

1. Agreements for the supply of products and services

- 1.1. Each time a Quotation is executed by you and us, a separate contract will be entered into consisting of the following documents (each, an **Agreement**):
 - (a) these Terms of Service;
 - (b) the Quotation; and
 - (c) the applicable Service Schedule.
- 1.2. To the extent of any inconsistency between the documents listed in subclauses 1.1(a) to 1.1(c), the document listed first in clause 1.1 shall prevail.
- 1.3. We have no obligation to supply any products or services under an Agreement other than as expressly required by the applicable Quotation(s).
- 1.4. We may modify these Terms of Service, any Service Schedule or our Acceptable Use Policy at any time and from time to time, in our absolute discretion. The modified versions will only apply to Agreements that we subsequently enter into with you. We will provide you with a copy of the modified versions or upload them to our website. It is your responsibility to ensure that you have read and understood them.

2. Term

- 2.1. Each Agreement will commence on the commencement date specified in the Quotation, or if the Quotation does not specify a commencement date, an Agreement will commence on the date of execution of the Quotation by the last party to execute it (**Commencement Date**).
- 2.2. If a contract term or an initial minimum period is specified in a Quotation or Service Schedule (each, a **Minimum Period**), upon expiry of the Minimum Period, the Agreement will automatically extend for subsequent consecutive periods each of equivalent length to the Minimum Period (each, a **Renewal Period**).
- 2.3. If there is a Minimum Period, the Agreement will continue for that Minimum Period and thereafter until and unless either party notifies the other party in writing that it wishes to terminate the Agreement at least 60 days prior to the expiry of the Minimum Period or the then current Renewal Period (as applicable) with time being of the essence. If such notice is provided, the Agreement will terminate at the end of the Minimum Period or the then current Renewal Period (as applicable).
- 2.4. If there is no Minimum Period, the Agreement will continue from the Commencement Date until the Ordered Products and Services have been delivered and thereafter until either party terminates the Agreement on 30 days' prior written notice to the other party.

3. Supply of Ordered Products and Services

- 3.1. We will use best endeavours to supply and/or procure the supply of the products and/or services specified in a Quotation (**Ordered Products and Services**) to you, substantially in accordance with
- 3.2. any Specifications.
- 3.3. You must provide and procure all necessary:

- (a) cooperation, permissions, authorisations, assistance, licenses, consents (including all relevant third-party and End User consents and authorisations); and
 - (b) access to such information (including account logins), Your Equipment, Personnel, End Users, servers, networks, data, content, facilities, documentation, records, resources, records, equipment and premises, as reasonably required by us to supply and/or procure the supply of the Ordered Products and Services to you.
- 3.4. Where required by us, you must also arrange safe and timely access to Your Premises for our Personnel and Third Party Providers to provision, support and maintain the applicable Ordered Products and Services.
 - 3.5. We are not liable for:
 - (a) ensuring that any data sent or received using any Ordered Products and Services is sent or received correctly and to the maximum extent possible by law, we and our Third Party Providers do not have any responsibility for loss of data, delays, non-deliveries or mis-deliveries of data;
 - (b) the installation of, or structural work of any description at Your Premises. You must procure all such work to be carried out prior to our, and/or our Third Party Providers', attendance at Your Premises for the purposes of carrying out any installation, configuration or setup of any Ordered Products and Services, unless otherwise agreed by you and us;
 - (c) ensuring that Your Equipment is compatible or interoperable with the Ordered Products and Services; and
 - (d) all and any acts and omissions of your Personnel, your third parties and End Users.
 - 3.6. With respect to any proposed installation, commencement or start dates specified in a Quotation:
 - (a) time is not of the essence and such dates are estimates only;
 - (b) where our Personnel or Third Party Providers or any Vendor are unable to provision any Ordered Products and Services by any agreed or estimated installation, commencement or start date for any reason:
 - (i) we may terminate the relevant Agreement at any time prior to the provisioning being completed, by notice to you, without liability; and
 - (ii) you may terminate the relevant Agreement prior to the provisioning being completed, by notice to us, without liability if the Ordered Products and Services are not installed or provisioned (as applicable) within 60 days after the agreed or estimated installation, commencement or start date for any reason; and

- (c) you must pay all costs and reasonable expenses that we incur as a result of any delay in the installation, procurement, commencement and/or implementation of Ordered Products and Services caused directly or indirectly by you or your Personnel.
- 3.7. You warrant that you will not use, or intend to use, any Ordered Products and Services for personal, domestic or household use or consumption.
- #### 4. Performance and availability of Ordered Products and Services
- 4.1. We warrant that Ordered Products and Services will perform materially in accordance with the Specifications.
- 4.2. We do not warrant that Ordered Products and Services will be:
- (a) uninterrupted or error-free, free from fault or external intrusion; or
 - (b) suitable for or will meet your requirements, unless such warranties are expressly set out in a Quotation or Service Schedule.
- 4.3. Where a Quotation specifies that we will provide Ordered Products and Services that comprise of one or more Virtual Servers or Virtual Data Centres, the service levels applicable to those Virtual Servers and Virtual Data Centres for the purposes of the Agreement will be as set out in the applicable Third Party Provider's Standard Form of Agreement available at the following links:
- (a) Virtual Server - https://www.zettaGRID.com/wp-content/uploads/2020/11/ZettaGRID_SFOA_Service_Description_Server_20201106.pdf
 - (b) Virtual Data Centre - https://www.zettaGRID.com/wp-content/uploads/2020/11/ZettaGRID_SFOA_Service_Description_VDCBackup_20201106.pdf
- 4.4. Where any Ordered Products and Services include our hosting of any Ordered Products and Services (**Axient Hosting**), the provisions of ZettaGRID's standard customer agreement, a copy of which can be found at <https://www.zettaGRID.com/> or <https://www.zettaGRID.com/terms/> shall be incorporated into the Agreement by reference such that: (i) any reference into that standard customer agreement to ZettaGRID shall be deemed to be a reference to us and any reference to "Customer", "you" and "your" therein shall be deemed to be a reference to you; and (ii) ZettaGRID Pty Ltd shall be entitled to rely on its protections, limitations and exclusions of liability thereunder.
- #### 5. Equipment
- 5.1. An Agreement does not transfer or assign title to Your Equipment to us.
- 5.2. An Agreement does not transfer or assign title to Our Equipment to you.
- 5.3. You must not, except as authorised in writing of us, grant or permit the grant or existence of any Security Interest in Our Equipment.
- 5.4. You must promptly notify us if any of Your Equipment becomes subject to any Security Interest or Purchase Money Security Interest (as defined under the PPSA) and you must indemnify us from and against all and any loss and/or damage incurred by us caused by any of the foregoing matters or the repossession of Your Equipment or any other action taken by any person that is a secured party in respect of Your Equipment.
- 5.5. You must keep Your Equipment insured for its full replacement value at all applicable times. You must provide us with a certificate of currency in respect of that insurance within 5 Business Days of a request by us at any time.
- #### 6. Your Data
- 6.1. You acknowledge that the information (in any form, including reports) generated from Ordered Products and Services (**Output**) is reliant on and formulated from, among other things, information that End Users enter into, upload into or generate from the Ordered Products and Services (**Your Data**). As between you and us, Your Data is owned by you and the Agreement does not transfer any IPR in Your Data to us.
- 6.2. We will not use Your Data other than to:
- (a) perform our obligations under the Agreement; and
 - (b) comply with our legal obligations.
- 6.3. You must ensure that:
- (a) your End Users are fully entitled (and where applicable, licensed) to disclose to us all of Your Data that is entered into Your Equipment, Our Equipment and Ordered Products and Services;
 - (b) all of Your Data is accurate and up-to-date; and
 - (c) the collection, use, disclosure and processing of Your Data by us, our Personnel and/or our Third Party Providers does not breach any Applicable Law or any person's rights.
- 6.4. Your Data may be hosted by us or our Third Party Providers on hardware or infrastructure located in or outside Australia. We may or may not own the infrastructure or the premises in which the infrastructure is located.
- 6.5. Data loss and corruption is unpredictable and can occur from time to time. In the event of any loss, destruction, alteration, corruption or damage to any of Your Data that you engage us to host:
- (a) your sole and exclusive remedy as against us, shall be to request that we use reasonable endeavours to restore that data from the latest back-up that we or our Third Party Providers maintain; and
 - (b) we shall not have any liability for any such loss, destruction, alteration, corruption or damage or for any unauthorised access or disclosure to Your Data unless it is caused by our wilful misconduct or intentional breach of the Agreement.

6.6. You must indemnify us in respect of any loss and damage that we incur as a result of any third party claim that the transmission, storage, hosting, disclosure, processing, access and/or use of Your Data by us for the purposes of the Agreement, or access to and/or use of Your Data by any End User, infringes the IPR and/or other rights of any person or breaches any Applicable Law.

7. Our Intellectual Property Rights

7.1. As between you and us, we own all IPR in:

- (a) Ordered Products and Services (including any software, Source Code, reports, Object Code, databases and database structures that are incorporated into or supplied in connection with the Ordered Products and Services); and
 - (b) all Output (except to the extent that it comprises and/or involves Your Data) made available in or via the Ordered Products and Services,
- (collectively, **Our IPR**).

7.2. You must not represent that you own any of Our IPR.

7.3. You must not directly or indirectly do anything that would or might invalidate, jeopardise, limit, interfere with or put in dispute Our IPR and you must not do or authorise the commission of any act that would or might invalidate or be inconsistent with our ownership of Our IPR.

7.4. You hereby assign to us all and any IPR in all and any comments in connection with Ordered Products and Services and any requests for new features, that you and/or your employees may make or suggest regarding them (each, an **Improvement Suggestion**).

7.5. You must procure from your employees an irrevocable and freely given written consent from each of them to the infringement of any Moral Rights that they may have in any such Improvement Suggestions by us and by any third parties who we authorise to operate or modify the Ordered Products and Services.

8. Confidentiality

8.1. Each party (**receiving party**) may receive information from the other party (**disclosing party**) during the Term that is marked as confidential or is deemed confidential by Applicable Law (**Confidential Information**).

8.2. The receiving party may not, at any time without the disclosing party's prior written consent, use and/or disclose any Confidential Information, other than to exercise its rights and perform its obligations under the Agreement or comply with Applicable Law.

8.3. Confidential Information does not apply to information:

- (a) that is independently developed, obtained or known by the receiving party, without breaching any obligation of confidence to the disclosing party;

- (b) that the receiving party can prove was already known to it at the time of disclosure by the disclosing party;
- (c) that is in the public domain, except where due to a breach of the Agreement or any breach of any obligation of confidence; or
- (d) that the receiving party must disclose under the rules of any stock exchange on which it or its holding company is listed.

8.4. Where we are required to do so under any contract with any supplier, we may disclose your Confidential Information to our suppliers, including, where the supplier provides us with services that we use to provide Ordered Products and Services.

9. Acceptable Use

9.1. You must ensure that any person who accesses and/or uses the Ordered Products and Services (each, an **End User**):

- (a) complies with all applicable Documentation and Specifications in the course of such access and/or use;
- (b) complies with all Applicable Laws in the course of such access and/or use;
- (c) does not infringe or permit any person to infringe any of our, or our licensors', IPR;
- (d) provides us with access to Your Data, Personnel, Your Equipment and/or any cooperation and/or assistance necessary for us to carry out our duties under the Agreement;
- (e) does not provide their passwords or other access credentials to any other person;
- (f) immediately notifies us of any unauthorised or suspected unauthorised use or disclosure of any access credentials for Ordered Products and Services; and
- (g) uses reasonable and appropriate security measures and precautions when using Ordered Products and Services.

9.2. You must:

- (a) ensure that you maintain a reliable Internet connection including any telecommunication services necessary for us to provision and supply Ordered Products and Services to you;
- (b) ensure that Your Premises is suitable and maintained in a manner suitable for the use of Ordered Products and Services;
- (c) maintain all building cabling (existing and new) in accordance with all relevant Australian industry standards and guidelines necessary for Ordered Products and Services to operate; and
- (d) not do anything that interferes with or prevents the proper functioning of Ordered Products and Services.

9.3. The availability of Ordered Products and Services will be subject to any bandwidth limitations, Internet and network downtime and congestion, database size limitations, throughput limitations and other technical and non-technical limitations or restrictions, as set out in the Specifications, Documentation and/or Vendor Terms.

9.4. Unless otherwise expressly specified in the Agreement, you must not, and must not permit any person to use Ordered Products and Services:

- (a) to copy, alter, modify, tamper with, create derivative works from, reproduce, resell, transfer to a third party, reverse assemble, reverse engineer, reverse compile or enhance Ordered Products and Services or any trade marks, any patent or copyright notices, or any confidentiality legend or notice, or other means of identification, used on or in relation to the Ordered Products and Services;
 - (b) in any manner that breaches Applicable Laws or violates all or any legal rights of any person in any jurisdiction (including any person's privacy, such as by way of identity theft or "phishing");
 - (c) to license, sublicense, resell, assign, transfer, distribute, commercialise or provide others with access to, Ordered Products and Services;
 - (d) to "frame", "mirror" or serve Ordered Products and Services on any web server or other computer server over the Internet or any other network;
 - (e) to store, transmit, distribute or introduce malicious programs into our systems, network or servers (e.g., viruses, worms, trojan horses, e-mail bombs);
 - (f) to make fraudulent offers of goods or services;
 - (g) to carry out security breaches or disruptions of network communication (security breaches include, accessing data of which you are not an intended recipient, logging into a server or account that you are not expressly authorised to access, corrupting any data, network sniffing, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes);
 - (h) to execute any form of network monitoring which will intercept data not intended for you; or
 - (i) to circumvent user authentication or security of any of our hosts, networks or accounts or those of our customers, Third Party Providers and/or Vendors,
- (collectively, **our Acceptable Use Policy**).

10. Fees

- 10.1. You must pay the Fees to us in accordance with the Payment Terms. You are not liable to pay any Fees to any Third Party Provider or Vendor (as applicable) for the use of the relevant Ordered Products and Services.
- 10.2. The Fees are non-refundable (except where we are compelled to provide a refund under applicable law) and are exclusive of all taxes (including GST) and you agree to pay all such taxes to us, in respect of any Supply (as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) made for the purposes of the Agreement.

You must pay all such taxes, at the same time as the Fees.

- 10.3. Without limiting any other rights or remedies available to us, we may suspend our obligations under an Agreement and your access to Ordered Products and Services if you fail to pay the Fees in accordance with the Payment Terms.
- 10.4. We may increase the Fees:
 - (a) on or after each anniversary of the Commencement Date by 3% per annum;
 - (b) to take into account any increase in the fees payable by us to our Third Party Providers or Vendors; and/or
 - (c) as otherwise agreed in writing by the parties.
- 10.5. For the avoidance of doubt, where Ordered Products and Services automatically (or otherwise) renews in accordance with the Agreement or Vendor Terms, you shall pay to us the Fees in accordance with the Payment Terms for the renewal.
- 10.6. If you fail to pay our Fees and we obtain a judgment against you from a Court of competent jurisdiction, you must pay pre-judgment interest and post-judgment interest at the maximum rate permitted under Applicable Law and you must indemnify us from and against all and any legal costs and disbursements (on an indemnity basis) that we incur in connection with the proceedings.

11. Managed Technical Support Services

- 11.1. If specified in a Quotation, we will use our best endeavours to manage the applicable Ordered Products and Services substantially in accordance with the Specifications and the service levels set out in the Quotation or Service Schedule (each, a **Supported Item**) (collectively, **General Managed IT Services**).
- 11.2. We shall only be obligated to provide the General Managed IT Services with respect to the Supported Items, and only while they are at the location specified in a Quotation (**Specified Location**). You warrant that the Specified Location is the only location from which the Supported Items will be used by you and/or your End Users and that you will not relocate any Supported Items from the Specified Location, without our prior written approval.
- 11.3. You warrant that you have a right to use the Supported Items and that you are licensed to operate the software installed on any Supported Items (**Third Party Software**) and where relevant, procure any such rights for us at your cost.
- 11.4. If during the Term, a Supported Item is repeatedly not operating substantially in accordance with the Specifications (**Error**) and the Error is reproducible and documented, Your Authorised Administrator may request technical support with respect to the Supported Item by calling our telephone helpdesk at +61 2 8338 3444 (during Business Hours) or by emailing us at helpdesk@axient.com.au (**Support Request**) (collectively, **Technical Support Services**). We

shall have no obligation to respond to any Support Request to any of your Personnel other than Your Authorised Administrator.

- 11.5. In the absence of service levels in a Quotation or applicable Service Schedule for an Ordered Product or Service, we will use reasonable endeavours to adhere to the following response times for all Support Requests (**Default Service Levels**) in our provision of the Technical Support Services:

Error Severity*	Response Time
Low	We will acknowledge receipt of the Support Request within 24 Business Hours of the Support Request
Medium	We will acknowledge receipt of the Support Request within 16 Business Hours of the Support Request
High	We will acknowledge receipt of the Support Request within 8 Business Hours of the Support Request
Critical	We will acknowledge receipt of the Support Request within 4 Business Hours of the Support Request

*Severity Key:

Low – an Error which is cosmetic or which affects a non-essential part of your business operations.

Medium – an Error which is not materially negatively impacting on your business operations.

High – an Error which is materially negatively impacting on your business operations.

Critical – an Error which prevents you from operating your entire business.

- 11.6. We have no obligation to provide Technical Support Services other than in respect of the Supported Items.
- 11.7. Notwithstanding any other provisions of an Agreement or any Vendor Terms, we have no obligation to perform any Technical Support Services in respect of an Error caused by:
- (a) your use of any Supported Item in combination with software or hardware not supplied or approved in writing by us;
 - (b) any modification of any Supported Item (including by way of installation of software not previously installed thereupon, or the modification of any software or the configuration thereof) not authorised by us or included in a Quotation or Service Schedule;
 - (c) Your Data;
 - (d) Use of Third Party Software or the applicable Ordered Product and Service in breach of the Vendor's terms and conditions;
 - (e) any obsolete or out of warranty hardware or software comprising or installed on any Supported Items;
 - (f) a failure or corruption of Your Equipment used in conjunction with the Supported Items beyond our reasonable control; or
 - (g) your, your Personnel's or End Users' breach of the Agreement,

(each, an **Excluded Event**).

- 11.8. You hereby authorise us to contact Third Party Providers and Vendors on your behalf to make changes to the Supported Items, as required to resolve any Error.
- 11.9. In the event that we are unable to resolve any Error with respect to a Supported Item we will contact the applicable Third Party Provider or Vendor to procure their technical support services (if specified in a Quotation and subject to the terms of the applicable Service Schedule), provided that you have a valid maintenance contract with them.

12. Equipment Hosting

- 12.1. If specified in a Quotation, we will use reasonable endeavours to deploy and host Your Equipment and/or the applicable Ordered Products and Services in designated areas within a dedicated cage or cabinet (**Dedicated Rack Space**) or in designated areas within shared cabinets or cages (**Shared Rack Space**) at the agreed location (the **Data Centre**) on public or private networks nominated by you in the Quotation (together, the **Equipment Hosting Services**).
- 12.2. The Equipment Hosting Services consist of:
- (a) refreshing and/or re-booting;
 - (b) power cycling;
 - (c) testing cabling for continuity and proper signalling;
 - (d) installing, moving or replacing Your Equipment;
 - (e) on premise technical assistance;
 - (f) remote management or troubleshooting;
 - (g) an agreed number of Dedicated Rack Spaces and/or Shared Rack Spaces for Your Equipment;
 - (h) reasonable physical security measures at the Data Centre including CCTVs and access cards required to access the Data Centre;
 - (i) power supply for each cabinet (including temperature and humidity maintenance); and
 - (j) an automatic fire detection and prevention system.
- 12.3. Except as otherwise specified in a Quotation, you are responsible for administering all aspects of Your Equipment, including application and virtualisation licensing, the operating systems, any firewalls or load balancers, domain name systems, intrusion detection systems, backups, monitoring and customer-administered storage solutions in accordance with industry-accepted practices and procedures.
- 12.4. You must not access the Data Centre. Our Personnel can access the Data Centre for the purposes of installing, operating, maintaining, and repairing Your Equipment or the applicable Ordered Products and Services.
- 12.5. We may also make changes to the provision of the Equipment Hosting Services, use your IP addresses and may establish new procedures for the use of the Equipment Hosting Services that we deem necessary. We will give you reasonable

advance notice and use all reasonable endeavours to minimise the effect that such change will have on your use of the Equipment Hosting Services.

- 12.6. Title to Your Equipment will remain with you while at the Specified Location and/or the Data Centre.
- 12.7. We may access your Dedicated Rack Space and/or Shared Rack Space (as applicable) as necessary for us to provide the Equipment Hosting Services or provision the applicable Ordered Products and Services.
- 12.8. We are not responsible for providing disaster recovery services. You may request that we assist you in recovering Your Data and moving it to a disaster recovery site and such assistance shall be payable by you on a time and materials basis in accordance with rates specified in a Quotation.

13. Managed Software Services

- 13.1. If specified in a Quotation, we will seek to procure a software licence for you and your End Users to access and use the software and associated services (the **Software**) and we shall be your point of contact for all operational or technical support questions related to the Software on a continuous basis (together, the **Managed Software Services**). Our supply of the Managed Software Services is subject to the Vendor's approval and provision of the Software to us.
- 13.2. The Managed Software Services include:
 - (a) monthly billing and access to support services;
 - (b) installation, setup and migration of systems and accounts for you and your End Users covering all aspects of your transition to the Software;
 - (c) licensing support including licensing model changes, program guidance and product use rights;
 - (d) cost and usage reports; and
 - (e) free of charge updates to the Software, at regular intervals (and notifying you of specific requirements for upgrades to the Software, as made available by the Vendor).
- 13.3. You acknowledge that your use of the Software is subject to a separate agreement between you and the Vendor comprised of the Vendor Terms. In the event that we procure a software licence for the Software for you, or for your End Users, then you agree to be bound by the Vendor Terms.
- 13.4. You agree that the Vendor is liable for all license and product claims relating to the Software. By placing an order for Managed Software Services with us, you represent and warrant that you accept the Vendor Terms and agree to pay us for all orders that we submit to the Vendor for you and your End Users use of the Software.
- 13.5. You must indemnify us against all and any liabilities, claims, losses, and expenses that may be incurred by us as a result of your and/or your End Users' failure to comply with the Vendor Terms.

14. Software Hosting Services

- 14.1. If specified in a Quotation, we will supply Software Hosting Services at the Data Centre or at the Specified Location.
- 14.2. You must not damage, or engage in any unauthorised activity (including any unauthorised access or interference) with respect to, any of Our Equipment, the Data Centre or any third party property or equipment.
- 14.3. We make no representation with respect to the speed of your LAN, WAN or Internet connection and as such we do not guarantee the performance of any part of the Software Hosting Services for factors outside of our reasonable control, including modem speeds, WAN speeds, ISP reliability or LAN traffic and connectivity to the Data Centre.
- 14.4. You must not access the Data Centre. Our Personnel can access the Data Centre for the purposes of installing, operating, maintaining, and repairing the applicable Ordered Products and Services.
- 14.5. You agree that you will maintain at least 1 additional current copy of Your Data stored on Our Cloud in a separate location other than Our Cloud.
- 14.6. If you ask us to custom configure our Software Hosting Services, we make no representation or warranty whatsoever regarding any such customised Software Hosting Services and we shall not be liable to you for any loss or damage arising from the provision of such customisation apart from any non-excludable guarantees under Applicable Law.

15. Liability

- 15.1. Any use of the Ordered Products and Services and/or any Output does not constitute any form of financial, legal or other advice. You must obtain all appropriate professional, financial, legal and other advice as applicable before relying on any Output. You must not represent (either expressly or implied) that any Output is any form of advice.
- 15.2. We are not liable for any failure to perform Ordered Products and Services caused by any breach of the Agreement by you or your Personnel.
- 15.3. Neither party is liable to the other party for any indirect, consequential or special losses arising out of, or in connection with this Agreement, including loss of profits, loss of business opportunity, loss of revenue, loss of savings or loss of data and whether arising in contract, tort (including negligence) or otherwise, and whether the loss or damage is foreseeable or not.
- 15.4. Our liability for all loss or damage that you sustain in connection with any Ordered Products and Services as a result of our breach of the Agreement over one or more events, other than that arising from any damage to tangible property, personal injury or death, will be limited, in the aggregate, to 1 (one) times the value of the Fees for the 12 (twelve) month period preceding the last liability, loss or damage event, paid by you under the Agreement, for those Ordered Products and Services. This cap is reduced to the extent that you,

your End Users and/or any Third Party Provider or Vendor caused or was responsible for such loss.

- 15.5. Where liability for breach of any guarantees under the ACL can be limited, our liability arising from any breach of those guarantees (if any) is limited, at our option: (i) with respect to the supply of goods, to the replacement or repair of the goods or the cost of resupply or replacement of the goods; and/or (ii) with respect to services, to the supply of services again or the cost of re-supplying the services again.
- 15.6. Other than any non-excludable guarantees implied into this Agreement under the ACL (if any), all conditions, warranties and guarantees that would be implied in an Agreement are hereby excluded from the Agreement.
- 15.7. Either party may obtain urgent interlocutory relief from a court of competent jurisdiction to prevent any actual or potential breach of the Agreement.
We are not liable under an Agreement or otherwise for any acts or omissions of any Third Party Provider or Vendor and you hereby irrevocably release us from any claims, allegations, proceedings and complaints that you may have at any time concerning the Ordered Products and Services in respect thereof.

16. Force Majeure Event

- 16.1. We are not liable for any failure by us to perform our obligations under an Agreement if such failure was caused by a Force Majeure Event. If a Force Majeure Event continues for 45 consecutive days, either party may terminate the Agreement by written notice.

17. Termination

- 17.1. A party (**the defaulting party**) may terminate the Agreement by written notice to the other party if the defaulting party commits a breach of the Agreement that is not remediable, or if the breach is a remediable breach and the defaulting party fails to remedy the breach within 14 days of written notice from the other party requiring the breach to be remedied.
- 17.2. We may terminate and/or suspend our provision of Ordered Products and Services, if:
- (a) you fail to pay any Fees to us as in accordance with the Payment Terms;
 - (b) you and/or your End Users repeatedly infringe or breach our Acceptable Use Policy; or
 - (c) a Third Party Provider or Vendor ceases to provide hardware, software, products or services that we require to comply with our obligations to supply Ordered Products or Services to you.
- 17.3. Either party may terminate the Agreement by written notice to the other party if the other party suffers an Insolvency Event.
- 17.4. If an Agreement is terminated for any reason:

- (a) you shall, at our option, promptly return or destroy all copies of our Confidential Information in your possession or control;
 - (b) we shall, at your option, promptly return or destroy all copies of your Confidential Information in our possession or control; and
 - (c) any rights granted by us to you pursuant to the Agreement immediately terminate.
- 17.5. Upon termination of the Equipment Hosting Services and/or Software Hosting Services (as applicable):
- (a) we will provide you with administrator credentials for the applicable Ordered Products and Services;
 - (b) we will provide you with access to a copy of Your Data hosted on Our Cloud (where applicable) for a period of 15 Business Days; and/or
 - (c) we will provide reasonable transition services to any nominated third parties upon your written request for an additional fee to be agreed between you and us.
- 17.6. If an Agreement is terminated prior to the expiry of the Minimum Period (other than due to our breach or if we suffer an Insolvency Event), without limiting any other rights or remedies available to us, you will pay all invoiced Fees and 75% of any outstanding amounts that are not yet invoiced that we calculate or reasonably estimate would have been payable by you under the Agreement for the remainder of the Minimum Period and any reasonable expenses incurred by us (collectively, the **Outstanding Amount**). If an Outstanding Amount is payable, we shall send you a tax invoice in respect of the Outstanding Amount and you will pay that invoice within 30 days. You agree that payment by you under this clause is not intended to be, and will not be punitive and will compensate us for reasonable losses resulting from early termination of the Agreement.
- 17.7. Any rights or obligations that, by their nature, survive termination shall so survive, including any provision dealing with confidentiality, IPR, liability, dispute resolution and jurisdiction.
- 17.8. Termination does not affect any accrued rights of either party.

18. Notices

- 18.1. All notices required or permitted to be made under the Agreement shall be in writing and shall be deemed delivered if:
- (a) delivered in person;
 - (b) sent by post to the recipient's postal addresses identified in the relevant Quotation; or
 - (c) sent by email to the recipient's email addresses identified in the relevant Quotation.
- 18.2. Notice given under subclause 18.1(a) shall be effective upon delivery.
- 18.3. Notice given under subclause 18.1(b) shall be deemed delivered 6 Business Days after posting if posted domestically in Australia, or 20 Business

Days after posting if posted to or from Australia from any other country.

- 18.4. Notice given under subclause 18.1(c) shall be deemed to have been validly and effectively given on the day on which it is transmitted if the sender receives a read or delivery receipt confirming delivery or receipt of the email or a reply to the email.
- 18.5. Any party may change its address for notice hereunder by giving written notice to the other party in accordance with this clause 18.

19. General

- 19.1. A party may not assign its rights or novate its obligations under the Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned or delayed).
- 19.2. If any provision of the Agreement is deemed invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain enforceable.
- 19.3. A waiver is only effective if in writing.
- 19.4. The relationship between you and us is non-exclusive and nothing in the Agreement will prevent us from supplying any goods or services to any third party in our absolute discretion. You and we are independent contracting entities and nothing contained in the Agreement creates any relationship of partnership, employment, joint venture or agency between the parties.
- 19.5. The Agreement is the entire agreement between you and us about its subject matter and supersedes all other proposals, arrangements or agreements between the parties about its subject matter.
- 19.6. The Agreement may be amended only by a written document signed by the parties and a provision of or a right under the Agreement may not be waived or varied except in writing signed by the party to be bound.
- 19.7. The Agreement is governed by the laws in force in New South Wales. Each party submits to the exclusive jurisdiction of the courts located in New South Wales and the courts of appeal from them in relation to any proceedings and disputes concerning the Agreement.

20. Definitions and Interpretation

- 20.1. In these Terms of Service and in any Agreement words in bold font in parentheses have the meanings given to them therein and the following words have the following meanings:
- ACL** means schedule 2 to the *Competition and Consumer Act 2010* (Cth).
- Applicable Law** means any legislation, rule of the general law, including common law and equity, judicial order or consent or requisition from, by or with any governmental agency, including any Data Protection Law, in any applicable jurisdiction.
- Business Day** means any day from Monday to Friday excluding public holidays in New South Wales.

Business Hours means 9:00am – 5:00pm on Business Days.

Data Protection Laws means all applicable data protection and privacy laws in any applicable jurisdiction, including the *Privacy Act 1988* (Cth).

Documentation means any user manuals, notes, technical instructions and documentation provided by us in respect of the Ordered Products and Services.

Fees means any fees, charges, costs and expenses set out in a Quotation.

Force Majeure Event means war, strike, lockout, natural disaster, flood, labour disturbance, pandemic, harmful code or component, communication outage, Internet outage, interruption of service, denial of service attack, breach of contract by a Third Party Provider, Vendor, fire, threatened or actual act of terrorism, earthquake, act of God, or other circumstances beyond our reasonable control.

GST has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)).

Insolvency Event means, in respect of a party: (a) the party ceases to carry on business, is unable to pay its debts as and when they fall due, or is deemed to be insolvent or bankrupt; (b) a receiver or a liquidator or provisional liquidator or an administrator is appointed to the party, or an application (including voluntary application filed by that party) is lodged or an order is made or a resolution is passed for the winding up (whether voluntary or compulsory) or reduction of capital of that party; (c) the party enters into an arrangement with its creditors; (d) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution; (e) the party suspends payment of its debts to the other party or a third party, or the party takes the benefit of any law for the relief of insolvent debtors; or (f) anything analogous or having a substantially similar effect to any of the events described in (a) through (e) above occurs under the law of any applicable jurisdiction.

IPR means all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under article 2 of the convention establishing the World Intellectual Property Organisation, and all rights to enforce any of the foregoing rights.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Object Code means Source Code in compiled or binary form.

Our Cloud means our cloud system as specified in a Quotation for the applicable Ordered Products and Services.

Our Equipment means any equipment, systems, software, networks, servers, hardware, cabling, ports, switches and/or other ancillary equipment or tools owned and/or operated by us, that is not Your Equipment.

Payment Terms means payment terms set out in the applicable Quotation.

Personnel means a party's employees, agents, officers and subcontractors. We are not your Personnel and you are not our Personnel for the purposes of the Agreement.

PPSA means *Personal Property Securities Act 2009* (Cth) as amended from time to time and any regulations thereunder.

Quotation means a document entitled "*Quotation*" prepared by us and accepted by you.

Service Schedule means a document with that title that we supply to you in respect of Ordered Products and Services.

Source Code means human readable computer code.

Specifications means the technical specifications for Ordered Products and Services as set out in or annexed to a Service Schedule or Quotation by us.

Supported Item means any hardware, software or other item that we expressly agree to provide General Managed IT Services for in a Quotation.

Terms of Service means these terms of service, as amended by us from time to time.

Third Party Provider means any of our third party suppliers, subcontractors and/or providers who provide any goods or services that we supply or resupply as part of Ordered Products and Services.

Vendor means any third party who supplied any goods or services that we are required to manage, support or maintain under an Agreement.

Vendor Terms means any end user agreement, terms and conditions or other agreement that a Third Party Provider or Vendor requires you to enter into in order to use any goods or services that we supply or resupply as part of Ordered Products and Services, including as specified in or attached to a Quotation.

we, us and **our** means Axient Pty Ltd ABN 14 090 510 848.

you and **your** means the customer specified in a Quotation.

Your Authorised Administrator means the person who is responsible for password resets for your End Users, licensing usage management, creating Software groups, setting aliases and/or setting End User permissions in respect of the applicable Ordered Product and Service.

Your Equipment means any systems, software networks, servers, equipment, hardware, cabling, ports, switches and/or other ancillary equipment or tools owned by you.

Your Premises means any premises owned, controlled or occupied by you, as specified in a Quotation, including the Specified Location.

20.2. Unless the context requires otherwise:

- (a) a reference to "**a party**" means you or us (as the context dictates) and a reference to "**the parties**" means you and us;
- (b) headings and underlinings are for convenience only and do not affect the construction of the Agreement;

- (c) a provision of the Agreement will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision, or because the party's legal representative prepared the provision;
- (d) currency or "\$" refers to Australian dollars;
- (e) a reference to a statute or regulation includes amendments thereto;
- (f) a reference to time is to time in New South Wales;
- (g) a reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity;
- (h) the words 'such as', 'including', 'particularly' and similar expressions are not words of limitation and shall be interpreted as if the words "but not limited to" immediately followed them in each case; and
- (i) a reference to the singular includes the plural and vice versa.