

General Service Terms
Calibre One Pty Ltd ABN 87 160 457 090
(Calibre One)

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General Service Terms

- Background**
- A. This agreement relates to the provision of information technology services (**Services**) by Calibre One (**we** or **us**) to the Customer (**you** or **your**). The terms of this Agreement and the Services to be provided under it are contained in these General Service Terms and in the applicable Specific Service Terms.
 - B. Your Agreement with us is divided into two (2) parts:
 - (i) the first part is these General Service Terms, including the attached Scope of Works and Service Level Terms, which apply to all of our Services to you; and
 - (ii) the second part is the Specific Service Terms being those Specific Service Terms that apply to the specific Services which we have agreed to provide to you as set out in the Scope of Works (for example our Specific Service Terms include Specific Service Terms – Managed IT Services; Specific Service Terms – C1 Cyber Security – Monitor, Detect and Advise Service; Specific Service Terms – Device Management Service; Specific Service Terms – Telstra Managed Service; Specific Service Terms – Telephony Support Service; Specific Service Terms – NextGen Firewall Advanced Management and Reporting Service; and).
 - C. The Services that we will provide to you and the prices and applicable rates on which our Fees for those Services will be calculated are as set out in the Scope of Works subject to adjustment in accordance with the terms of this Agreement.
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Operative Provisions

The Parties agree, in consideration of, among other things, the mutual promises contained in this Agreement as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement (including all parts of this Agreement other than these General Service Terms such as in the applicable Specific Service Terms) except to the extent that the context requires otherwise the following terms and expressions shall have the following meanings:

Agreement	means this Agreement including all of its Schedules, Annexures and Attachments and the Specific Service Terms as applicable to the Services set out in the Scope of Works.
Authority	means: <ul style="list-style-type: none"> (a) any government, semi-government body or authority, Federal, State, Territory or local; or (b) any minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of a person referred to in paragraph (a) above, statutory or otherwise.
Business	means the business conducted by the Customer at the Premises on the Commencement Date.
Business Day	means a day which is not Saturday, Sunday or a public holiday in Darwin or Adelaide.
Calibre One	means Calibre One Pty Ltd (ABN 87 160 457 090) and includes all its lawful successors, or assigns.
CPI	means the All groups Consumer Price Index weighted average of eight capital cities as published by the Australian Bureau of Statistics or if that index is not published any other index as nominated by Calibre One.
Commencement Date	means the date of commencement of this Agreement being the commencement date stated in the Scope of Works or, if no date is stated, the earlier between the date that the Scope of Works is first executed by the Customer and Calibre One.
Customer	means the person named and described as such in the Scope of Works and includes all of their lawful successors, or assigns.
Fees	means the prices, fees and charges calculated in the amounts and at the rates set out in the Scope of Works or Calibre One's hourly rates from time to time for the relevant Service in relation to Services to which our hourly rates apply or as otherwise provided for or agreed under or in this Agreement (subject to any variation or adjustment permitted under the terms of this Agreement) which the Customer must pay to Calibre One for the provision of the Services and the Products.

Information Technology	means all current software, programs, systems, hardware, electronic document retention, storage and retrieval processes and all other information technology of whatsoever kind or nature used by the Customer in order to efficiently conduct the Business as at the Commencement Date, and includes all additional information technology which the Customer may acquire, develop or create for use in the Business during the Term and which Calibre One agrees in writing in the Scope of Works to cover under the Services provided under this Agreement.
Information Technology Assets	means all assets and property (including Intellectual Property) comprised in the Customer's Information Technology System for its Business and located or kept at the Premises.
Intellectual Property	means all things ordinarily regarded as intellectual property and being intangible property created as the result of mental creativity such as any design, trade mark, patent, copyright, invention, artistic work, literary work and moral right.
Law	means all applicable laws that in any way govern or regulate the terms of this Agreement, or anything done or to be done under it including the common law, equity and all relevant statutes, regulations, codes of practice and/or by-laws together with all amendments.
Party	means a Party to this Agreement and Parties shall have a corresponding collective meaning.
Premises	means the address where the Customer conducts the Business being the address of the Business as set out in the Scope of Works, or such other place to which the Customer carried on the Business from time to time.
Products	means all the Information Technology hardware and software products to be provided by Calibre One to the Customer at any time during the Term as set out in the Scope of Works and which may include an Compatible Device as referred to in Specific Service Terms – Device Management Service.
Quarter	means successive period of 3 months finishing on 30 June, 30 September, 31 December and 31 March.
Recommendation	means any advice given or recommendation made by Calibre One to the Customer.
Related Entity	has the same meaning as in the <i>Corporations Act 2001</i> (Cth).
Schedule	means a schedule to this Agreement or to any Specific Service Terms.
Scope of Works	means the Scope of Works attached at Schedule 1 hereto as amended from time to time by agreement between the Parties in writing.
Services	means all the Information Technology maintenance, support, advice and consulting services to be provided by Calibre One to the Customer during the Term as set out in the Scope of Works and which may include the Managed IT Service, the Device Management Service and the Cyber Security Service as referred to in the Specific Service Terms (subject to any of those services being selected in the Scope of Works) and any other services as may be provided by Calibre One from time to time which are referred to in the Scope of Works.

Service Terms	Level	means the Service Level Terms attached at Schedule 2 hereto.
Specific Terms	Service	means the Specific Service Terms applicable to the Services selected in the Scope of Works – for example 'Specific Service Terms – Managed IT Services' will apply if the Managed IT Service is selected, 'Specific Service Terms – Device Management Service' will apply if the Device Management Service is selected, and 'Specific Service Terms – C1 Cyber Security – Monitor, Detect and Advise Service' will apply if the Cyber Security Service is selected (note that multiple Specific Service Terms documents will apply if multiple services are selected).
Telstra		means Telstra Corporation Limited (ACN 051 775 556) and any corporation being a related body corporate (as defined in the <i>Corporations Act 2001</i> (Cth) of Telstra Corporation Limited
Term		means the term of this Agreement as set out in the Scope of Works subject to extension in accordance with clause 14.1.
Third Party		means a person that is not a Party to this Agreement.
Upfront		means an invoice issued before a relevant Product or Service has been provided by Calibre One to the Customer and which shall be payable by the Customer to Calibre One before that Product or Service is provided and in any event within 14 days of the date of invoice unless agreed otherwise.
Upfront Limit	Payment	The Upfront Payment Limit is set in 3 bands being: <ul style="list-style-type: none"> a) Basic - \$3,000.00 (GST inc.) b) Standard - \$5,000.00 (GST inc.) c) Premium - \$10,000.00 (GST inc.)

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) the singular includes the plural and the plural includes the singular;
- (b) a reference to one gender includes all other genders;
- (c) a reference to a person includes a body corporate, an individual, an incorporated association and any form of legal entity;
- (d) headings are included for reference only and shall not affect the interpretation of this Agreement;
- (e) a Party who is a trustee is bound both personally and in its capacity as trustee;
- (f) a Party includes that Party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;
- (g) every covenant or agreement expressed or implied in this Agreement by which more Parties than one covenant to agree shall bind such Parties and every one or more of them jointly and each of them severally and every provision expressed or implied in this Agreement which applies to more Parties than one shall apply to such Parties and every two or more of them jointly and each of them severally and their respective administrators, executors and assigns;

- (h) "including" and similar words are not words of limitation;
- (i) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to any document or instrument includes any variation or replacement of it;
- (k) a reference to clauses, annexures, attachments or schedules is a reference to the clauses, annexures, attachments or schedules of this Agreement;
- (l) a reference to any Authority, association or body whether statutory or otherwise shall (if that Authority, association or body ceases to exist or is re-constituted, re-named or replaced or its powers or functions are transferred to any other Authority, association or body) be deemed to refer respectively to the Authority, association or body established or constituted in its place or as nearly as may be succeeding to its powers or functions;
- (m) where any word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning;
- (n) any reference to time is a reference to time in Darwin;
- (o) if an act must be done on a day which is not a Business Day, that act may be done instead on the next Business Day;
- (p) all monetary amounts are in Australian dollars; and
- (q) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement.

1.3 Inconsistency

In the event of any inconsistency between anything contained in these General Service Terms (excluding the Scope of Works and the Service Level Terms), in the Scope of Works, the Service Level Terms or the Specific Service Terms then they are to be construed to the intent that each shall be given the maximum force permitted by Law but to the extent that such inconsistency cannot be reconciled the order of priority between those documents shall be:

- (a) first the Scope of Works;
- (b) second the Specific Service Terms applying to this Agreement;
- (c) third these General Service Terms (excluding the Scope of Works and the Service Level Terms); and
- (d) fourth the Service Level Terms.

2. ENGAGEMENT

2.1 Performance of Service

Calibre One represents and warrants that it has all the necessary skills, knowledge, experience and expertise to perform the Services in a proper and competent manner.

2.2 Licence and Permits

Calibre One holds all necessary licences and permits required to authorise Calibre One to perform the Services. Where there are any applicable industry standards and codes, they will at all times be complied with by Calibre One. Calibre One and all Calibre One's employees and sub-contractors are properly qualified, experienced, licensed (where applicable) and competent to properly perform and will perform the Services to any applicable standards and codes.

2.3 Notification of Delay of Service

If an event occurs that is beyond the reasonable control of Calibre One which prevents us from performing a Service on or by any agreed date or time frame, Calibre One will notify the Customer within a reasonable time period and give an estimate of the time for completion of that Service. The agreed date or time frame for delivery of the Service by Calibre One is extended for so long as the effect of any event beyond our control continues.

2.4 Equipment and Materials

Calibre One will provide all equipment and all materials as may be necessary to perform the Services properly and efficiently. Unless otherwise agreed in writing all materials including Products supplied will be new and of high quality. All Calibre One equipment will be safe for use, properly maintained and capable of being used to carry out the Services.

2.5 Request to Increase the Scope of Works

The Services to be provided under this Agreement are as set out in the Scope of Works. The Scope of Works can only be amended by mutual agreement of the Parties in writing or as otherwise expressly provided for in this Agreement.

2.6 Price

The Customer will pay Calibre One the Fees for the Services and Products provided under this Agreement calculated at the prices, rates and charges as set out in this Agreement (including in the Scope of Works) or at Calibre One's usual hourly rates as determined by it from time to time for Services where hourly rates apply (unless some other hourly rate is specified in this Agreement) and subject always to variation or adjustment made in accordance with this Agreement.

2.7 Expenses, allowances and overheads

In addition to the Fees, there may be additional expenses, costs and overheads that are sometimes required for the completion of tasks in connection with the Services. Examples of such may include travel or accommodation expenses. All such expenses, costs or overheads shall be reimbursed by the Customer to Calibre One at cost plus a 2.5% administration charge within 14 days upon request.

2.8 Sub-Contractors

Calibre One may use sub-contractors to provide any of the Services. In such circumstances, Calibre One will ensure that the sub-contractors we engage:

- (a) are suitably qualified, hold all necessary licences and are otherwise able to perform the sub-contracted Services in a proper and workman-like manner; and
- (b) do not do or omit to do anything that would if done or not done by Calibre One be a breach any of this Agreement.

Calibre One remains responsible for performance of all of its obligations under this Agreement notwithstanding that we have sub-contracted any of the Services.

3. ACCEPTANCE OF THESE TERMS

3.1 Acceptance

This Agreement comes into force on the Commencement Date.

3.2 Irrevocability

The terms and conditions of this Agreement are irrevocable and can only be amended by mutual agreement between the Parties in writing except as expressly provided otherwise in this Agreement.

3.3 Two or More Parties

In the event there is more than one party as a Customer to this Agreement each of them will be jointly and severally liable for all of the obligations and covenants of the Customer under this Agreement.

4. QUOTES AND FEE VARIATIONS

4.1 Expiry of Quotes

All quotes provided by Calibre One in relation to any change in Services or Products to be provided under this Agreement will remain valid for 14 days only. If Calibre One provides the Customer with a quote in relation to any change in or variation of the Services or Products as set out in the Scope of Works shall be amended, in accordance with the quote if it is accepted by the Customer in writing communicated to Calibre One within 14 days of the date of the quote. If not accepted within that period the Scope of Works shall not be amended and Calibre One shall not be obliged to provide the quoted Services or Products.

4.2 Fee Variation

- (a) Any price for a Product set out in the Scope of Works may be varied by Calibre One, by a reasonable amount in proportion to any change, if the price which Calibre One pays for a Product is affected by a change in international currency exchange rate and we notify you of the relevant change.
- (b) If Calibre One's cost of wages, materials or any other supply or input applicable to any of the Services increases, Calibre One may, increase any of the relevant Fees for that Service by a reasonable amount commensurate with the increase in cost to Calibre One (plus a reasonable profit component thereon) and the Customer must pay the Fees as varied by us such variation to apply from the date the change in our Fees are notified to you.
- (c) In addition to any other right to vary or adjust any of our Fees Calibre One shall be entitled, in our discretion, to adjust any of our Fees on an annual basis, on each anniversary of the Commencement Date in accordance with the increase in CPI based on the percentage increase in CPI from the CPI number for the Quarter last completed before the Commencement Date (in the case of the first adjustment) or the CPI number for the previous anniversary of the Commencement Date immediately before the anniversary of the Commencement Date on which the adjustment is occurring (for subsequent adjustments) to the CPI number for the Quarter last completed on the anniversary of the Commencement Date on which the adjustment is occurring. Our Fees will increase by the same percentage as the relevant percentage increase in the CPI from the date that Calibre One notifies the Customer of the increase.

5. TERMS OF PAYMENT

5.1 Invoices

- (a) Calibre One shall be entitled to invoice the Customer monthly in advance for all Fees for recurring services, subscriptions, charges and payments under this Agreement (**Recurring Fees**). For any Recurring Fees invoiced in advance the Customer must pay the full amount of Calibre One's Recurring Fees before the commencement of the recurring period (which is most commonly a monthly recurring period) to which the invoice relates or within 7 days of the date of the invoice whichever is later.
- (b) Calibre One shall be entitled, at any time in its absolute discretion, to invoice the Customer retrospectively for its Fees in connection with any Services and Products which have been provided under this Agreement, except to the extent that Services and Products are invoiced for in advance as Recurring Fees under clause 5.1(a) (in

which event such invoices are payable by the Customer in advance in accordance with clause 5.1(a)) or an invoice for payment Upfront is issued (in which event payment Upfront by the Customer is required in accordance with clause 5.2). All invoices rendered by Calibre One to the Customer under this clause 5.1(b) shall be due and payable by the Customer to Calibre One within 14 days of the invoice date.

- (c) The Fees charged in all invoices will be calculated using the rates, charges and prices for the Services and Products delivered under this Agreement as set out in the Scope of Works or as set out elsewhere in this Agreement, subject to any adjustment or variation in those rates, charges and prices made in accordance with this Agreement.
- (d) Invoices for Services chargeable at hourly rates will be charged based on time records kept by Calibre One and any worksheets kept by Calibre One for those Services shall be prima facie evidence of the hours worked.
- (e) The Customer is not entitled to deduct or set-off any amount from any amounts invoiced to the Customer by Calibre One under this clause 5.
- (f) Calibre One shall be entitled to suspend any of the Services or provision of any Product while any invoice rendered by it to the Customer remains due and unpaid.
- (g) The Customer agrees that, in addition to any other rights, Calibre One shall have the right to require that the Customer pays any amount whatsoever for any Services or Products upfront before those Services or Products are provided, if Calibre One decides that its exposure to outstanding orders and invoices with the Customer is higher than it desires. If Calibre One renders an invoice under this clause the Customer agrees to pay it without set off or deduction before the relevant Service or Product is provided and in any event no later than 14 days from the date of the invoice.

5.2 Upfront Payments

- (a) The Customer must pay Upfront to Calibre One 50% of the price of any of the following items comprised in the Services or Products to be provided by Calibre One to the Customer under this Agreement:
 - (i) any software and software licences whatsoever; and
 - (ii) any other Products with a price exceeding the Customer's Upfront Payment Limit in relation to a single Product or for the composite price on multiple Products to be provided at or about the same time.
- (b) Calibre One shall be entitled to render an invoice for any amount payable Upfront at any time we consider reasonably appropriate, and the Customer agrees that it must pay Calibre One the full amount of such invoice without set off or deduction before the relevant Service or Product is provided and in any event no later than 14 days from the date of the invoice.
- (c) The Customer agrees that once it has placed an order for any software or software licences with Calibre One it is committed to paying Calibre One the full price for that software or software licence because Calibre One's orders for software and software licences are not usually refundable from its suppliers.
- (d) The Customer agrees that if it cancels any order for any software or software licences with Calibre One, the Customer is still liable to pay Calibre One the full price for that software or software licences including any amount invoiced Upfront and the remaining balance of the purchase price shall be due and payable within 14 days of invoicing by Calibre One. The liability of the Customer under this sub-clause is limited only in the circumstance that Calibre One receives a refund from its supplier, in relation to the relevant order, in which event Calibre One will pass the refund on to the Customer (the

Customer must not withhold or delay payment for the order on the basis that Calibre One may in future receive a refund).

- (e) In relation to any Service or Product which Calibre One has invoiced the Customer for Upfront Payment of 50% of the price in accordance with this clause, the Customer must pay Calibre One the remaining 50% of the price of that Product or Service within 14 days of invoicing by Calibre One, which may be rendered at any time after the Customer first receives that Product or Service notwithstanding that any other Products or Services are ongoing.
- (f) The Customer agrees that, in addition to the other provisions concerning invoicing and payment, Calibre One shall have the right to invoice the Customer Upfront and the Customer must pay Upfront, in accordance with clause 5.2(b), for any Services or Products whatsoever, if Calibre One decides that its exposure to outstanding orders and invoices with the Customer is higher than it desires.
- (g) Unless notified otherwise by Calibre One in writing the Basic Band (a limit of \$3,000.00 (GST inc.) Upfront Payment Limit shall apply to the Customer. The Customer agrees that Calibre One shall retain the right, in its absolute discretion to increase the Customer's Upfront Payment Limit from the Basic Band or any other band to the Standard Band, being \$5,000.00 (GST inc.) or the Premium Band, being \$10,000.00 (GST inc) or, to decrease the Customer's Upfront Payment Limit from the Premium Band or the Standard Band to the Basic Band or any other band. Calibre One will notify the Customer in writing of any change to the Customer's Upfront Payment Limit made by Calibre One.

5.3 Milestone Payments

In addition to, the other provisions concerning invoicing and payment, the Customer agrees to pay Calibre One, without set off or deduction, all invoices rendered in accordance with any Milestone Payment Schedule set out in the Scope of Works. Calibre One shall be entitled to render an invoice immediately upon completion of any milestone referred to in the Milestone Payment Schedule and the Customer must pay Calibre One any invoice for a completed milestone within 14 days of invoicing.

5.4 Payment Method

- (a) Payment of Calibre One's invoices must be made by the Customer in one of the following ways: credit card, cheque, electronic transfer to Calibre One's bank account or cash.
- (b) The Customer must arrange an automatic direct debit from its bank account into Calibre One's nominated bank account, such debit to occur on or before the first day of each month throughout the Term, for the amount of any monthly Recurring Fees and upon request by Calibre One at any time during the Term the Customer must within 2 Business Days provide evidence to the satisfaction of Calibre One that such direct debit arrangement is current.

5.5 Administration Fee

Where the Customer fails to pay Calibre One, in clear funds, the full amount payable under any tax invoice rendered by Calibre One on or before the due date, the Customer agrees that Calibre One shall be entitled to add a \$15 Administration Charge every 30 days following the due date until the outstanding amount is paid in full. The Customer will be liable to pay the Administration Charge in addition to the outstanding amount. The Customer agrees that the Administration Charge is not a penalty and that it represents a reasonable amount in relation to the internal administrative expense incurred by Calibre One in chasing overdue payment.

5.6 Recovery Costs

In the event the Customer is in breach of its obligation to pay any amount on an invoice rendered by Calibre One in accordance with this Agreement by the due date, the Customer shall keep Calibre One forever indemnified for all costs incurred by Calibre One (other than its internal administrative costs covered by the Administration Fee) in connection with recovering or attempting to recover the outstanding amount, including but not limited to solicitors fees on a solicitor and own client basis.

5.7 Third Party Arrangements

- (a) Where there is any arrangement or agreement between the Customer and any Third Party, including any financier or Telstra for the Third Party, to either invoice the Customer or pass on payment on behalf of the Customer to Calibre One, in relation to any Services provided by Calibre One (**Third Party Arrangement**), the Customer remains responsible to Calibre One for payment for all Fees in connection with those Services until payment is received in full by Calibre One. Calibre One is, notwithstanding any Third Party Arrangement, entitled in its absolute discretion to render its own invoices for Fees in connection with such Services in a manner consistent with this Agreement. The Customer shall be responsible for procuring that payment for Services subject to any Third Party Arrangement is received by Calibre One by the earlier of the due date for payment on each of the Third Party's invoices in accordance with the Third Party Arrangement or the due date for payment in any invoice rendered by Calibre One in accordance with this Agreement in relation to such Services.
- (b) The Customer and Calibre One acknowledges and agrees that the terms and conditions of any arrangement or agreement between the Customer and any Third Party shall in no way alter or derogate from the obligations of the Parties under this Agreement, and all Parties to this Agreement shall remain fully liable for all of their respective obligations and covenants under this Agreement notwithstanding any such arrangement or agreement with any Third Party.

6. GOODS AND SERVICES TAX

6.1 Definitions

- (a) For the purposes of this clause unless the context otherwise requires:

GST	means any tax imposed on goods, services or Taxable Supplies by or through the GST Act.
GST Act	means a <i>New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> and any regulation made thereunder, as amended from time to time.
GST Rate	means the percentage amount of GST payable determined under section 9-70 of the GST Act as amended from time to time.
Tax Invoice	includes any document or record treated by the Commissioner of Taxation for GST purposes: <ul style="list-style-type: none"> a) As a tax invoice; or b) As a document entitling the recipient to an input tax credit.

Taxable Supply has the same meaning it given in the *New Tax System (Goods and Services Tax) Act 1999* (Cth).

- (b) The Parties acknowledge and agree that all amounts payable by the Customer under this Agreement are GST exclusive unless stated otherwise.
- (c) All amounts payable by the Customer under this Agreement, in connection with any Taxable Supply made by Calibre One, will be grossed up to include any GST to be paid at the same time that the underlying amount is due and payable. GST shall be calculated by applying the GST Rate at the time to the amount payable.
- (d) Calibre One shall issue Tax Invoice's to the Customer for all GST payable by the Customer under this Agreement.

7. SALE & LEASE OF PRODUCTS

7.1 Title to Products Sold

The Customer acknowledges and agrees that title and ownership of any Product sold by Calibre One to the Customer under this Agreement remains with Calibre One until the price (including GST) for the Product, including Administration Fees, has been paid in full by the Customer to Calibre One. The Customer agrees to return any Product to Calibre One's possession immediately on demand made by Calibre One at any time before title and ownership in the Product transfers to the Customer.

7.2 Lease Terms

Any Product provided by Calibre One to the Customer by way of lease or licence from Calibre One to the Customer shall be provided on such lease or licence terms as may be agreed between Calibre One and the Customer.

8. WORKPLACE HEALTH AND SAFETY

8.1 Calibre One Obligations

Calibre One will ensure that at all times in performing the Services it uses safe and proper procedures and practices and that all its employees are properly trained and supervised and observe all proper safety practices. Where protective equipment, materials or clothing are required these will be provided by Calibre One and Calibre One will ensure that these are used by its personnel at all relevant times, except that Calibre One reserves the right to require that the Customer provide any such equipment, materials and clothing where specialised items are required due to the nature of the Premises or the Business.

8.2 Customer Obligations

The Customer will ensure that, in relation to any of the Services to be performed on the Customer's Premises:

- (a) the Customer is authorised to occupy the Premises and to authorise Calibre One to have access to it as necessary to provide the Service;
- (b) at all times the Premises is safe and that all facilities provided by the Customer for the purposes of enabling the Service to be performed are also safe; and
- (c) Calibre One will have unencumbered and unobstructed access to the area of the Premises as required to provide the Services from time to time.

9. LIMITATION ON WARRANTY AND LIABILITIES

9.1 General

- (a) To the fullest extent permitted by Law, Calibre One makes no representation and gives no warranty in respect of the provision of the Services except that it will carry out the Services competently, professionally and to the best of its ability having regard to the terms of this Agreement.
- (b) All implied and statutory warranties and guarantees by Calibre One in connection with this Agreement and the Services and Products provided under it are excluded from this Agreement to the extent permitted by Law. This exclusion extends to all implied and statutory warranties and guarantees howsoever arising and on any subject matter including implied warranties and guarantees as to merchantability, fitness for purpose and the non-infringement of Third Party intellectual property.
- (c) Calibre One will not be liable for any loss or damage that the Customer sustains as a direct or indirect result of any Recommendation by Calibre One or any responses to requests for advice being followed unless they were made by Calibre One deliberately in the knowledge that if followed by the Customer the Customer would suffer loss and damage.

9.2 Statutory Warranties

- (a) In relation to any Service provided by Calibre One under this Agreement, which is not a service of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer acknowledges and agrees that, to the extent Calibre One's liability in relation to such Service under any warranty or guarantee arising under statute cannot be excluded entirely, Calibre One's liability under any that warranty or guarantee is limited, at our election, to:
 - (i) the supplying of the relevant Service to you again; or
 - (ii) paying you the cost of having the Service supplied again.
- (b) In relation to any Product provided by Calibre One under this Agreement, which is not a good of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer acknowledges and agrees that, to the extent Calibre One's liability in relation to such Product under any warranty or guarantee arising under statute cannot be excluded entirely, Calibre One's liability under any such warranty or guarantee in relation to any such Product is limited, at our election, to:
 - (i) the replacement of the Product or supply of an equivalent Product;
 - (ii) the repair of the Product;
 - (iii) paying you the cost of replacing the Product or acquiring an equivalent Product; or
 - (iv) paying you the cost of having the Product repaired.

9.3 Limitation of Liability

- (a) The Customer acknowledges and agrees that, to the fullest extent permitted by Law, all liability of Calibre One to the Customer for indirect and consequential loss, including the loss or corruption of any Information Technology, loss of revenue, loss of profits, failure to realise expected profits or savings and any other economic loss of any kind arising in connection with this Agreement or the provision of any of the Services or Products under it is hereby excluded, and the Customer hereby releases Calibre One from all claims, demands, actions or proceedings in relation to any such liability.
- (b) The Customer acknowledges and agrees that Calibre One shall not be liable to the Customer for any liability including costs, expenses, loss or damage (including loss of profits) of any kind (whether direct or indirect) suffered by the Customer in connection with this Agreement or the provision of any of the Services or Products under it due to:
 - (i) any of the Information Technology being properly in the possession or control of Calibre One;

- (ii) any of the Information Technology failing to operate properly or at all at any time or times during the Term for any reason whatever;
 - (iii) any non-deliberate inaccuracy, error or omission on the part of Calibre One arising out of or in connection with the Services including without limitation inaccuracies, errors or omissions as a result of Calibre One's negligence;
 - (iv) any non-deliberate negligent act or omission of Calibre One;
 - (v) the acts or omissions of the Customer in following or attempting to follow any recommendations or advice by Calibre One unless they were made by Calibre One with wilful disregard to their correctness or knowing that they were wrong;
 - (vi) any delay, failure or error in the provision of the Services because of any circumstance beyond Calibre One's reasonable control including, without limitation, failure of any communications network or system or electronic power surges, overloads, failures or black outs;
 - (vii) any delay in Calibre One attending the Premises to fix any breakdown or malfunction of any Information Technology;
 - (viii) any failure by Calibre One to fix any breakdown or malfunction of any Information Technology;
 - (ix) any inability of the Customer to access any of the Information Technology; and
 - (x) any disruption or interference with the Business as a direct or indirect consequence of the Services or Products being carried out or provided.
- (c) The Customer forever releases Calibre One from all claims, demands, causes of action or legal, court or tribunal proceedings by the Customer or anyone claiming through the Customer in relation to any liability which is excluded by clause 9.3(a) and for any liability which Calibre One is not liable for in accordance with clause 9.3(b).

9.4 Equipment and Products

- (a) Calibre One does not offer any warranties or guarantees in relation to any Product provided by it to the Customer. The warranty or guarantee (if any) on any Product provided by Calibre One is limited to any warranty or guarantee from the manufacturer of the Product or the distributor of the Product to Calibre One. Calibre One is not responsible for any manufacturer's or distributor's warranty or guarantee on any Product that we supply to the Customer.
- (b) Calibre One will, on request, assist the Customer by forwarding any Product provided by us under this Agreement, which is still covered by any manufacturer's or distributor's warranty or guarantee, to the manufacturer or distributor provided that the Customer will be responsible for all freight costs. To the extent that we are required to undertake any diagnostic work to determine whether or not an issue is covered by the manufacturer's or distributor's warranty or guarantee we will charge you at a rate or cost as agreed in advance.

9.5 Acknowledgement

The Customer acknowledges and agrees that:

- (a) the Customer has not relied upon any prior statement, undertaking or representation made or given by or on behalf of Calibre One before this Agreement was entered into; and
- (b) the Customer is fully aware of the contents of this Agreement and all documents referred to herein and that you have had the opportunity before entering into this Agreement to obtain independent legal advice on its terms.

9.6 Continuation

The releases, indemnities and limitation of liability contained in this Agreement shall all continue in full force and effect notwithstanding the termination or expiry of this Agreement.

10. FORCE MAJEURE

10.1 Effects of a Force Majeure event

- (a) Neither Party will be liable for failing to perform its obligations under this Agreement to the extent that the failure is triggered by a force majeure event.
- (b) A force majeure event is an event beyond the control of a Party which makes performance of any of its obligations under this Agreement impractical. Force majeure events include, but are not limited to acts of terror, fire, storm, flood, earthquake, explosion, accident, interruption to services, industrial disputes, war, rebellion, insurrection and acts of God but do not include industrial disputes involving the staff of a Party.
- (c) A Party claiming force majeure must, give notice in writing to the other Party of a force majeure event as soon as practicable after it becomes aware of the effect of the event on the performance of its obligations under this Agreement and it must take all reasonable steps to remove, mitigate or limit the effect of the force majeure event.
- (d) A Party claiming force majeure shall be relieved from the obligations which are impracticable for it to perform from the date of giving notice of the force majeure event for so long as the force majeure event makes it impracticable to perform the relevant obligations.
- (e) Notwithstanding anything else herein to the contrary neither Party shall be entitled to claim force majeure in connection with any obligation to pay any moneys payable under this Agreement.

11. ASSIGNMENT

11.1 Rights of Customer

The Customer shall not assign or transfer this Agreement without the prior written consent of Calibre One, which consent shall be in the absolute discretion of Calibre One. A change in ownership or control of the Customer shall be deemed to constitute an assignment.

11.2 Rights of Calibre One

- (a) Calibre One may assign or transfer all or any of its rights or obligations under this Agreement, whether in whole or part, to any person on giving written notice to the Customer.
- (b) Calibre One may sub-contract any part of its obligations under this Agreement without obtaining the consent of the Customer provided that Calibre One will remain liable for all of its obligations under this Agreement notwithstanding sub-contracting any of them.

12. CONFIDENTIALITY

12.1 Definition

For purposes of this Agreement, **Confidential Information** includes all information or material that has or could have commercial value or other utility in the business in which Party disclosing the information (**Disclosing Party**) is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word **Confidential** or some similar warning when disclosing them to the other Party (**Receiving Party**). If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide confirmation in writing to the Receiving Party that such oral communication constituted Confidential Information.

12.2 Exclusions from Confidential Information

Receiving Party's obligations under this Agreement do not extend to information that is:

- (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party;

- (b) discovered or created by the Receiving Party before disclosure by the Disclosing Party;
- (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or
- (d) is disclosed by Receiving Party with the Disclosing Party's prior written approval.

12.3 Obligations of Receiving Party

The Receiving Party shall hold and maintain the Confidential Information in strictest confidence and use it only for the purpose of this Agreement. The Receiving Party shall carefully restrict access to Confidential Information to employees, contractors, and third parties as is reasonably required on a need to know basis provided that those persons are under no less an obligation to maintain confidentiality or have signed non-disclosure agreements at least as protective as this clause. The Receiving Party shall return to the Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if the Disclosing Party requests it in writing. The Receiving Party may disclose Confidential Information to the extent necessary to enforce or administer this Agreement or if obliged to do so at Law in which event the Receiving Party will disclose the minimum amount of the Confidential Information as is practicable.

12.4 Time Periods

The nondisclosure provisions of this Agreement shall survive the termination of this Agreement and Calibre One's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret, until three years after this Agreement comes to an end or until the Customer sends Calibre One written notice releasing Calibre One from this Agreement, whichever occurs first.

12.5 Sharing Data with Third Parties

- (a) Notwithstanding anything else to the contrary herein Calibre One may share the Customer's data with any Third Party where it is necessary for the resolution of any technical issue or to do any other thing necessary in connection with carrying out any of our Services.
- (b) Any personal information collected, used and disclosed in the course of providing our Services will be in accordance with Calibre One's Privacy Statement (available at www.calibreone.com.au/terms)

13. PRIVACY AND ACCESS

13.1 Privacy and Access

- (a) The Customer consents to Calibre One contacting it directly for any purpose reasonably related to any Calibre One Service that the Customer uses or receives, to set up and carry out Cyber Security assessments, reviews or audits by Calibre One, or to obtain feedback or complete a survey in relation to any Service used or received by the Customer.
- (b) The Customer must promptly report any faults or issues with any Service to Calibre One and provide all reasonable assistance for Calibre One to access and use the Customer's Information Technology systems as reasonably required by Calibre One to address such faults and issues.
- (c) If a Party becomes aware of any Data Breach occurring in relation to data held, hosted, or supported by Calibre One on behalf of the Customer, it must notify the other Party of the breach as soon as possible after becoming aware of it so that it is assessed as to whether it is an Eligible Data Breach. Upon confirmation of an Eligible Data Breach Calibre One and the Customer shall engage in discussions regarding responsibility for notification of the breach. Unless agreed otherwise it will be the responsibility of the Customer to notify its own clients and Third Parties required to be notified of the breach in accordance with the requirements of the Notifiable Data Breach Scheme administered by the Office of the Australian Information Commissioner.

14. TERMINATION & EXPIRY OF AGREEMENT

14.1 Expiration of Agreement

This Agreement shall expire on the expiry date of the Term if either Party gives notice to the other in writing no less than 30 days prior to the expiration of the Term stating that it does not wish this Agreement to extend for another 12 months following the expiry date of the Term. In the absence of such written notice, the Term of this Agreement shall automatically be extended for another 12 months (without any action required by either Party) on a rolling annual basis so that it will continue to be extended for further periods of 12 months indefinitely unless or until this Agreement expires by notice in writing given by one Party to the other in accordance with this clause 14.1 or it is otherwise brought to an end.

14.2 Termination for Breach

In the event of breach of this Agreement (other than a minor breach) by a Party (**Breaching Party**) the other Party (**Innocent Party**) may give the Breaching Party notice in writing setting out details of the breach in reasonable detail and requiring that the Breach be remedied. If the breach is not remedied within 21 days after such notice is given the Innocent Party may terminate this Agreement immediately by notice in writing to the Breaching Party.

14.3 Termination for Convenience

Either Party may terminate this Agreement for convenience by giving 90 days' notice in writing to the other Party save and except that neither Party is entitled to terminate for convenience in relation to any Products you have agreed to purchase under this Agreement (in the event that any Products to be sold are yet to be provided at the time termination for convenience takes effect this Agreement shall be terminated in relation to the remainder of this Agreement but not in relation to the sale of Products not yet provided).

14.4 Effect of Termination

In the event of the termination or expiry of this Agreement the Customer agrees that it shall still be liable for Calibre One's fees and charges in relation to the provision of Services and/or provision of Products at any time before such termination or expiry takes effect.

15. INTELLECTUAL PROPERTY

15.1 Intellectual Property Rights

- (a) The Parties acknowledge and agree that nothing in this Agreement confers on either Party any right or interest whether at Law or in equity in the Intellectual Property of the other Party save and except that the Customer hereby grants to Calibre One a non-exclusive royalty free licence to utilise any Intellectual Property of the Customer in the Information Technology to the extent necessary to perform the Services and provide the Products.
- (b) The Customer acknowledges and agrees that no aspect of the Services performed by Calibre One which involves the development of any products or systems may be altered, reproduced, reverse engineered, stored in a retrieval system or transmitted to any Third Party by the Customer or any contractor, employee, agent or Related Entity of the Customer.
- (c) The Customer acknowledges and agrees that Calibre One owns all Intellectual Property created by Calibre One in connection with performance of the Services.
- (d) The Customer shall forever indemnify Calibre One against all liabilities, damages, costs (including legal costs on an indemnity basis) and expenses which Calibre One incurs as a result of any act or omission by the Customer which results in the infringement of or any challenge to the ownership of any Intellectual Property rights held by Calibre One.

- (e) This clause 15 shall continue in full force and effect notwithstanding the termination or expiry of this Agreement.

16. SERVICE OF NOTICES

16.1 Notice

A notice or other communication (**Notice**) between the parties in connection with this Agreement has no legal effect unless it is in writing and:

- (a) delivered by hand at the address for service of the Party to which it is addressed (**Recipient**);
- (b) sent by mail, postage prepaid, to the address for service of the Recipient, if the address is in Australia and the Notice is being sent from within Australia;
- (c) sent by prepaid airmail to the address for service of the Recipient, if the address is outside Australia or if the Notice is being sent from outside Australia;
- (d) sent by facsimile to the facsimile number of the Recipient; or
- (e) sent by email to the email address of the Recipient.

16.2 When Notice is Deemed to be Served

Where the Notice is delivered or sent in a manner provided by this clause it is deemed served on, given to and received by the Recipient:

- (a) if delivered, upon delivery;
- (b) if mailed from within Australia to an address in Australia, on the second Business Day after posting;
- (c) if mailed to an address outside Australia or mailed from outside Australia, on the fifth Business Day after posting;
- (d) if sent by email, before 4.00 pm on a Business Day on the day shown in the delivery receipt generated by the sender's email system which indicates that the email was sent to the Recipient's email address and otherwise on the next Business Day.

16.3 Receipt of Notice Email

A Notice sent email shall not be deemed served on, given to or received by the Recipient if the sender receives a report generated by the sender's email system indicating an error in transmission or delivery.

16.4 Addresses for Service of Notices

- (a) The address for service and email address for Calibre One is:

Address:	Calibre One, 7 / 390 Stuart Hwy, Winnellie NT 082
Attention:	Contracts
Phone:	1300 422 542
Email:	info@calibreone.com.au
- (b) The address for service and email address for the Customer is as set out in the Scope of Works.
- (c) A Party may change its address for service or email address by giving Notice of that change to each other Party.

16.5 Evidence of Service of Notices

A certificate signed by or on behalf of a party giving a Notice by any lawyer, officer or employee of that Party stating the date on which that Notice was delivered or sent, is prima facie evidence of the date on which that Notice was delivered or sent.

16.6 Notices Given to More than One Party

If the Party to which a Notice is intended to be given consists of more than one person then the Notice is deemed given to that Party if given to any of those persons

17. GENERAL MATTERS

17.1 Relationship

Nothing in these terms and conditions shall be deemed or construed to constitute or create a partnership, association, joint venture, employment relationship or agency between the Parties.

17.2 Additional Documents

The Parties will each execute, sign, deliver, enter into, acknowledge, effect and do all such deeds, acts, agreements, transfers, instruments and things as may be requisite or may be deemed proper for the purposes of carrying into effect any of the matters herein agreed to.

17.3 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes and extinguishes any representations warranties and agreements previously given made or entered into other than those contained herein, and no variation of this Agreement (other than a variation of the Scope of Works as provided for elsewhere herein) shall be effective unless in writing signed by (or by some person duly authorised by) each of the Parties.

17.4 Time of Essence

Any date or period mentioned in any clause of this Agreement may be extended by mutual agreement between the Parties, but as regards any date or period (whether or not extended aforesaid) time shall be of the essence, including the time or any period of notice referred to in any notice given pursuant to this Agreement.

17.5 Severability

If it is held by a court of competent jurisdiction that:

- (a) any part of this Agreement is void, voidable, illegal or unenforceable; or
- (b) this Agreement would be void, voidable, illegal or unenforceable unless any part of this Agreement was severed from this Agreement;
- (c) that part shall be severed from and shall not affect the continued operation of the rest of this Agreement.

17.6 Exclusivity

- (a) The Customer will only utilise Calibre One during the Term for the provision of the Services. This is an essential term of this Agreement.
- (b) The Customer must not without the express prior written consent of Calibre One permit any other person to interfere with, alter or change the Information Technology.

17.7 Exercise of Rights

Any rights conferred by this Agreement upon the Parties shall be unconditional and without prejudice to all other rights and remedies available to them.

17.8 Waiver

- (a) Failure or omission by any of the Parties at any time and from time to time to enforce or require the strict compliance with any provision of this Agreement shall not affect or

impair such provision in any way or the rights of such Party to avail itself of such remedies as it may have in respect of any breach or breaches of any such provisions.

- (b) No waiver of any right or remedy will be effective unless in writing and shall not operate as a waiver of that right or remedy or any other right or remedy on a future occasion.

17.9 Variation

No variation, modification or waiver of any provision of this Agreement nor consent to any departure by any Party therefrom shall be of any force or effect unless the same shall be confirmed in writing, signed by the Parties, and then such variation, modification, waiver or consent shall be effective only to the extent for which it may be made or given.

17.10 Jurisdiction

This Agreement will be construed in accordance with the Law applying in the Northern Territory and the Party's submit to the exclusive jurisdiction of the courts and tribunals of the Northern Territory and the courts with jurisdiction to hear appeals from them for the resolution of any dispute under this Agreement.

17.11 Execution in Counterpart

This Agreement may be executed in any separate number of counterparts, which when executed shall together be deemed to constitute one and the same instrument and which may be brought into effect by any means of exchange, including by exchange using any form of electronic media.

SCHEDULE 1 – SCOPE OF WORKS

[to be supplied to the Customer at the time of engagement]

SCHEDULE 2 – SERVICE LEVEL TERMS

- Background**
- A. This is the Service Level Terms section of our General Service Terms.
 - B. Calibre One operates a ticketing system to assist with categorising and prioritising our service level response times to the Customer for Services required under Specific Service Terms applying to the Customer.
 - C. Further information on our ticketing system can be found at:
<https://www.calibreone.com.au/service-level-agreements/>

1. SERVICE LEVEL TERMS

1.1 Definition

The Service Level Terms response time defines the expected time it will take Calibre One to classify and assign a resource on the submitted ticket

1.2 Service Level Applicable

Standard and premium service levels may apply. The standard service levels will apply to you unless the premium service levels are nominated in the Scope of Works, in which event, the premium service levels will apply. Premium service levels incur an additional cost (as set out in the Scope of Works) to standard service levels.

Calibre One will take all reasonable business and technical steps to meet the standard or, if applicable the premium response times as set out in this Schedule, with the target of no less than 90% of applicable tickets meeting the expected response times in each full calendar month. These steps include:

- (a) reassessing ticket priority based on updated information;
- (b) escalation of tickets to more senior engineers based on severity and complexity of the issue;
- (c) engaging vendor support where deemed appropriate provided that vendor support incurring a cost to the Customer will need advance approval from the Customer; and
- (d) arranging onsite technicians if required.

1.3 Response Time

The response time for each ticket is measured:

- (a) from when a valid service ticket is logged within our ticketing system;
- (b) applies to the originally logged priority level;
- (c) applies only during standard coverage hours.

1.4 Coverage Hours

Standard coverage hours are 8am to 5pm Australian Central Standard Time in Darwin.

2. PRIORITY LEVELS

2.1 Assessment

All tickets logged via phone or in person discussion are given a priority level by Calibre One based on the technical problem and impact of the request, based on the assessment of the situation by the Calibre One staff member.

Priority Level	Standard Response Time	Premium Response Time
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1	2 Hours	1 Hour
2	8 Hours	4 Hours
3	16 Hours	8 Hours
4	10 Days	5 Days

2.2 Definition

The Priority levels and response times to situations and circumstances concerning the operation of the Customer's Information Technology are:

Priority 1: A server is offline or a critical business failure situation.

Priority 2: The Customer's ability to operate is majorly affected or an urgent change request with significant business impact.

Priority 3: Core business is unaffected, but efficient operation of one or more people is impacted.

Priority 4: An inconvenient or annoying issue, but clear workarounds exist.

Priority 5: A background, planned or scheduled task.

2.3 Urgent Requests

Tickets logged via email or Calibre One's ticket portal must not be used for urgent requests by the Customer and are to be automatically given a Priority 3 level unless agreed otherwise.

2.4 Priority Level Request

Tickets which the Customer seeks to have allocated a Priority 1 or Priority 2 level must be clearly advised to Calibre One as urgent and logged by phone or in person with Calibre One

2.5 Escalation of Priority

Tickets may be escalated in priority at Calibre One's discretion, however for the purpose of measuring response times the original priority level allocated by Calibre One will apply

3. EXCLUSIONS

Tickets caused or requested for the following reasons will not be covered by these Service Level Terms:

- (a) equipment or situations identified and communicated to the Customer by Calibre One as not being fit for purpose;
- (b) devices, users, or persons not expressly covered by the Specific Service Terms;
- (c) interference with any equipment by any Third Party;
- (d) wilful damage to any equipment by any person;
- (e) negligence on the part of the Customer causing or contributing to any situation or to any equipment to operate to its full capacity; and
- (f) projects, work or services that are not covered by the Specific Service Terms applying to the Customer including any project, work or services separately quoted for by Calibre One

4. AFTER HOURS BUSINESS SUPPORT

4.1 24/7 Help Desk

- (a) Standard coverage hours are 8am to 5pm Australian Central Standard Time in Darwin. An optional 24 hour a day 7 day a week (**24/7**) help desk provides Priority 1 and Priority

2 level support only. If Calibre One's supporting engineer determines the support to be less than a Priority 2 level then the request will not be processed until the start of the next Business Day.

- (b) All requests logged for the 24/7 help desk supplement must be logged via calling the help desk number. Email requests will not be processed until the next Business Day.
- (c) Any work performed outside of standard coverage hours, at the request of the Customer, will incur an afterhours charge as determined by Calibre One and payable by the Customer. Any such work and after hours charges will be advised by Calibre One to the Customer, and approved by the Customer before the works are performed by Calibre One.