

## Terms of Service

### 1. Agreements for the supply of products and services

- 1.1. Each time a Proposal is accepted by you, a separate contract will be entered into consisting of the following documents (each, an **Agreement**):
- these Terms of Service;
  - the Proposal;
  - the applicable Service Schedule; and
  - the Acceptable Use Policy.
- 1.2. To the extent of any inconsistency between the documents listed in subclauses 1.1(a) to 1.1(d), the document listed first in clause 1.1 shall prevail.
- 1.3. Our Proposals are open for acceptance for 30 days only. We have no obligation to supply any products or services under an Agreement other than as expressly required by the applicable Proposal(s).
- 1.4. We may modify these Terms of Service, any Service Schedule or our Acceptable Use Policy at any time and from time to time, in our absolute discretion. The modified versions will only apply to Agreements that we subsequently enter into with you. We will provide you with a copy of the modified versions or upload them to our website. It is your responsibility to ensure that you have read and understood them.

### 2. Term

- 2.1. Each Agreement will commence on the commencement date specified in the Proposal, or if the Proposal does not specify a commencement date, the Agreement will commence on the date of execution of the Proposal by the last party to execute it.
- 2.2. If a contract term, initial term or minimum period is specified in a Proposal or Service Schedule (each, a **Minimum Period**), upon expiry of the Minimum Period, the Agreement will automatically extend for subsequent consecutive periods each of equivalent length to the Minimum Period (each, a **Renewal Period**), until and unless either party notifies the other party in writing that it wishes to terminate the Agreement at least 60 days prior to the expiry of the Minimum Period or the then current Renewal Period (as applicable) (time being of the essence), in which case if such notice is provided, the Agreement will terminate at the end of the Minimum Period or the then current Renewal Period (as applicable).
- 2.3. If there is no Minimum Period, the Agreement will continue from the Commencement Date until the Ordered Products and Services have been delivered and thereafter until either party terminates the Agreement on 30 days' prior written notice to the other party.

### 3. Supply of Ordered Products and Services

- 3.1. We will use our best endeavours to supply and/or procure the supply of the products and/or services specified in a Proposal (**Ordered Products and Services**) to you, substantially in accordance with any Specifications.
- 3.2. You must provide all necessary:
- cooperation, permissions, authorisations, assistance and consents (including all relevant third-party and End User consents and authorisations); and
  - access to such information (including account logins), Your Equipment, Personnel, End Users, servers, networks, data, content, facilities, documentation, records, resources, records, equipment and premises, as reasonably required by us to supply and/or procure the supply of the Ordered Products and Services to you.
- 3.3. Where required by us, you must also arrange safe and timely access to Your Premises for our Personnel and Third Party Providers to provision, install, support and maintain the applicable Ordered Products and Services. Support and maintenance are not within the scope of the Agreement unless the Proposal clearly states that they will be provided.
- 3.4. We are not liable for:
- the content or security or communications that you receive, access or rely upon when using Ordered Products and Services;
  - ensuring that any data sent or received over any Ordered Products and Services is sent or received correctly and to the maximum extent possible by law, we and our Third Party Providers do not have any responsibility for loss of data, delays, non-deliveries or mis-deliveries of data;
  - the installation of electrical wiring, removal of doors, widening of entrances or any other structural work of any

description at Your Premises. You must procure all such work to be carried out prior to our, and/or our Third Party Providers', attendance at Your Premises for the purposes of carrying out any installation, configuration or setup of any Ordered Products and Services;

- ensuring that Your Equipment is compatible or interoperable with Ordered Products and Services; and
  - all and any acts and omissions of your Personnel and End Users.
- 3.5. With respect to any proposed installation, commencement or start dates specified in a Proposal:
- time is not of the essence and such dates are estimates only; and
  - where our Personnel or Third Party Providers are unable to provision any Ordered Products and Services by any agreed or estimated installation, commencement or start date for any reason: (i) we may terminate the Proposal at any time prior to the provisioning being completed, by notice to you, without liability; and (ii) you may terminate the relevant Agreement prior to the provisioning being completed, by notice to us, without liability if the Ordered Products and Services are not installed or provisioned (as applicable) within 60 days after the agreed or estimated installation, commencement or start date for any reason; and
  - you must pay all costs and expenses that we incur as a result of any delay in the installation, procurement, commencement and/or implementation of Ordered Products and Services caused directly or indirectly by you or your Personnel.

### 4. Performance and availability of Ordered Products and Services

- 4.1. We warrant that Ordered Products and Services will perform materially in accordance with the Specifications.
- 4.2. We do not warrant that Ordered Products and Services will be:
- uninterrupted or error-free, free from fault or external intrusion; or
  - suitable for or will meet your requirements, unless such warranties are expressly set out in a Proposal or Service Schedule.
- 4.3. If there are Service Levels specified in a Proposal or Service Schedule:
- we will use our best endeavours to ensure that the applicable Ordered Services comply with those Service Levels; and
  - any breach of the Service Levels will not constitute a breach of the Agreement.
- 4.4. If there are Service Credits specified in a Proposal or Service Schedule, your entitlement to the Service Credits is your sole remedy and our sole liability for any non-performance or unavailability of the Ordered Services that they relate to.
- 4.5. We may in our sole discretion, vary Ordered Services at any time or from time to time, provided that such variation does not have a material adverse effect on the performance of the Ordered Services.

### 5. Your Equipment and Our Equipment

- 5.1. An Agreement does not transfer or assign title to Your Equipment to us.
- 5.2. An Agreement does not transfer or assign title to Our Equipment to you.
- 5.3. You must not, except as authorised in writing of us, grant or permit the grant or existence of any Security Interest in Our Equipment.
- 5.4. You must promptly notify us if any of Your Equipment becomes subject to any Security Interest or Purchase Money Security Interest (as defined under the PPSA) and you must indemnify us from and against all and any loss and/or damage incurred by us caused by any of the foregoing matters or the repossession of Your Equipment or any other action taken by any person that is a secured party in respect of Your Equipment.
- 5.5. You must keep Your Equipment insured for its full replacement value at all applicable times. You must provide us with a certificate of currency in respect of that insurance within 3 Business Days of a request by us at any time.

### 6. Your Data

- 6.1. Data in any form entered into, uploaded into Ordered Products and Services (**Your Data**) is, as between you and us, owned by you and the Agreement does not transfer any IPR in Your Data to us.
  - 6.2. We will not use Your Data other than to:
    - (a) perform our obligations under the Agreement; and
    - (b) comply with our legal obligations and to comply with Applicable Law.
  - 6.3. You must ensure that:
    - (a) your End Users are fully entitled (and where applicable, licensed) to disclose to us all of Your Data that is entered into Your Equipment and Ordered Products and Services;
    - (b) all of Your Data is accurate and up-to-date; and
    - (c) the collection, use, disclosure and processing of Your Data by us, our Personnel and Third Party Providers does not breach any Applicable Law or any person's rights.
  - 6.4. Your Data may be hosted by us or our Third Party Providers on hardware or infrastructure located in or outside Australia. We may or may not own the infrastructure or the premises in which the infrastructure is located.
  - 6.5. Data loss and corruption is unpredictable and can occur from time to time. In the event of any loss, destruction, alteration, corruption or damage to any of Your Data that you engage us to host:
    - (a) your sole and exclusive remedy as against us, shall be to request that we use reasonable endeavours to restore that data from the latest back-up that we or our Third Party Providers maintain; and
    - (b) we shall not have any liability for any such loss, destruction, alteration, corruption or damage or for any unauthorised access or disclosure to Your Data unless it is caused by our wilful misconduct or intentional breach of the Agreement.
  - 6.6. You must indemnify us in respect of any loss and damage that we incur as a result of any third party claim that the transmission, storage, hosting, disclosure, processing, access and/or use of Your Data by us for the purposes of the Agreement, or access to and/or use of Your Data by any End User, infringes the IPR and/or other rights of any person or breaches any Applicable Law.
- 7. Our Intellectual Property Rights**
- 7.1. As between you and us, we own all IPR in:
    - (a) Ordered Services (including any software, Source Code, Object Code, databases and database structures that are incorporated into or supplied in connection with the Ordered Services); and
    - (b) all Output (except to the extent that it comprises Your Data) made available in or via the Ordered Products and Services, (collectively, **Our IPR**).
  - 7.2. You must not represent that you own any of Our IPR.
  - 7.3. You must not directly or indirectly do anything that would or might invalidate, jeopardise, limit, interfere with or put in dispute Our IPR and you must not do or authorise the commission of any act that would or might invalidate or be inconsistent with our ownership of Our IPR.
  - 7.4. You hereby assign to us all and any IPR in all and any comments in connection with Ordered Services and any requests for new features, that you and/or your employees may make or suggest regarding them (each, an **Improvement Suggestion**). Each such comment and Improvement Suggestion becomes our sole and exclusive property. This assignment is effective when you or your employees make the comment or disclose the Improvement Suggestion to us including under section 197 of the *Copyright Act 1968* (Cth) and in equity. You must procure from your employees an irrevocable and freely given written consent from each of them to the infringement of any Moral Rights that they may have in any such Improvement Suggestions by us and by any third parties who we authorise to operate or modify the Ordered Products and Services.
- 8. Confidentiality**
- 8.1. Each party may receive information from the other party (**disclosing party**) during the Term that is marked as confidential or is deemed confidential by Applicable Law (**Confidential Information**).
  - 8.2. The party who receives Confidential Information from the disclosing party (**receiving party**) may not, at any time without the disclosing party's prior written consent, use and/or disclose any Confidential Information, other than to exercise its rights and perform its obligations under the Agreement or comply with Applicable Law.
  - 8.3. Where we are required to do so under any contract with any supplier, we may disclose your Confidential Information to our suppliers, including, where the supplier provides us with services that we use to provide Ordered Services.
  - 8.4. Confidential Information does not apply to information:
    - (a) that is independently developed, obtained or known by the receiving party, without breaching any obligation of confidence to the disclosing party;
    - (b) that the recipient can prove was already known to it at the time of disclosure by the disclosing party;
    - (c) that is in the public domain, except where due to a breach of the Agreement or any breach of any obligation of confidence; or
    - (d) that the receiving party must disclose under the rules of any stock exchange on which it or its holding company is listed.
- 9. Acceptable Use**
- 9.1. You must ensure that any person who accesses and/or uses Ordered Products and Services (each, an **End User**):
    - (a) complies with all applicable Documentation, Applicable Laws, our directions and policies (including any security policy) in the course of such access and/or use;
    - (b) does not infringe or permit any person to infringe any of our, or our licensors', IPR;
    - (c) provides us with access to Your Data, Personnel, Your Equipment and/or any cooperation and/or assistance necessary for us to carry out our duties under the Agreement;
    - (d) does not provide their passwords or other access credentials to any other person;
    - (e) immediately notifies us of any unauthorised or suspected unauthorised use or disclosure of any access credentials for Ordered Products and Services; and
    - (f) uses reasonable and appropriate security measures and precautions when using Ordered Products and Services.
  - 9.2. You must:
    - (a) ensure that you maintain a reliable internet connection for us to connect to Your Equipment, Personnel, End Users, servers, networks, data, content, facilities, documentation, records, resources, records, equipment and premises, where reasonably required by us to provide any Ordered Services;
    - (b) ensure that your premises are suitable and maintained in a manner suitable for the use of Ordered Products and Services;
    - (c) maintain all building cabling (existing and new) in accordance with all Australian industry standards and guidelines necessary for Ordered Products and Services to operate; and
    - (d) not do anything that interferes with or prevents the proper functioning of Ordered Products and Services.
  - 9.3. The availability of Ordered Services will be subject to any bandwidth limitations, internet and network downtime and congestion, database size limitations, throughput limitations and other technical and non-technical limitations or restrictions as set out in the Specifications and/or Documentation.
  - 9.4. Unless otherwise expressly specified in the Agreement, you must not, and must not permit any person to use Ordered Services:
    - (a) to copy, alter, modify, tamper with, create derivative works from, reproduce, resell, transfer to a third party, reverse assemble, reverse engineer, reverse compile or enhance Ordered Services or any trade marks, any patent or copyright notices, or any confidentiality legend, notice or other means of identification, used on or in relation to Ordered Services;
    - (b) in any manner that breaches Applicable Laws or violates all or any legal rights of any person in any jurisdiction (including any person's privacy, such as by way of identity theft or "phishing");
    - (c) to license, sublicense, resell, assign, transfer, distribute, or provide others with access to, Ordered Services;
    - (d) to "frame", "mirror" or serve Ordered Services on any web server or other computer server over the Internet or any other network;

- (e) to store, transmit, distribute or introduce malicious programs into our systems, network or servers (e.g., viruses, worms, trojan horses, e-mail bombs);
  - (f) to make fraudulent offers of goods or services;
  - (g) to carry out security breaches or disruptions of network communication (security breaches include, accessing data of which you are not an intended recipient, logging into a server or account that you are not expressly authorised to access, corrupting any data, network sniffing, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes);
  - (h) to execute any form of network monitoring which will intercept data not intended for you; or
  - (i) to circumvent user authentication or security of any of our hosts, networks or accounts or those of our customers or Third Party Providers,
- (collectively, **our Acceptable Use Policy**).

## 10. Fees

- 10.1. You must pay the Fees to us in accordance with the Payment Terms and any applicable Service Schedule, without setoff, deduction or counterclaim.
- 10.2. Except as otherwise set out in a Proposal, the Fees are exclusive of all taxes such as GST and you agree to pay all such taxes to us, in respect of any Supply (as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) made for the purposes of the Agreement at the same time as the Fees.
- 10.3. Without limiting any other rights or remedies available to us, we may suspend our obligations under this Agreement and your access to Ordered Services if you fail to pay the Fees in accordance with the Payment Terms.
- 10.4. If you fail to make any payment due to us under this Agreement in accordance with the Payment Terms then, without limiting our rights and remedies, you shall pay interest on the overdue amount at a rate equal to 2% per annum above the current overdraft rate that we have with our principal banker from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment and you shall pay the interest together with the overdue amount upon demand by us. You must indemnify us from and against all and any legal costs and disbursements (on a full indemnity basis) that we incur in connection with the proceedings.
- 10.5. We may increase the Fees payable under an Agreement:
  - (a) annually by 3%; and
  - (b) at any time to accommodate any currency fluctuations.

## 11. Liability

- 11.1. Ordered Products and Services and/or any reports, outcomes, results or information generated from the Ordered Products and Services (**Output**) does not constitute our financial, legal or other advice. You must obtain all appropriate professional, financial, legal and other advice as applicable before relying on any Output. You must not represent (either expressly or implied) that any Output is our advice.
- 11.2. We are not liable for any failure to perform Ordered Services or failure to procure Ordered Products caused by any breach of the Agreement by you or your Personnel.
- 11.3. Neither party is liable to the other party for any loss of profits, loss of business opportunity, loss of revenue (other than caused by your failure to pay the Fees), loss of savings or loss of data and whether arising in contract, tort (including negligence) or otherwise, and whether the loss or damage is foreseeable or not.
- 11.4. Our liability for all loss or damage that you incur that is caused by our breach of the Agreement, that is not otherwise excluded by the terms and conditions of the Agreement, is capped, in the aggregate, at an amount equivalent to the quantum of the Fees paid by you under an Agreement, for the Ordered Products and Services to which the breach relates to, and which cap is reduced to the extent that you, your End Users, your Personnel and/or any Third Party Provider caused or was responsible for such loss.
- 11.5. Where liability for breach of any guarantees under the ACL can be limited, our liability arising from any breach of those guarantees (if any) is limited, at our option: (i) with respect to the supply of goods, to the replacement or repair of the goods or the cost of resupply or replacement of the goods; and/or (ii) with respect to services, to the supply of services again or the cost of re-supplying the services again.

- 11.6. Other than any non-excludable guarantees implied into this Agreement under the ACL (if any), all conditions, warranties and guarantees that would be implied in the Agreement are hereby excluded from the Agreement.
- 11.7. Either party may obtain urgent interlocutory relief from a court of competent jurisdiction to prevent any actual or potential breach of the Agreement.

## 12. Force Majeure Event

- 12.1. We are not liable for any failure by us to perform our obligations under an Agreement if such failure was caused by a Force Majeure Event. If a Force Majeure Event continues for 45 consecutive days, either party may terminate the Agreement by written notice to the other party.

## 13. Termination

- 13.1. A party (the **first party**) may terminate the Agreement by written notice to the other party if the other party (**the defaulting party**) commits a breach of the Agreement that is not remediable, or if the breach is a remediable breach and the defaulting party fails to remedy the breach within 14 days of written notice from the first party requiring the breach to be remedied.
  - 13.2. We may terminate and/or suspend our provision of Ordered Products and Services, if:
    - (a) you fail to pay any Fees to us as in accordance with the Payment Terms;
    - (b) you and/or your End Users repeatedly infringe or breach our Acceptable Use Policy; or
    - (c) a Third Party Provider ceases to provide hardware, software, products or services that we require to comply with our obligations to supply Ordered Products or Services to you.
  - 13.3. Either party may terminate the Agreement by written notice to the other party if the other party suffers an Insolvency Event.
  - 13.4. If the Agreement is terminated for any reason:
    - (a) you must, at our option, promptly return or destroy all copies of our Confidential Information in your possession or control; and
    - (b) any rights and licences granted by us to you pursuant to the Agreement immediately terminate.
  - 13.5. If an Agreement is terminated prior to the expiry of the Minimum Period (other than due to our breach or if we suffer an Insolvency Event), you will pay 75% of any outstanding amounts that we calculate or reasonably estimate would have been payable by you under the Agreement for the remainder of the Minimum Period (collectively, the **Outstanding Amount**). If an Outstanding Amount is payable, we shall send you a tax invoice in respect of the Outstanding Amount and you will pay that invoice within 30 days. You agree that: (i) payment under this clause is not intended to be, and will not be punitive and you will compensate us for reasonable losses resulting from early termination of the Agreement; and (ii) the Outstanding Amount is less than the total loss that we will suffer from the early termination of the Agreement.
  - 13.6. Any rights or obligations that, by their nature, survive termination shall so survive, including any provision dealing with confidentiality, IPR, liability, dispute resolution and jurisdiction.
  - 13.7. Termination does not affect any accrued rights of either party.
- ## 14. Notices
- 14.1. All notices required or permitted to be made under the Agreement shall be in writing and shall be deemed delivered if:
    - (a) delivered in person;
    - (b) sent by post to the recipient's postal addresses identified in the Proposal; or
    - (c) sent by email to the recipient's email addresses identified in the Proposal.
  - 14.2. Notice given under subclause 14.1(a) shall be effective upon delivery.
  - 14.3. Notice given under subclause 14.1(b) shall be deemed delivered 6 Business Days after posting if posted domestically in Australia, or 20 Business Days after posting if posted to or from Australia from any other country.
  - 14.4. Notice given under subclause 14.1(c) shall be deemed to have been validly and effectively given on the day on which it is transmitted if the sender receives a read or delivery receipt confirming delivery or receipt of the email or a reply to the email.

- 14.5. Any party may change its address for notice hereunder by giving written notice to the other party in accordance with this clause 14.

## 15. General

- 15.1. A party may not assign its rights or novate its obligations under the Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned or delayed).
- 15.2. If any provision of the Agreement is deemed invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain enforceable.
- 15.3. The relationship between you and us is non-exclusive and nothing in the Agreement will prevent us from supplying any goods or services to any third party in our absolute discretion. You and we are independent contracting entities and nothing contained in the Agreement creates any relationship of partnership, employment, joint venture or agency between the parties.
- 15.4. The Agreement is the entire agreement between you and us about its subject matter and supersedes all other proposals, arrangements or agreements between the parties about its subject matter.
- 15.5. The Agreement may be amended only by a written document signed by the parties and a provision of or a right under the Agreement may not be waived or varied except in writing signed by the party to be bound.
- 15.6. The Agreement is governed by the laws in force in New South Wales. Each party submits to the exclusive jurisdiction of the courts located in New South Wales and the courts of appeal from them in relation to any proceedings and disputes concerning the Agreement.

## 16. Definitions and Interpretation

- 16.1. In these Terms of Service, words in bold font in parentheses have the meanings given to them therein. In addition, the following words have the following meanings:

**ACL** means schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Applicable Law** means any legislation, rule of the general law, including common law and equity, judicial order or consent or requisition from, by or with any governmental agency, including any Data Protection Law, in any applicable jurisdiction.

**Business Day** means any day from Monday to Friday excluding public holidays in New South Wales.

**Business Hours** means 9:00am – 5:00pm AEST (or AEDT where applicable) on Business Days.

**Data Protection Laws** means all applicable data protection and privacy laws in any applicable jurisdiction, including the *Privacy Act 1988* (Cth).

**Documentation** means any user manuals, notes, technical instructions and documentation provided by us or the relevant Third Party Provider in respect of the Ordered Products and Services.

**Fees** means any fees and charges set out in a Proposal.

**Force Majeure Event** means war, industrial action, government action, natural disaster, flood, labour disturbance, pandemic, harmful code or component, communication outage, Internet outage, interruption of service, denial of service attack, breach of contract by a Third Party Provider, fire, threatened or actual act of terrorism, earthquake, act of God, or other circumstances beyond our reasonable control.

**GST** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** means, in respect of a party: (a) the party ceases to carry on business, is unable to pay its debts as and when they fall due, or is deemed to be insolvent or bankrupt; (b) a receiver or a liquidator or provisional liquidator or an administrator is appointed to the party, or an application (including voluntary application filed by that party) is lodged or an order is made or a resolution is passed for the winding up (whether voluntary or compulsory) or reduction of capital of that party; (c) the party enters into an arrangement with its creditors; (d) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution; (e) the party suspends payment of its debts to the other party or a third party, or the party takes the benefit of any law for the relief of insolvent debtors; or (f) anything analogous or having a substantially similar effect to any of the events described in (a)

through (e) above occurs under the law of any applicable jurisdiction.

**IPR** means all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under article 2 of the convention establishing the World Intellectual Property Organisation, and all rights to enforce any of the foregoing rights.

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth).

**Object Code** means Source Code in compiled or binary form.

**Ordered Product** means a product that is part of Ordered Products and Services.

**Ordered Service** means a service that is part of Ordered Products and Services.

**Our Equipment** means any equipment, systems, software, networks, servers, hardware, cabling, ports, switches and/or other ancillary equipment or tools owned and/or operated by us.

**Payment Terms** means payment terms set out in the applicable Proposal.

**Personnel** means a party's employees, agents, officers and subcontractors. We are not your Personnel and you are not our Personnel for the purposes of the Agreement.

**PPSA** means *Personal Property Securities Act 2009* (Cth) as amended from time to time and any regulations thereunder.

**PPSR** means the Personal Property Securities Register established under the PPSA.

**Proposal** means a document entitled "*Proposal*" executed by both you and us.

**Service Schedule** means a document with that title that we supply to you.

**Source Code** means human readable computer code.

**Specifications** means the technical specifications for Ordered Products and Services as set out in a Service Schedule.

**Term** means the term of an Agreement determined pursuant to clause 2.

**Third Party Providers** means any of our third party suppliers, subcontractors and/or providers who provide any goods or services that we supply or resupply as part of Ordered Products and Services.

**Vendor** means a third party who owns the Intellectual Property Rights in any software or service, or is the manufacturer of any products, that we supply or resupply as part of Ordered Products and Services.

**Your Equipment** means any systems, software networks, servers, equipment, hardware, cabling, ports, switches and/or other ancillary equipment or tools owned or operated by you or on your behalf. For the avoidance of doubt, Our Equipment is not Your Equipment.

**Your Premises** means any premises owned, controlled or occupied by you specified in a Proposal.

- 16.2. Unless the context requires otherwise:

- (a) a reference to "**a party**" means you or us (as the context dictates) and a reference to "**the parties**" means you and us;
- (b) headings and underlinings are for convenience only and do not affect the construction of the Agreement;
- (c) a provision of the Agreement will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision, or because the party's legal representative prepared the provision;
- (d) currency or "\$" refers to Australian dollars;
- (e) a reference to a statute or regulation includes amendments thereto;
- (f) a reference to time is to time in New South Wales;
- (g) a reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity;
- (h) the words 'such as', 'including', 'particularly' and similar expressions are not words of limitation and shall be interpreted as if the words 'but not limited to' immediately followed them in each case; and
- (i) a reference to the singular includes the plural and vice versa.

## Service Schedule - Managed IT Services

### 1. About this Service Schedule

1.1. This Service Schedule applies where a Proposal that you and we execute expressly provides for our supply of one or more of the following services to you:

- (a) General Managed IT Services;
- (b) Technical Support Services;
- (c) Managed Cloud Backup Services;
- (d) Managed Equipment Hosting Services;
- (e) Managed Software and Data Hosting Services;
- (f) Managed Microsoft 365 Services;
- (g) Managed Google Workspace Services;
- (h) Managed Cloud Services;
- (i) Managed Cyber Security Services; and
- (j) Other Managed Services.

1.2. This Service Schedule must be read in conjunction with our Terms of Service and the other documents that comprise the Agreement. Words starting with a capital letter in this Service Schedule that are not otherwise defined in this Service Schedule have the meanings given to them in the Terms of Service.

### 2. General Managed IT Services

2.1. If “General Managed IT Services” is specified in a Proposal, we will:

- (a) check the Supported Items’ logs (either continuously or regularly) and read any error notifications issued by the Supported Items by email to us with respect to errors reported by the Supported Items; and
- (b) install firmware updates and other software patches to the Supported Items promptly after receiving notice of the existence of the updates and patches where they are available to us free of charge or paid for by you,

(individually and collectively, **General Managed IT Services**).

### 3. Technical Support Services

3.1. If “Technical Support Services” is specified in a Proposal, we will provide the following services:

- (a) we will operate a support helpdesk through which you can request technical support from us with respect to any Supported Item (**Support Request**) if the Supported Item is repeatedly not operating substantially in accordance with the Specifications (**Error**);
- (b) if you issue a Support Request, we will:
  - (i) acknowledge receipt of the Support Request and assign a priority to the Error (low, medium, high or critical);
  - (ii) use our best endeavours to resolve (including, by making changes to the Supported Items, as required), or subject to you having a valid support contract with the relevant Third Party Provider or Vendor, escalate the Support Request to the relevant Third Party Provider or Vendor of the Supported Item for resolution; and
  - (iii) provide you with updates on the status of the Support Request and the time anticipated by us for resolution,

(together, the **Technical Support Services**).

3.2. All Support Requests must be made by telephone call to our telephone helpdesk (during Business Hours) or by emailing our helpdesk (at any time) using the helpdesk telephone number or email address specified in the Proposal or otherwise notified to you.

3.3. For the avoidance of doubt, we have no obligation to provide Technical Support Services other than in respect of Supported Items. Further, we have no obligation to perform any Technical Support Services in respect of an Error caused by:

- (a) your use of any Supported Item in combination with software or hardware that the Supported Item is not compatible with;
- (b) use of any Supported Item in a location other than any designated location for the Supported Item specified in the Proposal;
- (c) modification of any Supported Item (including by way of installation of software not previously installed

thereupon or the reconfiguration of a Supported Item in any way) not performed or authorised by us;

- (d) corruption, unauthorised access or disclosure to or of Your Data;
- (e) any obsolete or out of warranty hardware or software comprising or installed on any Supported Items; or
- (f) any other matter beyond our reasonable control, (each, an **Excluded Event**).

3.4. Except where we otherwise agree to provide response times with respect to any Error within service levels specified in the Purchase Order, we will adhere to the following response times for all Support Requests (**Default Service Levels**):

Error Severity*	Response Time
Low	We will acknowledge receipt of the Support Request within 24 Business Hours of the Support Request
Medium	We will acknowledge receipt of the Support Request within 16 Business Hours of the Support Request
High	We will acknowledge receipt of the Support Request within 8 Business Hours of the Support Request

\*Priority Key:

*Low* – an Error that is cosmetic or affects a non-essential part of your business operations.

*Medium* – an Error that is not materially negatively impacting on your business operations but is not Low priority.

*High* – an Error that is materially negatively impacting on your business operations that prevents you from operating critical business functionality that is causing you to suffer financial or reputational loss or damage.

3.5. In order to resolve an Error with a Supported Item we may need to temporarily suspend the operation of the Supported Item. You hereby authorise us to do so. We will notify you in advance if we need to suspend any Supported Item.

3.6. A Support Request will be resolved for the purposes of the Agreement when the Supported Item performs materially in accordance with the Specifications.

### 4. Managed Cloud Backup Services

4.1. If “Managed Cloud Backup Services” is specified in a Proposal, we will supply or procure the supply of one of the following services (as specified in the Proposal):

- (a) a service that backs up that part of Your Data (excluding any active or open files) that is specified in the Proposal at the frequency set out in the Proposal (**Standard Backup**); and/or
- (b) a service that backs up that part of Your Data (including any active or open files) that is specified in the Proposal at the frequency set out in the Proposal (**Enhanced Backup**),

to facilitate the restoration thereof (the **Backup Files**) in the event that the Backup Files are lost or corrupted (the **Managed Cloud Backup Services**).

4.2. The Managed Cloud Backup Services will be configured to backup the Backup Files only in the locations in which they are held at the time that the configuration is carried out by us.

4.3. If you or any other person relocates Backup Files or if Your Equipment become unavailable or inaccessible by the backup service for any reason, the Managed Cloud Backup Services will not be able to operate in their intended manner, we will not be liable for the failure of the Managed Cloud Backup Services and you will still be required to pay us for the Managed Cloud Backup Services.

4.4. You must:

- (a) maintain Your Equipment (as it relates to your systems and networks) so that we are able to access the Backup Files at all times; and
- (b) immediately notify us if you relocate any Backup Files or if you become aware that the Managed Cloud Backup Services are not backing up the Backup Files.

4.5. The Managed Cloud Backup Services will only:

- (a) take backups of the Backup Files;
- (b) will backup on an incremental or complete basis; and
- (c) will delete copies of the Backup Files on a recurring basis,

- but only as specified in the Proposal.
- 4.6. You acknowledge that the Managed Cloud Backup Services may not prevent data loss or corruption. In the event of any data loss or corruption of the Backup Files, we will use our best endeavours to restore the Backup Files from the latest version of the Backup Files that is held by the Managed Cloud Backup Services and we will not be liable for any loss or corruption of the Backup Files other than where caused by our wilful breach of the Agreement.
- 5. Managed Equipment Hosting Services**
- 5.1. If “*Managed Equipment Hosting Services*” is specified in a Proposal, we will host that part of Your Equipment expressly specified in the Proposal as being equipment that we will host for you (**Hosted Equipment**) in designated areas within a dedicated cage or cabinet (**Dedicated Rack Space**) or in designated areas within shared cabinets or cages (**Shared Rack Space**) specified in the Proposal (together, the **Managed Equipment Hosting Services**).
- 5.2. The Managed Equipment Hosting Services are limited to:
- our storage of the Hosted Equipment in the Dedicated Rack Space and/or Shared Rack Space (as applicable) at the data centres specified in the Proposal (each, a **Data Centre**);
  - our provision or procurement of reasonable physical security measures at the Data Centres;
  - power supply; and
  - an automatic fire detection and prevention system.
- 5.3. Except as otherwise specified in a Proposal, the Managed Equipment Hosting Services do not include network or internet bandwidth connectivity or cross-connection to any equipment.
- 5.4. Except as otherwise agreed in writing, you are responsible for administering all aspects of the Hosted Equipment, including application and virtualisation licensing, the operating systems, any firewalls or load balancers, domain name systems, intrusion detection systems, backups, monitoring and customer-administered storage solutions in accordance with industry-accepted practices and procedures.
- 5.5. You may not access the Dedicated Rack Space or Shared Rack Space without our prior written consent, which may be withheld in our absolute discretion.
- 5.6. The hosting of the Hosted Equipment in the Data Centre does not constitute a lease, sublease or licence and you acknowledge that we (and the Data Centre owner) does not grant you any real property interest in the Data Centre or any part of it as a tenant or otherwise under Applicable Law.
- 5.7. We may access your Dedicated Rack Space and/or Shared Rack Space (as applicable) in order to comply with our obligations under the Agreement, any contract with the Data Centre owner or Applicable Law and you must not interfere, obstruct or seek to restrict such access.
- 5.8. Upon termination of the Agreement, we shall, at our option:
- remove and store the Hosted Equipment at your risk and cost; or
  - request that you immediately remove the Hosted Equipment from the Data Centre (or our premises), and we will continue to invoice you for the Managed Equipment Hosting Services until all of the Hosted Equipment has been removed or collected. Under no circumstances will we be liable for any loss or damage caused to the Hosted Equipment or other property resulting from such removal and/or storage.
- 5.9. If a Proposal expressly states that the Managed Equipment Hosting Services will include cross-connect services:
- we will connect the Hosted Equipment via physical or wireless connections to a third party’s equipment (the **Other Party**) at the Data Centre (the **Cross-Connect Services**); and
  - prior to carrying out any Cross-Connect Services, you and the Other Party must provide us with a signed acknowledgement confirming that you and the Other Party each consent to the Cross-Connect Services and agree to pay us any applicable Fees for them.
- 5.10. If “*Remote Hands Services*” is specified in a Proposal, we will use reasonable endeavours to provide you with remote hands services for your Hosted Equipment by:
- refreshing and/or re-booting;
  - power cycling;
  - setting up or moving the Hosted Equipment; and
- any other assistance agreed in writing by us and you with respect to the Hosted Equipment.
- 6. Managed Software and Data Hosting Services**
- 6.1. If “*Managed Software and Data Hosting Services*” is specified in a Proposal, we will host Your Data, systems and software as specified in the Proposal in a third party data centre specified in the Proposal or where no data centre is so specified, as determined by us (**Our Cloud**).
- 6.2. The Managed Software and Data Hosting Services do not include backup services. If you wish us to backup any of Your Data, systems and software that we host in Our Cloud, you must enter into a Proposal with us for our provision of Managed Cloud Backup Services.
- 6.3. We will use our best endeavours to make the Managed Software and Data Hosting Services Available, as measured over the course of each calendar month during the term of the Agreement (each such calendar month, a **Service Period**), at least 99% of the time, excluding the time that the Managed Software and Data Hosting Services is not Available solely as a result of your and/or your End Users’ breach of the Agreement, a Scheduled Outage or a Force Majeure Event (the **Availability Target**). “**Available**” means the Managed Software and Data Hosting Services are available and operable for access by you and/or your End Users materially in accordance with the Specifications. “**Availability**” has a corresponding meaning. “**Actual Uptime**” means the number of minutes in the Service Period that the Managed Software and Data Hosting Services are Available. “**Percentage Uptime**” = [Actual Uptime + total minutes in Service Period that the Managed Software and Data Hosting Services are not Available due to Scheduled Outages or Force Majeure Events or your and/or your End Users’ breach of the Agreement] ÷ Total Minutes in Service Period x 100.
- 6.4. Upon suspension of the Managed Software and Data Hosting Services:
- we will provide you with access to a copy of Your Data hosted on Our Cloud for a period of 15 Business Days after which time we will delete all of Your Data on Our Cloud and delete any virtual machines that we were hosting on your behalf; and
  - we will provide transition services to assist you with the migration of Your Data that you downloaded from Our Cloud in your possession or control, to your nominated third party replacement supplier, for an additional fee to be agreed between you and us.
- 7. Managed Microsoft 365 Services**
- 7.1. If “*Managed Microsoft 365 Services*” is specified in a Proposal, we will:
- procure a subscription or licence for your End Users to access and use the Office 365 products and services (**Microsoft 365 Services**) as specified in the Proposal;
  - setup, configure and act as the administrator of your Microsoft 365 tenant, including by setting up your domain name(s) on the tenant, adding, editing, and removing user accounts, resetting account passwords, purchasing licence(s) on your behalf and allocating licences to user accounts;
  - install Microsoft 365 Services on virtual machines or physical machines of your End Users (subject to you facilitating electronic remote access to those machines);
  - create Microsoft Office 365 groups, setting aliases and setting End User permissions; and
  - provide training services for the Microsoft 365 Services to your End Users set out in the Proposal on the agreed dates and times at the location, specified in the Proposal.
- 7.2. You acknowledge that your use of the Microsoft 365 Services is subject to the Microsoft Services Agreement between you and Microsoft Corporation at <https://www.microsoft.com/en-au/servicesagreement/>, Microsoft’s Privacy Statement at <https://privacy.microsoft.com/en-us/privacystatement> and any other Microsoft agreements, policies and statements referred to or attached to the Proposal (collectively, **Microsoft Terms**). In the event that we procure a software licence for any Microsoft 365 Services for you or any End

- User, then you agree to be bound by all applicable Microsoft Terms, as shall be published and amended from to time.
- 7.3. You agree that Microsoft Corporation is liable for all license and product claims related to the Microsoft 365 Services. By placing an order for Managed Microsoft 365 Services with us, you represent and warrant that you accept the Microsoft Terms and agree to pay us for all orders, subscriptions, products and services that we acquire from Microsoft Corporation for your and/or your End Users' use of the Microsoft 365 Services.
- 7.4. You must indemnify us from and against all and any liability, claims, losses, damages and expenses that may be incurred by us as a result of your and/or your End Users' failure to comply with any Microsoft Terms.
- 7.5. We are not liable for any downtime or unavailability of any Microsoft 365 Services.
- 8. Managed Google Workspace Suite Services**
- 8.1. If "*Managed Google Workspace Suite Services*" is specified in a Proposal, we will:
- procure a subscription or licence for your End Users to access and use the Google Workspace Suite products and services (**Google Workspace Services**) as specified in the Proposal; and
  - setup, configure and act as the administrator of your Google tenant, including by setting up your domain name(s) on the tenant, adding, editing, and removing user accounts, resetting account passwords, purchasing licence(s) on your behalf and allocating licences to user accounts;
  - install Google Workspace Services on virtual machines or physical machines of your End Users (subject to you facilitating electronic remote access to those machines);
  - create Google Workspace groups, setting aliases and setting End User permissions; and
  - provide training services for the Google Workspace Services to your End Users set out in the Proposal on the agreed dates and times at the location, specified in the Proposal.
- 8.2. You acknowledge that your use of the Managed Google Workspace Services is subject to the Google LLC terms and conditions between you and Google LLC at <https://policies.google.com/terms?hl=en>, Google's Statement at <https://policies.google.com/privacy?hl=en> and any other Google agreements, policies and statements referred to or attached to the Proposal (collectively, **Google Terms**). In the event that we procure a software licence for any Google Workspace Services for you or any End User, then you agree to be bound by all applicable Google Terms, as shall be published and amended from to time.
- 8.3. You agree that Google LLC is liable for all license and product claims related to the Google Workspace Services. By placing an order for Managed Google Workspace Services with us, you represent and warrant that you accept the Google Terms and agree to pay us for all orders, subscriptions, products and services that we acquire from Google LLC for your and/or your End Users' use of the Google Workspace Services.
- 8.4. You must indemnify us from and against all and any liability, claims, losses, damages and expenses that may be incurred by us as a result of your and/or your End Users' failure to comply with any Google Terms.
- 8.5. We are not liable for any downtime or unavailability of any Google Workspace Services.
- 9. Managed Cloud Services**
- 9.1. If "*Managed Cloud Services*" is specified in a Proposal, we will:
- procure a subscription or licence for your End Users to access and use the cloud platform (**Cloud Platform**) as specified in the Proposal; and
  - setup, configure and act as the administrator of your Cloud Platform, including by setting up your domain name(s) on the tenant, adding, editing, and removing user accounts, resetting account passwords, purchasing licence(s) on your behalf and allocating licences to End User accounts;
  - using third party monitoring services to monitor uptime of the Cloud Platform; and
- provide training services for the Cloud Platform to your End Users set out in the Proposal on the agreed dates and times at the location, specified in the Proposal.
- 9.2. You acknowledge that your right to use and/or access the Cloud Platform is subject to any Vendor agreements or terms and conditions governing a user's use of the Cloud Platform and any other policies and statements referred to or attached to the Proposal (collectively, **Cloud Platform Vendor Terms**).
- 9.3. You agree that the Vendor is liable for all license and product claims related to the Cloud Platform. By placing an order for Managed Cloud Services with us, you represent and warrant that you accept the Cloud Platform Vendor Terms and agree to pay us for all orders, subscriptions, products and services that we acquire from the Vendor for your and/or your End Users' use of the Cloud Platform.
- 9.4. You must indemnify us from and against all and any liability, claims, losses, damages and expenses that may be incurred by us as a result of your and/or your End Users' failure to comply with any Cloud Platform Vendor Terms.
- 9.5. We are not liable for any downtime or unavailability of the Cloud Platform.
- 10. Managed Cyber Security Services**
- 10.1. If "*Managed Cyber Security Services*" is specified in a Proposal, we will::
- deploy firewalls, endpoint security and other security products that are designed to maintain your network security (but only to the extent those firewalls and products are specified in the Proposal);
  - use our best endeavours to identify security breaches, threats and vulnerabilities on the devices or networks specified in the Proposal as being covered by the Managed Cyber Security Services;
  - provide password management and security awareness training to your End Users, on the agreed dates and times at the location specified in the Proposal.
- 10.2. You acknowledge that devices connected to your networks, and particularly those connected to the Internet, are subject to security threats and that no representation, warranty or guarantee has been provided that our Managed Cyber Security Services will be able to identify or eliminate all or any specific types of security breaches, threats or vulnerabilities.
- 10.3. You agree that we will not be held responsible or liable for ensuring the security, privacy or integrity (including threats arising from viruses, trojans, worms, hacking tools or any other harmful component) of any of Your Data managed by the Managed Cyber Security Services either directly or indirectly or transmitted to another location using any software, hardware or service. You must fully indemnify and defend us in relation to any claim relating to the matters referred to in this clause 10.3.
- 11. Other Managed Services**
- 11.1. Where specified in a Proposal, we will supply or procure the supply of the following services:
- anti-virus services that are designed to detect computer viruses (**Antivirus Services**);
  - anti-spam services that are designed to manage, screen and block spam email sent to your network (**Antispam Services**);
  - on-site and off-site disaster recovery (**Disaster Recovery Services**);
- (individually and collectively, **Other Managed Services**).

## Service Schedule – Professional Services

1. **About this Service Schedule**
  - 1.1. This Service Schedule applies where a Proposal that you and we execute expressly provides for our supply of one or more of the following professional services to you (collectively, the **Professional Services**):
    - (a) Project Scoping Services;
    - (b) Consulting Services;
    - (c) Implementation Services;
    - (d) Data Migration Services; and
    - (e) Training Services.
  - 1.2. This Service Schedule must be read in conjunction with our Terms of Service and the other documents that comprise the Agreement. Words starting with a capital letter in this Service Schedule that are not otherwise defined in this Service Schedule have the meanings given to them in the Terms of Service.
2. **Fees**
  - 2.1. In relation to the Fees for Professional Services:
    - (a) the Proposal will set out a specified number of hours for our provision of Professional Services to you. Once you have used the specified number of hours set out in the Proposal, your engagement of our Professional Services shall be deemed to have come to an end until you buy further blocks of time (each, a **Block of Time**); and
    - (b) if you require our Personnel to work in the evenings, weekends or public holidays and depending on the availability of Personnel, we can do so at your written request only at our after-hours rates. For clarity, after-hours work is any work done outside of Business Hours on Business Days and at any time on weekends and on public holidays in New South Wales.
  - 2.2. You will be responsible for all costs and expenses of our Personnel for any onsite attendance, and for interstate travel, with respect to accommodation, meals and transport (collectively, **Additional Expenses**). You must reimburse us for all Additional Expenses that we incur within 7 days of the date of any invoice we issue to you for Additional Expenses.
3. **Project Scoping Services**
  - 3.1. If “*Project Scoping Services*” is specified in a Proposal:
    - (a) we will carry out a detailed analysis, investigation, and evaluation of the components of your information technology environment and enterprise infrastructure specified in the Proposal;
    - (b) we will carry out all work, analysis and evaluation as reasonably required in order for us to deliver a report to you outlining our recommendations as to the products and services that we consider will meet your objectives specified in the Proposal (**Enterprise Architecture Report**);
    - (c) you must make all of Your Equipment, resources, , data, End Users and Personnel available to us that we reasonably require in order to prepare the Enterprise Architecture Report; and
    - (d) we will deliver the Enterprise Architecture Report to you.
  - 3.2. The Project Scoping Services do not include implementation of any recommendations or the provision, implementation, licensing or supply of any products and services (and the associated planning that will be required for the implementation) specified in the Enterprise Architecture Report; all such products, work and services will be subject to the negotiation of a separate Proposal.
  - 3.3. Any Proposals or pricing included in the Enterprise Architecture Report are estimates only and are not binding on us, unless specified otherwise.
4. **Consulting Services**
  - 4.1. If “*Consulting Services*” is specified in a Proposal, we will provide the Consulting Services in accordance with any requirements set out in the Proposal.
5. **Implementation Services**
  - 5.1. If “*Implementation Services*” is specified in a Proposal we will implement, setup and configure the products and services specified in the Proposal (**Implementation Services**) in accordance with the technical requirements, dates, activities and responsibilities specified in the Proposal (**Implementation Workplan**).
    - 5.2. In the course of carrying out the Implementation Services, we will:
      - (a) monitor the implementation activities performed by any of our Third Party Providers; and
      - (b) notify you of any Third Party Provider’s failure to perform its duties and obligations.
    - 5.3. If any products fail to pass the acceptance tests specified in the applicable Implementation Workplan (**Implementation Tests**), and we can demonstrate that the reason for the failure or non-compliance with the applicable Implementation Tests was caused by an issue or defect in Your Equipment or an issue, incompatibility or defect in or with your technical environment, then:
      - (a) you must promptly (within 7 days or as otherwise set out in the Implementation Workplan) correct or procure the correction of the relevant issue or defect and we will re-test the relevant products and services in accordance with the Implementation Workplan and Implementation Test; and
      - (b) if you fail to correct or procure the correction of the relevant issue within the 7 day period referred to in clause 5.3(a), the products and services will be deemed to be accepted by you, notwithstanding the issue or defect.
    - 5.4. If any products or services fail to pass the Implementation Tests in accordance with the Implementation Workplan due to our breach of the Implementation Workplan and you issue a written notice to us requiring us to rectify the non-compliance within 7 days of the completion of the failed Implementation Tests, we will promptly re-configure the relevant products or services in order to rectify the non-compliance.
6. **Data Migration Services**
  - 6.1. This clause 6 will only apply if “*Data Migration Services*” is specified in a Proposal.
  - 6.2. The Data Migration Services are limited to the following tasks:
    - (a) the development of a data migration and deployment strategy (**Migration Plan**) for the migration of Your Data from the database specified in the Proposal (**Legacy Data**) to a target database (**Target Database**);
    - (b) extracting the Legacy Data;
    - (c) converting the Legacy Data into a format suitable for the target database specified in the Migration Plan (**Converted Data**); and
    - (d) importing the Converted Data into the target database, as specified in the Proposal.
  - 6.3. You must comply with your obligations with respect to data migration as set out in the Proposal (including, by ensuring the integrity of the data, de-duplication of the data, assisting us with data extraction and providing data translation maps, where required by us).
  - 6.4. We will use reasonable endeavors to ensure that the Converted Data is successfully integrated with and compatible with the Target Database, but will not be liable for any incompatibility caused by any modification of your technical environment, the Target Database or Your Equipment that we have not approved in writing.
  - 6.5. You represent and warrant that you have the right to engage us to transfer any Legacy Data (whether in the form of Converted Data or otherwise) to the Target Database and that the transfer and conversion will comply with Applicable Law.
  - 6.6. We are not liable for any failure to carry out Data Migration Services where caused by your or your Personnel’s breach of the Migration Plan or any provision of this clause 6.
  - 6.7. For the avoidance of doubt, we have no obligation to encrypt any Legacy Data or Converted Data and/or provide access review or data loss prevention services as part of the Data Migration Services.
7. **Training Services**



- 7.1. If “*Training Services*” is specified in a Proposal, we will train your Personnel specified in the Proposal on the allocated number of days set out in the Proposal, at mutually agreed times (**Training Services**). The Training Services shall be delivered online unless otherwise agreed.
- 7.2. If the Training Services are carried out in person at your premises, you will be responsible for all costs and expenses of our Personnel in connection with travel to and attendance at the training (**Training Expenses**). You must reimburse us for all Training Expenses that we incur within 28 days of the date of any invoice that we issue to you for the Training Expenses.