



# Master Services Agreement

This **MASTER SERVICES AGREEMENT** (the “Agreement”) is entered into between of Kaizen Digital Studios Central Park, 152 St Georges Terrace, Perth WA 6000, ABN 92 590 286 539 (“Kaizen Digital”, “**Us**”) and the named party (“**Customer**”, “**You**”) and sets out the terms and conditions upon which Kaizen Digital will agree to supply and the Customer will acquire the Service(s):

## RECITALS

- A. Kaizen Digital provides a range of information communication technology (ICT) services, including Managed Services, Cloud Services and Architecture Services.
- B. Kaizen Digital agrees to supply the Service(s) to the Customer and the Customer agrees to accept the Service(s) from Kaizen Digital on the terms and conditions set out in this Agreement.

## 1. Agreement

1.1. The Agreement between the parties consists of:

- 1.1.1. the Master Terms.
- 1.1.2. the applicable Service(s) Schedules.
- 1.1.3. the Service Order Forms signed or authorised by the parties.

1.2. To the extent of any inconsistency between these documents, the order of priority of interpretation is:

- 1.2.1. the Service Order Form(s).
- 1.2.2. the Service(s) Schedule(s); and
- 1.2.3. the Master Terms.

## **2. The Service(s)**

### **2.1. Ordering Service(s)**

- 2.1.1. The Customer may order Service(s) by requesting Kaizen Digital to provide a draft Service Order Form.
- 2.1.2. The parties will complete the Service Order Form to agree on the Service(s), the Charges, the Service Unit Term and any other additional terms and conditions.
- 2.1.3. Following completion of the Service Order Form in clause 2.1.2, Kaizen Digital will provide the Service(s) to the Customer, in accordance with the applicable Service(s) Schedules and Service Order Forms.
- 2.1.4. During the Term, the parties may agree that additional Service(s) are to be provided to the Customer by Kaizen Digital by agreeing a new Service Order Form and once signed by the parties, the terms of this Agreement are taken to be varied to include the additional Service(s) with the appropriate Service Level applicable.
- 2.1.5. Service(s) are based on term shown under "Service Details". The effective date is the date of service commissioning as determined by Kaizen Digital.

## **2.2 Champion(s)**

- 2.2.1 Customer must appoint one or more Champion(s) to be responsible for the day-to-day administration of this Agreement on behalf of Customer. Unless otherwise notified by You, the Champion(s) will be the persons named as a contact person in any relevant Service Order Form.
- 2.2.2 Customer must notify Us immediately should the Champion(s) be removed or replaced, together with the contact details of a new Champion(s), or of any change to the Champion(s) contact details.
- 2.2.3 Customer will be responsible for the acts, omissions, and defaults of the Champion(s). Any direction, instruction, notice, approval, or other communication made or given to the Champion(s) will be deemed to have been made or given to Customer.

## **2.3 Service Delivery**

- 2.3.1 Kaizen Digital will supply the Service(s) to the Customer at the applicable Service Level (subject to the exclusions specified in the Service Levels Schedule) from the commencement of the applicable Service(s) Unit Term.
- 2.3.2 Kaizen Digital will use all reasonable endeavours to meet the Customer's requested date for supply of a revised or new Service but Kaizen Digital do not represent or warrant that Kaizen Digital will deliver the Service by this date (unless agreed otherwise in the Service Order Form).
- 2.3.3 Kaizen Digital is not liable for any delay in provision of the Service(s) due to the actions of another party including, but not limited to, delays in obtaining access to any property or premises of the Customer or third parties necessary for the provision of the Service(s).
- 2.3.4 The Customer must reasonably co-operate with Kaizen Digital to allow Kaizen Digital to supply the Service(s) safely and efficiently, which includes but is not limited to assisting Kaizen Digital to liaise with the Customer's building management so that Kaizen Digital may obtain access to the Customer's premises and following our reasonable requests to provide Kaizen Digital Representatives with safe and prompt access to the Customer's premises and the Customer's representatives, equipment, data and information.
- 2.3.5 Kaizen Digital will ensure that its Representatives comply with the Customer's reasonable directions, including but not limited to security and work, health and safety matters, while on the Customer's premises.
- 2.3.6 All Service(s) are subject to a physical site survey and safety regulations.

## **2.4 Quality of Service(s)**

- 2.4.1 Kaizen Digital will provide the Service(s) to the Customer:
  - a. in accordance with the Service Levels.
  - b. in accordance with relevant Australian Standards, Australian industry best practice and guidelines, and where none apply,

relevant international best practice and guidelines.

- c. in accordance with applicable law; and
- d. in accordance with the provisions of this Agreement.

2.4.2 Kaizen Digital represents and warrants that:

- a. it has the legal authority to enter into this Agreement.
- b. it has all necessary rights, interests, and approvals necessary to lawfully provide the Service(s).
- c. it has, and its employees, contractors and agents providing the Service(s) have, the necessary experience, skill, knowledge, qualifications, and competence to provide the Service(s) defined in this Agreement including in the Service Order Form(s).

2.4.3 The Customer acknowledges that Kaizen Digital makes no warranty in relation to the performance or characteristics of any website or software supplied by a third party in connection with the Service(s), but Kaizen Digital will actively work with the Customer to assist the Customer to resolve any performance issues with any product supplied by a third party.

2.4.4 This clause 2.4 survives the termination (for any reason) or expiry of this Agreement.

2.4.5 Kaizen Digital NBN: your service on the NBN offers download speeds up to your selected plan speed, and upload speeds up to your selected plan speed. Actual speeds will be slower and will vary due to several factors including hardware and software configuration, source and type of content downloaded, the number of users and performance of interconnecting infrastructure not managed by Kaizen Digital. If you have selected a high speed (up to 100/40 Mbps) plan, these speeds may exceed the capabilities of some computers and servers.

## **2.5 Permitted uses of the Service(s)**

2.5.1 In using the Service(s), the Customer must comply with all laws, all directions by a Regulatory Authority and reasonable directions by Kaizen Digital.

2.5.2 The Customer must not use, or attempt to use, the Service(s):

- a. to break any law or to infringe another person's rights.
- b. to expose Kaizen Digital to liability.
- c. in any way which damages, interferes with, or interrupts the Service(s), or any telecommunications network, equipment, or facilities, or cabling controlled by Kaizen Digital or a supplier to supply the Service(s).
- d. in any way which may damage any property or injure or kill any

person.

e. to transmit, publish or communicate material, which is defamatory, offensive, abusive, indecent, menacing, or unwanted; or

f. in any way which contravenes our Acceptable Use Policy.

2.5.3 The Customer acknowledges that, where the Service is a network service, Kaizen Digital may be required by law to intercept communications over the Service(s) and may also monitor the Customer usage of the Service(s) and communications sent over the network service.

2.5.4 If Kaizen Digital reasonably believes the Customer is engaging in activity that is contrary to this clause 2.5, Kaizen Digital will notify the Customer of such activity and that it may without further notice may direct the Customer to immediately cease such activity. The Customer must immediately comply with any such direction. If the Customer does not, then Kaizen Digital will take any steps reasonably necessary to ensure compliance with the direction (including suspension of the relevant Service).

### **3 Equipment**

#### **3.1 Kaizen Digital Equipment**

3.1.1 To use the Service(s), the Customer may need to be physically provided with Kaizen Digital equipment on the Customer's premises. Legal title to such equipment remains solely with Kaizen Digital, and the Customer holds such equipment as a bailee of Kaizen Digital for the duration of this Agreement.

3.1.2 The Customer must take reasonable care of Kaizen Digital's equipment while it is in the Customer's physical possession.

3.1.3 The Customer is responsible for the repair or replacement costs of Kaizen Digital's equipment that is lost, stolen or damaged while in the Customer's possession, excepting any fair wear and tear.

3.1.4 The Customer must provide access to the Customer's premises and facilities as reasonably necessary to enable Kaizen Digital to install any equipment on the Customer's premises required for the Service(s).

3.1.5 Kaizen Digital will advise the Customer in writing of the required space, power supply and environment for all equipment used in connection with the Service(s) and located on the Customer's premises. Kaizen Digital will uninstall and remove all of its equipment located on the Customer's premises at the end of the applicable Service(s).

3.1.6 Kaizen Digital will comply with all of the Customer's directions, policies and procedures relating to work, health and safety and security while Kaizen Digital is at the Customer's premises.

#### **3.2 Customer Equipment**

3.2.1 The Customer must ensure that all Customer's equipment it uses in

connection with the Service(s), and the way the Customer uses that equipment, complies with all laws, as well as directions by a relevant Regulatory Authority and reasonable directions by Kaizen Digital.

- 3.2.2 If the Customer's equipment, or its use, does not comply with clause 3.2.1, Kaizen Digital may disconnect such equipment from the Service(s). Kaizen Digital will endeavour to provide the Customer notice before disconnection but may do so immediately in an emergency.

## **4 Service Charges**

### **4.1 Charges**

- 4.1.1 The Customer must pay all Charges incurred in respect of the Service(s) as specified in the Service Order Form.
- 4.1.2 If the Customer does not pay an invoice for a Charge by its due date, and unless the Charge is being disputed in good faith, Kaizen Digital reserves the right to charge the Customer:
- a. interest at the rate of 3% above the prevailing interest rate charged by Kaizen Digital current bank on overdue payments, from the due date until payment is received.
  - b. All reasonable expenses incurred by Kaizen Digital (including reasonable solicitor client legal costs and expenses and the fees of our debt recovery agents) in relation to recovering payments due, as substantiated by Kaizen Digital to the Customer's reasonable satisfaction.
  - c. An equal amount to recoup any bank or financial institution fees incurred by Kaizen Digital because the Customer payment (however made) is not honoured.
- 4.1.3 Installation Service(s): any once off installation fees will be invoiced on receiving a signed Service Order Form.
- 4.1.4 Software licensing (SPLA) costs are subject to change with market trend.

### **4.2 Invoices & Payment**

- 4.2.1 Invoices will be emailed to the Customer as applicable to the Deliverable on the Service Order Form. Invoices can be sent by mail on request.
- 4.2.2 For Labour Service Deliverables unless otherwise agreed in writing by Kaizen Digital the Customer must pay within fourteen (14) days of the date of the invoice. The Customer must pay the invoice by direct deposit of funds into Kaizen Digital nominated bank account.
- 4.2.3 For Recurring Service Deliverables unless otherwise agreed in writing by Kaizen Digital the Customer must pay the invoice by direct debit. Funds will be deducted from the Customers chosen bank account on the sixth (6) Business Day of the date of invoice.

4.2.4 For non-Labour and non-Recurring Service Deliverables unless otherwise agreed in writing by Kaizen Digital the Customer must pay on date of receipt of invoice. The Customer must pay the invoice by direct deposit of funds into Kaizen Digital nominated bank account. Only once funds have cleared into Kaizen Digital nominated bank account will the Deliverable(s) on the Service Order Form be released.

4.2.5 Recurring Service(s) invoices are billed pro-rata in advance.

4.2.6 Usage-based Deliverable(s) as defined by the Service Unit Rate will be calculated based on monthly usage, invoices are issued in arrears.

### **4.3 How can the Customer dispute an invoice?**

4.3.1 To dispute an invoice in good faith, the Customer must notify Kaizen Digital in accordance with clause 12.8 and the dispute resolution procedure in detailed in clause 6 will apply.

4.3.2 A Notice must include the detailed reasons for the dispute and must be issued within sixty (60) days of the invoice date. If the Customer fails to notify Kaizen Digital by this date, the Customer waives all rights to dispute the invoice.

4.3.3 The Customer may withhold only the disputed amounts of the invoice.

4.3.4 Where a dispute is determined under clause 6:

- a. in Kaizen Digital's favour, the Customer must pay Kaizen Digital the amount withheld within seven (7) days of such determination; or
- b. in the Customer's favour and the Customer has already paid the disputed amount, Kaizen Digital must credit the relevant amount within seven (7) days of such determination.

4.3.5 Except for any billing disputes the Customer has with Kaizen Digital, if the Customer does not pay the Customer invoice on the due date Kaizen Digital reserve the right to:

- c. charge additional fees as detailed in clause 4.1; and
- d. take any additional actions as allowed under this Agreement, including but not limited to suspension or termination of Service(s).

### **4.4 GST**

4.4.1 Unless otherwise expressly noted, all charges for the Service(s) are exclusive of GST. The Customer will pay to Kaizen Digital at the same time when any part of the Charges for the Service(s) is payable, an amount equal to any GST payable on supply of that Service(s).

4.4.2 Kaizen Digital must issue a tax invoice to the Customer for any supply on which GST is imposed.

## **5 Rebates**

- 5.1 Where Kaizen Digital fails to achieve the relevant Service Level in anyone (1) month, the Customer is entitled to a rebate calculated in accordance with the Schedule 4 Service Levels for that relevant Service, which may be set-off as against any outstanding or future invoices.
- 5.2 In order to claim a rebate, the Customer must lodge a written claim detailing the incident the Customer contends gives rise to the claim within forty-eight (48) hours of the incident. Kaizen Digital must respond to the written claim within fourteen (14) days of the claim
- 5.3 The Customer is not entitled to a rebate when:
- 5.3.1 the Customer has any undisputed overdue payments outstanding with Kaizen Digital; or
  - 5.3.2 failure to achieve the Service Levels is caused directly or indirectly by, or arises from or in connection with:
    - a. a Force Majeure Event.
    - b. any act or omission by the Customer or the Customer's agents, employees, or contractors; or
    - c. the Customer's equipment; or
- 5.4 a suspension of the Service(s) allowed under this Agreement (but excluding any suspension that is due to an event beyond the Customer control).

## **6 Complaints and Disputes**

### **6.1 Notification**

- 6.1.1. If the Customer has any complaints in relation with the Service(s) (including complaints about the Customer invoice) the Customer must contact Kaizen Digital and notify it of the complaint, in accordance with clause 12.8.
- 6.1.2. Both parties agree to use reasonable endeavours to resolve any such dispute or complaint quickly and efficiently and to the mutual satisfaction of both parties.

### **6.2 Arbitration**

- 6.2.1. If the parties are not able to reach a resolution of the dispute or complaint within a reasonable period of time (in any event being no more than twenty-one (21) days after the date of the receipt of the notice of the complaint or dispute), then the dispute is to be tabled at a meeting of the Chief Executive Officers of each party for resolution.
- 6.2.2. If the Chief Executive Officers are unable to resolve the dispute or complaint, the dispute or complaint must be submitted for arbitration in accordance with, and subject to, the Resolution Institute Expedited Commercial Arbitration Rules.
- 6.2.3. The party raising the dispute must propose to the other party the name of the proposed arbitrator. If the parties cannot agree on an arbitrator



within fourteen (14) days then the arbitrator will be appointed by the Resolution Institute nomination service, Western Australia Chapter.

- 6.2.4. The decision of an arbitrator will be final and conclusive and binding on the parties.
- 6.2.5. The parties must sign all documents and do all things necessary to give effect to the decision of the arbitrator.
- 6.2.6. Each party must bear its own costs of, and incidental to, the arbitration, except where stipulated to the contrary by the arbitrator.

### **6.3 Exceptions**

**6.3.1** The activation of this clause 6 does not prevent either party:

- a. seeking urgent interlocutory relief; or
- b. seeking recovery for any claim that either party reasonably considers to be a monetary claim from a court with competent jurisdiction.

### **6.4 Continuing Obligations**

**6.4.1** The parties agree to continue to perform their obligations under this Agreement, notwithstanding the existence of a dispute or complaint, unless the nature of the dispute renders such performance effectively impossible.

### **6.5 Ombudsman and Department of Fair Trading**

**6.5.1** If the complaint is not resolved to the Customer's satisfaction, the Customer may refer the complaint to the Telecommunications Industry Ombudsman or the Department of Fair Trading.

## **7 Termination of the Service(s)**

### **7.1 Customer rights to cancel the Service**

**7.1.1** The Customer may cancel the Customer Service(s) immediately if:

- a. Kaizen Digital is required to cancel the Service(s) to comply with a direction from a law enforcement agency or a Regulatory Authority.
- b. any one of the Service(s) is unavailable for a period of more than 7 consecutive days: or
- c. an Insolvency Event has occurred with respect to Kaizen Digital,

by issuing Kaizen Digital with a notice under clause 12.8, and the notice will be taken to have effect from the earliest point it is received by Kaizen Digital in accordance with the methods of receipt described in that provision.

**7.1.2** If the Customer cancels the Service(s) under clause 7.1.1, there is no penalty or cancellation fee payable.

### **Customer termination for convenience**

**7.1.3** The Customer may cancel the Service(s) by giving Kaizen Digital thirty (30) days' written notice.

**7.1.4** If the Customer cancels the Service(s) under clause 7.1.3, it must pay a cancellation fee. The cancellation fee will be calculated by multiplying the monthly Charges payable by the Customer under this Agreement by the remaining months (or part) of the Service Unit Term(s) for all Service(s) cancelled.

## **7.2 Kaizen Digital's rights to cancel the Service**

7.2.1 Kaizen Digital may cancel the Service(s) immediately in the following circumstances:

- a. it is required to cancel the Service(s) to comply with a direction from a law enforcement agency or a Regulatory Authority relating to the Customer.
- b. the Customer has failed to make a payment by the due date and the Customer fails to make such payment within forty-five (45) Business Days of receipt of a notice requiring the Customer to do so, except where an amount is permitted to be withheld pursuant to a billing or performance dispute.
- c. an Insolvency Event occurs with respect to the Customer.

7.2.2 Kaizen Digital may cancel the Service(s) by giving the Customer thirty (30) days' written notice if:

- a. the relevant Service Unit Term has ended and Kaizen Digital is continuing to supply the Service(s); or
- b. Kaizen Digital is unable to supply the Service(s) to the Customer because of a Force Majeure Event which has occurred and is continuing.

7.2.3 If Kaizen Digital cancels the Service(s), the written notice will contain:

- a. the effective date on which cancellation takes effect (Cancellation Date).
- b. the reasons for the cancellation.
- c. details of all charges for the use of the Service(s) up to the Cancellation Date.
- d. how these charges are calculated.
- e. when the charges are due.
- f. details of any applicable refunds or rebates and how these refunds or rebates are calculated.
- g. details of any damages claim and how it is calculated.

## **7.3 What happens when the Service is cancelled?**

7.3.1 Where the Service(s) are cancelled:

- a. The Customer will not be able to use the Service(s) after the Cancellation Date.
- b. Subject to any disputes the Customer has with Kaizen Digital, the

Customer agrees to pay for any Charges for the Customer's use of the Service(s) until the Cancellation Date.

- c. Any credits on the Customer account will be applied to pay for any undisputed, outstanding Charges at the Cancellation Date.
- d. Kaizen Digital will refund to the Customer any money that the Customer has paid in advance for that part of the Service(s) that is being cancelled on a pro-rata basis.

Kaizen Digital will uninstall and collect all its equipment located on the Customer's premises within thirty (30) days and the Customer will provide, or procure the provision of, access to the premises for such removal.

#### **7.4 Suspending the Service**

7.4.1 Kaizen Digital may suspend the Service(s) by giving the Customer prior notice where:

- a. any event specified in clause 7.2.1 has occurred.
- b. Kaizen Digital is temporarily unable to supply the Service(s) to the Customer because of a Force Majeure Event; or
- c. the Customer breaches the Acceptable Use Policy.

7.4.2 Kaizen Digital may only suspend the Service(s) for a period that is reasonable in the circumstances

7.4.3 For the avoidance of doubt, suspension of the Service(s) pursuant to this clause 7.4 does not constitute downtime for the purposes of the Service Level Schedule and the calculation of any rebates calculated in accordance with this Agreement.

#### **7.5 Information contained in a written notice to suspend the Service**

7.5.1 If Kaizen Digital suspends the Service(s), the written notice given to the Customer will contain all the relevant information including the dates on which the suspension will take effect and the reasonable reasons for the suspension.

#### **7.6 What happens when a Service is suspended?**

7.6.1 When the Service(s) is suspended:

- a. The Customer will not be able to use the Service(s).
- b. The Customer will be liable to Kaizen Digital for any Charges for access to or use of the Service(s) during the period of suspension, except where the suspension is as a result of an event that was reasonably out of the Customer control.

## **8 Liability and Indemnity**

### **8.1 Exclusion of implied terms**

- 8.1.1 Where legislation applies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this Agreement. However, the liability of Kaizen Digital for any breach of such condition or warranty shall be limited, at the option of Kaizen Digital to one or more of the resupplies of, or payment of the cost of resupplying, the Service(s).

## **8.2 Limits to Kaizen Digital's liability**

- 8.2.1 To the extent permitted by law, Kaizen Digital's total liability to the Customer in any 12-month period in respect of any Loss arising out of or in connection with this Agreement will not in any circumstances exceed the value of annual fees for the service.

- 8.2.2 Without limiting the above liability cap:

- a. Kaizen Digital is not liable for any indirect, special, or consequential loss or damage, loss of profits, loss of production, loss or corruption of data, loss of sales opportunity or business reputation, direct or indirect labour costs and overhead expense; and
- b. Kaizen Digital's liability for the Customer loss under or in connection with this Agreement or the Service(s) is reduced to the extent that the Customer's acts or omissions or the Customer's equipment and applications cause or contribute to that loss.

- 8.2.3 The limitations in this clause does not extend to any liability of Kaizen Digital:

- a. which by law it cannot contract out of.
- b. which arise out of personal injury or death or property damage; or
- c. which arise as a result of any fraud, wilful misconduct, or gross negligence of Kaizen Digital or any of its Representatives.

## **8.3 Indemnity**

- 8.3.1 The Customer must indemnify Kaizen Digital against all Loss arising from or in relation to:

- a. A claim against Kaizen Digital arising out of the death of or personal injury to its Representatives, to the extent that such Loss is caused by a negligent or intentional act or omission, by the Customer or any of its representatives.
- b. Any equipment, network, or other tangible property of Kaizen Digital's or any thirdparty, to the extent that such loss is caused by a negligent or intentional act or omission, by the Customer or any of its representatives.
- c. A claim by a third party against Kaizen Digital to the extent that the claim relates to any negligent or wilful act or omission of the Customer or any of the Customer representatives in relation to this

Agreement.

8.3.2 Kaizen Digital must indemnify the Customer against all Loss arising from or in relation to:

- a. A claim against the Customer arising out of the death of or personal injury to its representatives, to the extent that such Loss is caused by a negligent or intentional act or omission, by Kaizen Digital or any of its representatives.
- b. Any of the Customer's equipment, network, or other tangible property, to the extent that such loss is caused by a negligent or intentional act or omission, by Kaizen Digital or any of its Representatives; or

A claim by a third party against the Customer to the extent that the claim relates to any negligent or wilful act or omission of Kaizen Digital or any of its Representatives in relation to this Agreement

#### **8.4 Survival**

8.4.1 This clause 8 survives the expiry or termination (for any reason) of this Agreement.

## **9 Confidentiality**

### **9.1 Customer's obligations**

9.1.1 The Customer agrees to keep in confidence and not to use or disclose any of Kaizen Digital's Confidential Information. The Customer may only disclose Confidential Information:

- a. To the Customer's legal advisers in relation to the Customer's rights under this Agreement.
- b. To the Customer's Representatives.
- c. To comply with any law, binding directive of a regulator, court order or listing rules of any stock exchange on which its securities are listed.

9.1.2 The Customer acknowledges that a breach of this confidentiality clause may cause Kaizen Digital irreparable damage for which monetary damages would not be an adequate remedy. In addition to other remedies that may be available, Kaizen Digital may seek and obtain injunctive relief against such a breach or threatened or suspected breach. The Customer's obligations with respect to the Confidential Information survive termination of this Agreement. The Customer must return Kaizen Digital's Confidential Information immediately upon request.

### **9.2 Kaizen Digital's confidentiality obligations**

9.2.1 Kaizen Digital agrees to keep in confidence and not to use or disclose any of the Customer Confidential Information. Subject to clause 9.2.2, Kaizen Digital may only disclose Confidential Information to the extent

that the disclosure is necessary to comply with Kaizen Digital's obligations under this Agreement:

- a. To its legal advisers in relation to its rights under this Agreement.
- b. To its Representatives who are required by contract or by fiduciary duty to keep such information confidential.
- c. To comply with any law, binding directive of a regulator, court order or listing rules of any stock exchange on which its securities are listed.

9.2.2 Kaizen Digital may not in any circumstances disclose Customer Data to any other party unless that disclosure is required by a Law. Unless prohibited by a Law, Kaizen Digital must notify the Customer as soon as possible upon receipt of a notice having the force of a Law requiring Kaizen Digital to disclose Customer Data.

9.2.3 Kaizen Digital acknowledges that a breach of this clause 9.2 may cause the Customer irreparable damage for which monetary damages would not be an adequate remedy. In addition to other remedies that may be available, the Customer may seek and obtain injunctive relief against such a breach or threatened or suspected breach. Kaizen Digital's obligations with respect to the Confidential Information survive termination of this Agreement Kaizen Digital must return the Customer Confidential Information immediately upon request.

9.2.4 Nothing in this clause will prevent Kaizen Digital from disclosing any information to a party undertaking due diligence enquiries in relation to Kaizen Digital, provided that party is bound by confidentiality restrictions set out in this clause 9 and Kaizen Digital has sought prior written approval from the Customer in releasing the Confidential Information.

### **9.3 Survival**

9.3.1 This clause 9 survives the expiry or termination (for any reason) of this Agreement.

## **10 Intellectual Property**

### **10.1 The Customer's intellectual property**

10.1.1 Kaizen Digital must not use the Customer's Intellectual Property Rights without the Customer's prior written consent.

### **10.2 Kaizen Digital's intellectual property**

10.2.1 The Customer acknowledges that Kaizen Digital's Intellectual Property Rights remain its sole property and no rights are conferred on the Customer with respect to Kaizen Digital Intellectual Property Rights except as specifically expressed in this Agreement.

10.2.2 All Intellectual Property Rights created by Kaizen Digital in delivering the Service(s) to the Customer remain the sole property of Kaizen Digital.

### **10.3 Warranty**

10.3.1 Kaizen Digital warrants that:

- a. the supply of the Service(s) to the Customer does not and will not infringe any Intellectual Property Rights of any third party; and
- b. it is entitled, and will be entitled at all relevant times, to deal with the Intellectual Property Rights as required under this Agreement.

#### **10.4 Survival**

10.4.1 This clause 10 survives the expiry or termination (for any reason) of this Agreement.

### **11 Insurance**

#### **11.1 Insurance policies**

11.1.1 Kaizen Digital must, at its own cost, take out and maintain the following insurances policies with reputable insurers:

- a. professional indemnity insurance for the term of this Agreement and for a period of six (6) years after the expiry or termination of this Agreement, in the amount of at least \$10,000,000 for any one claim
- b. public liability insurance for the term of this Agreement in the amount of at least \$20,000,000 for any one claim; and
- c. workers' compensation insurance as required under any laws applicable to Kaizen Digital.

#### **11.2 Further requirements**

11.2.1 Kaizen Digital must, in respect of the above insurance policies:

- a. provide copies of the certificate of currency with respect to each insurance policy effected in accordance with clause 11.1 to the Customer prior to the commencement of this Agreement, on renewal and otherwise on the Customer's request; and
- b. promptly and fully comply with all its obligations under the insurance policies, so as to ensure that they, at all times, remain enforceable.

#### **11.3 Failure to comply**

11.3.1 If Kaizen Digital, at any time, fails to comply with its obligations under this clause 11, then the Customer may do everything necessary to comply with such obligations and recover, upon demand, all expenses incurred in doing so from Kaizen Digital.

#### **11.4 Insurance of subcontractors**

11.4.1 Kaizen Digital must ensure that any subcontractors engaged to provide any part of the Service(s) are insured to a level commensurate with the insurance obligations of Kaizen Digital under this clause.



## 11.5 Survival

- 11.5.1 This clause 11 survives the expiry or termination (for any reason) of this Agreement.

## 12. General

### 12.1. Customer personal information

- 12.1.1 Kaizen Digital will only collect, use, and disclose personal information of the Customer with the written consent of the Customer that is reasonably necessary to provide the Service(s), and in compliance with the relevant law. The Customer may at any time contact Kaizen Digital to access and if required correct any stored personal information.
- 12.1.2 Any complaints about Kaizen Digital use of personal information should be addressed to [hello@kaizendigitalstudios.live](mailto:hello@kaizendigitalstudios.live)

### 12.2 Costs

- 12.2.1 Each party must pay its own costs in respect of the negotiation, execution, and performance of this Agreement.

### 12.3 Assignment

- 12.3.1 A party cannot assign or otherwise transfer any of its rights under this Agreement without the prior written consent of each other party.

### 12.4 Variation

- 12.4.1 This Agreement may only be varied in writing and executed by all relevant parties.

### 12.5 Waiver and exercise of rights

- 12.5.1 A waiver by a party of a provision of a right under this Agreement is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.
- 12.5.2 A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- 12.5.3 A single or partial exercise of a right by a party does not preclude another exercise or attempted exercise of that right or the exercise of another right.
- 12.5.4 Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.
- 12.5.5 **Severability** If the whole or any part of a provision of this Agreement is void, unenforceable or illegal it is severed, and the remainder of this Agreement otherwise has full force and effect.

This clause has no effect if the severance alters the basic nature of this Agreement.

## **12.6 Entire agreement**

12.6.1 This Agreement constitutes the entire agreement between the parties about its subject matter and any previous contracts, understandings, negotiations, and representations on that subject matter cease to have any effect.

## **12.7 Governing law**

12.7.1 This Agreement is governed by the laws from time to time in force in Western Australia and appeal courts there from.

## **12.8 Notices**

12.8.1 A notice, approval, consent, or waiver to be given under or in connection with this Agreement must be in writing, and signed by the sender and in the absence of evidence to the contrary will be taken to be received:

- a. If left at the address of the addressee, at the time it was left.
- b. If sent by ordinary post, on the third Business Day after posting.
- c. If sent by express post, on the next Business Day.
- d. If sent by facsimile, at the time recorded on a transmission report from the machine from which the facsimile was sent; and
- e. If sent by electronic email, if the sender receives no advice that the message was undeliverable.

## **12.9 Interpretation**

12.9.1 Undefined words and expressions have the same meaning as in the *Telecommunications Act 1997* (Cth) and associated Acts, regulations, and determinations.

12.9.2 A reference to a person includes a reference to a person, firm, corporation, or other legal entity.

12.9.3 The singular includes the plural and vice versa.

12.9.4 Headings are purely for ease of reference and do not form part of or affect the interpretation of this contract.

12.9.5 Different grammatical forms of the same word have the corresponding meaning.

12.9.6 A reference to a clause is to a clause in this Agreement, unless otherwise stated.

12.9.7 References to each party include references to its successors in title,

permitted assigns and novatees.

## **12.10 Personal Property Securities Act**

12.10.1 If a party to this Agreement determines that this Agreement (or any aspect or transaction in connection with it) is or contains a security interest (as that term is defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**), that party may seek to perfect such security interest and each party agrees to do such things that the party seeking to perfect the security interest reasonably requires (such as obtaining consents, signing, and producing documents, getting documents completed and signed and supplying information) within the time stipulated in the notice for the purposes of enabling Kaizen Digital to apply for any registration or exercise rights in connection with the security interest. The parties agree that sections 125, 130 and 132(3)(d) and 132(4) of the PPSA are excluded to the extent permitted by Law.

## **13. Security**

13.1 Kaizen Digital Service(s) are delivered in accordance with the Security Policy, a copy of which is available on request.

13.2 As a part of its disaster recovery and business continuity planning, Kaizen Digital reviews and updates its Security Policy, and any related Security Management Plan on an ongoing basis, so as to best align them with policy changes and reduce the risk of rising threats.

13.3 In accordance with the requirements stated in these policies and standards, Kaizen Digital will:

13.3.1 Undertake annual security audits to ensure our Service(s) are compliant with any relevant law, policy and standards required by the Customer.

13.3.2 Make available, when requested, necessary resources and provide access to any information or equipment deemed appropriate by a qualified third-party auditor who has been engaged by the Customer.

13.3.3 Maintain comprehensive timely and accurate documentation in a threat and risk register on the current threat exposure and security control mechanisms in place for each Service we deliver to our customers.

13.3.4 Maintain a security incident management system to detect and manage suspected information security incidents that may impact on the Service(s) it delivers.

13.4 For security incidents affecting or involving multiple suppliers, whether they be the Customer's or Kaizen Digital, all parties will agree (on an incident-by-incident basis) who will be responsible for overall incident management co-ordination. Kaizen Digital will provide all reasonable cooperation necessary in this regard; and Kaizen Digital requires that its Customers ensure that the obligations set out in this section apply equally to all suppliers associated with the delivery of any Kaizen Digital Service(s).

## 14. Definitions

**Acceptable Use Policy** – means the policy issued by Kaizen Digital and the latest version is available on Kaizen Digital's website-<https://www.kaizendigitalstudios.live/legal/>

**Architecture Service(s) Schedule** – means Schedule 1 of this Agreement.

**Business Day** – means day banks are open for business in Perth, Western Australia, but excludes Saturday or Sunday.

**Cloud Service(s) Schedule** – means Schedule 2 of this Agreement.

**Confidential Information** – means information concerning a party that is by its nature confidential or is marked "confidential", and in respect of the Customer, includes but is not limited to, the Customer Data, but does not include:

- a. information already known to the receiving party at the time of disclosure by the other party; or
- b. information in the public domain, other than as a result of disclosure by a party in breach of its obligations of confidentiality under this Agreement.

**Customer Data** – means data owned by the Customer that is held by Kaizen Digital, regardless of whether it is held for the purposes of and in fulfillment of the Kaizen Digital's obligations in providing the Service(s).

**Force Majeure Event** – means any event or circumstance or combination of events or circumstances which prevents a party from performing its obligations under this Agreement and which is (are) beyond the reasonable control of or could not have been reasonably avoided (by the taking of any precaution which might reasonably be expected to have been taken) by the affected party including:

- a. acts of God, epidemics, cyclones, tidal waves, landslides, lightning, earthquakes, floods, or fire.
- b. strikes, lockouts, work bans, boycotts, barricades, picketing or other industrial disturbances.
- c. acts of public enemy, war declared or undeclared, sabotage, blockade, revolution, riots, insurrections, civil disturbances.
- d. any changes in law or government directives that materially adversely impacts the costs of providing the Service(s).

**GST** – means the tax created by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other goods and services tax, or any tax applying to this agreement in a similar way and the terms used in the said Act have the same meaning.

**Insolvency Event** – means in relation to a party, any one or more of the following events or circumstances:

- a. being in liquidation or provisional liquidation or under administration.
- b. having a controller (as defined by the Corporations Act 2001 (Cth)) or analogous person appointed to it or any of its property.

- c. being taken under section 459F (1) of the Corporations Act 2001 (Cth) to have failed to comply with a statutory demand.
- d. being unable to pay its debts as and when they fall due or being otherwise insolvent.
- e. becoming an insolvent under administration, as defined in section 9 of the Corporations Act 2001 (Cth).
- f. entering a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors.
- g. any analogous event or circumstance under the laws of any jurisdiction; or
- h. taking any step or being the subject of any action that is reasonably likely to result in any of the above occurring,
- i. unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger, or consolidation approved by the other party (which approval is not to be unreasonably withheld or delayed).

**Intellectual Property Rights** – means copyright, moral right, trademark, design, patent, semiconductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before on or after the date of this Agreement, and including any similar right granted to a party under licence, where that licence permits dealing with the subject rights as contemplated under this Agreement.

**Labour** – means any physical work conducted by a Kaizen Digital Representative.

**Law** – means any applicable statute, regulation, by-law, ordinance, or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law and rules of equity as applicable from time to time.

**Loss** – means loss, cost or damage or any cost or expense suffered or incurred, however caused whether based in tort, contract or otherwise.

**Managed & Hosted Services Schedules** – means Schedule 3 of this Agreement.

**Master Terms** – means clauses 1-14 of this Agreement.

**Recurring** – means any Service(s) Deliverable that is monthly, annually, or bi-annually ongoing.

**Regulatory Authority** – means the Australian Communications and Media Authority (or any replacement agency or authority) and any other governmental body having regulatory oversight in connection with the Services.

**Representatives** – means the person(s) for the time being occupying the position as notified in writing by Kaizen Digital from time to time.

**Security Management Plan** – means Kaizen Digital' s management plan governing how Kaizen Digital manages security, as developed under the Security Policy.

**Security Policy** – means Kaizen Digital Services & Information Security Policy & Standards, a security policy compliant with Australian Standard ISO/IEC 27000-2009, with the latest version is available at <http://www.Kaizen Digital.net.au>

**Service Charges** – means all charges incurred in respect of the Service(s) under this Agreement calculated in accordance with the pricing specifications set out in the Service Order Form.

**Service Level(s)** – means the level of service that Kaizen Digital provides to the Customer specified in Service Levels Schedule 4 and the Service Order Form.

**Service Levels Schedule** – means Schedule 4 of this Agreement.

**Service Order Form** – means the Service Order Form signed or authorised by Kaizen Digital and the Customer for Service Charges. The Service Order Form may be in the form of, quotation, agreement, acceptance of work via written or electronic mail, and/or invoice payment.

**Service Unit Rate (SUR)** – the rate for a Charge for Kaizen Digital to provide a Service to the Customer, as may be specified in the Service Order Form.

**Service Unit Term (SUT)** – means the applicable term for a Service as specified in the Service Order Form for that Service.

**Services** – means the list of computer and net based functions provided by Kaizen Digital to the Customer as specified in Service Order Form.

**Services Schedules** – means the Architecture Services Schedules, Cloud Services Schedule, and the Managed & Hosted Services Schedule.

**Term** – means the period commencing on the signing or initial payment on invoice of this Agreement and ending on the cancellation of all Service(s) provided hereunder.

## Schedule 1- Architecture Services

This Schedule applies when the parties have agreed a Service Order Form in respect of any Architecture Services.

### 1. Definitions

**Architecture Services** means Enterprise Architecture Services or Solution Architecture Services

**Deliverables** means the deliverables to be provided by Kaizen Digital as specified in the Service Order Form.

**Enterprise Architecture Services** means services involving the development of a blueprint of the Customer's organisation from a technology perspective, defining the hardware, operating systems, programming, and networking solutions for the organisation as a whole.

**Solutions Architecture Services** means the design of specific information systems or applications to describe a particular solution and the work required to deliver it.

### 2. Architecture Services

- 2.1. The Service Order Form sets out the details of the Architecture Services and any Deliverables to be provided by Kaizen Digital.
- 2.2. The Service Order Form will also set out the details of any materials and inputs to be provided by the Customer. These materials and inputs must be provided by the Customer by the dates specified in the Service Order Form or, where no dates are specified, upon reasonable request.
- 2.3. Kaizen Digital will perform the Architecture Services and deliver the Deliverables to the Customer.
- 2.4. Kaizen Digital aims to meet the scheduled timeframes and delivery dates set out in the Service Order Form but cannot guarantee to do so. The time estimates in the Service Order Form are based on Kaizen Digital's previous experience, assumptions as to the nature of the internal environment, the availability of our Representatives at the time the Service Order Form was agreed and the timeliness of the Customer's inputs and materials. As a result, any indications given by Kaizen Digital with respect to the delivery dates are estimates only and may vary.

### 3. Change management

Either party may request changes to the scope of the Architecture Services or the Deliverables.

If the parties agree on the proposed changes, then Kaizen Digital will provide the Customer with a document setting out the impact of the changes on the scope of the Architecture Services (including price, Deliverables, and resources).

### 4. Acceptance of Deliverables

- 4.1. The Service Order Form may set out that acceptance testing is required for a Deliverable. If so, the following process will apply for that Deliverable:
  - 4.1.1. there will be an acceptance test period of five (5) Business Days from the date Kaizen Digital delivers the Deliverable to the Customer.
  - 4.1.2. the Customer may carry out acceptance testing during the acceptance test period to make sure that the Deliverable is consistent with the requirements set out in the Service Order Form.
  - 4.1.3. if the Deliverable is consistent with the requirements in the Service Order Form, the Customer must issue Kaizen Digital with an acceptance notice before the end of the acceptance test period; and
  - 4.1.4. if the Deliverable is not consistent with the requirements in the Service Order Form (a Defect), the Customer must provide Kaizen Digital with a written defect notice before the end of the acceptance period which provides Kaizen Digital enough information to enable it to identify the defects and repair that Deliverable. Kaizen Digital will then re-submit to Deliverable to the Customer and the accepting testing will begin again. To avoid doubt, a minor or cosmetic difference, as defined by the Customer, to the requirements which does not have any substantive effect on the Deliverable will not be regarded as a Defect for the purposes of this clause.
  - 4.1.5. if Kaizen Digital does not consider a matter raised by the Customer constitutes a Defect, it will notify the Customer. The parties will use all reasonable efforts to resolve a dispute about whether there is a Defect as soon as reasonably practicable, including by escalation to more senior management, under Clause 6 of this Agreement.
- 4.2. Acceptance of a Deliverable occurs on the earliest of:
  - 4.2.1. the date the Customer issues a notice of acceptance to Kaizen Digital.
  - 4.2.2. expiry of the acceptance test period (unless a valid Defect notice has been issued); or
  - 4.2.3. the Customer uses the Deliverable in any way other than for testing purposes.
- 4.3. Acceptance of a Deliverable does not affect any rights the Customer may otherwise have under any law or elsewhere in this Agreement to have defects in a Deliverable corrected.

## **5. No Warranty**

- 5.1. Kaizen Digital aims to, but cannot guarantee, that each Deliverable will be free from defects errors.
- 5.2. Kaizen Digital does not accept responsibility or liability for defects in a



Deliverable which result from the Customer's inputs and/or materials or which are caused by misuse of or intentional damage to the Deliverable (other than by Kaizen Digital).

## 6. Steering Committee

- 6.1. If it is stated on the Service Order Form that a Steering Committee is to be established, the parties must agree and establish such a committee and a process for the conduct of its business by the date stated in the Service Order Form.
- 6.2. The Steering Committee must consist of each party's nominated project managers or officers. All members of the Steering Committee must be authorised and properly qualified, informed and instructed to enable the Steering Committee to properly assess progress under this Schedule.
- 6.3. Unless agreed otherwise, the members of the Steering Committee or their authorised delegates must meet weekly at the Customer's offices at an agreed time.
- 6.4. At least one (1) Business Day prior to a Steering Committee meeting, Kaizen Digital's project manager must submit to the Customer's project manager a report of progress including:
  - 6.4.1. details (including dates) of Deliverables commenced, completed, or accepted.
  - 6.4.2. details of any delays or issues arising from the project, including any known reasons for the delay or issue arising, and plans for the management of such delays and issues.
  - 6.4.3. a review of any minutes and actions from the last meeting and any issues log.
  - 6.4.4. any new change requests or contract variations (if applicable); and
  - 6.4.5. details of the progress of any draft change requests or contract variations (if applicable).

## 7. Intellectual Property Rights

- 7.1. Kaizen Digital retains all Intellectual Property Rights in and to its material which is incorporated into the Deliverables and any material it develops for the Customer in carrying out the Architecture Services.
- 7.2. Unless otherwise set out in the Service Order Form, Kaizen Digital grants to the Customer a perpetual, non-exclusive, non-sub-licensable and non-transferable license in Australia to use, adapt and reproduce solely for its internal business purposes the Kaizen Digital material which is incorporated into a Deliverable and any material Kaizen Digital develops for the Customer in carrying out the Architecture Services.
- 7.3. Unless otherwise agreed in the Service order Form, the Architecture Services and any Deliverables are provided for the Customer's benefit only, and the Customer must not use them for a third party's benefit or allow a third party to use them.

## **8. Charges**

- 8.1. All Charges for the Architecture Services are as set out in the Service Order Form.
- 8.2. The Charges must be paid in the amounts and at the times set out in the Service Order Form.
- 8.3. The Customer must also reimburse Kaizen Digital for out-of-pocket expenses reasonably and actually incurred by it in performing the Architecture Services, provided that Kaizen Digital.
  - 8.3.1. first obtains approval for each expense from the Customer whereby the expense is greater than \$100; and
  - 8.3.2. produces a valid invoice or receipt when claiming the expense.
  - 8.3.3. where the expense is less than a \$100 valid invoice or receipt will not be produced.
- 8.4. Where the Service Order Form sets out a price for a Deliverable which is not calculated on a time and materials basis, that price is subject to the Customer providing its inputs and materials as required and to the assumptions and dependencies set out in the Service Order Form remaining valid and being fulfilled. Where the quoted price will be impacted as a result of any change to the factors, the Charge may be varied as a result of an agreed change through the change management procedure in clause 3 of this Schedule.

## **9. Confidential Information**

- 9.1. Each party will treat as Confidential Information all information provided by the other relating to the provision of the Architecture Services including: the Service Order Form; and
- 9.2. technical, operational, billing, pricing, and commercial information in relation to the supply of the Architecture Services.

## Schedule 2 – Cloud Services

This Schedule applies when the parties have agreed a Services Order Form for Cloud Services. Kaizen Digital's Cloud Services consist of:

Cloud services	Kaizen Digital Inclusions	Kaizen Digital Responsibility
<b>Foundation</b>	Management of applicable Kaizen Digital hardware	Availability
<b>Premium</b>	As for Foundation, plus Cloud Software Licences, software patching, monitoring and maintenance	Availability and Maintenance
<b>Premium +</b>	As for Premium, plus service support, integration	Availability, Support and Maintenance

Where the parties have agreed a Cloud Services Form, they must also agree an Architecture Services Form. Kaizen Digital is not required to deliver any Cloud Services until the Architecture Services have been delivered (unless Kaizen Digital waives such requirement).

### 1. Definitions

**Cloud Services** means Services provided as Foundation, Premium and or Premium+

**Cloud Software** means the software to be provided as part of PaaS or SaaS, as specified in the Service Order Form.

**Cloud Software Terms** means the end user licence agreements for the relevant Cloud Software, as provided by Kaizen Digital to the Customer in conjunction with the Service Order Form

**Customer Data** means data or information that is submitted by the Customer into the Cloud Service to be stored or processed and made accessible from the Cloud Service in any form, regardless of the format, location or medium.

**Cutover Date** means the date when Kaizen Digital advises the Customer that the Customer can commence loading Customer Data into the Cloud Service following the completion of the Transition in Services.

**Deliverables** means the deliverables to be provided by Kaizen Digital as specified in the Service Order Form.

**Environment** means the entire set of technology components required for the provision of the Cloud Service.

**Permitted User** means such specified persons that the Customer has permitted to use the Cloud Services, including individual end users

**Support Services** means any services specified in the Service Order Form that are additional to or bundled with the Cloud Service and may include, but are not limited to, implementation, user training and ongoing system administration, monitoring and performance management, backup, and recovery services.

**Third Party Application** means an application supplied, licensed from, or owned by a third party which is used by the Customer.

**Transition In Services** means any activities specified in the Service Order Form that are to be undertaken by Kaizen Digital prior to the Cutover Date that may include data migration, business continuity plans, testing of the Cloud Service (including user acceptance testing), handover arrangements and planning to enable the Customer's operations and Customer Data to be moved to the Cloud Services.

## **2. Service Unit Term**

- 2.1. The Cloud Services are provided for the Service Unit Term as specified in the Service Order Form.
- 2.2. The Cloud Services may be terminated or suspended in accordance with the Master Terms.

## **3. Cloud Services**

- 3.1 Kaizen Digital will provide the Cloud Services as specified in the Service Order Form.
- 3.2 In providing the Cloud Services, Kaizen Digital aims to meet the applicable Service Levels, except to the extent a Service Level Exclusion applies. The Customer acknowledges that the Service Levels are targets only and failure to meet the Service Levels is not a breach of this Agreement (but nothing in this clause limits any right of the Customer to claim any rebate under the Service Level Schedule).
- 3.3 Any Transition in Services shall be provided by Kaizen Digital in accordance with the Service Order Form.
- 3.4 The Customer must pay the Charges for the Cloud Services as set out in the Service Order Form.

## **4. Cloud Software**

- 4.1 Where the Cloud Services include Cloud Software, the Customer acknowledges that the Cloud Software is not owned by Kaizen Digital and its use by the customer is subject to the Cloud Software Terms.
- 4.2 Kaizen Digital is not liable for, and does not warrant or support, the Cloud Software or any other third-party products or services, whether or not they are designated by Kaizen Digital as "certified" or otherwise, except as specified in Service Order Form.

## **5. Acceptance of Deliverables**

- 5.1 The Service Order Form may set out that acceptance testing is required for a Deliverable. If so, the following process will apply for that Deliverable:
  - 5.1.1 there will be an acceptance test period of 5 Business Days from the date Kaizen Digital delivers the Deliverable to the Customer.
  - 5.1.2 the Customer may carry out acceptance testing during the acceptance test period to make sure that the Deliverable is consistent with the requirements set out in the Service Order

Form. if the Deliverable is consistent with the requirements in the Service Order Form, the Customer must issue Kaizen Digital with an acceptance notice before the end of the acceptance test period; and

- 5.1.3 if the Deliverable is not consistent with the requirements in the Service Order Form (a Defect), the Customer must provide Kaizen Digital with a written defect notice before the end of the acceptance period which provides Kaizen Digital enough information to enable it to identify the defects and repair that Deliverable. Kaizen Digital will then re-submit to Deliverable to the Customer and the accepting testing will begin again. To avoid doubt, a minor or cosmetic difference at the discretion of the Customer to the requirements which does not have any substantive effect on the Deliverable will not be regarded as a Defect for the purposes of this clause.
- 5.1.4 if Kaizen Digital does not consider a matter raised by the Customer constitutes a Defect, it will notify the Customer. The parties will use all reasonable efforts to resolve a dispute about whether there is a Defect as soon as reasonably practicable, including by escalation to more senior management under Clause 6 of the Master Terms
- 5.2 Acceptance of a Deliverable occurs on the earliest of:
  - 5.2.1 the date the Customer issues a notice of acceptance to Kaizen Digital.
  - 5.2.2 expiry of the acceptance test period (unless a valid Defect notice has been issued); or
  - 5.2.3 the Customer uses the Deliverable in any way other than for testing purposes.
- 5.3 Acceptance of a Deliverable does not affect any rights the Customer may otherwise have under any law or elsewhere in this Agreement to have defects in a Deliverable corrected.

## **6. Customer Use and Access to Cloud Services**

- 6.1. The Customer agrees that the access rights of any specified Permitted User (for example on a named or password enabled basis) cannot be shared or used by more than one individual, unless the right is reassigned in its entirety to another individual authorised user in which case the first user shall no longer have any right to access the Cloud Service.
- 6.2. The Customer acknowledges and agrees that the Cloud Services may be provided on a shared service basis to the Customer and other clients of Kaizen Digital from a common code base and/or common Environment and Kaizen Digital may from time to time:
  - 6.2.1. change add or delete the functions, features, performance, or other characteristics of the Cloud Service, and if such change, addition, or deletion is made, the specifications of the Cloud Service shall be amended; accordingly, and

- 6.2.2. correct errors or upgrade the Cloud Service, provided that the functionality or availability of the Cloud Service used by the Customer shall not decrease during the Service Unit Term.
- 6.3. Kaizen Digital does not guarantee any change, addition, deletion, error correction, patch or new version will be compatible with any application, other software or interface that connects to or interfaces with the Cloud Service that has been made by or on behalf of the Customer unless that change, addition, deletion, error correction, patch or new version has been made by, or recommended by, Kaizen Digital.
- 6.4. The Customer is solely responsible for all Customer Data and it, and its specified Permitted Users, are solely responsible for entering Customer Data into the Cloud Services, maintaining Customer Data (including backing up and restoring Customer Data) and ensuring that it is accurate and not false, misleading, or deceptive nor is it likely to mislead or deceive.
- 6.5. The Customer will use its best endeavours to prevent viruses or other harmful or malicious code in the Customer Data and that the Customer Data does not infringe any third party's rights.
- 6.6. The Customer must not:
  - 6.6.1. remove, alter, or obscure any disclaimer or notice, or any restricted right legend, trademark, copyright, or other ownership right legend appearing in the Cloud Service on a screen or any printout from the Cloud Service.
  - 6.6.2. copy, adapt, translate, publish, communicate to the public, or create any adaptation, translation, or derivative of the Cloud Service or any user documentation, unless expressly permitted by law.
  - 6.6.3. reverse engineer, reverse compile, decompile or disassemble the object code of any part of the Cloud Service or otherwise attempt to derive the source code of the Cloud Service, except to the extent permitted by law; or
  - 6.6.4. use or permit the use of the Cloud Service for any purpose that may cause damage or injury to any person or property or breach any law.

## **7. Information ownership**

- 7.1 Kaizen Digital does not own or have any interest in or rights to the Customer Data wherever it maybe located other than as set out in this Agreement.
- 7.2 The Customer grants to Kaizen Digital or to any third party associated with Kaizen Digital, a non- exclusive, non-transferable licence over the Customer Data for the sole purpose of Kaizen Digital performing its obligations under this Agreement and enabling the Customer's use of the CloudService including handling Customer Data in accordance with the Customer's instructions.

## **8. Termination**

- 8.1 On termination of the Cloud Services for any reason:
- 8.1.1 all licences granted in this Schedule immediately terminate.
  - 8.1.2 other than in respect of Confidential Information, which is Customer Data, each party must destroy or return and make no further use of any Confidential Information (and all copies of them) of the other party
  - 8.1.3 at the Customer's request made within 30 days of termination, Kaizen Digital must provide the Customer with access to a copy of all Customer Data in the format specified in the Order Documents or if no format is specified, in the standard format as usually provided by Kaizen Digital, and then subsequently delete all Customer Data held.



## **9. Foundation Services**

- 9.1 Additional terms and conditions may be set out in the Service Order Form in relation to Foundation Services.
- 9.2 Unless otherwise specified in the Service Order Form, the Customer is solely responsible for:
  - 9.2.1 configuring, installing, maintaining, and obtaining licences to any software, applications or other materials that may be installed, located, hosted, or otherwise stored on Foundation Services.
  - 9.2.2 ensuring that all content and data stored on or otherwise retained on the Infrastructure as a Service are backed-up and that copies of back-up media are stored securely.
  - 9.2.3 restoring data or content from back-up media.
  - 9.2.4 implementing and maintaining security measures to protect the data, software, applications, or other materials that are installed, located, hosted, or otherwise stored in Foundation Services
  - 9.2.5 obtaining all third-party consents that are necessary to enable the Customer to store the relevant data and content in Foundation Services; and
  - 9.2.6 all use of Foundation Services by any person.
- 9.3 The Customer must:
  - 9.3.1 ensure that all licences obtained by it in relation to software, applications or other materials that are hosted on the Infrastructure as a Service extend to permit Kaizen Digital (and its sub-contractors) to run, execute or otherwise use each such item for the purposes of providing the Infrastructure as a Service; and
  - 9.3.2 comply with the terms of all licences referred to in clause 9.2.1 and 9.3.1.

## **10. Premium Services**

- 10.1 Additional terms and conditions may be set out in the Service Order Form in relation to Premium Services.

## **11. Premium + Services**

- 11.1 Additional terms and conditions may be set out in the Service Order Form in relation to SaaS

## Schedule 3 – Telco Services

This Schedule applies when the parties have agreed a Services Order Form for Managed & Hosted Services.

### 1. Definitions.

**Internet Services** means the provision of access to worldwide networks, as specified in the Service Order Form.

**Telco Services** means Data Centre Hosting, Internet Services and Managed Network Services,

**Managed Private Network Services** means the provision of a private network, the connection of multiple local area networks using a private wide area network, as specified in the Service Order Form.

**Data Centre Hosting** means the provision of space in a data centre for the keeping of ICT equipment, some facilities may have additional terms, and these are to be set out in the Service Order form

**Transition In Services** means any activities specified in the Service Order Form that are to be undertaken by Kaizen Digital prior to commencement of the Managed Services that may include, audit of the Customer's IT environment, deployment of management software and commissioning of a secured management link and any transitional support services required to enable the Managed Services to commence.

### 2. Service Unit Term

- 2.1. The Telco Services are provided for the Service Unit Term as specified in the Service Order Form.
- 2.2. The Telco Services may be terminated or suspended in accordance with the Master Terms.

### 3. Additional Terms

- 3.1 Additional terms and conditions may be set out in the Service Order Form in relation to Telco Services.

## Schedule 4 – Service Levels

### 1. Definitions

**High Availability** means an availability level of 3 or above.

**Resolution Time** is measured from the second that the Service becomes unavailable according to our reporting and automatic notification systems, to the time those systems report the resumption of the Service, provided that:

- (a) where an individual Service Outage occurs outside of a Support Hours Window, the measurement of time for the restoration of that Service Outage commences when the next subsequent Support Hours Window opens (e.g., if a customer has subscribed for a "Corporate" Support Level and a Service Outage occurs at 1am,

- (b) the measurement of the Resolution Time does not commence until 8:30am, when the next Support Hours Window opens); and the measurement of time for the restoration of a Service Outage is only to occur within a Support Hours Window (e.g., if a customer has subscribed for a "Corporate" Support Level and a Service Outage is notified at 5pm, the measurement of time for resolving the Service Outage commences at 5pm, stops at 5:30pm and recommences at 8:30am the next following day when Support is provided).

**Services Downtime** means the aggregate of the time recorded against each individual Service for planned and unplanned Services Outages that occur during supported hours.

**Services Outages** means when a Service is not available for any reason, excluding and subject to clause 5.1.3 of the Master Terms.

**Services Resolution Time** means the maximum time permitted for Kaizen Digital to resolve each incident that affects an individual Service, as set out in the table in clause 2 of this Schedule for the relevant availability level, and subject to the measurement of time in accordance with the definition of Resolution Time

**Support Hours Window** is the daily time period that Kaizen Digital provides support for service outages for the relevant Support Level.

**Support Level** means the relevant level of Support as set out in the table in clause 3 of this Schedule.

**Service Quality** means the reliability of the delivered service to enable the customer to utilise the service for its intended use.

## 2. Service Options

### 2.1 Availability Level Options

Kaizen Digital measures Services availability as the aggregate of time recorded against each Service for planned and unplanned outages, scheduled and urgent maintenance events that occur at any time, calculated over the SUT, where the Services are unavailable to the Customer.

Level	Uptime (%)	Downtime	
		per annum	per 30 days
1	98.9%	96 Hours	8 Hours
2	99.5%	48 Hours	4 Hours
3	99.85%	13.2 Hours	66 Minutes
4	99.95%	4.4 Hours	22 Minutes
5	99.98%	1.8 Hours	9 Minutes

Uptime is calculated as a percentage using the following formula:

*Uptime = (Total Time – Cumulative Downtime)/Total Time, expressed as a percentage*

Where:

<b>Uptime:</b>	Actual service availability (calculated as a percentage)
<b>Cumulative Downtime:</b>	The total amount of time-of-service downtime (measured in minutes)
<b>Total Time:</b>	Total time for the service since the start of the SUT (measured in minutes)

## 2.2 Resolution Time Options

Level	Response Time	Resolution Time
1	4 Hours	24 Hours
2	3 Hours	12 Hours
3	2 Hours	8 Hours
4	30 minutes	2 Hours
5	15 minutes	1 Hour

## 2.3 Support Options

All Services	Basic	Small Business	Corporate	Enterprise	Enterprise +
Services Support Hrs	Best Effort	M – F 8am to 6pm	M-F 8am to 6pm	7 days 8am to 6pm	24x7x365
General Service Desk Hrs (IMACDR*)	M – F 8am to 6pm				
*Installs, Moves, Changes, Deletes, Restores					
Prearranged Service Desk Hrs – 7 days' notice required		M – F 6am toMidnight	M – F 6am toMidnight	M – F 6am toMidnight	24 X 7 X 365*
*Excluding Christmas, and New Year's Day					
Once off Request fee for prearranged Services (7+ days notification):		\$950.00 + \$180 p/h	\$450.00 + \$180 p/h	\$350.00 + \$180 p/h	\$250.00 + \$180 p/h
Once off Request fee for prearranged Services (less than 7 days notification):		\$1150.00 + \$180 p/h	\$650.00 + \$180 p/h	\$550.00 + \$180 p/h	\$350.00 + \$180 p/h

Start Work Service Desk Request	Best Effort	Best Effort	2 Business Days	2 Business Days	1 Business Days
Availability:	Level 1	Level 2	Up to Level 4	Up to Level 5	Up to Level 5
NOC Monitored	no	no	Included	Included	Included
Dedicated Account Manager	no	yes	yes	yes	Yes
Network Services					
PRTG Portal	no	no	Included	Included	Included
Assessment & Planning	no	no	Included	Included	Included
Implementation Support	no	no	Included	Included	Included
Data Centre Services					
Included Access Cards (Extra \$50 per card)	2		6		
General Access Hours	M – F 8am to 5pm		M – F 8am to 5pm		
Pre-Arranged Access hours	M – F 6am to Midnight		24X7X365*		
*Excluding Christmas, and New Year’s Day					
Emergency Access outside General hours	\$450.00		\$250.00		
Access to Build room*	\$350.00 per day		\$150.00 per day		
*Maximum of 5 days					

### 3. Service Rebates

Service Rebates apply to Services where the agreed Services delivery time or, availability does not meet the agreed standard.

Service Rebates for failure to meet the Service standards are:

Rebate for affected Service(s) – Period 1	Rebate for affected Services – Period 2	Rebate for affected Services – Period 3
Where the Service Downtime standard is exceeded during a	Where the Service Downtime standard is exceeded during a	Where the Service Downtime standard is exceeded during a
Monthly billing period, a Service Rebate paid at 10% of the monthly	second monthly billing period, on the same individual Service, a	third monthly billing period, on the same individual Service, then a

Service charge per hour or part thereof beyond the Service Downtime standard.	Service Rebate paid at 30% of the monthly Service charge per hour or part thereof beyond the Service Downtime standard.	Service Rebate of one month's Service charge will apply.
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**Notes:**

- Period 1 - the first monthly billing cycle in which Service Downtime standard is exceeded.
- Period 2 - the month billing cycle following Period 1.
- Period 3 - the month billing cycle following Period 2.

The maximum Services Rebate paid within one month is capped at 100% of the Charge per month per affected individual Services.

Additionally, where the Services availability standard has not been met on the same individual Services for two or more consecutive measurement periods, Kaizen Digital will provide one of the following options:

- A change in service type, where it is available, (using alternative technologies). The alternative service would be provided as equivalent as that of the existing service, or
- Subject to feasibility, the provision of a redundant service.

These options will be provided, at no incremental cost to the Customer, until such time as either the Services is able to meet service availability standards, or the contract ends.

## 4. Service Notifications

Service Outage notifications relate to the arrangements for Kaizen Digital or its suppliers to plan, conduct and manage:

- Routine and urgent maintenance events / Service Outages and to provide advance advice to the Customer; and
- Unplanned Service Outages (like faults, for example) and provision of subsequent advice to the Customer.

The notification of routine and urgent maintenance events will include advice of the planned events, the type of work to be undertaken, the individual Services to be affected, the extent of any maintenance period, the completion of events and the reporting of successfulness of the service outage.

The standards applicable to the provision of advice the Customer about planned service outages are not dependent on what Service Level is selected with regards to the Services. The standards:

- Routine maintenance – at least 2 weeks' notice.

- Urgent maintenance of up to ½ hour duration – at least 4 hours' notice.
- Urgent maintenance of ½ hour to 4-hour duration – at least 24 hours' notice.
- Urgent maintenance of over 4-hour duration – at least 80 hours' notice.

## 5. Service Escalation

Service Escalation means the occasional need for the Kaizen Digital or the Customer to pro-actively escalate an issue where a delivery or support metric has been exceeded or is likely to be exceeded. Service Escalation requires:

- Kaizen Digital will escalate outstanding service requests or issues to your nominated contact person within your organisation in accordance with the applicable service escalation matrix shown below.
- Kaizen Digital will provide half (0.5) hourly reports to the Customer's nominated contact officer for any escalated fault (unless otherwise agreed with the Customer).

### 5.1 Kaizen Digital Incident Management Escalation Matrix

Escalation Level	Resolution Time exceeded or likely to be exceeded by:	Incident to be escalated to:
1	An amount less than 24 hours	The Customer's IT Manager <i>and</i> Kaizen Digital's Service Manager for the service being delivered
2	24 hours	The Customer Corporate Services Manager <i>and</i> Kaizen Digital's Technical Service Manager
3	48 hours or more	The Customer CEO, Agency Secretary or General Manager and the relevant contract managers <i>and</i> Kaizen Digital's General Manager

When the initial delivery of a service is going to be affected, the following escalation table applies.

### 5.2 Service Delivery Escalation Matrix

Escalation Level	Due Date exceeded or likely to be exceeded by:	Incident to be escalated to:
1	An amount less than 30% beyond the expected delivery time	The Customer's IT Manager <i>and</i> Kaizen Digital's Service Manager for the service being delivered
2	An amount greater than 30% beyond the expected delivery time	The Customer Corporate Services Manager <i>and</i> Kaizen Digital's Technical Service Manager
3	Situation where the completion date is unknown.	The Customer CEO, Agency Secretary or General Manager and the relevant contract managers and



Kaizen Digital's General Manager.

## **Schedule 5 – Customer Responsibilities**

This Schedule applies in respect of all Services as described in Schedules 2 and 3 and ordered by the Customer pursuant to a Services Order Form.

### **1. Customer Responsibilities that are excluded from Kaizen Digital's Service Level**

#### **1.1. Foundation, Premium and Premium + Services**

Kaizen Digital recommends that Customers looking for High Availability have access to multiple IaaS environments with appropriate replication to the Customer's needs. Customers are responsible for every facet of the operation of the resources provided in the IaaS environment, including:

- configuration of all operating systems and the operational environment.
- operational activity.
- data.
- backup; and
- all aspects of security.

The Customer and its personnel must:

- comply with all reasonable directions from Kaizen Digital in relation to the use of any servers using IaaS.
- only use resources in the IaaS environment in accordance with all applicable laws; and
- do all things necessary to prevent unauthorized access and use of resources provided in the IaaS environment.

The Customer must not use the IaaS resources:

- for any purpose or activity which is illegal or to promote any such activity.
- to issue, distribute or publish any Data which is obscene, defamatory, threatening, or abusive.
- to disrupt or interfere with Kaizen Digital's business, or Other Users, or their software, hardware, or computers, including by the circulation of computer viruses.
- to access without authorisation any other computer accessible via the Virtual Server.
- to store illegal material such as pornography or sex-related products or

attempt to sell that material; or

- for any other purpose in Kaizen Digital's reasonable opinion that would be inappropriate or likely to damage the reputation of Kaizen Digital or other users.

The Customer must take reasonable steps to ensure that its software, hardware, or network configurations are not used to cause any attack or security breach on Kaizen Digital or any other user's software, hardware, or network configurations.

## **1.2. Backup as a Service (BaaS)**

When using BaaS:

- Customers must ensure that the contracted backup procedures are in line with their business requirements.
- Customers are responsible for testing that backup are successful.
- Any configuration or setup of backups by Kaizen Digital is the responsibility of the Customer to check.

## **1.3. Firewall Services**

Kaizen Digital does not make any recommendation on how the Customer's firewall should be configured. Kaizen Digital will take direction from the Customer on the requirements of the firewall and manage the firewall accordingly.

## **1.4. Load Balancing Services**

Kaizen Digital does not make any recommendation on how a Customer's Load Balancer should be configured. Kaizen Digital will take direction from the Customer on the requirements of the Load Balancer and manage the Load Balancer accordingly.