

SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (**Agreement**) is between BA365 Australia Pty Ltd (ABN 73 624 113 113), hereinafter referred to as BA365, and the organization / company / individual agreeing to this Agreement (referred to as **you** or **your**), collectively referred to as the Parties or each a Party as listed within Schedule 1 of this agreement.

This Agreement governs the access and use of the BA365 software and services (**Software**), as listed in Schedule 1 of this agreement, and any customisation or related services made available to you (together with the Software referred to as **Services**).

1. ACCEPTANCE

- 1.1 This Agreement forms a binding legal agreement between you and BA365. By using the Website and Services, you agree to comply with and be legally bound by the terms of this Agreement. Please read this Agreement carefully. If there are any questions, you should contact BA365 using the contact details at the end of this Agreement.
- 1.2 You acknowledge and agree this Agreement by: (i) Signing this Agreement (ii) accessing or using the Website or Services; or (iii) making part or full payment for the Services. If you do not agree to this Agreement, you should cease accessing or using the Website and Services immediately. As you are agreeing to this Agreement on behalf of an organisation, you represent and warrant that you have the power and authority to enter into and bind such organisation and act on behalf of any person who are using the Services (each a **User**, collectively referred to as **Users**).
- 1.3 The Services shall only be used by Users who are your employees, contractors or authorised agents acting in the ordinary course of business and directly working for or managed by you. You must ensure any such User using or accessing the Services does so in accordance with this Agreement.
- 1.4 BA365 reserves the right to make changes to this Agreement at any time, effective upon the posting of any modified Agreement. BA365 will endeavour to communicate these changes to you via email. It is your obligation to ensure that you have read, understood and agree to the most recent Agreement available.

2. SOFTWARE AND SERVICES

- 2.1 The Software is the sole and exclusive property of BA365.
- 2.2 Users can access and use the Software via the Website using a web-browser installed on any computer or tablet that has capacity to connect to the Internet (**Device**).
- 2.3 To access the Services, you must:
 - (a) complete BA365's registration form provided by BA365 (**Registration Form**), including a User's personal information, your billing details and other related information as requested by BA365 (**User Information**); and

P: 1300 911 149
A: 1/53 Southgate Avenue, Cannon Hill, Q 4170
E: info@ba365.com.au
www.ba365.com.au

- (b) subscribe to the Software and Services (**Subscription**) for a 12-month period or such other fixed term as notified to you by BA365 and agreed by the Parties (**Subscription Period**). The fees for each Subscription Period (**Subscription Fee**) may vary and is calculated on a sliding scale subject to the functionalities and Services you request as identified on the Registration Form.
- 2.4 Upon receipt of the completed Registration Form, BA365 will provide you with the required login details to access the Services.
- 2.5 Subject to the User Information contained in the Registration Form, BA365 may customise the interface, look and feel of the Software. BA365 will provide the Services for the duration of your Subscription. You are responsible for determining what Services you require, who will be a User of the Services and the User's access level. You may change the Services required, a User's access level or revoke their access to the Services at any time for any reason by notifying BA365. Upon receipt of such notification, the User's access may be revoked or User's access to the Services may change as applicable.
- 2.6 BA365 may, in accordance with the Registration Form and User Information, customise the Software and Services to meet your particular needs including but not limited to functionality changes and data migrations services and incorporating your logo or trademark into the appearance of the Software accessed by your Users. It is at BA365's sole discretion whether or not the Software and Services is customised in accordance with your request. If BA365 agrees to customise the Software for you and subject to the level of customisation, a separate written agreement may be entered into between the Parties outlining the terms and conditions for such customisation.
- 2.7 The Software is not intended to be relied upon in satisfaction of any legislative requirements or standards specified by any domestic or foreign governmental or non-governmental agency or regulatory body. While the information and material on the Website or otherwise provided to you through the Services is provided in good faith on an "as is" basis, BA365 and its directors, officers, employees, contractors and agents accept no responsibility for and make no representations or warranties to you or any User as to the reliability, accuracy, currency or completeness of the information in the information generally contained on the Website or provided through the Services. Any reliance you place on the information contained on the Website or provided through the Services is entirely at your own risk. Please refer to clause 15 for BA365's full disclaimers.
- 3. DATA**
- 3.1 Any commercial information and other information you submit through the Website and Services (collectively referred to as **Data**), User Information or other information otherwise collected by BA365 is stored in servers located in Australia. BA365 will take reasonable steps and use industry standard procedures to ensure that Data is kept secure and confidential.
- 3.2 BA365 will not use, disclose or reference any Data or User Information except in accordance with this Agreement.

- 3.3 You represent and warrant that: any and all Data you submit via the Website and Services are your sole and exclusive property; or you have secured any and all authorisation and rights to use the Data as applicable under the relevant laws.
- 3.4 You acknowledge and agree that any collation, conversion and analysis of Data performed as part of the Services is likely to be subject to human input and machine errors, omissions, delays and losses, including but not limited to any loss of Data or damage to media that may give rise to loss or damage. BA365 is not liable for any such errors, omission, delays or losses. You acknowledge and agree you are responsible for adopting reasonable measures to limit the impact of such loss or error.
- 3.5 You grant BA365 a licence to use, copy, transmit, store, and back-up your Data, User Information and other related information for the purposes: (i) to enable each User to access and use the Services; (ii) related to provision of Services to you and the performance of BA365's obligations under this Agreement; and (iii) for research and development and as required for our Services.
- 3.6 BA365 may access and use the Data for business purposes including, without limitation, display of comparative assessment results, future development and improvement of its products and services; provided: (i) the disclosure is solely for the purpose of explaining and promoting the benefits of the System to potential clients; (ii) only aggregate data (i.e., no individually identifiable information) is disclosed ; and (iii) that BA365 shall adhere to applicable laws in connection with its collection, storage and use of Data.
- 3.7 It is your responsibility to maintain copies of all Data which a User provides via the Services. BA365 will use reasonable industry standards and procedures to prevent data loss, including but not limited to Daily backups and offsite data storage. However, as the Data are stored on a cloud-based service, provided by third parties, BA365 does not guarantee that there will be no loss of Data, User Information and other information and does not represent or warrant that access to the Services, Data, Website or User Information will be available without interruption.
- 3.8 If a User enables third-party applications for use in conjunction with the Services, you acknowledge that BA365 may allow the providers of those third-party applications to access any inputted Data as required for the interoperation of such third-party applications with the Services. BA365 is not responsible for any disclosure, modification or deletion of data resulting from any such access by third-party application providers.
- 3.9 You acknowledge and agree that you are responsible for complying with all laws and regulations regarding the use and disclosure of Data, including but not limited to any *Civil Aviation Act 1988* (Cth), *Civil Aviation Regulations 1988* (Cth) or other regulations, rules or guidelines set by the Civil Aviation Safety Authority or related government body or agency, privacy laws and other requirements under Australian law or corresponding foreign domestic law (collectively referred to as **Requirements**).

4. SECURITY

BA365 will use and maintain security systems for the transmission of Data, consisting of encryption, SSL and "firewall" technologies that are understood in the industry to provide adequate security for the transmission of such information over the Internet. These measures are intended to prevent unauthorised Data infiltration or security breaches. BA365 does not guarantee the security of any Data during transmission over networks, or data you store on your servers, your contractors or third-party providers.

5. PAYMENT

- 5.1 You agree to pay the Subscription Fee upfront on a yearly as required to enable you to access and use the Services. BA365 will provide a tax invoice (**Invoice**) setting out the Subscription Fees due and payable for each 12 months period.
- 5.2 You will be required to make payment by way of bank transfer in accordance with the payment terms as set out in an Invoice. BA365 will process the initial payment upon request for the Services and a Subscription. You must provide your organisation's billing details when completing your Registration Form.
- 5.3 You acknowledge and agree that to maintain your Subscription and access to the Services, payment to BA365 must be made by the due date indicated on Invoice issued by BA365 or as advised by us, in writing, from time to time.
- 5.4 If payment is not made within 30 days of the date of Invoice, BA365 may prevent and suspend each User's access to the Services without notice to you or the User and you will not be able to access the Data or the Software.
- 5.5 Upon notice to BA365 regarding any changes to any Services or access to the Services, payment amounts will be adjusted and reflected in your Invoice and the changes will take effect immediately.
- 5.6 Nothing prevents BA365 from taking any action necessary to recover any unpaid fees. If you fail to pay, your information will be passed on for collection and/or legal action. You acknowledge and agree that you are liable for and will pay all costs including debt collection, commission, solicitor's fees and any out of pocket expenses. If at any time you fail to comply with BA365's payment terms and as a result you are passed on for collection and or legal action, BA365 may place a default against you with a credit reporting agency.
- 5.7 All amounts are stated in Australian dollars and unless otherwise stated, all amounts are exclusive of GST.
- 5.8 BA365's pricing structure or payment methods may be amended from time to time at its sole discretion.

6. TERMINATION

- 6.1 To terminate this Agreement or your Subscription, you must contact BA365 using the contact details below.

P: 1300 911 149
A: 1/53 Southgate Avenue, Cannon Hill, Q 4170
E: info@ba365.com.au
www.ba365.com.au

- 6.2 Upon receipt of request to terminate, BA365 will review the request and contact you or your organisation's authorised representative identified in the Registration Form to confirm. After confirmation, BA365 will terminate your Subscription immediately.
- 6.3 BA365 will store your Data for 6 months after termination. It is the User's responsibility to retrieve all necessary Data prior to termination. BA365 may assist with access and migrating your Data in a particular format via a selected media prior to the expiry of this period. Please contact BA365 to discuss whether this is possible. Any access to Data for the purposes of Data migration and Data migration services performed by BA365 will be at your own expense.
- 6.4 BA365 may terminate this Agreement and your access to the Services immediately, in its sole discretion, if:
- (a) you breach any of the terms in this Agreement and, if capable of being remedied, you do not remedy the breach within 14 days after receiving notice of the breach;
 - (b) BA365 reasonably suspect that you or a User is attempting to reverse engineer the Software that you are provided with access to;
 - (c) BA365 consider that a request for a Subscription or access to Services is inappropriate, improper or unlawful;
 - (d) you fail to pay an Invoice in accordance with the payment terms;
 - (e) you fail to provide BA365 with clear or timely instructions to enable BA365 to provide you or Users with access to the Services;
 - (f) BA365 consider that the Parties' working relationship has broken down including a loss of confidence and trust;
 - (g) where there is an Insolvency Event; or
 - (h) for any other reason outside BA365's control which has the effect of compromising our ability to provide you with, or access to, the required Services within a required timeframe.
- 6.5 On termination of this Agreement or completion of the Services, BA365 may retain your User Information, Data or other documents (including copies) as required by law or regulation. You acknowledge and agree to authorise BA365 to retain or destroy such documents upon termination of this Agreement and in accordance with any applicable statutory periods.

7. Software As A Service Licence Agreement Expiry

- 7.1 In the event that your current Software As A Service Licence Agreement expires, on payment of any invoice you agree to renew your software licence subscription for the next 12 months and be bound by the BA365 terms and conditions, this Software As A Service Licencing Agreement and BA365 Mobile Device Technical Specifications as published from time to time on this website.
- 7.2 In the event that you are operating on an expired Software As A Service Licencing Agreement, 6 months notification of termination is required to terminate a renewal, otherwise a 12 month default period will apply.
- 7.3 If a renewal invoice is not paid by the required due date and subsequent requests for overdue payment are not compiled and your Software As A Service Licence has expired, your right to access the Services stops immediately and your license to the software related to the Services ends.

8. USERS AND YOUR OBLIGATIONS

- 8.1 You warrant that all information provided to BA365 is true, accurate and complete.
- 8.2 You acknowledge and agree you are responsible for how the Users use the Services and that:
- (a) each User uses the Services at their own risk;
 - (b) if there is any unauthorised use of your passwords or any other breach of security, you will immediately notify BA365 of such activity;
 - (c) the accessibility and reliability of the Services is dependent upon the User's choice of web-browser, internet connection, Device, Device operating system, any printer, cameras, scanners or other hardware (**Hardware**) and Hardware settings;
 - (d) it is your responsibility to determine that the Services meet your needs and your business, and are suitable for the purposes for which the Services are used;
 - (e) you are responsible for obtaining any consents, licences, permits and permissions from other parties as required for the Services to be provided, at your cost, and for providing BA365 with the necessary consents, licences and permissions; and
 - (f) you will cooperate with BA365 and provide BA365, as reasonably requested by BA365 from time to time, with information and/or access to your Device or Data as is reasonably necessary to enable BA365 to perform the Services and comply with these requests in a timely manner.
- 8.3 You acknowledge and agree that each User:
- (a) is authorised to use the Services and to access any Data, User Information or other information they input into the Software or provide to BA365 as required for the Services;
 - (b) will use the Services for your own lawful internal business purposes, in accordance with this Agreement; and
 - (c) will keep all usernames and passwords required to access the Services secure and confidential.
- 8.4 You acknowledge and agree that the reliability of the Services is dependent upon your configuration and implementation of your operating system, your choice of web browser and your equipment.
- 8.5 You may use the Services on behalf of third parties or in order to provide services to such third parties and you must ensure that you are authorised to do so and that all persons for whom or to whom you provide such services will comply with and accept all terms of this Agreement that apply to you.
- 8.6 BA365 is not responsible to any person or entity other than you and nothing in this Agreement confers, or purports to confer, a benefit on any other person or entity. If you use the Services on behalf of or for the benefit of any third party, you agree that:
- (a) you are responsible for ensuring that you have the right to do so;
 - (b) BA365 does not warrant the fitness for purpose or suitability of the Services for such third party's purposes and third parties may not rely on BA365 for any purpose;
 - (c) you are responsible for authorising any person who is given access to your Data, and you agree that BA365 has no obligation to provide any person or entity with access to such

- Data without authorisation from you and may refer any requests for access to the Data to you to address; and
- (d) you will indemnify BA365, on first demand, against any and all claims, expenses, liabilities or losses arising out of in connection with BA365's refusal to provide any persons with access to your Data in accordance with this Agreement and BA365 making Data available to any person with authorisation from you.
- 8.7 You remain solely responsible for complying with all applicable laws. It is your responsibility to ensure that the storage of and access to your Data submitted via the Services and the Website comply with laws which are applicable to you, including any laws requiring you to retain records of your Data.
- 8.8 Each User must have their own safeguards and back up processes in place to recover from any failures or loss of Data which might occur whilst using the Services and protecting the confidentiality of your Data with suitable management procedures, as you may see fit.

9. PROHIBITED USE

- 9.1 You acknowledge and agree that you and each User will not:
- (a) attempt to circumvent or disable the Software or any technology features or measures in the Software, Website or otherwise provided through the Services by any means or in any manner;
- (b) attempt to modify, copy, adapt or reproduce the Software;
- (c) attempt to decompile, disassemble, reverse engineer, create derivative works or otherwise attempt to derive the source code for the Software;
- (d) distribute, encumber, sell, rent, lease, sub-license, mirror, serve on any webserver, or otherwise transfer, publish or disclose the Software or Services to any third party (except as permitted under this Agreement);
- (e) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Website or Services or used in connection with the Website and Services;
- (f) use the Website and Services in any manner to aid in the violation of any third-party Intellectual Property, including but not limited to another's copyrights, trade secrets, and patents;
- (g) take any action that interferes, in any manner, with BA365's rights with respect to the Website and Services;
- (h) attempt to undermine the security or integrity of BA365's computing systems or where the Software or any and all part of the Services is hosted by a third party, that third party's computing systems and networks;
- (i) use, or misuse, the Services in any way which may impair the functionality of the Services, Website or other systems used to deliver the Software or impair the ability of any other user to use the Software or Website;

- (j) infringe any third-party rights, laws or regulation in working with BA365 and receiving the Services;
 - (k) attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access a Device or to the computer system on which the Data is stored or Services are accessed and/or used; and
 - (l) transmit or input into the Services or Website, any files that may damage the Website or Services, content that may be offensive, or material or Data in violation of any law (including any content protected by copyright or trade secrets which you do not have the right to use);
 - (m) using any program/script/command, or sending messages of any kind, with the intent to interfere with, or disable, any persons' use of the Software or Service;
 - (n) sending unsolicited email messages through or to users of the Software in breach of the Spam Act 2003;
 - (o) using the Software to send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages; and
 - (p) use of the Software in breach of any person's privacy (such as by way of identity theft or "phishing").
- 9.2 Title, ownership rights and Intellectual Property rights in and to any content displayed on the Website or in the Software, or accessed through the Website or the Services, are the property of the applicable content owner and may be protected by applicable copyright or other law. This Agreement gives you no rights to such content.
- 9.3 You acknowledge that any breaches of this clause may lead to termination of this Agreement.

10. CONFIDENTIAL INFORMATION

10.1 You agree:

- (a) not to disclose the Confidential Information to any third party at any time without the written permission of BA365;
- (b) to use your best endeavours to protect the Confidential Information from any unauthorised disclosure;
- (c) only to use the Confidential Information for the purpose for which it was disclosed by BA365 and not for any other purpose; and
- (d) to be responsible for and assume liability in relation to each of the employees, agents, consultants and contractors to whom Confidential Information is disclosed and ensure that they maintain the confidentiality of the Confidential Information and otherwise comply with the obligations set out in this Agreement.

10.2 Your obligations set out in clause 9.1 do not apply to Confidential Information:

- (a) that is already in the public domain, except as a result of the actions by you or a User in breach of this Agreement;
- (b) received from a third party, except where there has been a breach of confidence leading to its disclosure;

(c) that must be disclosed by law, provided that you reveal only so much of the Confidential Information as you are required by law to disclose and obtain written permission in advance from BA365 in order to allow BA365 to object to, or otherwise prevent, the Confidential Information being disclosed.

10.3 This clause will survive termination of this Agreement.

11. PRIVACY

11.1 BA365 agrees to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

12. INTELLECTUAL PROPERTY

12.1 Intellectual Property Rights” means all present and future rights conferred by statute, common law or equity in or in relation to any copyright and related rights, trade marks, designs, patents, circuit layouts, business and domain names, inventions, goodwill, rights to inventions, database rights, rights to use, and protect the confidentiality of, our Confidential Information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection and any other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist or will subsist now or in the future in any part of the world.

12.2 Title to, and all Intellectual Property rights in the Services, the Website and any documentation relating to the Services and the Website, remain the property of BA365 and our successors and permitted assigns. Your right to use such Intellectual Property is subject to the terms of this Agreement.

12.3 Title to and all Intellectual Property rights in any Data you input into the Services remain your property. However, a User’s access to the Data and continued use of the Services is contingent on monthly payments of your Subscription Fee.

12.4 You grant BA365 a non-exclusive, worldwide, royalty free, irrevocable licence to use any Intellectual Property which subsists any materials you provide through the Services including but not limited to copyright in any logos or related materials for the purpose of customising the Services for you.

12.5 Any requests to or agreements with BA365 to modify and/or enhance any Services for you or to develop programs, software or materials related to the Services must be documented in a written agreement and signed by the Parties. No variation to the terms of this Agreement will come into effect until it is documented in writing and signed by the Parties.

13. UPDATES AND SUPPORT

- 13.1 BA365 will automatically implement any updates to the Services (**Updates**) for the duration of this Agreement. BA365 will endeavour to notify you of all Updates via email and using other means via the Website.
- 13.2 From time to time, BA365 will publish and make available to the User technical specifications (**Device Specifications**) relating to compatibility of mobile devices and mobile device operating system. It is the Users responsibility to manage and control mobile devices in line with these technical specifications to ensure performance of the Services, Website or Software.
- 13.3 Updates may compromise the performance of the Services or the Website's or Software's interface and may result in a corruption of Data. You acknowledge that BA365 is not liable for any loss, harm or damage suffered, directly or indirectly, as a result of any Update.
- 13.4 The Services may contain automatic communications features which relay certain non-personally identifiable information to BA365 in connection with the operation of the Services. This information may include a User's web-browser settings, the version of a User's operating system and de-identified Data. BA365 may use this information for research purposes including statistical analysis of aggregate customer behaviour.
- 13.5 BA365 will provide email and telephone support to the User when setting up the User's initial profile. If a User requires technical support, this will be provided at the level of the support agreement as listed within Schedule 1 of this agreement.

14. AVAILABILITY OF WEBSITE AND SERVICES

- 14.1 Whilst BA365 intends that access to the Services via the Website should be available on a full-time basis, it is possible that the Website will be unavailable to due to maintenance or other development activity. BA365 will endeavour to provide Users with reasonable prior notice of such maintenance or development activities.

15. FEEDBACK AND DISPUTE RESOLUTION

- 15.1 Your feedback is important to BA365. BA365 seeks to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact any member of BA365's staff.
- 15.2 If there is a dispute between the Parties in relation to this Agreement, the Parties agree to the following dispute resolution procedure:
- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
 - (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Queensland to appoint a mediator.

The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

- 15.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under this Agreement, by law or in equity.

16. LIMITATION OF LIABILITY AND DISCLAIMERS

- 16.1 The Parties agree that, to the fullest extent applicable, BA365's liability for the Services provided via the Website is governed solely by the Australian Consumer Law.

- 16.2 BA365's liability is covered by the relevant insurance policy. BA365 will take steps to maintain such policies after the completion of BA365's Services and termination of this Agreement, for period as BA365 may be required under law.

- 16.3 You acknowledge that whilst BA365 will take reasonable steps to ensure that the Services will be fit for the purposes as advertised, BA365 gives no guarantees that:

- (a) the Services will meet your requirements as the functionality of the Services is dependent upon a User's use, their discretion and input of Data;
- (b) the Services will work in each of your desired use case scenarios; and
- (c) the Services can be executed on every operating system, or web-browsers or compatible with all Hardware as it is not possible to test each and every variant.

- 16.4 The Services use third party hosting services which are provided without any sort of warranties, and BA365 cannot ensure that these third-party hosting services are provided free of defect or without interruption.

- 16.5 BA365 does not warrant that use of the Services will be uninterrupted or error free. The operation of the Services is dependent on public telephone services, computer networks and the Internet, which can be unpredictable and may from time to time interfere with the use of the Services. BA365 accepts no responsibility for any such interference or prevention of your use of the Services.

- 16.6 You agree that any information, insight or guidance contained on the Website or as part of the Services is:

- (a) provided in good faith on an 'as is' basis. Any reliance you place on any information, including information regarding geospatial information contained in the Website or Services is at your own risk. BA365 makes no warranties or representation regarding the quality, accuracy, correctness or completeness of any such information; and
- (b) not an attempt to advise you of your requirements including but not limited to any requirements set by the respective Government jurisdiction you operate within, their respective legislation or regulations, or be a substitute for any legal or professional advice you may obtain regarding your legal Requirements. Nothing contained in the Website or Services is to be used or relied on for legal advice or advice generally regarding the Requirements in Australia, New Zealand or any country. The Website and Services and any materials contained therein is intended for general information purposes only.

Although BA365 may customise the Services subject to your Registration Form, BA365 does so in accordance with your instructions and does not take into account your organisation's specific circumstances and you should obtain your own legal or professional advice regarding use of the Services or any customisation including obtaining your own legal or professional advice regarding any relative legislative or regulatory requirements, pertinent to the relevant jurisdictions you operate the services within.

- 16.7 All risk arising out of the use or performance of the Services remains with you. You understand and agree that the use of the Services, material or data downloaded or otherwise obtained through the use of the Services and Website, is at your own discretion and risk and that you will be solely responsible for any infections, contaminations or damage to your computer, system or network. BA365 is not responsible or liable for delays, inaccuracies, errors or omissions arising out of your use of the Software, any third-party software or operating system.
- 16.8 To the maximum extent permitted by applicable law, BA365 and its licensors disclaim all warranties, express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose and non-infringement of third-party intellectual property rights or lack of viruses, for the Software. In no event will BA365 or its licensors be liable for any consequential, incidental, indirect, special, punitive, or other damages whatsoever arising out of this Agreement, the use of or inability to use the Software, even if BA365 has been advised of the possibility of such damages.
- 16.9 You acknowledge that BA365 may pursue any available equitable or other remedy against you as a result of a breach by you of any provision of this Agreement.
- 16.10 BA365 or its licensors' liability for breach of any of its obligations under this Agreement for the Services, or breach of any warranty implied by law, will be limited, to the extent permitted by law, to the price paid by you for the Services during the last 12 month period. BA365's total liability to you for all damages in connection with the Software will not exceed the price paid by you under this Agreement for the 12-month period prior to the act which gave rise to the liability. The foregoing limitations, exclusions and disclaimers will apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.
- 16.11 You acknowledge and agree that BA365 will not be liable for any direct or indirect loss or damages, non-compensatory damages including punitive, aggravated, multiple, exemplary, liquated or any other non-compensatory damages or the consequences of non-payment.

17. AUSTRALIAN CONSUMER LAW

- 17.1 Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by BA365 to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 17.2 Nothing in this Agreement removes your Statutory Rights as a consumer under the ACL. You agree that BA365's liability for Services provided to consumers is governed solely by the ACL

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and this Agreement. BA365 excludes all conditions and warranties implied by custom, law or statute except for your Statutory Rights.

- 17.3 Except for your Statutory Rights, all material and work is provided to you without warranties of any kind, either express or implied; and BA365 expressly disclaim all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 17.4 If you are a consumer as defined in the ACL, the following applies to you: BA365 guarantee that the services BA365 supply to you are rendered with due care and skill; fit for the purpose that BA365 advertise, or that you have told BA365 you are acquiring the services for or for a result which you have told BA365 you wish the services achieve, unless BA365 consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time. To the extent BA365 are unable to exclude liability; BA365's total liability for loss or damage you suffer or incur from BA365's services is limited to BA365 re-supplying the services to you, or, at BA365's option, BA365 refunding to you the amount you have paid BA365 for the services to which your claim relates during the last 12 months and which is reduced to the extend a Force Majeure event caused or was responsible for such a loss.
- 17.5 In order for the User to claim against BA365 under a non-excludable warranty, guarantee, right or remedy provided by the Australian Consumer Law, or under an express warranty given in respect of the goods or services provided under this Agreement, the User must provide written notice to BA365 with documentary evidence substantiating the claim, for BA365's review, and, in respect of the services, must continue to use it only in accordance with the provisions of this Agreement.
- 17.6 Upon receipt of a valid claim from the User under an implied warranty, guarantee, right or remedy provided by the Australian Consumer Law, BA365 will contact the User to arrange a suitable remedy.

18. INDEMNITY

- 18.1 You will be liable for and agree to indemnify, defend and hold BA365 harmless for and against any and all claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from: (i) any information that is not accurate, up to date or complete or is misleading or a misrepresentation; (ii) any breach of this Agreement; (iii) any misuse of the Services, from or by you, your employees, contractors or agents; and (iv) any act or omission .
- 18.2 You agree to co-operate with BA365 (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given BA365.
- 18.3 The obligations under this clause will survive termination of this Agreement.

19. NOTICE

P: 1300 911 149
A: 1/53 Southgate Avenue, Cannon Hill, Q 4170
E: info@ba365.com.au
www.ba365.com.au

19.1 Any notice required or permitted to be given to you under this Agreement will be addressed to you at the email address provided by you when requesting a Subscription.

19.2 Any notice issued by email shall be deemed delivered upon the email being sent, provided that if an email is sent out of Business Hours, it shall be deemed to be delivered at 9am on the next Business Day.

20. RELATIONSHIP OF PARTIES

20.1 Neither Party is authorised to bind the other Party in any way without prior written consent of the other Party.

20.2 The Parties acknowledge and agree that they will not seek to bind the other Party other than with the prior written consent of the other Party.

21. RIGHTS OF THIRD PARTIES

21.1 Any person or entity who is not a party to this Agreement has no right to benefit under or to enforce any terms of this Agreement.

22. BA365 Commercial Partners

22.1 You agree that during the term of this Agreement or for a period of 36 months after the expiration or termination of this Agreement you shall not, directly or indirectly, solicit, offer to purchase, enter into an agreement for services or purchase any product or service that is similar to or may compete with BA365 either in functionality or otherwise from any BA365, agent, commercial partner, contractor, employee, software developer or software provider

23. PUBLICITY RIGHTS

23.1 We may identify you as an BA365 customer in our promotional materials. We will promptly stop doing so upon your request sent to info@ba365.com.au

24. ASSIGNMENT

24.1 This Agreement is personal to the Parties. A Party must not assign or deal with the whole or any part of its rights and/or obligations under this Agreement without the prior written consent of the other Parties.

24.2 Any purported dealing in breach of this clause is of no effect.

25. WAIVER OR VARIATION OF RIGHTS

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

25.2 A Party is not liable to any other Party for any loss, cost or expense that may have been caused or contributed to by the failure, delay, waiver or exercise of a power or right.

26. POWERS, RIGHTS AND REMEDIES

26.1 Except as expressly stated to the contrary in this Agreement, the powers, rights and/or remedies of a Party under this Agreement are cumulative and are in addition to any other powers, rights and remedies of that Party. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right, or remedy that a Party may have at any time against the other Party to this Agreement or any other person.

27. FORCE MAJEURE

27.1 If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control (**Force Majeure**), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders of acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

28. CONSENTS AND APPROVALS

28.1 Where this Agreement provides that a Party may conditionally or unconditionally give or withhold any consent or approval in relation to any matter in this Agreement, that Party may in its absolute discretion, and without being obliged to give reasons for doing so, withhold any consent or approval or give consent or approval conditionally or unconditionally.

29. FURTHER ASSURANCE

29.1 Each Party must from time to time and in a timely manner do all things reasonably required of it by another Party to give effect to this Agreement.

30. ENFORCEABILITY

30.1 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the provisions in question will not be affected.

31. COUNTERPARTS

31.1 This Agreement may be executed in any number of counterparts and, if so, the counterparts taken together will constitute one and the same Agreement.

32. ENTIRE AGREEMENT AND UNDERSTANDING

P: 1300 911 149
A: 1/53 Southgate Avenue, Cannon Hill, Q 4170
E: info@ba365.com.au
www.ba365.com.au

32.1 The date of this Agreement is the date this Agreement is accepted by you.

32.2 In respect of the subject matter of this Agreement:

- (a) this Agreement contains the entire understanding between the Parties; and
- (b) all previous oral and written communications, representations, warranties or commitments are superseded by this Agreement and do not affect the interpretation or meaning of this Agreement.

33. GOVERNING LAW AND JURISDICTION

33.1 This Agreement is governed by the laws of Queensland and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland.

34. DEFINITIONS

Confidential Information includes confidential information about the Software, Services, BA365's business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information whether or not such information is reduced to a tangible form or marked in writing as "confidential".

Insolvency Event means the occurrence of any of the following events in which a Party:

- (a) is unable to pay its debt as they fall due;
- (b) makes or commences negotiation with a view to making, a general rescheduling of its indebtedness, a general assignment, scheme or arrangement or composition with its creditors;
- (c) Takes any corporate action or any steps are taken, or legal proceedings are started for:
 - a. Its winding-up, dissolution, liquidation or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by the other Party (which approval will not be unreasonably withheld); or
 - b. The appointment of a controller, receiver, administrator, office manager, trustee or similar officer of it or of any of its revenues and assets; or
- (d) seeks protection or is granted protection from its creditors, under any applicable legislation.

Intellectual Property includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to confidential information, know how, methods of work, processes, reports, drawings, manuals, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs, specifications, research, (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, company names or internet domain names,



For any questions or notice, please contact BA365 at:

BA365 Information Services Pty Ltd (ABN 73 624 113 113)
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Email: info@ba365.com.au

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