

Apromore Software-as-a-Service Agreement

1 Parties and agreement

1.1 Platform Services

The Platform Services provide a wide range of business process analytics functionality, including functionality for

- (a) importing, storing and organizing business process execution data (event logs) and business process models;
- (b) visualizing and editing process models;
- (c) discovering process maps and process models from event logs;
- (d) filtering event logs by removing certain events or traces;
- (e) analysing the performance of a business process using performance measures; and
- (f) other functionality related to the use of event logs and process models.

1.2 Parties

This Agreement is between you, the entity that is a party to an Order Form (referred to as **you** or **your**) and **Apromore Pty Ltd** (ABN: 51 635 938 760), its successors and assignees (referred to as **us**, **we** or **our**) and collectively the Parties. This Agreement forms the agreement under which we provide you with the Services and shall govern any Order Forms entered between the Parties that reference this Agreement. Please read this Agreement carefully. If you have any questions, please contact us using the contact details provided in an Order Form before you access or use the Services.

1.3 Definitions

The definitions and interpretation section in this Agreement are set out in **clause 22** (*Definitions and interpretation*).

2 Agreement & Services

2.1 Services

You have requested the Services as set out in one or more Order Forms. We will supply the Services in accordance with this Agreement.

2.2 Agreement & Conflicting terms

This Agreement is made up of the following documents (in order of precedence) and shall collectively be referred to as the **"Agreement"**:

- (a) this Apromore Software-as-a-Service Agreement;
- (b) any applicable Order Form, unless expressly indicated otherwise in such Order Form; and
- (c) any terms and conditions as set out on a URL provided by us.

3 Acceptance

3.1 Acceptance

You accept this Agreement by:

- (a) signing this Agreement (if applicable);
- (b) signing an Order Form that references this Agreement;
- (c) clicking a box indicating acceptance; or
- (d) accessing or using the Services.

3.2 Authority

By accepting this Agreement, you warrant:

- (a) to us that you have reviewed this Agreement and will use the Services in accordance with it;
- (b) to us that you have the authority to act on behalf of any person or entity for whom you are using the Services and you are deemed to have agreed to this Agreement on behalf of any entity for whom you use the Services; and
- (c) to us that you have all hardware, software and services which are necessary to access and use the Services.

4 Term

4.1 Agreement Term

This Agreement commences on the Agreement Start Date and continues for as long as any Order Form remains in effect, unless earlier terminated in accordance with this Agreement (**Agreement Term**).

4.2 Term of Order Forms for Platform Services

Where an Order Form is for the subscription to one or more Platform Services, the initial term of each Order Form will begin on the Start Date of such Order Form and continue for the term set forth therein (**Initial Term**). Except as set forth in such Order Form, each Order Form will automatically renew for successive periods of 12 months (each a **"Renewal Term"**) unless a Party provides the other Party with written notice of non-renewal at least thirty (30) days prior to the end of the then-current term of the Order Form.

4.3 Term of Order Forms for Professional Services

Where an Order Form is for Professional Services only, such Order Form shall take effect on the Start Date of the Order Form and remain in effect until:

- (a) all Professional Services under such Order Form have been provided; or
- (b) the applicable Order Form is terminated in accordance with this Agreement.

5 Accounts for Platform Services

5.1 Create Account

We, the Platform Services or you may create one or more accounts for yourself in order for you and your Authorised Users to access and use the Platform Services (**Account**). You must ensure that any information you provide to us, or we request from you as part of the creation process is complete and accurate.

5.2 Account security

You are responsible for:

- (a) all activity on your Account, including any activity by Authorised Users;
- (b) using commercially reasonable efforts, maintaining the confidentiality and security of your Account login credentials and the login credentials of Authorised Users to prevent unauthorised access to your Account;

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- (c) all data uploaded or posted under your Account to the Platform Services;
- (d) ensuring that any activities on your Account comply with this Agreement; and
- (e) promptly notifying us upon becoming aware of any unauthorised use, or access to, the Platform Services through your Account.

6 Licence and restrictions on use

6.1 Licence

In consideration for payment of the Fees, we grant you a non-exclusive, non-transferable (except with our written permission), non-sublicensable (except as otherwise permitted under this Agreement), personal and revocable licence to access and use the Platform Services ordered under an Order Form for the Order Form Term and solely for your internal business purposes (**Licence**).

6.2 Licence Restrictions

You must not (and must ensure your Authorised Users do not) access or use the Platform Services except as permitted by the Licence and you must not and must not permit any other person to:

- (a) use the Platform Services in any way which is in breach of any applicable Laws or which infringes any person's rights, including Intellectual Property rights;
- (b) use the Platform Services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;
- (c) use the Platform Services in any way that damages, interferes with or interrupts the supply of the Platform Services;
- (d) introduce malicious programs into our hardware, software or Systems, including viruses, worms, trojan horses and e-mail bombs;
- (e) reveal your Account's login credentials to others or allow others to use your Account (other than Authorised Users);
- (f) use the Platform Services to carry out security breaches or disruptions of a network. Security breaches include accessing data where you are not the intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data (including network sniffing/monitoring, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
- (g) use any program/script/command, or send messages of any kind, with the intent to interfere with, or disable, any person's use of the Platform Services;
- (h) send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages or use the Platform Services in breach of any person's privacy (such as by way of identity theft or "phishing"); or
- (i) use the Platform Services to circumvent user authentication or security of any of our networks,

accounts or hosts or those of our members or suppliers.

7 Authorised Users

7.1 Authorised Users

If set out in an Order Form, you agree that the Licence permits you to access and use the Platform Services in accordance with the number of Authorised Users, as set out in that Order Form.

7.2 Multiple Users

Only one member of your Personnel may be assigned a User account and other individuals may not use the same User account at the same time. You may reassign a User account to a different member of your Personnel only after 90 days from the last reassignment of that same User account, unless the reassignment is due to:

- (a) termination of the Personnel's employment or contract;
- (b) a change of the Personnel's duties and responsibilities which no longer require the user to access the Platform Services for a period of at least 90 days; or
- (c) temporary reallocation of a User account to cover the long term absence of the Personnel.

7.3 Increasing Authorised Users

You may, at any time, increase the number of Authorised Users by requesting the increase in writing to us and entering into an additional mutually executed Order Form for any new fees for the Additional Users which will be applicable as of the effective date of such Order Form, in accordance with **clause 10** of this Agreement.

7.4 Administrators

Through the Platform Services, you may be able to specify certain Authorised Users as "Administrators". Administrators will have additional rights and controls over your Account and other Authorised User accounts such as creating, modifying and de-provisioning Authorised Users and managing access to Customer Data within the Platform Services. Without limiting **clause 5** and **6** of this Agreement, which fully apply to Administrators, you are responsible for whom you allow to become Administrators and their actions on your Account. You agree that we are not responsible for your administration and internal management of your Account, and we shall not be liable for any loss or unauthorised access to Customer Data caused directly or indirectly by an Administrator.

8 Limit on Dataset Size

8.1 Dataset Size

If set out in an Order Form, you agree that the Licence permits you to access and use the Platform Services in accordance with the Dataset Size as set out in that Order Form.

8.2 Increasing Dataset Size

You may, at any time, increase the maximum allowed size of a dataset by requesting the increase in writing to us and entering into a mutually executed Order Form for any new fees, which will be applicable as of the effective date of such

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Order Form, in accordance with **clause 10** of this Agreement.

9 Service Levels

During the Agreement Term, and subject to the terms and conditions of this Agreement and any limitations specified in an Order Form, we will:

- (a) make the Platform Services available to you; and
- (b) provide Support,

in accordance with the Services Levels outlined in the Schedule of this Agreement.

10 Additional Services

10.1 Purchase of Additional Services

You may purchase additional services by notifying us in writing and entering into one or more additional Order Forms, each of which will provide a general description of the Services to be provided to you, the period we will provide the additional Services, and the Fees payable. All terms and conditions set forth in this Agreement are automatically incorporated in, and deemed part of, each such Order Form.

10.2 Billing of Additional Services

Unless otherwise specified in the applicable Order Form, we will charge you for any additional services at our then-current rates. If you purchase an increase to a current subscription to the Platform Services (e.g. purchase an additional Authorised User, increase dataset size), the fees will be prorated for the remainder of the then-current Billing Period.

11 Professional Services

11.1 Our responsibilities

Where you order Professional Services under an Order Form, we will:

- (a) perform the Professional Services:
 - (i) in a proper and professional manner, and in accordance with industry practice;
 - (ii) with due care, skill and diligence;
 - (iii) within the timeframes as may be advised by you and mutually agreed, except where there is a delay by you as described in **clause 21.3**; and
 - (iv) in accordance with any requirements set out in the applicable Order Form;
- (b) promptly reperform any part of the Professional Services that are not performed or provided in accordance with **clause 11.1(a)**, or if such part of the Professional Services cannot be re-performed, we will refund you any amounts paid by you for them, provided you provide us notification of our nonconformity of **clause 11.1(a)** within thirty (30) days of the performance thereof. This shall be the sole remedy for a breach of **clause 11.1(a)**.

11.2 Deliverables from Professional Services

Subject to your compliance with **clause 15**, we grant you a worldwide, royalty-free, revocable, non-sublicensable (except as otherwise permitted under this Agreement)

licence to use and reproduce Deliverables in order to enjoy the benefit of the Professional Services. For the avoidance of doubt, this **clause 11.2** does not relate to our Software or the Platform Services which are licensed under **clause 6**.

12 Open Source Software

To the extent that the Platform Services, or any part of the Software, is licensed under an open source software arrangement:

- (a) the terms of the Open Source Licence will apply to that Software; and
- (b) the provisions of the Open Source Licence will prevail over the remainder of the Agreement in the event and to the extent of any inconsistency.

13 Third Parties

13.1 Third Party Inputs

You acknowledge and agree that:

- (a) the provision of the Platform Services may be contingent on, or impacted by, third parties (including those specified in the Data Processing Agreement), other customers' use of our services, suppliers, other subcontractors (**Third Party Inputs**); and
- (b) despite anything to the contrary, to the maximum extent permitted by law, we will not be responsible, and will have no Liability, for any default or breach of this Agreement or law, if such default or breach was caused or contributed to by any Third Party Inputs.

14 Privacy

14.1 Privacy Laws & Data Processing Agreement

We will at all times comply with the Privacy Laws. If in the course of providing the Services we process Personal Data that is contained in the Customer Data, the Data Processing Agreement shall apply to such processing.

14.2 Your obligations

- (a) You must, and must ensure that all of your Personnel and Authorised Users comply with the requirements of the Privacy Laws in respect of all Personal Data collected, used, stored or otherwise dealt with under or in connection with this Agreement.
- (b) You acknowledge that the Platform Services were not designed to process Sensitive Information and accordingly, you agree not to submit or upload Sensitive Information to the Platform Services or use the Platform Services to collect, process or store Sensitive Information.
- (c) Without limiting this **clause 14**, you must:
 - (i) notify Authorised Users, Personnel, or other natural persons from whom Personal Data is collected about any matter prescribed by Privacy Laws in relation to the collection, use and storage of their Personal Data;
 - (ii) ensure that any Personal Data transferred to us is complete, accurate and up to date; and

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- (iii) notify us immediately upon becoming aware of any breach of a Privacy Law that may be related to the use of Personal Data under this Agreement.
- (d) Without limiting this **clause 14**, you may only disclose Personal Data in your control to us if:
 - (i) you are authorised by Privacy Laws to collect the Personal Data and to use or disclose it in the manner required by this Agreement; and
 - (ii) you have informed the individual to whom the Personal Data relates, that it might be necessary for you to disclose their Personal Data to third parties and you have obtained their consent to do so.

15 Fees and payment

15.1 Fees

Unless the relevant Order Form states otherwise, we will invoice you for any Fees payable at the start of the Initial Term of an Order Form and no more than 30 days before the start of each subsequent Billing Period.

15.2 Failure to pay invoices

If any payment has not been made in accordance with the Payment Terms, we may (in our absolute discretion):

- (a) immediately cease or suspend the provision of the Services, and recover as a debt due and immediately payable from you any additional costs of doing so; and
- (b) engage debt collection services and/or commence legal proceedings in relation to any such amounts.

15.3 Recommencement of services

If you rectify such non-payment after the Services have been suspended, then we will recommence the provision of the Services as soon as reasonably practicable.

15.4 Payment

You must pay us the Fees and any other amount payable to us under this Agreement, without set off or delay, in accordance with the payment terms of the relevant Order Form or as agreed between the Parties from time to time.

15.5 Fees

Except as otherwise expressly specified in an Order Form, the Fees are subject to change upon thirty (30) days' notice from us to you and will apply to the next Billing Period. Such notice may be provided at any time via email or via a notification to your Account.

15.6 Sales tax

All Fees exclude Goods and Services Tax, Value-Added Tax or any other applicable sales taxes. You agree to pay any sales taxes applicable to your use of the Platform Services, the Professional Services or any other additional services provided by us under this Agreement. If we have the legal obligation to pay or collect sales taxes for which you are responsible, we will invoice you and you will pay that amount unless you provide us with a valid tax exemption certificate authorised by the appropriate taxing authority.

16 Intellectual Property Rights

16.1 Our Intellectual Property

All Intellectual Property in the Software, Platform Services, and all Intellectual Property developed, adapted, modified or created by us or our Personnel (including in connection with this Agreement, the Software and the Platform

Services and any machine learning algorithms output from the Platform Services) is and will remain owned exclusively by us or our third party service providers.

16.2 Obligations

You must not, without our prior written consent:

- (a) copy or modify, in whole or in part, any of our Intellectual Property;
- (b) use, in whole or in part, any of our Intellectual Property except as permitted in accordance with this Agreement;
- (c) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of our Intellectual Property to any third party;
- (d) reverse assemble, reverse engineer, reverse compile or enhance the Platform Services;
- (e) breach any Intellectual Property Rights connected with the Software or the Platform Services, including altering or modifying any of our Intellectual Property;
- (f) cause any of our Intellectual Property to be framed or embedded in another website; or create derivative works from any of our Intellectual Property;
- (g) resell, assign, transfer, distribute or make available the Platform Services to third parties;
- (h) "frame", "mirror" or serve any of the Platform Services on any web server or other computer server over the Internet or any other network; or
- (i) alter, remove or tamper with any trademarks, any patent or copyright notices, any confidentiality legend or notice, any numbers or any other means of identification used on or in relation to the Platform Services or Software.

16.3 Non identifying analytics

Despite anything to the contrary in this Agreement or elsewhere, for the purposes of monitoring the availability, and performance of the Platform Services, we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Platform Services (**Platform Analytics**). You agree that we may make such Platform Analytics publicly available including to our third party service providers, provided that it:

- (a) does not contain identifying information; and
- (b) is not compiled using a sample size small enough to make the underlying Customer Data identifiable.

16.4 Rights in Platform Analytics

We and our licensors own all right, title and interest in and to the Platform Analytics and all related Software, technology, documentation and content provided in connection with the Platform Analytics, including all Intellectual Property rights in the foregoing.

16.5 Your Intellectual Property

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As between you and us:

- (a) all Customer Data is and remains your property; and
- (b) you retain any and all rights, title and interest in and to the Customer Data, including all copies, modifications, extensions and derivative works.

16.6 Licence

You grant us a limited licence to copy, transmit, store and back-up or otherwise access the Customer Data, and to transfer Customer Data to our subcontractors, during the Agreement Term solely to:

- (a) supply the Services to you (including to enable you and your Personnel to access and use the Services);
- (b) diagnose problems with the Platform Services;
- (c) monitor the security of the Platform Services;
- (d) enhance and otherwise modify the Platform Services; and
- (e) develop other services, provided we de-identify the Customer Data,

as reasonably required to perform our obligations under this Agreement.

16.7 Feedback

You may provide Feedback to us regarding the Services. You acknowledge that providing Feedback is voluntary and you hereby grant us a perpetual, irrevocable, royalty-free and fully paid right to use and otherwise exploit in any manner any Feedback provided by you, including for the purpose of improving and enhancing the Services, provided that you are not referenced in such use.

16.8 Your Data and compliance

- (a) You must, at all times, ensure the integrity of the Customer Data and that your use of the Customer Data is compliant with all Laws.
- (b) You represent and warrant that:
 - (i) you have obtained all necessary rights, releases and permissions to provide all your Customer Data to us and to grant the rights granted to us in this Agreement; and
 - (ii) the Customer Data (and its transfer to and use by us) as authorised by you, under this Agreement does not violate any Laws (including those relating to export control and electronic communications) or rights of any third party, including any Intellectual Property rights, rights of privacy, or rights of publicity; and
 - (iii) any use, collection and disclosure authorised in this Agreement is not inconsistent with the terms of any applicable privacy policies.

17 Liability

17.1 Liability

Despite anything to the contrary, to the maximum extent permitted by law:

- (a) the maximum aggregate Liability arising from or in connection with this Agreement (including the Services or the subject matter of this Agreement) will be limited to, and must not exceed in the aggregate

for all claims the total amount of Fees you paid (or payable to us) under the Order Form(s) giving rise to such Liability in the 12-month period directly preceding the date on which such Liability arose; and

- (b) neither Party will be liable for any Consequential Loss, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

17.2 Exclusions to Liability

Despite anything to the contrary, to the maximum extent permitted by law, we will have no Liability, and you waive and release us from and against, all Liability (whether under statute, contract, negligence or other tort, indemnity, or otherwise) arising from or in connection with any:

- (a) loss of, or damage to, any property or any injury to or loss to any person;
- (b) failure or delay in providing the Services;
- (c) breach of this Agreement or any Laws; or
- (d) the Computing Environment, where caused or contributed to by any:
- (e) Force Majeure Event;
- (f) a fault, defect, error or omission in the Computing Environment or Customer Data; or
- (g) act or omission of you, your related parties, Authorised Users, Personnel or any third party (including customers, end users, suppliers, providers or subcontractors),

and, in any event, any error, omission or lack of suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Services.

17.3 Indemnity

To the maximum extent permitted by law, you indemnify and continue to indemnify us against all Liability we suffer or incur, arising from or as a consequence of a breach of **clause 14 (Privacy)**, **clause 16 (Intellectual Property Rights)**, **clause 20 (Confidential Information)** and your Authorised Users' use of the Platform Services contrary to this Agreement, including from any claim relating to the Customer Data.

17.4 ACL

Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection Laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of our services which cannot be excluded, restricted or modified (**Statutory Rights**). Nothing in this Agreement attempts to exclude, restrict or modify your Statutory Rights as a consumer under the ACL. Any and all other warranties or conditions which are not guaranteed by the ACL are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in this Agreement.

17.5 Acknowledgement

You acknowledge and agree that:

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- (a) you are responsible for all users using the Platform Services, including your Personnel and any Authorised Users; and
- (b) your use of the Platform Services and any associated programs and files at your own risk;
- (c) the technical processing and transmission of the Platform Services, including your Customer Data, may involve:
 - (i) transmissions over various networks; and
 - (ii) changes to conform and adapt to technical requirements of connecting networks or devices;
- (d) we may use third party service providers to host the Platform Services;
- (e) the Platform Services may use third party products, facilities or services. We do not make any warranty or representation in respect of the third party products, facilities or services;
- (f) we do not guarantee that any file or program available for download and/or execution from or via the Platform Services is free from viruses or other conditions which could damage or interfere with data, hardware or software with which it might be used;
- (g) we are not responsible for the integrity or existence of any data on the Computing Environment, network or any device controlled by you or your Authorised Users;
- (h) any Deliverables, information, advice, material and work (including the Professional Services) provided by us under this Agreement does not constitute legal, financial, merger, due diligence or risk management advice; and
- (i) we may pursue any available equitable or other remedy against you if you breach any provision of this Agreement.

18 Termination

18.1 Mutual Termination

The Parties may terminate:

- (a) this Agreement (including all Order Forms); or
 - (b) any one or more Order Forms,
- by a mutually signed agreement.

18.2 Termination for cause of this Agreement

To the extent permitted by law, either Party may terminate this Agreement (or one or more Order Forms), if the other Party:

- (a) has breached a material term of this Agreement and has failed to remedy such breach within twenty (20) Business Days of receiving notice to do so, subject to any other express right of termination;
- (b) ceases operation without a successor; or
- (c) is subject to an Insolvency Event.

18.3 Termination for failure to pay

We may terminate this Agreement (including all Order Forms) by providing you with five (5) Business Days' notice, in our sole discretion, if you fail to pay an invoice within 30 days of the invoice payment date.

18.4 Effect of termination

On termination of this Agreement:

- (a) you must cease using the Platform Services and we will cease to provide the Platform Services;
- (b) you must pay for all Services provided under this Agreement including Services which have been performed and have not yet been invoiced to you, and all other amounts due and payable under this Agreement, including under an indemnity, within five (5) Business Days of termination;
- (c) you agree that any payments made are not refundable except:
 - (i) where you terminate this Agreement in accordance with **clause 18.2** or **clause 21.7**; or
 - (ii) where you are entitled to a refund for payments made for Professional Services in accordance with **clause 11.1(b)**.
- (d) if you terminate this Agreement in accordance with **clause 18.2** or **clause 21.7**, we will refund you any prepaid Fees for Platform Services on a pro-rated basis for the remainder of the then-current Billing Period of the relevant Order Forms after the effective date of termination;
- (e) if we terminate this Agreement in accordance with **clause 18.2**, you must pay any unpaid Fees covering the remainder of the Agreement Term after the effective date of termination;
- (f) you must promptly return (where possible) or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property;
- (g) we must promptly return (where possible) or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property unless we are required by Law or regulatory requirements to retain such information;
- (h) for the avoidance of doubt, any provisions of this Agreement that by their nature survive the termination of this Agreement will remain in force after this Agreement Term; and
- (i) we will remove your Customer Data within 30 days of the date of termination of this Agreement, as described in **clause 18.5**.

18.5 Remove your data

Upon request by you within 21 days after the effective date of termination or expiration of this Agreement, we will make the Platform Services available to you for the sole purpose of retrieving your Customer Data. After this 21-day period (and no later than 30 days after the date of termination or expiration of this Agreement), we will delete or destroy all your Customer Data on the Platform Services unless legally prohibited.

18.6 Accrued rights

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The accrued rights, obligations and remedies of the Parties are not affected by the termination of this Agreement.

19 General Warranties

19.1 Our warranties

We warrant and agree that:

- (a) we are properly constituted and have the right and authority to enter into this Agreement;
- (b) we will provide the Services in accordance with all applicable Laws;
- (c) during the Agreement Term, we will implement and maintain appropriate administrative and technical security measures designed to protect the security, confidentiality and integrity of, and prevent the unauthorised disclosure of, Customer Data; and
- (d) we will use reasonable effort to ensure all of our obligations under this Agreement will be carried out:
 - (i) by suitably competent and trained Personnel; and
 - (ii) in an efficient and professional manner.

19.2 Your warranties

You warrant and agree that:

- (a) there are no legal restrictions preventing you from agreeing to this Agreement;
- (b) you are not subject to an Insolvency Event;
- (c) you will cooperate with us and provide us with all assistance, resources, data, people, information, facilities, access and documentation that is reasonably necessary to enable us to perform the Services, and as otherwise requested by us, from time to time, and in a timely manner;
- (d) all information and documentation that you provide to us in connection with this Agreement is true, correct and complete and that we will rely on such information and documentation in order to provide the Services;
- (e) you will inform us if you have reasonable concerns relating to our provision of the Services under this Agreement, with the aim that the Parties will use all reasonable efforts to resolve your concerns; and
- (f) you are responsible for obtaining any consents, licences, authorities and permissions from other parties necessary for the Services to be provided in accordance with this Agreement, at your cost, and for providing us with the necessary consents, licences, authorities and permissions.

20 Confidential Information

20.1 Confidential

Each Party (**Recipient**) must keep confidential, and not disclose, any Confidential Information of the other Party (**Discloser**) except:

- (a) where permitted by this Agreement;
- (b) with the prior written consent of the Discloser;
- (c) where the Confidential Information is received from a third party, except where there has been a breach of confidence;

- (d) on a confidential, “needs to know” basis to the Recipient’s Personnel, auditors, insurers, agents and professional advisors; or
- (e) where the Recipient is compelled to do so by Law, provided that it gives the other Party written notice prior to disclosure.

20.2 Use

The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed and in connection with this Agreement.

21 General

21.1 Amendment

This Agreement may only be amended by a written instrument executed by both Parties.

21.2 Assignment

Neither Party may assign, transfer or otherwise deal with all or any of its rights or obligations under this Agreement without the prior written consent of the other Party. Any purported dealing in breach of this **clause** is of no force or effect.

21.3 Delay

- (a) If the provision of the Services depends upon or includes the provision of information, materials, consents or approvals by you or your Personnel, or requires your cooperation, action or response (or that of your Personnel), you must provide that information, cooperation and those materials, consents or approvals in a timely manner.
- (b) If you breach this obligation, we will be entitled to an extension of time in respect of any deadline or milestone to the extent of the delay caused by you and we will have no Liability for a failure to perform the Services caused by you.
- (c) If we are delayed from performing our obligations due to such a circumstance for a period of at least two months, a Party may terminate this Agreement by giving the other Party five (5) Business Days’ notice in writing.

21.4 Disputes and notices

- (a) Neither Party may commence court proceedings relating to any dispute arising from, or in connection with, this Agreement without first meeting with a senior representative of the other Party to seek (in good faith) to resolve that dispute (unless that Party is seeking urgent interlocutory relief or the dispute relates to compliance with this provision).
- (b) Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to the Party at the address on the Platform Services or in an Order Form. A Party may change its notice details by written notice to the other Parties. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 4 Business Days in the case of post, or at the time of transmission in the case of transmission.

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21.5 Entire agreement

This Agreement (including any applicable Order Form) contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter. No provision of any purchase order or other business form employed by you will supersede or supplement the terms of this Agreement.

21.6 No Exclusivity

The Services will be provided to you on a non-exclusive basis.

21.7 Feature sets

We reserve the right at any time and from time to time to change or remove features of the Platform Services provided that, where there is any material negative alteration to the functionality of the Platform Services in accordance with this **clause**, we will provide you with twenty (20) Business Days' notice and you may terminate this Agreement by written notice without Liability to us.

21.8 Publicity

With your prior consent, we may use advertising or publicly announce that we have undertaken work for you, including in website testimonials and in our marketing material.

21.9 Subcontracting

We may engage subcontractors to perform the Services on our behalf. Despite this, we retain responsibility for all our obligations under this Agreement.

21.10 Waiver

Any failure or delay by a Party in exercising a power or right (either wholly or partly) in relation to this Agreement does not operate as a waiver or prevent a Party from exercising that power or right or any other power or right. A waiver must be in writing.

21.11 Severance

If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions.

22 Definitions and interpretation

22.1 Definitions

Unless defined on the Platform, in an Order Form or otherwise, the following words will mean:

ACL is defined in **clause 17.4 (ACL)**;

Account is defined in **clause 5 (Accounts for Platform Services)**;

Agreement Start Date means the Start Date set out in the first Order Form for the Platform Services between the Parties;

Agreement Term is defined in **clause 4.1**;

Authorised User means a member of your Personnel who is authorised by you to access and/or use the Platform Services under an Account and is allocated a User account;

Billing Period means the period for which you agree to prepay the Fees for the Platform Services under an Order Form. The Billing Period may be the length of the Initial Term (or applicable Renewal Term) of the Order Form, or shorter. Where an Order Form does not set out the Billing Period, the Billing Period shall be 12 months and we will therefore invoice you for the applicable Fees annually in advance.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Victoria, Australia;

Business Hours means 9 am to 5 pm on a Business Day;

Computing Environment means your computing environment including all hardware, software, information technology and telecommunications services and Systems;

Confidential Information includes confidential information about a Party's business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential" but does not include any information which is in the public domain other than through a breach of confidence. Our Confidential Information includes our Intellectual Property including the Software. Your Confidential Information includes the Customer Data;

Consequential Loss includes any indirect, incidental or consequential loss, loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any remote, abnormal or unforeseeable loss, loss of use and/or loss or corruption of data or any loss or damage relating to business interruption, or otherwise, suffered or incurred by a person, arising out of or in connection with this Agreement (whether involving a third party or a Party to this Agreement or otherwise);

Customer Data means the information, logos, documents and other data inputted by you, your Personnel or Authorised Users into the Platform Services or stored by the Platform Services or generated by the Platform Services as a result of your use of the Platform Services;

Data Processing Agreement means a data processing agreement (including its annexes and supplements) entered into between the Parties to govern the processing of Personal Data in connection with the Services provided under this Agreement.

Deliverable means a work product or material in whole or in part created by us for you in the course of providing Professional Services under this Agreement or Order Form, excluding the Platform Services and Software;

EU GDPR means Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the Processing of Personal Data and

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on the free movement of such data (General Data Protection Regulation);

Feedback means any idea, suggestion, recommendation or request by you or any of your Personnel or Authorised Users, whether made verbally, in writing, directly or indirectly, in connection with the Services;

Fees means all fees set forth in Order Forms that reference this Agreement;

Force Majeure Event means an event which is beyond a Party's reasonable control including a fire, storm, flood, earthquake, explosion, accident, act of the public enemy, terrorist act, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, transportation embargo, and strike by employees of a third person;

Insolvency Event means the occurrence of any one or more of the following events in relation to either Party:

- (a) it is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable Laws;
- (b) an application or order is made for its winding up, bankruptcy or dissolution or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
- (c) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the Laws of any relevant jurisdiction is appointed in respect of it or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 10 Business Days;
- (d) a controller is appointed in respect of any of its property;
- (e) it is deregistered under the Corporations Act or other legislation or notice of its proposed deregistration is given to it;
- (f) a distress, attachment or execution is levied or becomes enforceable against it or any of its property;
- (g) it enters into or takes action to enter into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (h) a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of it or its property;
- (i) a petition for the making of a sequestration order against its estate is presented and the petition is not stayed, withdrawn or dismissed within 10 Business Days or it presents a petition against itself; or
- (j) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the relevant Party;

Intellectual Property includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, customer names or internet domain

names. Our Intellectual Property includes the Platform Services and Software;

Laws means acts, ordinances, regulations, rules, code and by-laws of any state, territory or country and includes Privacy Laws;

Liability means any loss, liability, cost, payment, damages, debt or expense (including reasonable legal fees);

Licence is defined in **clause 6.1** (*Licence*);

Open Source Licence means the open source software licence as set out at/in <https://apromore.org/ee-licenses>;

Order Form means each written or electronic order specifying the products and services (e.g. the Platform Services, Authorised Users and/or Professional Services) to be provided under this Agreement and the Fees payable, that is entered into between the Parties;

Order Form Term means the duration of an Order Form, being the Initial Term of an Order Form and each subsequent Renewal Term (if any);

Party means either party to this Agreement;

Payment Terms means the payment terms as described in the relevant Order Form;

Personal Data means any information relating to an identified or identifiable natural person and is protected similarly as personal data, personal information or personally identifiable information under applicable Privacy Laws;

Personnel means, in relation to a Party, the officers, employees, contractors, sub-contractors and agents of that Party;

Platform Analytics is defined in **clause 16.3** (*Non identifying analytics*);

Platform Services means the Apromore software-as-a-service platform described in **clause 1.1** and associated products and services that are ordered by you under an Order Form and made available to you by us on a subscription basis;

Privacy Laws means any applicable laws and regulations relating to the collection, use, disclosure and security of Personal Data including the EU GDPR and UK GDPR where applicable;

Professional Services means training, consulting, or implementation services related to the Platform Services that we provide you pursuant to an Order Form. Professional Services do not include Support;

Sensitive Information means:

- (a) health information about an individual;
- (b) genetic information about an individual;
- (c) credit, debit or other payment card data;
- (d) government issued identification numbers (such as passport numbers, driver's licence numbers);
- (e) personal data of children protected under any child privacy laws; and
- (f) any other information or combinations of information that fall within the definition of "special categories of data" under the EU GDPR or UK GDPR;

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Service Levels means, using commercially reasonable endeavors, the performance levels we will achieve, as set out in the Schedule of this Agreement;

Services means the Platform Services and Professional Services provided under an Order Form or made available to you under this Agreement;

Software means the software used to provide any of the Platform Services, and includes any instructions in hard copy or electronic form and any update, modification or release of any part of that software after this Agreement is entered into by the Parties;

Support means standard technical support to Authorised Users of the Platform Services that you have ordered under an Order Form and includes troubleshooting any unintended use of the Platform Services functionalities by Authorised Users, providing reasonable assistance to Authorised Users regarding the use of the Platform Services and sharing knowledge about the use of the Platform Services with Authorised Users;

System means all hardware, software, networks and other IT systems used by a Party from time to time, including a network;

Third Party Inputs is defined in **clause 13.1** (*Third Party Inputs*);

UK GDPR means the Data Protection Act 2018 and the EU GDPR as incorporated into United Kingdom law by virtue of Section 3 of the United Kingdom's European Union (Withdrawal) Act 2018; and

User means a Process Analyst User, Process Viewer User, Process Design User or any other user type identified in the relevant Order Form.

22.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;

- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (d) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (e) the word "**month**" means calendar month and the word "**year**" means 12 months;
- (f) the words "**in writing**" include any communication sent by letter or email or any other form of communication capable of being read by the recipient;
- (g) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (h) the word "**includes**" and other similar words mean "**includes without limitation**";
- (i) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body that performs most closely the functions of the defunct body; and
- (j) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it.

23 Governing Law

This Agreement will be governed by the laws of, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria, Australia.

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Schedule – Service Levels

1. Background

- 1.1 This Schedule contains the Service Levels agreed between you and us with respect to the Platform Services.
- 1.2 We will not be liable to you on account of any failure to meet the Service Levels outlined in this Schedule, provided that we have acted in good faith and used reasonable endeavours to meet the Service Levels.

2. Definitions

Priority Level 1 means an incident or situation that has occurred and is causing a critical service outage of the Platform Services or multiple Authorised Users are unable to access a material part of the Platform Services which requires immediate resolution due to you being unable to undertake a critical business activity.

Priority Level 2 means an incident or situation where the Platform Services is highly degraded or key features of the Platform Services are unavailable or extremely slowed for one or multiple Authorised Users.

Priority Level 3 means an incident or situation where the normal operation of the Platform Services is prevented but has minimal or no impact on your business operations. This includes general assistance with service capabilities, user management and basic configurations or administration issues. May include issues where an acceptable Workaround has been successfully applied as a temporary solution.

Priority Level 4 means general inquiries for information or documentation in relation to the Platform Services.

Scheduled Downtime means:

- (a) our normal maintenance schedule for the Platform Services which we will perform between 0:00 and 5:00 am CET, Monday to Friday, and after 10:00 pm CET on Saturdays until 5:00 am CET on Sundays; and
- (b) any other maintenance to be conducted as mutually agreed between the Parties.

Uptime Exclusions means:

- (a) Scheduled Downtime;
- (b) failures of the Platform Services resulting from your (or your Authorised Users) acts or misuse of the Platform Services including any use that exceeds any limits set out in the relevant Order Form;
- (c) factors outside our reasonable control, including force majeure events; and
- (d) failures of the Platform Services due to your (or your Authorised Users) equipment, internet or other technology.

Workaround means a temporary solution that will allow the Platform Services to continue to function until such time as a new solution can be identified to resolve a reported incident or problem.

3. Hours of Coverage

9:00 am and 5:00 pm CET, Monday to Friday, excluding national public holidays and public holidays in [Country] (**Hours of Coverage**)

4. Help Desk

- 4.1 We will provide you a help desk which is a single point of contact between you and us (**Help Desk**).
- 4.2 We will provide a Help Desk that is capable of receiving requests for Support, notifications of incidents and problems relating to the Platform Services by email and an online web form (**Support Requests**) 24 hours per day, 7 days per week.
- 4.3 During the Hours of Coverage, we will communicate the progress and status of Support Requests.
- 4.4 During the Hours of Coverage, we will manage and resolve Support Requests including where practicable, through the temporary use of a Workaround.

5. Service Levels

In providing the Platform Services, we will endeavour to meet or exceed the following Service Levels measures monthly:

5.1 Response and Resolution

Priority Level	1 st Response Target	Resolution Target	Service Level Target
Level 1	During Hours of Coverage, within 6 hours of receiving the Support Request.	During Hours of Coverage, within 5 Business Days of receiving the Support Request.	90% in accordance with the requirements of this Schedule.
Level 2	During Hours of Coverage, within 1 Business Day of receiving the Support Request.	During Hours of Coverage, within 7 Business Days of receiving	95% in accordance with the requirements of this Schedule.

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		the Support Request.	
Level 3	During Hours of Coverage, within 2 Business Days of receiving the Support Request.	During Hours of Coverage, within 14 Business Days of receiving the Support Request.	95% in accordance with the requirements of this Schedule.
Level 4	During Hours of Coverage, within 3 Business Days of receiving the Support Request.	During Hours of Coverage, within 20 Business Days of receiving the Support Request.	99% in accordance with the requirements of this Schedule.

5.2 Technology Uptime

Excluding any Uptime Exclusions, the Platform Services will be operational and available to Authorised Users for the purposes contemplated by the Agreement for a minimum of 98% in any given calendar month (**Technology Uptime**). Technology Uptime will commence to be measured on a mutually agreed “go-live” date, which shall not be prior to the Start Date of the applicable Order Form.