

Services Agreement

SERVICES AGREEMENT

DATE

The date on which the Subscriber has requested Capital Monitor to commence the supply of a service.

PARTIES

Capital Monitor Pty Ltd ACN 008 656 666 of Suite S2.105, Parliament House, Canberra, Australian Capital Territory.

And

The Subscriber, who has provided his name and address details to Capital Monitor.

Please note: With effect from 1 March 2005, Reed International Books Australia Pty Ltd, trading as LexisNexis (ABN 70 001 002 357) has purchased the business of Capital Monitor (Pty) Ltd.

THE PARTIES AGREE AS FOLLOWS

(1) Capital Monitor has agreed to supply the Subscriber with the Information on the terms and conditions of this document.

(2) The Subscriber has agreed to use the Information supplied by Capital Monitor only on the terms and conditions of this document.

OPERATIVE PROVISIONS

1.0 INTERPRETATION

1.1 Definitions

In this document unless the context otherwise requires:

- **"Copyright Materials"** means copies of press releases, transcripts, policy papers, court decisions, news stories, draft legislation and all other legislative instruments, government publications, media releases, whether in writing, electronically or through any other medium (including all information and any materials whatsoever received by Capital Monitor which is the subject of any licence agreement between Capital Monitor and any other third party).
- **"GST"** means:
 - the same as in the GST Law;
 - any other goods and services tax, or any tax applying to this transaction in a similar way; and
 - any additional tax, penalty tax, fine, interest or other charge under a law for such a tax.
- **"GST Law"** means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- **"Information"** means the Copyright Materials and any other information disclosed to the Subscriber by Capital Monitor, whether disclosed in writing, electronically or through any other medium, except to the extent that such information is:
 - known to the Subscriber before the commencement of this document; or
 - becomes public knowledge other than by breach of this document.
- **"Intellectual Property"** means all industrial and intellectual property rights (including rights to patents, designs, copyright, trade marks, trade names and circuit layouts) conferred under statute or common law or equity in any country.
- **"Loss or Claim"** means, in relation to any person, a damage, loss, cost, expense or liability (and in particular including any indirect, economic or consequential damage, loss, cost expense or liability) incurred by the person or a claim, action, proceeding or demand made against the person, however arising and whether present or future, fixed or unascertained, actual or contingent.
- **"Site"** means the office, premises or e-mail address from which the Subscriber is able to gain access to the Information.

- **"Subscription Fee"** means (exclusive of GST) the agreed rate of payment between the parties for the supply of the Information as described in item 1 of schedule 1.
- **"Term"** means the period commencing from the first date on which Information is provided by Capital Monitor to the Subscriber under this document and ending on [the day which is [number] years from] the last date on which the Information is provided to the Subscriber under this document.

1.2 Rules for interpreting this document

(A) Headings are for convenience only, and do not affect interpretation. Except where the context requires otherwise:

(i) a reference to:

(a) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party; and

(b) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;

(ii) a singular word includes the plural, and vice versa;

(iii) a word which suggests one gender includes the other genders;

(iii) the word **"agreement"** includes an undertaking or other binding arrangement or understanding, whether or not in writing; and

(iv) the words **"subsidiary"**, **"holding company"** and **"related body corporate"** have the same meanings as in the Corporations Law; and

(B) If the Subscriber is a Commonwealth government agency which has only a notional liability to pay GST or a State government agency which is treated under the GST Law as if it paid GST, then references to GST which the Subscriber must pay extend to any notional liability of the party to pay GST and references to an input tax credit extend to any notional input tax credit to which the party is entitled.

2.0 SUPPLY OF INFORMATION

(a) Capital Monitor has agreed to supply to the Subscriber the Information on the terms and conditions of this document.

(b) In consideration of Capital Monitor providing the Information to the Subscriber, unless specifically licensed to do so, the Subscriber must not:

(i) subject to clauses 2(b)(ii) and 3(a) of this document, copy or distribute any part of the Information, to any person or any organisation, outside of the Subscriber's own Site, until the day following its receipt from Capital Monitor; and

(ii) engage in any activity to sell, copy, distribute, reproduce, disseminate, publish or in any other manner make known any part of the Information, including the Copyright Materials, for any consideration whatsoever, whether by way of financial remuneration, profit or otherwise.

(c) The Subscriber undertakes to:

(i) comply with all directions issued by Capital Monitor from time to time during the Term;

(ii) only use software that it is legally entitled to use when accessing and using the Information; and

(iii) refrain from disruptive activities which may include, but are not limited to, the circulation of any unsolicited publicity or advertising material, propagation of computer worms and viruses, the sending of harassing, obscene, offensive or threatening electronic mail and the forgery of electronic mail.

(d) Without limiting clause 3(b)(ii) of this document, Capital Monitor makes no representations or warranties, express or implied, as to the accuracy, reliability or completeness of the Information.

3.0 COPYRIGHT MATERIALS

Where the Subscriber receives Copyright Materials, the Subscriber:

(a) must not allow the Copyright Materials to be reproduced in any manner; and

(b) acknowledges and agrees that:

(i) the Copyright Materials and all Intellectual Property rights in the Copyright Materials are and must remain the exclusive property of the Commonwealth of Australia or other relevant bodies; and

(ii) Capital Monitor makes no representations or warranties, express or implied, as to the accuracy, reliability or completeness of the Copyright Materials; and

(iii) will immediately notify Capital Monitor if it becomes aware of any breach of this document or unauthorised use of the Copyright Materials.

4.0 RETURN OR DESTRUCTION OF INFORMATION

The Subscriber must immediately on request by Capital Monitor:

- (a) stop using the Information or any part of it; and
- (b) delete, destroy or return to Capital Monitor (at Capital Monitor's option) any document or record (including a copy) in any form or media containing the Information or any part of it, and
- (c) must confirm to Capital Monitor in writing promptly when it has complied with these obligations.

5.0 GST

5.1 Same meaning as GST Law

Words defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.

5.2 GST payable in addition to the Subscription Fee

In addition to paying the Subscription Fee, the Subscriber must:

- (a) pay to Capital Monitor an amount equal to any GST payable on any supply by Capital Monitor under or in connection with this document;
- (b) make that payment:
 - (i) if Capital Monitor must pay GST on or after receiving the Subscription Fee or other consideration or any part of it - as and when the Subscriber must pay or provide the Subscription Fee or other consideration or that part of it;
 - (ii) if Capital Monitor must pay GST on issuing an invoice under this document – within 30 from the date on which Capital Monitor issued that invoice; and
 - (iii) if Capital Monitor must pay GST upon the occurrence of some other event - within 7 days of a written request by Capital Monitor for payment for the GST, which may be in the form of a tax invoice (or an adjustment note).
- (c) indemnify Capital Monitor against, and pay Capital Monitor on demand, the amount of:
 - (i) all GST on the transaction contemplated by this document; and
 - (ii) any loss, liability or expense directly or indirectly incurred in connection with or arising from or caused by any failure by the Subscriber to pay any amount as and when required by this clause.

5.3 Invoice

Capital Monitor must issue a tax invoice (or an adjustment note) to the Subscriber for any supply for which Capital Monitor may recover GST from the Subscriber under this document, and must include in the tax invoice (or adjustment note) the particulars required by the GST Law for the Subscriber to obtain an input tax credit for that GST.

5.4 Adjustments

Capital Monitor must refund to the Subscriber any overpayment by the Subscriber for GST, but Capital Monitor need not refund to the Subscriber any amount for GST paid to the Commissioner of Taxation unless Capital Monitor has received a refund or credit of that amount.

5.5 Capital Monitor need not pay until Subscriber pays

Capital Monitor need not pay any GST or take any other step to minimise liability for any GST, until it receives from the Subscriber the payment for that GST.

6.0 ACCOUNT CODE AND SUBSCRIBER IDENTIFICATION

- (a) The Subscriber will be issued with an account code and a userid to enable it to access the Information.
- (b) The Subscriber agrees to keep its account code and userid secure and confidential.
- (c) The Subscriber must not provide its account code or userid to any other person other than the person nominated by the Subscriber as the person authorised to receive the service.
- (d) The Subscriber is liable for any charges that accrue to its account code.
- (e) If the Subscriber is concerned that the confidentiality of its account code has been breached, the Subscriber may request in writing for its account code to be cancelled and for a new account code to be issued.

(f) Upon the receipt of a notice pursuant to clause 6(e), Capital Monitor must cancel the Subscriber's existing account code and issue the Subscriber with a new account code as soon as it is reasonably practicable.

(g) The Subscriber must pay for any charges accrued in relation to its existing account code up until the time that Capital Monitor receives from the Subscriber the notice required by clause 6(e).

(h) For added security, the Subscriber must frequently change its userid.

7.0 PAYMENT

(a) The Subscriber agrees to pay the Subscription Fee.

(b) The Subscriber will be invoiced monthly for the Subscription Fee and any charges incurred in relation to any other ancillary services purchased.

(c) Capital Monitor must receive payment, in Australian currency, within 30 days of the date of the invoice issued.

(d) The Subscription Fee may be paid 6 or 12 months in advance.

(e) The Subscriber may be eligible for a 10% discount at Capital Monitor's discretion.

(f) Payments may be made by MasterCard or Visa.

(g) Credit may be extended upon application to Capital Monitor.

(h) Payments of accounts must be received within 30 days of the date of the invoice issued.

(i) Late payments will attract an administrative charge on the overdue amount of 1.5% per month, payable from the date of the invoice.

8.0 EQUIPMENT REQUIRED FOR ACCESS TO THE INFORMATION

The Subscriber must provide the necessary computer and communications equipment and the necessary software to gain access to the Information.

9.0 NO RESPONSIBILITY FOR TELECOMMUNICATIONS LINKS

Capital Monitor does not accept responsibility for the breakdown or malfunction in any manner whatsoever of any of the telecommunications links upon or through which the Subscriber gains access to the Information.

10.0 UPGRADES OR MODIFICATIONS IN RELATION TO THE INFORMATION

(a) The Subscriber acknowledges that and consents to:

(i) Capital Monitor being able to regularly update, upgrade or modify its existing software, systems and database; and

(ii) not being able to access the Information during such time as when Capital Monitor is updating, upgrading or modifying its existing software, systems and database.

(b) Where an update, upgrade or modification is required, Capital Monitor must endeavour to undertake such activities outside of normal business hours in the shortest possible time.

(c) Capital Monitor must notify the Subscriber of any planned downtimes in advance. Nevertheless, Capital Monitor cannot be responsible for unforeseen downtimes.

(d) Capital Monitor does not accept any responsibility for the changes relating to the availability, contents or conditions in relation to the usage of the Copyright Materials which may be imposed by a third party from time to time.

11.0 LIABILITY OF CAPITAL MONITOR

Capital Monitor is not liable to the Subscriber in respect of any loss or damage (including consequential loss or damage) which may be suffered or incurred or which may arise directly or indirectly in respect of the Information supplied pursuant to this document or in respect of a failure or omission on the part of Capital Monitor to comply with its obligations under this document.

12.0 TERMINATION

(a) Capital Monitor may terminate this agreement by giving the Subscriber 30 days' written notice if:

(i) the Subscriber fails to pay the Subscription Fee within 60 days after the date of the invoice issued;

(ii) the Subscriber is in breach of any of its obligations in relation to this document; or

(iii) Capital Monitor decides to terminate this agreement for any reason whatsoever.

(b) The Subscriber may terminate this agreement by giving Capital Monitor 30 days' written notice.

13.0 CLAIMS AND INDEMNITY

13.1 Infringement of Intellectual Property rights

The Subscriber warrants to Capital Monitor that its use of the Copyright Materials or any part of it does not infringe or contribute to the infringement of any Intellectual Property of any person in Australia or any other country and must indemnify Capital Monitor in respect of any loss, damage, expense, claim or liability suffered or incurred by Capital Monitor, including legal costs on a full indemnity basis, as a result of any Loss or Claim by a third party alleging infringement of any Intellectual Property rights in relation to the Copyright Materials or any part of it.

13.2 Breach of Subscriber's warranties

The Subscriber indemnifies, and must keep indemnified, Capital Monitor and any of its related bodies corporate against any Loss or Claim to the extent that the Loss or Claim arises from or is connected in any way with a failure of the Subscriber to meet its obligations in relation to clauses 2, 3 or 4 of this document.

13.3 GST on claims

- (a) If a payment to satisfy a claim or a right to claim under or in connection with clauses 13.1 or 13.2 gives rise to a liability to pay GST, the Subscriber must pay, and indemnify Capital Monitor against the amount of that GST.
- (b) If Capital Monitor has a claim under or in connection with this document for a cost on which Capital Monitor must pay GST, the claim is for the cost plus all GST (except any GST for which Capital Monitor is entitled to an input tax credit).
- (c) If Capital Monitor has a claim under or in connection with this document whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

13.3 Equitable relief

The Subscriber acknowledges that monetary damages may not be a sufficient remedy for any breach of this document and that Capital Monitor is entitled to equitable relief in addition to all other remedies.

14.0 MODIFICATION OF TERMS OF THIS DOCUMENT

Capital Monitor reserves the right to vary the terms and conditions of this document provided that 30 days' written notice has been given to the Subscriber.

15.0 IMPLIED TERMS

- (a) Subject to clause 15(b), any condition or warranty which would otherwise be implied in this document is hereby excluded.
- (b) Where legislation implies in this document any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in this document. However, the liability of Capital Monitor for any breach of such condition or warranty shall be limited, at the option of Capital Monitor to one or more of the following:
 - (i) the supplying of the Information again; or
 - (ii) the payment of the cost of having the Information supplied again.

16.0 NO WAIVER

No failure to exercise or delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

17.0 DURATION

The Subscriber agrees to continue to observe its obligations contained in this document during the Term.

18.0 ASSIGNMENT BY CAPITAL MONITOR

Capital Monitor may assign the benefit of this document or any part of it provided it has given no less than thirty (30) days prior written notice to the Subscriber.

19.0 NO ASSIGNMENT

The Subscriber may not assign the benefit of this document or any part of it without the prior written consent of Capital Monitor.

20.0 NOTICES

20.1 Method

Any instructions or notices to be given by one party to the other may be given by personally delivering the same, by facsimile or by registered mail addressed to the party at the address of the party specified in this document or at such other address as a party may specify as its address for this purpose by notice to the other party.

20.2 Notice received

Any instructions or notices so sent shall be deemed to have been duly given, served and received:

- (i) if by personal delivery, on the day of delivery;
- (ii) if by facsimile, on the day following its dispatch;
- (iii) if by mail within Australia, on the fourth day following the date of posting;
- (iv) if by airmail from outside Australia into Australia or vice versa, or wholly outside Australia, on the seventh day following the day of posting.

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20.3 Address for notices

CAPITAL MONITOR

Address: GPO Box 2891

CANBERRA ACT 2601

AUSTRALIA

Facsimile: (+61) 2 6273 4905

THE SUBSCRIBER

Address: As provided to Capital Monitor by the Subscriber.

Facsimile: As provided to Capital Monitor by the Subscriber.

21.0 GOVERNING LAW AND JURISDICTION

This document is governed by the laws of the Australian Capital Territory, Australia. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this document.

Capital Monitor

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