

# 3 Clicks Service Agreement

Loggia Corp Pty Ltd (ACN 107 587 913)



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**PARTIES**

1 **LOGGIA CORP PTY LTD**  
 ACN 107 587 913  
 of 10 Marleigh Street, Vermont, Victoria 3133  
 (“Licensor”)

**and**

2 **(“THE LICENSEE”)**

**BACKGROUND**

- a) The Licensor provides software as a service known as 3 Clicks.
- b) The Licensee wishes to use 3 Clicks under licence.
- c) The parties have agreed that the Licensor will grant the Licensee a license to use 3 Clicks on the terms and conditions specified in this Agreement.

**TERMS****1. INITIAL DELIVERABLES****1.1 3 Clicks License**

The Licensor hereby grants to the Licensee a non-transferable, non-exclusive right, without the right to sublicense to use 3 Clicks during the Term subject to this Agreement (“**Licence**”) always subject to the Terms and Conditions set out in this agreement and, without limitation, the timely payment of the License Fees payable hereunder.

- (a) The Licensee shall use 3 Clicks solely to process the work of its own business and to utilise the functionality of 3 Clicks.
- (b) The Licensee shall not (and shall not allow any third party) to:
  - (i) use 3 Clicks to process the work of any non-majority owned subsidiary, non-majority owned affiliate or third party;
  - (ii) translate, reverse engineer, decompile, disassemble or attempt to reconstruct or discover any source code or underlying ideas or algorithms of 3 Clicks by any means;
  - (iii) provide, rent, lease, licence, transfer or grant any rights in 3 Clicks, in full or in part, to or for the benefit of third parties;
  - (iv) remove or alter any product identification, copyright, trademark or other proprietary notices, labels or marks on or in 3 Clicks;
  - (v) copy, modify, incorporate into or with other software, or create a derivative work of any software components that make up 3 Clicks or of 3 Clicks generally;
- (c) The Licensee acknowledges that the only implementation method for using 3 Clicks is by a Hosted service.
- (d) The Licensee acknowledges that the use of 3 Clicks (including the normal operation of all components of the software making up 3 Clicks) contrary to the terms of this licence constitutes an infringement of the Licensor’s copyright in 3 Clicks and will be a breach of this Agreement.
- (e) The Licensee acknowledges that the Licensor may apply any software security features to 3 Clicks and any software components of 3 Clicks as the Licensor determines appropriate from time to time.

**1.2 Users**

- (a) The Licensor will allow the Licensee to create log-ins and passwords to access 3 Clicks and no fee will be payable by the Licensee for doing so.

- (b) The Licensee shall have the ability to create different log-in rights for its users (as described in the Manual) and the responsibility for determining the correct access levels for each login created shall remain with the Licensee.
- (c) The Licensee shall be solely responsible for the creation and use of any log-ins created on its behalf pursuant to this Agreement and undertakes to pay all Usage Fees relating to such use.
- (d) Where one employee or contractor ceases to be an employee or contractor of the Licensee, or that employee's or contractor's role with the Licensee has permanently changed so that the employee or contractor no longer requires access to 3 Clicks, the Licensee will use its best efforts to ensure that such employee's or contractor's log-in be disabled by the Licensee. The Licensee acknowledges that any failure by the Licensee to disable such employee's or contractor's log-in leaves the Licensee at risk of such employee or contractor continuing to have access to the Licensee's 3 Clicks Service and information and data contained within 3 Clicks relating to the Licensee. The Licensee further acknowledges and agrees that any failure by the Licensee to disable such employee's or contractor's login and all consequences flowing from such failure shall be entirely at the risk of the Licensee and the Licensee shall not hold the Licensor liable or responsible for any loss or other consequence suffered by the Licensee arising from such an event or events.
- (e) The Licensee shall not (and shall not allow any employer, contractor or third party to) knowingly:
  - (i) use another person's log-in or password;
  - (ii) share a log-in or password with another person; or
  - (iii) allow a computer to remain logged in to 3 Clicks for the purpose of being used to access 3 Clicks by a person other than the allocated user of the log-in and password.

### **1.3 Licence for Manual**

- (a) The Licensee hereby acknowledges that as part of the use of 3 Clicks the Licensee will have access to the Manual.
- (b) The Licensee agrees with the Licensor that the Licensor shall have no liability to the Licensee relating to or arising out of any error or omission in the Manual.
- (c) To the extent as may be required the Licensor will upon release of a new version of 3 Clicks will use its best endeavours to update the Manual.

### **1.4 Delivery**

- (a) By the Delivery Date, the Licensor will make the most recent version as at the date of this agreement of 3 Clicks available for use by the Licensee by providing a Hosted solution.
- (b) By the Delivery Date, the Licensor will provide the Licensee with access to an electronic version of the Manual hosted online.

**FURTHER DELIVERABLES****2.1 3 Clicks updates**

- (a) The Licensor may at its sole discretion and at no charge to the Licensee produce and release updates to 3 Clicks subject to the provisions of clause 2.2.
- (b) The Licensor will endeavour to introduce updates to 3 Clicks so as to minimise any disruption to the Licensee's use of 3 Clicks. In the event that an update causes an Issue in relation to any part of 3 Clicks the parties agree that the Licensor's liability shall be limited to providing support in accordance with the provisions of clause 3.1 below.
- (c) The Licensor will use its best endeavours where an update of 3 Clicks occurs to retain the general functionality that already exists in 3 Clicks, provided however that this will not limit the changes introduced in an update of 3 Clicks. If an update causes the removal of a function or process of 3 Clicks, then the Licensor will provide a practical alternate method for achieving the intended functional process.

**2.2 Enhancements to 3 Clicks**

- (a) The Licensee may make an Enhancement Request from time to time throughout the Term. In the event that an Enhancement Request is made the Licensor will consider that Enhancement Request and will provide the Licensee with a detailed quote and scope of work and/or advise where the Enhancement Request or part of the Enhancement Request is not possible and/or the extent to which (if any) it will be incorporated into future updates of 3 Clicks. If the quote and associated scope of work is approved by the Licensee, the Licensor will enhance that specific function into 3 Clicks to accommodate the Licensee's Enhancement Request.
- (b) Upon receipt of an Enhancement Request, the Licensor will meet with the Licensee in order to ascertain the Licensee's requirements for enhancements to specific function of 3 Clicks.
- (c) Upon implementation of the enhancement the Licensor will provide and enable the Licensee to use the enhancement pursuant to the Enhancement Request and incorporate such enhancement in future 3 Clicks updates to the Licensee, provided that it is reasonable to do so in the context of the required resources, expertise, time and cost.
- (d) The Licensor does not warrant that any enhancement to 3 Clicks requested by the Licensee will be possible to design and implement.
- (e) Following the implementation of the enhancement, the subject of the enhancement request, the Licensee shall pay the Enhancement Fee within 30 days of receiving an invoice for that enhancement from the Licensor.

**2.3 Implementation of 3 Clicks and updates and enhancements**

The Licensor will, where applicable:

- (a) implement any 3 Clicks updates or enhancements on the Hosted service;
- (b) update the Manual.

**3. SUPPORT SERVICES****3.1 Category A Support, Category B Support and Category C Support**

- (a) In the event that an Issue arises for the Licensee during the Term then for the purposes of dealing with that Issue, the Licensee;
  - (i) can access the Category A Support outlined in Clause 3.1(b) below; and or
  - (ii) can access the Category B Support in accordance with the procedures outlined under Category B Support outlined in Clause 3.1(c) below; and or
  - (iii) can initiate a request for Category C Support as outlined in Clause 3.1(j) below.
- (b) **Category A Support** is the online support wiki and forums help services found at the 3 Clicks client centre that do not require a response from the Licensor and do not involve a Category B Support Request being made by the Licensee.

- (c) **Category B Support** is the support that is provided by the Licensor in response to the Licensee accessing “3 Clicks is offline” or “3 Clicks has a defect” in the “How can we help” dropdown box in the 3 Clicks client centre and then creating completing and submitting a Category B Support Request in accordance with Clause 3.1(d) below.
- (d) Whenever the Licensee wants to make a Category B Support Request the Licensee will provide the Licensor with information of:
- (i) the function being sought to be performed at the time that the Issue arose;
  - (ii) the form of manifestation of the Issue (e.g. program or system ‘freezing’, program or system ‘crash’, error message, failure to execute function);
  - (iii) any error codes or messages appearing;
- (e) Upon receiving a Category B Support Request pursuant to Clause 3.1(c) the Licensor will:
- (i) Provide an acknowledgement response to the Support Request
  - (ii) process the Issue and allocate an Issue Number to the Licensee;
  - (iii) classify the Issue according to the Issue Classification table in Item 1 of Schedule 2;
  - (iv) advise the Licensee of the classification and Issue Number within the time for acknowledgement set down in Item 2 of Schedule 2; and
  - (v) respond to the Issue in accordance with the provisions and response times set down in Item 2 of Schedule 2 that correspond with the relevant classification.
- (f) Following the Issue being processed by 3 Clicks and the allocation by 3 Clicks of an Issue number to the Licensee:
- (i) the Licensee must direct any ongoing written communication in relation to that Issue through the 3 Clicks’ client centre portal for communicating on any Category B Support Request and in doing so must quote the Issue Number; or
  - (ii) where the Licensee undertakes any oral communication in relation to that Issue with 3 Clicks the Licensee must quote the Issue number.
- (g) As part of the Licensee’s obligations in respect of a Category B Support Request made by the Licensee the Licensee’s staff will assist the Licensor:
- (i) to replicate the circumstances in which the Issue arose and seek to replicate the occurrence of the Issue; and
  - (ii) in the identification and diagnosis of any error or defect.
- (h) The Licensee acknowledges that:
- (i) The Licensor may utilise such employees and contractors as it deems appropriate in its absolute discretion in providing the support services, however, it will remain primarily responsible.
  - (ii) The Licensor is under no obligation to provide support services other than Category A Support and Category B Support.
- (i) To the extent that the Licensee requires Category C Support services the Licensee acknowledges that such activity will be charged on a reasonable time and materials basis.
- (j) All **Category C Support** will be those support services negotiated and detailed in writing between the Licensee and the Licensor from time to time throughout the term and to the extent that the Licensee requires Category C Support the Licensee acknowledges that such support will be charged on a reasonable time and materials basis.

#### 4. USE OF SOFTWARE

##### 4.1 Prohibited Acts

The Licensee shall not at any time:

- (a) attempt to modify any software components of 3 Clicks or directly access the 3 Clicks database for any purpose contemplated by this Agreement;
- (b) attempt to share a User account. The sharing of a User is strictly prohibited and is liable to suspension of the account.

#### **4.2 Licensee Data**

- (a) All data of the Licensee is and will remain the property of the Licensee;
- (b) The Licensee accepts all risk in and liability for the Licensee's data; and
- (c) Notwithstanding the provisions of both Clause 4.2 (a) and (b) the Licensee's data can and will be used in conjunction with 3Clicks.

### **5. PAYMENT TERMS**

#### **5.1 Payment**

- (a) Subject to the provisions of this Agreement that may require payment by the Licensee to the Licensor of particular amounts throughout the term of this Agreement and any holdover, the Licensee will pay to the Licensor a Usage Fee for using 3 Clicks in respect of each Relevant Month to be determined and calculated in accordance with item 4 of Schedule 1.
- (b) The Licensor will provide the Licensee with an Invoice in respect of each Relevant Month, which will itemise the number of users and the Usage Fee for that month.
- (c) The Invoice provided to the Licensee will be prima facie evidence of the amount owing by the Licensee to the Licensor in respect of any month throughout the Term or any hold over.
- (d) The Licensee must pay the Usage Fee within 30 days of receiving an Invoice pursuant to clause 5.1(b). Where the licensee fails to pay the Usage Fee within the 30 day period, upon the Licensor serving the licensee 14 days written notice of its intention to disable 3 Clicks, the Licensor may at its discretion disable 3 Clicks until each (and/all) outstanding Invoice(s) issued by the Licensor to the Licensee has been paid.

#### **5.2 GST**

- (a) Unless expressly stated otherwise, all rates, charges and amounts set down in this Agreement are exclusive of GST (or any similar sales or value added tax).
- (b) If the Licensor is liable to pay GST (or any similar sales or value added tax) with respect to any supply made under this Agreement, then the Licensor shall invoice and the Licensee shall pay an additional amount ('Additional Amount') equal to the GST-exclusive payment multiplied by the GST rate (or any similar sales or value added tax rate), so that the net amount retained by the Licensor after payment of GST (or any similar sales or value added tax) shall be equal to the GST-exclusive amount set down in this Agreement.
- (c) The Licensor shall invoice the Additional Amount at the same time as it invoices the payment for the supply to which such GST (or any similar sales or value added tax) relates, and such Additional Amount shall be payable upon the same terms as the payment for the supply to which such GST (or any similar sales or value added tax) relates.

### **6. MISCELLANEOUS**

#### **6.1 Intellectual property rights in 3 Clicks and associated software components**

- (a) Unless otherwise declared in writing and signed by both parties, the title to and beneficial ownership of 3 Clicks and all software components making up 3 Clicks and the Manual (and all copies and portions thereof) and all applicable rights to patents, copyrights, trademarks, trade secrets and other intellectual property of and in 3 Clicks and the Manual, updates, enhancements, modifications and derivative works no matter how they arise, are permanently and irrevocably vested in the Licensor and shall remain with the Licensor and the delivery of copies to and use of 3 Clicks and the Manual by the Licensee.
- (b) The Licensor reserves all rights, copyright and ownership of the intellectual property embodied in 3 Clicks and the Manual. This includes:

- (i) the right to modify, enhance or reengineer portions of 3 Clicks and the Manual in subsequent release;
- (ii) the right to sell the intellectual property to a third party.

## 6.2 Warranties and liability

- (a) The Licensor warrants that it has the right and authority to grant and provide the 3 Clicks Licence under this agreement and that the development of 3 Clicks and the Manual have both been undertaken with reasonable care. Where deficiencies the subject of an Issue in 3 Clicks and the Manual are found to exist, the Licensor will take reasonable steps to rectify those deficiencies.
- (b) The Licensor does not warrant that the operation of 3 Clicks or any associated software components will be uninterrupted or error free, or that 3 Clicks will operate in hardware and software combinations selected by the Licensee
- (c) The Licensee covenants and agrees that the Licensor will not be liable for and hereby indemnifies the Licensor against any defects resulting from improper or inadequate maintenance by the Licensee; other software of the Licensee or any third party, interfacing or supplies; unauthorised modification; improper use or operation outside of the specifications for 3 Clicks; abuse, negligence, accident, loss or damage in transit; improper site preparation; or unauthorised maintenance or repair.
- (d) The Licensor will not be held responsible for any business or legal decisions, actions or omissions taken by the Licensee based on the Licensee's use of 3 Clicks however the Licensor will use its best endeavours to ensure the integrity of the service and for this purpose the Licensor will conduct regular sample tests on a backup of the Licensee's service.
- (e) Except to the extent that the exclusion, restriction or modification of certain conditions, warranties and rights is prohibited in the context of this Agreement by the *Competition and Consumer Act 2010* (Cth) or any equivalent State or Territory legislation then for the purposes of this agreement and more particularly the provision by the Licensor to the Licensee of the use of 3 Clicks
  - (i) any conditions, warranties or rights implied to the Licensee's benefit by legislation, conduct or common business practice are hereby excluded to the maximum extent permissible;
  - (ii) Neither party shall be liable to the other party for any consequential or pure economic loss howsoever arising (including negligence); and
  - (iii) Other than as specifically provided for in Sub-paragraph 6.2 (e) (iv) immediately below a party's liability under this Agreement howsoever arising (including negligence) shall be limited to the Usage Fee amounts paid to the Licensor under this Agreement in the 12 months immediately before the claim arose.
  - (iv) The Licensor's liability in respect of any claim that arises under:
    - a) Sub-clause 2.2 shall be limited to the Enhancement Fee paid by the Licensee to the Licensor for the specific enhancement implemented by the Licensor pursuant to an Enhancement Request by the Licensee; and
    - b) Paragraph 3.1(j) shall be limited to the amount paid by the Licensee to the Licensor pursuant to the specific Category C Support service that was negotiated between the Licensor and the Licensee following a request by the Licensee for that Category C Support.
- (f) Without derogating from clause 6.2(e), where a condition, warranty or right cannot be excluded but under the *Competition and Consumer Act 2010* (Cth) or any equivalent State or Territory legislation may be restricted, the Licensor's liability with respect to the supply of goods is limited to the replacement of the goods or the supply of equivalent goods or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired, and with respect to the supply of services is limited to the supplying of the services again or the payment of the cost of having the services supplied again.
- (g) The Licensee:
  - (i) Warrants that where the Licensee requests the licensor to integrate 3 Clicks or any associated software component with 3<sup>rd</sup> party software that it holds all necessary valid licenses in relation to such 3<sup>rd</sup> party software that those licenses allow for such integration.
  - (ii) indemnifies and holds harmless the Licensor against any loss, damage or liability with respect to:

- a) any failure by the Licensee to pay any fees or disbursements as and when they fall due, and the Licensor's reasonable costs in following up and/or enforcing its rights with respect to such fees or disbursements; and
  - b) any claim by a third party with respect to an alleged infringement by the Licensor of that third party's intellectual property rights being rights with respect to which the Licensee is obliged to obtain a licence or assignment under subclause (a);
- (h) The Licensee acknowledges that while the Licensor will take all reasonable measures to protect the Service from computer viruses, such risks cannot be completely excluded and will not hold the Licensor responsible for such risks arising except in the circumstances where the Licensor does not have as part of its service, industry standard anti-virus software where it is appropriate to do so. The Licensor will remove any viruses that it caused to be transmitted to the Licensee's computer network or computers at its own cost.
  - (i) The Licensee acknowledges that while the Licensor will take all reasonable measures to avoid the loss of data from any cause related to the provision of the services, such risks cannot be completely excluded and will not hold the Licensor responsible for such risks arising. Other than where the undertaking of backup is part of the services, the Licensee will be responsible for backing up its data at its own cost prior to any repair or maintenance of its computer network, computers, computer software or other equipment by the Licensor.
  - (j) This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
  - (k) The Licensor will comply with all applicable laws and regulations, including but not limited to the Privacy Act.
  - (l) The Licensor warrants that all the services it provides:
    - (i) will be carried out with all due care and skill and by suitably competent and trained personnel engaged by the Licensor;
    - (ii) will be carried out in a professional and timely manner having reasonable regard to the matter or issue being dealt with;
    - (iii) will not infringe any Intellectual Property rights and/or moral rights of any person. Notwithstanding any other provision of this Agreement, the Licensor indemnifies and holds harmless the Licensee against any loss, damage or liability with respect to any claim by a 3rd party with respect to an alleged infringement by the Licensee of that third party's intellectual property or moral rights with respect to services or goods provided by the Licensor to the Licensee under the 3 Clicks Licence granted to the Licensee.

### **6.3 Force Majeure**

- (a) If a Force Majeure arises so as to wholly or partly prevent or delay the Licensor providing any or all of the Support Services or any updates or Requested Enhancements of 3 Clicks, the Licensor will:
  - (i) use reasonable endeavours to address the matters subject to the Force Majeure as quickly as practicable (provided it is capable of doing so), to the extent that such Force Majeure relates to a strike, lockout or other labour difficulty the Licensor will not be liable to settle the same on terms not reasonably acceptable to the Licensor; and
  - (ii) notify the Licensee of the Force Majeure, its likely duration and the period (in the Licensor's opinion) of any consequent delays or other relevant events, and the said dates will be so extended unless the Licensee disputes the delay period within seven days of receipt of the notice in which case the parties shall consult in an endeavour to agree upon a satisfactory extension of time and failing agreement within seven further days either party may refer the matter to the dispute resolution process under clause 5.
- (b) Subject to clause 6.3(a), neither party shall be liable for any delay or failure to perform its obligations under this Agreement if due to a Force Majeure event other than an obligation by the Licensee to pay the Licensor any accrued but unpaid debt owed to the Licensor by the Licensee in respect of the Usage Fee which must be paid in the normal course.

### **6.4 Termination**

- (a) For the purposes of this sub clause 6.4, a default by one of the parties under any of clauses 1.1, 1.1(b), 1.1(d), 4.1, 5.1, 5.2 and 6.13 shall be deemed to be a material breach and any right of termination pursuant to this clause shall apply.
- (b) A party may terminate this Agreement:

- (i) by notice in writing if any other party commits a material breach of this Agreement and fails to rectify such breach within 14 days of receiving a notice to rectify; or
  - (ii) by notice in writing if any other party suffers an Insolvency Event; or
  - (iii) by notice in writing if a Force Majeure event other than under clause 6.3 continues for an unbroken period of 30 days; or
  - (iv) by notice in writing by either party to the other of not less than 90 days.
- (c) The Licensor may terminate this Agreement by notice in writing if a Force Majeure event under clause continues for an unbroken period of 30 days.
  - (d) Upon termination of this Agreement pursuant to this subclause or otherwise, the Licensee shall have no further rights to access or use 3 Clicks (including but not limited components or applications of 3 Clicks).
  - (e)

#### **6.5 Dispute resolution**

If a dispute arises out of or relates to this Agreement a party to this Agreement may not commence any court proceedings relating to the dispute unless it has complied with this clause, except where the party seeks urgent interlocutory relief. For avoidance of doubt, the Licensor must continue to supply 3 Clicks until such dispute has been resolved but only where the Usage Fee continues to be paid by the Licensee to the Licensor in a timely manner in accordance with 5.1 (c). The dispute resolution process is as follows:

- (a) the party claiming the existence of a dispute must give written notice to the other parties specifying the nature of the dispute;
- (b) on receipt of that notice the parties must endeavour in good faith to resolve the dispute expeditiously, and after 5 business days if requested by any party, shall resort to mediation;
- (c) in the event of resort being had to mediation, the parties must appoint a mediator and agree on the mediator's remuneration. If the parties fail to agree on the appointment then either party may apply to the President of the Law Institute of the Victoria or the President's nominee to appoint a mediator and determine the mediator's remuneration;
- (d) the parties must observe the instructions of the mediator about the conduct of the mediation;
- (e) if the dispute is not resolved within 10 days after the mediator is appointed, or any other time that the parties agree to in writing, the mediation ceases;
- (f) each party must pay an equal share of the cost of the mediation to the mediator and each party agrees to indemnify the mediator against liability in respect of the mediation of the dispute;
- (g) if the dispute is resolved, each party must observe the terms of the resolution and the terms are binding on the parties and override the terms of this Agreement to the extent that there is any conflict;
- (h) the mediation procedure is confidential and any written statements prepared for the mediator or for a party and any discussion between the parties and between the parties and the mediator before or during the mediation procedure cannot be used in any legal proceedings.

#### **6.6 Notices**

- (a) A notice required or permitted to be given by one party to another under this Agreement must be in writing, addressed to the other party and:
  - (i) handed to that party's representative;
  - (ii) delivered to that party's address;
  - (iii) sent by pre-paid mail to that party's address; or
  - (iv) transmitted by facsimile to that party's facsimile number.
- (b) A notice given to a party in accordance with clause 6.6 (a) shall be treated as having been duly given and received:

- (i) if handed to the party's representative, immediately;
  - (ii) if delivered to a party's address, on the day of delivery;
  - (iii) if sent by pre-paid mail, on the third day after posting; or
  - (iv) if transmitted by facsimile to a party's facsimile number and a correct and complete transmission report is received, on the day of transmission.
- (c) For the purposes of this clause, the address or facsimile number of a party is the address or facsimile number stated in the Request for Tender unless notice of another address or facsimile number has been given in writing.

#### **6.7 Equitable Remedy**

In addition to the other remedies available to the Licensor under this Agreement or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of 3 Clicks will entitle the Licensor to any remedy available in law or at equity against the Licensee, including injunctive relief.

#### **6.8 Waiver**

The failure of either party at any time to enforce any of the terms and provisions of this Agreement or to exercise any right hereunder shall not constitute a waiver of the same or affect the party's rights thereafter to enforce the same.

#### **6.9 Governing law**

This Agreement shall be governed and construed in accordance with the laws for the time being in force in the State of Victoria, Australia and the parties agree to the jurisdiction of the Courts and Tribunals of that State.

#### **6.10 Assignment**

This Agreement and the licence thereunder is personal to the Licensee and shall not be assignable by the Licensee without the prior written consent of the Licensor, except in circumstances where;

- a) the Licensee itself is sold to a third party and the third party acknowledges and agrees in writing with the Licensor to all the terms and conditions of this license; or
- b) the business of the Licensee is sold to a third party and that third party agrees in writing with the Licensor to enter into a transfer of the License on identical terms to the terms of this license.

#### **6.11 Whole agreement**

This Agreement contains the whole of the agreement between the parties and supersedes in its entirety any previous understandings and arrangements and no understanding, arrangement or provision not expressly set forth therein shall be binding upon the parties and no variation, modification or alteration of any of the terms of this Agreement shall be of any effect unless in writing and signed by each of the parties.

#### **6.12 Severance**

If any provision of this Agreement shall be held to be invalid or in any way unenforceable, it shall be severed and the remaining provisions shall not in any way be affected or impaired and this Agreement shall be construed so as to most nearly give effect to the parties' intentions when it was originally executed.

#### **6.13 Confidentiality**

- (a) The parties acknowledge that the Confidential Information is confidential to the other party and constitutes a valuable asset of the other party and each party covenants and agrees that it will:
  - (i) keep all Confidential Information confidential, regardless of when disclosed;
  - (ii) not use any Confidential Information in any way other than for the purposes set out in this Agreement;
  - (iii) refrain from making or having made any recording or duplication of the Confidential Information, by any means whatsoever without the authority of the other party;

- (iv) not disclose or give access to the Confidential Information to any other persons and limit access to Confidential Information to those of its employees, directors, executive officers, managers, agents, contractors or representatives reasonably requiring it for the purposes of this Agreement. Each party will ensure that any such person is and will be bound by confidentiality obligations no less onerous than in this agreement. It is acknowledged by the Licensee that the Licensor will request access to the Licensee's data from time to time for the purposes of testing software updates.
- (v) not use any of the Confidential Information in any way that would be harmful to the best interests of the other party.
- (b) A party's obligations under this Agreement do not extend to any Confidential Information:
  - (i) that is publicly available at the date of its disclosure to the other party;
  - (ii) that is, at the date of its disclosure to the other party, already properly in the possession of the other party in written form from another source;
  - (iii) that, after the date of its disclosure to the other party, becomes publicly available from other sources;
  - (iv) that, after the date of its disclosure to the other party properly becomes available on a non-confidential basis from a third party having no obligation of confidentiality with respect thereto.
- (c) The burden of showing that any Confidential Information is not subject to the obligations of confidentiality in this Agreement will rest on the party that has received the Confidential Information.
- (d) If at any time this Agreement is terminated each party shall return to the other party any Confidential Information disclosed to it and shall not keep copies thereof.
- (e) The obligation of confidentiality and non-use under this Agreement shall continue until the lawful publication of Confidential Information disclosed to it.
- (f) Each party agrees that it obtains no proprietary rights of any kind to the Confidential Information disclosed to it.

#### 6.14 GOOD FAITH

Each party to this agreement will act in good faith in exercising or performing their respective rights and obligations toward the other in accordance with the terms of this agreement and each party, to the extent that it is within that party's control, will for the fulfilment of this agreement, use its reasonable endeavours to ensure that its employees, directors, executive officers, managers, agents, or representatives will not commit fraud or undertake wilful misconduct.

### 7. DEFINITIONS AND INTERPRETATION

#### 7.1 Dictionary

In this Agreement:

**"3 Clicks"** means a service provided by the Licensor to the Licensee under this Agreement that is a software online service that is used in the manufacturing systems and process in the apparel industry.

**"Confidential Information"** means all software, arrangements, dealings, transactions, methods, knowledge, information, data, know-how, Intellectual Property, programs, other material and affairs of that party and any and all information of a confidential nature that a party first becomes aware of as a result of its involvement with the other party for the purposes of this Agreement.

**"Confirmation"** means the confirmation response received from the Licensee to a request for confirmation emailed by the Licensor to the Licensee.

**"Date of this Agreement"** means the date on which the Agreement is executed by the last of the parties to do so.

**"Delivery Date"** means the date specified in Item 1 of Schedule 1, and if no date is specified, then the number of days specified in Item 1 of Schedule 1 after the date of this Agreement.

**"Designated Support Contact"** means the Licensee, or their authorised representative, who is the sole point of contact for technical support, queries and logging issues.

**“Enhancement Fee”** means the fee payable by the Licensee to the Licensor in relation to any enhancement requested and then developed and implemented pursuant to an Enhancement Request, which will be subject to the professional service fee rates set out in Item 3 of Schedule 1 and otherwise on the terms and conditions negotiated in relation to any enhancement undertaken.

**“Enhancement Request”** means a request made by the Licensee to the Licensor to enhance a specific function of 3 Clicks in line with a written brief from the Licensee to meet a specific demand of the Licensee in relation to that function of 3 Clicks.

**“Force Majeure”** means any event or condition not existing at the date of this Agreement, not reasonably foreseeable as of such date and not reasonably within the control of any party, which prevents in whole or in material part the performance by one of the parties of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable, including (but not limited to):

- (a) war or warlike conditions, riot or civil commotion, terrorism, mobilisation, insurrections;
- (b) import or export bans blockades or embargoes;
- (c) statutory or union contract reductions in working hours, strike or lockout or other labour conflicts;
- (d) natural catastrophe, earthquakes, storms, floods, fires, epidemics;
- (e) where access to or provision of services by the 3<sup>rd</sup> party hosting the 3 Clicks Service infrastructure from time to time becomes unavailable for whatever reason other than where it is determined that the same was directly and entirely caused by the default of the Licensor in its dealings with such 3<sup>rd</sup> party.

but for the avoidance of doubt:

- (f) lack of funds on the part of the Licensee to make on the due date any payment required under this Agreement shall not constitute an event of Force Majeure; and

**“GST”** has the same meaning as in the GST Act.

**“GST Act”** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended, varied or replaced from time to time and any subsequent or replacement tax.

**“Hosted”** means the provision by the Licensor of access to 3 Clicks installed on the Licensor’s servers and specifically excludes installation of 3 Clicks on the Licensee’s systems.

**“Insolvency Event”** means relation to a partnership or corporation, the happening of any of the following events to or in relation to that entity or in the case of:

- (a) a partnership - a person majority owned or controlled by that partnership; or
- (b) a corporation - any related body corporate of that corporation:

the events being:

- (c) the person is or states that it is insolvent or unable to pay its debts as they fall due;
- (d) an order is made that the person be wound up;
- (e) a liquidator or provisional liquidator is appointed for the person, whether or not under an order;
- (f) a resolution is passed to appoint an official manager for the person;
- (g) except to reconstruct or amalgamate while solvent, the person does or proposes:
  - (i) to enter into a scheme or arrangement or composition with, or assignment for the benefit of, all or any class of its creditors;
  - (ii) a re-organisation, moratorium or other administration involving all or any class of its creditors, members, owners or controllers; or
  - (iii) to wind itself up or otherwise dissolve itself or is otherwise wound up or dissolved;
- (h) a receiver or receiver and manager is appointed; or

- (i) any act or event analogous, or having a substantially similar effect, to any of the events specified above occurs.

**"Intellectual Property"** includes 3 Clicks and all software components making up 3 Clicks, copyright, discoveries, inventions, patents, designs, trademarks, know-how and other intellectual property rights.

**"Invoice"**, where the 'supply' is a 'taxable supply' within the meaning of the GST Act, means a Tax Invoice.

**"Issue"** means any operational or functional problem or degradation, bug, defect, anomaly pertaining to the usage of 3 Clicks or any updates, enhancements or upgrades of 3 Clicks..

**"Licence"** means the licence to use 3 Clicks and Manual as granted under clause 1.

**"Licensee"** means the party named as the Licensee as set out in the Join form

**"Licensee's Enhancement Fee"** means the fees and disbursements specified in Item 2 of Schedule 1.

**"Manual"** means the online manual for 3 Clicks service for the current version and future versions.

**"Minimum Monthly Usage Fee"** means the minimum monthly Usage Fee payable by the Licensee to the Licensor pursuant to Clause 5.1(a) of this Agreement as set out in Item 4 of Schedule 1.

**"Maximum Annual Usage Fee"** (if provided for in the Special Conditions to this Agreement) means the maximum Usage Fee excluding GST that is payable by the Licensee to the Licensor during a specified year.

**"Relevant Month"** means a given calendar month in which the Licensee or its personnel use 3 Clicks.

**"Remote User"** means one person operating out of an address other than the Licensee, and remotely accessing 3 Clicks.

**"Service"** means the provision of 3 Clicks to the Licensee

**"Software"** 3 Clicks version 4, the computer program used in the manufacturing of apparel and includes all updates, enhancements and upgrades to 3 Clicks.

**"Special Conditions"** means the conditions listed in Item 9 of Schedule 1.

**"Supply"** means the same as in the GST Act, but if the GST Act does not apply but an equivalent law in a jurisdiction outside Australia applies then it means the same as the word in that law that is equivalent to the word 'supply' in the GST Act.

**"Support Services"** means the support services as detailed in Item 1 of Schedule 2 and any other support services that may from time to time be offered by the Licensor to the Licensee.

**"Tax Invoice"** has the same meaning as in the GST Act.

**"Term"** means the term of this Agreement specified in the Item 2 of Schedule

**"Usage Fee"** means the monthly fee payable by the Licensee to the Licensor in respect of any Relevant Months calculated according with Item 4 of Schedule 1.

**"User"** means an individual person that has been enabled by the License to have access to the 3 Clicks system.

## **7.2 Interpretation**

In this Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) words expressed in the singular include the plural and vice versa;
- (c) words of one gender include all other genders;
- (d) where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning;
- (e) a reference to a party includes that party, its legal representatives, successors and permitted assigns except as otherwise provided for in this Agreement; and

(f) Schedules form part of this Agreement.

## SCHEDULE 1

### ITEM 1 – DELIVERY DATE

Date	The date designated by the Licensor for commencement of the Service as notified in writing by the Licensor to the Licensee within 72 hours from receipt by the Licensor of Confirmation from the Licensee to proceed.
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### ITEM 2 – TERM

Period	An initial License period of 12 months and the License will thereafter automatically renew 12 month periods unless the License is terminated in accordance with clause 6.4
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### ITEM 3

<b>Professional Services</b>	Annual increase of the hourly rate: 5%
Business Consulting	\$145 per hour + GST
Development or Enhancement	\$165 per hour + GST
Education and support other than Category A Support and Category B Support	\$145 per hour + GST
Interstate and international professional services	Price on application

**ITEM 4 – USAGE FEE**

Subject to any Special Conditions, the Usage Fee per month payable by the Licensee to the Licensor shall be determined in the manner set out in the relevant pricing tier outlined in the table below:

<b>Pricing</b>	<b>Fee per user (+ GST)</b>
Per User per month	\$100.00
Storage	An initial allocation of storage of 150GB is included with the License. Any additional storage required by the Licensee will be charged at the rate of \$100 inc GST for each additional 150GB or part thereof consumed per month.

**ITEM 5 - LICENSEE'S ENHANCEMENT FEE**

<b>Licensee's Enhancement Fee</b>	<b>Fee: See ITEM 3</b>

**SCHEDULE 2****ITEM 1 – ISSUE CLASSIFICATION**

<b>Classification</b>	<b>Description</b>
High	The Issue prevents use of a core function of 3 Clicks essential to perform the Licensee's business
Medium	The Issue causes significant user inconvenience, or creates operational difficulties whilst still allowing the Licensee to perform core business
Low	The Issue is inconvenient but non-essential defects

**ITEM 2 – ISSUE RESPONSE**

Support for an Issue will be provided between the hours of 9am – 5pm Monday to Friday (excluding Public Holidays where support will be unavailable). Support will be provided in accordance with the following response times:

<b>Classification</b>	<b>Acknowledgement</b>	<b>Response</b>
High	Within 4 hours by email or telephone	<p>Licensor will, once notified, immediately and assertively work to investigate and rectify the problem as soon as possible and respond within 24 hours of the initial notification by any of the following:</p> <ul style="list-style-type: none"> <li>● closing the Issue following provision of support and rectification or</li> <li>● providing a workaround that will allow the Issue to be reclassified; or</li> <li>● providing a schedule of further action with such further action to be carried out by the Licensor</li> </ul>

		assertively and with all due haste.
Medium	Within 24 hours by email or telephone	<p>Licensors will respond within two business days of the initial notification by any of the following:</p> <ul style="list-style-type: none"> <li>● closing the issue following provision of support and rectification; or</li> <li>● closing the issue as being corrected in a future update of the Software from, provided that such release will be available within 14 days of the notification; or</li> <li>● providing a workaround that will allow the issue to be reclassified; or</li> <li>● providing a schedule of further action to be carried out by the Licensor assertively and with reasonable haste.</li> </ul>
Low	Three business days by email or telephone	<p>Licensors will respond within 10 business days by any of the following:</p> <ul style="list-style-type: none"> <li>● closing the Issue following provision of support and rectification; or</li> <li>● closing the Issue as being corrected in a future Software update that will be available within 60 days of the notification.</li> </ul>