

# TERMS AND CONDITIONS

## 1. Definitions and Interpretation

In this Agreement, unless the context otherwise indicates, each of the following expressions shall have the meaning assigned to it below:

<b>Agreement</b>	Means the services agreement, and as the context requires, each Work Package Contract.
<b>Fees</b>	Means any and all fees payable by the Customer under this Agreement, as set out in the Work Specification and/or any applicable Schedule.
<b>GST</b>	Means any goods and services tax imposed by the GST Law.
<b>GST Law</b>	Means the same as “GST Law” in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Intellectual Property</b>	includes without limitation: <ul style="list-style-type: none"><li>(a) All copyright subject matter, inventions, designs, patentable or patented subject matter, code (including source and object code), software, proprietary information, know-how, formulas, trade secrets, process technology and trademarks; and</li><li>(b) Any and all legislative and common law rights protected under the laws of copyright, design, patent, circuit layouts, confidential information and trademarks.</li></ul>
<b>Personal Information</b>	Has the meaning given to that term in the Privacy Laws.
<b>Privacy Laws</b>	Means the <i>Privacy Act 1988</i> and any related legislation, rules or principles, including the <i>Australian Privacy Principles</i> .
<b>Schedule</b>	Means each schedule to this Agreement describing particular Services, and additional terms which relate to the supply of those Services, under this Agreement.
<b>Services</b>	Means the services described in a particular Work Specification and includes the supply of any goods provided with or as part of those services.
<b>Term</b>	Means the term of this Agreement as set out in a clause
<b>Work Package Contract</b>	Means a contract for performance of Services formed by acceptance of a particular Work Specification.
<b>Work Specification</b>	Means a scope of works, specification, job description or similar document issued by the Supplier which may subsequently be agreed to by the Customer as set out in this Agreement, and which relates to or more fully describes the Services and/or the pricing of the Services.

## 2. Term

This Agreement shall commence on the date of this Agreement. It will continue for a minimum period of 12 months. After the initial 12 month period this Agreement may be terminated by either party providing at least 3 months prior written notice to the other. Termination of this Agreement will not affect any Work Package Contract or the parties' respective rights and obligations under any such Work Package Contract.

## 3. Agreement and Work Package Contracts

Execution of the "Agreement" by the parties does not oblige the Supplier to supply any Services. Clauses 1 – 18 of this document will apply to all Work Package Contracts. Only those Schedules specified in a particular Work Specification will apply to the corresponding Work Package Contract. In default of a Work Specification specifying an applicable Schedule, then those Schedules relevant to the type of Services being provided will apply to the particular Work Package Contract.

When the Customer requests Services from the Supplier, the Supplier shall issue a Work Specification to the Customer setting out details of the Services to be provided including pricing details. Unless specified to the contrary in a Work Specification, the Work Specification will remain open for acceptance by the Customer for a period of up to 28 days. If the Customer requests changes to a Work Specification, the Supplier may thereafter issue an amended Work Specification which will be dealt with as set out above in this clause. The Customer may provide written acceptance of a Work Specification, but in any event the Customer will be deemed to have accepted a Work Specification if it accepts any Services under the Work Specification from the Supplier.

Upon acceptance, or deemed acceptance of a Work Specification, a binding contract will be formed between Customer and the Supplier for the supply of Services on the terms of the Work Specification and this Agreement (including any applicable Schedules). The Supplier will not be bound by any changes to a Work Specification unless it has agreed to those changes in writing.

## 4. Services

The Supplier will use best endeavours to provide the Services in accordance with any applicable timeframes set out in the agreement

## 5. Fees and Invoicing

- a) The Customer must pay Supplier the Fees specified.
- b) Supplier will invoice for Professional Services, either:
  - On a monthly basis; or
  - On completion of a work package contract. Details for payment will be included in the relevant in work package contract or schedule.
- c) Supplier will invoice for Goods supplied:
  - In advance to the customer for prepayment, or as
- d) Supplier will not proceed on an order without an approved work package contract or purchase order from the customer with separate payment terms in place.
- e) The Customer acknowledges that if the Customer's requirements or specifications as to the Services change, Supplier may give the Customer notice of additional Fees which will apply to any revised or varied Work Specification.

- f) Where any Fees or expenses become payable to Supplier pursuant to this Agreement, unless specified otherwise in the relevant Work Package Contract:
  - o payment shall, unless otherwise agreed in writing, be made in full within 14 days of the date of invoice;
  - o time of payment shall be of the essence; and
  - o Except in relation to any statutory, legal or equitable right of set-off or counter claim, abatement or analogous deduction which cannot be lawfully excluded, the Customer shall not be entitled by reason of any set-off, counter claim, abatement or analogous deduction to withhold payment of any amount due to Supplier.
- g) To the extent that the Services may involve the Supplier rendering Services, at the Customer's direction, for the benefit of clients or customers of the Customer, payment of the Fees will not be dependent on the Customer recovering any monies which may be or become owed to the Customer by those clients or customers.
- h) If the Customer fails to pay any amount due under this Agreement by the due date, without prejudice to any other rights Supplier may have under this Agreement or at law Supplier shall be entitled to charge interest on such amount until paid, accruing on a daily basis and compounded monthly at the rate of 2% above the base rate of Westpac Bank applicable to business lending.
- i) The supplier reserves the right to suspend services if the customer is late in paying
- j) Subject to giving the Customer 30 days' written notice of the revision Supplier shall have the right at any time to revise the Fees to cover any increases in general costs or service costs that fall outside of Supplier's control. The Customer reserves the right to terminate this Agreement on 3 months notice if the aggregate increase in Fees under this clause exceeds 50% in any 12-month period
- k) The supplier will charge a 4% year on year increase to account for CPI.

## 6. Expenses

The Customer will pay or reimburse the Supplier for any goods supplied as part of the Services, and for any expenses incurred by the Supplier in providing Services, as set out in the Work Specification. Unless specified to the contrary in the Work Specification, prices are exclusive of any materials or goods supplied with the Services, and the Supplier may charge for these in addition.

Any other out of pocket expenses incurred by Supplier in the course of providing Services will be at the Customer's expense and the Customer will reimburse Supplier for such expenses on request, provided Supplier gives the Customer reasonable evidence substantiating the expenses incurred. Supplier will use best endeavours to give the Customer notice of expenses before they are incurred.

## 7. GST

Unless expressly stated to the contrary, the Fees are exclusive of any applicable GST. If Supplier incurs a GST liability in respect of any supply of goods or services under this Agreement, the consideration otherwise payable by the Customer for that supply will be increased by an amount equal to the amount of Supplier's GST liability. Supplier will provide the Customer with a tax invoice in applicable form.

## 8. The Customer's Obligations

- (a) The Customer must during the Term provide all assistance reasonably required by Supplier in order for the Supplier to provide the Services. That assistance will include without limitation:
  - (i) reasonable access to the Customer's premises, IT and operating systems; and
  - (ii) Provision of any required information or data, including for testing purposes.

## 9. Privacy Laws

The supplier will not divulge to any 3rd party, without prior consent, customer's private details, and vice versa. This includes, but is not limited to – company details, employee names, contact numbers, email and roles of employees.

## 10. Intellectual Property

Any Intellectual Property created in the course of this Agreement will be owned by the Supplier from creation, unless agreed otherwise by the parties in writing.

The Supplier may use the Customer's name and trade mark on advertising or promotional material, and may disclose that the Customer is a customer of the Supplier.

## 11. Warranties and Limitation of Liabilities

- (a) The Supplier warrants that its employees, agents and sub-contractors will at all times be suitably qualified and experienced, and will exercise due skill and care in providing the Services.
- (b) Other than as expressly set out in this Agreement or a particular Work Specification, the Supplier makes no warranties, promises or representations of any kind regarding the Services, including as to performance, quality, timing or fitness for purpose of the Services, or the accuracy or completeness of any information provided, and all such warranties, promises and representations are excluded to the extent permitted by law. Without limiting the foregoing, any representations made by the Supplier, its sub-contractors or other representatives shall be of no force or effect unless made in writing and signed by a duly authorised representative of the Supplier.
- (c) The Supplier makes no warranties regarding any goods supplied with or as part of the Services. The Supplier will use reasonable endeavours to provide the Customer with the benefit of any manufacturer's warranty applicable to any goods and to assist the Customer to make a warranty claim on the manufacturer, if applicable.
- (d) Subject to this clause 11, the liability of the Supplier for any loss or damage however caused (including negligence), which is suffered by the Customer in connection with this Agreement is limited to the Fees for Services paid by the Customer in the 12 months prior to the Customer first suffering loss or damage in connection with this Agreement.
- (e) The Supplier is not liable to the Customer or any other person for indirect, consequential or incidental damages or expenses of any kind (including, without limitation, loss of profits, loss of business opportunity, loss of reputation or goodwill, loss of or corruption to data, loss of life or personal injuries) arising from or relating to the Services.
- (f) The Supplier is not liable for any delay or inability to render Services, as set out in this Agreement, or at all, to the extent that the delay or inability results from:
  - (i) the Customer's failure to provide information or assistance as and when reasonably requested by Supplier;
  - (ii) any breach of this Agreement by the Customer, or the Customer's negligence;

- (iii) the acts or omissions of customers or clients of the Customer, where Services are being rendered to or for the benefit of those clients or customers, or at premises owned or controlled by those clients or customers;
  - (iv) the Supplier not being given appropriate and timely access to any sites, premises or infrastructure; or
  - (v) Any other matter or circumstances outside Supplier's reasonable control.
- (g) None of the foregoing will be read or applied so as to purport to exclude, restrict or modify all or any of the provisions of the *Competition and Consumer Act (Cth) 2010* or the *Australian Consumer Law* or any other law which cannot be excluded, restricted or modified. If Supplier incurs a liability to the Customer or any other person under such legislation, including any implied warranty or guarantee, the Supplier's liability is limited to, at its election:
- (i) the re-supply of the Services; or
  - (ii) The payment of the costs of having the Services (including any relevant goods) re-supplied.

## 12. Confidential Information

Each party agrees not to disclose to any third party any information which they receive, or have access to, which is confidential to the other party. Each party will not use such confidential information for any purpose other than to carry out their respective obligations under this Agreement. A party may disclose confidential information to its employees for purposes reasonably required in connection with this Agreement, to their professional advisers for the purpose of obtaining professional advice, or to purchasers or prospective purchasers of part or all of their business. Each party will use reasonable endeavours to ensure that any employees, professional advisers or actual or prospective purchasers who receive the other party's confidential information do not disclose that information to third parties. Confidential information of another party may however be disclosed:

- (a) if it was in the public domain, or lawfully known by the recipient, prior to its disclosure to the recipient by the other party; or
- (b) if required by law.

## 13. Termination

- (a) Either party may terminate this Agreement and / or any Work Package Contract without further notice if:
  - (i) The other party breaches a material term of this Agreement and does not rectify the breach within 30 days of receiving written notice of it; and
  - (ii) The other party makes an assignment for the benefit of creditors, any process or execution is levied against any of its assets, or it otherwise becomes unable to pay its debts as and when due, or it has any external controller appointed, any proceedings are threatened or commenced or an order is made for such an appointment or for its winding up, or if it suffers any other insolvency event.

- (b) Termination of this Agreement and / or any Work Package Contract is without prejudice to the rights of either party which may have accrued prior to termination.
- (c) All charges invoiced up to the date of notice of termination will be paid by the customer. Any work performed prior to the date of notice of termination but not invoiced at the date of notice of termination, will be paid by the customer upon receipt of a correctly rendered invoice from the supplier.
- (d) Either party has the right to terminate the agreement after the initial term, subject to Section 14, without penalty.

## **14. Restraint**

The Customer may not, during the Term and for 6 months thereafter, directly or indirectly, solicit or entice away from Supplier any principal, employee or contractor of Supplier who has performed services for the Customer or with whom the Customer has otherwise had contact during the Term.

## **15. Entire Agreement**

This Agreement, and each Work Specification including any applicable Schedules, appendices or other documents expressly attached or referred to, shall constitute the entire agreement between the parties with respect to the Services to be provided under a Work Package Contract and supersedes all prior oral or written communications or agreements of the parties with respect to the Services, and also supersedes any document or terms issued by the Customer. If there is a conflict between any documents comprising a Work Package Contract, the order of priority given to documents will be

- (a) this Agreement;
- (b) the applicable Schedules;
- (c) the applicable Work Specification;
- (d) any other document attached to the Work Specification; and
- (e) Any other document referred to expressly and incorporated into the Work Package Contract by reference.

## **16. Dispute Resolution**

The parties agree that in the event that any dispute arises out of or in connection with this Agreement (“Dispute”), the parties will first meet promptly to try and resolve the Dispute amongst themselves by negotiation. If the parties do not resolve the Dispute by negotiation within 20 Business Days of their first meeting, then the parties agree to refer the Dispute for mediation by an accredited mediator they agree on (and absent agreement by a mediator appointed by the Institute of Arbitrators and Mediators Australia). Neither party may commence any court proceedings in relation to a Dispute until it has exhausted the dispute resolution procedure in this clause, unless the party is seeking injunctive or other interlocutory relief for the Dispute.

## 17. General Provisions

- (f) This Agreement and any Work Specification may only be varied by a document in writing signed by both parties.
- (g) Each party agrees to do all acts and execute such further documents and instruments as may reasonably be required to give effect to the intentions of the parties under this Agreement.
- (h) Any individual signing the Agreement on the Customer's behalf personally warrants to Supplier that they have all necessary authorities to bind the Customer to this Agreement.
- (i) The Customer may not assign the Agreement or any of its rights under this Agreement without the prior written consent of the Supplier. The Supplier may sub-contract the provision of Services under this Agreement, in which event it will remain liable for its obligations under this Agreement and must ensure the sub-contractor's compliance with those obligations.
- (j) The Supplier may, in the event of the sale of part or all of Supplier's business, novate this Agreement (and any existing Contracts) to a third party buyer and the Customer consents in advance to any such novation.
- (k) This Agreement is made in the State of Tasmania and is governed by the laws for the time being in force in the State of Tasmania. The parties submit to the non-exclusive jurisdiction of the Courts of Tasmania in connection with disputes concerning this Agreement.

## 18. Interpretation

In this Agreement:

- (l) headings are for convenience only and do not affect the interpretation of this Agreement;
- (m) reference to any statute or statutory provision shall include any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such provision;
- (n) words denoting the singular shall include the plural and vice versa;
- (o) words denoting individuals shall include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
- (p) words denoting any gender shall include all genders;
- (q) references to any document, deed or agreement shall include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (r) a party includes the party's representatives, administrators and permitted assigns;
- (s) all references to dates and times are to Hobart time;

- (t) all references to “\$” and “dollars” are to the lawful currency of Australia unless otherwise expressly stated;
- (u) if a party consists of more than one person this Agreement binds them jointly and each of them severally;
- (v) “including” and “for example” or similar expressions are not words of limitation;
- (w) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (x) “related body corporate”, “subsidiary” and “holding company” have the same meaning as in the *Corporations Act 2001 (Cth)*; and
- (y) recitals or background contained in this Agreement do not form part of the operative provisions of the Agreement.



# PERFORMANCE SERVICE LEVELS

## 1. Response and Resolution Times

The performance Service Levels are laid out below.

Priority	Description	Response Time	Service Level
1	Any incident raised where the impacted service is critical to operations, where the service is not available, severely degraded or unusable for the majority of or all users.	Respond within 15 minutes	98%
		Resolve or workaround within 4 hours	
2	Any incident raised where the impacted service is critical to operations, and is impacted to a point where it is usable in an abridged capacity, or where a work around is in place	Respond within 15 minutes	98%
		Resolve or workaround within 8 hours	
3	Any incident or Service Request that effects a user or user's ability to perform their daily tasks but does not impact critical business functions.	Respond within 30 minutes	95%
		Resolve or workaround within 3 business days	
4	Any incident or Service Request that does not significantly impact a user or users ability to perform their daily tasks and does not impact critical business functions	Respond within 90 minutes	95%
		Resolve or workaround within 10 business days	

## 2. Calculation

Performance against Service Levels will be calculated over a calendar month period. Performance of the Service level is calculated by the number of confirmed breaches in a priority category as a percentage of the total number of incidents in that category within that reporting period.

## 3. Timings

Timings will commence when the Service Desk logs an incident. This happens automatically when an email, call or alert is received.

All P1 and P2 incidents MUST be logged via phone call. This includes business and after hours.

Time waiting for a 3<sup>rd</sup> party vendor independent of the supplier does not count towards the resolution time pertaining to a Service Level.

Those incidents which don't meet the documented response time, will be actively managed and worked on by INSCOPE IT (or pursued via the technology vendor or other 3rd party) to resolve within an agreeable, and reasonable extension in time.