

THIS AGREEMENT is made immediately upon order

BETWEEN:

- (1) GoPlex Consulting a company registered in Australia under Australia Business Number 33692766071 whose registered office is at 30 Amourin Street, North Manly 2100, NSW, Australia (“the Host”) and
- (2) The registered client of which requires, as determined by the client, the services of GoPlex Consulting (“the Client”)

WHEREAS:

- (1) The Service Provider is engaged in the business of providing Hosting Services to clients and has reasonable skill, knowledge, qualifications and experience in that field.
- (2) The Client wishes to acquire the Hosting Services provided by the Service Provider as detailed in Clause 6 and Schedule 1, subject to, and in accordance with, the terms and conditions of this Agreement.
- (3) The Service Provider wishes to provide the Hosting Services to the Client subject to, and in accordance with, the terms and conditions of this Agreement.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Business Day”	means any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in Sydney, Australia;
“Commencement Date”	means the date on which this Agreement comes into force pursuant to Clause 2;
“Confidential Information”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement or otherwise (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked or may be interpreted as such);

“Data Protection Legislation”	means 1) unless and until EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations, and secondary legislation (as amended from time to time), in the UK and subsequently 2) any legislation which succeeds the GDPR;
“Downtime”	means the non-availability of one or more parts of the Hosting Services as defined in Clause 7;
“Fees”	means the fees payable by the Client to the Service Provider in accordance with Clause 5 and Schedule 1;
“Hosting Package”	means the specification under which the Hosting Services and Fees shall be determined and provided as set out in Schedule 1;
“Hosting Services”	means the website hosting services provided by the Service Provider as set out in Clause 6;
“Intellectual Property Rights”	means any and all patents, rights in inventions, rights in designs, trade marks, trade and business names and all associated goodwill, rights to sue for passing-off or for unfair competition, copyright, moral rights and related rights, rights in databases, topography rights, domain names, rights in information (including know-how and trade secrets) and all other similar or equivalent rights (subsisting now or in the future) in any part of the world, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights for their full term;
“Performance Monitor”	means the individual(s) appointed by the Service Provider to monitor the provision of the Hosting Services in accordance with the Service Levels under Clause 9;
“Scheduled Service Downtime”	means Downtime which is pre-planned by the Service Provider for maintenance, upgrades and similar activities in accordance with Clause 8;
“Service Levels”	means the agreed levels to which the Service Provider’s performance in providing the Hosting Services must adhere as set out in Clause 7;
“Support Ticket”	means a message sent to the Service Provider via the Service Provider’s online support system;
“Term”	means the term of this Agreement as set out in Clause 2; and

“Uptime” means the normal, fully functional availability of the Hosting Services and all components thereof.

- 1.2 Unless the context otherwise requires, each reference in this Agreement to:
 - 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 “this Agreement” is a reference to this Agreement and each of the Schedules as amended or supplemented at the relevant time;
 - 1.2.4 a Schedule is a schedule to this Agreement; and
 - 1.2.5 a Clause or paragraph is a reference to a Clause of this Agreement (other than the Schedules) or a paragraph of the relevant Schedule.
 - 1.2.6 a "Party" or the "Parties" refer to the parties to this Agreement.
- 1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.

2. **Term of Agreement**

- 2.1 This Agreement will come into force on the Commencement Date of the Service and shall continue in force for an initial Term of a pre-defined period by the client from that date, subject to the provisions of Clauses 7 and 12.
- 2.2 Following the end of the initial Term, the Term of this Agreement may be renewed for further periods (which shall thereafter be defined as part of the Term).

3. **Service Provider’s Obligations**

- 3.1 The Service Provider shall provide the Hosting Services to the Client in accordance with the provisions of Clause 6 and Schedule 1 and in accordance with the required Service Levels set out in Clause 7.
- 3.2 The Service Provider shall provide the Client with such information and advice in connection with the Hosting Services and the provision thereof as the Client may, from time to time, reasonably require both before and during the provision of the Hosting Services.
- 3.3 The Service Provider shall use reasonable endeavours to keep the Client informed of any special requirements (including, but not limited to, legislative requirements) applicable to the provision of the Hosting Services. To the extent necessary and appropriate, the Service Provider shall promptly take steps to comply with any such requirements. These steps shall not otherwise alter this Agreement in any way.

4. **Client’s Obligations**

- 4.1 The Client shall provide the Service Provider with such information in

connection with the Hosting Services and the provision thereof as the Service Provider may, from time to time, reasonably require both before and during the provision of the Hosting Services.

- 4.2 The Client shall comply with any and all terms and conditions which the Service Provider may apply to the Hosting Services.

5. Fees and Payment

- 5.1 The Client shall pay the Fees to the Service Provider on a basis in accordance with the pricing structure of the Hosting Package as consideration for the Hosting Services provided by the Service Provider in accordance with the terms and conditions of this Agreement.
- 5.2 All payments required to be made pursuant to this Agreement by the Client shall be made at pre-determined intervals by the chosen payment method to such bank in Sydney, Australia as the Service Provider may from time to time nominate, without any set-off, withholding or deduction except such amount (if any) of tax as the Client is required to deduct or withhold by law.
- 5.3 Where any payment pursuant to this Agreement is required to be made on a day which is not a Business Day, it may be made on the next following Business Day.
- 5.4 If either Party fails to pay on the due date any amount which is payable to the other pursuant to this Agreement then, without prejudice to and notwithstanding sub-Clause 12.2.1, that amount shall bear interest from the due date until payment is made in full, both before and after any judgment, at a rate of 0% per annum over the Westpac Banking Corporation base rate from time to time in force.

6. Provision of the Hosting Services

- 6.1 The Service Provider shall, throughout the term of this Agreement, provide the Hosting Services to the Client in accordance with the terms and conditions of this Agreement, the provisions of the Hosting Package and the Service Levels.
- 6.2 The Service Provider shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Hosting Services.
- 6.3 The Service Provider may alter, improve or otherwise modify the Hosting Package provided that any such change will not significantly alter the provision of the Hosting Services or result in the removal of any features or services that form part of the Hosting Package. The Client may be notified no later than seven (7) Business Days in advance of any planned changes and may receive full documentation of any action required on their part. No alterations under this sub-Clause 6.3 shall affect the Fees payable by the Client within the period. GoPlex Consulting reserves the right to change the price of any product at any time, although such change will only be incurred by the Client on the next invoice due.
- 6.4 The Service Provider shall use all due and proper care to ensure that the manner in which it provides the Hosting Services does not have any adverse effect on the name, reputation, image or business of the Client.

7. Service Levels

- 7.1 The Service Provider shall use reasonable endeavours to ensure an Uptime rate of 99.9%.
- 7.2 The Service Provider shall implement such organisational, technological and other measures as are reasonably required to ensure the Uptime rate set out in sub-Clause 7.1.
- 7.3 For the purposes of this Agreement, Downtime refers to one or more whole periods of 2 minutes.
- 7.4 The Service Provider may issue a discount of 10% of the Fees payable for each whole ten (10) minute period of Downtime, if the Client requests this discount within fourteen (14) days of downtime. Such discounts may be applied to the Fee payment due immediately following the Downtime. Discounts shall be made up to a maximum of 100% of the Fees payable for a given period.
- 7.5 In the event that the Hosting Services are unavailable for a period exceeding twelve (12) hours per period for consecutive periods, the Client shall have the right to terminate this Agreement in accordance with sub-Clause 12.3.
- 7.6 Sub-Clauses 7.4 and 7.5 shall not apply to any Downtime which results from any of the following:
 - 7.6.1 Scheduled Service Downtime;
 - 7.6.2 Failure of the Client's own computer systems, network or software;
 - 7.6.3 Failure by the Client, its employees, subcontractors, agents or other similar third parties to comply with any reasonable instructions issued by the Service Provider;
 - 7.6.4 Breach by the Client of any terms or restrictions of the Hosting Package including, but not limited to, exceeding data storage or transfer limitations;
 - 7.6.5 Problems which are beyond the reasonable control of the Service Provider including, but not limited to, internet service provider failure and other matters arising under Clause 15.

8. Scheduled Service Downtime

- 8.1 The Service Provider may, from time to time, require Scheduled Service Downtime in order to perform maintenance and upgrades on its computer systems, network and infrastructure.
- 8.2 The Service Provider shall use reasonable endeavours to ensure that any period of Scheduled Service Downtime causes minimal disruption to the Hosting Services and is as brief as is reasonably possible. Nothing in this sub-Clause 8.2 shall constitute a guarantee of the same.
- 8.3 The Service Provider shall notify the Client of Scheduled Service Downtime no later than twenty-four (24) hours prior to the start of the same. Such notice shall include an outline summary of the work to be performed during, and the estimated duration of, the Scheduled Service Downtime.
- 8.4 Whenever possible, the Service Provider shall use reasonable endeavours to perform maintenance and upgrades without incurring any Scheduled Service Downtime.

9. Service and Performance Monitoring

- 9.1 The Service Provider shall appoint the Performance Monitor to ensure that the Hosting Services are provided in accordance with the Service Levels and the terms and conditions of this Agreement and in particular to deal with respond accordingly to any and all Support Tickets informing the Service Provider of the non-availability of the Hosting Services.
- 9.2 In the event that the Service Levels fall below the requirements set out in Clause 7, the provisions of sub-Clauses 7.4 and 7.5 shall apply.

10. Confidentiality

- 10.1 Each Party undertakes that, except as provided by sub-Clause 10.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of this Agreement and after its termination:
 - 10.1.1 keep confidential all Confidential Information;
 - 10.1.2 not disclose any Confidential Information to any other party;
 - 10.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms and conditions of this Agreement;
 - 10.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 10.1.5 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-clauses 10.1.1 to 10.1.4 above.
- 10.2 Either Party may:
 - 10.2.1 disclose any Confidential Information to:
 - 10.2.1.1 any sub-contractor or supplier of that Party;
 - 10.2.1.2 any governmental or other authority or regulatory body; or
 - 10.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;to such extent only as is necessary for the purposes contemplated by this Agreement, or as required by law, and in each case subject to that Party first informing the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in sub-Clause 10.2.1.2 above or any employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this Clause 10, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
 - 10.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of this Agreement, or at any time after that date becomes, public knowledge through no fault of that Party, provided that in doing so that Party does not disclose any part of that Confidential Information which is not public knowledge.

- 10.3 The provisions of this Clause 10 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

11. Intellectual Property Rights

- 11.1 The Service Provider will not acquire ownership of any Intellectual Property Rights subsisting in any material belonging to the Client which the Client may, from time to time, require the Service Provider to host or store in the course of providing the Hosting Services.
- 11.2 The Client agrees to fully indemnify the Service Provider against any and all costs, expenses, liabilities, losses, damages, claims and judgments that the Service Provider may incur or be subject to as a result of the infringement of any Intellectual Property Rights belonging to any third party arising out of the Client's failure to obtain the necessary rights and permissions from third parties in relation to any material (or Intellectual Property Rights) owned by such third parties.

12. Termination

- 12.1 Either Party may terminate this Agreement by giving to the other not less than twenty-four (24) written notice.
- 12.2 Either Party may forthwith terminate this Agreement by giving written notice to the other Party if:
- 12.2.1 any sum owing to that Party by the other Party under any of the provisions of this Agreement is not paid within thirty-one (31) days of the due date for payment;
- 12.2.2 the other Party commits any other material breach of any of the provisions of this Agreement and, if the breach is capable of remedy, fails to remedy it within twenty-four (24) hours after being given written notice giving full particulars of the breach and requiring it to be remedied;
- 12.2.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
- 12.2.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- 12.2.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on the other Party under this Agreement);
- 12.2.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
- 12.2.7 the other Party ceases, or threatens to cease, to carry on business; or
- 12.2.8 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of this Agreement. For the purposes of this Clause 12, "control" and

“connected persons” shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.

- 12.3 The Client shall have the right to forthwith terminate this Agreement by giving written notice to the Service Provider in the event that the Service Provider fails to provide the Hosting Services in compliance with the Service Levels for the period set out in sub-Clause 7.5.
- 12.4 The right to terminate this Agreement given by this Clause 12 shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

13. **Post-Termination Provisions**

Upon the termination of this Agreement for any reason:

- 13.1 any sum owing by either Party to the other Party under any of the provisions of this Agreement shall become immediately due and payable;
- 13.2 any rights or obligations to which any of the Parties to this Agreement may be entitled or be subject before its termination shall remain in full force and effect where they are expressly stated to survive such termination;
- 13.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which either Party may have in respect of any breach of this Agreement which existed at or before the date of termination;
- 13.4 subject as provided in this Clause 13, and except in respect of any accrued rights, neither Party shall be under any further obligation to the other;
- 13.5 the Service Provider shall forthwith remove any and all information belonging to and pertaining to the Client from its computer systems; and
- 13.6 each Party shall (except to the extent referred to in Clause 10) forthwith cease to use, either directly or indirectly, any Confidential Information, and shall forthwith return to the other Party any documents in its possession or control which contain or record any Confidential Information.

14. **Liability and Indemnity**

- 14.1 Except as expressly provided in this Agreement, neither Party shall be liable or responsible to the other in contract, tort or otherwise (including any liability for negligence) for:
 - 14.1.1 any loss of revenue, business, contracts, anticipated savings or profits, or any loss of use of facilities; or
 - 14.1.2 any special indirect or consequential loss howsoever arising.
- 14.2 For the purposes of sub-Clause 14.1.1 “anticipated savings” means any expense which either Party expects to avoid incurring or to incur to a lesser degree than would otherwise have been the case by reason of the use of the Hosting Services provided by the Service Provider under this Agreement.

15. **Force Majeure**

Neither Party to this Agreement shall be liable for any failure or delay in performing

their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

16. Data Protection

16.1 All personal information that the Service Provider may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) and the Client’s rights under the GDPR.

16.2 For complete details of the Service Provider’s collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Client’s rights and how to exercise them, and personal data sharing (where applicable), please refer to the Service Provider’s Privacy Policy.

17. Data Processing

17.1 In this Clause 17, “personal data”, “data subject”, “data controller”, “data processor”, and “personal data breach” shall have the meaning defined in Article 4, EU Regulation 2016/679 General Data Protection Regulation (“GDPR”).

17.2 The Parties hereby agree that they shall both comply with all applicable data protection requirements set out in the Data Protection Legislation. This Clause 17 shall not relieve either Party of any obligations set out in the Data Protection Legislation and does not remove or replace any of those obligations.

17.3 For the purposes of the Data Protection Legislation and for this Clause 17, the Client is the “Data Controller” and the Service Provider is the “Data Processor”.

17.4 The Data Controller shall ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Data Processor for the purposes described in this Agreement.

17.5 The Data Processor shall, with respect to any personal data processed by it in relation to its performance of any of its obligations under this Agreement:

17.5.1 Process the personal data only on the written instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by law. The Data Processor shall promptly notify the Data Controller of such processing unless prohibited from doing so by law;

17.5.2 Ensure that it has in place suitable technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage or destruction. Such measures shall be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures.

- 17.5.3 Ensure that any and all staff with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential;
- 17.5.4 Not transfer any personal data outside of the European Economic Area without the prior written consent of the Data Controller and only if the following conditions are satisfied:
 - 17.5.4.1 The Data Controller and/or the Data Processor has/have provided suitable safeguards for the transfer of personal data;
 - 17.5.4.2 Affected data subjects have enforceable rights and effective legal remedies;
 - 17.5.4.3 The Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and
 - 17.5.4.4 The Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of the personal data;
- 17.5.5 Assist the Data Controller at the Data Controller's cost, in responding to any and all requests from data subjects in ensuring its compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner's Office);
- 17.5.6 Notify the Data Controller without undue delay of a personal data breach;
- 17.5.7 On the Data Controller's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination of this Agreement unless it is required to retain any of the personal data by law; and
- 17.5.8 Maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with this Clause 17 and to allow for audits by the Data Controller and/or any party designated by the Data Controller.
- 17.6 The Data Processor shall not sub-contract any of its obligations with respect to the processing of personal data under this Clause 17.

18. **Nature of the Agreement**

- 18.1 This Agreement is personal to the Parties and neither Party may assign, mortgage, or charge (otherwise than by floating charge) or sub-license any of its rights hereunder, or sub-contract or otherwise delegate any of its obligations hereunder, except with the written consent of the other Party, such consent not to be unreasonably withheld.
- 18.2 Subject to the provisions of Clause 17, this Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 18.3 Each Party acknowledges that, in entering into this Agreement, it does not rely on any representation, warranty or other provision except as expressly

provided in this Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

- 18.4 No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 18.5 At any time after the Commencement Date each of the Parties shall, at the request and cost of the other Party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the Party so requiring may reasonably require for the purpose of giving to the Party so requiring the full benefit of all the provisions of this Agreement.

19. Severance

The Parties agree that, in the event that one or more of the provisions of this Agreement is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of this Agreement. The remainder of this Agreement shall be valid and enforceable.

20. Relationship of the Parties

- 20.1 Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership between the Parties nor, except as expressly provided, shall it constitute, or be deemed to constitute an agency of any other party for any purpose.
- 20.2 Subject to any express provisions to the contrary in this Agreement, the Service Provider shall have no right or authority to, and shall not do any act, enter into any contract, make any representation, give any warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the Client or bind the Client in any way.

21. Notices

- 21.1 All notices under this Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 21.2 Notices shall be deemed to have been duly given:
- 21.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 21.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
 - 21.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 21.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

22. Law and Jurisdiction

- 22.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 22.2 Any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

IN WITNESS WHEREOF this Agreement has been duly executed the day and year first before written

SIGNED by
Blake Harrold, Managing Director
for and on behalf of GoPlex Consulting

SCHEDULE 1

Hosting Package

Information available via the GoPlex Client Dashboard, under the Client's selected Service <https://goplex.com.au/order/clientarea.php?action=products>. For further information contact GoPlex.

Fees

The following fees are exclusive of the cost of each GoPlex Hosting Package Plan. Please visit <https://goplex.com.au/web-hosting> for Hosting Package Prices.

Fee Name	Fee Value
Late Fee	nil
Bandwidth Overage	\$0.01 per MB
Disk Usage Overage	\$0.01 per MB