

## BYTE

### TERMS & CONDITIONS

**Registered Trading Name:** Byte Information Technology Pty Ltd ("Byte")

**ABN:** 32 624 089 929

#### 1. Definitions and Interpretations

1.1 In this Agreement the following expressions will have the following meanings: -

"Agreement" means the agreement between the parties, which incorporates these Conditions and any other documents attached or incorporated by reference;

"Client" means the party specified as such in the Commercial Terms;

"Commencement Date" means the date specified in the agreement on which the Agreement comes into force or if no such day is specified the date on which the Services commence;

"Commercial Terms" means the attached document in the form of a scope of work, proposal, statement of work or any other document containing the commercial terms of the Services to be provided by Byte to the Client.

"Event" means a condition or situation detected by the Client which indicates that a Product may have suffered an Incident;

"Force Majeure" means any of the following:- (i) Act of God, (ii) outbreak of hostilities, riot, civil, disturbances, acts of terrorism (iii) the act of any government or authority (including refusal or revocation of any license or consent) (iv) fire, explosion, flood, fire, fog or bad weather (v) power failure, failure of telecommunication lines, failure of breakdown of plant, machinery or vehicles, (vi) theft, malicious damage, strike, lock-out of industrial action of any kind and (viii) any cause or circumstance whatsoever beyond either party's reasonable control;

"Incident" means the occurrence of an Event in a Product that prevents it from operating in accordance with its specifications;

"Intellectual Property Rights" means all patents, utility models, petty patents, design rights (whether registered or unregistered), certain layout rights, trademarks, service marks and copyright, and applications in any country of the World for any of the foregoing;

"Normal working hours" means the days and hours as specified in the Commercial Terms;

"Product" means any item of hardware and/or software covered by this Agreement;

"Related Party" has the meaning ascribed to that term by the Corporations Act 2001 (Cth);

"Response Time" means the time specified in the Service Level Agreement table in Appendix 1 which is measured from the time at which a Service Request is logged;

"Service" means the services to be provided by Byte to the Client, more particularly described in the agreement and where the context admits will include any part thereof;

"Service Charge" means the charges for the Services as set out in the Commercial Terms;

"Variation" means any change to the Services including but not limited to:

- I. The addition or reduction of features or services;
- II. The addition or reduction of equipment and/or software;
- III. The use of existing equipment and/or software in a different configuration or for a different purpose;

"Variation Schedule" means a schedule to the Agreement drawn up pursuant to Clause 3.4; and

"Year" means the period of 12 months after the Commencement Date and each anniversary of the Commencement Date thereafter.

#### 1.2 Interpretation

1.2.1 All references to a statutory provision will be construed as including references to any statutory provision modification, consolidation or re-enactment (whether before or after today's date) for the time being force.

1.2.2 Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders; words denoting persons include firms and corporations and vice versa.

1.2.3 Unless otherwise stated, a reference to a clause or schedule is a reference to this Agreement, and each schedule shall be deemed to form part of this Agreement.

1.2.4 Clause headings are for ease of reference only and do not affect the construction of the Agreement.

1.2.5 Any reference to a party to the Agreement includes a reference to its successors in title and permitted assigns.

## 2. Performance of Services

2.1 Byte will diligently perform the Services with reasonable skill and care and in accordance with the terms of the Agreement.

2.2 To the extent that they are reasonably required to enable Byte to perform the Services, the Client will throughout the period of the Agreement promptly provide Byte with complete and accurate information concerning its operations and activities as such information relates directly to the Services, and answers to any questions or decisions made by the Client, in relation to the Services.

2.3 Where Byte is required to work on the Client's premises, the Client will provide Byte free of charge with such office space and office services as may reasonably be necessary to enable Byte to perform the Services.

2.4 Byte shall keep sufficient records of all acts and things done by it in relation to the provision of the services and at the Client's request will make them available for inspection and/or provide copies to the Client at the Client's own cost.

2.5 Byte will incur no liability whatsoever to the Client by reason of any delay in the performance of the Services if:

2.5.1 such a delay is due wholly or partly to any act or omission of the Client, including but not limited to failure to approve any which approval is required by the Client within any periods agreed in writing between Byte and the Client or if there is no such period with a reasonable time; or

2.5.2 the delay is due to Force Majeure pursuant to Clause 10.

2.6 In the event of any such delay as set out above, Byte will have the right to extension of time to perform the Services by such reasonable period having regard to the nature of such delay, and in respect of any such act or omission on the part of the Client, the right to be paid all reasonable costs charges and losses sustained or incurred by Byte as a result thereof and any part of the Service Charge which would but for such act or omission have been payable.

## 3. Variation to Services

3.1 Either party may at any time propose a Variation. Such party will give notice of such Variation or Change Request (a "Variation Order") together with full particulars to the other party. Subject to the agreement of the Client, Byte will within a reasonable time of the service of the Variation Order prepare at its discretion and at the Client's cost either a feasibility study or proposal or, if it is satisfied that the proposed Variation can be implemented without such a study or proposal, an implementation plan incorporating (inter alia) Byte's recommendation for the scope and period of implementation.

3.2 As part of the preparation by Byte of the feasibility study, proposal and/or plan the Client will promptly furnish such information as Byte may reasonably require, to enable Byte to prepare a quotation for the proposed Variation, which quotation shall include (inter alia):

3.2.1 Any cost (including any under-recovery of charges for Services) of implementing the variation and/or any price for carrying out any new service;

3.2.2 Any proposal for an amendment to the agreement;

3.2.3 The scope of work to implement the Variation including any effect on existing Services;

3.2.4 The timetable for such implementation; and

3.2.5 Any change to the duration of the agreement.

3.3 In proposing a Variation, both Byte and the Client respectively will take due account of any current plans or developments of which it is aware and which the other may be considering in

connection with the Services. However, this will not restrict the right of either party to request a Variation if considered appropriate.

3.4 If the Client accepts the quotation prepared by Byte, Byte will prepare a variation schedule to the Agreement incorporating the agreed variations, which will be binding upon signature by both parties.

If the Client declines to accept the quotation, the Client will notify Byte in writing and, if applicable, will pay Byte the reasonable costs as may have been incurred in connection with the preparation of the quotation.

#### **4. Price and Payment**

4.1 The Service Charge and any variation to the Service Charge during the period of the Agreement will be as set out in the Commercial Terms or appropriate schedule of costs and any Variation Schedule.

4.2 The Service Charge includes travel time, the cost of travel, accommodation and subsistence, and expenses incurred by Byte in the course of providing any out of scope Services which shall be charged to the Client and payable pursuant to Clause 4.3 provided that Byte will on written request provide the Client with such evidence of such costs and expenses as reasonably required.

4.4 Unless otherwise agreed in writing Byte will invoice the Client in respect of the services on a monthly basis with 30 day payment terms.

4.5 Where the supply by Byte of goods or services is a taxable supply within the meaning of any relevant goods and services tax legislation the consideration payable by the Client will be increased by an amount equal to the goods and services tax that is payable.

4.6 Byte reserves the right to charge the Client interest in respect of the late payment of any sum due under this Agreement at the rate of two (2) per cent per annum above the base rate of National Bank of Australia from time to time in force compound quarterly on the amount outstanding from the date payment is due to the actual date of payment. The Client will pay such interest upon demand. All amounts due under this Agreement will be paid in full without a deduction or withholding other than as required by law. The Client will not be entitled to assert any credit set-off or counterclaim

against Byte in order to justify withholding payment of any such amount in whole or in part.

4.7 If after the due date for payment has passed, payment of the Service Charge due under the terms of this agreement is not made within 7 days of a written demand sent to the Client or within 7 days of the expiry of any agreed credit period (whichever is the longer), Byte may at its discretion suspend the performance of the Services or any part thereof until payment in full is received by Byte. If upon resumption of the Services, Byte is required to carry out any services or incur any costs which but for the suspension would not have carried out or incurred. the Client will reimburse the cost of any such service and costs, which will become payable pursuant to Clause 4.3. Any period of suspension will be treated as a delay pursuant to Clause 2.5.

4.8 All equipment and licensing, whether independent from or forming part of a project or agreement, is invoiced upon delivery from the third party supplier on either C.O.D. or 7 days terms. The equipment and licensing will be independent of completion of configuration/project/cutover.

4.9 The Client acknowledges that equipment and licensing may be required prior to implementation/cutover for set up and testing purposes and agrees to remit payment in accordance with clause 4.8 (above).

#### **5. Communication**

5.1 The Client will nominate a person with the necessary knowledge and experience relevant to the provision of the services and with the requisite knowledge of the Client's business (including but not limited to the Client's organisation, its operations and business practices) as its representative and as the prime point of contact with Byte and through whom all communication with Byte will be made.

5.2 Byte will nominate a representative who shall be responsible for monitoring and reviewing the performance of the Agreement and through whom all communication with the Client will be made.

5.3 Each party may at any time substitute another suitable person, as its representative, and will give notice to the other party of any such solution.

5.4 Each party's representative will meet periodically as agreed between the parties to review the Services and to deal with any requests

and problems as may have arisen in the period prior to the review.

5.5 Either party is entitled to call a meeting referred to in Clause 5.4 upon not less than three (3) days' notice if that party reasonably considers that there are issues which need to be discussed and/or resolved relating to the Services. Both parties will use all reasonable endeavors to attend meetings called on shorter notice when urgently required.

5.6 Where the proceedings of each such meeting are recorded, Byte shall produce minutes and a copy sent to the Client as soon as possible thereafter. If the Client has signified its approval, or it fails to notify Byte of its approval or disapproval within 15 days of receipt, the minutes will be deemed to be approved by the Client and an accurate and authoritative record of the matters discussed and agreed.

## 6. Employment of Personnel

6.1 Byte will make available sufficient personnel to provide the services at the times agreed between Byte and the Client for the performance of the Services.

6.2. Byte warrants that the personnel it assigns to providing the Services will do so with a degree of skill and experience appropriate to the tasks to which they are allocated.

6.3 During the period of the Agreement and for a period of twelve (12) months following its expiry neither party will without the prior written consent of the other party either directly or indirectly or in conjunction with any other person induce any employee of the other directly involved in the supply or purchase of the Services to leave their employment and become an employee of such party.

6.4 As part of the written consent referred to in Clause 6.3, the party giving the consent may require the other party to make a payment to the first party to reflect the cost of recruiting a replacement for such employee and to cover the cost of the first party of any delay or failure in completing any work being undertaken by such employee on behalf of the first party at the time such consent is given by reason of such employee ceasing to be employed by the first party, provided however that neither this Clause for a sum in excess of \$25,000 or such other sum as may be agreed in writing.

## 7. Intellectual Property

7.1 Unless otherwise agreed in writing, any Intellectual Property

Rights arising solely out of and in the course of the work carried out by Byte as part of the Services will vest in Byte.

7.2 Subject to the payment of all sums due to Byte under this Agreement, Byte agrees to grant or procure the grant to the Client and, where appropriate, the Client's Related Companies, of a non-exclusive, perpetual royalty free licence under the Intellectual Property Rights referred to in clause 7.1 to use and reproduce the results of such work for the purposes of its own business.

7.3 To the extent that Byte requires a licence under any Intellectual Property Rights vested in or licensed to the Client to enable it to carry out the Services, the Client grants to Byte, and warrants that it has the right to grant to both Byte and Byte's Associated Companies engaged in providing the Services, a non-exclusive, royalty-free licence for the duration of the Agreement.

7.4 Byte Information Technology warrants that:

7.4.1 Any Intellectual Property rights arising out of and in the course of such work undertaken by its employees as part of the services will (subject to any statutory provision) vest or will be caused to vest in Byte and that none of its employees will have any right title or interest, whether legal or beneficial, in any such Intellectual Property Rights.

7.4.2 Whilst carrying out any work as part of the Services, Byte shall not knowingly infringe upon the Intellectual Property Rights of any other person or entity.

7.5 This statement of work refers to the support and maintenance of identified Client IT systems. Intellectual Property Rights for this engagement will be shared between the Client and Byte following these guidelines:

7.5.1 System architecture, design, construction, software, application and other elements directly related to the identified Client IT systems remain the sole property of the Client. For any work executed by Byte on these identified systems the IP rights are assigned to the Client.

7.5.2 System support, maintenance, sub-contractor engagement, account management and associated support functions and processes are key to the development and sustainability of Byte's support

offering. Byte retains sole IP rights for these components.

7.5.3 Subject to the payment of all sums due to Byte under Agreement, Byte agrees to grant or procure the grant to the Client and, where appropriate, the Client's Related Companies, of a non-exclusive, perpetual royalty free licence under the Intellectual Property Rights referred to in clause 7.1 to use and reproduce the results of such work for the purposes of its own business.

7.5.4 To the extent that Byte requires a licence under any Intellectual Property Rights vested in or licensed to the Client to enable Byte to carry out the Services, the Client grants to Byte, and warrants that it has the right to grant to Byte Information Technology and Byte's Associated Companies engaged in providing the Services, a nonexclusive, royalty-free licence for the duration of the Agreement.

## **8. Liability**

8.1 Except to the extent that either party may become liable for the death or injury of any person, each party's liability to the other party in respect of any loss of or damage to property, resulting from its own or its employees, agents or sub-contractor's negligence or breach of statutory duty will be limited to AUD\$10,000,000.

8.2 Subject to clause 8.1, Byte's entire liability in respect of any act or omission of Byte's employees, agents or sub-contractors, arising from any breach of any of its obligations under the Agreement or resulting from any representation, statement, tortious act or omission or breach of any statutory duty arising under or in connection with the Agreement will be limited to direct damages in an aggregate amount not exceeding the value of the contract or the amount recoverable by Byte from its insurers, whichever is higher, but will exclude in any event any loss of profits and loss of anticipated earnings.

8.3 Byte will not be liable to pay to the Client any damages whatsoever representing indirect or consequential loss or damage howsoever arising.

8.4 Nothing contained in this agreement shall affect the rights of the Client who has acquired goods or services under this agreement as a "consumer" with the meaning of the Competition and Consumer Act 2010 (Cth), or of any other law of the Commonwealth, or of any State or Territory; provided however where the Client is a consumer

then the liability of Byte for a breach of any condition or warranty implied by the said Act (other than a condition or warranty implied by Section 69) shall be limited at the election of Byte to the provision of the goods or services supplied again.

## **9. Publicity**

9.1 The parties acknowledge that the terms of the Agreement are to be treated as confidential information pursuant to Clause 11 and neither party shall disclose any such terms without the prior written approval of the other party.

9.2 The Client acknowledges that Byte may wish to publicise the existence of the agreement, and its relationship with Client and the general nature of the Services in connection with Byte's advertising and publicity program. Byte will submit any publicity material containing any of the above references to the Client prior to publication for approval (such approval not to be unreasonably withheld or delayed by the Client).

## **10. Force Majeure**

10.1 If either party's performance of its obligations are affected by Force Majeure it will notify the other party of the nature and extent thereof. If by reason of Force Majeure, either party is unable to perform or there are delays by such party in the performance of any such obligations, such party's performances of any such obligation will be suspended as long as the Force Majeure continues and the time for performance of that obligation will be extended accordingly, and the party otherwise in default will not in any event be liable to the other party for any loss or damage whatsoever and howsoever arising (whether direct or indirect loss or damage) incurred or suffered or for any breach of any of the terms of the Agreement by reason of such Force Majeure.

## **11. Confidentiality**

11.1 Each party ("the receiving party") will at all times during the continuance of this agreement and after its termination: -

11.1.1 Maintain confidential all information given to him by the other party ("the disclosing party") at any time in respect of the business and affairs of the other party, whether initially disclosed orally or in writing, or in the form of samples, models, computer data or software, or by demonstration or otherwise, which is by its very nature confidential or is previously identified or indicated to the

receiving party by the disclosing party as being confidential information (“the Information”):

11.1.2 Not use the Information other than for the purposes of this Agreement;

11.2 Information may be disclosed or reproduced by the receiving party to such an extent only as is necessary for the purposes contemplated by this Agreement, or as required by law and subject in each case to the disclosing party being satisfied that the receiving party has entered into an agreement on similar terms as contained in this Clause 11 with the disclose as to the confidentiality and restricted use of such Information, so as to enable the receiving party to comply with its obligations under this Agreement.

11.3. Information disclosed pursuant to this Agreement will be stored securely when not in use. Upon expiry or termination of this Agreement, the receiving party will return all Information and all or any permitted copies to the disclosing party.

11.4 Except where the disclosing party gives written instructions to the receiving party at any time that the obligations of confidentiality in respect of specified items of Information should be maintained for a different period, the receiving party’s obligations pursuant to this Agreement will notwithstanding subsequent termination, continue for an indefinite period.

11.5 The receiving party will be permitted to use for any purpose and to disclose any part of the Information to the extent only that:

11.5.1 The Information is in or comes into the public domain otherwise than by disclosure by the receiving party; or

11.5.2 The Information was or is lawfully in possession of the same and free to disclose it; or

11.5.3 The receiving party already has knowledge of the Information prior to disclosure by the disclosing party as evidence by written records; or

11.5.4 Law requires such disclosure.

11.6 Nothing in this Clause shall be deemed to grant a license expressly or by implication under any Intellectual Property Rights.

11.7 This Clause shall supersede any existing agreement between the parties concerning the confidentiality of Information as may have been

entered into in anticipation of the conclusion of the Agreement.

## 12. Duration and Termination

12.1 This Agreement shall come into force on the Commencement Date and subject as provided in this Clause 12 will continue in force for the period specified in the Agreement or if no such period is specified until the services have been substantially completed.

12.2 Without prejudice to Clause 13.1 either party will be entitled to terminate this Agreement if the other:

a) Commits any material breach of any term of this Agreement which (in the case of a breach capable of being remedied) will not have been remedied within 30 days of a written request to remedy the same; or

b) Convenes a meeting of its creditors or a resolution is passed, or Court order made for winding up that party or an administrator is appointed to that party pursuant to any relevant law; or where a receiver or manager is appointed to the assets or undertaking of that party or any part thereof.

12.3 Any termination of this Agreement will be without prejudice to any other rights or remedies a party may be entitled to under this Agreement or at law and will not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

12.4 Either party may terminate this Agreement for convenience, in whole or in part and without liability for such termination by giving ninety (90) calendar days’ prior written notice to the other party. In such event all terms and conditions of this Agreement will remain in full force and effect until the termination takes effect.

## 13. Consequences of termination

13.1 Upon termination of the Agreement pursuant to Clause 13, Byte shall be entitled, on reasonable notice to the Client, to enter upon the premises of the Client for the purposes of recovering any equipment or materials which are the property of Byte, for which purpose the Client grants Byte an irrevocable license to enter any such premises.

## 14. Assignment of Agreement

14.1 Either party may assign the benefit subject to the burden of this Agreement or any part thereof to any Related Party. Neither party can assign or sub-contract any of its obligations under this Agreement to any other person without the prior written consent of the other party.

#### **15. Waiver**

15.1 The waiver by either party of the breach or default of any of the provisions of this agreement by the other party will not be construed as a waiver of any succeeding breach of the same or other provisions nor will any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach of default by the other party.

#### **16. Notices**

16.1 Any notice or other communication required to be given pursuant to the Agreement shall be in writing and delivered by hand or sent by pre-paid post to the address of the other party set out in this agreement (or such other address as may have been notified) and any such notice or other communication shall be deemed to have been served (if delivered) by hand at the time of delivery or (if sent by post) upon the expiration of 48 hours after posting or at the time of transmission, jurisdiction to be invalid or unenforceable.

#### **17. Invalidity and Severability**

17.1 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision will not affect the other provisions of the Agreement and all provisions not affected by such invalidity or unenforceability will remain in full force and effect. The parties agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

#### **18. Agency Partnership and Joint Venture**

18.1 The Agreement shall not operate so as to create or recognise a partnership of joint venture of any kind between the parties.

#### **19. Cumulative Remedies**

19.1 The provisions of this Agreement, and the rights and remedies of the parties, are cumulative.

#### **20. Whole Agreement**

20.1 Unless otherwise agreed in writing, this Agreement supersedes and invalidates all other commitments, representations and warranties relating to the subject matter which may have been made by the parties either orally or in writing prior to the date of this Agreement, and which will become null and void from the date this Agreement is signed.

#### **21. Dispute Resolution**

21.1 If a dispute arises out of or relates to the breach, termination, validity or subject matter of this contract, the parties agree to first endeavor to settle the dispute by mediation administered by the Australian Commercial Disputed Centre (ACDC).