



Level^{UP}

MASTER SERVICES AGREEMENT

March 2022



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This master service Agreement forms the basis of Services provided to you by LevelUP Solutions Pty Ltd and applies to all products and Services we supply to you whether as principal or agent. Our Agreement with you includes clauses detailed in our Proposal, quotation, statement of works or other Services definition documentation, which you authorise and provide to us via, email or other portal access we provide.

INTERPRETATION

In this Agreement, unless the context requires otherwise:

“Agreement” means this agreement between us, which includes these standard terms and any accepted Proposal.

“Proposal” means a document we put together to record the basis upon which we will undertake for you, a particular Services or a particular project or assignment

“Charges” means our charges (exclusive of GST, unless stated otherwise) for the Services, as set out in the Proposal, which may include fixed charges, usage charges, additional fees and/or one-off fees.

“Connected” means connection to the network so that you are able to receive the Services.

“The Services” or **“Service”** means all or part of a service, which have been agreed to by the Parties as part of this Agreement or any subsequent additions or amendments.

“Software” means any software, which we provide to you for the purpose of you accessing or using the Services.

“Telecommunications Service Provider” means a provider of telecommunications services to the public in New Zealand or Australia.

“Term” means the initial Term of this Agreement as agreed between the parties as stipulated in this Agreement or other Proposal.

“Working Day” means a day on which registered banks are open for business in Queensland.

“Your Equipment” means the equipment that you provide so that you can use the Services.

“Our Equipment” is the equipment supplied and retained by us that may be located at your Premises or at another offsite facilities used in the delivery of The Services. We retain title and ownership of Our Equipment until we have received payment for it in full.

“Premises” means the location at which Our Equipment is situated or your offices and other office location

1. COMMENCEMENT OF SERVICES

1.1. Every signed Proposal/SDA/Agreement received by us shall be subject to our acceptance. On our acceptance we will countersign and provide a signed copy to you via return email.

1.2. Subject to our acceptance in 1.1 above, we will begin providing Services to you in accordance with the timeframe that is agreed in writing by both parties or, if no timeframe is agreed, within a reasonable timeframe.

1.3. Should any Services start before a stated agreement period, this agreement will be deemed to have been accepted and be in place for those services or supply of goods.

2. OUR COMMITMENT TO YOU

2.1. We may provide services to your business at your Premises. We have agreed that we may provide Services or goods (as a reseller) and other services to you pursuant to and according to the terms of this Agreement and of any purchase order issued by you from time to time.

2.2. Where we provide Services or supply goods or install Our Equipment at your Premises you will ensure our safety and the safety of Our Equipment and will meet all legal obligations you have to us in respect of your workplace and you will indemnify us for any liability loss or costs we may suffer consequent upon your failing to meet this obligation

2.3. We will comply with, and will ensure our employees, and contractors comply with, all rules, regulations and policies applicable to your Premises. We will ensure that our employees and contractors will only access your Premises and systems to the extent authorised by you.

2.4. We will assist you in any claims under warranty for repair/replacement of any goods made by you against the manufacturer of such goods where those goods have been sold by us pursuant to this Agreement, during the respective goods' warranty period. We retain ownership of all goods and Equipment supplied to you until we have received payment in full.

2.5. Every risk to any and all goods supplied pursuant to this Agreement remains with us until completion of delivery after which time you assume all risk, except when such goods are within your control before delivery in which event risk passes as soon as the goods are no longer under our control.

2.6. We will use all reasonable skill and care in providing goods and services under this Agreement. Further, we warrant that our employees and contractors have the requisite qualifications, skills and competencies required to provide the Services in accordance with this Agreement or any Proposal.

2.7. We will endeavour to remedy any fault or outage with the Service within the timeframe specified in the Proposal or otherwise within a reasonable timeframe.

2.8. Owing to operational or other reasons, we may from time to time restrict or suspend a Service. In those circumstances, we will give you as much notice as reasonably possible and will endeavour to ensure that suspensions or restrictions take place outside of normal business hours. Where we are restricting or suspending a Service in the case of an emergency or in order to protect people or property, or due to events beyond our reasonable control, we may not be able to give you any notice prior to such restriction or suspension, but will endeavour to inform you as soon as reasonably possible.

2.9. The Services can be adversely affected by radio interference, atmospheric conditions, geographic factors, network congestion, maintenance, outages on other networks and provider sites, the configuration or limitations of your, or your intended recipient's equipment, or other operational or technical difficulties which means that you may not receive some or all of the Services in certain areas or at certain times.

2.10. If The Services is interrupted as a result of our Equipment or other equipment or services supplied by us, failing for a period longer than twenty-four (24) hours we undertake to upon request by you, credit a portion of your monthly payment charges covering the period of interruption, provided that your equipment did not cause the interruption.

2.11. We do not warrant that your use of any of our infrastructure, Software or network services will be uninterrupted or error-free.

2.12. We are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and you acknowledge that our Service infrastructure may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

2.13. Where network services are used and because of the nature of telecommunications, it is impossible to provide a fault-free service. The quality and coverage of the Services depends partly on Your Equipment, partly Our Equipment, and partly on other Telecommunication Service Providers and telecommunications networks to which our network is connected or connects.

2.14. We acknowledge the importance of ensuring the health and safety of all persons present at your Premises. In the event that you notify us of any unsafe practice of our employees, agents or sub-contractors at your Premises we will immediately take all necessary actions to cease, or ensure the cessation of, the unsafe practice and will report to you on the remedial actions taken and if relevant, the future preventative measures put in place to avoid a recurrence.

3. YOUR COMMITMENT TO US

You agree:

- 3.1. not to use or permit the Services to be used in any way which is illegal, in any way abusive or which constitutes harassment or which causes harm or damage of any sort or contravenes our “Acceptable Use Policy” or other specific terms of use in relation to that Service, as notified by us to you from time to time;
- 3.2. not to use or permit the Services to be used in any way that could interfere with or damage our network or that of any other operator;
- 3.3. to follow our reasonable instructions about the use of the Services;
- 3.4. only to use the Services for the purpose for which they are provided.
- 3.5. you will ensure that all information you provide us is accurate and complete. This includes advising us promptly if you change premises or postal address.
- 3.6. you acknowledge that you are responsible for any use of the Services by you or by any third party, whether authorised by you or not.
- 3.7. you will, if we ask you to, obtain any third-party authorisation, license or consent that we may reasonably require in connection with the provision of the Services.
- 3.8. you agree to follow our instructions about the use of the Services and ensure that everyone who uses the Services in connection with the provision of our Services to you also meets your responsibilities when using the Services. You agree to keep us protected against any legal action taken against us and to meet any losses we may incur as a result of such use of the Services.
- 3.9. Using or agreeing to use the Services does not give you any rights in any part of the Services. you must not resell or assign your right to receive, in any way whatsoever, the whole or any part of the Services.
- 3.10. you will ensure that Your Equipment that is connected to the network and/or to Our Equipment is telepermitted and is installed in accordance with our specifications and;
- 3.11. to follow our reasonable direction about modifications that may need to be made to Your Equipment so that you can use the Services.
- 3.12. you agree that all requests for work involving our staff or contractors will be made through us directly.

3.13. You acknowledge that we are not a recruitment company. Whether in your personal capacity, or through the indirect capacity of an employee, agent or partner you are prohibited from recruiting, or attempting to recruit any of our employees, agents, staff or contractors.

4. CHARGES INVOICING & PAYMENT

4.1. All sums stated exclude GST. Full payment of all undisputed invoices presented by us, will be made by you within fourteen (14) days of the date you receive the invoice documentation. Invoices will be sent electronically (.pdf format) to an email account nominated by you.

4.2. Our Charges and the basis of those Charges for the Services are set out in this Agreement or otherwise as notified to you in writing or through our website from time to time and are subject to amendment as set out in the associated Application Form(s) or as otherwise notified to you from time to time.

4.3. You entitled to receive discounts from our standard labour rates under this Agreement; pricing will be defined and accepted on a case-by-case basis within subsequent Proposal, quotation, statement of works or Services definition documentation.

4.4. You agree to pay our Charges for the Services, regardless of who ultimately uses them. When paying any Charges, you will also at the same time pay us an amount equal to any GST payable on the supply. The Charges will apply from the date you are Connected.

4.5. We will invoice you for the Services we provide you at intervals applicable to the Service. Our Charges are structured so that fixed charges are normally payable in advance and other charges will normally be payable in arrears.

4.6. Where applicable, we may charge for some Services or certain Charges in arrears depending on when charges are received from other network operators and 3rd party service providers.

4.7. A minimum invoice value of \$10 plus GST per month applies. If the amount being invoiced to you in any given month is below this value, a top up charge will apply.

4.8. You agree to pay each invoice on or before the due date for payment and without set-off, counter claim or deduction.

4.9. Part payment of your invoice will not amount to a full and final settlement unless we have agreed to this in writing.

4.10. You agree that any outstanding invoices that are in arrears of 14 days from the due date will incur a late fee of \$20, applied to your next invoice.

4.11 You hereby charge all of your right in all of your property so as to better secure to us the payment of any debt owing by you to us from time to time.

5. DISPUTED ACCOUNTS

5.1 Disputed amounts should be notified to us within ten (10) days of receiving the invoice and will be dealt with by the parties in accordance with clause 18.

6. CREDIT ARRANGEMENTS

6.1. We are not obliged to begin providing Services to you until we have satisfied ourselves that you will be able to pay the Charges. If we have already commenced providing Services to you and we then receive an unsatisfactory credit check, we may stop providing any Services.

6.2. You understand that we are asking for personal information about you so as to use Equifax credit reporting service to complete a credit check. You understand that: Equifax will give us information about you for that purpose. We may use Equifax credit reporting services in the future for purposes related to the provision of credit.

6.3. Where required we may from time to time require you to make an advance payment or provide some other form of security to cover amounts payable by you under this Agreement. If this Agreement is terminated, we will return to you any security not required to cover outstanding amounts.

6.4. A default interest rate of 5% over the prevailing Commonwealth Bank commercial overdraft lending rate may apply to undisputed payments not made within twenty (30) days of the date you receive the invoice documentation. In the event of default in payment of any undisputed invoiced sums, you will pay all legal costs (including solicitors' fees on an indemnity basis, GST, and disbursements) incurred by us in relation to any attempt by us to recover or enforce payment of, any debt owing by you to us.

7. OUR EQUIPMENT

7.1. On occasion, Our Equipment may be supplied to you at your Premises as a component part of The Services. Ownership of Our Equipment and any part thereof will at all times remain with us and you must;

- a) Not remove Our Equipment from your Premises without prior written consent from us
- b) Not sell, lease, dispose of, charge, lend or otherwise part with possession of or encumber Our Equipment.
- c) Not deface, obliterate or remove any label or mark which identifies the ownership of Our Equipment or;
- d) Take reasonable precautions to protect Our Equipment from detrimental environmental conditions, electromagnetic interference, electrical interference or power fluctuations;
- e) Not do or allow any other act that may affect or prejudiced the ownership of Our Equipment at your Premises by us.
- f) Provide a safe and secure operating environment for Our Equipment at your Premises and carry insurance over your Premises that protects our Equipment from loss.
- g) Immediately provide access and all necessary assistance to us to collect Our Equipment from your Premises on termination or cancellation of this agreement.
- h) Be liable for any loss (including fire, theft or damage) of or to Our Equipment at your Premises. In the event of any such loss, theft or damage, you will immediately notify us.

7.2. In the event of a Civil Emergency (defined as any event that causes or leads to civil infrastructure disturbance or outage effecting greater than or equal to four (4) city blocks) The Services will be supplied on a best-effort basis.

7.3. Where the Service relies on Our Equipment being available to multiple parties for disaster recovery purposes;

- a) Unless otherwise defined, activation is operated on first in first service basis.
- b) The first up caller has first choice on the amount of Our Equipment they wish to engage.
- c) Additional activations are handled on a best-effort basis.

7.4. We reserve the right to charge you for the cost of de-installing, transporting and re-installing Our Equipment if you relocate your Premises.

8. YOUR EQUIPMENT

8.1. You will ensure that all of Your Equipment that is connected to the network and/or to Our Equipment is telepermitted and is installed in accordance with our specifications.

8.2. You agree to follow our reasonable instructions about modifications that you may need to make to Your Equipment so that you can use the Services.

8.3. Notwithstanding anything else in this Agreement, if Your Equipment causes a fault in the operation of a Service then you will, if we ask you to, pay us the reasonable costs of restoring that Service.

9. NETWORK OPERATORS & OTHER SUPPLIERS

9.1. We have certain obligations towards other network operators, agents and suppliers. Those persons (and their officers, employees, contractors and agents) will not be liable to you or anyone else for any claims, costs, damages, losses or other liabilities of any kind arising in any way from the Services we provide or from your use of those Services and our network, including (without limitation) your access to and use of any provider's site or network operator's networks.

10. SUSPENSION

10.1. In addition to any other right we may have under any agreement, we are entitled to disable and/or disconnect The Services on 48 hours' notice in the event of any non-payment or late payment of any charges or monies due to us.

11. TERMINATION

11.1. You will not seek to terminate this or other agreement before the end of the Term, unless agreed to in writing by both Parties. Thereafter any agreement will remain in force on a month-to-month basis until it is either updated, or terminated, by either party within the conditions in the agreement.

11.2. We may stop providing any Service or terminate this Agreement at any time by giving you no less than Sixty (60) days prior written notice, or such other period as may be agreed between both parties. We may end a Service at any time if we are withdrawing it from general availability or replacing it with a new service.

11.3. Subject to clause 12.5 below, you may give up any Service or terminate this Agreement at any time by giving us no less than sixty (60) days prior written notice.

11.4. Notwithstanding clauses 11.1 and 11.2 we may terminate this Agreement or any Service immediately where:

- a) You commit a material breach of this Agreement which is incapable of being rectified;
- b) You commit a material breach which is not rectified within thirty (30) days of written notice of that breach having been given to you by us;
- c) You commit three or more material breaches of this Agreement where notice has been given as stipulated immediately above in any twelve (12) month period;
- d) A receiver or manager over any or all of your assets is appointed;
- e) You or your director(s) or principal(s) go into liquidation, bankruptcy or receivership (or it appears that any of these events is likely to happen); or
- f) You are removed from the ASIC Companies Register.

12. CONSEQUENCES OF TERMINATION

When this Agreement is terminated:

12.1. Any Services provided will be discontinued and Network based Services will be disconnected;

12.2. each party must immediately return to the other any information, equipment or any other item which is in its possession and which belongs to the other party; and

12.3. We may access your Premises to remove Our Equipment. You must immediately provide access and all necessary assistance to us to collect Our Equipment. If we are unable to gain access, we may invoice you and you agree to pay the cost to replace the Equipment with a new and available item of equivalent specifications.

You acknowledge that:

12.4. the Charges for some Services are set based on the Term which you have agreed for that Service; and

12.5. if you give up any Service or terminate this Agreement under clause 11.3 or we terminate all or part of this Agreement under clause 11.5 prior to the expiry of the Term:

a) we may charge you (in which case you will be liable to pay) the monthly charges, as specified for that Service, for the period from the date of termination to the expiry of the Term, as compensation to us for the revenue which we would otherwise have expected to receive from you in respect of that Service over the Term;

b) You will repay any credit, equipment subsidy or installation subsidy we have given against your account, and

c) any credit remaining on the account will not be used to set off any Charges or early termination charges.

12.6. Termination and the rights set out in clause 12.4 are without prejudice to any other rights or obligations either party may have under this Agreement.

13. CONFIDENTIALITY, PUBLICITY AND PRIVACY

13.1. Each party agrees not to reveal any information concerning the provisions of this Agreement or information provided under it to any third party, other than:

- a) as required to perform its obligations or exercise its rights under this Agreement;
- b) as required by law or by the rules of any stock exchange;
- c) to its employees, agents and contractors in order to give effect to the purpose for which the information was provided;
- d) where the information is already in the public domain (but not where it is in the public domain as a result of a breach of this clause); or
- e) with the other party's written consent.

13.2. Each party agrees not to issue any press release or public statement concerning this Agreement without the other party's prior written approval.

13.3. If you are an individual, you agree that we can collect, retain and use any information about you and can pass it on to our employees, contractors, agents and suppliers for a range of lawful purposes connected with our business operations, such as checking your creditworthiness, providing the Services and keeping you informed about new products and services. You may ask to see the information that we hold about you at any time and you may ask us to correct any errors.

13.4. Where you disclose to us any information about a director, partner, principal or contact person, you confirm that:

- a) you are authorised by that person to make that disclosure for the purposes described above;
- b) that person has agreed that we can collect, retain and use any information about him or her and can pass it on to our employees, contractors, agents and suppliers for a range of lawful purposes connected with our business operations, such as checking his or her creditworthiness, providing the Services and keeping him or her informed about new products and services; and
- c) that person understands that he or she may ask to see the information that we hold about him or her at any time and he or she may ask us to correct any errors

14. SECURITY

14.1. We may require you to provide a Personal Identification Number (“PIN”) which will enable us to verify the identity of those who are authorised to have access to your account details with us and to make changes to your account. You are entirely responsible for maintaining the security of your PIN. We are entitled to rely on the provision of your PIN without further enquiry, as evidence of authority to access your account details and to make changes to your account.

14.2. Some Services are available via the internet or other systems operated by third parties and, although we will endeavour to maintain the security of information, we cannot guarantee that information you receive or supply when using the Services will be secure at all times. You acknowledge that we are unable to exercise control over and make no representations or warranties concerning, the security or content of data or information passing over our network, any systems operated by third parties, and the internet.

14.3. We will not be responsible for any harm you suffer from a virus or other manipulating program which infiltrates Your Equipment, whether it was transmitted via the Services or otherwise. In accordance with clause 4 you remain responsible for all Charges applied to your account for the use of any Services activated by such a virus or program.

15. INTELLECTUAL PROPERTY RIGHTS

15.1. Each party agrees that title to and all intellectual property rights in respect of any documentation standards, contracts, and business systems or other intellectual property belonging to the other party prior to the effective date of this Agreement, shall remain the property of that party. We agree to indemnify you for and against any third-party claims made against you under or in connection with this Agreement for breach of third-party intellectual property rights. Except where it is agreed in writing that you are paying us to develop any code, software or other copyrightable material for the purpose of transferring ownership of same to you, all such copyright shall remain our property.

16. LIABILITY

16.1. A party is not liable for any failure or delay in performing an obligation if it is due to a cause reasonably beyond the control of that party and that party has used its best endeavours to perform on time despite the cause.

16.2. You acknowledge that we will have no liability whatsoever for any loss of profits or any indirect or consequential loss or damage of any kind arising out of or in connection with the provision of the goods or services (including the Services) pursuant to this Agreement.

16.3. Where you are acquiring any Services for the purposes of a business, to the maximum extent permitted by law, you agree you will not assert or attempt to assert any rights or claims against us under the provisions of the Competition and Consumer Act 2010 in respect of the supply of those Services to you.

16.4. No claim for damage, loss or injury direct or indirect against us in respect of any Services supplied by us shall in any case exceed either the re-supply or the cost of re-supply of the Services giving rise to the claim against us and we reserve the right to elect either option at our absolute discretion.

16.5. In respect of Our Equipment, our liability shall be limited to the replacement of Our Equipment only, where such replacement shall be of reasonably equivalent quality and specifications by reference to what is commercially available to us at the time the replacement is required.

16.6. Notwithstanding any other clause in this Agreement, and to the maximum extent permitted by law, we will not be liable to you in tort (including negligence), contract or otherwise for any economic loss, loss of profit, loss of savings, loss of anticipated profit or savings, or for any indirect, special or consequential loss or damage, however caused, whether arising in relation to the supply or non-supply of any Services, any breach by us of this Agreement or otherwise.

16.7. No other network operator and/or third-party supplier (including their officers, employees, contractors and agents) will be liable to you for loss or damage of any kind arising from your use of the Services. This clause is intended to be for the benefit of, and enforceable by, each such network operator and third-party supplier.

16.8. Apart from the warranties expressly given to you in this Agreement, all other warranties, express or implied, are excluded (to the extent permitted by law).

16.9. You agree that we can make no warranties, or carry any liability that exceeds that specified in the terms of supply issued by the manufacturer/licensor to us in relation to goods

comprising hardware or software), except where the goods are faulty due to an act or omission of our employees, contractors or suppliers.

16.10. You will indemnify us against all claims of any kind whatsoever however caused or arising (including without limitation all sums paid to compromise or settle claims, proceedings and actions out of court) brought by any person in connection with:

a) any use by you of the Services other than in the manner contemplated by this Agreement;
or

b) any failure by you to meet your obligations under this Agreement.

16.11. You will reimburse us on demand for any expenses, disbursements and legal costs incurred by us in the enforcement of any of our rights contained in this Agreement (including all solicitor's fees and debt collection agency fees on an indemnity basis) where we are enforcing those rights as a result of your non-compliance with any of your obligations under this Agreement.

16.12. You acknowledge that you have not relied on any representation by us or any of our employees or agents as to the fitness for purpose, suitability or features of any Service, except where such representations are recorded in the relevant Proposal or this Agreement.

16.13. Our sole responsibility and liability in respect to The Services, where provided to you, pursuant to this agreement is to maintain The Services in good order and repair. You must notify us as soon as The Services is no longer in full working order. We will respond to such as soon as reasonably possible.

17. DISPUTE RESOLUTION

17.1. A party claiming a dispute that has arisen may give notice to the other party specifying the nature of the dispute. On receipt of that notice, the parties will use all reasonable endeavours to resolve the dispute by discussion, negotiation or other informal means.

17.3. The parties otherwise agree to the non-exclusive jurisdiction of the Queensland Courts in respect to the resolution any dispute or claim between them.

18. NOTICES

18.1. Any notice given to us pursuant to this Agreement must be in writing and be delivered by email to support@levelup.solutions

18.2 Any notice given to you pursuant to this Agreement may be given in writing and emailed to either (1) the email address you used to accept the terms of this Agreement, or (2) the last known email address used by you to correspond with us.

19. ENTIRE AGREEMENT, VARIATION & CONFLICT

19.1. We may update these terms and conditions by mutual agreement and with one month's notice in writing to you to do so.

19.2. This Agreement contains all of the terms, representations and warranties made between the parties and supersedes all prior discussions and agreements covering the subject matter of this Agreement

19.3. No variation or waiver of any provision of this Agreement shall be recognised or binding on us unless it is in writing and signed by our authorised representative.

19.4. If there is any inconsistency between the terms contained in this Agreement and in the Proposal, then the terms contained in the Proposal will take precedence.

19.5. This will vary our agreement with you. When we do this, we will make a copy of the amended standard terms available to you on our website at <https://levelup.solutions> The amendments we make will apply seven days after we make the amended terms available to you. We may interpret your ongoing use of our services after that date as constituting your acceptance of the amendments.

19.6. This document along with other relevant documentation to be signed by the parties simultaneously records the entire agreement and prevails over any earlier agreement, concerning its subject. Each variation to this Agreement must be in writing, signed by the contract authorities of the parties and attached to this document.

20. ASSIGNMENT

20.1. Neither party may assign, or otherwise deal with its rights or obligations under this Agreement, without the prior consent of the other party, such consent not to be unreasonable withheld or delayed.

21. FORCE MAJURE

21.1. Notwithstanding any other provision in this Agreement, neither party is liable to the other for failing to meet any of its obligations under this Agreement to the extent that the failure was caused by an act of God or other circumstance beyond that party's reasonable control.

21.2. Nothing in clause 21.1 shall release you from any obligation to make payment of sums owing to us when those sums are due and owing to us under this Agreement.

22. NON-WAIVER

22.1. If either party delays or fails to enforce any of its rights or remedies under this Agreement, this will not constitute a waiver by that party of that or any other right or remedy available to it.

23. TERMS SEPERATELY BINDING

23.1. Each term of this Agreement is separately binding. If for any reason either party cannot rely on any term, that term shall be severed and all other terms remain binding.

24. JURISDICTION

24.1. This Agreement shall be governed by the laws of Queensland.

25. APPLICATION OF THESE TERMS & CONDITIONS

25.1. We and you acknowledge that you may receive other products or services from us in respect of which specific terms and conditions (whether separately negotiated with us, or generally applicable in respect of that category of goods and service) might apply. In the event that such terms and conditions do not deal with any particular matter relating to the provision of those services, the terms and conditions set out in this Agreement shall apply. Otherwise, the provisions of the contractual documents provided in relation to the provision of those other services shall apply.