

Customer Agreement

Version 1.0. Effective from August 2017

This Customer Agreement (“Agreement”) is a legally binding agreement between you (the “Customer”) and Harvest Digital Planning Pty Ltd (ABN 53 102 443 916) (“Harvest”) that applies to the supply to you of Harvest’s technology related services and products.

1. Scope of Agreement

This Agreement governs your initial purchase as well as any future purchases made by you of Harvest’s technology related services and products. If you fail to comply with your obligations under this Agreement then such failure may entitle Harvest to terminate or suspend this Agreement in whole or in part in accordance with its provisions.

This Agreement includes:

- (i) these terms and conditions and any Addendum;
- (ii) Harvest’s Privacy Policy;
- (iii) each Order Form;
- (iv) each Terms of Service; and
- (v) any other documents incorporated into this Agreement by attachment or reference.

In the event and to the extent of any inconsistency between any of these documents forming part of this Agreement then these documents will be interpreted in the order of priority (highest to lowest) specified above.

2. Term of Agreement

This Agreement begins on the date of the last party to sign it and continues until terminated in accordance with its provisions.

3. Services and Products

Harvest agrees to supply to you any Services or Products specified in an Order Form in accordance with this Agreement.

You agree to:

- (i) promptly provide Harvest with any assistance or information when requested by Harvest for the purpose of supplying any Services or Products to you;
- (ii) follow any guidelines or procedures notified by Harvest from time to time in connection with the supply or use of any Services or Products;
- (iii) comply with any directions given by Harvest from time to time in connection with the supply or use of any Services or Products; and
- (iv) comply with all applicable laws, standards, codes and other legislative or regulatory measures in connection with the supply of any Services or Products.

You acknowledge and agree that:

- (i) to the full extent permitted by law, any Services or Products (including, without limitation, any content contained within or generated by any Services or Products) are supplied by Harvest on an “as is” basis without any representations or warranties unless otherwise expressly provided in the applicable Order Form; and
- (ii) Harvest may collect, share and publish aggregate, anonymized data, metadata and other information about your use of any Services or Products.

4. Charges and taxes

4.1 Payment of Charges

You agree to pay the Charges to Harvest within thirty (30) days after receipt of an invoice from Harvest unless otherwise specified in the applicable Order Form. You agree to pay Harvest interest on any amount due and not paid by you within the time required by this Agreement at the maximum corporate overdraft rate of the Commonwealth Bank of Australia (or any replacement overdraft rate) from the due date for payment until the amount is paid in full.

4.2 Additional Charges

You agree to pay additional Charges to Harvest for the supply by Harvest of any services or products requested by you which are in addition to any Services and Products specified in an Order Form.

Harvest may also require you to:

- (i) pay additional charges and fees based on Harvest’s standard rates in effect from time to time for any additional work required to be undertaken by Harvest; and
- (ii) reimburse Harvest for any additional costs or expenses incurred by Harvest,

to supply any Service or Product to you, to the extent that such additional work, costs or expenses are due to:

- (a) the supply of the Service or Product being delayed by circumstances beyond the reasonable control of Harvest;
- (b) Harvest being required to supply the Service or Product in circumstances other than those expressly or reasonably assumed or contemplated in this Agreement; or
- (c) you not complying with your obligations under this Agreement.

4.3 Taxes

The Charges are exclusive of all taxes, duties and government charges imposed or levied in connection with the supply of any Services or Products unless otherwise expressly provided in the applicable Order Form. You agree to be responsible for all existing and new taxes, duties and government charges imposed or levied in connection with the supply of any Services or Products unless otherwise expressly provided in the applicable Order Form.

5. Confidentiality

Each party agrees not to disclose to any third party any of the other party's Confidential Information, without the other party's prior written consent, except to the extent the disclosure is made for the purpose of:

- (i) exercising its rights or performing its obligations under this Agreement;
- (ii) complying with any law or order of a government agency; or
- (iii) obtaining advice from its solicitors, auditors, insurers, accountants, consultants or other professional advisors in connection with this Agreement.

In giving consent to the disclosure of its Confidential Information in accordance with this clause

5 a party may impose any conditions it considers reasonably necessary and the other party must comply with any such conditions.

6. Privacy

Each party agrees to:

- (i) do anything reasonably requested by the other party for the purpose of the other party complying with its obligations under any applicable privacy law in connection with this Agreement; and

(ii) cooperate with the other party for the purpose of resolving any complaint that the other party has breached any applicable privacy law in connection with this Agreement.

7. Intellectual Property Rights

7.1 Ownership

You acknowledge and agree that, unless otherwise expressly provided in the applicable Order Form:

- (i) title and all Intellectual Property Rights in all Services and Products will at all times remain vested in Harvest and its third party licensors;
- (ii) title and all Intellectual Property Rights in all further development of any Services or Products (whether or not as a result of any suggestions, ideas, requests, feedback or recommendations made by you to Harvest, or the supply of any Services or Products to you by Harvest) will vest in and become the property of Harvest from the time of creation.

You agree not to take any action which is inconsistent with the Intellectual Property Rights in any Service or Product of Harvest or its third party licensors.

7.2 Third party claims

Subject to clause 7.3, Harvest agrees to defend any action brought against you which claims that your use of any Service or Product infringes any Intellectual Property Rights of a third party in the Service or Product, and will pay all costs and damages finally awarded against you and which are attributable to the claim provided that you:

- (i) promptly notify Harvest in writing of any infringement, suspected infringement or alleged infringement of such Intellectual Property Rights of a third party;
- (ii) give Harvest sole control of the defence of the claim including, without limitation, sole control of the negotiations for settlement or compromise of the claim;
- (iii) do not admit liability for the alleged infringement of Intellectual Property Rights or otherwise prejudice the ability of Harvest to defend the claim;
- (iv) provide Harvest with all assistance and cooperation in conducting the defence of the claim, or negotiating the settlement or compromise of the claim, as Harvest may reasonably require; and
- (v) permit Harvest at its option to:

- (a) modify or replace the infringing part of the Service or Product in order to avoid continuing infringement;
- (b) procure for you the right to continue using the infringing Service or Product; or
- (c) terminate the supply of the Service or Product and refund to you any Charges paid for the period during which you are unable to effectively use the Service or Product.

7.3 Excluded claims

You acknowledge and agree that Harvest is not required to defend any action brought against you where the infringement, suspected infringement or alleged infringement of the Intellectual Property Rights of a third party in any Service or Product arises from:

- (i) use of the Service or Product in combination with any other service or product not approved by Harvest;
- (ii) modification or alteration of the Service or Product without the prior written consent of Harvest; or
- (iii) use of the Service or Product in a manner or for a purpose not expressly authorised or reasonably contemplated by Harvest.

8. Representations and warranties

8.1 Reliance on representations

You acknowledge and agree that:

- (i) to the extent you have relied upon any representation made by Harvest which is not otherwise expressly stated in this Agreement, you have been provided with an opportunity to independently verify the accuracy of that representation; and
- (ii) you have not relied on any other representation made by or on behalf of Harvest which has not been expressly stated in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by Harvest.

8.2 Exclusion of representations and warranties

To the full extent permitted by law and unless otherwise expressly provided in an Order Form, Harvest and its Personnel make no representation, warranty or guarantee as to the reliability, timeliness, quality, suitability, availability, accuracy or completeness of any Services or Products (including without limitation, any content contained in or generated with any Services or Products) or that:

- (i) the use of any Services or Products will be secure, timely, uninterrupted or error-free;
- (ii) any Services or Products will operate in combination with any other hardware, software, system, or data;
- (iii) the products (including, without limitation, any products, services, information, or other material purchased or obtained by you through the Services of Products) will meet your requirements or expectations;
- (iv) any Customer Data stored using any Services or Products will be accurate or reliable or that any such stored Customer Data will not be lost or corrupted;
- (v) errors or defects with any Services or Products will be corrected; or
- (vi) any Services or Products (or any server that makes any Services or Products available) will be free of viruses or any other harmful code.

9. Implied terms

To the full extent permitted by law, any condition, warranty or representation which would otherwise be implied in this Agreement (whether by any law or otherwise) is excluded.

Where any condition or warranty is implied in this Agreement which cannot lawfully be excluded, the liability of Harvest for any breach of such condition or warranty will to the full extent permitted by law be limited at its option to:

- (i) goods – if the breach relates to goods, replacing the goods or supplying equivalent goods, repairing the goods, paying the cost of replacing the goods or of acquiring equivalent goods or paying the cost of having the goods repaired; and
- (ii) services – if the breach relates to services, supplying the services again or paying the cost of having the services supplied again.

10. Liability

10.1 Limitation of Liability

Subject to clause 9 and clause 10.2, to the full extent permitted by law the aggregate Liability of Harvest and its Personnel to you and your Personnel for Liability arising out of, or in connection with:

- (i) any Service or Product — will be limited to the total of the Charges received by Harvest from you under this Agreement for the supply of the Service or Product respectively during the previous twelve (12) month period; and

(ii) this Agreement (excluding Liability arising out of, or in connection with the supply of any Service or Product) — will be limited to the total of the Charges received by Harvest from you during the previous twelve (12) month period.

10.2 Exclusion of Liability

To the full extent permitted by law Harvest and its Personnel will have no Liability to you or your Personnel for or in respect of any and all:

- (i) loss of profit, loss of opportunity, loss of revenue, loss of income, loss of production, loss of data, loss of management time or loss of, or damage to, reputation or goodwill;
- (ii) losses, damages, costs, charges, expenses or liabilities of any kind or nature whatsoever not directly, or naturally in the usual course of things, arising out of, or in connection with, this Agreement (including, without limitation, consequential, special or indirect losses, damages, costs, charges, expenses or liabilities of any kind or nature whatsoever); or
- (iii) claims, actions, demands, proceedings, losses, damages, costs, charges, expenses or liabilities of any kind or nature whatsoever directly or indirectly arising out of or in connection with any act or omission of any third party not under the direct control of Harvest.

11. Dispute resolution

11.1 Reasonable efforts to resolve disputes

Each party must use all reasonable efforts in good faith to resolve any dispute which arises in connection with this Agreement in accordance with this clause 11 before commencing legal proceedings in connection with the dispute (except legal proceedings for urgent interlocutory relief) or terminating this Agreement in connection with the dispute.

11.2 Dispute notice

A party claiming that a dispute has arisen in connection with this Agreement must give the other party a written notice setting out full details of the dispute.

If a party gives the other party a written notice in connection with a dispute in accordance with this clause 11.2 then the dispute must be referred to a senior management representative of each party who must use their best endeavours to resolve the dispute

within a period of ten (10) Business Days (unless another period is agreed in writing by the parties) of the other party receiving such notice.

11.3 Mediation of disputes [Suggest use arbitration for international disputes]

If the senior management representatives of the parties are unable to resolve a dispute within the period required by clause 11.2 then either party may, with the prior written consent of the other party, refer the dispute to mediation which must be conducted in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.

If the parties are unable to agree on the appointment of a mediator within five (5) Business Days after the referral of a dispute to mediation then the mediator will be appointed by, or on behalf of, the President of The Institute of Arbitrators & Mediators Australia.

11.4 Continued performance

Each party must continue to perform its obligations under this Agreement despite the existence or alleged existence of a dispute in connection with this Agreement.

If a party breaches any provision of this clause 11 then the other party is not required to comply with the provisions of this clause 11 before commencing legal proceedings in relation to the dispute.

12. Agreement termination and suspension

12.1 Termination by either party

Either party may, by giving at least one (1) month's prior written notice to the other party, terminate this Agreement provided that the effective date of termination is no earlier than any agreed date for Harvest to complete the supply of all Services and Products.

12.2 Termination by Harvest

Without limiting any other rights or remedies that Harvest may have against you arising out of or in connection with this Agreement, Harvest may by giving written notice to you terminate or suspend this Agreement in whole or in part effective immediately where you:

- (i) breach a material provision of this Agreement and fail to remedy the breach within thirty (30) days after receiving written notice requiring you to do so;
- (ii) fail to make payment of any invoice within sixty (60) days after the due date for payment;
- (iii) cease to carry on business;
- (iv) are taken to have failed to comply with a statutory demand;
- (v) cease to be able to pay your debts as they become due;
- (vi) have a receiver, receiver and manager, official manager, controller, administrator (whether voluntary or otherwise), provisional liquidator, liquidator or similar official appointed over the whole or a substantial part of your undertaking and property;
- (vii) have the holder of an encumbrance take possession of the whole or a substantial part of your undertaking and property;
- (viii) enter or propose to enter into any scheme of arrangement or any composition for the benefit of your creditors; or
- (ix) become subject to an order or resolution for winding up or dissolution without winding up (otherwise than for the purposes of solvent reconstruction or amalgamation).

12.3 Termination by Customer

Without limiting any other rights or remedies that you may have against Harvest arising out of or in connection with this Agreement, you may by giving written notice to Harvest terminate this Agreement effective immediately where Harvest breaches a material provision of this Agreement and fails to remedy the breach within thirty (30) days after receiving written notice requiring it to do so.

12.4 Consequences of termination

On termination of this Agreement Harvest may:

- (i) retain any monies previously paid by you under this Agreement;
- (ii) charge a reasonable sum for any Service or Product supplied under this Agreement in respect of which no sum has previously been charged; and
- (iii) pursue any additional or alternative remedies provided by law.

Clauses 1 (Scope of Agreement), 3 (Services and Products), 4 (Charges and taxes), 5 (Confidentiality), 7 (Intellectual Property Rights), 8 (Reliance on representations), 9 (Implied terms), 10 (Liability), 12.4 (Consequences of termination), 14 (General provisions), 15 (Definitions) and 16 (Interpretation) and any other provision of this Agreement which is capable of having effect after its termination, will survive and remain in full force and

effect following its termination. The termination of this Agreement for any reason does not affect any accrued rights or remedies of a party under this Agreement.

13. Notices

A notice given under this Agreement must be given in writing by a person duly authorised by the sender and hand delivered, or sent by prepaid post or electronically, to the recipient's address for notices specified in an Order Form or otherwise notified to the sender by the recipient (as varied by any written notice given by the recipient to the sender).

A notice given under this Agreement takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (i) if hand delivered – on the day of delivery if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;
- (ii) if sent by prepaid post – two (2) Business Days after the date of posting; and
- (iii) if sent by email or other electronic means – on the day the sender receives a delivery receipt generated by the sender's system or acknowledgement of receipt from the recipient (whichever occurs earlier) if received before 5.00 pm a Business Day, otherwise on the next Business Day.

Each party must give the other party written notice of any change in the party's address or the identity of the relevant person to whom notices are to be addressed under this Agreement within two (2) Business Days of the change occurring.

14. General provisions

14.1 Approvals and consents

Harvest may, in its absolute discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement unless otherwise expressly provided in this Agreement.

14.2 Variation

Subject to the other provision of this clause 14.2, the provisions of this Agreement may not be varied except by agreement in writing signed by each party.

Unless otherwise expressly provided in this Agreement, Harvest may amend this Agreement by giving you at least three (3) months' prior written notice of the amendment

and you will be deemed to have accepted and agreed to be bound by the amendment unless you give written notice to Harvest terminating this Agreement at least thirty (30) days prior to the amendment taking effect.

14.3 Assignment

You acknowledge and agree that Harvest may, at any time by giving written notice to you, assign its rights and obligations under this Agreement to any of its related corporations (as defined in the Corporations Act 2001 (Cth)) or a purchaser of the whole or a substantial part of its business.

You agree not to assign, novate, sub-licence, transfer, charge, mortgage, encumber or otherwise deal with any of your rights or obligations under this Agreement without the prior written consent of Harvest.

14.4 Severability and waiver

Any provision, or any part of a provision, of this Agreement which is void or unenforceable will be severed and the remainder will continue in full force and effect. A party will only be deemed to have waived a right or remedy under this Agreement to the extent that the waiver is in writing and signed by that party.

14.5 Harvest's employees and contractors

You acknowledge and agree that Harvest may subcontract the supply of any Services or Products under this Agreement.

During the supply by Harvest of any Services or Products, and for twelve (12) months (or otherwise for the longest period permitted by law if that period is unenforceable for any reason) after the supply by Harvest of any Services or Products, you agree not to solicit for employment or contracting, employ or contract, either directly or indirectly, any person who is employed or contracted by Harvest, except with the prior written consent of Harvest.

14.6 Execution of Agreement

This Agreement may be executed in counterparts and all executed counterparts will be deemed to constitute one agreement. Each party must pay its own costs of negotiating, preparing and executing this Agreement. Each party must do, at its own cost, everything reasonably necessary (including, without limitation, executing documents) to give full effect to this Agreement.

14.7 Force majeure

A party is excused from performing its obligations under this Agreement to the extent that it is prevented by circumstances beyond its reasonable control including, without limitation, acts of God, natural disasters, acts of war, cyber attacks, riots and strikes.

14.8 Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior statements, representations, warranties, understandings and agreements, whether verbal or in writing.

14.9 Parties' relationship

A relationship of employment, agency or partnership is not created between the parties by this Agreement.

14.10 Governing law and jurisdiction

This Agreement will be governed by the laws of the State of Victoria, Australia each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of Victoria, Australia.

15. Definitions

In this Agreement, unless the contrary intention appears:

“Addendum” means an addendum to this Agreement.

“Business Day” means a day which does not fall on a weekend or public holiday in Melbourne, Victoria, Australia or the place where the notice is to be received respectively.

“Charges” means the subscription fees or other charges agreed in an Order Form which are payable by you to Harvest for the supply of any Services or Products.

“Confidential Information” means all information of a confidential nature relating to the business or affairs of a party which the party has identified or marked as confidential, or which the other party knows or ought to know is confidential.

“Intellectual Property Rights” means all present and future rights subsisting in Australia which are conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, business and domain names, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields.

“Liability” means any claim, action, demand, proceeding, loss, damage, cost, charge, expense or liability of any kind or nature whatsoever (including, without limitation, any loss or loss of use of, or damage to, any property and any personal injury, illness or death of any person) directly or indirectly arising out of, or in connection with, this Agreement (whether in contract, in tort, under statute or in any other way and whether due to negligence, wilful or deliberate breach or any other cause).

“Order Form” means an order form entered into between you and Harvest for the supply of any Services or Products.

“Personnel” means the officers, employees, agents and contractors of a party.

“Privacy Policy” means Harvest’s Privacy Policy available at www.harvestdp.com as updated by Harvest from time to time.

“Products” means any products specified in an Order Form which Harvest has agreed to supply to you.

“Services” means any services specified in an Order Form which Harvest has agreed to supply to you.

“Terms of Service” mean any terms of service entered into between you and Harvest for the supply of any Services or Products.

16. Interpretation

In this Agreement, unless the contrary intention appears:

- (i) a reference to a clause is to a clause of this Agreement;
- (ii) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (iii) a reference to a document includes all amendments and replacements of that document;

- (iv) headings are for convenience only and do not affect the interpretation of this Agreement;
- (v) a reference to legislation (including subordinate legislation) includes consolidations, amendments, re-enactments and replacements of it and all subordinated legislation made under it;
- (vi) a reference to a month is to a calendar month;
- (vii) a reference to a party is to a party to this Agreement and includes that party's agents, successors and permitted assigns;
- (viii) a reference to a person includes a natural person, partnership, body corporate, association, trust, joint venture, government agency or authority, or other entity; and
- (ix) words in the singular include the plural and vice versa.

No rule of construction applies to the disadvantage of a party on the basis that it prepared or put forward this Agreement or any part of it.

By signing below each party agrees to be legally bound by the terms and conditions set out above:

EXECUTED as an agreement

SIGNED for and on behalf of)
HARVEST DIGITAL PLANNING PTY)
LTD ABN 12 148 958 927 by its)
 authorised representative in the)
 presence of:

.....
 Signature of authorised
 representative

.....
 Signature of witness

.....
 Name of authorised representative

.....
 Name of witness

.....
 Date

SIGNED for and on behalf of)
[INSERT CUSTOMER'S NAME] ABN)
[INSERT ABN] by its authorised)
representative in the presence of:)

.....
Signature of authorised
representative

.....
Signature of witness

.....
Name of authorised representative

.....
Name of witness

.....
Date

.....
.....

I'd prefer to not name these if that's appropriate.
Sounds good
These may be product specific.