

Master Terms and Conditions

BACKGROUND

Otilas provides a range of information technology services, including:

- Managed services;
- IT outsourcing;
- Cloud services; (including Infrastructure as a Service (IaaS), Backup and Recovery as a Service (BRS products) and Software as a Service (SaaS products);
- Colocation Services
- Infrastructure services; systems integration; project services;
- Hardware and Software procurement;
- Intranet solutions; application management; application & web development;
- Telephony and unified communications services

These Master Terms set out the terms and conditions under which Otilas supplies these services and are applicable to all Clients.

AGREEMENT

1. PARTIES

The parties are:

- 1.1. The Company name in an Otilas Order Form ('Otilas', 'us', 'we' or 'our');
- and
- 1.2. The Client named in an Otilas Order Form ('you' or 'your')

2. MASTER TERMS

These Master Terms apply to all IT services provided by us to you to the exclusion of any purchase order or other document submitted by you to us. These terms supersede any previous agreement that you had with us governing the terms of our engagement. These Master Terms may also be referred to as Terms and Conditions, Service Terms and Service Agreement.

3. PRODUCT TERMS

- 3.1. The services that we are able to provide are described in the Product Terms.
- 3.2. Each of the Product Terms sets out:
 - 3.2.1. The scope of the service;
 - 3.2.2. The fees for the service; and
 - 3.2.3. Any special conditions that apply to the service.

4. ORDER FORM

- 4.1. You may request a service by submitting an Otilas Order Form to us.
- 4.2. Each Otilas Order Form:
 - 4.2.1. Must be in our standard form, as current at the time;
 - 4.2.2. Must clearly identify the service requested;
 - 4.2.3. Must set out the parties to the agreement;
 - 4.2.4. Is a request for a service and not a contract unless and until accepted by us.

5. SERVICE CONTRACTS

- 5.1. If we accept an Otilas Order Form by any means (verbal or written using any media), a binding contract is created ("Service Contract") comprising:
 - 5.1.1. The Product Terms, including any special conditions
 - 5.1.2. The Otilas Order Form; and
 - 5.1.3. These Master Terms.
- 5.2. Each Service Contract is an independent contract.
- 5.3. If there is any inconsistency between the parts of a Service Contract, the order of priority is highest to lowest is:
 - 5.3.1. Any special conditions in the Product Terms;
 - 5.3.2. The Remainder of the Product Terms;
 - 5.3.3. These Master Terms (which take priority over the Order Form).

6. SERVICES

- 6.1. For each Service Contract, we will provide you with the services specified in the relevant Product Terms ('the service').

7. FEES

- 7.1. The fees for a service are:
 - 7.1.1. The fees specified in the Product Terms;
 - 7.1.2. If none are specified, our then current published fees for that service; or
 - 7.1.3. If there are no current published fees, at our time and materials rates for similar service or the fee that we deem suitable for that type of service based upon our usual fees and our usual hourly rate.
- 7.2. Except where we have agreed fixed fees for services, we may adjust our fees at any time.
- 7.3. If we perform any work that is not covered by the Product Terms, we may charge for that work:
 - 7.3.1. At our current published rates for that type of work; or
 - 7.3.2. If there are no current published rates, at our time and materials rates for similar work or the fee that we deem suitable for that type of service based upon our usual fees and our usual hourly rate.
- 7.4. Unless we say otherwise in writing, when we use the term Monthly Base Fee this means the standard price contained in the Otilas Order Form, excluding variations, usage, consumption, Excluded Item fees or set up fees.

8. PRE-PAID FEES

- 8.1. If Product Terms require fees to be pre-paid:
 - 8.1.1. Services will not be provided until you pay the pre-paid fees;
 - 8.1.2. We may suspend providing a service if the balance of the pre-paid fees will not cover our fees for the service required; and
 - 8.1.3. We may apply amounts you owe us against the balance of your pre-paid fees in any manner we decide.
- 8.2. Pre-paid fees are non-refundable.

9. EXPENSES

- 9.1. You must reimburse our out of pocket expenses provided:
 - 9.1.1. The expenses have been directly incurred supplying an IT service to you (including parts, travel expenses, labour other ancillary expenses).
 - 9.1.2. We supply reasonable evidence substantiating the expense.

10. INVOICING AND PAYMENT

- 10.1. We will invoice you:
 - 10.1.1. In accordance with any payment schedule specified in the Product Terms;
 - 10.1.2. Otherwise:
 - 10.1.2.1. Monthly in advance for pre-paid fees; or
 - 10.1.2.2. Monthly in arrears
- 10.2. You must pay each invoice in full:
 - 10.2.1. By the due date specified in the invoice; or
 - 10.2.2. If no due date is specified, within 14 days of the invoice date.
- 10.3. Late invoicing does not affect our right to payment or your obligation to pay.
- 10.4. If a payment is overdue, in addition to our other rights:
 - 10.4.1. We may charge interest on the overdue amount at the Default Rate, calculated daily;
 - 10.4.2. We may withhold providing services under any Service Contract; and
 - 10.4.3. You must indemnify us against all costs and expenses (including legal expenses on a solicitor / client basis) incurred by us in attempting to recover the overdue amount.

The 'Default Rate' means the overdraft reference rate quoted by our principal banker on the first day of the applicable month plus 2%.

- 10.5. If:
 - 10.5.1. You fail to pay any amount (whether in whole or part) payable in respect of any hardware and/or Loan Equipment by the time required for payment;
 - 10.5.2. You become insolvent (as that term is defined in the Corporations Act 2001); or
 - 10.5.3. The Service Contract between us is terminated, or becomes terminable at our option,
- 10.6. You authorize us to arrange, through our own financial institution, a debit to your nominated account or credit card any amount we deem payable by you.

This debit or charge will be applied to your nominate bank account or credit card facility. You agree to ensure that your nominate bank account or credit cards shall maintain a sufficient balance to pay all outstanding amounts.

We may, without notice to you, enter at any reasonable time any premises where hardware and/or Loan

Equipment is located (or believed by us to be located) and take possession of that hardware and/or Loan Equipment not paid for and any other hardware and/or Loan Equipment to the value of the amount owing. Our permission to enter your premises for that purpose is revocable. We are not liable to you in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by you as a result of any action taken by us under this clause.

11. THIRD PARTY CHARGES

- 11.1. You are responsible for all third party charges incurred as a result of your use of the service (for example, telecommunication carriage fees) unless we specify otherwise in writing.
- 11.2. We may increase our fees by written notice to you if there is an increase in third party charges including but not limited to unforeseen variances imposed on us by suppliers in your use of, or for installation of a service

12. GST

- 12.1. Terms in italics in this clause have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.
- 12.2. Unless stated otherwise, fees stated under this agreement exclude GST.
- 12.3. The consideration payable by you under this agreement is the value of any taxable supply for which payment is to be made.
- 12.4. Subject to us supplying you with a valid tax invoice, if we make a taxable supply in connection with a Service Contract for a consideration, which represents its value, then you must pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- 12.5. Subject to us supplying you with a valid tax invoice, if a Service Contract requires you to pay, reimburse or contribute to an amount paid or payable by us in respect of an acquisition of taxable supply from a third party, the amount required to be paid, reimbursed or contributed by you will be the value of the acquisition by us less any input tax credit to which we are entitled plus, if our recovery from you is a taxable supply, any GST payable under clause 12.4.

13. SERVICE DELIVERY

- 13.1. We will provide the service:
 - 13.1.1. During Business Hours, unless otherwise specified in writing;
 - 13.1.2. At the location(s) specified in the Product Terms or, if no location is specified, at the location we determine to be most appropriate; and
- 'Business Hours' means 8:30am to 5:00pm (AEST), Monday to Friday, excluding public holidays at the place in which the service is to be provided.

14. SERVICE STANDARD

- 14.1. We do not warrant that the service will be uninterrupted or error free.
- 14.2. If service levels are specified in the Product Terms, we will use all reasonable efforts to meet or exceed those service levels
- 14.3. We do not guarantee that service levels will be met. If the Product Terms specify that credits or rebates will apply, those credits or rebates are your sole remedy in respect of service level failure.

15. ACCESS

- 15.1. You must provide us with reasonable and timely access to your facilities, premises, information, equipment, personnel, network and data to enable us to fulfill our obligations under the Product Terms.
- 15.2. We will not be responsible for any delay in providing a service where the delay results from your failure to provide timely access in accordance with clause 15.1

16. YOUR OBLIGATIONS

- 16.1. You must:
 - 16.1.1. Comply with our reasonable and lawful directions in relation to the service;
 - 16.1.2. Provide a safe working environment for our personnel;
 - 16.1.3. Comply with all laws, regulations, policies and guidelines (including any acceptable use policy that we inform you of) applicable to the service;
 - 16.1.4. Ensure that any incumbent provider who is transitioning the service to us makes available the information, resources and facilities required by us to provide the service;
 - 16.1.5. Maintain regular and complete backups of all your data.
 - 16.1.6. We will not be responsible for any failure, default or delay to the extent caused by your failure to perform your obligations under this clause.

17. HARDWARE SUPPLY

- 17.1. To the extent that the service is for the sale and supply of hardware:

- 17.2. The risk of loss of or damage to the hardware passes to you on delivery. Your obligation to insure hardware commences when risk passes to you. You must insure the hardware for its full value and ensure that our interest is noted.
- 17.3. You must not sell, dispose of, assign or encumber the hardware unless and until you have paid for it in full;
- 17.4. Where the hardware manufacturer's warranty is capable of being assigned to you, it is the only warranty given in relation to the hardware, to the extent permitted by law;
- 17.5. Where hardware is subject to export control laws or regulations you must not directly or indirectly export, re-export, distribute or otherwise act in violation of such laws and regulations; and
- 17.6. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

18. HARDWARE LEASING

- 18.1. To the extent that the service is for the leasing of hardware
 - 18.1.1. We own the hardware and it is leased, not sold to you;
 - 18.1.2. You must not do anything which is contrary to or prejudices our ownership of the leased hardware;
 - 18.1.3. You must insure the leased hardware for its full replacement value and keep it secure and safe from loss, destruction or damage;
 - 18.1.4. The leased hardware must only be used by you in accordance with the manufacturer's instructions and our reasonable directions;
 - 18.1.5. At the end expiry of the lease term you must return the leased hardware to us along with all parts and accessories;
 - 18.1.6. We may require a security deposit which may apply in satisfaction of any amount you owe us in relation to the leased hardware;
 - 18.1.7. If the leased hardware is lost, destroyed or damaged:
 - 18.1.7.1. You must promptly notify us of the loss or damage;
 - 18.1.7.2. You must pay us the cost of repairing or replacing the leased hardware; and
 - 18.1.7.3. Your obligation to pay the fees in respect of the leased hardware is absolute and continues notwithstanding its loss, destruction or damage or the termination of the Service Contract; and
 - 18.1.8. We may retake possession of the hardware if
 - 18.1.8.1. You breach this agreement; or
 - 18.1.8.2. We reasonably believe we need to do so to protect our title to the hardware – and you irrevocably authorise us to enter on to your premises for this purpose.

19. LOAN EQUIPMENT

- 19.1. We may install on your premises, loan or otherwise provide you with equipment ("Loan Equipment"). All Loan Equipment:
 - 19.1.1. Remains our property;
 - 19.1.2. Must only be used by you for the purposes of receiving services from us; and
 - 19.1.3. Must be kept secured from loss or damage.
- 19.2. If Loan Equipment in your possession or control is lost, stolen or damaged:
 - 19.2.1. You must notify us without delay; and
 - 19.2.2. You must pay us the replacement cost of the Loan Equipment calculated as the recommended retail price at the date the Loan Equipment was lost, stolen or damaged minus any amount we recover from an insurance policy.

20. INSPECTION AND INSURANCE

- 20.1. You must allow us to enter upon your premises to inspect any hardware and/or Loan Equipment in your possession upon reasonable notice from time to time.
- 20.2. If any hardware and/or Loan Equipment belonging to us is sold or otherwise disposed of by you or if any insurance claim is made in respect of it, we are entitled to trace and receive the sale or insurance proceeds. You must notify us of all insurance claims made by you in respect of the hardware and/or Loan Equipment. You must keep the proceeds of sale or insurance in a separate bank account or trust for us.
- 20.3. You must reimburse to us all costs incurred by us in exercising our rights under this clause.

21. SOFTWARE

- 21.1. To the extent that a service involved the creation or licensing of software that we own or have licensed or have sub-licensed to you:
 - 21.1.1. We warrant that our software will operate substantially in accordance with its accompanying documentation during the warranty period;
 - 21.1.2. We will use our reasonable efforts to correct any defect provided:
 - 21.1.2.1. You notify us of the defect during the warranty period;
 - 21.1.2.2. You have used the software in accordance with its accompanying documentation and our recommendations;

21.1.2.3. The software has not been used on or in conjunction with equipment or software not approved by us;

21.1.2.4. The software has not been modified by anyone other than us;

21.1.2.5. The defect is not due to change in your IT or physical environment or software not approved by us;

21.1.2.6. You are not in breach of this agreement or any Service Contract.

21.1.2.7. 'Warranty period' means 30 days from the date of delivery, unless we specify a different period.

21.1.2.8. 'Defect' means a reproducible failure of the software to work substantially as described in the documentation that accompanies it.

22. PPS LAW

22.1. This clause applies to the extent that the agreement we have with you provides for or contains a 'security interest' for the purposes of Personal Property Securities Act 2009 (Cth) ("PPS Law") (or part of it). The security interest granted to us is a 'purchase money security interest' ('PMSI') to the extent that it can be under section 14 of PPS Law.

22.2. We may register our security interest. You must do anything (such as obtaining consents and signing documents) which we require for the purposes of:

22.2.1. Ensuring that our security interest is enforceable, perfected and otherwise effective under the PPS Law;

22.2.2. Enabling us to gain first priority (or any other priority agreed to us in writing for our security interest; and

22.2.3. Enabling us to exercise rights in connection with security interest.

22.2.4. Enabling us to exercise rights in connection with the security interest.

22.3. Our rights under our agreement with you are in addition to and not in substitution for our rights under other law (including PPS Law) and we may choose whether to exercise rights under our agreement and/or under such other law, as we see fit.

22.4. The following provisions of PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of our agreement with you in respect of goods that are not used predominantly for personal, domestic or household purposes:

22.5. The following provisions of the PPS Law:

22.5.1. Sections 95 (notice of removal of accession to the extent it requires us to give a notice to you), 96 (retention of a ccession), 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires us to give a notice to you); section 132(3)(d) (contents of s statement of a ccount a fter disposal); section 132(4) (statement of a ccount if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re - instatement of security agreement).

22.6. You waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

22.7. We and you agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to us the benefit of section 275(6)(a) and we shall not be liable to pay damages or any other compensation or be subject to injunction if we breach this sub-clause.

22.8. You must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the hardware and/or Loan equipment other than with our express written consent.

22.9. You must not lease, hire, bail or give possession of ('sub-hire') the equipment to anyone else unless we (in our absolute discretion) first consent in writing. Any such sub-hire must be in writing in a form acceptable to us and must be expressed to be subject to our rights under our agreement with you.

22.10. You must take all steps including registration under PPS Law as may be required to:

22.10.1. Ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;

22.10.2. Enabling us to gain (subject always to our rights) first priority (or any other priority we agree in writing) for the security interest; and

22.10.3. Enabling each of us to exercise our respective rights in connection with the security interest.

22.10.4. We may recover from you the cost of doing anything under this clause, including registration fees and the costs of notification.

23. THIRD PARTY MATERIALS

23.1. In providing a service we may supply you with materials (including software) licensed by third parties.

23.2. You must comply with the terms of the third party license and indemnify us against any loss, damage, claim, liability or demand we incur due to your breach of a third party license.

23.3. You must comply with all laws applicable to licensing of software or the protection of intellectual property and failure to do so provides us with the right, at our discretion, to terminate any agreement with you with 7 days notice.

You agree that we have the right to terminate all agreements between you and us with no notice period if we, at our absolute discretion, believe that your breach of software license or any applicable law represents a risk to us or may represent a risk to us in the future.

24. DELAY

- 24.1. We will use our reasonable efforts to meet any deadlines or milestones that we promise to meet but will not be liable for any delay or failure to meet these.
- 24.2. To the extent that our provision of service is impaired by:
 - 24.2.1. You;
 - 24.2.2. A third party
 - 24.2.3. A failure or defect (not caused by us) in hardware or software (not supplied by us); or
 - 24.2.4. An event beyond our reasonable control – then;
 - 24.2.5. Our obligation to provide the service is suspended;
 - 24.2.6. We will not be liable to you in respect of any delay or failure to provide the service
- 24.3. Where our personnel are delayed from performing a service due to a delay you cause, we may invoice you those personnel's hourly rate plus 50% for the duration of the delays subject to us making reasonable efforts to reallocate personnel to other chargeable duties.

25. CONFIDENTIALITY

- 25.1. A party must not use or disclose the other party's confidential information without prior written approval.
- 25.2. Each party must take all reasonable steps to ensure that its employees and agents do not use or disclose the other party's confidential information.
- 25.3. A party may disclose confidential information where required by law or the rules of a stock exchange.
- 25.4. This clause survives termination of this agreement.
- 25.5. 'Confidential information' means all information treated by the owning party ('discloser') as confidential and:
 - 25.5.1. Provided to the other party ('recipient'); or
 - 25.5.2. Of which the recipient becomes aware – except information that
 - 25.5.3. The recipient creates or lawfully obtains indecently of the discloser; or
 - 25.5.4. Is public knowledge (otherwise than as a result of a breach of confidentiality by the recipient).
 - 25.5.5. Any commercial terms of our agreement with you including any price information for any good or service provided by us to you shall be deemed to be Confidential Information.

26. INTELLECTUAL PROPERTY RIGHTS

- 26.1. Unless otherwise specified in writing, we own exclusively all intellectual property rights in material, including software, that we design, create, modify, supply or license, even if it was created or modified for or suggested by you.
- 26.2. To the extent necessary for you to receive the benefit of a service, we grant you a non-exclusive, non-transferable, license to use our materials.
- 26.3. If any of your materials become combined with our materials with your knowledge and without your objection, then we have a perpetual, royalty-free, irrevocable, non-exclusive license to copy, use, adapt and distribute and sub-license those materials in the course of our ongoing business.
- 26.4. 'Intellectual property rights' includes all patents, copyright, rights in circuit layouts, registered designs, trademarks, written content, trade, business or company names and the right to have confidential information kept confidential.

27. LIMITATION OF LIABILITY

Rights and remedies for non-PDH goods costing no more than \$40,000

- 27.1. If we supply you with goods or services not of a kind ordinarily acquired for personal, domestic or household use of consumption but costing no more than \$40,000 you have extensive rights under the Australian Consumer Law including consumer guarantees and remedies but:
 - 27.1.1. In relation to these goods, our liability for failure to comply with a consumer guarantee (other than certain guarantees about ownership and undisturbed use) is limited to
 - 27.1.1.1. Replacing the goods or supplying equivalent ones;
 - 27.1.1.2. Repairing the goods
 - 27.1.1.3. Paying the cost of replacing the goods or acquiring equivalent ones; or
 - 27.1.1.4. Paying the cost of having the goods repaired; and
 - 27.1.2. In relation to these services, our liability for failure to comply with a consumer guarantee is limited to:
 - 27.1.2.1. Supplying the services again; or
 - 27.1.2.2. Paying the cost of having the services supplied again.

Exclusions of implied terms and limitation of liability

- 27.2. Subject to clause 27.1
 - 27.2.1. Any representation, warranty, condition, guarantee or undertaking that would be implied in these terms by legislation, common law, equity, trade, custom or usage or otherwise is excluded to the fullest extent permitted by law.
 - 27.2.2. We do not warrant or represent the performance, accuracy, reliability or continued availability of our goods and services or that they will be free from faults, errors or interruptions.

- 27.2.3. We are never liable to you for, and you release us from any claim for any Consequential Loss.
- 27.2.4. Subject to clause 27.1, 27.2.1, 27.2.2, 27.2.3 and 27.2.5, our maximum aggregate liability under a Service Contract or Claim, whether for breach of these terms or in negligence or in any other tort or for any other common law or statutory cause of action or otherwise is the amount equal to the fees you have paid to us under the Service Contract in the preceding year.
- 27.2.5. We will not be liable to you for data loss under any circumstances.
- 27.3. For the purpose of this Agreement;
 - 27.3.1. Claim means any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim); and
 - 27.3.2. Consequential Loss means any indirect, special, economic or consequential loss or damage or loss of revenue, profits, goodwill bargain or opportunities or loss or corruption of data or loss of anticipated savings that you incur or suffer in any way, whether (a) caused by our negligence; or (b) we knew or should have known of the possibility of such loss or damage.

28. WARRANTY AND INDEMNITY

- 28.1. You warrant that you have not relied on any representation made by us which has not been stated expressly in these Master Terms.
- 28.2. You must indemnify us, our employees and agents against any loss (including reasonable legal costs and expenses) or liability any of us reasonably incurs or suffers arising from any proceedings where such loss or liability was caused by:
 - 28.2.1. Your breach of these Master Terms or a Service Contract; or
 - 28.2.2. Your wilful, unlawful or negligent act or omission.

29. TERMINATION AND SUSPENSION OF SERVICE CONTRACTS

- 29.1. We may terminate or suspend performance of a Service Contract immediately if:
 - 29.1.1. You breach the Service Contract and fail to remedy the breach within 14 days after receiving a notice detailing the breach and requiring that it be cured;
 - 29.1.2. You become insolvent;
 - 29.1.3. You fail to pay money owed to us within 30 days of it being due;
 - 29.1.4. You cease, or threaten to cease, carrying on your business;
 - 29.1.5. You exceed your credit limit or there is an adverse change in our credit assessment of you, or if you (verbally, or otherwise) deny the existence of the Service Contract or deny that you are bound by the Service Contract or any of its terms or conditions;
 - 29.1.6. We reasonably believe that you have used a service for unauthorised, criminal or unlawful activity; or
 - 29.1.7. An administrator or controller (as those terms are defined in the Corporations Act 2001) is appointed in respect of any of your assets.
- 29.2. Your breach of a Service Contract is deemed to be a breach of these Master Terms and all other Service Contracts.
- 29.3. Termination of a Service Contract does not affect our rights of action based on any breach by you before the termination.
- 29.4. On termination we may:
 - 29.4.1. repossess any of our property in your possession, custody or control;
 - 29.4.2. retain all moneys paid to us under the Service Contract;
 - 29.4.3. provide you with an invoice for all unpaid fees and expenses and any costs incurred by us as a result of termination; and
 - 29.4.4. pursue any additional or alternative remedies provided by law.
- 29.5. If you terminate a Service Contract prior to its expiry (or if we terminate the contract before its expiry for any reason authorized under this agreement), then you must pay us within 14 days of invoice, the equivalent of the Monthly Service Fee multiplied by the number of months remaining in the Service Contract.
- 29.6. The termination fee in clause 29.5:
 - 29.6.1. Is a reasonable pre-estimate of our loss and damage arising from an early termination of a Service Contract; and
 - 29.6.2. Is without prejudice to any other rights we may have to recover other sums from you.
 - 29.6.3. You acknowledge that we may recruit staff, purchase software licenses, purchase infrastructure, engage third party providers, and incur other expenses in order to provide services to you and you acknowledge that the payment in accordance with 29.5 is a fair and reasonable equivalent to these costs incurred by us.
- 29.7. Should the Service Contract expire and not be expressly terminated by you it will continue indefinitely and automatically be renewed for a further 24 Month terms starting on the original contract expiry date.
- 29.8. Upon expiry or termination of a Service Contract each party must return any property belonging to the other party within 7 days.
- 29.9. Should the Service Contract be terminated for any reason we no longer have any obligation to retain your data or any other intellectual property of yours on our infrastructure or systems or that of our suppliers and we may

remove this data as at the date of service cancellation. It is your responsibility to ensure that any data or intellectual property residing on our systems or infrastructure is backed up prior to the cancellation of the Service Contract.

30. TERMINATION AND CONTRACT PERFORMANCE

- 30.1. You may not terminate a Service Contract on the basis of our failure to perform at the service level stated in a Service Level Agreement;
- 30.2. Service Level Agreements applicable under all Service Contracts represent our expectations for service levels and we shall make all reasonable efforts to attain these levels but you acknowledge that this may not be possible from time to time.
- 30.3. If you terminate a Service Contract before expiry you will pay us in accordance with 29.5.

31. NOTICES

- 31.1. All notices must be:
 - 31.1.1. in writing;
 - 31.1.2. Signed by the party giving it (or its authorised representative); and
 - 31.1.3. Sent to a party's service address.
- 31.2. A party's service address is any of:
 - 31.2.1. In the case of a corporation, its current registered office;
 - 31.2.2. The parties' business addresses set out in a Otilas Order Form; or
 - 31.2.3. Any other address a party nominates, by written notice to the other party, as a service address.
 - 31.2.4. Notwithstanding the above, Otilas may advise of changes to these terms or the Product terms via email or via a note on a monthly invoice supplied by Otilas to you.

32. RESTRAINTS

- 32.1. Neither party may approach the employees, Agents or Contractors of the other party to this Agreement, with an offer of employment during the term of this Agreement or for 12 months after its expiry or termination.
- 32.2. For the avoidance of doubt, nothing in this clause 32 prevents either party from employing an employee of the other party as a result of the employee responding to a public notice, in the absence of a ny solicitation however if this occurs then the employing party will pay a replacement recruitment fee to the other party of \$15,000 ex GST.

33. GENERAL MATTERS

- 33.1. We are an independent contractor and have no authority to bind you by contract or otherwise.
- 33.2. We may sub-contract the performance of this agreement.
- 33.3. We may assign or novate our rights and obligations under this Agreement at any time without your consent.
- 33.4. You may not assign your rights and obligations under this agreement without our prior written consent (which we will not unreasonably withhold).
- 33.5. If a party overlooks a breach of a Service Contract by the other party on one or more occasions, it is not taken to have agreed to any future breach.
- 33.6. These Master Terms, the Product Terms and the Otilas Order Form are the entire agreement between the parties with respect to the services Specified in the Product Terms and all prior agreements regarding those services are superseded.
- 33.7. Anything that is unenforceable must be read down, to the point of severance if necessary.
- 33.8. Anything a party can do, it may do through an appropriately authorized representative.
- 33.9. Any matter in our discretion is in our absolute and unfettered discretion.
- 33.10. Client agrees that Otilas will not provide any Service(s) to Client if Client does not have a current Service Agreement or Contract as defined by these Master Terms. Therefore Client agrees that if Otilas currently supplies Client with any service Otilas is entitled to assume that Client is in a current Service Agreement or Contract. Client is required to provide Otilas with written instruction to cancel Service prior to the expiry of the Service Agreement or Contract. If Client does not provide written instruction to cancel Service prior to expiry and subsequently at any later time pays an invoice for Service after Contract expiry Client agrees that this payment will constitute your instruction to renew Service Agreement or Contract from the date of invoice payment for a term equivalent to the initial Service Agreement or Contract.
- 33.11. You agree that we will be granted administrative exclusivity for all systems and infrastructure that is subject to this agreement. This means that you agree that you authorise us to be solely responsible for the administration, monitoring, and maintenance of your systems and infrastructure and you agree that we have sole rights to access or implement any change on these systems and infrastructure. You authorise us to change administrator account passwords and agree that you or any third party appointed by you will not access or attempt to access any of your systems or infrastructure. You agree that administrative exclusivity is a necessary provision to ensure that we are solely responsible for the management of your systems and infrastructure according to best practice and in order to deliver the services subject to this agreement. Furthermore, you

agree that if you or any third party appointed by you access or attempt to access any of the systems or infrastructure that is subject to this agreement we have the right, at our sole discretion, to immediately cancel any or all services provided to you or to suspend services until we are satisfied that this condition has been fulfilled. You agree that in the event that we cancel or suspend your service/s subject to this clause you will indemnify us and hold us harmless in relation to any loss, including financial loss and data loss, suffered by you as a result of the cancellation or suspension of the service/s. You also agree that if we cancel your service/s pursuant to our rights under this clause you must pay us the outstanding value of the service agreement in accordance with 29.5 and 29.6 and 29.6.1.

- 33.12. If we perform any work at your request that is not part of our Service Catalogue, and that is not classified by our Service delivery Manager as an Incident, this work will be billed at the standard work request rate of \$180 per hour (ex GST). The amount payable will be \$180 (ex GST) multiplied by the total number of hours expended on the work, plus any reasonable expenses incurred in performing the work. This amount is payable if the work is requested in a ticket submitted through the Otilas Portal, email, verbal, or any other instruction that we may reasonably understand to be a request to complete task/s for you that are outside of the scope of the Service Catalogue and that do not constitute an Incident. If you do not request a quote for a work request, you agree that we are entitled to assume that you consent to us undertaking all required tasks necessary to complete the work request, and you agree to pay for all works completed. If final payment is not made, or if progress payments (if applicable) are not received within 14 days of invoice date, you agree that we have the right to cease any open tasks and to restore your systems to their state before we made any alterations or changes pursuant to the project or work request.
- 33.13. If you add additional staff that require support, you agree to advise us of this change within 30 days so that we may adjust your monthly cost in accordance with this change. Any additional users will be charged at \$70 per month, payable from the earliest of the date on which the additional user accesses the Otilas Portal, the date on which the user requests us to complete any task by any means, or the date on which our monitoring and remote access software is installed on the user's desktop. You agree that any user that requests that we undertake any task, and that is employed by you or who is added to your domain after the date of execution of this agreement will be regarded as being an additional user pursuant to this agreement. Furthermore, if you do not advise us of any additional users we may at our sole discretion terminate this agreement with the balance outstanding to be paid in accordance with 29.5. You agree to pay the aforementioned monthly rate as a back-charge for all additional users.
- 33.14. We may provide you with a Support Services Schedule or equipment Schedule that lists the services we will supply you and lists the devices for which these services will be supplied. If you do not request these documents prior to service commencement in writing, you agree that we will, at our sole discretion, determine which devices will be supported by us pursuant to the service contract and in accordance with the number of devices/subscriptions ordered through the Otilas Order Form.
- 33.15. We may supply you with a Service Level Agreement (SLA) at our sole discretion. This will only be supplied if requested in writing prior to service commencement. The Service Level Agreement provides an indication of our usual service delivery times and is intended as a guide. You agree that all representations made within the Service Level Agreement (if provided) are indicative only and are not part of your service contract.
- 33.16. You agree that from time to time we may require you to complete a user Register form which we use to confirm the full list of users that we are required to support. You agree that the information that you provide on this form will be true, complete, and accurate. Furthermore you agree that upon submission of this form, if the form denotes an increase in user numbers (beyond the number of users explicitly supported within your contract), your submission of this form and acceptance of these Master Terms and Conditions will constitute a renewal of your contract for a term of 24 months from the date of submission of the form. You agree that given the inter-dependency of many of our services this contract renewal will apply to all services provided by us to you, except for services which already have an expiry date more than two years from the date of submission of the user Register form. Upon renewal of your contract the monthly amount payable will increase to reflect the additional users as per the provisions of these Master Terms. You agree that if we request you to complete and submit a user Register form and you fail to do so within 2 weeks from the date of our initial request, we will amend the number of registered users to what we reasonably assume to be the correct number of users and will effect a renewal of your contract in accordance with the terms of this clause.
- 33.17. You agree that all directors of the Client company (or other legal entity as appropriate) are jointly and severally liable for all moneys payable to Otilas in relation to any products or services provided by Otilas to you or any associated company. You agree that your guarantee and the guarantee of any other director is not conditional upon the agreement of any other director or guarantor.

34. APPLICABLE LAW AND DISPUTES

34.1. This agreement is subject to the laws that apply in New South Wales, Australia.

34.2. Any dispute or difference arising in connection with this agreement will be submitted to arbitration in accordance with and subject to the Institute of Arbitrators and Mediators Australia Expedited Commercial Arbitration Rules.

34.3. Otherwise, legal proceedings relating to this agreement or any dispute about it must be brought in the courts of new South Wales, Australia.

35. INTERPRETATION

35.1. Headings are for navigational assistance only and do not affect the meaning of this agreement.

35.2. Where a term is said to 'include' one or more things, the list is not exhaustive and does not limit the natural meaning of the term in any way.

35.3. A schedule or attachment to a document (including a schedule or attachment to this agreement) is part of that document, as is any document incorporated by reference.

35.4. A reference to the singular includes the plural and vice versa.

35.5. There is no significance in the use of gender-specific language.

35.6. A 'person' includes any entity which can sue and be sued and any legal successor to or representative of that person.

35.7. A reference to 'hardware' or 'Loan equipment' includes all IT and communication products and equipment including hardware, software and related parts, accessories and other goods.

35.8. A reference to a law includes any amendment or replacement of that law.

35.9. A provision must not be construed to the disadvantage of a party because that party prepared or required it.