

STANDARD TERMS AND CONDITIONS



DURATION

- 1. Agreement Start Date** This Agreement starts and is effective on the last date it is signed by both parties.

- 2. Order Start Date** The term of the Service Order starts from the date we advise you the Service is 'ready for use'.

- 3. After the Fixed Term** After the Fixed Term, we will continue to supply the Services on a month-to-month basis until you cancel the Services or terminate this Agreement in accordance with clause 36.

SERVICES FOR YOUR GROUP COMPANIES

- 4. Purchasing Services for your Group Companies** Your Group Companies can purchase Services under this Agreement if you:
 - (a) provide us with your Group Companies' full corporate details;
 - (b) inform your Group Companies of the contractual arrangements in this Agreement;
 - (c) are responsible for the obligations of your Group Company (including payment) as if they were your own; and
 - (d) ensure that your Group Company uses the Services consistently with the terms of this Agreement.

SERVICES

- 5. Ordering Services**
 - (a) You can purchase Services by placing an order, which includes the Services, Fixed Term, Charges and any special conditions that apply.
 - (b) We will accept, reject or respond to your order.
 - (c) If you would like to purchase additional Services, you need to place a new order.

- 6. Installation of Services**
- (a) We will install the Services in your Service Order.
 - (b) We may need third party suppliers to install some Services and we will let you know if this is the case.
 - (c) You must provide us with access to your premises and buildings to install the Services.

7. Supply of Services We will supply the Services in accordance with this Agreement.

- 8. Use of Services** You must not use or attempt to use the Service:
- (a) other than for the purpose we've specified (if any);
 - (b) to break laws, infringe upon anyone else's rights, or harm property or people;
 - (c) in a way that damages, interferes with or interrupts the Service or our network; or
 - (d) to re-supply or re-distribute the Service (or any part of it) without our prior express written agreement.

- 9. Training**
- (a) We may offer training to assist you to use the Services.
 - (b) Training may incur an additional once-off charge.

- 10. Fault reporting**
- (a) If there is a fault, you must firstly ensure the fault has not been caused by your equipment or software application.
 - (b) You can report faults to our support team by emailing or calling us
 - (c) If the fault was due to your equipment, software or failure to use the Services in accordance with this Agreement, we may charge you for our costs incurred in restoring the Service.

11. Maintenance

- (a) We may conduct maintenance on our services from time to time.
- (b) You acknowledge network maintenance may impact the Services we provide to you.
- (c) We will use our best efforts to tell you before conducting maintenance work.

EQUIPMENT

12. Title and Risk

- (a) Any time you receive equipment from us, it continues to be our property unless we sell it to you.
- (b) If we sell equipment to you, title passes to you when you pay us and risk passes to you when we deliver the equipment to your nominated address.

13. Our equipment

While our equipment is in your care or on your premises, you must:

- (a) use the equipment correctly and in line with instructions we give (including ensuring it has suitable space and power);
- (b) allow Atomic Systems to service, modify, maintain, repair or replace the equipment;
- (c) pay us for any theft or damage to our equipment (except fair wear and tear);
- (d) keep our equipment free from charge, mortgage, lien or encumbrance, and make it clear to third parties that it belongs to us;
- (e) only if we request, cooperate with us (including by executing any documents) to enable us to register a security interest over the equipment in accordance with the *Personal Properties Securities Act 2009 (Cth)* and *Personal Property Securities Regulations 2010 (Cth)*.

14. Your equipment

You must ensure your equipment used in connection with the Services is fully compatible and complies with Applicable Laws.

PAYMENT AND TAX

- 20. Invoice** We will issue you a monthly invoice for the Charges.
- 21. Payment** You must pay all Charges within the specified time frame on your invoice. If your method of payment incurs charges from your financial institution, you must pay these charges.
- 22. Invoice disputes** You can dispute an invoice (or any part of it) only by: (i) notifying us in writing within 7 days of receiving the invoice of the reasons for disputing the invoice and (ii) paying the undisputed amount when due.
- 23. Late payment** If you pay late, we may:
- (a) suspend the Services after writing to you seeking payment; or
 - (b) charge you interest at the rate set by the Commonwealth Bank plus 2%.
- 24. GST** Our charges exclude GST unless otherwise stated. You must pay the GST specified on the invoice.
- 25. Withholding tax**
- (a) You will pay the charges without withholding or deduction unless prohibited by law.
 - (b) If you need to pay withholding tax, you will pay us an additional amount that will result in us receiving the full amount, which we would have received if no withholding or deduction had been made.

CONFIDENTIALTY

- 26. Confidentiality** In relation to the other party's Confidential Information, each party shall:
- (a) keep it confidential for 3 years after the date of disclosure;
 - (b) use it solely for the purpose of performing its obligations or exercising its rights under this Agreement;
 - (c) not disclose it to any person, except its directors, officers, employees or professional advisors who need it to perform obligations, exercise rights or conduct audits in connection with the Agreement, or as required by Applicable Law;
 - (d) ensure that such persons keep it confidential; and
 - (e) return or destroy it on termination of this Agreement, except where it is necessary to keep it for regulatory reasons in secure archives.
- 27. Customer reference** We may publicly refer to you as an Atomic Systems customer in our marketing, sales, financial material, or reports. If you don't want us to refer to you as a customer, you must let us know in writing.

INTELLECTUAL PROPERTY

- 30. Ownership** Each party retains ownership of its own IPR.
- 31. License** Each party grants the other party a license to use the IPR owned by or licensed to it or its group companies and which the other needs to use for the purpose of providing or using the Services.
- 32. License terms** Each license is:
- (a) is non-exclusive, non-transferable, non-sublicensable license;
 - (b) subject to the licensee not copying, modifying, reverse engineering, adapting, unless expressly permitted by Applicable Law; and solely for the duration of the Services.
- 33. Third party licenses** Where a party makes third party licenses available to the other, the party will: (i) notify the other of the applicable license terms; and (ii) comply with such terms.

LIABILITY

34. No indirect loss

Neither party is liable for:

- (a) any loss (direct or indirect) of profit, revenue, anticipated profits or savings, or goodwill;
- (b) any loss of or corruption of data;
- (c) loss or damage to credit rating or increased financing costs;
- (d) any indirect or consequential losses, regardless of whether they were contemplated by either of the parties when the Agreement was entered into or when the relevant order was placed under it, unless such liability cannot be excluded under the Applicable Law.

35. Liability cap

- (a) A party's aggregate liability under this Agreement (whether in contract, tort (including negligence), breach of statutory duty, indemnity or otherwise) during each consecutive 24 month period starting on the date of last signature of the Agreement (**Liability Period**) shall not exceed the amount of the Charges paid or payable in respect of that Liability Period.
- (b) If the Liability Period is less than 24 months, a party's liability shall not exceed the monthly Charge paid or payable for that Liability Period multiplied by 24.

TERMINATION

36. You can terminate

- (a) You can cancel your Service or terminate this Agreement at any time by giving us 30 days written notice
- (b) However, if you cancel your service during the Fixed Term, you must pay us the monthly Charges for the Services multiplied by the number of remaining months which is a genuine pre-estimate of the loss that we will suffer. If we save costs from not having to deliver the Services to you, we will deduct these from the amount that you must pay us.
- (c) If you cancel a Service before we have provided it to you, you must pay us any costs we incur in preparing to provide the Services to you.

37. We can terminate

We can terminate a Service or this Agreement immediately by giving you written notice if:

- (a) you fail to remedy a breach of this Agreement and we have given you 14 days written notice asking you to do so;
- (b) you breach clauses 8 and 13, each of which are essential terms of this Agreement;
- (c) you fail to pay any amount due under this Agreement within 14 days of the date that we write to you seeking payment;
- (d) we cannot provide the Services in accordance with this Agreement because of a third party supplier failure (not caused or contributed to by us);
- (e) we are required to do so by law or government direction;
- (f) we cannot obtain or retain any permit, license, lease, or consent required to provide the Services;
- (g) you become (or likely to become) bankrupt or insolvent or an administrator, receiver or scheme administrator is appointed to manage your business or assets; or
- (h) the Fixed Term has expired.

38. We can suspend

We can suspend the Services if:

- (a) you fail to pay any amount due under this Agreement within 14 days of the date that we write to you seeking payment;
- (b) we believe it is necessary to do so to maintain, protect or restore any part of our network; or
- (c) there is an emergency; only for as long as it is necessary to do so.

39. Effect of termination

If this Agreement or any part of it is terminated, you must:

- (a) stop using the Services;
- (b) return or make available for collection any equipment owned by us in accordance with our reasonable instructions; and
- (c) pay all Charges due under this Agreement.

40. Force Majeure

- (a) If a Force Majeure event occurs which prevents either party from performing any or all its obligations under this Agreement, if the affected party gives the other party written notice as soon as possible, the affected party is (i) not liable for that failure or delay; and (ii) not required to perform its obligations, whilst affected by the Force Majeure event.

- (b) Either party may terminate the Agreement with immediate effect by giving written notice to the other party if the other party is subject to a Force Majeure event that continues for more than 30 consecutive days.

DISPUTES

41. Senior representative resolution

If there is a dispute, both parties' senior representatives must meet to try to resolve it.

42. CEO resolution

If your and our senior representatives have not resolved the dispute within 1 month of their first meeting to resolve the dispute, both parties' CEO must meet to try to resolve the dispute.

43. Litigation

If both parties' CEO do not resolve the dispute within 1 month of their first meeting to resolve the dispute, either party may take further action, including commencing legal proceedings.

44. Interlocutory relief

Nothing in this Agreement prevents either party from seeking urgent interlocutory relief.

CHANGING THE TERMS

45. Changes in writing

Except for changes made in accordance with clause 46 and any Service Schedule, any amendment to this Agreement must be in writing and signed by the parties.

46. Changes required by Applicable Law

We may vary this Agreement (including changing or introducing new charges or changing or withdrawing Services) where required to comply with Applicable Law. We will notify you of such change as is reasonably practicable.

ASSIGNMENT AND SUBCONTRACTING

- 47. Assignment** Neither party can assign or transfer its rights or obligations under this Agreement without the other party's prior written consent.
- 48. Subcontracting** We may subcontract some or all our obligations under this Agreement but shall be responsible to you for the acts or omissions of our subcontractors.

GENERAL

- 49. Trust** You must tell us if you are a trust.
- 50. Resupply of Atomic Systems Services** You must tell us if you are or intend to use Atomic Systems' services in whole or in part to your clients or tenants, this cannot be done with prior written agreement from Atomic Systems
- 51. Inclusive wording** Any phrases introduced by the terms "including", "include", "in particular" or any similar expression are deemed to have the words "without limitation" following them and are construed as illustrative and do not limit the sense of the words preceding those terms.
- 52. Survivability**
- (a) Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement (in whole or part) will continue in force.
 - (b) This Agreement will be binding on the parties and their successors, trustees, permitted assigns or receivers but no other person.
- 53. Severance** Any provision of this Agreement found to be unenforceable does not form part of the Agreement, but the remaining provisions continue in full force.
- 54. Notices** All notices shall be sent to the parties' respective registered office set out in this Agreement by registered post or email to an email address previously used or advised by the other party.

- 55. Entire Agreement** This Agreement represents the entire agreement between the parties relating to its subject matter and supersedes any previous agreements between the parties.
- 56. No reliance** The parties acknowledge that, in entering into this Agreement, neither party has relied upon any statement or warranty made, or agreed to, by any person, except those expressly provided for by this Agreement.
- 57. Further assurances**
- (a) Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.
 - (b) Each party acknowledges that it has obtained legal advice, or had the opportunity to obtain legal advice, in connection with this Agreement.
- 58. Authority to sign** Each party warrants that the individual executing this Agreement has the full and proper authority to do so.
- 59. Joint and several liability** If this Agreement is executed on behalf of the Customer by more than one party, each party shall be jointly and severally liable for the obligations of the Customer.
- 60. Counterparts** This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- 61. Governing law and jurisdiction** This Agreement is governed by the laws of Western Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia

DEFINITIONS

Applicable Law	law, regulation, binding code of practice, rule or requirement of any relevant government or governmental agency, professional or regulatory authority, each as relevant to (i) Atomic Systems in the provision of the Services and/or (ii) the Customer in the receipt of the Services or the carrying out of its business.
Confidential Information	confidential information (i) concerning the business and affairs of a party or its Related Body Corporates, that a party obtains or receives from the other party; or (ii) which arises out of the performance of any Services.
Charges	the charges and fees for the Services or equipment set out in a Service Order.
Fixed Term	the term of an individual Service as specified in a Service Order.
Force Majeure	any cause preventing a party from performing any or all of its obligations which arises from events beyond the control of the affected party.
Group Company	any company that is a Related Body Corporate as defined in the <i>Corporations Act 2001 (Cth)</i> .
GST	goods and services tax or value added tax as applicable under the relevant jurisdiction
Home-based Business	A business carried on where most or all the work of the business is carried out at the residence of the business owner or owners, whether the business is operated by an individual or individuals, a company, a partnership or a trust.

IPR (i) rights in, and in relation to, any patents, registered designs, design rights, trade marks, trade and business names (including all goodwill associated with any trade marks or trade and business names), copyright, moral rights, databases, domain names, topography rights and utility models, and includes the benefit of all registrations of, applications to register and the right to apply for registration of any of the foregoing items and all rights in the nature of any of the foregoing items, each for their full term (including any extensions or renewals thereof) and wherever in the world enforceable; (ii) rights in the nature of unfair competition rights and rights to sue for passing off; and (iii) trade secrets, confidentiality and other proprietary rights, including rights to know how and other technical information.

Services the services provided by us under this Agreement and which are specified in the Service Schedule.

Service Order an order in Atomic Systems' standard form for the provision of a Service, which includes the Services, any Fixed Term, Charges or special conditions that apply, which has been signed by Atomic Systems.