



# Master Services Agreement

## 1. Introduction

- 1.1. This Master Services Agreement (**MSA**) is made between LifeByte Systems Pty Ltd (ACN 623 666 946) of Suite 13.01, Level 13, 55 Clarence St, Sydney NSW 2000 (**LifeByte**) and the person or entity specified in the first Order Form (**Customer**).
- 1.2. This MSA governs and regulates the Customer's access to, and use of, the Broker CRM, HUB System, Smart Risk Reporting and Trading Server Management platforms and tools as more particularly described in the relevant Order Form and the Documentation. The Customer acknowledges that it has read and agreed to the terms contained herein, and agrees to be bound by them.
- 1.3. The parties may enter into one or more Order Forms. Each Order Form (together with the Special Conditions incorporated into each Order Form) will constitute a separate agreement for the provision of the Services on the terms and conditions of that Order Form (and will incorporate the terms and conditions of this MSA).
- 1.4. In the event of any inconsistency between this MSA, any Special Conditions or any Order Form, the Special Conditions and Order Form shall take precedence. Further, no terms or conditions set out in any invoice or purchase order (or similar), issued by the Customer, will override this MSA, any Special Conditions or Order Form (and the MSA, Special Conditions and Order Forms will prevail, as the context permits).

## 2. Term

- 2.1. This MSA commences on the date LifeByte commences providing the Services to the Customer, or the Order Start Date in the first Order Form (whichever is earlier) (**Commencement Date**) and continues for the period set out in the Order Form (**Initial Term**) unless terminated earlier in accordance with this MSA.
- 2.2. At the end of the Initial Term, this MSA will automatically be renewed for subsequent periods equal to the Initial Term (each a **Further Term**), unless either party notifies the other party in writing at least 30 days prior to the end of the Initial Term or then current Further Term (as the case may be) that it does not wish to extend the term of the MSA.
- 2.3. The termination of this MSA shall not prejudice or affect:
  - (a) the rights and obligations of the parties under any Order Form wholly or partially outstanding at the date of such or termination; or
  - (b) any right of action or remedy which shall have accrued or shall accrue subsequently under this MSA or any Order Form to either party.

## 3. User Subscription

- 3.1. Subject to the terms of this MSA and any Special Conditions, the Customer is granted a non-exclusive, personal, non-transferable and non-sub-licensable licence to permit the Authorised Users to access and use the LifeByte Platform and to use the Services during the Term solely for its business or personal purposes.
- 3.2. The Customer will not acquire, or be entitled to, any rights other than those rights expressly set out in this MSA or any Special Conditions.
- 3.3. Upon the Customer accepting the terms and conditions of this MSA, LifeByte create a unique account (**Customer Account**) for the Customer to use during the Term. The Customer Account will be operated by a username and password

(**Customer Password**) which can be changed at any time by self-service portal.

- 3.4. In relation to the Authorised Users, the Customer undertakes that:
  - (a) the Customer will ensure that each Authorised User complies with this MSA and any Special Conditions; and
  - (b) each Authorised User will keep a secure non-transferable username (**User Name**) and password (**User Password**) for his/her access to the LifeByte Platform and to use the Services, and the Customer will ensure that each Authorised User will keep his/her User Name and User Password confidential. The Customer is responsible for all use of the Services by all Authorised Users or any other person, whether or not authorised by the Customer, who accesses the LifeByte Platform and/or Services (directly or indirectly) through use of the User Names and User Password. The Customer is liable for any breach of this MSA (or any Special Conditions) by its Authorised Users. LifeByte is not responsible or liable for any Loss due to misused, stolen or hacked User Names and User Passwords. LifeByte does not have access to the Authorised User's current User Password. The Authorised User can change its User Password at any time by self-service portal; and
  - (c) the maximum number of Authorised Users that the Customer authorises to access and use the LifeByte Platform, the Services and the Documentation will not exceed the number of User Subscriptions you have purchased from time to time. The Customer will not allow any User Subscription to be used by more than one individual Authorised User.

## 4. Customer obligations

- 4.1. The Customer must:
  - (a) provide LifeByte with all necessary cooperation in relation to this MSA and each Order Form and all necessary access to Personnel, computer systems, information and data (including Customer Data and technical specifications) as may be required by LifeByte, in order to provide the Services (including installation and debugging services). LifeByte relies on the Customer to provide accurate, complete and up-to-date information at all times;
  - (b) comply with the terms and conditions of this MSA (including Documentation and any Special Conditions) and all Relevant Laws in its use of the Services and in respect of its activities and obligations, and the Customer will comply with all LifeByte's directions, policies (including Privacy Policy) and guidelines advised in writing from time to time;
  - (c) obtain and maintain all equipment, hardware and software required by the Customer to use and/or access the Services; and
  - (d) indemnify LifeByte against all third party claims, disputes, proceedings and Losses that LifeByte may suffer or incur as a result of, or in connection with, the Customer breaching this MSA, any Special Conditions or any Order Form or an act or omission of the Customer or its Personnel.



4.2. LifeByte will not be liable for any interruptions or delays in providing the Services resulting from an act or omission of the Customer or its Personnel, failure to fulfil any of its obligations under this MSA or any relevant Order Form. LifeByte reserves the right to invoice the Customer for any additional costs incurred by LifeByte as a result of such interruptions or delays.

4.3. The Customer may designate one or more Authorised Users as its administrators for the purpose of accessing the Customer's Account and to manage the Authorised Users' accounts (**Administrators**). The Administrators are responsible for:

- (a) maintaining the confidentiality of the Administrator password and the Customer account;
- (b) granting Authorised Users the right to access and administer the Customer account; and
- (c) ensuring that all activities involving the Customer account comply with this Agreement.

## 5. Restrictions

5.1. The Customer must not:

- (a) introduce, access, store, distribute or transmit any viruses, trojan or other malicious code into the LifeByte Platform, the Services or any of LifeByte's telecommunication and computer systems;
- (b) violate LifeByte's Intellectual Property Rights;
- (c) copy, modify, duplicate, create derivative works from, frame, mirror, republish, transmit or distribute all or any portion of the LifeByte Platform or Documentation, or any third party software that the Customer may access or use through the Services, in any way;
- (d) access all or any part of the LifeByte Platform or Services in order to build a product, service or code which competes with the LifeByte Platform or the Services;
- (e) modify, alter, adapt, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the LifeByte Platform in any way or otherwise learn the source code or algorithms underlying the LifeByte Platform (or attempt to do any of the foregoing);
- (f) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the LifeByte Platform, the Services and/or Documentation available to any third party;
- (g) alter, remove, obscure or interfere with any notices relating to Intellectual Property Rights appearing in, or on, or affixed to, the LifeByte Platform, the Services, the Documentation or any other literature relating to the LifeByte Platform; and
- (h) impersonate another client or Authorised User or provide false identity information to gain access to the LifeByte Platform or use the Services; and
- (i) engage in any activity or conduct that is in breach of any Relevant Laws.

5.2. The Customer acknowledges and agrees that, to the maximum extent permitted by Relevant Laws, LifeByte makes no representations, warranties or guarantees in relation to the availability, continuity, reliability, accuracy, currency or security of the Services, the LifeByte Platform or Documentation (or any products or services provided in connection with the LifeByte Platform).

5.3. LifeByte will not be liable if the Services or the LifeByte Platform is unavailable for any reason, including directly or indirectly as a result of:

- (a) telecommunications unavailability, interruption, delay, bottleneck, failure or fault;

- (b) negligent, malicious or wilful acts or omissions of third parties (including LifeByte third party service providers);
- (c) maintenance (scheduled or unscheduled) carried out by LifeByte or any third party service provider;
- (d) services provided by third parties ceasing or becoming unavailable; or
- (e) a Force Majeure Event.

## 6. LifeByte's obligations

6.1. During the Term, LifeByte agrees to provide the Customer with the Services substantially in accordance with the relevant Order Form.

6.2. Clause 6.1 shall not apply in the event of:

- (a) any non-conformance which is caused, or contributed to, by use of the Services or the LifeByte Platform contrary to LifeByte's instructions; or
- (b) modification or alteration of the Services or the LifeByte Platform by any party other than LifeByte.

6.3. In the event LifeByte fails to provide the Services in accordance with clause 6.1, LifeByte will, at its expense, use reasonable endeavours to correct any such non-conformance, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of clause 6.1.

6.4. LifeByte shall provide the Customer LifeByte's standard customer support services in effect at the time the Services are provided.

6.5. Notwithstanding the forgoing and to the maximum extent permitted by Relevant Laws, LifeByte:

- (a) does not warrant that Customer's access to, and use of, the Services and the LifeByte Platform will be uninterrupted, virus-free or error-free; nor that the Services, Documentation and/or the information or results obtained by the Customer through the Services will meet the Customer's requirements.
- (b) does not warrant that the LifeByte Platform will be free from external intruders (hackers), unauthorised viruses or worm dissemination; and
- (c) is not responsible for any delays, failures or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and Customer acknowledges that the Services, LifeByte Platform and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities or networks.

6.6. This MSA shall not prevent LifeByte from entering into similar agreements with third parties, or from developing, using, licensing or providing products or services which are similar to those provided under this MSA or an Order Form.

## 7. Payment

7.1. The fees payable for each of the Services and to access and use the LifeByte Platform (as the context permits) are set out in the relevant Order Form (**Fees**) and are payable within 30 days of the invoice date.

7.2. All Fees are in local currency and are exclusive of any goods and services or value added tax (or similar tax), if applicable, which shall be added to and payable in addition to the Fees. The Customer will be liable for all foreign exchange or conversion charges. To the fullest extent permitted by any Relevant Laws, the Fees are non-refundable.

7.3. Local taxes of any kind, including duties, levies, tariffs, charges, contribution, imposts or any similar charges (including without limitation, sales taxes, use taxes and value added taxes), whether or not similar to any in force at the



Commencement Date and whether imposed by a local, municipal, governmental, state, federal or other body or authority in any of the countries to which this agreement applies, shall, if applicable, be added to all sums due under this agreement at the rate prevailing at the time such taxes are due.

- 7.4. LifeByte reserves the right to vary the Fees set out in any Order Form to reflect increases in the cost of providing the Services or the LifeByte Platform by providing the Customer with 30 days' written notice of these changes. If the Customer does not agree to these changes, the Customer may terminate the relevant Order Form no later than 30 days after the it has received written notice of the new Fees. If LifeByte does not receive the written notice within 30 days the Customer will have deemed to have accepted the new Fees.
- 7.5. If the Customer fails to pay the Fees (or any other amounts) by the due date, without limiting any other remedies available to LifeByte under this MSA or any Relevant Laws, LifeByte may, in its absolute discretion, either:
- charge interest on all outstanding amounts that are due to LifeByte under this MSA or any Order Form, charged at an interest rate of 1.25% per month (15% per annum);
  - suspend access to, and use of, the Services and the LifeByte Platform until all outstanding amounts (including interest) that are due to LifeByte under this MSA or any relevant Order Form are paid in full; or
  - terminate this MSA or the relevant Order Form in accordance with clause 12.
- 7.6. The Customer will pay LifeByte all costs and expenses incurred in recovering any outstanding amounts (including interest) that are due to LifeByte under this MSA or any relevant Order Form, including legal costs or other expenses incurred by LifeByte in relation to enforcement steps or mercantile or collections agents.

## 8. Customer Data

- 8.1. To access and use the LifeByte Platform and to use the Services, the Customer will be required to provide Customer Data to LifeByte.
- 8.2. The Customer will have sole responsibility for the legality, reliability, integrity, accuracy and quality of Customer Data. The Customer will ensure that its Personnel or other third parties have given their authority and consent for the provision by the Customer of their Customer Data (including Personal Information) to LifeByte and its use in accordance with this MSA, any Special Conditions or an Order Form.
- 8.3. The Customer authorises LifeByte to:
- use Customer Data to perform (and improve the performance of) the Services and the LifeByte Platform, and in the course of performing the Service to use Customer Data (and all Intellectual Property Rights contained therein);
  - use Customer Data to inform the Customer of other products or services that LifeByte may offer from time to time or in relation to Third Party Products and Services;
  - share Customer Data, in aggregated anonymized form, with its Related Bodies Corporate, affiliates or other third parties (with whom LifeByte may contract or be affiliated with from time to time) for the purposes of performing or improving the Service or the LifeByte Platform.

## 9. Third party providers

- 9.1. The Customer acknowledges that the Services and the LifeByte Platform (as the context permits) may require the Customer to use or access Third Party Products and Services and that the Customer does so solely at its own risk.

- 9.2. LifeByte makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of any such Third Party Products and Services, or any transactions completed, and any contract entered into by the Customer, with the owner, licensor or operator of such Third Party Products and Services.
- 9.3. LifeByte recommends that the Customer refer to the third party's terms and conditions and privacy policy prior to using the relevant Third Party Products and Services.
- 9.4. LifeByte does not endorse, sponsor or approve any Third Party Products and Services made available via, or used in conjunction with, the Services or the LifeByte Platform. It is Customer's sole responsibility to determine that specific products or services, meets the needs of the Customer's business and are suitable for the purposes for which they are used.
- 9.5. Any rights the Customer may have to access Third Party Products and Services shall be limited to:
- the extent of LifeByte's ability to pass on such rights to Customer; or
  - the relevant Third Party licensor terms.

## 10. Intellectual Property Rights

- 10.1. The Customer acknowledges that, notwithstanding anything else, LifeByte and/or its licensors own all Intellectual Property Rights in the Services, the LifeByte Platform and the Documentation (and anything arising or generated therefrom) (collectively, the **LifeByte IP**). Using the Services, the LifeByte Platform and the Documentation (as the context permits) does not give the Customer, its Authorised Users or anyone else ownership of, or any right, title or interest in any of the foregoing (or any LifeByte IP contained therein), or any information, content or technology that may be provided to, or accessed by, the Customer in connection with their use, all of which is, and will remain, owned by LifeByte or its licensors.
- 10.2. All Intellectual Property Rights discovered, developed or otherwise coming into existence as a result of, for the purposes of, or in connection with, the Services or the LifeByte Platform will automatically vest in, and are assigned to, LifeByte (**Developed IP**).
- 10.3. Subject to clauses 10.1 and 10.2, the Customer will remain the owner of its Customer Data, provided the Customer grants LifeByte a royalty-free, transferable, worldwide and perpetual licence for LifeByte (and its Related Bodies Corporate) to use and sub-license any Customer Data that the Customer makes available to LifeByte on or via the LifeByte Platform (and all Intellectual Property Rights contained therein) for the purpose of providing the LifeByte Platform, the Services or any ancillary services.
- 10.4. All trade marks, logos, trade dress and service marks on or affixed to the LifeByte Platform are either trade marks or registered trade marks of LifeByte, or third parties that have authorised such use, and may not be copied, imitated, or used, in whole or in part.

## 11. Liability

- 11.1. To the maximum extent permitted by Relevant Laws, LifeByte excludes all express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), in connection with the access to, and use of, the Services, the LifeByte Platform or the Documentation.
- 11.2. Nothing contained in this MSA, any Special Conditions or any Order Form excludes, restricts or modifies the application of any condition, warranty or other obligation, the exercise of any right or remedy, or the imposition of any



liability under the *Competition and Consumer Act 2010 (Cth)* or any other international, federal, State or Territory legislation where to do so is unlawful.

11.3. To the maximum extent permitted by Relevant Laws, LifeByte will not be liable to the Customer, any Authorised User or any third party for any:

- (a) Consequential Loss; or
- (b) loss of or damage to any property or any personal injury or death to the Customer, any Authorised User or any third person,

arising out of, relating to, or connected to, the provision or use of the Services, the LifeByte Platform, the Documentation, this MSA, any Special Conditions or any Order Form, regardless of the cause of action on which they are based, even if advised of the possibility of such damage occurring.

11.4. Under no circumstances will LifeByte's aggregate liability, whether based upon warranty, contract, statute, tort (including negligence) or otherwise, exceed the Fees paid by the Customer to LifeByte under this MSA or any Order Form in the preceding 3 months of the claim.

11.5. Except as expressly provided in this MSA or any Order Form, the Customer assumes sole responsibility for results or deliverables obtained from the use of the Services and the LifeByte Platform, and for conclusions drawn or financial or trading decisions made from such use. LifeByte will have no liability for any Loss caused by errors or omissions in any information or instructions provided to LifeByte by the Customer in connection with the Services or LifeByte Platform, or any actions taken by LifeByte at the Customer's direction.

11.6. To the maximum extent permitted by Relevant Law, the Customer agrees to defend, indemnify and hold LifeByte, its Related Bodies Corporate and its Personnel (collectively, the **Indemnified**) harmless from and against any and all actions, claims, proceedings, demands and Losses (including legal costs on a full indemnity basis) that may be brought against the Indemnified or which the Indemnified may pay, sustain or incur as a direct or indirect result of or arising out of:

- (a) the access to, and use of, the Services, the LifeByte Platform or the Documentation by the Customer, its Personnel or any third party;
- (b) any breach of any third party's Intellectual Property Rights or other rights caused by the Customer or its Personnel; or
- (c) any breach by Customer or its Personnel of this MSA or any Order Form.

## 12. Termination

12.1. Either party may terminate this MSA or any Order Form by giving the other party at least 30 days' written notice of termination, provided if either party terminates in this manner while an Order Form is in effect, the terms of this MSA shall apply until the expiration or termination of the existing Order Form.

12.2. Either party may terminate this MSA or any Order Form immediately by notice in writing if:

- (a) the other party is in breach of any term of this MSA, any Special Conditions or any Order Form and such breach is not remedied within 5 days after receiving notice requiring it to do so;
- (b) the other party is in breach of any term of this MSA, any Special Conditions or any Order Form and such breach is not capable of remedy; or
- (c) an Insolvency Event occurs in respect of the other party.

12.3. On termination of this MSA for any reason:

- (a) the Customer must immediately pay all outstanding Fees and any other amount owing to LifeByte under this MSA and any Order Form (including interest);
- (b) LifeByte may delete or otherwise dispose of all Customer Data (whether on a LifeByte storage media or otherwise), unless LifeByte receives, no later than 10 days after the effective date of termination, a written request for the delivery to the Customer of the then most recent back-up of Customer Data. LifeByte shall use reasonable endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided the Customer has, at that time, paid all Fees outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by LifeByte in returning or disposing of Customer Data. Notwithstanding any other clause in this MSA, any Special Conditions or any Order Form, it is the Customer's obligation to ensure it has retained back-up copies;
- (c) the Customer must immediately destroy or return to LifeByte all copies of the Documentation, Confidential Information, LifeByte IP, Developed IP and any other property belonging to LifeByte in its possession, custody or control and certify to LifeByte, in writing, that it has done so; and
- (d) all licences and rights granted to the Customer under this MSA, any Special Conditions or any Order Form shall immediately terminate.

12.4. Termination or expiration of an individual Order Form shall not affect the continuation of this MSA or any other individual Order Form then in force.

## 13. Confidentiality and privacy

13.1. A Receiving Party:

- (a) may use Confidential Information of the Disclosing Party only for the purposes of this MSA or an Order Form; and
- (b) must keep confidential all Confidential Information of the Disclosing Party except: (i) for disclosures permitted under this clause 13; and (ii) to the extent (if any) the Receiving Party is required to disclose any Confidential Information by law or in accordance with the rules of an applicable stock exchange.

13.2. A Receiving Party may disclose Confidential Information of the Disclosing Party to persons who:

- (a) have a need to know for the purposes of this MSA or an Order Form (and only to the extent that each has a need to know); and
- (b) before disclosure: (i) in the case of the Receiving Party's Personnel, have been directed by the Receiving Party to keep confidential all Confidential Information of the Disclosing Party; and (ii) in the case of other persons, have agreed in writing with the Receiving Party to comply with substantially the same obligations in respect of Confidential Information of the Disclosing Party as those imposed on the Receiving Party, (each a **Direction**).

13.3. A Receiving Party must:

- (a) ensure that each person to whom it discloses Confidential Information of the Disclosing Party under clause 13.2(b) complies with its Direction; and
- (b) notify the Disclosing Party of, and take all steps to prevent or stop, any suspected or actual breach of a Direction.

13.4. If a Receiving Party is required by law to disclose any Confidential Information of a Disclosing Party to a third



person (including government or regulatory authority) the Receiving Party must before doing so:

- (a) notify the Disclosing Party; and
- (b) give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
- (c) notify the third person that the information is confidential to the Disclosing Party.

13.5. The Customer acknowledges that LifeByte is reliant on the Customer alone for direction as to the extent LifeByte is entitled to use, disclosure, storage, transfer, process or handle the Personal Information. Consequently, the Customer warrants that, in relation to any Personal Information comprising the Customer's Data or otherwise disclosed to, or brought to, the attention of, LifeByte pursuant to this MSA or any Order Form:

- (a) it has been collected in accordance with the Privacy Laws;
- (b) the Customer has the authority to provide LifeByte, or otherwise make available to LifeByte, such information; and
- (c) the Customer has obtained the informed consent of the individuals the subject of such Personal Information in order for LifeByte to use, disclose, store, transfer, process or handle it.

#### 14. Force Majeure

14.1. LifeByte will have no liability to the Customer under this MSA, any Special Conditions or any Order Form if it is prevented from or delayed in performing its obligations under this MSA, any Special Conditions or any Order Form, or from carrying on its business, by acts, events, omissions or accidents beyond control including, but not limited to, acts of God, failure of a utility service or transport or telecommunications network, riots, civil commotion, computer hacking, war, acts of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or earthquake, any disaster or adverse weather, governmental actions, default or non-performance of hosting or data centre providers or other suppliers or sub-contractors, labour disputes, or any other failure, act or omission in LifeByte's supply chain (collectively, **Force Majeure Event**).

14.2. The Customer accepts that access to, and use of, the Services and the LifeByte Platform may be temporarily suspended as required during a planned or unplanned service outage, technical failure, maintenance work or excessive server load on the technical equipment used by LifeByte. In some cases, LifeByte may be unable to notify the Customer of such an occurrence.

#### 15. Dispute resolution

The parties must, before resorting to court proceedings (except interlocutory or interim relief), refer any dispute between the parties under or relating to this MSA, any Special Conditions or any Order Form initially to a nominated representative of each party to endeavour to resolve the dispute within 20 days. If the dispute is not resolved within this period, then either party may, in its sole discretion, initiate court proceedings. Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this MSA and each Order Form.

#### 16. Notices

16.1. All notices, requests, demands, consents, approvals, offers, agreements or other communications (**notices**) given by a

party under or in connection with this MSA, any Special Conditions and each Order Form must be:

- (a) in writing;
- (b) signed by a person duly authorised by the sender or, where transmitted by e-mail, sent by a person duly authorised by the sender;
- (c) directed to the intended recipient's address (as specified in clause 16.3 or as varied by any notice); and
- (d) hand-delivered, sent by prepaid post or transmitted by e-mail to that address.

16.2. A notice given in accordance with this clause is taken as having been given and received:

- (a) if hand-delivered, on delivery;
- (b) if sent by prepaid post: (i) within Australia, on the fourth Business Day after the date of posting; or (ii) to or from a place outside Australia, on the seventh Business Day after the date of posting; or
- (c) if transmitted by e-mail, on transmission, but, if the delivery or transmission is not on a Business Day or is after 5.00pm (recipient's time) on a Business Day, the notice is taken to be received at 9.00am (recipient's time) on the next Business Day.

16.3. The parties' respective details for the purposes of this clause are set out in the first Order Form (unless otherwise notified in writing by 1 party to the other).

#### 17. General

17.1. A waiver of any right under this MSA, any Special Conditions or any Order Form is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

17.2. If any provision (or part of a provision) of this MSA, any Special Conditions or any Order Form is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

17.3. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, then the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

17.4. This MSA, any Special Conditions and each Order Form, and any other documents referred to therein, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

17.5. Neither party shall, without the prior written consent of the other party (which will not be unreasonably withheld), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this MSA, except that LifeByte may assign, sell or transfer its rights or obligations under this MSA to a Related Bodies Corporate or bona fide third party purchaser of LifeByte's business.

17.6. Nothing in this MSA, any Order Form or any Special Conditions are to be construed as constituting a partnership, employment relationship, joint venture, or any other form of association between the parties in which 1 party may be liable for the acts or omissions of any other party.

17.7. The laws of the state of New South Wales, Australia govern this MSA, any Special Conditions and each Order Form. The parties agree to submit to the exclusive jurisdiction of the courts of New South Wales.

#### 18. Definitions



The definitions in this clause apply in this MSA, each Order Form and any Special Conditions (unless otherwise expressly stipulated in any Order Form or Special Conditions):

- 18.1. **Authorised Users** means those Personnel of the Customer who are authorised by Customer to access the LifeByte Platform and use the Services.
- 18.2. **Business Day** means each day excluding Saturdays, Sundays and public holidays in New South Wales.
- 18.3. **Confidential Information** means in the case of a Disclosing Party:
- the following information, regardless of its form and whether the Receiving Party becomes aware of it before or after the date of this MSA: (i) information that is by its nature confidential; (ii) information that is designated by the Disclosing Party as confidential; (iii) information the Receiving Party knows, or ought to know, is confidential;
  - all notes and other records prepared by the Receiving Party based on or incorporating information referred to in paragraph (a) above;
  - all copies of the information, notes and other records referred to in paragraphs (a) and (b) above;
  - the LifeByte Platform (including any data stored in the LifeByte Platform) (in the case of LifeByte), but in all cases excludes information that the Receiving Party creates (whether alone or jointly with any third person) independently of the Disclosing Party or is public knowledge (otherwise than as a result of a breach of confidentiality by Receiving Party).
- 18.4. **Customer Data** means all data, works and materials:
- uploaded to or stored on the LifeByte Platform by the Customer or an Authorised User;
  - transmitted by the LifeByte Platform at the instigation of Customer;
  - supplied by Customer or an Authorised User for uploading to, transmission by, or storage on, the LifeByte Platform; or
  - generated by the LifeByte Platform as a result of the use of the Services by Customer.
- 18.5. **Consequential Loss** means the following, however arising and even if it is reasonably contemplated by the parties at the Commencement Date as a likely result of breach of this MSA:
- indirect, consequential, incidental, special, remote or unforeseeable loss, damage, cost or expense;
  - loss of revenue, profit, income, bargain, opportunity, use, production, customers, business, contract, goodwill, or anticipated savings, loss caused by business interruption, or the cost of obtaining new financing or maintaining existing financing, loss of or corruption to data, loss of use of data;
  - costs or expenses incurred to prevent or reduce loss or damage which otherwise may be incurred or suffered by a third party; or
  - loss or damage of the nature set out above in clauses (a) to (c) (inclusive) that is incurred or suffered by or to a third party.
- 18.6. **Developed IP** has the meaning in clause 10.2.
- 18.7. **Disclosing Party** means a party to this MSA who discloses or makes available Confidential Information to the Receiving Party.
- 18.8. **Documentation** means the documents made available to the Customer by LifeByte which sets out the description of the Services, and LifeByte Platform (including operating instructions, user guides, manufacturer's specifications, policies and procedures, and any updates, replacements

revisions or additions such documentation, provided or made available LifeByte from time to time, but does not including training materials).

- 18.9. **Fee** has the meaning in clause 7.1.
- 18.10. **Force Majeure Event** has same meaning in clause 14.1.
- 18.11. **Insolvency Event** means any of the following:
- a receiver, receiver and manager, liquidator, provisional liquidator, controller or any form of external administrator has been appointed over either party or any property belonging to either party;
  - an event occurs which gives any person the right to seek an appointment referred to in paragraph (a);
  - a party proposes or takes any steps to enter into a scheme, arrangement, agreement or compromise with its creditors or call a meeting of creditors;
  - a party suspends payment of its debts generally;
  - a party becomes insolvent or bankrupt within the meaning of the Corporations Act 2001 (Cth) or a party has a bankruptcy petition presented against it;
  - an application is made to a court or a resolution is passed or an order is made for the winding up or dissolution of a party or an event occurs that would give any person the right to make an application of this type; or
  - any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in paragraphs (a) to (f).
- 18.12. **Intellectual Property Rights** means all designs, copyright, trade marks, patents, operations, software or systems, trade names and domain names, rights in goodwill, rights in confidential information or other intellectual property rights, whether under statute, common law, equity, and whether registered or unregistered and including all applications for, and renewals or extensions of, such rights and all similar rights which subsist or will subsist now or in future in any part of the world.
- 18.13. **Loss** means loss, damage, liability, charge, expense, outgoing, payment or cost of any nature or kind, including all legal and other professional costs and including Consequential Loss.
- 18.14. **Order Form** means a form containing an order by the Customer for the provision of Services by LifeByte.
- 18.15. **Order Start Date** has the meaning specified in the relevant Order Form.
- 18.16. **Personal Information** means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, disclosed to or made available to LifeByte in the course of providing the Services.
- 18.17. **Personnel** means any officer, employee, agent, contractor, sub-contractor or consultant of a party and in the case of the Customer, includes Authorised Users.
- 18.18. **LifeByte IP** has the meaning in clause 10.1.
- 18.19. **LifeByte Platform** means the platform managed by LifeByte and used by LifeByte to provide the Services, including the application and database software for the Services, the system and server software used to provide the Services, the computer hardware on which that application, database, system and server software is installed, and associated technology and code.
- 18.20. **Privacy Laws** means any applicable laws and codes of practice dealing with privacy, including the *Privacy Act 1988 (Cth)* (as amended) and the Australian Privacy Principles



- 18.21. **Privacy Policy** means the LifeByte privacy policy available at the company website or such other web address notified by LifeByte to the Customer from time to time, which is incorporated into this MSA.
- 18.22. **Receiving Party** means a party to this MSA who obtains Confidential Information of the other party to this MSA.
- 18.23. **Related Bodies Corporate** has the meaning in the *Corporations Act 2001(Cth)*.
- 18.24. **Relevant Laws** means any relevant rules of common law, principles of equity, international, federal, state and local laws, statutes, rules, regulations, proclamations, ordinances and by-laws and other subordinate legislation, rulings, or legal requirements and Privacy Laws, anywhere in the world.
- 18.25. **Services** means the services to be provided by LifeByte to the Customer pursuant to an Order Form as more particularly described in the Documentation.
- 18.26. **Special Conditions means** the special conditions (if any) specified in the relevant Order Form.
- 18.27. **Term** has the meaning in clause 2.1.
- 18.28. **Third Party Products and Services** means any software, products, services or content (including all Intellectual Property Rights contained therein) that:
- (a) are provided by third parties;
  - (b) interoperate with the Services or LifeByte Platform; or
  - (c) may be identified as third party products or services.
- 18.29. **User Subscriptions** means the user subscriptions purchased by the Customer pursuant to an Order Form and this MSA which entitles Authorised Users to access and use the LifeByte Platform, the Services and the Documentation in accordance with this MSA and the relevant Special Conditions.