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**OPTIONAL SERVICES AGREEMENT**

**TERMS AND CONDITIONS**

These terms and conditions are between the Service Provider and Consumer described in the Service Package, together the **Parties** and each a **Party**. The Nexpert X Terms and Conditions, these terms and conditions and the Service Package form the entire agreement under which the Service Provider will perform the Project for the Consumer (together, the **Agreement**).

1. **ACCEPTANCE**
	1. The Consumer agrees to this Agreement using the Platform acceptance functionality to accept the Service Package.
	2. **The Consumer should read this Agreement carefully and contact the Service Provider if the Consumer has any questions.**
2. **THE PROJECT**
	1. The Service Provider agrees to perform the Project for the Consumer in accordance with this Agreement (including any Specifications).
	2. The Consumer acknowledges and agrees that any dates for delivery or for completion notified by the Service Provider are estimates only, unless time is specified in writing as a mandatory deadline. The Service Provider will have no Liability to the Consumer for failing to meet:
3. any delivery or completion date estimates; or
4. any mandatory deadlines as a result of:
	1. any event or circumstance beyond the Service Provider’s reasonable control; or
	2. the acts of omissions of the Consumer.
	3. The Service Provider may perform the Project for the Consumer using the Service Provider’s employees, contractors and third party providers (**Service Provider** **Personnel**), and they are included in this Agreement. The Service Provider will be liable for the acts and omissions of all Service Provider Personnel.
	4. All variations to the Project and any increases in the Service Package Fees must be made by the Service Provider submitting via the Platform a change ticket to amend the Service Package (**Change Request**) and the Change Request must be accepted via the Platform by the Consumer. Where a Change Request is accepted by the Consumer, the Change Request will become a **Variation** andthe Project will be varied in accordance with the Variation.
	5. If any instruction or direction from the Consumer constitutes a variation, then the Service Provider will not be obliged to comply with such instruction or direction unless agreed in accordance with clause 2.4.
5. **PRICE AND PAYMENT**
	1. The Consumer agrees to pay the Service Provider the Service Package Fees in accordance with the Platform Payment Terms. All amounts are stated in Australian dollars and are inclusive of GST (unless otherwise stated).
	2. Unless otherwise permitted by the Platform Payment Terms, the Service Package Fees must be paid before the Service Provider commences the performance of the Project.
6. **SERVICE PROVIDER OBLIGATIONS AND WARRANTIES**
	1. The Service Provider represents, warrants, acknowledges and agrees that:
7. there are no legal restrictions preventing it from entering this Agreement;
8. it has not relied on any representations or warranties made by the Consumer in relation to the Project, unless expressly stipulated in this Agreement;
9. the Service Provider will not infringe any third party rights in performing the Project;
10. it is, and the Service Provider Personnel are, the Consumer’ independent contractors, not the Consumer’ employees, and accordingly, are not entitled to any Employee Benefits; and
11. it will perform the Project:
12. in accordance with applicable laws;
13. with due care, skill and diligence;
14. with due expedition and without delay;
15. in a proper and professional manner, and in accordance with best industry practice; and
16. in accordance with the Consumer’ reasonable instructions or requirements.
17. **BUSINESS OBLIGATIONS AND WARRANTIES**
	1. The Consumer represents, warrants, acknowledges and agrees that:
18. there are no legal restrictions preventing it from entering this Agreement;
19. it has not relied on any representations or warranties made by the Service Provider in relation to the Project (including as to whether the Project is or will be fit or suitable for the Consumer’ particular purposes), unless expressly stipulated in this Agreement;
20. it will cooperate with the Service Provider, and provide the Service Provider with all documentation, information, instructions, licences, consents, approvals, permissions and access reasonably necessary to enable the Service Provider to perform the Project, as reasonably requested by the Service Provider, from time to time, and in a timely manner;
21. the information the Consumer provides to the Service Provider is true, correct and complete;
22. the Consumer will not infringe any third party rights in working with the Service Provider and receiving the Project; and
23. the Consumer will provide the Service Provider and the Service Provider Personnel with sufficient access, free from harm or risk to health or safety, to the Premises (including any facilities at the Premises), as reasonably required to enable the Service Provider to perform the Project, including at the dates and times that the Service Provider may reasonably request.
24. **STATUTORY RIGHTS:**
	1. Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations, may confer the Consumer with rights, warranties, guarantees and remedies relating to the Project which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in this Agreement excludes the Consumer’ Statutory Rights as a consumer under the ACL.
	2. Unless expressly set out in this Agreement and subject to the Consumer’ Statutory Rights, the Service Provider excludes all express and implied warranties, representations and guarantees of any kind (whether under statute, law, equity or on any other basis) and all materials, work, goods and services (including the Project) are provided to the Consumer without warranties, representations and guarantees of any kind.
25. **INTELLECTUAL PROPERTY**
	1. As between the Parties, all Intellectual Property Rights owned by a Party or developed by a Party independently of this Agreement will at all time vest, or remain vested in that Party.
	2. As between the Parties, all Intellectual Property Rights developed, adapted, modified or created by or on behalf of the Consumer, Consumer Personnel, Service Provider or Service Provider Personnel specifically for the Consumer under this Agreement, will at all times vest, or remain vested, in the Consumer.
	3. If the Service Provider or any Service Provider Personnel have any Moral Rights in any Intellectual Property which vests in the Consumer, in connection with this Agreement or the provision of the Services, the Service Provider will (and will ensure that any Service Provider Personnel) consent to the Consumer’s use or infringement of those Moral Rights.
	4. The Consumer grants the Service Provider a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence, for the duration of the Term, to use the Consumer’ Intellectual Property for the performance of the Service Provider’s obligations under this Agreement.
	5. The Service Provider grants the Consumer a non-exclusive, revocable, worldwide, sublicensable and non-transferable right and licence to use the Service Provider’s Intellectual Property as required for the Consumer’ use and enjoyment of the Project as contemplated by this Agreement.
26. **TERM AND TERMINATION**
	1. This Agreement will commence on the Start Date, and will continue until the End Date, unless terminated earlier in accordance with its terms.
	2. Either Party may terminate this Agreement if the other Party breaches a material term of this Agreement, and that breach has not been remedied within 10 business days of being notified by the relevant Party.
	3. On termination or expiry of this Agreement, the Parties agree that:
27. any amounts paid or payable for the Project performed by the Service Provider prior to the date of termination or expiry are non-refundable;
28. any amounts paid for the Project not performed by the Service Provider prior to the date of termination or expiry will be refunded to the Consumer; and
29. each Party will return or give the other Party access to recover all property belonging to that Party on request (including any Intellectual Property or Confidential Information), and to give that Party such rights of access necessary to exercise the rights under this clause.
	1. The accrued rights, obligations and remedies of the Parties are not affected by termination of this Agreement.
30. **LIABILITY, INDEMNITY AND EXCLUSIONS**
	1. **Exclusions:** Despite anything to the contrary, to the maximum extent permitted by law, each Party will not be liable for any Liability to the extent caused or contributed to by (whether directly or indirectly):
31. the acts or omissions of the other Party;
32. the other Party’s breach of this Agreement, any law or any third party rights;
33. any services, information, documentation, specifications or directions provided by a third party; or
34. any event or circumstance beyond that Party’s reasonable control.
	1. **Limitation of liability:** Despite anything to the contrary, to the maximum extent permitted by law:
35. neither Party will be liable for any Consequential Loss; and
36. each Party’s maximum aggregate Liability in relation to this Agreement will be limited to Service Package Fees payable by the Consumer to the Service Provider under this Agreement, except to the extent clause 9.3 applies.
	1. Despite anything to the contrary, the liability cap in clause 9.2(b) will not apply to a Party, to the extent the Liability is caused or contributed to by:
37. that Party providing any Intellectual Property to the other Party which infringes third party Intellectual Property Rights, when used in accordance with this Agreement; or
38. that Party using any Intellectual Property in breach of the terms of this Agreement; or
39. that Party’s fraud or wilful misconduct.
40. **CONFIDENTIALITY**
	1. Subject to clause 10.2, each Party must (and must ensure that their personnel do) keep confidential, and not use or permit any unauthorised use of, all Confidential Information.
	2. Clause 10.1 does not apply where the disclosure is required by law or the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with this Agreement and provided that the Party ensures the adviser complies with the terms of clause 10.1.
41. **GENERAL**
	1. **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute.
	2. **Governing law:** This Agreement is governed by the laws of the state in which the Consumer is located, as set out in the Service Package. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in that state and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
	3. **GST:** If and when applicable, GST payable on the Service Package Fee is included in the Service Package Fee and is paid as part of the Service Package Fee.
	4. **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
	5. **Amendment:** This Agreement may only be amended by written instrument executed by the Parties.
	6. **Severance:** If any provision (or part of it) under this Agreement is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under this Agreement cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from this Agreement and the remaining provisions (and remaining part of the provision) of this Agreement are valid and enforceable.
	7. **Priority:** To the extent of any inconsistency between this Agreement and the Nexpert X Terms and Conditions, the Nexpert X Terms and Conditions will prevail.
	8. **Survival:** Clauses 6, 7, 8, 9 and 10 will survive the termination or expiry of this Agreement.
42. **DEFINITIONS**

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them within this Agreement, and:

**Confidential Information** includes information which:

1. is disclosed in connection with this Agreement at any time;
2. is prepared or produced under or in connection with this Agreement at any time;
3. relates to either Party’s business, assets or affairs; or
4. relates to the subject matter of, the terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as “confidential”, and howsoever a Party receives that information.

**Consequential Loss** includes any consequential, special or indirect loss, damage or expense including any real or anticipated loss of revenue, loss of profit, loss of use, loss of occupation, loss of benefit, loss of financial opportunity, or economic loss whether arising out of a breach of this Agreement, at law, under any statute, in equity, or in tort (including negligence).

**Consumer** means the business identified in the Service Package.

**Consumer Personnel** means the Consumer’ employees, contractors, invitees or other third parties engaged by the Consumer.

**Employee Benefits** means all benefits owing to employees under the Employment Legislation including minimum wage, superannuation, workers compensation, leave entitlements or any other employee benefit.

**Employment Legislation** means the *Fair Work Act 2009* (Cth), *Fair Work Regulations 2009* (Cth), *Superannuation Guarantee Charge Act 1992* (Cth) and *Superannuation Guarantee (Administration) Act 1992* (Cth).

**End Date** means the date the Consumer indicates via the Platform that the Project is complete.

**Intellectual Property** means any domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Intellectual Property Rights** means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

**Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party, a Party or otherwise.

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth).

**Nexpert X Terms and Conditions** means the terms and conditions for the Platform accessible at nexpertx.com.au.

**Platform** means the Nexpert X introductory platform accessible at nexpertx.com.au.

**Platform Payment Terms** means the payment terms for the Service Package Fee as set out on the Platform.

**Premises** means any property necessary for the Service Provider to access to carry out the Project.

**Project** means the provision of professional services by the Service Provider to the Consumer as set out in the Service Package.

**Service Package** means the Service Package on the Platform to which the Service Provider has indicated this Agreement will apply.

**Service Package Fee** means thefee for the Project as set out in the Service Package.

**Service Provider** means the service provider identified in the Service Package.

**Specifications** means any specifications set out in or attached to the Service Package.

**Start Date** meansthe date this Agreement is accepted in accordance with clause 1.1.