
Terms of Engagement - Solutions Outsourced Pty Limited (Sol Out)

1 Establishment of agreement & appointment

1.1 Establishment of agreement

- (1) Thank you for choosing Sol Out as your consultant to provide the Services.
- (2) The terms and conditions that are set out below are the conditions under which Sol Out will provide the Services to you.

1.2 Appointment

Upon commencement of the Services:

- (1) you appoint Sol Out as your consultant to provide the Services; and
- (2) Sol Out accepts its appointment as a consultant and agrees to provide the Services to you, on the terms set out in this agreement.

1.3 Term of appointment

The appointment referred to in clause 1.2 will continue until this agreement ends.

2 Services

2.1 Your responsibilities

- (1) You must promptly provide us with any information, facilities and assistance we ask you for (acting reasonably) that is necessary to allow us to perform the Services.
- (2) You should advise us of any services or products you wish to obtain from a third party that relates to the Services so we can attempt to ensure that any such services or products are compatible with the Services being provided by us to you.
- (3) You must obtain all necessary permissions and authorities in respect of your use of any data and other materials provided to Sol Out including, but not limited to, graphics, registered company logos, names and IP.
- (4) While Sol Out backs up and stores your data, you are ultimately responsible for your data. Sol Out will not be liable for any loss suffered by you as a result of:
 - (a) your failure to back up your data; or
 - (b) any deficiency or difference between Sol Out's stored data and your expectation of the content of that data.
- (5) You must promptly comply with any reasonable rules or directions imposed by Sol Out or the owners of any third party servers that it uses (either issued directly to you or through Sol Out).
- (6) You must promptly notify Sol Out of any change in your circumstances or change in the information that you have supplied to Sol Out which may affect the Deliverables or Sol Out's performance of the Services.
- (7) You are responsible for maintaining the security and protection of any details that you provide to Sol Out and that are used in connection with the Services.
- (8) You will be responsible for any costs incurred as a result of a third party's use and access to any of your accounts, regardless of whether such use was authorised or otherwise done with the knowledge or consent of Sol Out.
- (9) In the event that you cannot comply with your responsibilities, you must notify Sol Out in writing:
 - (a) that you cannot comply with your responsibilities;
 - (b) why you cannot comply with your responsibilities; and
 - (c) alternate options that will enable you to comply with your responsibilities.

2.2 Data Breach

- (1) If applicable, the parties to this document must comply with any obligations under the *Privacy Act 1998* (Cth).
- (2) If a party to this document is aware, or has reasonable grounds to suspect or believe, that there has, or may have been, an Eligible Data Breach as defined by the *Privacy Act 1998*

(Cth), the party who becomes aware of that breach must notify the other as soon as practicable.

- (3) If you are subject to obligations under the *Privacy Act 1998* (Cth) and believe you cannot comply with those obligations without the assistance of Sol Out, you must notify Sol Out in writing, within seven (7) days of becoming aware of your inability to comply with your obligations, of the type of assistance you require from Sol Out.
- (4) In the event that Sol Out provides you with assistance in complying with your obligations under the *Privacy Act 1998* (Cth), those services provided by Sol Out will fall outside of the scope of this document.

2.3 Consent to act on your behalf

- (1) You agree to Sol Out consenting, on your behalf, to any terms and conditions of any licence, software or other product that is necessary for Sol Out to provide the Services to you.
- (2) Upon consenting to any licence in accordance with the above, Sol Out will provide you with notice of this consent within a reasonable period after the consent has been given.

2.4 Third party services

You acknowledge that Sol Out, in our own right and at our discretion, may engage third party suppliers to perform some of the Services on your behalf and you authorise us to enter into Third Party Contracts with such third party suppliers on your behalf.

3 Fees and payment

3.1 Schedule of Fees

- (1) Sol Out will provide or make available to you, prior to or contemporaneously with this agreement, a schedule of fees detailing the fees Sol Out will charge for the provision of the Services (**Schedule of Fees**).
- (2) The Schedule of Fees will be deemed to be incorporated into this agreement and will form the basis of the fees which are payable by you to Sol Out (**Service Fees**).
- (3) The Schedule of Fees will change from time to time. If the Schedule of Fees does change then this agreement will be changed accordingly so that the fees that Sol Out will charge you for the provision of the Services will reflect the then current fees contained in the Schedule of Fees.
- (4) If we have provided you with a fixed quote for the Services, then any change to the Schedule of Fees in accordance with paragraph (3) will not change the amount of that fixed quote.
- (5) The amounts payable by you in accordance with the Schedule of Fees are exclusive of:
 - (a) all taxes and levies (such as GST); and
 - (b) any disbursements incurred by Sol Out in the course of performing the Services (other than as stated in the Schedule of Fees).

3.2 Terms of payment

- (1) If we ask you for a deposit before we begin performing the Services then we may, at our discretion, not begin performing the Services until that deposit is paid.
- (2) If Sol Out has performed part of the Services, but suspends the Services or terminates this agreement due to your inability to provide anything reasonably required by Sol Out, Sol Out reserves the right to retain any deposit and/or invoice you for any work that Sol Out has completed to date.
- (3) Sol Out will provide you with a tax invoice for the provision of the Services from time to time.
- (4) You must pay Sol Out within:
 - (a) the time stipulated on the invoice provided to you by Sol Out; or
 - (b) if there is no such date on the invoice, fourteen (14) days of the date of the invoice.
- (5) Interest will be payable on any overdue amount at the rate applicable under the then current interest rate:
 - (a) charged by the Commonwealth Bank of Australia from time to time for overdraft facilities for balances equal to the amount that is overdue;
 - (b) calculated daily and invoiced weekly; and
 - (c) from the due date for payment until the overdue amount is paid by you.

3.3 Suspension of the Services

If:

- (1) you fail to comply with any term of this agreement or any reasonable direction of Sol Out concerning the provision of the Services;
- (2) Sol Out is aware or suspects that the security of your details or accounts have been compromised; or
- (3) Sol Out becomes aware of any Claim relating to any information or data provided to Sol Out by you, then Sol Out may:
 - (a) from time to time without notice suspend the provision of the Services: and/or
 - (b) not provide you with the Deliverables until such time as the relevant matter is rectified by you.
- (4) If the Services are suspended under this clause then:
 - (a) Sol Out will not be liable to you for any Claim; and
 - (b) you indemnify Sol Out against any claim made by a third party, that arises as a result of the non-provision of those Services.

3.4 Payment by credit

It is an essential term of this agreement that you consent to us obtaining a credit reporting agency report in relation to you which may contain some of your personal information. It is important that we do this as we need to ensure that we can rely on you to pay any amounts owing to us under this agreement.

4 Warranties and indemnities

4.1 Sol Out warranties

- (1) Sol Out does not warrant that the Services will meet your requirements, other than as expressly set out in this agreement.
- (2) Sol Out will provide you with reasonable notice of the conduct of any system maintenance so that you are able to take any possible interruptions into account. However, in the event of urgent system maintenance Sol Out is not required to provide you with notice and will not be liable for any Claim that arises out of any resulting interruption to the Deliverables and/or your business as a result of urgent system maintenance.

4.2 Your warranties

- (1) You warrant that you will not do, or allow to be done any of the following acts in respect of your use of the Deliverables:
 - (a) Use the Deliverables for any immoral, fraudulent, obscene or illegal purpose.
 - (b) Infringe the IP of any third party.
 - (c) Distribute unsolicited advertising or spamming, monopolisation of services, propagation or transmission of code or software containing computer worms, viruses, trojan horses, key loggers, or any other harmful code or software.
 - (d) Reverse engineer, modify, decompile, disassemble, attempt to discover the source code of, or create derivative works based on any aspect of the Deliverables, nor permit anyone else to do so.
 - (e) Store, transmit, publish, distribute, disseminate, encourage or permit access to:
 - (i) defamatory conduct and material;
 - (ii) threatening, harassing or abusive conduct and material;
 - (iii) unsuitable material or conduct to a minor; or
 - (iv) any material or conduct that breaches Australian legislation and regulations.
 - (f) Access, modify, disrupt, endanger, or attempt to access, modify, disrupt or endanger the Services or Deliverables that you are not authorised to access or modify.
- (2) You warrant that:
 - (a) you will comply with all current and applicable Australian legislation, in particular Australian legislation concerning publications, privacy and data breaches;

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- (b) you will comply with all agreements, guidelines, rules, regulations, terms of use and policies of Sol Out or any third parties;
 - (c) Sol Out reserves the right not to use any data and other materials supplied by you if Sol Out, acting reasonably, deems that data or materials inappropriate or offensive;
 - (d) all necessary permissions and authorities in respect to data and other materials provided by you to Sol Out have been obtained and that supply of such data and other material will be regarded as a guarantee by you that all such permissions and authorities have been obtained;
 - (e) all of your IP is your property or is IP that you are permitted to use; and
 - (f) for the period of twelve (12) months after the date of expiration or termination of this document:
 - (i) you will not, or attempt or endeavour to, employ, engage, solicit or entice away from Sol Out any employee of Sol Out who you have had contract with in the twelve (12) months prior to the expiry or termination of this document; and
 - (ii) if you breach (i), you will be liable to pay Sol Out a sum equal to that employee's last annual gross taxable remuneration package paid by Sol Out as compensation for the loss and damage suffered by Sol Out.

4.3 Indemnities

You indemnify Sol Out against any Claim:

- (1) relating to the proper performance by Sol Out of its obligations under this agreement;
- (2) relating to the data and other materials provided by Sol Out at your request;
- (3) resulting from the failure of you to backup and store your own data;
- (4) resulting from the use of Sol Out's servers and the servers of third parties;
- (5) resulting from any interruption to the Deliverables and/or your business as a result of urgent system maintenance;
- (6) resulting solely from your use of the Sol Out IP or any third party IP other than in accordance with this agreement;
- (7) resulting from your fraudulent, negligent or unlawful behaviour;
- (8) relating to the data and other materials provided to Sol Out by you;
- (9) relating to the data and other materials provided to and used by a third party;
- (10) resulting from a breach of the terms of this agreement by you;
- (11) resulting from the use of the IP by you; or
- (12) resulting from your use or misuse of the Deliverables.

5 Intellectual Property and Confidential Information

5.1 Ownership

- (1) Any IP vested in you prior to the provision of the Services remains vested in you.
- (2) Unless otherwise agreed to between the parties in writing, any improvements made to your IP in the provision of the Services will remain vested at all times in Sol Out subject to Sol Out granting a fee-free licence to you to use that IP for the purpose of re-use of the Deliverables.

5.2 Ownership of the Sol Out IP

- (1) Title to the Sol Out IP and any improvements to it, whether made by you or Sol Out, remains vested at all times in Sol Out.
- (2) SilverStripe will, at all times, retain ownership of the SilverStripe IP.

5.3 Restricted conduct

- (1) You must not launch or attempt to launch a product or arrangement that is the same or similar to Sol Out or which uses Sol Out IP, without prior permission from Sol Out.
- (2) You must not do anything that is inconsistent with the IP of Sol Out or SilverStripe or which adversely affects the IP of Sol Out or SilverStripe.

5.4 Non-disclosure

A party must not disclose Confidential Information disclosed to it by the other party except:

- (1) with the prior written consent of the disclosing party; or
- (2) in accordance with the terms of this agreement.

5.5 Exceptions to non-disclosure

- (1) A party may disclose Confidential Information that has been disclosed to it:
 - (a) where such disclosure is made to those of its employees, advisers, related bodies corporate and shareholders who have a need to know (and only to the extent each has a need to know) and are aware and agree that the information that is to be disclosed must be kept confidential; or
 - (b) which, at the time of disclosure, is within the public domain; or
 - (c) where required by law or any order of any court, tribunal, authority or regulatory body.
- (2) You acknowledge and agree that Sol Out will not be in breach of this agreement if it uses information created by or provided to it during the provision of the Services (including images contained in the Deliverables) on its website for marketing and other purposes associated with its business. Further to this you consent to Sol Out using such information in that manner.

6 Limitation of liability

- (1) Sol Out is not responsible for any loss or damage (including any indirect or consequential losses such as loss of products, loss of profits, business interruption, loss of use, loss of data or of intellectual property) to your hosting, software, web systems or otherwise to your business that is caused by:
 - (a) latent or pre-existing technical faults with your computer systems or software currently installed;
 - (b) the integration and application of the Services to your existing computer systems, provided that integration and installation is in accordance with good industry practice;
 - (c) incorrect or insufficient information provided to Sol Out by you concerning the present condition of your computer systems;
 - (d) any agreement entered into in accordance with clause 2.4;
 - (e) any other act or omission of Sol Out, its employees or agents, except to the extent that any such Claim arises as a direct result of the negligence of Sol Out; and
 - (f) any act or omission by you, your employees or agents.
- (2) In the event that Sol Out is responsible for any loss or damage arising out of the provision of the Services, Sol Out will be liable only to the extent of the cost of Services actually paid by you at the time of the loss or damage.

7 Termination

- (1) This agreement terminates:
 - (a) upon either party giving the other party thirty (30) days written notice;
 - (b) where either party becomes subject to an Insolvency Event; or
 - (c) where a party is in breach of their obligations under this agreement and fails to rectify that breach within seven (7) days of receiving notice from the other party to do so, then the non-defaulting party may terminate this agreement immediately by giving notice in writing to the party in default.
- (2) If this agreement is terminated, you must pay Sol Out all money owing under this agreement on or before the date of termination.

8 Administrative provisions

8.1 Waiver

The failure of Sol Out at any time to require compliance by you to any provision of this agreement will not be deemed to be a waiver of any of its rights, unless Sol Out specifically agrees to such waiver in writing.

8.2 Authority

Each signatory represents and warrants that if has full power and authority (corporate or otherwise) to execute this agreement and any variations to this agreement, to bind their respective company.

8.3 Severance

If any provision of this agreement is found by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the validity of the other provisions of this agreement will not be affected and will continue to be valid and enforceable to the fullest extent permitted by law.

8.4 Force Majeure

Neither party will be deemed to be in breach of this agreement by reason of delay or failure in performing obligations (other than payment obligations) if the delay or failure was reasonably, and in all of the circumstances, beyond the relevant party's control.

8.5 Governing Law and Jurisdiction

This agreement will be deemed to have been made in the state of New South Wales, Australia and will be governed by the laws of that state. The parties agree to submit to the exclusive jurisdiction of the Courts of that state.

9 Definitions

Claim against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Confidential Information

means:

- (3) this agreement; and
- (4) **financial information:** information regarding costs, profits, markets, sales and other financial information; and
- (5) **business information:** information regarding business relationships and strategies, development plans, marketing, product concepts, trade secrets and other business information the business of the disclosing party and the disclosing party's clients or third party suppliers; and
- (6) **personal information:** any personal information relating to the officers (as defined in s9 of the *Corporations Act 2001*), partners, employees, agents, contractors or clients of the disclosing party; and
- (7) **information obtained through performance:** all information which becomes known to a party as a consequence of it performing the obligations under this agreement including (without limitation) all data information records, documents, accounts, plans, specifications, price lists, customer lists, correspondence, photos and papers of every description relating to the disclosing party; and
- (8) **technical information:** information regarding designs, development processes and tools, hardware specifications, know-how, production, research, software specifications, data bases and software developed or used by a party whether as owner or under licence from any person and other technical information; and
- (9) **disclosed information:** any other information disclosed by a disclosing party that:
 - (i) is identified as being confidential; or
 - (ii) would be apparent to a reasonable person that such information was disclosed in confidence by the disclosing party.

Deliverables

means any material (both intangible and tangible) that Sol Out

	agrees to provide you as part of the Services.
IP	means all intellectual property rights conferred by law including (without limitation): <ol style="list-style-type: none">(1) patents, designs, formulas, plans, specifications or other documents created in connection with the business of the relevant party; and(2) copyright, trademark, trade business, company names, business names, websites, URLs or email addresses; and(3) all other proprietary rights and all other intellectual property defined in Article 2 of the Convention establishing the World Intellectual Property Organisation (July 1967).
Services	means the services Sol Out agrees in writing to provide to you from time to time.
Sol Out IP	means all IP created or used by Sol Out in the performance of the Services other than the IP to which clause 5.1 applies.
Third Party Contracts	means any contract entered into with a third party relating to the provision of the Services.
