

# MANAGED SERVICES – TERMS AND CONDITIONS

## 1 Application and Term

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- 1.1 **Application.** These terms and conditions govern Deployus' supply of the Services to the Client, and the Client's receipt and use of the Services.
- 1.2 **Term.** These terms and conditions and the Client's agreement with Deployus commences on the date Deployus commences providing the Services, and continue to apply until Deployus completes the Services or until Deployus terminates the Services by written notice to the Client (whichever occurs earlier) ("Term").

## 2 Supply of Services

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- 2.1 **Services.** Deployus will use best endeavours to provide the Services in a professional manner, with due care and skill, and otherwise in accordance with these terms and conditions.
- 2.2 **Services acknowledgements.** The Client acknowledges and agrees that:
- (a) Deployus relies on the Client to select the IT products and services that Deployus is engaged to manage as part of the Services, and Deployus takes no responsibility and accepts no liability for the suitability, quality or operation of those products and services (which is a matter for the Client and the relevant third party supplier); and
  - (b) Deployus will respond to particular issues identified by the Client, but does not provide a full monitoring service or take responsibility for ensuring the ongoing availability of the Client's environment (unless otherwise agreed in writing between the parties as part of the relevant Services description).

## 3 Client obligations

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- 3.1 **Obligations.** The Client must: (a) fulfil any responsibilities or dependencies as set out in the Services description or otherwise agreed between the parties; (b) give or procure for Deployus full access to the Client's Systems and premises as required to enable Deployus to provide the Services; (c) give or procure for Deployus all information and assistance necessary or reasonably required to enable Deployus to provide the Services; (d) follow all reasonable directions given by Deployus in connection with the provision of the Services; and (e) comply with all applicable laws.
- 3.2 **Client acknowledgements.** The Client acknowledges and agrees that if the Client does not comply with clause 3.1, Deployus: (a) may not be able to supply the Services; and (b) subject to clause 7.3, is not liable to the Client for any failure to supply the Services or any delay in the supply of the Services (to the extent such failure or delay is caused or contributed to by the Client's failure to comply with clause 3.1).
- 3.3 **Client warranties.** The Client represents and warrants, and it is a condition of this agreement, that: (a) use of the Client Material by Deployus in accordance with this agreement will not infringe the Intellectual Property Rights of any third party; (b) all information provided by the Client or on the Client's behalf is accurate and is not, whether by omission of information or otherwise, misleading; and (c) the Client did not rely upon any representation made to the Client by Deployus or any Related Body Corporate of Deployus (if any) before entry into this agreement.

## 4 Fees and payment

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- 4.1 **Fees.** The Client must pay the Fees and other amounts to Deployus within 14 days of receiving a Tax Invoice. The Fees and other amounts are exclusive of taxes (which the Client must also pay).
- 4.2 **Expenses.** The Client must reimburse Deployus for all substantiated travel and accommodation costs and expenses

reasonably incurred by Deployus (or its employees, agents or contractors) for the purpose of providing the Services to the Client.

- 4.3 **Dispute.** If there is a dispute about whether a Fee or other amount is payable or available, the Client must not withhold the amount in dispute.
- 4.4 **Deferral of performance.** If the Client fails to pay the Fees in accordance with these terms, Deployus may defer performance of all Services until they are paid.

## 5 Intellectual property and title in equipment

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- 5.1 **Ownership of Materials.** Each party (or its licensors, as applicable) retains ownership of all Intellectual Property Rights subsisting in any Material it provides or makes available to the other party under or in connection with these terms and conditions or the Services ("**Background Materials**"). Any modification or enhancement to any Background Material of a party is deemed to form part of the Background Materials of that party and all Intellectual Property Rights in such modification or enhancement vest in that party immediately from creation. If a party's Background Material is modified or enhanced by or on behalf of the other party, then the other party assigns all Intellectual Property Rights it may have in such modification or enhancement immediately from creation.
- 5.2 **Licence to Materials.** Each party grants the other party a non-exclusive licence to use its Background Materials provided or made available to the other party, solely for the purposes of these terms and conditions.
- 5.3 **Developed IP.** All Intellectual Property Rights in any Material created by or on behalf of a party in the course of providing the Services will vest in Deployus immediately from creation. The Client must assign to Deployus any Intellectual Property Rights that do not automatically vest in Deployus and must sign any document required to give effect to that assignment.
- 5.4 **Title and risk:** If Deployus supplies equipment, risk passes to the Client on delivery, and title passes on payment in full for that equipment. The Client acknowledges that this document creates a security interest under the Personal Property Securities Act and consents to Deployus registering that interest. The Client must not charge or encumber the equipment in any way without the prior consent of Deployus, nor allow a third party to gain a security interest in the equipment.

## 6 Confidential Information and privacy

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- 6.1 **Obligations of confidence.** Each party must treat as confidential information the provisions of these terms and conditions and all information provided by the other party under these terms and conditions, including Deployus's technical, operational, billing, pricing and commercial information in relation to the supply of Services ("**Confidential Information**").
- 6.2 **Privacy.** The Client must make all necessary disclosures and procure any necessary consents to ensure Deployus is able to use the Client's Personal Information (and the Personal Information of the Client's Clients, contractors, personnel and officers) lawfully (including specifically in accordance with the Privacy Laws) as required to provide the Services.
- 6.3 **Publicity.** The Client must not mention or refer to Deployus or its services in any announcement, publication, declaration or other communication, without Deployus's prior written consent.

## 7 Liability and Indemnities

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- 7.1 **Limitation of liability.** Subject to clauses 7.2 and 7.3, the aggregate liability of Deployus for any loss or damage, however caused, incurred or suffered by the Client in connection with these terms and conditions is limited to the Fees paid or payable

by the Client to Deployus in the 12 months before the Client first suffered the relevant loss or damage.

- 7.2 **Consequential Loss.** Subject to clause 7.3, a party is not liable for any Consequential Loss however caused (including by negligence), suffered or incurred by the other party in connection with the Services and these terms and conditions.
- 7.3 **Australian Consumer Law.** For any liability in relation to goods or services supplied by Deployus that cannot lawfully be excluded but that can be limited, Deployus's liability is limited to Deployus's choice of re-supplying or paying the cost of re-supplying services and repairing, replacing or paying the cost of repairing or replacing goods (respectively).
- 7.4 **Exclusions.** Clauses 7.1 and 7.2 do not apply in relation to the indemnification obligations set out in clauses 7.5 and 7.6.
- 7.5 **Mutual indemnities.** Each party ("**Indemnifying Party**") indemnifies the other party ("**Indemnified Party**") from and against any loss or damage incurred or suffered by the Indemnified Party in connection with: (a) any breach of its confidentiality obligations under clause 6.1; or (b) any claim by a third party that the Indemnified Party's use of the Background Materials of the Indemnifying Party in accordance with these terms and conditions infringes the rights (including the Intellectual Property Rights) of any person.
- 7.6 **Client indemnity.** The Client is liable for, and indemnifies Deployus from and against, all loss or damage (including legal costs) incurred or suffered by Deployus however caused in connection with:
- (a) any breach of clause 6.2 or 6.3 by the Client or its officers, employees, contractors or agents;
  - (b) any claim by a third party that Deployus is not or has not been asked or authorised to access and interact with the Systems of the Client (including Systems provided to the Client by a third party) for the purpose of providing Services.

## 8 Force majeure

Neither party will be liable for, or in breach of these terms and conditions as a result of, any failure or delay in the performance of its obligations under these terms and conditions (except for an obligation to pay money) to the extent that such failure or delay is wholly or partially caused directly or indirectly, by a Force Majeure Event.

## 9 Taxes

- 9.1 Subject to the remainder of this clause, the Client must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this agreement.
- 9.2 Any words capitalised in this clause 9 and not already defined in clause 11 have the meaning given to those words in the GST Act.
- 9.3 Except under this clause 9, the consideration for a Supply made under or in connection with this agreement does not include GST.
- 9.4 If a Supply made under or in connection with this agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable: (a) the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply, in addition to, and in the same manner as the consideration otherwise payable under this agreement for that Supply); and (b) the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.
- 9.5 Where a Supply made under or in connection with this agreement is a Progressive or Periodic Supply, clause 9.4 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

## 10 General

- 10.1 **Amendments.** This agreement may only be amended by written agreement between all parties.
- 10.2 **Entire agreement.** This agreement supersedes all previous agreements about their subject matter and embodies the entire agreement between the parties.
- 10.3 **Governing law and jurisdiction.** The laws of Queensland (Australia) govern these terms and conditions. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland (Australia) and courts competent to hear appeals from those courts.
- 10.4 **Survival.** Termination or expiry of these terms and conditions will not affect clauses 3.2, 4, 5, 6, 7, and 8 and this clause 10.

## 11 Definitions and interpretation

### Definitions

In these terms and conditions:

**Deployus** means Deployus Pty Ltd ACN 083 024 499.

**Consequential Loss** means: (i) any consequential loss or loss that does not arise naturally (that is, according to the usual course of things) from a breach; and (ii) any indirect loss, loss of revenues, loss of reputation, loss of profits, loss of actual or anticipated savings, lost opportunities (including opportunities to enter into arrangements with third parties), loss or corruption of data, and loss or damage in connection with claims against a party by third parties.

**Client** means the entity or person who has engaged Deployus to provide the Services.

**Fees** means the fees payable by the Client for the Services, communicated by Deployus to the Client.

**Force Majeure Event** means any occurrence or omission outside a party's reasonable control.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Intellectual Property Rights** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, patent, registered or unregistered trade mark, registered or unregistered design, rights in relation to trade secrets or knowhow, right in relation to semiconductors and circuit layouts, rights in relation to trade or business or company name, or right of registration of such rights.

**Services** means the managed services and/or network services and equipment supply we provide to you from time to time, as separately described in our proposal, statement of work or similar document, and any other services or activities agreed between the parties in writing.

**Material** includes software, firmware, tools, documentation, reports, data, diagrams, procedures, plans and any other materials.

**Personal Information** has the meaning given to that term in the *Privacy Act 1988 (Cth)*.

**Privacy Laws** means the *Privacy Act 1988 (Cth)*, the *Spam Act 2003 (Cth)*, any registered APP Code that binds a party, and any other laws, industry codes and policies relating to the handling of Personal Information.

**Systems** includes networks, routers, firewalls, switches, software, applications, computers, servers, mobile devices, cloud services (including storage, software, platforms and infrastructure as a service) and any other IT systems or equipment.