

Managed Services Agreement – Terms and Conditions

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Additional Charge means a charge levied to your account in relation to the supply of a service or product or good of the Agreement that is not included in the Agreement that is deemed by CMTG to be reasonable

Agreement means the document detailing the Managed Services to be provided.

Affiliate means any person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person.

Business Day means Monday to Friday excluding public holidays in the state of Western Australia.

Business Hours means 8:00am to 5:00pm on Business Days.

Charges means the monthly fee for supply of the Managed Service.

Client means a person or business receiving services from CMTG.

CMTG means CMCS Networks Pty Ltd ABN 83 875 569 897 trading as CMTG Networks which may be used interchangeably in the Agreement or herein.

Commencement Date means the date for the commencement of the services as specified in the Agreement

Confidential Information means information in relation to a party

- a) and includes network designs, client data, pricing, financial data, statistics, optimization recommendations, strategic or other business plans; or
- b) that is disclosed or made available by that party to the other party or otherwise obtained by the either party; or
- c) that the other party has access to; that
- d) is by its nature confidential; or
- e) the other party knows is confidential

Due Date means the date payment is due and payable by the client to CMTG for the supply of the Managed Services.

Emergency means anything this is considered to be of an extreme or catastrophic nature touching or impinging upon human life, property, goods, anything material or intangible deemed necessary to give effect to the agreement.

Event of Default means

- a) An Insolvency Event; or
- b) A breach of a term of this Agreement.

Extended Support Hours means hours CMTG available to provide support by phone to the Clients outside of normal business hours Monday to Friday 5:00am – 8.00am

Fixed Cost means the Agreement.

Initial Term means the committed period of engagement by the Client, starting on the commencement date.

Insolvent means the occurrence of any of these events in respect of the Parties

- c) an order is made that it be wound up; or
- d) an order is made appointing a liquidator or provisional liquidator in respect of it, or one of them is appointed whether or not under an order; or
- e) except to reconstruct or amalgamate while solvent on terms approved by the other party, it enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement, or composition with, or assignment for the benefit of, all or any class of its creditors; or
- f) it resolved to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on the terms approved by the other party, or is otherwise wound up or dissolved; or
- g) it is or states that it is insolvent; or
- h) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand; or
- i) it is, or makes a statement from which is may be reasonably deduced by the other party that it is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or
- j) it takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to it.

Managed Services (MSA) means those services described in the Agreement

Network means all equipment including switches, routers, firewalls, and cabling.

Out of Scope means services provided that do not form a part of the Managed Services

Parties means Client and CMTG collectively or individually, as the context requires.

Penalty Rate means those amounts prescribed in the Agreement to any extent applicable.

Response Time means the maximum delay prior to CMTG responding to a request for Services of and incidental to the Agreement.

Service Fee means the amount payable by the Client to CMTG in respect of the provision of the Managed Service as shown the Agreement

Term means the term set out in Item 1 – Services Agreement which commences on the Commencement Date.

Third Party Service means any service provided by a third party to the Client in respect of the provision of the Services

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- a) A document including this Agreement, includes any variation, novation or replacement of it notwithstanding any change in the identity of the parties;
- b) An individual includes associations, partnerships, corporations, joint ventures, unincorporated associations or trusts,

states or any statutory authority or government department;

- c) A party is a reference to a party to this Agreement and includes that party's executors, administrators, successors, and permitted assigns;
- d) words importing the singular include the plural and vice versa;
- e) a gender includes all other genders;
- f) other parts of speech and grammatical forms of a word or phrase defined in the deed have a corresponding meaning;
- g) an expression importing a natural person includes a company, partnership, joint venture, association, corporation or other body corporate;
- h) a reference to law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by law, judgement, rule of common law or equity or a rule of an application stock exchange and is a reference to that law as amended, consolidated or replaced;
- i) a reference to an agreement, other than the Agreement, includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- j) "includes" or "including" means "without limitation";
- k) if any Party comprise of more than one party each of those parties will be jointly and severally liable for the performance of the Parties' obligations under this Agreement
- l) A "right" includes a remedy, authority or power;
- m) "\$" or "dollars" means an amount in Australian currency;
- n) headings are for convenience only and do not affect the interpretation of the Agreement;

1.3 Interpretation – order of precedence

This Agreement is comprised of the following documents which apply in the following order of precedence

- a) **The Agreement; and**
- b) These terms and conditions,
- c) With the result that any inconsistency between these documents will be resolved in favour of the earlier listed document.

2. Term

This Agreement shall be effective as of the date specified in the MSA, the Client and CMTG reserve the right to review this agreement quarterly the term of the MSA is specified in the MSA details. ("the Term"). And the MSA remains in force for the Term unless terminated earlier in accordance with this Addendum. The term will automatically renew for an additional 1-year period (the "Renewal Term") UNLESS either party gives written notice at least 30 days before the end of the Term or the Renewal Term

3. Services

3.1 Scope of Work

CMTG will perform the Services on the Network either remotely or on site in accordance with the Managed Service SLA

3.2 Service Delivery

CMTG will:

- a) Perform the Services on Site with due care, skill and judgement, and in a proper workmanlike manner,
- b) Use reasonable endeavours to perform the Services in accordance with the Managed Services SLA but will not be responsible for delays or other problems caused by the Client or for reasons beyond CMTG's control; and
- c) In performing the Services, comply with all applicable laws and regulations.

3.3 Conditions of Service

- a) The Client network is eligible for monitoring under this Agreement provided it is in good condition and CMTG serviceability requirements and site environmental conditions are met.
- b) CMTG shall not be responsible to the Client for loss of use of the Network or for any other liabilities arising from alterations, additions, adjustments or repairs which been made to the Network other than by an authorised representative of CMTG.
- c) CMTG reserves the right to suspend or terminate this Agreement if in its sole discretion; conditions at the service site pose a health or safety threat to any CMTG representative

3.4 Responsibilities of CMTG

- d) CMTG shall monitor, advice, and provide services as defined in the MSA in accordance with CMTG's Network policies then in effect. CMTG shall provide scheduled remote and onsite support services in accordance with the MSA. CMTG's representatives shall have and the Client shall provide full access to the Network in order to affect the necessary monitoring and/or supplemental services. All services defined in the Agreement shall be provided during regular business hours, unless otherwise specified.
- e) CMTG shall be obligated to provide service at the Service Site(s) defined in the MSA as outlined in Account Information Section.
- f) CMTG is obligated to provide Client with Service Agreements higher-priority response for emergency as well as non-emergency service requests.

3.5 Responsibilities of Client

- a) The Client shall provide adequate workspace, heat, light, ventilation, electric current and outlets, internet, remote access, and long-distance telephone access for use by CMTG's representatives.
- b) The Client agrees that it will inform CMTG of any modification, installation, or service performed on the Network by individuals not employed by CMTG in order to assist CMTG in providing an efficient and effective Network support response.
- c) The Client will designate a managerial level representative to authorize all Network Support Services. Whenever possible, said representative shall be present whenever a CMTG service representative is on-site. The contact information shall be outlined in Account Information Section, and it is the Client's responsibility to inform CMTG of any changed

made to this representation thirty (30) days in advance.

- d) It is the responsibility of the Client to promptly notify CMTG of any events/incidents that could impact services defined within this agreement and/or any additional service needs, and for CMTG to respond in a timely manner via phone, email, remote access, and/or on-site services.

4. Contract Price and Fees.

4.1 Invoicing

CMTG will invoice the Client the relevant amount of the Contract Price monthly and the amount is due monthly in advance. CMTG will invoice the Client for any additional fees ("Fees") that arise for Deliverables or other work performed beyond the Scope of Work in accordance with its standard rates applicable from time to time.

4.2 Payment

If the Client has an overdue invoice and further Services or Deliverables are provided, then the invoice for those further Services or Deliverables is due and payable by the Client immediately upon receipt. CMTG reserves the right to refuse or suspend service under this Agreement in the event the Client has failed to pay any invoice within thirty (30) days of the invoice date, whether it is an invoice for services provided under this Agreement or any other agreement between the parties. CMTG prefers to receive payment of the Contract Price by direct debit or EFT

4.3 Change in Contract Price

CMTG reserves the right to renegotiate rates based on additions of locations, hardware, software, hardware support requirements, and/or services as well as modify this Agreement (or any portion thereof) in negotiation with the Client. If revised rates are not agreed between both parties then the contract may be terminated within 30 Days' notice

4.4 GST

- a) Unless expressly included, the consideration for any supply under, or in connection with this MSA and Addendum does not include GST. To the extent that any supply made under, or in connection with, this Addendum is a taxable supply, the recipient of that supply must pay an amount equal to the amount of GST imposed in respect of the supply under the GST Act
- b) The supplier must provide the recipient a GST tax invoice as required by the GST Act.
- c) GST is only applicable to Australian registered companies.

4.5 Interest

CMTG may charge interest on overdue accounts at a rate that is 5% above the Cash Rate as set from time to time by the Reserve Bank of Australia ("Interest") and such interest is owed from the due date of the invoice until date of payment.

5. Confidentiality

5.1 Acknowledgement

Each party acknowledges that in the course of their association with each other they will have access to confidential information.

5.2 Protection of Confidential Information

CMTG will:

- a) Keep the Client's Confidential Information confidential and will not (except as expressly permitted under this Agreement or to provide the Managed Services) disclose the Client's Confidential Information;
- b) not make copies of data or material containing the Client's Confidential Information; or
- c) not use the Client's Confidential Information; and
- d) take all reasonable steps to enforce any obligation of confidence imposed or required to be imposed by this Agreement.

5.3 Exceptions to obligations of confidentiality

Nothing in this Agreement prohibits the use or disclosure of any Confidential Information by either Party to the extent that

- a) the information has been placed in the public domain other than due to a breach of an obligation of confidentiality by that Party;
- b) the disclosure is expressly required by law, but the Party must use its best efforts to minimise such disclosure
- c) the information has been independently developed by the Party and without reference to the Confidential Information of the other Party; or
- d) the other Party has approved in writing the particular use or disclosure of the Confidential Information

5.4 Equitable Relief

The Parties acknowledge that each will be entitled to equitable relief against the other (in addition to any other rights available under this Agreement or at Law) if the other Party breaches any of its obligations under this clause 5

5.5 Period of Confidentiality

The obligations with respect to Confidential Information disclosed under this Agreement will survive the termination or expiry of this Agreement and continue for as long as the information remains confidential.

6. Software Licenses

6.1 Client software licences

The Client will be responsible for maintaining all software licenses for use of software on hardware and equipment owned by the Client that are covered by the MSA. CMTG will provide details of licensing requirements at appropriate times and facilitate the purchase and installation of the licenses.

7. Intellectual Property

7.1 Pre-Existing and General intellectual Property

The Intellectual Property Rights owned by each Party before the MSA commence remain the property of that Party. Any ideas, concepts or techniques developed by CMTG in the course of providing the Services are the property of CMTG

7.2 Third Parties

Third Party Intellectual Property Rights will remain the property of such third party.

8. Non-Solicitation

During the period of 12 months after the expiry or termination of this MSA, neither Party may solicit or endeavour to entice away from the other Party any employee of the other party.

9. Limitation of Liability

9.1 Implied Terms

To the extent permitted by law but subject to clause 9.3 below, all warranties whether expressed, implied, statutory or otherwise, relating in any way to the subject matter of this MSA and Addendum, are excluded

9.2 Limitation of Liability

Under no circumstances will CMTG be liable to the Client on account of any claim (whether based on contract, negligence or other tort, breach of any statutory duty or otherwise) for any special, consequential, indirect, incidental or exemplary damages, or any loss of profits, revenue, interest, goodwill, loss or corruption of data or for any loss or interruption to the Client's business, or for any damages or sums paid by the Client to third parties, even if CMTG has been advised of the possibility of such damaged.

9.3 Australian Consumer Law

Under the Australian Consumer Law included in the Competition and Consumer Act 2010 (Cth) ("ACL"), consumers have certain rights which cannot be excluded, including guarantees as to the fitness for purpose of goods and services. Nothing in this Addendum will be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the ACL) and which by law cannot be excluded, restricted or modified. This Addendum must be read subject to these statutory provisions. Subject to any consumer rights under the ACL and to the extent permitted by law, CMTG limits its liability in respect of any claim under those provisions, at the option of CMTG, to supplying the services again, or paying the cost of having the services supplied again.

10. Insurance

CMTG will maintain insurance during the term of this MSA. CMTG has the following levels of cover; Professional Indemnity: \$10 million, Public and Product Liability: \$20 million and Workers Compensation as required by law.

11. Safety

11.1 Client work practices

The Client will take all reasonable steps necessary to ensure that CMTG and its employees are not exposed to hazards in the Client's premises and that the Client's work practices are in accordance with all relevant occupational health and safety administration

11.2 CMTG Work Practices

At the Client's premises, CMTG will use its reasonable endeavours to procure that its servants comply with the Client's occupational health, safety and environmental rules, protocols and policies prescribed or directed from time to time any site specific safety requirements; CMTG will ensure that its employees comply with the reasonable directions of any officer or representative of the Client

having responsibility for occupational health and safety in or about the Client's premises the Services for any unauthorised purpose

12. Termination

12.1 Breach

Either party may terminate this Addendum immediately by written notice to the other party if the other party breaches any material provision of this Addendum, and the breach has not been remedied within 20 Business Days after service of written notice of the breach.

12.2 Insolvency

Either party may terminate this MSA immediately by written notice to the other party if that other party:

- a) fails to make a payment within the time specified under this Addendum;
- b) becomes, threatens or resolves to become Insolvent; or
- c) ceases or threatens to cease conducting business in the normal manner.

13. Consequence of Termination

13.1 Payments on Termination

Upon termination of this MSA and Addendum, the Client must pay to CMTG any outstanding amounts (either billed or accrued) which are payable to CMTG as at the date of termination.

13.2 Early Termination

Upon Termination of this MSA and Addendum, prior to the Term, the Client must pay CMTG all outstanding fees at that time together with an amount equal to the fees which would have been payable if the agreement had continued for the full term.

13.3 Return of Information on Termination

Upon termination of this MSA, each party must return, or destroy, at the other party's option, all documentation and information relating to the other party's business (in whatever form it is held including but not limited to written, graphic or electromagnetic form, and all copied) in that party's possession or control. Such information includes without limitation, any Confidential Information and any records relating to a party's Intellectual Property

13.4 Effect of Termination

Termination of this Addendum will not prejudice any rights or any claim that either party may have accrued against the other party up to the date of termination including, without limitation, any claim for damages as a result of the occurrence of an event which gives rise to a right of termination.

14. General

14.1 Notices

Notices given under this MAS and Addendum:

- a) Must be in writing addressed to the intended recipient at the address last notified by the intended recipient to the sender;
- b) must be signed by a person duly authorised by the sender; and
- c) Will be taken to be served when delivered, received or left at the intended recipients address, but if delivery or receipt occurs on a date on which business is not generally carried on in the place to which the notice is sent, or later than 5pm on that date at that place, it will be

taken to have been served at the commencement of business on the next day on which business is generally carried on in that place.

14.2 Entire Agreement

This Addendum and the MSA constitute the entire agreement between the parties with respect to their subject matter and supersede all prior and all contemporaneous agreements, understanding, marketing materials and communications, whether written or oral. Any contrary or additional terms, conditions, or representatives attached to or made part of any purchase order or similar document, or contained in presentations or slideshows, emails or letters, or otherwise communicated between the parties, will be invalid and non-binding on the parties.

14.3 Nature of engagement

CMTG is engaged by the Client as an independent contractor. Nothing in this Agreement or this Addendum creates a relationship between the parties of employer and employee, principal and agent, partnership or joint venture.

14.4 Amendment

This document may be amended only by another document signed by each of the parties.

14.5 Assignment

Except to a Related Body Corporate, neither party may assign or otherwise transfer its rights under this Addendum without the prior written consent of the other party.

14.6 Severance

Any provision of this Addendum which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability, but will not invalidate the remaining provisions of this Addendum nor affect the validity or enforceability of that provision in any other jurisdiction.

14.7 No Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Addendum will operate as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that right, power or remedy.

14.8 Governing Law

This Addendum is governed by the laws of the state of Western Australia. The parties submit to the non-exclusive jurisdiction of those courts.

14.9 Alternative Software

CMTG reserves the right to use alternative third party software to deliver the services outlined in this agreement.