



HotDeskPlus Aus SAAS Terms and Conditions

These terms and conditions (**Terms and Conditions**) are a legally binding contract between you (the **Customer, you and your**) and Hotdeskplus Pty Ltd (a company registered in Australia with ACN 632 908 920) (**HotDeskPlus, we, us and our**).

If you are agreeing to these Terms and Conditions not as an individual but on behalf of an entity or organisation, then “you” means that entity or organisation, and you acknowledge that you are binding that entity or organisation to these Terms and Conditions.

Please read these Terms and Conditions carefully before signing. By signing these Terms and Conditions or otherwise accepting them by signing the Order Form or using or accessing the Products and Services, you acknowledge that you have read, understand and agree to follow and be bound by these Terms and Conditions.

These Terms and Conditions incorporate the Data Security and Privacy Addendum attached to this Agreement.

1 Contract structure

- (a) The terms of engagement for the provision of the Products and Services to the Customer will be set out in an order form which must be executed by both HotDeskPlus and the Customer (**Order Form**). Upon execution by both parties, the Order Form will incorporate these Terms and Conditions and the HotDeskPlus Documentation (as updated from time to time and available on the HotDeskPlus Website and HotDeskPlus App or otherwise attached to the Order Form) and take effect as a binding agreement (**Agreement**)
- (b) Any new features, tools or Software which are added to the Products and Services (including any Updates under clause 6) will also be subject to the Agreement.
- (c) Each party must perform its obligations under the Order Form in accordance with these Terms and Conditions and the terms of the Order Form. The parties must comply with any special conditions set out in the Order Form (**Special Conditions**).
- (d) In the event of any inconsistency between these Terms and Conditions and the Order Form, the provisions will prevail in the following descending order:
 - (i) the Special Conditions (if any), which must explicitly state which terms they replace in order to be valid;
 - (ii) the remaining provisions of the Order Form;
 - (iii) these Terms and Conditions; and
 - (iv) the HotDeskPlus Documentation

2 Term

- (a) The Agreement commences on the Commencement Date and continues for the Initial Term, unless terminated earlier in accordance with clause 14.
- (b) At the end of the Initial Term, the Agreement will be automatically extended for successive Renewal Terms unless:
 - (i) either party provides written notice of its intention to cancel such automatic renewal:
 - (A) no less than 90 days' prior to the commencement of the relevant Renewal Term;
 - (B) no less than 24 hours prior to the commencement of the relevant Renewal Term where the Initial Term is also a Trial Period; or
 - (C) such other period as specified in the Order Form; or
 - (ii) the Trial Period is extended through execution of a new Order Form. If this occurs the previous Order Form will be taken to have been terminated on the day that the new Order Form is executed; or
 - (iii) this Agreement is terminated earlier in accordance with clause 14.

3 Licence

- (a) Subject to clause 4 and the Terms and Conditions of this Agreement, including the Customer's payment of all, if any, relevant Fees and amounts under this Agreement, HotDeskPlus grants to the Customer a non-exclusive, limited, non-sublicensable, non-transferable, revocable licence to access and use, and make available to its Personnel to use, in the Jurisdictions, the Products and Services during the Term in accordance with this Agreement. The Customer is liable for any access or use of the Products or Services outside the Jurisdictions in breach of this clause 3(a).
- (b) The licence set out in clause 3(a) vests in the Customer on the Commencement Date and endures for the duration of this Agreement except as otherwise specified in this Agreement.
- (c) HotDeskPlus will:
 - (i) assist with delivering or otherwise providing access to, and initial configuration and customisation (as applicable) of, the relevant Products and Services as required for the Customer to exercise its rights under clause 3(a) and



as required pursuant to the Order Form, including by providing encryption keys, where applicable; and

- (ii) provide the Customer with any HotDeskPlus Documentation reasonably required to use the Products and Services.

- (d) HotDeskPlus may engage a third party service provider to assist in the delivery, installation, customisation or support of the Products and Services, as applicable.

4 Use of Products and Services

- (a) The Customer must promptly provide all information required by HotDeskPlus to set up the HotDeskPlus App and the Customer's Operating Environment.

- (b) The Customer must use, and must ensure that its Personnel use, the Products and Services in accordance with the End User Licence Agreement for the Products and Services when the Customer and/or its Personnel register to use the Products and Services. All use by the Customer personnel will be deemed to be use by the Customer for which the Customer remains liable.

- (c) The Customer must not, without HotDeskPlus' prior written approval:

- (i) use the Products and Services for a purpose other than the Authorised Purpose and in accordance with the Terms and Conditions of this Agreement;
- (ii) copy or replicate, or directly or indirectly allow or cause a third party to copy or replicate, the whole or any part of the Products and Services;
- (iii) use the Products and Services to assist in the conduct of the business of any third party;
- (iv) modify, adapt or amend the Products and Services, or permit any third party to modify, adapt or amend the Products and Services;
- (v) disassemble, decompile, or reverse engineer (or permit any other person to do so) all or any parts of the computer programs or source code which form any part of the Products and Services (or attempt to do so) or take any other action intended to render any of the programs more amenable to human understanding or render the programs operational as to any other user who has not been authorised by HotDeskPlus;
- (vi) publicly disseminate information regarding the performance of the Products and Services; or
- (vii) sub-license, rent, sell, lease, distribute or otherwise transfer the Products and

Services or any part of them except as permitted under this Agreement.

- (d) The Customer is responsible for maintaining control over and access to its instance of, or account for, the Products and Services. The Customer must keep accurate, up-to-date records of each of the Customer's Personnel who access the Customer's instance of, or account for, the Products and Services.

- (e) The Customer must maintain the confidentiality of all login information and must not allow or authorise any person other than the Customer's Personnel to use the login information. The Customer must immediately notify HotDeskPlus of any suspected or actual unauthorised access to or use of the login information.

- (f) The Customer must ensure there is only one end user per HotDeskPlus Account. The Customer is responsible for any and all activities that occur on the Customer's instance of, or account for, the Products and Services, whether or not authorised by the Customer.

- (g) The Customer must not, and must ensure its Personnel do not, use the Products and Services (including through the upload of any Customer Material) in any way that:

- (i) involves anything which is false, defamatory, harassing or obscene;
- (ii) involves unsolicited electronic messages;
- (iii) would involve the contravention of any person's rights (including Intellectual Property Rights);
- (iv) may contravene any Laws;
- (v) could damage, disable or impair any part of the Products and Services;
- (vi) may otherwise be regarded by HotDeskPlus, on reasonable grounds, to be unacceptable (HotDeskPlus may from time to time notify the Customer of the circumstances which it regards as unacceptable);
- (vii) involves any fraudulent activity;
- (viii) involves any dealing with Personal Information in contravention of applicable Privacy Laws; or
- (ix) involves the sale or promotion of any illegal business activities or prohibited products or services.

- (h) The Customer must comply at all times with the terms of any Third Party Licences.

5 Fees, payment and GST

5.1 Fees and payment

- (a) Except as provided for in clause 5.1(b), the Customer must pay the Fees set out in each invoice, without set-off, abatement or deduction, in accordance with this clause 5 and in accordance with any specific invoicing arrangements specified in the Order Form. The Fees payable will be calculated by the methods specified in the Order Form.
- (b) If the Customer has been granted a Trial by HotDeskPlus, the Customer:
 - (i) is not required to pay any Fees; and
 - (ii) will not be issued invoices
 for the duration of the Trial Period.
- (c) During the Initial Term and/or no later than 30 days prior to any Renewal Term, HotDeskPlus may notify the Customer in writing of revisions to the Fees to take effect from the start of the next Renewal Term.
- (d) Except as provided for in clause 5.1(b) and unless expressly stated otherwise in the Order Form:
 - (i) if the Customer did not undertake a Trial, invoices for Up-front Fees and Set-up Fees set out in the Order Form will be invoiced on the Commencement Date and the Customer must pay all such invoices within 7 days of receipt;
 - (ii) if the Customer did undertake a Trial, invoices for Up-front Fees and Set-up Fees set out in the Order Form will be invoiced on the first day of the first Renewal Term immediately following the Trial Period and will not be invoiced for subsequent Renewal Terms and the Customer must pay all such invoices within 7 days of receipt;
- (e) Except as provided for in clause 5.1(b) and unless expressly stated otherwise in the Order Form, if the Customer is on a Monthly Billing Cycle, invoices for any volume-based and/or other Fees as set out in the Order Form will be submitted monthly in advance and the Customer must pay all such invoices within 30 days of receipt.
- (f) Except as provided for in clause 5.1(b) and unless expressly stated otherwise in the Order Form, if the Customer is on a Quarterly Billing Cycle, invoices for any volume-based and/or other Fees as set out in the Order Form will be submitted:
 - (i) quarterly in advance for the Quarterly Billing set out in section 10 of the Order Form; and
 - (ii) monthly in arrears for the Monthly Adjustment
 and the Customer must pay all such invoices within 30 days of receipt.

- (g) Except as provided for in clause 5.1(b) and unless expressly stated otherwise in the Order Form, if the billing cycle is annually, invoices for any volume-based and/or other Fees as set out in the Order Form will be submitted
 - (i) annually in advance for the Annual Billing set out in section 10 of the Order Form; and
 - (ii) monthly in arrears for the Monthly Adjustment,
- (h) and the Customer must pay all such invoices within 30 days of receipt.
- (i) Any portion of the payments not paid by the Customer on or before the date that it is due shall accrue interest at a rate equal to the 30 day Australian Treasury Bill rate plus 4% per annum, from the date such amount is due until payment is received in full by HotDeskPlus.
- (j) The Customer will pay the Fees through one of the payment methods specified in the Order Form, including by electing to authorise us to automatically deduct any Fees payable under clause 5.1(a) from a bank account, credit card or debit card nominated by the Customer on the date such amounts are due under clauses 5.1(d) - 5.1(h). If you authorise us to make such deductions, we will do so each month until you tell us to stop by removing this as your preferred payment method in accordance with the notification process in clause 21. You are responsible for ensuring that sufficient funds are available on the relevant due date so that the appropriate deduction can be made. For the avoidance of doubt, if an attempted deduction is unsuccessful, the relevant amount will be considered to be unpaid and clause 5.1(k) will be enlivened if it is not otherwise paid using a different payment method.
- (k) If the Customer fails to make payment to HotDeskPlus in respect of any Fees when due under clauses 5.1(d) - 5.1(h), the Customer acknowledges that HotDeskPlus may suspend the provision of services, including access to the Products and Services, until such time as payment is made in full as per the invoice.

5.2 GST

- (a) If GST is payable on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable on that supply.
- (b) Unless otherwise stated, all amounts referred to in this Agreement, including the Fees, are stated on a GST exclusive basis.
- (c) If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST payable on that supply will be recalculated



to reflect that adjustment and an appropriate payment will be made between the parties.

- (d) In providing an invoice, a party shall provide proper tax invoices if GST is applicable to the Fees.
- (e) Terms which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) shall have that meaning in this Agreement.

6 Updates

- (a) From time to time, HotDeskPlus may introduce Updates to the Products and Services.
- (b) HotDeskPlus will provide the Customer with reasonable prior notice in advance of any Update which would, in the reasonable opinion of HotDeskPlus, have a material detrimental impact on the Products and Services, unless security, legal, system performance or Third Party Licence considerations or obligations require an expedited Update.

7 Support Services

HotDeskPlus shall provide any Support Services as specified in the Order Form.

8 Intellectual Property Rights

8.1 Ownership

- (a) The Customer acknowledges and agrees that HotDeskPlus owns or licenses:
 - (i) all Intellectual Property Rights in the Products and Services; and
 - (ii) any Developed Intellectual Property,and nothing in this Agreement is intended to transfer ownership of or interest in any Intellectual Property Rights of HotDeskPlus or any third party.
- (b) To the extent that the Customer acquires ownership of any Intellectual Property Rights in the Developed Intellectual Property:
 - (i) the Customer assigns, and shall procure that its Personnel assign, such Intellectual Property Rights to HotDeskPlus;
 - (ii) the Customer must, upon request by HotDeskPlus, execute (and procure that its Personnel execute) any assignment or other document reasonably required to evidence or perfect HotDeskPlus' ownership of such Intellectual Property Rights; and
 - (iii) the Customer must provide all reasonable assistance requested by HotDeskPlus to protect, defend and assert HotDeskPlus' interests in such Intellectual Property Rights.
- (c) the Customer must notify HotDeskPlus immediately if it becomes aware of any:

- (i) unauthorised access to or use of the Products and Services;
- (ii) other breach of any of HotDeskPlus' Intellectual Property Rights; or
- (iii) claim by any third party relating to Intellectual Property Rights in the Products and Services.

- (d) HotDeskPlus indemnifies the Customer against any liability (including liability for reasonable legal costs) under an injunction or final judgment against the Customer, based on a claim that its use of the Products and Services in accordance with this Agreement is an infringement of the Intellectual Property Rights of any third person (**Claim**), except to the extent any such infringement is caused by an act or omission of the Customer, and only if:

- (i) the Customer notifies HotDeskPlus immediately after it becomes aware of the Claim;
- (ii) HotDeskPlus has sole control over defence of the Claim (even in the Customer's name) and any negotiations to settle the Claim;
- (iii) the Customer allows its name to be used in any proceedings arising out of the Claim; and
- (iv) the Customer provides HotDeskPlus all other assistance reasonably requested (and paid for) by HotDeskPlus to defend or settle the Claim.

- (e) If a Claim is made, HotDeskPlus may:

- (i) procure for the Customer the right to continue using the Products and Services free of the Claim;
- (ii) replace or modify the Products and Services to remove any infringing (or allegedly infringing) component; or
- (iii) immediately terminate this Agreement and the Customer must immediately cease using the Products and Services.

8.2 Customer Material

- (a) The Customer agrees and acknowledges that it is solely responsible for any Customer Material.
- (b) While HotdeskPlus will seek to ensure that the Products and Services are as accurate as possible, the Customer acknowledges and agrees that:
 - (i) HotDeskPlus is not responsible for any Customer Material or other information input into the Products and Services by the Customer and/or its Personnel;
 - (ii) it must ensure that all Customer Material that is input into the Products and



Services is accurate, complete and up-to-date;

- (iii) it has sufficient rights to all Customer Material, to hold the Customer Material and input it to the Products and Services; and
- (iv) it has obtained from all individuals and third parties any required Consents and have provided all required notices with respect to the collection, retention, disclosure and use of the Customer Material as contemplated for the purposes of this Agreement that are required under applicable laws.

(c) The Customer, in the event that it discovers that any Customer Material input by it into the Products and Services is not accurate, complete or up-to-date, will promptly notify HotDeskPlus and update the Customer Material.

(d) HotDeskPlus reserves the right to modify, update, edit or delete Customer Material where it deems such Customer Material is a risk to the security, accuracy or integrity of the Products and Services, and may do so without prior written notice to the Customer, but will use reasonable endeavours to notify the Customer as soon as reasonably practical in the event of such deletion.

(e) The Customer must ensure that Customer Material, and its collection, use, processing, disclosure and dissemination via the Products and Services:

- (i) will not infringe any Intellectual Property Rights of any person; and
- (ii) complies with all applicable Laws (including Privacy Laws, where applicable).

(f) Notwithstanding any other clause in this Agreement, the Customer agrees that HotDeskPlus will have the right to access, use, adapt, modify, reproduce, reformat, transform, and process Customer Material for the purpose of:

- (i) providing the Customer with the Products and Services;
- (ii) internal training; and
- (iii) testing, improving and developing new features for the Products and Services,

and grants HotDeskPlus a perpetual, royalty-free, worldwide, transferable, non-exclusive licence to do so, including the right to sub-license.

9 Variation

(a) HotDeskPlus may unilaterally amend these Terms and Conditions from time to time to reflect additions to the Products and Services offered, changes in market conditions, changes in technology used to provide the Products and Services under this

Agreement, changes in payment methods, changes in relevant laws and regulatory requirements and changes in the capabilities of HotDeskPlus' system.

(b) HotDeskPlus will provide the Customer with reasonable prior notice of any amendment to these Terms and Conditions in writing.

10 Confidentiality and publicity

10.1 Confidentiality

(a) Each party

(i) except as permitted under clause 10.1, must keep confidential all Confidential Information of the other party; and;

(ii) may use Confidential Information of the other party solely for the purposes of exercising its rights and performing its obligations under this Agreement and otherwise for the purposes of this Agreement;

(iii) may only disclose Confidential Information of the other party

(A) to persons which control, or are controlled by, the party within the meaning of the Corporations Act, and the employees, legal advisors or consultants of such persons, in each case under corresponding obligations of confidence as imposed by this clause and only where such persons, employees, legal advisors or consultants of such persons have a need to know such information in connection with this Agreement;

(B) in enforcing this Agreement or in a proceeding arising out of or in connection with this Agreement; or

(C) to the extent required by Law or pursuant to a binding order of a government agency or court.

(b) HotDeskPlus may disclose Confidential Information of the Customer to the extent necessary in connection with a capital raising, financing, or transfer or divestiture of all or a portion of its business, or otherwise in connection with a merger, consolidation, change in control, reorganisation or liquidation of all or part of HotDeskPlus' business, but will use reasonable efforts to minimise the scope of such disclosure.

10.2 Publicity

(a) Subject to clause 10.2(b) the Customer acknowledges and agrees the parties will not make any public announcement in relation to this

Agreement without the prior written approval of the other party.

- (b) The Customer acknowledges and agrees that HotDeskPlus may:
- (i) disclose to third parties the fact that the Customer has entered into this Agreement with HotDeskPlus, including by way of the use of the Customer's company logo; and
 - (ii) use de-identified information about the Customer,

in any marketing or other material used by HotDeskPlus, including case studies regarding the Customer's involvement with HotDeskPlus.

- (c) The Customer grants to HotDeskPlus a royalty-free, non-exclusive licence to use and display the Customer's logo on the HotDeskPlus Website or in HotDeskPlus' marketing materials for the purpose of clause 10.2(b). The licence granted in this clause 10.2(c) survives termination of the Agreement for whatever reason.

11 Third Party Content

- (a) The Customer acknowledges that the Products and Services may incorporate Third Party Content including open source software and that HotDeskPlus is not responsible for the accuracy, quality, integrity or reliability of the same.
- (b) To the extent permitted by Law (including the Australian Consumer Law, if applicable), HotDeskPlus does not give any representation or warranty as to the reliability, accuracy or completeness of any Third Party Content, including open source software, and HotDeskPlus will have no responsibility or liability to the Customer or any other person arising from or in connection with any error, defect or inaccuracy in any Third Party Content.

12 Operating Environment

- (a) The Customer acknowledges that, except to the extent otherwise provided in this Agreement, it is solely responsible for establishing, providing or procuring, maintaining and supporting any Third Party Licences and any operating environment, facilities, equipment and telecommunications and internet connections necessary to use and obtain the benefit of the Products and Services (**Operating Environment**).
- (b) The Customer must ensure that the Operating Environment has the necessary specifications, features and third party software required to ensure compatibility with relevant parts of the Products and Services, as may be notified by HotDeskPlus from time to time.

13 Force Majeure

- (a) Subject to the requirement to give notice under this clause, if the performance by any party (**Affected Party**) of all or any of its obligations under this

Agreement is prevented or delayed (in whole or in part) due to any Force Majeure Event, this Agreement will continue and remain in effect but the Affected Party will not be in breach of this Agreement for that reason only, and the Affected Party will be granted a reasonable extension of time to complete performance of its affected obligations. This clause 13(a) shall not apply to payment obligations under clause 5.

- (b) The Affected Party must promptly, after becoming aware of a Force Majeure Event, give written notice to the other party of the nature of the Force Majeure Event and the way and the extent to which its obligations are prevented or delayed and notify the other party of any material change in these matters and use its reasonable endeavours to limit the effects of the Force Majeure Event, and promptly carry out its obligations as soon as, and to the extent that, it is able to do so.

14 Termination

14.1 Termination

- (a) Either party may terminate this Agreement with immediate effect by giving written notice to the other party at any time if:
- (i) the other party experiences an Insolvency Event;
 - (ii) the other party breaches any material provision of this Agreement which is incapable of being remedied, or where the breach is capable of being remedied, fails to remedy the breach within 30 days after receiving written notice from the terminating party requiring it to do so; or
 - (iii) without limiting clause 14.1(a)(ii), the other party fails to comply with the obligations set out in clause 10 (Confidentiality and Publicity) or the Data Security and Privacy Addendum.
- (b) HotDeskPlus may terminate this Agreement:
- (i) on 60 days' written notice to the Customer for any reason;
 - (ii) immediately by written notice to the Customer in the event of any change (directly or indirectly) in a controlling interest or majority ownership of the Customer; or
 - (iii) immediately by written notice to the Customer if, subject to an invoice that has been disputed under clause 22, the Customer fails to pay any amount due under this Agreement, and does not pay within 14 days after receiving notice requiring the Customer to do so.



14.2 Consequences of termination

- (a) On expiration or termination of this Agreement for any reason, the Customer must immediately:
- (i) stop using the Products and Services, and ensure that all of the Customer's Personnel stop using the Products and Services;
 - (ii) return to HotDeskPlus (or, at HotDeskPlus' direction, destroy) all copies of the HotDeskPlus Documentation and any of HotDeskPlus' Confidential Information in the Customer's possession or control; and
 - (iii) allow HotDeskPlus or HotDeskPlus' nominee to access the Customer's premises and systems to enable HotDeskPlus to de-install and remove relevant parts of the Products and Services (if applicable).
- (b) If HotDeskPlus terminates this Agreement under clause 14.1(a)(ii) the Customer will pay HotDeskPlus any unpaid Fees covering the remainder of the Term.
- (c) If the Customer terminates this Agreement under clause 14.1(a)(ii) HotDeskPlus will refund the Customer any pre-paid Fees covering the remainder of the Term after the date of termination on a pro-rata basis.
- (d) Termination of this Agreement shall not relieve the parties of any accrued liability (including with respect to outstanding or accrued Fees).

15 Warranties

- (a) The Customer warrants that:
- (i) it has the authority to enter into and perform its obligations under this Agreement and that this Agreement has been duly executed and is a legal, valid and binding Agreement;
 - (ii) it will act in good faith towards HotDeskPlus and any of HotDeskPlus' authorised representatives and provide such assistance and co-operation as is practicable on request by HotDeskPlus; and
 - (iii) it will comply at all times with applicable Laws and regulations, and all reasonable directions HotDeskPlus gives.
- (b) The Customer will be solely responsible for any representations, warranties or guarantees made or published concerning the Products and Services by the Customer to the extent that such representations, warranties or guarantees are inconsistent with any warranties in this Agreement.
- (c) HotDeskPlus warrants that:

- (i) it has the authority to enter into and perform its obligations under this Agreement and that this Agreement is a legal, valid and binding Agreement;
- (ii) it has all rights necessary to grant access to the Products and Services;
- (iii) it will comply at all times with applicable Laws; and
- (iv) it will not do anything or make any statement that could be reasonably expected to harm the reputation of the Customer.

16 Disclaimer

- (a) The Customer acknowledges and agrees that, to the extent permitted by Law (including the Australian Consumer Law if applicable), the Products and Services are made available "as is" and HotDeskPlus makes no representation, warranty or guarantee as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of any content contained in or generated by the Products and Services, or:
- (i) that the use of the Products and Services will be secure, timely, uninterrupted or error-free;
 - (ii) that the Products and Services will operate in combination with any other hardware, software, platform, or Customer Material;
 - (iii) that the Products and Services will meet the Customer's requirements or expectations;
 - (iv) that any stored Customer Material will be accurate or reliable or that any stored Customer Material will not be lost or corrupted;
 - (v) errors or defects will be corrected;
 - (vi) that the Products and Services, and information extracted from them, will be accurate, free from defects, bugs, errors or omissions, or that any Customer Material input into the Products and Services will not be lost or corrupted; or
 - (vii) in relation to non-infringement, title, fitness for a particular purpose, functionality, availability or merchantability.
- (b) Without limiting any other provision of this Agreement, to the extent permitted by Law (including the Australian Consumer Law if applicable), HotDeskPlus does not make any representation, warranty or guarantee:
- (i) that servers used to make a hosted component of the Products and Services available are free of viruses or other harmful components; or

- (ii) in respect of the availability or uptime of any hosted component of the Products and Services due to scheduled or unexpected maintenance, system downtime or outages or other interruptions.
- (c) HotDeskPlus uses reasonable endeavours to ensure that the Products and Services are free of viruses or other harmful components, but cannot guarantee they will be free from unknown viruses and other harmful components.
- (d) HotDeskPlus shall not be liable for delays, interruptions, service failures and other problems inherent in use of the internet and electronic communications or other platforms outside the reasonable control of HotDeskPlus, including third party hosting providers.
- (e) HotDeskPlus disclaims all liability in respect of the results of any verification of identity performed using the Products and Services, including to the extent that such verification relies on the accuracy or completeness of any Customer Material.

17 Indemnities

Without limiting any other indemnities given by the Customer under this Agreement, the Customer shall defend, hold harmless and indemnify HotDeskPlus and its Related Bodies Corporate and Personnel (the **HotDeskPlus Indemnified Parties**) from and against any Loss suffered or incurred by the HotDeskPlus Indemnified Parties arising out of or in connection with:

- (a) any breach by the Customer of clauses **Error! Reference source not found.** (Licence), 4 (Use of the Products and Services), 8 (Intellectual Property Rights), 10 (Confidentiality and Publicity) or the Data Security and Privacy Addendum;
- (b) the performance, or failure to perform, of the Products and Services associated with any deficiency or inadequacy of the Customer's Operating Environment;
- (c) any Customer Material (including Personal Information or Sensitive Information used or disclosed by the Customer, including any claim by any person that Customer Material infringes any Intellectual Property Right or other right (including privacy rights) of such person or any third party);
- (d) the use of the Products and Services by the Customer and its Personnel;
- (e) any fraud, wilful misconduct or negligence by the Customer or its Personnel; or
- (f) any loss or damage to property arising out of or otherwise in connection with any wrongful act or omission of the Customer.

18 Limitation of Liability

- (a) To the extent permitted by Law, (including the Australian Consumer Law if applicable), and subject

to clause 18(c), no liability is accepted in relation to a Trial of the Products and Services and in no event will the aggregate liability of HotDeskPlus for any Loss, direct or otherwise, exceed an amount either that is equivalent to the Fees paid by the Customer to HotDeskPlus in the Contract Year in which the event giving rise to the liability occurred, regardless of the cause or form of action. For the avoidance of doubt, the limitation of liability under this clause 18(a) is cumulative and not per incident and applies to the indemnity provided in clause 8.1(d).

- (b) To the extent permitted by Law, (including the Australian Consumer Law if applicable), under no circumstances will either party be liable for any Consequential Loss, except to the extent arising from a breach by the Customer of its obligations under clauses 8, 10 and the Data Security and Privacy Addendum.
- (c) Clause 18(a) does not apply to, and shall not limit, any party's liability:
 - (i) for death or personal injury caused by that party or its Personnel;
 - (ii) for fraud (including fraudulent misrepresentation); or
 - (iii) under any indemnity given in this Agreement except for in clause 8.1(d).

19 Assignment

The Customer must not sub-license, assign or novate, directly or indirectly, or attempt to sub-licence, assign or novate, any of its rights or obligations under this Agreement without the prior written consent of HotDeskPlus.

HotDeskPlus may assign or subcontract all or part of this Agreement to any other party.

20 Survival

Without limiting any other provision of this Agreement, clauses 5 (Fees, payment and GST), 8 (Intellectual Property Rights), 10 (Confidentiality and publicity) and 18 (Limitation of liability), and the Data Security and Privacy Addendum and any other clauses which should by their nature survive termination of this Agreement, survive termination or expiry of this Agreement for any reason.

21 Notices

- (a) Subject to clause 21(b), a party giving notice or notifying under this Agreement must do so in English and in writing:
 - (i) in the case of HotDeskPlus, addressed to the CEO at Level 30, 40 Bank Street, London E14 5NR or, in the case of the Customer, to the person and address supplied in the Order Form or as altered by any notice; and
 - (ii) hand delivered or sent by prepaid post to that address.

- (b) For the purposes of service messages and notices about the Products and Services, including notices under clause 6, notice may consist of:
- (i) an email from HotDeskPlus to an email address associated with the Customer's account; or
 - (ii) A pop-up notification to the Administrator Account in the HotDeskPlus App, even if HotDeskPlus has other contact information. The Customer acknowledges and agrees that HotDeskPlus shall have no liability associated with or arising from the Customer's failure to maintain accurate contact or other information, including, but not limited to, the Customer's failure to receive critical information about the Products and Services.
- (c) A notice given in accordance with this clause is taken to be received:
- (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, three (3) days after the date of posting;
 - (iii) if sent by email under clause 21(b), at the time of sending the email.

22 Dispute resolution

- (a) If a dispute arises out of or in relation to this Agreement, either party may notify the other in writing in which case a nominated representative of each affected party must promptly attempt in good faith to resolve the dispute. In the event that the parties are unable to resolve the dispute within 60 days of the written notification referred to in this clause, each party must promptly refer the dispute for resolution to one of the Managing Director, Chief Executive or Chief Operating Officer (**Senior Executive**) of that party.
- (b) If the parties are unable to resolve the dispute within 14 days following referral to the Senior Executive of the relevant parties, then the parties must seek to mutually appoint an arbitrator. If the parties cannot agree on a single arbitrator, then there shall be three arbitrators: one selected by each party, and a third selected by the first two. Arbitration will take place in London (UK) unless all three arbitrators mutually agree on an alternative city. The arbitration rules will be the Resolution Institute Arbitration Rules.
- (c) Nothing in this clause 22, shall prevent a party from seeking urgent injunctive relief before an appropriate court with respect to a violation of Intellectual Property Rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

23 General

- (a) Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement.

- (b) This Agreement contains the entire agreement between the parties with respect to its subject matter. Neither of the parties has relied on or is relying on any other representation in entering into this Agreement.
- (c) Except where expressly stated otherwise, any express statement of a right of a party under this Agreement is without prejudice to any other rights of that party expressly stated in this Agreement or existing at Law.
- (d) Nothing in this Agreement gives a party any right to bind the other party in contract or otherwise at Law, or hold itself out as a representative of the other party.
- (e) Each party must take all steps as may be reasonably required by the other party to give effect to the Terms and Conditions of this Agreement and transactions contemplated by this Agreement.
- (f) Subject to clause 9, this Agreement may be amended only by another written agreement executed by all the parties.
- (g) The Customer will be fully responsible to HotDeskPlus for any Loss suffered by HotDeskPlus or its Personnel arising from or in connection with the acts or omissions of its sub-contractors, contractors, assigns and all their employees, as if they were the acts and omissions of the Customer.
- (h) No failure to exercise or delay in exercising any right, power or remedy under this Agreement operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (i) The rights, powers and remedies provided to a party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or any agreement.
- (j) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
- (k) Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.
- (l) This Agreement and, to the extent permitted by law, all related matters including non-contractual matters, is governed by the Laws of Victoria, Australia. In relation to such matters, each party irrevocably accepts the non-exclusive jurisdiction of courts with jurisdiction there and waives any right to object to the venue on any ground.



- (m) This Agreement may be executed in any number of counterparts and by electronic means. All counterparts will be taken to constitute one agreement.

24 Third Party Beneficiaries

- (a) Aside from Related Bodies Corporate of, HotDeskPlus, there are no third-party beneficiaries under this Agreement.

25 Definitions and interpretation

25.1 Definitions

The following definitions apply unless the context requires otherwise.

Administrator Account means the account of the Customer's chosen administrator, who is given oversight of the Customer's platform and users.

Annual Billing Cycle means where invoicing on an annual basis has been selected in the Order Form.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended or replaced from time to time.

Authorised Purpose means the Customer's use of the Products and Services for the purpose of recording Personnel Data and using this Data:

- to determine office real estate needs;
- to allow booking of and/or checking in to available desks, office space and meeting rooms
- to provide detailed management information around HotdeskPLUS processes, associated costs and employee activities including well-being;
- for any other purpose set out in a schedule to this Agreement or in an attachment to the Order Form; or
- as the ordinary use of any additional features would permit provided as Updates to the Software by HotDeskPlus from time to time.

Authority means APRA, ASIC and any government or semi-government statutory, public or other authority or body having jurisdiction over the Customer.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place of incorporation of HotDeskPlus.

Commencement Date means the commencement date specified in the Order Form.

Confidential Information means all information of a confidential or proprietary nature, in any form whether tangible or not, disclosed or communicated by a party to the other, or learnt or accessed by, or to which the other party is exposed as a result of entering into this Agreement. Specifically, HotDeskPlus' Confidential Information includes the design, specification and content of the Products and Services, including its source code, HotDeskPlus' Personnel information, operational and other policies, project documentation,

proposals, or other development documentation including any specifications, or business strategies, and the Terms and Conditions of this Agreement, including the Fees and information relating to HotDeskPlus' pricing and all reports generated by HotDeskPlus. Confidential Information does not include information which:

- (a) becomes public knowledge during this Agreement;
- (b) is already known to the other party;
- (c) is received by the other party from a third party not under a duty of confidence; or
- (d) is independently developed by the other party

in circumstances where there was no breach of any obligation of confidence.

Consent means any licences, clearances, permissions, authorisations, waivers, approvals or consents.

Consequential Loss means any indirect or consequential loss (not being loss which arises naturally as a result of a breach of this Agreement or other event the subject of the relevant claim), including loss of profits, loss of income or revenue, loss of Data, loss of or damage to reputation, loss of or damage to goodwill, loss of business opportunities (including opportunities to enter into or complete arrangements with third parties), loss of management time, damage to credit rating, or loss of business.

Contract Year means a 12 month period commencing on the Effective Date or any anniversary of the Effective Date.

Corporations Act means the *Corporations Act 2001* (Cth), as amended or replaced from time to time.

Customer Material means any and all Data or other material input, entered into or added or uploaded to the Products and Services, or otherwise provided or made available to HotDeskPlus, by, on behalf of, or at the request of, the Customer or its Personnel.

Data means any data, information or Personal Information accessible to HotDeskPlus (or any third parties who have access to such Data through HotDeskPlus) under or in connection with this Agreement and which relates in any way to the Customer or its related entities (including their operatives, suppliers, customers and Personnel).

Developed Intellectual Property means any Intellectual Property Rights arising from any work done by or for HotDeskPlus on behalf of the Customer in connection with the Products and Services, including the development of any portals used by the Customer to access the Products and Services and any feedback (including suggestions, ideas, information, comments, process descriptions or other information) provided by the Customer to HotDeskPlus.

Effective Date means the start date of this Agreement, or if no such date is set out, the date of HotDeskPlus' first invoice to the Customer.

End User Licence Agreement means the end user terms and conditions of use for the particular Products and Services available on the HotDeskPlus Website and HotDeskPlus App,



which end users must accept as part of the registration process for a HotDeskPlus Account.

Fees means the fees and expenses set out in the Order Form.

Force Majeure Event affecting a party means a circumstance beyond the reasonable control of that party causing that party to be unable to observe or perform on time an obligation under this Agreement, including acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and acts of war and war, general strikes (other than of its own staff), embargo, or power, water and other utility shortage.

HotDeskPlus Account means the account for each end user to enable use of the Products and Services which is activated following registration and acceptance of the End User Licence Agreement.

HotDeskPlus App / App means the application downloaded by end users to a mobile device.

HotDeskPlus Documentation means the API documentation, sample code, reference manual, user instructions, technical literature and all other related materials supplied to the Customer in any format by HotDeskPlus for aiding the installation, use and application of the Products and Services (including the Software), and will include all revised documentation supplied as part of an Update.

HotDeskPlus Website / Website means <https://app.hotdeskplus.com/>

Initial Term means the initial term set out in the Order Form, such period commencing on and from the Commencement Date and which may be preceded by a Trial Period if a Trial Period is specified in the Order Form.

An **Insolvency Event** occurs in respect of a person where:

- (a) a party ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of a substantial part of its assets;
- (b) a party becomes unable to pay its debts when they fall due, or stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (c) a party becomes or is (including under legislation) deemed or presumed to be insolvent;
- (d) a party has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of it or the whole or any part of its assets or business;
- (e) any composition or arrangement is made with any one or more classes of its creditors;
- (f) except for the purpose of solvent amalgamation or reconstruction, an order, application or resolution is made, proposed or passed for its winding up, dissolution, administration or liquidation;
- (g) a party enters into liquidation whether compulsorily or voluntarily; or

- (h) any analogous or comparable event takes place in any jurisdiction.

Intellectual Property Rights means all industrial and intellectual property rights of any kind including but not limited to copyrights (including rights in computer software object code and source code), trade marks, service marks, business names, trade names, rights in trade names, domain names, rights in domain names and URLs, company names, product names, logos or get-up, designs, design rights, database rights, patents, rights in inventions, Know-how and other proprietary rights, format rights, trade secrets, semi-conductor or circuit layout rights, rights in Confidential Information, and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these (whether or not any of these are registered and including any application, or right to apply, for registration), which may subsist anywhere in the world, existing now or in the future, and all derivations, modifications, improvements and enhancements to these intellectual property rights, but excludes moral rights, and similar personal rights where these are non-assignable.

Jurisdictions means the United Kingdom, any member state of the European Union and Australia.

Know-how means non-trivial industrial and commercial information and techniques, in each case, in any form and not in the public domain.

Law means all applicable laws including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by laws, rules, regulatory principles, requirements and determinations, mandatory codes of conduct and standards, writs, orders, injunctions and judgments.

Loss means any claim, loss, damage, liability, cost, charge or expense (including legal expenses on a full indemnity basis), however arising, and whether present or future, fixed or unascertained, actual or contingent. For the avoidance of doubt, Loss does not include payment of Fees.

Minimum User Number means the minimum number of invoiced monthly users as stated in clause 9 of the Order Form.

Monthly Adjustment means the adjustment amount based on the monthly fee per user set out in the Order Form where the actual monthly users exceeds the Minimum User Number.

Monthly Billing Cycle means where invoicing on a monthly basis has been selected in the Order Form.

Operating Environment has the meaning given to that term set out in clause 12.

Personal Information has the meaning given to that term in the Privacy Act.

Personnel means, in respect of a person, any officer, employee, contractor, servant, agent, or other person under the Customer's direct or indirect control and includes any subcontractors, who may also be end users of the Products and Services.

Privacy Act means the *Privacy Act 1988* (Cth), as amended or replaced from time to time.



Privacy Laws means the Privacy Act, the *Spam Act 2003* (Cth) and all other laws, rules and regulations in Australia which relate to the privacy, protection, use or disclosure of Personal Information and any guidelines, orders, directives or codes of conduct issued by an Authority under or in respect of such laws, rules or regulations, as amended from time to time.

Products and Services means the products and services specified in the Order Form and described on the HotDeskPlus Website (as updated from time to time), including any Software, Support Services, any associated HotDeskPlus Documentation or Updates (as applicable), and any additional material or services the parties have agreed that HotDeskPlus will supply to the Customer in accordance with the Schedules of this Agreement.

Quarterly Billing Cycle means where invoicing on a quarterly basis has been selected in the Order Form.

Related Body Corporate has the meaning given to that term in section 9 of the Corporations Act.

Renewal Term means the periods for which the Term shall successively renew, as set out in the Order Form.

Sensitive Information means:

- (a) information or an opinion about an individual's:
 - (i) racial or ethnic origin; or
 - (ii) political opinions; or
 - (iii) membership of a political association; or
 - (iv) religious beliefs or affiliations; or
 - (v) philosophical beliefs; or
 - (vi) membership of a professional or trade association; or
 - (vii) membership of a trade union; or
 - (viii) sexual orientation or practices; or
 - (ix) criminal record;that is also Personal Information; or
- (b) health information about an individual; or
- (c) genetic information about an individual that is not otherwise health information; or
- (d) biometric information that is to be used for the purpose of automated biometric verification or biometric identification; or
- (e) biometric templates,

which is received by the Customer as a consequence of, or otherwise in connection with, this Agreement.

Set-up Fees mean the Fees specified as such in the Order Form.

Software means the software, licensed or otherwise, provided to the Customer by HotDeskPlus in accordance with this Agreement, and includes all software supplied as part of an Update.

Support Services means the support services provided by HotDeskPlus as specified in the Order Form (if applicable).

Term means the period from the Commencement Date until the end of the Trial Period, the Initial Term or any applicable Renewal Term in accordance with clause 2.

Third Party Content means any information, data or other content that HotDeskPlus sources and/or supplies from any third party for use in connection with the Products and Services.

Third Party Licence means any licence, registration or other authorisation that is required by the Customer to enable the Customer to properly access and use the Products and Services, including any licence, registration or other authorisation as notified by HotDeskPlus to the Customer.

Trial means use of the Products and Services specified in the Order Form without charge for the Trial Period, in accordance with this Agreement.

Trial Period means the period of the Trial, being 90 days or such other period as set out in the Order Form.

Update means any update, upgrade or modification to the Software from time to time, but does not include new versions of the Software, and accompanying revisions to the HotDeskPlus Documentation, as determined in the absolute discretion of HotDeskPlus.

Upfront Fees mean the Fees specified as such in the Order Form.

25.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) the singular includes the plural and conversely;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to a person includes any body corporate, unincorporated body or other entity and conversely;
- (d) a reference to a clause is to a clause of these Terms and Conditions;
- (e) a reference to any party to this Agreement or any other agreement or document includes the party's successors and permitted assigns;
- (f) a reference to any agreement or document (including a reference to this Agreement) is to that agreement or document as amended, notated, supplemented, varied or replaced from time to time, where applicable, in accordance with this Agreement or that other agreement or document;
- (g) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (h) a reference to conduct includes any omissions, statement or undertaking, whether or not in writing;



(i) mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included; and

(j) all references to \$ are to Australian dollars, unless another currency is specified in the Order Form.



HotDeskPlus Data Security and Privacy Addendum

This Data Security and Privacy Addendum (**Addendum**) is supplementary to and forms part of the HotDeskPlus SAAS Terms and (**Agreement**), including as amended from time to time.

By signing the Agreement or otherwise accepting the SAAS Terms and Conditions by signing the Order Form or using or accessing the Products and Services, the Customer enters into this Addendum. All capitalised terms that are undefined shall have the meaning set forth in the Agreement.

1 Application of this Addendum

This Addendum:

- (a) applies in addition to the Agreement; and
- (b) despite anything to the contrary in the Agreement, overrides and prevails over the terms of the Agreement to the extent of any inconsistency.

2 Definitions

Unless the context otherwise requires, capitalised words in this Addendum have the same meaning as in the Agreement. In addition, the following definitions apply in this Addendum unless the context requires otherwise.

Eligible Data Breach has the meaning given to that term in the Privacy Act.

OAIC means the Office of the Australian Information Commissioner.

3 Privacy

- (a) Each party must comply with the Privacy Act (as though it were an entity bound by the Privacy Act and notwithstanding the small business exception in the Privacy Act) and any other applicable Privacy Laws, in respect of any Personal Information that:
 - (i) one party discloses to the other party; or
 - (ii) comes into the possession or control of a party by any means, including through use of the Products and Services.
- (b) The Customer must both during and after the Term:
 - (i) take all reasonable steps to ensure that Personal Information and Sensitive Information is protected against misuse and loss, or unauthorised use, access or disclosure, including by not disclosing any Personal Information or Sensitive Information to a third party;
 - (ii) not do anything which may cause HotDeskPlus to breach any Privacy Law; and
 - (iii) if requested by HotDeskPlus, co-operate with HotDeskPlus to resolve any complaint or investigation under any Privacy Law, and provide other reasonable assistance for HotDeskPlus to comply with any applicable Privacy Law.
- (c) Customer must, throughout the Term, obtain all necessary Consents, and provide all necessary notices, relevant to its use of the Products and Services, including those in relation to collection, use, disclosure and storage of Personal Information or Sensitive Information of any individual whose Personal Information or Sensitive Information may be provided to HotDeskPlus, directly or indirectly, as contemplated by this Agreement.
- (d) Customer acknowledges and agrees that HotDeskPlus may provide all or part(s) of the Products and Services from any location worldwide.
- (e) HotDeskPlus will use reasonable endeavours to ensure that any parties it subcontracts its obligations under the Agreement to will comply with the Privacy Act (as though it were an entity bound by the Privacy Act and notwithstanding the small business exception in the Privacy Act) and any other applicable Privacy Laws, in respect of any Personal Information that HotDeskPlus discloses to the subcontractor.

4 Data Breach

4.1 Notification of Data Breach to the Customer

HotDeskPlus must:

- (a) immediately report to the Customer any suspected, likely or actual:
 - (i) unauthorised access to, or unauthorised disclosure of Data; or
 - (ii) any loss of Data in circumstances where unauthorised access to, or unauthorised disclosure of, Data is likely to occur,(each a **Data Breach**) immediately after becoming aware of the Data Breach and, in any event, within 24 hours of becoming aware of the Data Breach; and
- (b) comply with all instructions of the Customer in relation to that suspected Data Breach, such instructions to be in writing.

4.2 Response to Data Breach

After notifying the Customer in accordance with clause 4.1 of this Addendum and unless instructed in writing by the Customer otherwise, HotDeskPlus must:

- (a) immediately investigate and remedy the Data Breach, including by taking all necessary steps to mitigate any harm to individuals which may result from the Data Breach;
- (b) immediately provide written notification to the Customer of:
 - (i) the identity and contact details of any entities suspected or likely to be involved in the Data Breach;
 - (ii) a description of the suspected, likely or actual Data Breach that HotDeskPlus has reasonable grounds to believe has happened;
 - (iii) the kinds of Personal Information concerned in the Data Breach;
 - (iv) if known at the time of notification that there are reasonable grounds to believe the relevant circumstances amount to an Eligible Data Breach:
 - (A) the reasons why HotDeskPlus considers that a reasonable person, would or would not, conclude that the Data Breach would be likely to result in serious harm to any of the individuals to whom the information relates; and
 - (B) any remedial action HotDeskPlus has taken or proposes to take and any proposed recommendations about the steps that individuals to whom the Personal Information relates should take in response to the Eligible Data Breach; and
 - (v) if not known at the time of notification that there are reasonable grounds to believe the relevant circumstances amount to an Eligible Data Breach, details of the reasonable and expeditious assessment HotDeskPlus is undertaking, or plans to undertake, to assess whether there are reasonable grounds to believe that the relevant circumstances amount to an Eligible Data Breach and how such assessment will be completed within 30 days of HotDeskPlus becoming aware of the Data Breach;(collectively, the **Notifiable Matters**).
- (c) provide the Customer with all information, documents and assistance required by the Customer in respect of the Data Breach;
- (d) provide the Customer with ongoing updates (at least daily) with respect to the Notifiable Matters until such time as the Customer determines that the Data Breach has been remedied; and
- (e) not notify OAIC or affected individuals of the Data Breach.



4.3 Notification of an Eligible Data Breach

As soon as practicable after the Customer becomes aware that there are reasonable grounds to believe that there has been an Eligible Data Breach, the Customer will prepare a proposed statement in accordance with section 26WK(3) of Part IIIC of the Privacy Act, obtain HotDeskPlus' written approval to that statement and the method of notification for issuing such statement to affected individuals and OAIC, and, when such written approval is received, issue the statement to affected individuals and OAIC on behalf of itself and the Customer.

5 Acknowledgement by Customer

The Customer acknowledges that the computer servers used to host the HotDeskPlus Operating Environment and App are located in Australia, United Kingdom and any member state of the European Union.

6 Warranties and Indemnities

- (a) The Customer represents and warrants to HotDeskPlus that it has made all necessary disclosures (including at the time of collection of any Personal Information) and obtained all necessary Consents or permissions in respect of such Personal Information and Sensitive Information disclosed as part of the Data, including in relation to the transfer of that Personal Information and Sensitive Information outside of Australia.
- (b) The Customer indemnifies HotDeskPlus against any Loss arising out of or in connection with a breach by the Customer of the warranty given in clause 6(a) of this Addendum.

Schedule 1: Analytics

If the parties agree that HotDeskPlus will provide Data Analysis Services to the Customer, the provisions of this Schedule will apply in addition to the other terms of this Agreement. Unless defined in this Schedule, any capitalised terms are defined in clause 25.1 of the Agreement.

1 Data Analysis Services

HotDeskPlus will provide the Data Analysis Services and deliver copies of the Derivative Materials to the Customer.

2 Derivative Materials

- (a) The Customer grants HotDeskPlus a perpetual, non-exclusive, world-wide, irrevocable, royalty free licence to access, use, adapt, modify, reproduce, reformat, transform, process, aggregate, commercialise and exploit, and create Derivative Materials from, the Customer Material to the extent necessary to provide the Data Analysis Services and to otherwise carry out its obligations under this Agreement.
- (b) The Customer will ensure that any existing or future Intellectual Property Rights in any Derivative Materials (excluding the Customer Material) vest in HotDeskPlus absolutely. The Customer agrees to assign, and procure the assignment of, such Intellectual Property Rights in any Derivative Materials to HotDeskPlus immediately on their creation.
- (c) HotDeskPlus grants the Customer a perpetual, non-exclusive, world-wide, irrevocable, royalty free licence to access, use, adapt, modify, reproduce, reformat, transform, process, aggregate, commercialise and exploit the Derivative Materials for internal purposes only.
- (d) The Customer agrees and acknowledges that HotDeskPlus intends to use and/or aggregate, on a de-identified basis, the Customer Material in conjunction with other information collected or obtained by HotDeskPlus, and the Customer agrees that HotDeskPlus is permitted to make full use of, commercialise and exploit the Customer Material for those purposes.

3 Warranties

In addition any other warranties provided under this Agreement, HotDeskPlus warrants that:

- (a) it will exercise due care and skill in performing the Data Analysis Services;
- (b) the Data Analysis Services will be performed in a professional manner by Personnel who are suitably qualified and experienced to perform the Data Analysis Services and will be of a standard commensurate with the qualifications and experience of those Personnel; and
- (c) it has the necessary Personnel, facilities, other resources, expertise and experience to perform the Data Analysis Services in accordance with this Agreement.

4 Disclaimer

While HotDeskPlus will use its Best Endeavours to ensure that the Derivative Materials are as accurate as possible, the Customer acknowledges that the accuracy of the Derivative Materials is reliant upon the accuracy of Customer Material provided by the Customer and its Personnel.

Except to the extent expressly provided in this Agreement, to the extent permitted by Law (including the Australian Consumer Law if applicable), neither HotDeskPlus nor any of its third party suppliers makes any representation, warranty or guarantee as to the reliability, quality, suitability, truth, availability, accuracy or completeness, or any content contained in the Derivative Materials.

5 Best Endeavours

A reference to a party using or obligation on a party to use its best endeavours or reasonable endeavours does not oblige that party to:

- (a) pay money:
 - (i) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing) in addition to any arms' length consideration for any goods, service or licenses to be provided by such third party; or
 - (ii) in circumstances that are commercially onerous or unreasonable in the context of this Agreement;
- (b) provide other valuable consideration to or for the benefit of any person other than arms' length consideration for any goods, service or licenses to be provided by such person;
- (c) agree to commercially onerous or unreasonable conditions;
- (d) forego, sacrifice or prejudice their commercial, economic or operational interests; or
- (e) use best endeavours or reasonable endeavours after the termination of this Agreement.

6 Definitions

Data Analysis Services means the services set out in Annexure A (Data Analysis Services). For the avoidance of doubt, the Data Analysis Services form part of the Products and Services for the purposes of this Agreement only if this Schedule applies.

Derivative Materials means materials, data and insights derived or created by or on behalf of HotDeskPlus as part of the Data Analysis Services, which are based on, or created or derived from, the Customer Material. For the avoidance of doubt, the Derivative Materials form part of the Products and Services for the purposes of this Agreement only if this Schedule applies.



Annexure A – Data Analysis Services

Data Analysis of data for the purpose of the Customer making decisions relevant to the carrying out of their business in an anonymised or non-anonymised format.