



# **Services Agreement**

**MPPI Global Pty Ltd ACN 159 367 414**

## Operative Provisions

This agreement can only be superseded by a written contract endorsed by MPPI Global director or CEO

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### 1. Definitions and Interpretation

#### 1.1 Definitions

In the Agreement:

**Additional Fees** takes its meaning from clause 5.3(b).

**Additional Obligations** means the obligations on the Client set out in writing between the parties which the Client must undertake in order for the Services to be delivered.

**Agreement** means this Services Agreement.

**Assumptions** mean any assumptions set out in writing between the parties which must be true in order for the Services to be delivered at the price proposed by MPPI Global.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane, Queensland.

**Claim** means any claim notice, demand, investigation, action, proceeding, litigation, or judgment however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence) or statute and whether involving a party to the Agreement or third party.

**Client** means the party requesting MPPI Global to perform the Services.

**Client Material** means any material including documents, information or data provided by the Client to MPPI Global in connection with the Agreement.

**Confidential Information** means information, which is by its nature confidential, including but not limited to:

- (a) confidential information relating to the Client or the Client's customers;

- (b) information relating to the personnel, policies, practices, clientele or business strategies of MPPI Global; and

- (c) information relating to the terms of the Agreement,

but does not include:

- (a) information already known to the receiving party at the time of disclosure by the other party; or
- (b) information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under the Agreement.

**Consequential Loss** means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

**Default Rate** means the to rates as set out on the website <https://mppiglobal.com/>.

**Deliverables** means any output produced by MPPI Global as anticipated during the provision of the Services.

**Fees** means any money payable by the Client to MPPI Global for any Services, as set out in writing between the parties, along with any Additional Fees.

**Force Majeure Event** means an unforeseen event beyond the control of the affected party, including an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, health epidemic, hacking, industrial action or labour disturbance, currency restriction, embargo, pandemic, action or inaction by a government, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a computer virus, trojan, malware, ransomware or other malicious code.

**In Scope Work** means the services described in writing to be delivered in the performance of the Services.

**Insolvency Event** means in respect of a party (the **Insolvent**), the appointment of an administrator, a receiver or receiver and manager in respect of the Insolvent, an application to a court or an order for the winding up of the Insolvent, or where anything analogous or having a substantially similar effect to any of the preceding events occurs.

**Intellectual Property** means all present and future rights conferred by statute, common law or equity in or in relation to business names, circuit layouts, computer software, confidential information, copyright, designs, domain names, formulas, inventions, knowhow, patents, plant varieties, recipes, trade marks, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic field, the benefit of any application to register such a right and the benefit of any renewal or extension of such a right.

**Liability** means any liability (whether actual or prospective), loss, damage, cost or expense of any description, including legal fees on a solicitor and own client basis.

**Non-excludable Condition** means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010* (Cth)), which cannot by law be excluded.

**Out of Scope Work** means any services which are not In Scope Work or otherwise express as out of scope.

**Payment Terms** means 30 days from the date on MPPI Global's invoice unless otherwise agreed by the parties in writing.

**Services** means the services provided by MPPI Global, specified as In Scope Work which relies on the Assumptions, and includes the Deliverables provided in accordance with this Agreement, the details of which are set out in writing between the parties and referred to as a Work Order.

**Variation** has the meaning given in clause 5.3(b).

**Work Order** means any written agreement setting out the Services the Client procures from MPPI Global

incorporating these terms of this Agreement.

## 1.2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- (a) headings are inserted for ease of reference only and have no legal effect;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a specific meaning, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (d) a reference to a clause number is a reference to its sub-clauses;
- (e) a reference to a party to the Agreement includes the party's successors and permitted assigns;
- (f) a reference to a person includes a firm, a body corporate, an unincorporated association or an authority and vice versa;
- (g) a reference to the Agreement or another document includes any variation, novation, replacement or supplement to any of them from time to time;
- (h) a reference to a part, clause, annexure, exhibit, appendix or schedule is a reference to a part of, clause of, an annexure, exhibit, appendix or schedule to the Agreement and a reference to the Agreement includes any annexure, exhibit, appendix and schedule;
- (i) a reference to a right or obligation of two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (j) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and

- any regulations and statutory instruments issued under it;
- (k) a reference to conduct includes any omission, representation, statement or undertaking, whether or not in writing;
  - (l) specifying anything in the Agreement after the words including, includes or for example or similar expressions does not limit what else might be included unless there is express wording to the contrary; and
  - (m) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this document or the inclusion of a provision in it.

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## **2. Agreement**

- (a) This Agreement represents the terms and conditions to be incorporated into a Work Order between the parties and applies to the Services MPPI Global undertakes or provides to, or on behalf, of the Client.
- (b) This Agreement becomes binding from the date on which the Client instructs MPPI Global to commence any Services pursuant to a Work Order.

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## **3. Work Orders**

### **3.1 Operation of Work Orders**

- (a) The parties may enter into Work Orders from time to time, setting out the Services and additional terms to this Agreement including payment details. Each Work Order is subject to this Agreement.
- (b) The Client is not obliged to make any minimum level of purchases and MPPI Global is not obliged to accept any particular Work Order request.
- (c) Each Work Order constitutes a separate agreement, and the expiry or termination of any Work

Order does not automatically affect the validity of this Agreement or any other Work Order(s) then on foot.

### **3.2 Relationship between this Agreement and Work Orders**

To the extent that any conflict exists, the various documents comprising a contract between the parties will take precedence in the following order (from highest to lowest priority):

- (a) any variation to this Agreement, or any Work Order, agreed in writing between the parties;
- (b) the Work Order; then
- (c) this Agreement.

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## **4. Services**

### **4.1 Services**

MPPI Global will provide the Services as agreed in each Work Order, subject to this Agreement. If no Fees are set out in a Work Order, MPPI Global will provide the Services on a time and materials bases at the Default Rates.

### **4.2 Hours of operation**

MPPI Global's personnel are available during 8:00am and 4:00pm on Business Days. Services requiring its personnel's involvement will be carried out during these hours unless otherwise determined by MPPI Global in its sole discretion, acting reasonably.

### **4.3 Performance standards**

- (a) MPPI Global agrees to provide the Services:
  - (i) professionally, efficiently, and to industry standards applicable in Australia; and
  - (ii) in a timely manner.
- (b) In performing the Services, MPPI Global will:
  - (i) comply with all relevant occupational health and safety policies;

- (ii) comply with relevant laws including State and Federal laws and local government laws and regulations; and
- (iii) observe the Client's reasonable directions in relation to security or the use of any of its facilities or equipment.

#### 4.4 Service limitations

MPPI Global will use reasonable efforts in providing the Services, however other than as set out in this Agreement, to the fullest extent permitted at law, MPPI Global:

- (a) does not warrant or guarantee the Services are uninterrupted or error free;
- (b) does not take any responsibility for faults, delays, or interruptions to the Services caused by:
  - (i) misuse or user error except to the extent the misuse or error is caused by it;
  - (ii) any software or equipment which was not provided by MPPI Global;
  - (iii) the delays, action, or inaction of any third party;
  - (iv) the delays, action, operation, inaction, or failure of any third party service, software, or equipment;
  - (v) any delays relating to Client Material, which is required to be provided by the Client; or
  - (vi) any Force Majeure Event;
- (c) is not responsible for faults in the Client's or its customer's software, equipment, or network;
- (d) does not warrant or guarantee the Services for any fitness of

purpose, performance, or compatibility other than as set out in a Work Order; and

- (e) does not warrant or guarantee that use of the Services will bring the Client, or its customers into compliance with any particular legislation or standard.

#### 4.5 Out of Scope services

- (a) MPPI Global may in its sole discretion, upon request by the Client, provide Out of Scope Services.
- (b) The same standards, warranties and indemnities apply to Out of Scope service as apply to the Services.
- (c) MPPI Global will charge the Client at the rates contained in the related Work Order and where applicable rates do not appear in that Work Order, at its Default Rates.
- (d) Notwithstanding clause 4.5(c), MPPI Global may vary its fees at any time, by 30 days' written notice. Any change will apply only to new Work Orders and Out of Scope Services requested and performed after the effective date of the change.

#### 4.6 Right to sub-contract

MPPI Global may appoint employees or agents to provide all or part of the Services without consent or notice to the Client; and such entities are bound by the same obligations as MPPI Global. It is MPPI Global's responsibility to ensure such entities comply with the relevant Work Order.

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### 5. Client's rights and obligations

#### 5.1 Nominated representative

The Client agrees, upon MPPI Global's request, to nominate a key representative to liaise with MPPI Global, who has the authority to make decisions and give instructions on the Client's behalf in relation to the Services.

## 5.2 Client responsibilities

The Client will:

- (a) ensure that MPPI Global has access to all information and personnel, and the Client's equipment, as may be required in order for MPPI Global to provide the Services to the Client in accordance with a Work Order;
- (b) establish and maintain clear channels of communication at all times with MPPI Global;
- (c) immediately inform MPPI Global of any change of circumstances that may materially impact the provision of the Services including any service failure or system threat;
- (d) take all reasonable information technology security precautions, and ensure the users of its computer systems take similar precautions;
- (e) reimburse MPPI Global the amount of all expenses reasonably and properly incurred by it in the performance of its duties under a Work Order , including travel expenses between MPPI Global's premises and the Client's site, accommodation and subsistence expenses, and all other expenses incurred or required to be incurred by the Client to promptly and efficiently provide the Services;
- (f) perform any Additional Obligations; and
- (g) promptly provide MPPI Global with directions, instructions or information which are requested by MPPI Global.

## 5.3 Change Request

- (a) The Client agrees and acknowledges that the Fees are based on the scope of the Services as anticipated by the In Scope Work, Out of Scope Work and the Assumptions.

- (b) If the Client wishes to change the scope of the Services after the commencement of a Work Order (**Variation**), MPPI Global will negotiate with the Client in respect to extra Fees (**Additional Fees**) which result from the Variation.
- (c) Unless otherwise set out in a Work Order, the Additional Fees will be charged at the Default Rate for the person who provides the Services.
- (d) For the avoidance of doubt:
  - (i) any change to the In Scope Work, Out of Scope Work or Assumptions will be considered a Variation;
  - (ii) any other change that is considered by MPPI Global, at its sole and absolute discretion, to be a change to the scope of the Services, will be considered a Variation; and
  - (iii) MPPI Global is under no obligation to accept a Variation requested by the Client.

## 5.4 Warranties

The Client warrants and undertakes:

- (a) it and its representatives have all necessary licences and legal right(s) to permit and authorise MPPI Global to provide the Services; and
- (b) providing the Services in accordance with the Client's directions will not contravene any applicable laws.

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## 6. Payments

### 6.1 Payment of Fees

- (a) MPPI Global will invoice the Client for the Services, and any Additional Fees incurred as a result of a Variation.

- (b) The Client is responsible for paying all government charges or duties of any kind incurred as a result of this Agreement (**Taxes**).
- (c) Unless otherwise stated all Fees expressed are exclusive of any Taxes.
- (d) The Client must pay MPPI Global
  - (i) the Fees; and
  - (ii) any Taxes associated with the Fees which are payable by MPPI Global,
 in accordance with the Payment Terms.

## 6.2 Foreign Tax

- (a) If the Client is required by any law to make any deduction or withholding for or on account of tax or otherwise from any payment to MPPI Global under this agreement (**Tax Payment**), the Client must pay the Tax Payment in addition to the Fees.
- (b) For the purposes of calculating the amount payable pursuant to the invoice MPPI Global's Fees must be grossed up to include any Tax Payment.
- (c) At the Client's request and upon the Client providing MPPI Global with the grossed-up amounts, MPPI Global will provide a new invoice.
- (d) The Client must deliver to MPPI Global a copy of any official receipt or receipts issued by the relevant tax authority evidencing the Tax Payment has been made.

## 6.3 Overdue invoices

If the Client fails to pay MPPI Global's invoice in accordance with the Payment Terms, MPPI Global will have the right to:

- (a) immediately cancel any Work Order in effect with the Client without any obligation to refund the Client any money in respect of the cancellation, even if the contract period has not expired;

- (b) immediately initiate proceedings against the Client to recover the overdue amount (this right takes precedence over the conditions in clause 12 of this Agreement); and
- (c) to recover all costs in relation to any action taken against the Client to recover overdue amounts, including but not limited to legal costs and outlays on a full indemnity basis.

## 6.4 Fee disputes

- (a) If the Client reasonably believes an invoice contains an error, it must notify MPPI Global before the due date of the invoice and pay the undisputed portion of the invoice (**Disputed Amounts**).
- (b) Provided the Client has complied with clause 6.4(a) and the aggregate of all Disputed Amounts on all invoices issued to the Client does not exceed \$2,000 plus GST, MPPI Global will not suspend or terminate any Services for non-payment of the disputed fees while the dispute is being investigated.

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## 7. Confidentiality

### 7.1 Obligations of confidence

- (a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) A party will not be in breach of clause 7.1(a) in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- (c) Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of the Agreement, do not make public or disclose the other party's Confidential Information.
- (d) Notwithstanding any other provision of this clause, a party may disclose the terms of the

Agreement (other than confidential information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.

## 7.2 Survival

The obligations under this clause 7 survive termination of the Agreement.

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## 8. Intellectual Property

### 8.1 Client Materials

- (a) **Client Materials** means any data, images, materials and Intellectual Property provided by the Client to MPPI Global in order for MPPI Global to provide the Services.
- (b) The parties acknowledge that if the Client makes available to MPPI Global any Client Materials, then where the Client owns the Intellectual Property in said materials, the Client retains ownership.
- (c) The Client warrants that it owns, or is otherwise licensed to use, the Intellectual Property in all the Client Materials, and that use of the Client Materials by MPPI Global will not infringe the rights of any third party.
- (d) The Client grants MPPI Global a non-exclusive, revokable, royalty free and worldwide licence to use the Client Materials for the sole purposes of providing the Services.

### 8.2 MPPI Global IP

- (a) **MPPI Global IP** means any Intellectual Property which are independently created by MPPI Global and which:
  - (i) are in existence before the date of this Agreement; or
  - (ii) come into existence after the commencement of this Agreement and relates to the Optimum suite of software.

(b) No ownership or other rights in MPPI Global IP are transferred to the Client under a Work Order and MPPI Global retains its right to use MPPI Global IP for any purpose.

(c) To the extent that the Client may at any time acquire any right, title or interest in MPPI Global IP, the Client assigns to MPPI Global all such rights, title and interest.

(d) To the extent that any MPPI Global IP is contained within the Deliverables, MPPI Global grants to the Client a non-exclusive licence to use the MPPI Global IP where it is necessary to operate any Deliverables and in accordance with any terms set out in a Work Order.

### 8.3 Third party IP

- (a) MPPI Global may use third party materials as necessary to provide the Services. Use of third party materials may be subject to creative commons or open source licensing terms, or such third party licensing terms.
- (b) Where MPPI Global has used third party materials in the Deliverables, it warrants that the Deliverables do not infringe in any way on any third party's Intellectual Property.

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## 9. Limitation of Liability and indemnities

### 9.1 Commercial nature of this Agreement

The Client acknowledges and agrees it is acquiring the Services for commercial purposes and not for domestic, personal or household use.

### 9.2 Implied conditions

MPPI Global expressly excludes all conditions, warranties and other terms which might otherwise be implied by any law, regulation, statute, common law or law of equity except any Non-excludable Condition.



### 9.3 Limitation of Liability

To the maximum extent permitted at law, MPPI Global's Liability arising under a Work Order, whether that Liability arises in contract, tort (including negligence) or under statute, is limited to the lesser of, the Fees payable under the Work Order which gave rise to the damage or \$10,000.

### 9.4 Consequential Loss

Notwithstanding any other clause in this Agreement, and to the maximum extent permitted at law, MPPI Global excludes all liability for any Consequential Loss suffered by the Client.

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## 10. Suspension and Force Majeure

### 10.1 The Client's default and suspension

- (a) MPPI Global may suspend the provision of Services under any or all Work Orders at any time and give the Client a notice of default if:
  - (i) subject to clause 6, it fails to make any payment when due, or any payment is dishonoured or subject to chargeback;
  - (ii) it fails to provide clear and timely instructions;
  - (iii) it fails to provide necessary Client Materials; or
  - (iv) the Client Materials infringe a third party's Intellectual Property rights.
- (b) Suspension of Services under this clause does not affect the Client's liability to make payment and will immediately end when the issue giving rise to the suspension is remedied.

### 10.2 Force Majeure Event

- (a) If a party is affected by a Force Majeure Event, they must immediately notify the other party of the circumstances. The parties' obligations under this Agreement

and any Work Order are suspended for the duration of and to the extent that they are affected by the Force Majeure. However, either party may end this Agreement and any Work Order if the Force Majeure continues for more than 60 days.

- (b) Nothing in this clause 10.2, affects the Client's obligation to pay the Fees.

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## 11. Termination

### 11.1 Termination for default

- (a) Either party may end any Work Order immediately by written notice if the other party:
  - (i) commits any material breach of any term of this Agreement and which in the case of a breach capable of being remedied is not remedied within 10 Business Days of a written request to remedy it (including a breach of the Payment Terms);
  - (ii) breaches a material provision of this Agreement that is not capable of remedy; or
  - (iii) experiences an Insolvency Event.

### 11.2 Termination for convenience

Either party may end any Work Order at any time for any reason by giving the other party 10 Business Days written notice.

### 11.3 Consequences of Termination

- (a) If a Work Order ends for any reason, then in addition to any other rights MPPI Global has:
  - (i) it may issue an invoice for work not previously invoiced for any Fees contemplated by any Work Order; and

- (ii) the Client must pay all of MPPI Global's outstanding invoices whether or not due, including any invoice issued under clause 11.3(a)(i).
- (b) If a Work Order is terminated before the end of any applicable contract period for any reason, and MPPI Global was not in default of that Work Order, then in addition to the rights specified in clauses 11.3(a) and any other rights MPPI Global may have to fees for the balance of the contract period (if any) of that Work Order (calculated using the fees applicable as at the date of termination), excluding any costs which can be reasonably mitigated, become immediately due and payable. The parties agree that this is not a penalty, but represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from early termination in light of MPPI Global's sunk costs and ongoing commitments.
- (c) If MPPI Global terminates a Work Order under clause 11.2 then it will refund to the Client any unused portion of Fees which were prepaid for that Work Order, less any other amounts owed to MPPI Global.

explanation of the nature of the Dispute; and what action the complainant thinks will resolve the Dispute (**Dispute Notice**).

- (c) Within 10 Business Days of the Dispute Notice being received by the other party, a nominated senior executive of each party must meet in Brisbane, Queensland (unless otherwise agreed between the parties), act in good faith and use best endeavours to resolve the Dispute at that meeting, or such subsequent meetings as may be reasonably required.
- (d) If the Dispute is not resolved pursuant to clause 12.1(c) within 30 days of the Dispute Notice being received by the other party, the parties agree to attend a privately held mediation with a mediator appointed by the nominated senior executive of both parties and in the absence of agreement within 7 days of disagreement by such mediator as appointed by the President, or person in like office of the Resolution Institute.
- (e) If the Dispute is not resolved within a further 30 days pursuant to clause 12.1(d) then either party may commence proceedings against the other party in respect of the Dispute.
- (f) Nothing in this clause 12 prevents a party from seeking urgent injunctive or similar relief from a court.

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## 12. Dispute Resolution

### 12.1 Dispute Resolution

- (a) Subject to clause 12.1(f), any dispute which arises between the parties in connection with a Work Order (**Dispute**) must be dealt with in accordance with the requirements of this clause 122, before either party will be entitled to commence proceedings against the other party in respect of the Dispute.
- (b) The party claiming that a dispute has arisen (**Complainant**) must give the other party a written notice setting out a detailed

### 12.2 Dispute resolution not to apply to debts

The dispute resolution procedure set out in this clause 122 will not apply in any instance where MPPI Global seeks to recover a debt.

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## 13. General

### 13.1 Assignment

- (a) MPPI Global may assign, novate or otherwise transfer any of its rights or obligations under this

Agreement to a third party without notice to, or the prior consent of the Client, but if MPPI Global requires, the Client will sign any documents to give effect to an assignment, novation or transfer by MPPI Global under this clause.

- (b) The Client must not assign all or any of its rights given to it under this Agreement without the prior written consent of MPPI Global, which consent MPPI Global may grant or not in its absolute discretion.

### 13.2 Further Assurances

Each party must do anything reasonably necessary (including executing agreements and documents) required to give full effect to this Agreement or any Work Order and the transactions contemplated by it.

### 13.3 Governing law

The laws of Queensland, Australia govern this Agreement. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

### 13.4 Operation of the Agreement

- (a) This Agreement and any Work Order contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement or the Work Order and has no further effect.
- (b) right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (c) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (d) the exercise of a right does not prevent any further exercise of

- (b) Any right that a person may have under this Agreement or a Work Order is in addition to, and does not replace or limit, any other right that the person may have.

- (c) Any provision of this Agreement or a Work Order which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make the document enforceable, unless this would materially change its intended effect.

### 13.5 Relationship

Nothing in this Agreement or a Work Order is intended to create or be construed as creating a relationship of agency, joint venture or partnership between the parties. Unless expressly stated in a Work Order, no party may act as agent of or in any way bind another party to any obligation.

### 13.6 Variation

Any variation or amendment to this Agreement or a Work Order must be in writing signed by all parties.

### 13.7 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the

that right or of any other right