

Master Terms and Conditions

1. Meanings

Words used in this Agreement and the rules of interpretation that apply are set out at the end of these Terms and Conditions.

2. Provision of Services

- 2.1 FSA must provide the Customer with the Services set out in the attached Statement of Work
- 2.2 FSA has no obligation to provide any goods or services requested by the Customer until the parties execute a Statement of Work with respect to those services.
- 2.3 If FSA supplies services requested by the Customer without the Customer entering into a Statement of Work, the act of supplying those goods or services will be deemed to create a Statement of Work incorporating the terms of this Agreement and any services supplied are deemed to be Services provided on the terms of this Agreement and in consideration for the Fees, unless those services are expressly supplied under the terms of another agreement.
- 2.4 If a Statement of Work fails to specify the Fees applicable to the Services, the Fees will be calculated in accordance with FSA's standard rates and charges applicable at the time of providing the Services.
- 2.5 If a Statement of Work requires FSA to provide Services to a third party, FSA's obligations to the Customer are discharged by providing the Services to that third party as if it were the Customer and the Customer remains liable for:
 - (a) all Fees payable with respect to those Services; and
 - (b) any acts or omissions of that third party in connection with the provision of the Services that would create a liability to FSA under this Agreement if that third party was the Customer.

3. Term

Each Statement of Work begins on the Commencement Date and continues until terminated or completed in accordance with its terms.

4. Customer's general obligations

- 4.1 The Customer must:
 - (a) at all times provide an employee with appropriate skills, knowledge and experience as FSA's primary contact for provision of Services to the Customer;
 - (b) only request Services using the contact details provided by FSA for that purpose from time to time;
- 4.2 The Customer must provide FSA and its Personnel with:
 - (a) access to and use of all information, equipment, documentation and facilities reasonably necessary for FSA to provide the Services; and
 - (b) appropriate procedures, passes and contact information where special security access to equipment is reasonably required to provide the Services.

5. Variations to a Statement of Work

- 5.1 Either party may propose a Change Request to a Statement of Work by written notice (including by fax or e-mail) (**Change Request**).
- 5.2 The parties will use their best endeavours to arrange a time to discuss any Change Request as soon as possible after the Change Request is notified.

6. Intellectual Property

- 6.1 Unless specified otherwise in a Statement of Work, the Customer:
 - (a) acknowledges and agrees that all Intellectual Property licensed from third parties or developed by FSA to provide the Services remains the sole property of FSA and its licensors, regardless of whether that Intellectual Property was created in accordance with this Agreement.
 - (b) hereby assigns to FSA all present and future proprietary rights (including Intellectual Property) it may otherwise have in the material referred to in clause 6.1(a); and
 - (c) must obtain, at the request and for the benefit of FSA, a written assignment of that Intellectual Property from any of the Customer's Personnel who may otherwise claim an interest in that Intellectual Property, together with a written consent waiving any moral rights that person may have in connection with the Intellectual Property; and

- (d) must, on the termination of this Agreement or at the earlier request of FSA, deliver up to FSA a copy of any Intellectual Property referred to in this clause 6.1.
- 6.2 Any Intellectual Property subsisting in the provision of Services is licensed to the Customer on the terms of the applicable Licence Agreement.
- 6.3 Except as provided in this clause 6, FSA does not grant the Customer any rights in relation to any Intellectual Property under this Agreement and all Intellectual Property remains the property of FSA and applicable third parties.
- 6.4 The Customer grants FSA an irrevocable licence to use, reproduce, modify and adapt any material within the Customer's possession or control to the extent such use, reproduction, modification or adaptation is reasonably required to carry out its obligations under a Statement of Work.
- 6.5 FSA may suspend the performance of its obligations under this Agreement and vary the relevant Statement of Work in accordance with clause 5, if any third party reasonably alleges that any use, reproduction, modification or adaptation referred to in clause 6 infringes the rights of a third party.

7. Fees and Payments

- 7.1 The Customer must pay FSA the Fees in accordance with this clause 7 or as otherwise provided in the applicable Statement of Work
- 7.2 FSA may make an additional charge at its then current rates for the time of its employees to travel to and from a Site to perform on-site services and also recover all associated reasonable costs including travelling, accommodation (if applicable) and living expenses (at cost).
- 7.3 FSA may issue Tax Invoices for the Fees, together with any other fees or charges payable to FSA:
 - (a) in the case of amounts payable for the provision of Services over a specified recurring period of time, immediately before the commencement of the time period to which the Fee relates;
 - (b) otherwise where the Fees are calculated based on an hourly rate, immediately after the hours of work have been done; and
- 7.4 The Customer must pay the amount stated in FSA's Tax Invoice, without set-off, within 14 days of receipt or on such later due date specified in the Tax Invoice.
- 7.5 Without limiting clause 7.4, if the Customer disputes an amount set-out in FSA's Tax Invoice, it must notify FSA within 14 days of the date of receipt of the Tax Invoice and provide written reasons for the dispute.
- 7.6 A failure by the Customer to notify FSA of a dispute in accordance with clause 7.5 will be deemed to be acceptance of the amounts set out in the Tax Invoice and the Customer waives any rights it might otherwise have to dispute the Tax Invoice.
- 7.7 The Customer will nominate 1 person whom FSA will deal with in relation to all invoices and payment matters.
- 7.8 The Customer must pay FSA interest on any amount due and not paid by the Customer within the time required by this Agreement at the rate which is 2% per annum above the Commonwealth Bank of Australia Corporate Overdraft Reference Rate (and if that rate ceases to be quoted, any similar rate quoted by an Australian licensed bank nominated by FSA) as quoted on the date on which payment was due (or if that date is not a Business Day, the next Business Day when the rate is quoted).
- 7.9 To the maximum extent permitted by law, the Fees are non-refundable.

8. Additional Fees

- 8.1 FSA may charge the Customer additional fees at its then current time and materials rates if it is asked by the Customer or otherwise required to provide additional services which are required due to:
 - (a) any breach of this Agreement by the Customer;
- 8.2 Without limiting clause 8.1, FSA may charge the Customer additional fees at its then current time and materials rates if it is asked to provide services that are not covered by the terms of this Agreement, including the services specifically excluded in a Statement of Work.
- 8.3 FSA is not obliged to provide the services referred to in clauses 8.1 and 8.2, however if it does so, those services will be provided on a case by case basis and subject to the terms of this Agreement unless a separate agreement is entered into for the provision of those services.

9. Warranties

- 9.1 FSA warrants that:
 - (a) Services will be performed in a professional and workman like manner

- 9.2 Each party warrants that:
- (a) it has full power and authority to enter into this Agreement; and
 - (b) it has not relied on any representation made by the other which has not been expressly stated in this Agreement.
- 9.3 To the maximum extent permitted by law, FSA's sole obligation and liability in respect of any breach of the warranties given by it under this Agreement will be to resupply the Services in compliance with the warranties and in accordance with any warranty service procedures set out in this Agreement and the relevant Statement of Work
- 9.4 This clause 9 applies only to the maximum extent permitted by law. Clause 13.1 applies to non-excludable warranties, to the extent applicable.
- 9.5 The Customer warrants and it is a condition of this Agreement that FSA's provision of the Services in accordance with this Agreement will not infringe the rights of any third party whose property (including Intellectual Property) or confidential information FSA is required by the Customer to access, use, reproduce, modify or adapt in order to comply with its obligations under this Agreement.

10. Confidentiality

- 10.1 The Customer acknowledges that FSA's systems, software, software development tools, manuals, maintenance diagnostic tools, support systems and methodologies and any technical information or data relating to them is the Confidential Information of FSA and constitutes proprietary information and trade secrets of FSA.
- 10.2 The receiving party of Confidential Information must:
- (a) treat Confidential Information as secret and confidential and as the property solely of the disclosing party;
 - (b) not use Confidential Information for any purpose other than the performance of this Agreement;
 - (c) ensure the Confidential Information is secured with the same level of security as it uses to protect its own Confidential Information;
 - (d) only disclose Confidential Information to those of its employees and other professional consultants who require Confidential Information to enable the receiving party to perform its obligations pursuant to this Agreement or otherwise exercise its rights under this Agreement; and
 - (e) ensure that each person to whom Confidential Information has been disclosed complies, and is obliged to comply, with the obligations of the receiving party under this Agreement and, if reasonably required by the disclosing party, executes a confidentiality agreement in the form reasonably required by the disclosing party.
- 10.3 Clauses 10.2, and 10.4 do not apply to Confidential Information that the recipient is required to disclose by any applicable law or legally binding order of any Court, or by a lawful requirement of any government or regulatory department, body, instrumentality, Minister, agency, recognised stock exchange or other authority which has jurisdiction over the recipient. Before such disclosure the receiving party must:
- (a) use its best endeavours to give the disclosing party details of the information to be disclosed and the law or order requiring disclosure; and
 - (b) notify the entity requiring the information that it is the Confidential Information of the disclosing party and request the entity to whom the disclosure is to be made to treat the information as confidential.
- 10.4 Without limiting this clause 10, the Customer must not disclose to any other person any details of FSA's fees or charges.

11. Termination and Suspension

- 11.1 Without limiting FSA's other rights, FSA may suspend the performance of its obligations under this Agreement if:
- (a) the Customer fails to pay any amount to FSA when due;
 - (b) the Customer breaches any other provision of this Agreement and does not remedy that breach (if capable of remedy) or make reasonable compensation in money (if not capable of remedy) within 30 days after receipt of notice requiring it to do so; or
 - (c) FSA is otherwise entitled to terminate this Agreement.
- 11.2 FSA may terminate this Agreement immediately by written notice to the Customer if at any time:
- (a) any amount payable by the Customer under this Agreement remains outstanding for 30 days after request by FSA for payment of that amount; or
 - (b) the Customer commits a breach of or fails to perform any or all of its obligations under this Agreement and does not remedy that breach or non-performance (if capable of remedy) or make reasonable compensation in money (if not capable of remedy) within 30 days after receipt of notice requiring it to do so.

- 11.3 The Customer may terminate this Agreement with immediate effect by written notice to FSA either:
- (a) if FSA commits a breach of or fails to perform any or all of its material obligations under this Agreement and does not remedy that breach or non-performance (if capable of remedy) or make reasonable compensation in money (if not capable of remedy) within 30 days after receipt of notice requiring it to do so; or
 - (b) With an accompanying break fee equal to 50% of the estimated remaining fees in any Statement of Work for which FSA has commenced worked for the Customer.
- 11.4 Without limiting the generality of clauses 11.2 and 11.3, a party may terminate this Agreement with immediate effect by written notice to the other party if that other party suffers an Insolvency Event.
- 11.5 Termination of this Agreement in accordance with clauses 11.2 – 11.4 in no way limits or prejudices any right or remedy that either party may have as a result of any breach of this Agreement.

12. Consequences of Termination

- 12.1 Subject to clause 12.2, upon termination of this Agreement each party must promptly return to the other party or destroy (at the other party's election) all Confidential Information, software, data, materials and other property of the other party (including all copies), held by it, its Personnel or otherwise under its control.
- 12.2 On or after termination of this Agreement FSA may issue a Tax Invoice for all Fees and any other amounts payable to FSA but not included in a previous Tax Invoice. The Customer must pay those amounts within 7 days of the date of the Tax Invoice.
- 12.3 Termination of this Agreement for any reason does not affect the rights and obligations of either party arising prior to termination. Clauses 6, 7, 8, 9, 10, 11, 12, 13, 15, 16 and 17 survive termination of this Agreement.

13. Limitation of liability

- 13.1 If any law implies in this Agreement any term, condition or warranty that cannot lawfully be excluded, that term, condition or warranty is deemed to be included in this Agreement. However, FSA's liability for a breach of the applicable term, condition or warranty (other than a warranty implied by the *Competition and Consumer Act 2010* (Cth) or any corresponding State Act) is, to the maximum extent permitted by law, limited to any one or more of the following, at FSA's option:
- (a) if the breach relates to services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 13.2 Subject to clause 13.1 and to the maximum extent permitted by law, FSA has no liability to the Customer for any Consequential Loss, however caused (including by breach of contract, negligence or breach of statute), which is suffered or incurred in connection with or relating to this Agreement (including a Statement of Work) or otherwise arising out of the relationship between the parties, whether or not FSA was aware or should have been aware of the possibility of such loss or damage.
- 13.3 Subject to 13.1, and to the maximum extent permitted by law, FSA's total aggregate liability to the Customer for any and all Loss (including Consequential Loss to the extent it cannot be excluded under clause 13.2), however caused (including by breach of contract, negligence or breach of statute), which is suffered or incurred by the Customer in connection with or relating to any Statement of Work or otherwise arising out of the relationship between the parties, is limited to the Fees (less any GST or other taxes) paid to FSA by the Customer under the applicable Statement of Work in the 12 months prior to the loss occurring (less any other claims paid by FSA in connection with or relating to that Statement of Work in that period).
- 13.4 No provision of this Agreement applies to limit a party's liability to the other for the death of, or injury to, any person caused by the negligent or malicious acts or omissions of that party or its Personnel.

14. Force Majeure

- 14.1 Each obligation of a party, will be suspended during the time and to the extent that the party is prevented from or delayed in complying with that obligation by Force Majeure.
- 14.2 A party affected by Force Majeure must:
- (a) as soon as reasonably possible after being affected give to the other party full particulars of the Force Majeure (including why it is a circumstance beyond its reasonable control), the manner in which its performance is prevented or delayed and its calculation of the estimated period of prevention or delay due to Force Majeure; and
 - (b) promptly and diligently take appropriate reasonable action to enable it to perform the obligations compliance with which is prevented or delayed by Force Majeure except that the party is not obliged to settle a strike, lockout, boycott or other industrial dispute.

14.3 If a party is relieved from performing an obligation under clause 14.1 for a period of at least 60 days, either party may terminate this Agreement without penalty by written notice to the other.

15. Notices

15.1 Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.

15.2 Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this Agreement or most recently notified by the recipient to the sender.

15.3 Any notice is effective for the purposes of this Agreement upon delivery to the recipient, or production to the sender of a facsimile transmittal confirmation report, between Business Hours in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next Business Day thereafter.

16. General

16.1 Each party must pay its own costs in relation to:

(a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and

(b) the performance of any action by that party in compliance with any obligation or liability arising, under this Agreement, or any agreement executed or effected under this Agreement, unless this Agreement provides otherwise.

16.2 Except in accordance with this Agreement, the Customer must not contract, employ or otherwise engage the services of any FSA Personnel, either directly or indirectly, during the term or for a period of twelve months after the expiry or termination of this Agreement.

16.3 Where any Fees are stated inclusive of GST or any similar tax, the Fees to be paid by the Customer shall be increased by the amount of any increase in the GST or such similar tax.

16.4 This Agreement is governed by and construed under the law in the State of New South Wales.

16.5 Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.

16.6 Each party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales in relation to both itself and its property.

16.7 Unless otherwise specified in this Agreement, any amendment to this Agreement has no force or effect, unless effected by an agreement in writing and executed by the parties.

16.8 This Agreement confers rights only upon a person expressed to be a party, and not upon any other person.

16.9 This Agreement, in conjunction with a Statement of Work:

(a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and

(b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement,

except as contained in any document which expressly excludes the operation of this clause.

16.10 In the event of any inconsistency between these Terms and Conditions, any Statement of Work, the terms of the Statement of Work take precedence over these Terms and Conditions and the terms of the Schedule or Attachment, to the extent of the inconsistency.

16.11 Each party must execute any agreement and perform any action necessary to give full effect to this Agreement, whether before or after performance of this Agreement.

16.12 The provisions of this Agreement do not merge with any action performed or agreement executed by any party for the purposes of performance of this Agreement.

16.13 Any representation in this Agreement survives the execution of any agreement for the purposes of, and continues after, performance of this Agreement.

17. Definitions and interpretation

17.1 In this Agreement, unless the context otherwise requires:

Agreement means these Terms and Conditions, each Statement of Work and any other document executed by the parties which incorporates these Terms and Conditions;

Business Day means any day on which banks are open and conduct normal trading operations in Sydney other than a Saturday or Sunday;

Business Hours means the hours between 9am and 5pm on a Business Day;

Change Request means a written variation to a Statement of Work including:

- (a) the reason for the Change Request (if known);
- (b) any variation to the specifications of any Services;
- (c) any material variation to the obligations of the Customer;
- (d) any variation to the Fees and applicable payment terms; and
- (e) any variation to the manner in which the Services are to be provided,

and executed by the parties;

Commencement Date means the date specified in the relevant Statement of Work;

Confidential Information means the terms of this Agreement and any material or information of a confidential nature, whether received before or after the date of this Agreement, including details of suppliers, customers, business practices and plans and Intellectual Property provided by or emanating from a party (**the disclosing party**) to the other party (**the receiving party**) in connection with this Agreement, including material incorporating or derived from any such material or information, but excludes material or information which:

- (a) is at the time of disclosure, or subsequently becomes, material or information in the public domain otherwise than by a breach by the receiving party of this Agreement;
- (b) was or becomes known by a party independently of the other party, otherwise than by any breach of a confidentiality obligation owed by a third party to the disclosing party;
- (c) is independently developed by the receiving party, as evidenced by written record; or
- (d) is assigned by the disclosing party to the receiving party in accordance with the terms of this or any other agreement;

Consequential Loss means any indirect, incidental, special, economic or consequential loss, cost or damage, loss of business profits, revenue or opportunities, business interruption, loss of business information (including computer data), loss of business, loss of anticipated savings, loss of goodwill or loss due to delay;

Customer means the person identified as such in any Statement of Work;

Fees means the amounts payable to FSA by the Customer, as set out in a Statement of Work or as otherwise notified to the Customer by FSA in accordance with this Agreement;

Force Majeure means a circumstance beyond the reasonable control of a party and includes labour disputes, fire, floods, explosions, riots, civil disturbances, war, terrorism, unforeseeable weather conditions, natural disasters, direct government action or regulation, or acts of God that renders impossible a party's ability to perform its obligations under this Agreement;

FSA means Financial Simplicity Australia Pty Ltd;

GST Law has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999;

GST means any tax, levy, charge or impost implemented under the GST Law or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Law;

Insolvency Event means the occurrence of any of the following events in relation to a party:

- (a) a liquidator, provisional liquidator, official manager, company administrator, administrator, receiver, manager, trustee in bankruptcy or receiver and manager or other form of insolvency or bankruptcy administrator is appointed to or over the whole or any part of its undertaking, property or assets or any step is validly taken for the appointment of such a person;
- (b) the party entering into, or resolving to enter into, a scheme of arrangement or composition with or assignment for the benefit of, or proposing a reorganisation, moratorium or other administration, involving its creditors or a class of its creditors;
- (c) the party entering into bankruptcy or a deed of company arrangement;
- (d) the party being ordered by a court, or otherwise resolving, to wind itself up or otherwise dissolve itself or enter into bankruptcy, or giving notice of an intention to so resolve, except by way of bona fide solvent reconstruction or amalgamation on terms approved by the other party;
- (e) the party suspending payments of its debts generally; or
- (f) the party becoming unable to pay its debts when they fall due or becoming unable to pay its debts within the meaning of the Corporations Act or being presumed to be insolvent under the Corporations Act;

Intellectual Property means:

- (a) any commercial information, industrial or intellectual property (whether in material form or not) or rights of a proprietary nature, including without limitation:
 - (i) any copyright, invention, patent, design, trade mark, service mark, domain name, semiconductor, idea, confidential information, trade secret, know-how, database; or
 - (ii) any rights protected or recognised under any laws anywhere in the world related to the above or any similar laws; and
- (b) any thing (whether in material form or not) copied or derived from the above property or rights;

Licence Agreement means the terms and conditions accompanying a Service or as otherwise specified in the relevant Statement of Work, for the license of specified property (including Intellectual Property) subsisting in a Service to the Customer;

Loss means claims, losses, costs, expenses and damages (including Consequential Loss and legal costs and disbursements on a solicitor and own Customer basis) sustained or incurred, whether directly or indirectly or consequentially or in any other way;

Personnel means officers, employees, contractors and agents

Related Body Corporate has the meaning given by Section 50 of the Corporations Act;

Statement of Work means a document entitled "Statement of Work" attached to this Agreement or signed by the parties and specifying among other things the Services to be provided by FSA and the Fees to be paid by the Customer with respect to those Services, except where such document expressly excludes the terms of this Agreement;

Site means any location at which the Services are to be provided;

Services means the services to be supplied by FSA as specified in a Statement of Work;

Tax Invoice has the meaning given by the GST Law;

Terms and Conditions means this document; and

17.2 In this Agreement unless the context requires otherwise:

- (a) clause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Agreement includes its successors and permitted assigns;

- (g) any reference to any agreement includes that agreement as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) when a thing is required to be done or money required to be paid under this Agreement on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
- (l) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.