



SAAS SERVICES AGREEMENT - DEEPEN PTY LTD

This SaaS Services Agreement (**Agreement**) is entered into on between Deepen Pty Ltd (ACN 646049283) (**Company**), and the entity using Deepen software (**Customer**).

BACKGROUND

- (A) This Agreement is for the Company to provide the Customer to provide the services outlined in Schedule 2 (**Services**), which includes access to the software the Company provides as part of the Service (**Software**).
- (B) This Agreement also includes and incorporates Schedule 1.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

1.1. Definitions

In this agreement unless the context otherwise requires:

Intellectual Property means copyrights, patents, trade marks, service marks, trade names, designs, and similar industrial, commercial and intellectual property (whether registered or not and whether protected by statute or not and including formulae, recipes and know-how).

1.2. Interpretations

In this agreement unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender refers to all genders;
- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this agreement;
- (f) a recital, schedule, annexure or description of the parties forms part of this agreement;

- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to this agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) where an expression is defined anywhere in this agreement it has the same meaning throughout;
- (k) a reference to time is to local time in Victoria; and
- (l) a reference to "dollars" or "\$" is to an amount in Australian currency.

2. SaaS Services and Support

- (a) Subject to the terms of this Agreement, the Company will use commercially reasonable efforts to provide the Customer the Services in accordance with the Service Level Terms attached in Schedule 1.
- (b) Subject to this Agreement, the Company will provide the Customer with reasonable technical support services in accordance with the Company's standard practice.

3. Restrictions and Responsibilities

- (a) Except as otherwise permitted by the Copyright Act 1968 (Cth) or agreed to in writing by Deepen Pty Ltd, the Customer must not:
 - (i) modify the Software or merge any aspect of the Software with another programme, record, reverse engineer, copy, duplicate, reproduce, create derivate works from, frame, download, display, transmit or distribute any of the Software, the source code of the Software or any documents, manuals or setup instructions provided with the Software or in relation to the Services;
 - (ii) licence, sell, rent, lease, transfer, assign or otherwise commercially exploit the Software or the Services;
 - (iii) engage in unauthorised access to or use of data, services, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures;
 - (iv) access, store, distribute or transmit:
 - (A) viruses, worm, trojan or other malicious code that corrupts, degrades or disrupts the operation of the Software;
 - (B) material that is unlawful, unethical, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive or a contravention of the rights of any third party;

- (C) material that facilitates illegal activity; or
- (D) material that abuses or causes damage or injury to any person or property;
- (v) provide Software login details or passwords, or otherwise provide access to the Software, to any unauthorised third party and you will take all reasonable steps to prevent unauthorised access to, or use of, the Software;
- (vi) share any features of the Software that are not publicly available with any unauthorised third party;
- (vii) engage in any conduct on the Software that is in breach of this Agreement (or any agreements mentioned therein); and
- (viii) encumber or allow the creation of any mortgage, charge, lien or other security interest in respect of the Software.

Any breach of this clause constitutes a breach of this Agreement and we may, at our absolute discretion, terminate or suspend your access to, and/or use of, the Software or the Services, and/or take further actions against you for breach of this Agreement.

- (b) With respect to any Services distributed or provided to the Customer for use on the Customer's premises or devices, the Company hereby grants the Customer a non-exclusive, non-transferable, non-sublicensable license to use such Services during the Term only in connection with the Services.
- (c) The Customer represents, covenants, and warrants that the Customer will use the Services only in compliance with the Company's standard published policies then in effect (**Policy**) and all applicable laws and regulations.
- (d) The Customer hereby agrees to indemnify and hold harmless the Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and legal fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from the Customer's use of Services. Although the Company has no obligation to monitor the Customer's use of the Services, the Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.
- (e) The Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, **Equipment**). The Customer shall also be responsible for maintaining the security of the Equipment, the Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of the Customer account or the Equipment with or without the Customer's knowledge or consent.

4. Confidentiality and Proprietary Rights

- (a) Each party (**Receiving Party**) understands that the other party (**Disclosing Party**) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (referred to as **Proprietary Information** of the Disclosing Party).
- (b) Proprietary Information of the Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of the Customer includes non-public data provided by the Customer to the Company to enable the provision of the Services (**Customer Data**).
- (c) The Receiving Party agrees:
 - (i) to take reasonable precautions to protect such Proprietary Information, and
 - (ii) not to use (except in performance of the Services or as otherwise permitted in this Agreement) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.
- (d) The Customer shall own all right, title and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to the Customer as part of the Services. The Company shall own and retain all right, title and interest in and to (a) the Services, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all Intellectual Property related to any of the foregoing.
- (e) Notwithstanding anything to the contrary, the Company shall have the right to collect and analyse data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and the Company will be free (during and after the term) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.
- (f) Both parties agree to promptly destroy any Proprietary Information of the other party that is within their possession when this Agreement is terminated.
- (g) No rights or licenses are granted except as expressly set out in this Agreement.

5. Intellectual Property

- (a) Subject to clauses 5(a) and 5(b), the Company grants the Customer a personal, non-exclusive, non-transferable and revocable license to permit its authorised users to access and use the Software and the Services (including the Intellectual Property contained therein) throughout the world during the Term.
- (b) All rights, title or interest in and to the Software and any information or technology that may be provided to, or accessed by, you in connection with your use of the Software or Services is owned, and will remain owned, by the Company or its licensors (**Provider IP**). Using the Software or the Services does not transfer any ownership or rights, title or interest in and to the Provider IP.
- (c) All Intellectual Property discovered, developed or otherwise coming into existence as a result of, for the purposes of, or in connection with, the Software or the provision of any Services will automatically vest in, and are assigned to, the Company, including any enhancements, improvements and modifications to the Provider IP (collectively, **Developed IP**).
- (d) The Customer must not represent to anyone or in any manner whatsoever that they are the proprietor of the Software and/or the Provider IP.
- (e) The Customer agrees that the Company may refer to the Customer, their business name, publish their logo and/or trade mark and make reference to the Customer as a customer of the Company in any communications or publications for the purposes of marketing or promoting the Company's business.

6. Payment of Fees (if applicable)

- (a) The Customer will pay the Company the then applicable fees described in the Pricing for the Services and Implementation Services in accordance with this Agreement (**Fees**). If
- (b) the Customer's use of the Services exceeds the Service Capacity set forth on the Pricing or otherwise requires the payment of additional fees (per the terms of this Agreement), the Customer shall be billed for such usage and the Customer agrees to pay the additional fees in the manner provided in this Agreement.
- (c) The Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or the current renewal term, upon thirty (30) days prior notice to the Customer (which may be sent by email).
- (d) If the Customer believes that the Company has billed the Customer incorrectly, the Customer must contact the Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to the Company's customer support department.

- (e) The Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by the Company thirty (30) days after the mailing date of the invoice.
- (f) Unpaid amounts are subject to an interest charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service.
- (g) Where applicable, any goods or services tax, charge, impost or duty payable in respect of this Agreement or the supply of any goods or service made under or in respect of this Agreement and any other taxes, duties or levies will be paid by the Customer at the then-prevailing rate.

7. Term and Termination

- (a) Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Pricing, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, **Term**), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.
- (b) In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of non-payment), if the other party materially breaches any of the terms or conditions of this Agreement. The Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, the Company will make Customer Data available to the Customer in a form the Company deems appropriate for a period of thirty (30) days, but thereafter the Company may, but is not obligated to, delete stored Customer Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

8. Warranty and Disclaimer

- (a) The Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimises errors and interruptions in the Services and shall perform the Implementation Services in a professional and proper manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by the Company or by third-party providers, or because of other causes beyond the Company's reasonable control, but the Company shall use reasonable efforts to provide advance notice in writing or by email of any scheduled service disruption. However, the Company does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services.

- (b) While all due care has been taken, the Company does not warrant that the operation of the Services will be uninterrupted or error free or that any third party components of the Services, will be accurate or error free or that the Services will be compatible with any application, program or software not specifically identified as compatible by the Company.
- (c) To the maximum extent permitted by law, no further warranty, condition, undertaking or term, express or implied, statutory or otherwise as to the condition, quality, performance or fitness for purpose of the Software provided hereunder is given or assumed by the Company other than as required at law.
- (d) The Company makes no representations, warranties or guarantees:
 - (i) that content available on, or produced by or via, the Software is accurate, complete, reliable, current, error-free or suitable for any particular purpose; or
 - (ii) that the Software and/or the Services are or will be free from viruses, worm, trojan or other malicious code. The Customer responsible for taking precautions in this respect.
- (e) The Company's obligation and the Customer's exclusive remedy during the Term are limited, in the Company's absolute discretion, to:
 - (i) the Company, at its own expense, using all reasonable endeavours to rectify any non-conformance of the Services by repair (by way of a patch, workaround, correction or otherwise) within a reasonable period of time; or
 - (ii) a refund of the Fees paid if, in the Company's reasonable opinion, it is unable to rectify such non-conformance within a reasonable timescale or at an economic cost, whereupon this Agreement will terminate.
- (f) The Customer acknowledges and accepts that it is the Customer's sole responsibility to ensure that:
 - (i) the facilities and functions of the Services meet the Customer's requirements;
 - (ii) the Services are appropriate for the specific circumstance of the Customer and are within the laws and regulations of the Customer's jurisdiction.
 - (iii) the Company does not purport to provide any legal, taxation or accountancy advice by providing the Service under this Agreement.
- (g) The Company will not be liable for any failure of the Services to provide any function not described in the documentation (provided online as part of the Services) or any failure attributable to:
 - (i) any modification to the Services other than by the Company;
 - (ii) accident, abuse or misapplication of Services by the Customer;
 - (iii) use of the Services with other software or equipment without the Company's written consent;
 - (iv) use of other than the latest, unaltered current release of the Services; or
 - (v) use other than in accordance with this Agreement.

- (h) If, upon investigation, a problem with the Services is determined not to be the Company's responsibility, the Company may invoice the Customer immediately for all reasonable costs and expenses incurred by the Company in the course of or in consequence of such investigation.

9. Indemnity

The Customer will at all times indemnify and hold harmless the Company and its officers, employees and agents in respect of any third party claim for any injury, loss, damage or expense occasioned by or arising directly or arising directly or indirectly from:

- (a) a breach by the Customer of its obligations under this Agreement;
- (b) any wilful, unlawful or negligent act or omission of the Customer.

10. Limitation on liability

- (a) Except in the case of death or personal injury caused by the Company's negligence, the liability of the Company under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise must not exceed the fees paid by the Customer to the Company for the Services under this Agreement in the 12 months prior to the act that gave rise to the liability, in each case, whether or not the Company has been advised of the possibility of such damages.
- (b) Neither party is liable to the other party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.

11. Dispute Resolution and Mediation

- (a) If a dispute arises out of or relates to the terms of this Agreement, neither Party may commence any legal proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).
- (b) A Party to this Agreement claiming a dispute (**Dispute**) has arisen under the terms of this Agreement, must give written notice to the other Party detailing the nature of the Dispute, the desired outcome, and the action required to settle the Dispute (**Dispute Notice**).
- (c) On receipt of the Dispute Notice by the other Party, the Parties to this Agreement must within seven days of the Dispute Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree.
- (d) If for any reason whatsoever, 21 days after the date of the Dispute Notice, the Dispute has not been resolved the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by Deepen Pty Ltd or his or her nominee and attend a mediation.
- (e) It is agreed that mediation will be held in Victoria, Australia.

- (f) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing, undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation.
- (g) All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the fullest extent possible, must be treated as "without prejudice" communications.
- (h) If thirty (30) days have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.
- (i) In the event that the Dispute is not resolved at the conclusion of the mediation, either Party may institute legal proceedings concerning the subject matter of the Dispute thereafter.

12. General

- (a) Except as otherwise permitted by this Agreement, no variation to its terms will be effective unless in writing and signed by both the Company and the Customer.
- (b) If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- (c) This Agreement is not assignable, transferable or sublicensable by the Customer except with the Company's prior written consent. The Company may transfer and assign any of its rights and obligations under this Agreement without consent.
- (d) This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in writing signed by both parties, except as otherwise provided in this Agreement.
- (e) No agency, partnership, joint venture, or employment is created as a result of this Agreement and the Customer does not have any authority of any kind to bind the Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and legal fees.
- (f) All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognised overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.
- (g) This Agreement takes effect, is governed by, and will be construed in accordance with the laws from time to time in force in Victoria, Australia. The Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

SCHEDULE 1 Specifications

Statement of Work

Deepen will provide self service software accessible via the the internet. Specifically, "Deepen Studio" an admin dashboard for organisations, and "The Deepen mobile app" for end users (Available via Apple App Store and Android Play Store). This includes ongoing software updates, bug fixes, technical support, and the maintenance of cloud hosting for software infrastructure.

Service Level Terms

Deepen will make reasonable efforts to ensure 99% uptime of the software. Paying customers will be advised in advance of planned outage for maintenance purposes.

Support Terms

The Company will provide Technical Support to the Customer via email on weekdays during the hours of 9:00 am through 5:00 pm Australian Eastern Standard Time, with the exclusion of Australian Public Holidays (**Support Hours**). The customer may initiate a helpdesk ticket during Support Hours emailing support@deepenapp.com. The Company will use commercially reasonable efforts to respond to all Helpdesk tickets within one to three business days.

SCHEDULE 2 SAAS Services Pricing

Services: Subscription to Deepen for organisations and/or use of the Deepen mobile app
(Service(s))

Services Fees: Not applicable to end users of the Deepen mobile app. Subscription plan fees (if applicable) are published on the Deepen website (Deepenapp.com) and viewable in the settings section of Deepen Studio login. Fees are payable in advance, subject to the terms of clause 6 of this Agreement.

Initial Service Term: 1 Month(s)

Service Capacity: Based on the number of "Monthly Active Users" (definition below) as specified on subscription plan inclusions published on the Deepen website (Deepenapp.com) and viewable in the settings section of Deepen Studio login.

Definition of Monthly Active Users: "Monthly Active Users" means the number of users accessing an organisations' content on the Deepen mobile app in a given month. This includes both registered and anonymous users.

Implementation Services: the Company will use commercially reasonable efforts to provide the Customer the services described in the Statement of Work (**SOW**) found in Schedule 1 of this Agreement (**Implementation Services**), and the Customer shall pay the Company the Implementation Fee (if applicable) in accordance with the terms of this Agreement.

Pilot use: if the Services use during the Pilot Period will be restricted to non-productive evaluation use. During pilot/evaluation use: (1) no fees will apply, except for any Pilot Use Fee specified below, (2) the Services are provided "AS IS" and no warranty obligations of the Company will apply, and (3) the Customer may terminate this Agreement and all of its rights hereunder by providing the Company written notice thereof no less than 10 days prior to the end of the Pilot Period; otherwise, this Agreement shall continue in effect for the Initial Service Term (**subject to earlier termination as provided in the Agreement**) .

Pilot Period: 14 days

Pilot Use Fee: \$0