

## Terms and Conditions

### 1. Definition

1.1 In these Terms & Conditions (which expression includes the Schedules and any attachments to them) the following words and phrases shall, unless the context otherwise requires, have the following meanings:

**Acceptable Usage Policy** means the policy specified by Zeara as amended from time to time by agreement between the parties which will not be unreasonably withheld, relating to the acceptable usage of the Software, the Applications and the Devices and any hardware software or systems relating to them;

**Authorised Representatives** means the authorised representatives of Zeara and the Client as set out in this Agreement;

**Business Day** means any day except for a Saturday, Sunday or Public Holiday;

**Change Request** means a request to change (including to cease) any service or to add any new service to the Services or a request to amend this Agreement or any document attached to or referred to in it;

**Client IT Equipment** means the Hardware, the Operating System and the Third Party Software Applications;

**Commencement Date** means the date at which Zeara will commence provision of the Services as set out in this Agreement;

**Contact Point** means the contact details (either telephone or email) of Zeara notified to the Client from time to time by which the Client may make a Support Request;

**Disaster** means an event defined as a Disaster in the Disaster Recovery Plan;

**Disaster Recovery Plan** means the Client's plan which sets out the procedures to be adopted in the event of a Disaster;

**Dispute Resolution Procedure** means the procedure set out in clause 15;

**GST** means Goods and Services Tax;

**Hardware** means the hardware detailed in the Order;

**Initial Term** means the Initial Term as set out in the Order;

**Intellectual Property** means property in which intellectual property rights of whatever nature (including but not limited to patents, trademarks, database rights and present and future copyright) subsist and, where the context so admits, includes such intellectual property rights;

**Month** means a calendar month;

**Office Hours** means the period between 08:30 and 17.30 on a Business Day;

**Operating System** means the Client's operating system detailed in Service Order Form that is operated on the Hardware;

**Order** means a signed Services Order or Accepted Quote which with these Terms & Conditions constitutes an Agreement;

**Out of Office Hours** means the periods between 0.00 and 08.29 and 17 .31 and 23.59 on a Business Day and 24 hours a day on any day that is not a Business Day;

**Service Charge** means the Service Charge as set out in this Agreement;

**Service Level** means the service level set out in Service Level Agreement in accordance with which Zeara is to provide the Services;

**Services** means the services set out in Order;

**Service Rate** Standard Office Hours rate is \$160.00 per hour. Out of Office Hours rate is \$240.00 per hour;

**SLA** means the Service Level Agreement;

**Support Request** means a request for support in respect of the Operating System by the Client pursuant to this Agreement;



**Term** means the period set out in the Order;

**Third Party Software** means the non-Microsoft software used by the client from time to time;

**Zeara, Us, Our or We** means Zeara Managed Services PTY LTD ABN: 12 101 416 657; and its heirs, successors, and assigns;

## **2. Term**

### **2.1 Initial Term**

Zeara will provide the Services to the Client from the first of the next month after the date of signing and for the duration of the Term outlined in the Order subject to these Terms and Conditions.

2.2 After the expiry of the Term , an extension of the Term will automatically commence for 12 Months and will continue indefinitely, unless terminated by the Client as specified in Clause 22.1.

## **3. Provision of Services**

3.1 Zeara will provide the balance of the Services to Client on the terms of this Agreement commencing on the Commencement Date.

3.2 Zeara will provide the services only to the Client locations and to the locations that Zeara holds part of the Client IT Environment, such as servers housed in the Zeara Data Centres.

3.3 If Client requests services outside Office Hours, and if Zeara choose to do so, Zeara may charge Client for work in accordance with the Service Rate.

## **4. Service Levels**

4.1 Zeara will provide the Services to Client in accordance with the Service Level.

## **5. Service Records**

5.1 Zeara shall maintain records of the Services provided and will provide copies to the Client on receipt of a written request.

## **6. Excluded Services**

6.1 Unless otherwise included in our Order the Services do not include services relating to or required as a result of any of the following and shall be entitled to make additional charges for any such services in accordance with its standard charging rates from time to time in force:

6.2 the installation of any new hardware;

6.3 the maintenance, repair, substitution or replacement of any Hardware;

6.4 training in respect of any Software Application;

6.5 the addition of any Hardware or Software to the Operating System without Zeara's agreement in writing for such Hardware or Software to be added to the Client IT Equipment;

6.6 failure of the Client to maintain the necessary environmental conditions for the operation of the Operating System;

6.7 failure of the Client to comply with Zeara's reasonable recommendations relating to the use of the Operating System;

6.8 any support or maintenance undertaken to the Operating System by persons not authorised or approved by Zeara;

6.9 improper installation to the Operation System by the Client or any third party;



6.10 notwithstanding the terms of this Agreement, the provision of any Services on Christmas Day, Boxing Day and New Year's Day.

## **7. Internet Connections**

7.1 You agree to pay for the Internet Connection service from the activation date.

7.2 If the service is cancelled before the end of the Term outlined in the Order, the Client agrees to pay the remaining amount up and until the end of Term.

## **8. Cloud Computing**

### **8.1 Hosted Exchange**

If the Client has the actual mailboxes on Hosted Exchange with a charge for each mailbox being based on the actual storage quota used by that mailbox. The available storage quotas are: 5GB, 25GB increments. Additional charges may apply if listed on the Order.

### **8.2 Hosted Workspace\Cloud Desktop**

The Client will be invoiced monthly in advance for this Service. The charges will include the per user per month charge as set out in the Order, any additional hosted applications as set out in the Order.

### **8.3 Hosted Virtual Server\Cloud Server**

Zeara shall use reasonable skill and care to ensure continuing up-time of the web server(s) hosting the Client's web site and other applications. However, the Client acknowledges that Internet connections, technical hardware and third party software are used by Zeara to fulfil the hosting Service and that 100% reliability cannot therefore be guaranteed. Subject to any terms agreed in a Service Level Agreement, which sets out additional terms under which the Client provides the Service(s), Zeara will not be liable for service interruptions or down-time of the Server whether resulting from technical failure or howsoever arising. Whilst the Client will use reasonable skill and care to ensure the security of its web servers, Zeara does not guarantee that its web servers or those co-located with the Client will be free from unauthorised users or hackers and exclude any liability that results from such abuse.

## **9. Third Party Software**

9.1 The Client shall maintain in time all current software maintenance agreements with the vendors of supported Third Party Software Applications used by the Client to ensure adequate assistance from such vendors if required.

9.2 The Client agrees that the use of third party products is in accordance with their standard agreement and is at your sole risk and we are not responsible in any way for their performance, features nor failures.

9.3 Zeara use Third Party anti-virus software to protect the servers and email from viruses. Although all reasonable care is taken by Zeara to ensure that the anti-virus software is up to date, Zeara makes no warranty as to the effectiveness of its third party anti-virus software and excludes any loss or damage caused by a virus which infects any electronic device, computer, PC, server or network owned or used by the Client.

## **10. Service Fee**

10.1 The Client agrees to pay Zeara the Service Charges outlined in the Order, in accordance with these Terms and Conditions.

10.2 The Service Charge shall be paid monthly in advance by direct debit to the account of Zeara notified to the Client from time to time.



10.3 The pro-rata monthly charge for a device or other item or Services is payable where the relevant Services are commenced or are terminated part way through a month.

10.4 If an onsite service call or visit incurs car parking costs, the Client will be invoiced and payable by the Client within Zeara payment terms.

10.5 The Service Charge and any other payments to be made by the Client under these Terms & Conditions are stated exclusive of GST;

10.5.1 the Client must pay the GST inclusive amount for that taxable supply at the time of payment.

10.6 Zeara shall be entitled to increase the Service Charge in accordance with the CPI Index (measured as a percentage). Zeara shall be entitled to increase the Service Charge at any time by notice in writing following the expiry of the Initial Term but not more than once in any consecutive period of 12 months.

10.7 Zeara reserves the right to increase the Service Charge at any time by notice in writing to the Client to reflect any increase in the cost of providing the Services which is due to an act or omission of the Client including but not limited to any change in the date for the performance of the Services or any delay caused by any instructions of the Client or failure by the Client to give Zeara adequate information or instructions.

10.8 If the Client fails to make any payment due to Zeara on the due date for payment, Zeara reserves the right to:

10.8.1 Charge Interest on all overdue invoices, excluding any invoices that are subject to a bona fide dispute, under this Agreement at the rate of 2%.

10.8.2 Suspend performance of the Services until all sums due to Zeara have been paid in full (but only after having given written notice of intention to do so).

10.9 The Service Charge is exclusive of Zeara's expenses incurred in connection with the provision of the Services and any additional service charges will be charged at the Zeara's Service Rate and shall be payable by the Client in advance or if credit terms are offered by Zeara to the Client within 14 days of the date of Zeara's invoice.

10.10 All payments payable to Zeara pursuant to these Terms & Conditions shall be paid without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Client has a valid court order requiring an amount equal to such deduction to be paid by Zeara to the Client.

10.11 We require payment to terms. Payment must be made on time, in full, and without any deduction, set off or counterclaim. In the event an account is outstanding, we will refer the matter to our debt collection agents, Kearley Lewis Pty Ltd, which the Client will be responsible for any further costs incurred.

10.12 The Client agrees to a minimum base user count on signing, of either 10 users or the number of users represented on the Order or whichever is greater.

## **11. Use of site**

11.1 The Client shall provide all persons authorised by Zeara with full, safe and uninterrupted access including remote access to the Site, the Operating System and the Client IT Equipment as may reasonably be required for the purpose of performing the Services. Where the Services are to be performed at the Site the Client shall provide adequate working space and office (including telephone) facilities for use by Zeara's personnel and take reasonable care to ensure their safety.

11.2 The Client grants to Zeara, with effect from the Commencement Date for the duration of the Agreement, a non-exclusive royalty-free licence to use, operate, copy and modify any Intellectual Property owned by the Client for the purpose only of fulfilling Zeara's obligations under the Agreement.

11.3 The parties shall co-operate to obtain the consents of third parties to the use by Zeara of any Third-Party Software Application, documentation products and other materials ("Third Party Products") (including, without limitation, software and know-how) which:

11.3.1 the Client is permitted to use; and

11.3.2 is required by Zeara for the provision of the Services.

## **12. Additional Client obligations**

12.1 The Client shall ensure that appropriate environmental conditions are maintained for the Client IT Equipment and shall take all reasonable steps to ensure that the Operating System and the Client IT Equipment is operated in a proper manner by the Client's employees.

12.2 The Client shall nominate an Authorised Representative to be available to liaise with, and respond to queries from, Zeara's Authorised Representative (for example, as to the resolution of conflicting priorities between two or more items of support or maintenance).

12.3 The Client shall:

12.3.1 Co-operate with Zeara in performing the Services and provide any assistance or information as may reasonably be required by Zeara.

12.3.2 Report faults promptly to Zeara.

12.3.3 carry out a back-up operation on a daily basis and keep full back-up copies of all of its data.

12.3.4 Maintain adequate and up to date anti-virus software on the IT Equipment at all times.

12.3.5 maintain vigilance of password management and access management to limit the risks to their system.

12.4 The Client warrants that:

12.4.1 it is the owner of the Client IT Equipment or is authorised by the owners of the Client IT Equipment to make it available to Zeara;

12.4.2 the details of the Client IT Equipment given to Zeara are complete and accurate; and

12.4.3 that all data and other information provided by it to Zeara is not obscene, defamatory or likely to result in any claim being made against Zeara by any third party.

12.5 The Client shall indemnify Zeara against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against Zeara as a result of the Client's failure to adhere to this Agreement.

12.6 The Client shall at its own expense execute all documents and do all acts and things reasonably required by Zeara to give effect to the terms of this Agreement and shall provide access to all information and documentation which is within its possession which is reasonably required by Zeara to enable it to fulfil its obligations.

## **13. Acceptable Usage Policy**

The Client agrees to abide by the following Acceptable Usage Policy ("AUP"). The Client warrants and undertakes to Zeara that it will not by itself or others:

13.1 use its web site (where the Zeara is providing the hosting service for the web site) for unlawful purposes;

13.1.1 knowingly or recklessly post, link to or transmit, or permit third party users to post, link to or transmit:

13.1.2 any material that is abusive, threatening, harmful, malicious, defamatory, obscene, pornographic, profane or otherwise unlawful;

13.1.3 any material containing a virus or other hostile computer program;

13.1.4 post, link to or transmit any material that constitutes or encourages a criminal offence, gives rise to civil liability or infringes the intellectual property rights of any third parties;

13.1.5 knowingly or recklessly transmit or permit third party users to transmit unsolicited email in breach of Australian Law.

13.2 Zeara may suspend the Client's Service(s) immediately and without notice to the Client in its sole discretion if in the Zeara's opinion the Client has or has knowingly, recklessly or negligently permitted any breach of the Acceptable Usage Policy, or if it receives any complaint that unsolicited email has been transmitted by the Client, or by the Client's agents or customers, or if any material hosted on the Client's web site(s) or server(s) (in respect of which Zeara is providing a hosting service) may be unlawful, harmful or defamatory. Zeara may disclose the Client's name and address to a complaining third party if in our reasonable discretion it is necessary or appropriate to do so, for example if there is evidence of a prima facie case that the Client's web site(s) or server(s) in respect of which the Zeara is providing a hosting service is infringing the rights of a third party.

#### **14. Fair Use Policy**

14.1 It is important to Zeara that all eligible Zeara clients are able to access our Services. For this reason, and to ensure the provision of a quality service, a Fair Use Policy applies to some of our services;

14.1.2 For Services that are subject to our Fair Use Policy, we may apply our Fair Use Policy where in our reasonable opinion your usage of our Services are excessive and/or unreasonable as detailed;

14.1.3 We have developed our Fair Use Policy by reference to average client profiles and estimated client usage of our Services;

14.1.4 If your usage of our Services materially exceeds estimated use patterns over any month, or is inconsistent with normal usage patterns, then your usage will be excessive and/or unreasonable;

14.1.5 If your usage is excessive and/or unreasonable you may be contacted to advise that your usage is in breach of our Fair Use Policy;

14.1.6 We may then request that you stop or alter your usage to fall within our Fair Use Policy;

14.1.7 If your excessive or unreasonable usage continues after receipt of a request to stop or alter the nature of such usage, we may without further notice apply charges to your account for the excessive and/or unreasonable element of your usage; suspend, modify or restrict your use of the Services or withdraw your access to the Services.

#### **15. Dispute Resolution Procedure**

15.1 If a party considers that a dispute arising out of this Agreement has arisen, that party must before commencing any legal proceedings in relation to the dispute notify in writing the other party's Representative giving details of the dispute.

15.2 All disputes arising out of this Agreement or services provided should be notified to either the Zeara account manager or, the Client representative, whichever is applicable.

15.3 Within 5 business days (or any longer period agreed between the parties) after notification is given must attempt to resolve the dispute. If the Zeara account manager has not responded to the Clients' satisfaction with the 5 business day period, the dispute can be escalated by emailing [dispute@zeara.com.au](mailto:dispute@zeara.com.au). An extraordinary meeting of the parties may be called by Zeara by service of no less than 5 days written notice and each party agrees to procure that its Authorised Representative and Managing Director (or person with equivalent authority) shall attend all extraordinary meetings called in accordance with this clause.

15.4 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this Agreement. If any dispute referred to a meeting is not resolved at that meeting then EITHER [the Dispute Resolution Procedure shall be deemed exhausted].

## **16. Sub-Contracting**

16.1 The Client shall not be entitled to give, bargain, sell, assign, let or otherwise dispose of its rights and obligations under this Agreement without the prior written consent of Zeara.

16.2 Zeara may subcontract Service obligations under the Agreement provided that by subcontracting we are:

16.2.1 not relieved from any of our obligations under the Agreement; and

16.2.2 Liable for any breach of the Agreement committed, caused or contributed to by our subcontractors.

16.3 In the event of serious or consistent failure by any of Zeara's subcontractors, Zeara is to replace such subcontractor(s) upon reasonable request of the Client.

## **17. Intellectual property**

17.1 In the absence of prior written agreement to the contrary, all Intellectual Property created by Zeara or any employee, agent or sub-contractor of Zeara in the course of performing the Services shall vest in Zeara.

17.2 Where, in connection with the provision of the Services, the Client uses any Intellectual Property which is owned by Zeara, Zeara shall grant to the Client, or shall procure that the Client is granted (without charge to the Client and for the benefit of the Client) an indefinite non-exclusive, royalty-free licence to use, adapt, maintain and support such Intellectual Property, which licence shall include the right for any person providing services to the Client to use, adapt, maintain and support such Intellectual Property for the benefit of the Client.

17.3 In the absence of prior written agreement to the contrary, all Intellectual Property in the Client IT Equipment and any other information, materials or assets supplied to Zeara by the Client shall remain vested in the Client or its third party licensors. The Client shall grant or shall procure the grant of a licence to Zeara to utilise the Client IT Equipment or such other information, materials or assets to the extent required for the provision of the Services.

17.4 Unless stated expressly in writing in this Agreement, neither party will acquire any ownership interest in or licence of the other's Intellectual Property by virtue of this Agreement.

## **18. Confidentiality**

18.1 Both parties to this Agreement undertake, except as provided below, to treat as confidential and keep secret all information marked 'confidential' or which may reasonably be supposed to be confidential supplied by Zeara or the Client (in this Agreement collectively referred to as the "Information") with the same degree of care as it employs with regard to its own confidential information of a like nature and in any event in accordance with best current commercial security practices, provided that, this clause shall not extend to any information which was rightfully in the possession of either party prior to the commencement of the negotiations leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).

18.2 Neither party shall without the prior written consent of the other party divulge any part of the other party's Information to any person except:

18.2.1 to their own employees, consultants or sub-contractors and then only to those employees, consultants or sub-contractors who need to know the Information for the purposes of this Agreement; and

18.3 Each party to this Agreement shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Information and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.

18.4 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

18.5 Provided that it is not in breach of the confidentiality obligations set out above, Zeara may refer to and publicise its involvement with the Client, but only with the Client's prior written approval in relation to each publication, which shall not be unreasonably withheld or delayed.

#### **19. Force Majeure**

19.1 Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party (an event of "Force Majeure"). In the event that a Force Majeure event continues for a continuous period of more than 30 days, either party may terminate this Agreement by written notice to the other party.

#### **20. Limitation of liability**

20.1 Save as otherwise provided in this clause 18, to the maximum extent permitted by law, Zeara will not be liable in any circumstances for any special or punitive damages, or indirect, incidental, economic or consequential loss (including but not limited to loss of profits, revenue, opportunity, data or goodwill) suffered or incurred by Client, arising out of or in connection with this agreement or the Services, whether in an action for tort (including negligence), product liability, or under statute or contract, and whether or not such loss or damage was foreseeable or even if advised of the possibility of the loss of damage.

#### **21. Termination for cause**

21.1 This Agreement may be terminated for cause in whole by either party in the following circumstances;

21.1.1 by either party with immediate effect from service on the other of written notice if the other party is in breach of any material obligation under these Terms & Conditions and, if the breach is capable of remedy, that party has failed to remedy such breach within 28 Business Days of receipt of notice so to do;

21.1.2 by either party including parent company or entity having a controlling interest in the party becomes insolvent;

21.1.3 a notice of deregistration of the party is given under sections 601 AA(5) or 601 AB(B) of the Corporations Act; or

21.1.4 by either party with immediate effect from the date of service on the other party of written notice if the other party ceases or threatens to cease to carry on business or a substantial part of it.

#### **22. Termination without cause**

22.1 After the expiry of the Initial Term either party may terminate this Agreement at any time by giving one complete calendar month's written notice to the other.

#### **23. Consequences on Termination**

23.1 If this Agreement is terminated in whole or in part for any reason Zeara shall subject to payment of its reasonable fees use all reasonable endeavours to co-operate fully with the Client to ensure an orderly migration of the Services to the Client or, at the Client's request, a new service provider.



#### **24. Severability**

24.1 If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered Ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

#### **25. Waiver**

25.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

#### **26. Notices**

26.1 Any notices given under these Terms & Conditions shall be in writing and sent to the last notified email address of the Client.

#### **27. Entire Agreement**

27.1 This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. However the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the same. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

#### **28. Governing Law**

28.1 This Agreement is governed by the laws in force in the State of Victoria, and each party submits to the non-exclusive Jurisdiction of the Courts of that State and the Commonwealth of Australia.

# Schedule 1

## Service Level Agreement

### SLA for Zeara Cloud Services

We guarantee 99.95% of Cloud Service availability in any given calendar month. It is important to us that our clients understand this guarantee and we have defined some key terms here to make sure that this is the case.

For 99.95% availability to apply, the following conditions must be met:

#### Cloud Desktops

We define the virtual desktop as the desktop environment that we provide as part of our hosted virtual desktop products. Zeara monitor the hosted virtual desktop infrastructure by testing connection settings and session generation every 30 minutes.

#### Availability

A virtual desktop is available when it allows a user with the correct credentials to login via our portal or the Clients private portal and stream an application or access a desktop environment session.

#### Unavailability

Any period of time during where you are unable to login to your virtual desktop. A period of downtime begins when it is detected by our own monitoring systems or when a ticket is raised with our support team. A period of unavailability finishes when you are again able to login to your virtual desktop.

#### Exclusions

- Loss of service caused by the following will not be included in monthly availability calculations:
- Unavailability where external network issues or incidents are caused by the presence of single points of failure within the client solution that were identified. Internet connection down
- Unavailability which is caused by incidents relating to technical or human error on the client terminal including but not limited to, Anti-virus services, Microsoft updates and terminal BIOS updates
- Incidents relating to printers, scanners, copiers, cameras, USB sticks or external hard drives
- Unavailability caused by a problem with the Third Party Application we host on behalf of the customer. Service Credits shall be payable as below and relate to the Recurring Fees for the affected service up to 20% of the monthly service(s):

*Downtime in any given calendar month*

<99.95%  
 <99.60%  
 <99.40%  
 <99.20%  
 <99.00%

*Credit Given*

0% of recurring fees  
 5% of recurring fees  
 10% of recurring fees  
 15% of recurring fees  
 20% of recurring fees

**Up to 20% is maximum credit given within a month.**

**Maximum Response Time**

<p><b>Critical (Priority One)</b></p> <p>Server down, major application down, Hosted Workspace not accessible for all users, major network fault all users, single user has no desktop functionality.</p>	<p><b>15 minutes</b></p>
<p><b>Major</b></p> <p>Minor application affecting a number of users, reduced network functionality, Hosted Workspace/application performance issue, single printer not available.</p>	<p><b>2 hours</b></p>
<p><b>Normal</b></p> <p>Single user has restricted desktop functionality, single printer not available, failed backup.</p>	<p><b>4 hours</b></p>
<p><b>Minor</b></p> <p>New user account request, move or change</p>	<p><b>2 Days</b> (or scheduled as agreed)</p>



## Schedule 2

### Support Request Procedure

All requests for support are to be referred to Zeara help desk in the first instance.

This may be facilitated either via:

- Email to [support@zeara.com.au](mailto:support@zeara.com.au)
- Telephone 1300 248 766

All calls will be logged, allocated and attended to within the agreed SLA response time.