

TERMS AND CONDITIONS

These Terms and Conditions (incorporating the Master Terms and all applicable Schedules) (**Terms**) govern the provision of services by Blue Packets Pty Ltd, ACN 123 286 984 (**BluePackets**) to each customer from time to time (**Customer**)

MASTER TERMS

1 DEFINITIONS AND INTERPRETATIONS

1.1 (Definitions): In the Terms, unless the context otherwise requires:

Agreed Scope means the scope of Services to be provided by BluePackets to the Customer, as described in the Fee Proposal provided to the Customer and confirmed in Item 3 of the Details.

Applicable Schedules means the Schedules to these Master Terms that are applicable to a Customer, as set out in Item 5 of the Details.

Confidential Information in relation to any person means any and all confidential and/or proprietary knowledge, data or information which is in the knowledge, possession or control of that person (or any employee or agent of that person), including:

- (a) these Terms;
- (b) all and every part of the information regarding that party's business affairs obtained or disclosed during the course of negotiation and implementation of these Terms and the provision of the Services;
- (c) Intellectual Property Rights, trade secrets, inventions, mask works, ideas, processes, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements (including without limitation improvements in process), discoveries, developments, drawings, designs and techniques; and
- (d) information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customers.

Confirmation means the confirmation associated with these Terms and signed by the Customer.

Customer Premises means the business premises of the Customer from time to time.

Customer System means the information technology system of the Customer.

Details means the information set out in the "Details" section of these Master Terms. **Equipment** means the Hardware and/or the Software.

Expenses means any out-of-pocket expenses incurred by BluePackets in providing the Services, including without limitation all travel accommodation and other expenses.

Fee Proposal means a Fee Estimate or a Fixed Price Quote.

Fixed Price Quote has the meaning given by clause 8.2(b) of these Master Terms.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Hardware means physical components of an information technology system or other items provided by BluePackets from time to time under these Terms.

High Demand System means an information technology system in which a Server or Server system requires a higher than usual level of servicing (typically due to extreme age, previous mistreatment, interference or irregular maintenance).

Intellectual Property Rights has the meaning given by clause 21.1.

Master Terms means these master terms and conditions which apply to any Services provided by BluePackets to the Customer from time to time.

Overdue Amount has the meaning given by clause 9.1 of the Master Terms.

Proposed Scope means the scope of work requested by the Customer from time to time as confirmed by BluePackets in the Fee Proposal (as amended by agreement between the parties from time to time).

Relevant Laws means each relevant law or legal requirement under any statute, regulation or by-law, any condition of any authorisation and any decision, directive, guideline or requirement of a government agency which is relevant to the provision of the Services under these Terms.

Server means a computer or system on a network that manages resources.

Services means some or all of the services which are to be provided by BluePackets to the Customer as set out in the Fee Proposal and confirmed in Item 3 of the Details.

Service Standard means the standard expected of a skilled information technology professional acting in a safe and competent manner.

Software means the programs used on Workstations, Servers and other information technology equipment from time to time.

Standard Fees means the fee amounts set out in Item 4 of the Details, as varied by BluePackets and notified to the Customer from time to time.

Suspension and Renewal Fee has the meaning given by clause 9.2.

Terms means the Master Terms, the Details and all Applicable Schedules.

Underpowered System means an information technology system that takes an unusually long time to service because of its condition (including, for example, because of a lack of resources or existing poor configuration).

Up-Front Payment has the meaning given by clause 8.4(a) of the Master Terms.

Workstation means a terminal or personal computer owned or operated by the Customer and which is connected to a mainframe or to a network of computers.

1.2 (Interpretation) In these Terms, unless the contrary intention appears:

- (a) Headings are for convenience only and do not form part of the Terms or affect their interpretation.
- (b) A reference to any legislation includes regulations and other instruments under it and any variation or replacement of any of them.
- (c) The singular includes the plural and vice versa, and words importing any gender include the other genders.
- (d) A reference to “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or any authority;
- (e) References to any instrument are to that instrument as it may from time to time be amended or extended in accordance with its terms.
- (f) References to dollars or \$ is a reference to Australian dollars.

1.3 (Binding nature of Terms): BluePackets and the Customer agree that these Terms are binding on their legal personal representative, heirs, successors and permitted assigns.

1.4 **(Inconsistency and precedence):** The provisions of the Schedule in respect of the relevant Service prevail over these Master Terms to the extent of any inconsistency.

2 APPOINTMENT

2.1 **(Appointment):** The Customer wishes to retain BluePackets to provide the Services subject to and accordance with these Terms. By signing and returning the Confirmation or by continuing to request Services from BluePackets, the Customer agrees to be bound by these Terms.

2.2 **(Acceptance):** BluePackets accepts its appointment to provide the Services in accordance with these Terms.

2.3 **(Location):** The Services may be provided by BluePackets at the Customer Premises or remotely, or at such other reasonable location as agreed between the parties from time to time.

3 COMMENCEMENT AND TERM

3.1 **(Commencement):** Unless expressly stated otherwise in these Terms, the rights and obligations created under these Terms commence on, and are enforceable from, the date on which the Confirmation is signed by the Customer or the date on which BluePackets start providing the Services (whichever is earlier).

3.2 **(Term):** These Terms will continue in full force and effect until the terminated by BluePackets or the Customer in accordance with clause 24 of these Master Terms or pursuant to the relevant Schedule.

4 SERVICES

(Provision of Services): BluePackets agrees to provide the Services in accordance with:

- (a) these Terms;
- (b) the Service Standards;
- (c) all Relevant Laws;
- (d) the Agreed Scope;
- (e) any reasonable direction of the Customer.

5 OBLIGATIONS ON CUSTOMER

5.1 **(Facilitate provision of Services):** The Customer agrees to take all reasonable steps to facilitate the provision of the Services by BluePackets, including without limitation:

- (a) **(Access):** arranging for staff or consultants of BluePackets to be provided with reasonable access (including remote access) to the Customer Premises or systems as and when required; and
- (b) **(Support):** providing access to the Customer's systems and resources, to the extent deemed reasonably necessary and appropriate by BluePackets and agreed by Customer, in respect of the provision of the Services.

5.2 **(Other reasonable steps):** The Customer agrees to take any other reasonably necessary steps to facilitate BluePackets providing the Services to the Customer, including without limitation signing or executing any documents or declarations reasonably requested by BluePackets in order to ensure that BluePackets can continue to provide the Services.

6 SERVER AND WORKSTATION REQUIREMENTS

For the avoidance of any doubt, the Customer agrees that whenever BluePackets is retained to provide any form of maintenance services for a Customer's equipment, that equipment must be modern, fit for purpose and fully functioning and must meet the following minimum standards:

(a) **Server Minimum Requirements:**

Windows Server 2016 Operating System (64 bit)
Memory: Minimum 16GB
Modern Intel or AMD CPU (no more than 6 years old)

(b) **Workstation Minimum Requirements:**

Windows 10 Professional or newer
Memory: Minimum 8GB
Modern Intel or AMD CPU (no more than 6 years old).

7 LICENSING, ANTI VIRUS AND BACKUP

7.1 **(Software licensing):** The Services do not, unless otherwise agreed in writing by BluePackets, include any software licensing. All software licensing, anti-virus and backup must be purchased and renewed separately).

7.2 **(Back Up and Virus Protection):** The Customer acknowledges that the Customer remains responsible for ensuring:

- (a) appropriate back-up of the Customer System and all information contained on the Customer System; and
- (b) that appropriate virus protection is in place and up to date.

BluePackets takes no responsibility for any damage or loss incurred by the Customer as a result of the Customer failing to back-up as appropriate or failing to ensure that appropriate virus protections are in place at all times.

8 PAYMENTS, QUOTING, INVOICING, EXPENSES AND GST

8.1 **(Standard Fees):** The Customer agrees that BluePackets will be entitled to invoice the Customer for the Standard Fees in respect of the relevant Services.

8.2 **(Fee Proposal):** Upon reasonable request by the Customer, BluePackets may provide a Fee Proposal for the provision of Services. The Fee Proposal will be prepared having regard to the Proposed Scope. The Fee Proposal may be either (at the discretion of BluePackets):

- (a) an estimate of fees having regard to the Proposed Scope (**Fee Estimate**). BluePackets agrees to use reasonable efforts to meet the Fee Proposal, however the Customer agrees that there may be circumstances in which the amount invoiced by BluePackets may exceed the Fee Proposal. The Customer agrees that if the Proposed Scope changes, then the Fee Proposal will not be valid.
- (b) a fixed estimate of costs prepared having regard to the Proposed Scope (**Fixed Price Quote**). If BluePackets provides a Fixed Price Quote, then in that circumstances, BluePackets agrees to cap its fees for the provisions of the Services at the Fixed Price Quote amount, unless:
 - (i) there is any change to the Proposed Scope;

- (ii) BluePackets is requested by the Customer to provide additional services;
 - (iii) any of the assumptions contained in the Fixed Price Quote are not satisfied (or cease to be satisfied); or
 - (iv) the Customer does not comply with any provision of these Terms.
- 8.3 (Services not covered by Fee Proposal):** For the avoidance of any doubt, regardless of form, the Fee Proposal does not cover any Services that are not specified in the Fee Proposal. All other Services or items that are requested by, or provided to, the Customer from time to time are excluded from the Fee Proposal.
- 8.4 (Exceptions to Fee Proposal):** The Customer acknowledges and agrees that, notwithstanding any Fee Proposal:
- (a) additional per-hour consulting time (at the relevant Standard Fee rates) may be required to bring the Customer System (or specific parts of the Customer System) up to a usable industry standard.
 - (b) any identified faults (hardware or software) identified in a Customer System will be an additional cost for the Customer charged on an hourly basis.
 - (c) any requests for further Services (for example adding new users, adding new software) will be an additional cost for the Customer charged on an hourly basis.
- 8.5 (Up Front Payment)**
- (a) BluePackets requires up-front payment for any hardware or software provided to the Customer by BluePackets (**Up Front Payment**). Generally speaking, BluePackets does not require Up Front Payment in respect of the other Services provided by BluePackets.
 - (b) BluePackets may bill for Services in advance of the provision of those Services in its discretion.
- 8.6 (Estimated Costs):** Unless BluePackets has provided a Fixed Price Quote, the total labour cost amount is an estimate only. BluePackets charges for actual labour hours incurred, so the billable amount may be less than what has been estimated. BluePackets provides no guarantee that additional costs will not be incurred in carrying out the Services.
- 8.7 (Labour Costs):** Labour costs are charged on an ad-hoc basis depending on the labour time spent.
- 8.8 (Invoicing):** BluePackets will invoice the Customer either monthly or at the end of a relevant project as agreed between the parties. The invoice will incorporate all fees and Expenses related to the provision of Services over the relevant period, plus GST. The Customer must pay the invoice within 14 days of issue. Invoices will be communicated via email unless otherwise agreed.
- 8.9 (Disputed Invoice):** If the Customer disputes any invoice, then the Customer must contact BluePackets in writing setting out the details of the dispute (**Notification**) within 60 days of the date of invoice. BluePackets will review and consider the Notification, and may, in BluePackets' discretion, either:
- (a) agree to amend the disputed invoice to take account of the Customer's concerns; or
 - (b) reject the dispute and require the Customer to pay the invoice.
- 8.10 (Expenses):**

- (a) **(Expenses the responsibility of the Customer):** Subject to paragraph (b), any Expenses incurred by BluePackets in providing the Services will be charged at cost directly to the Customer where such Expenses are pre-approved in writing by Customer.
- (b) **(Fixed Expenses):** The Customer will not be responsible for any Expenses that have been specifically incorporated into a Fixed Price Quote.
- (c) **(Invoicing of expenses):** Any Expenses incurred by BluePackets will be included in the invoices issued to the Customer pursuant to clause 8.8.

8.11 (Information to debt collectors): If BluePackets needs to take action against the Customer for an Overdue Amount, BluePackets may disclose to its debt collection agents any personal information that the collection agent reasonably requests in order to recover the Overdue Amount (and any interest) from the Customer.

8.12 (GST):

- (a) **(GST Recovery)** If a Supply under these Terms is subject to GST, the Recipient must pay to the Supplier an additional amount equal to the amount of any payment in connection with the Supply multiplied by the applicable GST rate.
- (b) **(Tax Invoices):** The Supplier for any Taxable Supply under these Terms must deliver to the Recipient a Tax invoice that complies with all of the requirements of the GST Act prior to any obligation arising on the Recipient to pay the consideration for a Taxable Supply.
- (c) **(Time of Payment):** The additional amount is payable at the same time as the consideration for the Supply is payable or is to be provided. However, the additional amount need not be paid until the Supplier gives the recipient a Tax Invoice.
- (d) **(Change in GST amount):** If the amount of GST payable on Supplies under these Terms changes because of an Adjustment Event, the parties must do all things necessary to ensure that the Adjustment Event is appropriately recognised, including the issue of an Adjustment Note if required under the GST Act.
- (e) **(Meaning of Key Terms):** Capitalised terms used in this clause that are not otherwise defined in these Terms have the meaning given in the GST Act.

9 SUSPENSION AND TERMINATION

9.1 (Breach of terms or failure to pay for services): If a Customer fails to pay some or all of the invoiced amount within the required payment time (**Overdue Amount**) under these Terms, or otherwise breaches any provision of the Terms, then BluePackets may, in its sole discretion, do some or all of the following:

- (a) **(Suspension):** Immediately suspend provision of the relevant Service to the Customer in accordance with clause 10 of these Master Terms until the Overdue Amount (and any interest, fees and charges payable) has been paid in full or the breach of the Terms has been remedied;
- (b) **(Cross Suspension):** Where more than one Service is provided to the Customer, BluePackets may, at its sole discretion, suspend provision of any or all of the other Services, including those Services that have been paid up to date by the Customer, until the Overdue Amount (and any interest and other fees and charges payable) has been paid in full;

- (c) **(Termination):** Terminate any further provision of the Services (or any other services) to the Customer;
- (d) **(Retain goods purchased by BluePackets on behalf of Customer):** retain any Equipment purchased by BluePackets on behalf of the Customer if such Equipment has not been paid for in full by the Customer; or
- (e) **(Interest):** charge interest on any Overdue Amount at a rate of 2% per month.

BluePackets will not be liable for any loss, damage, disadvantage or harm that the Customer may suffer as a result of BluePackets deciding not to continue to perform any further work for the Customer in accordance with this clause.

- 9.2 (Suspension and renewal fee):** The Customer acknowledges that if the Services are suspended pursuant to clause 9.1, BluePackets may charge the Customer a suspension and renewal fee which will reflect the costs to BluePackets associated with the suspension and renewal of the relevant Services (**Suspension and Renewal Fee**).

10 WARRANTIES

- 10.1 (BluePackets Warranty):** BluePackets warrants that it will take all reasonable care and diligence to ensure the Services are provided to the Service Standard. The Customer acknowledges that IT Systems are dynamic and require ongoing maintenance and monitoring. BluePackets warrants that while it will endeavour to ensure its workmanship will be provided to the Service Standard, it cannot be held responsible for occurrences outside of its control and which reflect the nature of a dynamic IT System, including without limitation, viruses.

- 10.2 (Customer Warranty):** The Customer warrants that it will:

- (a) take all reasonable steps to facilitate the provision of the Services by BluePackets; and
- (b) pay all properly invoiced amounts when due and payable and any Overdue Amounts on demand.

11 LIMITATION OF LIABILITY

- 11.1 (Party's liability is limited):** Subject to law, each party's liability is limited to the total amount of fees invoiced to the Customer in respect of the Services over the 6 month period prior to the liability arising other than liability arising from:

- (a) any unlawful or negligent act or omission or wilful misconduct; or
- (b) a breach of confidence.

- 11.2 (Damage or loss caused by the Customer or by the effluxion of time):** BluePackets will not be liable for any damage or loss incurred by the Customer where such damage or loss:

- (a) is caused by any interference with Equipment caused by the Customer or the Customer's agents, employees, or nominees;
- (b) occurs in respect of Equipment provided or installed by BluePackets that is outside of the manufacturer's warranty.
- (c) is due to the failure of any hardware or software subject to law.
- (d) is caused by any breach by the Customer of these Terms.

- 11.3 (Suspension):** BluePackets will not be liable where the Customer incurs loss due to a suspension of Services by BluePackets caused by a failure of the Customer to pay any amount to BluePackets when such amount is due and payable, or where such suspension is otherwise permitted pursuant to these Terms.

12 INDEMNITY

12.1 **(Customer):** The Customer shall:

- (a) indemnify and keep indemnified on demand; and
- (b) by way of continuing indemnity, defend and keep harmless,

BluePackets and its officers, contractors and employees from and against all direct liabilities, damages, losses, penalties, demands, suits, costs, payments, outgoing expenses and proceedings of any nature whatsoever in relation to:

- (c) any failure by the Customer to pay any amount due and payable to BluePackets;

12.2 **(Limitation):** The indemnity in clause 12.1 does not extend to any loss or damage that is attributable to the negligent or reckless act or omission, or wilful misconduct, of BluePackets or its officers and employees (including any breach of these Terms by BluePackets).

12.3 **(Survival):** The provisions of this clause 12 survive termination of these Terms.

13 PRIVACY

13.1 **(Privacy):** BluePackets is bound by the privacy principles contained under the Privacy Act 1988 (Cth). BluePackets' privacy policy is available at its website www.bluepackets.com.au (**Privacy Policy**). BluePackets may use and disclose this information in accordance with the Privacy Act where required in relation to the Services that BluePackets provides, and in accordance with the Privacy Policy.

13.2 **(Privacy and International Suppliers):** Customers are advised that BluePackets may provide the Customer's personal information to various entities contracted by BluePackets from time to time (**Third Parties**) where authorised by Customer in writing. Some of the Third Parties may be located or may store a Customer's personal information offshore.

14 CREDIT CHECKS

(Credit checks): If BluePackets provides the Services in advance of payment, then BluePackets may, in its sole discretion, liaise with third party providers to obtain a credit search and credit history of the Customer. The Customer agrees to cooperate with BluePackets in respect of any such credit check.

15 BLUEPACKETS TIME AND ATTENTION

BluePackets agrees to devote all necessary time, attention, work, effort and expertise to the provision of the Services as reasonably determined by BluePackets from time to time.

16 LEGAL ADVICE

The Customer is invited to obtain independent legal advice in relation to these Terms if the Customer would like to do so. BluePackets recommends that the Customer obtain such independent advice.

17 AMENDMENT

These Terms may be varied by BluePackets upon prior written notice of not less than thirty (30) days to the Customer. Prior to the expiration of such notice, Customer shall have the right to terminate this Agreement with immediate effect where it deems, in its sole discretion, that such variation is not acceptable to Customer.

18 DISPUTE RESOLUTION

(Informal resolution): BluePackets will initially attempt to resolve any dispute that may arise between the Customer and BluePackets in relation to the Services by informal means. BluePackets agrees to take all reasonable steps to resolve any dispute to the Customer's satisfaction.

19 RECORDS

19.1 (Records): Each party must keep such information and material in respect of the Services from time to time to ensure that the other can satisfy its obligations under these Terms and pursuant to Relevant Law.

19.2 (Survival): This clause 19 of the Master Terms survives termination of these Terms.

20 CONFIDENTIALITY

20.1 (Confidential Information): BluePackets agrees to:

- (a) treat all Confidential Information as secret and confidential and not use such Confidential Information for any unauthorised purpose;
- (b) not disclose any Confidential Information to any person other than an employee or agent or sub-contractor who requires that information to effectively perform their respective duties, who are aware the information is confidential, and who are bound to treat it as such;
- (c) ensure that it complies with any separate confidentiality agreements or undertakings entered into with the Customer from time to time; and
- (d) not use any Confidential Information for its own purposes, or for the benefit of any third party, except as expressly authorised by the Customer.

20.2 (Exception): Nothing in this clause 20 prevents the BluePackets from disclosing Confidential Information:

- (a) to its professional advisers upon those persons undertaking to keep confidential any information so disclosed on terms no less onerous than those contained in this Agreement; or
- (b) to comply with any Relevant Law or requirement of any regulatory body; or
- (c) to the extent that disclosure is required to perform the Services in accordance with these Terms; or
- (d) with the prior written consent of the Customer.

20.3 (Survival): The provisions of this clause 20 will continue to apply notwithstanding that these Terms have come to an end.

21 INTELLECTUAL PROPERTY

21.1 (Definitions): For the purposes of this clause, the following definitions apply:

- (a) **Intellectual Property Rights** means:

- (i) copyright, patents, procedures, processes, source code, formulae, methods of production, inventions, innovations, know-how, confidential information, database rights, and rights in trademarks and designs (whether registered or unregistered);
 - (ii) applications for registration, and the right to apply for registration, for any of the same; and
 - (iii) all other intellectual property rights and equivalent or similar forms of protection, existing anywhere in the world; and
- (b) **IP Materials** means all documents, software, photographic or graphic works of any type, and other materials in any medium or format which are created by or on behalf of BluePackets in the course of performing the Services and which are protected or relate to Intellectual Property Rights.
- 21.2 (Treatment of Intellectual Property Rights):** The Customer is granted an irrevocable, perpetual, worldwide, royalty free right, including the right to sub-license, to all Intellectual Property Rights in any IP Materials produced by BluePackets in the performance of, or giving effect to the Services,. However, the Customer acknowledges that BluePackets retains ownership of all Intellectual Property Rights which exist or which arise (whether through creation, authorship, production, evolution, discovery, development or invention) in the process of performing the Services.
- 21.3 (Third Party Rights):** The Customer represents and warrants that it will not infringe the Intellectual property Rights of any third party in requesting BluePackets to perform the Services. The Customer indemnifies BluePackets for any loss, damage or expense suffered or incurred by BluePackets as the result of any claim that the items serviced by BluePackets at the request of the Customer infringe the Intellectual Property Rights of any person.
- 21.4 (Survival):** The provisions of this clause 21 survive termination of these Terms.
- 22 GENERAL PROVISIONS**
- 22.1 (Severance):** Any provision of these Terms which is invalid or unenforceable in a particular jurisdiction, may be read down or severed to the extent of the invalidity or unenforceability in that jurisdiction only. The invalidity or unenforceability of a provision of these Terms in one jurisdiction does not affect the:
- (a) application of that provision in any other jurisdiction in which it is valid and enforceable; or
 - (b) remaining provisions of these Terms.
- 22.2 (Authority):** Unless these Terms expressly provide otherwise, no party has the authority to act for, or incur any obligation on behalf of, the other parties.
- 22.3 (Costs):** Each party must bear its own costs in respect of the entry into and negotiation of these Terms.
- 22.4 (Entire Agreement):** These Terms comprise the parties' entire understanding in relation to the subject matter of these Terms and supersede any prior agreement or arrangement.
- 22.5 (Reliance):** The Customer acknowledges that it has entered these Terms:
- (a) without reliance on any representation made by BluePackets or its officers or agents; and
 - (b) having made its own investigation and analysis of all matters relevant to these Terms.

- 22.6 (Cumulative):** The rights, remedies and powers of the parties under these Terms are cumulative and not exclusive of any rights, remedies or powers provided to the parties by law.
- 22.7 (Consent):** Unless these Terms expressly provides otherwise, any approval or consent required to be obtained under these Terms may be withheld, given conditionally, or given unconditionally, in each case in the relevant party's absolute discretion.
- 22.8 (Waiver):** A right granted to one party under these Terms may only be waived by that party giving notice in writing to the other party. A party does not waive any right granted under these Terms by not exercising that right immediately.
- 22.9 (Governing law and Jurisdiction):** These Terms are governed by the laws in force in the State of New South Wales and the parties submit to the exclusive jurisdiction of the Supreme Court of New South Wales to decide any dispute between them in relation to these Terms.

23 CYBER RISK INSURANCE

- 23.1** BluePackets accepts no liability in the event that the Customer has not obtained and maintained appropriate cyber risk insurance in place.

23.2

24 TERMINATION

- 24.1 (Termination):** Subject to any specific termination provisions in an Applicable Schedule, either party can terminate these Terms on 30 days' prior written notice to the other.
- 24.2 (Consequences of Termination):** On termination:
- (a) **(No further obligations on BluePackets):** BluePackets has not further obligation to provide any Services to the Customer.
 - (b) **(Outstanding invoices):** The Customer must pay all remaining amounts owing to BluePackets.

SCHEDULE 1 - PURCHASE OF EQUIPMENT

1 DEFINED TERMS

In this Schedule:

- (a) **Equipment** means the Hardware and/or Software purchased from BluePackets by the Customer and described in the Fee Proposal and Item 6 of the Details.
- (b) **Hardware** has the meaning given by the Master Terms.
- (c) **Software** has the meaning given by the Master Terms.

Any other term that is not otherwise defined has the meaning given to that term in the Master Terms.

2 GENERAL TERMS OF SALE OF EQUIPMENT

- 2.1 **(Supply)**: BluePackets agrees to provide the Customer the Equipment, and any other Hardware or Software requested by the Customer from time to time in accordance with the Master Terms and this Schedule 1. The Customer agrees to the purchase subject to the terms and conditions of these Terms.
- 2.2 **(No Refunds or Returns)**: The Customer acknowledges that, subject to law, all Equipment is non-returnable and non-refundable.
- 2.3 **(Payment)**: The Customer must pay BluePackets in full for all Equipment prior to delivery of the Equipment by BluePackets. The Customer acknowledges that BluePackets may withhold delivery of the Equipment until payment has been made in full
- 2.4 **(Manufacturer Warranty)**: Subject to law and the relevant provisions of the Consumer Code, BluePackets does not provide any warranty in respect of the Equipment. The warranty is the responsibility of the manufacturer of the Equipment. BluePackets may, however, on request, liaise with the manufacturer of the Equipment and act as agent of the Customer to arrange for any manufacturer warranty claims to be satisfied. However, any onsite visit required for diagnosis, or reinstallation of software will be charged out at BluePackets usual rates.
- 2.5 **(Alternative Product may be supplied)**: If a particular product is not in stock, then BluePackets may, with the Customer's prior consent, provide an alternative product in place of the original product.
- 2.6 **(Unsafe Equipment)**: If the Equipment breaks down or becomes unsafe to use, the Customer will:
 - (a) immediately stop using the Equipment;
 - (b) take all necessary steps to prevent injuries from occurring to any person or property as a result of the condition of the Equipment; and
 - (c) not repair or attempt to repair the Equipment without BluePacket's prior written consent.
- 2.7 **(No liability for interference)**: The Customer agrees that BluePackets will have no liability to the Customer for any loss or damage to the Customer or any third party if the Customer interferes with any Equipment.

3 ADDITIONAL INDEMNITY

3.1 In addition to the provisions of the Master Terms, to the extent permitted by law, BluePackets excludes all liability arising from any failure of any Equipment supplied by BluePackets to the Customer, or any loss, damage or injury to person or property occurring as a result of the use of the Equipment by the Customer or any third party.

3.2 (Indemnity): The Customer indemnifies BluePackets for any loss or damage suffered by BluePackets as a result of any interference with the Equipment by the Customer.

4 EXCLUSION

(Exclusion of liability): To the extent permitted by law, BluePackets excludes all liability arising from any failure of the Equipment or any loss, damage or injury to person or property occurring as a result of the use of the Equipment.

SCHEDULE 2 - ONGOING MAINTENANCE

1 DEFINED TERMS

In this Schedule:

- (a) **Fixed Maintenance Fee** has the meaning set out in Item 10 of the Details.
- (b) **Monthly Baseline Maintenance** means essential maintenance of the Customer's Servers and Workstations incorporating Server hardware health checks, backup checks, key software security updates and reporting.

Any other term that is not otherwise defined has the meaning given to that term in the Master Terms.

2 ONGOING BASELINE MAINTENANCE

- 2.1 BluePackets agrees to perform ongoing Monthly Baseline Maintenance on the Customer's Servers and Workstations for the Fixed Maintenance Fee.
- 2.2 The Customer acknowledges that the Monthly Baseline Maintenance is not all-inclusive, and specifically excludes any other matters, including without limitation any additional repairs.
- 2.3 BluePackets will perform the management of this maintenance remotely. Any requirement for BluePackets to attend the Customer's premises will be at an additional cost (see the Standard Fees under the Master Terms).

3 SERVICE STANDARD

Unless otherwise agreed in writing, BluePackets does not undertake or guarantee any minimum response of resolution time. BluePackets will, however, use its best efforts in respect of all services provided.

4 SERVER AND WORKSTATION REQUIREMENTS

- 4.1 (**Minimum Requirements - Servers**): The Customer agrees that the provision of the Services is subject to any servers within the Customer System satisfying at least the following minimum requirements:
 - (a) Windows Server 2016 Operating System (64 bit)
 - (b) Memory: Minimum 16GB
 - (c) Modern Intel or AMD CPU (no more than 6 years old)
- 4.2 (**Minimum Requirements – Workstations**): The Customer agrees that the provision of the Services is also subject to any workstations within the Customer System satisfying at least the following minimum requirements:
 - (a) Windows 10 Professional or newer; or MacOS 11 or newer;
 - (b) Memory: 8GB
 - (c) Modern Intel or AMD CPU (no more than 6 years old)
- 4.3 (**Underpowered and High-Demand Systems**): At its discretion, acting reasonably, BluePackets may deem a server or workstation to be classed as either:
 - (a) an Underpowered System; or

- (b) a High Demand System.

4.4 (Failure to meet minimum requirements or designation as an Underpowered or High Demand System): If BluePackets makes one of the determinations in clause 4.3, or determines that the Customer does not satisfy the minimum requirements set out in clause 4.1 and 4.2, it may (in its discretion):

- (a) decide, following written notice to the Customer, not to continue to provide the Services; or
(b) subject to clause 4.5, decide to continue to provide the Services.

4.5 (Additional Maintenance Fees): If BluePackets decides to continue working on an Underpowered System or a High Demand System, it may do so on an hourly rate based on BluePackets standard hourly rates at the relevant time (including in respect of any maintenance that is required). If this situation arises, BluePackets will notify the Customer before proceeding with additional work.

4.6 (Identified Faults): If BluePackets is required to remedy any faults (whether Hardware or software) identified in a System, the costs for remedying such faults will, unless otherwise agreed by BluePackets from time to time, be charged at an hourly rate based on BluePackets standard hourly rates at the relevant time.

5 REPORTING, INFORMATION AND MONITORING

5.1 (Reporting): BluePackets agrees to provide updates to the Customer regarding the provision of the Services (including in respect of “work in progress”) upon reasonable request of the Customer.

5.2 (Information): BluePackets agrees to provide the Customer with reasonable information regarding the provision of the Services.

5.3 (Installation of Monitoring Device): By accepting our Fee Proposal and agreeing to be provided with Services by BluePackets, the Customer agrees to the installation of BluePackets’ monitoring agent on all current devices, as well as any devices connected to the Customer System in the future. If there are particular devices that the Customer does not wish to be monitored, these must be notified to BluePackets in writing prior to any Services (or further Services) being provided to the Customer. Instructions to effect the removal of the monitoring agent will be provided upon termination of this Agreement. ANNEXURE A

This is a fee for service offering. Only the services specifically listed are included. This is not an all-inclusive package. Customer acknowledges that additional costs will be involved in maintaining the Customer's systems.

Workstations Tasks to be undertaken by BluePackets:

- Updates to the operating system as supported by our system.
- Removal of system temporary files that are identified by our system.
- Monitoring of the status of the anti-virus software on the system where supported.
- Monitoring of Hard Disk Drive space.
- Automated updates of free third party software that is supported by our system and by the Customer’s system.

Server Tasks to be undertaken by BluePackets:

- Microsoft and Apple Operating system security updates, including major service pack installation for the Microsoft Server operating system.
- Backup test restore of a single file from the most recent backup.
- Monitoring of the status of the server hardware health where supported by our system.

Monitoring of the status of the operating system and services where supported by our system. Monitoring of the anti-virus health status.
Monitoring of the Hard Disk Drive space.
Monitoring of operating system logs for health and failed log-in attempts where supported and detected by our system.

Updates as needed to the following products:

- Trend-Micro Anti-Virus.
- ShadowProtect Backup.
- MailStore (email archiving).

Updates to the server operating system as supported by our system, this will not include all updates.

For both the Server and Workstation Tasks BluePackets will provide a report on the Customer system as part of the maintenance package.

Important information:

Updates will be released on a regular cycle, however updates may be delayed, fail, or be withheld depending on a number of factors including:

- Impact, or potential impact on the operating system
- Timing of release of updates by the producer of the software
- Timing of scheduled installation and system reboots
- The capacity of the Customers' system to accept the updates
- Software updates deemed to be not urgent by BluePackets may be deployed on a non-regular, or as-needed basis.

BluePackets will not be liable for any delay, failure or withholding of an update for any of the reasons above.

Not all Third Party software is included with the non-operating system updates. Any non-free or proprietary updates required will be billed on a per-hour basis for deployment. Updates are only installable when made available by the software producer. No license fees or renewal fees are included with this package. The customer will need to pay for all software separately from this agreement.

BluePackets will undertake this work remotely. No site visit is included. For the avoidance of any doubt, if a site visit is required, then additional fees will be payable by the Customer.

This is a dynamic product, and as such features may be added, changed, or removed from time to time without notice or approval by the Customer.

Shadow Protect backup is the only supported backup software at the time of writing. Restoration of backups using other software may incur a per-hour service fee.

The reports provided to the Customer:

- Will be in a format selected at the sole discretion of BluePackets.
- Are not further customisable.
- Will not include all information on the activity or work undertaken by BluePackets staff. Are subject to change without notice to the Customer.
- Are subject to error and/or omissions, for which BluePackets will not be liable. The information we put into the report relies on a number of 3rd party sources, with availability and the format of the information subject to change without notice.
- Are provided 'as-is' without any further analysis or interpretation included with this product.
- Are the responsibility of the Customer to retain for future reference. For the avoidance of any doubt, BluePackets will not have any responsibility to maintain any reports.

Any feedback, changes, or improvements may be integrated into future system changes by BluePackets in its absolute discretion. BluePackets has sole discretion on any system changes. The Customer irrevocably releases ownership of any improvement suggestions to BluePackets.

Information on the management of the updates.

- System reboots and the following post reboot processes are not individually managed.
- Timing of the automatic reboot can be scheduled for after business hours, however if the Customer requires additional post-reboot monitoring or other tasks to be taken after reboot, then a per-hour fee will be charged by BluePackets to the Customer for this service.
- The service inclusion is limited to the installation of updates only. This may have a range of consequences. Rectification of any consequences of the application or management of updates is not included with this service. Any work required in this regard will be charged by BluePackets to the Customer on a per-hour fee basis if required.
- Systems that are faulty and cannot be updated will require additional per-hour fees to repair, or additional hardware, software and per-hour fees to replace. The Customer will be liable for these additional fees.

Information on optional additions:

BluePackets may offer additional services and/or products from time to time for an additional ongoing fee.

Information on the "Managed Anti-Virus" product:

On a per system, or per user (whichever is larger) basis and for a monthly fee, BluePackets will provide a bundled Third-Party anti-virus product for deployment on selected systems. An email based anti-virus and anti-junk email system may also be deployed on a per-user per month basis. The Managed Anti-Virus product assists with stopping and/or minimising the impact of known malicious software. BluePackets cannot and does not provide any guarantee that all malicious software will be prevented from damaging the Customer's systems.

The particular version of anti-virus and any anti-junk email product may change without notice. The email scanning product will delay the flow of email to your email system. The Customer irrevocably releases BluePackets from any liability associated with such delays.

BluePackets cannot guarantee that all emails will be delivered, or delivered in a timely fashion, and will not be liable if any emails are not delivered, or are not delivered in a timely fashion.

Information on the "Web Protection" product:

The product provides protection against known malicious websites and content. BluePackets cannot and does not provide any guarantee that all known malicious websites and content will be blocked. The product provides limiting tracking and reporting of user activity. The product has the ability to block categories of website access. The categories are not exact. Not all sites within a selected category will be matched, and may be matched incorrectly.

Limits on the "Web Protection" and "Anti-Virus Products":

Any additional customisation of the product to suit the end-users needs will be charged by BluePackets to the Customer on a per-hour basis. We cannot and do not guarantee that the products will be free from defects. The products will not stop all infections, virus' or other malicious activity, and BluePackets gives no undertaking or guarantee that such infections, virus' or other malicious activity will be stopped. The Customer is required to educate and manage their staff on the acceptable use, storage and sharing of data. The products may not stop the loss or exposure of data. The products may not stop the spread of malicious activity beyond your network. The products may not stop the Customer being impacted by other malicious activity such as social engineering based exploits. The anti-virus product will use additional system resources and may slow down your system. The Customer acknowledges that the products may incorrectly identify safe files or electronic correspondence as malicious. BluePackets takes no liability for any Rectification of consequences associated with the use or failure of the products is not included with the fee and will be charged for on a per-hour basis.

Information about system, information, and data access.

The monitoring software will provide BluePackets with remote access to the system(s) it is installed on. The remote access will be used for:

- The provision of support and any support related services
- System monitoring and management
- Asset data collection, asset auditing.
- Any other uses required to service the Customer
- The collection of user and system for accounting, access or other reporting purposes.

The Customer acknowledges that BluePackets will have and will need full system access to perform its tasks.

Requirements

In addition to the minimum standards as defined, BluePackets may at its sole discretion decline to provide any product.

Information on Monitoring

All monitoring is subject to false positives, alert failures, and action failures. BluePackets cannot guarantee that all failures will be identified. BluePackets cannot guarantee that alerts will be actioned. There is no guarantee or requirement for BluePackets to respond to any alert within a specific time frame. Alerts are worked through on a best efforts basis during Business Hours on Business days. BluePackets may stop responding to alerts if the Customer fails to authorise requests for repairs to a system or systems in a timely manner. The Customer may be asked for further approval for per-hour billing to be undertaken based on an alert.

Deployment of the system:

BluePackets will deploy the monitoring software on workstations and servers that are discovered or visible at the time of deployment. Server and/or workstation systems may be missed during this process due to a variety of reasons. The monitoring software may be removed for a variety of reasons. At any time, BluePackets may re-scan your network and add additional workstation and server devices to the monitoring system. It is the Customer's responsibility to ensure that the systems in the maintenance report match the systems that they require to be monitored and updated. Retrospective refunding or discounting is at the sole discretion of BluePackets and is otherwise not available to the Customer.

Other important information:

Unless otherwise agreed upon BluePackets will bill for the full calendar month for which the monitoring software is installed. This billing is not pro-rated based on remaining dates (i.e. a full month is payable by the Customer even if monitoring is only provided for part of a month).

The billing for this service will continue even if unused until the Customer requests the monitoring software to be removed from a particular system(s) OR until BluePackets removes the monitoring software. When the monitoring software is removed BluePackets will give no further notification of the removal.

The Customer is responsible for all other system running costs, including but not limited to:

- Hardware, software licensing, insurance, and general maintenance.
- Electricity, 'bandwidth' (Consumption of ISP upload and download).