

# **SuttonNet General IT Services & Reseller Services: Terms & Conditions**

Valid from 1 June 2021

## 1 Introduction

*We, us or our* in these Terms & Conditions means D.P Sutton & W.T Sutton t/a SuttonNet, ABN 68 252 718 370. *You or your* means the entity receiving our Services under these Terms & Conditions, as our client.

## 2 Terms of Service

### 2.1 General

1. Services covered under these Terms & Conditions are:
  - a) Reseller Services, comprising:
    - i. domain name registration, renewal and related services,
    - ii. sales of security certificates and related products, and
    - iii. other hardware, services and software which we buy on your behalf and onsell to you;
  - b) IT support and IT services including installation of security certificates and related products, troubleshooting, software and hardware installation, research and IT training (except for training and other services provided under our Web Development and Hosting Agreement); and
  - c) any other services and products not covered by our other Agreements and Terms.
2. You agree that you will promptly:
  - a) provide us with all access, logins, relevant history, Client Data, information, contact details and materials, and
  - b) complete any verification checks and confirmations,as required for us to supply the Services.

### 2.2 Reseller Services

#### 2.2.1 General

1. It is your responsibility to ensure product suitability and to make your requirements clear to us, before you request us to suggest, recommend, order or buy products &/or services from any wholesaler or other supplier on your behalf.
2. Products or services are supplied under our Reseller Services in accordance with:

- a) availability from time to time from our wholesalers and suppliers;
  - b) our selection from the available products and services;
  - c) relevant rules, such as domain space policies and codes of practice; and
  - d) policies and terms of our wholesalers and suppliers.
3. Our wholesalers' Terms and Conditions are:
- a) for domain name services:
    - i. at <https://www.tppwholesale.com.au/legals/> (for legacy domains still registered through TPP Wholesale),
    - ii. at <https://synergywholesale.com/documentation/> (for all domains registered after 26 May 2021, and for domains transferred from TPP Wholesale to Synergy Wholesale in accordance with notifications to registrants from May 2021),
  - b) at <https://www.thessslstore.com/termsandconditions.aspx> (for website security certificates and related products),
  - c) for other suppliers: see our website <https://suttonnet.com.au> or ask us.
4. Domain licensing policies and codes of practice are:
- a) for Australian (.au) domain space, at <https://auda.org.au>
  - b) for other national domain spaces, found by searching online using the relevant domain suffix, eg '.nz domain space policies'
  - c) for top level domains (those with no country suffix) and domain names generally, at <https://icann.org/>

### 2.2.2 Security Certificates & Related Products

1. All websites that we host must maintain a valid website security (SSL/TLS) certificate at all times.
2. Our installation service is only for websites and domains hosted on our own server, unless otherwise agreed by us.
3. When you order a security certificate or related product from us, we will:
  - a) purchase the product through our supplier on your behalf;
  - b) assist you, if needed, through any verification process;
  - c) to the extent that we have access to your website, domain or other relevant software or hardware:
    - i. take steps necessary to install the product on your website(s), domain(s) or as otherwise required,

- ii. test the product's functionality, and
    - iii. repair any defects;
  - d) advise you of any changes we become aware of, that you or your Personnel need to make to your website or other software or hardware in order to make the product fully operational (eg update image filenames on your website);
  - e) where you have requested a trust seal and we have access to edit your webpage content, add that trust seal to a suitable location or locations on your website (additional Fee applies); and
  - f) if annual re-installation is required, re-install the updated product each year on the same domain for the duration of the Term, if the requisite conditions are met:
    - i. that the domain is registered to the same owner-entity; and
    - ii. for a security certificate:
      - A. that you continue to host your website or domain (as applicable) with us, or
      - B. that we agree to re-install on your third party hosting service in accordance with clause 4 below.
- 4. Where we agree to install the product on a third party server, you agree and acknowledge that:
  - a) installation entitlements and/or Fees on our published pricelist apply only to websites hosted on our own server;
  - b) you will pay our Fee for initial installation and, where annual re-installation is required, our re-installation Fee each year for the duration of the Term before we (re-)install the product;
  - c) if your webhosting services change after you ordered the product, we may refuse to (re-)install the product on your altered hosting environment or service.
- 5. From time to time, we may review available security certificates & related products and refuse to accept on our server, or recommend against, certain products for reasons of security, performance, issuance integrity or other known problems.
  - a) We will notify you of our decision and, at your request, the reasons for it.
  - b) If required, you agree to pay the costs of a suitable replacement product and any installation Fee.
  - c) We will remove and replace an unaccepted product:

- i. in the case of a free product, within 30 days of our notification;
- ii. in the case of a commercial product, at or near the current product's expiry date or in the case of urgent security problems without a practical workaround or fix, within 30 days of notification; and
- iii. with a product of your choice.

### 2.2.3 Domain Services

1. You may receive our domain Services without hosting with SuttonNet.
2. We agree to manage your domain records and to process all requests and updates for you, through our reseller account.
3. By using our domain Services:
  - a) you warrant that you are eligible to register or renew (as applicable) the relevant domain name(s) under domain rules;
  - b) you agree to keep your registrant details up to date and to notify us if you become ineligible to hold the domain(s); and
  - c) you agree to pay our invoices in a timely manner.
4. Upon your written request, we will supply you and/or your Authorised Users with your domain password.
5. You acknowledge that we do not undertake to supply you with access to any online domain Account, because:
  - a) the nature of our business is as a 'managed service' provider; and
  - b) the main registrar for which we are a reseller (Synergy Wholesale) is solely a wholesaler and does not provide registrants with access to domain accounts on its own website.
6. In the event that SuttonNet does supply you with domain Account access on our website (whitelabelled), or on TPP Wholesale's website:
  - a) you agree that this is solely at our discretion;
  - b) you are the Account owner and regardless of any change in any contact details, you will remain responsible for your Account, as set out in these Terms & Conditions;
  - c) it is your responsibility to keep your Account details confidential;
  - d) you are responsible for all activity on your Account, including activity by any of your Authorised Users and for ensuring that activities on your Account comply with these Terms & Conditions and all relevant domain policies and codes of practice;

- e) we are not responsible for the management or administration of your own Account;
- f) you may ask us to undertake domain services for you via our reseller account instead; and
- g) to the extent that we - to meet our obligations as resellers or in response to a request you make - take any action to correct, &/or advise or support you concerning, any errors or problems caused or aggravated by any activity on your own Account, whether authorised by you or not: we will charge you a Fee for such action, advice &/or support.

### 2.3 Variations

1. You may request a *Variation* to a Service supplied under these Terms & Conditions by written notice to us (*Variation Request*).
2. We will:
  - a) advise you if we see technical or other reasons not to proceed with, or to amend, a Variation Request that you make; and
  - b) advise you of any associated costs (*Fee Variation*) before a Variation Request is accepted. These may include (but are not limited to):
    - i. our Expenses, including international currency exchange fees;
    - ii. administration costs;
    - iii. amending work done to date;
    - iv. installation Fee, if you request a change of security certificate or related product within the supplier's refund period but after our installation.
3. Whether we agree to your Variation Request or not, you must pay in full all Fees for:
  - a) all work which was done up to the date and time of your Variation Request which was in accordance with the previously agreed specifications, and
  - b) all Expenses reasonably incurred by us before or after that date, in relation to that work.

We may require that these Fees be paid in full before we proceed with a Variation Request.

4. Where:
  - a) the Services are changed; or

- b) the costs of providing the Services increase (*Variation Event*); and
  - c) the cause of that Variation Event relates to, or is connected with, an event or circumstance beyond our reasonable control,  
  
you agree to pay us our reasonable additional costs and expenses that we may suffer or incur as result of the Variation Event, as a debt due and immediately payable.
- 5. You acknowledge that changes to wholesale prices and international currency exchange variations affect our Expenses for Reseller Services, and that these constitute Variation Events.
  - 6. Where feasible, we will notify you of a Variation Event and invoice you for the Fee Variation before we purchase a non refundable product or service on your behalf.

## 2.4 Refunds, Faulty Goods, Purchase in Error & Change of Mind

### 2.4.1 General

- 1. See Section 12.
- 2. For 'change of mind' or cancelled Services, see Section 2.3 and Section 6.

### 2.4.2 Reseller Services: Special Terms

- 1. Refunds or replacements for products or services supplied under our Reseller Services are available only in accordance with:
  - a) relevant regulations, such as international and national domain space rules; and
  - b) policies and terms of our wholesalers and their suppliers.See Section 2.2.1.
- 2. If we register a domain name on your behalf which differs from your written request to us, and the error is ours:
  - a) unless you decide to retain the domain name, we will cancel it and not charge you for the registration; and
  - b) if still required, we will process your original request.
- 3. We will not refund on a domain name registered with wrong spelling or otherwise not as you desire (eg .com instead of .com.au), where:
  - a) you requested us to register the domain name exactly as we have done; or

- b) our domain registration invoice email showed you the domain name as we would register it, and you did not send us a written notice of correction before paying the invoice.
4. If we purchase any other product or service on your behalf which differs from your written request, and the error is ours:
  - a) unless you decide to retain the product or service, we will cancel or return it, as applicable;
  - b) if our invoice email showed you the product or service to be ordered, and you did not send us written notice of correction before paying that invoice, you agree to pay all associated costs for cancellation, return and/or replacement. Otherwise, we will not charge you for our costs in changing the order;
  - c) we will process your original request if still required, after we have invoiced you for any price difference and you have paid us any amount outstanding; and
  - d) we will process any overpayment you have made to us in accordance with Section 5.

### 3 Third Party Inputs

1. You agree that:
  - a) the Services we provide may include Third Party Inputs; and
  - b) our provision of the Services may be contingent upon, or impacted by, such Third Party Inputs.
2. To the extent that any Third Party Inputs are required by us in order to provide the Services to you:
  - a) we agree to obtain and maintain the required licences and accounts for access and use of any Third Party Inputs (at no additional cost to you); and
  - b) you agree to:
    - i. adhere to the terms and conditions of any such third parties as updated from time to time; and
    - ii. comply with our reasonable instructions and directions.
3. You acknowledge and agree that the benefit of the Third Party Inputs on the Services is subject to your compliance with the above clause.



## 4 Changes to Services

1. You acknowledge that our third party suppliers and wholesalers may make changes to their products, services and terms or conditions at any time, without your consent and without notifying you.
2. You agree that we may make changes:
  - a) to our Services or to our choice of suppliers and wholesalers, at any time without your consent and without notifying you;
  - b) to our Fees, at any time and without notifying you.
3. Updated Fees will apply to your next order or service.
4. If the change to our Services means we are unable to re-install your security certificate or related product as required, or otherwise fulfil our obligations to you:
  - a) we will credit you any re-installation or other portion of your prepaid Fees which requires refund, by either (at our discretion):
    - i. retaining a credit in your account towards current or future invoices, or
    - ii. providing you with a refund; and
  - b) if applicable, we will forward to you re-installation information which we receive from our wholesaler, for you or your Personnel to re-install the product.

## 5 Payment Terms

### 5.1 General

1. You agree to pay us:
  - a) the Fees, including all pre-approved Expenses; and
  - b) any other amount payable to us under these Terms & Conditions, in accordance with these Payment Terms.
2. Fees are calculated based on the requested services:
  - a) as quoted by us and agreed between the Parties; or
  - b) in accordance with our service plans and schedule of rates, as updated from time to time.
3. We will invoice you:

- a) for Reseller Services:
    - i. in the case of renewal of any Reseller Services, in the month before the Expiry Date, and
    - ii. in the case of new registrations or purchases, before the Service is provided; and
  - b) otherwise, on a monthly basis for Services performed during the previous period.
4. You must pay the amount in the invoice, by the method set out there:
- a) for Reseller Services, before the Service is provided;
  - b) for other Services, within 30 days of the invoice date; or
  - c) as otherwise agreed between the parties.
5. If we incur costs on your behalf because you unreasonably delay provision of Services, we will charge these to you as a debt due immediately.
6. You agree and acknowledge that:
- a) it is your responsibility to pay us in a timely manner;
  - b) if you pay for renewed Services after their Expiry Date:
    - i. suspension, partial loss or cancellation of the Services may result,
    - ii. consequent suspension, partial or complete loss of other Services may result (eg own-domain email service is unavailable if the domain name expires),
    - iii. resumption of Reseller Services may not be possible (eg a cancelled domain may have been registered by another registrant), or may require us to pay additional Expenses on your behalf,
    - iv. Synergy Wholesale charges a late payment fee in accordance with their terms, which we will recover from you,
    - v. the above are fully or largely outside our control, and
    - vi. you are liable for any additional costs incurred by us to resume your Services;
  - c) if you choose to pay for renewed Services on or very shortly before their Expiry Date:
    - i. we might not know of your payment or renew your Services until after the Expiry Date, for various business, personal or other reasons, and
    - ii. (b) i - iv and (b) vi above then apply;

- d) for a security certificate or related product, additional time may be needed after ordering to receive the product and render it fully operational. This is due to factors including (but not limited to):
    - i. international banking processes,
    - ii. verification of your entity, and
    - iii. technical requirements of the product, your website and/or Computing Environment;
  - e) we act in good faith to process your requests in reasonable time; and
  - f) we are not responsible for any loss consequent upon our not supplying the Services within your desired timeframe or before an Expiry Date.
7. In the event that a Fee Variation results in a credit from amounts already paid for any of our Services under these Terms & Conditions: we will (at our discretion) either:
- a) retain a credit in your account towards current or future invoices; or
  - b) provide you with a refund.

## 5.2 GST

1. Our prices and quotes are excluding GST.
2. Where GST is payable on any supply made under these Terms & Conditions, you must pay us the amount of the GST.
3. We will issue you with a tax invoice and include GST if you are in Australia.
4. If an adjustment event arises in respect of any supply made under these Terms & Conditions, a corresponding adjustment will be made and a revised tax invoice issued.

## 5.3 Non Payment

1. If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion):
  - a) immediately cease or suspend providing the Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so;
  - b) charge a re-instatement fee after payment is made and services are resumed; and/or

- c) charge a late fee at 5% of the invoiced amount, and/or charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 8% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date for payment in accordance with the Payment Terms.
2. If you rectify such non-payment within a reasonable time after the Services have been suspended, then we may, at our discretion, recommence the provision of the Services as soon as reasonably practicable.
3. We take no responsibility for non availability of Services in the case of late or non payment.

## 6 Termination

### 6.1 General

1. You may only terminate these Terms & Conditions in accordance with this clause or as set out in the Schedule.
2. To the maximum extent permitted by law and except as specified in these Terms & Conditions, we do not allow refunds of the Fees.

### 6.2 Cancellation of Services

1. You may terminate all or part of the Services provided under these Terms & Conditions at any time, by giving 30 days' notice in writing to us.
2. We will cease providing the relevant Services and at your request, cancel a domain name registration or delete a security certificate or related product.
3. You agree to pay us any costs which we incur for cancellation of the Services.
4. No refund is applicable for cancelled products and services under our Reseller Services, except as provided for under our wholesalers' and suppliers' terms and conditions.
5. For other Services: if applicable, we will provide you with either an account credit or a pro-rata refund on cancelled prepaid Services, at our discretion.

### 6.3 Immediate Termination

These Terms & Conditions will terminate immediately upon written notice by:

1. us, if:

- a) you (or any of your Personnel) breach any provision of these Terms & Conditions and that breach has not been remedied within 10 Business Days of being notified by us;
  - b) you attempt to terminate these Terms & Conditions early, including through repudiation;
  - c) you fail to provide us with clear or timely instructions or information to enable us to provide the Services;
  - d) for any other reason outside our control which has the effect of compromising our ability to provide the Services; or
  - e) you are unable to pay your debts as they fall due; and
2. (b) you, if we:
    - a) are in breach of a material term of these Terms & Conditions, and that breach has not been remedied within 10 Business Days of being notified by you; or
    - b) are unable to pay our debts as they fall due.

#### **6.4 Actions Upon Expiry or Termination**

1. Upon expiry or termination of these Terms & Conditions:
  - a) we will immediately cease providing the Services;
  - b) you are to pay for all Services provided prior to termination, including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under this and any other Agreement with us;
  - c) you also agree to pay us our additional costs arising from, or in connection with, such termination;
  - d) if you require any disengagement services:
    - i. we may provide these to you; and
    - ii. if we do, you agree to pay us our additional costs arising from, or in connection with such disengagement services; and
  - e) each Party agrees to promptly return (where possible), or delete or destroy (where not possible to return), any of the other Party's property (including any Confidential Information, and any Intellectual Property).
2. We will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms & Conditions constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of these Terms & Conditions.

3. Termination of these Terms & Conditions will not affect any rights or liabilities that a Party has accrued under it.
4. This clause will survive the termination or expiry of these Terms & Conditions.

## 7 Abuse of Services

1. You must not (and you must ensure that your Authorised Users do not) access or use our Services except as permitted by these Terms & Conditions, and you must not and must not permit any other person (including any of your Authorised Users) to:
  - a) introduce any software without our knowledge and approval into our hardware and software or Systems;
  - b) introduce any malicious software into our hardware and software or Systems;
  - c) reveal or allow others access to your passwords or authentication details or allow others to use your Account or authentication details (other than Authorised Users);
  - d) use our services in any way that damages, interferes with or interrupts their supply;
  - e) use our services for sending spam or in any way which is in breach of any applicable Laws or which infringes any person's rights, including Intellectual Property Rights, libel laws and privacy rights.
2. We may suspend or delete domains, websites and remove access to Accounts which, at our absolute discretion, breach this clause. In that case, we reserve our right to:
  - a) recover from you our additional costs of doing so and of rectifying your abuse of our Services; and
  - b) charge a re-instatement fee after Services are resumed.

## 8 Warranties & Responsibilities

1. You represent, warrant and agree that:
  - a) you will comply with these Terms & Conditions, our reasonable requests or requirements, and all applicable Laws;

- b) you will co-operate with us and provide us with all assistance, information, documentation, Content, materials, access, facilities, authorities, consents, licences and permissions reasonably necessary to enable us to comply with our obligations under these Terms & Conditions or at Law, in a format agreed with us;
- c) there are no legal restrictions preventing you from entering into these Terms & Conditions;
- d) all information and documentation that you provide to us in connection with these Terms & Conditions is true, correct and complete and you are authorised to provide this information to us;
- e) you have not relied on any representations or warranties made by us in relation to the Services (including as to whether the Services are or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms & Conditions;
- f) the Services are provided to you solely for your benefit and you will not (or you will not attempt to) disclose, or provide access to, our Services to third parties without our prior written consent;
- g) you will notify us of any breach or suspected breach of these Terms & Conditions within 48 hours of becoming aware of it;
- h) to the maximum extent within your power, you will rectify any breach of these Terms & Conditions within 48 hours of your becoming aware of it, including editing or deleting website Content that is in breach of our terms;
- i) you will be responsible for the use of any part of the Services, and you must ensure that no person uses any part of the Services:
  - i. to break any Law or infringe any person's rights (including Intellectual Property Rights);
  - ii. to transmit, publish or communicate material that is defamatory, abusive, indecent, menacing or fails to meet our Content guidelines; or
  - iii. in any way that damages, interferes with or interrupts the supply of the Services;
- j) your use of the Services will not result in the transmission of a computer virus (or any similar or other damaging component) to our Systems;
- k) Client Data supplied by you is virus-free, accessible and usable in order for us to provide the Services;
- l) we will have reasonable access to your Systems where necessary for the purpose of supplying the Services;

- m) you are responsible for all users using the Services, including your Personnel and any Authorised Users;
- n) you use the Services and any associated programs and files at your own risk;
- o) you have reviewed these Terms & Conditions, including our Privacy Policy, and you understand them and will use the Services in accordance with them;
- p) the provision of the Services may be contingent on, or impacted by, Third Party Inputs;
- q) we may use third party service providers to integrate with the Services or to host the Services. If the providers of third party applications or services cease to make their services or programs available on reasonable terms, we may cease providing any affected features without Liability or entitling you to any refund, credit, or other compensation;
- r) we do not make any warranty or representation in respect of any third party products, facilities or services which the Services may use;
- s) we are not responsible for the integrity or existence of any data on the Computing Environment, network or any device controlled by you, your Authorised Users or your Personnel;
- t) you have all the hardware, software and services which are necessary to access and use the Services;
- u) you are not and have not been the subject of an Insolvency Event;
- v) if applicable, you hold a valid ABN which has been advised to us; and
- w) if applicable, you are registered for GST purposes.

## 9 Intellectual Property

1. This clause will survive termination or expiry of these Terms & Conditions.
2. The Parties agree that nothing in these Terms & Conditions constitutes a transfer or assignment of any Intellectual Property Rights.
3. You grant us a non-exclusive, revocable, worldwide, non-sublicensable and non-transferable right and licence to use the Intellectual Property Rights in the Client Data for the performance of our obligations under these Terms & Conditions and as contemplated by these Terms & Conditions.
4. If you or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with these Terms & Conditions, you agree to (and agree to ensure that your Personnel) consent to our use or infringement of



those Moral Rights for the performance of our obligations under these Terms & Conditions and as contemplated by these Terms & Conditions.

5. You grant us a limited licence to copy, transmit, store and back-up or otherwise access the Client Data to:
  - a) supply the Services to you;
  - b) diagnose problems with the Services;
  - c) enhance and otherwise modify the Services, and
  - d) as reasonably required, perform our obligations under these Terms & Conditions.
6. You must, at all times, ensure the integrity of the Client Data and that your use of it is compliant with all Laws.
7. You represent and warrant that:
  - a) you have obtained all necessary rights, releases and permissions to provide all Client Data to us and to grant the rights granted to us in these Terms & Conditions; and
  - b) the Client Data (and its transfer to and use by us) as authorised by you, under these Terms & Conditions does not violate any Laws (including those relating to export control and electronic communications) or rights of any third party, including any Intellectual Property Rights, rights of privacy, or rights of publicity.
8. We assume no responsibility or Liability for Client Data. You are solely responsible for the Client Data and the consequences of using, disclosing, storing or transmitting it.

## 10 Privacy & Confidentiality

1. We agree to handle any Personal Information you provide to us, solely for the purpose of performing our obligations under these Terms & Conditions and in accordance with any applicable Laws and our Privacy Policy.
2. Each Party agrees:
  - a) not to disclose the Confidential Information of the Disclosing Party to any third party;
  - b) to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and
  - c) to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.

3. The obligations in the above clause do not apply to Confidential Information that:
  - a) is required to be disclosed in order for the Parties to comply with their obligations under these Terms & Conditions;
  - b) is authorised to be disclosed by the Disclosing Party;
  - c) is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms & Conditions; or
  - d) must be disclosed by Law or by a regulatory authority, including under subpoena.
4. Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause.
5. This clause will survive the termination or expiry of these Terms & Conditions.

## 11 Analytics & Marketing

1. We may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Services, in an aggregated and anonymised format (*Analytics*).
2. You agree that we may make such Analytics publicly available, provided that it:
  - a) does not contain information that identifies your entity; and
  - b) does not make the underlying Client Data or Personal Information identifiable.

## 12 Australian Consumer Law

1. Certain legislation, including the Australian Consumer Law, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the Services by us to you which cannot be excluded, restricted or modified (*Statutory Rights*). Nothing in these Terms & Conditions excludes your Statutory Rights under the ACL.
2. You agree that our Liability for the Services is governed solely by the ACL and these Terms & Conditions.

3. Subject to your Statutory Rights, we exclude all express and implied warranties, and all material, work and services (including the Services) are provided to you without warranties of any kind, either express or implied, whether in statute, at Law or on any other basis.
4. This clause will survive the termination or expiry of these Terms & Conditions.

## **13 Exclusions to & Limitations on Liability**

These clauses will survive the termination or expiry of these Terms & Conditions.

### **13.1 Exclusions**

Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:

1. your, your Authorised User's or your Personnel's acts or omissions;
2. any use or application of the Services by a person or entity other than you, or other than as reasonably contemplated by these Terms & Conditions;
3. any works, services, goods, materials or items which do not form part of the Services (as expressed in these Terms & Conditions), or which have not been provided by us;
4. any relocation, configuration or reconfiguration of any Services by you or any user;
5. the loss of, corruption to, or errors in the Client Data;
6. any virus, fault or defect in any item in your System;
7. any Third Party Inputs;
8. the Services being unavailable, or any delay in us providing the Services to you, for whatever reason; and/or
9. any event outside of our reasonable control (including a Force Majeure event, a fault defect, error or omission in the Client Data).

### **13.2 Limitations**

Despite anything to the contrary, to the maximum extent permitted by law:

1. neither Party will be liable for Consequential Loss;

2. a Party's liability for any Liability under these Terms & Conditions will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including a failure to mitigate; and
3. our aggregate liability for any Liability arising from or in connection with these Terms & Conditions will be limited:
  - a) to us resupplying the Services to you; or, in our sole discretion,
  - b) to us repaying you the amount of the Fees paid by you to us in the last 12 months in respect of the supply of the relevant Services to which the Liability relates.

## 14 General Terms

1. *Amendment:* these Terms & Conditions may only be amended by written instrument executed by the Parties.
2. *Counterparts:* these Terms & Conditions may be executed in any number of counterparts that together will form one instrument.
3. *Disputes:* A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms & Conditions (including any question regarding its existence, validity or termination) (Dispute) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
4. *Entire agreement:* these Terms & Conditions contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
5. *Further assurance:* Each Party must promptly do all things and execute all further instruments necessary to give full force and effect to these Terms & Conditions and their obligations under it.
6. *Force Majeure:* We will not be liable for any delay or failure to perform our obligations under these Terms & Conditions if such delay is due to any circumstance beyond our reasonable control (including but not limited to epidemics,

pandemics, and Government sanctioned restrictions and orders, whether known or unknown at the time of entering into these Terms & Conditions).

7. *Governing law*: these Terms & Conditions is governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
8. *Notices*: Any notice given under these Terms & Conditions must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email or where the time of transmission is not on a Business Day, 9am on the next business day.
9. *Online execution*: these Terms & Conditions may be executed by means of such third party online document execution service as we nominate subject to such execution being in accordance with the applicable terms and conditions of that document execution service.
10. *Publicity*: You agree that we may advertise or publicise the broad nature of our provision of the Services to you, including on our website or in our promotional material, unless you otherwise provide us with notice that you do not approve of such publicity.
11. *Relationship of Parties*: these Terms & Conditions is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
12. *Severance*: If a provision of these Terms & Conditions is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms & Conditions without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms & Conditions.

## 15 Definitions

In these Terms & Conditions, unless the context otherwise requires, capitalised terms have the meanings given to them in the Schedule, and:

1. *Account* means an account accessible to you and/or your Authorised Users to use Services provided under these Terms;
2. *ACL or Australian Consumer Law* means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*, as amended, from time to time;

3. *Terms & Conditions* means these terms and conditions and any documents attached to or referred to in them;
4. *Authorised User* means a user permitted to access and use your Account;
5. *Business Day* means a day on which banks are open for general banking business in New South Wales, excluding Saturdays, Sundays and public holidays;
6. *Change* has the meaning given in Section 4;
7. *Client Data* means your information, documents and other data, including any personal information, provided by you, your Authorised Users or your Personnel to us or our Systems or otherwise accessible by us in providing the Services;
8. *Computing Environment* means your computing environment including all hardware, software, information technology and telecommunications services and Systems;
9. *Confidential Information* includes information which:
  - a) is disclosed to the Receiving Party in connection with these Terms & Conditions at any time;
  - b) is prepared or produced under or in connection with these Terms & Conditions at any time;
  - c) relates to the Disclosing Party's business, assets or affairs; or
  - d) relates to the subject matter of, the terms of and/or any transactions contemplated by these Terms & Conditions, whether or not such information or documentation is reduced to a tangible form or marked in writing as 'confidential', and howsoever the Receiving Party receives that information;
10. *Consequential Loss* includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise;
11. *Disclosing Party* means the party disclosing Confidential Information to the Receiving Party;
12. *Expenses* means any disbursements, including third party service, hardware, software, domain and security certificate costs; travel and accommodation costs; and any other third party costs, reasonably and directly incurred by us for the purpose of the provision of the Services.
13. *Expiry Date* means for products or services sold with a defined lifespan, the date of the product or service expiry as advised by our supplier and notified by us to you;

14. *Fee Variation* means a change or proposed change to the agreed fee, which is associated with a Variation Request or Variation Event.
15. *Fees* means the amount we charge you for Services supplied under these Terms & Conditions and includes our Expenses and any Fee Variations.
16. *Insolvency Event* means any of the following events or any analogous event:
  - a) a Party disposes of the whole or any part of the Party's assets, operations or business other than in the ordinary course of business;
  - b) a Party ceases, or threatens to cease, carrying on business;
  - c) a Party is unable to pay the Party's debts as the debts fall due;
  - d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Party's assets, operations or business;
  - e) any step is taken for a party to enter into any arrangement or compromise with, or assignment for the benefit of, a Party's creditors or any class of a Party's creditors; or
  - f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of a Party's assets, operations or business;
17. *Intellectual Property* means any domain names, knowhow, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing;
18. *Intellectual Property Breach* means any breach by you (or any of your Personnel) of any of our Intellectual Property Rights (or any breaches of third party rights including any Intellectual Property Rights of third parties), including, but not limited, to you (or your Personnel):
  - a) copying, altering, enhancing, adapting or modifying any of our Intellectual Property;
  - b) creating derivative works from our Intellectual Property;
  - c) providing or disclosing our Intellectual Property to, or allowing our Intellectual Property to be used by, any third party;
  - d) assigning or transferring any of our Intellectual Property Rights or granting sublicenses of any of our Intellectual Property Rights, except as expressly permitted in these Terms & Conditions;
  - e) reverse engineering or decompiling any of our Intellectual Property Rights, except where permitted by Law; or

- f) using or exploiting our Intellectual Property for purposes other than as expressly stated in these Terms & Conditions (including, without limitation, using our Intellectual Property for commercial purposes or on-selling our Intellectual Property to third parties);
19. *Intellectual Property Rights* means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property;
20. *Laws* means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any person with the authority to bind the relevant Party in connection with these Terms & Conditions or the provision of the Services;
21. *Liability* means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to these Terms & Conditions or otherwise. Moral Rights has the meaning given in the *Copyright Act 1968 (Cth)*;
22. *Party* means you or us and *Parties* means you and us, as defined in Section 1;
23. *Personnel* means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents;
24. *Receiving Party* means the party receiving Confidential Information from the Disclosing Party;
25. *Reseller Services* has the meaning given in Section 2.1;
26. *Service(s)* has the meaning given in Section 2.1;
27. *Schedule* means a schedule to these Terms & Conditions;
28. *Statutory Rights* has the meaning given in Section 12;
29. *System* means all hardware, software, networks and other IT systems used by a Party from time to time, including a network;
30. *Term* for a renewable product or service means the length of time for which the product or service is 'live', up to its Expiry Date;
31. *Third Party Inputs* means third parties or any goods and services provided by third parties, including hosting providers, customers, end users, suppliers, transportation or logistics providers or other subcontractors which the provision of the Services may be contingent on, or impacted by;
32. *Variation*, *Variation Request* and *Variation Event* have the meanings given to them in Section 2.3.



## 16 Interpretation

In these Terms & Conditions, unless the context otherwise requires:

1. a reference to these Terms & Conditions or any other document includes the document, all schedules and attachments as amended, supplemented, varied or replaced from time to time
2. a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
3. a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
4. no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
5. a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
6. a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
7. a reference to time is to local time in New South Wales; and
8. a reference to \$ or dollars refers to the currency of Australia from time to time.