

Carrolls Business Solutions Managed IT Services Terms and Conditions

Effective 01 January 2012

ABN: 16 046 990 097

Current Terms

The most current Terms can always be found at:

http://cbsau.com/TandC/CBS_Managed_IT_Services_Terms_and_Conditions.pdf

1. DEFINITIONS AND INTERPRETATION

The Customer, the Fees, the Hardware, the Software and the Services have the meaning given to them in the Proposal.

The following words have these meanings in the Agreement:

Agreement means the Managed Service Proposal including its schedules and annexure(s) and any other document expressly incorporated by reference, subject to clause 3.1, and attached to this Managed IT Support Services agreement.

Billing Month means the period ending on the 30th day of each calendar month or such other day as agreed by both parties.

CPI means the all groups consumer price index of Australia published in any year by the Australian Bureau of Statistics.

GST Law means the New Tax System (Goods and Services) Act 1999 and any other law dealing with the imposition or administration of a goods and services tax in Australia. Terms used in the Agreement, which are defined in the GST Law, have the meaning given in that law.

Installation Services means the Professional Services associated with the installation and commissioning of Managed Service Equipment including Hardware and Software as specified on receipt of a work order, purchase order or Managed Service Proposal.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law including copyright, trademarks (whether or not registered), patents, registered designs and rights in circuit layouts.

Logical Server means a physical server and any virtual servers that are running on it.

Managed Service means a Solution consisting of Services and Support.

Managed Services, Support and Maintenance Pricing means all cost of product and maintenance services with recurring fees that are included in the Managed Service Proposal.

Managed Service Equipment means all equipment, product including hardware, software with recurring fees as listed in the Managed Service Proposal Annexure A.

Proposal means the Managed IT Services proposal detailing the proposed solution including all Managed Services, Support and Maintenance, and Managed Service Equipment. In addition this may include an option for outright purchase for services and product.

Service Commencement Date means the date in which the Managed Service is commissioned and is operational, as stated on the acceptance certificate.

System Configuration means the CBS system as outlined in the Proposal supplied to the Customer and installed in accordance with the terms of the Agreement.

Work Order means a notice received by the customer to commence supplying a Managed Service at specific site in the form set out in Appendix 1 of this agreement.

1.1 Interpretation

The following apply in the interpretation of the Agreement, unless the context requires otherwise.

- (a) A reference to any Act, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (b) A reference to the singular includes the plural number and vice versa.
- (c) A reference to a gender includes a reference to each gender.
- (d) A reference to a party means a person who is named as a party to the Agreement.
- (e) Person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (f) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under the Agreement, their substitutes and assigns.
- (g) An agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them both jointly and severally.
- (h) Includes means includes but without limitation.
- (i) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (j) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (k) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to the Agreement.

- (l) A reference to dollars or \$ is to Australian currency.
- (m) A heading is for reference only. It does not affect the meaning or interpretation of the Agreement.
- (n) Any schedule attached to this Agreement forms part of it. If there is any inconsistency between any clause of this Agreement and any provision in any schedule or attachment, the clause of this Agreement will prevail.

2. TERM OF AGREEMENT

This agreement commences on the date that this agreement (or counterparts of it) are signed by both parties and is effective for the period of twelve (12) months after that date. The agreement will then automatically renew for successive periods of twelve (12) months each during any of which either party may terminate this agreement by giving the other party not less than ninety (90) days written notice.

Notice of any changes to the monthly rate or terms of this agreement will be provided no less than 30 days before automatic renewal takes place at which time the Client has the right to negotiate or terminate the agreement.

3. THE AGREEMENT

3.1 The Agreement is formed when the Customer has signed and witnessed this Agreement and is accepted by CBS. Any additional terms in a Customer's work order or purchase order do not form part of this Agreement unless expressly accepted by CBS in writing.

3.2 These Managed IT Support Services may only be varied if approved in writing by CBS in writing.

3.3 The Agreement contains the entire understanding between the parties for the supply of a Managed Service by CBS to the Customer and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the Supplies. For the avoidance of doubt any quotation or other material provided by CBS does not form part of the Agreement.

3.4 In the event of any inconsistency between these Managed IT Support Services and other terms in the Agreement, these Managed IT Support Services prevail to the extent of such inconsistency.

3.5 The System Configuration may incorporate special terms and conditions applicable to the supply of all or part of the Managed Service. In the event of any inconsistency between these Managed IT Support Services and any terms and conditions specified in the System Configuration, and then to the extent of such inconsistency the former prevails.

3.6 CBS and its suppliers reserve the right to carry out product improvement programmes, which could result in changes to the Managed Service to be delivered under this agreement, provided that these changes will not degrade the quality of the managed service equipment or their

performance in comparison with the relevant manufacturer's written description and specifications current as at the date of the Proposal.

4. FEES AND PAYMENT

Client shall effect payment of CBS fees in respect of:-

- 4.1 The telephone/e-mail support services within 14 (fourteen) days from the date of each of CBS invoices;
- 4.2 Product sales (including hardware sales and software licensing) at time of order unless prior arrangements have been made with CBS management. A maximum of 7 (seven) days will be extended for product sales;
- 4.3 The on-site support services within 14 (fourteen) days from the date of each of CBS invoices;
- 4.4 any expenses incurred in providing the on-site services within 7 (seven) days from the date of each of CBS invoices
- 4.5 The ad-hoc support services within 14 (fourteen) days from the date of CBS invoices;
- 4.6 or as otherwise agreed to in writing between CBS and Client and recorded in the support schedule.
- 4.7 If Client fails to pay CBS' fees in accordance with the provisions of this agreement CBS shall be entitled, without prejudice to its rights in terms of this agreement and in terms of law, to:-
- 4.8 Immediately suspend the support services until Client pays the total outstanding fees. Client acknowledges that it will have no claims of whatever nature against CBS in respect of the suspension of the support services in terms of this clause; or
- 4.9 Cancel this agreement and claim any damages that it may have suffered.
- 4.10 In the event of CBS instructing it's solicitors to collect an overdue amount, all legal fees and collection charges as between solicitor and CBS shall be borne and charged to the Customer and exercise of these rights will be without prejudice to any other rights CBS may have under the Agreement.

Fees are defined in Appendix B

5. GST

- 5.1 GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other law dealing with the imposition or administration of a goods and services tax in Australia. Terms used in this clause which are defined in the GST Law have the meanings given in that law.
- 5.2 Amounts payable under the Agreement do not include GST unless otherwise stated.
- 5.3 If any payment made or other consideration given by a party (Payer) in connection with this agreement does not include GST and is the consideration for a taxable supply for which the party who makes the supply (Supplier) is liable for GST, the Payer must, at the same time as the

consideration is given, pay to the Supplier an additional amount equal to the amount of the consideration multiplied by the rate of GST under the GST Law.

5.4 Any reference in the Agreement to a cost or expense to be reimbursed by one party to another (Payee) includes any GST payable in connection with a taxable supply to which that cost or expense relates, less the amount of any input tax credit that the Payee or, if the Payee is a member of a GST group, the representative member of the GST group is entitled to claim.

6. CONFIDENTIALITY

CBS acknowledges that in the course of the relationship created by this agreement information pertaining to Clients' business ("Confidential Information") may be disclosed to CBS. CBS agrees to treat all Confidential Information disclosed to it as strictly confidential and agrees:

6.1 not to disclose the Confidential Information to anyone or copy the Confidential Information without Clients' written consent;

6.2 not to use the Confidential Information for any purpose other than what is reasonably contemplated under this agreement for the purpose of its performance;

6.3 to notify Client immediately on becoming aware or suspecting that an unauthorised disclosure or use of the Confidential Information has occurred or is likely to occur;

6.4 to take all reasonable precautions to ensure that its personnel do not disclose or make unauthorised use of the Confidential Information;

6.5 on expiry or earlier termination of this agreement, to return to Client all documents or material containing or embodying the Confidential Information; and

6.6 if requested by Client, to ensure that its Personnel sign and deliver to Client a confidentiality agreement in substantially the same terms as this agreement.

This clause will survive expiry or earlier termination of this agreement.

7. CBS AS INDEPENDENT CONTRACTOR

7.1 CBS is an independent contractor without authority to bind Client by agreement or otherwise and neither CBS nor any of its personnel is an agent or employee of Client by virtue of this agreement.

7.2 CBS is solely responsible for payment, if any, of pension, superannuation, workers' compensation, taxes and other amounts incidental to employment in respect of any of its Personnel and neither CBS nor any of its Personnel has any entitlement from Client in relation to any form of employment or related benefit or entitlement.

7.3 Without detracting from clause 10b) of this agreement, CBS indemnifies Client against all costs, demands and liability Client suffers or incurs as a result of Client being or becoming responsible for, or incurring any liability in respect of, any of the matters referred to in clause 10b). Client may at any time reduce the payments (or any of them) it is required to pay CBS under this agreement by the amount (if any) payable by CBS pursuant to this indemnity.

SERVICES

7.4 CBS will provide the Services with due care and skill

7.5 CBS reserves the right to determine which personnel will perform the Services.

7.6 The Customer must obtain all third party consents required for CBS to provide the Services, provide a safe working environment at the Customer's premises for the personnel performing the Services and supply them with such assistance, including access to the Customer's resources, personnel, equipment and systems, as CBS may reasonably require to provide the Services.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 Intellectual Property Rights in the Managed Service Equipment and Services are owned by CBS or the manufacturer or licensor of the Hardware or Software (Third Party Suppliers).

8.2 The Customer must promptly notify CBS of any infringement, or any suspected or claimed infringement, of any Intellectual Property Rights in the Managed Service Equipment and Services (Infringement) and the Customer:

(a) must give CBS all information available to the Customer in connection with the Infringement;

(b) must render its fullest co-operation and assistance to CBS in relation to resolving the Infringement;

(c) must not, without the prior written consent of CBS, make any admissions concerning the Infringement; and d) releases and holds harmless CBS from any liability in respect of an Infringement if the Customer used the Managed Service Equipment or Service not supplied or authorised by CBS, or modified in a manner not authorised by CBS, or in any way not authorised by or reasonably foreseen by CBS.

(d) CBS and the Third Party Suppliers will have complete control at their own expense of all matters relating to any claim including any defence, negotiations, settlement or compromise in respect of the claim.

9. MODIFICATIONS

9.1 CBS reserves the right to modify the terms of this agreement at any time if there is any change in the number of product or users supported.

9.2 Reasons for modifying this agreement may include, but are not limited to, breaches of our Fair Use Policy, changes to your software, hardware, infrastructure or size of organisation.

9.3 Client may increase their level of support at any time and this will take effect from the next monthly payment.

9.4 Client may reduce the level of support required with effect 30 days from the next monthly payment.

10. TERMINATION

10.1 Client may terminate this agreement immediately by notice in writing to CBS if:

(a) CBS fails to comply with the service level requirement in Appendix A more than five (5) times during any calendar month;

10.2 There is a material change in the ownership or control of CBS or the sale or transfer of all, or substantially all, of CBS assets occurs.

10.3 Either party may terminate this agreement immediately by notice in writing to the other party if:

(a) the other party is in breach of any term of this agreement and, if the breach is capable of remedy, it is not remedied within thirty (30) days of that party being notified of the breach by the first party;

(b) The other party becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration including liquidation, provisional liquidation, receivership, voluntary administration or any analogous administration;

(c) The other party enters into a scheme of arrangement or composition with creditors; or

(d) The other party ceases or threatens to cease conducting its business.

10.4 Termination of this agreement will not prejudice the rights of either party in respect of any prior breach of this agreement by the other party.

10.5 Upon termination of the Agreement by CBS under clause 11.3, the Customer must immediately pay CBS all Fees and other amounts payable under the Agreement, other than Fees for Services due to be provided after the date of termination.

10.6 If the customer wishes to terminate this agreement before the completion of the Initial Term then the customer must pay within 30 days from date of invoice to CBS:

(a) All overdue Total Monthly Managed Service Payments

(b) The Total outstanding Monthly Managed Service amounts calculated on the number of months still outstanding to complete the Initial Term (12 months), based on the last monthly invoice issued for the Managed Service

10.7 If after termination of the agreement, for whatever reason, CBS advises the Client that there are proprietary software or internal arrangements that belong to CBS then the client will grant CBS access to the system to remove these and restore the system to an acceptable state. This may be done under the supervision of the clients staff.

11. NOTICES

Any notice or other communication in relation to this agreement must be in writing, may be given by delivery, by posting (by ordinary mail) or by facsimile transmission to the addressee's address or

facsimile number specified in the Agreement (or as otherwise notified by one party to the other from time to time) and is deemed delivered two (2) business days after posting or on completion of the facsimile transmission, as the case may be.

12. INDEMNITY

12.1 The Customer must indemnify CBS in relation to all losses, damages, expenses, liabilities, claims, demands, actions and suits suffered or incurred by, or made or instituted against, CBS as a result, directly or indirectly, of a breach by the Customer of its obligations under the Agreement.

12.2 Subject to any condition, warranty or right implied by the Trade Practices Act 1974 (Cth) or any other law which cannot by law be excluded by agreement, CBS gives no warranties apart from those, if any, expressly set out in the Agreement and all other implied conditions, warranties and rights are excluded.

12.3 Where any condition, warranty or right is implied by law and cannot be excluded, CBS limits its liability for breach of that implied condition, warranty or right to the extent permitted by law.

12.4 Subject to the qualifications in section 68A of the Trade Practices Act 1974 (Cth) or any other law, CBS's liability for any breach of any implied condition, warranty or right, in connection with the supply of Managed Service Equipment or services, is limited:

(a) In the case of Managed Service Equipment supplied, to any one or more of the following (as CBS may determine):

- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the costs of replacing the goods or of acquiring equivalent goods; or
- (iv) the payment of the costs of having the goods repaired; and

(b) In the case of services supplied, to one of the following (as CBS may determine):

- (i) the supplying of the services again; or
- (ii) the payment of the costs of having the services supplied again.

12.5 Subject to the provisions of 13.1, 13.2, 13.3 and despite any implication arising from any other provisions of the Agreement, CBS is not liable to the Customer in contract, in tort (including negligence), under any statute (to the extent permitted by law) or otherwise for, or in respect of, any indirect or consequential loss or damage suffered by the Customer or any other person arising out of any breach or other act or omission in connection with this agreement.

12.6 The parties agree that indirect or consequential loss or damage, for the purpose of clause 0 means or includes:

(a) any financial loss or expense including loss of business opportunity, including where caused by loss of use or of goodwill, loss of data or delay in the performance of any obligation;

(b) any expense incurred in connection with that loss or in mitigation or attempted mitigation of that loss; and

(c) payment of liquidated sums or damages in accordance with any other agreement, even if those losses were in the contemplation of the parties at the time they entered into the Agreement.

12.7 Subject to clauses 13.1, 13.2,13.4,16.d and 13.5 and except in the case of any claim for damages arising from the death of, or injury to, any person caused by any wilful or negligent act or omission of CBS, but otherwise notwithstanding anything else to the contrary contained in or implied in the Agreement, any liability which CBS may have to the Customer in relation to breach of an obligation:

(a) in relation to the Supplies, will be limited to the remedies set out in clauses 13.4(a) and 13.4(b); and

(b) Otherwise, for the aggregate of all events, is limited to the total Fees then paid by the Customer under the Agreement.

13. SEVERABILITY

Each of the provisions of this agreement shall be considered as separate terms and conditions and in the event that this agreement is affected by any legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provision shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions hereof shall remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not a part hereof.

14. FORCE MAJEURE

14.1 CBS is not liable for any failure to observe its obligations under the Agreement where such failure is wholly or substantially due to any cause beyond the reasonable control of CBS including strikes, industrial action, breakdown of plant, machinery or delivery vehicles or vessels, war, blockades or governmental interference or request or any act of God, or due to a shortage in transportation or inability to obtain labour or materials from the usual sources of CBS or the manufacturer or licensor of the Hardware, Software or any part of the Hardware or Software.

14.2 Any delay resulting from any of the above causes described in clause 15.1 will immediately extend the date for performance by CBS of any obligations under the Agreement by the period of the delay.

15. MISCELLANEOUS PROVISIONS

15.1 CBS may not subcontract the performance of this agreement, or any part of it, without Clients' prior written consent.

15.2 CBS may not assign the benefit of this agreement without Clients' prior written consent.

15.3 A provision of or right under this agreement may not be waived except in writing signed by the party or parties to be bound.

15.4 CBS shall not issue any press release or deploy any marketing, advertising or promotional material that uses the Clients' name without obtaining the Clients' prior approval to that material and its use.

15.5 This agreement contains all of the agreements, covenants, understandings, conditions, representations, warranties and other undertakings made between CBS and Client concerning the subject matter of this agreement. All modifications and amendments must be in writing and executed by CBS and Client.

15.6 This agreement is governed by the laws for the time being of the State of New South Wales in Australia and the parties submit to the non-exclusive jurisdiction of the courts of that state.

15.7 Any service and consulting times detailed in any communication are estimates only and are based on information provided by you. Where information is inaccurate, customer commitment is less than promised or customer supplied equipment/services are incomplete actual times may vary significantly from the time estimated. Invoicing therefore will be based upon actual time spent unless otherwise stated in the proposal

15.8 Additional work requested which is outside of the scope of a proposal would be at additional cost.

15.9 Prices quoted exclude freight unless otherwise stated.

15.10 Any Goods supplied will be invoiced on date of receipt at your premises.

15.11 Payment for any hardware or software supplied is required at the time of customer order unless prior arrangements have been made with CBS management.

15.12 Discounts for pre-payment will only be allowed if pre-payment has actually occurred.

15.13 Where payment for Goods or Services is to be provided via a Lease or Finance arrangement, responsibility for payment shall remain with the client at all times.

15.14 All prices listed in quotations & proposals are correct at time of quotation but are subject to change without prior notice. In particular, currency exchange rate fluctuations may lead to frequent changes in the prices of goods sourced outside Australia.

15.15 It should be noted that specifications of software and hardware products are subject to change without notice according to supplier variations and other influences that are out of our control.

15.16 CBS will not proceed with the supply of any product or services listed in quotations & proposals unless the client supplies a signed and dated purchase order or have signed and dated Client acceptance portion of our quote or have signed and dated any Product Licence Agreement that may be required.

15.17 CBS does not waive a right or remedy under the Agreement or at law if it fails to exercise a right or remedy, only partially exercises a right or remedy, or delays in exercising a right or remedy. A waiver or consent is effective only if in writing and properly signed by or on behalf of CBS.

15.18 Notices under the Agreement must be in writing and transmitted by mail, email or facsimile to the address set out in the Agreement or such other address as may be nominated from time to time by notice. Proof of posting, delivery of email or of dispatch of facsimile is proof of receipt:

- (a) in the case of a letter on the second day after posting;
- (b) in the case of a facsimile upon production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile communication was sent in its entirety to the facsimile number of the recipient notified for the purposes of this clause; and
- (c) in the case of delivery by email, when sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

15.19 Even if a part of the Agreement is for any reason invalid or unenforceable, the remaining portion remains in full effect as if it had been signed it without the invalid portion.

15.20 The parties agree that the services listed in Appendix C are reasonable and appropriate to maintain the system. If some unforeseen future event, failure or issue leads the parties to conclude that the services need to be adjusted then CBS will be given the opportunity to make such adjustments to prevent a re-occurrence.

16. NON-EMPLOYMENT

For the Period during which this Agreement is in effect, and for a period of twelve (12) months thereafter, neither party will solicit for employment employees of the other. However, should one party advertise a position and an employee of the other party be the successful candidate and be offered the position, a placement fee will be chargeable, such placement fee being equal to three (3) months of the annual salary offered for the advertised position.