention of the Parties to this Agreement that this Agreement and the performance under this Agreement, and all suits and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of Victoria Australia, without regard to the jurisdiction in which any action or special proceeding may be instituted.
- 17.6. The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.
- 17.7. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

THE CUSTOMER ACKNOWLEDGES THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS, AND THE PERSON SIGNING THE APPLICABLE STATEMENT OF WORK HAS BEEN AUTHORISED TO DO SO.