

# GENERAL TERMS AND CONDITIONS OF SUPPLY AGREEMENT

THIS AGREEMENT IS DATED

**BETWEEN:**

Intellect Information Technology Pty Ltd ACN 103 370 789 of 343 Little Collins Street, Melbourne in the State of Victoria ("Intellect IT");

**AND**

The party whose details are set out in Schedule A Item 1 ("Client")

## 1. DEFINITIONS

- a) "Business Hours" refers to the hours between 9.00 and 17.30 Monday to Friday excluding Victorian public holidays.
- b) "Client" refers to the organisation so identified in Schedule A Item 1.
- c) "Client Location" refers to the location specified in Schedule A Item 2.
- d) "Delivery Date" means Intellect IT's estimated delivery date of the Goods.
- e) "EULA" or "End User Licence Agreement" means the licence agreement governing the use of Third Party Software as agreed directly between the Client and the owner of the Third Party Software.
- f) "Goods" means either Hardware or Third Party Software procured or supplied pursuant to this Agreement.
- g) "Hardware" means any physical product manufactured by a third party, including any associated third party maintenance service contracts, and includes each individual item, unit or component of such product.
- h) "Intellectual Property Rights" includes copyright, trade mark, design, patent, semiconductor or circuit layout rights, trade, business or company names, any right to have confidential information kept confidential or other proprietary rights or any rights to registration of those rights whether created before or after the date of this Agreement.
- i) "Scope of Work" means a written quote for Services for a specific project.
- j) "Services" means the services supplied by Intellect IT to the Client.
- k) "Third Party Software" means software that is manufactured, licensed or owned by a third party and procured by Intellect IT for the Client, the use of which is subject to that third party's EULA.

## 2. SERVICES

- a) In consideration of the payment by Client of the fees and charges in accordance with clause 3 Intellect IT agrees to provide and Client agrees to accept the Services on the terms and conditions of this Agreement, including the Schedules.
- b) The Services to be supplied by Intellect IT may include remote and onsite technical support, monitoring, consulting, maintenance or other services as requested by Client to Intellect IT.
- c) Client may request alterations to the scope of the Services in accordance with the provisions contained in Cancellation or Variation clause of this Agreement.
- d) Intellect IT will perform the Services utilising such resources, employees and subcontractors as Intellect IT in its sole discretion deems appropriate.

## 3. FEES AND CHARGES

- a) Client agrees to pay the Fees and Charges specified in Schedule C and in any Scope of Work issued by Intellect IT. The Fees and Charges will be adjusted by Intellect IT each financial year to reflect increases in the cost of providing the Services and Goods; provided however that the increase in Fees shall not exceed five percent (5%) of the prior year's rate. Increases will become effective upon 1 July and be preceded by at least 30 days prior written notice to Client setting out the new Fees and Charges. Nothing in this clause effects Client's right to terminate this Agreement in accordance with clause 12(j) on receiving a major modification of terms by Intellect IT.
- b) These Fees and Charges are valid only for sixty (60) days from the date of this Agreement and thereafter are subject to change on written notice.
- c) Client shall pay the Fees and Charges within 14 days of the date of Intellect IT's invoice. Intellect IT reserves the right to charge interest on overdue sums on a day to day basis from the due date to the date of payment at the rate referred to in Section 2 of the Penalty Interest Rate Act 1983 (Vic) (as amended). Intellect IT reserves the right to suspend the delivery of further Goods or Services if the terms of payment are not strictly adhered to by Client.
- d) Notwithstanding clauses 3 a) and 3 b), subject to special arrangements, payments may be made on account by approved Clients on agreed terms in accordance with Clause 13. Unless terms have been established and approved in writing by Intellect IT the Client must make full payment prior to dispatch of Goods and/or Services, either by direct deposit or by bank cheque. If Client fails to pay the Fees and Charges within the agreed credit period then the Client's credit facility may be immediately varied, suspended or terminated.

- e) Client agrees to pay any delivery charges for the supply of Goods. Other out-of-pocket expenses will be charged as an additional cost to Client provided Client has approved the expenses in writing in advance.
- f) Unless otherwise agreed, the Services will be performed by Intellect IT during Business Hours. If Client requests work to be performed outside Business Hours, Intellect IT will use commercially reasonable endeavours to meet Client's requirements at the rate specified in Schedule C.
- g) All Fees and Charges specified in this Agreement are exclusive of any value added tax, goods and services tax or taxation of a similar nature ("GST") unless specified otherwise. If GST is payable in relation to any Goods or Services supplied by Intellect IT to the Client then the fees will be adjusted by adding an amount equal to the amount of the GST in the invoice. Client must pay to Intellect IT any amount under this clause in full, despite any right of set-off that Client may have.
- h) Intellect IT reserves the right to pass on fees and charges associated with processing of credit card and direct debit payment methods.

#### **4. INTELLECT IT'S GENERAL OBLIGATIONS**

- a) Intellect IT will co-operate fully and act reasonably to ensure the timely progress and fulfilment of Intellect IT's obligations pursuant to this Agreement.
- b) If Intellect IT is delayed in the delivery of agreed Services, Intellect IT must promptly notify Client of that delay, and cooperate with the Client to establish and implement a work-around plan to overcome or minimise the effect of the delay.
- c) Estimated Delivery Dates are based on information available to Intellect IT from suppliers and are subject to change at any time, without prior notice. Intellect IT is not responsible for an inability to supply Goods or delays in delivery caused by a supplier or for other reasons beyond the reasonable control of Intellect IT.
- d) Intellect IT will maintain for a period of not less than 6 months a record of all Services provided and Client will be given details of that record on request.
- e) If Client has lost services such as but not limited to internet connection, printing facilities, workstations, systems, applications or data, Intellect IT will respond on a best efforts basis however can make no assurance as to outcome.

#### **5. CLIENT RESPONSIBILITIES**

- a) Client will provide Intellect IT with reasonable access to and use of all information and facilities determined necessary for supply of the Services and delivery of Goods and as reasonably requested by Intellect IT.
- b) Client warrants that all information pertaining to its hardware, software or service requirements and specifications provided to Intellect IT is complete, accurate and current.
- c) Client may permit Intellect IT personnel to perform Services on-site at the Client's Location without Client's presence at Client's own risk.
- d) Client must notify Intellect IT if the Client's Location is in an environment that poses a potential health hazard to Intellect IT personnel. Upon notification by Client that a potential hazard exists, Intellect IT may introduce modifications to this Agreement solely for the purpose of protecting its personnel.
- e) Client acknowledges that provision of the Services (including the process of repair) may result in the loss of some or all of Client generated or stored data. Client should ensure that it routinely saves copies of Client data elsewhere, particularly prior to the provision of Services which involve repair and reconditioning.

#### **6. SERVICES WARRANTY**

- a) Intellect IT warrants that the Services will be provided with due care and skill; fit for the intended purpose and supplied within reasonable time frames as described in clause 4. The benefits under this warranty for "consumers" within the meaning of the *Competition and Consumer Act 2010(Cth)* are in addition to other rights and remedies under this legislation in relation to the Services.
- b) Intellect IT's liability for breach of the services warranty in clause 6.a shall be remedied by the re- supply of the Services or payment of the cost of having the Services supplied again.
- c) In the event of a major failure by Intellect IT under this warranty Clients which are "consumers" under the *Competition and Consumer Act 2010(Cth)* are entitled to compensation for any other reasonable foreseeable loss or damage. Otherwise, Client's remedy shall be set out in clause 8.
- d) Client may require Services or Goods to have connectivity to the Internet. The Internet is an international computer network of both national and international interoperable packet switched data networks. Intellect IT cannot and will not guarantee that the use of the Goods or provision of the Services will provide Internet access that is sufficient to meet Client's needs. Client agrees that its use of the Goods and the Internet is solely at its own risk and is subject to all applicable local, state, national and international laws and regulations.

#### **7. THIRD PARTY WARRANTIES**

- a) Intellect IT provides Goods to Client on an 'AS IS' basis and passes any manufacturers' warranties unaltered to Client.
- b) Intellect IT acknowledges that Goods come with guarantees that cannot be excluded under the Australian Consumer Law and does not purport to provide any warranties for Goods additional to those provided by the manufacturer..

- c) Client's use, rights and obligations in respect of Third Party Software is governed by its applicable EULA, unless it is varied by agreement between the parties to that EULA.
- d) Client agrees to execute and be bound by the terms of the Third Party Software owner's EULA. On request, Intellect IT is able to provide the Client with a copy of the relevant EULA for its review prior to submitting a purchase order to Intellect IT.

## 8. REMEDIES AND LIABILITY

- a) Intellect IT shall not be responsible for any misinformation provided to it by the Client or any third party.
- b) Except to the extent that the exclusion, restriction or modification of certain conditions, warranties and rights is prohibited in the context of this Agreement by the *Competition and Consumer Act 2010(Cth)* or any equivalent state or territory legislation, the warranties provided herein in relation to the Services are in lieu of, and the Client hereby waives, all other warranties whether express or implied. Intellect IT neither assumes nor authorises the Client or any other person to assume for Intellect IT any other warranty except as may be specifically provided in writing by Intellect IT.
- c) Except for reasonably foreseeable loss and damage to "customers" specified in clause 6 (c) Intellect IT shall not be liable to the Client or third parties for any damages stemming from loss, interception or misdirection of data, files, software, code, operating systems, applications or other intangible property or data being rendered inaccurate, or for loss of profit (howsoever categorised).
- d) To the extent permitted by the *Competition and Consumer Act 2010 (Cth)* or any equivalent state or territory legislation applying to the provision of Services under this Agreement, Intellect IT 's liability, whether in contract, tort, statute or otherwise is limited to the coverage by Intellect IT's professional indemnity and public liability insurance.
- e) The Client shall indemnify Intellect IT and hold Intellect IT harmless from and against any and all third party claims which may be asserted against or suffered or incurred by Intellect IT which arise from the supply of the Services or from Client's breach of this Agreement unless such claims result from fraudulent acts of Intellect IT or are outside Intellect IT's ordinary performance of this contract.
- f) For the purpose of the indemnity above, Intellect IT includes: Intellect Information Technology Pty Ltd; its employees, directors, sub-contractors and agents; its sub-contractors' and agents' employees, directors' sub-contractors and agents; and so on down the line.
- g) To the extent permitted by law the remedies contained in this Agreement are Client's sole and exclusive remedies.

## 9. CANCELLATION OR VARIATION

- a) An order may be cancelled or varied by the Client only if such cancellation or variation is accepted by Intellect IT in writing and any such cancellation or variation shall only occur on terms which provide that Intellect IT will be compensated by the Client against any costs or loss (including but not limited to loss of profit) incurred.

## 10. RISK AND TITLE

- a) Risk of loss or damage to Goods will pass to Client when the Goods are delivered to Client, or to Client's authorised representative.
- b) Notwithstanding the passing of risk, all Goods supplied to Client remain the property of Intellect IT until all monies owing to Intellect IT for the Goods have been paid in full. Prior to full payment of such monies to Intellect IT, Client shall have no right to sell or dispose of any or all of the Goods.
- c) Notwithstanding the passing of risk, Client shall hold the Goods as bailee for Intellect IT and shall return the Goods to Intellect IT on demand and until payment has been received in full. Client must properly segregate the Goods and shall keep records of the Goods in such manner as to clearly indicate that they are the property of Intellect IT until paid for. Intellect IT will be entitled to enter the premises of Client as legal and beneficial owner of the Goods at any reasonable time to inspect all records in relation to all Goods supplied by Intellect IT and to recover possession of those Goods for which payment in full has not been made.
- d) Client must ensure the Goods against loss or damage of any kind for their full value until full payment of the purchase price has been made.

## 11. INTELLECTUAL PROPERTY

- a) The parties understand and accept that any Intellectual Property Rights existing prior to entering into this Agreement remain unaffected and nothing in this Agreement shall operate as a transfer of such rights.
- b) Subject to Intellect IT's obligation of confidentiality in clause 12.i, Intellect IT reserves the right to use any and all skills, expertise, knowledge and know how gained in the provision of the supply of the Services in the provision of similar services to other clients.

## 12. GENERAL

- a) Service Method: Any notice to or by a party under this Agreement must be in writing and signed by the sender and may be served by: delivery in person or by mail post or transmission by facsimile or email to the addresses specified for Client in Schedule A Item 3; and for Intellect IT in Schedule A Item 1. The parties consent to the use of electronic means to send and receive communications and accept these as signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.

- b) Severability: Any provision of this Agreement which is invalid in any jurisdiction shall be ineffective in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.
- c) Assignment: A party shall not assign or otherwise transfer any right or liability under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.
- d) Governing law and jurisdiction: This Agreement shall be governed by and construed under the laws of the state of Victoria and each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria.
- e) Signatory authority: The parties acknowledge and agree that each signatory to this Agreement is possessed of all rights and authority to execute this Agreement and that they will not challenge the legitimacy, terms or enforceability of this Agreement based on the identity or authority of any such signatory.
- f) Notice: All written notices, consents and other communications under this Agreement shall be deemed to have been received on the date of actual receipt if delivered, if it sent by fax or email at the time and on the day it was successfully transmitted or the third business day after being sent by mail.
- g) Termination: The parties may terminate this Agreement at any time by mutual agreement upon sixty days (60) written notice or such other agreed period. If either party breaches any of its material obligations under this Agreement and the breach is not substantially cured within the cure period specified below, then the other party may terminate this Agreement by giving written notice to the other party at any time before the breach is substantially cured. In respect to Client's payment obligations, the cure period shall be the period of time specified on the invoice from Intellect IT supplied invoice or any extension to the due date through the extension of credit to Client by Intellect IT pursuant to clause 3 (c). With respect to all other obligations under this Agreement, the cure period shall be 30 days after receipt of notice describing the breach, provided that, if a longer period is reasonably required to cure the breach and the cure is promptly begun, such cure period shall be extended for as long as the cure is being diligently prosecuted to completion.
- h) Force majeure: Neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any natural calamity, act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, disruption or outage of communications, power or other utility, failure to perform by any supplier or other third party, or other cause which could not have been prevented with reasonable care. If, due to any such cause, Intellect is unable to provide to Client the Services and this inability continues for a period of more than 30 days (the "Outage Period"), then the term of this Agreement shall be extended by the Outage Period. If this inability continues for Services for more than 60 days after Client has requested the Services, then Client may terminate this Agreement, without penalty, by giving written notice of termination to Intellect IT at any time before the inability ends except in relation to a pre-existing obligation to make any payment for Services already provided under this Agreement.
- i) Confidential Information: All information disclosed by one party to the other in connection with this Agreement shall be treated as confidential information unless it is or becomes publicly available through no fault of the other party, is already known to the other party, or is later rightfully obtained by the other party from independent sources. Each party's confidential information shall be held in strict confidence by the other party, using the same standard of care as it uses to protect its own confidential information, and shall not be used or disclosed by the other party for any purpose except as necessary to implement or perform this Agreement. Without limiting the generality of the foregoing, such confidential information includes:
  - a. Client's data and software, and the details of Client's computer operations and recovery procedures, which include trade secrets of Client,
  - b. Intellect IT's physical security systems, access control systems, specialized recovery equipment and techniques, pricing and documentation, which include trade secrets of Intellect IT, and
  - c. the terms of this Agreement. The obligation contained in this clause 12.i shall continue for a period of 12 months after the expiration or termination of this Agreement.
- j) Modification: This Agreement may be modified by Intellect IT upon 30 days written notice to Client. In the event of the modification of major terms which are unacceptable to Client, Client may terminate this Agreement on 14 days written notice to Intellect IT.
- k) Privacy: The collection, use, storage, disclosure or transfer of personal information is governed by legislation including the Privacy Act 1998 (Cth), Privacy Amendment (Enhancing Privacy Protection) Act 2012(Cth), Information Privacy Act 2000 (Vic) and Health Records Act 2001(Vic), as amended from time to time. Client consents to Intellect IT's use of personal information as set out in the Privacy Policy on Intellect IT's website as amended (on notice to Client) from time to time. To the extent that Client requires Services which involve personal information of Client's employees, Client appoints Intellect IT its agent for this purpose, and Client agrees to take all reasonable steps to secure any consent required from its employees for Intellect IT to conduct this Service.

### 13. CREDIT

- a) Client warrants that any information it provides to Intellect IT for the purposes of assessing its creditworthiness is accurate, correct and complete. Client acknowledges that Intellect IT will act in reliance on this information.
- b) In the event of Intellect IT granting credit facilities to Client then:
  - a. All accounts are to be settled in accordance with the agreed terms of credit set out in Schedule C and the credit facilities may only continue if payment is maintained in accordance with these terms.

- b. Should Client default in making any payment in accordance with the terms of credit, then all monies due to Intellect IT shall immediately become due and payable. Intellect IT shall be entitled to charge interest as specified in Schedule C on all overdue amounts.
  - c. Any expense and/or costs or disbursements incurred by Intellect IT in recovering any outstanding monies including debt collection agency fees and legal costs shall be paid by Client.
  - d. It is expressly understood and agreed that the credit arrangement may be suspended, varied or terminated at any time by Intellect IT at its discretion without notice. In that event, all monies owing to Intellect IT will be immediately due and payable.
  - e. Intellect IT may at any stage during the continuance of the credit arrangement impose as a condition precedent to the grant of further credit that Client give such security as Intellect IT shall in its discretion think fit. Intellect IT shall be entitled to withhold supply of goods or further credit until such security is obtained.
  - f. Client will notify Intellect IT no later than 14 days after any change of ownership, or any other change in its particulars which is likely to impact on its credit eligibility or credit worthiness.
- c) Where Client is a Trustee, Client shall be liable on the account and in addition the assets of the Trust shall be available to meet payment of any monies due and owing to Intellect IT.
- d) Client and, in the case of a corporate Client, its directors, hereby authorises and unconditionally grants its consent to Intellect IT obtaining from a credit reporting agency or other person or company, information and/or reports concerning it from time to time during the continuance of its credit account so as to assist Intellect IT in deciding whether to grant credit or to continue to grant credit to it or for collecting overdue payments. Client further authorises and consents to Intellect IT obtaining and disclosing information about its credit worthiness to and from credit reporting agencies and credit providers of Intellect IT. For the purposes of this paragraph "report" and "information" include any credit report originating from a credit reporting agency or any other record or information that has bearing on Client's creditworthiness, credit standing, credit history, credit capacity and personal information.

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## SCHEDULE A - CLIENT

**Item 1**      **Client name:** \_\_\_\_\_  
**ACB/ABN:** \_\_\_\_\_  
**Registered Office:** \_\_\_\_\_  
\_\_\_\_\_

**Item 2**      **Clients Location:** \_\_\_\_\_  
\_\_\_\_\_

**Item 3**      **Send Client's Notices and Accounts  
related communication to Attention:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Email:** \_\_\_\_\_  
**Facsimile:** \_\_\_\_\_

**Item 4**      **Client's Authorised Representative/s:** \_\_\_\_\_  
\_\_\_\_\_

**Item 5**      **Approved Client's credit terms (none unless specified otherwise):**  
\_\_\_\_\_

## SCHEDULE B

**Item 1**      **Send Intellect IT's Notices and related communication to Attention:**  
\_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Email:** \_\_\_\_\_  
**Facsimile:** \_\_\_\_\_

**Item 2**      **Commencement Date:** \_\_\_\_\_  
**Intellect IT agrees to provide the Services as requested by Client from the above date  
(Commencement Date), or if not specified, from the date of this Agreement:**

## **SCHEDULE C – FEES AND CHARGES**

- 1) Professional time for the services is to be charged by the hour at **\$150**
- 2) The minimum fee for a service during business hours for:
  - a) an on-site visit is one hour plus travel time
  - b) a remote service is 15 minutes
- 3) Travel time is charged for:
  - a) in metropolitan Melbourne areas as one way travel from Intellect IT office
  - b) all other areas charged for travel both to and from Intellect IT office plus any travel, accommodation and related expenses
- 4) Outside of business hours, penalty rates apply as follows:
  - a) Mon-Friday 17:30-midnight; Saturday 9:00-17:30 – 1.5 times
  - b) All other times including Victorian public holidays – 2.0 times
- 5) The minimum fee for service outside of business hours (as defined in Item 4 above) is:
  - a) An on-site visit is two hours plus travel time;
  - b) A remote service is one hour.

### ***Specific credit, fees or charges***

Credit amount: \$ \_

Credit period: 30 days from the date of Intellect IT's invoice ("Invoice Date") – full payment is required unless specifically indicated otherwise below.

Credit charge: No interest within the above credit period. After 30 days, interest will then be calculated on a daily basis on the credit amount from the Invoice Date to the date of payment at 1% per month.

Maximum credit: The credit amount is the total credit available to Client at any point in time. Credit may be offered for additional Goods or Services only to the extent that the total credit does not exceed a maximum credit amount.

Termination of Credit Facility: In the event that any of the credit amount remains unpaid 14 days from the end of the credit period the credit facility will be terminated and all unpaid amounts (including interest) will be immediately due and payable.

***Signed as an agreement by their authorised signatories***

**Intellect Information Technology Pty Ltd**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Client name:** \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**In the presence of:**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**In the presence of:**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_