

PowerHouse Upskill LMS Platform



PowerHouse Upskill License Agreement and Service Level Agreement

August 2024

Version Information

Version	Date	Update / Details
2023-03	March, 2023	Annual Review and update
2023-06	June, 2023	Quarterly Review and update
2024-07	July, 2024	Annual Review and update
2024-08	August, 2024	Incremental Review and update

Terms and Conditions for the Supply of the PowerHouse Upskill Platform

Introduction

- Mediasphere Holdings Pty Ltd (trading as PowerHouse Hub) ABN: 93 120 008 924, of Level 1, 74 Smith Street Motorway, Southport, Queensland 4215, has developed the PowerHouse Upskill software platform which is a software application to pre-screen, onboard and upskill talent on a cloud-based SaaS platform. (hereafter "**PowerHouse Hub**")
- The Customer wishes to subscribe from PowerHouse Hub to a non-exclusive license for the PowerHouse Upskill platform to host, manage and maintain their onboarding, upskilling and compliance portal in accordance with the Works Agreement (hereafter "**Customer**").

It is agreed:

Definitions and interpretation

Definitions: In this Agreement:

1. Agreement means this document, the Works Agreement and any other schedule or annexure to this document.
2. Australian Privacy Principles has the meaning set out in the *Privacy Act 1988* (Cth)
3. Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday Brisbane, Australia and the United Kingdom.
4. Commencement Date means the date specified in the Works agreement.
5. Confidential Information means information relating to:
 - a. the design, specification and content of the Website that is not publicly available.
 - b. information contained on the Customer's computer network systems.
 - c. personnel details, policies, business strategies or any other information or material provided to PowerHouse Hub by the Customer.
 - d. the Development Tools and Templates.
 - e. the terms of this Agreement.
 - f. any proprietary information of either party that is not publicly available; and
 - g. any other information which is stated to be confidential or which, by its nature, should reasonably be considered to be confidential information.
6. Customer Content means all text, pictures, sound, graphics, video, embed codes, documents, files, end-user data generated on the Website and other data loaded and stored in the Website database as well all data and information (including Confidential Information) relating to the Customer and any third parties to whom the Customer provides products or services, and to their respective operations, facilities, assets, products, sales and transactions in whatever form whether entered, stored, generated or processed as part of the Services and includes any:
 - a. database in which such data or information is stored.
 - b. documentation or records related to such data or information; and
 - c. products resulting from the use or processing of such data or information.
7. Customer Deliverables expressly excludes PowerHouse Hub Tools and Templates and means whether created before or after the date of this Agreement all textual, graphical, audio and other material displayed on the Website which are custom developed by PowerHouse Hub for the Customer.
8. Data Protection Law means Privacy Laws (as that term is defined) and other relevant Australian laws and regulations including Privacy Amendment (Notifiable Data Breaches) Act 2017 (cth).
9. Developer Tools and Templates means the software developed prior to the date of this Agreement, or otherwise developed outside of the scope of this Agreement, that is proprietary to PowerHouse Hub or licensed to PowerHouse Hub by third parties.
10. GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other law dealing with the imposition or administration of a goods and services tax in Australia.

11. Hosting Fee means the monthly/annual fee that is payable by the Customer to PowerHouse Hub for the annual hosting of the Website.
12. Installation Date means the date or period for installation of Software as set out in the Works.
13. Intellectual Property Rights means any and all now known or subsequently known tangible and intangible:
 - a. rights associated with works of authorship, including but not limited to copyrights and moral rights.
 - b. trademark and trade name rights and similar rights.
 - c. trade secret rights.
 - d. patents, designs, algorithms and other industrial property rights.
 - e. all other intellectual and industrial property rights of every kind and nature throughout the universe and however designated (including logos, rental rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise.
 - f. all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force; and
 - g. all rights and causes of action for infringement or misappropriation of any of the foregoing.
14. Internet means the world-wide connection of computer networks providing for the transmission of electronic mail, on-line information, information retrieval and file transfer protocol.
15. Maintenance Services means the supply to the Licensee of Updates and Upgrades.
16. Off-peak Times means any time between 5:00pm and 11:59pm or 12:00am and 8:30am Australia time or at any time on a Saturday or Sunday.
17. Personal Information means personal information as defined under the *Privacy Act 1988* (Cth).
18. Privacy Laws means all applicable laws and regulations relating to privacy and the protection of Personal Information, including the *Privacy Act 1988* (Cth), the Health Records (Privacy and Access) Act 1997 (ACT), the *Health Records Act 2001* (Vic), the *Health Records and Information Privacy Act 2002* (NSW), the *Spam Act 2003* (Cth), and any other requirement under law or industry code relating to the handling of Personal Information.
19. Product means the PowerHouse Upskill Platform (which includes the following Apps and Products: Powerhouse Upskill LMS, Job Role Compliance and Upskilling App, Talent Mobility App and PowerHouse Recruit platform).
20. Release means, in respect of an Update or Upgrade, the release of that Update or Upgrade (as the case may be) to the customers of the Licensor generally] (and "Released" shall be construed accordingly).
21. Sensitive Personal Data means sensitive information as defined in the *Privacy Act 1988* (Cth) and special category data – Article 9 GDPR. Refer to <https://powerhouseupskill.com/data-management-and-gdpr/> and <https://powerhouseupskill.com/privacy-policy-2/> for our GDPR data Management.
22. Services means services under this contract for the provision of the works or additional services relating to web hosting, the maintenance of the Website and all other services reasonably required to run the website by PowerHouse Hub to the Customer.
23. Server System means the hardware and software system owned or licensed by Customer on which the Website resides and that maintains the Website on the World Wide Web, and which may change from time to time.
24. Site means the hardware system for the hosting of the Server Systems.
25. Software means PowerHouse Upskill Tools and Templates and any other computer program or programs consisting of a set of instructions or statements in machine readable form, and each and every component thereof to the extent that they are used in relation to the Website or produced under additional services requested by this Agreement.
26. Software License means the permission to use the Products on a non-exclusive basis and subject to the terms and conditions in this agreement. Access to the License is granted on the payment, in advance, of the annual recurring (or monthly) license fee.
27. Specifications means the requirements for the Customer Deliverables.

28. Term means a period of two (2) year which can be renewed on an annual license basis if granted by PowerHouse Hub.
29. Third Party Materials means any software or other material owned by a company or individual other than PowerHouse Hub or Customer which is employed on the Website and is supplied by PowerHouse Hub.
30. Update means a hotfix, patch or minor version update to the Software.
31. Upgrade means a major version upgrade of the Software.
32. User means one of the following:
 - a) Active User – a user that can login and access the Products. A User can be reported on and their data is stored and backed-up. The user counts towards the commercial license counter and forms part of the Annual License Fee; or
 - b) Disabled User – a user that cannot login, however their data is still stored, backed-up and can be reported on. This user counts towards the commercial license counter; or
 - c) Deleted User – a user that has been removed from the Products by the Customer. No data is stored, no reporting can be done. This user does not count towards the commercial license counter.
33. User Account means an access credit that is used by the Customer to allow their users to access the Products. A User Account is activated by the Customer using a single credit to create a new user on the platform. The User Accounts are valid for 12 months and cannot be reissued to another user once activated.
34. User Account (eCommerce) means an access account that is added to the Products via an eCommerce transaction to provide the user with access to a course (content), event or webinar through the Products. The User Account (eCommerce) does not use an access credit, but it is added automatically based on an agreed revenue share model. PowerHouse Hub provides the Customer with eCommerce marketing portals, shopping cart, secure access to agreed third party eCommerce providers to manage the transactions, creation and delivery of payment invoices to the Customer and the creation of a user account with access to the purchased content or activity.
35. Website means the Products which are accessible on the Internet through the World Wide Web supplied by PowerHouse Hub pursuant to the terms and conditions of this Agreement.
36. Website Graphics means the custom graphics and user interfaces developed for the Website by PowerHouse Hub and included in the Customer Deliverables.
37. Works Agreement means the agreement for the deployment of Products and provision of integration and set-up services and the listed fees.
38. World Wide Web means a method of representing and obtaining graphical data and linking data items used by Internet users.

Interpretation Reference to:

- a. one gender includes the others.
- b. the singular includes the plural, and the plural includes the singular.
- c. a person includes a body corporate.
- d. a party includes the party's executors, administrators, successors and permitted assigns.
- e. a statute, regulation or provision of a statute or regulation (Statutory Provision) includes:
 - a. that Statutory Provision as amended or re-enacted from time to time; and
 - b. a statute, regulation or provision enacted in replacement of that Statutory Provision; and
- f. Money is the Australian dollar (\$), unless otherwise stated.
- g. "Including" and similar expressions are not words of limitation.
- h. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- i. Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- j. A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.

- k. If an act must be done on a specified day which is not a Business Day, it must be done on the next Business Day.

1. Term

- i. This Agreement commences and is deemed to have effect on the date that the Works Agreement is executed by the Customer and continues for the Term unless terminated in accordance with the Termination clauses. Unless stated otherwise, the term of the license is 24 months with the option to renew for an additional subsequent 12-month term based on the payment of the annual license fee or the recurring monthly fee.

2. Supply and Installation of the Website

- i. PowerHouse Hub must deploy the Products and provide the Services upon the terms of this Agreement.
- ii. PowerHouse Hub agrees to provide the Products and the Services in accordance with the Works Agreement.
- iii. PowerHouse Hub must deploy the Products in a competent, proper, efficient and timely manner in accordance with the Works agreement.
- iv. PowerHouse Hub must deploy and provide access to the Products in accordance with the Works agreement and any agreed implementation plan and must do so in such a way as to avoid any reduction of or adverse effect on the then current business of the Customer.

3. Works Agreement and Payment Terms

- i. Works Agreement
 - o PowerHouse Hub will work in good faith with the Customer to implement a Works Agreement.
 - o The Works Agreement will include all project deliverables and document all fees associated with the project.
 - o The Customer signs the Works Agreement to commence the project and accept the project fees. The Customer signs the Works Agreement to agree with the terms and conditions in this Terms of this license agreement.
 - o The Customer agrees to pay PowerHouse Hub on or before the payment date in the Works Agreement and Customer invoice. In the event of a non-payment or overdue payment, 30 days after the payment date, PowerHouse Hub may deactivate your site. A site-reinstatement fee may apply. A service fee may be charged to all overdue accounts.
- ii. GST
 - o Terms used in this clause which are defined in the GST Law have the meanings given in that law.
 - o Amounts payable under this Agreement do not include GST unless otherwise stated.
 - o If any payment made or other consideration given by a party (Payer) in connection with this Agreement does not include GST and is the consideration for a taxable supply for which the party who makes the supply (Supplier) is liable for GST, the Payer must, at the same time as the consideration is given, pay to the Supplier an additional amount equal to the amount of the consideration multiplied by the rate of GST under the GST Law.
 - o Any reference in this Agreement to a cost or expense to be reimbursed by one party to another (Payee) includes any GST payable in connection with a taxable supply to which that cost, or expense relates, less the amount of any input tax credit that the Payee or, if the Payee is a member of a GST group, the representative member of the GST group, is entitled to claim.

4. Assignment, licensing and allocation of rights on Products

- i. PowerHouse Hub and Customer agree that the licensing will consist of:
 - a. Customer Deliverables.
 - b. Developer Tools and Templates; and
 - c. The Terms and Conditions.

5. Ownership of Developer Tools and Templates

- i. PowerHouse Hub and Customer confirm that PowerHouse Hub retains ownership of all rights, title and interest in and to PowerHouse Hub Tools and Templates, including, without limitation, all applicable Intellectual Property Rights to PowerHouse Hub Tools and Templates. PowerHouse Hub retains all right, title and interest in and to all tools and other information and materials used in the creation or development of PowerHouse Hub's Tools and Templates.

6. Developer Tools and Templates License

- i. PowerHouse Hub grants to the Customer (and its Related Bodies Corporate) a fully paid, non-exclusive licence for the Term, to use, publicly perform, publicly display and digitally perform PowerHouse Hub Tools and Templates solely for the purpose and to the extent necessary to operate the Products.
- ii. The licence granted in this agreement is revocable and is only for the term of this agreement.
- iii. PowerHouse Hub retains the right not to renew the license for an additional Term after the expiry of the original Term if PowerHouse Hub intends to enact its rights under this clause 6 (iii) then PowerHouse Hub shall provide not less than 90 days' notice to the Customer.
- iv. PowerHouse Hub may also terminate the licence granted with 180 days written notice prior to the expiry of the Term where there are reasonable grounds for alleging the Customer is in breach of a provision of this Agreement when the breach relates solely to:
 - a. the failure of the Customer to make a payment under this Agreement; or
 - b. A material breach of PowerHouse Hub's Intellectual Property Rights in PowerHouse Hub Tools and Templates by the Customer or its employees.

7. Customer Content and Customer Deliverables license

- i. The Customer confirms its grant to PowerHouse Hub of a non-exclusive, royalty-free licence for the Term to deploy, distribute and digitally perform any Customer Content or Customer Deliverables only on or in conjunction with the Products, solely for the purpose and to the extent necessary to perform PowerHouse Hub's obligations under this Agreement.

8. Ownership of Customer Content

- i. As between PowerHouse Hub and Customer, any Customer Content stored or delivered on the Products under this Agreement or otherwise, and all Intellectual Property Rights therein, at all times remains the property of the Customer or its licensor or Website subscribers. PowerHouse Hub has no rights to such Customer Content, other than the limited right to use such content for the purpose expressly set out in this Agreement.

9. Access to Server Systems

- i. The Customer agrees to provide PowerHouse Hub with reasonable information and access to its relevant Server Systems (including without limitation, read, write and execute privileges where such privileges relate to the Products) to the extent necessary for PowerHouse Hub to perform its obligations under this Agreement.
- ii. When accessing the Server Systems, PowerHouse Hub must comply with any reasonable policies or directions given by the Customer.

10. Hosting of Customer Content

- i. PowerHouse Hub will store all Customer Content on servers located on Amazon Web Services (AWS) servers in London for the United Kingdom and northern hemisphere clients and AWS servers in Sydney for Australian and southern hemisphere clients, unless otherwise specified.
- ii. PowerHouse Hub will comply with all relevant data protection legislation.
- iii. PowerHouse Hub will comply with all relevant privacy and data protection legislation.
- iv. PowerHouse Hub will not store, disclose or otherwise permit access to Customer Content to anyone located outside of the countries of operation.

11. Developer's warranties

- i. PowerHouse Hub warrants that all Software, supplied under this agreement, will upon installation conform in all material respect to the Product specifications and representations for the period of this agreement.
- ii. PowerHouse Hub will take all the reasonable steps to ensure that the software operates in accordance with the Works agreement.

12. Warranties and covenants

- i. PowerHouse Hub warrants as at the Commencement Date that:
 - a. The Customer Deliverables and Developer's Tools and Templates used in relation to the Website do not infringe the Intellectual Property Rights of any third party.
 - b. No proceedings have been instituted by any third party against PowerHouse Hub for the infringement of that party's Intellectual Property Rights by PowerHouse Hub's Intellectual Property.
 - c. No proceedings have been instituted by any third party against PowerHouse Hub seeking to challenge the validity of PowerHouse Hub's Intellectual Property Rights in the Development Tools and Templates.
 - d. The Deliverables will be provided in accordance with this Agreement, including the Works Agreement.
 - e. Any documentation provided as a part of the Deliverables will be adequate to enable a reasonably competent person to operate the Products; and
 - f. PowerHouse Hub will only access the Customer Website, or Customer Content, in accordance with this Agreement, support issues, core pushes, security patches and or if required to provide Upgrades.

13. Services

- i. From the Commencement Date, PowerHouse Hub agrees to perform the Services for the customer in return for the License Fee and any agreed additional fees as set out in the Works Agreement.
- ii. After the project commences, the Customer has the right to request project variations to cover out-of-project-scope changes to the project. Project variations requested by the Customer and not described in the Works Agreement will be managed with a written scope of work, delivery dates and aligned fees that the client can approve or reject. PowerHouse Hub has the right to accept or reject project variations.
- iii. On and from the Commencement Date and until terminated in accordance with its terms, PowerHouse Hub warrants that:
 - a. it will perform all Services in a professional manner, using appropriately qualified and trained personnel and in accordance with prevailing industry standards.
 - b. Performance of the Services by PowerHouse Hub does not violate the terms of any other agreement between PowerHouse Hub and a third party.

14. Upgrades

- i. PowerHouse Hub shall keep the Customer reasonably informed during the Term of its plans for the release of Upgrades; however, except to the extent that the parties agree otherwise in writing, the Licensor shall have no obligation to release Upgrades with features requested by the Customer or to take into account the opinions of the Customer in relation to plans for the release of Upgrades.
- ii. PowerHouse Hub may produce Upgrades during the Term and shall make such Upgrades available to the Customer.
- iii. PowerHouse Hub shall give to the Customer at least 30 Business Days' prior written notice of the Release of an Upgrade.
- iv. PowerHouse Hub may apply each Upgrade to the Software within the period of 90 Business Days following Release.
- v. Upgrade fees do not apply to Products that have been deployed as a core (out-of-the-box) platform as updates are seamlessly pushed to the core and updated to all deployments. Upgrade fees will apply if a Customer has requested and added custom programming to the core platform. The fees will include the integration of the programming overrides to a new version. PowerHouse Hub will provide the Customer with the scheduled Upgrade fee in writing at least 30 Business Days before the Upgrade.
- vi. PowerHouse Hub reserves to right to charge a cost recovery fee for the migration of the Customer's content and database to the updated version of the Product. PowerHouse Hub will provide the Customer with the scheduled Upgrade fee in writing at least 30 Business Days before the Upgrade.

15. Customer warranties

Customer warrants that:

- i. It has full power, right and authority to enter into this Agreement and the Customer is not subject to any obligations that would prevent or otherwise restrict the Customer from performing its obligations under this Agreement.
- ii. The Customer Content does not infringe the Intellectual Property Rights of any person.
- iii. The Customer Content is not obscene, offensive, upsetting, or defamatory; and
- iv. The use of the Customer Content by PowerHouse Hub in connection the performance of its obligations under this Agreement is not illegal, fraudulent or of a defamatory nature.

16. Indemnities

- i. Each party fully indemnifies the other against any loss, costs, expenses, demands or liability, in respect of third-party claims arising out of a breach of any warranty expressly given under this Agreement.
- ii. PowerHouse Hub agrees to indemnify and keep indemnified the Customer to the extent required by relevant legislation against and in respect of all actions, proceedings, claims, demands and liabilities arising in any way that may be brought or incurred or suffered by the Customer as a result of:
 - a. a breach of this Agreement by PowerHouse Hub; or
 - b. a breach of intellectual property rights, privacy, confidentiality or data breach obligations by PowerHouse Hub.
- iii. Without limiting the obligations of PowerHouse Hub under this clause, if a determination is made by any independent tribunal of fact or law or if it is agreed between the parties to the dispute that an infringement of Intellectual Property Rights has occurred, PowerHouse Hub shall in a timely manner:
 - a. replace or modify the infringing product ensuring that the quality, performance or usefulness of the Website is not degraded and so that the infringement ceases; or

- b. apply its best endeavours to procure for the Customer the right to possess and continue to use the whole or the relevant part of the Website or what was required under the Works Agreement.
- iv. The indemnities contained in this Agreement continue throughout the term of this Agreement.

17. Privacy

a. Privacy obligations

PowerHouse Hub must:

- i. comply with the Privacy Laws in respect of any Personal Information;
- ii. only use Personal Information:
 - 1. where it is necessary for providing or receiving the Services or providing the Products; and
 - 2. for the purpose of providing or receiving the Services and providing the Products;
- iii. take all necessary technical and organisational measures to prevent:
 - 1. unauthorised or unlawful use or disclosure of; and
 - 2. accidental loss or destruction of, or damage to,the Personal Information;
- iv. subject to the Privacy Laws and consents obtained from the relevant individuals:
 - 1. treat the Personal Information as Confidential Information; and
 - 2. destroy or permanently de-identify the Personal Information if that information is no longer needed to perform the obligations under this Agreement.
- v. take reasonable steps, when requested by another party from time to time, to assist that party to comply with its obligations under the Privacy Laws and any privacy statements or policies issued by it; and
- vi. notify the other party immediately if it becomes aware of a breach, or a suspected or possible breach, by the party of any of its obligations under this clause **Error!**
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18. Independent Contractors

- i. PowerHouse Hub and Customer are each independent contractors, and no agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Neither party has the power to obligate or bind the other party. Personnel supplied by PowerHouse Hub must work exclusively for PowerHouse Hub and must not, for any purpose, be considered employees or agents of the Customer and vice versa.

19. Confidentiality

- i. A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- ii. A party is not in breach of this clause in circumstances where:
 - a. it is legally compelled to disclose the other party's Confidential Information.
 - b. the information disclosed is generally available to the public (other than as a result of the wrongful disclosure by such party).
 - c. such party obtained the Confidential Information from a third party without breach by that third party of any obligation of confidence concerning the Confidential Information; or

- d. The Confidential Information was already in such party's possession (as evidenced by written records) when provided by or on behalf of the other party.
- iii. Each party must take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.
- iv. The Customer may at any time require PowerHouse Hub to arrange for its employees, agents or sub-contractors engaged in the performance of this Agreement to execute a suitable confidentiality deed and if requested PowerHouse Hub must arrange for the deed to be executed within the time frame reasonably required by the Customer.
- v. Each party must on demand or on the expiration or termination of this Agreement, destroy or return to the other party (as directed by that party) any documents supplied to that party in connection with this Agreement.
- vi. Despite any other provision of this clause, each party may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers or accountants, but must ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to that party.

20. Termination

- i. Without prejudice to any other rights either party may have under this Agreement or at law or in equity, either party may terminate this Agreement with immediate effect, in whole or in part, upon:
 - a. the other party becoming subject to any form of insolvency administration (whether voluntary or otherwise).
 - b. the other party being in breach, including multiple small breaches, of any clause of this Agreement and such breach not being remedied with 30 days of written notice by the party of that breach: or
 - c. a party purporting to or proposing to assign this Agreement or its rights or interests in any relevant Intellectual Property, without the other party's prior written consent.
- ii. Either party may terminate this Agreement for convenience with 180 days of written notice to the other party at any time.
- iii. PowerHouse Hub reserves the right to discontinue a Product or version of a Product at any time. In this event, PowerHouse Hub will announce an End-of-Life date on the Product website and provide email communication to the Customer. The End-of-Life date will apply 12 months after the announcement date. PowerHouse Hub will provide bug fixes, maintenance releases, work arounds, or patches for critical bugs during the 12-month period. At the end of the period End-of-Support will apply and Customers will be required to upgrade to the supported version of the software or terminate the agreement. When the End-of-Life applies to a critical security issue, upgrade dates may be reduced to protect Customer data.
- iv. Upon termination of this Agreement:
 - a. the Customer agrees to use all reasonable endeavours to assist the transfer of PowerHouse Hub Tools and Templates to PowerHouse Hub.
 - b. Any transfer or migration that occurs under this clause must be carried out at the Customers expense; and
 - c. The Customer agrees to use existing platform functions to extract any data required for their records or auditing purposes i.e., Export user functionality and the Reporting modules. If any custom exports are required these will incur a fee for service determined by PowerHouse Hub.

21. Further assurance

- i. Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

22. Severability

- i. If anything in this Agreement is unenforceable, illegal or void then it is severed, and the rest of this Agreement remains in force.

23. Variation

- i. An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

24. Assignment

- ii. PowerHouse Hub may not assign or novate its rights and obligations under this Agreement without the prior written consent of the Customer.
- iii. The Customer may assign or novate its rights and obligations under this Agreement without PowerHouse Hub's consent.

25. Waiver

- i. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- ii. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- iii. A waiver is not effective unless it is in writing.
- iv. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

26. Costs and disbursements

- i. Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.
- ii. The Customer as the purchaser of goods and services pursuant to this Agreement, must pay all stamp duty and other government imposts payable in connection with this Agreement and all other documents and matters referred to in this Agreement when due or earlier if requested in writing by PowerHouse Hub.

27. Notices

- i. A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.
- ii. In addition to any other method of service provided by law, the Notice may be:
 - a. sent by prepaid post to the address of the addressee set out in this Agreement or subsequently notified.
 - b. sent by email of the addressee sent by electronic mail to the electronic mail address of the addressee; or
 - c. delivered at the address of the addressee set out in this Agreement or subsequently notified.
- iii. A Notice must be treated as given and received:
 - a. if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting.
 - b. if sent by email before 5 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- iv. If otherwise delivered before 5 p.m. on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- v. An email message is not treated as given or received if the sender's computer reports that the message has not been delivered.

- vi. A Notice sent or delivered must be treated as validly given to and received by the party to which it is addressed even if:
 - a. the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent.
 - b. the Notice is returned unclaimed; or
 - c. in the case of a Notice sent by electronic mail, the electronic mail message is not delivered or opened (unless the sender's computer reports that it has not been delivered).
- vii. Any Notice by a party may be given and may be signed by its solicitor.
- viii. A party may change its postal address for service or email address by giving Notice of that change to each other party.

28. General

- i. This Agreement:
 - a. is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
 - b. supersedes any prior agreement or understanding on anything connected with that subject matter.
- ii. Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.

29. Governing law and jurisdiction

- i. The law of Queensland governs this Agreement.
- ii. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

Schedule 1

Product (Platform and Apps) and Pricing

PowerHouse Upskill Platform

Driving compliance and job skills competency



PowerHouse Upskill is your online training and compliance solution. Personalised Workforce Wallets allow workers and their managers to visualise skill and compliance gaps, while our full suite of LMS features makes it efficient to rectify these. PowerHouse Upskill is the core platform that can be enhanced with the Job Role Compliance and Talent Mobility Apps. The scalable platform grows to suit your current and future training, compliance and talent needs.

Job Role Compliance App

This plugin App adds Job Role Compliance and Upskilling to the PowerHouse Upskill platform.

Extend the capability of the PowerHouse Upskill platform with Job Role Compliance and Upskilling. Drive your productivity and performance while ensuring your workforce is compliant and skilled. Managers view real-time data analytics and reports on job role compliance and upskilling. Visual graphs plot compliance and skill gaps with action to resolve issues.

Talent Mobility App

This plugin App adds Talent Mobility to the PowerHouse Upskill platform.

Let us manage your staff succession plans, staff retention and talent mobility programs. PowerHouse Mobility is an internal Talent Community for employers to search ranked job role Talent Pools to find top performers with their employee network. Post internal job roles or use Talent On-Demand to instantly discover matched talent in your staff and contractor talent pools.

PowerHouse Recruit Platform

A new way to attract, profile and hire your new employees

PowerHouse Recruit is a product that expands and enhances your talent acquisition strategy. Create location-based Talent Pools to build an ongoing stream of pre-screened candidates to service your business. Pre-screen your candidates against your specific job roles and view top rated job seekers in your ranked Talent Pools. Stream candidates from your job boards, recruiters and direct registrations on your portal and assess them in one place.

Pricing

The PowerHouse Upskill license is based on an annual/monthly SaaS Per-User-Per-Month license fee for the Communities, Workflows, Upskill and Mobility package. The pricing has been included in the Works Agreement.

Schedule 2

PowerHouse Hub Products: Upgrades and End of Life Policy

1. Scope

To ensure delivery of innovative and cost-effective products, PowerHouse Hub may periodically discontinue specific products, apps or versions of products and hosted services. At PowerHouse Hub's sole discretion, such products or services may be discontinued regardless of the delivery method, including on-premises Software and Cloud Services.

This policy describes the intended communication and transition plans for discontinued products and versions and provides information required to plan for migration to replacement technologies. Any questions arising in the interpretation of this policy or the application of this policy shall be as determined by PowerHouse Hub in its sole discretion. Any conflict between this policy and the terms of support shall be controlled by the provisions of this policy. This policy is effective from the effective date set forth above.

2. Software

Releases

- **Major (Upgrade - Major) Release:** Major releases encompass new products, major architecture changes, major user interface (UI) changes, significant new features or capabilities/functionality additions, new solutions, and substantial innovation.
- **Minor Release:** Minor releases include updates or enhancements/features to existing products, moderate administration or UI changes, and major bug fixes.
- **Update (Patch) Release:** Update releases incorporate minor bug fixes, security fixes, and service packs and Update releases should be incorporated into the next Minor Software release.
- The Software product version numbering scheme is defined as follows:

(Major). (Minor). (Update). Example: 7.03.02 Where Major release is 7, Minor release is 3, Update release is 2.

- PowerHouse Hub will make commercially reasonable efforts to adhere to the following guidelines:
 1. The End-of-Life Period for a Major or Minor Software release will be determined internally but will be no shorter than eighteen months from when the new release becomes Generally Available.
 2. The maximum total support life of a Software release is the lesser of: (a) three (3) years from the date it first became Generally Available or (b) one (1) year after the second minor version becomes Generally Available.

3. Products

- PowerHouse Hub will make commercially reasonable efforts to provide six (6) months' notice of an affected product's End of Sale Date and, after the effective End of Sale Date, provide Full-Service Software Support for a maximum of 1 year.
- PowerHouse Hub will not provide Full-Service Software Support past the specified End of Life date.

5. Extension of Support Terms - Custom Software Support

In rare instances, and at our sole discretion, PowerHouse Hub may offer extended support, beyond the standard support lifecycle. Custom Software Support may be available at an additional cost to the customer based on a current support subscription that is not impacted by an End-of-Life Date.

Custom Software Support will provide commercially reasonable workaround solutions under the following conditions:

- The technology remains supportable per PowerHouse Hub, including being free from unsupported dependencies on components provided by independent Software vendors (ISVs) that are outside PowerHouse Hub's control; and
- The platform it operates on is supported by our original equipment manufacturer (OEM) technology partner (where applicable); and
- Technical support for issue resolution will be provided on a commercially reasonable basis; and

Custom Software Support does not include:

- Product Enhancement Requests (PER)
- Hotfixes or Engineering-related support
- New Operating System support
- SLA commitments related to defects in the supported product.

6. Definitions

Custom Software Support - Is an individually negotiated Software support contract requiring a PowerHouse Hub-approved quote for product where the customer requests Support beyond the published End of Life Date.

Defect Severity – References to bug or defect severity reflect a qualitative appraisal of the problem's extent.

End of Life (EOL) Period - Refers to the timeframe beginning with the day PowerHouse Hub announces a product is no longer available for purchase from current PowerHouse Hub price books until the last date the product is formally supported by PowerHouse Hub. If Software version only, EOL Period refers to the timeframe beginning with the day PowerHouse Hub announces a Software version will no longer be available until it is no longer supported.

End of Sale Date – The date a product is no longer Generally Available for purchase.

End of Life Date – The last day that the product and/or Software version is supported per the terms of the standard Software and Hardware support offerings.

Generally Available – Product is generally available for Sale and Support on current PowerHouse Hub price books.

Software - means each PowerHouse Hub Software program in object-code format that is (a) licensed from PowerHouse Hub or its authorized partners, or (b) embedded in or pre-loaded on Hardware provided by the Customer, in each case including updates and upgrades that customer installs during any applicable support period.

Schedule 3

The PowerHouse Hub Service Level Agreement (SLA)

1. SUPPORT

- i. **Application:** The service levels are provided in respect of the server used in the provision of the Services.
- ii. **Email Support:** Support consists of responding to queries logged by the Customer's administration users via the portal or via email submission.
- iii. **Extended Support:** The Customer may wish to license an extended support contract which provides access to phone support. This extended support will be included on the Works Agreement.
- iv. **Contact Details:** Email: support@powerhousehub.com
- v. **Telephone Queries and Support Requests:** The Customer may contact PowerHouse Hub on a range of issues including:
 - a. Accounts and Invoicing.
 - b. Database backup, management and restoration.
 - c. Urgent platform related issues affecting all users.
 - d. General enquiries.
- vi. **Logging Support Tickets:** The customer will log all support issues via email to: support@powerhousehub.com. After logging a support issue, the Customer will receive a support ticket number that will be used as a reference for the job.
- vii. **Uptime SLA.** PowerHouse Hub shall use all reasonable commercial efforts, being no less than accepted industrial standards in this regard, to ensure that the PowerHouse Portal Service is available to you 99.9% of the time in any calendar month. If it is not, you may be eligible to receive the Service Credits described below:
 - a. **"Service Credit"** may be provided according to the following schedule:
 - i. **One-week Credit:** Includes **Seven (7)** days of Services added to the end of your billing cycle, at no charge to you, if the Monthly Uptime Percentage for any calendar month is between 99.9% and 97.0%.
 - ii. **Two-week Credit:** Includes **Fourteen (14)** days of Services added to the end of your billing cycle, at no charge to you, if the Monthly Uptime Percentage for any calendar month is between 97.0% and 95.0%.
 - iii. **One-month Credit:** Includes **Thirty (30)** days of Services added to the end of your billing cycle, at no charge to you, if the Monthly Uptime Percentage for any calendar month is less than 95.0%.

Right to terminate: In the event the Monthly Uptime Percentage for any calendar month is less than 90.0%, you will have a right to terminate the PowerHouse Hub agreement with seven (7) days written notice to PowerHouse Hub, or alternatively you can opt to procure the One-month Credit outlined above.
- viii. Scheduled or Planned server upgrades or server maintenance does not include:
 - i. Downtime caused by natural disasters – flood, hurricane, earthquake and so on.
 - ii. Downtime caused by third-party digital software attacks on server.
 - iii. Downtime caused by physical attacks a server or data centres.
 - iv. Direct denial of service (DDoS) attacks or hacking attempts.
 - v. Downtime caused during user's DNS and/or IP address changes.
 - vi. Downtime during technical support upgrades.

- ix. **PowerHouse Hub’s Indicative Response and Resolution Times for Internet Support**
- x. Depending on the nature and severity of the error, the majority of response and resolution times for priority 1 issues are typically responded within 2 hours and resolved within 8 hours (if the error occurs during Business Hours). In some cases, however, the response time may reflect the times shown below and in extreme situations exceed these times. Events beyond PowerHouse Hub’s control or impact such as Acts of God, data centre disasters (fire, flood), power supply issues, replacement hardware etc. may result in protracted response and resolution times. PowerHouse Hub will keep all relevant stakeholders informed of the status and expected time for resolution. If any such delay continues for a period of more than 30 Business Days, and the issue has been caused by PowerHouse Hub’s software, the Customer may terminate the Agreement effective immediately.
- xi. Response times relate directly to the urgency and impact of the issue. Urgency and impact factors will be used to calculate a priority level for all incidents.
- xii. The priority level will be determined by Powerhouse Hub upon reviewing the support ticket and referencing the description below.
- xiii. Resolution times outlined in the below table does not include client review time.
- xiv. If further changes are required relating to the original issue the below resolution times will commence again from the requested date.

Priority Level	Description
1	Affects all platform users
2	Affects large number but not all users
3	Affects several users
4	Affects low number or single user

Nature of Defect/Fault	First Reply in Business Hours	Resolution / Mitigation ETA in Business Hours
Priority 1	2 hours	8 hours or as soon as feasible or practical
Priority 2	4 hours	24 hours or as soon as feasible or practical
Priority 3	8 hours	48 hours or as soon as feasible or practical
Priority 4	10 hours	To be negotiated with the customer depending on the fault.

- xv. Hardware and network errors include monitoring, response and resolution 7 days per week, 24 hours per day by the server service provider. Software errors include monitoring, response and resolution. Cloud infrastructure issues are the responsibility of the Service Provider. (Cloud infrastructure can be categorised as hardware, network and software that are in the Cloud Layer. Cloud infrastructure is covered by the Cloud Provider service level agreements (SLA). AWS SLA: <https://aws.amazon.com/legal/service-level-agreements/> The layer above the Cloud Layer which consists of server instances, Firewalls, IP Addresses, and server software, application software is the responsibility of Powerhouse Hub) and covered by this service level agreement.
- xvi. **Server Back-Up:** A server backup means a complete copy of the website files, content and database. The backup data is only to be used as a non-functional copy of the original website in case the original website becomes corrupt or inaccessible.

- xvii. The Database Back-Up Schedule includes the following:
 - Day 1 to Day 7: Full back-ups are generated daily and stored on-network.
 - Day 8 to Day 30: From the daily backups, the System Administrator generates a weekly back-up each Sunday.
 - Day 31 to Day 365: At the start of the month a full back-up is generated. The System Administrator stores a full year of your back-ups. These back-ups are stored off-network.
- xviii. The User File Back-Up processing is every 24 hours. This is a dynamic update and will be backed up reflecting the platform at that time. User file back-ups does not backup files that have been removed by the administrator i.e. if a file is deleted by the customer administrator it will be removed from the back-ups accordingly. Pop-up messages have been implemented prompting confirmation from the administrator that the file will be permanently deleted.
- xix. In the event of data corruption or server fault, the backup will be restored to a functional server which in effect will reinstate the website back to its previous state before the error occurred, minimizing data loss and downtime. The System Administrator may issue a service fee for the data recovery operation if not the fault of Powerhouse Hub.
- xx. **Scheduled Maintenance:** The System Administrator will provide accurate and timely information in order to notify the Customer of all Scheduled Maintenance. PowerHouse Hub will work with any third parties to ensure that Scheduled Maintenance is only to occur during Off-peak Times.

2. PENETRATION TESTING POLICY

- i. Before conducting an external Penetration Test (also known as "pen testing"), at your own cost, you must seek written permission from PowerHouse Hub before proceeding. As many of the tests may use scripts and automated systems which use brute force or multiple attacks to test, these appear as malicious attacks and are prohibited without permission.
- ii. To request permission, please send an email to support@powerhousehub.com with the following information.
 - Site or server being tested.
 - Date and time of the testing.
 - A copy of the test plan, including the range of tests being conducted.
 - Contact information (including direct email address and phone number) of the person conducting the test.
 - IP addresses or IP ranges from where the testing is originating.
- iii. PowerHouse Hub reserves the right to cancel any testing, without notice if the testing is having any adverse impact on any system or service. PowerHouse Hub also runs dedicated firewall systems, which include an Intrusion Prevention System (IPS) and this cannot be disabled for testing.
- iv. We do not permit and DoS, DDoS or black-hat testing to occur, nor any testing against upstream infrastructure.
- v. If you or your testing company have any questions, please don't hesitate to contact our support team. We request that you share the Penetration Testing Report to allow our team to address any vulnerabilities or issues discovered during the test. A re-test can be completed by your testing provider after PowerHouse Hub provide advice that issues discovered in the Penetration Test have been resolved or clarified.