

STANDARD TERMS AND CONDITIONS



DURATION

- 1. Agreement Start Date** This Agreement starts and is effective on the earlier of:
 - (a) the last date it is signed by both parties;
 - (b) the date in which the Quote is accepted by you; or
 - (c) after Atomic Systems receives any instructions for the supply of the Services after providing a valid Quote.

- 2. Order Start Date** The term of the Quote or any validly accepted 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 39.

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. Quotation**
 - (a) Once we have confirmed a Quote, then the prices in the Quote will be confirmed as the final agreed price. A Quote is confirmed as 'final' as soon as both parties agree with the final price after any final changes requested by you.
 - (b) The price in the final Quote may vary if you request any Service changes. We reserve the right to alter the Services and prices in the Quote, as long as you have not confirmed the Quote.
 - (c) A Quote shall be deemed to correctly interpret the original specifications and are based on the cost at the time the Quote is given. If you later require any changes to the Quote, and we agree to the changes, you agree that these changes will be charged at our discretion.
 - (d) Once the Quote has been confirmed, the Quote will be subject to this Agreement.
 - (e) When a special price or discount offer has been applied to a Quote, no other special promotion, discount or bonus offer will be applicable.

- 6. Ordering Services**
 - (a) You can purchase further Services outside the scope of the Quote by placing a Service Order with us, which includes the Services, Fixed Term, Charges and any special conditions that apply. You agree that any further

Services we provide under any applicable Service Order are governed by this Agreement, particularly these terms and conditions.

- (b) We will accept, reject or respond to your Service Order. If accepted, the Service Order will form part of this Agreement. We may, in our sole discretion, amend any part of the Service Order and send it to you for your acceptance.
- (c) If you would like to purchase additional Services, you need to place a new order.

7. Installation of Services

- (a) We will install the Services in the Quote or any validly accepted 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.

8. Supply of Services

We will supply the Services in accordance with this Agreement

9. 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.

10. Training

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

11. 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.

12. 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

13. 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.

- 14. 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).

- 15. Your Equipment** You must ensure your equipment used in connection with the Services is fully compatible and complies with Applicable Laws.

PAYMENT AND TAX

- 16. Fees**
- (a) You agree to pay the Fees to Atomic Systems for the Services in accordance with the terms set out in this Agreement. If You must make a payment or do any other thing on or by a day that is not a business day, You must make the payment or do the thing on or by the next business day. Your observation of agreed time frames is of primary importance in this Agreement.
 - (b) Any services you require that are beyond the scope outlined within the Quote or any validly accepted Service Order, whether by your request or as otherwise required, will be charged to you at an additional cost. Atomic Systems reserves the right to vary Fees during the term of this Agreement by providing five (5) business days written notice to you prior to the change being implemented.

- 17. Invoice** We will issue you a monthly invoice for the Charges.

- 18. 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.

- 19. Invoice Disputes**
- (a) 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.
 - (b) If you dispute the whole or any portion of the amount claimed in an invoice submitted by Atomic Systems, you must pay the portion of the amount stated in the invoice which is not in dispute in accordance with the terms of payment set out in this Agreement.

- 20. 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%.

- 21. Repayment of Debt** You acknowledge and agree that payments received by Atomic Systems will be applied as follows:

- (a) first in or towards payment of any costs (including legal costs), charges, expenses or outgoings paid by the Contractor in relation to any dishonoured cheque fees, collection costs or any other action taken by the Contractor for the recovery of any amounts owed by the Client;
- (b) secondly, in or towards payment of any interest due or payable here under, and
- (c) thirdly, in or towards payment of the debts contained in the outstanding Invoice in order from the longest standing due to the most recently incurred.

22. GST

Our charges exclude GST unless otherwise stated. You must pay the GST specified on the invoice.

23. 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.

24. Default

- (a) You will be in default if you do not pay us when monies are due for payment or fail to comply with any other obligation under this Agreement.
- (b) If you are in default under this Agreement, we may send you a default notice. The notice will tell you what the default is and what you are required to do to correct the default. You will have five (5) business days to rectify the default.
- (c) If you do not comply with the default notice, then we may terminate the agreement with immediate effect and you become immediately liable to pay us all monies owing with interest on that amount in line with clause 20.
- (d) You agree to pay on default all costs and expenses incurred in exercising our rights of recovery from you if any and indemnify us against any losses resulting from the default.

CONFIDENTIALITY

25. 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.

26. Disclosure and Security

- (a) The parties agree to take all reasonable measures to ensure the Confidential Information of the other party is protected against loss and against unauthorised access, use, modification, disclosure or other misuse and that only authorised representatives, employees and officers have access to such information.

- (b) Atomic Systems may only use, disclose or reproduce your Confidential Information strictly for the purposes of providing the Services to you under this Agreement.

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

28. Ownership

Each party retains ownership of its own IPR. You agree that Atomic Systems retains ownership of all IPR in respect of the Services including any copyright, patent, trade secrets or trade marks. You agree not to disclose any discovery, design, procedure, invention or improvement in procedure made known to you by Atomic Systems in relation to the Services

29. 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.

30. 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.

31. 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.

32. New IPR

Any discovery, design, invention or secret process or improvement in procedure made or discovered by Atomic Systems either alone or in conjunction with another person, whilst providing the Services, will belong to and be the absolute property of Atomic Systems. Atomic Systems would own all rights in respect of the materials or deliverables arising under the *Copyright Act 1968* (Cth).

WARRANTIES

33. Our Warranties

Atomic Systems warrants that it:

- (a) is not insolvent as at the date of entering into this Agreement;
- (b) has the power to enter into this Agreement;
- (c) will exercise all due care and diligence in the performance of the Services;
- (d) will ensure that the Services are provided to you in accordance with the scope and requirements set out in the Quote or any validly accepted Service Order.

34. Your Warranties

During the performance of the Services, you warrant that you:

- (a) will cooperate with Atomic Systems as we reasonably require;

- (b) will make available to Atomic Systems all information and assistance necessary or reasonably requested by us to enable us to provide the Services in a timely manner;
- (c) are not insolvent as at the date of entering into this Agreement;
- (d) have the power to enter into this Agreement;
- (e) have relied on your own skill, knowledge, experience and judgement to verify that the Services provided meet your requirements; and
- (f) have not relied on any implied warranty or representation by Atomic Systems that the Services are fit for any particular purpose.

LIABILITY AND INDEMNITY

35. Disclaimer

- (a) We disclaim all and any warranties, not required by law, whether express or implied including but not limited to warranties as to merchantability and fitness for a particular purpose of the Services.
- (b) To the maximum extent permitted by law, Atomic Systems will not be liable for any special, indirect or consequential damages, loss of profit, goodwill, bargain, revenue or loss of anticipated saving or loss, or corruption of data suffered by you arising under, pursuant to or as a result of the provision of the Services and, in any event, the maximum damages available to you are as per clause 37.

36. 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.

37. 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 12 month period starting on the Agreement Start Date as per clause 1 (**Liability Period**) and 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 12 months, a party's liability shall not exceed the monthly Charges paid or payable for that Liability Period multiplied by 12.

38. Indemnity

You agree to indemnify Atomic Systems against:

- (a) any claim against Atomic Systems arising out of or based on the death or bodily injury of any person or loss, destruction or damage of any personal property caused by your conduct, or that of your employees or agents;
- (b) any claim against Atomic Systems arising out of or based on any claim or action or allegation that Atomic Systems has caused third party losses while acting within Atomic Systems' authority under any of your directions pursuant to this Agreement; and
- (c) all loss (including legal fees and disbursements) incurred by Atomic Systems as a result of your breach of the terms of this Agreement, or that of your employees or agents.

TERMINATION

- 39. 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 agree that you will be liable to pay us the monthly Charges for the Services multiplied by the number of remaining months minus any costs which we are able to save from not having to deliver the Services to you. You acknowledge and agree that this is a genuine pre-estimate of the loss that we will suffer due to your termination.
 - (c) If you cancel a Service before we have provided it to you, you must pay us any reasonable costs we incur in preparing to provide the Services to you.
- 40. 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 9 and 14, 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.
- 41. Termination for Convenience**
- Notwithstanding any other clause in this Agreement, Atomic Systems may terminate this Agreement at any time by providing you with thirty (30) days' written notice.
- 42. 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.
- 43. 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.
- 44. 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.

DISPUTE RESOLUTION

- 45. Senior representative resolution** If there is a dispute, both parties' senior representatives must meet to try to resolve it.
- 46. 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.
- 47. 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.
- 48. Interlocutory Relief** Nothing in this Agreement prevents either party from seeking urgent interlocutory relief.

CHANGING THE TERMS

- 49. Changes in Writing** Except for changes made in accordance with clause 50 and any Service Schedule, any amendment to this Agreement must be in writing and signed by the parties.
- 50. 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.

CHANGING THE TERMS

- 51. Assignment** Neither party can assign or transfer its rights or obligations under this Agreement without the other party's prior written consent.
- 52. 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

- 53. Trust** You must tell us if you are a trust.

- 54. Exclusive Agreement** Notwithstanding any other clause in this Agreement, you agree that you must not engage any other party to provide the Services during the course of this Agreement, unless agreed by Atomic Systems in writing.
- 55. 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.
- 56. 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.
- 57. 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.
- 58. 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.
- 59. 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.
- 60. Entire Agreement** This Agreement represents the entire agreement between the parties relating to its subject matter and supersedes any previous agreements between the parties.
- 61. 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.
- 62. 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.
- 63. Authority to sign** Each party warrants that the individual executing this Agreement has the full and proper authority to do so.
- 64. 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.

65. 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.

66. 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

Agreement means the agreement between you and Atomic Systems which includes these terms and conditions, any Quote or applicable Service Order, and any other documents provided by Atomic Systems relating to the Services.

Applicable Law means any applicable 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) you in the receipt of the Services or the carrying out of its business.

Atomic Systems or us means Atomic Systems Pty Ltd ACN 639 879 815.

Confidential Information means:

- (a) any information which is by its nature confidential, regardless of the form or medium of that information; and
- (b) any other information relating to the business, computer systems or affairs of the recipient, the recipient's affiliates, or their patients (including personal information and patient files), including designs, proposals, contracts, financial details, marketing strategies, policies, products, services, processes, operating practices and procedures, business plans, reports, plans and documents, which is or has been disclosed (whether orally, electronically, in writing or otherwise), or otherwise obtained by the recipient,

but excludes information which:

- (c) was in the public domain at the time of its receipt by the recipient; or
- (d) became part of the public domain after its receipt by the recipient, otherwise than through a disclosure by the recipient, or any person to whom it has disclosed Confidential Information.

Charges Means the charges and Fees for the Services or equipment set out in a Quote or applicable Service Order.

Fees means the amount agreed between the parties for the Services as outlined in any Quote or applicable Service Order.

Fixed Term means the term of an individual Service as specified in a Quote or applicable Service Order.

Force Majeure means any event beyond the reasonable control of Atomic Systems and includes, any act of God, strikes, civil commotion, war, acts of terrorism, accident, shortage of labour, lockouts, compliance with a government or other authority requirement, discontinuance or shortage of any goods required to provide the Services, or problems or delays with services or personnel required to supply the Services.

Group Company	means any company that is a 'related body corporate' as defined in the <i>Corporations Act 2001</i> (Cth).
GST	means goods and services tax or value added tax as applicable under <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Home-based Business	means 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	means (i) rights in, and in relation to, any patents, registered designs, design rights, trademarks, trade and business names (including all goodwill associated with any trademarks 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.
Quote	means the quotation for the Services which is provided by us, accepted by you and may accompany these terms and conditions.
Services	means the services provided by us under this Agreement and which are specified in the Service Schedule.
Service Order	means 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.
you	means you, the client or customer of Atomic Systems as outlined in the Quote or applicable Service Order.