

## **212°F – ACCLAIM REWARDS CLIENT SERVICES AGREEMENT INCLUDING 30 DAY FREE TRIAL**

THE LEGAL AGREEMENTS SET OUT BELOW GOVERN YOUR USE OF THE SERVICES ("SERVICES"). TO AGREE TO THESE TERMS, CLICK "AGREE." IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK "AGREE," AND DO NOT USE THE SERVICES.

### **INTRODUCTION**

- A. 212F Pty Limited, ABN: 70106450631 of Level 7, 606 St Kilda Road, Melbourne VIC, Australia 3004 is the distributor for Acclaim Rewards.
- B. 212F has agreed to provide a range of services to the Client in accordance with the terms and conditions set out below. This range of services includes a 30 day free trial of the cloud based Acclaim Rewards Software Platform.

### **AGREEMENT**

#### **1. DEFINITIONS AND INTERPRETATIONS**

- 1.1. **Definitions:** In this Agreement, the following terms shall have the following meanings unless the context requires otherwise:
  - "Acclaim Rewards Software Platform"** means 212F's internet (cloud based) rewards redemption platform and includes access to software and processes.
  - "Agreement"** means this Agreement.
  - "Auxiliary Supplier"** means a third party provider who provides an element of the Services on behalf of 212F.
  - "Business Day"** is a day when the major trading banks are open for business.
  - "Commencement Date"** means the deployment date, which is the date the Acclaim Rewards Software Platform has been deployed and the Client has been issued the administration credentials to log onto Acclaim Rewards Platform as a user.
  - "212F Charges"** means the charges for the Services as set out in any Schedule to this Agreement.
  - "Participant"** means a current registered participant of the Client participating in a Program operated for the Client.
  - "Party"** or **"Parties"** means a party or parties to this Agreement.
  - "Program"** means the program established and managed by 212F on behalf of the Client.
  - "Points"** means the points issued by the Client to a Participant from time to time during the Program.
  - "Redemption"** means the process of the Participants exchanging Points for Reward Items contained in the Reward Catalogue and the arranging by 212F of the delivery of the Reward Item to the Participant.
  - "Reward Catalogue"** means the catalogue published by 212F on the Acclaim Rewards Software Platform, which is accessible to the Client and a Participant.
  - "Reward Items"** means items listed in the Reward Catalogue that can be redeemed for Points by Participants.
  - "Services"** means the services outlines in clause 3 of this Agreement.
  - "Term"** means the duration of this Agreement as provided in accordance with Clause 2.1.
- 1.2. **Interpretation:** In this Agreement, unless the contrary intention appears:
  - (a) The singular includes the plural and vice versa.
  - (b) A reference to an agreement or another instrument includes any written variation of either of them.
  - (c) The recitals to this Agreement form part of this Agreement.
  - (d) A reference to a clause, schedule and or appendix is a reference to a clause, schedule and or appendix of this Agreement and shall form part of this Agreement.
  - (e) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
  - (f) The word person includes a firm, body corporate or unincorporated association.
  - (g) A reference to a person includes the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns.
  - (h) A reference to a Party includes a reference to the representatives of that Party.
  - (i) A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
  - (j) A reference to a month is to a calendar month and a reference to a year is to a calendar year.
  - (k) All dollar amounts are expressed in Australian dollars and are **exclusive of GST** unless otherwise stated.
  - (l) If the day on which the payment of money falls due is not a business day, the due date will be deemed to be the next business day.
  - (m) A reference to a third party is a reference to a person who is not a party to this Agreement.
- 1.3. Headings are included for convenience and do not affect the interpretation of this Agreement.
- 1.4. Further definitions may be noted in the Schedules

## **2. TERM**

- 2.1. This Agreement is deemed to have commenced on the Commencement Date and shall continue unless terminated by either Party in accordance with Clause 12. During the first 30 days the use of the Services shall be free to the Client until and unless the Client wishes to approve a Redemption, at which time the Client must confirm in writing that it will pay all the Fees as set out in Schedule 1.

## **3. SERVICES**

- 3.1. 212F is providing a 30 day free trial of the Acclaim Rewards Software Platform and the Services.
- 3.1. 212F is providing the following for the Client:
- (a) Access to Acclaim Rewards Software Platform
  - (b) Set up of the Program for the Client on the Acclaim Rewards Software Platform
  - (c) Set up of the Client on the Acclaim Rewards Software Platform on an administration portal
  - (d) Hosting of Acclaim Rewards Software Platform
  - (e) Provision and fulfilment of Reward Items to Participants
  - (f) Reward Item Redemption

## **4. MUTUAL OBLIGATIONS**

- 4.1. **212F Obligations:**
- (a) 212F will commence provision of Services promptly from the Commencement Date.
  - (b) 212F will perform the Services to the reasonable satisfaction of the Client with diligence until the Services are completed and in accordance with sound and generally accepted industry standard practices for the Services.
- 4.2. **The Clients Obligations:**
- (a) The Client agrees to provide 212F with all information required to enable 212F to provide the Services.
  - (b) The Client agrees to pay all 212F Charges as invoiced to the Client.

## **5. TAX**

- 5.1. All prices, quotes, costs and fees or any other amount invoiced in accordance with this Agreement is exclusive of any GST, unless otherwise stated.
- 5.2. 212F will clearly state the amount of any applicable GST payable in respect to the supply of Services on a tax invoice so as to enable the Client to claim and recover the appropriate input tax credit under the GST law.

## **6. INTELLECTUAL PROPERTY**

- 6.1. The Client hereby grants 212F a license for the Term of this Agreement to use the Clients relevant details including all and any intellectual property of the Client as is required to enable 212F to provide the Services including without limiting the same all trade names, trademarks, logos, images and brand names including all such trade names, trademarks, logos, images and brand names on all stationery, invoices and all other relevant material prepared by 212F for distribution to Participants and or Auxiliary Suppliers and or any other third party ("the Copyright").
- 6.2. The Client warrants it will own or have the appropriate consents and or required licenses to pass the Copyright to 212F and enable 212F to deal with such Copyright to be able to deliver the Services.
- 6.3. 212F will own all rights, title, ownership and interests to copyright in the formatting, layout and design of any Program or related material.

## **7. CONFIDENTIAL INFORMATION**

- 7.1. Each Party acknowledges that the information disclosed by the other Party in relation to the operations of the Program whether to Auxiliary Suppliers, Participants or other parties is commercially sensitive and is the property of that other Party (Confidential Information).
- 7.2. Except as provided in this Agreement each Party must not permit any of its officers, employees, agents, contractors, Auxiliary Suppliers or related companies to use or disclose to any person Confidential Information without the prior written consent of the other Party.
- 7.3. Neither Party shall use, copy or reproduce Confidential Information for any purpose other than in connection with the performance of this Agreement. Upon termination of this Agreement for any reason, each Party shall immediately cease use of all Confidential Information of the other Party and deliver to the other Party all documents and things in its possession or control containing or constituting such Confidential Information.
- 7.4. The rights and obligations of each Party with respect to Confidential Information will survive the termination or expiry of this Agreement.

## **8. DATA USE & SECURITY**

8.1 Consent to Use of Data. 212F may collect and use technical information gathered as part of its support services, but may only use this information to improve its products and services. 212F shall not disclose this any of this information in a form that personally identifies the client or its clients.

8.2 Data Security. 212F agrees to use appropriate safeguards to prevent use or disclosure of Data other than as provided for by this Agreement.

## 9. SERVICE LEVEL AGREEMENT

9.1 212F will use commercially reasonable efforts to make the Cloud Services available 99.95% of the Service Year. 212F will provide a minimum hosting service equivalent to the requirements of a Tier 3 Data Centre whereby the uptime service level agreement is 99.982% and provides N+1 redundancy on power, diverse network paths, UPS, diesel generators and offsite daily data backups.

## 10. WARRANTIES

10.1 212F represents and warrants to the Client as follows:

- (a) 212F has the necessary skills and qualifications to provide the Services to the Client;
- (b) 212F will comply with the description and representations regarding the Services as provided for in this Agreement;
- (c) 212F is the owner of the intellectual property associated with the provision of the Services.

## 11. LIMITATION OF LIABILITY

11.1 The warranties in Clause 10 replace all other representations or warranties except where such representations or warranties may not lawfully be excluded.

11.2 212F will have no liability for the accuracy of data or information, (whether paper based or electronic) supplied by the Client. 212F will co-operate to correct errors attributable to the Client, but may charge to correct this. The Client will indemnify and hold 212F harmless from any claims of whatsoever nature arising from or related to information pertaining to or contained in the Client database which may come to the knowledge or possession of 212F either directly or indirectly as a result of 212F's provision of the Services.

11.3 No action arising out of this Agreement, regardless of form, may be brought by either Party more than two years after it becomes aware of the cause of action.

11.4 Notwithstanding any other clause in this Agreement 212F's maximum liability to the Client shall be limited to 25% of the 212F Charges to the Client in the year the liability arose and such liability shall be limited in calculation to 25% of the actual fees earned by 212F from the Client net of any amounts received from the Client and on paid to third parties.

## 12. TERMINATION

12.1 If either Party (the Defaulting Party):

- (a) Commits a material breach of this Agreement and fails to remedy such a breach within thirty (30) day of receipt of a notice in writing from the other party requiring such breach to be remedied; or
- (b) Becomes insolvent or is made subject to an application for winding up or resolves to wind up voluntarily (other than for the purposes of a solvent reconstruction), or has a receiver (or similar functionary) or an administrator appointed in respect of any of its assets, or ceases to carry on business or enters into a composition or arrangement with its creditors generally

The other Party may terminate this Agreement immediately by giving written notice of termination to the Defaulting Party.

12.2 212F may terminate this agreement for any non payment of invoices by the Client.

12.3 Following termination, each Party retains the right it had against the other Party in respect of any past breach in addition to any other rights, powers or remedies provided by law and agrees that termination does not affect the obligations and rights of the Parties.

12.4 Following termination for any reason 212F subject to payment to 212F of any 212F Charges owed to it by the Client, will, subject to information privacy laws, promptly make available to or enable the Client to directly access all current and historical data concerning Participants obtained by 212F resulting from the operation of this Agreement.

12.5 In the event that the Client terminates this Agreement in accordance with its terms and conditions then the Client may in addition to terminating this Agreement:

- (a) Recover any sums paid to 212F on any account under this Agreement, which have not been performed or completed except for transactions already in progress awaiting completion.
- (b) Pursue any additional or alternative remedies provided by law.

12.6 If either Party gives notice of termination, 212F may in addition to terminating this Agreement:

- (a) Recover all sums invoiced to the Client for Services, which have been incurred and performed by 212F.
- (b) Pursue any additional or alternative remedies provided by law.

12.7 212F may terminate this agreement in the event that the provision of this agreement seeks to advance the business of a competitor to 212F in anyway.

12.8 212F may terminate this agreement for any other reason 212F deem fit, with 212F providing the client a minimum of 90-days' notice

12.9. 212F may terminate this agreement immediately without notice should the Client data files represent a security risk to 212F or its other Clients

**13. VARIATION AND WAIVER**

13.1. **Variation:** An amendment or variation to this Agreement must be in writing and signed by both Parties.

13.2. **Waiver:** A right created under this Agreement may not be waived or varied except in writing signed by both Parties

**14. GOVERNING LAW**

14.1. The law of VIC / Australia governs this Agreement.

14.2. Both Parties acknowledge and submit to the exclusive jurisdiction of the courts of Victoria in respect of any dispute concerning this Agreement.

**15. NOTICES**

15.1. **Service:** All communications between the Parties with respect to this Agreement must be delivered by hand or sent by post, email or facsimile to the address of the addressee as provided below:

<b>212F</b>	Level 7, 606 St Kilda Rd Melbourne, Victoria 3004	
Acclaim Rewards Support Manager	info@2one2f.com	Tel: (03) 8620 7820 Fax: (03) 8620 7810

15.2. **Date of Service:** Communications are taken to have been received:

(a) If delivered by hand, on the day of delivery.

(b) If sent by post, two (2) business days after posting exclusive of the day of posting; provided a 'Fast Post' type services was utilised.

(c) If sent by email, at the time of transmission or, if the time of transmission is not during the addressee's normal business hours, at 9.30am on the next business day.

**16. ASSIGNMENT**

16.1. Neither Party to this Agreement shall assign or otherwise transfer this Agreement or any of the rights and obligations created herein, in whole or in part, without the prior written consent of the other Party.

**17. SEVERABILITY**

17.1. If any provision or portion of this Agreement is unenforceable, illegal or void, then it is severed and the rest of this Agreement remains in force.

**18. ENTIRE AGREEMENT**

18.1. This Agreement constitutes the entire agreement between the Parties on the subject matter of this Agreement and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

**19. RELATIONSHIP**

19.1. Nothing contained in this Agreement shall be read or construed so as to constitute the relationship of principal and agent or of partnership between the Parties. Neither Party may pledge or purport to pledge the credit of the other Party or make or purport to make any representations, warranties or undertakings for the other Party.

**20. FORCE MAJURE**

20.1. Neither Party to this Agreement shall be liable to the other for any loss or damage of any nature whatsoever incurred or suffered as a result of any failure or delays in performance due to any cause or circumstance beyond its control including any strikes, lockouts, labour disputes, fires, acts of God or the public enemy, riots, interference by any civil or military authority, compliance with any law, or order or policy of any governmental authority, delays in transit or delivery on the part of transportation companies or bodies, communication difficulties, default or failure of suppliers, subcontractors or Auxiliary Suppliers.

**SCHEDULE 1 – ACCLAIM REWARDS SOFTWARE PLATFORM**

This Schedule outlines the terms and conditions in force for the operation support the Acclaim Rewards Software Platform operated and managed by 212F on behalf of the Client.

212F will own all rights, title and interest in the Acclaim Rewards Software Platform and nothing in this Agreement shall pass any interest to or grant any rights to the Acclaim Rewards Software Platform to the Client.

**1. DEFINITIONS:**

In this Agreement, the following term shall have the following meanings unless the context requires otherwise:

**“Acclaim Rewards Software”** means 212F’s internet based rewards redemption application and includes access to software, processes and databases.

**“Points”** means the points issued by the Client to Participants from time to time during the Program.

**“Redemption”** means the process of Participant’s exchanging Points for Reward Items contained in the Reward Catalogue and arranging the delivery of the Reward Items to the Participant.

**2. SUPPORT**

- (a) 212F will support the Client in one initial Program set up.
- (b) Ongoing operation of the Program is to be conducted by the Client.
- (c) 212F will provide support for any problems the Client experiences with the Acclaim Rewards Software Platform after implementation, related to the technical functionality of the Acclaim rewards Software Platform or the Redemption processing
- (d) 212F’s support does not include Services where a defect is caused by:
  - (i) Improper use.
  - (ii) Alterations, amendments, which have not been approved in writing by 212F.
  - (iii) Fire, flood, lightning, earthquake and any other events over which 212F has no control.
  - (iv) The Client’s failure to follow the instructions provided by 212F for use of the Acclaim Rewards Software Platform
  - (v) Service work not performed by 212F.
- (e) The following sets out the levels of support to be supplied by 212F under this Agreement, contact is to be made using the support email:
  - (vi) Hours of coverage  
Monday to Friday (excluding public holidays) from 9.00am to 5.00pm.
  - (vii) Response times for urgent/non urgent  
The Client must clearly indicate on its request whether the call is “Urgent” or “Non-Urgent
  - (viii) Urgent requests for help/support will be responded to within 4 hours of 212F’s receipt. Of email. The response will not necessarily fix the problem. The parties will then discuss and agree upon a timetable for rectifying the problem.
  - (ix) For non-urgent requests, 212F will reasonably respond either within the same working day, or if 212F does not receive the request until 3.00pm or later, then during the following working day that the request was received by 212F.
- (f) All requests for support services must be directed to the contact(s) stipulated in the contact details outlined in the Agreement.
- (g) 212F will advise the Client when the work required will be completed by 212F after the parties agree on the services to be performed and the associated costs.

**3. FEES**

Acclaim Rewards Software Platform and Points redemption management fees are as provided in the table below: 212F observe the right to amend their fees with 60 days notice.

(a)	Description	Fee EXCL GST	Fee INCL GST	PER
	Software and Hosting (select one only)			
	Acclaim Rewards “Essential”	\$362.73	\$399.00	Month
	Acclaim Rewards “Pro”	\$453.64	\$499.00	Month
	Upload Targets for each additional block of 100 targets	\$45.45	\$50.00	Month
	Rewards Management			
	Points are valued using the ratio 10 to 1 (10 points equals 1 dollar). Points are paid on redemption	\$0.91 per 10 points	\$1.00 per 10 points	Paid as and when redeemed

**4. PAYMENT**

(a) The client must pay 212F for services as per the rate card, failing to do so will mean immediate termination of the contract

(b) Payment shall be by Credit card only. Cards accepted are: Visa and MasterCard, no card service fee will be applied.

## SCHEDULE 2 – REWARD ITEMS

This Schedule outlines the terms and conditions in force for the fulfilment of merchandise rewards (Reward Items) for the Program administered and managed by 212F on behalf of the Client.

### 1. DEFINITIONS

In this Agreement, the following terms shall have the following meanings unless the context requires otherwise:

“Points” means the points issued by the Client to Participants from time to time during the Program.

“Reward Catalogue” means the catalogue published by 212F within Acclaim Rewards Software Platform, which is accessible to the Client and its Participants.

“Reward Items” means items listed in the Reward Catalogue that can be redeemed for Points by Participants as set out in this schedule.

“Redemption” means the process of Participant’s exchanging Points for Reward Items contained in the Reward Catalogue and arranging the delivery of the Reward Items to the Participant.

### 2. COSTS

- (a) Reward Item costs include; the purchase price of the items from the Auxiliary Supplier, freight or delivery costs, a 212F margin and GST.
- (b) Reward Item costs are subject to change without notice.

### 3. AVAILABILITY AND SUBSTITUTION

- (a) The Reward Items available at any time are set out in the Rewards Catalogue and may only be redeemed via the Reward Catalogue.
- (b) All Reward Items are subject to availability and substitutions or restrictions may be necessary.
- (c) All Reward Items are subject to the specific conditions on which the provider of the reward (Auxiliary Supplier) makes the Reward Item available. If there is any inconsistency between them and these terms and conditions, the specific conditions prevail.
- (d) 212F are not responsible if Participants cannot claim or redeem a Reward Item for reasons beyond 212F’s control including the failure of an Auxiliary Supplier to honour its obligations for any reason. However, in these circumstances, where a Participant’s Points have not been redeemed, they may claim an alternative available Reward Item.

### 4. DELIVERY

- (a) Where possible Reward Items will be processed and delivered within 28 days of receipt of the Redemption. Sometimes, due to seasonal demands and delays, this delivery time may be longer than 28 days.
- (b) 212F recommends Reward Items be delivered to a business address. Deliveries to a personal or home address may incur delays and additional delivery costs.

### 5. DISPUTES & ISSUES

212F will manage any dispute concerning Rewards items redeemed not matching their description. Any dispute relating to the Reward Items its self, such as warranty or fit for purpose will be settled between the Participant and the Auxiliary Supplier that supplied the Reward Item

### 6. DISCLAIMERS

- (a) 212F will take reasonable and appropriate endeavours to ensure all deliveries are shipped with in the agreed timeframe. 212F are not responsible for any consequential damages for lost or stolen Reward Items, vouchers or tickets including during the course of delivery.
- (b) 212F:
  - (x) Make no express or implied warranty or representation in connection with the Reward Items (including with respect to type, quality or standard of fitness for any purpose).
  - (xi) Are not liable for any loss Participants suffer (including consequential loss) arising in connection with Reward Items (including a failure to provide a Reward Item, its loss, theft or destruction).
- (c) Where 212F are liable for a breach of these terms and conditions, then their liability will exclude an indirect or consequential loss a Participant may suffer. 212F’s liability is limited to:
  - (xii) Where the Reward Items constitutes goods, replacement or repaid of the goods or payment of the cost of replacing or repairing the goods.
  - (xiii) Where the Reward Item constitutes a service, supplying the service again or payment of the cost of having the service supplied again.

### 7. LIMITATIONS

- (a) Redeemed Reward Items are not exchangeable for other Reward Items, refundable, replaceable or transferable for cash or credit under any circumstances. Nor can Redemptions be cancelled or changed once they have been made.

- (b) No cash payment will be given for any unredeemed Points.
- (c) Reward Items may only be returned if damaged during delivery or faulty. If a Reward Item is covered by a manufacturer's warranty and requires service, a Participant must contact the manufacturer named in the warranty information.

**8. OWNERSHIP OF REWARD ITEMS**

- (a) Property of the Reward Items does not pass to the Participant until such time as payment in full for the Reward Item has been received and no other money is owed by the Client to 212F.
- (b) Should any payment be owed on Reward Items, 212F may at any time recover the Reward Items if they are in the possession of either the Client or Participants, and resell them, and for the purpose of recovering them, 212F or an appointed agent may enter the premises on which the Reward Items are located.

**9. PAYMENT TERMS**

- (a) Redemptions from Participants for Reward Items will be released to Auxiliary Suppliers only once payment for the individual Reward Invoice has been received by 212F from the Client.
- (b) 212F will invoice the Client for all Redemptions made by Participants as required on a daily, weekly or monthly basis. Payment will be by credit card to 212F on each business day (or otherwise agreed) for Reward Item invoices prepared and dispatched by 212F to the Client. Refer to schedule 1 for details.