

PowerHouse Hub Customer Agreement

Version: February 2020



Terms and Conditions for the Supply of the PowerHouse Platform

Introduction

- The Developer (Mediasphere International Pty Ltd, ACN 164 414 868, ACN 120 008 924), of Suite 30612, Level 6, Southport Central 3 Commercial, 9 Lawson Street, Southport, Queensland 4215) has developed the PowerHouse Hub software platform which is a software application to host and manage content and datasets on a cloud-based platform.

Mediasphere International Pty Ltd, operates two wholly owned subsidiary companies, which are party to this agreement and provide Product and services in their geographical regions:

- Australia, New Zealand, Asia and North America: Mediasphere Holdings Pty Ltd, trading as PowerHouse Hub, ACN 120 008 924, of Suite 30612, Level 6, Southport Central 3 Commercial, 9 Lawson Street, Southport, Queensland, Australia. 4215.
 - UK, Europe and Africa: Mediasphere Group Ltd, trading as PowerHouse Hub, company number: 10434018, of the Dome Building, the Quadrant, TW9 1DT, Richmond-Upon-Thames, Greater London, United Kingdom.
- The Customer wishes to subscribe to a non-exclusive license for the PowerHouse Hub platform to host, manage and maintain your training Website in accordance with the Works.

It is agreed

Definitions and interpretation

Definitions: In this Agreement:

1. Agreement means this document, the Works Agreement and any other schedule or annexure to this document;
2. Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
3. Business Hours means between the hours of 9.00am and 5.00pm on any Business Day in Australia and the UK.
4. Commencement Date means the date when the Works agreement is signed;
5. Confidential Information means information relating to:
 - a. the design, specification and content of the Website that is not publicly available;
 - b. information contained on the Customer's computer network systems;
 - c. personnel details, policies, business strategies or any other information or material provided to the Developer by the Customer;
 - d. the Development Tools and Templates;
 - e. the terms of this Agreement;
 - f. any proprietary information of either party that is not publicly available; and
 - g. any other information which is stated to be confidential or which, by its nature, should reasonably be considered to be confidential information.
6. Customer Content means all text, pictures, sound, graphics, video, embed codes, documents, files, end-user data generated on the Website and other data loaded and stored in the Website database;
7. Customer Deliverables expressly excludes the Developer Tools and Templates and means whether created before or after the date of this Agreement all textual, graphical, audio and other material displayed on the Website which are custom developed by the Developer for the Customer;
8. Developer Tools and Templates means the software developed prior to the date of this Agreement, or otherwise developed outside of the scope of this Agreement, that is proprietary to the Developer or licensed to the Developer by third parties.

9. Hosting Fee means the annual fee that is payable by the Customer to the Developer for the annual hosting of the Website;
10. Installation Date means the date or period for installation of Software as set out in the Works;
11. Intellectual Property Rights means any and all now known or subsequently known tangible and intangible:
 - a. rights associated with works of authorship, including but not limited to copyrights and moral rights;
 - b. trademark and trade name rights and similar rights;
 - c. trade secret rights;
 - d. patents, designs, algorithms and other industrial property rights;
 - e. all other intellectual and industrial property rights of every kind and nature throughout the universe and however designated (including logos, rental rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise;
 - f. all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force; and
 - g. all rights and causes of action for infringement or misappropriation of any of the foregoing;
12. Internet means the world-wide connection of computer networks providing for the transmission of electronic mail, on-line information, information retrieval and file transfer protocol;
13. Intranet is a private network that uses Internet protocols to securely share any part of an organisation's information or operational systems within that organisation.
14. Maintenance Services means the supply to the Licensee of Updates and Upgrades;
15. Off-peak Times means any time between 5:00pm and 11:59pm or 12:00am and 8:30am Australia and UK time or at any time on a Saturday or Sunday.
16. Personal Data has the meaning given to it under the DPA 2018.
17. Product means one of the software applications in the PowerHouse Hub software suite. The main Product titles include PowerHouse Select, Powerhouse Onboard, PowerHouse Talent and PowerHouse Certify.
18. Release means, in respect of an Update or Upgrade, the release of that Update or Upgrade (as the case may be) to the customers of the Licensor generally] (and "Released" shall be construed accordingly);
19. Sensitive Personal Data has the meaning given to it under special category data – Article 9 GDPR.
20. Services means services under this contract for the provision of the works or additional services relating to web hosting, the maintenance of the Website and all other services reasonably required to run the website by the Developer to the Customer;
21. Server System means the hardware and software system owned or licensed by Customer on which the Website resides and that maintains the Website on the World Wide Web and which may change from time to time;
22. Site means the hardware system for the hosting of the Server Systems;
23. Software means the Developer Tools and Templates and any other computer program or programs consisting of a set of instructions or statements in machine readable form, and each and every component thereof to the extent that they are used in relation to the Website or produced under additional services requested by this Agreement;
24. Software License means the permission to use the PowerHouse Hub software on a non-exclusive basis and subject to the terms and conditions in this agreement. Access to the License is granted on the payment, in advance, of the annual license fee.
25. Specifications means the requirements for the Customer Deliverables;

26. Term means a period of one (1) year which can be renewed on an annual license basis if granted by the Developer;
27. Third Party Materials means any software or other material owned by a company or individual other than Developer or Customer which is employed in the Website and is supplied by the Developer;
28. Update means a hotfix, patch or minor version update to the Software;
29. Upgrade means a major version upgrade of the Software.
30. User means one of the following:
 - a) Active User – a user that can login and access the Customer’s version of the platform. A User can be reported on and their data is stored and backed-up in the platform. The user counts towards the commercial license counter and forms part of the Annual License Fee; or
 - b) Disabled User – a user that cannot login, however their data is still stored in the platform and can be reported on. This user counts towards the commercial license counter; or
 - c) Deleted User – a user that has been completely removed from the system. No data is stored, no reporting can be done. This user does not count towards the commercial license counter.
31. User Account means an access credit that is used by the Customer to allow their users to access their version of the PowerHouse Hub platform. A User Account is activated by the Customer using a single credit to create a new user on the platform. The User Accounts are valid for 12 months and cannot be reissued once activated.
32. User Account (eCommerce) means an access account that is added to the platform via an eCommerce transaction to provide the user with access to a course (content), event or webinar through the PowerHouse platform. The User Account (eCommerce) does not use an access credit but it added automatically based on an agreed revenue share model. The Developer, on the platform, provides the Customer with eCommerce marketing portals, shopping cart, secure access to agreed third party eCommerce providers to manage the transactions, creation and delivery of payment invoices to the Customer and the creation of a user account with access to the purchased content or activity.
33. Website means the application which is accessible on the organisation’s Intranet and Internet through the World Wide Web, provides multimedia content through a graphical user interface, and which consists of documents, pictures, sound, graphics, video and other data embodied in the application supplied by Developer pursuant to the terms and conditions of this Agreement;
34. Website Graphics means the custom graphics and user interfaces developed for the Website by Developer and included in the Customer Deliverables;
35. Works means the agreement for the design and installation of Customer’s Website and the terms of this Agreement; and
36. World Wide Web means a method of representing and obtaining graphical data and linking data items used by Internet users.

Interpretation Reference to:

- a. one gender includes the others;
- b. the singular includes the plural and the plural includes the singular;
- c. a person includes a body corporate;
- d. a party includes the party’s executors, administrators, successors and permitted assigns;
- e. a statute, regulation or provision of a statute or regulation (Statutory Provision) includes:
 - a. that Statutory Provision as amended or re-enacted from time to time; and
 - b. a statute, regulation or provision enacted in replacement of that Statutory Provision;and
- f. Money is the Australian dollar (A\$) or the Great British Pounds, Sterling (£GBP), unless otherwise stated.
- g. “Including” and similar expressions are not words of limitation.

- h. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
 - i. Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
 - j. A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.
 - k. If an act must be done on a specified day which is not a Business Day, it must be done on the next Business Day.
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1. Term

- i. This Agreement commences and is deemed to have effect on the date that the Works is executed by the Customer and continues for the Term unless terminated in accordance with the Termination clauses. Unless stated otherwise, the term of the license is 12 months with the option to renew for an additional subsequent 12-month term based on the payment of the annual license fee.

2. Supply and Installation of the Website

- i. The Developer must install the Website and provide the Services upon the terms of this Agreement.
- ii. The Developer agrees to provide the Website and the Services in accordance with the Works agreement.
- iii. The Developer must develop and install by the Installation Dates the Website in a competent, proper, efficient and timely manner in accordance with the Works agreement.
- iv. The Developer must supply and install the Website to the Site in accordance with the Works agreement and any agreed implementation plan and must do so in such a way as to avoid any reduction of or adverse effect on the then current business of the Customer.

3. Work Agreement and Payment Terms

- i. The Developer will work in good faith with the Customer to implement a Works Agreement.
- ii. The Works Agreement will include all project deliverables and document all fees associated with the project.
- iii. The Customer signs the Works Agreement to commence the project and accept the project fees. The Customer signs the Works agreement to agree with the terms and conditions in this Terms and Conditions for the Supply, Hosting and Management of Your PowerHouse Platform agreement.
- iv. The Customer agrees to pay the Developer on or before the payment date included on the Works Agreement and Customer invoice. In the event of a non-payment or overdue payment, 15 days after the payment date, Mediasphere may deactivate your site. A site-reinstatement fee may apply. A service fee of 10% may be charged to all overdue accounts.

4. Assignment, licensing and allocation of rights in the Website

- i. The Developer and Customer agree that on the Installation Date the Website will consist of:
 - a. Customer Deliverables;
 - b. Developer Tools and Templates; and
 - c. The Terms and Conditions.

5. Ownership of Developer Tools and Templates

- i. The Developer and Customer confirm that the Developer retains ownership of all rights, title and interest in and to the Developer Tools and Templates, including, without limitation, all applicable Intellectual Property Rights to the Developer Tools and Templates. The Developer retains all right, title and interest in and to all tools and other information and materials used in the creation or development of the Developer Tools and Templates.

6. Developer Tools and Templates License

- i. The Developer grants to the Customer (and its Related Bodies Corporate) a fully paid, non-exclusive licence for the Term, to use, publicly perform, publicly display and digitally perform the Developer Tools and Templates solely for the purpose and to the extent necessary to operate the Website.
- ii. The licence granted in this agreement is revocable and is only for the term of this agreement
- iii. The Developer retains the right not to renew the license for an additional Term after the expiry of the original Term if the Developer intends to enact its rights under this clause 6 (iii) then the Developer shall provide not less than 90 days' notice to the Customer.
- iv. The Developer may also terminate the licence granted with 30 days written notice prior to the expiry of the Term where there are reasonable grounds for alleging the Customer is in breach of a provision of this Agreement when the breach relates solely to:
 - a. the failure of the Customer to make a payment under this Agreement; or
 - b. A material breach of the Developer's Intellectual Property Rights in the Developer Tools and Templates by the Customer or its employees.

7. Customer Content and Customer Deliverables license

- i. The Customer confirms its grant to the Developer of a non-exclusive, royalty-free licence for the Term to reproduce, distribute and digitally perform any Customer Content or Customer Deliverables only on or in conjunction with the Website, solely for the purpose and to the extent necessary to perform the Developer's obligations under this Agreement.

8. Ownership of Customer Content

- i. As between the Developer and Customer, any Customer Content stored or delivered on the website under this Agreement or otherwise, and all Intellectual Property Rights therein, at all times remains the property of the Customer or its licensor or Website subscribers. The Developer has no rights to such Customer Content, other than the limited right to use such content for the purpose expressly set out in this Agreement.

9. Access to Server Systems

- i. The Customer agrees to provide the Developer with reasonable information and access to its relevant Server Systems (including without limitation, read, write and execute privileges where such privileges relate to the Website) to the extent necessary for the Developer to perform its obligations under this Agreement.
- ii. When accessing the Server Systems, the Developer must comply with any reasonable policies or directions given by the Customer.

10. Hosting of Customer Content

- i. The Developer will store all Customer Content on servers located on Amazon Web Services (AWS) servers in London for the United Kingdom and northern hemisphere clients and AWS servers in Sydney for Australian and southern hemisphere clients, unless otherwise specified.
- ii. The Developer will comply with all relevant data protection legislation.
- iii. The Developer will not store, disclose or otherwise permit access to Customer Content to anyone located outside of the countries of operation.

11. Developer's warranties

- i. The Developer warrants that all Software, supplied under this agreement, will upon installation conform in all material respect to the Product specifications and for the period of this agreement.
- ii. The Developer will take all the reasonable steps to ensure that the software operates in accordance with the agreement.

12. Warranties and covenants

- i. The Developer warrants as at the Commencement Date that:

- a. The Customer Deliverables and Developer's Tools and Templates used in relation to the Website do not infringe the Intellectual Property Rights of any third party;
- b. No proceedings have been instituted by any third party against the Developer for the infringement of that party's Intellectual Property Rights by the Developer's Intellectual Property;
- c. No proceedings have been instituted by any third party against the Developer seeking to challenge the validity of the Developer's Intellectual Property Rights in the Development Tools and Templates;
- d. The Deliverables will be provided in accordance with this Agreement, including the Works Agreement; and
- e. Any documentation provided as a part of the Deliverables will be adequate to enable a reasonably competent professional computer operator to operate the Website.

13. Services

- i. From the Commencement Date, the Developer agrees to perform the Services for the customer in return for the License Fee and any agreed additional fees as set out in the Works Agreement.
- ii. After the project commences, the Customer has the right to request project variations to cover out-of-project-scope changes to the project. Project variations requested by the Customer and not described in the Works Agreement will be managed with a written scope of work, delivery dates and aligned fees that the client can approve or reject. The Developer has the right to accept or reject project variations.
- iii. On and from the Commencement Date and until terminated in accordance with its terms, the Developer warrants that:
 - a. it will perform all Services in a professional manner, using appropriately qualified and trained personnel and in accordance with prevailing industry standards;
 - b. Performance of the Services by the Developer does not violate the terms of any other agreement between the Developer and a third party.

14. Upgrades

- i. The Developer shall keep the Customer reasonably informed during the Term of its plans for the release of Upgrades; however, except to the extent that the parties agree otherwise in writing, the Licensor shall have no obligation to release Upgrades with features requested by the Licensee or to take into account the opinions of the Licensee in relation to plans for the release of Upgrades.
- ii. The Developer may produce Upgrades during the Term and shall make such Upgrades available to the Customer.
- iii. The Developer shall give to the Customer [at least 30 Business Days'] prior written notice of [the Release of an Upgrade].
- iv. The Developer may apply each Upgrade to the Software within the period of [90 Business Days following Release].
- v. The Developer reserves to right to charge a cost recovery fee for the migration of the Customer's content and database to the updated version of the Product. The Developer will provide the Customer with the scheduled Upgrade fee in writing [at least 30 Business Days before the Upgrade].

15. Customer warranties

Customer warrants that:

- i. It has full power, right and authority to enter into this Agreement and the Customer is not subject to any obligations that would prevent or otherwise restrict the Customer from performing its obligations under this Agreement.
- ii. The Customer Content does not infringe the Intellectual Property Rights of any person;
- iii. The Customer Content is not obscene, offensive, upsetting, or defamatory; and
- iv. The use of the Customer Content by the Developer in connection the performance of its obligations under this Agreement is not illegal, fraudulent or of a defamatory nature.

16. Indemnities

- i. Each party fully indemnifies the other against any loss, costs, expenses, demands or liability, in respect of third-party claims arising out of a breach of any warranty giving.
- ii. Without limiting the obligations of the Developer under this clause, if a determination is made by any independent tribunal of fact or law or if it is agreed between the parties to the dispute that an infringement of Intellectual Property Rights has occurred, the Developer must at its sole expense:
 - a. replace or modify the infringing product in a manner acceptable to the Customer such that the quality, performance or usefulness of the Website is not degraded and so that the infringement ceases; or
 - b. Procure for the Customer the right to possess and continue to use the whole or the relevant part of the Website or what was required under a Purchase Order.
- iii. The indemnities contained in this Agreement continue notwithstanding the expiry or termination of this Agreement.

17. Data Protection

- i. With respect to the rights and obligations under this written arrangement, the Customer and Developer (the Parties) acknowledge that they jointly process Personal Data as set out in Schedule 1 to perform their obligations governed by this Agreement in respect of their respective roles, and the relationship between the Customer and Developer is one of joint controllers.
- ii. The Parties shall comply at all times with and assist each other in complying with their respective responsibilities for compliance with the obligations of all Data Protection Laws in connection with the processing of Personal Data only as set out in Schedule 1 as updated in writing between the Parties from time to time, unless required to process the Personal Data for any other purpose by applicable Law in which case, where legally permitted, the Customer or Developer must inform the other of this legal requirement before processing.
- iii. Each Party agrees to their respective responsibilities and duties regarding processing as set out in Schedule 1 including to:
 - a. comply with data protection by design and data protection by default obligations under Data Protection Law, including, where required, legitimate interest assessments and data protection impact assessments and associated consultation with data subjects, other Parties involved with the processing and any applicable supervisory authority, to ensure appropriate technical and organisational measures, including appropriate data protection governance and audit compliance, are implemented to safeguard the rights and freedoms of data subjects;
 - b. observe the principles of Data Protection Law, including not retaining any of Personal Data for longer than is necessary to perform its obligations under this Agreement and upon the other Party's reasonable request, securely destroy (unless applicable Laws require continued storage of Personal Data) or return such Personal Data;
 - c. only transfer any Personal Data outside of the European Economic Area (the "EEA") relying on Adequacy Decisions by the EU Commission or on appropriate standard contractual clauses ("Standard Contractual Clauses") between the Parties. In the event that the Adequacy Decision granted in respect of the Standard Contractual Clauses is invalidated or suspended, or any supervisory authority requires transfers of personal information pursuant to such Standard Contractual Clauses to be suspended, then the Parties may require to:
 - i. cease data transfers forthwith, and implement an alternative adequacy mechanism (as agreed in writing by the Parties); or
 - ii. return all Personal Data previously transferred and ensure that a senior officer or director of the Customer or Developer certifies to the other that this has been done.
 - d. monitor for, investigate and manage any actual or suspected personal data breach regarding processing activities undertaken by them, to inform the other Party of such personal data breaches without undue delay, and the other Party's sole and exclusive remedy shall be for the first Party to use reasonable commercial endeavours to resolve the personal data breach;

- e. comply with and provide information notices to data subjects regarding processing activities undertaken by them, including personal data breaches – such notices being available to the Customer from time to time, as such document may be amended from time to time by the Developer in its sole discretion;
 - f. notify any applicable law enforcement authority (including any applicable supervisory authority) regarding personal data breaches where required relating to processing activities undertaken by them;
 - g. fulfil any data subject rights request pertaining to their Personal Data or assist the other Party in doing so – such requests to be passed to the other Party within two working days in order to fulfil that request;
 - h. notify the other Party without undue delay in writing if it receives from any applicable law enforcement authorities (including any applicable regulators) where permitted to do so:
 - i. any communication seeking to exercise rights conferred on the data subject by Data Protection Law;
 - ii. any complaint or any claim for compensation arising from or relating to the processing of Personal Data as set out in Schedule 1; or
 - iii. any communication from any applicable law enforcement authorities (including any applicable regulators);
 - i. provide such information and such assistance to the other Party as they may reasonably require, and within the timescales reasonably specified by the Parties, to allow the other Party to comply with their data protection by design and data protection by default obligations under Data Protection Law, including, where required, consultation regarding legitimate interest assessments and data protection impact assessments, to ensure appropriate technical and organisational measures, including appropriate data protection governance and audit compliance, are implemented to safeguard the rights and freedoms of data subjects, including such full and prompt information and assistance to the other Party and any applicable law enforcement authorities (including any applicable regulators) in relation to a personal data breach.
- iv. Each Party shall designate a contact point for data subjects.
- v. The Parties agree that they shall at no additional cost, keep or cause to be kept such information as is necessary to demonstrate compliance with their respective obligations under this clause (Data Protection) regarding the joint processing of Personal Data as set out in [Annex / Schedule / Appendix X] carried out by the Parties in writing and in electronic form, and shall, upon reasonable notice, make available to the other Party or grant to the other Party and its auditors and agents, and any applicable law enforcement authority (including any applicable supervisory authority), a right of access to, and to take copies of, any information or records kept by the other Party pursuant to this clause (Data Protection) – this information to contain no less than:
- a. their name and contact details, including those of its Companies, and, where applicable, of their representative, and their data protection officer;
 - b. the details regarding their respective processing set out in Schedule 1;
 - c. a general description of the appropriate technical and organisational measures to protect Personal Data against accidental or unlawful processing, loss, destruction, damage, alteration, or unauthorised disclosure or access, including so as to allow the Parties to comply with their obligations under Data Protection Law – in particular:
to safeguard against the specific offences:
 - i. for a person knowingly or recklessly to re-identify Personal Data that is de-identified Personal Data without the consent of the controller responsible for de-identifying the personal data.
 - ii. to alter, deface, block, erase, destroy or conceal Personal Data with the intention of preventing disclosure of all or part of the Personal Data that the person making the request would have been entitled to receive.

- iii. where transferring Personal Data to a third country or an international organisation, the identification of that third country or international organisation and, in the case of ex-EEA transfers without adequacy, binding corporate rules, code of conduct, data protection seals, or standard contractual clauses, the documentation of appropriate safeguards such as:
 - 1. explicit consent from affected data subjects, or
 - 2. evidence that the transfer is required for the performance or conclusion of the performance of a contract with said data subjects.
- iv. ensure that any staff or personnel (including contractors) authorised to process Personal Data shall be subject to a binding duty of confidentiality in respect of such data.
- vi. The Parties agree to notify each other immediately if, in the opinion of the other Party, the written arrangement for the processing of Personal Data given by the Customer or Developer violates any provision of Data Protection Law.
- vii. Neither Party must not perform their obligations under this Agreement in such a way as to cause the other Party to violate any of their obligations under Data Protection Law.
- viii. Whereas neither Party shall be responsible for accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed, by the other party, both parties shall be liable where the data subject may exercise his or her rights under Data Protection Laws.
- ix. For the purposes of this clause (Data Protection), "controller", "joint controller", "processor", "data subject", "personal data", "processing", "personal data breach" and "appropriate technical and organisational measures" will be interpreted in accordance with Data Protection Law.

18. Independent Contractors

- i. The Developer and Customer are each independent contractors, and no agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Neither party has the power to obligate or bind the other party. Personnel supplied by the Developer must work exclusively for the Developer and must not, for any purpose, be considered employees or agents of the Customer and vice versa.

19. Confidentiality

- i. A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- ii. A party is not in breach of this clause in circumstances where:
 - a. it is legally compelled to disclose the other party's Confidential Information;
 - b. the information disclosed is generally available to the public (other than as a result of the wrongful disclosure by such party);
 - c. such party obtained the Confidential Information from a third party without breach by that third party of any obligation of confidence concerning the Confidential Information; or
- iii. The Confidential Information was already in such party's possession (as evidenced by written records) when provided by or on behalf of the other party.
- iv. Each party must take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.
- v. The Customer may at any time require the Developer to arrange for its employees, agents or sub-contractors engaged in the performance of this Agreement to execute a suitable confidentiality deed and if requested the Developer must arrange for the deed to be executed within the time frame reasonably required by the Customer.

- vi. Each party must on demand or on the expiration or termination of this Agreement, destroy or return to the other party (as directed by that party) any documents supplied to that party in connection with this Agreement.
- vii. Despite any other provision of this clause, the Developer may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers or accountants, but must ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to the Developer.

20. Termination

- i. Without prejudice to any other rights either party may have under this Agreement or at law or in equity, either party may terminate this Agreement with immediate effect, in whole or in part, upon:
 - a. the other party becoming subject to any form of insolvency administration (whether voluntary or otherwise);
 - b. the other party being in breach, including multiple small breaches, of any clause of this Agreement and such breach not being remedied with 30 days of written notice by the party of that breach; or
 - c. the other party purporting to or proposing to assign this Agreement or its rights or interests in any relevant Intellectual Property, without the owner or licensor's prior written consent.
- ii. Either party may terminate this Agreement for convenience with 180 days of written notice to the other party at any time.
- iii. The Developer reserves the right to discontinue a Product or version of a Product at any time. In this event, the Developer will announce an End-of-Life date on the Product website and provide email communication to the Customer. The End-of-Life date will apply 12 months after the announcement date. The Customer will provide bug fixes, maintenance releases, work arounds, or patches for critical bugs during the 12-month period. At the end of the period End-of-Support will apply and Customers will be required to upgrade to the supported version of the software or terminate the agreement. When the End-of-Life applies to a critical security issue, upgrades dates may be reduced to protect Customer data.
- iv. Upon termination of this Agreement:
 - a. the Customer agrees to use all reasonable endeavours to assist the transfer of the Developer Tools and Templates to the Developer; and
 - b. Any transfer or migration that occurs under this clause must be carried out at the Developer's expense.

21. Inconsistency

- i. To the extent that there is an inconsistency between a provision in a clause in the body of this Agreement and a provision in a Schedule:
 - a. a specific provision takes precedence over a general provision; and
 - b. otherwise, to the extent necessary to resolve the inconsistency the following order of precedence applies:
 - i. the clauses of this Agreement;
 - ii. the Works Agreement;
 - iii. the Schedules; and
 - iv. any Purchase Orders.

22. Further assurance

- i. Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

23. Severability

- i. If anything in this Agreement is unenforceable, illegal or void then it is severed, and the rest of this Agreement remains in force.

This Agreement:

- i. is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- ii. Supersedes any prior agreement or understanding on anything connected with that subject matter.
- iii. Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.

24. Variation

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

25. Assignment

- ii. The Developer may not assign or novate its rights and obligations under this Agreement without the prior written consent of the Customer.
- iii. The Customer may assign or novate its rights and obligations under this Agreement without the Developer's consent.

26. Waiver

- i. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- ii. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- iii. A waiver is not effective unless it is in writing.
- iv. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

27. Costs and disbursements

- i. Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.
- ii. The Customer as the purchaser of goods and services pursuant to this Agreement, must pay all stamp duty and other government imposts payable in connection with this Agreement and all other documents and matters referred to in this Agreement when due or earlier if requested in writing by the Developer.

28. Notices

- i. A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.
- ii. In addition to any other method of service provided by law, the Notice may be:
 - a. sent by prepaid post to the address of the addressee set out in this Agreement or subsequently notified;
 - b. sent by email of the addressee sent by electronic mail to the electronic mail address of the addressee; or
 - c. delivered at the address of the addressee set out in this Agreement or subsequently notified.
- iii. A Notice must be treated as given and received:
 - a. if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
 - b. if sent by email before 5 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or

- iv. If otherwise delivered before 5 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- v. An email message is not treated as given or received if the sender's computer reports that the message has not been delivered.
- vi. A Notice sent or delivered must be treated as validly given to and received by the party to which it is addressed even if:
 - a. the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent;
 - b. the Notice is returned unclaimed; or
 - c. in the case of a Notice sent by electronic mail, the electronic mail message is not delivered or opened (unless the sender's computer reports that it has not been delivered).
- vii. Any Notice by a party may be given and may be signed by its solicitor.
- viii. A party may change its postal address for service or email address by giving Notice of that change to each other party.

29. General

- i. This Agreement:
 - a. is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
 - b. supersedes any prior agreement or understanding on anything connected with that subject matter.
- ii. Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.
- iii. At end of contract, the Developer will provide the Customer with a CSV export of the Customer's database before decommissioning the site.

30. Governing law and jurisdiction

- i. The law of Queensland governs this Agreement.
- ii. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

Schedule 1

The Developer provides learning management solutions and training portals that in conjunction with the customer enable the customer to develop intelligent solutions that drive human engagement and development. The Developer provides the software for organisations to commercialise training IP and deliver personalised learning portals designed to be fully responsive and accessible by all connected devices including iPads, iPhones, tablets and smartphones (the Service). The platform is delivered as an online cloud-based Software as a Service (SaaS), which reveals and responds to reliable metrics and data-driven insights to actively manage and drive human engagement and workforce development.

PowerHouse Hub is a cloud-based platform featuring a suite of three products which include PowerHouse Recruit, Talent and Certify. The PowerHouse Talent LMS will:

- Allow build and publication of training courses;
- Allow for the design creation and branding;
- Assign multiple managers to each training group to track staff progress;
- Publish visual data and export reports on all training metrics;
- Present a training dashboard with a personalised set of courses, events, documents, news items and activities;
- Provide a training record to track all completed training for the employee and verified by a manager;
- Be completely mobile responsive for anytime anywhere learning;
- Conform with ISO27001 security standards and provide for disaster recovery.
- Allow for translation services

It is the role of the Customer to determine:

1. the aims of using the Service to:
 - i. more effectively develop and manage their eLearning Management Solutions,
 - ii. leverage ease of administration and reporting capabilities of the Service to streamline business processes including billing for the Service,
 - iii. facilitate inclusive functions and features to improve the online behaviours of personnel, and
 - iv. generate reports to enhance the Service, including the necessity to process personnel Personal Data with the intended effect on such personnel being to improve their performance and choices such that all Parties benefit through statistical information to make decisions;
2. that all the following personnel shall use the Service (users) to improve their online behaviours:
 - i. Administrators in the HR department, that shall exclusively also have administration rights and access permissions to initiate all users and generate reports regarding their own and team members' performance,
 - ii. Managers from across the business, that shall also have access to User Dashboard and generate reports regarding their own and team members' performance, and
 - iii. Members of staff, including contractors, that shall also have the ability to generate reports regarding their own performance; and
3. that the following features and functions of the Service shall be utilised:
 - i. administration – administrators shall source the email addresses and contact details for all users to input on the platform via an API, webservice or manual upload to facilitate the configuration and use of, as well as rights and access permissions to, the Service by users,
 - ii. report generation – reports rely upon further inputs from users on the intuitive, easy-to-use platform, such inputs being systematically monitored and tracked using first and third party

cookies and other similar technologies relating to the contact details, IP Addresses and responses of users, which may include special categories of Personal Data entered into free-text fields, utilising data analytics, artificial intelligence (AI) and machine learning techniques on an ongoing basis to identify, match, combine and analyse such available inputs as well as derived profiles from AI-curated content, targeted learning, virtual cyber assistance, personalised 'nudge' interventions, and practical assessments relating to the users to score their individual ratings regarding their current online performance and previous historic differentials against a set of performance criteria compiled in automatically generated reports to compare results individually and across all users that all scientifically address human engagement and development on a single system underpinned by psychology and behavioural science, which supports users at the right time, in the right way, and in a way much more likely to influence behaviours and attitudes, and that makes it easy to track impact, progress, areas for improvement, and return on investment, such risk metrics, measurements, indicators, insights and advanced reporting being used for the following purposes:

- profiling of users to quantify and demonstrably enhance the Customer's human development vis-a-vis their online behaviours, choices and performance are adequately understood and improving, as determined by the Customer, the retention period being determined by the Agreement and whilst the Customer administrator has authorised their access to the Service,
- anonymised statistical output for billing, as determined by both Parties, the retention period to generate such bills from available usage being 6 years in case of handling enquiries and complaints, and
- platform usage regarding security, load balancing and other performance management, as well as Service development and innovation, as determined by the Developer, the retention period to generate such insight being 1 year,

and that such available inputs are in addition disclosed to and processed by other Parties, also joint controllers, within and outside the European Economic Area (EEA) subject to appropriate safeguards including adequacy, binding corporate rules, code of conduct, data protection seals, or standard contractual clauses.

It is the role of the Developer through the provision of the SaaS platform to determine:

1. the aim of the Service to:

- i. more effectively manage the learning profile of the Customer by facilitating the functions and features to improve the online behaviours of Customer personnel,
- ii. leverage ease of administration and reporting capabilities of the Service to streamline business processes including billing for the Service, and
- iii. monitor and optimise the platform performance and security, including generating reports to enhance the Service,

including the necessity to process personnel Personal Data with the intended effect on such personnel being to improve their performance and choices such that the all Parties benefit through statistical information to make decisions;

2. the means to most effectively provide rights and access permissions to the following:

- i. Administrators in the HR department, that shall exclusively also have administration rights and access permissions to initiate all users and generate reports regarding their own and team members' performance,

- ii. Managers from across the business, that shall also have access to the User dashboard and generate reports regarding their own and team members' performance, and
 - iii. Members of staff, including contractors, that shall also have the ability to generate reports regarding their own performance; and
3. the means to most effectively manage the processing of personnel Personal Data with regards to the following features and functions:
 - i. administration – allowing administrators to input sourced email addresses and contact details for all users onto the platform via an API, webservice or manual upload to facilitate the configuration and use of, as well as rights and access permissions to, the Service by users,
 - ii. report generation – to allow all users to generate reports relying upon further inputs from users on the intuitive, easy-to-use platform, such inputs being systematically monitored and tracked using first and third party cookies and other similar technologies relating to the contact details, IP Addresses and responses of users, which may include special categories of Personal Data entered into free-text fields, utilising data analytics, artificial intelligence (AI) and machine learning techniques on an ongoing basis to identify, match, combine and analyse such available inputs as well as derived profiles from AI-curated content, targeted learning, virtual cyber assistance, personalised 'nudge' interventions, and practical assessments, relating to the users to score their individual ratings regarding their current online performance and previous historic differentials, against a set of performance criteria, compiled in automatically generated reports, to compare results individually and across all users, that all scientifically address human engagement and development, on a single system, underpinned by psychology and behavioural science, which supports users at the right time, in the right way, and in a way much more likely to influence behaviours and attitudes, and that makes it easy to track impact, progress, areas for improvement, and return on investment, such risk metrics, measurements, indicators, insights and advanced reporting being used for the following purposes:
 - profiling of users to demonstrate that their online behaviours, choices and performance are adequately understood and improving, as determined by the Customer, the retention period being determined by the Agreement and whilst the Customer administrator has authorised their access to the Service, such Personal Data being secured deleted or returned as determined by the Agreement,
 - anonymised statistical output for billing, as determined by both Parties, the retention period to generate such bills from available usage being 6 years in case of handling enquiries and complaints, such Personal Data being secured deleted or returned as determined by the Agreement, and
 - platform usage regarding security, load balancing and other performance management, as well as Service development and innovation, as determined by the Developer, the retention period to generate such insight being 1 year, such Personal Data being secured deleted or returned as determined by the Agreement, and that such available inputs are in addition disclosed to and processed by other Parties, also joint controllers, within and outside the European Economic Area (EEA) subject to appropriate safeguards including adequacy, binding corporate rules, code of conduct, data protection seals, or standard contractual clause.

Schedule 2

PowerHouse Hub Products: End of Life Policy

Scope

To ensure delivery of innovative and cost-effective products, PowerHouse Hub may periodically discontinue specific products or versions of products and hosted services. At PowerHouse Hub's sole discretion, such products or services may be discontinued regardless of the delivery method, including on-premises Software and Cloud Services.

This policy describes the intended communication and transition plans for discontinued products and versions and provides information required to plan for migration to replacement technologies. Any questions arising in the interpretation of this policy or the application of this policy shall be as determined by PowerHouse Hub in its sole discretion. Any conflict between this policy and the terms of support shall be controlled by the provisions of this policy. This policy is effective from the effective date set forth above.

Software

Releases

- **Major (Main) Release:** Major releases encompass new products, major architecture changes, major user interface (UI) changes, significant new features or capabilities/functionality additions, new solutions, and substantial innovation.
- **Minor Release:** Minor releases include updates or enhancements/features to existing products, moderate administration or UI changes, and major bug fixes.
- **Update (Patch) Release:** Update releases incorporate minor bug fixes, security fixes, and service packs and Update releases should be incorporated into the next Minor Software release.
- The Software product version numbering scheme is defined as follows:

(Major). (Minor). (Update).

Example: 7.01.02

Where Major release is 7, Minor release is 1, Update release is 2.

- PowerHouse Hub will make commercially reasonable efforts to adhere to the following guidelines:
 1. The End of Life Period for a Major or Minor Software release, "N," starts when the N+2 release becomes Generally Available.
 2. The maximum total support life of a Software release is the lesser of: (a) three (3) years from the date it first became Generally Available or (b) one (1) year after the N+2 version becomes Generally Available.

Products

- PowerHouse Hub will make commercially reasonable efforts to provide six (6) months' notice of an affected product's End of Sale Date and, after the effective End of Sale Date, provide Full Service Software Support for a maximum of 1 year.
- PowerHouse Hub will not provide Full Service Software Support past the specified End of Life date.

Cloud Services

- PowerHouse Hub will support only the current release.

Extension of Support Terms - Custom Software Support

In rare instances, and at our sole discretion, PowerHouse Hub may offer extended support, beyond the typical support lifecycle. Custom Software Support may be available at an additional cost to customer but only if you have a current support subscription in effect on the End of Life Date.

Custom Software Support will provide commercially reasonable workaround solutions under the following conditions:

- The technology remains supportable per PowerHouse Hub, including being free from unsupported dependencies on components provided by independent Software vendors (ISVs) that are outside PowerHouse Hub's control; and
- The platform it operates on is supported by our original equipment manufacturer (OEM) technology partner (where applicable); and
- Technical support for issue resolution will be provided on a commercially reasonable basis; and

Custom Software Support does not include:

- Product Enhancement Requests (PER)
- Hotfixes or Engineering-related support
- New Operating System support
- SLA commitments related to defects in the supported product.

Definitions

Cloud Services - means Software or platform services offered on servers that are owned or managed by PowerHouse Hub and provided to customer as specified in one or more grant letters, or as further defined by the relevant customer agreement. Access to the Cloud Services 4 Corporate Products End of Life Policy requires either an active support agreement or an active subscription, as required by the specific offering.

Custom Software Support - Is an individually negotiated Software support contract requiring a PowerHouse Hub-approved quote for product where the customer requests Support beyond the published End of Life Date.

Defect Severity – References to bug or defect severity reflect a qualitative appraisal of the problem's extent.

End of Life (EOL) Period - Refers to the timeframe beginning with the day PowerHouse Hub announces a product is no longer available for purchase from current PowerHouse Hub price books until the last date the product is formally supported by PowerHouse Hub. If Software version only, EOL Period refers to the timeframe beginning with the day PowerHouse Hub announces a Software version will no longer be available until it is no longer supported.

End of Sale Date – The date a product is no longer Generally Available for purchase.

End of Life Date – The last day that the product and/or Software version is supported per the terms of the standard Software and Hardware support offerings.

Full Service Software Support - Means the same maintenance and technical support as you receive under your current support contract for products that are Generally Available. Security updates and maintenance will continue until the end of the Full Service Software Support period. Full Service Hardware Support - Full Service Hardware Support includes hardware warranty, new Software/firmware versions, escalations, update releases, product updates, content updates, and available maintenance and technical support.

Generally Available – Product is generally available for Sale and Support on current PowerHouse Hub price books.

Software - means each PowerHouse Hub Software program in object-code format that is (a) licensed from PowerHouse Hub or its authorized partners, or (b) embedded in or pre-loaded on Hardware provided by PowerHouse Hub's hosting partners, in each case including updates and upgrades that customer installs during any applicable support period.