

1 Definitions and interpretation

1.1 Definitions

Agreement means your agreement between Sudo Staff and You, including these terms and conditions and Your Order.

Business Hours means between 8 am and 6 pm (using the time zone of the Location) on Business Days.

Business Days means Monday to Friday, excluding declared public holidays at the Location.

Breach of Confidentiality means a breach of the obligations of confidentiality imposed by this Agreement.

Claims means all demands, claims, proceedings, penalties, fines and responsibility (whether criminal or civil, in contract, tort or otherwise).

Confidential Information means any information that relates to the business, affairs, properties, assets, trading practices, goods/services, developments, trade secrets, Intellectual Property rights, know-how, personnel, customers and suppliers of either Party, and all personal information that is protected by the *Privacy Act 1988* (Cth), but does not include information which is generally available in the public domain (otherwise than because of a breach of an obligation of confidentiality set out in this agreement), or was known or discovered by a Party independently of a disclosure by the other Party.

Company Personnel means any person or persons that Sudo Staff chooses to perform the Services on Sudo Staff's behalf, including, but not limited to, the Staff.

Default Interest Rate means the annual rate calculated by adding 10% to the current (at date of calculation) cash rate target published by the Reserve Bank of Australia.

Facilities means computer equipment, access to Your computer network, telecommunications system etc. It includes not only access to such resources but also use of them to the extent required by Sudo Staff to perform the Services.

Fee means the total price for a Service, including GST, for the full length of the term you choose when placing your Order, but does not include any Setup Fee. *For example, if you place an order for a service that costs \$100 (including GST) per month for a term of three months, the Fee is \$300.*

Full Time means 7.5 hours per Business Day for at least 93% of Business Days in the Term.

Full Time Service means a service in which the assigned Staff work for you on a Full Time basis.

GST Law means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

In advance means before the commencement of the period to which the payment relates.

Illegal Activity means activity which is prohibited, is in breach of the contractual or civil rights or another person, or attracts a civil or criminal penalty or sanction, under the laws of any of: the Location; Brisbane, Queensland, Australia; or the country of residence of the Staff.

Intellectual Property includes trademarks, patents, copyrights, processes know-how, registered designs or other like rights or any right to apply for registration of any of the former.

Information includes information whether of a technical, commercial or any other nature provided directly or indirectly in oral, electronic or documentary form or by way of models, biological or chemical materials or other tangible form or by demonstrations and whether before, on or after the date of this agreement.

Keep confidential (information of a party) means to not disclose that information to a person who is not a party to this agreement except for the purposes for which it was given or made available, or to a party's legal and accounting advisors for the purpose of obtaining legal and/or accounting advice, or to a person in compliance with an obligation imposed by Law.

Location means the agreed reference point for determining local time and local business hours. In the absence of other agreement, the Location is Brisbane, Queensland, Australia.

Losses means the net negative effect of an event or series of related events, including direct and indirect financial losses, damages, legal costs, taxes, opportunity cost and any other loss of any nature.

Non-exclusive service means a Service provided to you by Personnel who are or may be also engaged in providing non-exclusive services to other customers.

Order means an offer from you to purchase from Us one or more of Our Services selected by you for a nominated term and Fee, and, optionally, to pay a Setup Fee. Completing a purchase transaction on our website constitutes an Order. If your Order is not in writing we will record the details of your Order in our invoice.

Payment of our invoice operates as confirmation that your Order is correctly recorded.

Ordered Services means one or more Service nominated by You in an Order.

Parties means Sudo Staff and You, and **Party** means either of them.

Rate(s) means the Fee chargeable for a particular time period spent in doing the Services and as set out in your Order.

Related Entity means a related entity as defined in the Corporations Act 2001.

Service means a particular package of services that we agree to supply to you as a discrete offering. The components of a Service may include: staff skill level, experience and training, hardware or software inclusions, duration of commitment, whether full-time, part-time or non-exclusive, or any other criteria outlined in our service offerings.

services (used generally) means the supply to customers of the intellectual labour of persons via electronic means for the purpose of enabling customers to utilise that labour to attend to administrative tasks on the customer's behalf.

Setup fee means an amount you agree to pay to Us to setup for supply of the Service to you, including making technical arrangements for the connections between your assigned Staff and your IT systems and any particular configurations we agree to provide.

Staff means the specific individual personnel assigned by Sudo Staff to perform the Service.

Sudo Staff, Us, We means Sudo Staff Pty Ltd, ABN 18640072760

Term means the length of time for which a Service has been Ordered, commencing on the Commencement Date. When you order more than one Service then each Service has its own Term.

Up-to-date means that, on a given date, you have paid to Us at least the amount you have agreed, by these terms and conditions, to pay to us by that date (including any applicable interest and any fees).

Website Account means a customer's account on or accessible via our website.

You means the person entering into this agreement with Sudo Staff. Where You are a company, You includes the individual who accepted these terms on behalf of the company and you warrant that individual has authority to accept this contract on behalf of the company. If You are a partnership then you warrant you have authority to accept this contract on behalf of all the partners of the partnership. If You are the trustee of a trust and contracting for its benefit you warrant that you have the power under the applicable terms of trust to enter into this agreement as trustee and to be indemnified from the assets of the trust in respect of this agreement.

1.2 Interpretation

In this agreement unless the context requires:

- (a) words importing any gender or neuter include every gender and neuter;
- (b) words importing the singular number include the plural number and the other way around;
- (c) words importing persons include firms, companies and corporations and the other way around;
- (d) references to numbered clauses, paragraphs and schedules are references to the clause or paragraph in or schedule to this agreement;
- (e) reference in any schedule to this agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
- (f) any duty on any Party not to do or omit to do anything is to include a duty not to let that thing be done or omitted to be done;
- (g) any reference to an enactment includes reference to that enactment as amended or replaced occasionally and to any subordinate legislation or byelaw made under that enactment; and
- (h) the word "including" (and related forms including "includes") are understood as meaning "including without limitation".
- (i) Words defined in the Definitions, and/or in the body of the agreement (indicated by bold font in brackets) have that defined meaning throughout the agreement. It makes no difference if the word is defined before or after it is first used. Use of capitalisations to indicate defined words is for convenience only and a defined word has that meaning whether or not it appears in capitalised form.

2 Your Order & Commencement

- (a) Your Order constitutes an offer to us to purchase the Ordered Services.
- (b) We will promptly let you know if we accept your offer. We may let you know either by contacting you or by commencing to supply the Ordered Services.
- (c) We may discuss changes to your Order with you. If both parties agree to those changes then the changes become part of your Order and our acceptance. If both parties do not agree then we do not accept your offer.
- (d) If we accept your offer:
 - (i) The provisions of your Order, and these Terms and Conditions, take effect as a valid and binding contract between us.
 - (ii) The date of our acceptance is the date of our agreement with you.
 - (iii) Any Setup Fee becomes immediately payable.
 - (iv) We will contact you to arrange a commencement date for the supply of the Ordered Services (except for a Continuation Order, which will commence on the day following the last day of the previous Term).
 - (v) The term of each Service commences to run from the date we agree with you, or if no particular date is agreed, on the date we advise you that we are ready to commence supplying that service (**Commencement Date**).
- (e) If we do not accept your offer we will refund to you the full amount you have paid to us in respect of your Order.

3 Term

- (a) Each Service will expire automatically at the end of its Term as specified in the Order. If no expiration term is specified then the term is one month.
- (b) A request from you to continue the Service after the expiration of its Term (**Continuation Service**) will operate as a new Order.
- (c) You may Order a Continuation Service by:
 - (i) issuing us a complete new Order for one or more of our then available Services for your chosen Term at our then applicable Fee for that Service, or
 - (ii) continuing to use the Service after the expiration of the Term, which will operate as an Order from you (and an acceptance from us) for the Service for a term of one month commencing on the first day after the expiration of the previous term, for the Fee at which We are then advertising that Service for a term of one month on our website (or, if no equivalent Service is being advertised, at the same price as was payable for the last month of the Term) and otherwise on the terms and conditions then applicable to our Services as published on our website.

4 Fee

- (a) You will pay to Sudo Staff the Fees for the Ordered Services and any Setup Fee.
- (b) Unless we have agreed to allow you to pay by instalments you must pay the full amount of the Fee and any Setup Fee within 14 days of entering into this agreement.
- (c) We may offer you the option of paying a Fee in periodic instalments. If you choose to accept our offer to pay by instalments, you must pay the instalments in advance.
- (d) The following provisions apply during any period in which your payments are not up-to-date:
 - (i) You must pay us interest at the Default Interest Rate, calculated and compounding daily, on the amount you owe to us under this agreement.

We may, in our sole discretion, by written notice to you, elect to withdraw our agreement to allow you to pay the Fee by instalments, in which case the entire unpaid balance of the Fee becomes immediately payable.
 - (ii) We may suspend supply of the Service to you. If we suspend supply for this reason the Fee is not abated during the suspension period.
 - (iii) We may terminate your contract with us. If we terminate your contract for this reason you must pay us our Losses.
- (e) Sudo Staff will issue You a tax invoice under the GST Law for all amounts paid or payable by you.
- (f) You must pay interest, at the Default Interest Rate, compounding daily, upon the entire outstanding portion of the Fee during any period where your payments are not up-to-date as required by this agreement.
- (g) When making a payment to us, other than via our website, you must quote the order reference numbers or invoice numbers we have assigned you.
- (h) Where, in this agreement, provision is made for crediting or refunding a number of days, or the unused portion of a Fee, then the value of each day will be calculated by dividing the Fee by the number of Business Days in the applicable Term for the Service.

5 Supply Services

- (a) Sudo Staff will supply to you each Ordered Service for the agreed term and in compliance with this agreement.
- (b) The Service will be delivered by means of assigning to you one or more Staff and required hardware and software as is required by the components of the Service and the Order.
- (c) We encourage you to liaise with us throughout the term and raise any issues with us. We will try to resolve your concerns promptly and effectively.
- (d) If you have particular IT wishes or requirements, let us know, and we will try and accommodate them.

6 Your obligations

- (a) You must pay our Fees in full and on time.
- (b) You must not use the Service to conduct illegal activity.
- (c) Our Services are for business use. You must not use the Service for personal, domestic or household use or consumption.
- (d) You must comply with your obligations under this Agreement.

7 Staff (Service Delivery)

- (a) We will assign you Staff to deliver your Service.
- (b) You must directly work with your Staff and give directions as to your task allocations and required activities to be conducted by your Staff.
- (c) We will endeavour to ensure that the same individual remains as your assigned Staff throughout the Service Term, but if we are unable to do so we may assign replacement personnel or terminate the Service.
- (d) We may assign replacement personnel to cover temporary periods of absence of your assigned Staff, such as for holidays, sick leave or other temporary unavailability.
- (e) Unless otherwise specified and agreed, Services will be supplied between the hours 8 am to 6 pm on Business days.
- (f) Holidays and Sick Leave
 - (i) Sudo Staff cannot guarantee 100% availability of Staff or other personnel.
 - (ii) While Staff are not employed by you, they are entitled to (and need) rest and sick days like any other employee. Full Time service delivery is defined to include an allowance for such leave.
 - (iii) If you have Ordered a Full Time Service and the Staff assigned is unavailable to render services for at least Full Time, then we may, at our election, assign (on a temporary or ongoing basis) replacement personnel and/or credit you for the number of days by which the Service delivery was less than Full Time.
 - (iv) If one of your Staff resigns or becomes too unwell to provide the Service we will assign a replacement person as your Staff.
 - (v) Any adjustment request must be specifically made by you to us within 1 month of the occurrence and will be adjusted by dividing the Fee by the number of business days in the Term, multiplied by the number of business days the Staff was unavailable and a replacement was not provided by Us.

- (g) You may request the Staff to work overtime or perform tasks outside of the scope of your Order. Such requests must be first approved by Us and may incur an additional Fee.
- (h) Both parties agree not to directly or indirectly solicit for hire any of the other party's employees, the Staff, or any individual involved past or present in the delivery of services for the duration of this Agreement and a period of one year after termination or expiry of this Agreement.

8 Information Technology, Hardware & Software

- (a) We will ensure that your Staff assigned to your Services are equipped with:
 - (i) Full Time Services:
 - (A) A virtual computer (**VPC**) with Windows Operating System or (at your request) a Linux Operating System.
 - The VPC will be hosted on a cloud platform and set up from a standard template at the start of the service;
 - The VPC will be, or have specifications that match, the current Amazon Work Spaces Standard Tier.
 - The VPC will be used exclusively for the provision of the Service to you;
 - (ii) All Services:
 - (A) A headset with microphone;
 - (B) Video-streaming capable camera;
 - (C) Client software capable of connecting to a standard VOIP telephone system;
 - (D) Client transcription software capable of handling audio formats: wav, mp3, wma and dct
 - (E) A sudostaff.com email address for each of your Staff;
 - (F) Any additional software included in your Order;
 - (G) Any additional hardware included in your Order.
- (b) Customisation
 - (i) You and your IT providers may access any VPC assigned to your Staff in respect of a Full Time Service at any time during the term of the Service and may install and configure any software you require, provided you have a valid and current licence for the software and provided that the software is not, or does not contain, malware.
 - (ii) You may assign hardware to be used by your Staff. If you do so, it is entirely at your own risk. You are responsible for delivery of the hardware to the Staff, its safety while being used by your Staff and its return to you at the end of the Service.
 - (iii) You may request us to supply additional software or hardware. We will identify whether we can supply the requested items and if so, the price we will charge you to add that item to your Service. If you agree, we will supply the requested Hardware and/or Software for the term of the Service. The software/hardware will remain ours at the end of the Service.
- (c) Connection to your IT Systems
 - (i) You may establish a connection (such as a VPN or RDP) between the VPC and your IT systems.

- (ii) You are responsible for the configuration and security of any such connections.

9 Confidentiality & Privacy

- (a) Each party must only use the Confidential Information of the other party for the purposes of exercising its rights or performing its obligations under this Agreement.
- (b) Privacy Act Compliance:
 - (i) We will ensure that your Staff (including replacement and relief Personnel) are contractually obliged to Us not to breach the Australian Privacy Principles (other than Australian Privacy Principle 1) in relation to the information;
 - (ii) You may, at any time during or after the Term, accept the benefit of that contractual promise by notice to Us, and may then enforce that obligation directly pursuant to s55 *Property Law Act 1974* (Qld).
 - (iii) You will ensure that you and your staff handle all personal information you hold about Our personnel and your Staff in accordance with, and not in breach of, the Australian Privacy Principles.
- (c) Confidentiality Generally
 - (i) We will keep confidential all of your Confidential Information that becomes known to us.
 - (ii) Staff and our personnel generally will keep confidential any of your Confidential information that becomes known to them.
 - (iii) You must keep confidential any of our Confidential Information coming into your possession.
 - (iv) The parties' obligations of confidentiality survive the termination of this agreement.

10 Termination

- (a) Either Party may terminate any Service by notice in writing to the other party. The Notice may:
 - (i) Be given at any time during the term.
 - (ii) Take effect from the date the notice was given, or some nominated future date (**Termination Date**).
 - (iii) Be given for valid cause, or without valid cause.
- (b) If notice of termination is given we will discontinue to supply the Service from the termination date.
- (c) If the termination was by you and was without valid cause, or by us for valid cause:
 - (i) You must pay any unpaid portion of the Fee for each Service you terminate;
 - (ii) If we incur Losses because of the termination, you must pay us those Losses.
- (d) If the termination was by you and was for valid cause, or by us and without valid cause, we will refund to you the amount of any unused portion of the Fee you have paid us for the Service.
- (e) Valid Cause and Without Valid Cause:
 - (i) Valid causes for You to terminate include:

- (A) We fail to supply the Service substantially and materially in accordance with the Order and these Terms.
 - (B) Your Staff commits, or We commit, a breach of confidentiality.
 - (C) Your Staff commits serious misconduct or serious neglect of duty in the course of the provision of the Service.
- (ii) Valid causes for Us to terminate include:
- (A) Your payments are not Up-to-Date.
 - (B) You give us a notice of termination without valid cause.
 - (C) You commit a breach of confidentiality.
 - (D) You enter a deed of arrangement or an order is made for it to be wound up.
 - (E) An administrator, receiver or receiver/manager or a liquidator is appointed to You under the *Corporations Act 2001* (Cth).
 - (F) You would be presumed to be insolvent by a court in any of the circumstances referred to in the *Corporations Act 2001* (Cth).
- (iii) A notice of termination that does not nominate an applicable Valid Cause is a notice Without Valid Cause.

11 Warranties, liability and indemnities

- (a) Ownership of any work product or output created by the Staff in the performance of services under this agreement belongs to You.
- (b) Sudo Staff warrants it will use reasonable care and skill in supplying the Services and that the services will have the characteristics specified in the Order.
- (c) Sudo Staff provides no warranty that any particular outcome, result or goal can or will be achieved or reached by any date, or that the Services will have any attributes or characteristics that are not specified in the Order.
- (d) You warrant and agree that the Services are not and will not be used for personal, domestic or household use or consumption.
- (e) Without limiting the other provisions of this agreement, You and We agree that, except in the case of death or personal injury caused by Sudo Staff's negligence, the liability of Sudo Staff for any Claim made under or in connection with this agreement is limited to:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- (f) You will indemnify and hold harmless Sudo Staff against all Claims, and pay to Us all Losses we suffer as a result of any Claims made against Us or our employees, contractors or Personnel (including Staff) by any person in respect of, or arising out of, any action You have taken or have instructed others to take, or the Staff have taken in accordance with your specific direction or consistently with your general directions.
- (g) Each of the Parties acknowledge that, in entering this agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this agreement and in the Order, and any conditions, warranties or other terms implied by statute or common law are excluded from this agreement to the fullest extent permitted by law.

- (h) Neither Party is liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including any economic loss or other loss of turnover, profits, business or goodwill.
- (i) To the maximum extent permitted by applicable law, Sudo Staff excludes and will not be liable for any loss of revenue, business, anticipated savings or profits, loss of goodwill, loss of Your data or for any indirect or consequential loss arising out of or relating to the Services, or this Agreement.
- (j) Sudo Staff's limitations and exclusions of liability as set out in this clause apply regardless of the basis on which the relevant liability arises, whether in contract, tort (including negligence), breach of statutory duty or otherwise.

12 Fair Use

- (a) Where we offer a service on a non-exclusive basis, then the use of that service is subject to reasonable usage limits. In particular, while such service is not billed at an hourly rate, it does include a maximum cap of 10 engaged hours per week.
- (b) If your usage of the service requires more than this level of support then we may contact you to offer you alternative arrangements, or we may discontinue providing the service to you.

13 General

- (a) Force majeure

Neither Party will have any liability under or be deemed to be in breach of this agreement for any delays or failures in performance of this agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances must quickly let the other Party know in writing when such circumstances cause a delay or failure in performance and when they no longer do so. If such circumstances continue for a continuous period of over 6 months, either Party may terminate this agreement by written notice to the other Party.

- (b) Amendments and Updates

- (i) We may from time to time update our Terms and Conditions.
- (ii) If we update our Terms and Conditions we will place copy of the new provisions on our website and we may also send a copy to you.
- (iii) You do not have to agree to our changed terms and conditions and changes we make will not apply to you unless and until you agree to the new provisions. Unless you agree to the changed Terms and Conditions the version that applied to you at the time you ordered a Service will continue to apply to that Service.
- (iv) You can agree to the new terms expressly (including verbally) at any time.
- (v) You agree to the new terms by implication if you place an Order (including a Continuation Service) with us after we have put a copy of our updated Terms and Conditions on our website.
- (vi) When you agree to updated Terms and Conditions the new Terms and Conditions will apply to all Services we supply to you, including current Services whose Term has not expired.

- (c) Notices & Orders

- (i) You may give notice to us by sending it by email to: admin@sudostaff.com

- (ii) We may give notice to you by sending it by email to the email address you have provided in your Website Account. If you do not have a Website account we may give notice to you by sending it to any email address you have used when communicating with us.
 - (iii) You may give us an Order by making selections on our Website and completing the checkout process, or by communicating your Order to us in some way (for example via email).
 - (iv) We may rely on the information in your Website Account. You must keep the information in your Website Account current by logging in to the Account and updating any information of yours that is not current.
- (d) Assignment
- (i) You may not assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of Your rights and obligations under this agreement without the prior written agreement of Sudo Staff.
 - (ii) Sudo Staff may assign, delegate, subcontract, mortgage, charge or otherwise transfer any or all of Our rights and obligations under this agreement
- (e) Entire agreement
- (i) This agreement and the Order contains the whole agreement between the Parties regarding the subject matter of agreement and replaces any prior written or oral agreements, representations or understandings between them about such subject matter.
 - (ii) The Parties confirm that they have not entered this agreement on the basis of any representation that is not expressly included in this agreement.
- (f) Waiver
- (i) No failure or delay by Sudo Staff in exercising any right, power or privilege under this Agreement will harm the same or operate as a waiver of the same nor will any single or partial exercise of any right, power or privilege prevent any further exercise of the same or exercising any other right, power or privilege.
- (g) Agency, partnership etc
- (i) This agreement does not imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties besides the contractual relationship provided for in this agreement.
 - (ii) Staff supplied under this agreement are not your employees.
 - (iii) If you choose to authorise your Staff to enter into contracts or negotiations or make any other arrangements on your behalf, as part of your use of the Service, the Staff is acting as your agent, not ours, and we are not responsible to You or any other person for any arrangements made (whether or not within or in excess of authority you have given).
 - (iv) Neither Party will have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- (h) Severance
- (i) If any provision is forbidden by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from this agreement and rendered ineffective as far as possible without changing the remaining provisions of this agreement, and will not in any way affect any other circumstances of or the validity or enforcement of this agreement.
- (i) Announcements

- (i) Except as permitted by this clause, no Party may issue or make any public announcement or show any information about this agreement unless before such public announcement or disclosure it furnishes all the Parties with a copy of such announcement or information and obtains the approval of such persons to its terms.
- (ii) No Party may be forbidden from issuing or making any such public announcement or showing such information if it is necessary to do so to follow any law or the regulations of a recognised stock exchange.

(j) Arbitration

- (i) Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any questions regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Expedited Arbitration Rules. The seat of arbitration shall be Brisbane, Australia. The language of the arbitration shall be English.

(k) Law and jurisdiction

- (i) This agreement takes effect in, is governed by, and will be interpreted under the laws from time to time in force in Queensland, Australia. Subject to the Arbitration clause, the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.

(l) No Reliance

- (i) Each of the Parties acknowledges that, in entering into this agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this agreement. Any conditions, warranties or other terms implied by statute or common law are excluded from this agreement to the fullest extent permitted by law.

End of Provisions

ⁱ Last updated 25 October 2022