



GENERAL TERMS AND CONDITIONS

Background

These are the general terms and conditions for the supply of Services by the Supplier to the Client (Terms). The Terms accompany, and are taken to be incorporated into, the Agreement which legally binds the Client and the Supplier.

1. Definitions

In these Terms:

Agreement means any agreement between the Supplier and the Client for the supply of services or products, including the Policies;

Business Day means a day other than a Saturday, Sunday or public holiday in South Australia;

Claim means any claim or action:

- (a) under, arising out of, or in connection with these Terms; and
- (b) otherwise at law or in equity including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) in restitution, including restitution based on unjust enrichment.

Confidential Information means information disclosed by or on behalf of a party that:

- (a) is by its nature confidential or by the circumstances in which it is disclosure is confidential; or
- (b) is designated by the disclosing party as confidential or identified in terms connoting its confidentiality,

but does not include:

- (c) information which is or becomes public knowledge other than through a breach of these Terms and/or the Agreement; or
- (d) information that a party can prove has been developed or derived by that party without any unauthorised reliance on the other party's confidential information; or
- (e) information that a party can prove was received from a third party in circumstances which did not involve a breach of any obligation of confidence; or
- (f) information required to be disclosed by law or by any Government Authority;

Corporations Act means the *Corporations Act 2001 (Cth)*;

Client means “you”, being the party requesting the supply of Services;

Force Majeure Event means any event, other than an insufficiency of funds, the consequences of which are beyond the control of the affected party and could not have been prevented, overcome or remedied by the exercise by the affected party of a standard of care and diligence consistent with that of a prudent and competent person under the circumstances, and includes:



- (a) an act of God, flood, fire or damage caused by lightning, storm or tempest, rains falling at any time;
- (b) strikes, lockouts or other industrial disturbances;
- (c) an act of public enemy, war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic; and
- (d) the effect of any change in applicable laws of any government or other competent authority;

GST has the meaning given to that term in the GST Act;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended from time to time;

Insolvency Event means any one or more of the following events or circumstances occurring in relation to you:

- (a) the commission of an act of bankruptcy as defined in the *Bankruptcy Act 1966 (Cth)*;
- (b) being in liquidation or provisional liquidation or under administration;
- (c) having a controller (as defined in the Corporations Act) or analogous person appointed to you or any of your property;
- (d) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (e) being unable to pay debts as and when they fall due;
- (f) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (g) entering into a compromise or arrangement with, or assignment for the benefit of, any of your members or creditors; and
- (h) any analogous event or circumstance under the laws of any jurisdiction.

Intellectual Property means all intellectual property of the Supplier such as copyrights, patents, trademarks (registered or unregistered), process know-how, trade secret, registered designs or other like rights or any right to apply for registration of any of the former;

Policies means the policies adopted by the Supplier and notified to the Client from time to time, including the Fair Use Policy, the Data Policy and the Privacy Compliance Statement;

Services means any services supplied in accordance with the Agreement;

Service Fees means the fees (including service fees and licence fees) payable for the provision of the Services in accordance with the Agreement;

Supplier means “we” or “us”, being Medlink Pacific Pty Ltd (ACN 619 266 303) Trading as CyberSquad IT Consulting; and

Terms means these standard trading terms for the supply of Services.

2. Services

- a. We will provide the Services as outlined in the Agreement, which may include, but is not limited to, managed IT services, hardware provisioning, software support, network management, cybersecurity solutions, consultation and consulting services, and project management.



- b. Regardless of the Services provided to the Client, our staff are available during our standard operating hours, being 8:00 am to 6:00 pm AEST Monday through Friday, excluding public holidays (**Standard Operating Hours**).
- c. Notwithstanding clause 2.2 above, in accordance with the terms of their Agreement, Clients may be able to contact us for urgent support outside of Standard Operating Hours, including out of hours support on Saturdays/Sundays and public holidays.
- d. You acknowledge that we will provide the Services to you:
 - i. From the start date specified in the Agreement, unless we have notified you in writing prior to that date that we are not able to commence until a later date (**Late Start Date**), in which case, from the Later Start Date;until:
 - ii. If an end date is specified in the Agreement, that end date, unless terminated earlier in accordance with the terms of the Agreement;
 - iii. If no end date is specified in the Agreement, until the Agreement is terminated or no further renewals are exercised, in accordance with the terms of the Agreement: or
 - iv. such other date as agreed in writing between the parties.

3. Additional Services

- a. You may request that we provide additional Services at any time (**Additional Services**).
- b. Where we agree to provide Additional Services, the parties will negotiate in good faith to agree a suitable arrangement (including any fee for Additional Services as agreed in writing by the parties, standards and service levels) for your utilisation of the Additional Services.

4. Fees and Payment

- a. The Service Fees will be invoiced to you for the Services in accordance with the terms expressed in the Agreement.
- b. You must pay all invoices issued by us within seven (7) days after the receipt of an invoice detailing the sum due and owing, unless we have agreed to different payment terms within the Agreement.
- c. If you default in payment under the Agreement, then you will be liable for all costs incurred by us in the recovery of monies owing to us and the Supplier may suspend or reduce, at their own discretion, the supply of Services to you.

5. Interest

- a. A Client who fails to pay an invoice payable under the Agreement for a period of fourteen (14) days after the due date, may be required to pay interest on the outstanding part of that amount until it is paid in full.
- b. Unless stated otherwise in the Agreement, the interest rate will be five percentage points above the cash rate target announced by the Reserve Bank of Australia from time to time.
- c. That interest will accrue and be recoverable from day to day.



6. GST

- a. In these Terms, GST, GST Law, Taxable Supply, Tax Invoice and Adjustment Note have the meanings given in section 195-1 of the GST Act.
- b. Unless stated otherwise, if a Taxable Supply is made under these Terms the party which made the supply (Supplying Party) may in addition to the amount payable under these Terms and/or the Agreement, recover from the other party (Receiving Party) an additional amount on account of GST, calculated by multiplying the amount payable by the prevailing GST rate.
- c. Where a Taxable Supply is made under these Terms the Supplying Party shall issue to the Receiving Party a Tax Invoice or an Adjustment Note, as applicable, in accordance with the GST Law.

7. Default

- a. In the event that:
 - i. there is a material breach by you of any of these Terms or the Agreement;
 - ii. any moneys payable to us (on any account you have with us) become overdue;
 - iii. you are subject to an Insolvency Event;

then we may, without prejudice to our other remedies under these Terms or at law and without notice to you,

 - iv. cancel all or any part of any Agreement which remains unperformed;
 - v. continue with an Agreement and recover all amounts outstanding under that Agreement;
 - vi. suspend all future supply of Services until the material breach has been substantially remedied or the overdue moneys have been paid;
 - vii. charge you late payment fees on any moneys unpaid on the due date in accordance with the rate published from time to time from the due date until you pay the amount in full;
 - viii. demand immediate settlement of outstanding late payment fees or other amounts;

8. Limitation of Liability

- a. To the maximum extent permitted by law, our liability for any claim arising out of or in connection with the Agreement is limited to the total fees paid by you for the Service giving rise to the claim.
- b. Provisions of the *Competition and Consumer Act 2010 (Cth)* and other laws in force from time to time in Australia may imply warranties or conditions or impose obligations on the Supplier. If any such provisions apply then, to the extent permitted by law, the Supplier's liability shall be as set out in clause 8.4.
- c. Subject to clause 8.2, the Supplier offers no other guarantees or warranties in respect of the Services it supplies to the Client, and all representations, conditions and warranties of



- any nature made in relation to the Services are expressly excluded from these Terms and the Agreement and shall not bind the Supplier.
- d. To the extent that any warranty, guarantee or condition cannot be excluded, the liability of the Supplier for breach of any such guarantee, condition or warranty shall be limited, at the option of the Supplier, to any one or more of the following:
 - i. the supplying of the Services again; or
 - ii. the payment of the cost of having the Services supplied again.
 - e. Except as expressly provided to the contrary in these Terms, the Supplier shall not have any liability for any indirect or consequential expenses, losses, damages or costs incurred by the Client arising in any way out of or in relation to the supply of the Services. Any liability by the Supplier which may arise under these Terms is limited to the maximum extent permitted by law.

9. Indemnity

The Client indemnifies the Supplier, its officers, employees and agents and agrees to keep the Supplier, its officers, employees and agents indemnified in respect of any non-compliance by the Client with its obligations under these Terms and any Agreement, or any third party claims.

10. Warranties

- a. You warrant that you have sufficient power and authority to enter into an Agreement with us on the terms of the Agreement.
- b. The parties warrant to each other that they be truthful and accurate in their dealings with each other.
- c. You warrant that all information relating to you that is provided to us is true and correct and you acknowledge that we rely upon its contents. You undertake to notify us if there is a change to any of the information provided.

11. Dispute Resolution

- a. **General obligation**
 - i. If a dispute arises out of or relates to the Agreement, the parties to the Agreement and to the dispute agree to endeavour in good faith to settle the dispute in accordance with this clause 11 before having recourse to court proceedings (other than court proceedings by a party seeking urgent interlocutory relief).
- b. **Notification of dispute**
 - i. A party claiming that a dispute has arisen must give written notice to the other parties to the dispute specifying:
 - 1. the nature of the dispute,
 - 2. what outcome the complainant wants; and
 - 3. what action the complainant considers will settle the dispute.



- ii. On receipt of the notice specified in clause 11.2.1, the parties to the dispute must within 5 Business Days of receipt of the notice take reasonable steps to confer and try to resolve the dispute.
- iii. Nothing in this clause affects the right of a party to take legal proceedings under the Agreement. In particular, this clause does not affect the right of any party to seek injunctive relief where this is necessary to prevent irreparable damage to the party making the application.

12. Inconsistency

If these Terms are inconsistent with any provision of the Agreement, the Agreement will prevail.

13. Confidentiality

- a. These Terms, another Agreement between you and us, and any communications we have with you regarding our terms of supply of Services are deemed part of our Confidential Information.
- b. You or your employees must not disclose Confidential Information to any person (except to legal, financial or business advisers for the purpose of seeking advice relating to these Terms or the Agreement), without our prior written consent. You must notify us immediately of any unauthorised use or disclosure of our Confidential Information.
- c. Nothing in this clause 13 prevents you from disclosing our Confidential Information if you reasonably believe it is required by law (except this paragraph does not permit you to disclosure or authorise the disclosure of any information under sections 275(1) and (4) of the PPSA unless section 275(7) of the PPSA applies), as long as you notify us immediately when you become aware that such a disclosure may be required. This obligation of confidentiality will survive expiration or termination of these Terms or any Agreement and will continue until the information ceased to be confidential.

14. Intellectual Property

- a. Where any Intellectual Property is produced by the Supplier during the supply of Services and the duration of the Agreement, the ownership of the Intellectual Property remains with the Supplier and may only be reproduced or copied with the prior written consent of the Supplier.
- b. Nothing in these Terms or the Agreement transfers or grants to you a right, title or interest in or to any Intellectual Property unless otherwise stated in the Agreement.
- c. You agree not to reverse engineer, interfere, modify or otherwise undertake an act that could compromise the Intellectual Property rights of the Supplier in the Services is provides to you.
- d. You agree that you will keep and will ensure that your employees keep confidential all trade secrets, ideas, know-how, concepts and information whether in writing or otherwise relating to the Services and all other information relating to the Supplier and its affairs or business, which is not in the public domain.
- e. You retain ownership of your Intellectual Property, and we will not claim ownership of your systems, data, or any other materials you provide.



15. Privacy and Data Protection

- a. The Supplier will comply with the Australian Privacy Principles in all dealing with the Client and the handling of personal data. A copy of the Supplier's Privacy Compliance Statement and the Data Policy will be provided to you upon request and is available on the Supplier's website.
- b. You consent to us collecting your personal information in order to provide you the Services you have requested.
- c. You agree to provide necessary permissions for us to access and process your data to deliver the agreed Services.

16. Force Majeure

- a. If a Party is prevented in whole or in part from carrying out its obligations under these Terms or the Agreement, or is delayed in doing so, as a result of a Force Majeure Event, the affected Party will not be liable for any delay in or failure of performance arising from that Force Majeure Event.
- b. The affected Party must use reasonable endeavours to mitigate or overcome the impact of the Force Majeure Event as soon as reasonably practicable after its occurrence so as to be able to resume performance of its obligations under these Terms and/or the Agreement.

17. Amendment

The Supplier may amend these Terms from time to time and will notify the Client of these amendments.

18. General Provisions

- a. The Terms shall be governed by and interpreted in accordance with the laws in force in the State of South Australia. The parties submit to the exclusive jurisdiction of the Courts of the State of South Australia.
- b. Unless otherwise specified, each party will, at its own expense and when requested by the other party, promptly do, sign and deliver everything reasonably required to give full effect to these Terms and the transactions contemplated by these Terms.