

## Terms and Conditions

### 1. Definitions

- 1.1. The Trading Terms are 30 days from the date of invoice
  - 1.2. Customer means any third party entering into any agreement with Metwide.
  - 1.3. Agreement means any agreement, deed, or written document between Metwide and any Customer within which Metwide agrees to provide any Services to the Customer. For the avoidance of doubt, these Terms & Conditions are incorporated into any such Agreement.
  - 1.4. Service Item means a bundle of services, hardware and software as described within any Agreement, including (but not limited to) Managed Service Items, Software as a Service Items, Support Service Items, Maintenance Service Items, and Administrative Service Items.
  - 1.5. The Service means the combination of one or more Service Items, and any other services which are listed within any Agreement.
  - 1.6. Service Modifications are Schedules which may be appended to any Agreement which are subject to mutual agreement, which may alter the number and type of Service Items included within the Service.
  - 1.7. Base Fee means the minimum monthly recurring charge specified in any Agreement, including where listed, The Monthly Total Base Support and Maintenance Fee, plus the monthly Total Base Managed Service Fee, plus the monthly Total Software as a Service Fee, plus any additional listed recurring charges for services.
  - 1.8. Availability means the percentage of time within any month, based on 24-hour days, during which any Managed Service Item was operating free of problems or errors that would prevent normal usage by the customer or external third parties where appropriate.
  - 1.9. Service Level Breach means an instance where Metwide fails to meet a Support SLA Action Time or a Managed Service SLA Availability Target as described within any Agreement.
  - 1.10. Service Level Credit means a specified amount to be applied to a customer's account by Metwide for a Service Level Breach.
  - 1.11. Amount at Risk means the maximum cumulative Service Level Credit expressed as a percentage of the Base fee.
  - 1.12. Root Cause Analysis means an investigation of the primary cause or causes of a problem, sponsored by an executive within Metwide who is not involved in the day-to-day provision of the Deliverables, and resulting in a documented report forwarded to the Customer.
  - 1.13. Force Majeure means a circumstance beyond the reasonable control of a party, which results in the party being unable to perform on time an obligation under any Agreement (other, than an obligation to pay). These circumstances could include acts of God, lightning strikes, earthquakes, floods, storms, fires and any natural disaster, acts of war, terrorism, riots, civil commotion, malicious damage, strikes, shortages of electricity or other utilities, shortages of labour or materials, and acts or omissions of government or other authority;
  - 1.14. Effective Date means the date of any Agreement.
  - 1.15. Metwide means Metwide Communications Pty Ltd or any related entity or subsidiary of Metwide Communications Pty Ltd,
  - 1.16. Customer means any third party entering into any Agreement with Metwide for which these Terms & Conditions will otherwise be applicable.
  - 1.17. Deliverables means any range of IT infrastructure and/or services as described in any Agreement to be provided by Metwide in accordance with the terms of any such Agreement.
  - 1.18. Managed Service means:
    - (a) Managed Service Network items
    - (b) General Managed Data Service Items
    - (c) Managed Server Items
    - (d) Managed Desktop Items
    - (e) Managed Telephony ItemsAny/or any other Managed Service Item as defined in any Agreement.
  - 1.19. Support Service items means:
    - (f) Desktop Support Coverage
    - (g) Desktop Support
    - (h) Desktop Change Request
    - (i) Telephony Support Coverage
    - (j) Telephony Change Request
    - (k) Server Support Coverage
    - (l) Server Support
    - (m) Server Change Request
    - (n) Network Support Coverage
    - (o) Network Support
    - (p) Network Change RequestAnd/or any other Service Item as defined in any Agreement.
  - 1.20. Software as a Service items means:
    - (q) Microsoft subscription services including but not limited to Microsoft 365 and office 365
    - (r) SPLA licencing including but not limited to Microsoft and Veaaam
    - (s) Anti-Virus subscriptions such as web root
    - (t) KeeperAnd/or and other Software as a Service item as defined in any Agreement.
  - 1.21. Business Hours are 08:00 to 18:00 Australian Eastern Standard Time on business days.
  - 1.22. Minimum Term means the shortest amount of time, for which the Customer agrees to pay Metwide for Delivery of The Service.
- ### 2. General Terms
- 2.1. The method, terms and conditions of any Agreement shall continually be subject to change as a result of mutually agreed improvement actions. Such agreed actions will be documented by Metwide and may be grounds to issue a new version of any such Agreement.
- ### 3. Term
- 3.1. Any Agreement commences on the earlier of;
    - a. The Effective Date; and,

- b. The Date the Customer requests Metwide to commence provision of any of the Deliverables.
- 3.2. The Minimum Term of any Agreement and any Support Service Items or Managed Service Items or Software as a Service Items contained herein is 36 months unless otherwise specified otherwise in the Agreement.
- 3.3. Following the minimum term, the Agreement will automatically renew for consecutive 12 month periods, unless terminated via the Termination Provisions in section 15 below, or otherwise extended in accordance with this Agreement

#### 4. Interpretation

In any Agreement, unless otherwise specified:

- 4.1. Words denoting persons shall include all legal entities.
- 4.2. Any reference to a clause, appendix, or attachment is a reference to that item as it relates to the Agreement and as may be subsequently amended. The recitals, Schedules, appendices, and attachments to the Agreement form an integral part of this Agreement.
- 4.3. References to a Party to the Agreement include references to the successors or permitted assigns (immediate or otherwise) of that Party.
- 4.4. Words denoting the singular include the plural and vice versa.
- 4.5. If there is inconsistency between any of the documents that form part of the Agreement, those documents will be interpreted with the following order of priority to the extent of any inconsistency:
  - a. Service Modifications included and defined in any Agreement
  - b. The Schedules to any Agreement;
  - c. The Agreement itself; and
  - d. Other documents incorporated by reference in the Agreement.
- 4.6. The table of contents and headings are provided for convenience only and shall have no legal effect.

#### 5. Safeguarding of data; confidentiality

- 5.1. Subject and without prejudice to the provisions below, ownership of all pre-existing Intellectual Property Rights ("IPR") in the services and deliverables supplied under this Agreement ("Background IPR") by one Party (the "Transmitting Party") to the other Party (the "Receiving Party") shall remain with the Transmitting Party, but the Receiving Party shall be deemed to have a worldwide, non-exclusive, royalty-free license to use the IPR solely for the performance of the Agreement. Such license shall not include any right to grant sublicenses.
- 5.2. Unauthorized copying of any item shall be strictly prohibited; however each Party shall be entitled to make a reasonable number of back-up copies of software for the purpose of the Agreement.
- 5.3. Metwide will retain exclusive ownership of all IPR developed in the course of any Agreement ("Developed IPR") and will own all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed

under these Terms. For the avoidance of doubt, Metwide does not own any information of the Customer and has no IPR over any device, system, or software which rely on or use the Customer's information. The customer is the sole owner of its data and information. Metwide hereby grants the Customer a worldwide, non-exclusive, perpetual, royalty free non transferrable right and license to use the deliverables, solely for the Customer's internal use.

#### 6. Acceptable Usage Policy

- 6.1. Metwide reserves the right to suspend or terminate with 30 days' notice, any Customer's account, which in Metwide's opinion, breaches the policy set out herein. The customer agrees that they shall not:
  - a. Use or permit the use of a Service in any manner which constitutes a violation or an infringement of any duty or obligation in contract, tort, or otherwise to any third person; or in connection with the commission of an offence against the laws of the Commonwealth or the States or Territories;
  - b. Use the Service in an unacceptable manner including, but not limited to the transmission or forwarding of any defamatory, offensive, abusive, indecent, spam or menacing material or the making of any hoax call;
  - c. Knowingly, or by any negligent act or omission, use or permit the use of a Service in connection with the transmission of any computer virus that may adversely affect the Metwide Equipment, the Metwide Network, the equipment or network of any third party provider to Metwide or any network users;
  - d. Use the Service to engage in any activities in a manner that may expose Metwide or any third party provider to the risk of any legal or administrative action including prosecution under any law; or
  - e. Interfere or attempt to interfere with the operation of: a Service, Service Number or an IP address; any Metwide Equipment; the Metwide Network or the equipment, network or IP Addresses of any other person.
  - f. Connect any equipment to the service that is not labelled with the ACA telecommunications compliance mark
- 6.2. The Customer agrees that they shall comply with all laws, regulations, standards and codes applicable to the telecommunications industry.

#### 7. Service Levels

- 7.1. The Service Level Agreements as contained within any Agreement ("SLA") to be complied with by Metwide is as specified in the schedules to any such Agreement.
- 7.2. Where the Service consists of multiple Items, and where these Items are priced separately within the Agreement, availability of those Items will be measured separately, and Service Level Credits will be allocated based on the monthly service fee of the affected Item.

- 7.3. Availability is measured by Metwide's monitoring tools.
- 7.4. In addition to any conditions described in the Agreement, in order to receive a Service Level Credit for a breach of an SLA the Customer must notify Metwide in writing, specifying the date(s) and time(s) of the Service Level Breach, and a description of the Service Level Breach. Notifications must be received by Metwide within 30 days of the Service Level Breach. If the Service Level Breach is confirmed by Metwide, any applicable Service Level Credit will be applied to the customer's next service invoice.
- 7.5. Service Level Credits are cumulative up to a maximum equal to the Amount at Risk. Unless otherwise specified in the Proposal, the maximum Amount at Risk is 20% of the Base Fee.
- 7.6. If Metwide substantially fails to meet the Service Levels described in any such Agreement, two or more months in any rolling three-month period or three or more months in any rolling six -month period, then Metwide shall;
- Investigate, assemble and preserve pertinent information with respect to, and report on the causes of, the problem, including performing a Root Cause Analysis of the problem;
  - Advise the Customer of the status of remedial efforts being undertaken with respect to such problem;
  - Minimize the impact of and correct the problem and begin meeting the Service Level;
  - Make appropriate preventive measures so that the problem does not recur; and
- 7.7. For the avoidance of doubt a substantial failure means;
- For the Support SLA a month in which more than 25% of incidents result in a Service Level Breach, and;
  - For Managed Service Items, a month where the average Availability of all Managed Service items was less than 95%

## 8. Service Level Exceptions

- 8.1. Unless otherwise set out in any Agreement, the Customer shall not receive Service Level Credits under the Agreement in connection with any failure or deficiency of Availability caused by or associated with;
- Access to the Service being suspended due to actual or supposed violation of Metwide's Acceptable Use Policy (AUP).
  - Access to the Service being suspended due to late payments for any of the Items.
  - Reasonable after-hours scheduled maintenance windows, where the customer is informed in advance with reasonable notice.
  - Any failure or malfunction of Customer Equipment, or any computer software or power supply managed by the Customer or at the Customer's premises your premises
  - An act or an omission by the customer or a person under the Customer's direction or control (other than if the act

or omission is at the direction of Metwide);

- The occurrence of a Force Majeure Event; or a requirement, direction, or any other order, issued by a government, statutory or other relevant authority with jurisdiction over the Services.

## 9. Facilities

- Managed Services will be delivered from a data centre or server co-location facility nominated by Metwide.
- Technical support services may be provided by Metwide, at Metwide' discretion on-site at the Customer's premises, via the Metwide Service desks, or via any appropriate remote access technology.
- The Customer shall provide any reasonable desk space, software licenses, warehouse space, or other reasonable on-site infrastructure and reasonable work environment as may be required for the proper provision of the Deliverables.

## 10. Non-Solicitation of Employees

- Neither Party shall directly or indirectly solicit or seek to procure (other than by general advertising), without the prior written consent or instruction of the other Party, the employment of the other Party's employees and contractors engaged in the provision of the Service during the Term of any Agreement and for 12 months thereafter.
- For the avoidance of doubt, nothing in any Agreement (unless otherwise stated) prevents either party from employing an employee of the other party as a result of the employee responding to a public notice, in the absence of any solicitation however if this occurs then the employing party will pay a replacement recruitment fee to the other party of \$20,000 ex GST

## 11. Liability

- Waiver: In no event, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort), shall a party be liable for indirect or consequential, exemplary, punitive or special damages (including lost profit, lost revenue, lost business opportunity, lost data and loss of use) even if such party has been advised of the possibility of such damages in advance.
- Limitation of Liability: Metwide' total aggregate liability to the Customer for all claims under any Agreement, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort) shall be limited to an amount equal to the lesser of 3 Month's Base Fee, and the costs of and resupply of the Services.

## 12. Governing Law.

- This Agreement and performance under it shall be governed by and construed in accordance with the Laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of that State.
- If any provision or part of a provision of these Terms shall be, found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or

unenforceability shall not affect the other provisions or parts of such provisions of these Terms, all of which shall remain in full force and effect.

### 13. Pricing and financial provisions

- 13.1. The Item prices and volumes per the commencement date are as described in the Agreement. Any changes to Item Quantities may result in corresponding changes to the Base Fee.
- 13.2. Metwide may, at any time after the Minimum Term for the Service, increase or decrease the Charges or change the terms applicable for the supply of the Service. Metwide will do this by giving the customer ninety (90) days prior written notice of the variation (a Variation Notice).
- 13.3. If Metwide provides the Customer a Variation Notice and the Customer does not accept the variation, the Customer must notify Metwide in writing within sixty (60) days from the date of the Variation Notice and the services will be terminated at the end of the notice period. If The Customer fails to do so, The Customer will be deemed to have accepted the Variation Notice and the varied terms will take effect at the conclusion of the notice period.
- 13.4. During the Term of the Agreement, Pricing may be revised on each anniversary date in line with increase in CPI (the Consumer Price Index -All Groups; for Sydney published by the Australian Bureau of Statistics). Revised pricing will apply from the month following each anniversary date.
- 13.5. The Base Fee will be invoiced monthly in advance.
- 13.6. Should the Customer wish to dispute an invoice, the Customer must notify Metwide in writing within the Trading Terms (Dispute Notice), otherwise the invoice will be deemed payable in full.
- 13.7. Dispute Notices must describe the invoice number, disputed amount, and reason for the disputed amount.
- 13.8. In the event of a disputed invoice, duly appointed representatives of each party must make a reasonable good faith effort to resolve the dispute within 14 days of the notification of the dispute. If an agreement cannot be reached within this timeframe, Metwide reserves the right to appoint a third party debt collection agency to collect invoiced amounts plus any applicable penalties.
- 13.9. Metwide reserves the right to enforce penalties of 2% per month for late payments and these rights may be transferred to a third party debt collection agency. Should any costs be incurred in debt recovery action for overdue accounts, these costs will be passed to the Customer in full
- 13.10. Any undisputed amounts must be paid within Trading Terms to avoid late payment penalties.
- 13.11. Invoices greater than 6 months old are incontestable. Similarly, Metwide shall not invoice for any work performed more than 6 months prior to invoice date.
- 13.12. Metwide reserves the right to suspend services to a customer where an invoice remains unpaid after the Trading Terms.

- 13.13. If any Managed Service Items are suspended by Metwide due to a customer's failure to pay an invoice on time, a re-activation fee equal to 50% of the Monthly Fee for the suspended Managed Service Items shall apply.

### 14. Privacy Act

- 14.1. The Customer consents to Metwide obtaining a credit report for the purpose of assessment by Metwide of an application by the Customer for credit and/or for the purpose of the collection by Metwide of payments which are overdue. The Customer further authorises and consents to Metwide disclosing information about its credit worthiness to credit reporting agencies or collection agencies (including identity particulars and details of overdue payments).

### 15. Termination

- 15.1. Following the Minimum Term of any Service Item described herein, Metwide may terminate that Service Item for any reason, by providing the other party with 90 days written notice.
- 15.2. The Customer may terminate this Agreement for any reason prior to the end of Minimum Term by providing Metwide with at least 60 days' notice prior to the end of the Minimum Term.
- 15.3. In the event that the Customer otherwise purports to terminate any Agreement not in accordance with clause 15.2 herein, the Customer will be legally obligated to pay:
  - (a) a Managed Service Early Termination Fee, Support Service Early Termination Fee and a Software as a Service Early termination Fee calculated against each terminated Service item until the termination date of the Agreement (subject to clause 3.3); or
  - (b) For any service that Metwide is required to contract with third parties to obtain for the benefit of the Customer, that cannot otherwise be terminated earlier, the Customer is required to pay out the balance of such contract as owed to the third party.
- 15.4. The Managed Service Early Termination Fee, Support Service Early Termination Fee and Software as a Service Early Termination Fee is calculated in accordance with the following formula:

Number of part or whole months remaining in the contract term of each terminated Managed Service, Support Service and Software as a Service Item as at the date of termination, Multiplied by,  
The Monthly Fee for each Managed Service, Support Service and Software as a Service Item:
- 15.5. The customer acknowledges that the Managed Service Early Termination Fee, Support Service Early termination Fee and Software as a Service Early Termination Fee is equivalent to the combined remaining unpaid value of the Minimum Term of all Service Items and is a genuine estimate of Metwide's loss for early termination.
- 15.6. Metwide may terminate this agreement for any reason prior to the Minimum Term, by

providing the Customer with no less than 90 days advance notice.

- 15.7. Upon Termination of this agreement, the Customer agrees to pay all outstanding balances to Metwide in full within 14 days, including the Early Termination Fee if applicable. Upon receipt of all payments due under the Agreement, Metwide shall then provide the Customer with all Customer owned information and materials including documentation, media, license keys and other information in its possession, and shall work reasonably with the Customer to facilitate a transition to a new IT supplier or staff member at the Customer's request.

#### **16. Termination for Non-Performance**

- 16.1. The Customer may terminate the Agreement immediately following a Substantial breach of Service levels as defined in section 7.7, if Metwide fails to remedy the breach within 30 days after receiving a notice from the customer detailing the breach and requiring that it be cured.
- 16.2. Termination of any Agreement does not affect Metwide's rights of action based on any breach by the Customer before the termination and is without prejudice to any other rights Metwide may have to recover other sums from the Customer.

#### **17. Notices**

- 17.1. All notices under any Agreement will be in writing and signed by the appropriate signatories. A notice will be validly sent if addressed as provided in the Agreement, or transmitted by one of the following methods, and deemed received
- a. Upon receipt, if hand delivered, or sent by express courier service;
  - b. On the date sent when sent by email.

#### **18. Interest**

- 18.1. Metwide is entitled to charge the Customer interest on any outstanding monies owed by the Customer to Metwide provided in accordance with any Agreement at the rate of 15 percent per annum.

#### **19. Legal Fees**

- 19.1. In the event that the Customer fails to make any payments as due within the Agreement, the Customer is liable for and indemnifies Metwide in respect to any and all legal fees incurred by Metwide in respect to recovering any such monies owed by the Customer.

#### **20. Retention of Title**

- 20.1. The Customer agrees and acknowledges that save as to circumstances where Metwide has agreed to sell them Equipment, to which other terms apply, that in relation to all agreements in which the Customer is hiring Equipment, the title of the goods will always remain with Metwide and that the title of such goods and Equipment does not ever transfer to the customer and that Metwide is entitled to register this Security Interest on the PPSR in order to protect and perfect their right and title to the Equipment.
- 20.2. The Customer acknowledges and agrees that the Hire Agreement and these terms and conditions may give rise to the creation of a Security Interest in the Equipment pursuant to the PPSA. In these circumstances the Customer consents to Metwide effecting a registration on the PPSR (in any manner that Metwide considers appropriate) in relation to that Security Interest and agrees to do anything that Metwide requires it to do (such as obtaining consents, signing and producing document, producing receipts and getting documents completed and signed):
- a. to provide more effective security over the Equipment;
  - b. to register in respect of a Security Interest constituted by these terms at any time;
  - c. to enable us to exercise our rights in connection with the Equipment; and
  - d. to show us whether you have complied with these terms
- 20.3. If Chapter 4 of the PPSA applies to the enforcement of that Security Interest the Customer agrees:
- a. to the extent that section 115(1) of the PPSA allows this, the following provisions of the PPSA will not apply to the enforcement of that Security Interest: section 130 to the extent that it requires Metwide to give notice to the Customer, paragraph 132(3)(d), subsection 132(4), section 142 and section 143 (reinstatement of security agreement); and
  - b. to the extent that section 115(7) of the PPSA allows this, section 95 to the extent that it requires Metwide to give a notice to the Customer, section 96, section 121(4), section 125 (obligation to dispose of or retain collateral) the following provisions of the PPSA will not apply to the enforcement of that Security Interest: section 127, section 129(2) and (3), section 132, section 134(2), section 135, section 136(3), (4) and (5) and section 137.