



# **Balance Internet Pty Ltd**

## **Integration SaaS Licence Agreement**



## SOFTWARE AS A SERVICE AGREEMENT (Terms and Conditions)

This Software as a Service Agreement (Agreement) is between BALANCE INTERNET PTY LTD (ACN 130 025 393) (referred to as BALANCE INTERNET) and the individual or entity referenced in the Particulars at clause 30 (referred to in this agreement as you or your), with you and Balance Internet collectively referred to as the Parties and each a Party.

This Agreement governs the access and use by you of the BALANCE INTERNET cloud-based system integration software (Software) and any related services made available to you (together with the Software referred to as the Services).

### 1. ACCEPTANCE

- 1.1 This Agreement forms a binding legal agreement between the Parties. By using the Services, you agree to comply with and be legally bound by the terms of this Agreement. Please read this Agreement carefully. If you have any questions, you should contact BALANCE INTERNET using the contact details at the end of this Agreement.
- 1.2 You agree the Services will only be used by your employees, contractors or authorised agents acting in the ordinary course of business and directly working for or managed by you. You must ensure that each of your employees, contractors or authorised agents using or accessing the Services does so in accordance with the terms of this Agreement.
- 1.3 BALANCE INTERNET reserves the right to make changes to this Agreement at any time, effective upon the posting of a modified Agreement. BALANCE INTERNET will communicate these changes to you via email or Balance Internet's website at (<https://dabus.io/license.html>) (the "Website"). It is your obligation to ensure that you have read, understood and agree to the most recent Agreement available on the Website.

### 2. PRIVACY POLICY

- 2.1 This Agreement incorporates BALANCE INTERNET'S Privacy Policy as set out on the Website.

### 3. SOFTWARE AS A SERVICE

- 3.1 Your Fees will vary subject to the period of service (Service Period) and the functionalities and Services you require in accordance with the Service License level nominated and agreed to by you in the Particulars at clause 30 The Service Period will be as set out in the Particulars.

#### 4. DATA

- 4.1 The nature of the Services is data and system integration which includes mapping, transforming and synchronising data between Integrated Third Party Applications. Accordingly, the function of the Services requires the collection, use and disclosure of information including; information or other data submitted by end users (“Users”) of the Integrated Third Party Applications (“User Information”) ; and information or other data stored in and transmitted between Integrated Third Party Applications and via the Services, (collectively referred to as Data). BALANCE INTERNET will take reasonable steps and use industry standard procedures to ensure that Data is kept secure and confidential.
- 4.2 It is your responsibility to maintain copies of all Data which is inputted or otherwise transmitted via the Services. BALANCE INTERNET will endeavour to prevent loss of Data such as by backing up Data where required. BALANCE INTERNET does not make any guarantees or warrant that there will be no loss of Data and does not represent or warrant that access to the Services, the Data or your Balance Internet account accessible via the Balance Website (“Account”) will be available without interruption.
- 4.3 Title to and all Intellectual Property Rights in any Data you input into the Services remain your property. However, unless otherwise stated in this agreement or required by law, your right to access the Data via the Services and your continued use of the Services is contingent on payment of your Service Fees as and when they are due.
- 4.4 You grant BALANCE INTERNET the rights to transmit, backup, store and hold data for purposes including:
- (a) for BALANCE INTERNET'S administrative, support and training purposes; and
  - (b) in accordance with this Agreement or as otherwise required for BALANCE INTERNET to develop, provide, promote and improve the Services.
- 4.5 You represent and warrant that:
- (a) any and all Data you submit (or a User submits) via the Services are your sole and exclusive property; or
  - (b) you have secured any and all authorisation and rights to transmit and otherwise use: (i) the Data; or (ii) any data between Integrated Third Party Applications, as applicable under the relevant laws or applicable third party terms of service.
- 4.6 You acknowledge and agree that:



- (a) any modification, transformation, mapping, 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. BALANCE INTERNET is not liable for any such errors, omissions, delays or losses. You acknowledge and agree you are responsible for adopting reasonable measures to limit the impact of such loss or error;
- (b) BALANCE INTERNET is not responsible or liable to the extent permissible by law for any corruption or loss of any Data; and
- (c) you are responsible for complying with all laws and regulations regarding the use and disclosure of Data including but not limited to the Privacy Act 1988 (Cth), the Spam Act 2003 (Cth) and any other requirements under Australian or corresponding foreign law.

## **5. SECURITY**

- 5.1 BALANCE INTERNET has implemented and will maintain security systems for the transmission of Data consisting of encryption 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.
- 5.2 BALANCE INTERNET does not guarantee the security of any Data you store on your servers, or the servers of your contractors, your service providers or User Devices.

## **6. AVAILABILITY OF SERVICES**

- 6.1 Although BALANCE INTERNET intends that access to the Services should be available on a full-time basis, the Services may be unavailable or temporarily interrupted due to maintenance or other development activity from time to time.
- 6.2 Where possible, BALANCE INTERNET will provide notice of any maintenance or development activity in advance via email or via the Services.

## **7. SUPPORT**

- 7.1 BALANCE INTERNET may provide technical support to you and specific Users for the Services subject to the level of your Service License under the terms of the Technical Support Agreement (SLA) between you and BALANCE INTERNET. If you require technical support, please contact BALANCE INTERNET using the details at the bottom of this Agreement. BALANCE INTERNET endeavours to respond to a support request within a reasonable period of time.



- 7.2 You acknowledge and agree, if the required support is outside the scope of Services paid for by you, support services may incur a support services fee.
- 7.3 Balance will only provide support to you for the Services to the extent that the Services operate with the agreed and specified versions of third party software identified and confirmed by Balance in writing as “operable third party software” at the endpoints detailed in the “Particulars” section (see clause 30 below) during or at the conclusion of the initial set up phase and in any event within 30 days of the Commencement Date (unless otherwise agreed in writing). For avoidance of doubt, Balance is not responsible for the provision of support to you or any User for any third party software. Balance Internet is not responsible for the provision of support for any changes, new release and or updates to the data format, schema, or available methods of integration related to any such third-party software including API endpoints or data processing rules that occur or change after the initial set up phase that may cause that third party software to cease being a version of operable software unless and until the relevant change, new release and or update of the third party software is agreed to by Balance in writing. This may or may not require an additional service fee depending on the nature of the change, new release and or update.
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## **8. PAYMENT**

- 8.1 You agree to pay BALANCE INTERNET the Service License Fee as required to enable you to access and use the Services.
- 8.2 You will be invoiced monthly for the Service License Fee and are required to make payment within 30 days of receipt of the invoice to maintain access to the Services.
- 8.3 Invoicing for the Service License Fee will commence on the date of deployment.
- 8.4 Ongoing invoices will be issued on the last day of each subsequent month.
- 8.5 Where you require the use of a purchase order, you are responsible for providing the applicable purchase order at the time of purchase. You acknowledge and agree that to the extent of any inconsistency between this Agreement and any terms and conditions attached to your purchase order, the terms of this Agreement will prevail.
- 8.6 If payment is not made within 60 days of the date of the invoice, BALANCE INTERNET may by written notice prevent you from accessing your Account, deny your further access to the Services and at Balance Internet’s discretion delete your or your User’s Data.
- 8.7 Unless otherwise stated, all amounts are stated in Australian dollars and are exclusive of goods and services tax (GST) or other duties, taxes and tariffs as applicable.



8.8 BALANCE INTERNET'S pricing structure may be amended from time to time in its sole discretion.

## **9. CANCELLATION**

9.1 If you would like to cancel the Services, you may do so by giving BALANCE INTERNET no less than 30 days written notice. Upon cancellation access to your Services will be terminated and any Data will be deleted and you will not be charged any further Service License Fees.

9.2 BALANCE INTERNET may terminate this Agreement or your Services License immediately, in its sole discretion, if:

- (a) you breach any of these Terms and you fail to remedy that breach within 30 days of Balance Internet giving you written notice setting out particulars of that breach;
- (b) BALANCE INTERNET reasonably suspects you are attempting to reverse engineer the Software that is provided to you; or
- (c) for any other reason outside BALANCE INTERNET'S control which has the effect of compromising its ability to provide you with the Services within a required timeframe.

9.3 On termination of the Services, BALANCE INTERNET may retain your Data and related documents (including copies) to the extent required by law or regulation. Your express or implied agreement to this Agreement constitutes your authority for BALANCE INTERNET to retain or destroy such documents in accordance with such law or regulations.

## **10. YOUR OBLIGATIONS**

10.1 You represent and warrant that all information provided to BALANCE INTERNET is true, accurate and complete.

10.2 You acknowledge and agree that you are responsible for how you use the Services and that:

- (a) the Services will only be used for your own lawful personal or business purposes, in accordance with this Agreement;
- (b) where relevant, all usernames, passwords, API keys and/or any other credentials required to access the Services are kept secure and confidential;
- (c) if there is any unauthorised use of an Integrated Third Party Application, your Account or any breach of security, you will immediately notify BALANCE INTERNET of such activity;



- (d) it is your responsibility for obtaining any consents, licences, permits and permissions from other parties including but not limited to the providers for Integrated Third Party Applications as required for the Services to be provided, at your cost, and for providing BALANCE INTERNET with the necessary consents, licences and permissions; and

10.3 BALANCE INTERNET has no responsibility to any person or entity other than you and nothing in this Agreement confers, or purports to confer, a benefit on any person or entity other than you. 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) BALANCE INTERNET 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 BALANCE INTERNET for any purpose;
- (c) you are responsible for authorising any person who is given access to your Data and you agree that BALANCE INTERNET 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 BALANCE INTERNET, on first demand, against any and all claims, expenses, liabilities or losses arising out of in connection with BALANCE INTERNET'S refusal to provide any persons with access to your Data in accordance with this Agreement and BALANCE INTERNET making Data available to any person with written authorisation from you.

10.4 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 via the Services comply with laws which are applicable to you, including any laws requiring you to retain records of your Data.

10.5 You must have your own safeguards and backup 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.

## **11. PROHIBITED USE**

11.1 You acknowledge and agree that the Services are provided "as is" and you will not:

- (a) use the Services in any manner that is illegal or violates any applicable law or regulation;
- (b) attempt to circumvent or disable the Software or any technology features or measures in the Services by any means or in any manner;



- (c) attempt to modify, copy, adapt or reproduce the Services except as necessary to use it for normal operation;
- (d) attempt to decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for the Software;
- (e) distribute, encumber, sell, rent, lease, sub-license, or otherwise transfer, publish or disclose the Services to any third party (except as permitted under this Agreement);
- (f) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in or on the Services or used in connection with the Services or Website;
- (g) use the Services in any manner to aid in the violation of any third party Intellectual Property Rights, including but not limited to another's copyrights, trade secrets, and patents;
- (h) take any action that interferes, in any manner, with BALANCE INTERNET'S rights with respect to the Software;
- (i) attempt to undermine the security or integrity of BALANCE INTERNET'S computing systems or where the Services are hosted by a third party, that third party's computing systems and networks;
- (j) use, or misuse, the Services in any way which may impair the functionality of the Services, or other systems used to deliver the Services or impair the ability of any other user to use the Services;
- (k) attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the Services are accessed; and
- (l) transmit, or input into the Services any files or content that defames BALANCE INTERNET or the Services, may be offensive or inappropriate 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).

11.2 Title, ownership rights and Intellectual Property Rights in and to any content displayed on the Services, or accessed through 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.





11.3 You acknowledge that any breach of this clause is a breach of a material term giving rise to a right in favor of Balance Internet to terminate this Agreement.

## **12. PRIVACY**

12.1 BALANCE INTERNET agrees to comply with the Privacy Act 1988 (Cth) including the Australian Privacy Principles as amended from time to time, any other applicable legislation or privacy guidelines and corresponding foreign law.

## **13. INTELLECTUAL PROPERTY**

13.1 If you hold a current Service License, BALANCE INTERNET grants you a personal non-exclusive, non-transferable, limited and revocable licence (Licence) to use any reports or related materials containing your Data generated from the Services for your purposes. All other uses are prohibited unless you obtain BALANCE INTERNET'S prior written consent.

13.2 Title to, and all Intellectual Property Rights in the Services and Website, and any documentation relating to the Services, remain the property of BALANCE INTERNET, its successors and permitted assigns. Your right to use such Intellectual Property Rights is subject to the terms of this Agreement.

13.3 Where third-party applications are used in conjunction with the Services including but not limited to Integrated Third Party Applications, you acknowledges that BALANCE INTERNET 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. BALANCE INTERNET is not responsible for any disclosure, modification or deletion of data resulting from any such access by Integrated Third Party Applications.

## **14. Not Used.**

## **15. FEEDBACK AND DISPUTE RESOLUTION**

15.1 Your feedback is important to BALANCE INTERNET. BALANCE INTERNET seeks to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact BALANCE INTERNET using the details at the bottom of this Agreement.

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 Victoria 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 You acknowledge and agree that whilst BALANCE INTERNET will take reasonable steps to ensure that the Services will be fit for the advertised purpose, BALANCE INTERNET gives no guarantees that the Services will work in each of your desired use case scenarios.
- 16.2 The Services use third party hosting services and rely on the availability of Integrated Third Party Applications. BALANCE INTERNET cannot ensure and does not warrant the uptime or availability of these third party services or that these third party services are provided free of defect or without interruption.
- 16.3 BALANCE INTERNET 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, the Internet, which can be unpredictable and may from time to time interfere with the use of the Services. BALANCE INTERNET accepts no responsibility for any such interference or prevention of your use of the Services.
- 16.4 To the maximum extent permitted by applicable law, BALANCE INTERNET 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 BALANCE INTERNET 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 Services, even if BALANCE INTERNET has been advised of the possibility of such damages and or Balance Internet has been found in the provision of the Services to have acted negligently
- 16.5 You acknowledge and agree that BALANCE INTERNET may pursue any available equitable or other remedy against you as a result of a breach by you of any provision in this Agreement.



16.6 BALANCE INTERNET 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 total price paid for the Services. BALANCE INTERNET'S total liability to you for all damages in connection with the Services will not exceed the price paid by you under this Agreement for the Services. The foregoing limitations, exclusions and disclaimers will apply to the maximum extent permitted by applicable law..

16.7 You acknowledge and agree that BALANCE INTERNET will not be liable for any non-compensatory damages including punitive, aggravated, multiple, exemplary, liquidated or any other non-compensatory damages or the consequences of non-payment.

16.8 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law (including your consumer guarantees) or any corresponding foreign law.

## 17. INDEMNITY

17.1 You will be liable for and agree to indemnify, defend and hold BALANCE INTERNET 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:

- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) any breach of this Agreement;
- (c) and any misuse of the Services and/or the Services Licence from or by you, your employee(s), contractor(s), agents or a User;
- (d) any breach of law, regulation or licence by you;
- (e) any claim brought by any third party including any User against a Party arising out of the Services;
- (f) any claim by any third party, that:
  - i. the grant, or exercise of any licence, of any Intellectual Property rights under this Agreement; or
  - ii. the supply or use of the Services,

infringes the Intellectual Property rights or any rights of any person.



17.2 You agree to co-operate with BALANCE INTERNET (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 us.

17.3 The obligations under this clause will survive termination of this Agreement.

## **18. NOTICE**

19.1 Any notice required or permitted to be given to you under this Agreement will be addressed you at the email address you provided when completing the Registration Form.

## **19. RELATIONSHIP OF PARTIES**

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

19.2 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.

## **20. RIGHTS OF THIRD PARTIES**

20.1 Any person or entity who is not a party to this Agreement including but not limited to any User other than you have no right to benefit under or to enforce any of this Agreement.

## **21. ASSIGNMENT**

21.1 This Agreement is personal to you. You 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 BALANCE INTERNET.

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

## **22. WAIVER OR VARIATION OF RIGHTS**

22.1 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.

22.2 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.

## **23. POWERS, RIGHTS AND REMEDIES**



23.1 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.

## **24 FORCE MAJEURE**

24.1 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.

## **25. FURTHER ASSURANCE**

25.1 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.

## **26. ENFORCEABILITY**

26.1 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.

## **27. ENTIRE AGREEMENT AND UNDERSTANDING**

27.1 The date of this Agreement is the date that this Agreement is signed by you.

27.2 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.

## 28. GOVERNING LAW AND JURISDICTION

28.1 This Agreement is governed by the laws of Victoria and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Melbourne, Victoria.

## 29. DEFINITIONS

**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:
  - i. 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
  - ii. the appointment of a controller, receiver, administrator, office manager, trustee; or
- (d) seeks protection or is granted protection from its creditors, under any applicable legislation.

**Integrated Third Party Application** means the application(s) and/or system(s) whether owned by or licensed to you and integrated via the Services.

**Intellectual Property Rights** 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 inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets and know-how.



## **Appendix I**

### **INTEGRATION DATA DASHBOARD**

The Service License Fee includes access to a Data Dashboard that displays statistics that provide insights into the entities where data is exchanged through the Systems Integration Software.

These entities include Product, Orders and Customers.

### **CONDITIONS RELATING TO THE DATA DASHBOARD**

1. Balance Internet does not guarantee the accuracy, availability of the data displayed the dashboard or the functionality of the dashboard(s).
2. The Service License Fee does not include any Support for the Dashboard(s) or the charts that display the data.
3. Support for the dashboard(s) can be accessed under either an existing Balance Internet SLA (Support Level Agreement) or under a separate SLA.
4. Requests for new or additional charts or dashboards will be considered as a additional requirement and will be quoted for and delivered under Balance Internet's standard project management process.
5. As a number of the components and services are provided by third parties, Balance Internet cannot guarantee the future availability or functionality of the dashboards or their contents.
6. Initial usage of the provided dashboards and charts is free. However, Balance Internet reserve the right to introduce additional fees for this service in the future.
7. Access to the dashboard(s) will be provided to only one user/entity (via URL: User Name and Password) for each client.
8. Current version of the Dashboard(s) is best viewed on Desktop and is not optimised for display on mobile or tablet devices.

