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# 2017 TERMS AND CONDITIONS

ENGAGEMENT, SUPPORT AND OPERATIONAL

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Document Date: September 2017



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## DOCUMENT INFORMATION

### GENERAL INFORMATION

Item	Description
Subject	Terms and Conditions
Description	General Terms and Conditions of engagement with Sharing Minds in 2017
Author/Auditor	Intelligent Technology Solutions PTY LTD

### VERSION HISTORY

Version	Version Date	Comment
0.1	19/01/2015	Document created
0.2	12/06/2017	Document review
1.0	25/07/2017	Document published to website
2.0	13/09/2017	Document revised and published to website

## OVERVIEW

This document has been defined for use with all Sharing Minds engagements including all strategy engagements, consultancy, support contracts and application purchases to define the general terms and conditions that the Client agrees to.

Where required, additional terms and conditions or alternate terms and conditions may be provided within a given contract that override the terms and conditions specified in this document.

## DEFINED TERMS AND CONDITIONS

### Entity Name

Intelligent Technology Solutions PTY LTD (trading as Sharing Minds) shall be referred to in this document as SHARING MINDS.

Any organisation engaging SHARING MINDS shall be referred to in this document as a Client.

### Terms & Conditions

This contract is governed by the laws of Queensland (QLD) and Australia. The terms and conditions contained on this document supersede any previous terms and conditions.

### Limited Liability

In no event shall SHARING MINDS or its suppliers be liable for any accidental, consequential, incidental or indirect damages of any kind (including without limitation, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) arising out of the use or of the inability to use the software. In no event shall SHARING MINDS' liability for any claims whether in contract, tort or other theory of liability exceed the purchase price of the subject products or services, unless such limitation of liability is otherwise prohibited by law.

### Copyright

The intellectual property rights, copyright and company trade secrets of SHARING MINDS (conceived May 2008) vested in all software products, upgrades, dual-media software, hard-copy or electronic manuals and documentation are vested in SHARING MINDS, which reserves the right to use the software or material, or any part of it in other applications and for its own use.

### Hourly Work

Unless specified otherwise in writing the Client authorises SHARING MINDS to undertake work on an hourly-rate basis. SHARING MINDS may provide an estimated time to complete this work. Such estimates are not binding and all hours designated as performed will be charged at the rates set out or otherwise agreed. In an hourly work agreement, the initial meeting with Client will be conducted by SHARING MINDS at no cost. Any subsequent work will be charged at the rates set out or otherwise agreed. The minimum time chargeable for on-site work is 2 (two) hours per person per visit. The minimum time chargeable for off-site work is 60 (sixty) minutes per person per request.

### Pre-Paid Work

SHARING MINDS may offer a more competitive rate to those Clients pre-paying time in blocks of 40 hours or more per person on the project. Pre-paid rates become effective upon the day of payment. Rates revert to standard if pre-payment is not made prior to work commencing, or not so made for second or subsequent prepaid invoices in respect of work past the previously prepaid work. We recommend that you process payment within 24 hours of receiving a new invoice to ensure that the prepaid discount is maintained. Unused prepaid credit will expire 18 months from the date of issue of the invoice. No refund will be made for unused prepaid credit.

### Fixed Price Work

SHARING MINDS may agree to perform certain work or provide a software product for a fixed price in accordance with an agreed specification. In this case, the specification is binding and additional or previously unspecified work will be to Client's account. A 30 (thirty) percent payment is required prior to commencement, and the balance payable upon delivery of the software for User Acceptance Testing. SHARING MINDS conducts all development and testing in an environment with a default configuration. Unless stated otherwise, the following are excluded from any fixed price agreement: specification development, production deployment, third party component integration, data migration, network infrastructure or hardware services, graphic design including mock-ups.

### Requests for Work

Work requested by the Client (including employees or representatives of the Client), in written, electronic, or verbal form, is authorised by the Client. The Client may choose to work through a "Company-Champion." If so, the Client must inform SHARING MINDS of this decision in writing. After this advice, the Company Champion has sole authority to request billable work. All requests that the Company Champion is cc'd on are considered authorised.

### Out of Hours Work

Unless agreed prior, where possible all work will be completed within standard business hours (between 8:00am – 5:00pm, business days), however should any project work, support services or unscheduled work be required outside of these times, standard SHARING MINDS overtime rates will apply. The estimated cost of overtime will be provided and must be approved by the Client in writing before commencement.

### Assumptions, Limitations & Conditions

Each SHARING MINDS proposal may include several assumptions, limitations or conditions. These are provided to meet specific outcomes of the works outlined within the proposal. Any specifics noted within assumptions, limitations or conditions in a SHARING MINDS proposal override any item noted within this document.

### Uninvited Solicitation

Direct or uninvited solicitation of any SHARING MINDS employee by the Client is prohibited unless authorised in writing by SHARING MINDS. The Client warrants that will the Client solicit the employee, thereby breaching the prohibition, the Client will pay damages to SHARING MINDS of an amount proportionate to 21% +GST of the total remuneration package offered to the employee plus liquidated damages of 4 (four) weeks' pay +GST of the total remuneration package.

## Warranty

A 30-day warranty begins upon delivery of any fixed price job. No warranty applies to work done on an hourly basis, this includes bug fixing. SHARING MINDS and its suppliers disclaim all other warranties, either express or implied, including, but not limited to implied warranties or merchantability and fitness for a particular purpose, with regard to the software, the accompanying written materials, and any accompanying hardware.

## Bugs

A bug is a reproducible coding error that causes an unexpected defect, fault, flaw, or imperfection in a computer program. In other words, if any SHARING MINDS software does not perform as the developers intended, it is most likely a bug. Any unspecified feature or modification is not a bug, and will be reviewed for addition to a future release at the developer's discretion. All bugs with a project may be reported within 90 days of project close for review and rectification at no cost. All bugs reported following 90 days will be reviewed for cost.

## Source Code Ownership

The Client is granted a nonexclusive, transferable, perpetual Australian right and license to use, deploy and modify the software within the Client's group of companies for the Client's own internal purposes. SHARING MINDS reserves the right to use generic code from other projects as part of the Client's project. SHARING MINDS reserves the right to use generic code from the Client's project in future projects. Some projects contain SHARING MINDS Framework code that is common to other projects. The Client has access to the source code of the SHARING MINDS Framework at the end of the development, royalty free.

## Service of all Notices

Service of all notices shall be sufficient if delivered or sent by any form of email (preferred), facsimile, or post (standard, certified or registered) to either party's business address.

## Change Management

In addition to service of all notices, the Client must provide a minimum of 48 hours' notice of any platform changes, updates, outages or expected impacts. These are expected to go through formal change management and require Notification and Acceptance by SHARING MINDS and the Client.

Change Management does not include content changes and migration services.

## Testing

The Client agrees that prior to a version being submitted to the Client, the SHARING MINDS developers may:

- » Perform automated testing with SHARING MINDS Tools
- » Perform automated testing via Unit Tests
- » Perform an internal "Test Please" (aka "Alpha Testing" e.g. only that pages or forms load, not checking the business rules)
- » Then send a "Test Please" to the Client (aka "Acceptance Testing" to check the business rules)

### Training & Documentation

Training is charged in half day or full day sessions. Documentation, if required, is at additional cost. If documentation has not been specifically estimated or quoted, it will not be supplied. All custom documentation, including additions, deletions and amendments is to Client's account.

### Support

Software will be supported either under an Hourly Basis, Maintenance Support Agreement or on a Per Issue basis.

### Delegated Administration

Any works including projects, hourly works or support work conducted within a Client's Microsoft Azure or Microsoft Office 365 environment will require the granting of Delegated Administrator rights to SHARING MINDS. This ensures that all SHARING MINDS resources have adequate access to platforms, services, etc. as well as providing a full audit trail of system access to both SHARING MINDS and the Client.

### Cancellations by Client

If any hourly job is cancelled by the Client after commencement, SHARING MINDS will charge for all hours consumed up to that point in time. If an hourly job is cancelled by the Client, any pre-paid work not fully completed will not be refunded; however, the remaining balance will be credited to the Client's account for future utilisation. If any fixed price job is cancelled by the Client, SHARING MINDS will retain the initial percent of pre-paid value. Any further hours completed will be charged to the Client as a proportion of the quoted price based on hours completed to that point in time.

### Cancellations by SHARING MINDS

SHARING MINDS reserves the right to terminate any previously agreed project specification for fixed price work without prior notice. SHARING MINDS will charge on a pro-rata basis for any work completed. SHARING MINDS reserves the right to terminate any previously purchased pre-paid work blocks without prior notice. In this case, the Client will be refunded for hours not completed as a proportion of the pre-paid blocks purchase value. SHARING MINDS reserves the right to terminate any ongoing service contract including, but not limited to hosting and database updates, with 14 (fourteen) days' notice. In this case, any paid unexecuted services will be refunded as proportion of the charged price based on percentage of specified project completed.

### Credit Terms

SHARING MINDS reserves to the right to refuse or withdraw credit for any reason. In the event of credit being refused SHARING MINDS may agree to conduct work on a prepaid basis. If credit is offered, the Client agrees to keep within terms of 7 days and limit of AUD\$20,000(+GST). Client agrees that SHARING MINDS can stop work if either of these are exceeded. SHARING MINDS reserves the right to take legal action to recover debt and/or withhold source code until invoices are paid in full. Client has 14 (fourteen) days from date of receipt of an invoice to query invoice or timesheet. Client abrogates any right of reply after this time.

### Interest

SHARING MINDS reserves the right to charge interest on all overdue accounts (including fees and disbursements) at a rate of 5% per annum compounded daily. Overdue accounts are deemed to be those accounts that remain unpaid after 14 days from the Due Date of invoice for services or products provided by SHARING MINDS.

### Credit Card Details

SHARING MINDS retains the right to store credit card details on file.

### Deadlines

SHARING MINDS may choose to estimate the completion date of a project. While we will endeavour to meet all deadlines, we do not offer any guarantees, and SHARING MINDS is not liable for losses suffered due to a project being completed after the estimated completion date.

### Requests for Information

Any request by SHARING MINDS for information, are required by the close of the following business day. Should the requested information not be provided within this timeframe than any work will be rescheduled to a later date once the information is received.

### Equipment

SHARING MINDS is not liable for any equipment failures be it SHARING MINDS' equipment or equipment on the Client site.

### Viruses

While SHARING MINDS endeavours to have all its hardware virus-free, SHARING MINDS and the Client are expected to have current virus protection. SHARING MINDS is not liable for any accidental infection of Client hardware.

### Expenses

Any expenses will be priced separately to all business quotations and proposals unless otherwise stated.

SHARING MINDS will travel to work on-site. Based on an 8-hour working day, travel inside the Capital City Metropolitan area is not charged. With respect to work conducted outside the Capital City Metropolitan area:

Travel Charges – Where a Sharing Minds resources is required to travel to site. Unless otherwise agreed in writing Sharing Minds note that the first half-hour of travel is provided at no charge, and half the standard hourly rate is charged for any subsequent hours, door-to-door.

The Client shall organise and pay for ordinary expenses, such as hotel, airfare, taxis or transportation. Note: when booking airfares, all fares must be flexible where possible.

The Client shall provision AUD\$60 meal expense per person per day, if meals are not provided.

### Goods and Services Tax ("GST")

All prices quoted whether on an hourly basis or a fixed price basis are exclusive of GST unless otherwise stated. In addition to the amounts quoted the Client must pay GST on those amounts (if applicable). This will increase the quoted price by 10%. GST is payable by the Client at the same time as the Client pays the SHARING MINDS invoice.

## Severability

Each of the above clauses is severable and is enforceable separately. If one or more clauses are deemed unenforceable, this does not affect the validity of the rest of the contract.

## MOVING FORWARD

Should further information or clarification of content be required, please contact us through your Sharing Minds account manager.



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