

# Services Agreement

## Standard Terms and Conditions

### 1. Definitions and Interpretation

#### 1.1 Definitions

In this Agreement:

- (a) **Agreement** means the agreement between the parties, comprising the documents as set out in clause 3.2.
- (b) **Annexure** means the documents attached as an annexure to the end of these terms and conditions.
- (c) **Business Day** means a day (other than a Saturday or Sunday) upon which banks are ordinarily open for business in Brisbane, Queensland, Australia.
- (d) **Business Hours** means 8.30 am to 5.00 pm (AEST) on any Business Day.
- (e) **Claim** means any claim notice, demand, investigation, action, proceeding, litigation, or judgment however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort (including negligence) or statute and whether involving a party to this Agreement or third party.
- (f) **Client Materials** means any data, materials, and Intellectual Property that you provide to us in order for us to provide the Services, and includes any materials or information we request from you from time to time, or any materials that we are hosting on your behalf.
- (g) **Confidential Information** means all spoken, written or electronically stored information belonging to or relating to either party and includes without limitation:
  - (i) any kind of technical, financial or business information;
  - (ii) details of employees, suppliers, or customers;
  - (iii) material developed under this Agreement; and
  - (iv) Intellectual Property, concepts, know-how and trade secrets;
 but excludes information in the public domain (other than by default under this Agreement) or information independently known to the other party.
- (h) **Consequential Loss** includes, without limitation:
  - (i) data loss;
  - (ii) loss of opportunity, loss of anticipated profits or savings, expenses incurred through default or breach, wasted overheads, loss of contract, loss of business, loss of production, loss of use, loss of goodwill, and all other pure economic loss; and
  - (iii) disappointment, distress, stress, and inconvenience.
- (i) **Fees** means the total fees for any Products or Services purchased by you, as set out in the applicable Work Order.
- (j) **Force Majeure Event** means any of the following:
  - (i) an act of God;
  - (ii) war, terrorism, riot, insurrection, vandalism or sabotage;
  - (iii) strike, lockout, ban, limitation of work or other industrial disturbance; or
  - (iv) law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application, which is
  - (v) unforeseen by the affected party;

- (vi) is beyond the control of the affected party; and
- (vii) occurs without the fault or negligence of the affected party.
- (k) **Indemnified Officers** means, in relation to a party, its directors, employees, contractors, agents and representatives.
- (l) **Insolvency Event** in relation to a party means any of the following:
  - (i) the party enters into a scheme of arrangement with its creditors;
  - (ii) the party is wound up or dissolved, or an administrator, liquidator or receiver is appointed;
  - (iii) the party is placed under official management, commits an act of bankruptcy or is charged with a criminal offence; or
  - (iv) judgment is entered against the party for more than \$20,000.00, which remains unsatisfied or unappealed for more than 21 days.
- (m) **Intellectual Property** means all intellectual property rights, including copyright, inventions, patents (including patent applications), trade marks (whether registered or not), designs (whether registrable or not), eligible circuit layout rights, domain name licences, know-how, trade secrets, and includes the right to register any intellectual property rights.
- (n) **Liability** means any liability (whether actual or prospective), loss, damage, cost or expense of any description, including legal fees on a solicitor and own client basis.
- (o) **Managed Services** means the Services included in the Plan in relation to the Supported Equipment, as elected by you and set out in the Schedule, and as may be amended from time to time in accordance with this agreement.
- (p) **Notice of Default** means a Written Notice that:
  - (i) states that it is a notice of default;
  - (ii) specifies the default with sufficient detail and particulars;
  - (iii) gives a reasonable deadline by which the default must be remedied, of not less than 5 Business Days.
- (q) **Out-of-Scope Services** means all services outside the scope of a Work Order.
- (r) **Out-of-Scope Rate** means the hourly rate applicable to Out-of-Scope Services as per Annexure A, unless otherwise set out in a Work Order or amended under clause 4.7(a).
- (s) **Plan** means the level of services set out in the schedule and as may be amended from time to time under this agreement.
- (t) **Product** means any physical goods, such as Product or packaged software, that you request, order or purchase under this Agreement.
- (u) **Product Fees** means the fees for Product that you request, order, or purchase under this Agreement or a relevant Work Order.
- (v) **Schedule** means the schedule attached to the front of these terms and conditions.
- (w) **Services** means services that you request, order or purchase under this Agreement, the details of which shall be set out in the relevant Work Order (where applicable).
- (x) **Third Party Software & Services** means software or services that is manufactured, licensed or owned by a third party (other than Us or the Customer) ("Third Party") and procured on behalf of Us for the Customer, the use of which is subject to that Third Party's EULA (End User License Agreement), and where applicable, includes its

associated third party support, maintenance contract and service levels.

- (y) **Vendor Supported means:**
- (i) for a server, that the server is under vendor on-site warranty;
  - (ii) for any other Device, that the Device is under vendor warranty or vendor maintenance agreement;
  - (iii) for software, that where available you have access to vendor support and are entitled to receive upgrades, patches, service packs, and updates as they are released.
- (z) **Work Order** means the document(s), including proposals, setting out service specific terms and details of agreed products and services you are purchasing from us.
- (aa) **Written Notice** means providing information in writing, including by email.

## 1.2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- (a) where applicable, all terms used in this document have the same meaning as defined in the Schedule to this Agreement;
- (b) headings and tables of contents are inserted for ease of reference only and have no legal effect;
- (c) the singular includes the plural and vice versa;
- (d) where a word or phrase is given a specific meaning, other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (e) a reference to a clause number is a reference to its sub-clauses;
- (f) a reference to a party to this Agreement includes the party's successors and permitted assigns;
- (g) specifying anything in this Agreement after the words including, includes or for example or similar expressions does not limit what else might be included unless there is express wording to the contrary;
- (h) if something comes within the meaning of Confidential Information in this Agreement and Intellectual Property in this Agreement, and there is any conflict in this Agreement regarding its provisions concerning Intellectual Property and Confidential Information, the provisions concerning Intellectual Property prevail.
- (i) nothing in this Agreement excludes, restricts or modifies or has the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the *Competition and Consumer Act 2010* (Cth)) and which by law cannot be excluded, restricted or modified.

## 2. Term and Operation of Work Orders

### 2.1 Application

This Agreement is binding on you from the earlier of:

- a) the date on which you enter into any Work Order;
- b) the date you sign this Services Agreement; or
- c) the date you, having received a copy of these terms, instruct us to commence any Services or purchase any Product,

and applies to all Services we undertake for you.

### 2.2 Term

This Services Agreement will continue indefinitely until terminated under the terms of this Agreement.

## 3. Work Orders

### 3.1 Operation of Work Orders

- (a) These terms are general terms governing our relationship with you, in relation to any Services we provide to you at your request.
- (b) The parties may enter into Work Orders from time to time, setting out the relevant services and additional terms including payment details and Service Period (if applicable). Each Work Order is subject to the terms of this Services Agreement.
- (c) You are not obliged to make any minimum level of purchases and we are not obliged to accept any particular Work Order request.
- (d) Each Work Order constitutes a separate agreement, and the expiry or termination of any Work Order does not automatically affect the validity of this Services Agreement or any other Work Order(s) then on foot.
- (e) Unless the terms of the Work Order state otherwise, each Work Order shall continue in force on the same terms beyond the end of any applicable Service Period, unless either party elects in writing to end the Work Order at the end of the Service Period. However, after the Service Period expires, either party may end the relevant Work Order at any time, for any reason, by one month's written notice.
- (f) Work Orders which do not specify a Service Period will continue indefinitely, but either party may end the relevant Work Order at any time, for any reason, by the notice period required under the Work Order, or if no notice period is specified in the Work Order, by one month's written notice.

### 3.2 Relationship between Services Agreement and Work Orders

To the extent that any conflict exists between the various documents comprising the Agreement between the parties, the terms of the document with higher priority shall take effect, in the following order (from highest to lowest priority):

- (a) any variation to the Services Agreement or any Work Order agreed in writing between the parties; then
- (b) in order of commencement date from the most recent:
  - (i) the appendix or schedule to any Work Order; and
  - (ii) the terms of any Work Order; then
- (c) this Services Agreement; then
- (d) any policy or procedure of ours we disclose to you (not forming part of a Work Order).

## 4. Services

### 4.1 Services

We will provide the Services as agreed in each Work Order, subject to this Services Agreement.

### 4.2 Hours of operation

Our personnel are available during Business Hours on Business Days. Services requiring personnel involvement will generally be carried out during these hours.

Access to after-hours support may be made available as detailed in each Work Order and/or Proposal of Services.

### 4.3 Time and Fees

For Services which are calculated or charged by time:

- (a) time is calculated in 15 minute increments;
- (b) a 2 hour minimum period applies to any Services provided on-site; and
- (c) any work done outside of Business Hours is charged at 2 times the otherwise applicable rate.

#### 4.4 Performance

We agree to provide the Services:

- (a) to the standards and completing the key performance indicators (KPIs) specified in the relevant Work Order;
- (b) within the timeframe(s) set out in the relevant Work Order, or in any event, in a timely manner;
- (c) to all relevant Australian standards;
- (d) in accordance with industry best practice;
- (e) use reasonable endeavours to rectify any faults in the Services for which we are responsible; and
- (f) take reasonable steps to investigate and restore Services where affected by causes beyond our control.

#### 4.5 Performance ethic

In performing the Services, we will:

- (a) act diligently, ethically, soberly and honestly;
- (b) comply with all relevant occupational health and safety policies;
- (c) comply with all relevant laws including State and Federal laws and local government laws and regulations;
- (d) observe your reasonable directions in relation to security or use of any facilities or equipment; and
- (e) maintain prudent insurance policies.

#### 4.6 Service limitations

We will use reasonable efforts in providing the Services, however other than as set out in this Agreement, to the fullest extent permitted at law:

- (a) we do not warrant or guarantee the Services are uninterrupted or error free;
- (b) we do not guarantee any fixed deadlines for the delivery of Managed Services (but will in any event provide the Services in a timely manner);
- (c) we do not take any responsibility for faults, delays, or interruptions to the Services caused by:
  - (i) user error or misuse;
  - (ii) the delays, action, or inaction of any third party;
  - (iii) the delays, action, operation, inaction, or failure of any third party service, software, or equipment;
  - (iv) the delay in any content provided or required to be provided by you; or
  - (v) any Force Majeure Event; and
- (d) you are responsible for faults in your own software, equipment, or network;
- (e) we do not warrant or guarantee the Services for any fitness of purpose, performance, or compatibility other than as set out in this Agreement.
- (f) we provide no warranty on the effectiveness of anti-virus and anti-malware products or service. Any remedial works for issues caused by virus or malware infections that were not captured by the antivirus or anti-malware measures are considered out of scope.
- (g) we do not warrant or guarantee the Services:
  - (i) are uninterrupted, error free or fit for any specific purpose; and
  - (ii) do not take any responsibility for defects, delays or interruptions caused by the delays, action or inaction of any third party, service or software, including any content provided or required to be provided by you, or for any Force Majeure Event;
- (h) we provide no services in relation to the Specific Exclusions under this agreement;
- (i) we do not provide any warranties or support for hardware malfunction beyond diagnosing that a hardware malfunction has occurred. Such hardware may be under a manufacturer warranty;

- (j) we are not responsible for any delay, action or inaction of any third parties such as internet service providers, telecommunications companies or service providers;
- (k) we provide no warranty on the integrity of software released by vendors, including but not limited to patches, hotfixes, updates and device drivers. As such, we are not liable for any damages caused by the application, automated or otherwise, of this software as part of our Managed Service. Any remedial work to resolve issues caused by the application of vendor released software is out of scope.
- (l) it is your responsibility to implement and enforce suitable user policies to govern the use and secure of your network.
- (m) if you require any technical or support work outside the Scope of Services, we may, upon request, provide such services at our Out-of-Scope Rate.

#### 4.7 Surcharges

- (a) We may at our discretion, upon request by you, provide Out-of-Scope Services, at the Out-of-Scope Rate.
- (b) We may at our discretion, and either at your request or with your prior approval, provide Services or Out-of-Scope Services outside of Business Hours.

#### 4.8 Changes to Services

Technology and business environments are constantly evolving and we may make adjustments to the Services to ensure you continue to receive the best possible results. However, we will give you reasonable notice of any changes, and ensure that the replacement services are of the same high standards as the original.

#### 4.9 Right to sub-contract

We may appoint employees, sub-contractors or agents to provide all or part of the Services; and such entities are bound by the same obligations as us. It is our responsibility to ensure such entities comply with this Agreement. We warrant that we and every person who provides the Services on our behalf is competent and has the necessary skills, qualifications, permits and licences to provide the Services.

### 5. Your Rights and Obligations

#### 5.1 Instructions and materials

- (a) You must supply clear instructions regarding the scope and specifications of the Services, and respond to any questions about the Services promptly and clearly.
- (b) You must respond in a timely manner if we bring to your attention an issue that affects the operation of the Services.
- (c) You must notify us if you make any changes to your software, network or data which are likely to affect the Services.
- (d) You must take reasonable measures to prevent any unauthorised person from accessing the Services, and you are responsible for any damage caused or fees incurred by any such person.

#### 5.2 Warranties

You warrant and undertake that:

- (a) you and your representatives have all necessary licences and legal right(s) to permit and authorise us to provide the Services; and
- (b) providing the Services in accordance with your directions will not contravene applicable laws.

### 5.3 Access authority

Where we require access to your premises or any other location under your direction or control to perform the Services, or to exercise any other rights under this Agreement, you must provide or arrange us with access and a safe working environment in compliance with all occupational health and safety laws.

- (a) You must provide us with reasonable and timely access to your facilities, premises, information, equipment, personnel, network and data to enable to fulfill our obligations under the Product Terms.
- (b) We will not be responsible for any delay in providing a service where the delay results from your failure to provide timely access in accordance with clause 5.3.a

### 5.4 Client responsibilities

- (a) Unless expressly included in a Work Order, we are not required to provide any installation, implementation or integration services, nor any backup or disaster recovery services.
- (b) You are responsible for, and expressly agree that we are not responsible for:
  - (i) any performance or business outcomes from your use of the Services or Products;
  - (ii) any issues or defects arising in relation to your own data, business processes, software, equipment or network; or
  - (iii) any third party software or services, including any that integrate with the Services or Products, unless such functionality is expressly agreed in a Work Order.

You Agree to Us;

- a) keep us informed of any information or event relevant to the Services, including, but not limited to, details of any changes to key personnel.
- b) provide us on request with copies of all necessary software licences, licence keys and original media, to enable us to carry out the Services.
- c) You authorise our access to your environment for the purpose of providing our services.

## 6. Third Party Software & Services

Where we are providing software and services under a Work Order that involve a Third party provider you must agree to their terms and conditions of service and their Service Level Agreements.

- (a) We will not be responsible for any delays, outages or faults of the Third Party
- (b) We will make all reasonable efforts to facilitate recovery of services and provide updates as they become available
- (c) The Customer's use, rights and obligations in respect of Third Party Software is governed by its applicable EULA, unless it is varied by agreement between the parties to that EULA.
- (d) The Customer agrees to execute and be bound by the terms of the Third Party Software owner's EULA. We are able to provide the Customer with a copy/Link to of the relevant EULA for its review prior to submitting a work order.
- (e) The Customer accepts the Third Party Software owner's warranty in relation to the Third Party Software or Services. We cannot provide any warranty in relation to the Third Party Software or Services.

### 6.1 Third Party Charges

- (a) You are responsible for all third party charges incurred as a result of your use of the service (for

example hosting such as Office 365 and Azure, co-location, and telecommunications carriage fees) unless we specify otherwise in writing.

- (b) Where we specify that our fees include third party charges, we may increase our fees by written notice to you if there is an increase in third party charges.

### 6.2 Third Party Materials

- (a) In providing a service we may supply you with materials (including software) licensed by third parties.
- (b) You must comply with the terms of the third party license and you indemnify us against any loss, damage, claim, liability or demand we incur due to your breach of a third party license.

## 7. Payments

### 7.1 Payments

- (a) Payments are to be made as specified under each Work Order.
- (b) You must pay us the Fees as set out in the schedules or proposals agreed to
- (c) Any Monthly Service Fee's are payable monthly in advanced upon Service Commencement
- (d) In addition to any fees specified in each Work Order, we will issue invoices separately for the following fees where applicable under each Work Order:
  - (i) any setup fees (if any);
  - (ii) the full price of any Product ordered, paid in advance immediately upon receiving the pro-forma invoice;
  - (iii) any fees for Out of Scope Services requested and performed ;
  - (iv) if you have requested services that attract a surcharge, such as after hours services or onsite visits;
  - (v) any travel time at current hourly rates if we are required to travel to a site outside of the greater Brisbane area; and
  - (vi) any pre-approved expenses if we are required to travel to a site more than 100 km from our offices, including travel time at current daily rates, and all travel expenses including flights, accommodation and meals (excluding alcohol) at cost.

### 7.2 Further payment provisions

- (a) Unless otherwise stated, each tax invoice:
  - (i) is payable 14 days from the date of the tax invoice;
  - (ii) may be sent by post or email.
- (b) All fees are in Australian dollars, exclusive of GST. If any GST is imposed on a supply under this Agreement, you must pay the GST amount with and in addition to the Fees. We will itemise any applicable GST on each tax invoice.

### 7.3 Fee disputes

- (a) If you reasonably believe that an invoice contains an error, and you wish to dispute an invoice, you must:
  - (i) notify us before the due date of the invoice;
  - (ii) pay all undisputed fees on the invoice; and
  - (iii) provide detailed information about any disputed fees.
- (b) Provided you have complied with clause 7.3(a), we will not suspend or terminate any Services for

non-payment of the disputed fees while the dispute is being investigated.

- (c) Our records are prima facie evidence of fees owing and paid.

#### 7.4 Default in payment

If you fail to pay any invoice by the due date, then without prejudice to our other rights or remedies, until payment is made in full (including for any accrued interest), we reserve the following rights:

- (a) to charge for interest on all overdue amounts at the RBA cash rate plus 6 percentage points, compounded daily from the due date of the relevant invoice;
- (b) to immediately suspend work of any or all Services under any Work Order then on foot, and provide you with a Notice of Default;
- (c) to retain a lien over all equipment, materials, data and work in progress, including those owned by you in our possession and control; and
- (d) you are liable by way of liquidated damages for all amounts payable under this clause plus all costs of debt collection and enforcement, including legal fees on a solicitor and own client basis.

#### 7.5 Fee increases

- (a) Unless otherwise specified in the relevant Work Order, monthly fees and surcharges remain the same for the duration of any minimum Service Period specified for any Work Order (subject to any changes in the scope of the services provided). However we may change any such fees by 30 days' Written Notice at any time outside of a Service Period.
- (b) We may by 30 days' Written Notice:
  - (i) change our Out-of-Scope Rate, at any time; or
  - (ii) change our Fees to reflect changes in fees charged to us by our suppliers, for any third party Product or Service for which we are mere resellers.
- (c) We may vary Monthly Agreement Fees by Written Notice if:
  - (i) You change your Plan; or
  - (ii) You make changes to the supported equipment, associated software or your network that changes the scope of work under any agreements and work orders.

### 8. Confidentiality

- (a) Each party acknowledges that it may receive Confidential Information which is proprietary and confidential to the other party and any of that party's clients, directors, employees, contractors or agents.
- (b) Each party agrees not to use or disclose such Confidential Information, except to its officers, employees or contractors bound by the same confidentiality obligation, and only to the extent necessary for the party to carry out its obligations under this Agreement.
- (c) Despite clauses 8(a) and 8(b) above, either party may use or disclose Confidential Information to the extent necessary to:
  - (i) comply with any law, binding directive of a regulator or a court order;
  - (ii) comply with the listing rules of any stock exchange on which its securities are listed; or
  - (iii) obtain professional advice in relation to matters arising under or in connection with this document where

the advisors agree to be bound by the same obligation of confidentiality.

- (d) At the request of a party, the other party must return all Confidential Information received and must not retain any copies or extracts of the Confidential Information, except as it may retain in accordance with prudent business practices. Any retained material shall remain subject to the provisions of this Agreement without any time limit.

## 9. Intellectual Property

### 9.1 Client Materials

- (a) You (or where applicable, any third party owner) retain ownership of all relevant Intellectual Property rights in the Client Materials and such rights are not assigned or transferred to us.
- (b) You grant us (and our employees, contractors and agents, as applicable) an irrevocable, royalty-free, perpetual licence to use, copy, modify and adapt any Intellectual Property in the Client Materials as reasonably necessary to provide the Services.

### 9.2 Third Party Materials

We may incorporate third party materials as necessary to provide the Services. Use of third party materials may be subject to creative commons or open source licensing terms, or such third party licensing terms as notified by us to you.

## 10. Indemnity and Limitation of Liability

### 10.1 Responsibility for own actions

Each party agrees to release, indemnify and defend the other party and its Indemnified Officers against any Claim or Liability from or in relation to:

- (a) its own negligence or malpractice, or reckless or intentional misconduct, and
- (b) its own failure to perform its obligations and responsibilities under this Agreement.

### 10.2 Client indemnity

(a) You agree to release, indemnify and defend us and our Indemnified Officers against any Claim or Liability arising from or in relation to:

- (i) your misuse of the Products or Services;
- (ii) any wrongful or negligent acts or omissions of anyone whom you allow to access the Services from time to time, whether deliberately or otherwise;
- (iii) any loss or damage to persons or property (including data) caused by the Client Materials;
- (iv) your breach of any law or infringement of any third party rights including Intellectual Property rights;
- (v) if your instructions to us cause us to be in breach of any law or infringement of any third party rights including Intellectual Property rights;
- (vi) any breach of your warranties under this Agreement.

(b) You agree to release us and our Indemnified Officers against any Claim or Liability arising from or in relation to:

- (i) any downtime or interruption to Services, or data loss;
- (ii) third party software licensed to you as part of any Services;
- (iii) the acts or omissions of any third party outside our reasonable control;



- (iv) our reasonable actions in denying anyone access to the Services for security reasons or non-payment; and
  - (v) any actions we take in accordance with our obligations at law or any order issued by a court of law or relevant government authority; and
- whether directly or indirectly arising in connection with the Services, even if we knew or should have known about the possibility of such loss or damage.
- (c) You indemnify us for any reasonable legal expenses we incur as a result of your breach of this Agreement, including expenses for enforcing payment, on a solicitor and own-client basis.

- (ii) you fail to provide clear and timely instructions;
  - (iii) you fail to provide necessary Client Materials in a timely manner;
  - (iv) you fail to ensure that the hosted materials continue to meet the minimum requirements;
  - (v) we have reason to suspect illegal or unethical activity in relation to your data; or
  - (vi) in our reasonable opinion your data, network, software or equipment may be causing damage to any person or property.
- (b) Suspension of Services under this clause:
- (i) does not affect your liability to make payment; and
  - (ii) will immediately end when the issue giving rise to the suspension is remedied.

### 10.3 Limitation of Liability

- (a) We only accept liability to you as set out in this clause, or as required by consumer or other laws that cannot be excluded by contract.
- (b) To the extent allowable at law:
- (i) special, pure economic or Consequential Loss (whether arising under contract or tort) are expressly excluded under this Agreement;
  - (ii) all Services are provided under this Agreement on an 'as is' basis and all warranties that may be implied by law or statute (other than those set out in this Agreement) are excluded;
  - (iii) our liability, and liability of our Indemnified Officers under this Agreement is limited to (at our election), in relation to the Services:
    - (A) supplying the Services again; or
    - (B) payment of the cost of having the Services supplied again; or
    - (C) a refund of the amount you paid us for those Products or Services;
  - (iv) our liability, and liability of our Indemnified Officers under this Agreement is limited to (at our election), in relation to Product:
    - (A) supplying the Product again;
    - (B) payment of the cost of having the Product supplied again;
    - (C) repairing the Product;
    - (D) payment of the cost of having the Product repaired; or
    - (E) a refund of the amount you paid us for the Product; and
  - (v) despite any other provision to the contrary, our total liability and the total liability of our Indemnified Officers in connection with this Agreement whether under contract or tort, will not in any circumstances exceed the maximum value equal to the total fees received by us from you under this Agreement.

### 11.2 Force Majeure

- If a party to this Agreement is affected, or likely to be affected, by a Force Majeure Event:
- (a) That party must immediately give the other party prompt notice of that fact including:
- (i) full particulars of the Force Majeure Event;
  - (ii) an estimate of its likely duration and impact; and
  - (iii) any steps taken or proposed to mitigate and reduce the duration or impact.
- (b) Provided the party complies with clause 11.2(a), the party's obligations under this Agreement are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.
- (c) A party claiming a Force Majeure Event must use its best endeavours to remove, overcome, or minimise the effects of that Force Majeure Event as quickly as possible.
- (d) Either party may, by Written Notice, end any Work Order affected by the Force Majeure event if the event continues for 21 days or more. If all Work Orders are cancelled for this reason, either party may also end this Services Agreement.

## 12. Termination

### 12.1 Termination for default

- (a) Either party may end any Work Order immediately by Written Notice if the other party fails to remedy a Notice of Default in relation to that Work Order.
- (b) Either party may end this Services Agreement and all Work Orders immediately by Written Notice if the other party:
- (i) fails to remedy a Notice of Default; or
  - (ii) experiences an Insolvency Event.
- (c) Either party may end this Services Agreement and all Work Orders at any time and without prior notice if the other party is guilty of dishonesty, serious misconduct or serious neglect of duty.

### 12.2 Termination without default

- (a) Either party may end this Services Agreement at any time by giving the other party 30 days' Written Notice, but the termination date will be the date on which every Work Order between the parties has expired or been otherwise validly terminated.
- (b) For the removal of doubt, notice of termination of the Services Agreement under this clause 12.2 constitutes a notice under clause 3.1 to:

## 11. Suspension and Force Majeure

### 11.1 Your Default and Suspension

- (a) We may suspend our Services under any or all Work Orders at any time and give you a Notice of Default if:
- (i) you fail to make any payment when due, or any payment is dishonoured or

- (i) end every Work Order at the end of the relevant Service Period, where the Service Period has not expired; and
- (ii) end every Work Order at the end of 30 days, where the Service Period has expired.

### 12.3 Consequences of Termination

- (a) If this Services Agreement ends for any reason, then in addition to any other rights we may have:
  - (i) we may issue an invoice for other work not previously invoiced, whether for Services or any other services or charges contemplated by this Agreement;
  - (ii) you must pay all of our outstanding invoices whether or not due;
  - (iii) we retain a lien over all data until all outstanding invoices have been paid in full, including any invoice issued under clause 12.3(a)(i).
- (b) If a Work Order is terminated before the end of any applicable Service Period for any reason, and we were not in default of that Work Order, then in addition to the rights specified in clauses 12.3(a) and any other rights we may have all fees for the balance of the Service Period (if any) of that Work Order (calculated using the fees applicable as at the date of termination), excluding any costs we can reasonably mitigate, become immediately due and payable. The parties agree that this is not a penalty, but represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from early termination in light of our sunk infrastructure, support, training and implementation costs and ongoing commitments;
- (c) If we terminate a Work Order under clause 12.1(a), we may terminate by Written Notice to you any other Work Order, whether or not that other Work Order was in any way connected to or affected by termination of the previous services.
- (d) A party not in default may pursue any other rights or remedies available at law against a defaulting party, subject to clause 10.

## 13. Dispute Resolution

### 13.1 Mediation

- (a) If a dispute (a fee dispute pursuant to clause 10.3 is excluded) arises between the parties in relation to this Agreement, either party may give the other party a written notice that they intend to arrange mediation.
- (b) The parties must refer the dispute to an independent mediator within 21 days of the written notice.
- (c) If the parties cannot agree on a suitable mediator, either party may contact the Law Society in their state and request that they provide a mediator.
- (d) The costs of the mediation must be paid by the parties in equal shares.

### 13.2 Legal Proceedings

No party may commence court proceedings unless the dispute remains unresolved after 28 days from the date of the written notice provided under clause 13.1(a).

## 14. Privacy

### 14.1

The customer hereby authorises the Service Provider to collect, retain, record, use and disclose personal information about the Customer, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a Solicitor or any

other professional consultant engaged by the Service Provider, a debt collector, credit reference organisation and/or any other individual or organisation with maintains credit references and/or default listings.

### 14.2

The Customer also authorises the Service Provider to make enquiries with respect to the Customer's credit worthiness; to exchange information with other credit providers in respect to previous defaults of the Customer and to notify other credit providers of a default by the Customer.

## 15. General

### 15.1 Assignment

The parties may only assign or novate this Agreement in whole or in part with the prior written consent of the other party. Upon assignment or novation, the parties' obligations and benefits under this Agreement are binding on and shall benefit their respective representatives, successors and assigns.

### 15.2 Costs

All stamp duty, government charges and legal fees incidental to this Agreement, specifically including all legal fees incurred in enforcing this Agreement on a solicitor own client basis, are the responsibility of and payable by you.

### 15.3 Enduring clauses

The parties' rights and obligations under clauses 4.6, 5.2, 5.4, **Error! Reference source not found.**, 10, 10, 12.3, and 13 will survive the termination of this Agreement for whatever reason.

### 15.4 Relationship between the parties

Nothing in this Agreement constitutes an agency, partnership or contract of employment, or as a guarantee of future employment or engagement. It is the express intention of the parties to deny any such relationships.

### 15.5 Jurisdiction

The laws of Queensland, Australia apply to this Agreement and the parties submit exclusively to the courts of that jurisdiction.

### 15.6 Severability

If any provision of this Agreement is ruled by a court to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision or part provision of this Agreement.

### 15.7 Waiver

Any delay or failure to enforce any rights in relation to a breach by the other party will not be construed as a waiver of those rights.

### 15.8 Entire Agreement

This Agreement contains the entire agreement between the parties and supersedes all previous negotiations or agreements in relation to the subject matter of this Agreement.

### 15.9 Variation

Any variation or amendment to this Agreement must be in writing signed by all parties.

**Annexure A Rates Table**

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**A.1 Rates Table for additional service engagements**

Consulting Services as per proposal and based on the following rates table;

<b>Rate &amp; Services Table</b>	<b>Excluding GST</b>
Layer 8 Support & Development Services	<b>\$200 /hr</b>
Cyber Security Consulting <ul style="list-style-type: none"><li>- Governance, Risk &amp; Compliance</li><li>- Cyber Assessments &amp; Consulting</li></ul>	<b>\$250 /hr</b>
Strategic Consulting Services <ul style="list-style-type: none"><li>- IT Strategy &amp; Governance, Business Process Analyses &amp; Design, Solutions Architecture</li></ul>	<b>\$250 /hr</b>