frankieone

Master Services Agreement

BETWEEN

Frankie Financial Pty Ltd ABN 61 623 506 892

AND

Client Name

DATE:

Date: This agreement is made on the date indicated on the front page

Parties

Name	**Frankie Financial Pty Ltd ABN 61 623 506 892**
Address	121 King Street, Melbourne, VIC 3000
Email	mark@frankieone.com
Short name	**FrankieOne**
Name	INSERT
Address	INSERT
Email	INSERT
Short name	**Client**

Background

A.   FrankieOne provides the Software (as described herein) and related Services.

B.   The Client wishes to procure a licence to use the Software, and to engage FrankieOne to provide the Services, on the terms of this agreement.

The parties agree as follows:

Terms

1	**INTERPRETATION**

1.1   In this agreement the following terms have the following meanings, unless the context otherwise requires:

Affiliate	means a related body corporate of the Client within the meaning of s50 of the *Corporations Act 2001(Cth)*
Approved Affiliate	means an Affiliate located in the Territory whom FrankieOne has approved in writing to be an Authorised User of the Software
Authorised Users	means the Client, its Approved Affiliates, and their employees and subcontractors (but in the case of subcontractors, only for the purposes of them using the Software to provide goods or services to the Client), who are located in the Territory
Bureau Service	means any service which involves the Client on selling or otherwise providing the benefit of the Software or Services to any third party other than an Authorised User and whether for gain or otherwise
Business Day	means a day which is not a Saturday, Sunday or public holiday in the State of Victoria
Chose in Action	means a legal right of proceeding in a court of law to obtain a sum of money or to recover damages

Client Data	means:
	(a) all data and information provided by the Client which is stored in the Software, including any changes made to that data by the Software, FrankieOne or the Client; and
	(b) any data or reports created by the Software which are based on the information described in **paragraph (a)** above, but excluding Third Party Results
Client Works	means:
	(a) all text, images, logos, cinematographic films or other works which are the subject of copyright (and in which the Client is the owner of Intellectual Property Rights in) which the Client provides to FrankieOne for inclusion in the Software or which the Client or its Authorised Users input into the Software; and
	(b) the Client Data
Confidential Information	means all confidential or sensitive information of any kind whatsoever of a party and includes, in the case of FrankieOne, the design, functionality and architecture of the Software, the Material and FrankieOne's pricing structures and Fees, and in the case of the Client, includes the Client Works
CPI	The Australian Consumer Price Index (CPI) which is a general measure for inflation. With regard to Fee changes, this will be taken from the Australian Bureau of Statistics for the last relevant period
Customisation	means a modification made to the Software by FrankieOne specifically for the Client
Data Extraction	has the meaning given in **clause 4.7(a)(ii)**
Dispute	means a dispute, controversy or claim arising out of or relating to this agreement, or the breach, termination or invalidity thereof
Dispute Notice	has the meaning given in **clause 13.2**
Export Laws	has the meaning given in **clause 10**
Fees	means the fees and charges of FrankieOne relating to the provision of the Software and Services, as described in **clause 6.1**
Force Majeure Event	means an event arising out of or caused, directly or indirectly, by circumstances beyond a party's reasonable control, which prevents the party from complying with this agreement, including, without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; acts of terrorism; sabotage; strikes; epidemics; riots; power failures; computer failure and any such circumstances beyond its reasonable control as may cause interruption, loss or malfunction of utility, transportation, computer (hardware or software) or a telephone communication service; accidents; labour disputes; acts of civil or military authority; governmental actions; or inability to obtain labour, material, equipment or transportation. A "Force Majeure Event" shall also include disruption to business operations, or

	any restrictions imposed by a government or Government Agency in relation to a pandemic virus.
Government Agency	means a government agency or government body who has jurisdiction over the Services and the Transactions, and who has the power to review FrankieOne's processes and performance of the Services, or to investigate any aspect of FrankieOne's relationship with the Client
Hosting Services	has the meaning given in **clause 3.4(a)**
Implementation Services	has the meaning given in **clause 2.1(a)(ii)**
Indirect Loss	includes in respect of any claim by a party against the other (and whether contractual, tortious, statutory or otherwise) for any indirect, special, incidental, or consequential damages or injury including, but not limited to, any loss of (i) profits, (ii) contracts, (iii) revenue or (iv) data
Infringement Claim	means any legal proceedings made, instituted, claimed or threatened against the Client, alleging that the Client's use of the Software, the Materials or the Non-Software Deliverables pursuant to this agreement, infringes the Intellectual Property Rights of a third person
Intellectual Property Rights	means all intellectual property rights of any kind whatsoever throughout the world including, without limitation, all present, future, registered and unregistered rights which subsist in copyright, trademarks, patents, designs, circuit layouts, plant breeders' rights and the right to keep confidential information, confidential
Licence	has the meaning given in **clause 3.1(a)**
Live Environment	means the use by the Client of the Software in its business, for purposes other than testing the Software
Material	means user manuals, whitepapers and other materials or information which FrankieOne provides to the Client (in digital or hardcopy form) in relation to the use of the Software
Modern Slavery	has the meaning given to it under the *Modern Slavery Act 2018 (Cth).*
Modern Slavery Requirements	means any Relevant Laws in relation to Modern Slavery and any FrankieOne policy and standard in relation to responsible sourcing, provided that such requirements do not conflict with Relevant Laws in relation to Modern Slavery.
Non-Software Deliverables	means any item or thing, which an SOW requires FrankieOne to produce, which does not constitute Software or Material, or a modification, enhancement, adaptation or customisation to or of the Software or Material
Relevant Law	means any statute, ordinance, code or other law including regulations under them and any code of practice, membership rules or standards issued by relevant regulators or industry bodies, whether or not having the force of law, applicable to this

Agreement, the Confidential Information, or any other obligations performed under this Agreement.

Representative	of a party includes an employee, agent, officer, director, auditor, adviser, partner, consultant, contractor or sub-contractor of that party.
Services	means the services to be provided by FrankieOne under this agreement, as further described in **clause 2.1**
Software	means:

(a)   the computer software described in an SOW which FrankieOne agrees to licence to the Client under this agreement;

(b)   Customisations made to the above computer software; and

(c)   all Updates of the above computer software provided to the Client by FrankieOne under this agreement

SOW or Statement of Work	means a document, which may or may not be titled as an "SOW" or "Statement of Work", but which agrees certain particulars relating to this agreement, and which is in a form provided by FrankieOne to the Client from time to time
Support Level	means in relation to the Client, the support hours or levels for the Software specified in a relevant SOW, but in absence of any such statement in an SOW, *Support Level* shall mean in relation to the Client, the support hours or levels for the Software which FrankieOne deems reasonable in its sole discretion
Support Services	means the software support services described in **clause 5.1**
Territory	means the territory or territories specified in an SOW in which the Software may be used by Authorised Users, and in the absence of any such statement in an SOW, shall mean the Commonwealth of Australia
Third Party Licence	has the meaning given in **clause 11.1**
Third Party Results	means the results or information provided by Third Party Sources to FrankieOne, following FrankieOne's provision of information by the Client to the Third Party Source as part of a Transaction
Third Party Sources	means third parties to whom FrankieOne passes through information provided by the Client as part of a Transaction, and who then return results to FrankieOne
Third Party Source Breach	has the meaning given in **clause 3.2(c)**
Transactions	means the provision of a Service by FrankieOne whereby:

(a)   the Client provides information about its customers via the Software, for FrankieOne to submit on the Client's behalf to a Third Party Source;

	(b)	the Third Party Source processes the information provided by the Client, which may include searches of public or private databases; and
	(c)	the Third Party Source then returns the Third Party Results from that processing to FrankieOne
Transition Services		has the meaning given in **clause 4.8(a)** and also includes Data Extraction which is deemed to be a Transition Service under **clause 4.7(a)(ii)(B)**
Update		means any new version, new release or update to the Software which FrankieOne releases to its customers generally, and which is not a Customisation specifically produced for the Client, or alternatively which would be a Customisation however FrankieOne in its discretion designates as an Update for the purposes of this agreement

1.2 Interpretation

In the interpretation of this agreement, unless the contrary intention appears:

(a) a reference to a person includes a reference to a corporation, firm, association or other entity, and vice versa;

(b) the singular includes the plural and vice versa;

(c) a reference to any gender includes a reference to all other genders;

(d) a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions;

(e) an agreement, representation or warranty made by two or more persons is made by them jointly and by each of them severally;

(f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and

(g) headings are inserted for convenience only and do not affect the interpretation of this agreement.

2 ENGAGEMENT TO PROVIDE THE SERVICES

2.1 The Services

(a) The Client hereby engages FrankieOne to provide one or more of the following Services, as described in an SOW:

(i) a scoping assessment to determine the requirements for the implementation of the Software into the Client's business;

(ii) the implementation of the Software and Updates into the Client's business (**Implementation Services**);

(iii) Software support (in addition to the provisions in **clause 5**);

(iv) the processing of Transactions via the Software;

(v) producing Customisations to the Software as agreed between the parties in the SOW;

	(vi)	using heatmapping and recording tools for analytical purposes in order to improve our customer's user interaction patterns;
	(vii)	Transition Services; and
	(viii)	any other goods and services which the parties state in an SOW are to be provided under this agreement.

(b) Subject to this agreement, FrankieOne agrees to provide the Services described in an SOW, and in accordance with the requirements for the delivery of those Services as set out in the SOW.

2.2 Role of an SOW

(a) An SOW will describe the particulars of the Services to be provided. The parties may sign one or more SOWs in relation to this agreement. An SOW once entered into, becomes part of this agreement.

(b) An SOW will only take effect once it is signed by both parties, or both parties state in writing that they agree to the contents of the SOW.

(c) If there is any conflict between an SOW and a prior SOW, then the terms of the most recent SOW will prevail to the extent of the conflict. If there is any conflict between the terms of this agreement and an SOW, then the terms of this agreement will prevail to the extent of the conflict, unless the SOW is expressly stated to override a particular term of this agreement, then in which case the terms of the SOW will prevail over that particular term.

2.3 Changes to Services

(a) If the parties wish to change the scope or nature of the Services, then the parties may do so by signing a new SOW containing the modified or updated Services. The requirements for the Services will then be modified on and from the date of that SOW, or any other date specified in the SOW.

(b) Whilst each party will act reasonably in considering any request from the other party to modify the scope and nature of the Services, neither party is under any obligation to agree to any such modifications.

(c) The Client acknowledges that a modification to the scope or nature of the Services may result in an increase to the Fees.

2.4 Delivery conditions

In providing the Services, the parties agree:

(a) FrankieOne will provide the Services in a professional and workmanlike manner;

(b) FrankieOne's personnel will follow all reasonable on-site policies and procedures of the Client, which are disclosed to FrankieOne;

(c) the Client will ensure that it provides all reasonable access to its personnel and facilities to ensure that FrankieOne can properly provide the Services;

(d) the Client will provide FrankieOne with all information FrankieOne reasonably requests, which FrankieOne requires to enable it to properly provide the Services;

(e) the Client will promptly advise FrankieOne of any changes to the information provided under **clause 2.4(d)**, or if the Client becomes aware that any assumptions which FrankieOne communicates to the Client (whether stated in an SOW or otherwise) in relation to the Services, no longer hold true;

(f) the Client will undertake all tasks required of it in relation to the delivery of the Services which are specified in an SOW, or which could reasonably be expected from the Client to enable FrankieOne to meet its obligations under the SOW; and

(g) whilst FrankieOne will use all reasonable efforts to meet any agreed due dates for the provision of the Services, such due dates are estimated delivery dates only, and FrankieOne will not be liable for any failure to meet such due dates.

2.5 Accepting the Services

(a) The Client will be deemed to have accepted the Services, and/or the Software (as applicable) if:

(i) an SOW sets out acceptance tests in relation to the Services and the Software, and the Services and the Software satisfy the requirements of those acceptance tests (with both parties to act reasonably in making that determination);

(ii) the parties agree that the Services and/or Software (as applicable) are accepted in part, in which case that part of the Services and/or Software (as applicable) will be deemed accepted, with the un-accepted Services and/or Software (as applicable) remaining to be delivered under this agreement;

(iii) the Client uses the Software in a Live Environment, in which case that version of the Software, and the Services relating to the delivery of that version of the Software, will be deemed accepted; or

(iv) the parties otherwise agree that the relevant Services or Software are accepted.

(b) Acceptance of the Software or Services in accordance with this clause will deem that FrankieOne has met all requirements in relation to their delivery.

(c) Unless expressly specified in an SOW, acceptance of the Software or Services will not be a pre-condition to the payment of any Fees in relation to the same.

3 LICENCE CONDITIONS

3.1 General Licence Conditions

(a) Subject to this **clause 3** and to **clause 4**, FrankieOne grants to the Client, a non-exclusive, non-transferable, revocable licence (**Licence**) to:

(i) use the Software in the Territory; and

(ii) have the Authorised Users located in the Territory use the Software.

(b) The Client's use of the Software shall be limited solely to:

(i) the access and execution of the Software by the Client's Authorised Users, via their computers, tablets or phones (to the extent such functionality is available);

(ii) the use of the Software via an application programming interface as provided by FrankieOne from time to time; and

(iii) the use of the Software solely for Transactions as further provided under **clause 3.2**.

(c) This agreement does not grant the Client the right to use or access the source code for the Software or to install the Software on the Client's premises or any other location.

(d) The Client agrees that it will not:

    (i) use the Software in any way or for any purpose other than as contemplated by this agreement or for any unlawful purpose;

    (ii) use the Software to process Transactions in respect of any person who is not a direct customer of the Client;

    (iii) provide a Bureau Service using the Software or act as an agent for a third party, except where agreed in writing by FrankieOne;

    (iv) attempt to circumvent or break any encryption, decryption or other security device or technological protection measure contained in the Software;

    (v) upload to the Software any viruses, bugs, worms, trojan horses, harmful codes or any other form of defect or contaminant which could cause temporary or permanent damage to or will otherwise impair or harm or cause the malfunction of the Software or the software or hardware of FrankieOne or any third party;

    (vi) distribute any part of the Software or Services for commercial purposes or otherwise sublicence or resell access to the Software or the Services;

    (vii) create derivative works from all or any part of the Software; and/or

    (viii) transfer, assign, rent, lease, lend, sell or otherwise dispose of all or any part of the Software or any compilation derived from the Software

(e) The Client is liable and responsible for all use of the Software by its Authorised Users and an act, omission or negligence of an Authorised User will be deemed the act, omission or negligence of the Client in relation to such use.

(f) Except to the extent permissible under the *Copyright Act 1968 (Cth)*, the Client may not copy or reproduce the Software.

(g) The Client must not sublicense, deliver, transfer or assign the Licence to any other person without the written permission of FrankieOne.

(h) All rights in and to the Software and Material which are not expressly licensed under this agreement are strictly reserved by FrankieOne.

3.2 Transactions

(a) The Client may use the Software to undertake Transactions.

(b) The Client agrees that:

    (i) apart from where specified to the contrary in an SOW, it is responsible for ensuring it has adequate equipment and software for it to properly use and access the Software;

    (ii) it is responsible for ensuring that it provides accurate Client Data to the Software, in a form specified by FrankieOne from time to time, to enable the Software to properly process Transactions;

    (iii) unless specified to the contrary in an SOW, FrankieOne gives no warranty or representation in relation to when the Third Party Results of the Transactions will be provided by the Software to the Client;

    (iv) FrankieOne cannot warrant the performance or availability of the Third Party Sources and the Client will not be able to access a Third Party Source for a Transaction where that Third Party Source is unavailable to FrankieOne; and

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(v)   FrankieOne acts as a conduit only, and is in no way liable or responsible for the Third Party Results returned back to the Client by the Software.
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(c)   If:

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(i)   a Third Party Source breaches its obligations to FrankieOne (where such obligations arise under law or under an agreement between FrankieOne and the Third Party Source) (**Third Party Source Breach**);

(ii)   as a result of the Third Party Source Breach the Client suffers loss and damage;

(iii)   the Third Party Source Breach is a Chose in Action which is assignable by FrankieOne at law and, where applicable, under the relevant agreement between FrankieOne and the Third Party Source;

(iv)   FrankieOne advises the Client that FrankieOne will not be making a claim against the Third Party Source in relation to the Third Party Source Breach; and

(v)   the Client advises FrankieOne that it wishes to make a claim, or institute legal proceedings against the Third Party Source in relation to the loss and damage suffered by the Client,
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then FrankieOne will, to the extent permitted under the relevant agreement, on request by the Client, assign and transfer its rights in the Chose in Action to the Client for the purposes of enabling the Client to pursue any claim the Client may have against the Third Party Source.
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3.3   Licence Term

(a)   The Licence will commence on the date this agreement is entered into, or any other specified date described in a SOW, and then continue for the subscription period specified in a SOW (**Subscription Term**). At the conclusion of the Subscription Term, the Licence will automatically renew for further periods of time of the same duration as the Subscription Term (each a further "Subscription Term"), unless either party provides written notice of termination of the Licence no less than 30 days prior to the then current Subscription Term.

(b)   The Client will pay FrankieOne any applicable renewal Fee upon renewal of the Subscription Licence under **clause 3.3(a)**.

(c)   **Clause 4.7** will apply on termination of the Licence.

3.4   Hosting

(a)   The Software will be hosted on servers provided by third party hosting providers to FrankieOne (**Hosting Services**), and may only be accessed and used by the Client's Authorised Users via their computers, tablets or phones (to the extent such functionality is available). Nothing in this agreement grants the Client the right to install or use the Software on any other computer.

(b)   Apart from where specified in an SOW to the contrary, FrankieOne makes no representation, or provides any warranty, as to the performance or speed of the Hosting Services.

(c)   The Client's sole and exclusive remedy for any failure of the Hosting Services or any error in the Hosting Services against FrankieOne, is:

<blockquote>
(i)   the applicable remedies (if any) expressly set out in an SOW; and
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(ii)   to request FrankieOne to liaise with the relevant third party hosting provider through the third party hosting provider's usual support services to rectify the relevant failure or error.

3.5   Updates

(a)   During the Subscription Term:

(i)   the Client will be entitled to receive Support Services; and

(ii)   the Client will be granted the right to receive and use all Updates of the Software, which are made available to FrankieOne's customers generally during the term of this agreement.

(b)   The Client acknowledges that the use of the Updates may require additional Implementation Services to be provided by FrankieOne, and additional Customisations to the Update to incorporate previous Customisations delivered by FrankieOne, for the Software to continue to function properly. The Client will, unless determined otherwise by FrankieOne, be required to pay additional Fees in respect of the provision of the foregoing Services.

4   SUSPENSION AND TERMINATION

4.1   Suspension

(a)   FrankieOne may suspend its performance of this agreement, and the Client's use of the Software during any period of time which:

(i)   the Client has an unremedied breach of this agreement which has been notified to the Client, and which the Client has failed to remedy within the required period specified in FrankieOne's notice; or

(ii)   the Client is overdue in paying any of FrankieOne's Fees, and has failed to make payment within 14 days from the invoice due date following a written request for payment from FrankieOne.

(b)   The rights of FrankieOne under this **clause 4.1** are in addition to any rights which FrankieOne may have under this agreement or otherwise, which arise in relation to the matters described in this **clause 4.1**.

4.2   Termination by FrankieOne

This agreement, or any SOW, may be terminated at any time by FrankieOne on the provision of written notice to the Client if:

(a)   the Client has failed to comply with its obligations under **clause 2.4**, which in FrankieOne's reasonable opinion will prohibit FrankieOne from meeting its obligations under an SOW in accordance with the requirements of the SOW and/or this agreement;

(b)   the Client is in material breach of this agreement and the breach is not capable of rectification;

(c)   the Client is in material breach of this agreement and the breach by its nature is one which is capable of rectification, but the Client fails to remedy the breach within 30 days following the provision of written notice from FrankieOne to the Client, requiring that the breach be remedied;

(d)   the Client is in breach of a Third Party Licence which cannot be remedied, and which in FrankieOne's reasonable opinion will expose FrankieOne to a liability if this agreement continues;

(e) the Client becomes insolvent, bankrupt, is wound up, or has an administrator, liquidator or receiver appointed over it or its assets; or

(f) an SOW provides an additional right for FrankieOne to terminate the SOW or this agreement.

4.3 Termination by the Client

This agreement, or any SOW, may be terminated at any time by the Client on the provision of written notice to FrankieOne if:

(a) FrankieOne is in material breach of this agreement and the breach by its nature is one which is not capable of rectification;

(b) FrankieOne is in material breach of this agreement and the breach is one which is capable of rectification, but FrankieOne fails to remedy the breach within 30 days following the provision of written notice from the Client to FrankieOne, requiring that the breach be remedied;

(c) FrankieOne becomes insolvent, bankrupt, is wound up, or has an administrator, liquidator or receiver appointed over it or its assets; or

(d) an SOW provides an additional right for the Client to terminate the SOW or this agreement.

4.4 Termination due to a Force Majeure Event

Either party may terminate this agreement, or an applicable SOW, on the provision of written notice to the other party, if there is a disruption in FrankieOne providing its Services or the Software, that is caused by a Force Majeure Event and which continues for more than 30 days.

4.5 Termination or suspension not to affect other SOWs

A termination or suspension of an SOW under this **clause 4** will not, unless otherwise stated in writing to the contrary, act to terminate or suspend any other SOW.

4.6 Termination prior to renewal of the Licence

Either party may terminate this agreement as provided under **clause 3.3(a)**.

4.7 Termination of the Licence

Subject to clause 4.8, upon termination of the Licence:

(a) the Client may request no later than 30 Business Days after termination (or other period as agreed in writing between the parties) that:

(i) FrankieOne provides Transition Services pursuant to clause 4.8(a); or

(ii) FrankieOne extract some or all of the Client Works from the Software and provide the Client Works directly to the Client in FrankieOne's standard form (**Data Extraction**) for no additional cost provided always that:

(A) FrankieOne may in its sole discretion:

(1) require the Client enter into an SOW detailing the scope of the Data Extraction if the data is not in a standard form;

(2) decline to provide Client Works to the Client where any money is due and owing by the Client to FrankieOne under this MSA or any SOW;

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(B)   any request to transfer Client Works to a third party shall be deemed a Transition Service regarding which associated fees and charges are payable.
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(b)   subject to **clause 4.7(a)**:

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(i)   the Client will cease using and accessing the Software and FrankieOne may remotely disable the Client's and each Authorised User's access and use of the Software; and

(ii)   unless FrankieOne receives written notice within the period stipulated in **clause 4.7(a),** that FrankieOne will delete all Client Works from the Software after expiration of that period (although FrankieOne may continue to hold a copy of such Client Works to the extent required to meet its record keeping obligations under applicable law).
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4.8   Transition Out

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(a)   Upon termination of this agreement, the parties may agree (as part of an SOW) for the provision of Services, for the transition of the Services provided by FrankieOne to a new provider of such Services (or part thereof) to the Client (**Transition Services**).

(b)   There will be no obligation on FrankieOne to perform Data Extraction or Transition Services where FrankieOne terminates this agreement:

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(i)   under any **of clauses 4.2(a)** to **4.2(e)**; or

(ii)   under **clause 4.4**, but only where the relevant Force Majeure Event is continuing and prevents FrankieOne from performing Data Extraction or Transition Services.
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4.9   Obligations upon termination of this agreement

Upon the termination of this agreement:

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(a)   the Licence will terminate (and **clause 4.7** will apply accordingly);

(b)   the Client will immediately pay all Fees which are unpaid, together with any work in progress (including third party charges) which have been incurred by FrankieOne but which FrankieOne is yet to invoice (including third party charges received by FrankieOne after termination but which relate to a period prior to termination);

(c)   FrankieOne will cease providing all Services other than any Transition Services agreed under **clause 4.8**. If Transition Services are required to be provided on termination of this agreement, then (subject again to rights of earlier termination under **clauses 4.2** and 4.3), the termination of this agreement will be postponed until the completion of the Transition Services in accordance with the applicable SOW and this agreement;

(d)   the Client will delete or destroy, or where specified by FrankieOne, return to FrankieOne, any Material supplied by FrankieOne and any backup or archival copies of the Material;

(e)   nothing herein shall be construed to release either party from any breach of this agreement that arose prior to the effective date of such termination; and

(f)   **Clauses 6** to 14 will survive the termination of this agreement.
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5 SUPPORT SERVICES

5.1 Notwithstanding any other provision in this agreement, the Client acknowledges and agrees that FrankieOne will provide the Support Services up to the Support Level as detailed in the SOW.

5.2 The Support Services will be as follows:

(a) the provision of a contact email address, whereby the Client may place queries with FrankieOne in relation to the use of the Software, or any error in the Software;

(b) the attempted rectification of errors in the Software which are reported by the Client to FrankieOne; and

(c) any other software support services specified in an SOW.

5.3 Support Services will only be provided in respect of versions of the Software which have been accepted by the Client (as described in **clause 2.5**) or otherwise used in a Live Environment by the Client.

5.4 Requests for Support Services may only be made by specific staff members of the Client, which are named on the relevant SOW, and any other persons separately agreed between the parties in writing.

5.5 If an error or defect is reported in relation to the Software, FrankieOne may, in its sole discretion, attempt to rectify that error or defect by:

(a) providing the Client with a work around;

(b) taking the Software offline or restricting access to part or all of the Software for a specified period;

(c) undertaking programmatic changes to the Client's version of the Software; or

(d) providing the Client with an Update of the Software, which rectifies the relevant error or defect.

5.6 The Client acknowledges that not all errors or defects in the Software are capable of rectification.

5.7 The Client acknowledges that FrankieOne may refuse to provide Support Services where:

(a) the Client is in breach of this agreement;

(b) in excess of the Support Level; or

(c) the error or defect reported by the Client:

(i) is not reproducible by FrankieOne;

(ii) is determined by FrankieOne to not be an error or defect, but instead to be an intended consequence of the functionality of the Software; or

(iii) is determined by FrankieOne to be new functionality or a customisation of existing functionality.

6 FEES AND CHARGES

6.1 Fees and Charges

(a) The Client agrees to pay all Fees to FrankieOne. The Fees will be measured on the basis of:

(i) the fees and charges specified in a SOW.

(b)   If the Client is using the Software for a Subscription Term, then FrankieOne may amend the Fees payable by the Customer no more than once per calendar year and no more than CPI with at least 30 days written notice. In addition, FrankieOne may (subject to any contrary term governing price increases in an SOW) increase its Fees for the following Subscription Term, provided that FrankieOne has advised the Client of the increase in its Fees no less than 45 days prior to the conclusion of the then current Subscription Term, or during any other period specified in the relevant SOW. The Client acknowledges that if it does not agree to the new Fees for the following Subscription Term, that it may terminate its Subscription Licence under **clause 3.3(a)**.

(c)   If a Third Party Source increases the Fees they charge FrankieOne, then FrankieOne may increase its Fees by no greater than the same percentage increase imposed by the Third Party Source, by written notice to the Client. The forgoing Fee increase may only be made:

(i)   with no less than 7 days advance written notice to the Client; and

(ii)   in respect of Fees which are charged on a per Transaction basis.

(d)   An SOW may specify additional provisions in relation to the increase of Fees by FrankieOne.

(e)   The Fees must be paid by the Client to FrankieOne:

(i)   by the relevant due dates specified in an SOW in relation to the particular Fees; and

(ii)   if no such due dates are specified in an SOW, then within **14 days** of the date of FrankieOne's relevant invoice for the same.

(f)   The Fees must be paid by direct deposit to a bank account specified by FrankieOne, or by any other method specified on FrankieOne's invoice.

(g)   FrankieOne may charge penalty interest on debts that are overdue by more than 30 days. The penalty interest rate on debtors is fixed under Section 2 of the *Penalty Interest Rates Act 1983 (VIC)* as applied on 1 July each year.

(h)   The Client acknowledges that where a debt remains unpaid for more than 60 days the debt may be referred to a debt collection agency. The Client will be liable for all costs associated with the collection of the debt.

6.2   GST

(a)   In this **clause 6.2**:

(i)   **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*; and

(ii)   terms used in this **clause 6.2** shall have the same meaning as in the GST Act.

(b)   Unless expressly specified to the contrary, all amounts payable under this agreement (**consideration**) by one party (**payor**) to the other (**payee**) have been expressed to be exclusive of GST. The payor will, at the same time as paying the consideration to the payee, pay an additional amount on account of the GST, so that after deduction of GST, the payee receives no less than the amount of the consideration.

(c)   Where a party is required under this agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the

representative member for a GST group of which the other party is a member, is entitled.

7   LIABILITY AND INDEMNITIES

7.1   General limitation on FrankieOne's liability

(a)   The Client acknowledges that FrankieOne has made no warranties that the Software is error free. If the Software has been provided for evaluation or testing purposes, then the Client acknowledges that the Software may contain errors. In such circumstances, the Client accepts all risk in using that version of the Software.

(b)   The Client acknowledges that the Software and/or Third Party Sources may be unavailable for use by the Client during periods of planned maintenance or upgrades, or where FrankieOne considers such unavailability is necessary to rectify an issue with the Software or relevant Third Party Source.

(c)   The Client acknowledges that FrankieOne has not made and will not make any express or implied warranties in relation to the Software or Services or any other goods or services provided by FrankieOne under this agreement, other than those warranties expressly contained in this agreement. Subject to **clause 7.2** any term that would be implied into this agreement, including without limitation any condition or warranty, is hereby excluded.

(d)   Subject to **clause 7.2** the Client agrees that FrankieOne will not be liable in respect of any claim by the Client that arises due to a failure by FrankieOne to provide its Software or Services, to the extent such failure is caused or contributed to by a Force Majeure Event.

(e)   The Client agrees that its sole remedy in relation to any defect or errors in the Services or the Software, is to request Support Services in relation to the same in accordance with **clause 5**, or request the redelivery of any defective part in accordance with **clause 2**.

7.2   Consumer law limitations

(a)   If the *Competition and Consumer Act 2010* (Cth) (or analogous legislation) applies to this agreement and permits the limitation of liability for breach of warranty implied by statute, the liability of FrankieOne is limited, at the option of FrankieOne, to:

   (i)   in the case of goods, any one or more of the following:

      (A)   the replacement of the goods or the supply of equivalent goods;

      (B)   the repair of the goods;

      (C)   the payment of the cost of replacing the goods or of acquiring equivalent goods; or

      (D)   the payment of the cost of having the goods repaired; and

   (ii)   in the case of services:

      (A)   the supplying of the services again; or

      (B)   the payment of the cost of having the services supplied again.

(b)   Any of the terms and conditions of this agreement which limit or exclude any term, condition or warranty, express or implied, or the liability of FrankieOne will apply to the extent permitted by law and will not be construed as excluding, qualifying or limiting the Client's statutory rights or remedies arising by virtue of the breach of any

implied term of this agreement where such exclusion, qualification or limitation would be prohibited by legislation.

(c)   If the consumer guarantees under the Australian Consumer Law apply to the provision of any goods or services by FrankieOne to the Client, then FrankieOne provides the following notice to the extent required by the Australian Consumer Law:

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

   (i)   to cancel your service contract with us; and

   (ii)   to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

7.3   Indirect loss

Each party agrees the other party shall not be liable:

(a)   in FrankieOne's case - FrankieOne will not be liable in respect of Indirect Loss suffered by the Client arising out of or in connection with the provision of the Software or Services or the provision of any other goods or services under this agreement and whether as a result of any breach or default, by FrankieOne; and

(b)   in the Client's case - The Client will not be liable in respect of any Indirect Loss suffered by FrankieOne arising out of or in connection with this agreement and whether as a result of any breach or default, by the Client.

7.4   Liability limitation

Subject to **clause 7.5,** The maximum liability of FrankieOne under this agreement for any and all breaches of this agreement, and for any negligence in relation to this agreement, will not exceed:

(a)   the amount of the Fees paid in the prior 12 months by the Client;

7.5   Carve Outs

The limitation on FrankieOne's liability in relation to this agreement which is provided in **clause 7.4** will not apply to limit FrankieOne's liability under:

(a)   the indemnities given in **clauses 7.6** and **8.5**; and

(b)   a breach by FrankieOne of its obligations under **clauses 8.3**, 9, 12.3 and 12.4.

7.6   General Indemnities

(a)   Each party indemnifies the other party, and the other party's officers and employees (together the **"Indemnified Parties"**) for any direct loss, cost, expense or damage (including legal costs on a full indemnity basis) which are suffered or incurred by the Indemnified Parties as a direct result of:

   (i)   the death or personal injury of any person;

   (ii)   loss of, or damage to, any tangible property; and

(iii)   any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation,

to the extent caused or contributed to by any act or omission of the indemnifying party, its personnel or Authorised Users.

(b)   The Client further indemnifies FrankieOne, its agents, officers and employees (together the "**FrankieOne Indemnified Parties**") against any direct loss, cost, expense or damage (including legal costs on a full indemnity basis) which is suffered or incurred by the FrankieOne Indemnified Parties as a direct result of any action, claim, demand or proceedings instituted against FrankieOne by a third party as a result of the use of the Software by the Client, other than an Infringement Claim, to the extent caused or contributed to by any act or omission of the Client, its personnel or any Authorised User.

7.7   Document Verification Services

If the SOW indicates that the Software Licence includes the DVS Module, the Client acknowledges and agrees that as a Gateway User all disclaimers, exclusions, limitations of liability and indemnities that form part of this agreement enure for the benefit of, and can be directly enforced by the DVS Manager.

In this **clause 7.7**, capitalised terms have the following meanings:

"**DVS**" means the document verification services as further defined in the DVS Terms.

"**DVS Module**" means the electronic Know-Your-Customer (eKYC) (Australia) DVS.

"**DVS Manager**" has the meaning given to it in the DVS Terms.

"**DVS Terms**" means the third party Document Verification Service Business User Terms and Conditions, a link to which is provided in the SOW."**Gateway User**" means an Authorised User to whom FrankieOne provides a service to connect to and interact with the DVS.

8   INTELLECTUAL PROPERTY RIGHTS

8.1   Ownership of the Software and Material

FrankieOne will at all times be the owner of the Intellectual Property Rights in the Software, the Material and each Customisation, together with all Updates of the same. The Client hereby assigns to FrankieOne any and all Intellectual Property Rights which it has in respect of the foregoing.

8.2   Ownership of Non-Software Deliverables

If the SOW requires FrankieOne to produce any Non-Software Deliverables, then unless specified in the relevant SOW to the contrary, FrankieOne will be the owner of all Intellectual Property Rights in the Non-Software Deliverables but will grant an unrestricted, non-exclusive, worldwide, royalty free, perpetual licence to the Client to make any use of the Non-Software Deliverables whatsoever.

8.3   Ownership of Client Works

The Client will be the owner of all Intellectual Property Rights in the Client Works. The Client however grants FrankieOne a non-exclusive unrestricted licence to use the Client Works for the purposes of providing the Software and the Services. The forgoing licence will terminate upon the termination of this agreement.

8.4   Ownership of Third Party Results

The Client acknowledges that it has no Intellectual Property Rights in the Third Party Results and that the Intellectual Property Rights in the Third Party Results will be owned either by FrankieOne or the relevant Third Party Source who provided the Third Party Results.

8.5 Infringement Claims

(a) FrankieOne warrants that:

(i) it has all requisite rights in the Software, the Material, and the Non-Software Deliverables, to licence the same to the Client as stated in this agreement; and

(ii) the Client's use of the Software, Materials and Non-Software Deliverables will not infringe the Intellectual Property Rights of any person in relation to the same.

(b) The warranty contained in **clause 8.5(a)** will not apply to the extent that the relevant breach of Intellectual Property Rights (which results in the warranty being breached) is caused or contributed to by the Client or the Client Works.

(c) If a third party makes an Infringement Claim against the Client, then FrankieOne will indemnify the Client against all reasonable costs and legal fees incurred by the Client in defending the Infringement Claim, together with any damages or other remedies payable by the Client to the third party who institutes or makes the Infringement Claim. FrankieOne's liability under the forgoing indemnity will not apply to the extent that the Client Works or the Client causes or contributes to the Infringement Claim, or to the extent that the Client requests any functionality or features be included in the Software which causes or contributes to the Infringement Claim, and the indemnity is also subject to:

(i) the Client promptly notifying FrankieOne in writing of the Infringement Claim once it is received and providing FrankieOne with copies of all letters and documents relating to the Infringement Claim;

(ii) the Client providing all reasonable assistance and cooperation to FrankieOne in relation to the conduct of the defence of the Infringement Claim and any relevant counter claim; and

(iii) FrankieOne being given sole conduct of the defence of the Infringement Claim and if required by FrankieOne, an assignment of all of the Client's rights in relation to the Infringement Claim.

(d) If it is found that the Software, the Material or the Non-Software Deliverables infringe the Intellectual Property Rights of a third party, then FrankieOne may, at its cost:

(i) procure the right for the Client to use the infringing items or components;

(ii) replace the infringing items or components with items or components that are non-infringing; or

(iii) if the forgoing is not possible or practicable, terminate this agreement by written notice to the Client.

9   CONFIDENTIALITY

9.1 Each party must keep confidential, the Confidential Information of the other party and must only use that Confidential Information for the purposes of this agreement.

9.2 A party may only disclose the Confidential Information of the other party:

(a) to the extent that the information disclosed is in the public domain (but not as a result of a breach of this agreement);

(b)   to the extent required by law or the rules of a stock exchange on which the disclosing party is listed; and/or

(c)   to the disclosing party's professional advisors and employees, but only on a need to know basis and only where those persons are under a similar obligation of confidentiality as set out in this clause.

10   EXPORT LAWS

10.1   FrankieOne, its employees and its agents may be subject to export control laws of Australia, the United States or other jurisdictions that prohibit or restrict transactions with certain parties, and the type and level of technologies and services that may be exported (**Export Laws**). The Client agrees to comply fully with all such laws and regulations of Australia, the United States and other countries to assure that neither the Software, nor any direct products thereof are exported, directly or indirectly, in violation of Export Laws, or are used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation.

10.2   The Software nor underlying information or technology may be downloaded or otherwise exported or re-exported into (or to a national or resident of) Cuba, North Korea, Iran, Sudan, Syria or any other country to which Australia or the United States has embargoed goods; or to anyone on the U.S. Treasury Department's List of Specially Designated Nationals or the U.S. Commerce Department's Denied Persons List, Unverified List, Entity List, Non-proliferation Sanctions or General Orders, or similar lists or orders in Australia or other jurisdictions. By using the Software, the Client is agreeing to the foregoing and it is representing and warranting that it nor its Affiliates are not located in, under the control of, or a national or resident of any such country or on any such list, and that it acknowledges that it is responsible to obtain any necessary Australian or United States government authorisation to ensure compliance with such laws.

11   COMPLIANCE WITH THIRD PARTY LICENCES

11.1   The Software may incorporate components, or make use of services, licensed or provided to FrankieOne by third parties (including Third Party Sources), which may be subject to their own End User Licence Agreements (**Third Party Licences**).

11.2   The Client agrees:

(a)   to be bound by and observe all terms and conditions of such Third Party Licences which are disclosed to the Client in writing by FrankieOne; and

(b)   to not undertake any act, or cause any omission, which places FrankieOne in breach of a Third Party Licence.

11.3   The Client acknowledges and agrees that FrankieOne may at any time vary:

(a)   the functionality of the Software;

(b)   the components or services it procures from third parties (including Third Party Sources); and

(c)   the Third Party Sources which the Client may access via the Software,

11.4   If a variation by FrankieOne under **clause 11.3** involves:

(a)   a variation to material functionality of the Software (other than a change to a Third Party Source) which could reasonably be expected to cause material disruption to the Client's business operations; or

(b)   removing the Client's access to a Third Party Source which the Client was accessing prior to the variation and fails to provide a substitute Third Party Source which provides substantially the same functionality,

then:

(c)   FrankieOne must provide written notice to the Client as soon as practicable after making a determination to make the variation. The written notice from FrankieOne must advise the Client of:

(i)   the details of the variation and the reasons for it (subject to FrankieOne's confidentiality obligations to the relevant Third Party Sources); and

(ii)   when the variations are expected to come into effect (which in the case of a change described in **clause 11.4(a)** must be no less than 20 Business Days from the date of FrankieOne's notice); and

(d)   at any time within 20 Business Days following the receipt of written notice from FrankieOne under **clause 11.4(c)** the Client may terminate this Agreement, or the relevant SOW which is impacted by the variation (but such termination may only be effected during that 20 Business Day period).

11.5   If the Client fails to terminate this Agreement, or the relevant SOW (as applicable) under **clause 11.4(d))** then the Client will be deemed to have accepted the variation.

12   REGULATORY OBLIGATIONS

12.1   Client responsible for its own compliance

While the Client may use the Software to assist it with complying with one or more laws, the Client acknowledges and agrees that:

(a)   the Software acts as a conduit between the Client and the Third Party Sources. That is, the Software takes information provided by the Client to the Third Party Source, and returns the Third Party Results generated by the Third Party Source based on that information as supplied by the Client;

(b)   if a Third Party Source is unavailable to FrankieOne, or cannot be accessed by the Software (for any reason whatsoever), then the Client will be unable to use that Third Party Source during the period of unavailability;

(c)   subject to **clause 11.4**, FrankieOne may change the Third Party Sources it interfaces with via the Software, by giving prior written notice to the Client;

(d)   neither FrankieOne, or the Software, undertakes any verification or confirmation of the Third Party Results;

(e)   FrankieOne is under no obligation to review any Third Party Results or communicate any discrepancy in a Third Party Result which may place the Client in breach of any law;

(f)   FrankieOne has no responsibility for the accuracy or completeness of the Third Party Results. FrankieOne's sole obligation therein is to display or deliver the Third Party Results to the Client; and

(g)   the Client retains ultimate responsibility for its compliance with applicable laws and FrankieOne has no liability or responsibility whatsoever for the Client breaching any applicable laws or obligations which the Client has to a third party, as a result of any inaccuracy in the Third Party Results or failure of any service provided by a Third Party Source.

12.2   Cooperation with a Government Agency

(a) The Client will be responsible for all dealings with each Government Agency in relation to the Client's use of the Software to assist it in complying with laws administered by the Government Agency.

(b) The Client acknowledges that FrankieOne is under no obligation to advise the Client in relation to any dealings FrankieOne has with a Government Agency, including in relation to queries placed by the Government Agency with FrankieOne about the Client or the Services which FrankieOne provides to the Client.

12.3 Audit

(a) Each party will comply with any request from a Government Agency for the audit of that party. Neither party is under any obligation to inform the other party if such an audit is taking place.

(b) The Client may, on no less than 10 Business Days notice, audit FrankieOne's processes and books and records where such an audit is required to comply with applicable law, or a requirement of a Government Agency. The Client agrees to conduct the audit in a manner which to the extent possible, causes minimum disruption to FrankieOne's business operations. The Client will pay its own costs of the audit and will pay or reimburse FrankieOne for its costs in relation to the audit including any applicable internal staff costs, and the cost of external lawyers, accountants and other advisors to FrankieOne. All information provided by FrankieOne to the Client in relation to the audit shall constitute Confidential Information of FrankieOne.

12.4 Privacy

(a) Each party will comply with their obligations which arise under the *Privacy Act 1988 (Cth)* and General Data Protection Regulation (**GDPR**) (but only to the extent the GDPR applies to the party).

(b) The Client warrants and undertakes to FrankieOne that it has obtained the prior written consent of each individual:

(i) in respect of whom it uses the Software to perform a Transaction; or

(ii) otherwise provides personal information to FrankieOne in relation to that individual,

for the sharing of that individual's personal information with FrankieOne and Third Party Sources via the Software. The Client must ensure that each consent meets the requirements (if any) of the Third Party Sources, as disclosed to the Client from time to time.

(c) If FrankieOne becomes aware of an eligible data breach occurring in relation to FrankieOne, the Software, or any of its other computer systems, which relates to Client Data, then:

(i) FrankieOne will promptly notify the Client of the eligible data breach;

(ii) FrankieOne will carry out an assessment in relation to the eligible data breach as required by the *Privacy Act 1988 (Cth)*;

(iii) the parties will cooperate with each other in relation to meeting their obligations under the *Privacy Act 1988 (Cth)* in relation to the eligible data breach; and

(iv) each party will undertake all necessary steps to mitigate the risk of the eligible data breach causing serious harm to any of the individuals to whom it relates.

(d)   Each party warrants that it has in place:

   (i)   a system to detect and report when an event has occurred that may give rise to reasonable grounds to believe an eligible data breach has occurred;

   (ii)   a system to investigate and assess a suspected eligible data breach within 30 days of becoming aware that there are reasonable grounds to suspect that there may have been an eligible data breach, including a documented procedure for making an evaluation of each investigation; and

   (iii)   in FrankieOne's case, arrangements with its Third Party Sources to report any eligible data breaches within the time periods required in this clause.

(e)   Notwithstanding **clause 12.4(c)**, each party will:

   (i)   promptly report to the other party, any data security incidents which relates to information or data provided to it by the other party, and which the party reasonably considers may impact the business, operations, goodwill or good name of the other party; and

   (ii)   cooperate with the other party in relation to the steps to be taken by both parties to mitigate the effect of the security incident on their respective business, operations and customers.

(f)   For the purposes of this **clause 12.4**, the terms "personal information" and "eligible data breach" shall have the same meaning as in the *Privacy Act 1988 (Cth)*.

12.5   Insurance

(a)   Frankie will maintain insurance policies of the type and at minimum for the amounts below during the Subscription Term:

   (i)   **Professional Indemnity Insurance:** Professional indemnity insurance for the Frankie's liability for its acts and omissions in performing the Services, including coverage for network security and privacy, for a limit of not less than AUD$5,000,000; and

   (ii)   **Public Liability Insurance:** Public liability insurance with a limit of not less than AUD$5,000,000 which insures Frankie for loss or damage to or loss of use of any property and the bodily injury, disease, illness (including mental illness) or death of any person as a result of Frankie's acts and omissions in performing the Services.

   (iii)   **Cyber Liability Insurance:** with a limit of no less than AUD$2 million per claim and in the annual aggregate.

12.6   Security

(a)   Frankie uses a variety of security measures to seek to protect the Client Data and transaction records, including encryption or the use of access codes. Frankie has implemented and will maintain an Information Security Management System (ISMS) in line with the International Standard for Information Security, ISO/IEC 27001 (**Security Policy**).

(b)   The Client will be responsible for keeping secure all encryption keys or other access codes provided or made available by Frankie. The Client acknowledges and agrees that if it loses encryption keys or other access codes, Frankie may not be able to replace them and Frankie may not be able to access Client information or transaction records stored on the platform.

13 DISPUTE RESOLUTION

13.1 If a party has a Dispute with the other party in relation to this agreement, then the party must attempt to resolve that Dispute in accordance with this **clause 13**, before instituting legal proceedings in relation to the Dispute. The forgoing however will not prohibit a party applying to a court for injunctive relief or other urgent relief.

13.2 If a Dispute arises, either party may serve a notice (**Dispute Notice**) on the other party setting out the nature of the Dispute. The parties must then use best commercial endeavours to meet within 21 days of the Dispute Notice being served, to attempt to resolve the Dispute.

13.3 If the Dispute remains unresolved more than 60 days following a Dispute Notice being served under **clause 13.2**, then either party may require that the Dispute be submitted to mediation. If this occurs, then:

(a) the parties shall refer the dispute to the Resolution Institute (ACN 008 651 232), for facilitation of a mediation in accordance with the Resolution Institute's Mediation Rules;

(b) the parties must co-operate with Resolution Institute as facilitator; and

(c) if within 14 days after referral of the dispute to Resolution Institute the parties have not agreed upon the mediator or other relevant particular, then the mediator and any other relevant particular will be determined in accordance with Resolution Institute's Facilitation Rules.

14 MODERN SLAVERY, ANTI-BRIBERY AND CORRUPTION

14.1 In performing its obligations in connection with this Agreement, the parties will and will ensure that each of its Representatives will (or, in the case of any third party Representatives, use reasonable endeavours to ensure that they will):

(a) comply with:

(i) all Modern Slavery Requirements; and

(ii) all Relevant Laws in relation to anti-bribery, anti-corruption, money laundering, fraud or similar activities; and

(b) do all things required and necessary to mitigate or reduce modern slavery risks in its operations and supply chains and enable the other party to comply with Modern Slavery Requirements.

14.2 Each party must immediately give written notice to the other party if it becomes aware of a suspected or actual breach by it or its Representatives under the requirements set out in this clause 14.

15 MISCELLANEOUS

15.1 Apart from where expressly stated in this agreement, neither party is the agent or partner of the other party.

15.2 FrankieOne may subcontract its obligations under this agreement to a third party, provided that FrankieOne remains ultimately responsible for the performance of those obligations as required by the terms of this agreement.

15.3 A notice under this agreement must be in writing and must be sent to the address or email address of the recipient as specified in this agreement, or otherwise notified by the recipient to the sender from time to time. A notice will take effect when it is received. A notice will be deemed to have been received:

(a) in the case of a notice delivered by hand, on the date of delivery;

(b) in the case of a notice delivered by pre-paid post, if sent to an address in the same territory as the sender, then 3 days following the notice being sent, and if sent to an address in a different territory, then 7 days following the notice being sent; and

(c) in the case of a notice sent by email, at the time the email is sent provided that the recipient or their email server confirms receipt of the email.

15.4 This agreement may only be amended under **clause** 2.2(c) or otherwise by a document in writing signed by both parties.

15.5 Unless otherwise requested in writing by the Client, FrankieOne may use the Client's corporate identity (if applicable) as part of promoting the Software in the marketplace.

15.6 This agreement supersedes all prior representations, arrangements, understandings and agreements between the parties relating to the subject matter of this agreement and sets forth the entire and exclusive agreement and understanding between the parties relating to the subject matter of this agreement.

15.7 A provision of or a right created under this agreement may not be waived except in writing signed by the party or parties to be bound by the waiver. No single or partial exercise by any party of any right, power or remedy under this agreement will preclude any other or further exercise of that or any other right, power or remedy. The rights, powers or remedies provided in this agreement are cumulative with and not exclusive of any rights, powers or remedies provided independently of this agreement.

15.8 If any provision of this agreement is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this agreement to the intent that the invalid or unenforceable provision will be treated as severed from this agreement.

15.9 FrankieOne may assign or transfer its rights and obligations that arise under this agreement on written notice to the Client. The Client must not assign or transfer its rights or obligations that arise under this agreement without the prior written consent of FrankieOne (which may be withheld).

15.10 Each provision of this agreement capable of having effect after termination and each representation and warranty made in this agreement will survive the execution, delivery and termination of this agreement and the performance of all obligations under this agreement and will not merge on termination.

15.11 The parties acknowledge and agree that no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or part of it.

15.12 This agreement may be executed in any number of counterparts and all counterparts taken together will constitute one instrument. A signed copy of this agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this agreement for all purposes.

15.13 This agreement is governed by, and must be construed in accordance with, the laws of the State of Victoria, Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Victoria, Australia.

Executed as an agreement

SIGNED by the authorised person named below for and on behalf of **Frankie Financial Pty Ltd ABN 61 623 506 892**:

Name of authorised person	Signature

Position

SIGNED by the authorised person named below for and on behalf of <mark>**Client Name ABN**</mark>:

Name of authorised person	Signature

Position

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