

Master Services Agreement

This **Master Services Agreement** (“**Agreement**”) sets out the terms and conditions that apply to the Customer and Company in relation to the subscription to rights to access and use of its Managed Package software, Success Services and Professional Services in either an **Order Form** or **Statement of Work** (“**SOW**”). The Customer and Company each agree that the terms of this Agreement are incorporated into each separate Order Form and each separate SOW and that they have read, understood and agree to be bound by the terms of this Agreement.

Recitals

- (a) Company is engaged in the business of providing various software and services in the nature of strategy and consulting, design and implementation and maintenance and training, and access and use of the Company’s Managed Package.
- (b) Customer may from time to time require the Company to provide those software and services.
- (c) This Agreement sets out the terms and conditions agreed by the parties for the parties’ ongoing relationship and the provision of certain of those software and services.

Therefore, and in consideration of the mutual covenants and promises contained herein, this Agreement is made as follows:

1. Definitions

The following definitions apply to this Agreement:

Access Credentials	means username and password pair(s) or such other access credentials to use the Managed Package Subscription Services assigned to the Customer.
Business Day	means Monday to Friday, excluding Australian national public holidays.
Business Hours	means the hours between 9.00am and 5.00 pm Australian Eastern Standard Time (AEST) in a Business Day.
Cloud Platform	means the website or electronic platform on which the Managed Package is hosted, including any website or electronic platform controlled or operated by a third party (including but not limited to: Salesforce.com, Amazon Web Services, Google Cloud Platform, Microsoft Azure and others).
Company	means FieldKo Mobility Pty. Limited (ABN 56 639 172 286), with offices at Level 40, 140 William Street, Melbourne, 3000, Victoria, Australia.

Confidential Information	<p>means all confidential, non-public or proprietary information (including a party's Intellectual Property Rights or the terms and conditions of each Order Form and each SOW), regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of each Order Form and each SOW, relating to the business, technology or other affairs of the party disclosing the information, but does not include information:</p> <ul style="list-style-type: none">(a) which is in, or becomes part of, the public domain other than through breach of this Agreement or an obligation of confidence;(b) which the party receiving the information can provide by contemporaneous written documentation was already known to it at the time of disclosure by the other party or independently developed by the party receiving the information without reference to the Confidential Information of the party disclosing the information; or(c) which the party receiving the information acquires from a source other than the other party or any of its Representatives, where such source is entitled to disclose it on a non-confidential basis.
Contract End Date	<p>means the final date of availability of the Customer's Managed Package Subscription Services and/or Success Services as specified in an Order Form.</p>
Contract Start Date	<p>means the commencement date of Managed Package Subscription Services and/or Success Services as specified in an Order Form.</p>
Customer	<p>means the entity specified as the customer in each Order Form and each SOW as "Customer" entered into or accepted by the Company.</p>
Deliverables	<p>includes the set-up and installation of the Managed Package, all training and service support, monthly insight reports on findings, access to reporting suites from the Company and all collected data.</p>
Developed Materials	<p>means any materials developed or created by the Company in the course of, or associated with, the Professional Services (including without limitation all data and reports), for the Customer but excludes any Existing Materials (or enhancement or modifications of Existing Materials).</p>
Existing Materials	<p>means all documents, data, design, software systems, processes, inventions, reports, databases, computer software, hardware and other information and intellectual property belonging to the Company which the</p>

Company makes available to the Customer or otherwise employs for the purposes of performing the Professional Services.

Fees	means all of the fees payable by the Customer under this Agreement (including any Professional Service Fees), each Order Form and each SOW.
Helpdesk	means the system operated by Company which enables the Customer to notify issues and lodge requests for support services relating to the Managed Package and/or professional services performed by the Company.
Intellectual Property Rights	means all copyright, trademark, patent, design, semiconductor, confidential information, moral, trade secret, circuit layout rights or any like rights to the foregoing, whether arising by common law or by statute or any right to apply for registration under a statute in respect of such rights.
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 direct disbursements, losses, liabilities, damages, charges, costs and expenses (including legal costs and expenses on a solicitor/Customer basis), claims, demands, actions or proceedings (each a "Loss").
Managed Package	means the object code of the computer program described in an Order Form, and all related user manual and documentation.
Managed Package Annual Contract Value	means the total value as specified in the Order Form for 12 calendar months of Fees for the Company's Managed Package.
Managed Package Subscription Services	means the Company's provision of access to the Managed Package under an Order Form.
Milestone	means any fixed date to be met by the Company in performing any of its obligations under this Agreement.

Order Form	means the order form in a format as specified by Company from time to time, agreed by the parties for the supply of the Managed Package Subscription Services by the Company to the Customer.
Operator	means the third-party operator of the Cloud Platform.
Personnel	means in relation to a party, any natural person who is an employee, officer, agent or professional adviser of that party and, in the case of the Company, includes a subcontractor.
Professional Services	means professional services to be performed by the Company under an SOW or Order Form, the work products, deliverables or similar results to be produced by the Company.
Professional Services Fees	means the fees for all Professional Services performed by the Company.
Salesforce	means salesforce.com, inc., a Delaware corporation with its principal place of business at Salesforce Tower, 415 Mission Street, 3rd Floor, San Francisco, California 94105 USA.
Salesforce Terms of Use	means the terms provided by Salesforce at: https://www.salesforce.com/content/dam/web/en_us/www/documents/legal/Agreements/alliance-agreements-and-terms/Reseller-Pass-Through-Terms.pdf
Service Levels	means the standards of service which the Company must achieve in providing the Success Services to the Customer.
Specifications	means the Customer's functional and technical requirements as described in a Statement of Work, as amended from time to time.
Success Services	means a pre-agreed number of service desk hours to assist the Customer with the development and support of their Managed Package and related Salesforce applications.
Subscription Fee	means the subscription fee payable by the Customer, as set out in an Order Form.

Subscription Limitations	means the subscription limitations set out in an Order Form.
Subscription Term	means the term of the Managed Package Subscription Services as set out in an Order Form.
Term	has the meaning as defined in clause 15.1 of this Agreement.
User	means an individual who is authorised by the Customer to use the Managed Package Subscription Services, for whom subscriptions to a Managed Package Subscription Service have been ordered, and who have been supplied with Access Credentials.

2. Order Forms and Managed Package Subscription Services

- 2.1 During the term of this Agreement, Customer may wish to purchase Managed Package Subscription Services from the Company by completing an Order Form and providing it to the Company.
- 2.2 Upon the Company's acceptance of the Order Form, the Order Form will be incorporated into this Agreement.
- 2.3 Unless otherwise specific in the applicable Order Form:
- (a) Managed Package Subscription Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users;
 - (b) additional User subscriptions may be added during the applicable Subscription Term, which will be charged at the same Subscription Fee, proportional to the increase. Company will not unreasonably agree to the request to increase the Licence Limitations; and
 - (c) the added User subscriptions will terminate on the same date as the pre-existing subscriptions.
- 2.4 User subscriptions are for designated Users only and cannot be shared or used by more than one User, but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Managed Package Subscription Services.
- 2.5 The Company grants the Customer a limited, non-exclusive and non-transferable licence to use and access the Managed Package on the terms and conditions of this Agreement ("Licence").
- 2.6 The Licence is subject to the Customer complying with the terms of this Agreement and using the Managed Package within the Subscription Limitations.
- 2.7 If Company accepts the request to increase the User subscriptions under clause 2.3(c), the Subscription Fee will be increased from the date the additional User subscriptions are increased (pro-rata for the first

year on a monthly basis for the balance of the year), and the Customer must immediately pay the increase.

2.8 For the avoidance of doubt, Company may refuse to accept any request to decrease the User Subscriptions.

2.9 Company is not required to provide the source code of the Managed Package to the Customer under any circumstances.

3. Access to and use of the Managed Package

3.1 The Customer must use the Managed Package Subscription Services in accordance with:

- (a) the documentation relevant to the Managed Package Subscription Services and any directions given by Company from time to time, and only for its internal business purposes; and
- (b) the Salesforce Terms of Use.

3.2 The Customer is responsible for the supervision, management and control of all Access Credentials and use of the Managed Package via the Access Credentials.

3.3 Except for any unauthorised use by Company's own staff, the Customer acknowledges and agrees that any access to or use of the Managed Package Subscription Services via the Access Credentials is deemed to be access or use by the Customer.

3.4 The Managed Package Subscription Services commences on the Contract Start Date for the Managed Package set out in the Order Form and continues for the initial Subscription Term, subject to early termination of this Agreement.

3.5 Customer acknowledges that the Managed Package Subscription Services will automatically renew for the same period as the initial Subscription Term upon the expiry of the then current Subscription Term unless the Customer provides written notice to the Company that it does not wish to renew the Managed Package Subscription Services at least 30 days' prior to the expiry of the then current Subscription Term

4. Helpdesk

4.1 Company operates a Helpdesk that is accessible by telephone or electronic means.

4.2 Company will use commercially reasonable means to make the Helpdesk available:

- (a) by telephone during Business Hours; or
- (b) by electronic means (through email at support@fieldko.com), 24 hours a day, 7 days a week,

except for any planned downtime for maintenance, of which Company will use reasonable endeavours to conduct outside of Business Hours.

- 4.3 Customers may from time to time report issues or faults for the Company to provide support in respect of the Managed Package by accessing the Helpdesk.
- 4.4 Subject to 4.2 Company will:
- (a) respond to and restore issues and faults relating to the Managed Package reported through the Helpdesk;
 - (b) if the issue or fault relates to the Cloud Platform and not the Managed Package, the Company will use reasonable endeavours restore the issue or fault;
 - (c) Company will provide the Customer with status updates on the progress of the issue or fault through the Helpdesk;
 - (d) Customer understands that the Company may require additional clarification (beyond the initial support request) from the Customer in order to resolve the issue or fault request; and
 - (e) with respect to issues or faults, the Company must be able to reproduce the issue or fault in order to resolve them where feasible. Customer agrees to cooperate and work closely with Company to reproduce the issue or fault, including conducting diagnostic or troubleshooting activities as requested and appropriate.

5. Free Trial

- 5.1 If the Customer registered on the Company's website for a free trial, Company will make the Managed Package Subscription Services available to the Customer on a trial basis free of charge until the earlier of:
- (a) The end of the free trial period for which the Customer has registered; and
 - (b) the Contract Start Date of the Managed Package Subscription Services purchased by the Customer under an Order Form.
- 5.2 The Customer acknowledges that additional trial terms and conditions may appear on the Company's website and such additional terms and conditions are incorporated into this Agreement.
- 5.3 Customer acknowledges that any data entered and any customisations made to the Managed Package Subscription Services by the Customer during the term of the free trial period will be permanently lost unless the Customer purchases the Managed Package Subscription Services under an Order Form.
- 5.4 The Customer further acknowledges that:
- (a) the Customer is responsible for exporting any such data before the end of the free trial period; and
 - (b) any data entered or customisations made to the Managed Package Subscription Services by the Customer during the free trial period that would be a downgrade from that covered by the trial will not be transferred if the Customer purchases the Managed Package Subscription Services under an Order Form.

- 5.5 Notwithstanding clause 9, the Customer acknowledges that the Managed Package Subscription Services provided under this clause 5 are provided "AS-IS" and without any warranty.

6. Cloud Platform and Upgrades

- 6.1 The Customer acknowledges that the Managed Package is hosted on the Cloud Platform, and in order to exercise its rights under this Agreement to use the Managed Package, the Customer must accept and comply with the terms of use of the Cloud Platform as annexed to or provided as a link in the Order Form, as may be amended from time to time. If the Customer fails to do so, Company is not liable for any failure of the Customer to access or use the Managed Package.
- 6.2 The Customer acknowledges that use of the Managed Package may from time to time be subject to certain technical limitations. The Customer is responsible for ensuring that its use of the Managed Package complies with the technical limitations.
- 6.3 The Customer accepts the terms of use of the Cloud Platform at its sole risk. The Customer releases Company from all Loss of any kind (including loss of profits and consequential loss) arising from or in connection with:
- (a) the acceptance and compliance (or otherwise) by the Customer of the terms of use of the Cloud Platform referred to in clause 6.1;
 - (b) any changes to the Cloud Platform;
 - (c) any defect, interruptions or unavailability of, or changes to, the Cloud Platform; or
 - (d) any claims or proceedings brought by the Operator against the Customer arising from or in connection with the Customer's use of the Cloud Platform.
- 6.4 The Customer indemnifies Company from and against all claims and proceedings brought by the Operator against Company arising from or in connection with the Customer's use of the Cloud Platform.
- 6.5 Company may from time to time upgrade the Managed Package via the Cloud Platform. All such upgrades will form part of the Managed Package and the Managed Package Subscriptions Services provided under this Agreement.
- 6.6 The Cloud Platform may be amended from time to time by the Operator. The Customer acknowledges that such amendments are outside of the control of Company. To the extent that any amendments to the Cloud Platform affect the functionality or performance of the Managed Package, Company will use commercially reasonable endeavours to amend the Managed Package to restore its functionality and performance. Company warrants that it is a member of all applicable Operator partner programs that relate to the Customer's use of the Managed Package per the Order Form.

7. Availability and Suspension

- 7.1 The Customer acknowledges and agrees that the Managed Package Subscription Services may not be free from interruptions, and Company does not warrant access to the Managed Package Subscription Services will be uninterrupted or available when required.

- 7.2 Company may acting reasonably suspend or withdraw the availability of the Managed Package Subscription Services if:
- (a) Company reasonably suspects that the Managed Package Subscription Services has been misused by the Customer or that the Access Credentials have been compromised;
 - (b) the Cloud Platform is unavailable for any reason;
 - (c) the Subscription Limitations have been exceeded; or
 - (d) any significant adverse effect on the Managed Package Subscription Services or its operation or security occurs which, in the reasonable opinion of Company, is due to the use of the Managed Package Subscription Services by the Customer.
- 7.3 The Customer releases Company from all Loss of any kind arising from or in connection with any suspension or withdrawal under clause 7.2.

8. Intellectual Property Rights and Data Collection

- 8.1 The Customer acknowledges and agrees that all Intellectual Property Rights in and relating to the Managed Package are and remain the property of Company or its licensors (as applicable).
- 8.2 Nothing in this Agreement transfers any right, title to or interest in the Managed Package or the Cloud Platform to the Customer. The Managed Package is subject to copyright. The Customer must not copy or reproduce the Managed Package by any means or in any form, or directly or indirectly allow or cause a third party to do so, without Company' prior written consent. The Customer must notify Company immediately on becoming aware of any unauthorised use or copying of the Managed Package.
- 8.3 Subject to clause 8.1, all Intellectual Property Rights subsisting in the Existing Material will remain the exclusive property of the Company.
- 8.4 Subject to payment of all relevant Fees, all right, title and interest in the Developed Materials (including Intellectual Property Rights) will vest in the Customer. In furtherance thereof, Company shall assign all Intellectual Property Rights in respect of such Developed Materials to Customer, at Customer's cost but for no extra fee.
- 8.5 To the extent that any Deliverable incorporates any Existing Materials, the Company grants to the Customer a perpetual, royalty-free, non-exclusive licence to use and reproduce the Existing Materials, but solely for the purpose of, and only to the extent required, to enjoy the benefits of the Deliverable.
- 8.6 Notwithstanding anything to the contrary in this Agreement, any SOW or other correspondence between the Parties, the Company shall not be restricted from using for its own benefit or for the benefit of a third party the domain knowledge and skill sets acquired in the course of performing the Professional Services.
- 8.7 To the maximum extent permitted by law, the Customer must not:
- (a) reverse engineer, decompile or disassemble the whole or any part of the Managed Package, or create derivative works based on the Managed Package;

- (b) permit or enable unauthorised access or use of the Managed Package or accompanying written materials by third parties; or
- (c) directly or indirectly allow or cause a third party to do any of those things, without Company' prior written consent.

8.8 All Intellectual Property Rights in the Customer's data stored or processed during the Customer's use of the Managed Package Subscription Services remain the property of the Customer or its licensors (as applicable).

9. Warranties and Liability

- 9.1 Company warrants that it has the authority to grant the Licence.
- 9.2 Except as expressly set out in this Agreement, to the maximum extent permitted by law, and subject to clause 9.3, Company excludes all representations, warranties, terms, conditions and undertakings in respect of the Deliverables, Managed Package, the Professional Services, and the Managed Package Subscription Services, including any warranties regarding the merchantability or fitness for purpose.
- 9.3 In relation to any condition, warranty or representation implied by law that cannot be excluded, where permitted by law, Company' liability is limited, at the sole discretion and option of Company, to the minimum obligations or liabilities permitted by law, such as by supplying the services again or paying the cost of having the services supplied again.
- 9.4 The Customer acknowledges that it is relying solely on its own skill and judgement in determining the suitability of the Managed Package Subscription Services and the Managed Package for its business or for any general or specific purposes.
- 9.5 To the maximum extent permitted by law, Company is not liable to the Customer in any circumstances for any indirect, economic, special or consequential loss, or in any event for any loss of revenue, loss of production, loss of profit or loss of data.
- 9.6 Notwithstanding anything to the contrary in this Agreement, to the maximum extent permitted by law, Company's liability to the Customer on any basis and in any circumstances (including liability for negligence) will not exceed the amount equal to the Fees paid by the Customer in the first year of the Term.
- 9.7 Except to the extent of any claims against Company by a third party alleging that the Managed Package infringes the Intellectual Property Rights of that person, the Customer indemnifies Company against all Loss of any kind incurred or suffered by Company arising directly or indirectly as a result of or in connection with:
- (a) a breach or non-performance of any of the obligations of the Customer under this Agreement;
 - (b) the Customer's use of the Managed Package, the Deliverables, the Professional Services or the Managed Package Subscription Services; or
 - (c) any claim or proceedings against Company arising out of or in connection with the Customer's use or access of the Managed Package, the Deliverables, the Professional Services or the Managed Package Subscription Services.

10. Privacy Policy

- 10.1 Company is committed to protecting the privacy of Personal Information related to the provision of Professional Services by Company to the Customer in each SOW. Company agrees to abide by the Company's privacy policy which is available at: <https://www.fieldko.com/privacy>

11. Data Breach Response Policy

- 11.1 Company warrants it has a Data Breach Response Policy in place for the Term of every Order Form and SOW. The objective of the Company's Data Breach Response Policy is to contain, assess and respond to any reported data breaches in a timely fashion and help mitigate potential harm to affected parties.
- 11.2 Customer may request Company to provide a copy of its Data Breach Response Policy.

12. Marketing

- 12.1 Customer grants the Company permission to use any name or logo of the Customer or its affiliates in any of the Customer's marketing materials. Company shall include a trademark attribution notice giving notice of the Customer's ownership of its trademarks in any marketing materials in which the Customer's name and logo appear.

13. Fees

- 13.1 The Company may invoice the Customer, and the Customer must pay all relevant Fees, in accordance with the Order Form and SOW.
- 13.2 Unless expressly stated otherwise in an Order Form or the SOW, the Customer shall pay all invoices issued by the Company on the earlier of due date for payment specified on the SOW and thirty (30) days of the invoice date.
- 13.3 If the Customer fails to pay an amount on the due date for payment, the Customer must pay to the Company interest at the rate of 9% per annum on that amount, calculated and payable daily, computed from the due date until the amount is paid in full.
- 13.4 Without limiting any rights the Company may have, the Company may suspend the provision of any Professional Services and the Managed Package Subscription Services if any amount remains unpaid for a period of longer than sixty (60) days.
- 13.5 Other than taxes on Company's net income, all amounts invoiced by Company shall be exclusive of foreign, federal, state or local taxes (including GST), and the Customer must pay an additional amount on account of any such taxes (which will be calculated by the Company and set out in the invoice).

14. Confidentiality

- 14.1 Each party may use the other party's Confidential Information solely for the purposes of this Agreement, must keep confidential all Confidential Information of the other party, may disclose the other party's Confidential Information only to its representatives if the person to whom disclosure is made has undertaken to keep confidential any information so disclosed; or to the extent necessary to comply with any applicable law, any court proceedings, the requirements of any regulatory body or the rules of any stock exchange on which the shares of that party or any Related Body Corporate of that party are listed or are proposed to be listed.

15. Term and Termination

- 15.1 **Term.** Unless terminated earlier in accordance with these provisions, this Agreement will commence on the applicable Contract Start Date in each Order Form and each SOW and will remain in full force and effect in respect of each Order Form and each SOW until the expiry of the Order Form or final SOW or termination of this Agreement as set out below ("Term").
- 15.2 **Termination due to Breach.** In the event either party materially breaches this Agreement, the innocent party may, without prejudice to its other rights and remedies, terminate this Agreement by giving prior written notice of thirty (30) days, provided that the breach remains uncured at the end of such notice period.
- 15.3 **Termination for Insolvency.** Either party may terminate this Agreement upon written notice to the other party ("Defaulting Party") in the event: (i) the Defaulting Party suspends payment of its debts; (ii) the Defaulting Party becomes an externally-administered body corporate under the Corporations Act 2001; (iii) steps are taken by any person towards making the Defaulting Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 14 days); (iv) a controller (as defined in section 9 of the Corporations Act 2001) is appointed of any of the property of the Defaulting Party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 14 days); (v) the Defaulting Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act 2001; or (vi) an event happens analogous to an event specified in paragraphs (i) to (v) to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied.
- 15.4 **Termination for Convenience.** Customer may terminate this Agreement, any SOW or any Order Form for convenience upon written notice to the other party of not less than the greater of: (i) thirty (30) days or (ii) the greatest number of days remaining in the term of any SOW or Order Form.
- 15.5 **Consequences of Termination.** Upon termination of this Agreement by the Company, the Company may terminate in whole or in part, at its election. If the Customer terminates this Agreement it must nominate the applicable SOW or Order Form which is to be terminated and any other SOW or Order Form may continue unless expressing the subject of a termination notice. Any SOW, any Order Form attached hereto, the Professional Services, or the Managed Package Subscription Services provided hereunder, upon termination of this Agreement (including any SOW or Order Form) for any reason, (i) the Company is released from all obligations to provide the relevant Professional Services or the Managed Package Subscription Services, (ii) the recipient of confidential information shall, at the disclosing party's direction, return or destroy it and certify in writing that this provision has been

complied with, and (iii) all amounts due and payable, including any expenses, costs and investments made by Company specifically for the Customer as identified in the relevant SOWs and Order Forms, shall be paid by the Customer to the Company immediately.

16. Governing Law and Dispute Resolution

- 16.1 This Agreement shall be governed by the laws of the State of Victoria, Australia. Disputes under this Agreement, if not first resolved amicably between the parties within thirty (30) days from the written notification of the existence of such dispute by one party to another, shall be submitted for alternative dispute resolution to Australian Disputes Centre located at Level 16, 1 Castlereagh Street, Sydney NSW 2000 Australia.

17. General

- 17.1 **Assignments.** This Agreement (and each SOW and Order Form) may not be assigned by either party without the other party's prior written consent which shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of both parties, their successors and permitted assigns.
- 17.2 **Notices.** Communication of a routine nature may be transacted by email. Communication of a non-routine nature, including notices for termination shall be given in writing addressed to the address first written above and marked to the attention of the principal points of contact indicated in the applicable SOW or the Order Form.
- 17.3 **Independent Contractor.** The relationship of the parties to each other shall be that of independent contractors and shall not be interpreted to constitute an agency, partnership or joint venture.
- 17.4 **Non-Solicitation.** To the maximum extent enforceable by applicable law, during the term of this Agreement and for a period of twelve (12) months thereafter, neither party shall, directly or indirectly, for itself or on behalf of any other person (i) hire or solicit for hire any employee of the other party except through a general advertisement; (ii) in any manner attempt to influence or induce any employee of the other party to leave the employment of such party; or (iii) disclose to any person or entity any information obtained while rendering services to or receiving services from the other party concerning the names and addresses of the other party's employees.
- 17.5 **Force Majeure.** Neither party shall be liable for any failure to perform its obligations (other than obligation to make payment) under this Agreement if prevented from doing so by a cause or causes beyond its reasonable control. Without limiting the generality of the foregoing, such causes include Acts of God, or the public enemy, fires, floods, storms, earthquakes, riots, strikes, lockouts, acts of terrorism, wars or war operations, restraints of government or other cause or causes which could not with reasonable diligence be controlled or prevented by such party.
- 17.6 **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable, the same shall not affect the remaining provisions hereof, which will remain in full force and effect. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as part of this Agreement, a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

- 17.7 **Entire Agreement/Amendment.** This Agreement together with each agreed SOW, accepted Order Form and any exhibits attached hereto shall form the entire agreement between the parties with respect to the subject matter hereof. The terms and conditions set out in this Agreement supersede all prior or contemporaneous negotiations, agreements and understandings, oral or written or implied, between them regarding the subject matter hereof. An amendment or variation to this Agreement, a SOW or an Order Form is not effective unless it is in writing and signed by the parties.

18. Statement of Work and provision of Professional Services

- 18.1 During the term of this Agreement, Company and Customer may agree on one or more Statements of Work (each an “**SOW**”), in such form as reasonably specified by the Company from time to time. Each SOW will contain a description of the Professional Services to be performed by the Company under the SOW, the work products, deliverables or similar results to be produced by the Company, the place of performance (if relevant), the Fees for the provision of the Professional Services, the payment milestones (if relevant), payment terms, the obligations to be discharged by the Customer (“Customer Obligations”) and such other matters as the parties may deem fit to include in the SOW.
- 18.2 In respect of each SOW agreed to by the Company and the Customer:
- (a) the Company will provide the Professional Services and Deliverables; and
 - (b) each party will carry out their respective obligations, in accordance with the terms of this Agreement and the SOW.
- 18.3 In the event of any inconsistency between this Agreement, any SOW or an Order Form, the provisions of the SOW and Order Form shall override on all technical and operational matters, while this Agreement shall override on all other matters.
- 18.4 Subject to any provision in a SOW which is expressed to override this clause, if the SOW expressly states that a Deliverable is subject to the approval or acceptance of the Customer (“**Review Item**”), then the following provisions will apply:
- (a) the Customer must, at its own cost and expense, review and test the Review Item;
 - (b) the Customer must not reject the Review Item unless the Customer’s review or test objectively demonstrates that the Review Item does not comply with the requirements as set out in the SOW (“Relevant Requirements”);
 - (c) if the Customer rejects the Review Item, it must promptly notify the Company, and provide the Company with the objective evidence demonstrating that that the Review Item does not comply with the Relevant Requirements;
 - (d) if the Customer rejects a Review Item and the Company agrees that the Review Item does not comply with the Relevant Requirements, the Company will promptly correct or replace the Review Item, in which case the process in this clause 18.4 will reapply; and
 - (e) if the Customer does not notify the Company that it rejects the Review Item within seven days of receipt of the Review Item, the Customer is deemed to have accepted or approved the Review Item.

- 18.5 Unless otherwise agreed by the parties in writing, the Company is not obliged to supply and goods or services to the Customer under this Agreement in the absence of an agreed SOW or an Order Form.
- 18.6 If the Customer has elected to purchase service desk hours (“**Success Services**”) from the Company, the following provisions will apply:
- (a) Customer is aware that Success Services is a pre-agreed number of service desk hours as specified in the Order Form to assist the Customer with the development and support of their Managed Package and related Salesforce applications.
 - (b) Any unused service desk hours expire on the Contract End Date unless the Customer executes a new Order Form for the Managed Package for the same or greater amount in Managed Package Annual Contract Value prior to the Contract End Date, in which case any unused service desk hours will be made available for the Customer’s use on or before in the Contract End Date indicated in the subsequent Order Form.
 - (c) Company will provide Success Services to the Customer using the Company’s Service Desk in the following manner:
 - (i) Company will provide Customer with authenticated secure access to the Company’s Helpdesk for the purposes of creating, managing and viewing Customer’s support requests;
 - (ii) Customer understands that the Company will rely on Customer’s assessment of the issue and impact of each support request;
 - (iii) Company will provide immediate acknowledgement of all Customer submitted support requests and respond to each newly created support request as follows:

Bug or Defect Target Response and Restore Times:

Priority	Type of Problem	Example	Target Response Time	Target Restore Time
P1	Critical Production Failure	The production system has failed and a critical processing function such as pay calculation is unusable.	15 minutes	4 hours
P2	Non-Critical Failure	A function such as enquiry or reporting has failed.	1 hour	24 hours
P3	Intermediate Problem	A function has failed but a work around is possible.	4 hours	2 days
P4	Minor Problem	There is little or no operational impact. An informational call or an enhancement request.	1 day	7 days

Enhancement Target Response Times:

Priority	Example	Target Response Time
High	Amend or update a Survey	1 day
Medium	Build a new Report or Dashboard	2 days
Low	Configuration for new FieldKo users	4 days

- (iv) Company will prioritize all P1 severity issues logged by the Customer above all other issues.
- (v) Each newly created issue logged by the Customer in the Company's Service Desk will incur the following minimum deduction of Success Services hours:
 - (A) P1 or P2: Minimum two hours with additional hours to be consumed as required
 - (B) P3: Minimum one hour with additional hours to be consumed as required
 - (C) All other types of support requests: Minimum of 15 minutes with additional hours to be consumed as required
- (vi) Customer understands that the Company may require additional clarification (beyond the initial support request) from the Customer in order to resolve the support request; and
- (vii) With respect to system errors, Company must be able to reproduce errors in order to resolve them where feasible. Customer agrees to cooperate and work closely with Company to reproduce errors, including conducting diagnostic or troubleshooting activities as requested and appropriate. Reproducible errors that cannot promptly be resolved will be escalated to higher support tiers for further investigation and analysis.
- (d) The scope of activities the Company will provide support for under the Success Services program include:
 - (i) Minor enhancements with large complex enhancements to be scoped as part of support and best treated as separate project;
 - (ii) Remote web-based and onsite 'Train the Trainer' training related to the Company's Managed Package;
 - (iii) Configuration enhancements;
 - (iv) Production issues;
 - (v) Support requests;
 - (vi) Apex classes and trigger;
 - (vii) Visualforce pages;
 - (viii) Lightning Components;

- (ix) Data uploads;
 - (x) Salesforce administration activities;
 - (xi) Access to account management and expert skills to participate in roadmap sessions as per agreed frequency between Customer and Company; and
 - (xii) Migrating enhancements from the Customer's sandbox to production environment as agreed between Customer and Company.
- (e) Customer understands and agrees that any scope not related to the Customer's Managed Package or related Salesforce application will be out of scope of the Company's Success Services program unless agreed in writing by the Company.
- (f) Customer will ensure necessary resources are available to assist the Company develop its knowledge of the Customer's Salesforce application and associated business processes.

19. Proof of Concepts

- 19.1 The scope of certain Professional Services or Success Services may include innovative or experimental services intended to validate an unproven concept related to the Company's Managed Package or the Customer's related Salesforce application ("**Proof of Concept**"). Both Company and Customer agree that:
- (a) any outcomes of a Proof of Concept may or may not deliver the expected outcome due to their experimental nature; and
 - (b) any Proof of Concept may result in new Intellectual Property Rights which upon creation become the exclusive property of the Company. The Company grants the Customer a limited, non-exclusive and non-transferable licence to use that new Intellectual Property Rights on the terms and conditions of and pursuant to clause 2.4 of this Agreement.

20. Obligations of the Company

- 20.1 The Company must deliver, install and implement the Managed Package in accordance with any relevant Milestone dates.

21. Service Obligations

- 21.1 The Company must supply the Managed Package:
- (a) with due skill and care and to the best of its knowledge and expertise;
 - (b) in accordance with the Service Levels;
 - (c) in accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines;

- (d) in accordance with all applicable Laws;
- (e) in accordance with any reasonable directions given by the Customer from time to time;
- (f) so as to meet the Milestones and other project plan requirements, and where no Milestones or project plan requirements are specified, promptly and without delay; and
- (g) otherwise in accordance with the provisions of this Agreement.

22. Warranties and Disclaimer

22.1 **Warranties.** The Company represents and warrants that:

- (a) it has the right to enter into this Agreement;
- (b) it has all rights, title, licences, interests and property necessary to lawfully perform the Managed Package;
- (c) it and its subcontractors and Personnel, have the necessary experience, skill, knowledge and competence to perform the Managed Package and they will be performed in a professional manner;
- (d) the Managed Package will be fit for the purpose;
- (e) the Managed Package will be complete, accurate and free from material faults in design;
- (f) the media on which the Managed Package is furnished will be, under normal use, free from defects in materials, design and workmanship and Harmful Code;
- (g) if any Harmful Code is introduced, it will use all reasonable efforts promptly to report that introduction to the Customer and, where that Harmful Code is introduced as a result of a breach of clause this Agreement, it will take all necessary action to eliminate the Harmful Code.

22.2 **IP Warranty.** The Company warrants that:

- (a) the Managed Package does not infringe the Intellectual Property Rights of any person; and
- (b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences referred to in this Agreement.

22.3 **Remedy for Breach of Warranty.** If someone claims, or the Customer reasonably believes that someone is likely to claim, that all or part of the Managed Package infringe their Intellectual Property Rights, the Company must, in addition to the indemnity under clause 22 and to any other rights that the Customer may have against it, promptly, at the Company's expense:

- (a) use its best efforts to secure the rights for the Customer to continue to use the affected the Managed Package free of any claim or liability for infringement; or
- (b) replace or modify the affected Managed Package so that they or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of them.

23. Additional Indemnities

- 23.1 **Indemnity by the Company.** Notwithstanding any other provision of this Agreement, the Company indemnifies the Customer against Losses reasonably sustained or incurred by the Customer as a result of a claim made or threatened by a third party arising out of or in connection with an allegation that any Managed Package infringes the Intellectual Property Rights of a third party.
- 23.2 **Customer's Obligations.** Where the Customer wishes to enforce an indemnity under clause 22 it must:
- (a) give written notice to the Company as soon as practical;
 - (b) make reasonable efforts to mitigate the relevant Loss; and
 - (c) subject to the Company agreeing to comply at all times with clause 22, permit the Company, at the Company's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any settlement negotiation or litigation that may follow.
- 23.3 **Company's Obligations.** In the event that the Company is permitted to handle negotiations or conduct litigation under clause 22, the Company must keep the Customer informed of any significant developments relating to the conduct of the defence or settlement of any claim.
- 23.4 **Liability - Relevant Law.** The liability of a party for breach of this Agreement, or in tort, or for any other common law or statutory cause of action arising out of the operation of this Agreement, will be determined under the relevant law in Australia.
- 23.5 **No Limitation of Liability.** Any limit on the liability of each party under clause 9.7 does not apply in relation to liability relating to:
- (a) an infringement of Intellectual Property Rights; or
 - (b) a breach of any obligation of confidentiality, security requirement or privacy.

24. Protection of Personal Information

- 24.1 **Application of the Clause.** This clause applies only where the Company deals with personal information when, and for the purpose of, providing the Managed Package under this Agreement, but does not derogate from any obligation the Company may have under the Law or under this Agreement in relation to the protection of security.
- 24.2 **Definitions.** In this clause unless repugnant to the sense or content, terms, words and expressions have the same meaning as is given to terms, words and expressions in the Privacy Act 1988 (Cth) ("the Privacy Act").
- 24.3 **Obligations.** The Company agrees in respect of the provision of the Managed Package under this Agreement:
- (a) to use or disclose personal information obtained during the course of providing the Managed Package under this Agreement, only for the purposes of this Agreement;

- (b) not to do any act or engage in any practice that would breach an Australian Privacy Principle contained in the Privacy Act;
- (c) to carry out and discharge the obligations contained in Australian Privacy Principles;
- (d) not to use or disclose personal information or engage in an act or practice that would breach the Privacy Act;
- (e) to immediately notify the Customer if the Company becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 23, whether by the Company or any subcontractor;
- (f) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner, to the extent that they are not inconsistent with the requirements of this clause; and
- (g) to ensure that any employee of the Company who is required to deal with personal information for the purposes of this Agreement is made aware of the obligations of the Company set out in this clause.

24.4 **Subcontracts.** The Company must ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as the Company has under this clause, including the requirement in relation to subcontracts.

24.5 **Indemnity.** Notwithstanding clause 9.7, the Company agrees to indemnify the Customer in respect of any Loss suffered or incurred by the Customer which arises directly or indirectly from a breach of any of the obligations of the Company under this clause.