

VendorPanel Master Agreement

1. Master Services and Licence Agreement

- 1.1. This master services and licence agreement (**Master Agreement**) is a legal agreement between you and the organisation you represent (**you or your**) and VendorPanel Pty Ltd ABN 68 129 460 751 of Level 2, 360 Little Collins Street, Melbourne VIC 3000 Australia (**we, us or our**).
- 1.2. By clicking "Accept", signing a Service Order, or by accessing or using VendorPanel™ you confirm having read, understood and agreed to these conditions.

2. Background

- 2.1. We are the developer, owner and licensor of a procurement and supplier management application known as VendorPanel™.
- 2.2. This Master Agreement sets out the terms and conditions upon which we licence VendorPanel™ and provide associated services to you.

3. Application of Master Agreement

- 3.1. This Master Agreement is deemed to include all rights and obligations contained in any Service Order or Digital Forms and will govern your and your End Users' use of VendorPanel™ and the provision of all Services provided by us to you and your End User unless expressly stated otherwise.
- 3.2. If there is any inconsistency between clauses 1 to 21 of this Master Agreement and any terms contained in any Service Order or Digital Form, the order of priority as to which terms apply to the extent of any inconsistency is, from highest to lowest: (a) any Service Order; (b) any Digital Form; (c) this Master Agreement.
- 3.3. If a standalone written agreement has been entered into with us regarding the provision of Services, the terms of that agreement will take precedence over the terms of this Master Agreement to the extent of any inconsistencies.
- 3.4. This Master Agreement commences on the date accepted by you and continues, unless terminated earlier in accordance with clause 13, until the later of: (a) the expiry of any minimum term contained in any Service Order or Digital Form (**Subscription Term**); and (b) we cease to provide any Services to you (**Service Term**).

4. Services

We license use of VendorPanel™ to you and will provide you with the Services on the basis of this Master Agreement during the Service Term.

5. End Users

- 5.1. As part of the Services, we may permit the creation of accounts and/or allow your End Users to access and use VendorPanel™ and the Services.
- 5.2. You must ensure that each of your End Users strictly complies with the terms of this Master Agreement as if it were a party to it.
- 5.3. Your End Users' acts and omissions are taken to be your acts and omissions and you agree to indemnify us for any loss that we may suffer as a result of you or your End Users failing to comply with the terms of this Master Agreement.

6. Application of EUA and AUP

You agree to, and will ensure that each of your End Users, comply with our EUA and AUP as amended and updated from time to time.

7. Management of Customer Data

- 7.1. During the Service Term, we will store Customer Data and perform back-ups using commercially available back-up software.
- 7.2. You can download a copy of your Customer Data using export reporting tools at any time during the Service Term free of charge.
- 7.3. Where you request us to provide a copy of Customer Data we will provide it using export reporting tools in an industry standard readable format determined or available to us within 14 Business Days from the date of request. This service will be charged as per our Standard Fees.

8. Service availability and support

- 8.1. We do not promise that the access to and use of VendorPanel™ will be uninterrupted or error free.
- 8.2. Subject to clause 8.1, we will use every reasonable effort to ensure that VendorPanel™ is available for reasonable and normal use at least 99.5% of the time, calculated on a monthly basis.
- 8.3. From time to time we may publish or agree with you minimum service levels. Where these are in place, we will use or best endeavours to meet these minimum service levels.
- 8.4. Availability and compliance with service levels are measured quarterly (unless otherwise stated) and disregards unavailability due to: (a) planned and preventative maintenance; (b) failures, faults, defects or inadequacies in your computer systems, network or internet connectivity; (c) you or your End Users' breach of this Master Agreement, the EUA or AUP; (d) your exceeding any user, service, performance or transaction limits or other restrictions on the Services; (e) material increase in your demand without prior arrangement with us; (f) you or your End Users' negligence or operator error; or (g) force majeure.

9. Fees

- 9.1. The fees for the Services are: (a) the fees set out in any Digital Form or Service Order; or (b) where no such fees are set out, then our Standard Fees will apply.
- 9.2. Unless specified otherwise, all fees are exclusive of GST. You must pay GST at the same time as payment of the relevant consideration is made.
- 9.3. On each anniversary of this Master Agreement, our fees and rates will be subject to an increase equal to the amount of the fee or rate multiplied by CPI with increase no less than 0.0%.
- 9.4. We may also increase our Fees from time to time by notifying you in accordance with clause 18. In the event we increase our fees other than as agreed with you or in accordance with clause 9.3, you may notify us within 15 Business Days of such increase that you no longer wish to receive the Services to which the fee increase relates in which case the relevant provisions of clause 13 shall apply.

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10. Invoicing and payment

- 10.1. We will invoice you: (a) at the times specified in any Digital Form or Service Order; or (b) for fixed price or recurring fees, in advance; or (c) for variable or non-recurring fees, in arrears; or (d) in any event, whenever fees have been accrued.
- 10.2. You must pay each invoice in full, without deduction or set off, within the timeframe specified by us, or where we have not so specified, within 30 days of the invoice date.
- 10.3. Recurring fees may be paid via a recurring credit card payment, direct debit facility or such other electronic payment facility or platform as agreed between the parties.

11. Disputed Invoices

- 11.1. If you in good faith dispute all or any part of an invoice: (a) the parties must negotiate in good faith to settle the dispute promptly; (b) you must pay the undisputed amount of any invoice issued by us; and you must pay any outstanding amount with 5 days of dispute being settled.
- 11.2. For so long as you comply with your obligations under clause 11.1, we agree not to suspend provision of the Services solely as a result of the dispute.

12. Confidentiality

- 12.1. Subject to clauses 12.2 and 12.3, each party must not, and must ensure that its End Users, officers, employees and agents do not, without the prior written consent of the other party: (a) disclose any Confidential Information of the other party; or (b) retain, duplicate, memorise or use any Confidential Information of the other party other than for the purpose of performing its obligations under this Master Agreement.
- 12.2. A party may make disclosures: (a) to those of its employees, officers, professional or financial advisers and bankers as the party reasonably thinks necessary to give effect to this Master Agreement, but only on a strictly confidential basis; and (b) if required by law, after the form and terms of that disclosure have been notified to the other party and the other party has had a reasonable opportunity to comment on the form and terms.
- 12.3. The obligations in this clause do not apply to any information which the recipient can reasonably demonstrate: (a) is in the public domain through no fault of its own; (b) is already known to the recipient (as evidenced by its written records) at the date of disclosure and was not acquired directly or indirectly from the disclosing party; or (c) is required to be disclosed by law under a court order, or by any authorised stock exchange or other regulatory body.

13. Termination

- 13.1. A party may immediately terminate this Master Agreement by notice in writing where the other party: (a) fails to remedy a breach of this Master Agreement within 30 days after receiving a notice specifying the breach and requiring its remedy; or (b) fails to pay any money it owes to the other party within 14 days of it being due; or (c) suffers an Insolvency Event; or (d) you or any of your End Users breach the AUP.

13.2. Where this Master Agreement is terminated: (a) all legal rights of a party arising from a breach that preceded termination survive; and (b) this Master Agreement is otherwise at an end and all licenses granted in this Master Agreement are immediately terminated.

13.3. Subject to clause 13.5, either party may terminate this Master Agreement or the provision of any of the Services by giving written notice to the other. Services will then be terminated at the end of that billing cycle, or where we, at our complete discretion, choose to refund to you in part or in full, fees you've paid, the date to which the service was paid up in full.

13.4. Where we terminate this Master Agreement under clause 13.1 before the end of the Subscription Term, you must pay us the cancellation fee set out in the Standard Fees or, if not stated, and amount equal to the Loss we incur resulting from the Master Agreement being terminated prior to expiry of the Subscription Term.

13.5. Where you terminate this Master Agreement or the provision of a Service prior to the expiry of the Subscription Term for reasons other than under clause 13.1, you must pay us all fees applicable with respect to the Services through to the expiry of the Subscription Term.

14. Australian Consumer Law (ACL)

14.1. The ACL sets out certain consumer rights and remedies that cannot be excluded, restricted or modified. Nothing in this Master Agreement limits those rights and remedies in any way.

14.2. If we supply goods or services not of a kind ordinarily acquired for personal, domestic or household use or consumption but costing no more than \$40,000 our liability for failure to comply with conditions or guarantees under the ACL is limited in the case of services to: supplying the services again; or paying the cost of having the services supplied again.

15. Liability

15.1. Subject to clause 14: (a) we exclude all implied conditions, warranties, guarantees and representations of any kind; (b) you acknowledge that you have made your own enquiries and have not relied on any representation or promise not expressly set out in this Master Agreement; (c) we are not liable for loss of profits, opportunities, goodwill, anticipated savings or any indirect, special, economic or consequential loss or damage however caused (including by negligence); (d) our maximum aggregate liability to you in respect of any other Loss is limited to the amount actually paid by you to us under this Master Agreement in the previous 12 months; and (e) our liability to you in connection with this Master Agreement is reduced to the extent that you, your End Users or your personnel caused or contributed to the Loss.

15.2. We will not be liable for any failure or delay to meet our obligations under this Master Agreement due to any cause beyond our reasonable control.

15.3. In using the Services and fulfilling any of its obligations under this Master Agreement, the parties must comply with all applicable laws, regulations and codes, including the Privacy Act 1988 (Cth).

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15.4. In providing the Services we will comply with Privacy Laws in relation to Customer Data and must not do anything with the Customer Data that will cause us or you to breach our respective obligations under a Privacy law.

16. Indemnity

16.1. You indemnify us, our directors, employees and agents against all Loss suffered or incurred by any of us in connection with: (a) any claim that the Customer Data, its use, storage, reproduction or communication, infringes another person's rights; or (b) any breach of your obligations under this Master Agreement, including under the EUA and AUP.

16.2. You (a) warrant that you own, or hold any necessary license of, all intellectual property rights in the Customer Data and in receiving the Customer Data we will not infringe, violate or otherwise conflict with any intellectual property rights owned by a third-party; and (b) indemnify us from and against any liability arising out of any claim by a third-party that the Customer Data violates or infringes any intellectual property rights owned by a third-party.

17. Notices and other communications

17.1. A notice under this Master Agreement must be in writing and posted or emailed to a party's service address or personally delivered to the party.

17.2. A party's service address is any of: (a) in the case of a corporation, its current registered address; or (b) the last business address or email address the party notified as its service address.

17.3. Without limiting any other means by which a party may be able to prove that a notice has been received by the other party, a notice will be deemed to be received: (a) if sent by hand when left at the address of the recipient; (b) if sent by pre-paid post, 3 days (if posted within Australia to an address in Australia) or 10 days (if posted from one country to another) after the date of posting; or (c) if sent by email, upon the earlier of the sender receiving a notification that the email has been read and 9.00 am on the next Business Day subject to the sender not receiving a delivery failure notification.

18. Assignment

The parties may assign the whole or any part of this Master Agreement to another party and may disclose any Confidential Information reasonably required to effect such assignment or novation provided that the party to whom the Confidential Information is being disclosed agrees to keep that Confidential Information confidential, and is reasonably deemed as being able to deliver the Service, on terms consistent with this Master Agreement.

19. General

19.1. This Master Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

19.2. Each party must do, at its own expense, everything reasonably necessary (including executing documents)

to give full effect to this Master Agreement and any transactions contemplated by it.

19.3. If a term or part of a term of this Master Agreement is illegal or unenforceable it may be severed and the remaining terms continue in force.

19.4. A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

19.5. The parties are independent contractors and nothing in this Master Agreement creates a relationship of employment, trust, agency or partnership between them.

19.6. This Master Agreement is governed by and are to be construed under the laws of Victoria, Australia.

20. Dictionary

In this Master Agreement, except where the context otherwise requires:

AUP or Acceptable Use Policy means the acceptable use policy we publish which applies to VendorPanel™ as amended from time to time.

Business Hours means 9.00 am to 5.00 pm on a Business Day.

Business Day means a day that is not a Saturday, Sunday or public holiday in Victoria, Australia.

Confidential Information means: (a) information of any kind relating to a party's business, finances, strategies, plans, property, affairs, research, marketing, pricing, technologies, ideas, trade secrets, intellectual property, processes, customers, employees, partners, associates or joint ventures; and (b) in relation to a party, information received from or about that party which the recipient knows or ought to know is confidential.

CPI means the yearly percentage change in the Consumer Price Index All Groups (Eight Capital Cities) published by the Australian Bureau of Statistics in its most recent quarterly report.

Customer Data means: (a) information, records, documents, images or data of any kind entered into VendorPanel™ by you or an End User; and (b) any information, records, documents, images or data of any kind provided by you to us in connection with the Services.

Digital Form means any web page or electronic form hosted or provided by us where we seek your information and/or set out: (a) the terms of any Services that we will provide to you; (b) the fees associated with our Services; or (c) any special conditions or terms associated with the provision of our Services.

End User means any of your directors, officers, employees, agents or subcontractors.

EUA or End User Agreement means the terms and conditions governing your and your End Users' access and use of VendorPanel™ and the Services, as published by us from time to time.

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GST means GST within the meaning of the A New Tax System (Goods and Services Tax) ACT 1999 (*Cth*).

Insolvency Event means, in respect of a party: (a) the party commits an act of insolvency or is unable or deemed to be unable to pay its debts as and when they fall due; (b) the party enters into, or resolves to enter into, any form of external administration; or (c) any other event of equivalent effect occurs in any jurisdiction.

Loss means any loss, damage, cost, expense, liability or claim suffered or incurred by a party and arising in connection with this Master Agreement (whether based in contract, tort, breach of statutory duty or on any other basis, and whether arising from acts or omissions, and whether or not loss or damage the risk of which we were or should have been aware), including economic loss, business interruption, loss of revenue, profits, actual or potential business opportunities or contracts, anticipated savings, loss of profits or loss of data.

Privacy Laws means the Privacy Act 1988 (*Cth*) and any other relevant laws relating to the collection, use, disclosure, storage or granting of access rights to Customer Data.

Service Order means any written form where we set out: (a) the terms of any Services that we will provide to you; (b) the fees associated with our Services; or (c) any special conditions or terms associated with the provision of our Services..

Services means access, use and licence of VendorPanel™ and any other service provided to you by us pursuant to any Service Order or described in a Digital Form.

Standard Fees means our standard fees and charges, details of which can be found on our website or by contacting us.

21. Interpretation

In this Master Agreement, except where the context otherwise requires:

- 21.1. the singular includes the plural and vice versa, and a gender includes other genders;
- 21.2. a reference to A\$, \$A, dollar or \$ is to Australian currency;
- 21.3. a reference to time is to Australian Eastern Standard time;
- 21.4. a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity, and their permitted assigns;
- 21.5. 'including', 'for example' and similar expressions are not words of limitation;
- 21.6. a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Master Agreement or any part of it;
- 21.7. if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- 21.8. headings are for ease of reference and do not affect interpretation.

WHERE YOU SIGN UP FOR SERVICES ELECTRONICALLY, YOU WILL BE REQUIRED TO ACCEPT THESE TERMS ELECTRONICALLY.

BY SELECTING THE "I HAVE READ AND ACCEPT THE TERMS OF THE MASTER AGREEMENT" CHECK BOX, YOU AGREE TO THE TERMS OF THIS LICENCE WHICH WILL BIND YOU.

IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENCE, DO NOT SELECT THE CHECKBOX.