

Terms of Service

1. Agreements for the supply of products and services

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

2. Term

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

3. Supply of Ordered Products and Services

- 3.1. We will use our best endeavours to supply and/or procure the supply of the products and/or services specified in a Quotation (**Ordered Products and Services**) to you, substantially in accordance with any Specifications.
- 3.2. We will provide Ordered Services with all due care and skill.
- 3.3. You must provide all necessary:
 - (a) cooperation, permissions, authorisations, assistance and consents (including all relevant third-party and End User consents and authorisations); and
 - (b) access to such information (including account logins), Your Equipment, Personnel, End Users, servers, networks, data, content, facilities, documentation, records, resources, records, equipment and premises, as reasonably required by us to supply and/or procure the supply of the Ordered Products and Services to you.
- 3.4. Where required by us, you must also arrange safe and timely access to Your Premises for our Personnel and Third Party Providers to provision, install, support and maintain the applicable Ordered Products and Services. Support and maintenance are not within the scope of the Agreement unless the applicable Quotation clearly states that they will be provided.

- 3.5. If any changes are to be made to Your Premises that impact on any Ordered Products and Services or you wish to change the location to which we are to supply any Ordered Products and Services, you must provide us with at least 60 days prior written notice of the change and change in location. We are under no obligation to agree to the changes or proposed relocation. If we are unable to provide Ordered Products and Services to Your Premises because of any such changes or we do not agree to relocate Ordered Products and Services to the new location, you will be deemed to have committed an irremediable breach of the Agreement and we may at our sole discretion terminate the Agreement under clause 15.1.

3.6. We are not liable for:

- (a) the content or security of communications that you receive, access or rely upon when using Ordered Products and Services;
- (b) ensuring that any data sent or received over any Ordered Products and Services is sent or received correctly and to the maximum extent possible by law, we and our Third Party Providers do not have any responsibility for loss of data, delays, non-deliveries or mis-deliveries of data in relation to data sent or received over any Ordered Products or Services;
- (c) the installation of electrical wiring, removal of doors, widening of entrances or any other structural work of any description at Your Premises. You must procure all such work to be carried out prior to our, and/or our Third Party Providers', attendance at Your Premises for the purposes of carrying out any installation, configuration or setup of any Ordered Products and Services;
- (d) ensuring that Your Equipment is compatible or interoperable with Ordered Products and Services unless otherwise advised by us; or
- (e) all and any acts and omissions of your Personnel and End Users.

3.7. With respect to any proposed installation, commencement or start dates specified in a Quotation:

- (a) time is not of the essence and such dates are estimates only;
- (b) where our Personnel or Third Party Providers are unable to provision any Ordered Products and Services by any agreed or estimated installation, commencement or start date for any reason beyond the reasonable control of us: (i) we may terminate the relevant Agreement at any time prior to the provisioning being completed, by notice to you, without liability; and (ii) you may terminate the relevant Agreement prior to the provisioning being completed, by notice to us, without liability if the Ordered Products and Services are not installed or provisioned (as applicable) within 60 days after the agreed or estimated installation, commencement or start date for any reason; and
- (c) you must pay all costs and expenses that we incur as a result of any delay in the installation, procurement, commencement and/or implementation of Ordered Products and Services caused directly by you or your Personnel.

4. Performance and availability of Ordered Products and Services

- 4.1. We warrant that Ordered Products and Services will perform materially in accordance with the Specifications.
- 4.2. We do not warrant that Ordered Products and Services will be:
 - (a) uninterrupted or error-free, free from fault or external intrusion; or
 - (b) suitable for or will meet your requirements, unless such warranties are expressly set out in a Quotation or Service Schedule.

- 4.3. If there are Service Levels specified in a Quotation or Service Schedule:
- (a) we will use our best endeavours to ensure that the applicable Ordered Services comply with those Service Levels; and
 - (b) any breach of the Service Levels will not constitute a breach of the Agreement unless such breach(es) of the Service Levels is systemic and ongoing and has not been corrected after multiple notices of breach.
- 4.4. If there are Service Credits specified in a Quotation or Service Schedule, your entitlement to the Service Credits is your sole remedy and our sole liability for any non-performance or unavailability of the Ordered Services that they relate to.
- 4.5. We may in our sole discretion, vary Ordered Services at any time or from time to time, provided that such variation does not have a material adverse effect on the performance, price, quality, capability or functionality of the Ordered Services.

5. Notification of

- 5.1. If you wish to obtain, purchase, procure, license or obtain the right to use, any information technology or telecommunications goods and/or services at any time during the Term, you must notify us in writing of the proposed goods and services (**Acquisition Notice**).
- 5.2. We may or may not issue an offer to you to provide, sell, license or grant you the right to use the goods and services the subject of the Acquisition Notice during the 7 day period following date of our receipt of the Acquisition Notice (**Offer Period**) or at any other time. You have no obligation to accept any such offer that we may make.

6. Your Equipment and Our Equipment

- 6.1. Your Equipment is your property and an Agreement does not transfer or assign title to Your Equipment to us.
- 6.2. Our Equipment is our property and an Agreement does not transfer or assign title to Our Equipment to you.
- 6.3. You must ensure that when we provide Our Equipment to you:
- (a) Our Equipment is kept in good repair and condition (except for fair wear and tear);
 - (b) you shall allow us to service, modify, maintain, repair and/or replace Our Equipment at any time, at our discretion and at a reasonable time and with reasonable notice; and
 - (c) you must promptly notify us if Our Equipment or any of it is lost, faulty, stolen or damaged and you must pay us on demand the full replacement and repair costs with respect to Our Equipment if and when such incidents occur that are directly or indirectly your fault, or covered by your insurance.
- 6.4. You must not, except as authorised in writing by us, grant or permit the grant or existence of any Security Interest in Our Equipment.

7. Your Data

- 7.1. Data in any form entered or uploaded into Ordered Products and Services by you (**Your Data**) is, as between you and us, owned by you and an Agreement does not transfer any IPR in Your Data to us.
- 7.2. We will not use Your Data other than to:
- (a) perform our obligations under the Agreement; and
 - (b) comply with Applicable Law and any other legal obligation.
- 7.3. You must ensure that the collection, use, disclosure and processing of Your Data by us, our Personnel and Third Party Providers does not breach any Applicable Law or any person's rights.
- 7.4. Your Data may be hosted by us or our Third Party Providers on hardware or infrastructure located in or outside Australia. We may or may not own the infrastructure or the premises in which the infrastructure is located. Where data is hosted outside of Australia we will notify you of this, and you may

- opt to decline to have your data located outside of Australia. We will inform you of the impact of declining this.
- 7.5. Data loss and corruption is unpredictable and can occur from time to time. In the event of any loss, destruction, alteration, corruption or damage to any of Your Data that you engage us to host, except where contrary to Applicable Law:
- (a) your sole and exclusive remedy as against us, shall be to request that we use reasonable endeavours to restore that data from the latest back-up that we or our Third Party Providers maintain; and
 - (b) we shall not have any liability for any such loss, destruction, alteration, corruption or damage or for any unauthorised access or disclosure to Your Data unless it is caused by our wilful misconduct or intentional breach of the Agreement.
- 7.6. You must indemnify us, except in cases of negligence or misrepresentation by us or a breach in our systems by a third party, in respect of any loss and damage that we incur as a result of any third party claim that the transmission, storage, hosting, disclosure, processing, access and/or use of Your Data by us for the purposes of the Agreement, or access to and/or use of Your Data by any person, infringes the IPR and/or other rights of any person or breaches any Applicable Law.

8. Our Intellectual Property Rights

- 8.1. As between you and us, we own all IPR in:
- (a) Ordered Services (including any software, Source Code, Object Code, databases and database structures that are incorporated into or supplied in connection with the Ordered Services); and
 - (b) all Output (except to the extent that it comprises Your Data) made available in or via Ordered Products and Services, (collectively, **Our IPR**) unless otherwise assigned to you.
- 8.2. You must not represent that you own any of Our IPR.
- 8.3. You must not directly or indirectly do anything that would or might invalidate, jeopardise, limit, interfere with or put in dispute Our IPR and you must not do or authorise the commission of any act that would or might invalidate or be inconsistent with our ownership of Our IPR.
- 8.4. You hereby grant us a non-exclusive, irrevocable, transferable, sub-licensable, royalty-free and worldwide license to all and any IPR in all and any comments in connection with Ordered Services and any requests for new features, that you and/or your employees may make or suggest regarding them (each, an **Improvement Suggestion**). This license is effective when you or your employees make the comment or disclose the Improvement Suggestion to us including under section 197 of the *Copyright Act 1968* (Cth) and in equity. You must procure from your employees an irrevocable and freely given written consent from each of them to the infringement of any Moral Rights that they may have in any such Improvement Suggestions by us and by any third parties who we authorise.

9. Confidentiality

- 9.1. Each party may receive information from the other party (**disclosing party**) during the Term that is marked as confidential or has the quality of confidential information (**Confidential Information**).
- 9.2. The party who receives Confidential Information from the disclosing party (**receiving party**) may not, at any time without the disclosing party's prior written consent, use and/or disclose any Confidential Information, other than to exercise its rights and perform its obligations under the Agreement or comply with Applicable Law.
- 9.3. Where we are required to do so under any contract with any supplier, we may disclose your Confidential Information to the supplier, including, where the supplier provides us with services that we use to provide Ordered Services.
- 9.4. Confidential Information does not apply to information:

- (a) that is independently developed, obtained or known by the receiving party, without breaching any obligation of confidence to the disclosing party;
- (b) that the recipient can prove was already known to it at the time of disclosure by the disclosing party;
- (c) that is in the public domain, except where due to a breach of the Agreement or any breach of any obligation of confidence; or
- (d) that the receiving party must disclose under the rules of any stock exchange on which it or its holding company is listed.

10. Acceptable Use

10.1. You must ensure that any person who accesses and/or uses Ordered Products and Services (each, an **End User**):

- (a) complies with all applicable Documentation, Applicable Laws and all of our directions and policies (including any security policy) in the course of such access and/or use;
- (b) does not infringe or permit any person to infringe any of our, or our licensors', IPR;
- (c) provides us with access to Your Data, Personnel, Your Equipment and/or any cooperation and/or assistance necessary for us to carry out our duties under the Agreement;
- (d) does not provide their passwords or other access credentials to any other person;
- (e) does not interfere with or obstruct the provisioning of Ordered Products and Services to you and our other customers;
- (f) immediately notifies us of any unauthorised or suspected unauthorised use or disclosure of any access credentials for Ordered Products and Services or of any suspected, potential or actual data breach of Your Data; and
- (g) uses reasonable and appropriate security measures and precautions when using Ordered Products and Services.

10.2. You must:

- (a) promptly notify us of any breach of our Acceptable use Policy and of any events or incidents that would impact on and/or interfere with Ordered Products and Services, Your Equipment, Our Equipment and/or Your Data.
- (b) ensure that you maintain a reliable internet connection for us to connect to Your Equipment, Personnel, End Users, servers, networks, data, content, facilities, documentation, records, resources, records, equipment and premises, where reasonably required by us to provide any Ordered Services;
- (c) ensure that Your Premises are suitable and maintained in a manner suitable for the use of Ordered Products and Services;
- (d) maintain all building cabling (existing and new) in accordance with all Australian industry standards and guidelines necessary for Ordered Products and Services to operate; and
- (e) not do anything that interferes with or prevents the proper functioning of Ordered Products and Services.

10.3. The availability of Ordered Services will be subject to any bandwidth limitations, internet and network downtime and congestion, database size limitations, throughput limitations and other technical and non-technical limitations or restrictions set out in the Specifications and/or Documentation.

10.4. Unless otherwise expressly specified in the Agreement, you must not, and must not permit any person to use Ordered Services:

- (a) to copy, alter, modify, tamper with, create derivative works from, reproduce, resell, transfer to a third party, reverse assemble, reverse engineer, reverse compile or enhance Ordered Services or any trade marks, any patent or copyright notices, or any confidentiality legend, notice or other means of identification, used on or in relation to Ordered Services;

- (b) in any manner that breaches Applicable Laws or violates all or any legal rights of any person in any jurisdiction (including any person's privacy, such as by way of identity theft or "phishing");
- (c) to license, sublicense, resell, assign, transfer, distribute, or provide others with access to, Ordered Services;
- (d) to "frame", "mirror" or serve Ordered Services on any web server or other computer server over the Internet or any other network;
- (e) to store, transmit, distribute or introduce malicious programs into our systems, network or servers (e.g., viruses, worms, trojan horses, e-mail bombs);
- (f) to make fraudulent offers of goods or services;
- (g) to carry out security breaches or disruptions of network communication (security breaches include, accessing data of which you are not an intended recipient, logging into a server or account that you are not expressly authorised to access, corrupting any data, network sniffing, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes);
- (h) to execute any form of network monitoring which will intercept data not intended for you; or
- (i) to circumvent user authentication or security of any of our hosts, networks or accounts or those of our customers or Third Party Providers, (collectively, **our Acceptable Use Policy**).

11. Fees

11.1. You must pay the Fees to us in accordance with the Payment Terms and any applicable Service Schedule, without setoff, deduction or counterclaim. If no Payment Terms are specified for an Ordered Product or Ordered Service in a Quotation or Service Schedule, we will invoice any Fees in advance, or in arrears, at any time, for that Ordered Product or Ordered Service and you must pay those Fees within the time period specified in the invoice.

11.2. Except as otherwise set out in a Quotation, the Fees are exclusive of all taxes such as GST and you agree to pay all such taxes to us, made for the purposes of the Agreement, at the same time as the Fees.

11.3. We may not include the cost of consumables, replacement parts, hardware, software, third party manufacturer warranty parts, network and system upgrades and associated services in our Quotations. All such costs are payable by you in addition to the Fees set out in the Quotations.

11.4. Without limiting any other rights or remedies available to us, we may suspend our obligations under this Agreement and your access to Ordered Services if you fail to pay the Fees in accordance with the Payment Terms, unless you give us notice and reason of dispute of said fees prior to them falling due.

11.5. If you fail to make any payment due to us under this Agreement in accordance with the Payment Terms then, without limiting our rights and remedies, you shall pay interest on the overdue amount at a rate equal to 2% per annum above the current overdraft rate that we have with our principal banker from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment and you shall pay the interest together with the overdue amount upon demand by us. You must indemnify us from and against all and any legal costs and disbursements (on a full indemnity basis) that we incur in connection with any debt recovery or legal proceedings that we carry out to recover any unpaid Fees.

11.6. We may increase the Fees payable under an Agreement:

- (a) annually by 3% or in the case of a 12 month agreement that is to be renewed, as negotiated or otherwise agreed during the renewal notice period; and
- (b) at any time to accommodate any currency fluctuations.

12. Liability

- 12.1. Ordered Products and Services and any reports, outcomes, results or information generation from Ordered Products and Services (**Output**) does not constitute our advice. You must obtain all appropriate professional, financial, legal and other advice as applicable before relying on any Output. You must not represent (either expressly or implied) that any Output is our advice.
- 12.2. We are not liable for any failure to supply Ordered Products or Ordered Services caused by any breach of the Agreement by you or your Personnel.
- 12.3. Neither party is liable to the other party for any loss of profits, loss of business opportunity, loss of revenue (other than caused by your failure to pay the Fees), loss of savings or loss of data (except in cases of negligence or malpractice) and whether arising in contract, tort (including negligence) or otherwise, and whether the loss or damage is foreseeable or not.
- 12.4. Our liability for all loss or damage that you incur that is caused by our breach of the Agreement, that is not otherwise excluded by the terms and conditions of the Agreement or covered by our Insurances, is capped, in the aggregate, at an amount equivalent to the quantum of the Fees paid by you under the Agreement, for the Ordered Products and Services to which the breach relates to, and which cap is reduced to the extent that you, your End Users, your Personnel and/or any Third Party Provider caused or was responsible for such loss. Where loss or damage is covered by Insurance carried by us, liability will be capped at the value of the relevant Insurance Policy.
- 12.5. Where liability for breach of any guarantees under the ACL can be limited, our liability arising from any breach of those guarantees (if any) is limited, at our option: (i) with respect to the supply of goods, to the replacement or repair of the goods or the cost of resupply or replacement of the goods; and/or (ii) with respect to services, to the supply of services again or the cost of re-supplying the services again.
- 12.6. Other than any non-excludable guarantees implied into this Agreement under the ACL (if any), all conditions, warranties and guarantees that would be implied in the Agreement are hereby excluded from the Agreement.
- 12.7. Either party may obtain urgent interlocutory relief from a court of competent jurisdiction to prevent any actual or potential breach of the Agreement.
- 13. Non-Solicitation**
- 13.1. During the Term and during the Restraint Period after this Agreement has been terminated, you agree that you will not, and will ensure that your Personnel will not:
- canvass, solicit or endeavour to entice away from us any person that was or is our employee that your Personnel came into contact with during the 12-month period prior to the termination of the Agreement, or cause any such person to terminate their contracts of employment with us;
 - hire, engage or employ in any capacity or solicit the hiring, engagement or employment of any of our Personnel;
 - interfere or seek to interfere with the relationship between us and our Personnel;
 - induce any other person to perform any of the acts specified in sub-clauses 13.1(a) to (c).
- 13.2. You acknowledge that any breach by you of clause 13.1 will cause irreparable harm and significant damage to us and accordingly that we have the right to seek and obtain immediate injunctive relief in relation to any such breach or threatened breach. You will ensure that your Personnel make the same acknowledgements.
- 13.3. You acknowledge that provisions of clause 13.1 are fair and reasonable and that we are relying upon this acknowledgement in entering into this Agreement. You will ensure that your Personnel make the same acknowledgement.
- 13.4. For the purpose of this clause, **Restraint Period** means:
- 18 months;
 - or if 18 months is deemed unenforceable by a Court of competent jurisdiction, 12 months;
 - or if 12 months is deemed unenforceable by a Court of competent jurisdiction, 9 months.
- 14. Force Majeure Event**
- 14.1. We are not liable for any failure by us to perform our obligations under an Agreement if such failure was caused by a Force Majeure Event. If a Force Majeure Event continues for 45 consecutive days, either party may terminate the Agreement by written notice to the other party.
- 15. Termination**
- 15.1. A party (the **first party**) may terminate an Agreement by written notice to the other party if the other party (**the defaulting party**) commits a breach of the Agreement that is not remediable, or if the breach is a remediable breach and the defaulting party fails to remedy the breach within 14 days of written notice from the first party requiring the breach to be remedied.
- 15.2. We may terminate and/or suspend our provision of Ordered Products and Services, if:
- you fail to pay any Fees to us as in accordance with the Payment Terms, except in cases where such non-payment is due to an open dispute arising in respect of the fees payable and notice of dispute was given prior to the fees falling due;
 - you and/or your End Users repeatedly infringe or breach our Acceptable Use Policy; or
 - a Third Party Provider ceases to provide hardware, software, products or services that we require to comply with our obligations to supply Ordered Products or Services to you.
- 15.3. Either party may terminate an Agreement by written notice to the other party if the other party suffers an Insolvency Event.
- 15.4. If an Agreement is terminated or expires for any reason:
- you shall, at our option, promptly return all of Our Equipment that we supply to you, or make it available for our collection, and we shall at your option promptly return all of Your Equipment that you have supplied us, or make it available for your collection;
 - you shall, at our option, promptly return or destroy all copies of our Confidential Information in your possession or control, and we shall, at your option promptly return or destroy all copies of your Confidential Information in our possession or control; and
 - any rights and licenses granted by us to you, by you to us or by a Third Party Provider to you pursuant to or in connection with the Agreement immediately terminate.
- 15.5. If an Agreement is terminated prior to the expiry of the Minimum Period (other than due to our breach or default, mutual agreement of both parties, or if we suffer an Insolvency Event), and the Agreement requires you to pay Fees for Ordered Services on a recurring basis, without limiting any of our other rights or remedies and without limiting any other of your obligations, you will pay 60% of any outstanding amounts that we calculate or reasonably estimate would have been payable by you under the Agreement for those Ordered Services for the remainder of the Minimum Period (collectively, the **Outstanding Amount**). If an Outstanding Amount is payable, we shall send you a tax invoice in respect of the Outstanding Amount and you will pay that invoice within 30 days. You agree that: (i) payment under this clause is not intended to be and will not be punitive and you will compensate us for reasonable losses resulting from early termination of the Ordered Services; and (ii) the Outstanding Amount is less than the total loss that we will suffer from the early termination of the Ordered Services. An Outstanding Amount is not payable if you are not in breach of this agreement, and we opt to terminate the agreement.

- 15.6. Any rights or obligations that, by their nature, survive termination shall so survive, including any provision dealing with confidentiality, IPR, liability, dispute resolution and jurisdiction.
- 15.7. Termination does not affect any accrued rights of either party.
- 15.8. In the event of Termination, We will provide adequate documentation (the **Handover Documentation**) to assist in another party in providing similar services without interruption.

16. Notices

- 16.1. All notices required or permitted to be made under the Agreement shall be in writing and shall be deemed delivered if:
- delivered in person;
 - sent by post to the recipient's postal addresses identified in the relevant Quotation; or
 - sent by email to the recipient's email addresses identified in the relevant Quotation.
- 16.2. Notice given under subclause 16.1(a) shall be effective upon delivery.
- 16.3. Notice given under subclause 16.1(b) shall be deemed delivered 6 Business Days after posting if posted domestically in Australia, or 20 Business Days after posting if posted to or from Australia from any other country.
- 16.4. Notice given under subclause 16.1(c) shall be deemed to have been validly and effectively given on the day on which it is transmitted if the sender receives a read or delivery receipt confirming delivery or receipt of the email or a reply to the email.
- 16.5. Any party may change its address for notice hereunder by giving written notice to the other party in accordance with this clause 16.

17. General

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

18. Definitions and Interpretation

- 18.1. In an Agreement, words in bold font in parentheses have the meanings given to them therein. In addition, the following words have the following meanings:
- ACL** means schedule 2 to the *Competition and Consumer Act 2010* (Cth).
- Applicable Law** means any legislation, rule of the general law, including common law and equity, judicial order or consent or requisition from, by or with any governmental

agency, including any Data Protection Law, in any applicable jurisdiction.

Business Day means any day from Monday to Friday excluding public holidays in the State or Territory that our registered office is located in.

Business Hours means 8:00am – 5:00pm AWST on Business Days.

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

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

Fees means any fees and charges set out in the Quotation.

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

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

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

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

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

Object Code means Source Code in compiled or binary form.

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

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

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

Payment Terms means payment terms set out in the applicable Quotation.

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

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

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

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

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

Source Code means human readable computer code.

Specifications means the technical specifications for Ordered Products and Services set out in a Service Schedule or otherwise provided by us.

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

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

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

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

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

18.2. Unless the context requires otherwise:

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