

## MASTER SERVICES AGREEMENT AUS 210927

- A. This Agreement contains, among other things, warranty disclaimers, liability limitations and use limitations.
- B. Except as otherwise permitted by this Agreement, no variation to its terms will be effective unless in writing and signed by both the Company and the Customer.

### 1. Cloud Service and Implementation Services

Subject to the terms of this Agreement, the Company will use commercially reasonable efforts to provide the Customer the Services (collectively the Cloud Service and Implementation Services) in accordance with the following terms:

- a) **Support Terms** The Company will provide technical support to the Customer via both telephone and email on weekdays during the hours of 9:00 am through 5:00 pm Sydney time, with the exclusion of standard public holidays in New South Wales (“**Support Hours**”). The customer may initiate a helpdesk ticket during Support Hours emailing [support@nplan.io](mailto:support@nplan.io). The Company will use commercially reasonable efforts to respond to all Helpdesk tickets within one to three business days.
- b) **Advisory Terms** The Company will provide the Customer with the risk management and advisory services (collectively, “Advisory Services”) in relation to the Services and as specified in the Ordering Document. The Company will perform the Advisory Services with reasonable due care and skill, noting that any results or recommendations provided as part of the Advisory Services are based upon the instructions and information provided by the Customer and there is no guarantee or promise provided by the Company with respect to achieving a particular outcome or result.

### 2. Restrictions and Responsibilities

Except as otherwise permitted by local copyright legislation or agreed to in writing by the Company, the Customer must not reverse compile, disassemble, remove, release, disclose, reveal, copy, extract, modify or otherwise reverse engineer all or any part of the Services or any software, documentation or data related to the Services.

With respect to any Services that are distributed or provided to the Customer for use on the Customer’s premises or devices, the Company hereby grants the Customer a non-exclusive, irrevocable, non-transferable, non-sub-licensable license to use such Services during the Term only in connection with the Services. At termination of this Agreement, the license identified above shall be revocable by the Company.

The Customer represents, covenants, and warrants that the Customer will use the Services only in compliance with this Agreement and all applicable laws and regulations.

The Customer hereby agrees to indemnify and hold harmless the Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and legal fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from the Customer's use of Services. Although the Company has no obligation to monitor the Customer's use of the Services, the Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

The Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). The Customer shall also be responsible for maintaining the security of the Equipment, the Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of the Customer account or the Equipment with or without the Customer's knowledge or consent.

### **3. Confidentiality and Proprietary Rights**

Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (referred to as "Proprietary Information" of the Disclosing Party).

Proprietary Information of the Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of the Customer includes non-public data provided by the Customer to the Company to enable the provision of the Services ("Customer Data").

The Receiving Party agrees:

- (i) to take reasonable precautions to protect such Proprietary Information, and
- (ii) not to use (except in performance of the Services or as otherwise permitted in this Agreement) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

The Customer shall own all right, title and interest in and to the Customer Data. The Company shall own and retain all right, title and interest in and to (a) the Services, all improvements,

enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

Notwithstanding anything to the contrary, the Company shall have the right to collect and analyse data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and the Company will be free (during and after the term) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.

No rights or licenses are granted except as expressly set out in this Agreement.

#### **4. Payment of Fees**

The Customer will pay the Company the then applicable fees described in the Ordering Document for the Services in accordance with this Agreement (the “Fees”).

If the Customer believes that the Company has billed the Customer incorrectly, The Customer must contact the Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to the Company’s customer support department.

The Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by the Company thirty (30) days after the mailing date of the invoice.

Unpaid amounts are subject to an interest charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of the Services.

Where applicable, any goods or services tax, charge, impost or duty payable in respect of this Agreement or the supply of any goods or service made under or in respect of this Agreement and any other taxes, duties or levies will be paid by the Customer at the then-prevailing rate.

#### **5. Term and Termination**

Subject to earlier termination as provided below, this Agreement is for the Service Term as specified in the Ordering Document.

In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days’ notice (or without notice in the case of non-payment), if

the other party materially breaches any of the terms or conditions of this Agreement. The Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, the Company will make Customer Data available to the Customer in a form the Company deems appropriate for a period of thirty (30) days, but thereafter the Company may, but is not obligated to, delete stored Customer Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

## **6. Warranty and Disclaimer**

The Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimises errors and interruptions in the Services and shall perform the Implementation Services in a professional and proper manner.

Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by the Company or by third-party providers, or because of other causes beyond the Company's reasonable control, but the Company shall use reasonable efforts to provide advance notice in writing or by email of any scheduled service disruption. However, the Company does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services.

While all due care has been taken, the Company does not warrant that the operation of the Services will be uninterrupted or error free or that any third party components of the Services, will be accurate or error free or that the Services will be compatible with any application, program or software not specifically identified as compatible by the Company.

The Company's obligation and the Customer's exclusive remedy during the Service Term are limited, in the Company's absolute discretion, to:

- (a) The Company, at its own expense, using all reasonable endeavours to rectify any non-conformance of the Services by repair (by way of a patch, workaround, correction or otherwise) within a reasonable period of time; or
- (b) a refund of the Fees paid if, in the Company's reasonable opinion, it is unable to rectify such non-conformance within a reasonable timescale or at an economic cost, whereupon this Agreement will terminate.

The Customer acknowledges and accepts that it is the Customer's sole responsibility to ensure that:

- (a) the facilities and functions of the Services meet the Customer's requirements;
- (b) the Services are appropriate for the specific circumstance of the Customer and are within the laws and regulations of the Customer's jurisdiction.

- (c) the Company does not purport to provide any legal, taxation or accountancy advice by providing the Services under this Agreement.

The Company will not be liable for any failure of the Services to provide any function not described in this Agreement or any failure attributable to:

- (a) any modification to the Services other than by the Company;
- (b) accident, abuse or misapplication of Services by the Customer;
- (c) use of the Services with other software or equipment without the Company's written consent;
- (d) use of other than the latest, unaltered current release of the Services;
- (e) or use other than in accordance with this Agreement.

If, upon investigation, a problem with the Services is determined not to be the Company's responsibility, the Company may invoice the Customer immediately for all reasonable costs and expenses incurred by the Company in the course of or in consequence of such investigation.

## **7. Indemnity**

The Customer will at all times indemnify and hold harmless the Company and its officers, employees and agents in respect of any third party claim for any injury, loss, damage or expense occasioned by or arising directly or arising directly or indirectly from:

- (a) a breach by the Customer of its obligations under this Agreement;
- (b) any wilful, unlawful or negligent act or omission of the Customer.

## **8. Limitation on liability**

Except in the case of death or personal injury caused by the Company's negligence, the aggregate liability of the Company under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the fees paid by the Customer to the Company for the Services under this Agreement in the 12 months prior to the act that gave rise to the liability, in each case, whether or not the Company has been advised of the possibility of such damages.

Neither party is liable to the other party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill, including without limitation where any such loss, damage, costs or expenses arise from the use of any reports or information generated as part of the Services or the adoption of any such reports or information or advice provided as part of the Advisory Services.

## 9. General

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

This Agreement is not assignable, transferable or sublicensable by the Customer except with the Company's prior written consent. The Company may transfer and assign any of its rights and obligations under this Agreement without consent.

This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in writing signed by both parties, except as otherwise provided in this Agreement.

No agency, partnership, joint venture, or employment is created as a result of this Agreement and the Customer does not have any authority of any kind to bind the Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and legal fees.

All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognised overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

This Agreement shall be governed by and construed in accordance with Australian Law and the parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales in respect of any claim, dispute or difference arising out of or in connection with this Agreement.