



# Intuit Technologies

Terms of Business

Issued December 2020

**INTUIT**  
technologies

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**Provider** means Intuit Technologies of 39 Sandy Bay Road, Hobart TAS 7000 contactable at [servicedesk@itechnologies.com.au](mailto:servicedesk@itechnologies.com.au)

**Client** means

of

(address)

contactable on (customer email)

## 1. Agreement formation

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The Agreement will become legally binding on the parties when:

each party has signed this document;

if applicable, Client signs the Credit Application; and

Provider begins to provide the Services to Client.

## 2. Supply

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Subject to the Agreement, Provider will supply the Deliverables to Client in accordance with the Scope of Work.

## 3. Term of the agreement

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If the Scope Of Work refers to a Minimum Term, Provider will provide the Deliverables to Client for the Minimum Term after the parties enter the Agreement. If the Agreement is terminated for any reason, Client is still liable to pay fees for the entirety of the Minimum Term.

Upon the completion of a Minimum Term, or if there is no Minimum Term on the commencement of the Agreement, Provider will provide the Deliverables to Client for consecutive Rolling Terms.

The Agreement automatically renews for each Rolling Term unless terminated in accordance with the Agreement, or either party provides written notice of permanent cancellation of the Agreement to the other party more than the Cancellation Period before the end of the term. Cancellation will take effect at the end of the term in which the party gave notice of cancellation.



#### **4. Retrospective application**

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If Provider began providing Deliverables to Client before the Agreement was signed, the Agreement will apply retrospectively from the date on which Provider first provided the Deliverables to Client.

#### **5. Changes to terms**

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Provider may update the Agreement, including the fees, at its discretion by providing written notice to Client before the end of any Rolling Term. The updates will take effect in the following term. Where Client does not accept such changes, it must immediately notify Provider. Such notice of non-acceptance will cancel the automatic renewal of the Agreement, and the Agreement will cease at the end of the term in which Provider gave notice of changes.

#### **6. Calculation of fees**

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Client will pay Provider the amounts for the Deliverables set out in the Scope Of Work.

All fees quoted for the Deliverables by Provider are exclusive of GST unless expressly stated otherwise. Client will be responsible for paying any taxes or duties, including GST, that apply to the provision of the Deliverables.

#### **7. Timing for payment of the fees**

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Provider will invoice Client for the Deliverables in accordance with the terms outlined in the Credit Application or Scope of Work unless otherwise agreed in writing.

Payment will be deemed to have been made when Provider has received cleared funds in its bank account.

#### **8. Client obligations**

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Client will cooperate reasonably and in good faith with Provider. In order to fulfil this obligation, Client agrees without limitation to:

inform Provider of all matters necessary for it to provide the Deliverables;

provide Provider with directions or instructions at Provider's request;



provide Provider with such access to sites, files and data as is necessary to safely deliver and, where required, install Deliverables;

provide the Provider with such licences as are necessary to provide the Deliverables;

respond promptly to Provider's inquiries related to the Deliverables; and

perform in a timely manner any tasks reasonably necessary to enable Provider to provide any Deliverables.

Client agrees that all maintenance, alteration or servicing of the Equipment will be performed by Provider or its authorised representatives, and to the extent not covered by the Agreement these will be deemed outside the Scope Of Work.

## **9. Time estimate**

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Any timeframe given by Provider in respect of the delivery of Deliverables is indicative only, and not binding on Provider unless Provider specifies that it is binding in writing.

## **10. Service trial**

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If Client uses the Services without paying Provider (whether it be for a trial or any other reason), Client agrees that the use of the Services without charge is at the sole and absolute discretion of Provider and that, in exchange for the Services, Client enters into the Agreement in respect of the Services.

## **11. Services licence**

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Provider grants to Client a non-transferrable, non-exclusive and revocable licence to access the Services, subject to the terms of the Agreement.

## **12. Responsibilities for setup and installation**

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Client and Provider will be responsible for the installation and setup of the Deliverables only as described in the Scope Of Work.



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**13. Provision of information**

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Client will provide any information reasonably requested by Provider for the purpose of setting up and operating the Deliverables for Client. Client warrants that:

all information that it provides to Provider is accurate and complete in all respects;  
and

it will inform Provider whenever any such information changes.

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**14. Services discretion**

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Provider may at its sole and absolute discretion provide and charge for the Services in various modules, packages and combinations from which Client may choose.

Provider reserves the right to upgrade, maintain, tune, backup, amend, add to or remove features from, redesign, improve or otherwise alter the Services at its sole and absolute discretion.

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**15. Inaccessibility**

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From time to time, without notice, access to all or part of the Services may be disrupted or limited. During such an interruption, Provider will use its reasonable endeavours to restore access to the Services as soon as practicable.

Provider reserves the right, with 5 days' notice, to make some or all of the Services inaccessible from time to time as is required for upgrades, maintenance and updates.

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**16. Agency for external relationships**

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By entering into the Agreement Client irrevocably appoints Provider its agent for the duration of the Agreement.

The parties agree that the scope of the agency will be limited to use of the External Relationships only. Client grants permission to Provider to access its External Relationships.

The parties agree that no partnership, joint venture or contract of employment is created by the agency relationship under the Agreement.

No tripartite legal relationship will exist between Client, Provider and any provider of an External Relationship.



Client will be solely liable for any liability incurred by Provider using any External Relationship.

## **17. Services control by third parties**

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Unless explicitly provided for otherwise, Provider agrees and accepts that the Services are operated from services owned and controlled by a third party. As such, Client acknowledges that certain functions may be out of the control of Provider, including:

- data backup;
- data centres;
- disaster recovery;
- application servers; and
- payment services.

## **18. Delivery of support and maintenance**

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Provider will provide support and maintenance in respect of the Services in accordance with the Scope of Work.

## **19. Additional work**

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If Provider determines at its sole and absolute discretion that the requirement for any work outside the Scope Of Work for Services is caused by the fault or error of Provider, Client shall not pay for that additional work.

If Client requires support and maintenance outside the scope of the Agreement, Provider and Client may agree to charges for that work as outlined in a separate agreement. Alternatively, Provider may issue Client with a quote for out of scope work.

## **20. Failure to pay**

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If Client fails to pay Provider any amount under the Agreement on the due date for payment, Provider may immediately do any or all of the following, without any liability, until all overdue fees are paid:

- suspend the delivery of Goods;



interest on the overdue amount at 10% above the Reserve Bank of Australia cash rate;

suspend Client's use of any or all of the Services;

terminate the Agreement without any obligation to refund Client any money in respect of the cancellation, even if the contractual term of the Agreement has not expired;

initiate proceedings against Client to recover the overdue amount (despite any dispute resolution clause in the Agreement); and

recover all costs in relation to any action taken against Client to recover overdue amounts, including but not limited to legal costs and outlays on a full indemnity basis.

## 21. Authorised users

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Client may designate Authorised Users for the Deliverables in accordance with the mechanisms provided by the Deliverables.

Client warrants that all of the information provided to create an Authorised Account (whether that information is provided by an Authorised User or Client) is accurate and complete in all respects, and will update Provider whenever any of this information changes.

Client is responsible for ensuring that Authorised Users comply with the Agreement to the fullest extent the Agreement applies to the use of Authorised Accounts.

## 22. Third party accounts

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If Client wishes to open a Third Party Account, Client must request Provider to do so in writing. Provider may, at its absolute and sole discretion, choose:

to open, or not to open, any Third Party Account requested by Client;

to charge fees for any Third Party Accounts; or

to contract, or not to contract, with any Third Party User.

Client agrees and acknowledges that Provider will contract with the Third Party User under the Third Party Terms, and that no access to the Deliverables can be granted to Third Party Users until they have agreed to the Third Party Terms.

Client acknowledges and agrees that Provider may cancel access to a Third Party User that is in breach of the Third Party Terms.

Client is aware of a breach by a Third Party User of the Third Party Terms, it is obligated to notify Provider with detailed particulars of the breach.



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### **23. Provider may make enquiries**

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Client authorises Provider to:

disclose and obtain personal information to and/or from another credit provider or credit reporting agency including information relating to the commercial creditworthiness and personal creditworthiness of them;

use any information obtained for the purposes of assessing this credit application, collect payments due under the Agreement and notifying other credit providers of the commercial credit worthiness of them; and

disclose information about you where it has a duty to the public to disclose that information, and/or where it is required by law.

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### **24. Data storage**

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Provider will collect and store information that Client provides to it.

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### **25. Client undertakings in relation to services**

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Client undertakes:

to use the Services only as they were designed to be used;

not to use the Services in any way which could interfere with or damage Provider's network, any other operator's network, or another Client's enjoyment of the Services;

not to use the Services for unsolicited or unreasonably frequent or voluminous communications;

not to publish or otherwise communicate any review of, or information about, the Services to any third party without the prior written consent of Provider, except as specifically provided for in an agreement with Provider;

not to disable or circumvent any protection or disabling mechanism related to the Services;

not to install or store any software applications, code or scripts on or through the Services unless it first obtains the written permission of Provider;

not to use the Services to bully, harass, degrade, insult or otherwise demean any person (as determined by Provider) or to partake in offensive or indecent conduct; and

not to store, access or operate any data, code or software on, or in connection with, the Services that could be categorised or identified as:





a computer virus or malicious code;  
pornographic material; or  
"warez" or associated with "warez".

Client will be responsible for the breach of any undertaking or warranty in this clause regardless of whether that breach is caused by a security breach of any kind.

## **26. Lawful use of service**

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Client undertakes:

to ensure that all electronic communications sent through or in connection with the Services feature an unsubscribe facility, and that they comply with the requirements of the *SPAM Act 2003 (Cth)* when sending electronic communications through the Services; and

not to store or access any Data on the Services if such access or storage would:

breach any Intellectual Property Right;

breach any Privacy Law; or

breach any other law or applicable code (including any common law, statute, delegated legislation, rule or ordinance of the Commonwealth, or a State or Territory).

## **27. Disposal of business**

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Client must promptly notify Provider in writing of:

its intention to sell its business (including stock-in-trade), such notice to be given at least 14 days prior to the date of completion of the sale;

any proposal for the appointment of a receiver or liquidator or official manager of the business, such notice to be given immediately; and

any circumstances likely to lead to the appointment of a receiver, administrator, liquidator or official manager of the business, such notice to be given immediately.

In such circumstances Client must:

keep goods separately from its other property; and



where applicable, advise the purchaser, receiver, administrator, liquidator or official manager, as the case may be, that the stock so separated is Provider's/subject to Provider's Security Interest; and

deliver the goods to Provider; or

at Provider's discretion give access to Provider to permit Provider to reclaim the goods.

## **28. Provider right to suspend**

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Provider reserves the right to:

limit or suspend Client's access to the Deliverables; and

remove data or content uploaded to the Deliverables by Client

if Client breaches any of its obligations or undertakings in the Agreement.

## **29. Technical information**

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All Technical Information is for informational purposes only, and is to be used or relied on at Client's own risk.

Provider makes no warranty or representations as to the accuracy of the Technical Information.

There may be technical or administrative errors in the Technical Information.

Provider reserves the right to correct any errors in the Technical Information, as well as on the Services, without any notice to Client.

## **30. Security**

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Provider will take reasonable steps to ensure that the Services are secure from unauthorised access consistent with generally accepted industry standards in Provider's industry.

Client is solely responsible for:

keeping any usernames and passwords associated with its account for the Services secure; and

the use of its account, irrespective of who is using it, even if it is used without Client's permission.



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### 31. Data storage with third party

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Provider may subcontract the storage of the Data to a third party (or multiple third parties) without notification to or consent from Client.

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### 32. Backup

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Backup services will only be provided to Client in accordance with the Scope of Work.

Provider makes no warranties or guarantees, implied or express, in respect of the retention of or continued accessibility of any backups in connection with the Services.

Client acknowledges that Provider has recommended Client take reasonable steps to back up its Data separately from the Services.

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### 33. Data management after termination

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Provider will delete Client's Data within 2 weeks from the termination of the Agreement.

Notwithstanding the above, Provider will have the right to delete any Data up to 3 months after the Agreement is terminated (**Retention Period**).

Client may obtain the Data within the Retention Period if it bears the costs of the hardware and incidental costs reasonably required by Provider to affect a transfer of the Data to Client (**Return Costs**).

Provider will not be obliged to return Data to Client until Client has paid the Return Costs in advance to Provider, as well as any outstanding payments owed to Provider.

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### 34. Confidentiality

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A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.

A party will not be in breach of this confidentiality clause in circumstances where it is legally compelled to disclose the other party's Confidential Information.

Notwithstanding any other provision of this clause, a party may disclose the terms of the Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.



Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of the Agreement, do not make public or disclose the other party's Confidential Information.

### 35. Data disclosure

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Provider may access, review or copy on its own account, or disclose and transfer to any third party, any Data or Personal Information, to the extent required:

- to permit third party service providers to perform their services in connection with Provider's business;
- to interact with Provider's related bodies corporate;
- to affect a sale (or proposed sale) of all or part of Provider's business;
- to satisfy any contractual obligation that Provider has to any third party;
- where Client has overdue fees, to debt collection agencies or its legal advisers to recover the amount due;
- for Provider to ensure that Client is not in breach of the Agreement; and
- as required or permitted by any law that Provider and its related bodies corporate may be subject to.

### 36. Privacy practices

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Provider's privacy policy at <https://www.itechnologies.com.au/privacy-policy/>

explains:

- how Provider collects and stores personal information; and
- under what conditions Provider shares such information.

Client consents to Provider's collection, use and disclosure of the Data in accordance with the Privacy Policy.

Client, in receiving the Deliverables, agrees not to do anything that would compromise Provider's compliance with its Privacy Policy.

Provider may amend the Privacy Policy at its sole discretion by providing Client with a period of notice that Provider determines to be reasonable.

Provider makes no warranties or guarantees, implied or express, in respect of the retention of or continued accessibility of any Data.



Client agrees that Provider is not liable for any loss or damage that may occur by any loss, corruption or any other inaccessibility in respect of any Data.

Provider may store the Data "offsite". The Data storage location will not affect the laws that govern any agreement arising under the Agreement.

At the request of Client, Provider will take reasonable steps to delete Data about Client stored by Provider where appropriate.

The businesses that Provider contracts with to support its business are committed to protecting the confidentiality of Data, however, Provider reserves the right to permit those businesses to access, view and review any of Client's Data in order to support Provider's business and comply with any relevant laws, including in the following circumstances:

as contemplated by the Privacy Policy;

if a government agency or regulatory body lawfully and specifically requests them to do so;

when performing routine backup and restore operations, virus scan and virus removal, spam and content filtering;

when such access, view or review is urgent and necessary to protect personal safety, perform troubleshooting, restore systems operation in the event of a server failure, remove illegal or offending (eg pornographic, violating policies, etc) content; or

to prevent a server failure, service outage or other damage.

### **37. No privacy warranty**

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Provider makes no warranty as to whether Client's use of the Services will comply with Client's obligations under Privacy Law. It is Client's responsibility to determine whether the Services are appropriate for Client's circumstances.

### **38. Changes in response to privacy law**

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Provider may make any changes to the Services that it considers, at its sole and absolute discretion, to be beneficial for compliance with:

Privacy Law; or

any guidance issued by the Office of the Australian Information Commissioner.

Provider will immediately notify Client of any such change.



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**39. Client's notification obligations**

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Client undertakes that when it stores any Personal Information on the Services, it will notify the relevant individuals that such information may be accessible by Provider.

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**40. Ownership of data**

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Client shall at all times during the course of the Agreement be the exclusive owner of the Intellectual Property Rights in the Data.

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**41. License over data**

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Client grants Provider a non-exclusive, irrevocable, worldwide, perpetual, unlimited, assignable, sub-licenseable, fully paid up and royalty-free right to copy, prepare derivative works of, improve, distribute, publish, remove, retain, add to, process, analyse and use the Data for providing the Services.

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**42. Provider intellectual property**

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Provider owns the Product IP, and in any circumstances where it does not automatically have such ownership, Client will transfer it to Provider and will do all things necessary to ensure that full legal ownership of the Product IP passes to Provider.

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**43. Licence to intellectual property in services**

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Provider grants to Client a non-exclusive royalty-free licence to use the Product IP for the sole purposes of accessing and using the Services in accordance with the Agreement. This licence will automatically terminate when the Agreement terminates.



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#### **44. Undertakings regarding intellectual property**

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Client warrants that it will not do any of the following, or permit any person over whom it has effective control to do so:

copy or reproduce, or create an adaptation or translation of, all or part of the Product IP in any way, except to the extent that reproduction occurs automatically through the ordinary use of the Services in accordance with the Agreement;

incorporate all or part of the Product IP in any other webpage, site, application or other digital or non-digital format;

subject to other rights explicitly granted under the Agreement, sell, license, sublicense, lease, rent, distribute, disclose, permit access to, or transfer to any third party, whether for profit or without charge, any portion of the Services on any medium; or

directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, or algorithms contained in the Services or any documentation associated with them.

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#### **45. Exclusion of express warranties**

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Provider makes no warranties or guarantees:

that the Services will be accessible at all times, uninterrupted or error free;

that any of the Services are without bugs or viruses;

that any of the Technical Information is without error or inaccuracy;

that the Services are immune to unauthorised access or security breach; and

in respect of the retention of, or continued accessibility of, any Data.

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#### **46. Provider's set-off rights**

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Provider, after having demanded payment of a sum overdue, may apply any payment paid by Client, against:

Provider's costs and disbursements in recovering the sum due;

any interest accrued; or

the amount overdue.

Provider may at any time set off any amount Client owes to Provider against any amount Provider may then owe to Client.



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**47. Goods delivery**

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Provider will use its best endeavours to deliver Goods to the Site at the time agreed between the parties.

Delivery of Goods will be deemed to have taken place when the Goods arrive at the Site.

Risk in Goods will pass to Client upon delivery.

Title in all Goods shall remain with Provider until Client makes full payment to Provider of all money payable for the Goods.

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**48. Goods installation**

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Where the Goods include installation services for the installation of products or equipment, if Provider is unable to install Goods because of an act or omission of Client, including a failure to comply with Client obligations under the Agreement:

the risk in the Goods will pass to Client;

the Goods will be deemed to have been delivered; and

Provider may store the Goods until actual installation is possible and Client will be liable for all related costs and expenses.

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**49. Failure to accept goods**

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If for any reason Client is unavailable to accept delivery of the Goods, or the Provider is unable to deliver the Goods because the Client has not provided appropriate instructions, documents, licenses or authorisations:

the risk in the Goods will pass to Client;

the Goods will be deemed to have been delivered; and

Provider may store the Goods until delivery when Client will be liable for all related costs and expenses (including, without limitation, storage, insurance and redelivery).

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**50. Goods refunds**

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Provider reserves the right not to deliver certain Goods if the suppliers of the Goods to Provider fail to procure the Goods.





Provider will provide Client with written notice of the undelivered Goods at the earliest practicable date.

Client will not be liable to pay for undelivered Goods and will be entitled to a refund for amounts paid in respect of those undelivered Goods.

Provider does not offer refunds upon cancellation of an order or delivery of Goods by Client.

## 51. Goods faults

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Client is responsible for the testing of Goods.

Subject to any Non-Excludable Condition, If Client does not notify Provider in writing of any deficiency in the Goods within 5 days of their delivery, then Client will be deemed to have accepted such Goods.

If Client, acting reasonably, finds the Goods to be faulty in accordance with the sub clause above, Provider agrees to rectify them within a reasonable time at its own expense.

Small deviations from Scope Of Work will not entitle Client to reject Goods.

However, if any such fault is caused by Client's direction to change the Goods, the rectification shall be at Client's expense.

Nothing in this clause affects Client's rights for any alleged failure of a guarantee under the Australian Consumer Law.

## 52. Hire, Lease or Rent

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### Client may hire, lease or rent

Client may hire, lease or rent Equipment from Provider in accordance with the Scope of Work.

This section applies where Client hires, leases or rents Equipment from Provider.

### Dealings

Client acknowledges that as between Client and Provider, Provider owns the Equipment, and Client holds it as bailee only. Provider retains title to the Equipment, even if Client goes into liquidation or becomes bankrupt during the Hire, Lease or Rental Period.

Except as provided by the Agreement Client may not offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of Security Interest over, or otherwise deal with the Equipment in any way.

In no circumstances, will the Equipment be deemed a fixture.



## Equipment breakdown

If, for a reason not caused by the Client, Equipment breaks down or becomes unsafe to use while at a Site, Client must:

immediately stop using the Equipment and notify Provider;

take all steps necessary to prevent injury occurring to persons or property resulting from the condition of the Equipment;

take all steps necessary to prevent any further damage to the Equipment itself; and

not repair or attempt to repair the Equipment without Provider's written consent.

Upon receiving notice of such a break down or safety issue, Provider will take reasonable steps to repair or replace the Equipment as soon as reasonably possible.

Provider agrees to hire, lease or rent the Equipment to Client in accordance with the Scope Of Work for the hire and will:

provide the Equipment in good working order; and

provide the Equipment exclusively to Client during the Hire, Lease or Rental Period.

## Hire, Lease or Rental period

The Hire, Lease or Rental Period is for an indefinite term and ends when the Equipment is back in Provider's control or possession.

The Hire, Lease or Rental Period includes weekends and public holidays.

A minimum Hire, Lease or Rental Period may apply in respect of certain items of Equipment. Provider will advise Client at the time of hiring if a minimum hire period applies. If Client returns the Equipment to Provider before the expiration of the minimum hire period, Client is required to pay all hire charges in respect of the minimum hire period.

Provider makes no representation or warranty as to the suitability of the Equipment for Client's purposes. It is Client's responsibility to satisfy itself as to such suitability.

Fees will not apply in relation to hired, leased or rented Equipment that is broken down or dangerous, for a reason other than the fault of the Client, from the time that Provider receives notice of the breakdown until such time as the Equipment is repaired or replaced.

Client will ensure the Equipment is used only for the purpose for which it was designed by the manufacturer.

## Equipment maintenance



Client must:

keep the Equipment in good condition and in accordance with the manufacturer's and Provider's instructions at Client's own cost;

not in any way alter, modify, tamper with, damage or repair the Equipment without Provider's prior written consent;

not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment;

store the Equipment safely and securely.

Client must return the Equipment in good working order and during normal business hours.

Client must purchase insurance which covers Client's damage to, or loss of, Equipment.

### **53. Loss, damage or theft of equipment**

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If Equipment is damaged, or soiled beyond fair wear and tear, as a result of Client's acts or omissions, Client will be liable for:

the cost of recovering, repairing, replacing and/or cleaning the Equipment; and

any fees payable for the period in which the Equipment is being recovered, replaced or repaired.

### **54. Security**

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In any event, these terms, including the provisions relating to security, default and the PPS Act will apply to any credit issued in respect of a Client's Credit Application.

Client acknowledges the Agreement is a Security Agreement for the purposes of the PPS Act and consents to Provider registering its Security Interest on the PPSR.

Client waives its rights to receive all notices under the PPS Act that are permitted to be waived under s157(3) of the PPS Act.

For the purposes of section 20(2) of the PPS Act, the Collateral includes goods hired or sold to Client by Provider as well as the property described in this document regarding Security Interests.



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**55. Client Security Interest in Goods**

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Until Client's total indebtedness to Provider is discharged in relation to Goods, Client shall hold those Goods as bailee for Provider.

Client grants to Provider a Security Interest in all Goods sold, leased, rented, bailed, consigned or otherwise made available to Client by Provider including but not limited to:

the Goods and associated items;

the proceeds of Client's sale of Goods; and

any interest in book debts of Client relating to Goods.

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**56. Insurance**

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Client will obtain and maintain property damage insurance, liability insurance and general insurance against loss or damage to the Equipment, to a minimum amount equal to forty-eight (48) months of Equipment charges payable under the Agreement. Client shall provide evidence of this insurance to Intuit Technologies on request.

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**57. Contracting out**

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To the extent the law permits, Provider need not comply with any of the provisions of the PPS Act which the parties are permitted to contract out of under s115(1) and 115(7) of the PPS Act. The parties exclude the operation of s142 and 143 to the extent permitted by the law.

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**58. Non-disclosure**

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Unless otherwise agreed and to the extent permitted by the PPS Act, Client agrees not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. Client waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of such information.



If Provider exercises a right, power or remedy in connection with the Agreement, that exercise is taken not to be an exercise of a right, power or remedy under the PPS Act unless Provider states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPS Act.

## **59. Sale of Goods and incomplete payment**

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In the event that Client sells the Goods to a third party before it has made payment in full for them to Provider, Client:

assigns to Provider the benefit of any claim against such third party;

holds any proceeds from such sales on trust for Provider; and

will account fully to Provider for the proceeds of the sale of the Goods sold or any part thereof until Client's total indebtedness to Provider is discharged.

## **60. Further rights upon default**

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In addition to Provider's rights in relation to Client's failure to pay, Provider will have the following rights if Client is late to pay any money due and owing under the Agreement:

demand immediate payment of all moneys owed by Client to Provider whether due for payment or not;

recover from Client all goods or Equipment it has supplied to Client whether paid for or not;

re-sell or otherwise dispose of the goods or Equipment so recovered without reference to Client and apply the net proceeds to Client's debt to Provider;

immediately cancel any contract in effect with Client without any obligation to refund Client any money in respect of the cancellation; and

enforce any Security Interests against Client.

In order to effect recovery of goods in accordance with this clause, the servants or agents of Provider may:

enter upon Client's premises (or any premises under the control of Client or Client's agent if the goods or Equipment are stored at other premises); and



use any reasonable force to effect recovery without liability for trespass or any resulting damage.

## **61. Giving effect to grant of Security Interests**

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Client consents to Provider registering its Security Interests under the Agreement on the Register, and:

will execute all documents and do all things as may be required to give effect to this grant of Security Interests;

irrevocably appoints all and any of Provider's company secretary and credit manager or other representative as Client's attorney for the purposes of doing all such acts and things and executing all such documents necessary to enable Provider to register its Security Interests; and

agrees to indemnify Provider on an indemnity basis against all costs and expenses incurred by Provider in connection with registering its Security Interest including the preparation and registration of mortgage and charge documents, and all other costs associated with perfection and enforcement of such Security Interest on a full indemnity basis.

## **62. Limitations subject to the law**

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All limitations, exclusions and indemnities in the Agreement are subject to Non Excludable Conditions to the extent of any inconsistency, and apply to the fullest extent permissible by the law.

## **63. Limitation of liability**

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### **Implied Guarantees, Conditions and Warranties**

To the fullest extent available under the law, Provider excludes all implied guarantees, conditions and warranties from the Agreement and the Deliverables, except any Non Excludable Condition.

### **General Limitation**

Client deals with the Provider in respect of the Deliverables at its own risk. To the fullest extent permitted by law, Provider excludes all liability (including Consequential Loss) to Client for any Costs, suffered or incurred directly or indirectly by Client in connection with the Agreement or the Deliverables, including in connection with:



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- failure of any third party component including, without limitation, software failure, hardware failure, network failure, or power failure;
  - the Deliverables being inaccessible to that Client for any reason;
  - any excess usage charges Client may incur from third parties;
  - incorrect or corrupt data, lost data, or any inputs or outputs of the Deliverables;
  - computer virus, trojan and other malware in connection with the Deliverables;
  - security vulnerabilities in Deliverables or any breach of security that results in unauthorised access to or corruption of data;
  - failure of any third party software including, without limitation, the operating system and any other software;
  - failure of any third party component including, without limitation, hardware failure, network failure, or power failure;
  - the Client's participation in any experiments, beta software or pilots;
  - reliance on the Provider's advice;
  - technical advice, modelling or calculations provided the Provider;
  - the Client's failure to provide sufficient access or accurate information for the Provider to provide the Deliverables;
  - the infringement or claimed infringement of the Intellectual Property Rights or Moral Rights of any person in connection with the Agreement;
  - any party's failure to fulfil any formalities necessary to give full effect to an assignment of Intellectual Property Rights;
  - the Client's failure to observe proper safety measures and procedures;
  - the delivery, setup and installation of Deliverables;
  - the use, or breakdown of, Deliverables;
  - any harm to or claim by a third party in connection with the Deliverables;
  - any personal injury or death arising directly or indirectly in connection with the Deliverables;
  - any loss or damage to property arising directly or indirectly in connection with the Agreement;
  - any act or omission of the Provider, its personnel or any related body corporate under or in relation to the Agreement;
  - the Provider's breach of the Agreement;
  - the termination of the Agreement;



the Client's failure to fulfil its obligations under the Agreement; and  
any delay in the provision of the Deliverables.

The foregoing limitation applies however the Costs are caused whether they arise in contract, tort (including by Provider's negligence), or under statute.

### **Non Excludable Conditions**

Where a Non Excludable Condition is deemed to apply, to the fullest extent possible under the law, Provider limits its liability for any breach to:

in the case of goods:

the re-supply of the goods or payment of the cost of the re-supply of the goods; or

the replacement or repair of the goods or payment of the cost of replacement or repair of the goods; and

in the case of services:

the re-supply of the services affected by the breach; or

the payment of the cost of such re-supply of the services.

## **64. General indemnity**

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Client indemnifies the Indemnified against all Costs suffered or incurred by the Indemnified, however caused, arising wholly or partially, directly or indirectly, in connection with the Agreement or Client's use of the Deliverables.

## **65. Specific indemnities**

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Without limiting the generality of the section entitled "General indemnity" in the Agreement, the Client indemnifies the Indemnified against any Costs arising directly or indirectly from:

Client's breach of the Agreement;

Client or any authorised user's infringement of any third party Intellectual Property Rights while using the Deliverables;

Client's failure to fulfil any of its obligations in the "Privacy" clause of the Agreement;

Client's breach of Privacy Law;





- 
- the Client's breach of the Agreement;
  - the Provider's enforcement of its rights in connection with the Agreement, including legal costs on a full indemnity basis;
  - any harm to, claim or action by a third party arising directly or indirectly from the Client's use of the Deliverables;
  - any personal injury or death arising directly or indirectly out of the Client's conduct;
  - any damage to property arising directly or indirectly out of the Client's conduct;
  - the Client or any authorised user's infringement of any third party Intellectual Property Rights while using the Deliverables;
  - any claim, action or suit by a third party alleging infringement of their Intellectual Property Rights as a result of the conduct of the Client;
  - any negligent or unlawful act or omission by the Client in connection with the Deliverables;
  - the Provider's or a third party's reliance on a misleading representation made by a Client;
  - a contract in force between the Client and a third party connected with the Deliverables;
  - the Client's breach of privacy law;
  - the Client's storing Data on the Deliverables;
  - any cost incurred by the Provider resulting from a person pursuing rights conferred upon them by Privacy Law;

## **66. Conditions of indemnity**

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The Indemnified may make a claim under indemnities in the Agreement in relation to a Cost before having incurred the Cost, or before making a payment in relation to the Cost.

The indemnities in the Agreement shall be in addition to any damages for breach of contract to which Provider may be entitled. Nothing in the indemnities in the Agreement will be construed so as to prevent Provider from claiming damages in relation to Client's breach of any term of the Agreement.

Each indemnity in the Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of the Agreement for whatever reason.



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## **67. Anti-poaching**

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During any Agreement, and for 12 months following the end of the latest Agreement, Customer (including its directors, owners and employees) will not approach Provider's employees or subcontractors for employment or contractual engagement without the written approval of Provider.

The parties agree that this is a reasonable time frame, but that if it is unenforceable, they also agree to a restraint time frame of 6 months.

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## **68. Non solicitation**

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During Client's employment, and for the period following termination of Client's employment, Client must not, without the prior written consent of the Provider, directly or indirectly, do any of the following:

induce, encourage or attempt to induce or encourage an employee of the Provider to leave their employment (irrespective of whether such employee would or wouldn't be acting in breach of their own contract of employment with the Provider);

solicit, canvass or approach any person who is or was a customer, client or supplier of the Provider with whom Client had contact during the last 12 months of Client's employment, with a view to obtaining the custom of that person in a business that is the same or similar to the business conducted by the Provider;

interfere with the relationship between the Provider and its customers, clients, suppliers or employees; or

counsel, procure or assist any person to do any of the acts referred to in this clause.

For the purpose of this clause, the relevant period is:

24 months; (or if this is held to be invalid or otherwise unenforceable)

12 months; (or if this is held to be invalid or otherwise unenforceable)

6 months; (or if this is held to be invalid or otherwise unenforceable)

3 months; (or if this is held to be invalid or otherwise unenforceable)

2 months; (or if this is held to be invalid or otherwise unenforceable)

1 month.

For the purpose of this clause, the relevant area is:

Australia; (or if this is held to be invalid or otherwise unenforceable)



each State and Territory in which the Provider operates or has an office; (or if this is held to be invalid or otherwise unenforceable)

each city where the Provider operates or has an office.

Client acknowledges by accepting employment with the Provider that Client considers the restraints contained in this clause to be reasonable and intends the restraints to operate to the maximum extent possible.

If these restraints:

are void as unreasonable for the protection of the interests of the Provider; and

would be valid if part of the wording was deleted or the period of activity was reduced,

the restraints will apply with the modifications necessary to make them effective.

The restraints contained in this clause are separate, distinct and several, so that the unenforceability of any restraint does not affect the enforceability of the other restraints.

Nothing in this clause restricts or prevents Client from holding securities being no more than 5% of the issued share capital of a company carrying on a restricted activity (as set out in this clause) that is listed on the Australian Securities Exchange or other bourse where such holding is for investment purposes.

## **69. Termination for convenience**

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Provider reserves the right to withdraw from or cancel the Agreement at any time without giving reasons, by providing Client notice in writing no less than 2 weeks before the cancellation is to take effect.

If Provider exercises its right to terminate without giving reasons in accordance with the Agreement, Client will receive a pro-rated refund of money paid for the remainder of the Agreement.

## **70. Termination on insolvency**

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Either party may immediately terminate the Agreement by notice to the other party if the other party suffers an Insolvency Event.



## 71. Termination for breach

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Provider may terminate the Agreement immediately by written notice to Client if Client breaches the Agreement, and has failed to remedy that breach to the satisfaction of Provider within 5 days of a written notice from Provider requiring Client to do so.

If Provider exercises its right to terminate in accordance with this clause, Provider will not be obliged to refund any money to Client.

## 72. Dispute resolution procedure

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### Initiation of Dispute

If there is a Dispute, then either party may notify the other with a Resolution Notice, which:

includes, or is accompanied by, full and detailed particulars of the Dispute; and

is delivered within 14 days of the circumstances giving rise to the Dispute first occurring.

### Meeting to resolve Dispute

Within 14 days after a Resolution Notice is given, a representative (with the authority to resolve the dispute) of Client and Provider must meet and seek to resolve the Dispute.

### Mediation

If the representatives of Client and Provider do not resolve the Dispute within 30 days, the Dispute will be submitted for mediation in accordance with, and subject to, *The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules*.

### Mediation to final and binding arbitration

If the Dispute is not settled within 30 days of the submission to mediation (unless such period is extended by agreement of the parties), it will be submitted to final and binding arbitration in accordance with, and subject to, *The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations*.

### Costs for mediation / arbitration process



When the Dispute is submitted to mediation or arbitration, each party will pay its own Costs for the proceedings. The parties will share equally the Costs payable to *The Institute of Arbitrators & Mediators Australia*.

**Court proceedings not to be brought before process**

Subject to this section, a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.

**Parties can seek urgent injunctive relief**

Nothing in the Agreement prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

**Obligations and rights remain current during dispute**

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under the Agreement and any other agreement between the parties.

**Dispute resolution provisions subject to non-excludable conditions**

The obligations set out in the Agreement in relation to dispute resolution are available to the fullest extent available under the law, and subject to the Non Excludable Conditions to the extent of any inconsistency.

**73. Dispute resolution not to apply to debts**

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The dispute resolution procedure set out in this clause will not apply in any instance where Provider seeks to enforce a debt in connection with the Agreement.

**74. Unforeseen events**

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The obligations of Provider under the Agreement are suspended to the extent that an Unforeseen Event affects them, as long as the Unforeseen Event continues. The occurrence of an Unforeseen Event does not suspend the obligation of Client to pay any money under the Agreement.



A party claiming an Unforeseen Event must use their best endeavours to remove, overcome or minimise the effects of that Unforeseen Event as quickly as possible.

If an Unforeseen Event continues for more than 60 days, Provider may terminate any agreement in force for the provision of the Services by notice in writing to Client of not less than 14 days.

## **75. Communications**

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Communications must be in writing.

Either party may serve any Communication on the other party by sending it to that party's email address.

A Communication by email will be taken to have been received by the addressee 24 hours after the email was sent, unless the party sending the email knows or reasonably ought to suspect that the email was not delivered to the addressee's domain specified in the email address.

## **76. Inconsistency**

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In the event that there is any inconsistency between this document and the Scope Of Work, the terms in this document will take precedence to the extent of the inconsistency to the fullest extent available under the law.

## **77. Duties and taxes**

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Client will pay all stamp duties and any related taxes, fines and penalties in respect of the Agreement and the Deliverables.

## **78. Assignment and novation**

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Client cannot assign, novate or otherwise transfer any of its rights or obligations under the Agreement without the prior written consent of Provider.

Provider may assign, novate or otherwise transfer any of its rights or obligations under any Agreement to a third party without notice to, or the prior consent of, Client, but if Provider requires, Client will sign any documents to give effect to an assignment, novation or transfer by Provider under this clause.



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**79. Multiple parties as Client**

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If more than 1 party contracts with Provider under the Agreement as Client, the term Client refers to each of them, and the obligations of Client under the Agreement bind them, jointly and severally, and any obligation or a liability assumed by more than 1 Client binds them jointly and severally.

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**80. Governing law**

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The laws of Tasmania govern the Agreement and each party submits to the non-exclusive jurisdiction of the courts in that jurisdiction.

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**81. Relationship of parties**

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The relationship between Provider and Client under any Agreement does not form a joint venture or partnership.

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**82. General and interpretation**

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**Further assurances**

The parties agree to do everything required to give full effect to the Agreement.

**Entire agreement**

The Agreement and any other document incorporated by reference constitute the entire legal agreement. The parties agree that they have not relied on any representation or statements outside the terms of the Agreement.

**Counterparts**

The documents constituting the Agreement may be executed in multiple counterparts. The counterparts will be read as 1 legal document.

**Waiver**

No right or obligation under the Agreement will be waived unless the waiver is explicitly waived in writing.



**Severance**

Any unenforceable or invalid term of the Agreement will only be severed to the extent of the unenforceability or invalidity without affecting any other term in the Agreement.

**Binding on successors**

The Agreement is binding on each party's successors and permitted assigns.

**Agreement expenses**

The parties will cover their own expenses in preparing the Agreement documents.

**Interpretation**

Unless the terms and conditions of the Agreement explicitly state otherwise, the Agreement will be interpreted as follows:

a reference to a party includes that party's permitted assigns, administrators, successors, executors, legal representatives and any novated party;

any reference to a trustee includes any substituted or additional trustee;

unless used for the usual grammatical purpose, inverted commas around a term indicate industry jargon that will be interpreted according to how that term would be understood by an individual with expertise in the relevant industry;

"including", "includes" or any derivation of those words does not limit the matter in question to the things specifically mentioned in the applicable context;

where a term is defined, other grammatical forms of that term will be taken to have the same meaning;

headings are for convenience and will not affect interpretation;

words in the singular will be taken to include the plural and the opposite;

"\$" means the Australian dollar;

a reference to a document will be to that document as updated, varied or amended;

a document referenced by the Agreement will not take precedence over the referencing document;

when any kind of legislative instrument is referenced, the reference will be taken to be that instrument as updated or substituted for by the legislative body in any way;





where a "URL" is mentioned, the non-operation of the "URL" will not render the rights and obligations associated with it invalid;

any referenced digital resource may be replaced with another digital resource that is a "copy" of the original resource;

a reference to a party's conduct includes omissions as well as acts;

if a party is described as having discretion in a matter, the discretion in that matter will be interpreted as sole and absolute; and

where a party is required to do "anything necessary", this includes executing agreements and other legal instruments.

### 83. Definitions

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#### Agreement

means the legally binding contract arising between the parties under:

this document;  
the Scope Of Work; and  
any other document directly incorporated.

#### Australian Consumer Law

means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

#### Authorised Account, Authorised Accounts

means a sub-account, under the auspices of Client's overall account with Provider, which is operable by an employee, agent or contractor of Client.

#### Authorised User, Authorised Users

means

an employee, agent or contractor of Client; or  
any other third party, authorised by Client to use an Authorised Account.

#### Cancellation Period

means the period of notice required to terminate the Agreement at the end of a Rolling Term as described in the Scope of Work.

#### Collateral

means goods provided to Customer by Provider as well as the property described in the following Agreement regarding Security Interests.

#### Communication, Communications

means any written communication including each notice, consent, approval, request and demand under or in connection with the Agreement.



**Confidential Information**

means information that is by its nature confidential, including but not limited to information relating to the:

personnel, policies, practices, clientele or business strategies of the parties; Intellectual Property Rights of either party; and the terms of the Agreement,

but does not include information:

already rightfully known to the receiving party at the time of disclosure by the other party; or  
in the public domain (including information made publicly available via a mechanism in the Services by Client) other than as a result of disclosure by a party in breach of its obligations of confidentiality under the Agreement.

**Consequential Loss**

means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than the cost of repair), loss of opportunity or expectation loss, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.

**Cost, Costs**

means any costs, expenses, losses, damages, claims, demands, proceedings, and other liability.

**Credit Application**

means an application by Client for Provider to issue them with credit.

**Data**

means any data uploaded by Client or any user associated with Client to the Services or any other electronic servers and infrastructure used to provide the Services.

**Deliverables**

means the Goods, Services and Equipment provided under the Agreement.

**Dispute**

means any dispute arising between Client and Provider in connection with the Agreement.

**Equipment**

means:

equipment the Provider has brought to a Site to complete its work; and/or equipment hired by the Client from the Provider as described in the Scope of Work.



**External Relationship, External Relationships**

means any commercial relationship entered into by the Client with:

Telstra (and any other telecommunications providers); and  
any third party technology provider, that is managed or administered by Provider in  
association with the Services.

**Fee, Fees**

means the amount payable in respect of Goods provided by Provider to  
Client, including all costs, charges and expenses reasonably and properly  
incurred by Provider.

**Good, Goods**

means goods identified as sold or hired in the Scope Of Work.

**Hire Period**

means, in relation to Equipment hired by the Client, the period commencing  
on the earlier of the following:

when Client takes possession of the Equipment; or  
the Provider delivers Equipment to the address agreed between the parties for  
delivery for the hire.

**Indemnified**

means Provider and its directors, employees, contractors and agents.

**Insolvency Event**

means in respect of a party:

the appointment of an administrator, a receiver or receiver and manager in respect  
of that party;  
an application to a court or an order for the winding up of the party; or  
the occurrence of anything analogous or having a substantially similar effect to any  
of the preceding events.

**Intellectual Property Right, Intellectual Property Rights**

means all present and future rights conferred by statute, common law or  
equity in or in relation to business names, circuit layouts, computer software,  
confidential information, copyright, designs, domain names, formulas,  
inventions, knowhow, patents, plant varieties, recipes, trade marks, and other  
results of intellectual activity in the industrial, commercial, scientific, literary or  
artistic field, the benefit of any application to register such a right and the  
benefit of any renewal or extension of such a right.

**Minimum Term**

means the minimum term of the Agreement set out in the Scope Of Work.



## Moral Rights

means the rights commonly referred to as "moral rights", such as the right of attribution, which are recognised in the jurisdiction of the Agreement.

## Non Excludable Condition, Non Excludable Conditions

means any guarantee, condition or warranty (such as the consumer guarantees implied by the *Competition and Consumer Act 2010 (Cth)*), which cannot by law be excluded.

## Personal Information

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

## PPS Act

means the *Personal Property Securities Act 2009 (Cth)*.

## PPSR

means the Personal Property Securities Register.

## Privacy Law

means:

the *Privacy Act 1988 (Cth)*; and  
any code registered under the Privacy Act or Australian Privacy Principles.

## Privacy Policy

means Provider's Privacy Policy, which may be viewed at

<http://www.itechnologies.com.au/forms/Intuit%20Technologies%20Privacy%20Policy%202016.pdf> or any substitute URL.

## Product IP

means all Intellectual Property Rights subsisting in:

the Service or any part of it; or  
any additions or alterations made to the Service, including those made with the input of Client.

## Register

has the meaning given to that term in section 10 of the PPS Act.

## Resolution Notice

means a notice of Dispute served by a party in relation to the Agreement.

## Rolling Term

means the rolling term of renewal set out in the Scope Of Work.

## Security Agreement, Security Agreements

has the meaning given to that term in section 10 of the PPS Act.

## Security Interest, Security Interests

has the meaning given to that term in section 10 of the PPS Act.



**Service, Services**  
means the provision of:

software;  
electronic infrastructure;  
data storage and processing;  
networking;  
security;  
dashboard, monitoring and reporting;  
system migration and upgrade;  
procurement;  
cloud services (including maintaining cloud servers, cloud based antivirus monitoring,  
cloud migration, and cloud brokerage services);  
technology decommissioning and recycling;  
technology installation;  
technology management;  
physical and virtual servers;  
disaster recovery and backup that is managed or unmanaged;  
support and maintenance in respect of the above;  
advice in respect of the above; and  
any other service within the scope of the Agreement, by Provider to Client, as  
described in the Scope Of Work.

**Site, Sites**  
means, in respect of Goods, the place agreed by the parties for the provision  
of the Goods, or the object in relation to which the Goods are delivered.

**Scope Of Work, Scope Of Works**  
means the final version of the document sent by Provider to Client outlining  
the precise scope of the provision of goods and services.

**Technical Information**  
means information used, provided and created by the software, including:

software diagnostics;  
advice; and  
anything else Provider deems to fall under this category.

**Third Party Account, Third Party Accounts**  
means an account providing access to the Services for a third party end user.

**Third Party Terms**  
means the terms and conditions under which a third party end user will  
contract with Provider to use a Third Party Account.

**Third Party User, Third Party Users**  
means the end user using the Third Party Account under the Third Party Terms.



## Unforeseen Event, Unforeseen Events

means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, currency restriction, embargo, action or inaction by a government provider, a failure of a supplier, public utility or common carrier or computer disruption due to the effects of a virus or other malicious code.

