

Order Up Group Pty Ltd Master Service Agreement

1. Contract

- 1.1 Each contract comprises the Service Order and any schedules and attachments and incorporates the terms and conditions of this Agreement ("**Contract**") to the exclusion of any terms and conditions or other document issued or delivered by the Client.
- 1.2 To the extent there is any inconsistency, between this Agreement and a Service Order, the terms set out in the Service Order will prevail.

2. Term of Agreement

- 2.1 Unless otherwise agreed in writing by the parties, this Agreement shall continue to operate for 3 months from the "go live" date in respect of the provision of any services by Order Up Group to the Client.
- 2.2 Each Contract commences on the execution date of the Service Order, and, subject to earlier termination in accordance with the terms of this Agreement, operates for the term (if any) set out in the Service Order applicable to that Contract.
- 2.3 If under any Contract, there is no fixed term or Order Up Group continues to supply and the Client continues to use services beyond the Term, the Contract is deemed to continue on a month to month basis until such time a party provides the other party with 30 days written notice of termination.

3. Responsibilities under Contract

- 3.1 The Client must comply with all laws relating to the receipt and utilisation of the Services, the terms of this Agreement and the Service Order.

Client Equipment

- 3.2 The Client shall provide such assistance to Order Up Group and such continued access to Client equipment and Facilities, and must provide all necessary network connections (including internet), equipment, labour, and other materials as Order Up Group reasonably requires to provide the Services.
- 3.3 Order Up Group will not be responsible for the operation, maintenance, safety or security of any Client equipment and Facilities. Such equipment remains at the risk of the Client.
- 3.4 The Client is solely responsible for the transmission and reception of electronic communications by the Client's equipment and Facilities and Order Up Group has no responsibility for such electronic signals. The Client must ensure that the Client equipment is well maintained and does not damage or interfere with Order Up Group's equipment, Facilities or services.

Installation

- 3.5 The Client shall, at its own expense, comply with any directions or specifications issued by Order Up Group to prepare the Client Premises prior to Installation and shall provide Order Up Group with full access to the Client Premises.
- 3.6 If the Client delays Installation due to inadequate preparation of the Client Premises or access to the Client Premises, the Client shall be liable to Order Up Group for all reasonable costs and expenses incurred by Order Up Group directly or indirectly as a result of such delay.
- 3.7 The Client shall provide Order Up Group with such assistance, including the provision of personnel and facilities as Order Up Group reasonably considers necessary to ensure satisfactory Installation.
- 3.8 Risk of loss or damage to any equipment used in the Installation passes to the Client upon delivery of such equipment to the Client Premises.
- 3.9 Equipment and Facilities provided or installed at the Client Premises by Order Up Group for use in connection with the Services must not be used for any purpose other than that for which it was provided by Order Up Group (unless otherwise provided in writing by Order Up Group).
- 3.10 The Client, shall not without the prior written consent of Order Up Group, allow any adjustments, modifications, alterations, repairs or servicing to the equipment or Facilities provided by Order Up Group to be carried out by persons other than authorised Order Up Group.

4. Maintenance

General Maintenance

- 4.1 The Client shall notify Order Up Group in writing of any defect or suspected defect in the services provided by Order Up Group. Upon notification, Order Up Group shall, to the extent necessary, inspect, replace or repair any defect in the services at no charge and as soon as practicable after receiving notice from the Client.
- 4.2 Order Up Group shall be entitled to charge, and the Client shall pay, an additional charge if the defect is the result of:
 - 4.2.1 improper use or mismanagement by the Client;
 - 4.2.2 operation of the Facilities, equipment or Services other than in accordance with instructions provided by Order Up Group;
 - 4.2.3 use of Facilities, equipment or Services in a manner not reasonably contemplated by Order Up Group;
 - 4.2.4 modification of Facilities, equipment or Services not authorised by Order Up Group;
 - 4.2.5 use of Facilities, equipment or Services in a manner contrary to law;
 - 4.2.6 subjection of any physical Facilities or equipment to unusual or unrecommended physical, environmental or electrical stress;
 - 4.2.7 reinstallation or moving of the Facilities or equipment by a person other than Order Up Group;
 - 4.2.8 use of the Services, equipment or Facilities by a person other than the Client;
 - 4.2.9 Client's failure to comply with any term of this Agreement.
- 4.3 If the Client provides notice of a defect or suspected defect and any subsequent inspection by Order Up Group reveals no further obligation on Order Up Group, the direct and indirect costs and expenses associated with such inspection shall be borne by Client.

5. Use of services

- 5.1 Client undertakes not to:
 - 5.1.1 use the Service for any illegal or improper purpose nor allow any other party to do so;

- 5.1.2 use the Service fraudulently or in connection with criminal activity; or
- 5.1.3 assign or transfer in any way any of its rights or obligations under this Agreement or any part thereof without the prior written consent of Order Up Group.
- 5.2 The Client acknowledges and agrees that if required by Order Up Group, it will block or take other reasonable steps to prevent access to or use of the Service by any unauthorised person.
- 5.3 The Client is solely responsible for all use of the Services, including all fees and charges in connection therewith, notwithstanding that any use may have been fraudulent, illegal or not authorised by the Client, except where Order Up Group has knowledge of such fraudulent, illegal and/or unauthorised use and fails to inform the Client or fails to seek to limit or prevent such use.
- 5.4 Nothing in clause 5.3 will be construed as imposing an obligation on Order Up Group to monitor, detect and/or report fraudulent, illegal or unauthorised use of the Services.

6. Representatives

- 6.1 The Client must appoint and notify to Order Up Group in writing a representative to undertake and manage all the responsibilities and obligations of the Client under this Agreement and all Contracts. ("**Representative**").
- 6.2 If the Representative is replaced or removed, the Client must notify Order Up Group immediately of this replacement or removal.
- 6.3 The Client will be liable for all acts and omissions of its Representative.

7. Payment of Charges

- 7.1 Charges and rates shall be as set out in the applicable Service Order. The Client must make all payments to Order Up Group in accordance with such rates and charges.
- 7.2 Unless otherwise provided on an invoice, the Client will pay the Charges to Order Up Group within thirty (30) days of receipt of each invoice.
- 7.3 The Customer must complete and submit to Order Up Group a completed Payment Authority Form upon execution of this Agreement.
- 7.4 If the Client directs Order Up Group in writing to alter or vary the Services, or provide additional services, Order Up Group may provide to the Client a separate offer to supply such services at fees determined by Order Up Group. All additional Facilities and/or extra working hours incurred due to the Client's requirements and not included in a Contract shall be charged additionally at Order Up Group's then current rates.
- 7.5 If, as a consequence of the supply of incorrect information by the Client, the cost to Order Up Group of providing services is increased, Order Up Group reserves the right to charge extra fees at its then current rates.

Late payment

- 7.6 If the Client fails to pay any amount due in accordance with the invoice, this Agreement or any Contract, Order Up Group shall be entitled, in addition to any other remedy that it might have, to:
 - 7.6.1 charge the Client's credit card for the amount overdue in accordance with the executed Payment Authority Form;
 - 7.6.2 charge interest on overdue invoices from the due date until payment (whether before or after judgement) at a rate of 5 per cent **per annum** calculated daily. Interest shall continue to accrue on any unpaid amounts due to Order Up Group notwithstanding termination of this Agreement for any reason;
 - 7.6.3 suspend the provision of Services; and/or
 - 7.6.4 terminate this Agreement or any Contract.
- 7.7 The Client shall indemnify Order Up Group fully for all reasonable expenses whatsoever, including but not limited to all legal and collection agency fees, incurred either directly or indirectly in enforcing its rights under this Agreement.

Charge Disputes

- 7.8 Unless otherwise agreed in any Contract, Order Up Group will deliver, via email, its invoices in respect of the Services and Facilities provided under each Contract monthly in advance to the Client. Charges which are dependant on Client usage will be invoiced monthly in arrears. All invoices must be paid on the due date for payment prescribed on the invoice.
- 7.9 Order Up Group, at its discretion, may impose an administration fee for Client requests for postal deliveries or reprints of invoices.
- 7.10 Unless otherwise indicated, all sums due to Order Up Group are exclusive of GST, for which the Client shall be additionally liable and which shall be invoiced at the prevailing rate, and Order Up Group shall be entitled to claim from the Client, any further sum of money in respect of such taxes including GST. The Client must pay such taxes, including GST at the same time as the charges for each service are paid to Order Up Group.

Fee indexation

- 7.11 Should a Contract continue, notwithstanding the passing of the Contract's expiry date as in accordance with clause 2.3, the charges in respect of the Contract will be increased every twelve (12) months after the date of the relevant Service Order in proportion to the CPI increases for the twelve (12) month period preceding the charge increase.

8. Service Suspension

- 8.1 Order Up Group may, at its sole discretion and without prejudice to any right which it might have to terminate a Service, elect to suspend forthwith the provision of a Service until further notice if:
 - 8.1.1 Order Up Group has reasonable grounds to terminate the Service under clause 14;
 - 8.1.2 Order Up Group is obliged to comply with an order, instruction or request of a court, government, agency, emergency service organization or other competent administrative or regulatory authority;
 - 8.1.3 Order Up Group has reasonable grounds to believe that Client will not or is unable to pay invoices falling due;

- 8.1.4 Order Up Group has reasonable grounds to believe that the Service is being used fraudulently, illegally or in association with illegal activities or otherwise not in accordance with any applicable acceptable use policy;
 - 8.1.5 the Client is subject to any bankruptcy, winding up or analogous insolvency order or proceeding; or
 - 8.1.6 any invoice payable by the Client is more than 14 days in arrears.
- 8.2 In the event that any suspension made pursuant to clause 8.1 is implemented as a consequence of the breach, fault, act or omission of the Client, the Client shall pay Order Up Group all reasonable costs and expenses incurred by the implementation of such suspension and/or recommencement of the provision of the Services and Order Up Group may recover any other losses suffered as a result of such breach, fault, act or omission.

9. Intellectual Property

Order Up Group Intellectual Property

- 9.1 The Client acknowledges that Order Up Group owns all Intellectual Property subsisting in the Services and any documentation supplied by Order Up Group in connection with the Services. Nothing in this Agreement, the Contract or Service Order transfers ownership of any of the Intellectual Property subsisting in the Services or related documentation.
- 9.2 Order Up Group remains the owner or licensee of any Intellectual Property created or developed as a result of the provision of Services to the Client ("**Works**").
- 9.3 The Client must take all reasonable actions to protect the Intellectual Property rights comprised in the Works and in the Facilities provided by Order Up Group.
- 9.4 Should any Works be under the ownership of a third party, these Works remain the property of that third party.
- 9.5 Order Up Group grants to the Client a revocable non-exclusive licence to use the Works for the purpose of and to the extent necessary to allow Order Up Group to perform its obligations under this Agreement.

Software

- 9.6 The Client shall not copy or reproduce software provided by Order Up Group by any means or in any form without Order Up Group's prior written consent.
- 9.7 The Client shall not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of any software developed, licensed, or provided by Order Up Group (in connection with the Services or otherwise).

10. Confidentiality

- 10.1 Each party, including their officers, employees, agents and Representatives shall protect as confidential, and shall not disclose to any third party, any Confidential Information. The foregoing restrictions on use and disclosure of Confidential Information do not apply to information that:
 - 10.1.1 is in the possession of the receiving party at the time of its disclosure and is not otherwise subject to obligations of confidentiality;
 - 10.1.2 is or becomes publicly known, through no wrongful act or omission of the receiving party;
 - 10.1.3 is received without restriction from a third party free to disclose it without obligation to the disclosing party;
 - 10.1.4 is developed independently by the receiving party without reference to any Confidential Information, or
 - 10.1.5 is required to be disclosed by law, regulation, court or governmental order.
- 10.2 Clause 10.1 shall survive the termination of this Agreement.

11. Privacy

Disclosure

- 11.1 Each Party warrants to the other that:
 - 11.1.1 any Personal Information that it discloses to the other under this Agreement or any Contract has been collected in accordance with the Privacy Act as amended from time to time;
 - 11.1.2 the individual to whom the information relates has been made aware of the recipient's identity, the recipient's contact details and of the other details of which the recipient is required to inform a person about whom it collects information under the Privacy Act; and
 - 11.1.3 the other Party is authorised to collect the information for the disclosure and use for the purposes of this Agreement and any Contract.

Collection

- 11.2 If a Party discloses Personal Information under this Agreement to the other Party, the recipient must:
 - 11.2.1 not use, disclose, collect, or handle the information except in accordance with the Privacy Act;
 - 11.2.2 only use or disclose the information the purposes of this Agreement or any Contract, or as required by law;
 - 11.2.3 co-operate with any reasonable request or direction of the discloser which relates to the protection of the information or the exercise of the functions of the Privacy Commissioner under the Privacy Act; and
 - 11.2.4 ensure that access to the information by its employees, Representatives and subcontractors is limited to those who require access for the purposes of this Agreement or any Contract that they comply with the requirements of this clause and of the Privacy Act.

Complaints

- 11.3 Each party must promptly notify the other in writing of any complaint that it receives concerning the use, disclosure, collection, or handling of Personal Information and respond to any reasonable direction of the other in relation to a complaint arising from this.

12. Warranties

- 12.1 Each party represents and warrants to the other on a continuing basis that it does not act as trustee for any trust (unless otherwise notified) and has the power to enter into and perform this Agreement, subsequent Contracts and all related transactions.
- 12.2 Order Up Group shall perform its obligations pursuant to this Agreement in a reasonable and proper manner, to a standard generally acceptable within the industry and in accordance with any agreed Service Levels.

13. Liabilities and Indemnities

Liabilities

- 13.1 To the maximum extent permitted by law, Order Up Group's Liability to the Client in contract, tort, (including negligence or breach of statutory duty) or otherwise arising out of or in connection with this Agreement to provide any Services, is limited, in the decision of Order Up Group, to: (i) the supplying of the Services again; or (ii) the payment of the cost of having the Services supplied again. Nothing in this clause 13 operates to exclude, restrict or modify the application of any provision of the Competition and Consumer Act 2010 (Cth) or any equivalent legislation, or any rights conferred or liability implied by such provisions.
- 13.2 To the maximum extent permitted by law, neither party shall be liable to the other for indirect or consequential losses or otherwise for harm to business, lost revenues, loss of anticipated savings or lost profits.
- 13.3 The Client shall indemnify and shall hold Order Up Group, and each of its directors, officers, employees and agents, harmless against any and all Liability and Claims arising from the provision of the Services, including any Liability and Claim by any third person arising directly or indirectly as a result of the Client's use or misuse of the Services unless the Liability or Claim results directly from any breach by Order Up Group of its obligations under this Agreement. This clause 13 shall survive termination or expiration of this Agreement.
- 13.4 Order Up Group shall be under no liability to the Client in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of services supplied pursuant to this Agreement or in respect of a failure or omission on the part of Order Up Group to comply with its obligations under this Agreement.

Indemnities

- 13.5 The Client shall at all times indemnify and hold harmless Order Up Group and its officers, employees and agents ("those indemnified") from and against any Claims or Liability incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such Claim or Liability was in consequence of or resulting directly out of:
 - 13.5.1 a breach by the Client of its obligations under this Agreement; or
 - 13.5.2 any willful, unlawful or negligent act or omission of the Client; or
 - 13.5.3 the supply, performance or the use of the Services by the Client, to any third party;except to the extent that the Liability or Claim is caused by Order Up Group's acts or omissions
- 13.6 The aggregate liability of the Client for loss sustained by Order Up Group in connection with this Agreement is limited to an amount equal to three (3) times the total fees paid and payable to Order Up Group under this Agreement (where "payable" means amounts that have not been paid but which would be payable if both parties were to continue to properly perform all of their respective obligations under this agreement, and is not limited to amounts have become due and payable). The limit in this clause does not apply in relation to liability:
 - 13.6.1 for personal injury (including sickness or death);
 - 13.6.2 for loss of, or damage to, tangible property; or
 - 13.6.3 under clauses 9 (intellectual property), 10 (Confidentiality), or 11 (Privacy)
- 13.7 Order Up Group shall at all times indemnify and hold harmless the Client and its officers, employees and agents ("**those indemnified**") from and against any Claims or Liability incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such Claim or Liability was in consequence of or resulting directly out of;
 - 13.7.1 any wilful, unlawful or negligent act or omission of the Client; or
 - 13.7.2 breach of any obligation of confidence of privacy by Order Up Group; or
 - 13.7.3 claim that the Services infringe the intellectual property rights of any third party;except to the extent that the Liability or Claim is caused by the Client's acts or omissions.
- 13.8 The aggregate liability of Order Up Group for loss sustained by the Client in connection with this Agreement is limited to an amount equal to the total fees paid by the Client to Order Up under this Agreement in the preceding twelve (12) month period. The limit in this clause does not apply in relation to liability:
 - 13.8.1 for personal injury (including sickness or death);
 - 13.8.2 for loss of, or damage to, tangible property;
 - 13.8.3 which arises where the Services infringe the intellectual property rights of any third party.
- 13.9 Except as expressly set forth in this Agreement or any mutually agreed variations to this Agreement, all warranties, representations or agreements whether oral or in writing and whether express or implied, either by operation of law, statutory or otherwise, including any implied warranties of merchantability or fitness for a particular purpose, are hereby expressly excluded to the maximum extent permitted by law.
- 13.10 Any payment to be made pursuant to this clause 13 must be fully paid within thirty (30) days of written demand

Release

- 13.11 The Client agrees to use the Services at its own risk. The Client hereby releases to the fullest extent permitted by law Order Up Group and its contractors, servants and agents from all Claims and demands of every nature resulting from or in relation to:
 - 13.11.1 any statement, representation, warranty, promise, undertaking or agreement in connection with the provision of the Services unless the same is specified in the Agreement;

13.11.2 any Liability by the Client in consequence of or resulting directly or indirectly out of the supply, performance or the use of the Services by any third party or out of any breach, default, fault or negligence of Order Up Group in or in connection with the Agreement or otherwise except to the extent the Liability arises under an express obligation or a warranty in the Agreement;

13.11.3 any loss of or interruption to data or computer time, loss due to any inaccuracy, alteration or erroneous transmission of data, unauthorised access to data processed or transmitted by, to or through the Services, software errors or the infringement of any intellectual property rights of the Client or any other person; or

13.11.4 suspension or termination of the Services in accordance with the terms of the Agreement or as otherwise directed by any authority

14. Termination of Agreement

14.1 Either Party may terminate this Agreement immediately if:

14.1.1 the other Party has committed a material breach which is incapable of remedy;

14.1.2 the other Party has committed a material breach which is capable of remedy but which it fails to remedy within thirty (30) days of having been notified of such breach; or

14.1.3 if the other Party has a receiver or administrator appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (other than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect or if the other party becomes subject to an administration order, enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business, or undergoes or is subject to any insolvency or analogous acts or proceedings under any applicable law.

14.2 Termination of the provision of any Service shall not relieve the Client of its obligation to pay any charges due, owing or incurred hereunder. Charges for the Service terminated shall accrue up to the date of termination of the Service Order and shall include any charges or expenses incurred by Order Up Group in removing or disconnecting any equipment or Facilities following termination and any amounts due to third parties, which shall immediately become due and payable by Client.

Termination by Order Up Group

14.3 Without limitation to clause 14.1, Order Up Group may immediately terminate this Agreement or any Contract immediately by written notice to the Client if any of the following occurs:

14.3.1 the Client fails after Order Up Group has provided seven (7) days' notice to pay amounts due (and not under dispute under clause 7) under a Contract;

14.3.2 the Client uses the Services in a fraudulent, illegal or unauthorised manner;

14.3.3 the Client is in breach of an applicable law or any other regulatory authorisation required in respect of the use of the Services;

14.3.4 Order Up Group becomes aware or is advised by any regulatory authority that the provision of Services is illegal;

14.3.5 any consent application required for the provision of Services is denied and there is no reasonable chance that the provision of Services will be authorised at a later date;

14.3.6 termination of a lease of premises that are integral to Order Up Group's provision of Services; or

14.3.7 the Client materially breaches any Contract.

Effect of termination

14.4 Upon termination of this Agreement the Client must immediately cease using and, upon Order Up Group's written direction, return all property in its possession belonging to Order Up Group, including without limitation all equipment, Facilities and tangible embodiments of Confidential Information.

14.5 Should the Client be in breach of clause 14.4, Order Up Group may charge and continue to charge the Client over the period of such a breach.

14.6 If this Agreement is terminated by the Client before the expiry of the Term (unless terminated by the Client under clause 14.1) or is terminated by Order Up Group for breach of the Agreement by the Client then the Customer shall pay the Early Termination Charge in addition to any accrued charges.

14.7 Termination of the Agreement does not affect the accrued rights or liabilities of either party nor does it affect the provisions which expressly or by implication are intended to operate after termination.

15. Insurance

15.1 The Client shall obtain and maintain public liability insurance to insure itself against any liability arising out of or in connection with the utilisation of the Services or equipment, including cover for:

15.1.1 business interruption;

15.1.2 customer owned equipment (valued at the current recommended retail price of such replacement equipment); and

15.1.3 loss or damage to third parties arising out of, or in connection, with any act or omission of the Client.

16. Dispute Resolution

16.1 Where a Dispute arises between the parties, a party may give a written notice to the other parties to initiate the formal Dispute resolution process ("**Dispute Notice**"). All time periods in this clause 16 may be extended by agreement in writing.

16.2 The Dispute Notice must state that the notice is given under this clause 16, describe the nature of the Dispute and provide full disclosure of relevant information.

16.3 The parties must negotiate in good faith with a view to resolving the Dispute within 10 Business Days after the receipt of the Dispute Notice.

16.4 Each party must continue to perform its obligations under a Contract during a Dispute.

17. Force Majeure

Neither party shall be liable for any delay or failure in performance under this Agreement (other than the payment of money) resulting from acts beyond the control of such party, including without limitation acts of God, acts or regulations of any governmental or national or international authority, war or national emergency, terrorism, accident, fire, lightning, equipment failure, computer software malfunction or design defect, electrical power failure, telecommunication line or submarine cable failure, acts or omissions of other service providers, riot, strikes, lock-outs, industrial disputes or epidemics of infectious diseases.

18. Variations to Agreement

- 18.1 The provisions of this Agreement will not be varied, except by agreement in writing signed by the parties.
- 18.2 If either party wishes to vary this Agreement, the proposing party shall submit a copy of the proposed variations to the other party, specifying a reasonable period in which the other party is to provide written notice of acceptance or rejection of the proposal. If the party receiving a notice to vary the Agreement accepts such a notice, the Agreement will be deemed to be so amended from the date of acceptance.
- 18.3 If the party receiving a notice to vary the Agreement rejects such a notice, each party will perform the Agreement in accordance with the unvaried terms.

19. GST and Claims

- 19.1 If a payment to satisfy a claim or right to claim under or in connection with this Agreement (for example, for misleading or deceptive conduct or for misrepresentation or for a breach of any warranty or for an indemnity or for reimbursement of any expense) gives rise to a liability to pay GST, the payer must also pay, and indemnify the payee against, the amount of that GST.
- 19.2 If a party has a claim under or in connection with this Agreement for a cost on which that party must pay GST, the claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit).
- 19.3 If a party has a claim under or in connection with this Agreement and the amount of the claim depends on actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

20. Notices

Form

- 20.1 Any notice must be in writing and signed by the sender.

Service Method

- 20.2 Any notice may be served by delivery in person, by post, facsimile transmission or email to the postal or email address or number of the recipient specified in the relevant Service Order.

Receipt

- 20.3 Any notice is effective for the purposes of this Agreement upon delivery to the recipient or the recipient's email account or production to the sender of a facsimile transmittal confirmation report prior to 4.00 pm local time on a Business Day in the place in or to which the written notice is delivered or sent or otherwise at 9.00 am on the next Business Day following delivery or receipt.

21. General Provisions

- 21.1 Order Up Group may novate or assign its rights, benefits and obligations under this Agreement to a third party. The Client hereby consents to such novation or assignment, and upon novation to a third party, releases Order Up Group from its obligations under this Agreement. The Client will do all things reasonably necessary on its part to perfect any assignment or novation of this Agreement.
- 21.2 Order Up Group may use sub-contractors to perform its obligations under this Agreement.
- 21.3 This Agreement expresses the entire understanding of the parties and replaces any and all former Agreements, understandings, solicitations, offers and representations relating to Order Up Group's performance in connection with this Agreement and contains all the terms, conditions, understandings, representations and promises of the parties hereto.
- 21.4 This Agreement may be executed in counterparts by the respective parties. Each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same, provided that this Agreement will be of no force and effect until the counterparts are exchanged.
- 21.5 Each Service Order may be executed in counterparts by the respective parties. Each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same, provided that the Service Order will be of no force and effect until the counterparts are exchanged or receipt of a Service Order submitted by the Client through the online website of Order Up Group has been confirmed by Order Up Group by return email.
- 21.6 Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.
- 21.7 This Agreement shall be governed by the laws of the State of New South Wales, and the parties irrevocably agree to the non-exclusive jurisdiction of the courts of the State of New South Wales.
- 21.8 The warranties, conditions and provisions of this Agreement which are capable of having effect after the expiration of the Agreement will remain in full force and effect following the expiration of the Agreement.
- 21.9 Failure by either party to exercise or enforce any right or benefit conferred by this Agreement shall not be deemed to be a waiver of any such right or benefit nor operate so as to bar the exercise or enforcement thereof or of any other right or benefit on any later occasion.
- 21.10 Upon notification to the Client, the Client agrees to be a reference account for Order Up Group and permits Order Up Group to use its name, executives and products in press releases, advertising, and other marketing and promotional materials.
- 21.11 The Client acknowledges that a breach of this Agreement by Client may cause irreparable harm to Order Up Group for which damages may not be an adequate remedy, and that Order Up Group is entitled to seek injunctive relief to prevent the Client from doing anything that is or may be in breach of this Agreement. Such relief will be in addition to any other remedies available to Order Up Group at law or in equity.

21.12 If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement will remain otherwise in full force and effect apart from such provision which will be deemed deleted.

22. Definitions

In this document the following definitions apply:

Agreement means this master services agreement in respect of the supply of Services from time to time.

Business Day means any day on which trading banks generally are open for business in Sydney.

Claim means any claim or cause of action in contract, tort or under statute or otherwise.

Charges means the charges detailed in the Service Order.

Contract has the same meaning given in clause 1.3 of this Agreement.

Confidential Information means the confidential information of a party which relates to the subject matter of this Agreement.

Corporations Act means the *Corporations Act 2001*(Cth) and any regulations made under it.

CPI means the Consumer Price Index (All Groups) published by the Australian Bureau of Statistics from time to time or such published price index agreed by the parties acting reasonably.

Client Premises means any premises owned or occupied by the Client as further described in a relevant Service Order or at which Order Up Group equipment or Facilities are located.

Dispute means any dispute in respect of any matter or thing concerning or arising under this Agreement.

Dispute Notice has the meaning given to that term in clause 16.1.

Documentation means operating manuals, and other printed materials including users' manuals, which are designed to assist or supplement the understanding or application of a Facility.

Early Termination Charge is an amount calculated as 100% of all recurring Charges and committed setup fees that, but for the early termination, would have been paid by the Client between the date of the termination and the date of the expiry of the Term.

Effective Date means the date of signing this Agreement.

Emergency Maintenance means Maintenance carried out at a time other than during Order Up Group's normal business hours or Maintenance which requires a response time shorter than ten (12) hours.

Order Up Group means Order Up Group Pty Ltd ACN 608 497 883, of Suite A24, 24 Lexington Drive, Bella Vista, NSW Australia 2153

Facility means any facility, being physical or electronic, that facilitates the Services.

Force Majeure means any occurrence or omission as a direct or indirect result of which the party relying on it is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this Agreement and that is beyond the reasonable control of that party, including forces of nature, industrial action and action or inaction by a government agency.

GST includes any value added tax, consumption tax, gross receipts tax or any other tax or charge or impost of a similar nature payable in respect of goods and/or services supplied, consumed or otherwise in connection with this Agreement including any such tax levied charged or assessed under A New Tax System (Goods and Services) Tax Act 1999.

Installation means the installation of any equipment or Facilities.

Intellectual Property means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

Liability means charges, claims, payments, actions, judgments, damages, losses, costs, fees, expenses, liabilities and obligations.

Maintenance means maintenance carried out at regular intervals in order to ensure that any equipment or Facilities owned or licensed to Order Up Group remains in working order. Preventative Maintenance includes, but is not limited to, inspection, repairs, coding, adjustment and replacement of unserviceable or defective parts.

Maintenance Services means the Maintenance and Emergency Maintenance services.

Payment Authority Form means the direct debit authority form or credit card authority annexed to this Agreement as Annexure A.

Personal Information means "personal information" as defined in the Privacy Act.

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

Representative means any director, officer, employee or agent appointed by a party under clause 6.

Service Levels means the levels of service (if any) applicable to a Contract as set out in the relevant Service Level Agreement.

Service Order means a document (whether on-line or in hard copy) in a form approved by Order Up Group that includes details of the Client, Service and any commercial terms applicable to the provision of Services.

Services means any service provided by the Company including and not limited to the services described in the Service Order.

Term means the term detailed in the Service Order.

Works has the meaning given to the term in clause 9.2.

23. Interpretation

23.1 In the interpretation of this Agreement and any Contract, the following provisions apply unless the context otherwise requires:

- 23.1.1 Where the context so requires words denoting the singular include the plural and vice versa and words denoting any gender include all genders.
- 23.1.2 Clause headings are for ease of reference only and do not affect the interpretation of this Agreement.
- 23.1.3 References to Clauses are to Clauses of this Agreement.
- 23.1.4 References to each party herein include references to its successors in title, permitted assigns and novatees.