

Terms of Service

Last updated on 30 June 2022

1. Agreements for the supply of products and services

- 1.1. We may provide you with Application Forms setting out our quotations or proposals for the supply of products and services to you. Each time an Application Form is executed or otherwise accepted by you, a separate contract will be entered into consisting of the following documents (each, an **Agreement**):
 - (a) this Terms of Service;
 - (b) the Application Form; 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. Any quote in an Application Form that we send to you is open for acceptance for 30 days only. We have no obligation to supply any products or services under an Agreement other than as expressly required by the applicable Application Form(s).
- 1.4. We may modify this Terms of Service or any Service Schedule 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 Application Form, or if the Application Form does not specify a commencement date, the Agreement will commence on the date of execution of the Application Form by the last party to execute it.
- 2.2. If a contract term, initial term or minimum period is specified in an Application Form 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**), 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) (time being of the essence), in which case if such notice is provided, the Agreement will terminate at the end of the Minimum Period or the then current Renewal Period (as applicable).
- 2.3. 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 our best endeavours to supply and/or procure the supply of the products and/or services specified in an Application Form (respectively **Ordered Products** or **Ordered Services** and collectively, **Ordered Products and Services**) to you, substantially in accordance with any Specifications.
- 3.2. You must provide all necessary:
 - (a) cooperation, permissions, authorisations, assistance and 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, equipment and premises, as reasonably required by us to supply and/or procure the supply of Ordered Products and Services to you.
- 3.3. Where required by us, you must also arrange safe and timely access to Your Premises for our Personnel and Third Party Providers to provision, install, support and maintain the applicable Ordered Products and Services. Support and

maintenance are not within the scope of the Agreement unless the applicable Application Form clearly states that they will be provided.

- 3.4. Except to the extent that we are not able to exclude our liability pursuant to non-excludable Applicable Law, we are not liable for:
 - (a) the content, security or communications that you receive, access or rely upon when using Ordered Products and Services;
 - (b) ensuring that any data sent or received over any Ordered Products and Services is sent or received correctly and except to the extent that we are not able to exclude our liability pursuant to non-excludable Applicable Law, we and our Third Party Providers do not have any responsibility for loss of data, delays, non-deliveries or mis-deliveries of data;
 - (c) the installation of electrical wiring, removal of doors, widening of entrances or any other 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;
 - (d) ensuring that Your Equipment is compatible or interoperable with Ordered Products and Services; and/or
 - (e) all and any acts and omissions of your Personnel and/or End Users.
 - 3.5. With respect to any proposed installation, commencement or start dates specified in an Application Form:
 - (a) time is not of the essence and such dates are estimates only; and
 - (b) where our Personnel or Third Party Providers 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; 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 30 days after the agreed or estimated installation, commencement or start date for any reason.
- ### 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 an Application Form or Service Schedule or cannot be excluded from the Agreement under Applicable Law.
 - 4.3. If there are Service Levels specified in an Application Form or Service Schedule:
 - (a) we will use our best endeavours to ensure that the applicable Ordered Services comply with those Service Levels;
 - (b) you acknowledge that the Service Levels are targets only; and
 - (c) any breach of the Service Levels will not constitute a breach of the Agreement.
 - 4.4. We may in our sole discretion, vary Ordered Services at any time or from time to time, provided that any such variation does not have an adverse effect on the performance of the Ordered Services.

5. Your Equipment and Our 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 unless it expressly provides otherwise.
- 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 those terms are defined under the PPSA) and you hereby indemnify us from and against all and any loss and/or damage incurred by us caused by any of the foregoing matters, the repossession of Your Equipment and for 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 3 Business Days of a request by us at any time.

6. Your Data

- 6.1. Data in any form entered into, uploaded into or generated from Ordered Products and Services (**Your Data**) is, as between you and us, 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 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 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, to the maximum extent possible without breaching non-excludable Applicable Law:
 - (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 to or disclosure of Your Data unless it is caused by our negligence, wilful misconduct or intentional breach of the Agreement.
- 6.6. You hereby 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 Services (including any software, Source Code, Object Code, databases and database structures that are incorporated into or supplied in or in connection with the Ordered Services); and

- (b) all Output (except to the extent that it comprises 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 (or our licensors') ownership of Our IPR.
- 7.4. You hereby assign to us all and any IPR in all and any comments in connection with Ordered Services and any requests for new Ordered Services features, that you and/or your Personnel may make or suggest (each, an **Improvement Suggestion**). Each such comment and Improvement Suggestion becomes our sole and exclusive property. This assignment is effective when you or your Personnel make the comment or disclose the Improvement Suggestion to us including under section 197 of the *Copyright Act 1968* (Cth) and in equity. You must procure from your Personnel 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 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 party who receives Confidential Information from the disclosing party (**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 respective Agreement or to comply with Applicable Law.
- 8.3. 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 any Ordered Services.
- 8.4. 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 recipient 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 Applicable Law; or
 - (d) that the receiving party must disclose under the rules of any stock exchange on which it or its holding company is listed.

9. Acceptable Use

- 9.1. You must ensure that any person who accesses and/or uses any Ordered Services (each, an **End User**):
 - (a) complies with all applicable Documentation, Applicable Law, our directions and policies (including any security policy) in the course of such access and/or use;
 - (b) does not infringe or permit any person to infringe any of our, or our licensors', IPR;
 - (c) provides us with access to Your Data, Personnel, Your Equipment and/or any cooperation or assistance necessary for us to carry out our duties under the Agreement;
 - (d) does not provide their passwords or other access credentials to any other person;
 - (e) immediately notifies us of any unauthorised or suspected unauthorised use or disclosure of any access credentials for Ordered Services; and

- (f) uses reasonable and appropriate security measures and precautions when using any Ordered Services.
- 9.2. You must:
- (a) ensure that you maintain a reliable internet connection for us to connect to Your Equipment, Personnel, End Users, servers, networks, data, content, facilities, documentation, records, resources, equipment and premises, where reasonably required by us to provide any Ordered Services;
 - (b) ensure that your premises are suitable and maintained in a manner suitable for the use of any Ordered Products and Services;
 - (c) maintain all building cabling (existing and new) in accordance with all Australian industry standards and guidelines necessary for any Ordered Products and Services to operate; and
 - (d) not do anything that interferes with or prevents the proper functioning of any Ordered Services.
- 9.3. The availability of any Ordered 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 and/or Documentation.
- 9.4. Unless otherwise expressly specified in the Agreement, you must not, and must not permit any person to, use any Ordered 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 any Ordered Services or any trade marks, any patent or copyright notices, or any confidentiality legend, notice or other means of identification, used on or in relation to any Ordered Services;
 - (b) in any manner that breaches Applicable Law 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, novate, transfer, distribute, or provide others with access to, any Ordered Services;
 - (d) to "frame", "mirror" or serve any Ordered 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 or misleading 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 or Third Party Providers, (collectively, **our Acceptable Use Policy**).
- 10. Fees**
- 10.1. You must pay the Fees to us in accordance with the Payment Terms and any applicable Service Schedule, without setoff, deduction or counterclaim.
- 10.2. Except as expressly specified otherwise in the Payment Terms, all invoices issued by us must be paid within 30 days from the date of issue of an invoice.
- 10.3. Except as otherwise set out in an Application Form, the Fees are exclusive of all taxes such as GST and you agree to pay all such taxes to us, in respect of any Supply (as that term is defined in the GST Law) made for the purposes of the Agreement. You must pay all such taxes at the same time as the Fees.
- 10.4. Without limiting any other rights or remedies available to us, we may suspend our obligations under this Agreement and your access to Ordered Services if you fail to pay the Fees in accordance with the Payment Terms.
- 10.5. If you fail to make any payment due to us under this Agreement in accordance with the Payment Terms then, without limiting our rights and remedies, you shall pay interest on the overdue amount at a rate equal to 2% per annum above the current overdraft rate that we have with our principal banker from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment, and you shall pay the interest together with the overdue amount upon demand by us. You hereby indemnify us from and against all and any legal costs and disbursements (on a full indemnity basis) that we incur in connection with the proceedings set out in this clause 10.5.
- 10.6. We may increase the Fees payable under an Agreement annually by no more than 3%.
- 11. Liability**
- 11.1. Ordered Products and Services and Output does not constitute 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 impliedly) that any Output is our advice.
- 11.2. We are not liable for any failure to perform any Ordered Services caused by any breach of the Agreement by you or your Personnel.
- 11.3. Except to the extent that the following liability cannot be excluded pursuant to non-excludable Applicable Law:
- (a) neither party is liable to the other party for any loss of profits, loss of business opportunity, loss of revenue (other than caused by your failure to pay the Fees or any amount specified in clause 13.6), or loss of savings, whether arising in contract, tort (including negligence) or otherwise, and whether the loss or damage is foreseeable or not; and
 - (b) each party (the **first party**)'s aggregate liability for all claims for loss or damage that the other party may incur due to one or more breaches by the first party of an Agreement, that is not otherwise excluded by the terms and conditions of the Agreement, is capped at an amount equivalent to the quantum of the Fees paid or payable by you under the Agreement for the Ordered Products or Services to which the breaches relate, and shall be reduced to the extent that the other party caused or was responsible for such loss or damage.
- 11.4. 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 the services again or the cost of re-supplying the services again.
- 11.5. 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 the Agreement are hereby excluded from the Agreement.
- 11.6. Either party may obtain urgent interlocutory relief from a court of competent jurisdiction to prevent any actual or potential breach of the Agreement.

12. Force Majeure Event

12.1. A party is not liable for any failure to perform its obligations under the Agreement (other than an obligation to make payment) if such failure was caused by a Force Majeure Event. If a Force Majeure Event that prevents us from performing our obligations under the Agreement continues for 45 consecutive days, either party may terminate the Agreement by written notice to the other party.

13. Termination

13.1. A party may terminate the Agreement by written notice to the other party if the other party (**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 to the defaulting party requiring the breach to be remedied.

13.2. We may terminate or suspend our provision of any Ordered Products and Services if:

- (a) you fail to pay any Fees to us in accordance with the Payment Terms;
- (b) you, your Personnel or your End Users infringe or breach our Acceptable Use Policy; or
- (c) a Third Party Provider ceases to provide hardware, software, products or services to us that we require to comply with our obligations to supply any Ordered Products or Services to you.

13.3. Either party may terminate the Agreement by written notice to the other party if the other party suffers an Insolvency Event.

13.4. We may terminate this Agreement by written notice to you if you undergo a Change of Control without our consent.

13.5. If the Agreement is terminated for any reason:

- (a) you shall, at our option, promptly return to us or destroy all copies of our Confidential Information in your possession or control; and
- (b) we shall, at your option, promptly return to you or destroy all copies of your Confidential Information in our possession or control.

13.6. 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), you will pay 75% of any outstanding amounts that we calculate or reasonably estimate would have been payable by you under the Agreement for the remainder of the Minimum Period (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: (i) payment under this clause is not intended to be, and will not, be punitive and is an amount calculated to compensate us for reasonable loss and damage resulting from early termination of the Agreement.

13.7. 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.

13.8. Termination does not affect any accrued rights of either party.

14. Notices

14.1. 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 Application Form; or
- (c) sent by email to the recipient's email addresses identified in the relevant Application Form.

14.2. Notice given under subclause 14.1(a) shall be effective upon delivery.

14.3. Notice given under subclause 14.1(b) shall be effective 6 Business Days after posting if posted domestically in Australia, or 15 Business Days after posting to or from any other country.

14.4. Notice given under subclause 14.1(c) shall be effective 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 on the next Business Day unless an email failure notification is received, or otherwise when a reply to the email is received.

14.5. Any party may change its address for notice hereunder by giving written notice to the other party in accordance with this clause 14.

15. General

15.1. A party may not assign its rights or novate its obligations under an Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned or delayed).

15.2. If any provision of an Agreement is deemed invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain enforceable.

15.3. The relationship between you and us is non-exclusive and nothing in an Agreement will prevent us from supplying any goods or services to any third party in our absolute discretion. You and us are independent contracting entities and nothing contained in an Agreement creates any relationship of partnership, employment, joint venture or agency between the parties.

15.4. Each Agreement is the entire agreement between you and us about its subject matter and supersedes all other proposals, arrangements, representations or agreements between you and us about its subject matter.

15.5. An Agreement may be amended only by a written document signed by the parties and a provision of or a right under an Agreement may not be waived or varied except in writing signed by the party to be bound.

15.6. Each Agreement is governed by the laws in force in New South Wales. Each party submits to the exclusive jurisdiction of the courts located in that State and the courts of appeal from them in relation to any proceedings and disputes concerning the Agreement.

16. Definitions and Interpretation

16.1. In this Terms of Service, words in bold font in parentheses have the meanings given to them therein. In addition, 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.

Application Form means a document entitled "*Application Form*" or similar issued by us to you and accepted by you (either by executing it or otherwise confirming your acceptance of it).

Business Day means any day from Monday to Friday excluding public holidays in Queensland.

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

Change of Control means a change in the beneficial ownership of more than 25% of: (a) the issued share capital of a company; or (b) the legal power to direct or cause the direction of the general management of the company.

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 or a Third Party Provider in respect of the Ordered Products and Services.

Fees means any fees and charges set out in the Agreement.

Force Majeure Event means war, industrial action, government action, 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, fire, threatened or actual act of terrorism, earthquake, act of God, or other circumstances beyond our reasonable control.

GST and **GST Law** have 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) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution; (d) 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 (e) anything analogous or having a substantially similar effect to any of the events described in (a) through (d) 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.

Output means any reports and other output generated by any Ordered Services.

Ordered Product has the meaning given in clause 3.1.

Ordered Service has the meaning given in clause 3.1.

Our Equipment means any equipment, systems, software, networks, servers, hardware, cabling, ports, switches or other ancillary equipment or tools owned or operated by us.

Payment Terms means payment terms set out in the applicable Application Form.

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

PPSR means the Personal Property Securities Register established under the PPSA.

Service Schedule means a document with that title that we supply to you with, or refer to within, an Application Form that we provide to you.

Source Code means human readable computer code.

Specifications means the technical specifications for Ordered Products and Services as set out in, referred to from, or attached by us to a Service Schedule or included in any Documentation.

Term means the term of an Agreement determined pursuant to clause 2.

Third Party Provider means a third party supplier, subcontractors or provider of us who provides any goods or services that we rely on, supply or resupply as part of Ordered Products and Services.

Vendor means a third party who owns the Intellectual Property Rights in any software or service, or is the manufacturer of any products, that we rely on, supply or resupply as part of Ordered Products and Services.

We, our and us, means Lucid Multi Cloud Pty Ltd ABN 67 636 975 632 of Level 26, 44 Market Street, Sydney NSW 2000

Your Equipment means any systems, software networks, servers, equipment, hardware, cabling, ports, switches and/or other ancillary equipment or tools owned or operated by you or on your behalf, other than Our Equipment. For the avoidance of doubt, Our Equipment is not Your Equipment.

Your Premises means any premises owned, controlled or occupied by you specified in an Application Form.

16.2. 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.