

PROVIDENCE IT PTY LTD GENERAL TERMS AND CONDITIONS

This is a legally binding agreement between Providence IT Pty Ltd t/as Advanced Technology ABN 62 163 206 933 (**us/we/our**) and the person described in the Service Contract (**you, your, the Customer**) setting out the terms and conditions upon which we will supply the Goods and/or Services to you.

1 Framework

1.1 An agreement between us is formed when we receive a signed copy of the Service Agreement, and consists of the Service Agreement, any Special Terms and Conditions and these General Terms and Conditions (**Agreement**).

1.2 For the purpose of resolving any inconsistency specified in clause 1.1, the order of precedence is:

- (a) the Service Agreement;
- (b) the Special Terms and Conditions; and
- (c) the General Terms and Conditions.

2 Term and Services

2.1 This Agreement commences upon the later of:

- (a) the date set out on the Service Agreement; or
- (b) the date the Service Agreement is accepted by us.

Our acceptance is shown by our acceptance in writing or by issuing an invoice; or, by providing the Goods and/or Services, and continues for the minimum term set out in the Service Agreement (**Minimum Term**) unless terminated earlier in accordance with the terms of this Agreement (**Term**).

2.2 We will provide you with the Goods and/or Service(s) on the terms and conditions of this Agreement.

2.3 Unless otherwise agreed by us in writing, sale of additional Goods and/or Services to you are subject to our standard terms and conditions for that Good and/or Service, which is identified in the Service Agreement or on our Website.

2.4 Following the expiration of the Term, this Agreement will continue until terminated by either party on 30 days written notice.

2.5 We will provide the Services to you professionally and with appropriate due care and skill and in compliance with applicable laws, applicable third party licenses (where such is provided by you to us you must notify us of such) and regulations.

2.6 Except for any payment by you of the fees, rates and charges for the Services, but notwithstanding any other clause under this Agreement, if a party is unable to perform any obligation under this Agreement because of a Force Majeure Event, that party will have no liability to the other party.

3 Loan of Equipment

3.1 From time to time, at your request, we may loan you equipment provided you pay us the fees for rental of such equipment for the duration of the loan (as determined by mutual agreement between the parties).

3.2 We will loan you our equipment if:

- (a) there is a service failure; and

- (a) in our reasonable opinion, we need to install our own equipment in order to quickly put your services back into operation; and

- (c) your Contact Person is not immediately available to approve such installation.

3.3 We make no representations or warranties as to the quality of the equipment loaned to you under this clause 3, or its suitability for your intended use.

3.4 Nothing in this clause 3 or in this Agreement obliges us to loan our equipment to you (whether available for loan or not). We shall not be liable in any circumstances if we do not have any equipment available for loan.

4 Payment

4.1 Unless otherwise specified:

- (a) you must pay the invoiced fees, rates and charges associated with the Goods and/or Services, invoice or order, within 7 days from invoice issue date; and

- (b) we will invoice you for ongoing Services monthly in advance.

4.2 We may vary the terms of this Agreement, including any fees, rates and charges:

- (a) without notice to you if the variation arises due to a change in taxation law or other governmental action; and
- (b) by providing notice to you of any other variation after completion of the Minimum Term.

4.3 If you fail to pay any payments under this Agreement by the due date, we may:

- (a) charge interest at the rate of 18% per annum, calculated on a daily basis, on any overdue payments; and
- (b) charge you for all costs incurred by any third parties involved in collecting the debt from you.

4.4 If your bill is paid by direct debit from: an account held by you at an approved financial institution; or a valid credit card nominated by you; and a direct debit is dishonoured or cancelled, you agree to pay our administration fee set out in our invoice plus any dishonour fees.

4.5 If you dispute an invoice you must: raise that dispute with us as soon as reasonably possible and in any event within 14 days of the date of invoice; and

- (b) pay any undisputed amount included in the invoice in accordance with clause 4.1(a).

4.6 If you raise a dispute under clause 4.5, we will conduct prompt investigations and advise you of our findings.

4.7 If following an investigation by us under clause 4.6, the parties are unable to resolve the dispute, then either party may commence proceedings pursuant to clause 15.

4.8 All amounts payable under this Agreement are exclusive of GST. If GST is payable on any supply made by us under this Agreement, it will be specified on the invoice, and you must pay us an amount equivalent to the GST at the time that payment to us is due.

5 Title and Risk

5.1 We retain title and ownership of the Goods until payment is made in full.

5.2 Until title has passed to you, you hold the Goods as bailee and must clearly identify such Goods as our property and you must have the relevant insurance in place for the Goods.

5.3 All risk in the Goods and our equipment and software located on your premises passes to you upon delivery to you, or the item being provided at your premises as applicable.

6 Termination

6.1 Without prejudice to any right or remedy available, either party may at any time terminate this Agreement immediately by providing written notice to the other party if, the other party becomes insolvent, is subject of a bankruptcy order, or makes any arrangement or composition with or assignment for the benefit of its creditors or goes into voluntary (otherwise than for reconstruction or amalgamation) or compulsory liquidation, or a receiver or administrator is appointed over any of its assets, or in the case of partnership or a corporation, on dissolution or on the filing of an application to dissolve or in the case of a person that person dies.

6.2 Without prejudice to any right or remedy available to us we may terminate this Agreement immediately:

- (a) without notice if you use the Services unlawfully;
- (b) by written notice if:

- (i) you commit a material breach of this Agreement, which is capable of remedy and you fail to remedy the breach within 7 days of a written notice to do so;

- (ii) you commit a material breach of this Agreement which cannot be remedied; or

- (iii) any agreement between us and a supplier terminates or expires for any reason, such that we are unable in our reasonable opinion to continue to provide you the Services. In such case, we will endeavour to provide you with as much written notice as is reasonably possible.

6.3 Excluding clause 6.1, if you terminate this Agreement prior to the end of the Minimum Term you must pay all the fees, rates and charges applicable for the Minimum Term and any other monies owing by you to us, within 7 days of the date of termination or within 7 days of receipt of an invoice for that amount, whichever is the earlier. You agree this payment is a genuine pre-estimate of our loss and damage due to your cancellation.

6.4 Upon the termination or expiry of this Agreement:

- (a) you must pay all outstanding invoice and amounts within 14 days of the date of termination;

- (b) no refund may be given for any payments made in advance;

- (c) you must return or destroy (at our option) all copies of our Confidential Information, IPR and other material, information or property of any kind in accordance with our instructions;

- (d) you agree we may enter your premises to remove any of our Confidential Information, IPR and other material, information, or property of ours, our Personnel or our Related Parties; and
- (e) the accrued rights and obligations of each party are unaffected.

7 Your duties

- 7.1 You must:
- (a) use the Goods and/or Services, equipment, software or other item used in the Services lawfully and in
 - (b) allow us and our Personnel reasonable access to the site(s) and any relevant equipment for the purpose of performing the Services where required, and if site access is delayed then we may charge our standard rates for the additional time expended by us and our Personnel;
 - (c) promptly provide all decisions, materials, support staff and any information reasonably required by us to assist us in performing the Services, including providing detailed specifications of the requirements in writing, responding to questions without delay, performing intermediate tests and tests of work results;
 - (d) provide adequate power, water and other utilities; and
 - (e) ensure a safe working environment for our Personnel and inform us of any special safety and factory regulations and particular sources of danger that we may encounter at your site.
- 7.2 You must not:
- (a) other than making 1 copy for backup purposes, translate, adapt, modify, alter, decompile, disassemble, or reverse engineer the software;
 - (b) alter or remove any copyright or other intellectual property notifications on the Goods, equipment, software or other items provided to you by us; or
 - (c) attempt to rent, sell, remove or otherwise interfere with, create an interest in or dispose of our equipment or software.

8 Restraint

- 8.1 Unless otherwise provided in this Agreement, you must not, and must procure that each of your directors, officeholders and employees do not, during the Term and for a period of 12 months following termination of this Agreement, employ or solicit directly or indirectly or through any related or interposed body corporate, trust, principal, agent, shareholder, beneficiary, contractor, consultant or any other capacity) the employment or contract or consultancy or any other similar capacity any of our or our related parties staff or contractors or to enter into any other paid services for or with you.

8.2 If clause 8.1 is not complied with then you must pay to us liquidated damages, and which the parties agree is not a penalty, an amount equal to 50% of the total compensation, including but not limited to, salaries, wages, superannuation, bonuses, commissions, employee benefits, fees and other payments which the employee or subcontractor or consultant received during the prior 12 months of his or her employment, contract or consultancy with us.

8.3 This clause 8.3 does not limit any other remedies available to us for any other breach of this clause 8.3 or this Agreement, nor shall it preclude us from asserting any cause of action independent of this clause 8.3.

9 Privacy and Creditworthiness

9.1 The parties agree to act in good faith in all dealings between them in relation to this Agreement.

9.2 You authorise us and our related parties to, in accordance with the Privacy Act 1988, use and exchange your information before, during and after the provision of Goods and Services to you with any of our service providers, Related Parties, and employees for the following purposes:

- (a) to comply with our licenses;
- (b) to provide, administer and maintain Service delivery to you and your account; and
- (c) to assist us in assessing your creditworthiness and make new offers to you.

9.3 You agree, and, if you are a partnership each partner agrees, to authorise us to obtain a commercial or consumer credit report and to obtain personal or business information about you from your current service provider in order to provide the Services.

9.4 You agree that we may use your personal or business information for the following purposes:

- (a) considering or applying our credit policy to your application for consumer or commercial credit and whether to continue to provide the Services to you;
- (b) ongoing credit management of your account, including collection of overdue payments;
- (c) ongoing maintenance of credit records about you;
- (d) notifying you of information in connection with the Services; and
- (e) development, research and direct and indirect promotion of our products and services.

9.5 You agree that we may disclose your personal or business information for the following purposes to:

- (a) a credit reporting agency to assess your application for Services, or to

notify of a default by you and to allow a credit reporting agency to create or maintain a credit information file about you;

- (b) credit providers to obtain information about the status of your account;
- (c) collection agents to recover overdue amounts;

(d) carriers or service providers if required to enable them to provide the Services to you, or in the event we are no longer able to provide the Services to you;

- (e) assignees of all or part of our business assets, including trade receivables;
- (f) government or regulatory bodies and other organisations as authorised or required by law; and

(g) our Personnel, Related Parties, employees, agents (such as outsourcing agencies) and contractors engaged by us.

9.6 The type of information referred to in clause 9 includes identifying details (such as name, address, drivers' licence), information in your Application, whether, in our opinion, you have committed a serious credit infringement, and information relating to the conduct of your account and your use of the Services.

9.7 You agree that we or our agents may utilise any information collected and recorded by us in relation to your account to assist us in the process of debt recovery.

9.8 If you are an individual, or the individual named as a Contact Person in the Service Agreement, you may seek access to and request the correction of any credit information or personal or business information held by us by notifying us in writing of the request.

9.9 You agree that we and our Related Parties may use any information, including your electronic contact details such as email, collected and recorded by us in relation to your account to send commercial electronic messages as defined under the Spam Act 2003 (Cth).

10 Warranty

10.1 We warrant to you that, during the Term, we will perform the Services in a professional and workmanlike manner (**Limited Warranty**).

10.2 For the avoidance of doubt, we make no warranties about any Goods/Third Party Products. Any warranties applicable to any Goods/Third Party Products are given solely by the original manufacturer or vendor, and we have no responsibility or liability for the failure or fault in, or to maintain or service, any Goods/Third Party Products.

10.3	Except for the Limited Warranty, all Goods, Services, software and other products provided to you under this Agreement are provided on an “as is” basis and without any express, implied, statutory or other warranties of any kind. Without limiting the generality of the foregoing, we disclaim any and all implied warranties (including, without limitation, any implied warranties of merchantability, fitness for a particular purpose or non-infringement of IPR) to the extent permitted by law.	(a) resupplying the Services again, or paying for the cost of doing so; or (b) repairing or supplying equivalent Goods or paying the cost of repair or replacement, but in any event our liability will not exceed the cost of the relevant Goods or Services.	(e) any damage which you or your Personnel cause to us or our service providers network, equipment, software, infrastructure or other property or to the property of our other customers; and
10.4	Access to the Internet and your wide area network (WAN), if applicable, cannot be guaranteed where it is outside our direct control. Such access is dependent on additional services and products beyond those to be supplied by us under this Agreement. We shall have no responsibility for any inability of you to access the Internet and/or your WAN for any reason, and no such inability shall relieve you from any of your payment obligations under this Agreement.	11.3 Notwithstanding any other clause in this Agreement, in no circumstances will we be liable in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business, productivity, or anticipated savings, corruption, loss or destruction of data, failure of a backup to run correctly or for any indirect, special or consequential loss whatsoever. 11.4 A party’s liability under this Agreement is reduced to the extent of any contribution (including contributory negligence or otherwise) by the affected party and its employees, agents, contractors or Personnel. 11.5 Nothing in this Agreement limits a party’s liability for negligence by them under this Agreement, if that negligence causes personal injury or death. 11.6 If there is a programming error by us in relation to the Services, our liability and costs will be limited as follows: (a) we will rectify the error if the error can be reversed in our reasonable opinion; or (b) we will use all reasonable endeavours to restore the most recent and appropriate backup.	(f) any losses associated with the breach of your privacy information or a party’s Confidential Information as a result of theft or hacking of any Goods and/or Services, to the extent caused or contributed to by you, or by any criminal or negligent act or omission by you. 12.2 You must immediately notify us in writing of any Demand made, or threatened or brought, against you. Where the Demand arises from an infringement or alleged infringement referred to in clause 13.1(a). We may require you in such an event to cease use of the infringing or alleged infringing material in connection with this Agreement or may only permit you to continue such use upon such terms and conditions as notified to you by us in writing. For the purpose of this clause, “infringement” includes unauthorised acts which would, but for the operation of section 163 of the Patents Act 1990 (Cth), section 40A of the Designs Act 1906 (Cth) and section 183 of the Copyright Act 1968 (Cth) (or any sections that replace those sections from time to time), constitute an infringement.
11 Liability			
11.1	To the maximum extent permitted by applicable law and subject to clauses 11.2, 11.3, 11.4, and 11.5 but notwithstanding any other provision of this Agreement, our total aggregate liability to you or any person claiming through you for any costs, loss, liability, expense or damage, indirect, economic loss, or otherwise whatsoever, resulting from, arising under or in connection with this Agreement, whether based in contract, tort (including negligence), equity, statute, by way of indemnity or contribution, warranty or guarantee or any other type of damage or loss or otherwise, will not exceed an amount and scope equal to the greater of the aggregated amount for all events of: (i) the extent of the proceeds received from our insurance cover; or (ii) the fees rates and charges received from you under this Agreement for the Services in the 12 months preceding the event giving rise to the cause of action; or (iii) the amount charged to you for the Goods, whichever is the lesser.	12 Indemnities 12.1 You indemnify us, hold us harmless and defend us at your own expense, from and against any and all claims, damages, liabilities, losses, expenses, compensation and costs (including reasonable legal fees and expenses on a solicitor/client basis) arising out of liability for: (a) the infringement or alleged infringement of any IPR owned by a person other than us, which subsist within or outside Australia in any information, Background IP, documents, equipment, software or articles which are: (i) provided by you to us or our Personnel in connection with this Agreement; or (ii) which you use or propose to use or have in your possession or control; (b) your breach of this Agreement; (c) your use of the Goods and/or Services, equipment, software or any other item provided to you by us; (d) any Demand against us or our Personnel (including negligence) by any person other than you, which	
11.2	To the extent we are unable to exclude liability under this clause 11, and in respect of the Limited Warranty where such is reported to us within 12 months of any such breach, you agree that our total aggregate liability to you or a person claiming through you is limited to at our option to:		
13 Insurance First Claim			
13.1	Notwithstanding any other clause in the Agreement, you covenant and agree that if you make a claim or demand against us pursuant to clause 11 and 12 you will adhere and comply with the following procedure: (a) you must first claim or make a demand against your own insurer; and (b) you must provide, if requested by us evidence of your claim or demand to your insurer; (c) if: (i) your insurer refuses to process the claim or demand; or (ii) the claim or demand is outside the scope of your insurance; or (iii) the insurance proceeds from your own insurance fails to adequately cover your loss or damage; you must provide written notice to us setting out the facts and basis of the claim or demand.		
14 Dispute and Mediation			
14.1	If a dispute arises out of or relates to this Agreement, neither party may commence any court proceeding relating to the dispute unless it has complied with this clause 15, except where that party seeks urgent interlocutory relief.		

- expressly stating the specific power or right to be waived in writing signed by the party granting the waiver.
- 17.12 The failure to exercise or delay in exercising any power or right by a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right.
- 17.13 Nothing in the Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between us and neither party has any right to bind the other in contract or otherwise.
- 17.14 Except as otherwise set out in this Agreement where we may vary this Agreement, this Agreement may be varied only by Agreement signed by the parties.
- 17.15 Each party must at its own cost execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purposes of this Agreement.

18 Definitions

- 18.1 In this document, unless the context requires otherwise:
- Agreement** means the documents specified in clause 1.1 together with any other attachment, schedule or appended document;
- Service Agreement** means the Contract or Quotation under which you request us to supply specified Goods and/or Services to you;
- Providence IT Pty Ltd** means our and our Related Parties IPR which is in existence at the date of this Agreement, or, comes into existence after such other than in connection with this Agreement;
- Background IP** means your IPR which is in existence at the date of this Agreement, or, comes into existence after such other than in connection with this Agreement;
- Business Day** means any day not being a Saturday, Sunday or State public holiday at your first address set out in the Application;
- Business Hours** means in respect of Service delivery the operating hours of the relevant Service as set out in the Application and being Monday to Friday other than a day that is not a Business Day;
- Confidential Information** means, in any form whatsoever:
- (a) all trade and business secrets and other confidential information relating to the operations, dealings, pricing, transactions, financial arrangements, internal structures, clients, personnel, assets, liabilities, strategies, prices, businesses and affairs of a party or which come into a party's possession in the course of this Agreement or by reason of the provision of the Services; and

- (b) any of Providence IT IPR;
- (c) and for the avoidance of doubt includes our information where disclosed by any existing or potential customer, supplier, contractor, agent, licensor or licensee;

Contact Person means your contact person identified on the Application;

Demand means any action, claim or demand made for loss, damage, compensation, costs or expenses or any other relief, whether arising under statute or common law;

Delivery IP means all IPR created, discovered or coming into existence as a result of or in connection with this Agreement or the provision of the Services including (without limitation) IPR developed by us and our Related Parties in providing the Services and or Goods;

Force Majeure Event means any act of God (including lightening, flood severe weather, explosion, fire), war, civil disorder, acts of Government or other authorities, embargo, strike or other labour dispute or (without limitation) any other event or occurrence that is beyond our reasonable control;

Goods means items of hardware, software, or other items that you have ordered from us as set out in the Application, or may order from us from time to time;

GST means the tax imposed by A New Tax System (Goods and Services Tax) Act 1999 and A New Tax System (Goods and Services Tax) Transition Act 1999 and related tax imposition Acts of the Commonwealth of Australia;

IPR means all present and future registered and unregistered rights in respect of copyright, designs, trademarks, circuit layouts, know how, trade secrets, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967 and all Moral Rights;

Limited Warranty is defined in clause 10.1;

Minimum Term means the minimum term for the Agreement as specified in the Service Agreement;

Moral Rights means any of the rights described in Article BIS of the Berne Convention for Protection of Literary and Artistic Works 1886 (as amended from time to time), being "droit moral" or other analogous rights arising under any statute, that exist or that may come to exist, anywhere in the world;

Notice of Dispute is defined in clause 14.2;

Personnel means any of the following persons in relation to a party:

- (a) that party's officers, employees, agents, consultants, contractors and subcontractors;
- (b) officers, employees, agents, consultants and contractors of the that party's subcontractors; or

- (c) other persons engaged by that party, under their direction and control, or for whom that party is responsible;

Quotation means the quotation, proposal or other similar document under which you request us to supply specified Goods and/or Services to you;

Related Party means any person that is a related body corporate or an associated entity (within the meaning of the Corporations Act 2001 (Cth)) of ours, including but not limited to an entity in which we holds shares or units.

Services means the services to be provided by us to you set out in the Application, or may order from us from time to time;

Special Terms and Conditions mean the special terms and conditions applicable to a particular Good or Service provided by us;

Term is defined in clause 2.1;

Third Party Product means any product or equipment added to your equipment or any part of your network by any person other than us; and

Website means our website located at www.advancedtechnology.com.au

- 18.2 In this Agreement, unless the context requires otherwise:
- (a) the singular includes the plural and vice versa;
- (b) the word "person" includes a firm, body corporate, unincorporated association, authority or other entity and their executors, administrators substitutes and successors;
- (c) headings are inserted for convenience and do not affect the interpretation of this Agreement;
- (d) a reference to a clause, schedule, or Application, refers to a clause, schedule or Application of this Agreement;
- (e) a reference to the word "includes" means, including but not limited to;
- (f) a reference to an Agreement or other instrument includes any variation or replacement of them; and
- (g) a reference to a statute includes all statutes amending, consolidating or replacing such statute.