



ENGAGEMENT AGREEMENT

Dated the 2017

No Reservations Pty Ltd ACN 150 556 611, trading as Layer 8 Security

60 – 62 Merluna Road, Park Ridge South, Queensland, 4125

ABN 150 556 611

“Layer 8 Security”

[Name]

[Address]

[ABN]

“Client” or “You”

Recitals

- A. The Client agrees to engage and Layer 8 Security agrees to accept to provide products and/or services from the Start Date of this Agreement.
- B. The parties agree that the products to be supplied and services will be provided on the terms and conditions contained in this Agreement.

Definitions:

- a. “Client” or “You” means [insert Client entity]
- b. “Layer 8 Security” means No Reservations Pty Ltd ACN 150 556 611, trading as Layer 8 Security
- c. “Security Testing Services” means controlled electronic probing of hardware and software in the form of either a vulnerability assessment or an ethical penetration test
- d. “Start Date” means [insert date]
- e. “We” means No Reservations Pty Ltd ACN 150 556 611, trading as Layer 8 Security



1. Application of these terms

- 1.1 Unless the quotation, and the purchase order issued in respect of the quotation, specify that they are subject to a separate contract signed by the parties, these terms and conditions apply to the quotation and any purchase order issued in respect of it.

2. Supply of goods, services and software

- 2.1 Layer 8 Security (trading under No Reservations Pty Ltd, ABN 34 150 556 611) ("**Layer 8 Security**") agrees to supply goods ("**Products**") and/or services ("**Services**") to the Client on these standard terms and conditions ("**Terms**").
- 2.2 The Products and Services that we provide are tailored to each Client. The range of services include, but are not limited to, developing methodologies, technologies and solutions, to reduce the impact of cyber crime and human security.
- 2.3 The Client acknowledges that the purpose of some of the Services provided is to test the employees, consultants, directors and contractors of the Client and as such at times these persons may act upon phishing emails to their detriment and as such the Client is required to indemnify Layer 8 Security as detailed in Clause 23 of this Agreement.

3. Support and maintenance services

- 3.1 If the quotation includes hardware maintenance and support services to be performed by Layer 8 Security, the supply of the services will be on Layer 8 Security's terms and conditions which are available at the following URL: https://layer8security.com.au/?page_id=965 or upon request.
- 3.2 If the quotation is for support services to be supplied by a third party, the supply of those services will be on the third party's terms and conditions which are as published by the third party or upon request from Layer 8 Security.
- 3.3 Acceptance of the quotation constitutes acceptance of those terms and conditions for any quoted hardware maintenance services, unless the parties sign a written contract

4. Staff augmentation (labour hire) services

- 4.1 If the quotation includes a quotation for labour hire services, the supply of those services will be on Layer 8 Security's Staff Augmentation terms and conditions which are available at the following URL: https://layer8security.com.au/?page_id=965. Acceptance of the quotation constitutes acceptance of those terms and conditions for any quoted staff augmentation services, unless the parties sign a written contract.

5. Purchase orders

- 5.1 Any amendments to purchase orders for Products or Services must be approved by Layer 8 Security in writing to be effective. Only these Terms (and not other terms and conditions which may be attached to or incorporated in a purchase order) form part of the agreement between the parties. Acceptance of a purchase order by Layer 8 Security will not be acceptance of any such terms or conditions.

6. Taxes and GST

- 6.1 Although the quoted price might exclude GST the total amount payable to Layer 8 Security includes taxes, duties and government charges imposed or levied in Australia in connection with the supply of the Products and Services. The Client is liable for any new or varied taxes, duties or charges imposed subsequent to Layer 8 Security's quotation or proposal or in respect of the supply of the Products and Services.



- 6.2 The client must pay any GST payable in connection with the supply and Layer 8 Security will issue a valid tax invoice where GST is to be recovered.

7. Payment

- 7.1 Products will be invoiced on delivery to:
- (a) The nominated client delivery address, unless 7.1(b) or 7.1(c) applies; or
 - (b) Layer 8 Security's staging facilities where Services are to be performed on the Products; or
 - (c) Layer 8 Security's storage warehouse where Layer 8 Security is to store the Products in accordance with the Client's instructions, before shipment to the Client's designated delivery address.
- 7.2 Services will be invoiced at the end of each month and on completion or as otherwise prescribed in the documents describing the Services to be supplied.
- 7.3 Payment terms are strictly 30 days from the date of invoice. Client forfeits any discount that Layer 8 Security may have granted to Client if payment is not made to Layer 8 Security by the due date. Payment of undisputed amounts must not be withheld pending the settlement of any claims or disputes.

8. Price adjustments

- 8.1 Prices quoted are valid for 30 days from the date of the quotation unless otherwise specified in the quotation. If Products or Services are purchased by Layer 8 Security in a foreign currency (or if the price for them is subject to adjustment in accordance with exchange rate movements), Layer 8 Security may adjust the price of those Products or Services after receipt of an order to take account of any change in the exchange rate (as quoted by the Westpac Banking Corporation) which occurs between the quotation date and the date of acceptance of the quotation.

9. Interest

- 9.1 Any amount not paid on the due date for payment will carry interest from that date until payment is made in full at the rate being 2 percentage points above the overdraft rate charged on overdraft accounts over \$100,000 by the Westpac Banking Corporation from time to time.

10. Warranty

- 10.1 Layer 8 Security makes no warranty in relation to the Products or Services other than as contained in these Terms or as prescribed by a law which cannot be excluded or in the case of Products, as provided by the Products' respective manufacturers as made known to the Client in the documents supplied by Layer 8 Security or the manufacturer or as otherwise published or made known to the Client.
- 10.2 Defects in Products will be rectified in accordance with the manufacturer's warranty.
- 10.3 Defects in Services reported to Layer 8 Security within 30 days of delivery of the Service will be rectified by Layer 8 Security at no charge to the Client.
- 10.4 Layer 8 Security will not provide claimed warranty services for defects or deficiencies in Products or Services, which are caused by:
- (a) External causes including natural disaster, fire, accident, neglect, misuse, vandalism, water, lightning, power surge or spike;
 - (b) The use of a Product for other than its intended purpose;



- (c) The use with or connection of a Product to items not approved by Layer 8 Security;
- (d) The performance of maintenance or attempted repair by persons other than Layer 8 Security or as authorised by Layer 8 Security;
- (e) Changes made to the deliverables created by performance of the Services or to the operating environment;
- (f) The relocation of Products by the Client; or
- (g) Configuration or reconfiguration by the Client of the Products or other equipment with which the Products interface.

11. Delivery

- 11.1 Layer 8 Security will use its reasonable endeavours to deliver Products or Services to the Client by the date agreed but will not be liable for any delays in delivery caused by matters beyond its control. Freight charges incurred by Layer 8 Security in delivering Products to the Client will be invoiced to the Client at cost unless quoted otherwise.

12. Acceptance

- 12.1 Unless the Client gives Layer 8 Security written notice of any aspect of a deliverable which is alleged by the Client to be otherwise than in accordance with these Terms or any applicable specifications, within 7 days of the date of delivery of that deliverable, the Client is deemed to have accepted that deliverable on delivery. If the Client puts a deliverable to commercial use, it is deemed to have accepted that deliverable on the first day of such use, whether or not a notice of the kind contemplated by this clause is given to Layer 8 Security as required.

13. Returns

- 13.1 Products can only be returned if the return is authorised by both the relevant third party supplier and Layer 8 Security. The Products must be returned in the same condition as delivered by Layer 8 Security and Layer 8 Security reserves the right to charge the Client for any costs or losses incurred by Layer 8 Security if Products which are not faulty are returned.

14. Risk

- 14.1 Risk of loss, theft, damage, deterioration or destruction of Products passes to the Client upon the earlier of:
- (a) Delivery to the Client;
 - (b) The taking of possession by the Client; and
 - (c) Delivery to any carrier contracted to the Client for delivery to the Client.

15. Title

- 15.1 Until the Products have been paid for in full, they remain the property of Layer 8 Security. If the Client fails to pay any moneys to Layer 8 Security when due, Layer 8 Security may immediately without notice or demand enter upon the Client's premises and take possession of the Products. This right is without prejudice to any other rights that Layer 8 Security may have.

16. Client's authority and acknowledgements (Security Testing Services)

- 16.1 In this clause 16, "Security Testing Services" means controlled electronic probing of hardware and software in the form of either a vulnerability assessment or an ethical penetration test.
- 16.2 If Layer 8 Security is supplying Security Testing Services, the Client authorises Layer 8 Security to:

- (a) Provide the Security Testing Services;
- (b) Do all things necessary to provide the Security Testing Services and to discharge its obligations; and
- (c) Access data or software on the relevant system, where required to properly perform the Security Testing Services.

16.3 The Client acknowledges that, in providing the Security Testing Services, Layer 8 Security might:

- (a) Circumvent access controls or access protected data;
- (b) Inadvertently modify, alter, corrupt, erase or destroy data or software stored on or accessible through the system; or
- (c) Interfere with, disrupt, interrupt or obstruct the relevant system or the Client's business or operations; and
- (d) for the avoidance of any doubt, the Client authorises Layer 8 Security to do all such acts consistent with the Statement of Work in relation to the provision of the Security Testing Services.

16.4 The Client acknowledges that the security of the relevant system is and will remain the responsibility of the Client.

16.5 The Client acknowledges that the information contained in any security-related report supplied by Layer 8 Security is sensitive and confidential information and that it should be kept secure at all times.

16.6 If the consent, approval or authority of a person other than the Client is required in order for Layer 8 Security to provide the Security Testing Services lawfully and without infringing the rights of any person, the Client warrants that it will obtain that consent, approval or authority before Layer 8 Security commences to provide that part of the Security Services for which the consent, approval or authority is required.

17. Confidentiality

17.1 Layer 8 Security and the Client agree that they will keep at all times as strictly confidential any confidential information that is disclosed or provided by one party to the other. In this clause, "**confidential information**" means information in any form but does not include information that is already in the public domain at the time that it is disclosed or becomes part of the public domain otherwise than as a result of an unauthorised disclosure by Layer 8 Security or the Client.

18. Intellectual property

18.1 The Client acknowledges that, unless otherwise agreed in writing, all intellectual property rights attaching to the Products or arising out of the provision of Services are and will remain the property of Layer 8 Security (or its supplier, where such rights are owned by that supplier). Software will be licensed to the Client on the terms of the relevant licence agreement provided with the Product or as otherwise agreed between Layer 8 Security and the Client in writing. Any rights to be conferred on Client will only commence on payment of all charges payable in connection with those rights.

19. Termination

19.1 If the Client:

- (a) Makes default in any payment or breaches any of these Terms;

- (b) Becomes unable to pay its debts as and when they fall due; or
- (c) Commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up,

19.2 Layer 8 Security may without prejudice to any of its rights or remedies under these Terms or otherwise by notice to the Client:

- (a) Suspend further supply and require payment in advance for future supply;
- (b) Recover possession of any Product for which payment has not been made;
- (c) Terminate all or any purchase orders for Products or Services, which have been accepted by Layer 8 Security;
- (d) Claim immediate payment of all moneys due by the Client in respect of all Products and/or Services which will then be immediately due and payable notwithstanding the due date or dates for payment or any terms agreed by Layer 8 Security; and/or
- (e) Continue to enforce its rights and recover from the Client such payments and any other amounts owing as and when they fall due.

20. No representations

- 20.1 The Client acknowledges that Layer 8 Security has not made any warranty or representation, express or implied, in relation to the Products or the Services, including whether they are suitable for a particular purpose (whether such purpose was made known to Layer 8 Security or not), unless provided in writing.

21. No implied terms

- 21.1 To the fullest extent permitted by law, the parties agree to exclude any terms, which would otherwise be implied into these Terms by any statute. The liability of Layer 8 Security for a breach of a condition or warranty implied into these Terms by the *Competition and Consumer Act, 2010* is limited at the option of Layer 8 Security:
- (a) if the breach relates to goods, to the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; and
 - (b) if the breach relates to services, the supplying of the services again or the payment of the cost of having the services supplied again.

22. Limitation of liability

- 22.1 To the extent permitted by law, all express or implied warranties, representations, statements, terms and conditions relating to Layer 8 Security or the provision of Products and/or Services under these Terms, not expressly set out in these Terms, are excluded from the agreement between the parties.
- 22.2 If a condition or warranty is implied into this Agreement by a law, which cannot be excluded, Layer 8 Security's liability is limited (at Layer 8 Security's option) to:
- (a) The replacement or repair of the goods or the payment of the cost of having the goods replaced or repaired, in the case of supply of goods; or
 - (b) The supply of the services again or the payment of the cost of having the services supplied again, in the case of supply of services.



- 22.3 Layer 8 Security's aggregate liability, whether arising from breach of contract, negligence or any other tort, breach of warranty, under an indemnity, or statute, in equity or otherwise is limited to an amount equal to the total amount paid to Layer 8 Security under a quote or the total amount paid in the 12 months preceding any claim under an agreement for support or maintenance services.
- 22.4 Nothing in clause 22.3 operates to limit Layer 8 Security's liability for:
- (a) Claims for death, personal injury or damage to tangible property; or
 - (b) Claims for breach of a third party's intellectual rights.
- 22.5 Layer 8 Security has no liability to the Client for any incidental, indirect, special or consequential loss or damage, or for loss of or corruption of data, loss of use, revenues, profits, goodwill, bargain, opportunities or anticipated savings, whether arising from breach of contract, negligence or any other tort, in equity or under an indemnity, warranty or otherwise, whether or not Layer 8 Security was aware of the possibility of such loss or damage.

23. Indemnities

- 23.1 The Client does hereby waive, release, discharge and relinquish any and all claims that you now have or may have against us, our affiliates, subsidiaries, parents, shareholders, directors, officers, employees, agents and representatives ("**Indemnified Parties**") which are connected with, arise out of, relate to or are incidental to our providing You of any Products or Services.
- 23.2 You hereby indemnify and defend the Indemnified Parties harmless from and against any and all claims, loss, damage, tax, liability and/or expense that may be incurred by the Indemnified Parties arising out of or in connection with the performance of their obligations in providing a Product or Service including legal costs, fees and expenses of defending ourselves against any claim by any or all of the parties to any transaction and/or by any other person and/or as a result of your negligent act or omission on a full indemnity basis.
- 23.3 You further indemnify and hold us and the Indemnified Parties harmless from any claim or demand, including legal fees on a full indemnity basis, made by any third party due to or arising out of a breach of these Terms and Conditions by You.

24. Governing Law

- 24.1 These Terms and Conditions are governed by and will be construed according to the law of Queensland and is subject to the jurisdiction of the courts of Queensland.

25. Variation

- 25.1 Any variation to these Terms must be in writing. Layer 8 Security will charge variations to any of the Services agreed to be supplied, at its then current rates for those additional services, unless otherwise agreed in writing.

26. Force majeure

- 26.1 Layer 8 Security will not be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement (and the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control, including but not limited to any of the following:
- (a) Acts of god, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;

- (b) Fire, explosion or accidental damage;
- (c) Adverse weather conditions;
- (d) Non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause);
- (e) Interruption or failure in communications networks and facilities, (including the internet) and interruption or failure of utility service, including but not limited to electric power, gas or water; or
- (f) Mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law).

27. General

- 27.1 Notices must be in writing and sent by mail, hand delivery or transmitted by email, and are deemed delivered, in the case of:
- (a) Hand delivery, on delivery;
 - (b) Posting, three days after dispatch; and
 - (c) Email, upon returned acknowledgement of receipt of initial email.
- 27.2 No leniency, indulgence or extension of time granted by Layer 8 Security to the Client will prejudice any of Layer 8 Security's rights in any way or constitute a waiver of any of Layer 8 Security's rights. If any of these Terms are for any reason declared to be or become unenforceable, invalid or illegal, the remaining Terms will remain in full force and effect. The laws of Queensland govern these Terms and the parties agree to submit to the non-exclusive jurisdiction of the courts of Queensland.
- 27.3 These Terms, the applicable quotation and the purchase order constitute the entire agreement between the parties on the subject matter and supersede any previous understanding or agreement on that subject matter.

Executed by NO RESERVATIONS PTY LTD in accordance with
Section 127 of the Corporations Act 2001:



Name : Robert de Haan
Title : Director
Date _____

Signature : _____

Executed by [INSERT COMPANY] in accordance with
Section 127 of the Corporations Act 2001:

Name : _____
Title : _____
Date _____

Signature : _____

OR FOR INDIVIDUALS:

SIGNED SEALED and DELIVERED)
By the said [INSERT NAME] in the)
Presence of:) [INSERT NAME]

.....
Signature

.....
A Justice of the Peace/Solicitor