

TERMS OF ENGAGEMENT

1. Definitions and Interpretations

'Acceptance' means your consent to these Terms of Engagement and any Statement of Work (together, forming Stargate's Offer of contract) signed by You. Your Acceptance is established and confirmed by your signing of a Statement of Work, creating a contract between You and Stargate.

'Agreement' means the terms and conditions set out in these Terms of Engagement in addition to any Statements of Work and Schedules agreed in writing between You and Stargate.

'Commencement Date' means the date that you accept a quotation or Statement of Work prepared for You by Stargate.

'Confidential Information' of a party is all technical, financial, commercial and other information (in whatever medium) of or relating to it or its business affairs, which is disclosed or available to, or observed or accessible by, the other party in connection with this Agreement which:

- a) Is marked as 'confidential', 'sensitive', 'private' or any other similar description; or
- b) A reasonable person would (given its nature) consider confidential, or
- c) Includes information relating to the Personnel, policies or business strategies of a Party; or
- d) Includes information relating to the terms on which the Services are provided to the Customer pursuant to the Agreement; but excludes information that:
 - i. Is readily available in the public domain without breach of confidentiality; or
 - ii. The receiving party can establish by written records is or has been legally known to, developed by, or acquired by, that receiving party, independently of this Agreement.

'Customer' means any party whomsoever accepts a Statement of Work prepared for the Customer, by Stargate. Where the Customer is not a natural person, 'Customer' also means 'Customer Personnel'.

'Customer Personnel' means the employees, contractors and Subcontractors (including the Subcontractor's employees, contractors or agents) engaged by the Customer.

'Day' means a day on which banks are open for business in Melbourne (other than a Saturday, Sunday or public holiday).

'Deliverable' means any required outcome of the Services so specified in a Statement of Work.

'Fees' means the fees payable to Stargate by You in accordance with a Statement of Work;

'Force Majeure' means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under the Agreement. Such circumstances will include but are not limited to: acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires, and any natural disaster, acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, and strikes.

'Milestone' means in respect of a Project, any event or Deliverable identified as a Milestone in the Statement of Work.

'Milestone Date' means, in respect of any Milestone, the date for the satisfaction of that Milestone as described by the Statement of Work.

'Party' means either You or Stargate as the context requires;

'Services' means the Services described in the Statement of Work, or any other services the Parties agree in writing that Stargate is to provide under these Terms of Engagement.

'Stargate' means Stargate Technologies Pty Ltd ABN 29 083 556 709

'Statement of Work' means the form identified as such which contains Customer-specific details relating to the provision of Services under these Terms of Engagement;

'Stargate Personnel' means the employees, contractors and Subcontractors (including the Subcontractor's employees and contractors) engaged by Stargate in connection with a Statement of Work.

'You' means 'Customer' (and accordingly, related terms such as 'your' also have this meaning).

2. Term

These Terms of Engagement apply upon your acceptance of a quote or Statement of Work and continues for the period in which the agreed Services are provided unless cancelled by one of more of the parties in accordance with these Terms of Engagement.

3. Precedence

These Terms of Engagement prevail over those of a Statement of Work to the extent of inconsistency. No provision of a Statement of Work or any other agreement between the parties will take precedence over these Terms of Engagement unless it states expressly that it is intended to do so.

4. Provision of services

- a) Subject to the terms of this Agreement, Stargate will provide the Services to the Customer.
- b) Stargate is not responsible for any failure to provide the Services if such failure is caused by factors beyond Stargate's reasonable control including, but not limited to, telecommunications failure or fault, defective equipment utilised by the Customer or incorrect operation by the Customer of its own access facilities.
- c) Where the Customer requires Stargate to provide any services which are not described in one of the current Schedules, (for example, consulting services), the Parties must fully document the provision of those additional services and when this has been signed off by both Parties, that document is incorporated into, and becomes part of, this Agreement as a new Schedule.
- d) Each Party will at all times:
 - i. act in a professional manner in carrying out its obligations under the Agreement; and
 - ii. co-operate with the other Party to enhance the provision of Services and, where appropriate, to develop new services, in connection with the Agreement.

5. Confidentiality

- a) A Party must not without the prior written approval of the other Party, disclose or use the other Party's Confidential Information other than for the purposes of the Agreement.
 - i. A Party will not be in breach of clause 13 in circumstances where: it is legally compelled to disclose the other Party's Confidential Information;
 - ii. the information was rightfully in the possession of the receiving Party prior to the commencement of negotiations leading to the Agreement; or
- b) the information was already public knowledge or became so at a future date (otherwise than as a result of a breach of the Agreement).
- c) Each Party must take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of the Agreement, do not make public or disclose the other Party's Confidential Information.
- d) Notwithstanding any other provision of this clause, Stargate may disclose the terms of the Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers or accountants, and must ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to Stargate.
- e) This clause survives the termination of the Agreement

6. PRIVACY

- (a) In clauses 6:
 - i. Act means the Privacy Act 1988 (Cth)
 - ii. Privacy Law means:
 - a. the Act;
 - b. the National Privacy Principles contained in Schedule 2 to the Act or any approved privacy code (as defined in the Act) that applies to Customer, Stargate or both; and
 - c. any other statute, regulation or law in Australia or elsewhere which relates to the protection of Personal Information and which Customer or Stargate must observe.
 - iii. Personal Information means all information about a person that is 'personal information' as defined in the Act which is collected or held by either Party in connection with this Agreement.
- (b) Each Party must use reasonable endeavours to:
 - i. observe the Privacy Law and any privacy protocol provided to that Party or person by the other Party in respect of all Personal Information;
 - ii. promptly follow any reasonable direction of the other Party in relation to Personal Information;
 - iii. only use Personal Information for the purpose of this Agreement and not for the Party's own purposes;

- iv. ensure that only authorised personnel have access to Personal Information and all relevant personnel are properly trained to meet the requirements of this clause;
- v. provide reasonable assistance to the other Party to enable it to resolve any inquiry or complaint relating to Personal Information; and
- vi. immediately notify the other Party if:
 - a. it knows of or suspects unauthorised use, copying or disclosure of Personal Information;
 - b. it becomes aware that a disclosure of that Personal Information may be required by law; or
 any law prevents or may prevent it from performing its obligations under this clause.

7. Delivery

Stargate is not responsible for any failure to provide the Services if such failure is caused by factors beyond Stargate's reasonable control including, but not limited to, incorrect or ambiguous information provided by the customer, delay in Stargate's receipt of the customer's written instruction, telecommunications failure or fault, or inadequate or unsafe premises provided by the Customer.

8. Inspection & acceptance

You shall inspect all of Stargate's work upon delivery and shall, within forty-eight hours of delivery, give notice to Stargate of any matter in relation to which You allege that the Services are not in accordance with the Statement of Work. Failing such notice, to the fullest extent permitted by law, Stargate's work shall be deemed to have been delivered, and accepted by You.

9. Customer obligations

The Customer must:

- a) Promptly carry out any responsibilities it has that are specified in the Statement of Work and provide responses to Stargate's queries from time to time;
- b) Notify Stargate immediately if any issues or concerns arise in relation to Stargate's performance of the Services including (but not limited to) any issue or concern in relation to Stargate Personnel;
- c) Provide Stargate with the materials and information ('content') which are required by Stargate for the performance of the Services including, without limitation, materials and information in relation to any project, product, system or other thing;
- d) Ensure that the content is complete, accurate and reliable;
- e) If requested by Stargate, provide to Stargate Personnel a reasonable working area in the Customer's premises including reasonable facilities and access to amenities to enable Stargate to provide the Services;
- f) Ensure that its decision makers are reasonably available at all reasonable times to provide any required information in order for Stargate to provide the Services, and that

- information and decisions required are provided promptly;
- g) Comply with all laws and Regulatory Requirements regarding Stargate Personnel, including under Occupational Health and Safety legislation, Workers Compensation Legislation, non-discrimination and equal opportunity legislation and industrial awards, whether they impose requirements directly on Stargate or the Customer;
- h) Accept the consequences of all instructions, information or decisions given by any of its personnel to Stargate;
- i) Give Stargate such credits in respect of Stargate's contribution to any Deliverable as Stargate reasonably requires; and
- j) Maintain Insurances in accordance with the Statement of Work.

10. Customer responsibilities

The Customer will be responsible for obtaining all necessary permissions, authorisations, licences and consents required for the use of any Content supplied or specifically required by the Customer in which:

- a) Any third party owns any intellectual property;
- b) There is information which is confidential to any third party; or
- c) There is information regarding or identifying any person.

The Customer must use the Services and Deliverables in good faith and must at all times comply with this Agreement and all applicable laws, statutes and regulations in all jurisdictions regarding the Customer's use of the Services and Deliverables.

11. Stargate obligations

Stargate will:

- a) Perform the Services in a proper and workmanlike manner and in accordance with the Statement of Work, including any Requirements Documents agreed and specified in the Statement of Work, or as otherwise agreed in writing by the parties from time to time;
- b) Provide Stargate Personnel who, in Stargate's opinion, are properly qualified and experienced in accordance with any required skills, qualifications or experience specified by the Customer in the Statement of Work;
- c) Ensure that Stargate Personnel providing the Services act ethically and honestly and comply with all reasonable and lawful directions (including those relating to security) notified to them regarding use of premises or equipment;
- d) Withdraw any or all Stargate Personnel from providing the Services if, in the Customer's reasonable opinion, those members of Stargate Personnel are unacceptable;
- e) Use its best possible endeavours to provide a replacement Personnel member as soon as practicable, but in

- any case within 10 days after receipt of the Customer's reasonable request;
- f) Use reasonable commercial efforts to perform the Services in accordance with any estimated timetable set out in the Statement of Work.

12. Stargate's assumptions

You acknowledge and agree that Stargate's ability to complete the Services within the estimated timeframes and for the proposed fees are subject to the following assumptions:

- a) All information provided by You to Stargate relating to the Services (including information provided prior to the date of this agreement) is and will be accurate and complete; and Without limiting any other provision of this agreement, if any Assumption proves to be incorrect:
- b) Stargate is relieved from its obligations under this agreement to the extent that its ability to perform its obligations is affected by that Assumption being incorrect; and
- c) Stargate will be entitled to charge additional fees at its usual rates for any additional effort required as a result of the Assumption being incorrect.

13. Indemnities

You indemnify and save Stargate and its officers, employees, personnel and agents (those indemnified) harmless against any expense, loss, claim, judgement, award or order (including settlement of any claim entered into upon legal advice) suffered or incurred by or finally awarded against any of those indemnified arising from or incidental to:

- a) Compliance by Stargate with any instruction, specification or direction of the Customer, including but not limited to the use of any information, content or materials provided by the customer;
- b) Any injury to or death of any person caused by any negligent act or omission or wilful misconduct of the Customer or the Customer's Personnel;
- c) Any damage to real or tangible property caused by any negligent act or omission or wilful misconduct of the Customer or the Customer's Personnel;
- d) Any claim by a third party that the use, reproduction, adaptation, modification or sublicensing by or on behalf of Stargate of any Third Party Software, Customer Data, Services or Deliverables infringes the Intellectual Property('IP') Rights or other rights of any third party; and
- e) Any failure of the Customer to provide a safe system of work and ensure that the Customer and the Customer's Personnel comply with all applicable laws.

Subject to clauses 13 and 14, Stargate indemnifies the Customer and its officers, employees and agents (those indemnified) against all claims, liabilities, expenses, losses, damages and costs suffered or incurred by or finally awarded against any of those indemnified as a direct result of:

- f) Any injury to or death of any person caused by any negligent act or omission

or wilful misconduct of Stargate or Stargate Personnel;

- g) Any damage to real or tangible property caused by any negligent act or omission or wilful misconduct of Stargate or Stargate Personnel; or
- h) Any claim that the use of the Services (including deliverables) as contemplated by this agreement infringes the Intellectual Property Rights of any third party,

except to the extent that any such expenses, losses, damages or costs are the subject of the indemnity in clause 13, or are caused or contributed to by the Customer or the Customer's Personnel.

14. IP Claims

The indemnity provided by each party (Indemnifying Party) under clause 12 (d) (IP Indemnity) is subject to the following provisions:

- a) If a third party makes a claim against a party (Defending Party) that is covered by the IP Indemnity (IP Claim) then:
 - b) The Defending Party must promptly notify the Indemnifying Party of the IP Claim and provide full details thereof;
 - c) The Defending Party must promptly provide all assistance reasonably requested by the Indemnifying Party in relation to the IP Claim;
- d) The Indemnifying Party will have sole control and conduct of the IP Claim and any related settlement negotiations, unless otherwise agreed by the parties;
- e) If the Indemnifying Party agrees to allow the Defending Party to defend the IP Claim, the Defending Party must comply with the Indemnifying Party's reasonable directions in relation to the conduct of such defence and must not settle the IP Claim without the Indemnifying Party's prior written consent;
- f) The IP Indemnity is the Defending Party's sole remedy for an IP Claim.

15. Stargate Liability

Stargate will not be liable under this clause 14 in circumstances where an IP Claim arises directly or indirectly by reason of:

- a) The unauthorised use, misuse or modification by the Customer or the Customer's Personnel of Deliverables or any other output of the Services;
- b) The failure of the Customer or the Customer's Personnel to comply with this agreement or applicable laws, or to follow directions given by Stargate, including user manuals and other documents provided under this agreement;
- c) Stargate's compliance with the Customer's directions given under this agreement;
- d) Information, material or Deliverables provided by any third party (other than Stargate Personnel) to the Customer; or
- e) The Customer's use of any of the Deliverables in combination with any product or information not provided or developed by Stargate (except as contemplated under this agreement).

16. Variation

The provisions of the Agreement can only be varied by agreement in writing signed by the Parties.

17. Severability

If any provision of the Agreement is held invalid, unenforceable or illegal for any reason, the Agreement will remain otherwise in full force apart from such provisions which will be deemed deleted.

18. Notices

Notices under the Agreement may be delivered by hand, by mail or by facsimile to the addresses specified. Notice will be deemed given:

- a) in the case of hand delivery - on written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving Party;
- b) in the case of posting - 3 days after despatch; and
- c) in the case of facsimile - on receipt of transmission if received on a business day or otherwise at the commencement of the first business day following transmission.

19. Fees and Payment

The Customer must pay the Fees to Stargate in accordance with Statement of Work.

- a) Stargate will invoice the Customer weekly and the Customer must pay invoices within 7 (seven) days of the date of the invoice.
- b) Should payment not be effected within the agreed time frame, the Customer will be deemed to be in default and Stargate retains the right to restrict services.
- c) The Parties will mutually agree on the Fees to be payable for any additional services requested or used by the Customer, prior to the use of those additional services by the Customer. If the Customer uses any additional service offered by Stargate, the Customer will be deemed to have agreed to pay for that additional service at the rates and on the terms currently offered by Stargate.
- d) Stargate may vary the Fees set out in the Statement of Work, provided it gives notice to the Customer of those changes at least fourteen (14) days prior to the date from which those revised Fees are to apply.
- e) The Customer must pay Stargate interest on any amount due and not paid by the Customer within the time required by the Agreement at a rate of 24.00% per annum.
- f) The Customer must pay Stargate any late payment fees on any amount due and not paid by the Customer within the time required by the Agreement.
- g) Subject to clause 20, the Customer is liable for any taxes, duties or Fees imposed or levied by any government authority in connection with the supply of the Services.

- h) If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by Stargate, the Customer must pay the portion of the amount stated in the invoice which is not in dispute and notify Stargate in writing within 7 days of receipt of invoice of the reasons for disputing the remainder of the invoice.
- i) If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was first invoiced, then the Customer must pay the amount finally resolved together with interest on that amount in accordance with the terms of payment

20. GST

- a) To the extent that any supply to be made by Stargate to the Customer under or in connection with this Agreement is a taxable supply, the parties acknowledge and agree that:
 - i. any amount expressed as payable;
 - ii. anything else to be provided,
- b) by the Customer for that taxable supply has been determined and agreed upon on the basis that it is the value of that taxable supply ('GST Exclusive Amount').
- c) The consideration for each taxable supply made by Stargate to the Customer under or in connection with this Agreement must be the 'GST Inclusive Amount' (calculated in accordance with clause 11(c)).
 - i. The GST Inclusive Amount for any taxable supply made by Stargate to the Customer under this Agreement will be: the amount determined by multiplying the GST Exclusive Amount by the GST rate (expressed as a decimal) current at the date of making the taxable supply and adding the resultant product to the GST Exclusive Amount; or
 - ii. such lesser amount as Stargate may in its discretion determine.
- d) The Customer must, without any deduction or set-off, pay the GST Inclusive Amount in substitution for the GST Exclusive Amount for any taxable supply made under this Agreement and must pay the GST Inclusive Amount at the time and in the manner the GST Exclusive Amount would otherwise have been payable.
 - i. Except where repugnant to the context:
 - ii. the expression 'GST rate' means the percentage of the value of the taxable supply that is the amount of GST (being 10% at the date of this Agreement);
 - iii. the expression 'GST law' has the meaning given to it in A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
- e) the expressions 'value', 'supply', 'taxable supply', 'GST', 'tax invoice' and other expressions defined in GST law

have the meanings given to those expressions in GST law.

21. Force Majeure

Neither Party will be liable for any delay or failure to perform its obligations pursuant to the Agreement if such delay is due to Force Majeure. If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended. If a delay or failure by a Party to perform its obligations due to Force Majeure exceeds sixty (60) days, either Party may immediately terminate the Agreement on providing notice in writing to the other Party.

22. No Solicitation

- a) Neither party will, without the prior written consent of the other, for a 6 month period after the delivery of the Services or Termination of a Statement of Work, directly or indirectly solicit or offer employment or otherwise engage any personnel of the other party with whom the hiring party or any of its personnel came into contact during the course of the provision of the Services.
- b) In cases where Stargate personnel are engaged by You other than under these Terms of Engagement, Stargate reserves the right to charge You a fee equivalent to Stargate's estimate of costs to replace those personnel, but in any case not exceeding the aggregate of fees payable by You in the preceding three months.
- c) Nothing in this clause will prevent a party from employing a person who responds to a general advertisement or recruitment agency seeking applications.

23. Governing Law

These Terms of Engagement are governed by the Laws in force in the State of Victoria, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts in the State of Victoria, Australia and waives any objection to proceedings in any such court on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum.

24. Relationship of Parties

Nothing in these Terms of Engagement is to be construed as constituting one party as employer, agent or partner of the other party or in joint venture with the other party. No party has authority to bind or purport to bind the other party. Stargate is an independent contractor of the Customer only.

25. Non Exclusive Arrangement

You acknowledge that nothing in these Terms of Engagement prevents Stargate from entering into an agreement with any other person, company, partnership or joint venture in any capacity.

26. Property Rights

The parties acknowledge that this Agreement does not transfer any interest in any intellectual property except where specified in the Statement of Work.

27. Representation

The Customer warrants that it has not relied on any representation made by Stargate which has not been stated expressly in the Agreement, Statement of Work, or specifications contained in any document produced by Stargate and addressed to the Customer.

28. Limitation of Liability

- a) To the extent permitted by law, Stargate (and any of its subsidiaries, employees, contractors, agents and officers) will not be liable for any damages arising in contract, tort (including negligence) or otherwise from the use of (or inability to access or use) the Services or from any action taken (or refrained from being taken) by the Customer. In no event will Stargate be liable for any consequential, indirect or special damages of any kind which may result from the Customer's use of the Services including without limitation loss of profit.
- b) To the extent permitted by law, Stargate excludes all warranties and representations, express and implied, in relation to the Services.
- c) In no circumstances shall Stargate's total aggregate liability under or in any way connected with this Agreement or the provision of the Services (including liability arising as a result of the negligence of Stargate or any third party) exceed \$50,000.

29. No remedy for contributory breach

You have no remedy against Stargate in relation to:

- a) Delayed completion of a Deliverable; or
- b) Failure to complete a Deliverable, where such delay or failure is the direct or indirect result of any act or omission of the Customer or a breach by the Customer of these Terms of Engagement.

30. Termination with Cause

Without limiting the generality of any other clause in the Agreement, Stargate may terminate the Agreement immediately by notice in writing if:

- a) The Customer fails to provide safe premises for Stargate Personnel;
- b) The Customer is in breach of the Agreement and such breach is not remedied within fourteen (14) days of Stargate notifying the Customer of the breach;
- c) The Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
- d) The Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;
- e) The Customer, being a natural person, dies;
- f) The Customer ceases or threatens to cease conducting its business in the normal manner; or
- g) There is any change in the direct or indirect ownership or control of the Customer.

31. Termination for Convenience

Either party may terminate the Agreement at any time by giving the other party not less than 3 months notice in writing. If You give notice of Termination, Stargate may, in addition to terminating the Agreement:

- a) Retain any moneys paid;
- b) Charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
- c) Be regarded as discharged from any further obligations under the Agreement; and
- d) Pursue any additional or alternative remedies provided by law
- e) Charge an Early Termination Fee as specified by Stargate, being Stargate's genuine estimate of the cost that Stargate is likely to incur as a result of redeploying Stargate personnel.

32. Entire Agreement

These Terms of Engagement constitute the entire agreement between the Parties and supersede all other representations, agreements, statements and understandings, whether verbal or in writing.

33. Survival of Agreement

- a) Subject to any provision to the contrary, the Agreement will enure to the benefit of and be binding on the Parties and their successors, trustees, permitted assigns or receivers but will not enure to the benefit of any other persons.
- b) The covenants, conditions and provision of the Agreement which are capable of having effect after the expiration of the Agreement remain in full force and effect following the expiration of the Agreement