

RESELLER TERMS AND CONDITIONS

In this Agreement, when we say **you** or **your**, we mean you as an individual if you are accepting this Agreement for yourself. If you are accepting this Agreement on behalf of an entity (such as your employer) and you are authorised to do so, then **you** or **your** means that entity. When we say **we**, **us**, or **our**, we mean Intelus Pty Ltd (ACN 680 645 470).

This Agreement is entered into between us and you, together the **Parties** and each a **Party**.

1. Engagement and Term

- 1.1 We are an authorised distributor of the Products in the Territory.
- 1.2 You would like to purchase and resell the Products, and we agree to supply the Products for the purpose of resale, in accordance with the terms of this Agreement, as well as any Third Party Vendor Terms.
- 1.3 This Agreement applies from the time you agree to it, until the date this Agreement is terminated in accordance with its terms (**Term**).

2. Supply of Products

- 2.1 In consideration for your payment of the Price, we will supply the Products to you in accordance with the terms of this Agreement, whether ourselves or through our Personnel.
- 2.2 If this Agreement expresses a time within which the Products are to be supplied, we will use reasonable endeavours to provide the Products by such time, but you agree that such time is an estimate only.
- 2.3 You acknowledge and agree that we are an authorised distributor of the Products and not the original manufacturer or provider and, as such:
 - (a) the terms and conditions set out in this Agreement are in addition to any Third Party Vendor Terms;
 - (b) the terms of use for any Products shall exclusively be set out by the applicable Vendor;
 - (c) we make no representation or commitment, and shall have no liability or obligation in relation to the content or use of, or correspondence or contract you have with any Vendor or End User.

3. Title and Risk

- 3.1 Title in the Products will only pass to you on the date that you pay the Price in full in accordance with this Agreement.
- 3.2 Where applicable, if we are responsible for delivering the Products to you, we will use reasonable endeavours to deliver the Products by the time agreed between the Parties, and risk in the Products will pass to you once we have delivered the Products to the agreed delivery location. You will be responsible for the costs of delivery.
- 3.3 Where applicable, if you are responsible for collecting the Products from us, you must collect the Products by the time agreed between the Parties, and risk in the Products will pass to you once you have collected the Products from the agreed collection location. You will be responsible for the costs of collection.

4. Your Obligations

- 4.1 You agree to (and to the extent applicable, ensure that your Personnel agree to):
 - (a) comply with this Agreement, all applicable Laws, and our reasonable requests;
 - (b) comply with all relevant work, health, safety and welfare standards and regulations;
 - (c) maintain records in respect of your resale of the Products, including records of End Users you sold the Products to and records of End User complaints (include how such complaints were addressed or resolved), and provide such records to us immediately on request;
 - (d) not do anything that may adversely affect our goodwill, brand or reputation (or that of the Products);
 - (e) not make or offer any representation, guarantee or warranty in relation to the Products unless the relevant Vendor has provided its prior written consent;
 - (f) not register any Intellectual Property Rights in respect of the Products or our business; and
 - (g) obtain and hold all licences, consents and permits required by us, or as is necessary, to resell the Products.
 - 4.2 You must not, and you must ensure that your Personnel and any End Users do not:
 - (a) attempt to decompile, reverse engineer or otherwise attempt to discover the source code of any software contained in the Products;
 - (b) introduce viruses and other harmful code into the Products;
 - (c) remove or attempt to circumvent any security or technological protection measures incorporated into any of the Products;
 - (d) use the Products in any way that would be unlawful, inappropriate or would otherwise constitute a breach of a person's rights; or
 - (e) facilitate a third party to do any of the above acts.
 - 4.3 You agree to pay our additional costs reasonably incurred as a result of you failing to comply with this clause 4.
- ### 5. Orders
- 5.1 During the Term, you may request us to supply the Products by notifying us in writing or by any other process we specify (**Order Request**).
 - 5.2 If we accept the Order Request, we will issue confirmation of your Order Request and it will become a binding Order.
 - 5.3 Each Order is subject to, and will be governed by, this Agreement, the applicable Third Party Vendor Terms and any other conditions expressly set out in the Order. To the extent of any ambiguity or discrepancy between an Order and this Agreement, the terms of the Agreement will prevail.

6. Price and Payment

- 6.1 You agree to pay us the Price and any other amounts due under this Agreement in accordance with the Payment Terms.
- 6.2 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion, and without prejudice to any of our rights or remedies under this Agreement or at Law):
- (a) after a period of 5 Business Days from the relevant due date, suspend your appointment as our reseller, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs); and/or
 - (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date in accordance with the Payment Terms.
- 6.3 When applicable, GST payable will be clearly shown on our invoices. You agree to pay us an amount equivalent to the GST imposed on these charges. "GST" has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 6.4 Unless otherwise stated by us in writing, the Price is exclusive of any tax imposed by any government, state or local authority on the value of goods and services, and includes goods and services tax, sales tax, use tax, indirect tax, value added tax, excise tax, customs tax, tariffs and duties (Sales Tax), which will be your responsibility to pay. If we are required to pay any Sales Tax in relation to the Products we supply under this Agreement, the applicable Sales Tax will be set out in the invoice provided to you and the Price payable by you under this Agreement must be increased by the applicable Sales Tax. This clause 6.4 does not apply to any taxes imposed on our net income.

7. Security Interest

- 7.1 You acknowledge and agree that:
- (a) this Agreement is a 'security agreement' under the *Personal Property Securities Act 2009* (Cth) (**PPSA**);
 - (b) this clause 7 creates a security interest in the Products and any proceeds from any sale or disposal of the Products, and we are a secured party in relation to the Products and any such proceeds;
 - (c) we are entitled to register our interest on the relevant register as (at our discretion) a security interest, and if applicable, a 'purchase money security interest'; and
 - (d) you must (at your cost), where we request, take all steps that we consider necessary or desirable to assist us to register our security interest, to ensure our security interest in the Products and the proceeds is enforceable, and to perfect, or better secure our position under this Agreement, or ensure our priority over all other security interests

- 7.2 Until such time as title in the Products has passed to you as contemplated under clause 3.1, you must not allow any other person to have or acquire any security interest in the Products, unless with our prior written consent.

8. Intellectual Property

- 8.1 As between the Parties:
- (a) we own all Intellectual Property Rights in Our Materials;
 - (b) you own all Intellectual Property Rights in Your Materials; and
 - (c) nothing in this Agreement constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials or Your Materials.
- 8.2 You acknowledge and agree that your licence to use or resell any Products is provided by the Vendor and not us and is subject to any terms and conditions as made available by the Vendor, including, but not limited to, licenses, policies, warranties, ownership of intellectual property, privacy, scope of permitted use and other documentation.
- 8.3 As between the Parties, ownership of all Intellectual Property Rights in any New Materials will at all times vest, or remain vested, in us upon creation. To the extent that ownership of such Intellectual Property Rights in any New Materials does not automatically vest in us, you hereby assign all such Intellectual Property Rights to us and agree to do all other things necessary to assure our title in such rights.
- 8.4 We grant you a non-exclusive, revocable, royalty-free, worldwide, non-sublicensable and non-transferable right and licence, to use Our Materials that we provide to you and the New Materials, solely for the purpose of you performing your obligations under this Agreement.
- 8.5 You grant us a non-exclusive, irrevocable, royalty-free, worldwide, non-sublicensable (other than to our related bodies corporate, as that term is defined in the *Corporations Act 2001* (Cth)) and non-transferable right and licence to use Your Materials that you provide to us solely for the purpose of performing of our obligations or exercising our rights under this Agreement.
- 8.6 If you (if you are an individual) or any of your Personnel have any Moral Rights in any material provided, used or prepared in connection with this Agreement, you agree to (and will procure that your Personnel) consent to our use or infringement of those Moral Rights.
- 8.7 This clause 8 will survive termination or expiry of this Agreement.
- 9. Confidential Information**
- 9.1 Each Receiving Party agrees:
- (a) not to disclose the Confidential Information of the Disclosing Party to any third party (subject to subclause 9.1(c));
 - (b) to protect the Confidential Information of the Disclosing Party from any loss, damage or unauthorised disclosure;

- (c) to only disclose the Confidential Information to those of its Personnel who need to know the Confidential Information in connection with this Agreement, provided those Personnel keep the Confidential Information confidential in accordance with this clause 9; and
- (d) to only use the Confidential Information of the Disclosing Party for the purpose of performing obligations, or exercising rights or remedies, under this Agreement.
- 9.2 The obligations in clause 9.1 do not apply to Confidential Information that:
- (a) is required to be disclosed for the Parties to comply with their obligations under this Agreement;
- (b) is authorised in writing to be disclosed by the Disclosing Party;
- (c) is in the public domain or is no longer confidential, except as a result of a breach of this Agreement or other duty of confidence; or
- (d) must be disclosed by Law or by a regulatory authority, including under subpoena, provided that (to the extent permitted by Law) the Receiving Party has given the Disclosing Party notice prior to disclosure.
- 9.3 Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 9. A Party is entitled to seek an injunction, or any other remedy available at Law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 9.
- 9.4 This clause 9 will survive the termination of this Agreement.
- 10. Privacy**
- 10.1 You agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) (as if you were an "APP entity" as defined in the *Privacy Act 1988* (Cth)) and any other applicable Laws relating to privacy that may apply to you or the supply of the Reseller Services (**Privacy Laws**). You must not (and must procure that your Personnel do not) do anything which may cause us to be in breach of any Privacy Laws.
- 10.2 In respect of any 'personal information' (as that term is defined in the *Privacy Act 1988* (Cth)), including in respect of our clients and employees, that you receive or have access to in connection with this Agreement, you must (and must procure that your Personnel):
- (a) only use 'personal information' in accordance with our instructions and for the sole purpose of providing the Reseller Services; and
- (b) keep 'personal information' secure and protect it from loss, damage and unauthorised use or disclosure.
- 10.3 Your use and/or resale of the Products may also be subject to the privacy policies of Vendors.
- 10.4 This clause 10 will survive the termination or expiry of this Agreement.
- 11. Liability**
- 11.1 To the maximum extent permitted by Law, you indemnify us from and against any Liability that we may suffer, incur or otherwise become liable for, arising from or in connection with:
- (a) your breach or non-compliance with any Third Party Vendor Terms;
- (b) an End User's acts or omissions (or those of an End User's individual user);
- (c) any use of the Products that is not in accordance with this Agreement or the Third Party Vendor Terms; or
- (d) any infringement by you or any of your Personnel of the Intellectual Property Rights of us or a third party.
- 11.2 Despite anything to the contrary, to the maximum extent permitted by Law:
- (a) neither Party will be liable for Consequential Loss;
- (b) a Party's liability for any Liability under this Agreement will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (or any of its Personnel), including any failure by that other Party to mitigate its loss; and
- (c) (where the Products are not ordinarily acquired for personal, domestic or household use or consumption) our Liability is limited (at our discretion) to resupplying Products or paying the cost of having the Products supplied again; and
- (d) our aggregate liability for any Liability arising from or in connection with this Agreement will be limited to the Price paid by you to us under this Agreement in the 12 months preceding the date on which the relevant Liability arose.
- 11.3 This clause 11 will survive the termination or expiry of this Agreement.
- 12. Term and Termination**
- 12.1 Either Party may terminate this Agreement at any time by giving 30 days' notice in writing to the other Party.
- 12.2 This Agreement will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:
- (a) the other Party (**Defaulting Party**) breaches a material term of this Agreement and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) the Defaulting Party goes bankrupt, insolvent or is otherwise unable to pay its debts as they fall due.
- 12.3 Upon expiry or termination of this Agreement:
- (a) we will immediately cease supplying the Products;

- (b) you agree to cease all activities under or in connection with this Agreement, except to the extent required in order to comply with the relevant Third Party Vendor Terms, this clause xx or any other clause which survives termination;
- (c) subject to your Consumer Law Rights, any payments made by you to us are not refundable to you;
- (d) by us pursuant to clause 12.2, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including recovery fees);
- (e) upon our request or Vendor's request, you must provide reasonable assistance and cooperation to us or the relevant Vendor for the purpose of transferring any End Users to us, the Vendor or a new reseller (including by entering into legal documents to assign or novate agreements with End Users);
- (f) we may retain your documents and information (including copies) to the extent required by Law or pursuant to any information technology back-up procedure, provided that we handle your information in accordance with clause 9; and
- (g) you agree to promptly return (where possible), or delete or destroy (where not possible to return), any documentation, information or material provided to you by us that is in your possession or control.

12.4 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.

12.5 This clause 12 will survive the termination or expiry of this Agreement.

13. General

13.1 **Amendment:** This Agreement may only be amended by written instrument executed by the Parties.

13.2 **Assignment:** Subject to clauses 13.3 and 13.9, a Party must not assign, novate or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

13.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with this Agreement, to a debt collector, debt collection agency, or other third party.

13.4 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) (**Dispute**) without first complying with this clause 13.4. A Party claiming that a Dispute has arisen must give written notice to the other Party specifying the nature of the Dispute (**Dispute Notice**). The Parties must meet (whether in person, by telephone or video conference) within 10 Business Days of service of the Dispute Notice to seek (in good faith) to resolve the Dispute.

If the Parties do not resolve the Dispute within 20 Business Days of the date the Dispute Notice was served (or such further period as agreed in writing by the Parties), either Party may:

- (a) where you are resident or incorporated in Australia, refer the matter to mediation, administered by the Australian Disputes Centre, to be conducted in Sydney, New South Wales, in accordance with the Australian Disputes Centre Guidelines for Commercial Mediation.
- (b) where you are not resident or incorporated in Australia, refer the matter to arbitration administered by the Australian Centre for International Commercial Arbitration, with such arbitration to be conducted in Sydney, New South Wales, before one arbitrator, in English and in accordance with the ACICA Arbitration Rules.

Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

13.5 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under this Agreement if such delay or failure is caused or contributed to by a Force Majeure Event, provided that the Party seeking to rely on the benefit of this clause:

- (a) as soon as reasonably practical, notifies the other Party in writing details of the Force Majeure Event, and the extent to which it is unable to perform its obligations; and
- (b) uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.

Where the Force Majeure Event prevents a Party from performing a material obligation under this Agreement for a period in excess of 60 days, then the other Party may by notice terminate this Agreement, which will be effective immediately, unless otherwise stated in the notice. This clause will not apply to a Party's obligation to pay any amount that is due and payable to the other Party under this Agreement.

13.6 **Governing Law:** This Agreement is governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

13.7 **Notices:** Any notice given under this Agreement must be in writing addressed to the addresses set out in this Agreement, or the relevant address last notified by the recipient to the Parties in accordance with this clause. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

13.8 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.

- 13.9 **Subcontracting:** We may subcontract the supply of any part of the Products without your prior written consent. We agree that any subcontracting does not discharge us from any liability under this Agreement and that we are liable for the acts and omissions of our subcontractor.

14. Definitions

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them in the Agreement, and:

Agreement means these terms and conditions and any documents attached to, or referred to in, each of them.

Business Day means a day on which banks are open for general banking business in Sydney, New South Wales, excluding Saturdays, Sundays and public holidays.

Confidential Information means information which:

- (a) is disclosed to the Receiving Party in connection with this Agreement at any time;
- (b) relates to the Disclosing Party's business, assets or affairs; or
- (c) relates to the subject matter of, the terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

Consequential Loss includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your obligation to pay us the Price will not constitute "Consequential Loss".

Disclosing Party means the Party disclosing Confidential Information to the Receiving Party.

End User means an active end user or customer to whom you have resold the Products.

Force Majeure Event means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

Intellectual Property Rights or Intellectual Property means any and all existing and future rights throughout the world conferred by statute, common law, equity or any corresponding law in relation to any copyright, designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or confidential information, circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing, whether or not registered or registrable.

Law means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any government or similar authority with the power to bind or impose obligations on the relevant Party in connection with this Agreement.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth) and includes any similar rights in any jurisdiction in the world.

New Materials means all Intellectual Property developed, adapted, modified or created by or on behalf of us or you or any of your or our respective Personnel in connection with this Agreement, whether before or after the date of this Agreement and any improvements, modifications or enhancements of such Intellectual Property, but excludes Our Materials and Your Materials.

Our Materials means all Intellectual Property which is owned by or licensed to us and any improvements, modifications or enhancements of such Intellectual Property, but excludes New Materials and Your Materials.

Payment Terms mean the payment terms set out in the relevant Order.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Price means the price set out in the price list or the relevant Order.

Products means the third party products and services we are authorised to distribute as set out in our price list from time to time.

Receiving Party means the Party receiving Confidential Information from or on behalf of the Disclosing Party.

Territory means the territory in which we are authorised to distribute the Products and you are authorised to resell the Products, being Australia.

Third Party Vendor Terms means any terms and conditions that apply to the Products, which may be provided to you or made available on the applicable Vendor's website.

Your Materials means all Intellectual Property owned or licensed by you or your Personnel before the date of this Agreement (which is not connected to this Agreement) and/or developed by or on behalf of you or your Personnel independently of this Agreement and any improvements, modifications or enhancements of such Intellectual Property, but excludes Our Materials and New Materials.

Vendor means the third party supplier or manufacturer of the Products.