**PRIVACY AND ACCESS DEED**

**DATE <enter date 2018>**

**PARTIES**

* **AUSTRALIAN SUPPORT SERVICES PTY LTD ABN 29 167 554 967** of 15 – 17 Millennium Circuit, Helensvale, Queensland (**Beepo**)
* **PARTY IDENTIFIED IN Schedule 1 (Company)**

**BACKGROUND**

1. The Company has entered into an Outsourced Services Agreement (**Agreement**) with Beepo, whereby the Company has engaged Beepo to outsource administrative support services (**Services**) to be used by the Company in the operation of its Business.
2. The Agreement between the Company and Beepo remains standing.
3. As a result of the Agreement, Beepo may collect, receive, have access to, hold, use, store, disclose and destroy Personal Information of the Company's Customers from time to time.
4. This supplementary Privacy and Access Deed has been entered into to acknowledge the privacy obligations in relation to the Agreement and the collection of Personal Information of the Company's Customers.

**OPERATIVE PART**

* 1. Definitions
  2. **ACL** means the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
  3. **Beepo** includes Beepo, its agents, employees, representatives, and any other person operating in relation to the Agreement.
  4. **Business** means the Company's Business identified in Schedule 1.
  5. **Company Data** means any and all documents, information and other data, collected, received, used, stored, held or owned by the Company.
  6. **Customer** means the Company's Customers, including the Company's employees, agents, contractors, representatives and any other person associated with the Company.
  7. **Data Breach** has the same meaning as defined in the Privacy Act.
  8. **Notifiable Data Breaches Scheme** means the scheme under Part IIIC of the Privacy Act which establishes requirements for entities regarding Data Breaches.
  9. **Personal Information** has the same meaning as defined in the Privacy Act.
  10. **Privacy Act** means the *Privacy Act 1988* (Cth).
  11. Interpretation
      1. In this Deed the following rules of interpretation apply unless the contrary intention appears:
         1. headings are for convenience only and do not affect the interpretation of this Deed;
         2. the singular includes the plural and vice versa;
         3. words that are gender neutral or gender specific include each gender;
         4. where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
         5. the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
         6. a reference to:
            1. a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
            2. a party includes its successors and permitted assigns;
            3. a document includes all amendments or supplements to that document;
            4. a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Deed; and
      2. no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it.
  12. Access
      1. The Company acknowledges that Beepo will be provided with access to Personal Information of the Company's Customers and other Company Data.
      2. The Company acknowledges that its Customers may also disclose Personal Information to Beepo directly from time to time.
  13. File Sharing
      1. In the event that the Company or the Customer authorises Beepo to gain access to Personal Information and other Company Data through file sharing systems or equivalent, the Company acknowledges that such access:
         1. is at the Company's own risk;
         2. is subject to the terms of this Deed; and
         3. Beepo accepts no responsibility for any liability that may arise as a result of such access.
      2. If the Company is a consumer, nothing in this Deed restricts, excludes, limits or modifies the Company's rights or remedies against Beepo for failure of a statutory guarantee under the ACL. The liability of Beepo for any breach of a statutory guarantee under the ACL is limited to, at Beepo's option either:
         1. the resupply of the Services; or
         2. the reasonable cost of having the Services resupplied.
      3. If clause 4.2 does not apply, then other than as stated in this Deed, Beepo will not be liable for any direct, indirect or consequential losses suffered by the Company or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to another party arising under or in connection with the provision of the Services, except to the extent of liability imposed by the ACL.
  14. Privacy
      1. The Company agrees to comply with the Privacy Act, including the Australian Privacy Principles, the *Spam Act 2003* (Cth) and any other rules, regulations and legislation (**Privacy Laws**) in relation to the protection of any and all Personal Information of the Company's Customers that it may collect, receive, have access to, hold, use, store, disclose and destroy.
      2. The Company agrees to comply with Beepo's Privacy Policy as communicated to the Company from time to time.
      3. The Company agrees that it will:
         1. assist Beepo to comply with its obligations under the Privacy Laws to the greatest extent possible;
         2. immediately notify Beepo upon becoming aware of any breach of the Privacy Laws and comply with all directions of Beepo in respect of the breach;
         3. provide Beepo with such co-operation as Beepo requires in relation to resolving any complaint concerning privacy; and
         4. provide access to or amendment of any record as directed by Beepo.
      4. The Company also agrees to comply with:
         1. any directions made by the Office of the Australian Information Commissioner and any other regulatory body as relevant to this Deed;
         2. any privacy procedures stated in this Deed; and
         3. any other reasonable direction relating to privacy, data protection or spam laws, which is given by Beepo.
  15. Data Breaches
      1. The Company acknowledges that Beepo may be bound by the Notifiable Data Breaches Scheme and the Company must not do any act or engage in any practice that gives rise to a Data Breach in respect of any Personal Information of a Customer that is collected, held, used, managed or disclosed to Beepo.
      2. The Company agrees that it will also:
         1. assist Beepo to comply with its obligations under the Notifiable Data Breaches Scheme, to the greatest extent possible; and
         2. immediately notify Beepo upon becoming aware of any Data Breach and comply with all directions of Beepo in respect of the Data Breach.
  16. Warranties
      1. The Company represents and warrants to Beepo on an ongoing basis that:
         1. it has and continues to comply with Privacy Laws at all times, including when collecting receiving, gaining access to, holding, using, storing, disclosing, transferring and destroying Personal Information of its Customers;
         2. it has in place a lawful privacy policy;
         3. it has provided lawful collection statements to its Customer's before collecting their Personal Information;
         4. it has notified its Customer's that their Personal Information may be disclosed to Beepo, its affiliates and overseas;
         5. it has the right to provides it Customer's Personal Information to Beepo and allow Beepo to use the Personal Information; and
         6. it has the right to provide its Customer's Personal Information to overseas recipients, including to Beepo.
  17. Indemnity
      1. The Company indemnifies Beepo from and against any actions, claims, costs (including legal costs and expenses), losses, proceedings, damages, liabilities or demands suffered or incurred to the extent arising out of, in connection with or as a result of any breach of this Deed or the Privacy Laws.
  18. Release
      1. The Company releases Beepo from any of its obligations or liabilities arising from and against any actions, claims, costs (including legal costs and expenses), losses, proceedings, damages, liabilities or demands suffered or incurred to the extent arising out of, in connection with or as a result of any breach of this Deed or the Privacy Laws.
  19. General
      1. Queensland Law & Jurisdiction
         1. The law of Queensland from time to time governs this Deed. The parties agree to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia, and of courts entitled to hear appeals from those courts.
      2. Amending this Deed
         1. An amendment or change to this Deed is only effective once it is made in writing and executed by all parties.
      3. Counterparts
         1. This document may be executed in any number of counterparts all of which taken together constitute one instrument.
         2. All parties agree that a facsimile of a party’s signature or other electronically transmitted signature of a party is sufficient to indicate their approval of the terms of this Deed and agree to be so bound.
      4. Notice
         1. A notice by a party must be in writing and must be given to each other party. A notice may be given to a party in any of these ways:
            1. delivered by hand to the party and is deemed delivered when handed over;
            2. sent by prepaid mail or document exchange to the address of the party and is deemed delivered 48 hours after posting;
            3. sent by facsimile communication to the facsimile number of the party and is deemed delivered when the facsimile machine confirms transmission; or
            4. sent by email or other electronic means to the parties nominated e-mail address and is deemed delivered immediately after sending unless a delivery failure notification is given concerning the email.
         2. A notice given on a day which is not a business day is treated as given on the next business day.
      5. This Deed Continues
         1. This Deed continues to have effect and does not merge to the extent or where necessary to ensure the intentions of the parties.
      6. Severability
         1. If all or any part of a provision of this Deed is held to be unenforceable or invalid, then that provision (or part of it) must:
            1. where possible, be interpreted as narrowly as necessary allow it to be enforceable and valid; or
            2. be severed from this Deed;
         2. and in either case the validity and enforceability of the remaining provisions is not affected.
      7. No Waiver
         1. A party may exercise its rights at any time and does not waive those rights even if that party previously waived a breach or default of all or part of the same or other provision or delayed or omitted to exercise its rights. A waiver is only effective if it is signed by the party granting the waiver and to the extent set out in the waiver.
      8. Consent
         1. If a party is required to give consent, that party may not withhold consent unreasonably.

**Executed as a Deed**

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| --- | --- |
| **EXECUTED** by **AUSTRALIAN SUPPORT SERVICES PTY LTD** **ABN 29 167 554 967** in accordance with the *Corporations Act 2001* (Cth) | |
| Signature of Director | Signature of Director/Secretary |
| Name of Director | Name of Director/Secretary |

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| --- | --- |
| **EXECUTED** by the Party identified in Schedule 1 in accordance with the *Corporations Act 2001* (Cth) | |
| Signature of Director | Signature of Director/Secretary |
| Name of Director | Name of Director/Secretary |
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|  |  |

1. – PARTY DETAILS

|  |  |
| --- | --- |
| **Company** | [insert] |
| **Company's Business** | [insert] |
| **Company Address** | [insert] |
| **Company Email** | [insert] |