

**Plattar**

PLATTAR PTY LTD ABN 90 606 090 322

# MASTER SERVICES AGREEMENT



General Standards  
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## MASTER SERVICES AGREEMENT

### 1 INTERPRETATION

1.1 The following definitions apply in this document:

- (a) **ABN** means Australian Business Number.
- (b) **ACN** means Australian Company Number.
- (c) **Agreement** means this Master Services Agreement.
- (d) **Agreement Date** means the date the Client accepts this Agreement, which in default shall be the date the Client first accepts a Scope.
- (e) **App** means an application capable of deploying an AR content, and includes the Plattar App or Client App where implied by context.
- (f) **App Terms** means the Plattar App Terms of Service that apply to the use of the Plattar App accessible at <http://plattar.com>.
- (g) **AR** means augmented reality.
- (h) **Background IP** means all Intellectual Property of the Company incorporated in the Services, including the Plattar App, the Platform, an SDK or Proprietary Technology.
- (i) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne, Australia.
- (j) **Change Request** means a written notice from the Client requesting a change of the scope of a Scope, or any additional work not specified in a Scope or otherwise previously agreed to be provided by the Company.
- (k) **Client** means the client as identified on any Scope.
- (l) **Client IP** means all Intellectual Property of the Client (or its customer) (including drawings, specifications, data and character design) provided by Client to Company for use in relation to the Services.
- (m) **Client App** means a mobile AR application developed by the Company on behalf of the Client on the terms of this Agreement.
- (n) **Commencement Date** means the earlier of:
  - i The date stated as the Commencement Date in an Scope; or
  - ii The date when the Company first provides Services for the Client.
- (o) **Company** means Plattar Pty Ltd ABN 90 606 090 322.
- (p) **Confidential Information** means any written or verbal information that:
  - i Is about each party's business or affairs;

- ii Is about the conduct of each party under this Agreement and the during the term of this Agreement;
- iii A party informs the other party that it considers it confidential and/or proprietary;
- iv A party would reasonably consider to be confidential in the circumstances; and
- v Is personal information within the meaning of the *Privacy Act 1988* (cth).

but does not include information that a party can establish:

- vi Was in the public domain at the time it was given to that party;
  - vii Became part of the public domain, without that party's involvement in any way, after being given to the party;
  - viii Was in party's possession when it was given to the party, without having been acquired (directly or indirectly) from the disclosing party; or
  - ix Was received from another person who had the unrestricted legal right to disclose that information free from any confidentiality obligation.
- (q) **Consulting Services** means any consultation services provided by the Company including the formulation of advice, education, workshops, time in attendance or similar service, but excludes AR software development, and Technology Licensing services.
- (r) **Force Majeure** means an event or cause beyond the reasonable control of the party claiming force majeure and includes each of the following:
- i Act of God, lightning, storm, flood, fire, earthquake or explosion cyclone, tidal wave, landslide, adverse weather conditions;
  - ii Act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
  - iii The effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority; and
  - iv Embargo, inability to obtain necessary materials, equipment or facilities, or power or water shortage.
- (s) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property.
- (t) **Intellectual Property Rights** means, for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property, applications for the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.

- (u) **General Conditions** means the provisions set out in the section of this Agreement entitled "General Conditions".
- (v) **GST** has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (w) **New IP** means any Intellectual Property generated by the Company for the Client in the process of providing the Services.
- (x) **Party** means the Company and the Client.
- (y) **Platform** means the Plattar digital AR content management platform accessible from [www.plattar.com](http://www.plattar.com) or any other URL operated by the company from time-to-time.
- (z) **Plattar App** means the Plattar AR mobile application, owned and operated by the Company.
- (aa) **Project** means the Services provided by the Company pursuant to a Scope.
- (bb) **Proprietary Technology** means the Background IP owned by the Company in code or any other technology, but excludes the Intellectual Property licensed under the SaaS Terms, App Terms or any terms that govern the use of a SDK made available by the Company.
- (cc) **SaaS Terms** means the Plattar SaaS Terms of Service accessible at <http://plattar.com>.
- (dd) **Scope** means a scope, proposal or statement of work that describes the Project, as agreed to by the Parties.
- (ee) **SDK** means any software development kit owned and made available by the Company.
- (ff) **SDK Terms** means any terms of use imposed by the Company on the use of an SDK.
- (gg) **Services** means any development or consultation services provided by the Company to a Client subject to this Agreement.
- (hh) **Tax Invoice** has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (ii) **Technology Licensing Services** means the licensing of any of the Company's Background IP in:
  - i The Platform;
  - ii The Plattar App;
  - iii An SDK; or
  - iv Proprietary Technology.
- (jj) **Third-Party IP** means any rights which are owned by a third-party that are attached to any materials or deliverables included in the Services.

## **2 AGREEMENT AND COMMENCEMENT**

- 2.1** This Agreement commences on the Commencement Date. Where the Commencement Date pre-dates the Agreement Date the Parties expressly acknowledge that the terms and conditions of this Agreement, to the extent reasonably possible, commenced on the Commencement Date, and this Agreement is the formalisation of an existing undocumented agreement between the Parties.
- 2.2** The relationship between the parties in relation to the Services shall be governed by the terms of this Agreement until terminated under the provisions of this Agreement.

## **3 SERVICES**

- 3.1** The Company shall provide any of the following services (**Services**) to the Client, on the terms of this Agreement and subject to a Scope:
- (a)** Consulting Services;
  - (b)** AR software development and support services;
  - (c)** AR content creation services;
  - (d)** Technology Licensing Services; and
  - (e)** Such other services as may be agreed between the parties from time-to-time.

## **4 SOFTWARE DEVELOPMENT**

- 4.1** Unless specifically agreed otherwise, in relation to each Client App developed by the Company, the Company shall:
- (a)** Be recognised as the registered developer of the Client App on any mobile application marketplace, such as App Store or Google Play etc.; and
  - (b)** Approve any terms of service that shall apply to the use of the Client App.
- 4.2** In the event that Development Services involve deploying User Content via a Client App by sourcing the User Content from the Client's servers (e.g. via an API), and that User Content is not hosted or mirrored on the Company's servers for the Platform, the Client agrees that:
- (a)** The Company shall have no liability for that User Content in any way; and
  - (b)** The Client indemnifies the Company in relation to that User Content.
- 4.3** The Company cannot guarantee the functionality of a Client App that the Company did not solely develop.
- 4.4** The Company shall not be liable for any Client App developed by the Client or a third party, whether that Client App is developed using an SDK or not.
- 4.5** Any Client App developed by the Client or a third-party using an SDK, may be subject to separate SDK Terms governing the use of the SDK.

## **5 TECHNOLOGY LICENSING**

**5.1** The Client acknowledges and accepts that:

- (a)** All use of the Platform is subject to the SaaS Terms. Where the Company provides access to the Platform as part of the Services, the Client shall be deemed to have accepted the SaaS Terms at the time it first uses the Platform.
- (b)** All use of the Plattar App is subject to the App Terms. Where the Company provides access to the App as part of the Services, the Client shall be deemed to have accepted the SaaS Terms at the time it first uses the Plattar App.
- (c)** All use of an SDK is subject to any SDK Terms. Where the Company provides access to an SDK as part of the Services, the Client shall be deemed to have accepted the SDK at the time it makes any use of the SDK.
- (d)** Where the Company provides the Client with the Company's Proprietary Technology as part of the Consultancy Services or AR development and support services, and that Proprietary Technology is required to be used by the Client in a Client App, products or services it offers to its customers or users; unless agreed otherwise in writing, the Company agrees to grant the Client and its successors and assigns a perpetual, royalty-free, worldwide licence to use that Proprietary Technology within the products or services offered to the Client's customers, except that:
  - i** The Client must not sub-licence or in any way commercialise the Proprietary Technology; and
  - ii** The Client must not reverse engineer, decompile or otherwise purport to copy the Company's Proprietary Technology.

## **6 RELATIONSHIP**

**6.1** The Company warrants that it is an independent service provider to the Client.

**6.2** The Company will not:

- (a)** Hold itself out as an agent of the Client; or
- (b)** Incur obligations or liabilities on behalf of the Client unless the Client provides written permission.

## **7 PLATTAR'S KEY OBLIGATIONS**

**7.1** The Company will:

- (a)** Ensure that the Services are complete and provided in a timely manner and/or in accordance with any timeframes agreed by the parties;
- (b)** Ensure that the Services are provided:
  - i** exercising all due care and skill;
  - ii** in accordance with all applicable laws;

- iii using only qualified and experienced personnel; and
      - iv in accordance with the standards outlined in this Agreement;
- (c) Establish and maintain clear channels of communication at all times with the Client, and promptly answer any questions asked by the Client;
- (d) Comply with all the relevant laws and industry standards in respect of providing the Services; and
- (e) Act in accordance with the Client's reasonable directions while providing the Services.

## **8 CLIENT'S KEY OBLIGATIONS**

### **8.1** The Client will:

- (a) Ensure that the Company has access to all the:
  - i Resources, personnel, electronic systems and premises required to provide the Services; and
  - ii All facilities and materials and information reasonably requested for the Company to provide the Services;
- (b) Establish and maintain clear channels of communication at all times with the Company;
- (c) Promptly provide the Company with directions, instructions or information which are requested by the Company and which are reasonably required to assist the Company in the performance of its obligations under this document; and
- (d) Promptly provide the Company with a copy of all applicable policies, procedures, rules, regulations, standards of conduct and requirements relevant to the provision of the Services.

## **9 FEES, INVOICING & PAYMENT**

- 9.1 The Client shall pay the Company the fees agreed by the parties in writing for any Services and/or Projects.
- 9.2 Any variations to fees and/or Services must be made in writing and agreed by the parties.
- 9.3 If the Company does not provide a valid Tax Invoice (or does not supply the Client with its ABN) the Client may withhold from any payment made to the Company the amounts required for the Client to comply with the *Taxation Administration Act* 1953 (Cth) and related legislation.
- 9.4 The Company must render a valid Tax Invoice to the Client for any paid Services provided.
- 9.5 The Client agrees to pay any Tax Invoice promptly and within the stated timeframe, which in default shall be 14 days from the invoice.

- 9.6** All payments by the Client or other consideration for any supply by the Company to the Client under or in connection with this document include any GST for which the Company is liable on that supply, and the Company (and not the Client) is responsible for payment of that GST.
- 9.7** The Client will be entitled to set off any amount owed to the Company against any amount payable by the Company to the Client.
- 9.8** If the Client fails to pay an amount due under this Agreement by a due date, the Company may charge interest on the overdue amount at no more than 10% per annum compounding daily.
- 9.9** Should the Client dispute any charge on a Tax Invoice, the Client must notify the Company of the disputed item within 5 days of the date of the Tax Invoice.
- 9.10** The Client must pay the amount of the Tax Invoice not in dispute within the stated timeframe.
- 9.11** Failure by the Client to notify the Company of a disputed Tax Invoice within 5 days shall be deemed acceptance by the Client of the entire Tax Invoice.

## **10 CHANGE REQUESTS**

- 10.1** No Change Request from the Client is valid until accepted in writing by the Company.
- 10.2** Unless agreed otherwise in writing, the Company's usual rates (as specified in the Scope or otherwise provided to the Client) shall apply in respect of any Change Request undertaken by the Company.

## **11 ACCEPTANCE TESTING**

- 11.1** If specified in the Scope, the Client may assess the Services to determine if they were properly provided by the Company or to determine if they contain any defects.
- 11.2** The Client may notify any defects or problems with the Services by providing the Company with written notice giving the Company a reasonable amount of time to rectify the alleged issued (which in default shall not be less than 10 business days). The Company shall rectify any bona fide defects specified in the written notice in a prompt and professional manner.

## **12 INTELLECTUAL PROPERTY**

### **12.1 Background IP of the Company.**

- (a)** The Client acknowledges that the Company retains ownership of all of the Company's Background IP.
- (b)** In accordance with clause 5, all use of the Background IP by the Client contained in:
- i** The Platform shall be subject to the license contained in the SaaS Terms;
  - ii** The Plattar App shall be subject to the license contained in the App Terms;



- iii** An SDK shall be subject to the license contained in any SDK Terms;
  - iv** Proprietary Technology shall be subject to the license granted in clause 5.1(d).
- (c)** Notwithstanding 12.1(b), all other Background IP to the extent that it is contained within the Services, the Company grants the Client a non-exclusive, perpetual, non-transferable, royalty free and worldwide licence to use, for the purposes of its day to day business.

## **12.2 Client IP**

- (a)** The Company acknowledges that the Client retains ownership of all of Client IP.
- (b)** The Client grants the Company a non-exclusive, perpetual, non-transferable, royalty free and worldwide licence to use the Client IP to the extent that it is used for the purposes of providing the Services.

## **12.3 Third-Party IP**

- (a)** The Company shall grant to the Client such rights as the owner of the Third-Party IP permits the Company to grant the Client.

## **12.4 Assignment of New IP to the Client**

- (a)** Subject to payment in full of all fees under this Agreement, to the extent that the Company may at any time acquire any Intellectual Property Rights in the New IP in or from the Services, the Company, by this document, agrees to assign to the Client all such rights, title and interest to the New IP.
- (b)** The Client grants the Company a non-exclusive, perpetual, non-transferable, royalty free and worldwide licence to use, for the purposes of its day to day business, the Client's New IP to the extent that it is contained within the Services.
- (c)** In addition to this Agreement, the parties may enter into a formal written agreement to govern the assignment of Intellectual Property Rights, the terms of which shall prevail if there is any inconsistency with the terms of this Agreement.

## **13 CONFIDENTIALITY**

**13.1** The Company will keep all Confidential Information in confidence during the term of this Agreement and on an ongoing basis after the term of this Agreement.

**13.2** The Company must not:

- (a)** Use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Agreement; or
- (b)** Disclose any of the Confidential Information except in accordance with clauses 13.3 or 13.4.

**13.3** The Company may disclose Confidential Information to its Personnel if:

(a) The disclosure is required to enable the Company to perform its obligations or to exercise its rights under this document; and

(b) Prior to disclosure, the Company informs the person of the Company's obligations in relation to the Confidential Information under this document.

**13.4** Subject to clause 13.5, the Company may disclose Confidential Information that the Company is required to disclose:

(a) By law or by order of any court or tribunal of competent jurisdiction; or

(b) By any Government Agency, stock exchange or other regulatory body.

**13.5** If the Company is required to make a disclosure under clause 13.4, the Company must:

(a) To the extent possible, notify the Client immediately it anticipates that it may be required to disclose any of the Confidential Information; and

(b) Only disclose Confidential Information to the extent necessary to comply.

**13.6** The Client and the Company must each assist the other to comply with its obligations under the *Privacy Act 1988* (Cth) in relation to Confidential Information.

## **14 USE OF SYSTEMS**

**14.1** The Client may require the Company to use particular systems from time-to-time.

**14.2** By agreeing to a Project, the Client agrees that it grants the Company access to systems, probe any hardware and do all such things so required to undertake the Project.

## **15 POLICIES AND GUIDELINES**

**15.1** The Client will keep the Company aware of any policies or guidelines it has with respect to its business that the Company must follow. Failure to disclose such policies or guidelines will render them ineffective against the Company

## **16 FORCE MAJEURE**

**16.1** If a party is prevented in whole or in part from carrying out its obligations under this Agreement as a result of Force Majeure, it will promptly notify the other party accordingly. The notice must:

(a) Specify the obligations and the extent to which it cannot perform those obligations;

(b) Fully describe the event of Force Majeure;

(c) Estimate the time during which the Force Majeure will continue; and

(d) Specify the measures proposed to be adopted to remedy or abate the Force Majeure.

- 16.2** Following a notice of Force Majeure in accordance with clause 16.1 and while the Force Majeure continues, the obligations which cannot be performed because of the Force Majeure will be suspended, other than obligations to pay money that is due and payable.
- 16.3** The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.
- 16.4** The party that is prevented from carrying out its obligations under this Agreement as a result of Force Majeure must take all action reasonably practicable to mitigate any loss suffered by the other party as a result of the party's failure to carry out its obligations under this Agreement.
- 16.5** The term of this Agreement will not be extended by the period of Force Majeure.

## **17 DISPUTE RESOLUTION**

- 17.1** If any dispute arises between the Client and the Company in connection with this Agreement (**Dispute**), then either party may notify the other of the Dispute with a notice (**Dispute Notice**) which:
- (a) Includes or is accompanied by full and detailed particulars of the Dispute; and
  - (b) Is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.
- 17.2** Within 10 Business Days after a Dispute Notice is given, a representative (with the authority to resolve the dispute) of the Client and the Company must meet and seek to resolve the Dispute.
- 17.3** Subject to clause 17.4, a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.
- 17.4** Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.
- 17.5** Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this document and any related agreements.

## **18 LIABILITY & INDEMNITY**

- 18.1** In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the Client's access to, or use of, or inability to use the Services, whether based on warranty, contract, tort, negligence, in equity or any other legal theory, and whether or not the Company knew or should have known of the possibility of such damage, to business interruption of any type, whether in tort, contract or otherwise.
- 18.2** Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be

excluded, the Company and its related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, liability of the Company for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:

- (a) The re-supply of services or payment of the cost of re-supply of services; or
- (b) The replacement or repair of goods or payment of the cost of replacement or repair.

## **19 TERMINATION**

- 19.1** This Agreement shall end when the Services and/or deliverables have been completed by the Company in the reasonable opinion of the Client, or at any time agreed by the parties in writing.
- 19.2** Without affecting any other rights or obligations of the parties, either party may terminate this Agreement by giving 30 days' written notice.
- 19.3** Where a party is in breach of this Agreement, the other party may provide the breaching party a notice to remedy the breach within a reasonable time, which shall not be less than 10 business days. Should the breach remain unremedied then the other party may terminate this contract by written notice.
- 19.4** Should the Client terminate this Agreement without cause, it shall remain liable to pay any Fees that it had agreed to pay the Company for all active and/or delivered Projects.

## **20 AMENDMENT AND ASSIGNMENT**

- 20.1** The Company may amend or update this Agreement from time-to-time by providing 10 Business Day's notice to the Client.
- 20.2** The Amendment shall apply to any Scope, Change Request or other Services agreed to be supplied issued after the notice in 20.1 has been given.
- 20.3** The previous version shall remain in force for all outstanding Services subject to a Scope.
- 20.4** The Client may not assign or otherwise create an interest in this Agreement without the Company's written consent.
- 20.5** The Company may assign or otherwise create an interest in its rights under this Agreement by giving written notice to the Client.

## **21 ELECTRONIC COMMUNICATION & NOTICES**

- 21.1** The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.
- 21.2** The parties acknowledge and agree that this Agreement is binding upon each party if executed digitally and conveyed by electronic communication.
- 21.3** A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.

**21.4** Notices to the Company must be sent to:

Plattar Pty Ltd  
17/31 Queen Street  
Melbourne CBD  
VIC 3000  
Australia

info@palttar.com

**22 GENERAL**

**22.1 Precedence.** To the extent that this Agreement is inconsistent with the SaaS Terms, App Terms or SDK terms, this Agreement shall take precedence. To the extent that the Scope is inconsistent with this Agreement, the terms of the Scope will prevail. To the extent that the Special Conditions or Change Request are inconsistent with the Scope, the provisions of those Special Conditions or Change Request (as the case may be) will prevail.

**22.2 Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.

**22.3 Relationship.** The relationship of the parties to this Agreement does not form a joint venture or partnership.

**22.4 Waiver.** No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.

**22.5 Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.

**22.6 Governing Law.** This Agreement is governed by the laws of the state of Victoria, Australia. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.

**22.7 Liability for Expenses.** Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this Agreement.

**22.8 Inconsistency.** If this Agreement is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

**22.9 Counterparts.** This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

**22.10 Time.** Time is of the essence in this Agreement.

**22.11 Severability.** Any clause of this Agreement, which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.

**22.12 Interpretation.** Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:

(a) The singular includes the plural and the opposite also applies.

- (b) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (c) A reference to a *clause* refers to clauses in this Agreement.
- (d) A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- (e) Mentioning anything after *includes, including*, or similar expressions, does not limit anything else that might be included.
- (f) A reference to a *party* to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
- (g) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (h) A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (i) A reference to *dollars* or \$ is to an amount in Australian currency.

**22.13 Update.** This Agreement came was last updated on 25 August 2017.

**END GENERAL CONDITIONS**