

GENERAL TERMS & CONDITIONS

Contents

1	Definitions	2
2	Service	4
2.1	Service Terms	4
3	Product Detail	4
4	Termination	5
4.1	Termination for Default	5
4.2	Termination for Convenience	5
5	Service Hours	6
6	Service Records	6
7	Client Responsibility	6
8	Engagement of Staff	6
9	Force Majeure	7
10	Queries and Disputes	7
11	Warranty	7
11.1	The Company Warrants	7
12	Limitation of Liability	8
13	Competition and Consumer Act 2010	8
14	Indemnity	8
14.1	Indemnity by the Company	8
14.2	Indemnity by the Client	9
15	Insurance	9
15.1	Insurance by the Company	9
16	Insurance by the Client	9
16.1	Governed	10
17	Gifts	10
18	Changes to Service Level Arrangements	10
18.1	Alterations and Variations	10
19	Payment Terms	10
20	Term	11
20.1	Agreement Term	11
20.2	Term of each Order	11
20.3	Cost increase for current and new Term	11
21	Confidentiality	12
21.1	Notification of Data Breach	13
22	Software License Term	13
23	Modern Slavery	13
24	Variation	14

1 Definitions

In this Agreement, unless the context otherwise requires:

Availability means the time during which the services are available.

Business day means 8:30 AM to 5:00 PM, Monday to Friday excluding public holidays.

Change Request & Change management Request means:

- (a) Normal which are the majority of service and Infrastructure changes and;
- (b) Emergency (a change that must be introduced as soon as possible - testing may be limited or completely skipped in extreme cases).

Client or Customer means the party who purchases the services and is a direct signatory to this Agreement.

Company means the Service Provider Moncrieff Technology Solutions Pty Ltd.

Confidential Information means any information that concerns the business or finances of the Parties and is disclosed to or acquired by the other Party and which:

- (a) is by its nature confidential;
- (b) is designated by the Party as confidential; or
- (c) the other Party knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by a breach of this Agreement.

and a piece of IT equipment such as a Personal Computer, a Network switch or Laptop. **An incident** means an unplanned interruption to an IT service or a reduction in the quality of an IT Service. Failure of a configuration item that has not yet impacted service.

Information and communications technologies (ICT) means the computer systems and networks within an organisation.

Level 1 (LVL1) means support provided to resolve simple issues related to typical operating systems and IT infrastructure queries. Typically, do not require a great deal of time to resolve.

Level 2 (LVL2) means support provided to resolve general operational issues such as advanced features/configurations and/or problems related to system failures or bugs and fixes.

Level 3 (LVL3) means support provided to resolve high level, complex issues requiring specialised skills to resolve the issue. Typically, more time required to resolve Level 3 issues.

Normal business hours means 8:30 AM to 5:00 PM, Monday to Friday excluding public holidays.

On-Site Support means when the Company actions any Support on the Client's Site.



Out-of-hours work means activities that the Company is unable to undertake during normal business hours.

Party means an entity directly involved with this Agreement

Price means the agreed fee for the provision of the service. Generally expressed as a cost inclusive of GST.

Patch Management means applying appropriate security patches released by Microsoft to systems covered by the agreement.

Product means any product with a physical description in the context of the client's current IT environment and knowledge.

Related Bodies Clause means that this agreement is for the benefit of the parties and their related bodies corporate as that term is defined in the Corporations Act 2001.

Remote Site Support means when the Company actions any Client's Support from the Company's Site.

Remote Support Capabilities (RSC) means that the Company staff can remotely access the computer systems with appropriate access to systems.

Resolution time means the time taken to return to services to normal/acceptable levels of operation or the same levels of operation that existed before the incident/problem occurring.

Response time means the time taken to receive a call from the customer and begin diagnosis.

Service means one or more ICT systems that enable a business process.

Services mean an agreed level of Services offered to the Client and the Client agrees to pay for it.

Service Agreement (SA) is a signed Agreement between the Client and the Company detailing the service and service commitments for the services detailed within the Service Catalogue. These include IT Assist Agreements, Managed Service Agreements, Onsite Support Agreements, and other agreements as required.

Service Desk (ServiceDesk) means the central point of contact for queries and requests regarding ICT services.

Service Desk System is the job logging software used by the Company to record incidents and service requests.

Service Level means the level of commitment to providing services within agreed Key Performance Indicators (KPIs).

Service Level Agreement (SLA) means a signed Agreement between the Client and the Company detailing the service and service commitments for the services detailed within the Service Catalogue. Most often, it translates into time to respond to Customer calls and time to resolve the related issue (response and resolution times).

Service Request means a user's request for information or advice, a standard change, or access to an IT service.

Standard Operating Environment (SOE) means a software environment including an operating system, applications, patches, and utilities configured for and applied across a specific environment. It provides a consistent and predictable software environment.

Third-Party means any entity other than the Client or the Company

Time & Materials (T&M) means services that fall outside the scope of the customer's signed Service Agreement. The customer is invoiced on completion.

Travelling time means the time taken by a Company technician to travel from the Company's place of business to a location requested by the client, being a location not specified in this agreement, including the time taken to return to the Company's place of business after providing the on-site service.

2 Service

2.1 Service Terms

Subject to the Terms and Conditions contained in this Agreement, the Company will provide technical and professional services ("the Services") to the client, and the Services will be charged by the agreed prices set out in the Fees Schedule or Schedule B – Service Catalogue. The Company reserves the right to refuse continuation of the Services if the Client fails to meet the agreed Payment Terms set out at clause 19 herein.

Service and support under the conditions of this Agreement are restricted to the Services requested by the client. However, wherever possible, the Company will provide services outside of the agreed scope if suitable resources are available. In this case, all other Terms and Conditions of this Agreement apply.

3 Product Detail

Any reference to the Product in the context of this Agreement means the physical equipment included in the Client's current IT environment. A physical description of all products must be provided by the Client and must include the following information:

- a) Description
- b) Manufacturer
- c) Model Number



- d) Serial Number
- e) Software Version Number (if applicable)

It is understood that the list of equipment may change throughout the period of this Agreement. If the equipment does change, it is the responsibility of the client to inform the Company. If additional equipment is added to this list, the Company may submit a variation for the price and response conditions for this service. Where the client does not have up-to-date physical description information, the Company may be employed to gather and document this information, and if so, this work will be performed pursuant to clause 7.1 Additional Services in the Exclusions of Schedule C in Scope of Services of this Agreement.

4 Termination

4.1 Termination for Default

Either Party shall have the right, without prejudice to any of its other rights or remedies arising in connection with the Agreement or at law, by giving written notice to terminate forthwith the Agreement for any of the following reasons:

- a) Either Party becomes insolvent, receivership, bankruptcy, in administration, in composition or arrangement with its creditors, voluntary winding-up or any equivalent act or thing under any applicable law; or
- b) Either Party is in default of any provision of the Agreement; or
- c) Either Party fails, neglects, refuses or is unable at any time during the Services to provide payment as agreed in the Agreement between the Parties.

4.2 Termination for Convenience

Both parties may terminate the Agreement provided sufficient notice is given to each other.

- a) The Client may notify the Company sixty (60) Calendar days before Termination in writing of its wish to terminate this Agreement. A refund of any prepaid balance will be at the Company's sole discretion, and any refund will be paid after payment of all outstanding accounts has been cleared;
- b) The Company may notify the Client in writing with sixty (60) Business days' notice of the Company's wish to terminate this Agreement. A refund of any unused prepaid hours will be given in this instance, or
- c) The account being inactive for two years the notification period needs to be fourteen (14) Business days;
- d) During the Agreement either party must notify the other one month before the end of the Agreement period (or any term of renewal) of their wish to terminate this Agreement.



5 Service Hours

All Services are provided between 8.30am and 5:00 pm Monday to Friday excluding public holidays. Service coverage outside of these hours may be provided by special arrangements and will be charged at a rate specified or to be determined by the Company.

If specified in the Service Catalogue Schedule B - Service Level Details, on-call response Services can be provided by the Company 24 hours per day, seven (7) Business days per week and 365 days per year (excluding public holidays).

6 Service Records

On Request, the Client can secure a copy of all logged service calls and actions taken to resolve a given issue. It is the Client's responsibility to review the level of recording for sufficiency within fourteen (14) Business days of the relevant service event.

7 Client Responsibility

The Client must have a "legal license to use" for software and hardware products for the Company to use in their scope of works for a particular service request.

To facilitate prompt problem resolution, the Client shall notify the Company of any MAINTENANCE/SUPPORT requirements by providing the Company with information concerning the failure, as soon as possible after the problem has occurred.

- a) The client shall provide The Company with, at least, the following information:
- b) The name(s) of personnel who are competent to use the Products covered by this Agreement and those who are authorised to instigate a service request
- c) Access to Product's covered by this Agreement if On-Site or Remote Service is required
- d) Provide adequate working space and facilities for On-Site Support Service
- e) Access to and use of all information necessary to provide the Services

The Client agrees to provide an installation environment which meets the specified requirements of the Products particularly in relation to electricity supply, air conditioning, service clearances, cable runs, cleanliness and safety of the client and the Company personnel.

The Client must inform the Company of any significant configuration changes to the covered environment. This includes performing changes within a suitable Change Management Process.

8 Engagement of Staff

Neither party will, from the Agreement Commencement Date until twelve (12) months after the Completion of the Supply, without the other party's prior agreement in writing, directly or indirectly:

- a) Employ or engage on any other basis or offer such employment or engagement to any Employee of the other party; or



- b) Endeavour to entice away or solicit from the other party any Employee for the purposes of employment or engagement of such person.

In this Clause "Employee" shall mean any employee of or other person provided by either party who has been materially involved in the provision of the Supply or the Services.

Each party agrees that if it employs, engages or solicits any Employee contrary to this clause, the party in default shall be liable to pay to the other party liquidated damages which the parties agree to be a reasonable estimate of the costs of hiring and training a replacement for any such Employee.

9 Force Majeure

The Company shall not be responsible or liable, for failure to perform or observe, or for delay in performing or observing, any obligation under this Agreement where such failure or delay arises from any cause beyond the Company's control, including but not limited to, strike, lockout, industrial action, act of God, insurrection, war or civil commotion, or any other cause which The Company could not reasonably be expected to avoid.

Parties shall notify one another within three (3) business days of such event. If the force majeure occurrence lasts longer than the time anticipated to complete the Services, the Company may suspend any Services. If the event duration exceeds that period by thirty (30) Business days, both the Company and the Client may terminate without any obligation towards each other. The only obligation to one another is the Services charges to that date of suspended Services due to the Force Majeure and the Party's shall agree to the Fees and Charges.

10 Queries and Disputes

If, in the bona fide view of the Client, an invoice is incorrect, the client must notify the Company within fourteen (14) Business days of receipt of the disputed invoice. The Client shall not be obliged to pay the undisputed portion of the invoice until the resolution of the dispute.

Upon receipt of such notification, the Company undertakes to discuss the matter with the Client to reach suitable solution.

11 Warranty

In any event of the discovery of any error or bad workmanship, the Company shall, with all due diligence and without any cost to the Client, and shall promptly perform any remedial activities. The Company will not take any responsibility for the Client's mishandling of the equipment or service, as such remedial cost will be to the Client.

11.1 The Company Warrants

The Company warrants that the Services:

- a) will be provided with all due care and skill
- b) will conform to any legally applicable standards



- c) do not and will not infringe the intellectual property rights of any third party

12 Limitation of Liability

Subject to the terms of this Agreement, the Company shall not be liable to the Client, or to any Third Party, for any damage, loss or injury suffered by the Client, or Third Party, resulting directly or indirectly from any breakdown, or equipment failure, and without limitation to the foregoing, the Company shall not be liable to the Client or any Third Party, for loss of actual or anticipated revenue, or loss of data, or for data being rendered inaccurate, as a consequence of any delay or failure as aforesaid.

If any service carried out by the Company under this Agreement does not comply with clause 3.10 above, then The Company must remedy such defective service by either the:

- a) Provision of the relevant Service again and without cost to the client; or
- b) Payment of the cost of having the relevant Services provided by a Third Party.

Such election under this clause is to be made by the Client.

13 Competition and Consumer Act 2010

In the case of a breach by The Company of any condition or warranty implied into any agreement of which these terms and conditions form part arising under the Competition and Consumer Act, 2010 (as amended), The Company' liability shall be limited to:

- a) The replacement of the goods or the supply of equivalent goods;
- b) The repair of the goods;
- c) The payment of the cost of replacing the goods or of acquiring equivalent goods;
- d) The payment of having goods repaired;

In the case of services:

- e) The supply of the services again; or
- f) The payment of the cost of having the services supplied again.

14 Indemnity

14.1 Indemnity by the Company

The Company will indemnify and keep indemnified the client from and against all liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including reasonable legal fees and expenses), demands, claims and proceedings of any nature suffered or incurred by the client in respect of any:

- a) Loss of or damage to any real or personal property; or
- b) Personal injury or death;



- c) Such indemnity obligation shall survive the termination or expiration of the Agreement.

that arises out of, or as a consequence of, the performance or non-performance of this Agreement by the Company or its personnel.

14.2 Indemnity by the Client

The Client will indemnify and keep indemnified the Company from and against all liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including reasonable legal fees and expenses), demands, claims and proceedings of any nature suffered or incurred by the Company in respect of any:

- a) Loss of or damage to any real or personal property on the Client's premises; or
- b) Personal injury or death;
- c) Such indemnity obligation shall survive the termination or expiration of the Agreement.

that arises out of, or as a consequence of, the performance or non-performance of this Agreement by the Company or its personnel.

15 Insurance

15.1 Insurance by the Company

The Company, at its cost, shall affect and maintain throughout the duration of this Agreement:

- a) Public Liability Insurance for an amount in respect of any one occurrence of not less than the sum of \$20,000,000; and
- b) Workers compensation and employers' liability insurance with respect to The Company's personnel as required in Western Australia, including cover for common law liability with a limit of liability of not less than \$50 million for any one person or persons arising out of anyone. Such insurance must note the interest of the Consultant and
- c) Professional Indemnity Insurance of \$5 million per claim or similar cover which shall cover against a breach of duty in the giving of professional advice by the Company.
- d) Cyber Enterprise Insurance of \$1 million aggregate for loss to the company, loss to others and cyber event costs.

16 Insurance by the Client

The Client, at its cost, shall affect and maintain throughout the duration of this Agreement:

Public Liability Insurance for an amount in respect of any one occurrence of not less than the sum of \$20 million;



The Insurance serves to protect any third Party on its own Site.

16.1 Governed

The Agreement shall be governed and construed in accordance with the law of the State of Western Australia.

17 Gifts

The Client or the Company, in respect of the Agreement or the matters which are subject of the Agreement, warrant to not have made or offered and will not make or offer any payment, gift, promise or other advantage, whether directly or through intermediaries, to or for the use of any public official (i.e. any person holding a legislative, administrative or judicial office including any person exercising a public function for a public agency, a public enterprise or a public international organisation), where such payment, gift, promise or advantage would violate the all applicable laws and/or the principles described in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed in Paris on December 17, 1997.

18 Changes to Service Level Arrangements

18.1 Alterations and Variations

The Company has the right to vary its fees and charges during the period of this Agreement. If varied, the Company must issue a table of amended fees and charges to the client.

The Company has the right to vary the procedure for logging support calls. Changes will be notified in writing and will take effect immediately upon receipt of such notice by the client.

The Company has the right to on-charge any new taxes or government charges that may come into existence from time to time or during the Agreement Term.

Either party may vary the terms of the Agreement when the other party agrees, and both parties have signed a document detailing the variances. For any Variations caused by any agreed Change of Services refer to Clause 23 herein and Schedule E (if applicable).

The Time & Material Fees schedule details fees for work that are deemed to be outside the scope of services in this agreement.

19 Payment Terms

The Company shall submit the Invoice and the supporting documentation in accordance with the Fees and Charges in the Schedules.

The Client must make payments within thirty (14) days of receipt of an invoice issued by the Company, or otherwise as agreed in the Fee's Schedules. The Company reserves the right to withhold performance of the Services until payments are made within the agreed payment terms herein. Agreed response times are not guaranteed while payments are outside the agreed payment terms.



Interest shall be payable for late payment of correctly prepared and adequately supported invoices. The amount of interest payable shall be the Company's Bank 'Base Rate' from the due date for payment until date of actual payment.

20 Term

20.1 Agreement Term

This Agreement

This Agreement commences on the Commencement Date as stated in Clause Agreement Period in Schedule A – Service Agreement.

- (b) Subject to Clauses in Section 4 of this document, this Agreement ends upon the expiry of the Umbrella Agreement Term, unless:
 - (i) this Agreement is terminated earlier in accordance with its terms, in which case this Agreement ends on the later of the date of such earlier termination; or
 - (ii) any Disengagement Period extends beyond the agreed period, in which case this Agreement expires upon the expiry of the last day of the Agreed date in Schedule A.
- d) Subject to the Client receiving the Company's prior written approval, the Customer may elect for this Agreement to be extended for a period of up to 12 months after the expiry of the first agreement period by giving notice to that effect to the Company at least 60 days before the expiry of the Agreement Term.

20.2 Term of each Order

- a) Each Order commences on:
 - (i) the date specified in the relevant Order; or
 - (ii) if no date is specified in the relevant Order, the date that the relevant Order Form is incorporated in this Agreement in accordance with an issued Order.
- a) Each Order ends on the later of:
 - (i) the date specified in the relevant Order; or
 - (ii) the end of the relevant Agreement Period,

unless before that date, the End Date occurs, or the Order is terminated in accordance with the terms of this Agreement, in which case:

- (iii) the Order ends on the earlier of the End Date and the date the Order is terminated

20.3 Cost increase for current and new Term

After the Agreement period has ended, and Client elects to extend for another period of twelve (12) months, the Company reserves the right to increase the charges by a minimum of the known CPI increase. The Company may also review any Third-party ongoing charges that may have an effect on the current year of the Agreement. Any increase will be evaluated and, if



deemed necessary, passed on to the Client. The company will provide a letter to the client confirming the CPI % and the resultant new rates. The Company elected not to amend any charges during the term unless the Third-party provider enforces such an increase during the Term between Client and Customer.

21 Confidentiality

Confidentiality or “Confidential Information” means all information (regardless of its form or the medium in which it is stored) treated by the Client as confidential and which is disclosed to the Company, or of which the Company first becomes aware, (whether before or after the date of this Agreement) either through:

- a) Disclosure by the Client to the Company in relation to the Approved Purpose; or
- b) The Company’s involvement with the Client when performing any of its obligations under this Agreement.

For these purposes, confidential information includes:

- Information regarding the Client’s business including without limitation technical and commercially sensitive information, financial information, trade secrets and confidential know-how and any information about the Client’s customers or suppliers; and
- All information generated by the Company to the extent based on or containing the Client’s Confidential Information;

but excludes information:

- Created by the Company (whether alone or jointly with any other person) independently of the Client’s Confidential Information (if the Company has evidence in writing that the information falls within this exception); or
- That is public knowledge (otherwise than through a breach of confidentiality obligations by The Company or any person to whom The Company has disclosed the information in accordance with the terms of this Agreement).

Compliance with Applicable Privacy Laws: Each Party must comply with all applicable Privacy Law (including the Privacy Act 1988) in relation to Personal Information received or held by it in connection with the Agreement.

- c) The Company will treat the Client’s Confidential Information as confidential and will:
 - the company will not transfer or relocate the data, including clients data, to another jurisdiction for storage without first obtaining the written consent of the client
 - take reasonable steps to keep the information confidential including without limitation by handling such information in a secure manner;
 - use the confidential information only for the Approved Purpose;



- shall not cause or permit the disclosure of the confidential information to any person except as authorised in writing by the Client;
- shall not at any time make use of the confidential information in any manner whatsoever or derive any personal benefit from the confidential information or from its use or application except as authorised in writing by the Client;
- shall on demand or at the end of the agreement, return to the Client all the confidential information in the possession of The Company or in respect of which The Company may exercise control.

21.1 Notification of Data Breach

If an Eligible Data Breach occurs, the Company must as soon as reasonably practicable

- a) notify the Client of the breach;
- b) co-operate to minimise any loss or damage of each party, including loss of, or damage to, goodwill or reputation;
- c) consult with each other prior to any external communications; and
- d) co-operate to implement any remedial and preventative actions and to the extent reasonably necessary to ensure compliance with Privacy Laws.

22 Software License Term

In the event that the term of a software license does not match the term of this agreement, the following shall apply:

- (a) if the software license term continues after the term or cancellation of this agreement, the client shall remain responsible for complying with the terms of the software license, including any payment obligations, until the software license term expires;
- (b) if the software license term expires before the term of this agreement, the client shall be responsible for either renewing the software license or paying any early termination fees associated with the software license. The renewal of the software agreement may be automated to ensure the continuity of the software license.
- (c) cancelling a software license with a monthly payment and an annual commitment before the end of the commitment period, the client shall remain responsible for complying with the terms of the software license, including any payment obligations, until the software license term expires.

23 Modern Slavery

The Company agrees to take reasonable steps to identify, assess and address risks of Modern Slavery practices (as defined in the Modern Slavery Act 2018 Cth) in its operations and supply chains used in the provision of the Products.



24 Variation

Notwithstanding anything else called variation described in this Agreement elsewhere, the Client may at any time instruct the Company forthwith to change the existing Service Level. After the Client has issued a formal request to the Company, the Company will, within a reasonable time of ten (10) Business days, gather the necessary information and Fees and Charges based on the request received and forward it to the Client for review. The Client may then discuss, if required, the level of Services with the Company.

Should both parties agree to the changes, the Company will formalise the variation on a variation Form and issue it to the Client for Signature. The Client shall sign the variation request within ten (10) Business days.

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