

# Terms and Conditions

Effective Date: 1 June 2020

## 1. General

- 1.1 These Terms and Conditions apply to and form part of any transaction you ('CUSTOMER') make with Team Computing Australia Pty Ltd ('TEAM') from the Effective Date above until superseded.
- 1.2 These Terms and Conditions may only be changed or deleted by a Quotation, Statement of Work, Services Agreement or other written document issued by TEAM
- 1.3 In the event of a conflict between these Terms and Conditions and a specific Transactional Agreement then the terms and conditions of the Transactional Agreement shall apply unless contrary to the Law.
- 1.4 Each version of the Terms and Conditions applies to all Transactional Agreements entered into between the parties which are signed by the CUSTOMER on or after the date of that version Terms and Conditions until the release by TEAM of the next version.

## 2. Term and Termination

- 2.1 Except as provided for in Clause 2.2 of these Terms and Conditions, these Terms and Conditions and any relevant Transactional Agreement remain in force in respect of any Product or Service supplied to a CUSTOMER for as long as TEAM continues to supply that Product or Service to the Customer.
- 2.2 Other than where terminated by the CUSTOMER or TEAM in accordance with a relevant clause of a Transactional Agreement, these Terms and Conditions shall remain in force for the Initial Term of that Transactional Agreement and subsequent, extended or renewal terms shall be governed by those Terms and Conditions most recently released by Team at the time of any such renewal.
- 2.3 The CUSTOMER may terminate these Terms and Conditions or a Transactional Agreement by notice in writing to TEAM if:
  - (a) in respect of a Transactional Agreement, the CUSTOMER gives TEAM the greater of, sixty (60) days or the notice period specified in the Transactional Agreement, prior written notice of the termination and pays any applicable early termination fee, which is either:
    - (i) the early termination fee specified in the Transactional Agreement or;
    - (ii) if no early termination period is specified, the unpaid amount of the total charges applicable to the Transactional Agreement plus any reasonable costs incurred by TEAM caused by the cancellation; or
  - (b) TEAM commits a material breach of these Terms and Conditions or a Transactional Agreement and either:
    - (i) the breach is not remedied within 14 days of the date the written notice of the breach is given to TEAM; or
    - (ii) the breach is not capable of remedy; or
  - (c) TEAM suffers an Insolvency Event
- 2.4 TEAM may terminate these Terms and Conditions or a Transactional Agreement by notice in writing to the CUSTOMER if:
  - (a) CUSTOMER commits a material breach of these Terms and Conditions or a Transactional Agreement and either:
    - (i) the breach is not remedied within 14 days of the date the written notice of the breach is given to CUSTOMER; or

- (ii) the breach is not capable of remedy; or
  - (b) the CUSTOMER fails to pay any amount (which is not subject to a dispute under clause 27) due under any Transactional Agreement within 14 days of written notice from TEAM requiring payment; or,
  - (c) the CUSTOMER suffers an Insolvency Event; or
  - (d) a Supplier Failure occurs which impairs or prevents TEAM from delivering the Products or Services in a Transactional Agreement in accordance with these Terms and Conditions; or,
  - (e) any permit, licence, lease or consent required for the provision of the Services cannot reasonably be obtained or retained by TEAM; or,
  - (f) TEAM is required to do so to comply with any law or direction of any Government Agency.
- 2.5 In addition to the right to terminate these Terms and Conditions or a Transactional Agreement under clause 2.4(b), if the CUSTOMER fails to pay any undisputed amount due under this or any Transaction Agreement, TEAM may do one or more of the following:
- (a) Suspend the provision of the Services or Products;
  - (b) Charge the CUSTOMER interest on the overdue amount from the invoice date up to the date of actual payment at the Interest Rate;
  - (c) Where a Service includes access to any physical or logical assets, suspend access to those physical or logical assets; or
  - (d) Use or disclose any information including any Personal Information collected or recorded in relation to the CUSTOMER to a third party to assist TEAM in the process of debt recovery.
- 2.6 If TEAM suspends the provision of any Services or Products under clause 2.5, TEAM may reinstate those Services or Products if all amounts due (including interest) are subsequently paid. In that event, TEAM may charge a reinstatement fee equal to TEAM's reasonable costs incurred in suspending and reconnecting the Services or Products and reconnection will not occur until those costs have been paid.
- 2.7 On termination of these Terms and Conditions or a Transactional Agreement:
- (a) Where the Agreement is terminated in pursuant to clauses 2.4(a), 2.4(b), 2.4(c) or where the Agreement is terminated by the CUSTOMER pursuant to clause 2.3(a), TEAM may invoice the CUSTOMER and the CUSTOMER shall within 14 days pay TEAM for any Fixed Term Charge due in respect of the Service or Products for the remainder of the Initial Term or any renewal term;
  - (b) Unpaid sums owing by either party shall become due and payable to the other party;
  - (c) In addition to any other rights it may have TEAM may:
    - (i) Retain any monies paid to it in respect of Products or Services provided;
    - (ii) Invoice the CUSTOMER and the CUSTOMER shall within 14 days pay TEAM for any Services or Products provided up to the date of termination which have not yet been invoiced;
  - (d) The CUSTOMER must return to TEAM any passwords, keys, access codes, security devices or access cards provided by TEAM or any third party in relation to the Services or Products being terminated;
  - (e) The CUSTOMER must remove any equipment located on TEAM premises or in TEAM's data centres within 5 business days of the termination and should the CUSTOMER fail to do so TEAM may remove the equipment and dispose of it in any manner TEAM decides at TEAM's absolute discretion;

- (f) The CUSTOMER authorises TEAM to recover any sums owed to TEAM from any amounts the CUSTOMER may have previously overpaid;
  - (g) TEAM shall have upon reasonable notice to the CUSTOMER, reasonable access to the premises of the CUSTOMER for the purposes of disconnection packaging and retrieval of any goods or equipment owned by TEAM or a third party that were provided in relation to the terminated Services or Products and TEAM shall not be liable for any redecoration, repair or repainting as a result of such removal);
  - (h) TEAM shall continue to provide any Services or Products to the CUSTOMER that have not been terminated, unless the termination makes it technically or commercially unreasonable to do so.
- 2.8 Where a Transactional Agreement involves the supply of equipment under a rental or periodic arrangement, upon the expiry or termination of that Transactional agreement the CUSTOMER shall, at their own expense and without delay, return to TEAM the said equipment in good repair (in TEAM's reasonable opinion). Where this does not occur within 30 days of the expiry or termination then the CUSTOMER must provide TEAM access to the CUSTOMER premises to collect the equipment, with such removal being at the CUSTOMER's expense and upon notification of such expense the CUSTOMER shall pay that amount to TEAM as a debt immediately due and payable.

### 3. Supply of Goods

3.1 Where a Transactional Agreement includes a supply of Goods:

- (a) CUSTOMER agrees that until otherwise notified to CUSTOMER in accordance with these Terms and Conditions, the Goods will be supplied by TEAM to CUSTOMER:
  - (i) on these terms and conditions;
  - (ii) all other applicable annexures and schedules attached to them; and
  - (iii) the terms and conditions specified in the Transactional Agreement relating to the supply of those Goods.
- (b) TEAM agrees to sell and CUSTOMER agrees to purchase the Goods;
- (c) CUSTOMER acknowledges that a quoted price may change at any time up to TEAM's acceptance of the CUSTOMER's order
- (d) CUSTOMER acknowledges that TEAM may not be the manufacturer of the Goods;
- (e) At CUSTOMER's expense, CUSTOMER is responsible for ensuring that:
  - (i) The Delivery Site is suitable for installation of the Goods and has sufficiently convenient access to enable the delivery of the Goods;
  - (ii) CUSTOMER has all required government, building management, strata body and any other required regulatory consents and/or approvals to set up and operate and use the Goods at the Delivery Site;
  - (iii) The access to the Delivery Site is such that it will not cause excessive wear and tear to TEAM's and/or its contractors' trucks, trailers, vehicles and associated equipment (including from inclement weather);
  - (iv) TEAM and/or TEAM's contractors have permission to access and enter the Delivery Site; and
  - (v) TEAM's employees and contractors receive appropriate safety and induction courses for the Delivery Site.

- (f) TEAM sells the Goods to the manufacturer's design specifications but makes no warranty that the Goods or design specifications will comply with the requirements and/or conditions of any government or any other regulatory body, relating in any way to the Goods, the set up and operation of the Goods, the use of the Goods at the Delivery Site or that the Goods, the design specifications and the installation of the Goods will be able to withstand any particular environmental conditions. CUSTOMER accepts the Goods and Services on that basis and that those things are the responsibility of the CUSTOMER. CUSTOMER also accepts that CUSTOMER cannot delay payment of any money under this contract because of those things or anything else.
- (g) Except where otherwise provided in a Transactional Agreement or Engagement Agreement the CUSTOMER agrees with TEAM that CUSTOMER will provide at CUSTOMER's expense all services required for use of the Goods, delivering them to the Delivery Site, installation and maintaining them, employees, meals, and other relevant services for those purposes.
- (h) CUSTOMER must only use the Goods for a Permitted Purpose where a Permitted Purpose is specified in a Transactional Agreement and in any case must only use the Goods:
  - (i) in accordance with:
    - (A) TEAM's recommendations and/or specifications; and
    - (B) the manufacturer's recommendations and/or specifications if any part of the Goods was not manufactured by TEAM; and
  - (ii) as permitted by law.
- (i) CUSTOMER must otherwise comply with all laws relating to CUSTOMER's use of the Goods.
- (j) Subject at all times to TEAM's continuing rights in the Intellectual Property and the Confidential Information, title in any Goods referred to in any Transactional Agreement passes when all money owed by CUSTOMER to TEAM for the Goods including for all prior Transactional Agreements has been paid in full in cleared funds.
- (k) TEAM may enter CUSTOMER's premises to re-take possession of any part of Goods referred to in a Transactional Agreement if CUSTOMER is in breach of sub-clause 3.1(j).
- (l) CUSTOMER must not re-supply any part of Goods to any other party whether with or without charge.
- (m) CUSTOMER is responsible for the Goods from the time risk for them passes to the CUSTOMER.
- (n) The Goods are at CUSTOMER's risk as follows (as the case may be):
  - (i) If CUSTOMER is to collect the Goods from TEAM, the Goods are at CUSTOMER's risk from when they are loaded onto CUSTOMER's or CUSTOMER's contractor's vehicle(s) at TEAM's premises or the premises from which the Goods are to be collected by the CUSTOMER; or
  - (ii) If TEAM is to deliver the Goods to the Delivery Site, the Goods are at CUSTOMER's risk when the Goods have been unloaded at the Delivery Site by TEAM or another party on behalf of TEAM.
- (o) CUSTOMER must not alter the Goods without TEAM's prior written consent.
- (p) Where Goods are provided with a manufacturer's warranty or maintenance contract the CUSTOMER agrees to abide by the terms of any such warranty or contract and to hold TEAM harmless for any breach by any party of such a warranty or contract regardless of who caused the breach.
- (q) TEAM may, but is not obligated to, accept the return of a good and in this case:

- (i) All Goods returned must be in a condition suitable for resale and in a condition acceptable to TEAM and TEAM's suppliers for return; and
  - (ii) Credit or return requests must be approved in writing by TEAM prior to Goods being returned; and
  - (iii) TEAM may specify the delivery address to which Goods may be returned provided such address is within Australia; and
  - (iv) Opened, damaged or soiled Goods or packaging will not be acceptable for credit; and
  - (v) Freight or delivery charges on the original supply will not be credited unless the return is as a result of an error by TEAM; and
  - (vi) Return freight to TEAM or TEAM's designated delivery location is at CUSTOMER's expense; and
  - (vii) TEAM may charge a handling and restocking fee of up to 15% if the return is accepted, unless the goods were faulty at the time of delivery.
- (r) CUSTOMER agrees to abide by the terms of any applicable licence agreement pertaining to any Goods or Services provided.

## 4. Supply of Services

4.1 Where a Transactional Agreement includes a supply of Services:

- (a) CUSTOMER agrees that until otherwise notified to CUSTOMER in accordance with these Terms and Conditions, the Services will be supplied by TEAM to CUSTOMER:
  - (i) on these Terms and Conditions;
  - (ii) all other applicable annexures and schedules attached to them; and
  - (iii) the terms and conditions specified in the Transactional Agreement relating to the supply of those Services.
- (b) TEAM agrees to sell and CUSTOMER agrees to purchase the Services;
- (c) CUSTOMER must inform TEAM of the Materials required by TEAM to perform the Services and at CUSTOMER's cost supply the Materials to TEAM so that TEAM can use them when delivering the Services;
- (d) TEAM must use the Materials in delivering the Services;
- (e) TEAM must purchase, provide, repair and replace at TEAM's cost the Employee Equipment and cannot recover cost from the CUSTOMER;
- (f) CUSTOMER will provide such other cooperation, arrangements, access, details and information as TEAM needs to deliver the Services;
- (g) CUSTOMER will provide a safe and functional work environment for TEAM employees where the Services are delivered on CUSTOMER premises;
- (h) CUSTOMER must use the Services in accordance with the terms of the Transactional Agreement and any applicable Law
- (i) CUSTOMER will pay the cost of the Services as laid out in the Transactional Agreement;
- (j) CUSTOMER agrees that Services shall be provided on a time and materials basis unless otherwise specified in a Transactional Agreement;

- (k) Where a Transactional Agreement does not specify a fixed price for Services CUSTOMER agrees that TEAM may modify the rates for Services by providing at least 30 days written notice of such a change;
- (l) CUSTOMER agrees to reimburse TEAM for all reasonable expenses TEAM incurs in performing the Services plus an administration charge of 8% but only if TEAM;
  - (i) obtains CUSTOMER's prior approval for the expenditure; and
  - (ii) produces receipts or other evidence of the expenditure within 3 months of incurring the expense.
- (m) If a change in the Services is required, TEAM and CUSTOMER undertake to negotiate in good faith any necessary amendments to the terms and conditions of this contract or the applicable Transactional Agreement, including to the cost, because of that change and so as to enable the provision of the Services, as changed.
- (n) TEAM and CUSTOMER are independent contracting parties, not in any relationship of employer and employee, principal and agent, partnership or joint venturers.
- (o) TEAM will not receive any benefits or entitlements that any employee of CUSTOMER would receive.
- (p) Except as otherwise set out in or contemplated by the Services, TEAM has no authority to act for or to assume any obligation or liability on behalf of CUSTOMER.
- (q) CUSTOMER must allow TEAM access to monitor CUSTOMER usage of Services where applicable.
- (r) TEAM reserves the right to carry out feasibility studies, surveys, or other service qualifications following execution of a Transactional Agreement. In the event that TEAM discovers that the provision of the Services is, in TEAM's opinion, likely to be uneconomic, TEAM may terminate the Transactional Agreement or any part of it by giving CUSTOMER prior written notice before the Commencement Date.
- (s) TEAM may without CUSTOMER's prior consent subcontract or allow a subcontractor to subcontract any of TEAM's rights and obligations under this contract.
- (t) Except as otherwise specifically set out in this contract, TEAM will be liable to CUSTOMER for the acts and omissions of TEAM's subcontractors.
- (u) TEAM is liable for all acts and omissions committed by TEAM or TEAM's employees in the course of or as a direct result of providing the Services.
- (v) CUSTOMER will not do, or omit to do, anything which CUSTOMER is aware, or ought reasonable be aware, could have an adverse impact on TEAM's ability to provide the Service.
- (w) CUSTOMER may, acting reasonably, direct TEAM that TEAM must not use a particular employee or employees for the purpose of the provision of the Services and in that case CUSTOMER agrees that should TEAM using commercially reasonable endeavours be unable to substitute the employee or employees then TEAM shall be entitled to cease providing the Services without penalty or to negotiate in good faith with CUSTOMER to change the agreement to allow TEAM to continue to provide the Services.
- (x) TEAM warrants that:
  - (i) it will devote the time, ability and attention as and when reasonably required so as to professionally and competently provide the Services to CUSTOMER;
  - (ii) it possesses the expertise in providing the requisite specialist skills and services necessary to provide the Services or will procure such expertise; and
  - (iii) it will provide the Service:

- (A) in a lawful, competent, professional and timely manner;
  - (B) with the degree of skill, care and diligence of an experienced contractor providing the Services;
  - (C) in accordance with generally accepted industry standards;
  - (D) without limiting the obligations in sub-clause 4.1(x)(iii)(C), in accordance with any applicable standards of a generally recognised authority setting standards in Australia that are applicable to the Services;
  - (E) in a way that minimises as far as reasonably and commercially possible disruption or damage to CUSTOMER's business or reputation; and
  - (F) In accordance with any Service Levels specified in a the related Transactional Agreement
- (y) In providing the Services, TEAM will comply with;
- (i) all reasonable directions given by CUSTOMER;
  - (ii) any reasonable provision set out in any policy, practice and/or procedure of CUSTOMER as varied from time to time.
- (z) TEAM will provide the Services at such locations as CUSTOMER may nominate from time to time provided that such nominations are reasonable and that CUSTOMER agrees to reimburse TEAM for any new or additional travel, accommodation or living expenses TEAM incurs in providing the Service at those locations.
- (aa) Without limiting any other obligations of TEAM, TEAM will:
- (i) cooperate with other contractors and contractors engaged by CUSTOMER and where appropriate as specified in the Transactional Agreement, coordinate and integrate its work with the work of those contractors;
  - (ii) not unreasonably interfere with or disrupt or delay the business or affairs of CUSTOMER or CUSTOMER's employees in the execution of their work (although, CUSTOMER acknowledges that by its nature, the provision of the Services may cause disruption, outages and changes to the operation of some or all of the CUSTOMER's business).
- (bb) CUSTOMER's sole remedy for TEAM's failure to meet a Service Level is the Service Level Rebates or Service Level Credits as specified in the Transactional Agreement, and CUSTOMER waives the right to any further remedy.

## 5. Employees

### 5.1 TEAM:

- (a) is responsible for all statutory, contractual and other entitlements of TEAM's employees, including but not limited to the Employee Obligations;
- (b) warrants that it has met or will meet all such obligations as and when they arise;
- (c) must procure that TEAM's employees do all things that TEAM would otherwise be required to do under this contract as if a reference to "TEAM" was a reference to "TEAM's employees".

## 6. Good Faith Dealings

### 6.1 Each party agrees that it will:

- (a) act in good faith towards the other party, including where something about the agreement made under any Transactional Agreement or Engagement Agreement is not dealt with in it; and



- (b) make full disclosure to the other:
  - (i) about all material things known to them that directly or indirectly affect the transaction under any Transactional Agreement; and
  - (ii) as otherwise required under any Transactional Agreement or Engagement Agreement.

## 7. Suitability of Goods and/or Services

- 7.1 CUSTOMER accepts full responsibility for the correct selection of Goods or Services to satisfy their requirements and the appropriate use of those Goods or Services.
- 7.2 CUSTOMER acknowledges it has exercised its own judgement as to the suitability of the Goods and Services supplied by TEAM.
- 7.3 TEAM does not warrant that any particular Goods or Services will work with any particular computer system, network, software or data format except where expressly stated within a Transactional Agreement.

## 8. Deposits

- 8.1 If a deposit is defined under a Transactional Agreement the CUSTOMER must pay the deposit as set out in that agreement by electronic transfer or other means acceptable to TEAM within 3 Business Days of the acceptance of that agreement.
- 8.2 A deposit is non refundable;
- 8.3 A deposit will be held by TEAM and offset pro rata against the payments CUSTOMER is required to make under the related Transactional Agreement;
- 8.4 If CUSTOMER cancels or terminates any part of a Transactional Agreement, CUSTOMER forfeits the deposit to TEAM and without limiting any of its rights, TEAM may sue CUSTOMER for damages.
- 8.5 A deposit will be apportioned pro-rata between the Goods and Services (excluding maintenance) by reference to their total cost under the related Transactional Agreement.

## 9. Payments

- 9.1 Payment terms for Goods are Cash On Order unless otherwise specified.
- 9.2 Payment terms for Services are Payment in Advance unless otherwise specified.
- 9.3 TEAM may elect to offer credit terms to CUSTOMER but is not obligated to do so. Where credit terms are offered then unless otherwise specifically agreed in writing CUSTOMER shall pay amounts on tax invoices within 14 days from the date of issue.
- 9.4 If CUSTOMER does not pay money to TEAM when it is due, interest is payable on the overdue amount at the Interest Rate, calculated daily and compounded weekly from the date due until paid in full and the parties agree that this is a genuine pre-estimate of the damages that TEAM will suffer for the late payment.
- 9.5 If requested by the CUSTOMER, TEAM will issue a tax invoice for interest payable under clause 9.4
- 9.6 If CUSTOMER does not pay money to TEAM when it is due, TEAM may suspend Services, prevent delivery or retrieve Goods from CUSTOMER until such money is paid in full.
- 9.7 All payments by CUSTOMER will be made by electronic transfer to TEAM's nominated bank account.
- 9.8 TEAM is not required to supply any Goods or Services to CUSTOMER until the required payment has been cleared for drawing by TEAM.



- 9.9 CUSTOMER's obligation to pay TEAM is absolute and is not affected by any defect or damages or breakdowns or loss or destruction of the Goods or Services.
- 9.10 CUSTOMER may not set off against money CUSTOMER owes TEAM any money CUSTOMER says TEAM owes CUSTOMER.
- 9.11 Unless any dispute about the amount of money to be paid to TEAM is notified in writing to TEAM within 14 days of the Invoice Date the CUSTOMER agrees that the invoice is correctly rendered and that the money detailed on that invoice is payable to TEAM on the payment terms agreed between the parties.
- 9.12 In the case of a dispute over an amount on a TEAM invoice, the CUSTOMER is required to pay any other outstanding amounts on that invoice and any other invoice within the payment terms agreed between the parties.
- 9.13 TEAM may invoice CUSTOMER for Services from the Commencement Date whether or not CUSTOMER has used the Service since that date.
- 9.14 CUSTOMER acknowledges and accepts that TEAM may pay commissions to any dealer or referral fees to any person who introduced CUSTOMER to TEAM.
- 9.15 Provided TEAM provides CUSTOMER with reasonable evidence of increased costs, CUSTOMER agrees to pay varied Charges to TEAM where TEAM's costs increase as a result of any additional regulatory costs, imposts, penalties or taxes imposed by any governmental or regulatory body.

## 10. GST and other Taxes

- 10.1 CUSTOMER agrees that all pricing stated on a Transactional Agreement is exclusive of GST unless otherwise specifically stated.
- 10.2 CUSTOMER must, without deduction or set off, pay to TEAM all GST payable in respect of any taxable supply made by TEAM to CUSTOMER in respect of any Transactional Agreement.
- 10.3 The amount of GST payable by CUSTOMER is payable when CUSTOMER has to make payments to TEAM for the Transactional Agreement.
- 10.4 CUSTOMER must provide TEAM with a valid Australian Business Number.
- 10.5 TEAM will issue a valid tax invoice to CUSTOMER for all supplies made by TEAM to CUSTOMER.
- 10.6 To the extent that the CUSTOMER incurs any taxes or fees in relation to any Transactional Agreement those taxes shall be borne and paid by the CUSTOMER. Where any such taxes are incurred by TEAM on the CUSTOMER's behalf the CUSTOMER agrees to pay TEAM the full amount of those taxes and in the manner in which other payments are made to TEAM.

## 11. Fixed Term Payments

- 11.1 Subject to clause 11.2 as to instalment payment terms, where CUSTOMER purchases a Fixed Term Service, the Fixed Term Charge is payable on the Commencement Date and constitutes a debt due to TEAM as from that date.
- 11.2 CUSTOMER may pay the Fixed Term Charge in instalments as specified in the relevant Transactional Agreement, over the Initial Term for as long as CUSTOMER complies with the terms of the agreement.
- 11.3 TEAM must issue invoices to CUSTOMER in respect of each monthly or quarterly instalment of the Fixed Term Charge in advance.
- 11.4 If either:
  - (a) CUSTOMER terminates one or more Services prior to expiry of their Initial Term (other than in accordance with these Terms and Conditions or as otherwise specified in the Transactional Agreement); or

- (b) TEAM terminates one or more Services prior to the expiry of their Initial Term due to a breach by CUSTOMER or by direction of any Government Agency, then

any unpaid part of the Fixed Term Charge outstanding in respect of those Services becomes immediately due and payable to TEAM.

## 12. Delays

- 12.1 TEAM will use reasonable endeavours to deliver any Goods and Services on or before the Delivery Date, but that date is an estimate only. However meeting the Delivery Date and the later installation of the Goods or Services is not an essential date and/or term of this contract.
- 12.2 If TEAM considers it may have difficulty in meeting CUSTOMER's Delivery Date on time or at all, it must inform CUSTOMER as soon as it becomes aware of the difficulty.
- 12.3 If TEAM is delayed or prevented from performing an obligation to supply Goods and/or Services because of an event or circumstance beyond its control:
  - (a) that obligation is suspended so long as that event or circumstance exists; and
  - (b) it must as soon as practicable give CUSTOMER notice setting out the nature of the event or circumstance.

## 13. Customer Warranties

- 13.1 CUSTOMER warrants to TEAM that on the earlier of CUSTOMER taking delivery of the Goods and/or Services or on the installation of the Goods and/or Services by TEAM, CUSTOMER will have examined the Goods and/or Services and unless CUSTOMER otherwise notifies TEAM in writing within 7 days of the earlier of delivery or installation, CUSTOMER is satisfied as to its:
  - (a) compliance with their description under the Transactional Agreement;
  - (b) suitability and quality for CUSTOMER's use;
  - (c) compliance with any law regarding the design or use of the Goods and/or Services.
- 13.2 CUSTOMER acknowledges that:
  - (a) TEAM has entered into any Transactional Agreement relying on CUSTOMER's warranties;
  - (b) any implied terms, conditions and warranties are excluded to the extent permitted by law;
  - (c) TEAM is not liable to CUSTOMER for any consequential damages if TEAM breaches any of its obligations under any Transactional Agreement.

## 14. Indemnities

- 14.1 CUSTOMER indemnifies TEAM and its agents, contractors, officers, directors and employees against and releases them from any direct or indirect liability, loss, damage or cost, claim or action or cost arising from them that CUSTOMER may incur and which arise from or in relation to the Goods and/or the provision of the Services.

## 15. Force Majeure

- 15.1 Where a failure or delay by a party in the performance of its obligations (but not payment obligations) under a Transactional Agreement is caused by a Force Majeure event either directly or indirectly:
  - (a) The Affected Party must as soon as practicable give the other party written notice of the circumstances;
  - (b) The Affected Party is not liable for that failure or delay; and,

- (c) The Affected Party's obligations under these Terms and Conditions and the Transactional Agreement shall be suspended to the extent that they are affected by the Force Majeure event for the duration of the Force Majeure event.
- (d) Where the Force Majeure event continues for 30 days and while it continues, the non-Affected Party may terminate the relevant Transactional Agreement by giving written notice to the Affected Party and clause 2.7 applies.

## 16. Warranties and Limitation of Liability

- 16.1 Unless otherwise agreed in a Transactional Agreement, neither party is liable to the other for any Consequential Loss regardless of cause.
- 16.2 Except as otherwise implied by law:
  - (a) all conditions and warranties regarding the sale of the Goods, the Goods and the supply of the Services are set out in the Transactional Agreement; and
  - (b) CUSTOMER does not rely on any representations or warranties by TEAM in respect of the Goods, their installation or the Services that are not implied by law or specifically set out in any Transactional Agreement.
- 16.3 Where a condition or warranty about the sale of the Goods, the Goods and supply of the Services is implied by law and it cannot be excluded, the liability of TEAM for a breach of that term or condition is at the option of TEAM limited to one or more of the following:
  - (a) the replacement of the Goods or the supply of equivalent goods;
  - (b) repair of that part of the Goods that can be repaired;
  - (c) payment of the cost of replacing the Goods or of acquiring equivalent goods forming part of the Goods;
  - (d) payment of the cost of repairing that part of the Goods that can be repaired;
  - (e) resupplying the Service or part of the Service;
  - (f) paying the cost of having the Service or part of the Service resupplied.
- 16.4 If any of the Goods are manufactured by a party other than TEAM
  - (a) TEAM gives no warranty about the Goods;
  - (b) CUSTOMER accepts it on that basis;
  - (c) CUSTOMER agrees that CUSTOMER's only rights in respect of the Goods are against the manufacturer.
- 16.5 TEAM assigns to CUSTOMER the benefit of any express or implied warranties in relation to that part of the Goods that has not been manufactured by TEAM.
- 16.6 CUSTOMER indemnifies TEAM against any claims or obligations arising out of any proceedings CUSTOMER may institute against a manufacturer or supplier of the Goods where that manufacturer or supplier is not TEAM.
- 16.7 CUSTOMER acknowledges that a warranty does not cover fault, failure or malfunction due to external causes including but not limited to accident, abuse, misuse, normal wear and tear, any act of God including hail, problems with electricity supply including outages or power surges, servicing or repairs carried out by parties not authorised by TEAM, problems caused by parties other than TEAM or a party authorised by TEAM, any act of omission by CUSTOMER, CUSTOMER employees, contractors and agents or by any third party.

- 16.8 The total aggregate liability of each party in respect of all claims made under this agreement or any Transactional Agreement and the Services and Products provided thereunder (including claims under negligence or tort) is limited as follows:
- (a) For TEAM, where the claim is in respect of or in connection with a failure to meet any service level specified in the relevant agreement, the Service Level Rebate as described in the Transactional Agreement
  - (b) In every other case, an amount equal to:
    - (i) Where this Agreement has been in force for more than 12 months, the charges paid by the CUSTOMER in the 12 month period prior to the date of the relevant claim; or
    - (ii) Where this Agreement has not been in effect for 12 months or more, the amount calculated by multiplying the monthly recurring charges payable in respect of all services the CUSTOMER has with TEAM at the date of the breach by 12.
  - (c) Any limitation of liability herein does not limit either party's liability for:
    - (i) Death or personal injury caused by any negligent act or omission or wilful misconduct of that party or any of its officers, agents, employees or contractors.
    - (ii) Loss or damage to tangible property caused by any negligent act or omission or wilful misconduct of that party or any of its officers, agents, employees or contractors, which where permitted by Law is capped at \$20M; and,
    - (iii) In respect of the CUSTOMER, the CUSTOMER's liability under the indemnity given by the CUSTOMER under any relevant clauses; or,
    - (iv) Fraud.

## 17. Customer Representative

- 17.1 CUSTOMER appoints as their representative that person identified as CUSTOMER Representative in a Transactional Agreement.
- 17.2 CUSTOMER's Representative will be responsible for liaising with TEAM's Representative about the performance of TEAM of TEAM's obligations under any Transactional Agreement.
- 17.3 CUSTOMER's Representative has authority to act for and on behalf of CUSTOMER.
- 17.4 The actions and decisions of CUSTOMER's Representative bind CUSTOMER.
- 17.5 The appointment of CUSTOMER's Representative does not prevent or exclude CUSTOMER from exercising any of CUSTOMER's functions but that is always subject to the prior provisions of this clause.
- 17.6 CUSTOMER's Representative may give instructions to TEAM orally or in writing.

## 18. TEAM Representative

- 18.1 TEAM appoints as their representative that person identified as TEAM Representative in a Transactional Agreement.
- 18.2 TEAM's Representative will be responsible for liaising with CUSTOMER's Representative about the performance by TEAM of TEAM's obligations under any Transactional Agreement.
- 18.3 TEAM's Representative has authority to act for and on behalf of TEAM.
- 18.4 The actions and decisions of TEAM's Representative bind TEAM.
- 18.5 The appointment of TEAM's Representative does not prevent or exclude TEAM from exercising any of TEAM's functions but that is always subject to the prior provisions of this clause.

18.6 TEAM's Representative may give instructions to CUSTOMER orally or in writing.

## 19. Conflict of Interest

19.1 If provision of Services results in a conflict of interest or duty with any other work TEAM is undertaking or will undertake with CUSTOMER, TEAM must immediately:

- (a) Notify CUSTOMER; and
- (b) Stop undertaking or decline further work unless otherwise first agreed in writing by CUSTOMER.

## 20. Non-Disparagement

20.1 Each party covenants not to disparage the other party to any third party during, or after the termination of, any Transactional Agreement.

## 21. Restraint

21.1 Without the payment of further consideration, CUSTOMER undertakes to TEAM that it will not, without the prior written consent of TEAM, during the Restraint Period:

- (a) within the Restraint Area directly or indirectly carry on, be concerned or interested in, whether as principal, agent, partner, shareholder, joint venturer, employee, trustee, supplier, officer, contractor, syndicate member, beneficiary or otherwise in any capacity, any business similar to or competitive with or likely to be competitive with the Business; or
- (b) at any time induce any director, manager, contractor or employee of TEAM to terminate their contract with TEAM, whether or not that termination would be in breach of that person's contract; or
- (c) at any time employ or seek to employ either directly or through a third party any person who was a director, manager, contractor or employee of TEAM at any time in the 12 months prior to the CUSTOMER seeking to employ that person; or
- (d) interfere with the relationship between TEAM and any of TEAM's customers, suppliers, employees, contractors or partners; or
- (e) attempt to engage in any of the activities referred to in subclauses 21.1(a) to 21.1(d)

21.2 Sub clauses 21.1(a), 21.1(b), 21.1(c), 21.1(d) and 21.1(e) will operate on the basis that the maximum restriction will apply, unless it is unreasonable, in which case the immediately lower maximum restriction will apply.

21.3 TEAM and CUSTOMER consider the restraints contained in this clause to be:

- (a) necessary in order to protect TEAM's legitimate business and commercial interests, including the Confidential Information, Intellectual Property and TEAM's goodwill;
- (b) reasonable and intend the clause to operate to the maximum extent.

21.4 If these restraints:

- (a) are void for any unreasonableness or any other reason; and
- (b) would be valid if part of the wording was deleted or the period or area was reduced,

the restraints will apply with the modifications necessary to make them effective.

21.5 The restraints contained in this clause are intended to be separate, distinct and several, so that the enforceability of any restraint does not affect the enforceability of the other restraints.

21.6 CUSTOMER acknowledges that the remedy of damages may be inadequate to protect the interests of TEAM and TEAM is entitled to seek and obtain injunctive relief, or any other remedy, in any Court.

- 21.7 CUSTOMER will procure that no directors, officers, employees, contractors or shareholders of CUSTOMER will do anything which, had they been a party to this contract, would have caused them to be in breach of their obligations under this clause.

## 22. Protection of Confidential information

- 22.1 In the course of performing any Transactional Agreement the parties will have already had or will have access to Confidential Information of the other party.
- 22.2 Each party acknowledges that the Confidential Information represents the confidential and valuable property of the other party and/or the other party's related bodies corporate.
- 22.3 Each party will at all times maintain the confidentiality of the Confidential Information of the other party.
- 22.4 Neither party will, without the prior written consent of the other party, disclose the Confidential Information, or any part of it, to any third party.
- 22.5 Each party will use the Confidential Information only for the purposes of executing and/or performing a Transactional Agreement.
- 22.6 Neither party will at any time, without the prior written consent of the other party (which consent may be withheld at the absolute discretion of the other party), create any Record which contains or relates to the Confidential Information of the other party
- 22.7 All Records of a party's Confidential information shall remain the property of that party.
- 22.8 Immediately following the Termination Date each party will:
- (a) cease making use of the Confidential Information
  - (b) hand over to the other party all Records which contain or in any way relate to the Confidential Information of the other party
- 22.9 Immediately following the Termination Date CUSTOMER will hand over to TEAM all Records which contain any information relating to the Business.
- 22.10 Each party acknowledges that any use by or disclosure to competitors of the other party, or any third party, of the Confidential Information will significantly and irreparably damage the reputation of the other party and/or its related bodies corporate.
- 22.11 Each party acknowledges that the other party and any related bodies corporate will have the right at all times to enforce compliance (or restrain non-compliance) with the provisions of a Transactional Agreement by means of injunction, damages or other appropriate remedy or means.
- 22.12 Each party will procure that none of their directors, officers, employees, contractors or shareholders will do anything which, had they been a party to a Transactional Agreement, would have caused them to be in breach of their obligations under this clause.

## 23. Intellectual Property

- 23.1 CUSTOMER acknowledges that all Intellectual Property subsisting in or relating to the Business, including the Confidential Information, is owned by TEAM,
- 23.2 CUSTOMER agrees to promptly disclose to TEAM all Intellectual Property that is created or discovered by CUSTOMER in the course of or as a result of TEAM providing Services.
- 23.3 CUSTOMER acknowledges and undertakes that, all rights in or relating to any Intellectual Property created or arising in the course of TEAM providing the Services, whether or not at the request of TEAM or for or on behalf of a related body corporate of TEAM, and including, without limitation, any variations or modifications to any pre-existing Intellectual Property owned by TEAM, will be the sole and exclusive property of TEAM.

- 23.4 Without the payment of any further consideration, CUSTOMER hereby unconditionally and irrevocably assigns to TEAM the rights referred to in sub clause 23.3.
- 23.5 On request from TEAM, CUSTOMER agrees, at TEAM's expense, to execute all documents and perform any acts, which in TEAM's judgement may be necessary or desirable to:
- (a) ensure that all rights in and title to any Intellectual property referred to in sub clause 23.3 vest in TEAM; and
  - (b) obtain the full benefit of any patent, design or other appropriate form of protection for such Intellectual Property throughout the world.

## 24. Indemnity and Release

- 24.1 CUSTOMER indemnifies TEAM and its agents, contractors, officers, directors and employees against any direct or indirect liability, loss, damage or cost that TEAM may incur and which arises from supplying the Goods and/or Services except to the extent that it arises from TEAM's negligence or wilful act or omission or that of TEAM's agents, contractors, officers, directors and employees.

## 25. Personal Information and Privacy

- 25.1 CUSTOMER consents to the collection, use, storage and disclosure of CUSTOMER's, CUSTOMER's users, and End-User's Personal Information:
- (a) For purposes relating to the supply of Goods or Services to CUSTOMER, including:
    - (i) For billing purposes, account management, product and service development and other such purposes relating to TEAM providing the Goods or Services to CUSTOMER;
    - (ii) Disclosure to a Government Agency to assist in the investigation of crime or enforcement of Laws;
    - (iii) Disclosure to TEAM's suppliers or related bodies corporate of TEAM or agents or contractors for the purposes of providing Goods or Services to CUSTOMER; and
    - (iv) Disclosure to any third party as required by law; or
  - (b) Otherwise in accordance with TEAM's privacy policy as published from time to time on TEAM's website.

## 26. Ending the Contract

- 26.1 A party (**Innocent Party**) may give the other party (**Defaulting Party**) notice requiring the Defaulting Party to rectify any breach of this contract.
- 26.2 If the breach is of a material obligation of the contract and it is not rectified within 14 days of the Innocent Party giving notice to rectify the breach, the Innocent Party may terminate the contract at the end of that 14 days.
- 26.3 If the breach is of a non material obligation of the contract and it is not rectified within 42 days of the Innocent Party giving notice to rectify the breach, the Innocent Party may terminate the contract at the end of that 42 days.
- 26.4 Either party may terminate a Transactional Agreement (in its entirety) immediately by written notice to the other if:
- (a) TEAM requires a significant change in the Goods or Services and the parties do not agree to change the terms and conditions of this contract to enable the delivery of the Goods or the performance of the Services, as changed; or
  - (b) there is a change to the pricing not otherwise permitted under the Transactional Agreement, the change is beyond the control of TEAM and the parties do not agree to change the terms and



conditions of the Transactional Agreement to enable delivery of the Goods and/or the provision of the Services at the changed price.

- 26.5 If TEAM terminates a Transactional Agreement because the Goods have not been paid for, title in, and ownership of, the Goods immediately transfers to TEAM on termination and TEAM may at any time remove the Goods (and any other goods belonging to TEAM) from the Delivery Site. CUSTOMER agrees to grant TEAM all necessary access to enable TEAM to exercise TEAM's rights under this clause. If TEAM exercises TEAM's rights under this clause, CUSTOMER must pay to TEAM the costs and expenses TEAM incurs in removing the Goods (and any other goods belonging to TEAM) from the Delivery Site.
- 26.6 Without prejudice to TEAM's other rights and powers under a Transactional Agreement, TEAM may, at any time, including in the absence of CUSTOMER's breach, terminate this contract for any of the following reasons:
- (a) where TEAM deems the installation to fall outside the required performance, safety or quality levels as determined in TEAM's sole and absolute discretion;
  - (b) if the Goods or a component of the Goods fails and where TEAM cannot, at a reasonable cost, replace, fix or change the Goods or components;
  - (c) where TEAM considers that the Delivery Site is not fit for the installation of the Goods or the installation of the Goods is adversely affected by, or otherwise rendered impracticable due to, the conditions of the Delivery Site (including any latent conditions discovered after the date of the contract);
  - (d) by mutual agreement between the parties.
- 26.7 Terminating this contract shall not prejudice any rights arising before its termination.
- 26.8 Terminating a Transactional Agreement does not automatically terminate these Terms and Conditions or any other applicable Transactional Agreement, which will each continue in force until terminated in accordance with these Terms and Conditions.

## 27. Dispute Resolution

- 27.1 If any dispute (**Dispute**) arises:
- (a) out of or in relation to a Transactional Agreement; or
  - (b) out of or in relation to the operation or construction of a Transactional Agreement; or
  - (c) in connection with the transaction set out in a Transactional Agreement
- subject to subclause 27.8, the parties must comply with this clause.
- 27.2 A party claiming that a Dispute has arisen must give written notice (**Dispute Notice**) to the other party setting out the nature of the Dispute.
- 27.3 The parties must endeavour in good faith to settle the Dispute between themselves within 28 days of receipt of the Dispute Notice.
- 27.4 If the Dispute has not been settled within 28 days (or such other period as agreed to between the parties) after the giving of the Dispute Notice, the Dispute must be submitted to arbitration administered by Australian Commercial Disputes Centre (ACDC) and conducted in accordance with the ACDC arbitration rules, which are deemed incorporated into any Transactional Agreement.
- 27.5 The costs of the arbitrator and of the arbitration under this clause will be paid in accordance with the decision of the arbitrator.
- 27.6 The arbitration will be held in Sydney, Australia or such other place as the parties may agree.
- 27.7 The arbitrator's decision will be final and binding on the parties.

27.8 Nothing in this clause prevents a party from seeking urgent interlocutory injunctive relief before an appropriate court.

## 28. Entire Agreement

28.1 This contract including any Annexures and Schedules is the entire agreement between the parties on the subject matter.

28.2 The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of this contract.

28.3 All representation, communications and prior agreements in relation to the subject matter are superseded by this contract.

## 29. Counterparts

29.1 This contract may be executed in any number of counterparts. All counterparts make the one agreement.

29.2 Facsimiled or emailed copies of this contract may be executed. The facsimiled or emailed copies will bind the parties.

## 30. Further assurance

30.1 Each party will do all things necessary to give full effect to this contract and the transactions contemplated by them.

## 31. Invalidity

31.1 If a provision of or a right or remedy of a party under this contract or a Transactional Agreement is invalid or unenforceable in a particular jurisdiction:

- (a) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in that jurisdiction.

31.2 This clause is not limited by any other provision of this contract in relation to severability, prohibition or enforceability.

## 32. Consent

32.1 If a consent is required under this contract, that consent cannot be unreasonably withheld unless a provision of the contract states to the contrary.

## 33. Amendment

33.1 This contract may only be amended or supplemented in writing signed by the parties.

## 34. Assignment

34.1 CUSTOMER must not assign or encumber CUSTOMER's rights under this contract without the prior written consent of TEAM which must not be unreasonably withheld.

34.2 TEAM may assign its rights under this contract without CUSTOMER's prior written consent.

34.3 If a change in control of the CUSTOMER occurs then TEAM may, at its absolute discretion, terminate this Agreement or any Transactional Agreement at any time without notice and clause 2.4(c) shall apply as if the Agreement was terminated under that clause.

## 35. Waiver

- 35.1 The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right.
- 35.2 No single exercise of a power or right precludes any other or further exercise of it or the exercise of any other power or right.
- 35.3 A power or right may only be waived in writing, signed by the party to be bound by the waiver.

## 36. Cumulative Rights

- 36.1 The rights of a party under this contract do not exclude any other right or remedy provided by law.

## 37. No merger

- 37.1 The rights and obligations of the parties:
- (a) will not merge on completion of any one Transactional Agreement under this contract; and
  - (b) will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction under this contract or a Transactional Agreement.

## 38. Governing Law

- 38.1 This contract is governed by the law in force in New South Wales, Australia (the **Applicable Jurisdiction**).

## 39. Jurisdiction

- 39.1 The parties submit to the exclusive jurisdiction of the:
- (a) Courts of the Applicable Jurisdiction; and
  - (b) Courts exercising federal jurisdiction over matters arising in the Applicable Jurisdiction; and
  - (c) Any Court that may hear appeals from those Courts,
- In respect of any proceedings in connection with this contract.

## 40. Execution by an attorney

- 40.1 Any attorney who executes this contract on behalf of a party declares that the attorney has no notice of the:
- (a) Revocation of the power of attorney under the authority of which the attorney executes this contract; and
  - (b) The death of the grantor

## 41. Notices

- 41.1 All notices required or permitted to be given by one party to another under this contract must be in writing, addressed to the other party or their lawyer; and:
- (a) delivered to that party's address or their lawyer's; or
  - (b) posted to a party's address or the lawyer's; or
  - (c) transmitted by facsimile transmission to that party's facsimile number or their lawyer's; or
  - (d) transmitted by Email to that party's Email address or their lawyer's.
- 41.2 A notice given to a party under subclause 41.1 is treated as having been given and received:

- (a) if delivered to a party's address or their lawyer's on the day of delivery if a business day, otherwise on the next business day; or
- (b) if posted to a party's address or their lawyer's, on the second business day after posting, if a business day, otherwise on the second business day after the next business day; or
- (c) if transmitted by facsimile to a party's facsimile number or their lawyer's and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day; or
- (d) if transmitted by electronic mail to a party's Email address or their lawyer's and no message is received stating that the transmission has failed, on the day of transmission if a business day, otherwise on the next business day.

41.3 For the purposes of this clause:

- (a) the address, facsimile number or Email address of a party or their lawyer is set out in this contract or the Transactional Agreement;
- (b) in the case of an address not otherwise set out in this contract, the address is an address which that party or their lawyer may from time to time give notice of to each other party or their lawyer;
- (c) in the case of a facsimile number or an Email address, is a facsimile number or an Email address which:
  - (i) that party or their lawyer may from time to time give notice of to each other party or their lawyer; or
  - (ii) which that party or their lawyer may use from time to time to send communications to the other party or lawyer.

## 42. Costs

42.1 Each party will pay their own costs, fees and expenses in connection with the preparation, negotiation and execution of this contract.

## 43. Stamp Duty

43.1 CUSTOMER will be liable for any stamp duty on this contract.

## 44. Insurances

44.1 When risk in Goods passes to CUSTOMER, CUSTOMER must have and will keep CUSTOMER's own insurance for the Goods.

44.2 CUSTOMER will have the following insurances:

- (a) the Goods for full replaceable and/or repair value against damage to them while there at CUSTOMER's risk;
- (b) public liability insurance for a minimum of \$20,000,000;
- (c) workers compensation insurance for CUSTOMER's workers.

44.3 TEAM will have the following insurances:

- (a) full replaceable and/or repair value against damage to the Goods while they are at TEAM's risk;
- (b) public liability insurance for a minimum amount of \$20,000,000;
- (c) professional indemnity insurance for a minimum of \$5,000,000;

(d) workers compensation insurance for TEAM's workers.

44.4 A party must on the reasonable request of another give a copy of their current policy or a certificate of currency of it to the party who requests it.

## 45. Definitions and Interpretation

45.1 In these Terms and Conditions unless the context otherwise requires or permits:

- (a) **Affected Party** means the party affected by a Force Majeure event;
- (b) **Business** means the business of TEAM which includes provision of Services;
- (c) **Business Day** means a day which is not a gazetted public holiday in the State in which CUSTOMER's head office resides, unless otherwise defined in a Transactional Agreement;
- (d) **Charges** means the fees payable to TEAM for Goods or Services;
- (e) **Commencement Date** means the date that Services provided under a Transactional Agreement are first provided by TEAM to CUSTOMER or such date defined as Commencement Date in a Transactional Agreement;
- (f) **Confidential Information** means all confidential or proprietary information of TEAM and its related bodies corporate, including, without limitation:
  - (i) The Knowledge;
  - (ii) Information relating to the affairs, business practices, know how, trade secrets, marketing procedures, pricing information, products and services of TEAM and the Business;
  - (iii) Information relating to or about customers, customer list and customer requirements of TEAM;
  - (iv) Information relating to the trade connections of TEAM;
  - (v) Any Intellectual Property used, created or arising in the course of or as a result of the provision of the Services; and
  - (vi) Information of a commercially sensitive nature and of commercial value to TEAM

But does not include any of the above which is in or comes into the public domain in any way without breach of an obligation of confidentiality, including a breach of this contract by CUSTOMER;

- (g) **Consequential Loss** means
  - (i) A loss of revenue, loss of profits (real or anticipated) or loss of savings (real or anticipated);
  - (ii) Loss of or damage to goodwill, reputation, credit rating or market standing;
  - (iii) Increased costs of operations or finance;
  - (iv) Loss of actual or potential opportunities or loss of contracts;
  - (v) Loss arising from business interruption or wasted time;
  - (vi) Loss of or corruption of data; or
  - (vii) Any indirect, special, economic, incidental or consequential loss or damage;
- (h) **CUSTOMER** means a company, body corporate, trust or individual that wishes to enter or enters into a contract with TEAM for the supply of Goods or Services;

- (i) **CUSTOMER's Representative** means the person referred to as CUSTOMER's Representative in any Transactional Agreement or Engagement Agreement;
- (j) **Delivery Date** means the estimated delivery date set out in the Transactional Agreement;
- (k) **Delivery Site** means the place for delivery of Goods set out in the Transactional Agreement;
- (l) **Employee Equipment** means the mobile phone, computer and other applicable tools of trade of the employees of TEAM;
- (m) **Employee Obligations** means all obligations that an employer may be required to satisfy for an employee if the employee was providing the Services to the employer as an employee of the employer, including but not limited to:
  - (i) workers compensation insurance;
  - (ii) PAYG or other income tax deductions or withholdings;
  - (iii) contributions pursuant to the Superannuation Guarantee Administration Act (Cth) 1992;
  - (iv) annual leave;
  - (v) long service leave;
  - (vi) sick leave;
  - (vii) any other required contribution, statutory award or entitlement that TEAM may have to pay for its employees;
- (n) **Engagement Agreement** means a contract or deed between CUSTOMER and TEAM describing the method by which the parties may transact that is not a Transactional Agreement;
- (o) **Fixed Term Charge** means the charge payable in accordance with clause 11 for a Fixed Term Service for the total duration of the Initial Term;
- (p) **Fixed Term Service** means any Service supplied by TEAM in a fixed or minimum quantity per month or quarter for a fixed Initial Term, (for example, daily checks for 3 virtual machines for 36 months), where the number of months in the Initial Term is specified in the relevant Transactional Agreement;
- (q) **Force Majeure** means an event or circumstance outside the control of either of the Parties, including but not limited to "acts of god", natural disasters, government action or interference, war or civil unrest, labour shortages, national emergencies, epidemics or pandemics, strikes, refusals to grant licenses, and abnormal weather conditions, that materially disrupts the ability of one or both Parties to perform their obligations under the contract or makes performing those obligations commercially unviable;
- (r) **Goods** means an item or items that CUSTOMER wishes to purchase from TEAM that are not Services. **Goods** includes any item or items defined as a Good or Goods in a Transactional Agreement;
- (s) **GST** means Goods and Services Tax as described under A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended;
- (t) **Guarantor** means the person who has agreed to execute a guarantee in a Transactional Agreement or Engagement Agreement between CUSTOMER and TEAM;
- (u) **Initial Term** means, in respect of a Service, the minimum contract period specified in a Transactional Agreement applicable to that Service, the term of which is deemed to commence on the Commencement Date;
- (v) **Insolvency Event** means any one or more of:

- (i) an official receiver, liquidator, provisional liquidator, official manager or similar officer being appointed in respect of a party or Guarantor;
- (ii) a party or Guarantor entering into, or resolving to enter into, a scheme of arrangement or composition or assignment for the benefit of their creditors;
- (iii) a party or guarantor being unable to pay their debts when due;
- (w) **Intellectual Property** means all rights in and relating to inventions (including patents), trade marks, copyright, designs, processes, know-how, confidential information and all other rights in present and future intangible property;
- (x) **Interest Rate** means the Corporate Overdraft Reference Rate (CORR) charged from time to time by the Commonwealth Bank of Australia plus 2%;
- (y) **Invoice Date** means the date affixed to an invoice provided by TEAM to the CUSTOMER;
- (z) **Knowledge** means:
  - (i) special and intimate knowledge, experience, skills and know-how and methodology in relation to the Business; and
  - (ii) trade secrets and confidential information, including information in relation to the Business and its products, services, customers, customer lists, customer requirements and trade connections; and
  - (iii) access to materials in which copyright and other intellectual property rights subsist and which are owned or licensed by TEAM;
- (aa) **Law** means the Laws and Regulations of the State of New South Wales, Australia as may be applicable to the type of Transactional Agreement to which these Terms and Conditions apply;
- (bb) **Materials** means written materials, goods, software, licenses, trademarks, logos, documents and promotional displays reasonably required to be used by TEAM in the provision of the Services;
- (cc) **Permitted Purpose** means a particular purpose or use to which a Good or Service may be put as stated in a Transactional Agreement;
- (dd) **Personal Information** has the meaning given to that term in the Privacy Act;
- (ee) **Privacy Act** means the Privacy Act 1988 (Cth) as amended;
- (ff) **Record** means every kind of record including any document, disk, tape or other material of any kind on or in which information or data has been printed or stored;
- (gg) **related body corporate** has the same meaning as given under Section 50 of the Corporations Law and “related bodies corporate” has a corresponding meaning;
- (hh) **Restraint Area** means Australia;
- (ii) **Restraint Period** means the period of the Transactional Agreement and after the Termination Date a period of one year, but if one year is deemed by a competent court to be too long, then six months, or if six months is deemed by a competent court to be too long then three months;
- (jj) **Services** means items that CUSTOMER wishes to purchase from TEAM which are substantially made up of the personal exertion of TEAM’s employees agents or suppliers or any item or items that is defined as a Service or Services in a Transactional Agreement;
- (kk) **Service Levels** means the prescribed reliability, response times and priorities described in a Transactional Agreement;



- (ll) **Supplier Failure** means a failure of any equipment, product or service supplied to TEAM by a third party which is required by TEAM to enable it to perform its obligations under a Transactional Agreement;
- (mm) **TEAM** means Team Computing Australia Pty Ltd ABN 65 104 242 159, a company incorporated in Australia with registered address of Suite 502, 156 Pacific Highway St Leonards NSW 2065 or its duly appointed agent;
- (nn) **TEAM's Representative** means the person referred to as TEAM's Representative in any Transactional Agreement or Engagement Agreement;
- (oo) **Termination Date** means the date of:
  - (i) Completion of the provision of the Services (or the provision of maintenance if TEAM is also to maintain the Goods once they are installed); and
  - (ii) The termination, full performance or conclusion of all Transactional Agreements and Engagement Agreements between CUSTOMER and TEAM as provided within them;
- (pp) **Terms and Conditions** means this document;
- (qq) **Transactional Agreement** means a document agreed between TEAM and CUSTOMER that defines the Goods and/or Services, their price, conditions of sale or other terms relating to the supply of the Goods or Services in a generally accepted written format. Transactional Agreements include but are not limited to Quotations (after being signed by CUSTOMER), Purchase Orders (after being accepted by TEAM), properly executed Managed Services Agreements, Statements of Work, General Services Agreements and End-User Licence Agreements. A Transactional Agreement shall not be binding on TEAM unless it has been signed or otherwise authorised by the CUSTOMER to TEAM's satisfaction and has been accepted in writing by TEAM;
- (rr) A reference to "a contract", "the contract", or "this contract" means a Transactional Agreement or Engagement Agreement, incorporating these Terms and Conditions;
- (ss) A reference to a party includes references to the party's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation), assigns, contractors, agents, employees, invitees and licensees;
- (tt) A right or obligation of 2 or more persons gives that right or imposes that obligation jointly and severally;
- (uu) A reference to an association or body which has ceased to exist includes the organisation established in the place of that association or body to serve substantially the same purposes;
- (vv) A reference to the CEO or president of a body or authority is a reference, if there is no such person, to the senior officer of the body or authority or to the person who fulfils the duties of CEO or president as the case may be;
- (ww) A reference to any statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (xx) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this contract or any part of it;
- (yy) Where the day or last day for doing something or on which an entitlement is due to arise is not a business day, that day or last day will be the immediately following business day;
- (zz) If this deed prohibits a party from doing a thing, then that party may not allow or cause any person to do that thing;

- (aaa) A reference to conduct includes any omission and any statement or undertaking, whether or not in writing;
- (bbb) Headings are for readability only and do not form part of these terms and conditions;
- (ccc) Unless the context requires otherwise any terms in the singular also refer to the plural;
- (ddd) Any terms of one gender shall also refer to all genders;
- (eee) Where “include” or any form of that word is used, it must be construed as if it were followed by “without being limited to”;
- (fff) A reference to a person includes a body corporate, company, unincorporated body, trust, firm, partnership, syndicate or other such entity;
- (ggg) Terms that are defined by the Corporations Act have the same meaning as in the Act, except where the context demands otherwise;
- (hhh) A reference to conduct includes any omission, statement or undertaking, whether or not in writing;
- (iii) A reference to a party is a party to the Transactional Agreement or person who has signed a deed of accession to that agreement; and
- (jjj) Expressions used in this contract that have been defined in the A New Tax System (Goods and Services Tax) Act 1999 have the meaning given to that expression in that Act.