



GENERAL TERMS AND CONDITIONS

PARTIES

- (1) CONEKT AUSTRALASIA PTY LTD (ABN 62 642 707 515) of Unit F9/16 Mars Road, Lane Cove West NSW 2066 (**Supplier**)
- (2) The individual or entity named in the signed Solutions Document (**Customer**)

BACKGROUND

- (A) The Supplier is in the business of providing information technology services.
- (B) The Customer wishes to obtain, and the Supplier wishes to provide, the Services set out in the relevant Solutions Document in accordance with these General Terms and Conditions.

AGREED TERMS

Definitions and interpretation

- 1.1 Capitalised terms or expressions used in this agreement have the meanings set out in this clause.
 - . **Agreement Date:** means the date when the Solutions Document is signed by the Customer.
 - . **APP:** means an Australian Privacy Principle as defined in the Privacy Act.
 - . **Applicable Laws:** all applicable laws, statutes, regulations from time to time in force.
 - . **Business Day:** a day on which banks are open for business in Sydney, NSW, other than a Saturday, Sunday or public holiday in that city.
 - . **Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.
 - . **Charges:** the sums payable for the Services as set out in a Solutions Document.
 - . **Consumer Price Index:** the Consumer Price Index (All Groups) (Australia) published by the Australian Bureau of Statistics.
 - . **Control:** the definition given to that term in section 50AA of the Corporations Act, and the expression change of control shall be construed accordingly.
 - . **Corporations Act:** the *Corporations Act 2001* (Cth).
 - . **Customer's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Customer, its agents, subcontractors or consultants which is used directly or indirectly in the supply of the Services including any such items specified in a Solutions Document.

Customer Materials: all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to the Supplier in connection with the Services, including the items provided pursuant to clause 5.1(b).

Data Breach Investigation: an investigation as required to be carried out in accordance with clause 12.5(c).

Data Incident: an Eligible Data Breach that has, or is reasonably suspected to have, occurred in respect of any Personal Information the Supplier has collected, held, used or disclosed in the course of or relating to this agreement.

Deliverables: any output of the Services to be provided by the Supplier to the Customer as specified in a Solutions Document which may include Third-Party Product.

Direct Debit Terms: are those terms set out in the Direct Debit Agreement located at <https://www.conekt.com.au/legal>.

Eligible Data Breach: an eligible data breach as that term is defined in the *Privacy Amendment (Notifiable Data Breaches) Act 2016* (Cth).

Government Agency: any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

GST: goods and services tax chargeable under *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

GST Law: has the same meaning as "GST Law" in *the A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Initial Term is the initial committed term for a Service as set out in the relevant Solutions Document. This may be expressed as 'Term', 'Minimum Term' or 'Initial Term' in the Solutions Document pricing.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs and unregistered designs, circuit layout designs, rights to use, and protect the confidentiality of, confidential information (including know-how, trade secrets, and technical data), technology and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future anywhere in the world.

Interest Rate: the Reserve Bank of Australia's official cash rate plus 8% per annum and calculated daily.

Milestone: a date by which a part or all of the Services is to be completed, as set out in a Solutions Document.

Personal Information: has the meaning given in the Privacy Act.

Privacy Act: the *Privacy Act 1988* (Cth) as amended from time to time.

Privacy Policy: the Conekt Privacy Policy set out on its website at <https://www.conekt.com.au/privacy-policy>.

Sensitive Information: has the meaning given in the Privacy Act.

Services: the services which are to be provided to the Customer by the Supplier under a Solutions Document.

Service-Specific Schedules: the Schedules to this agreement that are set out at <https://www.conekt.com.au/legal> and relate to the types of Services and Deliverables described in the Solutions Document that are being provided.

Solutions Document: a document (physical or electronic) that is prepared by the Supplier and executed by the Customer and sets out the Services to be provided to the Customer by the Supplier and the applicable Charges.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier to the Customer and used directly or indirectly in the supply of the Services, including any such items specified in as such in a Solutions Document.

Service Term: the term during which the Services are to be provided, as set out in the Solutions Document. A term will begin on the date on which the Service is delivered or active.

Third-Party Product: hardware, software (including licences and software as a service) and services that are being delivered to the Customer under the Solutions Document but are produced, created, manufactured, or performed by a third party and resold by the Supplier.

Third-Party Product Terms: the end-user licence terms or manufacturer terms that apply to the use of Third-Party Products.

Variation: has the meaning given in clause 7.1 and includes variations and change requests.

1.2 In this agreement, the following rules of interpretation apply unless the contrary intention appears or the context otherwise requires:

- (a) headings and subheadings are for convenience only and do not affect the interpretation of this agreement;
- (b) references to clauses, Schedules, annexures, appendices, attachments and exhibits are references to the clauses of, and the Schedules, annexures, appendices, attachments and exhibits to, this agreement;
- (c) references to parties are references to the parties to this agreement;
- (d) references to a party to any agreement or document include that party's permitted assignees and successors, including executors and administrators and legal representatives;
- (e) words denoting the singular include the plural, and words denoting the plural include the singular;
- (f) words denoting any gender, include all genders;
- (g) the word "person" includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any Government Agency;
- (h) a reference to a body (other than a party to this agreement), whether statutory or not, that ceases to exist or has its powers or functions transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions;
- (i) a reference to any agreement or document (including this agreement) includes any amendments to or replacements of that document;
- (j) a reference to a law includes:
 - (i) legislation, regulations and other instruments made under legislation and any consolidations, amendments, re-enactments or replacements of them;

- (ii) any constitutional provision, treaty or decree;
- (iii) any judgment;
- (iv) any rule or principle of common law or equity,

and is a reference to that law as amended, consolidated, re-enacted, replaced or applied to new or different facts;

- (k) any promise, agreement, representation or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally;
- (l) any promise, agreement, representation or warranty given or entered into on the part of two or more persons is for the benefit of them jointly and each of them;
- (m) no provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this agreement;
- (n) if a period of time begins on a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (o) a reference to time is a reference to the time in Sydney, New South Wales, Australia, unless otherwise specified;
- (p) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (q) if any act is required to be performed under this agreement on or by a specified day and that day is not a Business Day, the act must be performed on or by the next Business Day;
- (r) a reference to a number of dollars, Australian dollars, \$ or A\$ is a reference to the lawful currency of the Commonwealth of Australia unless the amount is specifically denominated in another currency;
- (s) specifying anything in this agreement after the terms "include", "including", "includes", "for example", "such as", or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary;
- (t) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (u) an agreement other than this agreement includes a deed, undertaking or legally enforceable agreement or understanding, whether in writing or not; and

2. Agreement and Precedent

2.1 The agreement between the parties in relation to the provision of Service and Deliverables consists of:

- (a) the Solutions Document;
- (b) the relevant Service-Specific Schedules; and
- (c) these General Terms and Conditions.

2.2 Each Solutions Document creates a separate agreement between the parties incorporating the documents above and referenced therein.

- 2.3 In the case of any inconsistency between the terms of the agreement, the terms of the document appearing first in the list in clause 2.1 will prevail, except that clauses 8.1(b), 8.6(b), 15.3 of these General Terms and Conditions supplement and prevail over any Solutions Document or relevant Service-Specific Schedule. You should read all the documents that apply to our agreement carefully, but please pay particular attention to clauses 8.1(b), 8.6(b), 15.3 of these General Terms and Conditions to the extent they apply to you.
- 2.4 Any terms or conditions in any purchase order or any other related documentation submitted by or on behalf of the Customer in relation to the Services do not form part of this agreement and are void unless otherwise expressly agreed in writing and signed by authorised signatories of both parties.
3. **Commencement and term**
- 3.1 This agreement starts on the Agreement Date and, unless terminated earlier in accordance with clause 15, ends at the end of the Service Term or when the Services have been completed.
4. **Supplier's obligations**
- 4.1 The Supplier must use reasonable endeavours to provide the Services, and deliver the Deliverables to the Customer, in accordance with the Solutions Document in all material respects.
- 4.2 The Supplier must use reasonable endeavours to meet any performance dates specified in a Solutions Document but any such dates will be estimates only and time for performance by the Supplier will not be of the essence of this agreement.
- 4.3 The Supplier must use reasonable endeavours to observe all health and safety requirements that apply at any of the Customer's premises and that have been communicated to it under clause 5.1(d), provided that it will not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.
- 4.4 The Supplier will provide the Services using appropriate skills, training and tools, however, the Customer acknowledges that the provision of Services does not guarantee or represent in any way that all threats or non-compliant environments will be identified or that all damage will be prevented.
5. **Customer's obligations**
- 5.1 The Customer must:
- (a) provide reasonable assistance to the Supplier in all matters relating to the Services;
 - (b) provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) required under a Solutions Document or otherwise reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete in all material respects;
 - (c) provide, for the Supplier, its agents, contractors, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises and systems, office accommodation, data and other facilities as reasonably required by the Supplier, including any such access as is specified in a Solutions Document; and
 - (d) inform the Supplier of all health and safety requirements that apply at any of the Customer's premises where Services will be performed.

- 5.2 The Customer must ensure that the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services.
- 5.3 Before the date on which the Services are due to start, the Customer must obtain and maintain all necessary licences and consents as required to enable the Supplier to provide those Services, including in relation to the:
- (a) installation of the Supplier's Equipment;
 - (b) use of all Customer Materials; and
 - (c) use of the Customer's Equipment.
- 5.4 The Customer must comply with any additional responsibilities as set out in the relevant Solutions Document.
- 5.5 If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, contractors, subcontractors, consultants or employees, then, without prejudice to any other right or remedy it may have, the Supplier will be allowed an extension of time to perform its obligations equal to the delay caused by the Customer.

6. **Non-solicitation**

Neither party, without the prior written consent of the other, at any time from the date on which any Services commence to the expiry of 12 months after the completion of such Services, canvass, solicit, interfere with or entice away, or attempt to canvass, solicit, interfere with or entice away, from the other party or employ or engage or attempt to employ or engage any person who is, or has been, engaged as an employee, consultant, contractor or subcontractor of the other party in the provision or receipt of such Services in the 12-month period prior to completion of the Services.

7. **Services Variation**

- 7.1 Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a relevant **Variation** has been signed by both parties. A Variation is a document that sets out the proposed changes and the effect that those changes will have on:
- (a) the Services;
 - (b) the Charges;
 - (c) the timetable for the Services; and
 - (d) any of the other terms of the relevant Solutions Document.
- 7.2 If the Supplier wishes to make a change to the Services, it must provide a draft Variation to the Customer.
- 7.3 If the Customer wishes to make a change to the Services:
- (a) it must notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and
 - (b) the Supplier must, as soon as reasonably practicable after receiving the information at clause 7.3(a), provide a draft Variation to the Customer.

- 7.4 If the parties:
- (a) agree to a Variation, they must sign it and that Variation will amend the relevant Solutions Document; or
 - (b) are unable to agree a Variation, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 26.
8. **Charges and payment**
- 8.1 In consideration of the provision of the Services and Deliverables by the Supplier, the Customer must pay the Charges.
- (a) During the Initial Term of a Service, the Charges will include any discounts set out in the Solutions Document as applied to the relevant price. If Services are provided after an Initial Term and the parties have not entered a new contract for the Services, the Charges will not include the discounts applied in the Initial Term. For example, if the Solutions Document shows a price as having a 25% discount, that discount will only apply for the Initial Term and will not apply after the expiry of the Initial Term.
- 8.2 Notwithstanding any Service-Specific Schedule, any Solutions Document or any other quote or agreement between you and us under which we have provided or will provide any goods or services, during the Initial Term we may increase Charges on a six-monthly basis with notification to you to reflect increases in the costs to us of providing the applicable goods or services. The increase is not permitted to be more than a reasonable amount legitimately required for us to pass through our increased costs of providing the applicable goods or services which are outside of our control. If we increase Charges by more than 30% per annum (**Cap**), we will be required to provide you with a notice in writing which notice will include a statement that the increase is required to on-charge a supplier cost increase to you which is outside of our control. You will have 5 Business Days from the date of the notice to reject the price increase by written notice, or otherwise the price increase will take immediate effect as of the date of the notice. If you reject the price increase by providing complying written notice in accordance with this clause then either party will have the option to terminate the applicable services subject to the price increase upon written notice with immediate effect.
- 8.3 The Charges exclude the following, which will be payable by the Customer monthly in arrears following the submission of an appropriate invoice:
- (b) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services; and
 - (c) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Services as such items and their cost are set out in the Solutions Document or approved by the Customer in advance from time to time.
- 8.3 The Supplier will invoice the Customer for the Charges at the intervals specified or on the achievement of the Milestones indicated in the Solutions Document. If no intervals are specified, the Supplier will be entitled to invoice the Customer when any Services are performed, or Deliverables are delivered.
- 8.4 The Customer must pay each invoice submitted to it by the Supplier within the period set out in the invoice, or where there is no such period, within 30 days of receipt to the bank account nominated by the Supplier.

- 8.5 Without prejudice to any other right or remedy, the Supplier may have:
- (a) if any undisputed sum is due for payment under this agreement is not paid on the due date, the Customer must pay interest on the amount unpaid at the Interest Rate; and
 - (b) the Supplier may suspend part or all of the Services and, acting reasonably, any other services it provides to the Customer under another agreement until payment has been made in full.

8.6 Fees

- (a) Where you agree to enable a direct debit for payment of the Charges, we will make that debit in accordance with the invoice, and you will agree to the Direct Debit Terms. If an account is not being paid by direct debit the Supplier reserves the right to charge an administration fee of \$25 per invoice to cover its reasonable additional costs of administering billing.
- (b) Where you notify us that you will be transitioning to another supplier, you agree to pay us an offboarding administration fee for our work with respect to your offboarding and transition from any Services under any Solutions Document or any other quotes or agreement between you and us under which we have provided any goods or services. Our offboarding administration fee will be calculated based on standard hourly rates of \$250 per hour with a minimum commitment of 3 hours. The offboarding administration fee contemplated in this clause 8.6(b) will be payable in addition to any other fees set out in any Service-Specific Schedule, any Solutions Document or any other quotes or agreement between you and us under which we have provided or will provide any goods or services, including any applicable early termination fee (if any).

8.7 All sums payable to the Supplier under this agreement:

- (a) are exclusive of GST, and the Customer must in addition, pay an amount equal to any GST chargeable on those sums on delivery of a GST invoice; and
- (b) must be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. **Risk and Title**

9.1 Where the Services include hardware:

- (a) risk in any hardware transfers to the Customer on delivery to the Customer (either personally to a Customer representative or to a premise owned or controlled by the Customer or its agent); and
- (b) title passes to the Customer only when the Supplier has received payment in full in respect of the hardware.

10. **Third-Party Product Terms**

10.1 Where the Services include Third-Party Products, the Customer acknowledges that those products are owned and controlled by a third party, and the Supplier's ability to sell and provide those products is limited to the terms on which they are supplied by that third party. As a result, the Customer agrees that, where requested, those services are provided on the basis that the Customer will enter into the Third-Party Product Terms with the third-party vendor in respect of the use of the Third-Party Product (either separately or by way of a click-

through acceptance on use of the product) and that to the full extent allowable at law, the Supplier's obligations in respect of that product will not exceed the third party's obligations under those terms.

11. Intellectual Property Rights

11.1 In relation to the Deliverables:

- (a) the Supplier and its licensors will retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
- (b) the Supplier grants to the Customer, or will procure the direct grant to the Customer of, a non-exclusive, royalty-free licence during the term of this agreement to copy and modify the Deliverables (excluding the Customer Materials and Third-Party Products) for the sole purpose of receiving and using the Services and the Deliverables in its business; and
- (c) the Customer must not sub-license, assign or otherwise transfer the rights granted in clause 11.1(b).

11.2 In relation to the Customer Materials, the Customer:

- (a) and its licensors will retain ownership of all Intellectual Property Rights in the Customer Materials; and
- (b) grants to the Supplier a non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the sole purpose of providing the Services to the Customer.

11.3 In relation to Third-Party Property, the Supplier will licence to the Customer the Intellectual Property rights in those products only to the extent specified in the relevant Third Party Product Terms applicable to that product.

11.4 The Supplier:

- (a) warrants that the receipt and use of the Services and the Deliverables by the Customer will not infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) must keep the Customer indemnified in full against any liabilities, costs, charges, or expenses, damages and losses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt and use of the Services and the Deliverables; and
- (c) will not be in breach of the warranty at clause 11.4(a), and the Customer will have no claim under the indemnity at clause 11.4(b) to the extent the infringement arises from:
 - (i) the use of Customer Materials in the development of, or the inclusion of the Customer Materials in, the Services or any Deliverable;
 - (ii) any modification of the Services or any Deliverable, other than by or on behalf of the Supplier; and
 - (iii) compliance with the Customer's specifications or instructions in relation to dealing with the Services and Deliverables.

11.5 The Customer:

- (a) warrants that the Supplier's receipt and use of the Customer Materials will not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (b) must keep the Supplier indemnified in full against any liabilities, costs, charges, or expenses, damages and losses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in the performance of this agreement of the Customer Materials.

11.6 If either party (**Indemnifying Party**) is required to indemnify the other party (**Indemnified Party**) under this clause 11, the Indemnified Party must:

- (a) notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 11.4(b) or clause 11.5(b) (as applicable) (**IPRs Claim**);
- (b) allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party obtains the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (c) provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- (d) not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

12. **Privacy**

12.1 The Supplier warrants that it complies with and will continue to comply with the Privacy Act and its Privacy Policy.

12.2 The Customer warrants that it complies with and will continue to comply with the Privacy Act.

12.3 If the Supplier collects, holds, uses or discloses Personal Information in the course of or relating to this agreement, the Supplier must:

- (a) handle all Personal Information in accordance with the Privacy Policy;
- (b) only use Personal Information for the purpose of performing its obligations under this agreement; and
- (c) not disclose Personal Information to any third party without the Customer's prior consent except:
 - (i) to a subcontractor involved in the provision of the Services; or
 - (ii) as required by law or by order of a court; or
 - (iii) in response to a request from a government authority.

12.4 The Customer warrants that it:

- (a) will not provide any Sensitive Information to the Supplier unless that information is necessary for the Supplier to perform its obligations under the agreement and then only with the Supplier's specific written consent; and
- (b) has:
 - (i) made all necessary notifications required by APP 5, on behalf of itself and the Supplier to; and
 - (ii) obtained all necessary consents required by APP 6 from,
the individuals whose Personal Information it is disclosing to the Supplier in the course of this agreement to enable the Supplier to lawfully use the Personal Information and perform its obligations in accordance with this agreement.

12.5 If the Supplier becomes aware, or there are reasonable grounds to suspect, that a Data Incident has occurred in performing the Services, the Supplier must:

- (a) take reasonable steps within its control to contain the Data Incident;
- (b) as soon as reasonably possible, notify the Customer in writing stating the:
 - (i) nature and details of the Data Incident;
 - (ii) specific Personal Information affected; and
 - (iii) actions taken by the Supplier at clause 12.5(a);
- (c) identify whether the Data Incident is an Eligible Data Breach by conducting a thorough investigation of the Data Incident within 20 days of becoming aware of the Data Incident (**Data Breach Investigation**);
- (d) provide a copy of the report of the Data Breach Investigation in clause 12.5(c) to the Customer on completion;
- (e) engage in discussions with the Customer regarding:
 - (i) the conduct and outcomes of the Data Breach Investigation; and
 - (ii) in the case of an Eligible Data Breach, whether the Customer or the Supplier will make the relevant notifications under the Privacy Act; and
- (f) where it is agreed by the parties that the Supplier is making the relevant notifications, the Customer must approve the notifications before they are made (such approval to be given promptly and not to be unreasonably withheld).

12.6 Each party will ensure that its employees, contractors or advisors who are required to handle Personal Information in the course of this agreement are made aware of the obligations of that party in this clause 12.

12.7 Each party is responsible for the acts and omissions of its respective personnel (including subcontractors and advisors), and a breach by any such personnel is a breach by that party.

12.8 The Customer:

- (a) acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use Personal Information disclosed to it in the course of and for the purpose of this agreement; and

- (b) indemnifies the Supplier for any claim brought by any third party in connection with any act or omission by the Supplier in relation to a third party's Personal Information to the extent that such act or omission resulted directly from the Customer's instructions or the Customer's breach of this agreement.

13. **Confidentiality**

- 13.1 Each party (**Recipient**) must keep secret and confidential and not disclose any information relating to another party or its business (which is or has been disclosed to the Recipient by the other party, its representatives or advisers) or the terms of this agreement, except:
 - (a) where the information is in the public domain as at the date of this agreement (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the Recipient);
 - (b) if the Recipient is required to disclose the information by applicable law or the rules of any recognised securities exchange, provided that the Recipient has to the extent practicable having regard to those obligations and the required timing of the disclosure consulted with the provider of the information as to the form and content of the disclosure;
 - (c) where the disclosure is expressly permitted under this agreement;
 - (d) if disclosure is made to its officers, employees and professional advisers to the extent necessary to enable the Recipient to properly perform its obligations under this agreement or to conduct their business generally, in which case the Recipient must ensure that such persons keep the information secret and confidential and do not disclose the information to any other person;
 - (e) where the disclosure is required for use in legal proceedings regarding this agreement; or
 - (f) if the party to whom the information relates has consented in writing before the disclosure.
- 13.2 Each Recipient must ensure that its directors, officers, employees, agents, representatives and Related Bodies Corporate comply in all respects with the Recipient's obligations under this clause 13.
- 13.3 This clause 13 survives termination or expiry of this agreement.
- 13.4 The obligations of confidentiality in this clause 13 are not affected by the expiry or termination of this agreement.

14. **Limitation of remedies and liability**

- 14.1 Nothing in this agreement limits or excludes a party's liability:
 - (a) for death or personal injury caused by its negligence or wilful misconduct;
 - (b) for fraud or fraudulent; or
 - (c) where liability cannot be limited or excluded by Applicable Laws.
- 14.2 Subject to clause 14.1, the parties exclude any liability to each other, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this agreement, including any:
 - (a) loss of profits (other than in relation to early termination charges);
 - (b) loss of sales or business;

- (c) loss of production;
- (d) loss of agreements or contracts;
- (e) loss of business opportunity;
- (f) loss of anticipated savings;
- (g) loss of or damage to goodwill;
- (h) loss of reputation; or
- (i) loss of use or corruption of software, data or information.

14.3 Where the Customer is a 'consumer' within the meaning of that term in the *Australian Consumer Law*, as amended, it has the benefit of certain non-excludable guarantees and nothing in these terms and conditions excludes or restricts or modifies any guarantee which pursuant to the *Competition and Consumer Act 2010 (Cth)* is so conferred. However, the parties agree that the Services and Deliverables the subject of this agreement are not ordinarily acquired for personal, domestic or household use or consumption and as such, pursuant to s 64A of the *Australian Consumer Law*, the Supplier limits its liability for breach of any such non-excludable guarantee (other than a guarantee implied by sections 51, 52 or 53 of the *Australian Consumer Law*), in respect of each of the Services and Deliverables, at the Supplier's option, to one or more of the following:

- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of such goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and
- (b) if the breach relates to services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

14.4 Subject to clauses 14.1, 14.3 and 14.5, each party's aggregate liability in respect of claims based on events in any calendar year arising out of or in connection with this agreement or any collateral contract (other than the obligation to pay fees), whether in contract or tort (including negligence) or otherwise, will in no circumstances exceed 100% of the Charges payable by the Customer to the Supplier under this agreement in that calendar year.

14.5 In relation to liability arising in respect of Third-Party Products, to the maximum extent permitted by law, the Supplier's liability will not exceed the liability of the third-party vendor or manufacturer under the applicable Third-Party Product Terms.

15. **Termination**

15.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other party:
 - (i) is insolvent as defined by section 95A of the Corporations Act as disclosed in its accounts or otherwise;
 - (ii) states that it is insolvent;
 - (iii) is presumed to be insolvent under an Applicable Law (including under section 459C(2) or section 585 of the Corporations Act); or
 - (iv) otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (c) a liquidator or provisional liquidator is appointed to the other party;
- (d) an administrator is appointed to the other party under section 436A, section 436B or section 436C of the Corporations Act;
- (e) a controller (as defined in section 9 of the Corporations Act) is appointed to the other party or any of its assets;
- (f) a receiver is appointed to the other party or any of its assets;
- (g) an application is made to a court for an order, or an order is made, that the other party may be wound up, declared bankrupt or that a provisional liquidator, receiver or receiver and manager be appointed to that other party, and that application is not withdrawn, struck out or dismissed within 15 Business Days of it being made;
- (h) the other party enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (i) the other party proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (j) the other party has failed to comply with a statutory demand under section 459F(1) of the Corporations Act;
- (k) a notice is issued to the other party under section 601AA or section 601AB of the Corporations Act; or
- (l) the other party ceases to carry on business or threatens to do so, other than in accordance with the terms of this agreement.

15.2 Without affecting any other right or remedy available to it, the Supplier may terminate this agreement with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 7 days after being notified to make such payment; or
- (b) there is a change of control of the Customer.

15.3 Notwithstanding any Service-Specific Schedule, any Solutions Document or any other quotes or agreement between you and us under which we have provided or will provide any goods or services, but subject to clause 15.1, if you have any express right to terminate a Service and/or agreement with us to

which these General Terms and Conditions apply, you may only exercise that right to terminate after you have given us 60 days prior written notice of such termination.

15.4 On termination of this agreement under this clause 15:

- (a) the Solutions Document will terminate automatically;
- (b) the Customer must immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest;
- (c) in respect of the Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice to the Customer, which shall be payable immediately on receipt;
- (d) the Customer must also pay for, and when available, the Supplier must deliver, any Third-Party Product that has been ordered and is still to be delivered unless the order can be cancelled without penalty to the Supplier;
- (e) except where the Customer has terminated the agreement under clause 15.1, the Customer must pay an early termination fee as set out in the relevant Schedule or where there is no provision in the Schedule, the early termination fee will be an amount reflecting the remaining number of months in the Service Term multiplied by the monthly Charges less any reduction in third party or incremental costs that are realised as a result of the Service not being provided for the remaining period. The parties agree this calculation reflects a genuine reflection of the loss suffered by the Supplier;
- (f) the Customer must, return the Supplier's Equipment. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of the Supplier's Equipment. Until the Supplier's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping;
- (g) the Supplier must on request return any of the Customer Materials not used up in the provision of the Services; and
- (h) the following clauses will continue in force: clause 1 (Interpretation), clause 6 (Non-solicitation), clause 11 (Intellectual property rights), clause 13 (Confidentiality), clause 14 (Limitation of remedies and liability), this clause 15 (Termination), clause 19 (Waiver), clause 21 (Severability), clause 26 (Multi-tiered dispute resolution procedure) and clause 27 (Governing law and jurisdiction).

15.5 Termination or expiry of this agreement will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

16. **Force Majeure**

16.1 Neither party is in breach of this agreement or is liable to the other party for any loss incurred by that other party as a direct result of a party (**Affected Party**) failing or being prevented, hindered or delayed in the performance of its obligations under this agreement where such prevention, hindrance or delay results from events, circumstances or causes beyond the Affected Party's control (**Force Majeure Event**).

16.2 If a Force Majeure Event occurs, the Affected Party must notify the other party (**Non-affected Party**) in writing as soon as practicable and that notice must state the particulars of the Force Majeure Event and the anticipated delay.

- 16.3 On providing the notice in clause 16.2, the Affected Party will have the time for the performance of the affected obligations extended for a period equivalent to the period during which performance has been delayed, hindered or prevented. However, the Affected Party must continue to use all reasonable endeavours to perform those obligations.
- 16.4 The performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.
- 16.5 If the delay due to the Force Majeure Event continues for 90 days, the Non-affected Party may terminate this agreement immediately on providing notice to the Affected Party. This termination right does not apply to Third-Party Product that has been ordered and is still to be delivered unless the order can be cancelled without penalty to the Supplier.

17. Assignment, novation and other dealings

17.1 Except where this agreement provides otherwise, the Customer may not assign, novate, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this agreement without the prior written consent of the Supplier, whose consent must not be unreasonably withheld. The Supplier may assign, novate or transfer the agreement to a third party as long as it reasonably believes it will not have an adverse effect on the provision of the Services to the Customer.

18. **Amendment to terms**

An amendment of any term of this agreement must be in writing and signed by each party.

19. **Waiver**

19.1 No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this agreement unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.

19.2 Words or conduct referred to in clause 19.1 include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.

20. **Remedies cumulative**

Except as provided in this agreement and permitted by law, the rights, powers and remedies provided in this agreement are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of this agreement.

21. **Severability**

21.1 If the whole or any part of a provision of this agreement is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

21.2 Clause 21.1 does not apply if the severance of a provision of this agreement in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this agreement.

22. **Entire agreement**

This agreement states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

23. **Relationship of the parties**

23.1 Nothing in this agreement gives a party authority to bind any other party in any way.

23.2 Nothing in this agreement imposes any fiduciary duties on a party in relation to any other party.

24. **Notices**

24.1 A notice or other communication to a party under this agreement (**Notice**) must be:

- (a) in writing and in English;
- (b) signed by the sender or a person authorised to sign on behalf of the sender; and
- (c) addressed to that party in accordance with the details shown in the Solutions Document or any alternative details given in writing to the sending party).

24.2 A Notice must be given by one of the methods set out in the table below.

- 24.3 A Notice is regarded as given and received at the time set out in the table below. However, if this means the Notice would be regarded as given and received outside the period between 9.00 am and 5.00 pm (addressee's time) on a Business Day (**Business Hours Period**), then the Notice will instead be regarded as given and received at the start of the following Business Hours Period.

Notice delivery method	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By pre-paid post to the nominated address	At 9.00 am (addressee's time) on the second Business Day after the date of posting.
By email to the nominated email address	One hour after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

- 24.4 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

25. Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument. A party may execute this agreement by signing any counterpart. The date on which the last counterpart is executed is the date of this agreement.

26. Multi-tiered dispute resolution procedure

- 26.1 A party to this agreement claiming that a dispute has arisen from or in connection with this agreement (**Dispute**) must not commence court or arbitration proceedings arising from or relating to the Dispute, other than a claim for urgent interlocutory relief, unless that party has attempted to resolve the Dispute in accordance with this clause 26.
- 26.2 Compliance with this clause is a condition precedent to the right of any party to commence litigation or arbitration arising from, or in connection with, the Dispute.
- 26.3 A party to this agreement claiming that the Dispute has arisen must give a written notice to the other party or parties to this contract by email in accordance with clause 24 of this agreement, specifying the nature of the Dispute (**Dispute Notice**) together with relevant supporting documents.
- 26.4 Following service of the Dispute Notice, a senior executive of the Customer and senior executive of the Supplier must meet promptly and attempt in good faith to resolve the Dispute.
- 26.5 If the representatives have for any reason been unable to resolve the Dispute within seven days of service of the Dispute Notice, the Dispute must be referred to the CEO of the Customer and CEO of the Supplier who must attempt in good faith to resolve it.
- 26.6 If the CEOs are for any reason unable to resolve the Dispute within seven days of it being referred to them, the parties will attempt to settle it in good faith by mediation administered by the Australian Disputes Centre (ADC), in accordance with the ADC Guidelines for Commercial Mediation applicable at the time the matter is referred to the ADC and which are deemed to be incorporated into this agreement.

26.7 This clause 26 survives termination or expiry of this agreement.

27. **Governing law and jurisdiction**

27.1 This agreement is governed by the law in force in New South Wales, Australia.

27.2 Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement.