

Master Terms & Conditions

1. Scope of Agreement

This Agreement serves as a master agreement and applies to Customer's and its Affiliates' purchases from Sensible Business Solutions, or any of its Affiliates, of services ("Services"), as well as licenses for software, hardware, support and maintenance services, and/or subscription services (collectively, "Product"). For purposes of this Agreement, No Product will be provided under this Agreement alone, but (a) with the exception of Services, will require the execution of one or more addenda relating to the Product ("Addenda"), and may require the execution of (b) a written or electronic order form, or other mutually acceptable order documentation (including, without limitation, Statements of Work for Services) (each, an "Order"), which contains terms relating to one or more Addenda and/or this Agreement, each of which must be executed by both parties. The Services to be rendered to Customer must be further described in one or more Statements of Work, which upon the signature by both parties is deemed incorporated in this Agreement for all purposes, and will contain the information listed in The Managed Services Agreement. In the event of any conflict between the terms of the Statement of Work and those of this Agreement, the terms of the Statement of Work will prevail.

2. Duration

This Agreement commences when we receive the copy of this Agreement signed by your authorised officer together with the base fees (if any) referred to in the Proposal and continues for an initial term as nominated above from the date of commencement. Following the expiry of the initial term, this Agreement will be automatically renewed for additional 12 month terms, unless either party gives to the other notice of its intention not to renew the Agreement at least 90 days before the end of the then current term.

3. Supply of Services

3.1 We must supply the Services to you in accordance with:

- (a) this Agreement, including the Proposal; and
- (b) any reasonable directions given from time to time by you within the scope of this Agreement.

3.2 Unless provided expressly elsewhere in this Agreement, the Services to be supplied by us under this Agreement do not include:

- (a) hardware maintenance;
- (b) correction of errors or defects caused by operation of the software or the computer equipment in a manner other than that specified by us;
- (c) correction of errors caused by your failure to provide suitably qualified and adequately trained operating and

programming staff for the operation of any software or equipment;

- (d) training of operating staff;
- (e) rectification of major operator errors;
- (f) rectification of errors caused by incorrect use of any software;
- (g) rectification of errors caused by faulty equipment or software not supplied by us;
- (h) furnishing or maintenance of accessories, attachments, supplies consumable or associated items, whether or not manufactured or distributed by us;
- (i) correction of errors arising directly or indirectly out of your failure to comply with this contract or any other agreement between the parties relating to the software; and
- (j) maintenance made more difficult by your failure to comply with this contract or any other agreement between the parties relating to software.
- (k) Software development
- (l) Data Backups
- (m) Data Hosting
- (n) Office Relocations
- (o) Hardware Rentals
- (p) Software Licenses
- (q) Project Management
- (r) Consultancy Services
- (s) **Support for software that is not part of the Standard Microsoft Office or Server suite of products**
- (t) **Support for software that is not the currently supported version by original software manufacturers**
- (u) **Support for Hardware or Software that is not covered by a current maintenance agreement**
- (v) **Support for Changes in Technology where we are not involved in the planning process**

3.3 If you request we may in our discretion provide any of the services referred to in 3.2. We may make an additional charge for providing such services.

3.4 We will not be liable for any delay or failure to perform our obligations under this Agreement, including the Services, if the failure or delay is due to any act, omission or circumstance over which we cannot reasonably exercise control.

4. Variation to Services

If the parties want to vary the Services, including extend the time for completion of the Services, they must do so by a document signed by both parties. We will not start work on any varied Services until the parties have agreed in writing the scope and fees for those varied Services.

5. Payment

- 5.1 You must pay all fees for Products and Services in accordance with our standard payment requirements before we commence supplying the Services to you.
- 5.2 Unless specified otherwise, all monetary amounts expressed in this Agreement are inclusive of GST.
- 5.3 Unless specified otherwise, all monetary amounts expressed in this Agreement are exclusive of custom duties, excise and any other applicable transaction taxes, which Customer will pay.
- 5.4 All Product is FOB shipping point.
- 5.5 We review the fees for our services annually and will increase the fees for the Services, with effect from the first and each subsequent anniversary of this Agreement, by CPI or 4% whichever is the greater. We will give you at least 30 days written notice.
- 5.6 Interest is payable on late payments at the rate of 2% per annum.
- 5.7 All fees payable under this Agreement are exclusive of sales, use, GST, customs duties, excise

6. Your Obligations

You must:

- (a) co-operate with and give all other assistance reasonably necessary to us;
- (b) grant us exclusive access to the Administrator Accounts;
- (c) grant all rights to us, including rights to Intellectual Property Rights;
- (d) allow us all reasonable access to your premises during normal working hours, including the provision of car parking;
- (e) provide timely instructions and responses to our reasonable requests on all matters; and
- (f) follow all Sensible Acceptable Use Policies.

necessary for us to supply the Services and otherwise discharge our obligations under this Agreement.

7. Intellectual Property

You acknowledge that:

- (a) we own all Intellectual Property Rights in all material created by us in relation to the Services (whether alone or with you or your employees);
- (b) moral rights (as that term is defined in the *Copyright Act 1968* (Cth)) may subsist in material created by us; and
- (c) this Agreement does not transfer to you any rights in any material created by us or our employees in relation to the Services.

8. Confidentiality

Each party must keep confidential all Confidential Information of the other party disclosed to it. A party may use the other party's Confidential Information solely for the purpose of performing its obligations under this Agreement. That party may disclose that Confidential Information only to people who have a need to know and under binding obligations of confidentiality. These obligations do not extend to information that:

- (a) is or becomes public knowledge without fault of the receiving party;
- (b) is or becomes available to the receiving party from a source other than the disclosing party; or
- (c) is required to be disclosed by law or stock exchange regulation.

9. Limitation of liability

9.1 You warrant that you have not relied on:

- (a) any representation made by us which has not been stated expressly in this Agreement; nor
- (b) any descriptions or illustrations or specifications contained in any document including any catalogues or publicity material produced by us.

9.2 This Agreement consists of its express terms. Subject to clause 9.3, we exclude all conditions, warranties and terms that may be implied by statute, general law or custom into this Agreement.

9.3 This Agreement does not exclude or limit the application of any warranty or condition implied by any statute (including the *Trade Practices Act 1974* (Cth) (**TPA**)) where to do so would contravene that statute or cause any part or all of this Agreement to be void.

9.4 We limit our liability to you for a breach of any Non-excludable Condition (other than one implied by section 69 of the TPA), at our option, to any one of replacing, repairing, or paying the cost of replacing or repairing, the goods, or supplying again, or paying the cost of supplying again, the services, in respect of which the breach occurred. **'Non-excludable Condition'** means an implied condition or warranty the exclusion of which under the TPA would contravene that statute or cause part or all of the

- clause excluding that implied condition or warranty to be void.
- 9.5 If we become liable to you in respect of a loss (whether under this Agreement or any other principle of law or equity or legislation) and you or any other person contributes to the loss, to the maximum extent permissible our liability to you is limited to the amount that is attributable to our acts and omissions after allocating a just proportion of the liability for the loss to all people who contributed to the loss (whether or not they are parties to any claim by you).
- 9.6 We exclude all liability to any third parties arising out of or in connection with any Services or this Agreement.
- 9.7 Except for any liability referred to in clauses 9.3 and 9.4, our maximum liability to the you, whether in contract, tort or otherwise, arising out of, or in connection with this Agreement, is limited to the amount equal to:
- (a) where the fees under this Agreement are fixed, the total of those fixed fees; or
 - (b) where the fees under this agreement are variable, the maximum amount payable in the most recent 3 month period.
- 9.8 All Necessary Rights. If, as part of Sensible Business Solutions' performance of Services, Sensible Business Solutions is required to use, copy or modify any third party system (hardware, software or other technology) provided or licensed to Customer, then prior to Sensible Business Solutions' performance of such Services, Customer will acquire all rights necessary for Sensible Business Solutions to perform such Services.
- 10. Indemnity**
- You indemnify us, our employees, agents and subcontractors against all losses, damages, expenses and costs (on a full indemnity basis and whether incurred by or awarded against any of them) that any of them may sustain or incur as a result, whether directly or indirectly, of any claim or proceedings.
- 11. Termination**
- 11.1 We may terminate this Agreement:
- (a) with 90 days prior notice to you;
 - (b) if any payment due to us by you remains unpaid for a period of 14 days;
 - (c) if you breach any term of the Agreement and fail to remedy the breach within 14 days after receiving notice requiring you to do so; or
 - (d) with immediate effect by giving notice to you, if an act of insolvency happens to you (whether or not notified).
- 11.2 You may terminate this Agreement if we breach any term of this Agreement and fail to remedy the breach within 14 days after receiving written notice requiring us to do so.
- 11.3 You may terminate this Agreement at any time by providing at least 3 months' notice of your intent in writing.
- 12. After termination**
- 12.1 Promptly after termination, you must pay us for all Services supplied up to and on termination, including the Offboarding Fee.
- 12.2 On termination, each party (**first party**) must return to the other party all Confidential Information of that other party in material form (including without limitation, those parts of all notes and other records of the first party containing Confidential Information of the other party) in the first party's possession or control.
- 12.3 At any time after termination of this Agreement a party must not:
- (a) use or disclose to any person any Confidential Information of the other party;
 - (b) record any Confidential Information of the other party into any form (including without limitation, machine readable form); or
 - (c) sell or otherwise transfer any Confidential Information of the other party.
- 13. Non solicitation**
- 13.1 Neither party may solicit an employee of the other party for 6 months after that employee has been involved in providing or acquiring services under this Agreement without the prior written permission of that other party.
- 13.2 If any **Sensible Employee** is employed or contracted by the Customer to perform any Services, then the Customer agrees to pay Sensible a recruitment fee of \$17,500.00 + 10% GST.
- 14. Dispute Resolution**
- 14.1 Neither party may start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute, unless it has first complied with this clause.
- 14.2 A party claiming that a Dispute has arisen must notify the other party in writing.
- 14.3 Within 7 working days after a notice is given under clause 14.2 each party must nominate in writing to the other party an employee authorised to settle the Dispute on its behalf.
- 14.4 During the 20 day period after a notice is given under clause 14.2 (or if the parties agree a longer period, that longer period) each party's nominee must use his or her best efforts to resolve the Dispute.
- 14.5 If a Dispute is not resolved within the time allowed in clause 14.4, the Dispute must be referred:
- (a) for mediation, in accordance with the Australian Commercial Disputes Centre (**ACDC**) Mediation Guidelines; and

- (b) to a mediator agreed by the parties, or if the parties do not agree on a mediator, a mediator nominated by the then current chief executive officer of ACDC or the CEO of ACDC's nominee (or if no such person is available or willing to nominate a mediator, by the then President of the Law Society of New South Wales).
- 14.6 You must not withhold payment for Services supplied that are not the subject of a Dispute.
- 14.7 We will continue to supply those Services that are not the subject of a Dispute, unless otherwise agreed in writing by the parties.
- 14.8 All terminations require payment of an Offboarding Fee by you which is equivalent to 2 times the regular monthly fees for the services included in this agreement.
- 15. Notices**
- 15.1 A party notifying or giving notice under this Agreement must notify the other party:
 - (a) in writing;
 - (b) addressed to the address of the recipient specified on the first page of this Agreement or as varied by notice given in accordance with this clause; and
 - (c) left at or sent by post or facsimile to that address.
- 15.2 A notice given in accordance with clause 15.1 will be taken to have been received:
 - (a) if delivered by hand to the recipient's address, on the date of delivery, as long as delivery is acknowledged in writing by the recipient;
 - (b) if sent by post, 3 working days after the posting; and
 - (c) if sent by facsimile on a working day at the recipient's, on the date of transmission, or if sent on a non-working day at the recipient's, on the next working day (in both cases as long as the sender's facsimile machine records a successful transmission).
- 16. General**
- 16.1 Nothing in this Agreement creates a relationship of employer and employee, principal and agent, or partnership between the parties.
- 16.2 You must not assign this Agreement or any right under this Agreement without our prior written consent.
- 16.3 We may subcontract the performance of any of our obligations under this Agreement.
- 16.4 This Agreement is governed by the law applicable in New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that State.
- 16.5 This Agreement:
 - (a) is the entire agreement between the parties about its subject matter;
 - (b) in relation to that subject matter, supersedes any prior:
 - (i) understanding or agreement between the parties; and
 - (ii) condition, warranty, indemnity or representation imposed, given or made by a party.
- 16.6 **Verification.** Upon Sensible Business Solutions written request, Customer will provide Sensible Business Solutions with a certification signed by an officer of Customer verifying that Product is being used pursuant to the terms of this Agreement, including without limitation the licensed capacity of the Product. Sensible Business Solutions may, at its expense, audit Customer's use of Product to confirm Customer's compliance with this Agreement. Any such audit will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. If an audit reveals that Customer has underpaid Fees to Sensible Business Solutions, Customer will pay such underpaid Fees. If the underpaid Fees exceed five percent (5%) of the Fees paid, then Customer will also pay Sensible Business Solutions' reasonable costs of conducting the audit
- 17. **Referencing.** Customer agrees that Sensible Business Solutions and its Affiliates may refer to Customer as a customer of Sensible Business Solutions, both internally and in externally published media. Customer also agrees to instruct appropriate personnel within its organization that Customer has agreed to receive and participate in calls, from time to time, with potential customers of Sensible Business Solutions who wish to evaluate the technical specifications of Product.
- 17.1 The following definitions apply unless the context requires otherwise:
 - Affiliate** means any entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or under common control with Customer or Sensible Business Solutions, as the case may be.
 - Agreement** means these terms and conditions for the supply of Services by us and the attached Proposal and the Attached Service Agreement Order Form.
 - Administrator Accounts** means the usernames and passwords that are required to give unrestricted access to the Customer's computer system including to create, delete and modify any of the files or folders, as well as to change any settings.
 - Confidential Information** of a party means all confidential information (including without limitation, trade secrets and confidential know-how) relating to that party or a corporation

related (as that term is used in the *Corporations Act 2001* (Cth)) to that party of which the other party becomes aware, both before and after the day this Agreement is executed.

Our Confidential Information includes the Proposal.

Dispute means a dispute arising out of or relating to this Agreement, including without limitation, a dispute about the breach, termination, validity or subject matter of this Agreement, or a claim in equity or in tort relating to the performance or non-performance of this Agreement.

Proposal means the attached document prepared by us for the supply of Services to you, as varied in writing by the parties from time to time.

Sensible Acceptable Use Policies are policies on the Acceptable Use of Services supplied or supported by Sensible under the terms of this agreement. These policies are published and updated from time to time. The latest versions are always available on the Sensible website at:

<https://www.sensible.com.au/about-us/legal-stuff/>

Sensible Employee means a person who has been employed or contracted by Sensible Business Solutions Pty Ltd during the term of this agreement.

Services means all the services described in the Proposal that we are required to supply under this Agreement.

We, including its different grammatical forms such as **our** and **us** means Sensible Business Solutions Pty Limited ABN 87 084 151 477.

You and **your** means the Customer.

17.2 The following rules of interpretation apply unless the context requires otherwise:

- (a) any use of the verb **includes** or of words such as **for example** or **such as**, do limit anything else that is included in general speech; and
- (b) unless otherwise stated, monetary references are references to Australian dollar

Please indicate your acceptance of the terms by signing in the space on the first page of this document and initial every page and return to us.

Thank You !