

Microsoft Office 365 Agreement

Terms and Conditions

This Agreement sets forth the terms and conditions under which CMTG shall provide Microsoft Office 365 Licenses and support services.

The agreement is made between CMTG and the Client.

1. DEFINITIONS

The following terms have the meaning ascribed throughout this Agreement

Additional Charges means a charge levied to your account in relation to the supply of an Additional Service or product that is not included in the Agreement.

Additional Service means any information technology and telecommunications services that are requested by the Client from time to time in accordance with the provisions of the Agreement that do not, at the time of the Client's request, form part of the Microsoft Office 365.

Agreement means the document detailing the Microsoft Office 365 agreement.

Business Day means Monday to Friday.

Client means a person or business receiving services from CMTG.

Client Equipment means any equipment provided by the client in respect to the use of the Microsoft Office 365

CMTG means C&M Hosting Solutions t/as CMTG Hosting (ABN 71 972 449 575) whose registered office is 16 Boag Rd, Morley, WA 6062.

Delegated Administration means the process whereby CMTG is given administrative access to the Microsoft Tenancy covered under this agreement.

Effective Date means the date on which this Agreement is executed or the date on which CMTG commences to provide the Microsoft Office 365.

Event of Default means

- a) an Insolvency Event
 - b) a breach of a term of this Agreement
 - a) reasonable control of the non-performing party
- Expiry Date** means the date on which the term of this Agreement expires.
- Insolvency Event** means the occurrence of any of these events in respect of the Client an order is made that it be wound up; or
- a) 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
 - b) 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
 - c) it resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the other party, or is otherwise wound up or dissolved; or

- d) it is or states that it is insolvent; or
- e) 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
- f) it is, or makes a statement from which it 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
- g) 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
- h) a receiver, receiver and manager or analogous person is appointed to, or the Financier or any other person holding a Security Interest takes (or appoints an agent to take) possession of any property of the Company
- i) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction

Issue means any failure, malfunction, or abnormal performance of products and applications as identified in Appendix A reported by the Client to CMTG.

Losses means all losses, liabilities, damages, fines, costs and expenses (including reasonable legal fees on a solicitor/client basis and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties)

Microsoft Office 365 means the suite of software applications licensed by Microsoft

Microsoft Office 365 Fee means the amount payable by the Client to CMTG in respect of the supply of the Microsoft Office 365 Licenses

Microsoft Office 365 License means the license granted to use the Microsoft Office 365 application, or suite of applications as shown on the quotation.

Microsoft Tenancy means the representation of the Client's organisation with respect to the Microsoft Office 365 Licenses.

Partner of Record means the association of servicing Microsoft partners to a Microsoft Office 365 subscription.

Quotation means the written quotation or proposal, which has been accepted by the Client, which details the Microsoft Office 365 Licenses

Termination Fee means a fee payable by the Client to CMTG in respect of the termination of this Agreement and is calculated by multiplying the Microsoft Office 365 Fee by the number of months remaining in the term.

2. TERM AND TERMINATION

- 2.1 By using any or all of the Microsoft Office 365 licenses on the Agreement, the Client agrees to these terms and conditions.
- 2.2 The Agreement shall commence on the date of the acceptance of the Quotation and is subject to these terms and conditions.
- 2.3 The term the Agreement shall be for the period specified in the Quotation, subject to any earlier termination in accordance with this Agreement.
- 2.4 On the commencement of the Agreement, CMTG shall be set as the Aggregate Partner for the Microsoft Tenancy and shall remain as such for the term of the Agreement.
- 2.5 On the commencement of this Agreement, CMTG shall be given Delegated Administration permission for each product covered under the Microsoft Tenancy.
- 2.6 CMTG may terminate this Agreement immediately if:
 - a) Any licence or agreement under which CMTG or the Client has the right to use the Microsoft Office 365 License is revoked, or otherwise ceases to be valid; or
 - b) the Client is suspected, in the reasonable opinion of CMTG of involvement with fraud or attempted fraud in connection with the use of the Microsoft Office 365; or
 - c) the Client ceases, or threatens to cease, to carry on business; or
 - d) CMTG reasonably suspects the Client is unable to pay or is refusing to pay fees due to it; or
 - e) the Client commits an Event of Default.
- 2.7 The Client may terminate this Agreement by:
 - a) providing 30 days' notice in writing to CMTG of such termination; and
 - b) paying to CMTG, all outstanding Microsoft Office 365 Fees and Additional Charges, together with the Termination Fee
- 2.8 Upon termination, the Client will cease to have access to the Microsoft Office 365 Licenses.

3. SERVICES AND LIMITATIONS

- 3.1 Upon acceptance, CMTG will supply the Microsoft Office 365 Licenses to the Client.
- 3.2 The Client may request for CMTG to install the Microsoft Office 365 software upon the Client Equipment and to pay to CMTG for such services at the prevailing rate or as agreed on the Quotation (Additional Service).
- 3.3 The service level agreement for Microsoft Office 365 Software availability is governed by the Client's contract with Microsoft and CMTG shall have no liability for Losses incurred by the Client with respect to the use of the Microsoft Office 365 software, or take responsibility for system availability, server issues or the Client's own network performance.
- 3.4 Where an Issue is reported by the Client that is caused by the Microsoft Office 365 software, CMTG will notify Microsoft of the issue and seek assistance to provide a resolution. As well as seeking assistance from Microsoft, CMTG will also make reasonable efforts to use its own resources to find a resolution. The Client shall be liable

to pay CMTG at the Client's prevailing hourly rate for such service (Additional Service).

4. LICENSE FEE

- 4.1 In consideration of CMTG providing the Microsoft Office 365 License(s) during the Term, the Client shall pay to CMTG the Microsoft Office 365 Fee.
- 4.2 The Microsoft Office 365 License is supplied under the Microsoft Tenancy on a subscription model and can increase or decrease as required on a month-by-month basis to a minimum of 1 license per month. The Microsoft Office 365 Fee shall be adjusted accordingly at the relevant rate per Microsoft Office 365 License.
- 4.3 The client must notify CMTG in writing if it wishes to remove Microsoft Office 365 License(s) from the tenancy. The Microsoft Office 365 Fee will be reduced on the next invoice, by the quantity of licenses in the notification at the rate per Microsoft Office 365 License, and no pro-rata credits will be issued for the month in which the license was terminated.
- 4.4 The rate per license may be adjusted on expiration of this Agreement, and following such adjustment, shall become the Microsoft Office 365 Fee for the following 12-month period (or part thereof).
- 4.5 CMTG shall be entitled to adjust the rate per Microsoft Office 365 License used to calculate the Microsoft Office 365 Fee in accordance with clause 5.4 with 30 days' notice to the Client.

5. INVOICING AND PAYMENT

- 5.1 CMTG will invoice the Client on the first Business Day
 - a) Monthly in advance, the Microsoft Office 365 Fees; and
 - c) Any Microsoft Office 365 License apportioned at the rate for the license for the previous partial month in which a license is issued.
- 5.2 The Client will pay invoices within 14 days after receiving the invoice
- 5.3 The Client will pay undisputed charges when those payments are due. The Client may only withhold payment of any charges that the Client disputes in good faith.

6. GST

- 6.1 Where this Agreement or anything done or agreed to be done by CMTG under this agreement attracts or creates a liability in which CMTG is required to pay, or remit amounts in respect of GST, any payment to be made or consideration to be given by the Client in respect of such supply must be increased so that CMTG obtains, after paying or remitting the GST, the same payment or consideration as it would in the absence of a GST, and the increase in the payment or consideration is sufficient to cover all of the GST payable in respect of such supply at such increased level of payment or consideration
- 6.2 This clause does not apply to any fee, or any other payment, that is expressed to be or is calculated as being inclusive of GST, except to the extent that the rate of GST payable by CMTG is increased above 10%.



7. INTERPRETATION

- 7.1 In this Agreement, unless the context otherwise requires a reference to:
- d) a document, including this Agreement, includes any variation, novation or replacement of it notwithstanding any change in the identity of the parties;
 - e) the singular includes the plural and vice versa;
 - f) an individual includes associations, partnerships, corporations, joint ventures, unincorporated associations or trusts, states or any statutory authority or government department;
 - g) a party is a reference to a party to this Agreement and includes that party's executors, administrators, successors and permitted assigns;
 - h) "includes" or "including" means "without limitation";
 - i) "writing" includes any mode of representing or reproducing words in a tangible and visible form, and includes a facsimile transmission and electronic mail;
 - j) a "right" includes a remedy, authority or power;
 - k) "\$" or "dollars" means an amount in Australian currency;
 - l) headings are for convenience only and do not affect the construction of this Agreement;
 - m) if a word or phrase is defined, cognate words and phrases have a corresponding meaning;

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