



## **GENERAL TERMS AND CONDITIONS –**

### **SECUREOFFICE SCHEDULE**

#### **1. Service Schedule application**

- 1.1 The terms of this Schedule apply where the Supplier is supplying SecureOffice services to the Customer, as described in the Solutions Document. In accordance with the General Terms and Conditions these terms take precedence over any other terms in respect of the supply of SecureOffice in the case of any inconsistency.

#### **2. SecureOffice Terms and Conditions**

- 2.1 The SecureOffice Services are provided on the basis of the terms set out in Appendix 1. You agree to the terms contained in Appendix 1.
- 2.2 A reference to 'You' or 'Your' is a reference to the Customer.

## APPENDIX 1

### 1 DICTIONARY

1.1 In this Agreement, unless the context requires another meaning:

**Agreed Equipment** means the Customer's servers, desktops, printers, network devices and other devices as documented in the Supplier Quotation or Statement of Work, and amended from time to time by written agreement.

**Client-Owned IP** means the IP of Services described in the Supplier Statement of Work as delivering Client-Owned IP.

**Commencement Date** means in respect of a Service the date that You sign the Supplier Quotation or the Service Start Date, whichever is the later;

**Commercialise** includes, without limitation:

- (a) to manufacture, sell, license, assign or hire for commercial benefit or otherwise exploit a product or process or other subject matter in which Intellectual Property rights subsist;
- (b) to provide a service for commercial benefit;
- (c) to license or authorise any person to do any of the above for commercial benefit; or
- (d) any acts that are related to the acts set out in (a), (b) or (c),

but excludes a Party licensing Intellectual Property to a person merely to have that person perform activities on behalf of that Party and for that Party's own non-commercial purposes, and **Commercialisation** is similarly construed.

**Confidential Information** means:

- (a) in relation to each party and its RBCs, all information relating to each party's business, employees, suppliers, contractors, finances, customers, products and services, strategies and plans, technical information, know-how and other information in relation to its business; and
- (b) in the case Supplier and its RBCs, it also specifically includes technical information, know-how and other information relating to the Services,
- (c) no matter how recorded, but does not include any information that:
  - (i) is already known to the recipient;
  - (ii) comes into the public domain otherwise than through any default of the recipient party or any person acquiring the same from the recipient party; or
  - (iii) is disclosed to the recipient party by a third party without involving any breach of confidence;

**Contracted Term** means the Initial Term or Extended Term (if any);

**Cooling-off Period** means the time, if noted in the Supplier Quotation, during which You can withdraw from this Agreement without penalty. It is provided to allow You to experience Supplier's services and withdraw from the contract if these services do not suit Your business. During this period both parties will operate in good faith to implement the Supplier Services, and You will make payment upon Tax Invoices properly presented. Upon written request by You within the Cooling-off Period and provided that all presented Tax Invoices have been paid by You, Supplier will engage with a Third Party appointed by You to return Products and hand over management of Your Services to a Third Party. A Cooling-off Period will not apply if the Supplier Quotation does not display a Cooling-off Period;

**End User** means an individual, company or other entity (if any) to whom You provide services using the Services;

**Extended Term** has the meaning given to it in Clause 4.1;

**Fair Use Policy** means the fair use policy for the Services as set out on the Supplier website at [www.Supplier.com.au](http://www.Supplier.com.au) as amended and varied by Supplier from time to time;

**Fees** means, for each Service or any Products, the charges payable to Supplier for that Service or Products as specified in the Supplier Quotation;

**Force Majeure** means a circumstance beyond the reasonable control of the parties, which results in a party being unable to perform on time an obligation under this Agreement (other than an obligation to pay). These circumstances may include acts of God, lightning strikes, earthquakes, floods, storms, fires and any natural disaster, acts of war, terrorism, riots, civil commotion, malicious damage and strikes, failure of electricity or equipment break down;

**GST** means a goods and services tax, consumption tax, value-added tax, retail turnover tax or a tax of a similar nature;

**Products** means the items ordered by You and as specified in a Supplier Quotation; for the purposes of clarity, this can include software and/or licencing and/or maintenance agreements;

**Initial Term** has the meaning given to it in Clause 3;

**Intellectual Property Rights** means all copyright, patents, patent applications, trade marks (whether registrable or not) and designs (whether registrable or not), eligible circuit layout rights, trade secrets, know-how and all other intellectual property rights;

**Intellectual Property or IP** includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, trademarks (including service marks), designs and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields recognised anywhere in the world, but does not include Moral Rights and the rights of performers. means all copyright, patents, patent applications, trade marks (whether registrable or not) and designs (whether registrable or not), eligible circuit layout rights, trade secrets, know-how and all other intellectual property rights;

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth), as amended or replaced from time to time;

**Managed Services** means the services described in Clause 7;

**People** means the relevant party's directors, officers, employees, agents, contractors, advisers and representatives;

**Pre-existing Supplier IP** means any IP owned by Supplier other than that IP created specifically to deliver the Services;

**Products** means the items ordered by You and as specified in a Supplier Quotation; for the purposes of clarity, this can include Third Party software and/or Third Party licencing and/or Third Party maintenance agreements and/or Third Party Recurring Services;

**RBC** means a related body corporate as defined by the Corporations Act (or any replacement);

**Recurring Services** means Services which are delivered on a continuing basis and which are invoiced periodically;

**Satisfaction Guarantee** means, if noted in the Supplier Quotation, the facility for You to withdraw from a Recurring Services contract should you be dissatisfied with Our performance of the Supplier Statement of Work. You will provide notice of any dissatisfaction in a timely manner and allow Supplier a commercially reasonable period to attempt to resolve these issues to Your satisfaction. In the event that We are unable to satisfy your needs You may request in writing that we terminate the contract. Provided that all presented Tax Invoices have been paid by You, Supplier will engage with a Third Party appointed by You to return Products and hand over management of Your Services to a Third Party. The parties agree that payment will continue to be required by You for Third Party Recurring Services that have a remaining term, until the expiry of said term. A Satisfaction Guarantee will not apply if the Supplier Quotation does not display a Satisfaction Guarantee;

**Services** means the services ordered by You as specified in a Supplier Quotation or Supplier Statement of Work;

**Service Start Date** means the earlier of:

- (a) the date on which Supplier first notifies the Customer that the Services are ready for use; and
- (b) the date on which the customer first uses the Service;

**Software Development & Maintenance Services** means the services described in Clause [5](#);

**Services IP** means any Intellectual Property created by or on behalf of Supplier for the purposes of delivering the Services.

**Shared IP** means the IP of Services described in the Supplier Statement of Work as not delivering Client-Owned IP.

**Tax Invoice** means an invoice in the format required by the law and which also shows the amount of GST payable by Supplier in respect of the relevant Fees;

**Third Party** means a party not being a party to this Agreement;

**Third Party Recurring Service** means a Recurring Service provided by a Third Party, for which Supplier may be a wholesaler. Whilst Supplier does not guarantee or warrant the performance of a Third Party Recurring Service, We will work with You and the Third Party to resolve issues should they occur during the Contracted Term.

**Third Party Recurring Service Terms** means the licence and usage terms specified by the Third Party that provides the Recurring Service;

**Third Party IP** means IP which is owned by a person other than the Parties and is Used, or proposed to be Used, for the Services.

**Supplier Statement of Work** means a document titled “Statement of Work” (or “Scope of Work”, or a document of similar intent) issued by Supplier and signed by You which describes the Services and Products that Supplier will supply to You and the Fees Payable;

**Supplier Quotation** means the quotation or proposal issued by Supplier and signed by You which describes the Services and Products that Supplier will supply to You and the Fees Payable (which may be in the form of a Solutions Document);

**Wholesale Provider** means a supplier who provides all or part of a service, hardware or product which Supplier supplies to You.

**You and Your** means the Customer;

**Your Content** means any material (including data), in which Intellectual Property Rights subsist, which Supplier will host, transmit or otherwise need to use, modify or copy to provide You with the Services;

## GENERAL TERMS AND CONDITIONS

### 2 DURATION

- 2.1 Subject to termination under Clause 18, this Agreement commences on the Commencement Date and will continue until Supplier ceases to supply the Services to You.
- 2.2 Notwithstanding clause 2.1, clauses 14 (intellectual property) and clauses 15 (confidential information) and shall survive the expiry or termination of this Agreement.

### 3 INITIAL TERM FOR SERVICES SUPPLIED UNDER THIS AGREEMENT

- 3.1 The Initial Term for a Service is stated in the Supplier Quotation and commences on the Service Start Date.
- 3.2 The Initial Term for one-off Services under a Supplier Quotation or Statement of Work is the time required to complete the Services.
- 3.3 Where a Cooling-off period applies and You notify Supplier in writing (within the Cooling-off Period) that You wish to take advantage of the Cooling-off Period, the Initial Term shall expire when the Cooling-off Period completes, unless a longer term is provided for within the Third Party Recurring Service Terms.
- 3.4 Where a Satisfaction Guarantee applies and You notify Supplier in writing that You wish to take advantage of the Satisfaction Guarantee, the Initial Term shall expire when the contract is terminated pursuant to the Satisfaction Guarantee.

### 4 SERVICES AND PRODUCTS

- 4.1 You agree to purchase the Services for the Initial Term specified in the relevant Supplier Quotation.
  - a) On expiry of the Initial Term the Recurring Services (other than Third Party Recurring Services) provided under this Agreement shall automatically extend for successive 90-day periods (**Extended Term**) until either party terminates the Recurring Services in accordance with Clause 18.
  - b) On expiry of the Initial Term the Third Party Recurring Services provided under this Agreement shall automatically extend for successive periods

**(Extended Term)**, the length of which will depend on the contract period defined by the Third Party, until either party terminates the Recurring Services in accordance with Clause 18.

- 4.2 You agree that automatic renewal as per clause 4.1 is an essential contract term as Supplier needs advance notice in the allocation of resources in the provision of Recurring Services to you and will need sufficient notice to reallocate these resources. Without this notice the parties agree that it is reasonable to foresee that Supplier will experience financial loss if this agreement is terminated prior to the Extended Term expiry.
- 4.3 If Supplier agrees with You to provide a Service or provide Products by a particular date, You agree that the nominated installation or supply date is a target date only which Supplier will use reasonable endeavours to meet. Supplier is not liable to You for any loss or damage suffered by You in connection with any failure to meet any agreed or represented installation or supply date.
- 4.4 Where We are engaged to manage your overall IT infrastructure, We will put appropriate measures in place to provide commercially reasonable protection from general IT security threats.
  - a) We cannot and do not guarantee the security of your network, systems or business.
  - b) We cannot fix all security issues.
  - c) We may not be able to resolve security issues that exist in Third Party software, hardware or systems.
  - d) If You decline to implement commercially reasonable security solutions that We propose and a subsequent security breach occurs that these security solutions would have likely prevented, We reserve the right to charge You on a time and materials basis for remediation action required.

## **5 SOFTWARE DEVELOPMENT & MAINTENANCE SERVICES**

- 5.1 The services performed by Supplier will be those specified in the Supplier Statement of Work.
- 5.2 Supplier may install its own software or hardware to facilitate delivery of the Services, and ownership of these items will not pass to the Customer and must be returned at the end of the Agreement.

## **6 USE OF THE SERVICES**

- 6.1 You agree to comply with the Supplier Acceptable Use Policy as updated from time to time. The current version is published on the Supplier website.
- 6.2 You agree to comply with the Supplier Fair Use Policy as updated from time to time. The current version is published on the Supplier website.

## **7 MANAGED SERVICES**

- 7.1 The services performed by Supplier will be those specified in the Statement of Work.
- 7.2 Supplier may install its own software or hardware to facilitate delivery of the Services, and ownership of these items will not pass to the Customer and must be returned at the end of the Agreement.

## **8 ACCESS TO YOUR PREMISES**

- 8.1 You will provide Supplier with access as required to your site(s) in order to perform the Services.
- 8.2 See also Schedule 1.

## **9 HARDWARE MAINTENANCE**

- 9.1 You agree to keep the Agreed Equipment under a maintenance agreement with an agreed response time to rectify hardware faults and obtain software updates. Supplier will advise on a suitable vendor if required.
- 9.2 When a hardware fault is diagnosed on any Agreed Equipment under a maintenance agreement, Supplier will deal with the appropriate vendor to facilitate resolution of the problem.
- 9.3 Agreed Equipment not under a maintenance agreement may not be able to be repaired in a timely manner when a fault occurs. Additional costs may be incurred by the customer to fix equipment not under a maintenance agreement.

## **10 WARRANTIES**

### **10.1 The Customer warrants that:**

- a) it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to licence to Supplier, any materials reasonably necessary for the fulfilment of all its obligations under this agreement, including any third-party licences and consents in respect of any Customer Software; and
- b) Supplier's use in the provision of the Services or otherwise in connection with this agreement of any third-party materials, including any Products or Software supplied by the Customer to Supplier for use in the provision of the Services or otherwise in connection with this agreement, shall not cause Supplier to infringe the rights, including any Intellectual Property Rights, of any third party.

### **10.2 Supplier warrants and represents that:**

- a) it owns or has obtained valid licences, consents, permissions and rights to enable Supplier to comply with this agreement and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this agreement including for the Customer's use and receipt of the Services, and Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
- b) all personnel and sub-contractors used by Supplier in the performance of this agreement are adequately skilled and experienced for the activities they are required to perform.

## **11 FEES AND PAYMENT**

- 11.1 You must pay Supplier the Fees in accordance with this Agreement.
- 11.2 Your liability to pay for a Service will commence on the date Supplier makes it available to You even if You do not commence using it until a later date.
- 11.3 Supplier will issue to You a Tax Invoice in accordance with the requirements of the law relating to GST. Each invoice will specify the total Fees payable by You to Supplier for the Services or Products supplied.

- 11.4 Unless otherwise specified in the Supplier Quotation, Supplier will use reasonable endeavours to invoice You monthly for Recurring Services and on delivery for non-recurring Services, unless otherwise agreed in writing.
- 11.5 You must pay to Supplier an amount in respect of any GST payable on those Services and Products, and other charges at the same time and in the same manner as You are required to pay for the Services, Products and other charges to which the GST relates.
- 11.6 You must pay Supplier the amount specified in each Tax Invoice no later than the due date on the invoice.
- 11.7 You will make all payments to Supplier in Australian Dollars free of all transfer charges.
- 11.8 Pre-paid blocks of Professional Services time are invoiced in advance for the entire block.

## **12 LATE PAYMENTS**

- 12.1 If a Tax Invoice is unpaid after 30 days from the due date of the Tax Invoice, Supplier reserves the right to restrict, suspend and/or terminate the Service(s). Supplier will provide You at least 10 Business Days written notice of any impending restriction/suspension/termination. You may be liable for any costs involved in re-establishing Service(s).
- 12.2 You agree that if an invoice is outstanding for 30 days or longer additional fees will apply being:
  - a) an additional late payment fee of \$25; and
  - b) interest as per the Supreme Court of New South Wales default judgment rate (currently 6% above the cash rate published by the Reserve Bank of Australia);
  - c) Supplier may choose to waive these fees at their sole discretion.

## **13 PRE-EXISTING SUPPLIER IP AND THIRD PARTY IP OWNERSHIP**

- 13.1 Nothing in this Contract affects the ownership of Pre-existing Supplier IP or Third Party IP.

## **14 INTELLECTUAL PROPERTY**

- 14.1 Supplier may use Pre-existing Supplier IP, Third-Party IP and/or Services IP to deliver the Services.
- 14.2 Ownership of Client-Owned IP vests on its creation in You. You grant to Supplier the right to use this IP solely to deliver the Services to You.
- 14.3 Ownership of Shared IP remains with Supplier. You will be granted a perpetual, irrevocable, world-wide, non-exclusive royalty free and fee-free licence to Use this IP for the purposes of the Services and for Internal Purposes. This licence excludes the right to Commercialise.
- 14.4 You grant Supplier a non-exclusive licence for the term of this Agreement to use, copy and modify Your Content for the sole purpose of enabling us to supply the Services to You.
- 14.5 You must immediately notify Supplier in writing of any actual, suspected or anticipated infringement of any third party's Intellectual Property Rights that arises from or in connection with Your Content.



14.6 You indemnify Supplier against all loss, expense and damage suffered or incurred by Supplier which arises from or in connection with any claim made against Supplier by any person alleging that Your Content, or Supplier's use of it, infringes that person's Intellectual Property Rights.

## **15 CONFIDENTIAL INFORMATION**

15.1 Each party will:

- a) keep the Confidential Information of the other party confidential and will not disclose it or make it available directly or indirectly to any third party;
- b) use the Confidential Information solely for the purpose of performing its obligations under this Agreement;
- c) only disclose the Confidential Information of the other party to its officers, employees, professional advisers and permitted subcontractors who have a need to know the Confidential Information for the purposes of this Agreement (and only to the extent that it is needed) and have undertaken to maintain the confidentiality of the Confidential Information; and
- d) immediately notify the other of any actual or potential breach of confidentiality, disclosure or unauthorised use of the other party's Confidential Information; and take all steps to prevent or stop a suspected or actual breach of this Clause 15.

15.2 Upon demand and upon termination or completion of this Agreement, each party must:

- a) deliver to the other party all of the other party's Confidential Information in its possession which is capable of being delivered;
- b) delete, erase, or otherwise destroy any of the other party's Confidential Information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which is not capable of delivery to the other party; and
- c) The obligations of confidentiality under this Clause 15 do not extend to information which it is required to be disclosed by a governmental agency or by law, so long as the recipient promptly provides the other party with written notice of the required disclosure.

## **16 INDEMNITIES**

16.1 You will indemnify Supplier against:

- a) all loss (including consequential and indirect loss or damage) arising from or relating to a claim against either Supplier (and/or its Wholesale Provider) arising out of the death of or personal injury to the People of Supplier (including the People of the Wholesale Provider) to the extent that such damage or loss is caused by a negligent act or omission or an omission intended to cause death or personal injury by You or any of Your People;
- b) all loss (including consequential and indirect loss or damage) arising from or relating to any damage to or loss of any equipment, network or other tangible property of Supplier (and its Wholesale Providers) or any other third party to the extent that such loss is caused by a negligent act or omission or an act or omission intended to cause loss by You or any of Your People;
- c) all loss (including consequential and indirect loss or damage) arising from or in connection with a claim by a third party against either

Supplier (and/or its Wholesale Providers) to the extent that the claim relates to any negligent act or omission by You or any of Your People in relation to this Agreement; and

- d) all costs, losses, damages, liabilities (including consequential and indirect loss) and expenses (including reasonable legal costs and fees) arising from Your breach of this Agreement.

16.2 Supplier will indemnify You against:

- a) all loss (including consequential and indirect loss or damage) arising from or relating to a claim against either You arising out of the death of or personal injury to Your People to the extent that such damage or loss is caused by a negligent act or omission or an omission intended to cause death or personal injury by Supplier (and/or its Wholesale Providers) or any of its People;
- a) all loss (including consequential and indirect loss or damage) arising from or relating to any damage to or loss of any of Your equipment, network or other tangible property to the extent that such loss is caused by a negligent act or omission or an act or omission intended to cause loss by Supplier (and/or its Wholesale Providers) or any of its People;
- b) all loss (including consequential and indirect loss or damage) arising from or in connection with a claim by a third party against You to the extent that the claim relates to any negligent act or omission by Supplier (and/or its Wholesale Providers) or any of its People in relation to this Agreement; and
- c) all costs, losses, damages, liabilities (including consequential and indirect loss) and expenses (including reasonable legal costs and fees) arising from Supplier's breach of this Agreement.

## 17 LIMITATION OF LIABILITY

17.1 Except as otherwise expressly provided in this Agreement to the extent permitted by law, Supplier has no liability to You or Your end users in connection with this Agreement for or in any respect of any consequential loss, indirect loss or loss of profits of any kind, loss or corruption of data, interruption to business, loss of opportunity or goodwill, loss of revenue and economic loss of any kind whether in contract, negligence or any other tort under any statute or otherwise.

17.2 Notwithstanding any other provision of this Agreement, but subject to Clauses 18, 22, 16.1d) and 16.2d)), Supplier's liability to You for claims of loss or damage arising out of or in connection with this Agreement (**The Claim**) whether arising in tort (including negligence), statute or contract shall not exceed

- a) in the case of a Service, two times the monthly Recurring Charge paid by You under this Agreement for that Service for the month in which the claim arose; and
- b) in the case of Products, the total purchase price paid by You for the Products which limit will be an aggregate limit for all claims made in respect of that Products; and
- c) the amount recovered in respect of The Claim under any insurance policy maintained by Supplier.

17.3 To the extent permitted by law Supplier's total aggregate liability in respect of all claims (**The Claims**) that occur in any Year is limited to the amount recovered in respect of The Claims under any insurance policies maintained by Supplier.

17.4 You acknowledge and agree that:

- a) You may not have continuous and error free access to the Services;
- b) the Services may be unavailable to You due to downtime attributable to malfunction, upgrades or preventative or remedial maintenance activities; and
- c) Supplier does not warrant that it is or will be able to prevent or reduce any malicious attack on computer systems and data made from within or outside its business and that such an attempt could damage Your computer systems or data or those operated by any third party including Your End Users;

and to the maximum permitted by law, and without otherwise limiting the limitations and exclusions otherwise set out in this Agreement, Supplier will not be liable for any loss, expense or damage whatsoever suffered by You or any third party in connection with or arising from any of these circumstances.

17.5 Claims for liability must be notified in writing within 6 months of the event occurring otherwise Supplier does not accept any liability as the claim is deemed by the parties to be out of time.

## **18 TERMINATION**

18.1 A party may immediately (or with effect from any later date it may nominate) terminate this Agreement by written notice to the other party if:

- a) the other party materially breaches this Agreement and fails to remedy such breach within 14 days of receipt of notice from the first party specifying the breach and requiring it to be remedied;
- the other party materially breaches this Agreement and the breach is incapable of remedy.

18.2 Subject at all times to Clause 19, either party may terminate this Agreement provided that one party gives the other party at least 20 Business Days prior written notice.

18.3 Supplier reserves the right to terminate this Agreement immediately if:

- a) a Wholesale Provider terminates any arrangement with Supplier which prevents Supplier from providing the Service; or
- b) You take any step/s to appoint a receiver and manager and official manager, a controller, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of your assets, undertaking or business; or
- c) You become insolvent or are otherwise unable to pay debts as or when they become due or otherwise if something with the same or similar effect to paragraph (b) happens under the laws of any jurisdiction.

## **19 CONSEQUENCES OF TERMINATION**

19.1 The expiry or termination of this Agreement will not affect or limit any accrued rights of the parties.

19.2 The minimum amount due for the Contracted Term is

- a) 100% of the contracted fees for the Contract Term or the first 12 months (whichever is the lessor), plus
- b) 50% of the contracted fees beyond 12 months (if the Contract Term is greater than 12 months)

19.3 If this contract is terminated after the Contracted Term and during the Extended Term the minimum amount due is:

- a) 100% of the Extended Term, plus
  - b) 50% of the next Extended Term (if notice of Termination is less than 20 days before the expiry of the Extended Term).
- 19.4 If you wish to terminate a Service prior to the expiry of the Contracted Term you must pay to Supplier an amount calculated in accordance with Clause 19.2. This Clause 19.4 does not apply when You notify Supplier in writing that this Agreement should be cancelled according to the Cooling-off Period or the Satisfaction Guarantee.
- 19.5 The parties agree that the amount payable under Clause 19.2 and 19.3 represents a genuine pre-estimate of the loss and damage which will be suffered by Supplier in connection with the early termination of this Agreement.
- 19.6 Upon termination of this Agreement You must:
- a) return (at Your expense) any assets belonging to Supplier, and
  - b) pay Supplier any outstanding monies, Fees or charges owed to Supplier
- within 7 days.
- 19.7 Any assets belonging to Supplier supplied to You in the performance of this Agreement that You do not return will be invoiced at full replacement value.
- 19.8 If requested by You, Supplier will provide (at Your expense) assistance reasonably necessary to ensure that You can move to and use a replacement service
- 19.9 Clauses 19.2, 19.3, 19.4 and 19.5 apply insofar as they do not relate to Third Party Recurring Services. Third Party Recurring Services charges must be paid out by You as if the contract had proceeded to normal completion.

## 20 DISPUTE RESOLUTION PROCESS

- 20.1 The parties will seek to resolve any dispute which is not covered by this Clause 20 and will not start court or arbitration proceedings except as allowed under this Clause or except to seek urgent interlocutory relief.
- 20.2 The procedure for resolving a dispute is:
- a) a Party may give notice to the other Party about the nature of the dispute (**Dispute Notice**) and the parties will seek to negotiate a settlement within 10 Business Days of receipt of the Dispute Notice (**Negotiation Period**);
  - b) to the extent that the negotiations fail to settle the matter within the Negotiation Period, the parties will seek, within a further 10 Business Days, or such longer period as agreed by the parties, to reach Agreement on:
    - (i) a non-litigation, non-arbitration procedure for resolving dispute (such as mediation, reconciliation or independent expert determination);
    - (ii) the steps to be taken and when; and
    - (iii) the identity of any independent person who will assist the parties and the terms on which that person is to be retained (including the basis on which the independent party's costs are to be paid and by whom); and
  - c) if the parties are unable to reach agreement under this Clause 20 within the required time frame or they do reach agreement and the agreed procedure does not culminate in a settlement of the entire dispute within 20 Business Days of the date of the Dispute Notice, either Party may then commence court or arbitration proceedings to resolve remaining

issues.

20.3 The parties will engage in the procedure in Clause 20.2(b)(i) and (ii) in good faith and on a without prejudice basis.

## 21 NOTICES

21.1 Any notice or other communication to or by a party under this Agreement:

- a) may be given by personal service, post or email;
- b) must be in legible writing and in English addressed as shown below;
- (i) if to Supplier:

Level 1 (WeWork), 50 Miller St,  
North Sydney, New South Wales 2060  
Attention: Accounts  
Email: info@Supplier.com.au

- (ii) if to You:

The address and contact person on the Supplier Quotation or as specified to the sender by any party by notice or as varied by written notice;

- c) may be left at or sent by prepaid registered post, hand delivery or email to that address; and
- d) will be deemed to be duly given:
  - (i) on the day of delivery if by hand or by email or
  - (ii) 3 days after the date of posting by prepaid registered post;

21.2 The provisions of this Clause 21 are in addition to any other mode of service permitted by law.

## 22 FORCE MAJEURE

22.1 A party will not be liable for any failure or delay in the performance of its obligations under this Agreement if that failure or delay is due to circumstances beyond that party's control (**Force Majeure**). Any party who is, by reason of Force Majeure, unable to perform any obligation or condition under this Agreement must notify the other parties as soon as possible specifying:

- a) the cause and extent of such non-performance;
- b) the date of commencement of non-performance; and
- c) the means proposed to be adopted to remedy or abate the Force Majeure.

22.2 A party who is, by reason of Force Majeure, unable to perform any obligation or condition under this Agreement must:

- a) use commercially reasonable endeavours to remedy or abate the Force Majeure;
- b) resume performance after cessation of the Force Majeure; and
- c) notify each party when the Force Majeure has terminated or abated to an extent which permits resumption of performance to occur.

22.3 Subject to any other termination provisions non-performance by either of the parties of any obligation or condition under this Agreement shall be excused during the time and to the extent that such performance is prevented, wholly or in

part, by an event of Force Majeure of which notice has been given under this Clause 22.

22.4 The period of time during which performance of any obligation or condition is prevented by Force Majeure shall be added to the time provided in this Agreement for performance of that obligation or condition and to the time required for the performance of any act dependent on that obligation or condition except for the Contracted Term.

22.5 Where a Force Majeure event occurs as specified in this Clause 22, and is not remedied or does not abate for a period of 30 days this Agreement may be terminated by either party.

## **23 SEVERANCE**

23.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

23.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **24 ASSIGNMENT**

24.1 You may not assign or attempt to assign this Agreement or any right under this Agreement without Supplier's prior written consent which may be granted or withheld in our absolute discretion and which if granted may be granted subject to such terms and conditions that Supplier may prescribe.

24.2 You will be deemed to have assigned this Agreement or any right under it if there is a material change in the control of or shareholding in You.

24.3 Supplier may assign, novate or transfer its rights under this Agreement to a third party. If necessary, You must execute any document required to novate this Agreement to a third party.

## **25 RELATIONSHIP**

25.1 The relationship between the parties is one of independent contractors. No party has the authority to bind another party by contract or otherwise and no party nor their employees or agents are employees or agents of another party.

## **26 PUBLICITY**

26.1 Except as otherwise permitted under this Agreement, a party will not, directly or indirectly make any media release, public announcement or public disclosure relating to this Agreement or its subject matter without the agreement of all the parties unless it is required to make the announcement or disclosure by law or by a stock exchange.

## **27 COUNTERPARTS**

27.1 This Agreement may be executed in any number of counterparts and all counterparts taken together constitute one instrument.

## **28 ENTIRE AGREEMENT**

28.1 This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes any previous understandings or agreements on that subject matter. Each party acknowledges that in entering into this Agreement, that it:

- a) has not relied on any statement made or conduct engaged in by another party or any person on behalf of another party other than the statements set out in this Agreement; and
- b) was not influenced or induced to enter into this Agreement by any statement or conduct of the type referred to in paragraph (a).

## **29 FURTHER ASSURANCES**

29.1 Each party will promptly at the request of the other party execute and deliver such further documents and do such further acts as shall be reasonably necessary to give full effect to this Agreement and the transactions and conditions contemplated in this Agreement.

## **30 WAIVER**

30.1 A waiver by a party of a provision of or of a right under this Agreement is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.

30.2 A waiver is effective only in the specific instance and for the specific purpose for which it is given.

30.3 Failure by a party to exercise or a delay in exercising a right does not prevent its exercise or operate as a waiver.

## **31 SET OFF**

31.1 Supplier may set off any monies which are payable by You under this Agreement against any monies which Supplier may be liable to pay to You.

## **Chapter 2 Schedule 1**

### **Supply of Products – Terms and Conditions**

#### **1 SUPPLY OF PRODUCTS**

- 1.1 Where in a Supplier Quotation You have agreed to purchase Products, Supplier will supply You with the Products.

#### **2 WARRANTY**

- 2.1 Supplier makes no warranty that the Products are fit for any particular purpose.

#### **3 ACCEPTANCE OF PRODUCTS**

- 3.1 You agree to notify Supplier within 2 Business Days of delivery of the Products if there is a discrepancy between the Products delivered and what was ordered by You (including quantity).
- 3.2 Pursuant to Clause 3.1 of this Schedule, Supplier will organise for the Products to be replaced with the correct Products or, if they are no longer available, Supplier will accept return of the Products and make a refund for any payment made in respect of the Products.
- 3.3 If on arrival, You determine that the Products is not in working order, You may notify Supplier immediately in writing and make arrangements to return the Products in its entirety to Supplier (or to a location nominated by Supplier in writing) in the original packaging (so that the Products appears as it arrived to You) and in a manner to prevent damage to the Products.
- 3.4 Pursuant to Clause 3.3 of this Schedule, unless otherwise decided and notified to You, Supplier will pay for the return of the faulty Products and supply replacement Products or refund any monies paid on return of the original Products supplied.
- 3.5 Supplier may issue You separate Tax Invoices for:
- a) the Products purchased by You, upon delivery of the Products to Supplier; and
  - b) any installation services as identified in a Supplier Quotation.

#### **4 INSTALLATION SERVICES**

- 4.1 Installation and other services will be at an additional cost to the supply of the Products.
- 4.2 Supplier will only supply installation and other services where these services have been separately identified in a Supplier Quotation.
- 4.3 You accept that:
- a) with regard to installation and other services, the Supplier Quotation provides an allowance for a specific number of hours to perform the services; and
  - b) the eventual cost charged to You (calculated on the basis of time and materials plus time for travel to and from the site to perform the services) may be more or less than the allowance on the Supplier Quotation.
- 4.4 Subject to Clause 4.2 of this Schedule, Supplier will provide the installation and other services when the Products becomes available and at the time and location to be agreed to by both parties.



- 4.5 You shall provide Supplier with all reasonable assistance and access to Your facilities to enable Supplier to comply with its obligations without undue delay under this Clause 4.

## **5 CUSTOMER RESPONSIBILITY**

- 5.1 You accept the risk of loss or damage to the Products ordered (including license and warranty documentation) and the responsibility of insurance once the Products is delivered to Your requested delivery location.
- 5.2 You will at all times treat Supplier, its employees, agents and subcontractors with professional courtesy and respect common in normal commercial practice. Failure to comply with this cause will allow Supplier to immediately terminate the agreement and You agree to pay all due expenses and fees up to the time of termination.

## **6 RETENTION OF TITLE**

- 6.1 Notwithstanding delivery of the Products to You, until You have effected full payment for the Products previously supplied by Supplier:
- a) legal title to the Products will remain with Supplier;
  - b) the risk in the Products will pass to You on delivery to You or Your agent;
  - c) the relationship between the parties will be fiduciary;
  - d) You will:
    - (i) hold the Products as bailee for Supplier;
    - (ii) keep the Products separate from other Products and/or Third Party Software; and
    - (iii) label the Products so that they are identifiable as the property of Supplier.
- 6.2 If the Products is re-sold or used in the manufacture of other products or services by You, You shall hold such part of the proceeds as represents the invoice price of any Products sold or used by You in a separate identifiable account as the beneficial property of Supplier and shall pay such amount to Supplier upon request. Notwithstanding the previous above, Supplier shall be entitled to maintain action against You for the purchase price of the Products and the risk of the Products shall pass to You upon delivery.
- 6.3 For the purposes of recovering possession and without limiting the generality of the foregoing, You irrevocably authorise and license Supplier and its servants and agents to enter any premises where any Products may be stored and to take possession of the Products.

## **7 THIRD PARTY RECURRING SERVICES**

- 7.1 Products may include Third Party Recurring Services. These services may be subject to Third Party Recurring Service Terms by which You agree to be bound.