

MASTER SERVICE AGREEMENT

TERMS AND CONDITIONS OF USE

This Master Service Agreement (the “Agreement” or “MSA”) governs the provision of all services and customer acquisition (the “Customer”), using the services (the “Service”) provided by Karta Software Pty Ltd (the “Company”), whether a Customer registers for a trial of Service at no charge or agrees to pay for the Service.

This Agreement was last updated on the 1st September 2020. It is legally binding between Karta Software Pty Ltd, ABN 642 168 732, and the Customer, effective on the day the customer indicates they have accepted the terms outlined in this Agreement.

1. ACCESS

This agreement is accepted by the Customer when;

- a) clicking a box indicating acceptance, by way of email, signing of the agreement or in any way instructing the Company to commence Service,
- b) executing an order form that references this agreement, the Customer acknowledges that by agreeing to the terms on the Order Form they have read and agreed to the terms within this Agreement,
- c) using our Services for free (without charge), the Customer acknowledges they have agreed to the terms of this Agreement,
- d) an individual accepts this Agreement on behalf of a legal entity, or company, where such an individual represents that they have the authority to bind that such entity and/or its affiliates to the terms and conditions in this Agreement. In which case the term Customer shall refer to such entity and its affiliates. If the individual accepting this Agreement does not have such authority, or does not agree with these terms and conditions set out in this Agreement, then such an individual must not accept this Agreement and is excluded from using the Service.

Upon receipt of an acceptable application to use the Service the Company will grant the Customer a non-transferable and non-exclusive use of the Service;

- a) for access by Authorised Users only; and
- b) for a Customer’s agreed business purposes only.

Customers and Authorised Users will be in breach of this Service Agreement if they are a competitor, with the exception where prior written consent has been granted. Any natural person acting on behalf of a competitor, either directly or indirectly. Any competitor gaining access to information supplied unknowingly by the Company, acknowledges that having breached this agreement they will not be able to rely on the information or any part thereof or any of their findings in a court of law in any jurisdiction.

All intellectual property (IP) and all information included within the Service remains the sole and exclusive property of the Company or third party providers as per our [Copyright and Intellectual property notices](#). The Customer and/or Authorised Users must not remove, conceal or obliterate any copyright, or other proprietary notices included in the Service unless expressly allowed by the Company. Under this agreement, a Customer and Authorised Users agree that they must not, in any way reproduce, transmit or distribute either the content or any aspects of the system. This includes but is not limited to framing, reverse engineering, building a competitive product or copying any of the systems functionality; exploit any aspect of the system or service material. Any person attempting to introduce malicious code into the system will be prosecuted to the full extent of the law. Further details about our security policy can be requested by contacting us at mail@kartasoft.co

A Customer and users will be in breach, of our terms and conditions if they intend to use any or part of the service for the purposes of monitoring functionality, availability, benchmarking or any other type of performance which may or may not be used for competitive purposes, to reproduce a similar product or service for their own use, nor must a customer or user

disclose any information that may be considered confidential to any third party whatsoever, without the prior express written consent of the Company, except with prior written consent from the Company.

2. FREE OR TRIAL SERVICE

- 2.1 Where a Customer accesses the Services offered by the Company, for a 'free trial' or 'evaluation pilot', or any other term which indicates the Customer has access to a Service provided by the Company without charge. This trial may be terminated at sole discretion of the Company.
- 2.2 A trial period may also terminate; where a customer makes a purchase of the Service or where a Customer terminates access to the service in writing by sending notification to mail@kartasoft.co
- 2.3 Additional terms and conditions may apply to a trial period and be notified to the Customer upon an agreed start date, these terms and conditions are legally binding and are in addition to those outlined within this Agreement.
- 2.4 Any Customer's data provided or entered into the Service, or configurations or customisations, will be permanently deleted by the Company at the end of the trial period.
- 2.5 Notwithstanding "WARRANTIES, LIABILITY, INDEMNITIES AND RELEASE" within this Agreement, all trial periods are without warranty and the Company shall have no indemnification or obligations nor legality of any type. The Company does not represent or warrant that the service during the trial period meets the Customer's requirements in any way.
- 2.6 The Customer shall be fully liable to the Company arising from their use of the Service during the trial period or any breach the Customer makes.
- 2.7 The Customer is responsible for becoming familiar with all the features of the Service before making a purchase of the Service.

3. RESPONSIBILITIES USE OF SERVICE & CUSTOMER OBLIGATION

- 3.1 When a Customer uses the Services provided by the company, whether for evaluation purposes or as a fee-for-service the Company will provide details within an Order Form. The Order Form will specify when fees are due for use of the Service. The Customer may opt to add additional Services in the future which will be added to this Agreement.
- 3.2 Customers acknowledge that the Company provides software, this is described at kartasoft.co

The Company;
 - a) is not liable for the performance of any Customer using the Service,
 - b) is not liable for payment of any monies or compensation for a Customer's use of the Service.
- 3.3 The Company reserves the right to alter and update the features of the service without notice to the Customer or Users.
- 3.4 The Customer agrees and is not to use the Service to collect, process, transmit or store any sensitive personal information. The Customer acknowledges that the Company is not a subcontractor or business associate or (as those terms are defined in the USA Health Insurance Portability and Accountability Act (HIPAA)) or a payment card processor and that the Service provided are neither HIPAA nor PCI DSS compliant. The Company will have no liability under this Agreement for Sensitive Personal Information, notwithstanding anything to the contrary herein.
- 3.5 The Company's employees and contractors are responsible for their compliance with the Company's obligations under this Agreement, except as otherwise specified within this Agreement.

4. PASSWORDS

- 4.1 Aspects of the service may require the use of a password to access the system.
- 4.2 Passwords allow access for Authorised Users only and the passwords are non-transferable and for non-exclusive use of the system.
- 4.3 Customers and Authorised Users must ensure the confidentiality and security of the Password and take all reasonable steps to prevent unauthorised access\use of the system.

5. AUTHORISED USERS

- 5.1 The Customer must maintain accurate records of, the names and positions of their employees or company officers that have been nominated as Authorised Users for accessing password protected areas of the Service.
- 5.2 Any Authorised User that ceases to be an employee of a Customer or have a lawful right to access the system must have their password revoked by the Customer within 7 days. The Customer acknowledges and grants the rights to the Company to disable passwords, any and all substituted, nominated Authorised Users (for example upon an employee ceasing employment with the Customer) will be subject to the Terms and Conditions of Use and will be issued with a new password.
- 5.3 Any Authorised User that is authenticated by the system may be granted access. The Customer acknowledges that in the absence of fraud the access details will be relied upon for invoicing the Customer for any service fees associated with the access and that the Company will not take any further steps to verify individual user access or the authority on which they relied upon to use the system or access the Customer's account.
- 5.4 The Company reserves the right to alter a Customer or Authorised User's user name and/or password pursuant to an online request made by a person correctly entering a user name and password associated with our Customer.
- 5.5 The Company may collect personal data as part of conducting its business, details of our privacy policy can be found at [Privacy Policy](#)

6. FEES

- 6.1 All invoices issued by the Company are payable within twenty eight (28) days.
- 6.2 The Company will commence billing the Customer for an establishment fee or ongoing fees, monthly in advance and will commence invoicing upon a Customer acceptance of the Agreement. Where access to the service is granted at no charge or for an evaluation period this will be communicated to the Customer.
- 6.3 The Company provides a monthly fee for providing access to the Service; a minimum service level is indicated within the Order Form. The Customer acknowledges and agrees to the minimum service level and must pay the fees as specified.
- 6.4 Unless otherwise expressly stated, all prices or other fees payable or consideration to be provided under the Agreement are exclusive of GST.
- 6.5 The Company reserves the right to annually increase the fees at the Australian Consumer Price Index (CPI) as defined by the Australian Bureau of Statistics plus 3%.
- 6.6 The Customer acknowledges, understands and agrees that all fees are;
 - a) quoted and payable in Australian dollars,
 - b) in consideration of the Company providing the service,
 - c) are for access to the system and payable regardless of usage,
 - d) are non-refundable,

- e) any charges incurred by the Customer and Authorised User for accessing the Service are the Customer's responsibility and cost,
- f) the term and minimum agreed service level cannot be reduced during the Initial Term,
- g) any additional services, during any given month will incur a full months payment,
- h) service limits may apply to third party data and support calls a Customer is entitled to during any given billing period,
- i) any professional services provided outside of the standard Service offer will require a completed specification to be developed and will incur additional fees. These fees will be agreed in advance between both parties and any scope of work will be signed off by the Customer prior to the commencement of any work by the Company.

6.7 The Service is subject to usage limits which are specified in the Order Form and other documentation provided by the Company. If a Customer exceeds contractual usage limits, the Company may work with the Customer to either; remedy by reducing the usage level so that it conforms with the limit or where a Customer is unwilling or unable to adhere to contractual usage limits, the Company will amend the Order Form to cover the excess usage.

7. THIRD PARTY SERVICES

7.1 Where third party services are provided as part of the Service, the Customer is bound by separate terms and conditions between the Customer and the relevant third party. Information pertaining to third party content can be found at [Copyright and Intellectual property notices](#).

7.2 The Company is not responsible or financially liable for any third-party services or third-party content that the Customer may access through the Services provided by the Company.

7.3 The Company does not guarantee the continued availability of any third party services being used and provided by the Company as part of our Service.

8. TERM

8.1 The Order Form acts as an addendum to this Agreement and incorporates the Agreement Term. The fees indicated on the Order Form will remain open for acceptance for a period of thirty (30) days from its date of issue. If there is inconsistency between this Agreement and the Order Form, then this Agreement will prevail.

8.2 The Agreement operates for a period (Initial Term) of twenty four (24) months from the Commencement date as shown on the Order Form and will automatically renew for further period(s) of 12 (twelve) months on the anniversary of the agreement, unless notice is given in writing by either party ninety (90) days prior to the anniversary.

8.3 Any agreed implementation fee will be invoiced to the Customer upon acceptance of the Service as outlined in Clause 8.1.

9. TERMINATION

9.1 The Customer may terminate this agreement upon immediate notice to the Company if;

- a) the Company is in breach of a material term of this Agreement and has not rectified that breach within fourteen (14) days of Customer giving the Company written notice to do so,
- b) the Company is unable to provide a comparable service of features or functionality to that at the Commencement Date,
- c) the Company suffers an Insolvency Event.

9.2 The Customer acknowledges that if this agreement is terminated, the Company will discontinue the provision of the agreed services; which will result in denial of service.

9.3 This agreement may also be terminated by the Company without notice if the Customer;

- a) being a corporation, suffers an Insolvency Event,
- b) being a natural person, becomes bankrupt or insolvent,
- c) any money which the Customer must pay the Company under this Agreement remains outstanding for more than thirty (30) days after the date on which it became payable (whether or not the Company has made any formal demand for payment),
- d) The Customer or any of the Authorised Users is in material breach of this Agreement and has not rectified that breach within fourteen (14) days of the Company providing notice in writing to do so, or
- e) the Company is of the opinion that the continuation of this agreement may lead to commercial damage to the Company's business by reason of any breach or threatened breach of the Customer Agreement by the Customer or considers that the continuation of the service may expose it to a risk of legal proceedings,
- f) the Company is unable to provide a comparable service of features or functionality to that at the Commencement Date,
- g) The Company receives a credit report on the Customer which is, in the reasonable opinion of The Company, unsatisfactory.

10. CONFIDENTIALITY AND CLIENT DATA

- 10.1 The Company shall hold in strict confidence all details of the Customer's data and information, further information about confidentially can be found within our [Privacy Policy](#).
- 10.2 The Customer's data will only be held in the system for a period of 12 months unless otherwise agreed, fees maybe applicable.

11. WARRANTIES

- 11.1 By accepting the Service the Customer acknowledges that apart from the express warranties contained in this agreement the only conditions and warranties that are binding on the Company in relation to any matter whatsoever are those imposed and required to be binding by statute or regulation. The Company's liability arising from breach of those conditions and/or warranties shall be limited to:
 - a) In relation to goods;
 - I. the replacement of any goods or the supply of equivalent goods; or
 - II. the repair of any goods
 - III. in relation to services, the re-supply of the service.
- 11.2 Except to the extent referred to in Clause 12, The Company shall have no liability including liability for negligence, to any person or company for any loss or damage whether direct, indirect, consequential or otherwise howsoever suffered or incurred by any such person or company caused by or resulting directly or indirectly from the performance of services pursuant to this agreement.

12. LIABILITY

- 12.1 Karta Software Pty Ltd (the Company) its shareholders, employees, contractors, agents and Directors are not liable for any indirect, consequential, special or punitive loss or damage in respect of the Service or any act or omission on its part in relation to its obligations under this Agreement including, without limitation, payments to third parties, loss of revenue, profits, goodwill or data however caused, whether or not;
 - a) such loss or damage was foreseeable or contemplated by either party, or
 - b) the Company is advised of the possibility of such loss or damage.
- 12.2 All implied representations, warranties, conditions and terms relating to the Service or this Agreement not contained in this agreement are excluded from this agreement to the extent permitted by law. The Company is not liable to the Customer, user or any other natural person, for any failures (including but not limited to delays,

omissions, interruptions, system failure or software or program error) or faults in provision or operation of the Service. The Customer and Users, acknowledge that in such an event the Company has not breached its obligations, and that the Customer and all Users indemnifies the Company and its Directors and all parties associated with the Company against any claim. Including any claim made by a third party.

- 12.3 There is nothing in the Agreement that excludes, restricts or modifies any condition, warranty, right or remedy implied or imposed by any statute or regulation if it cannot lawfully be excluded, restricted or modified.
- 12.4 If the law, including the Trade Practices Act 1974 (as amended) or any similar legislation, implies or imposes a non-excludable condition or warranty which can be limited, the liability of the Company to the Customer for breach of that condition or warranty will be limited - as the Company determines to;
- a) supplying the Service again,
 - b) paying for the cost of supplying the Service again.
- 12.5 The total liability in all circumstances of the Company to the Customer in contract, tort (including negligence) or otherwise for any loss or damage (other than indirect, consequential, special or punitive loss or damage, which is excluded under Clause 12 is limited to the Charges paid by Customer to the Company under Clause 6 for the two (2) months immediately preceding the month during which the breach occurs or the liability arises.
- 12.6 The Company is not liable to a Customer or any other person if the Company terminates this agreement under Clause 9, other than liabilities accrued or accruing up to the date of termination. A Customer is not liable to the Company or any other person if Customer terminates this agreement pursuant to Clause 9, other than liabilities accrued or accruing up to the date of termination.
- 12.7 The Customer agrees that all of the clauses under Clause 12 are enforceable by and to the benefit of the Company.

13. INDEMNITIES AND RELEASE

The Customer and Users agrees to indemnify the Company against any liabilities, losses, expenses, damages and costs (on a solicitor and own Customer basis and whether incurred by or awarded against the Company) or other costs that The Company incurs in relation to any claim arising from acts taken by the Company at Customer's or User's request, including without limitation overriding or countermanding authority to access the Service provided to a User.

- 13.1 The Customer agrees that any User and any person claiming through the Customer will not be entitled to make a claim against the Company as a result of any claim, action, proceeding or demand brought by any third party as a result of the supply (or failure to supply) or use of the Service and the Customer releases the Company from and indemnifies the Company against any liabilities, losses, expenses or other costs associated with any such third party claim.

14. ASSIGNMENT

- 14.1 Subject to Clause 14.2, either party may not assign any of the rights or obligations within this Agreement without the prior written consent of the other.
- 14.2 The Company may assign this agreement, or require the Customer to novate this agreement, to a party capable of performing the Company's obligations. On so doing the Company will be unconditionally discharged from obligations under this agreement, which will be assumed by the assignee or novated party, as the case may be.

15. FORCE MAJEURE

The Company does not breach this agreement and is not liable to the Customer or any other person for delay or failure to perform an obligation due to a Force Majeure Event. Where affected by a Force Majeure Event, the Company is granted a reasonable extension of time to perform the obligation, unless the delay or failure exceeds 60 days, in which case the Company may immediately terminate this agreement on notice to the Customer.

16. SURVIVING PROVISIONS

The surviving provisions are as follows, 1. ACCESS, including intellectual property (IP), 3. RESPONSIBILITIES USE OF SERVICE & CUSTOMER OBLIGATION, 6. Any outstanding fees payable, 7. THIRD PARTY SERVICES, 10. CONFIDENTIALITY AND CLIENT DATA, 11. WARRANTIES, 12. LIABILITY, 13. INDEMNITIES AND RELEASE

17. ENTIRE AGREEMENT

This Customer Agreement acts as the entire agreement and supersedes all other Order Forms, representation either written or oral. The Customer recognises that the Order form acts as an addendum to this agreement to provide the commercial terms under which the client agrees on a minimum service level. In the event of conflict this agreement will prevail.

18. NOTICES

A notice or other communication given under this agreement must be sent via email to: generalcounsel@kartasoft.co

with a copy addressed and posted by registered mail to:

General Counsel
Karta Software Pty Ltd
307 199 Regent Street
Redfern, NSW 2016

19. GOVERNING LAW AND JURISDICTION

This agreement is governed by the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

20. COUNTERPARTS

This agreement may be signed in any number of counterparts. All those counterparts together make one instrument.

21. DEFINITIONS

“Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“Agreement” or “Subscription Agreement” or “Access” or “Terms and Conditions” means this Master Service Agreement and incorporates all the Terms and Conditions of use of the Services provided by the Company.

“Commencement Date” means the date that the Company first makes the Service available to Customer.

“Content” means information obtained by Karta Software Pty Ltd from publicly available sources or its third party content providers and made available to Customer or pursuant to an Order Form, as more fully described under the heading “Access”.

“Customer” means any individual or person accepting this Agreement as defined under “Access” on their behalf or as an individual accepting this Agreement on behalf of any legal entity such as a company, for which that person accepting this Agreement further information can be found under “Access”. This includes the Customer’s Authorised Users, meaning a person accessing the Service. A reference to Customer may infer a reference to Authorised User and vice versa.

“Customer Data” refers to any information either electronic or hard copy which has been provided to the Company, this excludes information from third party providers.

“Documentation” means compliance and regulatory documentation which can be found at kartasoft.co or requested from the Company at mail@kartasoft.co

“Fees” means payable amounts to the Company as set out in the Order form.

“Force Majeure Event” means an event or circumstance beyond the reasonable control of a party including acts of God, war, flood, fire, explosion, civil disobedience, legislation not in force at the date of this agreement, labour disputes or delays by third parties, including subcontractors.

“Free Service” or “Evaluation Pilot” means any service that is provided by Karta Software Pty Ltd and is made available to Customers without a fee; these services are also covered by this Master Service Agreement and binds the customer and the Company to the terms within it.

“Insolvency Event” means the happening of any of the following events in relation to a party:

- a) a liquidator, provisional liquidator, official manager, company administrator, administrator, receiver, manager, or receiver and manager or similar officer is appointed in respect of it; or
- b) it enters into, or resolves to enter into, a scheme of arrangement or composition with or assignment for the benefit of, or it proposes a reorganisation, moratorium or other administration, involving its creditors or a class of its creditors;
- c) it enters into a deed of company arrangement;
- d) it resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to so resolve, except by way of bona fide solvent reconstruction or amalgamation on terms approved by the other party;
- e) it suspends payments of its debts generally;
- f) it is or becomes unable to pay its debts when they are due or becomes unable to pay its debts; or
- g) it is or becomes unable to pay its debts when they are due or becomes unable to pay its debts within the meaning of the Corporations Law, or is presumed to be insolvent under the Corporations Law.

“Malicious Code” means code, files, scripts, programs or agents that are intended to harm the Service or the Company examples of this include but are not limited to, Trojan horses, viruses, worms and time bombs.

“Third Party Content” or “Third Party” refers to services or content provided by the Company’s partners, this Master Service Agreement, binds the Customer to the copyright and intellectual property requirements of all third parties. Further information can be found at [Copyright and Intellectual property notices](#).

“Order Form” means any instrument which provides details on the Services or minimum service levels, to be provided between the Customer and Karta Software Pty Ltd. This may include; an addendum, written notification or any other mutually agreed and authorised document to be appended to this Master Service Agreement. When agreeing to an Order Form the Customer agrees to be bound by the terms of this Agreement.

“Purchase” means that the Customer has agreed to purchase Services using an Order Form or other mutually agreed instrument.

“Service” means the service or products and that are ordered by a Customer under an Order Form or online purchasing portal, or other mutually agreed instrument. A Customer accessing Services without charge as a free trial or evaluation pilot is still deemed to be accessing the Service can is therefore bound by this Master Service Agreement. Further information about services can be found at kartasoft.co

“Users” means individuals who are authorised by the Customer to whom the Service has been granted. An individual accepting this Agreement on behalf of a legal entity or company, an individual who is authorised by a Customer to use the Service, for whom Customer has purchased the Service for examples of these might include but are not limited to; consultants, agents of Customer, third parties, employees, and contractors.

"We," "Us" or "Our" means the Company; Karta Software Pty Ltd [Registered in Australia ACN 642 168 732] [who the Customer is contracting with].

"You" or "Your" or "they" means the Customer or other legal entity for which you are accepting this Agreement.

In this agreement, unless the context otherwise requires:

- a) words importing the singular include the plural and vice versa;
- b) a reference to any person includes a company and any other form of business association whether incorporated or unincorporated and further includes any such person's successors and permitted assigns;
- c) headings are for convenience only and do not affect the interpretation of this agreement.

1-September-2020