

GENERAL TERMS AND CONDITIONS

Operative Provisions

The Customer agrees, in consideration of, among other things, to the General Terms and Conditions contained herein to be read in conjunction with the Quote, and the accompanying Scope of Works where applicable, issued to the Customer from the Company (hereinafter called the **Agreement**) and detailed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In These General Terms and Conditions, except to the extent that the context requires otherwise the following terms and expressions shall have the following meanings:

Agreement	means this Agreement including all its Schedules, Annexures and Attachments as applicable to the Services set out in the Quote, and accompanying Scope of Works where applicable, issued by the Company to the Customer.
Authority	means: <ul style="list-style-type: none"> (a) any government, semi-government body or authority, Federal, State, Territory or local; or (b) any minister, department, office, commission, delegate, instrumentality, agency, board, authority, or organisation of a person referred to in paragraph (a) above, statutory, or otherwise.
Business	means the business conducted by the Customer at the Premises on the Commencement Date.
Business Day	means a day which is not Saturday, Sunday, or a public holiday.
CPI	means the All-groups Consumer Price Index weighted average of eight capital cities as published by the Australian Bureau of Statistics or if that index is not published any other index as nominated by the Company.
Commencement Date	means the date of commencement of this Agreement being the commencement date stated in the Quote, or the Scope of Works or, if no date is stated, then the date that the Quote is accepted and executed by the Customer.
Company	means ICT Group (Aust) Pty Ltd (ABN 61 167 281 245) and includes all its lawful successors or assigns
Company Website	www.ictgroup.com.au
Customer	means the person named and described as such in the Quote and includes all their lawful successors or assigns.

Information Technology	means all current software, programs, systems, hardware, electronic document retention, storage and retrieval processes and all other information technology of whatsoever kind or nature used by the Customer in order to efficiently conduct the Business as at the Commencement Date, and includes all additional information technology which the Customer may acquire, develop or create for use in the Business during the Term and which the Company agrees in writing in the Scope of Works to cover under the Services provided under this Agreement.
Information Technology Assets	means all assets and property (including Intellectual Property) comprised in the Customer's Information Technology System for its Business and located or kept at the Premises.
Intellectual Property	means all things ordinarily regarded as intellectual property and being intangible property created as the result of mental creativity such as any design, trademark, patent, copyright, invention, artistic work, literary work, and moral right.
Law	means all applicable laws that in any way govern or regulate the terms of this Agreement, or anything done or to be done under it including the common law, equity and all relevant statutes, regulations, codes of practice and/or by-laws together with all amendments.
Party	means a Party to this Agreement and Parties shall have a corresponding collective meaning.
PMSI	means Purchase Money Security Interest.
PPSA	Means personal Property Securities Act 2009 (Cth)
Premises	means the address where the Customer conducts the Business being the address of the Business as set out in the Quote, or such other place to which the Customer carried on the Business from time to time.
Products	means all the Information Technology hardware and software products to be provided by the Company to the Customer at any time during the Term as set out in the Scope of Works and which may include a Compatible Device as referred to in Managed IT Services Agreement.
Quarter	means successive period of 3 months finishing on 30 June, 30 September, 31 December and 31 March.
Quote	Means the quote issued by the Company to the Customer which contains the financial details and liability for the total cost of the Services and/or products being provided to the Customer.
Related Entity	has the same meaning as in the Corporations Act 2001 (<i>Cth</i>).

Sales Order	Means the order confirmation of the Quote accepted by the Customer and/or order confirmation of a purchase order or request made by the Customer to the Company for the delivery of a particular product and/or service.
Schedule	means a schedule to this Agreement.
Scope of Works	means the Scope of Works detailed in this agreement as amended from time to time by agreement between the Parties in writing.
Services	means all the Information Technology maintenance, support, advice, and consulting services to be provided by the Company to the Customer during the Term as set out in the Scope of Works and Quote and any other services as may be provided by the Company from time to time which are referred to in the Scope of Works.
Service Level Terms	means the Service Level Terms as detailed in the Scope of Works.
Telstra	means Telstra Corporation Limited (ACN 051 775 556) and any corporation being a related body corporate (as defined in the <i>Corporations Act 2001</i> (Cth) of Telstra Corporation Limited
Term	means the term of this Agreement as set out in the Quote or Scope of Works subject to any agreed extension by both parties.
Third Party	means a person that is not a Party to this Agreement.
Upfront	means an invoice issued before a relevant Product or Service has been provided by the Company to the Customer and which shall be payable by the Customer to the Company before that Product or Service is provided, and in any event within three (3) Business Days of the date of invoice unless otherwise agreed.

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural, and the plural includes the singular.
- (b) a reference to one gender includes all other genders.
- (c) a reference to a person includes a body corporate, an individual, an incorporated association and any form of legal entity.
- (d) headings are included for reference only and shall not affect the interpretation of this Agreement.
- (e) a Party, who is a trustee, is bound both personally and in its capacity as trustee.
- (f) a Party includes that Party's executors, administrators, successors and permitted assigns, including any person taking by way of novation.
- (g) every covenant or agreement expressed or implied in this Agreement by which more Parties than one covenant to agree shall bind such Parties and every one or more of them jointly and each of them severally and every provision expressed or implied in this Agreement which applies to more Parties than one shall apply to such Parties and every

two or more of them jointly and each of them severally and their respective administrators, executors, and assigns.

- (h) "including" and similar words are not words of limitation.
- (i) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (j) a reference to any document or instrument includes any variation or replacement of it.
- (k) a reference to clauses, annexures, attachments, or schedules is a reference to the clauses, annexures, attachments, or schedules of this Agreement.
- (l) a reference to any Authority, association, or body whether statutory or otherwise shall (if that Authority, association, or body ceases to exist or is re-constituted, re-named or replaced or its powers or functions are transferred to any other Authority, association, or body) be deemed to refer respectively to the Authority, association or body established or constituted in its place or as nearly as may be succeeding to its powers or functions.
- (m) where any word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning.
- (n) any reference to time is a reference to time in Darwin.
- (o) if an act must be done on a day which is not a Business Day, that act may be done instead on the next Business Day.
- (p) all monetary amounts are in Australian dollars; and
- (q) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement.

1.3 Inconsistency

In the event of any inconsistency between anything contained in these General Terms and Conditions and the Quote, and the Scope of Works if applicable, then they are to be construed to the intent that each shall be given the maximum force permitted by Law but to the extent that such inconsistency cannot be reconciled the order of priority between those documents shall be:

- (a) Firstly, the Quote; and
- (b) Secondly, the Scope of Works; and
- (c) Finally, these General Terms and Conditions (excluding the Scope of Works).

2. ENGAGEMENT

2.1 Performance of Service

the Company represents and warrants that it has all the necessary skills, knowledge, experience, and expertise to perform the Services in a proper and competent manner.

2.2 Licence and Permits

the Company holds all necessary licences and permits required to authorise the Company to perform the Services. Where there are any applicable industry standards and codes, they will always be complied with by the Company. the Company and all the Company's employees and sub-contractors are properly qualified, experienced, licensed (where applicable) and competent to properly perform and will perform the Services to any applicable standards and codes.

2.3 Notification of Delay of Service

If an event occurs that is beyond the reasonable control of the Company which prevents the Company from performing a Service on or by any agreed date or period, the Company will notify the Customer within a reasonable time and give an estimate of the time for completion of that Service. The agreed date or period for delivery of the Service by the Company is extended for so long as the effect of any event beyond our control continues.

2.4 Equipment and Materials

the Company will provide all equipment and all materials as may be necessary to perform the Services properly and efficiently. Unless otherwise agreed in writing all materials including Products supplied will be new and of high quality. All the Company equipment will be safe for use, properly maintained and capable of being used to conduct the Services.

2.5 Request to Increase the Scope of Works

Any Services to be provided under this Agreement are set out in the Quote and Scope of Works. The Quote and Scope of Works can only be amended by mutual agreement of the Parties in writing.

2.6 Price

The Customer will pay the Company the Fees for the Services and Products provided under this Agreement calculated at the prices, rates and charges as set out in this Agreement (including in the Scope of Works) or at the Company's usual hourly rates as determined by it from time to time for Services where hourly rates apply (unless some other hourly rate is specified in this Agreement) and subject always to variation or adjustment made in accordance with this Agreement.

2.7 Expenses, allowances, and overheads

In addition to the Fees, there may be agreed additional expenses, costs and overheads that are sometimes required for the completion of tasks in connection with the Services. All such expenses, costs or overheads shall be reimbursed by the Customer to the Company at cost plus a 2.5% administration charge within fourteen (14) days upon the issue of an invoice to the Customer by the Company.

2.8 Sub-Contractors

The Company may use sub-contractors to provide any of the Services. In such circumstances, the Company will ensure that the sub-contractors engaged:

- (a) are suitably qualified, hold all necessary licences and are otherwise able to perform the sub-contracted Services in a proper and workman-like manner; and
- (b) do not do or omit to do anything that would if done or not done by the Company would be a breach of this Agreement.

the Company remains responsible for performance of all its obligations under this Agreement notwithstanding that the Company has sub-contracted any of the Services.

3. ACCEPTANCE OF THESE TERMS

3.1 Acceptance

This Agreement comes into force on the Commencement Date.

3.2 Irrevocability

The terms and conditions of this Agreement are irrevocable and can only be amended by mutual agreement between the Parties in writing except as expressly provided otherwise in this Agreement.

3.3 Two or More Parties

In the event there is more than one party as a Customer to this Agreement each of them will be jointly and severally liable for all the obligations and covenants of the Customer under this Agreement.

4. QUOTES AND FEE VARIATIONS

4.1 Expiry of Quotes

All Quotes provided by the Company in relation to any change in Services or Products to be provided under this Agreement will remain valid for fourteen (14) days only.

4.2 Fee Variation

- (a) If the Company's cost of wages, materials or any other supply or input applicable to any of the Services increases, the Company may, increase any of the relevant Fees for that Service by a reasonable amount commensurate with the increase in cost to the Company (plus a reasonable profit component thereon) and the Customer must pay the Fees as varied by the Company with such variation to apply from the date the change in the Fees are notified to the Customer.
- (b) In addition to any other right to vary or adjust any Fees the Company shall be entitled, at its discretion, to adjust any Fees on an annual basis, on each anniversary of the Commencement Date in accordance with the increase in CPI based on the percentage increase in CPI from the CPI number for the Quarter last completed before the Commencement Date (in the case of the first adjustment) or the CPI number for the previous anniversary of the Commencement Date immediately before the anniversary of the Commencement Date on which the adjustment is occurring (for subsequent adjustments) to the CPI number for the Quarter last completed on the anniversary of the Commencement Date on which the adjustment is occurring. The Fees will increase by the same percentage as the relevant percentage increase in the CPI from the date that the Company notifies the Customer of the increase.

5. TERMS OF PAYMENT

5.1 Invoices

- (a) the Company shall be entitled to invoice the Customer monthly in advance for all Fees for recurring services, subscriptions, charges, and payments under this Agreement (**Recurring Fees**). For any Recurring Fees invoiced in advance the Customer must pay the full amount of the Company's Recurring Fees before the commencement of the recurring period (which is most commonly a monthly recurring period) to which the invoice relates or within three (3) Business Days of the date of the invoice, whichever is later.
- (b) the Company shall be entitled, at any time in its absolute discretion, to invoice the Customer retrospectively for Fees in connection with any Services and Products which have been provided under this Agreement, except to the extent that the Services and Products are invoiced for in advance as Recurring Fees under clause 5.1(a) (in which event such invoices are payable by the Customer in advance in accordance with clause 5.1(a)) or an invoice for payment Upfront is issued (in which event payment Upfront by the Customer is required in accordance with clause 5.2). All invoices rendered by the Company to the Customer under this clause 5.1(b) shall be due and payable by the Customer to the Company within three (3) Business Days of the invoice date.
- (c) The Fees charged in all invoices will be calculated using the rates, charges and prices for the Services and Products delivered under this Agreement as set out in the Quote

and/or Scope of Works or as set out elsewhere in this Agreement, subject to any adjustment or variation in those rates, charges and prices made in accordance with this Agreement.

- (d) Invoices for Services chargeable at hourly rates will be charged based on time records kept by the Company and any worksheets kept by the Company for those Services shall be *prima facie* evidence of the hours worked.
- (e) The Customer is not entitled to deduct or set-off any amount from any amounts invoiced to the Customer by the Company under this clause five.
- (f) the Company shall be entitled to suspend any of the Services or provision of any Product while any invoice rendered by it to the Customer remains due and unpaid.
- (g) The Customer agrees that, in addition to any other rights, the Company shall have the right to require that the Customer pays any amount whatsoever for any Services or Products upfront before those Services or Products are provided, if the Company decides that its exposure to outstanding orders and invoices with the Customer is higher than it desires. If the Company renders an invoice under this clause the Customer agrees to pay it without set off or deduction before the relevant Service or Product is provided and, in any event, no later than three (3) days from the date of the invoice.

5.2 Upfront Payments

- (a) The Customer must pay Upfront to the Company the full price of any software, software licences, and any hardware contained in the Services or Products to be provided by the Company to the Customer under this Agreement.
- (b) the Company shall be entitled to render an invoice for any amount payable Upfront at any time The Company consider reasonably appropriate, and the Customer agrees that it must pay the Company the full amount of such invoice without set off or deduction before the relevant Service or Product is provided and, in any event, no later than three (3) Business Days from the date of the invoice.
- (c) The Customer agrees that once it has placed an order for any software or software licences with the Company it is committed to paying the Company the full price for that software or software licence Upfront on issue of invoice by the Company because the Company's orders for software and software licences are not usually refundable from its suppliers.
- (d) The Customer agrees that if it cancels any order for any software or software licences with the Company, the Customer is still liable to pay the Company the full price for that software or software licences including any amount invoiced Upfront and the remaining balance of the purchase price shall be due and payable within three (3) Business Days of invoicing by the Company. The liability of the Customer under this sub-clause is limited only in the circumstance that the Company receives a refund from its supplier, in relation to the relevant order, in which event the Company will pass the refund on to the Customer (the Customer must not withhold or delay payment for the order on the basis that the Company may in future receive a refund).
- (e) In relation to any Service or Product which the Company has invoiced the Customer for an Upfront Payment of 50% of the price in accordance with this clause, the Customer must pay the Company the remaining 50% of the price of that Product or Service three (3) Business Days prior to delivery upon notice of such delivery by the Company, which may be rendered at any time after the Customer first receives that Product or Service notwithstanding that any other Products or Services are ongoing.

5.3 Milestone Payments

In addition to, the other provisions concerning invoicing and payment, the Customer agrees to pay the Company, without set off or deduction, all invoices rendered in accordance with any Milestone Payment Schedule set out in the Quote and/or Scope of Works. the Company shall be entitled to render an invoice immediately upon completion of any milestone referred to in the Milestone Payment Schedule and the Customer must pay the Company any invoice for a completed milestone within three (3) Business Days of issue date of the invoice by the Company.

5.4 Payment Method

(a) Payment of the Company's invoices must be made by the Customer electronic transfer to the Company's bank account or cash.

5.5 Administration Fee

Where the Customer fails to pay the Company, in clear funds, the full amount payable under any invoice rendered by the Company on or before the due date, the Customer agrees that the Company shall be entitled to add a \$15 Administration Charge every 30 days following the due date until the outstanding amount is paid in full. The Customer will be liable to pay the Administration Charge in addition to the outstanding amount. The Customer agrees that the Administration Charge is not a penalty and that it represents a reasonable amount in relation to the internal administrative expense incurred by the Company in chasing overdue payment.

5.6 Recovery Costs

In the event the Customer is in breach of its obligation to pay any amount on an invoice rendered by the Company in accordance with this Agreement by the due date, the Customer shall keep the Company forever indemnified for all costs incurred by the Company (other than its internal administrative costs covered by the Administration Fee) in connection with recovering or attempting to recover the outstanding amount, including but not limited to solicitors fees on a solicitor and own client basis.

5.7 Third Party Arrangements

Where there is any arrangement or agreement between the Customer and Telstra whereby the products and/or services are delivered to the Customer by the Company in its capacity as a Dealer under a certain Telstra Dealership Agreement in force between Telstra and the Company, this Agreement will have no application in such circumstances.

6. GOODS AND SERVICES TAX

6.1 Definitions

(a) For the purposes of this clause unless the context otherwise requires:

GST	means any tax imposed on goods, services, or Taxable Supplies by or through the GST Act.
GST Act	means a <i>New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> and any regulation made thereunder, as amended from time to time.
GST Rate	means the percentage amount of GST payable determined under section 9-70 of the GST Act as amended from time to time.

- Tax Invoice** includes any document or record treated by the Commissioner of Taxation for GST purposes:
- a) As a tax invoice; or
 - b) As a document entitling the recipient to an input tax credit.
- Taxable Supply** has the same meaning it given in the *New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

- (b) The Parties acknowledge and agree that all amounts payable by the Customer under this Agreement are GST exclusive unless stated otherwise.
- (c) All amounts payable by the Customer under this Agreement, in connection with any Taxable Supply made by the Company, will be grossed up to include any GST to be paid while the underlying amount is due and payable. GST shall be calculated by applying the GST Rate at the time to the amount payable.
- (d) the Company shall issue Tax Invoice's to the Customer for all GST payable by the Customer under this Agreement.

7. SALE & LEASE OF PRODUCTS

7.1 Title to Products Sold

The Customer acknowledges and agrees that title and ownership of any Product sold by the Company to the Customer under this Agreement remains with the Company until the price (including GST) for the Product, including Administration Fees, has been paid in full by the Customer to the Company. The Customer agrees to return any Product to the Company's possession immediately on demand made by the Company at any time before title and ownership in the Product transfers to the Customer.

7.2 Lease Terms

Any Product provided by the Company to the Customer by way of lease or licence from the Company to the Customer shall be provided on such lease or licence terms as may be agreed between the Company and the Customer.

8. PMSI

8.1 PMSI General

These terms and conditions create a PMSI in the product (and their proceeds) supplied presently and in the future by the Company to the Customer.

The Customer agrees to do all things necessary and execute all documents reasonably required by the Company to register the PMSI granted by the Customer under these terms and conditions and to ensure that the Company acquires a perfected security interest in the product under the PPSA.

The Customer will, upon demand, pay all of the Company's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of the PMSI or any other security interest and all other costs associated with protection and enforcement of the PMSI or any other security interest created by these terms and conditions or by undertaking an audit under the provisions of the PPSA, or the repossession of the Product the

subject of these terms and conditions or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that the Company has with the Customer.

This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations.

8.2 Waiver by Customer

Until ownership of the product passes to the Customer, the Customer waives the Customer's rights under the following provisions of the PPSA, to the maximum extent that it is permitted by law, to:

receive a notice of intention to remove an accession (s.95);

receive a notice that the Company has determined to enforce the Company's security interest in accordance with land law (s118);

receive a notice of enforcement action against liquid assets;

receive a notice of disposal of the product by way of the Company purchasing the product from the Company (s129);

receive a notice of disposal of the product (s130);

receive a statement of account following disposal of the product (s132(2));

receive a statement of account every 6 months where there has been no disposal of the product (s152(4));

receive notice of retention of the product by the Company (s135(2));

object to any proposal by the Company to either retain or dispose of the product (s137(3));

redeem the product before the Company disposes of it (s142);

reinstate the security agreement (s143); and

receive any verification statement in relation to any registration event to which the Customer is a party (s157(1) and 157(3)).

8.3 Exclusions

To the extent permitted by the PPSA, these terms and conditions exclude any provisions of the PPSA which may be excluded in the Company's discretion, and which would otherwise confer rights on the Customer.

8.4 Part 4 of PPSA

The Customer further agrees that where the Company has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply. The Customer's right to possession of goods still owned by the Company under these terms and conditions shall cease if:

(a) the Customer being an individual, commits an act of bankruptcy, or,

(b) the Customer being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's

assets, any proceedings are instituted for the Customer's winding up, or the Customer enters into a Deed of Company Arrangement, or

(c) the Customer ceases or threatens to cease conducting business in the normal manner or apply for deregistration or receive a deregistration notice, or

(d) any cheque the Customer provides to the Company is dishonoured for payment, or

(e) the Customer fails to comply with any demand for payment issued by the Company, or

(f) the Customer breaches any of the terms and conditions contained herein and/or are in default of any other agreement between the Company and the Customer.

8.5 Company's Rights

The Customer agrees that the Company is entitled to enter any premises where the product supplied by the Company and still unpaid for is located and to repossess, remove and sell such product. The Customer agrees to indemnify and keep the Company indemnified in respect of any claims, actions and costs that may arise against the Company in relation to the removal, repossession and sale of the product pursuant to these terms and conditions including any claims brought by third parties.

The Customer agree that repossession and retention of the product pursuant to the PPSA will only satisfy so much of the monies which may become payable to the Company by the Customer, as is equivalent to the Company's estimation of the market value of the product as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest the Customer has on the product value of product recovered.

8.6 Demands

Until ownership of the product passes, the Customer must not give the Company a written demand or allow any other person to give the Company a written demand requiring the Company to register a financing change statement under the PPSA or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA.

8.7 Document Changes

The Customer agrees not to change the Customer's name or undertake any changes to any documents that the Company has registered, require to be registered or are capable of being registered without the Company's prior written consent.

9. WORKPLACE HEALTH AND SAFETY

9.1 the Company Obligations

the Company will always ensure that in performing the Services it uses safe and proper procedures and practices and that all its employees are properly trained and supervised and observe all proper safety practices. Where protective equipment, materials or clothing are required these will be provided by the Company and the Company will ensure that these are used by its personnel at all relevant times, except that the Company reserves the right to require that the Customer provide any such equipment, materials and clothing where specialised items are required due to the nature of the Premises or the Business.

9.2 Customer Obligations

The Customer will ensure that, in relation to any of the Services to be performed on the Customer's Premises:

- (a) the Customer is authorised to occupy the Premises and to authorise the Company to have access to it as necessary to provide the Service.
- (b) at all times, the Premises is safe and that all facilities provided by the Customer for the purposes of enabling the Service to be performed are also safe; and
- (c) the Company will have unencumbered and unobstructed access to the area of the Premises as required to provide the Services from time to time.

10. LIMITATION ON WARRANTY AND LIABILITIES

10.1 General

- (a) To the fullest extent permitted by Law, the Company makes no representation and gives no warranty in respect of the provision of the Services except that it will conduct the Services competently, professionally and to the best of its ability having regard to the terms of this Agreement.
- (b) All implied and statutory warranties and guarantees by the Company in connection with this Agreement and the Services and Products provided under it are excluded from this Agreement to the extent permitted by Law. This exclusion extends to all implied and statutory warranties and guarantees howsoever arising and on any subject matter including implied warranties and guarantees as to merchantability, fitness for purpose and the non-infringement of Third-Party intellectual property.
- (c) the Company will not be liable for any loss or damage that the Customer sustains as a direct or indirect result of any Recommendation by the Company or any responses to requests for advice being followed unless they were made by the Company deliberately in the knowledge that if followed by the Customer the Customer would suffer loss and damage.

10.2 Statutory Warranties

- (a) In relation to any Service provided by the Company under this Agreement, which is not a service of a kind ordinarily acquired for personal, domestic, or household use or consumption, the Customer acknowledges and agrees that, to the extent the Company's liability in relation to such Service under any warranty or guarantee arising under statute cannot be excluded entirely, the Company's liability under any that warranty or guarantee is limited, at our election, to:
 - (i) the supplying of the relevant Service to the Customer again; or
 - (ii) paying the Customer, the cost of having the Service supplied again.
- (b) In relation to any Product provided by the Company under this Agreement, which is not a good of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer acknowledges and agrees that, to the extent the Company's liability in relation to such Product under any warranty or guarantee arising under statute cannot be excluded entirely, the Company's liability under any such warranty or guarantee in relation to any such Product is limited, at our election, to:
 - (i) the replacement of the Product or supply of an equivalent Product.
 - (ii) the repair of the Product.
 - (iii) paying the Customer, the cost of replacing the Product or acquiring an equivalent Product; or
 - (iv) paying the Customer, the cost of having the Product repaired.

10.3 Limitation of Liability

- (a) The Customer acknowledges and agrees that, to the fullest extent permitted by Law, all liability of the Company to the Customer for indirect and consequential loss, including the loss or corruption of any Information Technology, loss of revenue, loss of profits, failure to realise expected profits or savings and any other economic loss of any kind arising in connection with this Agreement or the provision of any of the Services or Products under it is hereby excluded, and the Customer hereby releases the Company from all claims, demands, actions or proceedings in relation to any such liability.
- (b) The Customer acknowledges and agrees that the Company shall not be liable to the Customer for any liability including costs, expenses, loss, or damage (including loss of profits) of any kind (whether direct or indirect) suffered by the Customer in connection with this Agreement or the provision of any of the Services or Products under it due to:
 - (i) any of the Information Technology being properly in the possession or control of the Company.

- (ii) any of the Information Technology failing to operate properly or at all at any time or times during the Term for any reason whatever.
 - (iii) any non-deliberate inaccuracy, error, or omission on the part of the Company arising out of or in connection with the Services including without limitation inaccuracies, errors, or omissions as a result of the Company's negligence.
 - (iv) any non-deliberate negligent act or omission of the Company.
 - (v) the acts or omissions of the Customer in following or attempting to follow any recommendations or advice by the Company unless they were made by the Company with wilful disregard to their correctness or knowing that they were wrong.
 - (vi) any delay, failure, or error in the provision of the Services because of any circumstance beyond the Company's reasonable control including, without limitation, failure of any communications network or system or electronic power surges, overloads, failures, or black outs.
 - (vii) any delay in the Company attending the Premises to fix any breakdown or malfunction of any Information Technology.
 - (viii) any failure by the Company to fix any breakdown or malfunction of any Information Technology.
 - (ix) any inability of the Customer to access any of the Information Technology; and
 - (x) any disruption or interference with the Business as a direct or indirect consequence of the Services or Products being conducted or provided.
- (c) The Customer forever releases the Company from all claims, demands, causes of action or legal, court or tribunal proceedings by the Customer or anyone claiming through the Customer in relation to any liability which is excluded by clause 9.3(a) and for any liability which the Company is not liable for in accordance with clause 9.3(b).

10.4 Equipment and Products

- (a) The Company does not offer any warranties or guarantees in relation to any Product provided by it to the Customer. The warranty or guarantee (if any) on any Product provided by the Company is limited to any warranty or guarantee from the manufacturer of the Product or the distributor of the Product to the Company. the Company is not responsible for any manufacturer's or distributor's warranty or guarantee on any Product that The Company supply to the Customer.
- (b) the Company will, on request, assist the Customer by forwarding any Product provided by the Company under this Agreement, which is still covered by any manufacturer's or distributor's warranty or guarantee, to the manufacturer or distributor provided that the Customer will be responsible for all freight costs. To the extent that The Company are required to undertake any diagnostic work to determine whether an issue is covered by the manufacturer's or distributor's warranty or guarantee The Company will charge the Customer at a rate or cost as agreed in advance.
- (c) Loan Equipment – the Company may loan the Customer equipment to support the Managed Services. The Customer must return the equipment to the Company on termination or expiry of the Term.

10.5 Acknowledgement

The Customer acknowledges and agrees that:

- (a) the Customer has not relied upon any prior statement, undertaking or representation made or given by or on behalf of the Company before this Agreement was entered into; and
- (b) the Customer is fully aware of the contents of this Agreement and all documents referred to herein and that the Customer have had the opportunity before entering into this Agreement to obtain independent legal advice on its terms.

10.6 Continuation

The releases, indemnities and limitation of liability contained in this Agreement shall all continue in full force and effect notwithstanding the termination or expiry of this Agreement.

11. FORCE MAJEURE

11.1 Effects of a Force Majeure event

- (a) Neither Party will be liable for failing to perform its obligations under this Agreement to the extent that the failure is triggered by a force majeure event.
- (b) A force majeure event is an event beyond the control of a Party which makes performance of any of its obligations under this Agreement impractical. Force majeure events include, but are not limited to acts of terror, fire, storm, flood, earthquake, explosion, accident, interruption to services, industrial disputes, war, rebellion, insurrection, pandemics, and acts of God but do not include industrial disputes involving the staff of a Party.
- (c) A Party claiming force majeure must, give notice in writing to the other Party of a force majeure event as soon as practicable after it becomes aware of the effect of the event on the performance of its obligations under this Agreement and it must take all reasonable steps to remove, mitigate or limit the effect of the force majeure event.
- (d) A Party claiming force majeure shall be relieved from the obligations which are impracticable for it to perform from the date of giving notice of the force majeure event for so long as the force majeure event makes it impracticable to perform the relevant obligations.
- (e) Notwithstanding anything else herein to the contrary neither Party shall be entitled to claim force majeure in connection with any obligation to pay any moneys payable under this Agreement.

12. ASSIGNMENT

12.1 Rights of Customer

The Customer shall not assign or transfer this Agreement without the prior written consent of the Company, which consent shall be in the absolute discretion of the Company. A change in ownership or control of the Customer shall be deemed to constitute an assignment.

12.2 Rights of the Company

- (a) the Company may assign or transfer all or any of its rights or obligations to any third party under this Agreement, whether in whole or part, provided that such party has proven skills and resources at least equal to those of the Company, and that at least thirty (30) days prior written notice of that assignment has been given to the Customer.
- (b) The Company may sub-contract any part of its obligations under this Agreement without obtaining the consent of the Customer provided that the Company will remain liable for all its obligations under this Agreement notwithstanding sub-contracting any of them.

13. CONFIDENTIALITY

13.1 Definition

For purposes of this Agreement, **Confidential Information** includes all information or material that has or could have commercial value or other utility in the business in which Party disclosing the information (**Disclosing Party**) is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word **Confidential** or some similar warning when disclosing them to the other Party (**Receiving Party**). If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide confirmation in writing to the Receiving Party that such oral communication constituted Confidential Information.

13.2 Exclusions from Confidential Information

Receiving Party's obligations under this Agreement do not extend to information that is:

- (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party.
- (b) discovered or created by the Receiving Party before disclosure by the Disclosing Party.
- (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or
- (d) is disclosed by Receiving Party with the Disclosing Party's prior written approval.

13.3 Obligations of Receiving Party

The Receiving Party shall hold and maintain the Confidential Information in strictest confidence and use it only for the purpose of this Agreement. The Receiving Party shall carefully restrict access to Confidential Information to employees, contractors, and third parties as is reasonably required on a need-to-know basis provided that those persons are under no less an obligation to maintain confidentiality or have signed non-disclosure agreements at least as protective as this clause. The Receiving Party shall return to the Disclosing Party all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if the Disclosing Party requests it in writing. The Receiving Party may disclose Confidential Information to the extent necessary to enforce or administer this Agreement or if obliged to do so at Law in which event the Receiving Party will disclose the minimum amount of the Confidential Information as is practicable.

13.4 Time Periods

The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and the Company's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret, until three (3) years after this Agreement comes to an end or until the Customer sends the Company written notice releasing the Company from this Agreement, whichever occurs first.

13.5 Sharing Data with Third Parties

- (a) Notwithstanding anything else to the contrary herein the Company may share the Customer's data with any Third Party where it is necessary for the resolution of any technical issue or to do any other thing necessary in connection with conducting any of our Services.
- (b) Any personal information collected, used, and disclosed while providing our Services will be in accordance with the Company's Privacy Statement (available at www.ictgroup.com.au/terms)

14. PRIVACY AND ACCESS

14.1 Privacy and Access

- (a) The Customer consents to the Company contacting it directly for any purpose reasonably related to any the Company Service that the Customer uses or receives, to set up and carry out Cyber Security assessments, reviews, or audits by the Company, or to obtain feedback or complete a survey in relation to any Service used or received by the Customer.
- (b) The Customer must promptly report any faults or issues with any Service to the Company and provide all reasonable assistance for the Company to access and use the Customer's Information Technology systems as reasonably required by the Company to address such faults and issues.
- (c) If a Party becomes aware of any Data Breach occurring in relation to data held, hosted, or supported by the Company on behalf of the Customer, it must notify the other Party of the breach as soon as possible after becoming aware of it so that it is assessed as

to whether it is an Eligible Data Breach. Upon confirmation of an Eligible Data Breach the Company and the Customer shall engage in discussions regarding responsibility for notification of the breach. Unless agreed otherwise it will be the responsibility of the Customer to notify its own clients and Third Parties required to be notified of the breach in accordance with the requirements of the Notifiable Data Breach Scheme administered by the Office of the Australian Information Commissioner.

15. TERMINATION & EXPIRY OF AGREEMENT

15.1 Expiration of Agreement

This Agreement shall expire on the expiry date of the Term if either Party gives notice to the other in writing no less than thirty (30) days prior to the expiration of the Term stating that it does not wish this Agreement to extend for another twelve (12) months following the expiry date of the Term. In the absence of such written notice, the Term of this Agreement shall automatically be extended for another twelve (12) months (without any action required by either Party) on a rolling annual basis so that it will continue to be extended for further periods of twelve (12) months indefinitely unless or until this Agreement expires by notice in writing given by one Party to the other in accordance with this clause 14.1 or it is otherwise brought to an end.

15.2 Termination for Breach

In the event of breach of this Agreement (other than a minor breach) by a Party (**Breaching Party**) the other Party (**Innocent Party**) may give the Breaching Party notice in writing setting out details of the breach in reasonable detail and requiring that the Breach be remedied. If the breach is not remedied within thirty (30) days after such notice is given the Innocent Party may terminate this Agreement immediately by notice in writing to the Breaching Party.

15.3 Early Termination

Unless specifically provided for in this Agreement, if the Customer elects to terminate this Agreement without cause before the end of the Initial Term or a subsequent term, the Customer will be required to pay the balance of the Services Fees for the Services that would have been payable from the date of termination to the end of that term. If your Services are no longer in a fixed term, the Customer can terminate this Agreement on ninety (90) days written notice.

14.4 Effect of Termination

In the event of the termination or expiry of this Agreement the Customer agrees that it shall still be liable for the Company's fees and charges in relation to the provision of Services and/or provision of Products at any time before such termination or expiry takes effect.

16. INTELLECTUAL PROPERTY

16.1 Intellectual Property Rights

- (a) The Parties acknowledge and agree that nothing in this Agreement confers on either Party any right or interest whether at Law or in equity in the Intellectual Property of the other Party save and except that the Customer hereby grants to the Company a non-exclusive royalty free licence to utilise any Intellectual Property of the Customer in the Information Technology to the extent necessary to perform the Services and provide the Products.
- (b) The Customer acknowledges and agrees that no aspect of the Services performed by the Company which involves the development of any products or systems may be altered, reproduced, reverse engineered, stored in a retrieval system, or transmitted to any Third Party by the Customer or any contractor, employee, agent, or Related Entity of the Customer.

- (c) The Customer acknowledges and agrees that the Company owns all Intellectual Property created by the Company in connection with performance of the Services.
- (d) The Customer shall forever indemnify the Company against all liabilities, damages, costs (including legal costs on an indemnity basis) and expenses which the Company incurs as a result of any act or omission by the Customer which results in the infringement of or any challenge to the ownership of any Intellectual Property rights held by the Company.
- (e) This clause fifteen shall continue in full force and effect notwithstanding the termination or expiry of this Agreement.

17. SERVICE OF NOTICES

17.1 Notice

A notice or other communication (**Notice**) between the parties in connection with this Agreement has no legal effect unless it is in writing and either:

- (a) delivered by hand at the address for service of the Party to which it is addressed (**Recipient**); or
- (b) sent by mail, postage prepaid, to the address for service of the Recipient, if the address is in Australia and the Notice is being sent from within Australia; or
- (c) sent by prepaid airmail to the address for service of the Recipient if the address is outside Australia or if the Notice is being sent from outside Australia; or
- (d) sent by facsimile to the facsimile number of the Recipient; or
- (e) sent by email to the email address of the Recipient.

17.2 When Notice is Deemed to be Served

Where the Notice is delivered or sent in a manner provided by this clause it is deemed served on, given to, and received by the Recipient:

- (a) if delivered, upon delivery; or
- (b) if mailed from within Australia to an address in Australia, on the second Business Day after posting; or
- (c) if mailed to an address outside Australia or mailed from outside Australia, on the fifth Business Day after posting; or
- (d) if sent by email, before 4.00 pm on a Business Day on the day shown in the delivery receipt generated by the sender's email system which indicates that the email was sent to the Recipient's email address and otherwise on the next Business Day.

17.3 Receipt of Notice Email

A Notice sent email shall not be deemed served on, given to, or received by the Recipient if the sender receives a report generated by the sender's email system indicating an error in transmission or delivery.

17.4 Addresses for Service of Notices

- (a) The address for service and email address for the Company is contained in the "CONTACT US" section of the Company's Website.
- (b) A Party may change its address for service or email address by giving Notice of that change to each other Party.

17.5 Evidence of Service of Notices

A certificate signed by or on behalf of a party giving a Notice by any lawyer, officer or employee of that Party stating the date on which that Notice was delivered or sent, is prima facie evidence of the date on which that Notice was delivered or sent.

17.6 Notices Given to More than One Party

If the Party to which a Notice is intended to be given consists of more than one person, then the Notice is deemed given to that Party if given to any of those persons

18. GENERAL MATTERS

18.1 Relationship

Nothing in these terms and conditions shall be deemed or construed to constitute or create a partnership, association, joint venture, employment relationship or agency between the Parties.

18.2 Additional Documents

The Parties will each execute, sign, deliver, enter into, acknowledge, effect, and do all such deeds, acts, agreements, transfers, instruments, and things as may be requisite or may be deemed proper for the purposes of carrying into effect any of the matters herein agreed to.

18.3 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes and extinguishes any representations warranties and agreements previously given made or entered into other than those contained herein, and no variation of this Agreement (other than a variation of the Quote and Scope of Works as provided for elsewhere herein) shall be effective unless in writing signed by (or by some person duly authorised by) each of the Parties.

18.4 Time of Essence

Any date or period mentioned in any clause of this Agreement may be extended by mutual agreement between the Parties, but as regards any date or period (whether or not extended aforesaid) time shall be of the essence, including the time or any period of notice referred to in any notice given pursuant to this Agreement.

18.5 Severability

If it is held by a court of competent jurisdiction that:

- (a) any part of this Agreement is void, voidable, illegal, or unenforceable; or
- (b) this Agreement would be void, voidable, illegal, or unenforceable unless any part of this Agreement was severed from this Agreement.
- (c) that part shall be severed from and shall not affect the continued operation of the rest of this Agreement.

18.6 Exclusivity

- (a) The Customer will only use the Company during the Term for the provision of the Services. This is an essential term of this Agreement.
- (b) The Customer must not without the express prior written consent of the Company permit any other person to interfere with, alter or change the Information Technology.

18.7 Exercise of Rights

Any rights conferred by this Agreement upon the Parties shall be unconditional and without prejudice to all other rights and remedies available to them.

18.8 Waiver

- (a) Failure or omission by any of the Parties at any time and from time to time to enforce or require the strict compliance with any provision of this Agreement shall not affect or impair such provision in any way or the rights of such Party to avail itself of such remedies as it may have in respect of any breach or breaches of any such provisions.
- (b) No waiver of any right or remedy will be effective unless in writing and shall not operate as a waiver of that right or remedy or any other right or remedy on a future occasion.

18.9 Variation

No variation, modification, or waiver of any provision of this Agreement nor consent to any departure by any Party therefrom shall be of any force or effect unless the same shall be confirmed in writing, signed by the Parties, and then such variation, modification, waiver, or consent shall be effective only to the extent for which it may be made or given.

18.10 Jurisdiction

This Agreement will be construed in accordance with the Law applying in the New South Wales and the Party's submit to the exclusive jurisdiction of the courts and tribunals of the New South Wales and the courts with jurisdiction to hear appeals from them for the resolution of any dispute under this Agreement.

18.11 Execution in Counterpart

This Agreement may be executed in any separate number of counterparts, which when executed shall together be deemed to constitute one and the same instrument and which may be brought into effect by any means of exchange, including by exchange using any form of electronic media.