

GENERAL TERMS

PART A. BACKGROUND

These General Terms set out the general terms and conditions which, unless specifically excluded, apply to all services and products provided by Connected Intelligence Pty Ltd to its clients.

A reference in a contract between Connected Intelligence Pty Ltd and a client to "Master Terms" is a reference to these General Terms.

PART B. INTRODUCTION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Terms:

Additional Devices means Devices additional to the Nominated Device Number.

Administration means routine administration activities in relation to a Managed Device or Managed Product on a regular or scheduled basis.

Administrative Exclusivity means:

- sole responsibility for the Administration, Monitoring, and Maintenance of Your information technology systems and infrastructure; and
- sole right to access or implement any change on these systems and infrastructure.

Autonomous Remediation means remediation effected by Us automatically.

Beyond Scope Services Fee means the fee We charge on an hourly basis for providing Beyond Scope Services, the rate of which is shown on the Website.

Beyond Scope Services means the services beyond the scope of what is included in a Contract and includes those services identified as such in:

- the Order Form;
- the Managed Product Terms in relation to a Managed Product; and
- these Terms.

Business Day means any day which is not a Saturday, Sunday or a public holiday at the location in which the Support and Management Services or Managed Product is to be provided.

Business Hours means 9:00am to 5:00pm (AEST) on a Business Day.

Business Hours Service Option means providing the Support and Management Services during Business Hours.

Claim means any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim).

Client means the corporation or other organisation named as client in the Order Form.

Confidential Information means:

- all information treated by the owning party (**discloser**) as confidential and provided to the other party (**recipient**) or of which the recipient becomes aware, except information that:
 - the recipient creates or lawfully obtains independently of the discloser; or
 - is public knowledge (other than as a result of a breach of confidentiality by the recipient);
- the terms of any Contract; and
- Our price information for any Connected Services.

Connected means Connected Intelligence Pty Ltd (ACN 602 767 180).

Connected Services means:

- Support and Management Services;
- provision of a Managed Product; or

c. Project Services.

Consequential Loss means any indirect, special, economic or consequential loss or damage or loss of revenue, profits, goodwill, bargain or opportunities or loss or corruption of data or loss of anticipated savings.

Consumer Price Index means the Consumer Price Index (All Groups) for the city of Sydney published by the Australian Bureau of Statistics.

Contract means a contract between Us and You being either:

- a Service Contract;
- a Managed Product Contract; or
- a Project Services Contract.

Default Interest Rate means the overdraft reference rate quoted by Our principal banker on the first day of the applicable month plus 2%.

Device means:

- a Server Device;
- a User Device; or
- a Network Device

owned or controlled by You.

Discounted Onsite Rate means the Standard Onsite Rate, discounted by 50%.

GST means the tax imposed by the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Hardware means an item of hardware, including all ancillary parts, software and accessories.

Hardware as a Service means Hardware that We lend to You or otherwise provide to You other than by sale or leasing.

Hosting Services means systems or services controlled by Us or a third-party supplier, for the purpose of providing access to Your data or applications over a network or internet service.

Implementation means the preliminary services We need to provide to enable Us to provide Support and Management Services or a Managed Product.

Implementation Fee means the fee, if any, for providing Implementation, set out in the Order Form.

Intellectual Property Rights includes all patents, copyright, rights in circuit layouts, registered designs, trademarks, written content, trade, business or company names and the right to have confidential information kept confidential.

Location means the location(s) specified in the Order Form or, if no location is specified, at the location We determine to be most appropriate.

Maintenance means routine maintenance activities in relation to a Managed Device or Managed Product on a regular or scheduled basis.

Managed Device is a Device that has been nominated by You to receive a specific service from Us.

Managed Product is a tangible item (e.g. hardware) or intangible item (e.g. software) that We supply to You (whether or not through a third party) and administer for You, including without limitation, third-party software applications and cloud services.

Managed Product Contract means a Contract to provide a Managed Product.

Managed Product Terms for a Managed Product means, in relation to a Managed Product, the terms located at the Website which:

- describe the Managed Product;
- set out the terms and conditions specifically relating to the Managed Product; and
- sets out the Beyond Scope Services that are not included within the Managed Product.

Management is:

- a. Administration;
- b. Monitoring; or
- c. Maintenance

(or some combination of these) of Managed Devices or Managed Products.

Monitoring means:

- a. the installation and use of an RMM Agent to monitor for certain Device-specific events; and
- b. where possible, perform Autonomous Remediation of any known faults arising from this.

Monthly Fee means the monthly fee set out in the Order Form.

Network Device means a switch, router, firewall, network printer or other IP enabled device.

Nominated Device Number means:

at the commencement of a Contract, the number of Devices that are nominated in the Order Form to receive the Support and Management Services or the Managed Product (Initial Number); and

at a later point in time, the Initial Number plus any Additional Devices permitted by Us under the Contract up to that point in time.

Normal Business Activities means Your operational activities performed by Your Representatives in the context of normal and ongoing IT operations.

Onsite Cover Option means:

- a. Standard Onsite Option;
- b. Discounted Onsite Option; or
- c. Unlimited Onsite Option.

Onsite Services are Support and Management Services provided by Us at the Location.

Order Form means the order form for Support and Management Services or a Managed Product submitted by You in the form and format determined by Us from time to time.

Our, Us or We means Connected.

Payment Option means payment by:

- a. credit card;
- b. direct debit; or
- c. other payment option offered or accepted by Us from time to time.

Primary Contact means Your Representative with responsibility for the relationship with Us, being the person nominated as such in the Order Form or any replacement person as advised by You in writing from time to time.

Project Services are services other than Support and Management Services or the provision of a Managed Product provided by Us following a request for same by You.

Project Services Contract means a Contract to provide Project Services following a request for same by You.

Project Services Terms means, in relation to Project Services, the terms which:

- a. describe the Project Services;
- b. set out the terms and conditions specifically relating to the Project Services; and
- c. set out the Beyond Scope Services that are not included within the Project Services.

Remote Services are Support and Management Services provided by Us remote from the Location using Our RMM Agent, telephone, email or by other methods We determine to be most appropriate.

Request means a request for Support or Management Services in accordance with the protocol outlined on the Website.

RMM Agent means remote monitoring and management software used to monitor for certain Device-specific events.

Representative means an employee, agent or contractor or other representative of a party.

Server Device is a server computer or a Storage Area Network (SAN) or Network Attached Storage (NAS) device that is eligible for manufacturer software updates and can be a physical or a virtual device.

Service Commencement Advice means Our written advice of the Service Commencement Date.

Service Commencement Date means:

- a. the date when We will commence providing the Support and Management Services or the Managed Product; and
- b. where Implementation is required, means the date immediately following completion of Implementation.

Service Contract means a Contract to provide Support and Management Services.

Service Disruption is the partial or full disruption or degradation, as assessed by Us, of more than one Managed Product, Server Device or Network Device.

Service Level is the set of service standards and inclusions as specified in the Order Form.

Service Option means:

- a. the Business Hours Service Option; or
- b. the Unlimited Service Option

as set out in the Order Form.

Set Up means what We need to purchase or provide in order to be able to provide a Managed Product.

Set Up Fee means

- a. the fee or charge to provide Set Up, set out in the Order Form; and
- b. if no fee or charge is shown, the equivalent of the Monthly Fee for Support and the Management Services or the Managed Product.

Special Conditions means the special conditions, if any, set out in the Order Form.

Standard Onsite Rate means same hourly rate as applies to the Beyond Scope Services Fee.

Support and Management Services means the following services:

- a. Support; and
- b. Management.

Support means Our assistance of Users in using Managed Devices or Managed Products.

Tax Invoice means an invoice complying with the requirements of the GST Law.

Term means

- c. the term of a Contract shown on the Order Form; and
- d. if no period is shown, 24 months.

Terms means these General Terms.

Third Party Charge means the charge (e.g. telecommunications carriage fees) levied on Us by a third party as a result of Your use of a Managed Product.

Ticket is a unique record generated by Us pursuant to clause 16.3.

Transition-Out Services means services to facilitate the safe passing of Your data to You or Your nominated IT provider upon the expiration or termination of a Contract.

Unlimited Onsite Cover means the Beyond Scope Services hourly rate does not apply.

Unlimited Service Option means providing the Support and Management Services between 9:00am to 5:00pm (AEST) on a Business Day and in relation to a Service Disruption means

providing those services 24 hours a day, 7 days a week, 365 days per year.

User means a Representative nominated by You to use a Managed Device.

User Device means a desktop computer, laptop computer, tablet or smartphone that runs Microsoft Windows, MacOS, Apple iOS or Google Android as the operating system of a version that is eligible for manufacturer software updates.

Website means Our website located at www.connected.com.au.

Web Portal means Our portal located at support.connected.com.au.

Work Role is the level of technical skillset required to perform a task as determined by Us, being, from least skilled to greatest skilled, Level 1, Level 2 or Level 3, used to determine the applicable Beyond Scope Fee.

Work Type is one of the following types of service:

- a. Remote Services;
- b. Onsite Services; or
- c. After Hours Services

for which coverage will vary according to the Order Form, measured in hours spent in 15-minute increments.

You or Your means the Client.

1.2 Interpretation

In these Terms, unless the context otherwise requires or permits:

- a. where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase will have a corresponding meaning;
- b. references to legislation or legislative provisions will include modifying, consolidating or replacing legislation or legislative provisions;
- c. references to months and years means calendar months and years;
- d. the use of headings are only for convenience and do not affect interpretation and any headings, underlinings or marginal notes are only included for ease of reference;
- e. references to clauses, paragraphs, annexures and schedules are references to clauses, paragraphs, annexures and schedules in these terms;
- f. if the day on which any act, matter or thing is to be done under or pursuant to this Deed is not a Business Day, that act, matter or thing may be done on the next Business Day;
- g. references to a party will include as the context requires respective executors, administrators, successors and permitted assigns;
- h. references to a person includes any other entity recognised by law;
- i. words denoting the singular number include the plural and vice versa;
- j. words denoting one gender include every gender;
- k. every covenant or provision applying to or binding more than one person will bind them jointly and each of them severally; and
- l. a reference to a discretion is a reference to an absolute and unfettered discretion.

PART C. CONTRACTS GENERALLY

2.1 Formation

A Contract is formed upon Us advising You in writing that We have accepted an Order Form.

2.2 Parties

The parties to the Contract are You and Us.

2.3 Terms of the Contract

The terms and conditions of the Contract shall comprise the following elements:

- a. the terms of the Order Form;
- b. any Managed Product Terms identified in the Order Form; and
- c. these Terms.

2.4 Subject matter of the Contract

The Contract shall govern:

- a. the Support and Management Services;
- b. the Managed Product detailed on the Order Form; or
- c. the Project Services agreed between You and Us as the case may be.

2.5 Confirmation of Contract

After the formation of a Contract, We may provide You with a copy of the terms of the Contract, provided that a failure to do so shall not affect the validity of the Contract or give rise to any liability on Our part.

2.6 Inconsistency

In the event of any inconsistency between the elements of a Contract, the following elements shall prevail in order of decreasing priority:

- a. the Special Conditions;
- b. the terms of the Order Form other than the Special Conditions;
- c. the Managed Product Terms; and
- d. these Terms.

2.7 Term

The Contract shall, unless terminated earlier under clause 29.1, continue for the Term which shall commence on the Service Commencement Date provided that where the Order Form contains elements of Support and Management Services which have different Service Commencement Dates, the Term shall commence from the Service Commencement Date which is last in time.

2.8 Necessity of a Service Contract

You cannot enter into a Managed Product Contract or a Project Services Contract unless at the time You are currently a party to a Service Contract and upon entering into one of those Contracts, the Service Contract is deemed to be varied at that time to also provide Support and Management Services in relation to the new Contract.

2.9 Extension of Term of a Service Contract

When the Term of a Managed Product Contract expires on a date which is later than the expiry date of the Service Contract in place, the expiry date of the Service Contract shall automatically extend to the later date.

2.10 Renewal Term

A Service Contract or Managed Product Contract will be automatically renewed for a subsequent Term of the same length, unless not less than:

- a. 90 days before the end of the current Term, You give Us written notice; and
- b. 14 days before the end of the current Term, We give You written notice

of an intention to not renew the Service Contract or Managed Product Contract beyond the end of the current Term.

2.11 Project Services Contract

Clauses 2.1- 2.10 (inclusive) do not apply to a Project Services Contract which shall be formed and on terms as the parties shall agree.

3 VARIATION OF A CONTRACT

3.1 Permitted variation

A variation to a Contract is permitted for:

- a. a Service Contract; or

- b. a Managed Product Contract where the variation relates to a change in the quantity of an existing Managed Product.

3.2 Requesting a variation

In addition to the variation to a Service Contract pursuant to clauses 2.8 and 2.9, a request to vary a Contract shall be made by You submitting an Order Form.

3.3 Variation takes effect

The variation shall take effect upon Us advising You in writing that We have accepted the relevant Order Form.

3.4 New contract

Where a new Managed Product is obtained, it shall not be a variation of an existing Managed Product Contract but shall be governed by a new Managed Product Contract.

4 DEVICES TO ACCESS

4.1 General

Under a Contract, You can access the relevant Support and Management Services or Managed Product using:

- a. a number of Managed Devices not exceeding the Nominated Device Number; and
- b. any Additional Devices on the terms set out in this clause 4.

4.2 Users

You shall:

- a. nominate Your Representatives to be Users through the Web Portal; and
 - b. upon the deletion or addition of one of Your Representatives as a User, You shall immediately advise of the change on the Web Portal
- and We shall be entitled to assume that a User identified on the Web Portal at a point in time is authorised by You to use the Support and Management Services and any Managed Device or Managed Product at that time, despite You having previously withdrawn that person's authority.

4.3 Advise number

At Our request, You shall within a timeframe and in the format requested by Us advise the total number of Devices accessing Support and Management Services or a Managed Product.

4.4 Requesting Additional Devices

You may request Additional Devices by submitting an Order Form and You shall be permitted to use the Additional Devices upon Us advising You in writing of Our acceptance of the relevant Order Form.

4.5 Your obligation to report

In addition to Your obligation under clause 4.3, You shall inform Us in writing within 10 Business Days of You first becoming aware that You have used Additional Devices that have not been approved in accordance with clause 4.4.

4.6 Our determination

Where We determine that You have used Additional Devices that haven't been permitted pursuant to clause 4.4, You shall request use of those Additional Devices by submitting an Order Form and You shall be permitted to use the Additional Devices upon Us advising You in writing that We have accepted the Order Form.

4.7 Term of Additional Devices

Unless we agree otherwise, the Term for an Additional Device shall be the same period as the Term in the Order Form for the Nominated Device Number where the Term shall commence from the date of Us advising You that We have accepted the Order Form whether under clause 4.4 or clause 4.6.

5 OUR GENERAL OBLIGATIONS

5.1 Provide the Connected Services

During the Term of a Contract, We will provide:

- a. the Support and Management Services;
 - b. the Managed Products; or
 - c. the Project Services
- as the case may be.

5.2 Location of Support and Management Services

We will provide the Support and Management Services:

- a. as Remote Services; or
- b. as Onsite Services where We determine in a given situation that Remote Services would be inadequate.

5.3 Days and hours of Connected Services

We will provide the Support and Management Services or the Managed Products during the days and hours identified in the Service Option requested by You in the Order Form.

5.4 Service standard

We must Use all reasonable endeavours to provide the Connected Services in a timely fashion and where a Service Level applies, in conformity with that Service Level.

5.5 Failure to meet service standard

You acknowledge that:

- a. We do not guarantee that a Service Level will be met;
 - b. all representations made within a Service Level are indicative only and a breach of a Service Level shall not give rise to your right to terminate a Contract or any liability on Our part;
 - c. We do not warrant that the Connected Services will be uninterrupted or error free;
 - d. We will not be liable to You in respect of any delay or failure to provide the Connected Services; and
 - e. if the Order Form specifies that credits or rebates will apply for a service failure, those credits or rebates are Your sole remedy in respect of service level failure.
- a. Our obligation to provide the Connected Services is suspended without liability for Us where the provision of Connected Services is impaired by:
- i. You;
 - ii. a third party;
 - iii. a failure or defect not caused by Us in third party hardware or software; or
 - iv. an event beyond Our reasonable control.

6 YOUR GENERAL OBLIGATIONS

6.1 General

You will have the obligations in relation to Connected Services during the Term of a Contract set out in this clause 6.

6.2 Accurate information

You will at all times provide true, complete and accurate information concerning Your IT system and the Managed Devices.

6.3 Facilitate Implementation

You will provide all co-operation to facilitate Implementation, including without limitation making such information, resources and facilities required by Us to provide the Support and Management Services, including:

- a. ensuring that any incumbent provider who is assisting You in transitioning to Us makes available the information, resources and facilities required by Us to provide the Support and Management Services; and
- b. maintain regular and complete backups of all of Your data.

6.4 Facilitate ongoing Connected Services

You must facilitate Our ongoing provision of the Connected Services by:

- a. taking all reasonable steps to ensure We have timely and accurate information, including:

- i. advising Us promptly of changes to the Managed Devices and Managed Products;
 - ii. notifying Us immediately of any Service Disruption or degradation in performance to Your IT environment; and
 - iii. promptly providing Us with information We request either at the commencement of Our services or periodically thereafter, as well as promptly notifying Us where any such information has changed;
- b. ensuring that the Managed Devices or Managed Products are in a fit state for use, including:
 - i. ensuring that all software installed on a Managed Device is fully licensed in accordance with its manufacturer's licencing policies; and
 - ii. ensuring a Managed Device continues to be covered by its manufacturer warranties and that We have all necessary warranty details;
- c. providing Us with timely and adequate access to Devices or Products that You require Us to provide Support or Management Services for, including:
 - i. Your facilities, premises, information, equipment, personnel, network and data; and outside of Business Hours wherever this is possible, or by agreement during Business Hours, where this is required; and authorising Us to employ any tools that We deem necessary in relation to any Managed Device or Managed Product.

6.5 Devices

You will meet Your obligations in relation to Additional Devices set out in clause 4.

6.6 Access

You authorise Us to install the RMM Agent on any Device or Managed Device to enable Us to perform the following activities to facilitate Our provision of Support and Management Services:

- a. monitor in real-time operating system and application event logs;
- b. update and execute scripted procedures affecting the operating system and applications;
- c. remote control the Device, Managed Device or Managed Product;
- d. access information or files; or
- e. maintain current information about Managed Devices or Managed Products for service or billing purposes.

6.7 Abide by directions

You must at all times comply with:

- a. Our reasonable and lawful directions in relation to the Connected Services; and
- b. all laws, regulations, policies and guidelines (including any 'acceptable use' policy of which We inform You) applicable to the Connected Services.

6.8 Safe work

You must provide a safe working environment for Our personnel who visit the Location to provide Connected Services.

6.9 Exclusivity

During the Term of a Contract, You:

- a. will not use another provider to provide the relevant Connected Services or Managed Products or services similar to the Connected Services;
- b. will grant Us Administrative Exclusivity;

- c. authorise Us to change administrator account passwords and agree that You or any third party appointed by You will not access or attempt to access any of Your IT systems or infrastructure;
- d. agree that if You or any third party appointed by You access or attempt to access any of the systems or infrastructure that is subject to a Contract We have the right, at Our sole discretion, to immediately the Contract or to suspend all Support and Management Services or Managed Products provided to You until We are satisfied that this condition has been fulfilled; and
- e. agree that in the event that We cancel or suspend Connected Services pursuant to this clause:
 - i. You will indemnify Us and hold Us harmless in relation to any loss, including financial loss and data loss, suffered by You as a result of the termination or suspension of the Service/s; and
 - ii. if We terminate the Contract pursuant to Our rights under this clause You must pay Us the outstanding value of the Contract in accordance with clause 29.3(e).

6.10 No responsibility

We will not be responsible for any failure or default caused by Your failure to perform Your obligations under this clause 6.

6.11 Delay

Where Our personnel are delayed from performing a Connected Service due to a delay caused by You, We may invoice You for those personnel at their hourly rate for the duration of the delay, where, despite Our reasonable efforts to do so, We have not been able to allocate them to other chargeable duties during the delay.

PART D. PAYMENTS

7 GENERAL

The obligation to make payments under a Contract is set out in this Part.

7.1 Payments

During the Term of a Contract, You are liable to make the following payments:

- a. any Implementation Fees;
- b. any Set Up Fees;
- c. any fees for Hardware; and
- d. the ongoing Monthly Fees specified in the Order Form, as adjusted in accordance with this clause 7; and
- e. any other fees or charges set out in this clause 7.

7.2 Support and Management Services

The following additional fees shall be payable for Support and Management Services:

- a. Remote Services shall be provided at no fee; and
- b. Onsite Services shall be charged at:
 - i. No fee, where You selected the Unlimited Services Option in the Order Form;
 - ii. the Standard Onsite Rate, where You selected the Standard Onsite Option in the Order Form; and
 - iii. the Discounted Onsite Rate, where you selected the Discounted Onsite Option in the Order Form
 based on the time involved in providing the Onsite Services.

7.3 Beyond Scope Services

Where We provide Beyond Scope Services You shall pay the Beyond Scope Fee for the time it takes (in minimum 15-minute increments) Us to provide the Beyond Scope Services

depending on the Work Type and the Work Role involved in providing the Beyond Scope Services.

7.4 Payment for Additional Devices

Whenever You use the Additional Devices, We shall charge You for the Additional Devices as follows:

- a. where We have permitted the Additional Devices pursuant to clause 4.4, You shall be charged at the then current rate for Additional Devices; and
- b. where We have determined pursuant to clause 4.6 that You have used Additional Devices, We shall charge You one hundred and fifty percentum (150%) of the then current rate for the Additional Devices until We have permitted the Additional Devices pursuant to clause 4.6, whereupon We shall charge You for them at the then current rate for Additional Devices.

7.5 Adjustment of Monthly Fees

At the commencement of each anniversary of the Service Commencement Date, the Monthly Fee shall increase by the greater of:

- a. the annual percentage increase in the Consumer Price Index last published; and
- b. three percentum (3%).

7.6 Pre-paid fees

If the Order Form require fees to be pre-paid:

- a. The relevant Connected Services will not be provided until You pay the pre-paid fees;
- b. We may suspend providing relevant Connected Services if the balance of the pre-paid fees will not cover Our fees for the Connected Services required;
- c. We may apply amounts You owe Us against the balance of the pre-paid fees in any manner We decide; and
- d. Pre-paid fees are non-refundable.

7.7 Expenses

You must expeditiously reimburse an out of pocket expense We incur where:

- a. the expense has been directly incurred by Us supplying the Connected Services to You (including without limitation, parts, travel expenses, labour and other ancillary expenses); and
- b. We supply reasonable evidence substantiating the expense.

8 THIRD PARTY CHARGES

8.1 Our responsibility

Subject to clause 8.2, We acknowledge that We are responsible for all Third Party Charges and that Your contribution towards those Charges is included in the Monthly Fees.

8.2 Your responsibility

Where:

- a. the Third Party Charges exceed what is paid in the Monthly Fees; or
- b. there is an increase in the Third Party Charges through Your use of a Managed Product which is other than reasonable

You are responsible for the excess or increase.

9 GST

9.1 GST exclusive

Unless stated otherwise, the fees stated in the Order Form exclude GST.

9.2 Value of taxable supply

The consideration payable by You under a Contract is the value of any taxable supply for which payment is to be made.

9.3 Payment of GST

Subject to Us supplying You with a Tax Invoice, if We make a taxable supply in connection with the provision of Connected Services for a consideration which represents its value, then You must pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

9.4 Amount of GST

If a Connected Service requires You to pay, reimburse or contribute to an amount paid or payable by Us in respect of an acquisition of a taxable supply from a third party, the amount required to be paid, reimbursed or contributed by You will be the value of the acquisition by Us less any input tax credit to which We are entitled plus, if Our recovery from You is a taxable supply, any GST payable under clause 9.3.

10 INVOICING AND PAYMENT

10.1 Provide Tax Invoice

We will provide You with a Tax Invoice for the Connected Services We provide to You:

- a. in accordance with any payment schedules specified in the Order Form; and
- b. in the absence of any payment schedules:
 - i. monthly in advance by direct debit for the monthly Fees; or
 - ii. monthly in arrears for non-recurring fees.

10.2 Payment of Tax Invoice

You must pay each Tax Invoice in full:

- a. by the due date specified in the Tax Invoice; or
- b. if no due date is specified, within 14 days of the Tax invoice date.

10.3 Late invoicing

Late invoicing does not affect Our right to payment or Your obligation to pay.

10.4 Debit payment

If You have nominated in the Order Form a payment option by credit card or direct debit:

- a. You authorise Us to arrange, through Our financial institution, a debit to Your nominated bank account or credit card of all amounts owing to Us under the Contract; and
- b. You agree to ensure that Your nominated bank account or credit card shall at all times maintain a sufficient balance to pay all outstanding amounts.

10.5 Payment by other means

We will accept Your application to pay for Connected Services by any means other than direct debit of a nominated bank account or credit card if:

- a. that means satisfies Our credit assessment and approval criteria; and
- b. You pay a 4% administration fee in addition to the Monthly Fees.

10.6 Overdue Payment

If a payment is overdue then

- a. in addition to Our other rights, including Our right to terminate under clause 29.1, We may:
 - i. withhold providing Connected Services under any Contract;
 - ii. charge interest on the overdue amount at the Default Interest Rate, calculated daily;
- b. You must indemnify Us against all costs and expenses (including legal expenses on a solicitor / client basis) incurred by Us in attempting to recover the overdue amount.

PART E. SERVICE CONTRACTS

11 BACKGROUND

This part E deals specifically with Service Contracts.

12 IMPLEMENTATION

12.1 General

This Clause 12 applies in the event that Implementation is necessary.

12.2 Phases

Implementation is provided in the following phases:

- a. Our receipt of Your provision of information relating to Normal Business Activities and related requirements;
- b. Our installation of systems and tools that enable Us to provide services;
- c. Our discovery of information relating to Your IT systems and environment in readiness for commencement of the Connected Services; and
- d. addressing certain risks or recommendations arising from any of the above phases, such as inadequate backups, software licensing issues or Device warranty coverage.

12.3 Completion of Implementation

At the completion of the Implementation, we will provide:

- a. the Service Commencement Advice;
- b. any Set Up

and following this begin to provide You with Connected Services based on Your current environment and the information You have provided to Us pursuant to clause 12.2 a.

12.4 Ongoing communication

We may continue to communicate with You regarding certain risks and recommendations depending on their level of importance.

13 SUPPORT AND MANAGEMENT SERVICES

13.1 Support

We will provide Support to facilitate performance of Normal Business Activities.

Management

We will provide the following Management services to facilitate performance of Normal Business Activities:

- a. Administration in relation to Managed Devices and Managed Products; and
- b. Monitoring in relation to Managed Devices and Managed Products;
- c. Maintenance in relation to Managed Devices;
- d. Any other services referred to in the Managed Product Terms; or
- e. as otherwise specified on the Order Form on the condition that the relevant Managed Devices or Managed Products are fit for that purpose.

13.2 Additional Management responsibilities

In addition to Administration, Monitoring and Maintenance, our general responsibilities for Managed Devices and Managed Products are:

- a. facilitating diagnostic and resolution activities relating to the manufacturer warranty coverage of a hardware or software product where it is a version or model that We support at that time;
- b. participating in or facilitating diagnostic and liaison activities with third party software providers;
- c. providing Our standard periodic reporting at any given point in time;
- d. maintaining up to date documentation beneficial to management services as well as recovery, in the event of a systems failure

provided that these services are conditional upon You having given Us sufficient information of Your IT environment and requirements.

14 MONITORING

14.1 General

We shall provide Monitoring Services to facilitate Your Normal Business Activities.

14.2 Our determination

We shall determine the required Monitoring having regard to the specific requirements of the Managed Device or Managed Product, being comprised of any one of the following, or a combination thereof:

- a. availability metrics including cloud service and network uptime;
- b. resource utilisation metrics including CPU, RAM and storage;
- c. performance metrics including disk and network latency;
- d. software alerts including operating system and application events; and
- e. scheduled tasks including backup software job definitions; or
- f. as otherwise specified on the Order Form.

15 MAINTENANCE

15.1 General

We shall provide Maintenance to facilitate Your Normal Business Activities.

15.2 Our determination

We shall determine the required Maintenance having regard to the specific requirements of the Managed Device or Managed Product, being comprised of any one of the following, or a combination thereof:

- a. operating system patches deemed by the relevant software provider to be critical or security related, performed routinely depending on the priority of the update(s);

- b. supported third-party application patches;
- c. Anti-virus definition and signature updates as needed where it is a Managed Product, performed routinely;
- d. disk clean-up or temporary file removal; or
- e. preventative measures for some monitored services, performed as required or in response to Monitoring.

16 REQUEST FOR CONNECTED SERVICES

16.1 User Request

A User may Request Connected Services in relation to their use of a Managed Device.

16.2 Primary Contact Request

The Primary Contact may Request Connected Services in relation to any Managed Device or Managed Product.

16.3 Request Process

The following process shall apply upon a Request being received:

- a. on receipt of a Request, a Ticket will be generated and a unique ID assigned to it;
- b. on Our acceptance of a Request, We shall send an email of confirmation that includes the Ticket details and any further communication in relation to the Ticket will contain its unique ID; and
- c. to ensure timely handling of Your Ticket You authorise Us to provide the services requested (even if they are Beyond Scope Services) until You instruct Us not to.

PART F. BEYOND SCOPE SERVICES

17 GENERAL BEYOND SCOPE ITEMS

17.1 General

It is a Beyond Scope Service if:

- a. You request Support and Management Services for a Managed Device or Product, from a Device that is not a Managed Device;
- b. You request Support and Management Services that We don't provide, from a Managed Device; or
- c. We provide the same Services in response to unsuccessful Autonomous Remediation unless You instruct Us not to.

17.2 Beyond Scope Services Fee

The Beyond Scope Services Fee shall be determined having regard to the Work Type and the Work Role as well as the Service Option and the Onsite Option.

PART G. HOSTING, HARDWARE AND SOFTWARE

18 HOSTING

18.1 General

We may supply You with Hosting Services in respect of certain Managed Products such as third-party software

applications, website hosting, off-site backups, cloud services and other Managed Products as described on the Order Form.

18.2 Licence

You grant Us a licence to copy and store Your data or applications for the sole purpose of providing You with Hosting services.

18.3 Meet standards

The data that We host or store for You:

- a. shall not involve pornography or be data that We regard as being offensive or defamatory; and shall
- b. shall meets certain minimum standards we set from time to time

failing which, We may:

- a. terminate the Hosting Services;
- b. suspend the Hosting Services; or
- c. direct You to remove Your data.

18.4 Protection of data

We will take reasonable steps to protect Your data or applications against intrusions, viruses, Trojan horses, worms, time bombs or other similar harmful software which may affect Your service, but We do not warrant that any Managed Products or services directly or indirectly involved in the supply of Managed Products or services to You are error-free.

18.5 Prevent unauthorised access

You will prevent any unauthorised access to Your service and Our service platform including not disclosing User names and passwords that We provide You without Our prior consent.

18.6 Responsibility for Users

You are responsible for the use of the Hosting Services by Users.

18.7 Deletion of data

We will endeavour to provide You with prior notice, however We may delete Your data within seven days of the termination cancellation of the Hosting Services.

19 SALE OF HARDWARE

19.1 General principles

To the extent that the Connected Services involve the sale and supply of a piece of Hardware:

- a. the risk of loss of or damage to the Hardware passes to You on delivery;
- b. You must insure the Hardware when risk passes to You for its full value and ensure that Our interest is noted on the insurance policy;
- c. upon Our demand, You must provide to Us written evidence (including a copy of the insurance policy) to Our satisfaction of Your compliance with clause 19.1(b);
- d. We remain the legal and beneficial owner of the Hardware until all amounts due in respect of the Hardware and any other amounts You owe Us, actually or contingently presently or in future, have been paid to Us in cleared funds, even if You install the Hardware or commingle it with other goods; and

- e. You must not sell, dispose of, assign or encumber the Hardware unless and until You have paid for it in full.

19.2 Limited warranty

To the full extent permitted by law, the only warranty given in relation to the Hardware is the Hardware manufacturer's warranty and only to the extent that the warranty is capable of being assigned to You.

19.3 International controls

You acknowledge:

- where Hardware is subject to export control laws or regulations (including under export laws and regulations), You must not directly or indirectly export, re-export, distribute or otherwise act in violation of such laws and regulations; and
- the United Nations Convention on Contracts for the International Sale of goods does not apply.

20 HARDWARE AS A SERVICE

20.1 General principles

To the extent that the Connected Services involve Hardware as a Service at the Location, You acknowledge that the relevant Hardware:

- remains Our property;
- must only be used by You for the purposes of receiving Connected Services from Us; and
- must be kept secured from loss or damage.

20.2 Loss or damage to Hardware

If the Hardware in Your possession or control is lost, stolen or damaged:

- You must notify Us without delay;
- You must pay Us the replacement cost of the Hardware calculated as the recommended retail price at the date the Hardware was lost, stolen or damaged less any amount We recover under an insurance policy; and
- Your obligation to pay the required fees in respect of the Hardware is absolute and continues notwithstanding its loss, destruction or damage or the termination of the Contract.

20.3 Right to re-possess

We may re-take possession of the Hardware if:

- You breach the Contract; or
 - We reasonably believe that We need to do so to protect Our title to the Hardware; or
- and You irrevocably authorise Us to enter the Location to enable Us to give effect to this clause and We shall not be liable to You in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by You as a result of any action taken by Us under this clause.

21 INSPECTION AND INSURANCE

21.1 Allow inspection

You must allow Us to enter to enter the Location to inspect any Hardware in Your possession upon reasonable notice from time to time.

21.2 Insurance claims

You must notify Us of all insurance claims made by You in respect of the Hardware and or any equipment we provide to You.

21.3 Entitlement to Insurance proceeds

If:

- any Hardware and/or any equipment we provide to You belonging to Us is sold or otherwise disposed of by You; or
- if any insurance claim is made in respect of it

We are entitled to trace and receive the sale or insurance proceeds and to this end You must keep the proceeds of sale or insurance in a separate bank account on trust for Us.

21.4 Reimbursement of costs

You must reimburse to Us all costs incurred by Us in exercising Our rights under this clause.

22 SOFTWARE

22.1 General principles

To the extent that Connected Services involve the creation or licensing of software that We own or have licensed or have sub-licensed to You, You acknowledge:

- We warrant that Our software will operate substantially in accordance with its accompanying documentation during the Warranty Period; and
- We will use Our reasonable efforts to correct any Defect provided:
 - You notify Us of the Defect during the Warranty Period;
 - You have used the software in accordance with its accompanying documentation and Our recommendations;
 - the software has not been used on or in conjunction with equipment or software not approved by Us;
 - the software has not been modified by anyone other than Us;
 - the Defect is not due to a change in Your IT or physical environment after delivery of the software; and
 - You are not in breach of the Contract.

22.2 Meaning

In clause 22.1:

Defect means a reproducible failure of the software to work substantially as described in the documentation that accompanies it; and

Warranty Period means 30 days from the date of delivery, unless We specify in writing a different period in the relevant Managed Product Terms.

23 INTELLECTUAL PROPERTY AND MATERIALS

23.1 Our materials

Unless otherwise specified in writing, We own exclusively all Intellectual Property Rights in material, including software, that We design, create, modify, supply or license, even if it was created or modified for or suggested by You.

23.2 License to Use Our materials

To the extent necessary for You to receive the benefit of Connected Services, We grant You a non-exclusive, non-transferable, licence to use Our materials.

23.3 Licence to use Your materials

If any of Your materials become combined with Our materials with Your knowledge and without Your objection, then We have a perpetual, royalty-free, irrevocable, on exclusive license to copy, use, adapt and distribute and sublicense those materials in the course of Our ongoing business.

23.4 Third party principles

Where in providing Connected Services, We supply You with materials (including software) provided or licensed by third parties:

- You must comply with the terms of any third party contract or licence and You indemnify Us against any loss, damage, claim, liability or demand We incur due to Your breach of that a third party contract or licence; and
- You must comply with all laws applicable to licensing of software or the protection of intellectual property; or

- c. You must not do anything with respect to those materials that represents a risk to Us or may represent a risk to Us in the future failing which we may terminate the Contract without notice to You.

PART H. PPS LAW

24 PPS LAW

24.1 General principles

This clause applies to the extent that a Contract provides for or contains a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law") (or part of it). The security interest granted to Us is a 'purchase money security interest' ("PMSI") to the extent that it can be under section 14 of the PPS Law.

24.2 Right to register security interest

We may register Our security interest and You must do anything (such as obtaining consents and signing documents) which We require for the purposes of:

- ensuring that Our security interest is enforceable, perfected and otherwise effective under the PPS Law;
- enabling Us to gain first priority (or any other priority agreed to Us in writing) for Our security interest; and
- enabling Us to exercise rights in connection with the security interest.

24.3 Rights additional

Our rights under a Contract are in addition to and not in substitution for Our rights under other law (including the PPS Law) and We may choose whether to exercise rights under a Contract and/or under such other law, as We see fit.

24.4 Provisions not applying

The following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of a Contract in respect of goods that are not used predominantly for personal, domestic or household purposes: sections 95 (notice of removal of accession to the extent it requires Us to give a notice to You), 96 (retention of accession), 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires Us to give a notice to You); section 132(3) (d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

24.5 Provisions applying

The following provisions of the PPS Law: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on Us and You agree that in addition to those rights, We shall, if there is default by You, have the right to seize, purchase take possession or apparent possession, retain, deal with or dispose of any Hardware and/or any Equipment we provide to You, not only under those sections but also, as additional and independent rights, under a Contract and You agree that We may do so in any manner We see fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

24.6 Waive rights

You waive Your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

24.7 No disclosure of information

Neither party shall disclose information of the kind that can be requested under section 275(1) of the PPS Law. You must do everything necessary on Your part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to Us the benefit of section 275(6)(a) and We shall not be liable to pay damages or any other compensation or be subject to injunction if We breach this sub-clause.

24.8 Not to create security interest

You must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Hardware and/or any equipment we provide to You other than with Our express written consent.

24.9 No leasing or hire

You must not lease, hire, bail or give possession of ('sub-hire') the Hardware and/or equipment we provide to You to anyone else unless We (in Our absolute discretion) first consent in writing. Any such sub-hire must be in writing in a form acceptable to Us and must be expressed to be subject to Our rights under a Contract.

24.10 Take all steps

You must take all steps including registration under PPS Law as may be required to:

- ensure that any security interest arising under or in respect of the sub hire is enforceable, perfected and otherwise effective under the PPS Law;
- enabling Us to gain (subject always to Our rights) first priority (or any other priority We agree to in writing) for the security interest; and
- enabling each of Us to exercise Our respective rights in connection with the security interest.

24.11 Right to recover

We may recover from You the cost of doing anything under this clause 24, including registration fees and the costs of notification.

25 CONFIDENTIALITY

25.1 General principles

The following general principles apply:

- a party must not Use or disclose the other party's Confidential Information without its prior written approval;
- each party must take all reasonable steps to ensure that its employees and agents do not use or disclose the other party's Confidential Information;
- a party may disclose Confidential Information where required by law or the rules of a stock exchange; and
- this clause 25.1 survives termination of the Contract.

26 NO SOLICITATION

26.1 No approach

Neither party may approach Representatives of the other party to the Contract, with an offer of:

- Employment;
- appointment of agency; or
- independent contract

during the term of the Contract or for 12 months after its expiry or termination.

26.2 Exception

For the avoidance of doubt, nothing in clause 26.1 prevents either party from engaging a Representative in a way prohibited in that clause as a result of the Representative responding to a public notice, in the absence of any solicitation provided that if this occurs then the engaging party will pay a replacement recruitment fee to the other party of \$15,000 plus any applicable GST.

27 INDEMNITY AND HOLD HARMLESS

You must indemnify and hold harmless Us or Our Representatives against any loss (including reasonable legal costs and expenses) or liability We or Our Representatives incur or suffer arising from any proceedings where such loss or liability was caused by:

- a. Your breach of a Contract; or
- b. Your wilful, unlawful or negligent act or omission.

28 LIMITATION OF LIABILITY

28.1 Rights and remedies for non-PDH goods costing no more than \$40,000

If We supply You with goods or services not of a kind ordinarily acquired for personal, domestic or house hold use or consumption but costing no more than \$40,000 You have extensive rights under the Australian Consumer Law including consumer guarantees and remedies.

28.2 Liability for Connected Services

In relation to the Connected Services, Our liability for failure to comply with a consumer guarantee is limited to:

- a. supplying the Services again; or
- b. paying the cost of having the services supplied again.

28.3 Liability for goods

In relation to any goods we provide, Our liability for failure to comply with consumer guarantee (other than certain guarantees about ownership and undisturbed use) is limited to:

- a. replacing the goods or supplying equivalent ones;
- b. repairing the goods;
- c. paying the cost of replacing the goods or of acquiring equivalent ones; or
- d. paying the cost of having the goods repaired.

28.4 Exclusion of implied terms and limitation of liability

Subject to clauses 28.2 and 28.3;

- a. any representation, warranty, condition, guarantee or undertaking that would be implied in these terms by legislation, common law, equity, trade, custom or usage or otherwise is excluded to the fullest extent permitted by law;
- b. We do not warrant or represent the performance, accuracy, reliability or continued availability of Our goods and services or that they will be free from fault, error or interruption;
- c. under no circumstances shall We be liable to You for:
 - i. any Claim for any Consequential Loss that You suffer in any way, however caused by Us and You release Us from any such Claim;
 - ii. any loss of Your for data; and
- d. to the full extent permitted by law, Our maximum aggregate liability under a Claim, whether for breach of a Contract or in negligence or in any other tort or for any other common law or statutory cause of action or otherwise is the amount equal to the total fees You have paid to Us under the Contract in the preceding year.

29 TERMINATION AND SUSPENSION OF A CONTRACT

29.1 Right to terminate or suspend

We may, at Our discretion, terminate a Contract or suspend performance of the Contract immediately if You:

- a. breach the Contract and fail to rectify the breach within 14 days after receiving a notice detailing the breach and requiring that it be rectified;
- b. become insolvent;
- c. cease, or threaten to cease, carrying on Your business;
- d. exceed Your credit limit or there is an adverse change in Our credit assessment of You, or if You (verbally, or otherwise) deny the existence of the Contract or deny

that You are bound by the Contract or any of its terms or conditions;

- e. have used Connected Services for unauthorised, criminal or unlawful activity or in a manner that contravenes a software licence agreement; or
- f. an Administrator or Controller (as those terms are defined in the Corporations Act 2001) is appointed in respect of you or any of Your assets.

29.2 Prior rights unaffected

Termination of a Contract does not affect a party's rights of action based on any breach by You before the termination.

29.3 Our rights on termination

On termination, We may at Our discretion:

- a. retain all moneys paid to Us under the Contract;
- b. provide You with an invoice for all unpaid fees and expenses and any costs incurred by Us as a result of termination;
- c. repossess any of Our property in Your possession, custody or control;
- d. pursue any additional or alternative remedies provided by law; and
- e. If You terminate a Contract prior to its expiry (or if We terminate the Contract before its expiry for any reason authorised under the Contract), then You must pay Us within 14 days of invoice, the equivalent of the Monthly Fee multiplied by the number of months remaining in the Contract.
- f. You recognise that the termination fee in clause 29.3(e):
 - i. is a reasonable pre-estimate of Our loss and damage arising from an early termination of a Contract; and
 - ii. is without prejudice to any other rights We may have to recover other sums from You.
- g. You acknowledge that We may recruit staff, purchase software licenses, purchase infrastructure, engage third party providers, and incur other expenses in order to provide the Connected Services to You and You acknowledge that the payment in accordance with clause 29.3 is a fair and reasonable equivalent to these costs incurred by Us.
- h. upon expiry or termination of a Contract each party must return any property belonging to the other party within 7 days.
- i. Should the Service Contract be terminated for any reason We no longer have any obligation to retain Your data or any other intellectual property of Yours on Our infrastructure or systems or that of Our suppliers and We may remove this data as at the date of service cancellation. It is Your responsibility to ensure that any data or intellectual property residing on Our systems or infrastructure is backed up prior to the cancellation of the Contract.

30 TRANSITION-OUT SERVICES

You acknowledge that:

- a. there is no obligation on Us to provide Transition-Out Services;
- b. should you wish us to provide Transition Out Services we shall enter into good faith negotiations to determine the fees and expenses and other terms for Us providing the Transition-Out Services;
- c. unless We agree otherwise:
 - i. We shall determine the methodology to be utilised in providing the Transition-Out Services;

- ii. the period for the scoping and implementation of the Transition-Out Services shall not be less than 90 days from the expiration or termination of the Contract;
- iii. You shall ensure that your nominated IT provider, if any provides all due co-operation with us to facilitate the Transition-Out Services; in addition to paying the agreed Transition-Out Services fees and expenses, You shall be liable to continue to pay the Monthly Fees payable immediately prior to the expiration or termination of the Contract until the Transition-Out Services are finalised; and
- v. We will provide any Transition Out Services with all due care and professionalism provided that any failure to deliver the Transition-Out Services or for any delay in doing so shall not give rise to Our liability.

31 NATURE OF RELATIONSHIP

The Contract establishes the relationship of You as principal and Us an independent contractor and neither party has any authority to bind the other by contract or otherwise.

32 SUBCONTRACTING

We may sub-contract the performance of our Obligations under a Contract his agreement.

33 ASSIGNMENT AND NOVATION

33.1 Assignment and Novation by Us

We may at any time:

- a. assign any of Our rights under a Contract; or
- b. transfer by novation any of Our rights, benefits or obligations under a Contract to another person without Your prior consent and without giving You prior notice.

33.2 Assignment and Novation by You

You may not:

- a. assign any of Your rights under a Contract; or
- b. transfer by novation any of Your rights, benefits or obligations under a Contract to another person without Our prior written consent which We can withhold in Our discretion.

34 NOTICES

34.1 Notice details

All notices must be:

- a. in writing;
- b. signed by the party giving it (or its authorised representative); and
- c. sent to a party's service address.

34.2 Service address

A party's service address is any of:

- a. in the case of a corporation, its current registered office;
- b. the parties' business addresses set out in the Order Form; or
- c. any other address a party nominates, by written notice to the other party, as a service address.

35 GENERAL

35.1 Severability

If anything in a Contract is unenforceable, illegal or void then it is severed and the rest of the Contract remains in force.

35.2 Variation

An amendment or variation to a Contract is not effective unless it is in writing and signed by the parties.

35.3 Waiver

- a. A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right;

- b. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right;
- c. A waiver is not effective unless it is in writing; and
- d. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

35.4 Entire agreement

The Contract comprises the entire agreement between the parties with respect to the relevant Connected Services and supersedes all prior agreements regarding the relevant Connected Services.

35.5 No reliance

You warrant that You have not relied on any representation made by Us which has not been stated expressly in the Contract.

36 APPLICABLE LAWS AND DISPUTES

36.1 Applicable laws

A Contract is subject to the laws that apply in New South Wales and legal proceedings relating to a Contract or any dispute about it must be commenced in the courts of New South Wales.

36.2 Arbitration

Any dispute or difference arising in connection with a Contract will be submitted to arbitration in accordance with and subject to the Institute of Arbitrators and Mediators Australia expedited Commercial Arbitration Rules.