

Avantgarde Technologies Pty Ltd (**Avantgarde**) provides its services specified in any agreement between the parties on the following terms and conditions:

1. Contract

- 1.1 The Proposal between Avantgarde and the Client for the supply of the Services described in the Proposal to the Client on the terms and conditions contained herein shall constitute a binding contract between Avantgarde and the Client adhering to the Avantgarde terms and conditions of trade.
- 1.2 The Contract is comprised of the following documents:
- (a) the Proposal;
 - (b) these Terms and Conditions;
 - (c) all documents attached to the Proposal or incorporated by reference in the Proposal, (together, the **Contract**) and where there is any ambiguity or inconsistency, the documents take precedence in the order set out above.

2 Interpretation and Definitions

2.1 Definitions

In this Contract, unless the context otherwise requires, capitalised terms have the meaning set out below or as otherwise defined in the body of this Contract.

Ad-Hoc Rate	means \$270.00 plus GST
Avantgarde Business Hours	means 8:30am to 5pm, Monday to Friday except for public holidays in the State of Western Australia.
Data Protection Policy	means Avantgarde's standard policy governing the provision, use, and management of Data Protection Services, as amended by Avantgarde from time to time. The version of the policy applicable to this Contract shall be the version in effect at the Contract Date, as updated by any subsequent revisions notified to the Client or published on Avantgarde's website.
Data Protection Services	means the scheduled and automated process of replicating the Client's digital data, configurations, and system states from a primary source to a secondary storage medium at Avantgarde's principal place of business but excludes restoration.
Business Day	means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia or the location of the Avantgarde office providing the Services to the Client.
Business Hours	means 8:30am to 5:00pm Monday to Friday (time zone +8:00 GMT), excluding any public holidays in Western Australia.
Client	means the Client name in the Proposal.
Client Data	means all data relating to the Client, and its operations, facilitates, customers, Personnel, assets and the Client Environment (including Personal Information) in whatever form that information may exist and which:

	<ul style="list-style-type: none"> (a) is supplied or made available by the Client to Avantgarde; (b) is created or accessed by or on behalf of Avantgarde in the course of performing the Services; or (c) Avantgarde has access to under this Contract.
Client Environment	means the Client's information technology, telecommunications, internet and other relevant infrastructure that interfaces with the Services including any Hardware, Software and Equipment.
Client Equipment	means equipment and software owned by the Client.
Cloud Hosting	means the provision of remote computing resources, including virtual servers, data storage, databases hosted on infrastructure owned and operated by a third-party provider.
Cloud Hosting Policy	means Avantgarde's standard policy governing the provision, use, and management of cloud hosting services, as amended by Avantgarde from time to time. The version of the policy applicable to this Contract shall be the version in effect at the Contract Date, as updated by any subsequent revisions notified to the Client or published on Avantgarde's website.
Contract Date	means the date upon which this Contract is formed, being the date on which the last of the parties signs the Proposal.
CPI	means the most recently published Consumer Price Index (All Groups) for Perth by the Australian Bureau of Statistics. If the index is discontinued or fundamentally changed, it refers to the most nearly comparable index as determined by Avantgarde.
Cyber Breach	<p>means any incident in respect of the Client Environment or the Client Data (including in respect of Personal Information held or stored by Avantgarde on behalf of the Client) that results in:</p> <ul style="list-style-type: none"> (a) a notifiable data breach for the purposes of the <i>Privacy Act</i>; (b) the data having been misused, interfered with, corrupted or subject to unauthorised access, modification or disclosure; (c) unauthorised access to the data, storage device or computer network in which such information is stored; (d) that data or the storage device or computer system on which such information is stored being lost or misplaced; or (e) any part of the data becoming corrupted, not accessible, incorrectly modified or deleted as a result of loss, unauthorised disclosure or unauthorised access;
Dispute	a dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination.

Eligible Data Breach	has the meaning set out in the <i>Privacy Act</i> .
End User	means an employee, contractor, customer or other associate of the Client who interacts with or uses the Client Environment.
Equipment	means any equipment, Hardware or tools forming part of the Services which are provided by Avantgarde to the Client.
Excluded Loss	<p>means any of the following categories of loss or damage, whether direct, indirect or consequential and whether arising in contract, tort, statute or otherwise:</p> <ul style="list-style-type: none"> (a) any loss of actual or anticipated profits, business revenue, or savings; (b) any loss, corruption, or destruction of data, or the costs associated with the manual reconstruction or re-entry of such data; (c) any loss arising from business interruption, loss of opportunity, or loss of goodwill; (d) any wasted overheads, staff time, or management time incurred by the Client; (e) any compensation or penalties payable by the Client to its own customers or third parties (including penalty interest or settlement defaults); and (f) any damage to the Client's reputation or brand.
Fees	means the fees payable by the Client for the Services, as set out in the Proposal.
Hardware	means the physical, electronic, and tangible components of a computer system or network forming part of the Services which are provided by Avantgarde to the Client.
Interest Rate	means the rate of 12% per annum, calculated daily and compounded monthly.
Intellectual Property Rights	means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries.
Insolvency Event	<p>means, in respect of a party, the occurrence of one or more of the following events:</p> <ul style="list-style-type: none"> (a) a receiver, or receiver and manager is appointed; (b) a provisional liquidator, or official manager is appointed, (c) the party is deemed by law to be unable to pay its debts; (d) the party makes any arrangement or compromise with its creditors, or members, or with any class of its creditors, or members; (a) anything analogous to or of a similar effect to anything described above under the Laws of any relevant jurisdiction.
Managed Services	means the management, monitoring and maintenance of the Client Environment (or parts thereof) and the provision

	of End User support as set out in the Proposal.
Personal Information	has the meaning given to that term in the Privacy Act.
Personnel	means in respect of a Party, that Party's employees, officers, contractors and agents.
Privacy Act	means the <i>Privacy Act 1988 (Cth)</i> .
Project Based Work	means any project based work including, but not limited to, new hardware installation, data migrations, Client relocations or acquisitions, and any other project based work identified by Avantgarde from time to time in its sole discretion.
Proposal	means the proposal document or quote issued by Avantgarde to the Client.
Recommendations	means the professional advice, technical specifications, and strategic guidance provided by Avantgarde to the Client regarding the configuration, security, and maintenance of the Client Environment. This includes, without limitation, advice concerning hardware life cycles, software patching, security protocols, and infrastructure upgrades
Review Date	means 1 July of each calendar year.
Services	means the technical, advisory and managed solutions provided by Avantgarde to the Client under this Contract and may include Managed Services, Data Protection Services, Third Party Services, Cloud Hosting, Project Based Work, supply and installation of Hardware or Equipment and any other services. The specific Services to be provided will be described in the Proposal or in any subsequent variation to this Contract, all of which are governed by these Terms and Conditions.
Severity Levels	means the level of severity of a Support Request as set out in the Severity Matrix.
Severity Matrix	means the matrix of severity of Support Requests as set out in clause 5.2 below.
Site	means the Client's premises or such other location under the Client's control where the Services are to be provided, as specified in the Proposal.
Software	means any software forming part of the Services which is provided by Avantgarde to the Client.
Support Request	means a request for Managed Services submitted by the Client at Avantgarde via the designated support email / ticketing portal.
Target Response Time	means the period from when the Client logs a Support Request until Avantgarde acknowledges the request and commences initial diagnostic work, measured in Business Hours unless otherwise agreed in the Proposal for Severity Level 1 and Severity Level 2.

Telecommunication Policy	means Avantgarde's standard policy governing the provision, use, and management of Telecommunication Services, as amended by Avantgarde from time to time. The version of the policy applicable to this Contract shall be the version in effect at the Contract Date, as updated by any subsequent revisions notified to the Client or published on Avantgarde's website.
Telecommunication Services	means any services provided by a third-party carrier or service provider for the transmission of voice, data, or video, including but not limited to data and internet services, voice services and connectivity infrastructure.
Terms and Conditions	means the terms and conditions set out in this document.
Third Party Services	means any software, infrastructure, Cloud Hosting, Telecommunication Services or other licensing services provided by a third party vendor which Avantgarde procures, manages or resells to the Client.
Third Party Terms	means the terms and conditions applicable to Third Party Services.
Term	means the term of this Contract, commencing on the Contract Date and continuing for the initial term specified in the Proposal, unless it is extended in accordance with clause 3 or terminated in accordance with clause 12.
Working Away Allowance	means a working away from home allowance of \$100.00 plus GST per day, being a flat-rate recovery fee for staff meals and incidental expenses
Holding Over Term	means periods of 12 months.

2.2 Interpretation

In this Contract, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a "person" includes an individual, a body corporate, a partnership, a joint venture, or a government agency;
- (c) a reference to a party to this Contract includes that party's executors, administrators, successors, and permitted assigns;
- (d) a reference to "including," "for example," or "such as" does not limit the meaning of the words to which those examples relate;
- (e) headings and bold type are for convenience only and do not affect the interpretation of this Contract;
- (f) a reference to a statute or regulation includes any amendment, re-enactment, or replacement of it; and
- (g) no rule of construction applies to the disadvantage of a party on the basis that that party put forward or drafted this Contract or any part of it. The parties agree that this Contract shall be interpreted as if it were drafted jointly by both parties.

3 Engagement and Term

3.1 Term

- (a) In consideration of the payment of the Fees, Avantgarde will provide the Services to the Client during the Term on the terms and conditions contained in the Contract.
- (b) Unless otherwise specified in the Proposal, the Contract commences on the Contract Date and continues for the Term.
- (c) If no Term is specified in the Proposal, the Term is 12 months.
- (d) The parties may extend the Term for an additional period by written agreement.

3.2 Holding Over Term

- (a) If the Term expires and Avantgarde continues to provide Services to the Client without agreement on an extension to the Term, the Term will be extended for a Holding Over Term on the same terms and conditions as the initial term, except as set out in this clause 3.2.
- (b) Avantgarde may charge the Ad-Hoc Rate for all Managed Services.

4 Services

- 4.1 Subject to payment of the Fees, Avantgarde will provide the Services set out on the Proposal.
- 4.2 In the performance of the Services, Avantgarde will:
 - (a) use reasonable care and skill; and
 - (b) comply with all reasonable instructions of the Client communicated to Avantgarde in writing.
- 4.3 The Client acknowledges and agrees that:
 - (c) the Services (including Cloud Hosting and Telecommunication Services) may rely on infrastructure and connectivity provided by third-party carriers and providers;
 - (d) outages, performance degradation, or unavailability caused by such third-party providers are beyond the reasonable control of Avantgarde; and
 - (e) such outages, performance degradation, or unavailability shall not constitute a breach of this Contract by Avantgarde.
- 4.4 Avantgarde will use commercially reasonable endeavours to:
 - (a) select reputable third-party carriers or providers;
 - (b) monitor the performance of such carriers or providers; and
 - (c) act as the Client's advocate in managing service restoration and technical escalations with the carrier or provider during an outage.
- 4.5 Avantgarde is not liable for any loss, including Excluded Loss, arising from the failure of the network or infrastructure of a third party carrier or provider.

5 Managed Services

5.1 Business Hours

- (a) Avantgarde will provide Managed Services during Business Hours.
- (b) The Client may request, and Avantgarde may at its discretion provide, Managed Services outside of Business Hours.
- (c) If Avantgarde provides Managed Services outside of Business Hours, Avantgarde may:

- (i) charge the Ad-Hoc Rate; or
- (ii) deduct two (2) Prepaid Support Hours or Block Hours for every one hour (1) of Managed Services provided.

5.2 Severity Levels

(a) Support Requests are categorised as follows:

Severity Level	Definition	Target Response Time
1 (Critical)	Total Infrastructure Outage. All users are unable to access the service; mission-critical systems are down.	< 2 hours
2 (High)	Major functional loss. Services are available but performing poorly or a significant feature is broken (e.g., backups failing).	< 4 hours
3 (Normal)	Issues preventing a single employee from working.	< 8 hours
4 (Low)	General service inquiries, platform changes, minor bugs, or issues with the management portal that do not impact production services.	< 16 hours

- (b) Upon receipt of a Support Request, Avantgarde will categorise the Support Request into one of the Severity Levels set out in the Severity Matrix.
- (c) Avantgarde will use commercially reasonable endeavours to acknowledge the Support Request within the stated Target Response Time set out in the Severity Matrix.
- (d) The Client acknowledges that the Target Response Times are targets only and do not constitute a performance guarantee.
- (e) Any failure to meet a Target Response Time shall not constitute a breach of this Contract, provided that Avantgarde has acted in good faith and utilised reasonable resources available at the time to address the Support Request.
- (f) Avantgarde is not liable for failure to meet a Target Response Time where such failure is caused by factors beyond its reasonable control, including but not limited to third party outages or Client delays.
- (g) If Avantgarde fails to meet a Severity Level 1 or Severity Level 2 Target Response Time more than 3 times in a single calendar month, the Client shall be entitled to the Service Credit set out in clause 5.2(h) below.
- (h) The Service Credit will be calculated as 1% of the Prepaid Support Hours for that month, applied to the following month's invoice. The total aggregate of Service Credits in any month is capped at 5% of the Prepaid Support Hours for the relevant month.

5.3 Exclusions

The following items and activities are specifically excluded from the scope of the Managed Services and will be treated as ad-hoc support:

- (a) provision of Managed Services outside Avantgarde Business Hours;

- (b) the cost of any new or replacement Hardware, Equipment, parts, components, or consumables (including but not limited to server parts, workstations, cables, and printer toner);
- (c) any Project Based Work, including (but not limited to) office relocations, site commissions, server migrations, network upgrades, cloud migrations or hardware deployments.
- (d) providing functional training to the Client's Personnel on the use of Third Party Services;
- (e) any labour required to repair or restore systems following unauthorised modifications, "self-help" repairs, or configuration changes made by the Client or any third party without Avantgarde's written consent;
- (f) support for home internet connections, personal routers, or any device not explicitly listed in the Client's asset register or the Proposal;
- (g) electrical work, structural cabling (pulling wire through walls), or physical mounting of equipment that requires a licensed electrician or specialised tradesperson; or
- (h) remediation of damage caused by acts of God, power surges, fire, flood, or any other external event beyond the reasonable control of Avantgarde.

6 Software, Equipment and Hardware

6.1 Procurement and Sale of Hardware

- (a) This clause applies to the extent Avantgarde procures Equipment, Hardware or Software (**Goods**) for the Client under the Proposal.
- (b) Risk in the Goods passes to the Client on the later of:
 - (i) delivery of the Goods; and
 - (ii) when the Fees for the Goods have been paid in full.
- (c) Unless otherwise agreed in the Proposal, the Client must pay the Fees in respect of the Goods in advance and prior to delivery.
- (d) The Client will notify Avantgarde as soon as possible after delivery of the Goods if there are any material defects in the Goods.
- (e) The Goods will be deemed to have been accepted by the Client if Avantgarde does not receive such a notice from the Client within five (5) Business Days from the date of delivery of the Goods.
- (f) The Client acknowledges and agrees that:
 - (i) Avantgarde makes no representations and gives no warranties in respect of Goods, including that the Goods is fit for any particular purpose; and
 - (ii) all warranty claims in relation to the Goods are managed directly by the manufacturer.

6.2 Installation of Hardware

- (a) To the extent set out in the Proposal, Avantgarde will attend to the installation of the Goods at the Site on or before the date agreed by the parties during Business Hours, subject to the payment of the applicable Fees; and
- (b) The Client must notify Avantgarde as soon as possible after the installation of the Goods if there are any material defects in the installation.

- (c) The installation of the Goods will be deemed to have been accepted by the Client if Avantgarde does not receive such a notice from the Client within five (5) Business Days from the date of installation of the Goods.

7 Third Party Services

7.1 General

- (a) This clause applies to the extent Avantgarde procures Third Party Services for the Client under the Proposal.
- (b) The Client acknowledges and agrees that:
 - (i) the provision of the Third Party Services is governed by the Third Party Terms;
 - (ii) the Client is solely responsible for its compliance with the Third Party Terms; and
 - (iii) Avantgarde makes no representations and gives no warranties in respect of the Third Party Services, including that the Third Party Services is fit for any particular purpose.

7.2 Cloud Hosting

If the Services include Cloud Hosting Services:

- (a) the Cloud Hosting Policy is incorporated into this Contract; and
- (b) the Client agrees to comply with the Cloud Hosting Policy and any other technical or security policies issued by Avantgarde.
- (c) Avantgarde will provide the Client with at least thirty (30) days' notice of any material changes to these policies that negatively impact the Client's use of the Cloud Hosting Services.

7.3 Telecommunication Services

If the Services include Telecommunication Services:

- (a) the Telecommunication Policy is incorporated into this Contract; and
- (b) the Client agrees to comply with the Telecommunication Policy and any other technical or security policies issued by Avantgarde.
- (c) Avantgarde will provide the Client with at least thirty (30) days' notice of any material changes to these policies that negatively impact the Client's use of the Telecommunication Services.

7.4 Data Protection Services

If the Services include Data Protection Services:

- (a) the Data Protection Policy is incorporated into this Contract; and
- (b) the Client agrees to comply with the Data Protection Policy and any other technical or security policies issued by Avantgarde.
- (c) Avantgarde will provide the Client with at least thirty (30) days' notice of any material changes to these policies that negatively impact the Client's use of the Data Protection Services.

8 Client obligations and warranties

8.1 General Obligations

- (a) The Client must:

- (i) do all things necessary to enable Avantgarde to perform its obligations under this Contract;
 - (ii) The Client must properly operate and maintain the Client Environment in accordance with the reasonable requirements and instructions of Avantgarde;
 - (iii) comply with all Laws applicable to the Site including occupational health and safety laws;
 - (iv) comply with all data retention Laws applicable to the Client;
 - (v) provide Avantgarde with all information and documentation as reasonably requested by Avantgarde;
 - (vi) comply with all reasonable directions of Avantgarde and all documentation and operating manuals applicable to the use of the Services; and
 - (vii) co-operate with Avantgarde's reasonable investigations of outages, security problems and any suspected breach of this Contract.
- (b) The Client acknowledges and agrees that the effective and timely provision of the Services requires the Client to:
- (i) provide prompt instructions and decisions; and
 - (ii) implement and incorporate any Recommendations that Avantgarde may make in respect of the Client Environment.

8.2 Site and access requirements

- (a) The Client must:
- (i) provide Avantgarde with safe access its Site, facilities, specified equipment and the Client Environment to perform its obligations under this Contract;
 - (ii) provide adequate supply of power, network and cabling at the Site and any other electrical and mechanical fittings reasonably required by Avantgarde;
 - (iii) provide Avantgarde with an appropriate workstation, desk, any software, equipment and administrator passwords necessary for Avantgarde to perform the Services; and
 - (iv) maintain the Site and the Client Environment in good working repair and condition.

8.3 Reporting and inspections

The Client must promptly supply Avantgarde with any information reasonably requested by Avantgarde relating to the Client:

- (a) to enable Avantgarde to monitor and help reduce the incidence of fraud;
- (b) to assist Avantgarde in complying with its regulatory obligations;
- (c) to assess whether or not the Client has complied, is complying and will be able to continue to comply, with all obligations imposed on the Client under this Contract; and
- (d) for other purposes reasonably required by Avantgarde from time to time.

8.4 Client Warranties

The Client warrants that:

- (a) it holds all right, title and interest in, or it has a licence to use, any software, hardware, systems, IP addresses, domain names and all other items in the Client Environment;
- (b) the Client Environment is in good working order;

- (c) it will take all reasonable precautions to safeguard its business and specifically its Client Environment to minimise any loss or disruption, including (as applicable) implementing effective audit control, firewalls, virus checking controls, data security measures and appropriate data and software back-ups.

8.5 Eligible Data Breaches

- (a) Promptly and no later than 7 days upon becoming aware of an actual or suspected Cyber Breach in relation to the Client Environment, the Client must:
 - (i) immediately investigate, or procure the investigation of, the Cyber Breach;
 - (ii) make an assessment if the Cyber Breach amounts to an Eligible Data Breach and notify Avantgarde of the following:
 - (A) the reasons why the Client considers that a reasonable person would or would not conclude that the Cyber Breach is an Eligible Data Breach;
 - (B) whether the Client will issue any statements to the affected individuals and the Office of the Australian Information Commissioner;
 - (iii) if there are reasonable grounds to believe that the Cyber Breach amounts to an Eligible Data Breach, prepare statements in accordance with section 26WK of Part IIIC of the *Privacy Act* and issue the statements to the affected individuals and the Office of the Australian Information Commissioner of the Cyber Breach.
- (b) On receipt of the notification from the Client under clause 7.4(a)(ii) that the Client will not be issuing any statements to the affected individuals and the Office of the Australian Information Commissioner, Avantgarde may:
 - (i) investigate the Cyber Breach itself;
 - (ii) make an assessment if the Cyber Breach amounts to an Eligible Data Breach and notify the Client of its reason by which the Cyber Breach is an Eligible Data Breach; and
 - (iii) if Avantgarde considers that there are reasonable grounds to believe that the Cyber Breach amounts to an Eligible Data Breach, Avantgarde will prepare statements in accordance with section 26WK of Part IIIC of the *Privacy Act* and issue the statements to the affected individuals and the Office of the Australian Information Commissioner of the Cyber Breach on behalf of itself and the Client.
 - (iv) The Client will reimburse Avantgarde on demand for all reasonable costs incurred by Avantgarde in connection with clause 7.4(b).

9 Personnel

9.1 Personnel

Avantgarde may engage in the performance of the Services, such Personnel as required to complete the Services under this Contract.

9.2 No Solicitation

- (a) The Client must not at any time during this Contract and for 12 months following the expiry or termination of this Contract:
 - (i) solicit, interfere with, or endeavour to entice away any employee of Avantgarde; or
 - (ii) counsel, procure or otherwise assist any person to do any of the acts referred to in clause 9.2(a)(i) above.

- (b) If the Client breaches clause 9.2(a) above then the Client must pay to Avantgarde upon demand an amount equal to the greater of:
 - (i) \$50,000;
 - (ii) the recruitment or placement fee paid by Avantgarde to any recruitment agency for the placement of the relevant employee; and
 - (iii) three times the gross monthly salary of the relevant employee.
- (c) The parties agree that the amount identified in clause 9.2(b) is a genuine and reasonable pre-estimate of the loss resulting to Avantgarde due to a breach by the Client of clause 9.2(a) above. All sums payable in accordance with this clause shall be recovered by Avantgarde as liquidated damages.
- (d) The remedy in clause 9.2(b) is in addition to any other remedies Avantgarde has as set out in this Contract or at law.
- (e) In the event that clause 9.2(b) is found to be void, invalid or inoperative so as to disentitle Avantgarde from any liquidated damages, the parties agree and acknowledge that notwithstanding any clause in the Contract to the contrary, Avantgarde shall be entitled to claim general law damages for the Client's breach of clause 9.2(a).

10 Fees & Payment

10.1 Fees

In consideration of the provision of the Services, the Client agrees to pay Avantgarde the Fees.

10.2 Managed Services

The Client shall remunerate the Provider for Managed Services in accordance with one of the following billing models specified in the Proposal:

- (a) Prepaid Support Hours;
- (b) Block Hours; and
- (c) Ad-Hoc.

10.3 Prepaid Support Hours

Where the Client elects the Prepaid Support Hours billing model as specified in the Proposal, the following terms shall apply:

- (a) The Client agrees to pay for the quantity of hours of Managed Services set out in the Proposal monthly in advance (**Prepaid Support Hours**) at the hourly rate set out in the Proposal.
- (b) Avantgarde is not obligated to commence or perform any Services until the first invoice for Prepaid Support Hours has been paid in full and the funds have cleared.
- (c) All remotely performed Managed Services will be calculated and charged by Avantgarde in fifteen (15) minute intervals. Any time spent on a task that is less than 15 minutes, or falls between 15-minute increments, will be rounded up to the next full 15-minute interval.
- (d) Any Prepaid Support Hours not utilised by the Client in the month will accumulate during the Term.
- (e) If the Contract is terminated, the balance of Prepaid Support Hours will be considered fully utilised, and Avantgarde is not obligated to refund the Client any Fees for Prepaid Support Hours.

- (f) Prepaid Support Hours cannot be utilised by the Client for Project Based Work.
- (g) The required quantity of Prepaid Support Hours is based on the number of End Users and Client Environment. If there is:
 - (i) any change to the number of End Users; and/or
 - (ii) a material change to the Client Environment,
 Avantgarde may, acting reasonably, recalculate the quantity of Prepaid Support Hours and provide the Client with written notice of the adjusted quantity.
- (h) Avantgarde may charge the Ad-Hoc Rate for the hours utilised by the Client in excess of the Prepaid Support Hours.

10.4 Block Hours

Where the Client elects to the Block Hours billing model as specified in the Proposal, the following terms shall apply:

- (a) The Client shall prepay for a designated quantity of support hours at the rate specified in the Proposal (**Block**).
- (b) Avantgarde is not obligated to commence or perform any Services until the first invoice for the Block has been paid in full and the funds have cleared.
- (c) All remotely performed Managed Services will be calculated and charged by Avantgarde in twenty-five (25) minute intervals. Any time spent on a task that is less than 25 minutes, or falls between 25-minute increments, will be rounded up to the next full 25-minute interval.
- (d) As Managed Services are performed, the actual time spent calculated in accordance with clause 10.2(b) will be deducted from the Block.
- (e) Avantgarde will provide a monthly statement or ledger reflecting the expended usage and the remaining balance of hours in the Block.
- (f) When the remaining quantity of hours reaches 25% of the Block, Avantgarde will notify the Client. Upon receipt of this notification, the Client must purchase a subsequent Block to ensure continuity of the Services and to maintain any applicable preferential rates.
- (g) If the Block is exhausted before a subsequent Block is purchased, any additional Services performed will be automatically billed at the Ad-hoc Rate until such time as a new Block is purchased and paid for by the Client.
- (h) Unless otherwise agreed in writing, a Block must be utilised within 24 months from the date of purchase. Any unused hours in a Block at the conclusion of this period shall be forfeited and are non-refundable.
- (i) Block Hours cannot be utilised by the Client for Project Based Work.

10.5 Ad-Hoc

- (a) Where the Client elects the Ad-Hoc billing model as specified in the Proposal, the Client agrees to pay for Managed Services at the Ad-Hoc Rate.
- (b) All remotely performed Managed Services will be calculated and charged by Avantgarde in fifteen (15) minute intervals. Any time spent on a task that is less than 15 minutes, or falls between 15-minute increments, will be rounded up to the next full 15-minute interval.

10.6 Variation to the hourly rate for Managed Services

- (a) On each Review Date, Avantgarde may increase the hourly rate for Managed Services, the Ad-Hoc Rate and the Working Away Allowance, effective on the Review Date.
- (b) Any increase under this clause 10.6 will be the greater of:
 - (i) CPI; or
 - (ii) 5%.

10.7 Third Party Services Price Adjustment

- (a) The Client acknowledges that Third Party Services provided by Avantgarde is subject to pricing set by the Third Party.
- (b) Where a Third Party increases the cost of Third Party Services, Avantgarde may automatically adjust the Fees to reflect such increase.
- (c) The Fee adjustments will be applied to the relevant Third Party Services and reflected in the Client's next invoice without requiring any approval from the Client.
- (d) Avantgarde will use reasonable endeavours to provide the Client with notice of any material Third Party price increases as soon as practicable.

10.8 Foreign Exchange Adjustment

- (a) Where Avantgarde incurs costs in a foreign currency:
 - (i) in respect of any Goods; or
 - (ii) from a Third Party for Services provided to the Client,

Avantgarde may adjust the Fees charged to the Client to account for any variance in the exchange rate between the date of the relevant invoice to Avantgarde and the date of Avantgarde's invoice to the Client.
- (b) Adjustments under clause 10.8(a) shall be a direct pass-through of the currency fluctuation cost and will be applied to the Client's invoice as a "Currency Adjustment" or an updated unit price for the affected Service.

10.9 Site visits, travel

- (a) All Managed Services performed on Site will be calculated and charged by Avantgarde in 1 hour intervals. Any time spent on a task that is less than 1 hour, or falls between hourly increments, will be rounded up to the next full hour.
- (b) All time spent by Avantgarde Personnel traveling to and from the Site for the provision of Services will be recorded as billable time. This travel time will be:
 - (i) deducted from the Prepaid Support Hours; and
 - (ii) subject to the hourly billing interval as specified in clause .
- (c) Where the provision of Services requires Avantgarde Personnel to work at a Site that necessitates an overnight stay or travel outside of the Perth metropolitan area, the Working Away Allowance will be charged to the Client and will be invoiced as a separate line item.
- (d) All reasonable costs for accommodation, airfares, vehicle hire, and related travel expenses incurred by Avantgarde in the performance of Site-based Services shall be on-charged to the Client at cost plus 15%.
- (e) Avantgarde will use reasonable endeavours to obtain the Client's verbal or written approval prior to incurring significant accommodation or travel expenses, except where such expenses are necessary to address a Severity Level 1 Support Request.

10.10 Materials Tools and Personnel

Unless otherwise specified in the Proposal, if Avantgarde is to provide any Equipment, materials, consumables or special tools necessary for the performance of the Services, Avantgarde will provide these at cost plus 15%.

10.11 Invoicing and Payment

- (a) Unless otherwise specified in the Proposal, Avantgarde will issue and invoice the Client for the Fees on a monthly basis.
- (b) The Client must pay the invoice issued by Avantgarde under clause 10.11(a) within fourteen (14) days of the date of the invoice.
- (c) If the Client disputes any amount claimed in an invoice:
 - (i) the Client must give written notice to Avantgarde stating the reasons for the dispute within 14 days after receipt of the disputed invoice; and
 - (ii) the Client is not obligated to pay the disputed amount until the dispute is resolved but must pay all other undisputed amounts.
 - (iii) the disputed amount will be managed in accordance with clause 18.
- (d) Subject to clause 10.11(c), if the Client fails to pay any Fees by the due date:
 - (i) Avantgarde may, charge interest at the Interest Rate on the outstanding Fees or any other monies due and unpaid by the Client, until such time as the Client has paid in full, the outstanding amount and any interest accrued on the outstanding amount; and
 - (ii) the Client will pay to Avantgarde any reasonable costs incurred by Avantgarde in relation to collection of any amounts owing, including any legal costs incurred by Avantgarde, on a full indemnity basis.

10.12 Taxes

- (a) The Fees are exclusive of GST, and where applicable, GST and other taxes, duties or levies will be added to the Fees.
- (b) If GST is imposed on any supply made under this Contract by a party (**Supplier**) to another party (**Recipient**), then the Recipient must pay to the Supplier an amount equal to that GST in addition to any other amount payable or other consideration provided for the supply.
- (c) The Recipient's obligation to pay an amount equal to the GST under clause only applies if the seller has given the recipient a tax invoice for the supply that details the relevant amount of that GST.
- (d) If the amount paid by the Recipient under this clause 10.12 differs from the amount of GST payable at Law by the Supplier on the supply, the amount paid by the Recipient to the Supplier will be adjusted accordingly.

11 Suspension

11.1 Suspension

Avantgarde may, at its absolute discretion and without prejudice to any other rights or remedies available under this Contract, suspend the provision of all or part of the Services if:

- (a) the Client fails to pay any undisputed Invoice by its due date;

- (b) the Client is in material breach of any provision of this Contract and has failed to remedy that breach within 7 days of receiving written notice; or
- (c) the Client fails to, in the opinion of Avantgarde, participate in the dispute resolution process under clause 18 in good faith or refuses to attend a scheduled dispute resolution meeting.

11.2 Severity Level 1

During any period of suspension under this clause 11:

- (a) Avantgarde will cease all Managed Services;
- (b) Avantgarde may continue to respond to any Support Request categorised as a Severity Level 1;
- (c) the Client remains liable for all recurring Fees, including the Prepaid Support Hours and all Fees related to Third Party Services; and
- (d) any work performed by Avantgarde on Severity Level 1 Support Requests during a period of suspension will be deducted from the Prepaid Support Hours or Block Hours or billed at the Ad-Hoc Rate, at Avantgarde's discretion.

11.3 Reinstatement of Services

Avantgarde will reinstate the Services only once:

- (a) all outstanding Invoices, including any applicable late payment interest, have been paid in full;
- (b) the material breach has been remedied by the Client to Avantgarde's satisfaction; and
- (c) the Client has paid a reinstatement fee of \$2,000.

11.4 No liability

- (a) The Client acknowledges and agrees that during any period of suspension under this clause 11, the:
 - (iii) Client's business may not be able to operate in the ordinary course or at all; and
 - (iv) Client Environment may be subject to increased risks, including but not limited to security vulnerabilities, hardware failure, data loss, or service interruptions.
- (b) To the maximum extent permitted by law, Avantgarde shall not be liable for any loss, damage, costs, or expenses (including Excluded Loss) arising out of or in connection with the suspension of Services, regardless of whether such loss was foreseeable.
- (c) Without limiting the foregoing, the Client specifically acknowledges that Avantgarde is not liable for any security breaches, malware infections, or data corruption that occurs while Services (including monitoring and patching) are suspended under this clause 11.
- (d) The Client indemnifies and holds Avantgarde harmless against any claims arising from the cessation of Services during the period of suspension.

12 Termination

12.1 Termination

- (a) If the Client breaches any term of this Contract, then Avantgarde may give notice to the Client requiring it to remedy the breach within 7 days, or such greater period as is specified in the notice.

- (b) If the Client does not remedy breach with the timeframe prescribe by clause 12.1(a), Avantgarde Party may terminate the Contract immediately by notice in writing to the Client.
- (c) Avantgarde may terminate the Contract by immediate notice in writing to the Client if the Client is subject to an Insolvency Event.

12.2 Consequences for Termination due to Client default

In the event that this Contract is terminated by Avantgarde:

- (a) All Prepaid Support Hours and Block Hours are immediately forfeited in favour of Avantgarde;
- (b) the Client shall be liable to pay to Avantgarde:
 - (i) a lump sum equal to 50% of the value of the remaining Prepaid Support Hours that would have been payable by the Client for the balance of the Term. The parties agree that this amount represents a genuine pre-estimate of Avantgarde's loss of profit and is not a penalty;
 - (ii) the amount of any deficit in Prepaid Support Hours or Block Hours;
 - (iii) the total cost of all Third Party Services for the remainder of the minimum commitment period required by the relevant Third Party;
 - (iv) the full cost of all Goods ordered by Avantgarde on behalf of the Client which cannot be cancelled or returned to the Third Party for a full refund. Any Goods paid for under this clause will be delivered to the Client "as-is" upon receipt of all amounts due to Avantgarde under this Contract; and
 - (v) All unpaid Invoices and any unbilled Services performed up to the date of termination.

12.3 Handover and Data Migration

- (a) Subject to the payment of all sums due to Avantgarde under Clause 12.2 above, Avantgarde will use best endeavours to assist with the orderly transition of Services to a new provider (**Transition Services**).
- (b) Any time spent by Avantgarde on handover tasks, documentation, or data migration is outside the scope of the Prepaid Support Hours and will be billed at the hourly rate of \$270.00 plus GST.
- (c) Avantgarde may provide the Client with an estimate of the total fees and expenses likely to be incurred in providing the Transition Services. Avantgarde may require the Client to pay this estimated amount in full as a condition precedent to the commencement of the Transition Services.
- (d) If Avantgarde elects to require payment in advance for Transition Services in accordance with clause 12.3(c) above, within 7 days of the completion of the Transition Services, Avantgarde will perform a final reconciliation of the actual time spent against the estimated payment received. Any shortfall must be paid by the Client to Avantgarde within 7 days of the date of the final invoice. Any overpayment by the Client will be refunded by Avantgarde within 7 days of the completion of the reconciliation.
- (e) Avantgarde may withhold administrative credentials, domain transfers, and data exports until all outstanding termination payments have been received in full.

13 Confidentiality and Privacy

13.1 Confidential information

Each party must treat as confidential the provisions of this Contract and all information provided by the other party under this Contract, including Avantgarde's technical, operational, billing, pricing and commercial information in relation to the supply of Services (**Confidential Information**).

13.2 Privacy

The Client must make all necessary disclosures and procure any necessary consents to ensure Avantgarde is able to use the Personal Information of the Client, its Personnel and clients (including specifically in accordance with the Privacy Laws) as required to provide the Services.

Intellectual Property Rights

- (a) Each party retains ownership of all Intellectual Property Rights subsisting in any work it provides or makes available to the other party under or in connection with this Contract (**Background IP**).
- (b) Any modification or enhancement to any Background IP of a party is deemed to form part of the Background IP of that party and all Intellectual Property Rights in such modification or enhancement vest in that party immediately from creation.
- (c) If a party's Background IP is modified or enhanced by or on behalf of the other party, then the other party assigns all Intellectual Property Rights it may have in such modification or enhancement immediately from creation.
- (d) Each party grants the other party a non-exclusive licence to use its Background IP provided or made available to the other party, solely for the purposes of this Contract.
- (e) All Intellectual Property Rights in any work created by or on behalf of Avantgarde in the course of providing the Services will vest in Avantgarde immediately from creation.
- (f) The Client must assign to Avantgarde any Intellectual Property Rights that do not automatically vest in Avantgarde and must sign any document required to give effect to that assignment.

14 Liability

14.1 Australian Consumer Law

- (a) The Services may come with guarantees that cannot be excluded under the Australian Consumer Law (**ACL**).
- (b) To the extent that the Client is a "consumer" (as defined in the ACL), nothing in this Contract excludes, restricts, or modifies any right or remedy, or any guarantee, warranty, or other term or condition, implied by the ACL which cannot lawfully be excluded.
- (c) To the maximum extent permitted by law, Avantgarde's liability for a breach of a non-excludable statutory guarantee is limited, at Avantgarde's option, to:
 - (i) supplying the relevant Services again; or
 - (ii) the payment of the cost of having the relevant Services supplied again.

14.2 Limitation

Subject to clause 14.3 and to the extent permitted by law, Avantgarde's total aggregate liability, howsoever arising and whether in any action in contract, tort (including negligence), in equity, product liability, under statute or any other basis, is limited to an amount equal to the total Fees paid under this Contract in the six (6) month period preceding the date on which the event giving rise to liability occurred.

14.3 Excluded Losses

To the extent permitted by law, Avantgarde will not be liable to the Client for any Excluded Loss.

15 Indemnity

The Client indemnifies Avantgarde against any loss, cost, damage, or liability suffered or incurred by Avantgarde, its employees, or agents, arising out of or in connection with:

- (a) injury or death of any Avantgarde Personnel while attending the Client's premises; and
- (b) damage to or loss of Avantgarde's tools, hardware, or equipment while located at the Client's premises;

to the extent that such injury, death or damage is caused by the negligence, breach of Contract, breach of statutory duty, or wilful misconduct of the Client or its Personnel.

16 Insurance

16.1 Avantgarde's Insurance Obligations

throughout the Term of the Contract Avantgarde will maintain the following policies of insurance:

- (a) Public and Products Liability Insurance with cover of ten million dollars (\$10,000,000); and
- (b) Professional Indemnity insurance with cover of one million dollars (\$1,000,000).

16.2 Client's Insurance Obligations

Throughout the term of the Contract, the Client must maintain the following policies of insurance:

- (a) Public and Products Liability Insurance with cover of \$20,000,000; and
- (b) Cyber liability insurance with cover of \$5,000,000.

17 Dispute Resolution

- (a) In the event of a dispute arising between Avantgarde and the Client, either party may give written notice to the other party stating the reason for the dispute.
- (b) If the dispute has not been settled within fourteen (14) days from the date of service of the notice, either party may require by written notice to the other party that the matter be referred to senior representation for determination.
- (c) Following receipt of a notice of referral by either party, both parties shall appoint a senior representative to discuss and all outstanding issues.

17.1 Dispute

A Party who wishes to resolve a Dispute that has arisen in connection with the Contract must first give the other party to the Contract a written request to negotiate in respect of the Dispute (**Dispute Notice**).

17.2 Dispute Notice Particulars

The Dispute Notice must set out:

- (a) the alleged facts and details of the Dispute;
- (b) the contractual or legal basis for the Dispute;
- (c) the amount (if any) in Dispute; and

(d) the party's position on the Dispute.

17.3 Procedure

Within 20 Business Days of receipt of a Dispute Notice that complies with the requirements of clause 17.2, the parties must meet to negotiate in good faith to try to resolve the Dispute.

17.4 Referral to Senior Representatives

If the parties do not resolve the Dispute within 15 Business Days of the meeting under clause 17.3, they must refer the Dispute to a senior representative of each party (**Senior Representatives**) who must, acting reasonably, endeavour to meet promptly.

17.5 Alternative Dispute Resolution

If the Dispute is not resolved by the Senior Representatives within a period of 15 Business Days after the meeting of the Senior Representatives under clause p, the Parties will within a further 15 Business Days (or other longer period agreed by the parties) seek to agree:

- (a) the process for resolving the Dispute through means other than litigation, such as further negotiations, mediation or conciliation;
- (b) the procedure and timetable for any exchange of documents and other information relating to the Dispute;
- (c) procedural rules and a timetable for the conduct of the selected mode of alternative dispute resolution process; and
- (d) the procedure for selection and remuneration of any mediator or other moderator or expert who may be engaged by the Parties.

17.6 Cost of alternative dispute resolution

The cost and expenses of the mediator or the other moderator or expert will be apportioned equally between the Parties.

18 General

18.1 Notices

- (a) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this Contract must be in writing and either delivered personally, sent by email or ordinary post to the addresses shown in for the party in the Proposal.
- (b) All notices in respect of this Contract shall be deemed received:
 - (i) if by personal delivery, on the date of the personal delivery;
 - (ii) if sent by post, three Business Days after posting (or seven Business Days after posting if sent from one country to another), or
 - (iii) if sent electronically, on the date the email is sent unless:
 - (A) the sender receives a notification that the email was not delivered, undeliverable or similar such notice, in which case it will be deemed not received; and
 - (B) it is sent after 5:00pm or on a day that is not a Business Day, in which case it will be deemed to be received at 9:00am the next Business Day.

18.2 Entire Contract

- (c) This Contract constitutes the entire agreement between the parties in respect of its subject matter and supersedes all other prior agreements, quotation requests,

understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter (if any) made or given prior to the date of this Contract.

- (d) The Contractor warrants it has not entered into this Contract on the basis or in reliance on any prior representation which is not contained in this Contract.
- (e) If any provision of this Contract is, or becomes, void or unenforceable, that provision is, or will be, severed from this Contract so that all provisions that are not, or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

18.3 Counterparts

This Contract may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Contract, all of which together constitute one agreement.

18.4 Electronic execution

- (a) Each party agrees that:
 - (i) any electronic signature will be deemed an original signature for the purposes of this Contract; and
 - (ii) each party may rely on electronic signatures as if such signatures were an original signature,provided that each Party promptly, and in any event within 2 Business Days of electronic execution, exchange original versions of the electronically signed Contract.
- (b) The parties agree that the receipt of such electronically executed Contract in accordance with clause 18.4(a) will be binding on each party and will be construed as a contract executed by hand.

18.5 Amendment

This Contract may not be released, discharged, abandoned, changed or modified in any manner except by an instrument in writing signed by each of the Parties.

18.6 Waiver

The failure of any Party to enforce at any time any of the provisions of this Contract or to exercise any right will not be construed to be a waiver nor in any way to affect the validity of this Contract or any part of it or the right of any Party to enforce each and every provision and to exercise any right.

18.7 Governing Law

This Contract will be governed by and construed according to the laws in force in Western Australia from time to time and the Parties submit to the exclusive jurisdiction of the courts of that State and those courts having the right to hear appeals from them.

18.8 Survival of Terms

Termination of the Contract does not release either party from any obligations relating to the Contract that by their nature survive termination of the Contract, including all warranties and obligations of indemnity or confidentiality. All such obligations that are capable of having future operation continue in force, despite the Contract being otherwise fully performed.