



# MASTER SERVICES AGREEMENT

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Digital Sense Hosting Pty Ltd ABN 20 122 291 150 (**Digital Sense**)

The party named on the Quote (**Customer**)



## Parties

Digital Sense Hosting Pty Ltd ABN 20 122 291 150 (**Digital Sense**)

The party, ABN and address specified on the Quote (**Customer**)

## Background

- A. Digital Sense is a provider of cloud-based services, software and infrastructure services to its customers.
- B. The Customer wishes to engage Digital Sense to provide the Customer with one or more services.
- C. This Master Services Agreement sets out general terms which will govern the engagement. The particular Services to be provided by Digital Sense to the Customer will be set out in a Service Description and the Quote (together the 'Agreement').
- D. The parties wish to formalise their agreement on the terms and conditions of this Master Services Agreement, as set out below.



## 1. Definitions

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In this Agreement:

**Commencement Date** means the date the Customer enters into the initial Quote.

**Confidential Information** means, in relation to each party (for the purposes of this definition, the "Discloser"), all information disclosed by or on behalf of the Discloser, concerning or relating to:

- (a) any Customer Data;
- (b) the fee and remuneration structure set out in the Agreement;
- (c) know-how, trade secrets, ideas, marketing strategies, operational information, technical information and financial information;
- (d) proprietary software tools, business processes, project management methodologies and tools, software testing and verification methods, solution architecture models and solutions;
- (e) the business affairs (including products, services, customers and suppliers); and
- (f) other information, which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential;

but excluding any such information:

- (a) which is publicly known;
- (b) which is disclosed to the other party without restriction by a third party (other than the Discloser) and without any breach of confidentiality by that third party; or
- (c) which is developed independently by other party without reliance on any of the confidential information.

**Customer Data** means all data and information uploaded by the Customer to storage infrastructure utilised by Digital Sense for the provision of the Services to the Customer.

**Customer Technology** means the Intellectual Property Rights of the Customer which are created independently of the Agreement.

**Digital Sense Technology** means all Intellectual Property Rights created, owned or licensed by Digital Sense, excluding Customer Technology.

**Fees** means the amount payable by the Customer for the Services, as set out in each Quote.

**Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trademarks, know-how, confidential information, patents, inventions, plant breeder's rights and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth).

**PPSR** means the register established under the PPS Act.

**Privacy Law** means the *Privacy Act 1988* (Cth).

**Quote** means:

- a) the document prepared by Digital Sense detailing the Services and the Fees which has been signed by the Customer to indicate their acceptance of the quote; or
- b) an order placed through the Digital Sense customer portal;
- c) a Customer's purchase order; or
- d) acceptance of the Quote in writing.

**Security Interest** has the same meaning given to it in the PPS Act.



**Services** means the IT services to be provided by Digital Sense to the Customer during the term of the Agreement, as detailed in each Service Description and Quote.

**Service Levels** means the target services levels set out in each Service Description (if any).

**Service Description** means the document which sets out the terms and conditions applicable to the particular Services.

**Tax Invoice** means an invoice compliant with the requirements of the GST Law.

**Transition Out Plan** means the plan for the continuity and orderly transition of responsibility for the Services from Digital Sense to the Customer or another party, as mutually agreed to by the parties.

## 2. Formation and Precedence

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2.1 The following documents form the Agreement:

- a) this Master Services Agreement;
- b) the Service Description/s;
- c) the Quote; and
- d) any other document forming part of the Agreement as agreed to in writing by the parties.

2.2 In the event of any conflict or inconsistency between one or more of the documents in the Agreement, for interpretation, the following will be the order of precedence:

- a) the Quote;
- b) the Service Description/s;
- c) the terms of the Master Services Agreement; and
- d) any other document forming part of the Agreement as agreed to in writing by the parties.

2.3 By proceeding with a Quote you agree this Master Services Agreement and the Service Description/s apply to the provision of Services under the Quote. Any terms on a Customer's purchase order or otherwise will not apply.

## 3. Term

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3.1 The term of the Master Services Agreement starts on the Commencement Date and remains in force until terminated by either party pursuant to clause 19 (Termination) below.

3.2 The term of each Quote is as specified in the Quote, unless terminated earlier by either party pursuant to clause 19 (Termination). The term will automatically extend for 12 months unless the Customer notifies Digital Sense in writing 90 days prior to the expiry date that it does not wish to extend.

## 4. Services & Scope

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4.1 Digital Sense agrees to provide the Services during the term in accordance with this Agreement.

4.2 The scope of the Services to be provided by Digital Sense will be as set out in the Quote and Service Description.

## 5. General obligations

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5.1 The Customer must (in addition to any other obligations set out in a Service Description or Quote):



- a) comply with all laws;
- b) provide Digital Sense with all information, access to its premises, computer and network systems and personnel necessary for Digital Sense to provide the Services;
- c) provide adequate conditions for Digital Sense' personnel at the Customer's premises (if required);
- d) comply with the facility rules and procedures whilst at the data centre;
- e) pay the Fees in accordance with the terms of the Agreement;
- f) comply with any reasonable direction of Digital Sense required in order for us to perform the Services and comply with our obligations under the Agreement; and
- g) ensure that your personnel do not use the Services to:
  - (i) engage in any fraudulent, illegal or unlawful act;
  - (ii) interfere with the efficiency, security or integrity of our network;
  - (iii) transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted;
  - (iv) expose Digital Sense to liability;
  - (v) damage, interfere or interrupt the Services, or any telecommunications network, equipment, facilities or cabling owned or controlled by Digital Sense or a Supplier; or
  - (viii) engage in conduct otherwise deemed inappropriate by Digital Sense.

5.2 Digital Sense may request that you stop doing something which we reasonably believe is contrary to this clause and you must promptly comply with this request. If you do not, then Digital Sense may take any steps we consider reasonably necessary to ensure compliance with this clause or the request, including suspending or terminating a Quote or this Agreement.

5.3 Customer acknowledges and agrees that:

- a) Digital Sense' ability, and obligation, to provide the Services is subject to you complying with your obligations under this clause and any other limitation or exclusion set out in this Master Services Agreement, Service Description/s or Quote;
- b) unless otherwise expressly included in a Quote, the cost of third party application support consumables, replacement parts, hardware, software, network or server upgrades and any associated services are outside the scope of the Services and are the full responsibility of Customer; and
- c) unless otherwise expressly included in a Quote, Digital Sense is under no obligation to back up or otherwise retain data or applications not included in the Services.

## 6. Security Deposit

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- 6.1 Before the start date of this Agreement, the Customer must deliver to Digital Sense a security deposit (if any) specified in the Quote.
- 6.2 If you fail to make a payment when due under the Agreement, or if Digital Sense suffer loss or damage because of your breach, Digital Sense may apply the security deposit towards the arrears of payment, or towards the loss or damage. In doing so, Digital Sense does not waive the breach or any other right or remedy arising from the breach.
- 6.3 Within 10 business days after Digital Sense notifies the Customer with written notice that it has applied all or part of the security deposit under this clause, the Customer must provide Digital Sense



with additional security sufficient to replace the portion of the security deposit applied.

- 6.4 If this Agreement ends, and the Customer is not indebted to, or otherwise liable to Digital Sense for breach, then Digital Sense will return the security deposit to the Customer.

### 7. Fees and Payment

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- 7.1 The Customer agrees to pay Digital Sense the Fees as specified in the Quote or as otherwise provided by this Agreement.
- 7.2 In calculating the Fees, Digital Sense is only required to take into account billing information generated or received by Digital Sense or its Suppliers and may round up any charge to the nearest cent.
- 7.3 The Customer agrees to pay Digital Sense the Fees and any other fees owing under this Agreement within 14 days (or as otherwise agreed) of being provided with a Tax Invoice from Digital Sense.
- 7.4 The Fees for the Services will be increased annually in accordance with the CPI for the preceding 12 month period and in accordance with any vendor increases or as otherwise specified in a Quote.
- 7.5 If the Customer fails to pay an invoice within the time period stated in clause 7.3, Digital Sense may do any one or more of the following:
- a) charge interest on the amount owing at 2 percent per month;
  - b) restrict or suspend the Services in accordance with clause 8 below; and/or
  - c) terminate the Agreement, in accordance with clause 19 (Termination) of this Master Services Agreement.
- 7.6 If the Customer pays by direct debit and its financial institution fails to honour the payment, the Customer must pay to Digital Sense the amount owing, plus any administration or fees.
- 7.7 The Customer may dispute an amount invoiced by Digital Sense but only in accordance with this clause.
- 7.8 Except to the extent that you raise a valid billing dispute, you agree that the invoice is valid and payable and you must pay any undisputed amount included in accordance with this clause.
- 7.9 To raise a valid billing dispute, you must:
- a) make a good faith request to Digital Sense to investigate the specific charges or invoice, providing reasons why you believe that a particular charge or invoice is incorrect; and
  - b) make any such request to Digital Sense within 1 month of the date of the invoice.
- 7.10 If you raise a valid billing dispute, then Digital Sense will conduct investigations which are reasonably necessary and appropriate in the circumstances of the dispute. If we determine that the invoiced amount was correct you must pay the outstanding amount within 7 days. If the invoiced amount was incorrect we will correct the invoice.
- 7.11 You may only make a claim that a charge or invoice is invalid if you do so within 1 month of the date of invoice.
- 7.12 The Customer agrees that they have no right of set-off under this Agreement.

### 8. Suspension

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- 8.1 Digital Sense may temporarily suspend, downgrade or cancel (in part or in whole) the provision of the Services to Customer if:
- a) Digital Sense is required by law to do so;



- b) the Customer fails to comply with their obligations as per clause 5 (General Obligations);
  - c) doing so is necessary to allow Digital Sense or a Supplier to repair, maintain or service any part of the Digital Sense Network or a Supplier Network used to supply the Service;
  - d) an emergency occurs, which affects or may affect Digital Sense 's ability to provide the Services;
  - e) such suspension is pursuant to clause 7.5 (late or non-payment of invoice); or
  - f) if Customer is in breach of the Agreement.
- 8.2 If the Services are suspended or terminated as a result of clause 7.5 or Customer has otherwise breached the Agreement, Digital Sense may charge Customer a Reconnection Fee to reconnect the Services.

### 9. Intellectual Property Rights

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- 9.1 No rights of ownership to Customer Technology are transferred under the Agreement and the Customer grants to Digital Sense a non-exclusive, non-transferable licence to use its Intellectual Property Rights in Customer Technology during the term, but strictly for the purposes of it performing the Services for Customer.
- 9.2 No rights of ownership to Digital Sense Technology are transferred under the Agreement and Digital Sense grants the Customer a non-exclusive, non-transferable, revocable, royalty free licence to its Intellectual Property Rights in the Digital Sense Technology, but only to the extent necessary for Customer to use any deliverable (which deliverable is expressly provided as part of the Services) embodying any such rights.
- 9.3 Unless otherwise agreed in a Quote, Digital Sense will own any new IP created in the course of providing the Services to the Customer and will be licensed to the Customer as per this clause.
- 9.4 All Customer Data remains owned by the Customer.

### 10. Third Party Software Licences

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- 10.1 The Customer must comply with the licence terms of all software installed or used in the provision of the Services.
- 10.2 The Customer must not do or permit to do any act that breaches, or causes Digital Sense to breach, a software licence installed or used in the provision of the Services.

### 11. Confidential Information

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- 11.1 A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- 11.2 Each party must 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.
- 11.3 A party is not in breach of this clause in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- 11.4 Notwithstanding any other provision of this clause the parties may disclose the terms of the Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.



## 12. Public address identifiers

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- 12.1 A Service may use one or more identifiers such as a telephone number, IP address or domain name ('Public Address Identifiers').
- 12.2 The Customer must comply with the requirements of any Regulator or other body which administers Public Address Identifiers.
- 12.3 The Customer acknowledge and agree that:
- a) Digital Sense does not control the allocation of Public Address Identifiers;
  - b) Digital Sense is not liable to you if we are required to change any Public Address Identifier as a result of any direction given by a Regulator or other body which administers Public Address Identifiers; and
  - c) on cancellation of the Service, your right to use any related Public Address Identifier may cease.

## 13. Limitation of Liability

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- 13.1 Subject to clause 13.2, if a party is liable in connection with this Agreement (whether in contract, tort, or statute), then irrespective of anything else in this Agreement, that party's cumulative liability will in no event exceed the sum of the Fees paid by the Customer to Digital Sense in the past 12 months (except that amounts paid or payable by the Customer to Digital Sense are in addition to this cap on liability in respect of the Customer's liability to Digital Sense).
- 13.2 The limitation of liability in clause 13.1 does not apply to liability for:
- a) personal injury and death;
  - b) damage to property (whether belonging to Digital Sense or its Customers); or
  - c) fraud or wilful misconduct.
- 13.3 Neither party will be liable for indirect or consequential loss, or loss of revenue, profits, opportunity business, anticipated savings or loss of data.
- 13.4 If Digital Sense is in breach of a condition or warranty implied by the Australian Consumer Law (ACL) then the liability of Digital Sense is, to the extent permitted, limited to the repair or replacement of the goods or paying the cost thereof or the resupply of the services or the cost of doing so.

## 14. Insurance

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- 14.1 The Customer must hold insurance as follows:
- a) General Liability in the sum of \$20 million per occurrence; and
  - b) Workers Compensation as required by law.
- 14.2 The Customer's insurance must cover loss or damage to any equipment held on Digital Sense premises and any damage this may cause, whether to Digital Sense or Customer property.
- 14.3 The Customer must provide Digital Sense with certificates of currency on request.





## 15. Warranty

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15.1 Digital Sense warrants to Customer:

- a) that it has the full right and title to enter into this Agreement; and
- b) that the Services will be performed with due care and diligence.

15.2 Customer warrants to Digital Sense:

- a) that it has the full right and title to enter into this Agreement;
- b) that no information has been withheld from Digital Sense that may affect its decision to enter into this Agreement; and
- c) that it has satisfied itself of the content of this Agreement and, if necessary, obtained independent advice from a relevant expert.

## 16. Non-solicitation

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16.1 The Customer must not canvass, solicit or entice away any employee or contractor of Digital Sense from continuing to be employed by Digital Sense or its Related Entity or Related Body Corporate without the prior written consent of Digital Sense.

## 17. Privacy Law

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17.1 Each party agrees to comply with all Privacy Laws in relation to any and all Personal Information that it collects from the other party in connection with the Agreement.

17.2 You consent to us collecting, using and disclosing your personal information in accordance with our privacy policy.

## 18. Emergency Action

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18.1 Should Digital Sense form the opinion that any resources owned or operated by the Customer may damage any Digital Sense or a third party, Digital Sense may do anything necessary to cause the damaging resources to cease operation.

18.2 Any resulting emergency repairs are the responsibility of the Customer to pay in a timely manner to ensure proper operation of the Services.

## 19. Termination

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19.1 Either party may terminate a Quote immediately by written notice upon the occurrence of one of the following events:

- a) if the other party is in breach of this Agreement and has failed to remedy the breach within thirty (30) days written notice specifying the breach and requiring it to be remedied;
- b) the other Party is in breach of this Agreement and the breach is not capable of remedy;
- c) an Insolvency Event occurs in respect of the other party.

19.2 Digital Sense may terminate a Quote for non payment by the Customer after providing the Customer with 14 days' notice and payment is not received within this period.

19.3 Either party may terminate the Master Services Agreement on 7 days' notice to the other party if there are no current Quotes.



- 19.4 Termination of a Quote, either in whole or in part, does not affect other Quotes that are in place between the parties which remain in force unless terminated according to this clause.
- 19.5 Termination shall not prejudice or affect any right or action which shall have accrued or shall thereafter accrue to either party.
- 19.6 The following clauses survive termination this Agreement: Clause 9 (Intellectual Property Rights), Clause 10 (Third Party Software), Clause 11 (Confidential Information), Clause 13 (Liability), Clause 14 (Insurance), Clause 16 (Non-Solicitation), Clause 17 (Privacy Law), Clause 20 (Consequences of Termination), Clause 21 (Transition Out) and this clause 19.5.

## 20. Consequences of Termination

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- 20.1 Upon termination or expiration of a Quote or this Agreement:
- except as may be required by clause 21.21 (Transition Out), Digital Sense will cease performing the Services;
  - all money due by the Customer to Digital Sense under a Quote, including any recurring costs and any infrastructure, installation and other one-time costs incurred by Digital Sense in connection with preparation for the provision of the Services), must be paid in full. Digital Sense retain a lien over and may retain all equipment, and data belonging to the Customer, and deny the Customer both physical and remote access to the Customer's equipment and data unless and until the Customer's account is paid in full;
  - the Customer must remove their equipment and make good any damage to return Digital Sense' facilities to their original condition, fair wear and tear excepted;
  - each party must return to the other party or (if requested by the other party) destroy, all Confidential Information belonging to the other party; and
  - the Customer must return (within 10 Business Days) to Digital Sense or (if requested by Digital Sense) destroy, all materials incorporating Digital Sense Technology or New IP belonging to Digital Sense, in its possession or control.
- 20.2 Subject to clause 20.1 (b):
- Digital Sense will reasonably cooperate with the Customer to minimise any adverse effect on the Customer, and assist the Customer (at the Customer's expense) with the de-installation and removal of the Customer's equipment from the data centre; and
  - if the Customer does not remove the Customer's equipment within 14 days Digital Sense may remove the Customer's equipment from the space and store it at the Customer's cost. Any equipment not picked up by the Customer within a further 30 days will be deemed abandoned and Digital Sense may dispose of it at Digital Sense' sole discretion.

## 21. Transition out

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- 21.1 In the event that Customer gives Digital Sense notice that it intends to transition-out all or part of the Services on termination or expiration of a Quote or this Agreement, the following provisions will apply:
- such notice will not affect the Customer's obligations under clause 7 or any other obligations to pay money to Digital Sense under the Agreement;
  - in accordance with the Transition Out Plan, Digital Sense will provide such assistance as is reasonably necessary to facilitate an orderly, prompt and efficient transition of the Customer's Data and anything else reasonably necessary to migrate the Services to an alternative service provider or back to the Customer; and



- c) Digital Sense agrees to answer questions and provide such other information as may be reasonably sought in relation to the transition by the alternative service provider or by the Customer,

together (b) and (c) are the Transition Out Services.

21.2 The Customer may only require Digital Sense to provide the Transition Out Services during the period of time:

- a) commencing on the date of termination of the Quote or Agreement; and
- b) until two (2) months after the date of termination,
- c) unless Digital Sense otherwise agrees in writing to provide the Transition Out Services for a longer period of time.

21.3 The Customer acknowledges and agrees that the fees for the Transition Out Services will be provided at Digital Sense standard rates (or as agreed between the parties) and that such fees are payable to Digital Sense under clause 7.

21.4 On completion of the Transition Out Services, Digital Sense may remove any and all the Customer Data relating to the Services from its servers 14 days after termination of a Quote or this Agreement.

## 22. Force Majeure

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22.1 If a party ("Affected Party"):

- a) is prevented from, or delayed in, performance an obligation (other than an obligation of the Customer to pay money) by an event of force majeure; and
- b) the Affected Party as soon as possible after the event of force majeure notifies the other party providing particulars of:
  - (i) the event of force majeure;
  - (ii) the anticipated period of delay; and
  - (iii) the action (if any action is reasonably possible) the Affected Party intends to take to mitigate the effect of the delay, then those obligations of the Affected Party are suspended for the duration of the event of force majeure.

22.2 The party which is not the Affected Party must use all reasonable endeavours to remove or mitigate its loss arising from, and the effects of, the event of force majeure.

## 23. Goods and Services Tax

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23.1 Unless expressly stated to the contrary all amounts expressed in this Agreement are exclusive of GST.

23.2 If a party (the Supplier) is obliged under the GST Law to pay an amount of GST for a taxable supply made by the Supplier to another party (the Recipient) under the Agreement, the Recipient must pay the Supplier an amount equal to the GST payable on the supply by the Supplier.

23.3 The Recipient must pay the amount referred to in clause 23.2 and any interests, penalties, fines or expenses relating to the GST, in addition to and at the same time as the consideration otherwise payable by the Recipient for the supply.

23.4 If requested by the Recipient, the Supplier must provide the Recipient with a Tax Invoice on or before payment of the amounts required by this clause.



### 24. Disputes

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- 24.1 Subject to clause 24.2, a party claiming that a dispute or disagreement has arisen out of, or in connection with, the Agreement (Dispute) will, within five (5) Business Days of the Dispute arising, give written notice to the other party providing particulars of the Dispute (Notice of Dispute).
- 24.2 The parties must meet at such location (including via telephone or video conference) as agreed within 5 Business Days of receipt of the Notice of Dispute, to seek to resolve the Dispute amicably.
- 24.3 If the Dispute has not been resolved within 20 Business Days (or such other time as mutually agreed between the parties) of receipt of the Notice of Dispute, the parties agree to refer the Dispute to mediation administered by a mediator recommended and accredited by IAMA in accordance with IAMA's professional mediation rules.
- 24.4 If the Dispute has not been resolved within 40 Business Days of receipt of the Notice of Dispute then (on the basis that the exhaustion of the dispute resolution process set out in this clause **Error! Reference source not found.** is a condition precedent to the right of either party to commence court proceedings in relation to the Dispute) the party who first served the Notice of Dispute may commence litigation.
- 24.5 Any mediation discussions and proceedings undertaken in accordance with this clause constitutes Confidential Information and must take place in Brisbane (or as otherwise agreed).
- 24.6 Nothing in this clause prevents either party seeking injunctive or urgent declaratory relief for any matter (including to protect Confidential Information) arising out of, or in connection with, the Agreement.
- 24.7 Despite the existence of a Dispute, each party will at all times continue to fulfil all obligations under the Agreement, including in respect of confidentiality.

### 25. Notices

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- 25.1 Any notice or other communication to or by any party must be in writing and delivered to the other party.

### 26. PPS Act

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- 26.1 To the extent that a Security Interest arises under the Agreement or any transaction contemplated by the Agreement:
- a) the Customer acknowledges that the Security Interest will attach to any proceeds or any accession;
  - b) the Customer consents to Digital Sense effecting a registration on the PPS Register (in any manner Digital Sense considers appropriate) in relation to any Security Interest contemplated by the Agreement or the transactions contemplated by the Agreement, and the Customer agrees to provide all assistance reasonably required to facilitate this (including paying all costs in connection with effecting, maintaining, amending or discharging that registration);
  - c) the Customer waives the right to receive any verification statement (or notice of any verification statement) in respect of a registration made on the PPS Register;
  - d) the Customer must not, without first giving Digital Sense ten (10) business days' notice, change its name, ABN or any other personal identifiers which is required to be recorded on the PPS Register in connection with any Security Interest arising under the Agreement or the transactions contemplated by the Agreement.
- 26.2 The Customer and Digital Sense agree, that to the extent section 115(1) of the PPS Act allows



them to be excluded, sections 95 (to the extent that it requires Digital Sense to give notice to the Customer), 96, 121(4), 125, 130 (to the extent that it requires Digital Sense to give notice to the Customer), 132(3)(d), 132(4), 135, 142 and 143 do not apply to the enforcement by Digital Sense of any Security Interest arising under the Agreement or the transactions contemplated by them.

26.3 For the purposes of this clause 'accession', 'proceeds' and 'verification statement' have the meaning given to those terms in the PPS Act.

### **27. Governing law and jurisdiction**

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27.1 The Agreement is governed by and construed in accordance with the laws of Queensland.

### **28. Miscellaneous**

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28.1 If a provision of this Agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

28.2 An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

28.3 The Customer authorises Digital Sense to make public announcements in newspapers, trade journals and other publications regarding the existence of this Agreement and to identify the Customer as a customer of Digital Sense in advertising or marketing materials.

28.4 A party's waiver of a right under or relating to this Agreement, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party.

28.5 This Agreement may be executed in counterparts each of which will be considered an original but all of which will constitute one and the same instrument.

28.6 This Agreement is the entire agreement and understanding between the parties relating to the subject matter of this Agreement; and supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.