

General Terms & Conditions of Service

DC Two Limited (ACN 155 473 304)

This Agreement sets out the general terms and conditions that apply to the provision of all Services by DC Two Limited (ACN 155 473 304) (DC Two) to its Customers (together the Parties and each a Party).

1. General Terms

- 1.1 This Agreement sets out the general terms and conditions that apply to the provision of one or more Services from DC Two to the Customer from time to time during the Term. The relevant Services will be provided to the Customer following completion of a Services Agreement that is agreed and executed by DC Two and the Customer.
- 1.2 Every Services Agreement that is signed by DC Two and the Customer is subject to the provisions of this Agreement. To the extent that there is any conflicts between this Agreement and either a Services Agreement, the provisions of the Services Agreement will prevail (unless otherwise expressly agreed in writing between the Parties in the Services Agreement).
- 1.3 On and from the Service Commencement Date, DC Two agrees to provide the Services to the Customer in accordance with, and subject to, the terms and conditions of this Agreement, the Services Agreement or the Fixed Term Agreement and any documents that are stated in the Services Agreement as being incorporated into this Agreement.
- 1.4 The Customer agrees to pay the price payable for the Services set out in the relevant Services Agreement.
- 1.5 The Customer agrees to pay the agreed price to DC Two and to provide necessary assistance to DC Two. The Customer represents and warrants to DC Two that the information he, she or it has provided and will provide to DC Two for purposes of establishing and maintaining the service is accurate. If the Customer is an individual, the Customer represents and warrants to DC Two that he or she is at least 18 years of age.
- 1.6 The specification of the Services governed by this Agreement is described on the DC Two website (<https://dctwo.com.au/>) describing the particular Service the Customer has purchased based on the description as it stands on the Service Commencement Date (**Specification**). DC Two may modify products and services from time-to-time. Should the description of Services change subsequent to the Service Commencement Date, DC Two has no obligation to modify Services to reflect such a change.
- 1.7 The Customer acknowledges that all Intellectual Property Rights in the Service and any modification belong and shall belong to DC Two, and the Customer shall have no rights in or to the service other than the right to use it in accordance with the terms of this agreement.
- 1.8 DC Two reserves the right to make changes to these terms and conditions at any time and DC Two will give the Customer advance notice of these changes via electronic mail by notifying the primary Customer contact as set out in the applicable Services. If these changes materially affect the Customer's ability to use Services, the Customer may terminate this Agreement within 30 days of such a change. Otherwise, the Customer's continued use of the Service is the Customer's consent to be bound by the changes.
- 1.9 In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained on DC Two's website, the provision in the body of this Agreement shall take precedence.
- 1.10 Questions about the terms of this agreement will be answered at e-mail address accounts@dctwo.com.au or by phone number +61 1300 331 888.

2. Payments

- 2.1 Fees are due and payable in advance on the fourteenth day of each billing cycle. The Customer's billing cycle shall be monthly, beginning on the first day of the following month after the Service Commencement Date. DC Two may require payment for the first billing cycle before beginning the Service.
- 2.2 If the Service Commencement Date is the first day of the month, then the Customer's billing cycle shall commence on that date. If the Services Commencement Date falls part way through a month, then the first monthly fee shall be calculated pro-rata for the number of days remaining for that first month.

- 2.3 DC Two may start billing a Customer for a Service from the Service Commencement Date whether or not the Customer has used the Service since that date.
- 2.4 If the applicable Services Agreement provides for credit/debit card billing, the Customer authorises DC Two to bill subsequent fees to the credit/debit card on or after the first day of each successive billing cycle during the Term, otherwise DC Two will invoice the Customer via electronic mail to the Customer's accounts contact as listed in the applicable Services Agreement. Invoiced fees may be issued on or after the 1st day of each billing cycle, and the fees shall be due on the 14th day following the invoice date (unless stated otherwise in the applicable Services Agreement).
- 2.5 The Customer is fully responsible for the accuracy and completeness of all data (such as change in billing or mailing address, credit card expiration) and timely notification of changes of these details. DC Two is not responsible for any misunderstanding resulting from failure to notify of these changes by the Customer.
- 2.6 DC Two may increase (or decrease) its fees for Services, if such a change is notified to the Customer at least thirty (30) days prior to the effective date of the new fees. The Customer is entitled to terminate this Agreement with effect from the fee change. If the Customer does not give a notice of non-renewal during the notification period and prior to the effective date of the new fees, the Customer shall be deemed to have accepted the new fee.
- 2.7 The Customer does not have the right to hold back or set-off any payment from DC Two in case of Service or availability problems.
- 2.8 The Customer acknowledges that the amount of the fee for the Service is based on the Customer's agreement to pay the fee for the entire initial Service term, or renewal term, as applicable.
- 2.9 All Charges are non-refundable unless expressly stated otherwise, or otherwise provided by applicable law.
- 2.10 If the Customer disputes any part of an invoice submitted by DC Two, the Customer must;
- (a) notify DC Two in writing within 5 days of receipt of the invoice of the reasons for disputing the invoice; and
 - (b) pay the undisputed amount on or before the due date for payment.
- 2.11 The Parties must endeavour to resolve the disputed amount between themselves within 10 Business Days of the notification being given by the Customer. If the Parties do not agree the disputed amounts within 10 Business Days of the notification in writing by the Customer, the dispute resolution procedure set out in section 19 applies.
- 2.12 Where the Charges for any Service provided under the applicable Services Agreement includes the cost of power, DC Two may pass on to the Customer, and the Customer must pay, any increase in the cost of power from time to time. DC Two must notify the Customer of any increase as soon as reasonably practicable after the increase occurs. Failure to notify the Customer of the increase in cost of power does not negate the Customer's obligation to pay the increased power rate from the date of increase.
- 2.13 **Fixed Term**
- For Customers whose Services are supplied for a fixed term under in accordance with the applicable Services Agreement (**Fixed Term Agreement**) (e.g. where DC Two provides a Fixed Term Product or Service to a Customer);
- (a) If additional equipment or services are added to the Fixed Term Agreement at any time during the Fixed Term, DC Two may require an extension of the Initial Term or the Initial Term may be rescinded and a new Fixed Term will begin from a new date.
 - (b) If the Customer breaches any term of this Agreement or any specific Services Agreement (including non-payment of any invoice issued to the Customer, any unpaid part of any Fixed Term Charge outstanding becomes immediately due and payable.
- 2.14 **Overdue Amounts**
- If the Customer does not pay all of the invoiced Charges by the invoice due date, DC Two may;
- (a) commandeer any hosted equipment for the purposes of ensuring that DC Two's upstream suppliers and contracts can be satisfied;
 - (b) charge interest on the outstanding amount at the Interest Rate on and from the invoice due date and the Customer must pay the outstanding amount together with interest immediately on demand by DC Two; and/or

- (c) on 5 days' written notice to the Customer, suspended any or all of the Services until the Customer pays DC Two the unpaid amounts in full, together with any interests accrued under section 2.14(b).

- (a) replace the Service;
- (b) repair the Service; or
- (c) terminate this Agreement immediately by notice in writing to the Customer and refund any of the fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Service to date of termination), provided the Customer provides all the information that may be necessary to assist DC Two in resolving the defect or fault.

3. Security Deposit

- 3.1 Prior to the provision of any Services, if DC Two requests in the Services Agreement, the Customer must pay the Security Deposit to DC Two. If DC Two does not request a Security Deposit from the Customer, then this section 3 does not form part of the Agreement.
- 3.2 DC Two must hold the Security Deposit as security for the payment of any sums due under this agreement, a Services. If the Customer fails to pay any amount due on the due date for payment, DC Two may immediately deduct that amount from the Security Deposit in set-off of the Customer's payment obligation.
- 3.3 If DC Two deducts any monies from the Security Deposit under section 3.2 the Customer must pay by way of additional security that amount to DC Two to replace the amount of the Security Deposit used.
- 3.4 DC Two must return any part of the Security Deposit which is unused to the Customer on termination of this Agreement.
- 3.5 DC Two may conduct a credit check on the Customer prior to entering into any Services Agreement with the Customer. The Customer authorises DC Two to make all enquiries reasonably necessary to determine the Customer's creditworthiness including by conducting requests for information from banks, credit agencies and other financial institutions.

4. DC Two's Warranties and Limits of Liability

- 4.1 DC Two warrants that the Service will conform in all material respects to the Specification.
- 4.2 If the Customer notifies DC Two in writing of any defect or fault in the Service in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having used the Service outside the terms of this Agreement, for a purpose or in a context other than the purpose or context for which it was designed, then the Customer's remedies against DC Two are limited to the following actions which DC Two will complete (at DC Two's election):

- 4.3 DC Two does not represent or warrant that:
 - (a) the Service will be error-free or accessible at all times;
 - (b) the delivery of the Services will be uninterrupted or without delay; or
 - (c) that defects will be corrected.
- 4.4 The Customer represents and warrants to DC Two that the Customer has the experience and knowledge necessary to use Services and will provide DC Two with materials that may be implemented by DC Two to provide the Services without extra effort on its part.
- 4.5 DC Two shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract or tort, which fall within any of the following categories:
 - (a) special damage even though DC Two was aware of the circumstances in which such special damage could arise;
 - (b) loss of profits;
 - (c) loss of business opportunity;
 - (d) loss of goodwill;
 - (e) loss of data; or
 - (f) consequential loss.
- 4.6 DC Two strives to keep the Customer's content and data secure, but cannot guarantee that DC Two will be successful at doing so, given the nature of the internet. Accordingly, without limitation to section 5.3 below and this entire section 4, the Customer acknowledges that the Customer bears sole responsibility for adequate security, protection and backup of the Customer's content, data and applications. DC Two strongly encourages

the Customer, where available and appropriate, to:

- (a) use encryption technology to protect the Customer's content and data from unauthorized access
- (b) routinely archive the Customer's content and data; and
- (c) keep the Customer's applications or any software that the Customer uses or runs with the Services current with the latest security patches or updates.

4.7 DC Two will have no liability to the Customer for any unauthorized access or use, corruption, deletion, destruction or loss of any or all of the Customer's content, data or applications, which is deemed to be through no fault of DC Two.

4.8 The Customer agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) DC Two shall have no liability otherwise than pursuant to the express terms of this Agreement.

4.9 Notwithstanding anything else in the Agreement to the contrary, the maximum aggregate liability of DC Two and any of its employees, agents or affiliates, under any theory of law (including breach of contract, tort, strict liability and infringement) shall be a payment of money not to exceed the amount payable by the Customer to DC Two for three (3) months of Services.

4.10 No Party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause beyond its control (force majeure) including, without limitation, any of the following: act of God, governmental act, significant failure of a portion of the power grid, significant failure of the Internet, natural disaster, war, flood, explosion, riot, insurrection, epidemic, pandemic, strikes or other organized labour action, terrorist activity, or other events of a magnitude or type for which precautions are not generally taken in the industry.

4.11 For the avoidance of doubt, nothing in this section 4.11 shall excuse, or limit the Customer's liability, in respect of any payment obligations under this Agreement.

4.12 All other conditions, warranties or other terms which might have effect between the Parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

5. Customer's Obligations

5.1 The Customer must:

- (a) if relevant, provide and maintain its own network and network security;
- (b) comply with any operational procedures and technical specifications specified in any Fixed Term Agreement, applicable Services Agreement or other reasonable directions given by DC Two in relation to the Customer's obligations under this Agreement, a Fixed Term Agreement or Services Agreement;
- (c) provide DC Two with all information, assistance and co-operation reasonably requested by DC Two in order to enable DC Two to meet its obligations under this Agreement, a Fixed Term Agreement and Services Agreement;
- (d) ensure that any equipment it connects to DC Two's network is appropriate, adequately maintained and meets minimum technical standards determined by the Australian Communications and Media Authority; and
- (e) comply with the Acceptable Use Policy and all applicable laws, and also maintain and comply with any licences, consents, permits or other authorisations required for the Customer to use the Services.
- (f) Where utilising a Service Provider Bound Licence (including but not limited to Microsoft, Veeam, Shadow Protect), ensure the license is not removed from the DC Two environment. Where an image of a Virtual Machine is transferred out of the DC Two environment we have the right to request the licence is removed from The Customer's Virtual Machine before approving the transfer. The Customer is responsible for obtaining valid applicable licence when using the Virtual Machine outside of the DC Two environment.

5.2 The Customer must not make any representation or give any warranty in relation to any Service that is inconsistent with written materials supplied by DC Two for that purpose other than as expressly authorised in writing by DC Two.

- 5.3 Accounts and Passwords – When the Customers’ account creation process is completed with DC Two, the Customer’s authorised parties (as noted in the Services Agreement) will be issued with a unique user name (“User Name”) and a password. User Names identify the Customers’ account and allow the Customer to make requests for Services. The User Name is immutable and will always uniquely identify the Customers’ account. The Customer is fully responsible for all activities that occur under the User Names, regardless of whether such activities are undertaken by the Customer or a third party. Therefore, the Customer should contact DC Two immediately if the Customer believes a third party may be using the Customers password, or if the Customers password is otherwise lost or stolen. The Customer is responsible for maintaining up-to-date and accurate information (including contact information) for the Customers’ account. DC Two is not responsible for any unauthorized access to, alteration of, or the deletion, destruction, damage, loss or failure to store any of the Customers’ content or other data which is submitted for use in connection with the account or the Services.
- 5.4 The Customer retains sole responsibility and accepts sole liability for all the Customer’s content, data, application and any other software, information, data or material of any nature (**Customer Content**) stored on the Customer Equipment or DC Two Equipment or transmitted using the cloud and hosting Services even if the Customer did not authorise its creation, storage, access or transmission (including any unauthorised on-line access). The Customer warrants that:
- (a) to the best of the Customer’s knowledge, the Customer Content is and will remain free from any form of malicious code; and
 - (b) the Customer (or its licensors) hold the necessary rights in the Customer Content to authorise the Customer to use, publish, communicate, distribute and otherwise deal with the Customer Content.
- 5.5 If the Customer Content breaches the Acceptable Use Policy, DC Two may, without notice to the Customer, remove, alter or disable access to any Customer Content in accordance with the Acceptable Use Policy. DC Two is not responsible for any liabilities that the Customer or anyone else may suffer or incur as a result of our actions under this section 5.5.
- 5.6 End Users:
- (a) The Customer is solely liable for any dispute raised by any End Users in relation to the provision of any Services by the Customer to those End Users. DC Two expressly disclaims any liability which may arise either on the part of the Customer or an End User as a result of the use of a Service by an End User or any related or ancillary claim.
- (b) The Customer must;
- (i) ensure it has all necessary consents and authorisations necessary to supply any Service to End Users, suppliers and other carriers or carriage service providers;
 - (ii) respond to all End User fault reports, complaints or enquiries about services which are provided using a Service;
 - (iii) ensure in any contractual arrangements that the End User is bound by terms of this agreement as to compliance with laws.
- 5.7 The Customer must provide DC Two and its suppliers, contractors, agents and employees with full, safe and uninterrupted access to the Customer’s premises or systems (including via remote access) as may reasonably be required for the purpose of delivering the Services.
- 5.8 Where DC Two’s employees are given access the Customer’s premises in order to provide a Service:
- (a) the Customer must ensure that the Customer’s premises are safe and comply with all occupational health and safety laws; and
 - (b) DC Two must ensure that it’s employees comply with any reasonable direction given by the Customer or its employees in relation to maintenance of health and safety at the Customer’s premises.
- 5.9 Resold Services:
- (a) If DC Two resells to the Customer any services or software licenses purchased from a third party (**Resold Services**), the Customer must not do or omit to do anything which would cause DC Two to breach any of the terms of supply of the Resold Services from the third party (**Reseller Agreement**).
 - (b) The Customer must indemnify DC Two and any of its Related Bodies Corporate in respect of any losses, damages, costs, penalties or other liabilities of any nature directly or indirectly incurred by DC Two or any of its Related Bodies Corporate as a result of a breach of section 5.9 (a).

6. Fault Reporting and Recovery

- 6.1 The Customer must report any faults in relation to the Services in writing as soon as reasonably

practicable after it becomes aware of them. Service level outages are calculated as commencing at the time DC Two receives written (including electronic) notification of the fault.

6.2 DC Two will process any “unmanaged” system outages that are within the boundaries of DC Two’s infrastructure and Service responsibilities in accordance with the Service Legal Agreement.

6.3 DC Two reserves the right to charge the Customer at its then commercial rates (including additional rates for out of hours service, as published in the relevant Fixed Term Agreement or Services Agreement) for fault restoration services when DC Two responds to a fault request from the Customer where:

- (a) the failure to provide the Service to the Customer (or the use of any Service by an End User) was not due to a failure on DC Two’s part; and
- (b) the Customer ought to have known, or would have known following reasonable investigation, that the fault was not due to a failure on DC Two’s part.

6.4 DC Two has no obligation to restore any fault where the fault arises as a result of;

- (a) any fault in any equipment, software or any network unit which does not form part of DC Two’s Equipment;
- (b) a Supplier Failure;
- (c) defects in Customer Equipment or its installation;
- (d) any act or omission of the Customer or any of its employees, consultants, contractors, agents or representatives.

7. Intellectual Property Rights

7.1 Ownership of Intellectual Property Rights:

- (a) All Intellectual Property Rights which are owned by either Party as at the date of this Agreement will at all times remain owned by that Party exclusively.
- (b) Except as expressly provided, nothing in this Agreement or any Fixed Term Agreement or Services Agreement confers on the Customer any right or interest in, or licence to use, any of DC Two’s or any third party’s Intellectual Property Rights.

7.2 Domain Names and Internet Protocols:

- (a) The Customer warrants that any domain name registered or administered on its behalf will not violate any Intellectual Property Rights of any third party and that the Customer will comply with the rules and procedures of the applicable domain

name registries, registrars and any other relevant authorities.

- (b) The Customer irrevocably waives any claims against DC Two, and the applicable Supplier provisioning entity, that may arise from the acts or omissions of the Customer, the domain name registries, registrars or other relevant authorities.
- (c) DC Two’s network space assigned by DC Two to the Customer is not portable and must be returned to DC Two immediately if DC Two suspends or discontinues supply of data Services.
- (d) Where DC Two assigns any internet protocol numbers to the Customer in connection with a Service, the Customer may only use such internet protocol numbers in connection with that Service. If the Customer or DC Two suspends or discontinues the use or supply of a Service for whatever reason, the Customer’s right to use such internet protocol numbers will cease and DC Two may reallocate such numbers as it sees fit.

7.3 The Customer shall fully indemnify DC Two against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against DC Two that the Customer Content infringes any such Intellectual Property Rights.

8. Term, Termination and Suspension

8.1 The Term of this agreement shall begin on the date specified in the Fixed Term Agreement or applicable Services Agreement (**Service Commencement Date**), and shall continue indefinitely unless terminated in accordance with the terms of this Agreement.

8.2 Termination by either Party – Either Party may terminate this Agreement (**Non-Defaulting Party**) at any time on written notice to the other Party (**Defaulting Party**) if the Defaulting Party:

- (a) is in material or persistent breach of any of the terms of this Agreement and either that breach is incapable of remedy, or the Defaulting Party fails to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
- (b) an Insolvency Event occurs in relation to the Defaulting Party.

8.3 If an Insolvency Event occurs in relation to the Customer then section 2.14 may apply until the expiry of any Fixed Term.

8.4 Termination by the Customer for Convenience – Notwithstanding section 4.1, the Customer may

terminate this agreement by giving 30 days' notice in writing to DC Two if it wishes to stop using the service for any reason or no reason at all, at the Customers convenience, except where there is a Fixed Term Agreement in place.

8.5 Termination or Suspension by DC Two Other Than for Cause – Notwithstanding sections 4.1 and 4.2, DC Two may suspend, or terminate this Agreement (and, accordingly, cease providing all Services to the Customer), for any reason or for no reason, at DC Two's discretion at any time by giving 30 days written notice to the Customer.

8.6 Termination or Suspension by DC Two for Cause – DC Two may suspend the Customer's right and license to use the Services, or terminate this Agreement in its entirety (and accordingly, the Customers right to use any or all of the Services), for cause, without notice and without liability in the following circumstances;

- (a) DC Two reasonably believes that the Services are being used in violation of this Agreement;
- (b) DC Two reasonably believes that the suspension of Service is necessary to protect its network or its other customers;
- (c) DC Two reasonably believes that the Customer has breached, or is in breach of, or is about to breach the Acceptable Use Policy;
- (d) as requested by a law enforcement or regulatory agency;
- (e) the Customer breaches this Agreement (including failing to pay any Charges by the relevant due date);
- (f) if seven (7) days following issue of invoice for payment of fees as per section 2 of this Agreement, the Customer is in default of any payment obligation with respect to any of the Services or if any payment mechanism the Customer has provided to DC Two is invalid or charges are refused for such payment mechanism, and the Customer fails to resolve such payment obligation default or correct such payment mechanism problem within such seven (7) day period; or
- (g) if five (5) days following our provision of any notice to the Customer in accordance with this Agreement, if the Customer breaches any other provision of this Agreement and fails, as determined by DC Two, in DC Two's sole discretion, to resolve such breach within such 5 day period.

8.7 The Customer shall pay DC Two's reasonable reinstatement fee if Service is reinstated following a suspension of Service pursuant to section 8.6.

8.8 On termination for any reason: a) all rights granted to the Customer under this agreement shall cease; b) the Customer shall cease all activities authorised by this agreement; c) the Customer shall immediately pay to DC Two any sums due to DC Two under this agreement.

8.9 Inability of the Customer to pay its debts to DC Two does not constitute reason for termination of this agreement. If the Customer is unable to pay its debts, Section 2.14 of this agreement will apply.

9. Effect of Suspension or Termination

9.1 Suspension – Upon our suspension of the Customer's use of any Services, in whole or in part, for any reason;

- (a) fees will continue to accrue for any Services that are still in use by the Customer, notwithstanding the suspension (including your continued usage of space and power in a physical rack or bay, storage of data on a data storage device or compute capacity of memory and CPU during the period of suspension);
- (b) the Customer remains liable for all fees, charges and any other obligations the Customer has incurred through the date of suspension with respect to the Services; and
- (c) all of the Customer's rights with respect to the applicable Services shall be terminated during the period of the suspension

9.2 Termination – Upon termination of this Agreement for any reason:

- (a) the Customer remains liable for all fees (including any interest), Charges and any other obligations the Customer has incurred through TO the date of termination with respect to the Services; and
- (b) all of the Customer's rights under this Agreement shall terminate immediately.

9.3 Survival – In the event this Agreement is terminated for any reason, sections 2 (with respect to fees that are accrued but unpaid at the time of termination), 3.4, 4, 5, 7, and 9 to 26 (inclusive) will survive any such termination. For the avoidance of doubt, termination of this Agreement will not prejudice or affect the right of action or remedy which has already accrued to either Party.

10. Data Preservation in the Event of Suspension or Termination

10.1 In the Event of Suspension Other Than for Cause – In the event of a suspension by DC Two of the

- Customer's access to any Service for any reason other than a for cause suspension under section 8.5, during the period of suspension;
- (a) DC Two will not take any action to intentionally erase any of your data stored on the Services;
 - (b) applicable Service data storage charges will continue to accrue; and
- 10.2 In the Event of Termination Other Than for Cause
In the event of any termination by DC Two of any Service or any set of Services, or termination of this Agreement in its entirety, other than a for cause termination under Section 8.5:
- (a) DC Two will not take any action to intentionally erase any of your data stored on the Services for a period of seven (7) days after the effective date of termination; except in relation to section 2.14 (a); and
 - (b) your post termination retrieval of data stored on the Services will be conditioned on your payment of Service data storage charges for the period following termination, payment in full of any other amounts due us, and your compliance with terms and conditions DC Two may establish with respect to such data retrieval.
- 10.3 In the Event of Other Suspension or Termination – Except as provided in sections 10.1 and 10.2 above, DC Two shall have no obligation to continue to store your data during any period of suspension or termination or to permit you to retrieve the same.
- 10.4 Post-Termination Assistance – Following the suspension or termination of the Customers right to use the Services either by DC Two or the Customer for any reason other than a for cause termination (i.e., a termination under sections 8.3 or 8.4), the Customer shall be entitled to take advantage of any post-termination assistance DC Two may generally make available with respect to the Services, such as data retrieval arrangements DC Two may elect to make available. DC Two may also endeavour to provide the Customer unique post-suspension or post- termination assistance, but DC Two shall be under no obligation to do so. The Customers right to take advantage of any such assistance, whether generally made available with respect to the Services or made available uniquely to the Customer, shall be conditional upon the Customers' acceptance of and compliance with any fees and terms that DC Two may specify for such assistance.
- 11.1 The Customer acknowledges that DC Two processes personal data, as defined under the relevant data protection laws, of the users of the service for the purpose of complying with its obligations under this Agreement.
- 11.2 The Customer hereby warrants that it has the consent of the users to disclose their personal data to DC Two for the purpose of using the service and that for the same purpose the users have agreed that their personal data may be used by DC Two for the purposes of delivering the Services.
- 11.3 DC Two must:
- (a) take all steps reasonably necessary to ensure that personal data is treated securely;
 - (b) ensure that all data is signified as the property of the Customer and must not cause or have caused any pledge, lien, charge, mortgage, encumbrance of third party or any other security interest to be placed on the data or any database (whether electronic or otherwise) in which such data is stored;
 - (c) establish and maintain adequate and prudent safeguards against the destruction, loss or alteration of data in the possession, custody or control of DC Two that:
 - (i) are no less rigorous than safeguards that meet generally accepted industry standards (e.g. continued certification against IEC/ISO 27001 security standards); and
 - (ii) comply with all applicable laws.
- 11.4 DC Two acknowledges that the Customer enters into this Agreement on the basis of the data storage locations notified by DC Two to the Customer on or before execution of this Agreement. DC Two shall ensure that the data is not stored or disclosed into any country not included in the data storage locations without the Customer's prior written consent.
- 11.5 The Customer agrees that DC Two may, without notice to the Customer, report to the appropriate authorities any conduct by the Customer or any of the Customer's customers or end users that DC Two believes violates applicable law, and provide any information that it has about the Customer or any of its customers or end users in response to a formal or informal request from a law enforcement or regulatory agency or in response to a formal request in a civil action that on its face meets the requirements for such a request.
- 11.6 DC Two shall not disclose any data to third parties, but may process such data in duly anonymised and

11. Confidentiality and Data Protection

- aggregate form for purposes such as internal statistics, commercial sale and promotion.
- 11.7 DC Two will not refer to the Customer as a customer of DC Two in any press release, marketing, sales, or reporting materials without prior consent from a duly authorised representative of the Customer.
- 11.8 The Customer must:
- (a) keep DC Two's Confidential Information confidential;
 - (b) use DC Two's Confidential Information only for the purposes of this Agreement; and
 - (c) disclose DC Two's Confidential Information only to those of its employees who have a need to know and who have agreed to keep it confidential.
- 11.9 DC Two must:
- (a) keep the Customer's Confidential Information confidential;
 - (b) use the Customer's Confidential Information only as permitted by or for the purposes of this Agreement, to comply with obligations imposed on DC Two or its Related Bodies Corporate by law and to comply with directions and orders issued by a Regulator; and
 - (c) disclose the Customer's Confidential Information only:
 - (iii) to those of its employees and those of its Related Bodies Corporate employees who have a need to know and who have agreed to keep it confidential; and
 - (iv) as required to facilitate use of the Customer's Confidential Information as permitted under clause 11.9(b) or as otherwise specified in this Agreement.
- 11.10 DC Two must not (and must ensure that its personnel do not):
- (a) use data held by DC Two, or to which DC Two has access, other than for the purposes of fulfilling its obligations under this Agreement;
 - (b) purport to sell, let for hire, assign rights in or otherwise dispose of any data; or
 - (c) alter data in any way, other than to provide the Services in accordance with this Agreement.
- 11.11 The obligations of confidentiality in clauses 11.8 to 11.10 do not apply to Confidential Information:
- (a) that is in the public domain otherwise than as a result of a breach of this Agreement or other obligation of confidence;
 - (b) that is already known by, or rightfully received, or independently developed, by the recipient free of any obligation of confidence;
 - (c) with the consent of the other Party; or
 - (d) that is required to be disclosed by law or the rules of a stock exchange.
- 11.12 Either party may disclose Confidential Information of the other party where such Confidential Information is disclosed in compliance with an applicable law or a court order, provided that, prior to disclosing any such Confidential Information, the party making the disclosure has, where practicable, given the other party reasonable advance notice of such law or order and an opportunity to preclude or limit such production.
- 11.13 This clause 11 does not prevent a Party from disclosing information with the other Party's prior written consent or to the extent required by law or the rules of any stock exchange. The Customer acknowledges that DC Two is listed on the Australian Securities Exchange (**ASX**) and is required to comply with continuous disclosure obligations imposed under the rules of the ASX, including a requirement to disclose counterparties to market sensitive contracts.
- 11.14 The Customer will obtain no right, title or interest in or to the Intellectual Property. Where the Customer is permitted by DC Two (i.e. with its prior written consent) to use any part of the Intellectual Property, it must only use such Intellectual Property as follows:
- (a) the Customer must not make any copy of the Intellectual Property and must not alter the whole or any part thereof in any way, other than by the entry of data;
 - (b) the Customer must not allow any other person to be in possession of a copy of the whole or any part of the Intellectual Property; and
 - (c) the Customer must maintain accurate records as to the whereabouts of all copies of the whole or any part of the Intellectual Property provided to the Customer and to all persons who have access to it and must make such records available to DC Two at any reasonable time upon request.
- 11.15 The Customer is responsible for obtaining all authorisations, licenses and consents, and issuing all relevant notifications, required under applicable laws in relation to any information or content the Customer uses or provides DC Two (including any personal information) and any

Intellectual Property Rights subsisting in that information or content.

11.16 Data Breach

- (a) If DC Two becomes aware, or reasonably suspects, that it or a subcontractor (or any of their respective personnel) is using or disclosing, or has used or disclosed, personal information in contravention of the requirements under this Agreement then DC Two must give the Customer written notice of the full details of the data breach or data contravention immediately and in any event within 24 hours.
- (b) The Customer's knowledge of, or response to, any such notice, in whatever form that may take, does not affect any other rights of the Customer under this Agreement or at law.

12. Indemnification

12.1 The Customer agrees to fully indemnify, hold harmless and defend DC Two and its Related Bodies Corporate, directors, officers, employees, agents and contractors (on demand) from all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, legal fees on a solicitor-client basis) filed by a third party against any of the indemnified parties arising out of or relating to the Customer's breach of any term or condition of this Agreement, the Customer's use of the Service, any violation by the Customer of any of DC Two's policies, and/or any acts or omissions by the Customer. In such a case, DC Two will provide the Customer with written notice of such claim, suit or action. The Customer shall cooperate as fully as reasonably required in the defence of any claim.

12.2 Customer indemnities in respect of End Users

- (a) The Customer indemnifies DC Two (and its employees, directors or Related Bodies Corporate) on a full indemnity basis in respect of any losses, damages or costs incurred as a result of any claim made by an End User in connection with Services or their use by the Customer or the End User.
- (b) The Customer further indemnifies DC Two (and its employees, director or Related Bodies Corporate) in respect of any losses, damages or costs incurred as a result of the negligent, fraudulent, criminal or other illegal or wrongful use by the Customer or any End User of any Service supplied under this Agreement, a Fixed Term Agreement or applicable Services Agreement.

13. Compliance

13.1 The Customer will not use the service in any way or for any purpose that would violate, or would have the effect of violating, any applicable laws, rules or regulations or any rights of any third parties, including without limitation, any law or right regarding any copyright, patent, trademark, trade secret, music, image, or other proprietary or property right, false advertising, unfair competition, defamation, invasion of privacy or rights of celebrity.

14. Waiver

14.1 No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.

15. Severability

15.1 In the event that any of the terms of this agreement become or are declared to be illegal or otherwise unenforceable, such term(s) shall be null and void and shall be deemed deleted from this agreement. All remaining terms of this agreement shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph becomes applicable and, as a result, the value of this agreement is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate this agreement by written notice to the other Party.

16. No Agency

16.1 This agreement does not create any agency, partnership, joint venture, or franchise relationship. Neither Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

17. Third party rights

17.1 No term of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement.

18. GST

18.1 All prices quoted for supplies made and/or to be made under this Agreement, any Fixed Term

Agreement or Services Agreement are in Australian dollars and are exclusive of GST, unless expressed to the contrary in writing.

- 18.2 If GST is applicable to any supply made by DC Two under this Agreement, a Fixed Term Agreement or Services Agreement, DC Two is entitled to add to the amount otherwise payable an additional amount for the applicable GST.
- 18.3 The Customer agrees to pay DC Two such GST charge in the same manner and at the same time as the payment for the relevant supply.
- 18.4 DC Two will issue tax invoices to the Customer for the purposes of GST.
- 18.5 If required by applicable law, DC Two will give the Customer an adjustment note arising from the adjustment event relating to a taxable supply made under, or in connection with this Agreement, a Fixed Term Agreement or Services Agreement, within 30 days after the date DC Two becomes aware of the adjustment event.
- 18.6 For the purposes of this section 18, "GST" has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

19. Disputes

- 19.1 The Parties must exhaust the provisions of this section 19 before initiating any legal proceedings in court.
- 19.2 The Parties must use their best endeavours and act in good faith to resolve any dispute arising in connection with this agreement, a Fixed Term Agreement or Services Agreement by negotiation between a senior manager of each of them.
- 19.3 If senior managers of the parties have not resolved any dispute within 20 Business Days of notification of the dispute, the dispute must be escalated to the CEO of each party for resolution.
- 19.4 If the CEOs of the parties fail to resolve the dispute within 20 Business Days of notification of the dispute, either party may take such additional action as it deems necessary to resolve the dispute, including initiating legal proceedings.
- 19.5 Nothing in this section 19 prevents any party from seeking urgent interlocutory relief from a court at any time.

20. Assignment and Sub-contracting

- 20.1 The Customer may not assign, charge or deal with any of its rights and obligations under this Agreement, any Fixed Term Agreement or any

Services Agreement, or attempt or purport to do so, without the prior written consent of DC Two.

- 20.2 DC Two may novate or subcontract any of its rights or obligations under this Agreement or any Fixed Term Agreement or Services Agreement to any person without the Customer's consent.

21. Related Bodies Corporate

- 21.1 DC Two may:
 - (a) provide the Services to the Customer through the use of any of DC Two's Related Bodies Corporate; and/or
 - (b) invoice the Customer via any of DC Two's Related Bodies Corporate.
- 21.2 The Customer acknowledges that any debt owed under a Fixed Term Agreement or a Services Agreement is a debt owed to DC Two and that DC Two may take necessary action in relation to any such debt notwithstanding that the right or obligation giving rise to that debt has been satisfied by a Related Body Corporate of DC Two or that the invoice for that debt has been provided to the Customer by a related Body Corporate of DC Two.

22. Notices

- 22.1 Any notice required to be given pursuant to this agreement shall be in writing, and shall be sent to the other party by registered mail or e-mail.

23. Survivability

- 23.1 Subject to any provision to the contrary, this Agreement will ensure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers, but will not ensure to the benefit of any other persons.
- 23.2 The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of this Agreement will remain in full force and effect following the expiration of this Agreement.
- 23.3 Each indemnity in this Agreement survives the expiry or termination of this document.

24. Entire agreement

- 24.1 This Agreement, the Fixed Term Agreement or the relevant Services Agreement in so far as they describe the Specification, contain the whole agreement between the parties relating to the

subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

25. Governing law and jurisdiction

25.1 This agreement, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Western Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia.

Definitions

In this agreement unless the context otherwise requires:

Acceptable Use Policy means DC Two's Acceptable Use Policy which describes the prohibited uses of Services, as set out at <https://dctwo.com.au/terms> and amended from time to time.

Account Holder means the Person, Company, Trust or Self-Managed Super Fund as identified in the Services Agreement as the "Customer".

Agreement means this General Terms and Conditions document and its schedules and annexures (as varied from time to time), together with the following documents which are incorporated by reference (to the extent applicable):

- (a) the Fixed Term Agreement;
- (b) the Services Agreement;
- (c) the Reseller Agreement;
- (d) Microsoft End User License Terms
- (e) the Service Level Agreement;
- (f) the Acceptable Use Policy;
- (g) DC Two's website (dctwo.com.au), in so far as it describes the specification of the Services; and
- (h) any other document, schedule, annexures or policies expressly incorporated as part of these terms and conditions into the above documents by way of reference,

Business Day means:

- (a) in relation to a service provided at a data centre, a day that is not a Saturday, Sunday or public holiday in the state in which that data centre is located; and in all other cases,
- (b) a day that is not a Saturday, Sunday or public holiday in Western Australia.

Charges means the fees payable by the Customer to DC Two for Services provided under this Agreement or any relevant Services Agreement.

Corporations Act means the Corporations Act 2001 (Cth).

Confidential Information of a party means any information marked as confidential or which by its nature the other party knows or ought to know is confidential (regardless of the form of the information and when it was acquired) and includes trade secrets, technical knowledge, concepts, designs, plans, precedents, processes, methods, techniques, know-how, innovations, ideas, procedures, research data, financial data, databases, personnel data, computer software and programs, customer and supplier information, correspondence and letters and papers of every description including all copies or extracts of same relating to the affairs or business of the party. DC Two's Confidential Information includes the terms of this Agreement, DC Two documentation, DC Two's Rates and Service charges and service details. The Customer's Confidential Information includes the Customer's details.

Control has the meaning given in the Corporations Act 2001 (Cth).

Customer means the Account Holder unless the context of the paragraph clearly describes another party.

Customer Content has the meaning given in section 5.4.

Customer Equipment means any hardware, software, equipment, systems and cabling provided by the Customer or an End User used in the provision of Services.

DC Two Equipment means any equipment owned or used by DC Two in the provision of a Service.

End Users means the customers of the Account Holder.

Fixed Term has the meaning given in section 2.13.

Fixed Term Product means any Service supplied by DC Two in a fixed or minimum amount per month for a fixed Initial Term where the number of months in the Initial Term is specified in the relevant Fixed Term Agreement or Services Agreement for that Service.

Force Majeure Event means any event that is beyond the reasonable control of a party and which prevents a party from performing, or delays the performance of, any of its obligations under this Agreement, any Fixed Term Agreement or Services Agreement including (without limitation):

- (a) forces of nature, any act of God, fire, storm or explosion;
- (b) any strike, lockout or industrial action;
- (c) any action or inaction by any organ of government or government agency; or
- (d) a Supplier Failure.

GST has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Hosting Agreement means an agreement in DC Two's standard written format for the provision of a Service, which includes details of the Initial Term and Charges for the Services provided, signed on behalf of both parties.

Initial Term means, in respect of a Service, the minimum contract period specified in a Services Agreement applicable to that Service, the term of which shall be deemed to commence on the Service Commencement Date.

Insolvency Event means in relation to a Party:

- (a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the Corporations Act 2001 (Cth)) or similar official is appointed over any of the assets or undertaking of the Party;
- (b) the Party suspends payment of its debts generally;
- (c) the Party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Corporations Act 2001 (Cth);
- (d) the Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) the Party ceases to carry on business or threatens to cease to carry on business;
- (f) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
- (g) an application or order is made for the winding up or dissolution of the other party, or a resolution is passed, or any steps are taken to pass a resolution, for the winding up or dissolution of the other Party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the first party;
- (h) a Party threatens to do any of (a) – (g).

Intellectual Property Rights means all intellectual property rights, including the following rights:

- (a) patents, copyright, rights in circuit layouts, registered and unregistered designs, trademarks, domain names, business names and other property rights including copyright in software used to provide the Services and any publications and literature of DC Two; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

Interest Rate means an amount calculated daily at an annual rate of 15%.

Reseller Agreement has the meaning given in section 5.9(a).

Service Commencement Date in relation to a particular Service, means:

- (a) the ready for service date specified in the Services Agreement for that Service; or
- (b) if no date is specified in the Services Agreement or Fixed Term Agreement, the date notified to the Customer as the Service Commencement Date by email from DC Two; or
- (c) if neither (a) nor (b) applies, the date on which the Service is first made available to the Customer by DC Two.

Scheduled Maintenance means maintenance to be carried out by DC Two from time to time and notified to the Customer in writing.

Security Deposit means an amount payable by the Customer determined by DC Two to be held by DC Two as security for payment of all sums due under this Agreement, a Fixed Term Agreement or a Services Agreement.

Service means a product or service supplied by DC Two to the Customer under this Agreement, as more particularly specified in a Fixed Term Agreement or Services Agreement and includes any equipment, wires, cables, ports, switches, routers, virtual servers, storage, cabinets, racks and other hardware or telecommunications equipment supplied with that product or service.

Services Agreement means an agreement supplied to the Customer by DC Two setting out an Initial Term for the Services provided, along with specifications, details of the Charges, system requirements and performance capabilities of a Service, and signed on behalf of both parties.

Service Level Agreement means DC Two's Service Level Agreement which describes how DC Two will process "unmanaged" system outages, as set out at <https://dctwo.com.au/terms> and amended from time to time.

Fixed Term Agreement means a Services Agreement supplied to the Customer by DC Two setting out an Initial Fixed Term of twelve (12) months or more for the Services provided, along with specifications, details of the Charges, system requirements and performance capabilities of a Service, and signed on behalf of both parties.

Specification has the meaning given in section 1.6.

Supplier Failure means a failure of any equipment, product or service supplied to DC Two by a third party which is



YOUR CLOUD
YOUR WAY

required by DC Two to enable it to perform its obligations under this Agreement or a Fixed Term Agreement or Services Agreement.

Telecommunications Act means the Telecommunications Act 1997 (Cth).

Term means, in respect of a Service, the agreed period of time specified in a Services Agreement applicable to that Service, the term of which shall be deemed to commence on the Service Commencement Date.

