



### **Confidentiality and non-solicitation**

Confidentiality During the term of this Agreement, and thereafter in perpetuity, neither party shall without the prior written consent of the other, disclose to anyone any Confidential Information of the other. "Confidential Information" for the purposes of this Agreement shall include each party's proprietary and confidential information such as, but not limited to, customer lists, business plans, marketing plans, financial information, designs, drawing, specifications, models, software, source codes, and object codes. Confidential Information shall not include any information that client makes publicly available or information which becomes publicly available through no act of Techtonic It or Client or is rightfully received by either party from a third party. Client and Techtonic It both agree that they will not solicit for hire and it will not hire or otherwise engage any of each other's employees or contractors, either directly or indirectly during any period services are provided under this agreement or in the 24-month period immediately following termination of this agreement.

### **Force Majeure**

Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, pandemics, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, terrorism, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and within the party's power to satisfy), acts of any governmental body, failure or delay of third parties or governmental bodies from whom approvals, authorizations, licenses, franchises or permits must be obtained, or inability to obtain labor, materials, equipment, or transportation or illness of Techtonic IT technical staff (collectively referred to herein as "Force Majeure"). Each party shall use reasonable efforts to minimize the duration and consequences of any failure of or delay in performance resulting from a Force Majeure event. If the Client work is substantially changed due to a Force Majeure, Techtonic It will evaluate the need for change to IT services to Client and related change of managed service fees. Recognizing there are ongoing expenses to Techtonic IT of maintaining backups, remote monitoring, other vendor support software/licensing and availability of technicians to service on going needs, Techtonic IT will review with Client the need for change of fees if any. Late fees will not be charged under an agreed scenario below: Change in users at an amount of \$X per user. If reduction is on a per user, as staff returns to work the per user fee will be added back to the monthly fee and prorated as of the date of return if mid-month. A flat fee charge per month. If the change is a flat fee per month then billing will resume upon Client's resumption of services as mutually agreed between Techtonic IT and Client. This may be an evaluation between the parties of a gradual resumption of workers and network activity or an immediate resumption of workers and network activity.

### **Warranties & Guarentees**

Techtonic IT shall not be liable to Client or any of its affiliates for any damages, whether incidental, direct, indirect, special, consequential or punitive damages arising out of service or equipment provided hereunder, including but not limited to loss of profits or revenue, loss of use of equipment, lost data, or loss to person or property, costs of substitute equipment or other costs even if Techtonic IT has been advised of the possibility of such damages. Regardless of the form of action, Techtonic IT cumulative liability shall be only for loss or damage directly attributable to negligence of a Techtonic IT employee or contractor, for the cost of restoring the network to its condition prior to the negligence, but not to exceed thirty thousand Dollars. If a collection action is initiated by either party or if Techtonic IT has to defend any action by Client, Techtonic IT is entitled to its reasonable attorney fees and expenses to be paid by Client. Implied Warranties are expressly disclaimed by Techtonic IT. An Techtonic IT contractor is a technician or contractor who operates on behalf of Techtonic IT, is paid by Techtonic IT and has access to Techtonic IT service ticket management system for making time entries and charges for their work. Techtonic IT is not responsible for the acts of other technicians, contractors or



consultants providing service to Client not under its control and direction. If Client purchases equipment from Techtonic IT T it understands and agrees that it will look to the manufacturer for all remedies and warranties and agrees Techtonic IT IT is not responsible for functioning of the equipment and has not made any express or implied warranties. Techtonic IT shall not be liable for any claim or demand against the Client by any third party on account of errors or omissions performed hereunder. Remote access to personal computers and/or networks. If or when Client transitions to home or alternative networks, Techtonic IT will make best effort to make connections and serviceability. However, home or alternative networks may not have adequate internet connectivity and equipment to effectively work. Techtonic IT is not responsible for inadequacies in those home or alternative networks or to secure those connections. Home equipment will not be as secure and may not have Techtonic IT software and security features. Techtonic IT is not responsible for the security of the home or alternative networks. Work on a home or alternative network unless otherwise included is outside the scope of this Agreement and Techtonic IT may charge it's then hourly rate for work on home or alternative networks. Techtonic IT will charge for additional software installed at home or alternative networks as needed. In the event of a Force Majeure Techtonic IT is not required to have technicians work during periods or at places where their safety or health could be in jeopardy and in any event will not require technicians to go on site. Client agrees to carry liability insurance and property insurance covering any damage to its network as well as to any clients of the Client adversely affected by Client's network functioning or transmissions from its network. Techtonic IT may apply changes or additional terms, conditions and provisions to this Agreement upon 30 days advance written notice to client containing the proposed addition or change. If the additions or changes are not objected to then they shall take effect at the end of the 30 days. Within the 30 days Client may submit changes or objections to the proposed changes or additional terms. If the parties do not agree on the change or addition, then it shall not become part of the Agreement. All the terms, conditions and provisions of this Agreement will continue to apply during any renewal term. Both parties agree to negotiate in good faith rates to be mutually agreed under any renewed contractual service term to be effective at the end of the initial term.

### **Disruption of Services**

We aim to provide our Services with minimal interruptions, but sometimes they may be affected by factors outside our control. These factors include, but are not limited to: (a) problems with internet or telecommunications services, such as outages, delays, congestion, failures or faults; (b) actions or omissions of Third Parties that are harmful, negligent or wilful; (c) maintenance or repairs carried out by any Third Party on the systems we use to deliver our Services; or (d) services provided by Third Parties that stop or become unavailable. We will do our best to inform you of any disruptions and resume the Services as soon as possible.

### **Payments & Billing**

Failure to pay: If payment is not received by the first of the month for that month of service TECHTONIC IT reserves the right to put a hold on rendering on-site and remote services until monthly fee has been paid, provided TECHTONIC IT gives a five (5) business day notice of late payment. It is understood that any Federal, State or Local Taxes applicable shall be added to each invoice for services or materials provided by Techtonic IT. Client shall pay any such taxes unless a valid exemption certificate is furnished to Techtonic IT for the jurisdiction of use, except in cases when Techtonic IT procures or sources the incorrect equipment and / or software and / or support services any incorrect items or software shall be returned to Techtonic IT. If Client fails to make payment for any services or items purchased, and such failure continues for fifteen days, interest shall accrue on any amount due at the rate of 12% per annum until paid. In the event collection processes are instituted to collect any amounts due from Client, Client shall pay the costs of collection plus reasonable attorney fees.

#### **Annual CPI Annual CPI Price Increase**

Unless we have agreed otherwise in the relevant Subscription Agreement, we may increase Fees on 1 January each year by an amount calculated by multiplying the then current Fees by a fraction, the denominator of which is CPI for the quarter ending 12 months prior to the relevant adjustment date, and the numerator of which is the CPI for the quarter ending immediately before the adjustment date.

#### **PRIVACY**

You are responsible for the collection, use, storage and other dealings with Personal Information related to your business and the Services. You must comply, and ensure that your Personnel or Users comply, with Privacy Laws in relation to any Personal Information that you or they handle under or in connection with this Agreement or any applicable Subscription Agreement. You undertake for yourself, and on behalf of your Personnel or Users, to: obtain all necessary consents from individuals (including your Users) for any Personal Information that you supply to us under this Agreement or any applicable Subscription Agreement, as required by Privacy Laws; provide all notices to individuals (including your Users) from whom you collect Personal Information, as required by Privacy Laws; ensure that any Personal Information you transfer to us is complete, accurate and up to date; and notify us immediately if you become aware of any breach of Privacy Laws that may affect Personal Information under this Agreement or any applicable Subscription Agreement. You must not disclose Personal Information to us unless: You have legal authority to collect, use, disclose, store or handle the Personal Information as required by this Agreement or the applicable Subscription Agreement under the relevant Privacy Laws; and you have obtained the consent of the individual to whom the Personal Information relates to collect, use, disclose, store or handle the Personal Information in the manner required by this Agreement or the applicable Subscription Agreement. We will collect, use, disclose, store, and handle Personal Information in accordance with this Agreement, any applicable Subscription Agreement, our Privacy Policy, and applicable Privacy Laws.

#### **DATA SECURITY**

We must: Take reasonable precautions to prevent a Security Breach in relation to the Customer Data; and Promptly notify you if we become aware of an Eligible Data Breach to the extent permitted by Applicable Law (including under the Privacy Act). You are solely responsible for keeping any Access Credentials secure and confidential. You acknowledge and agree that: Access Credentials must not be shared or used by more than one User; We will not be responsible for any Security Breach or Eligible Data Breach that is caused or facilitated by your conduct or failure to protect any Access Credentials, unless Applicable Law prohibits us from excluding liability; and You must immediately notify us if you suspect or know that Access Credentials have been compromised. You acknowledge that we may have to allow Third Parties, such as a Government Agency, to access and inspect information, documents and data including your Customer Data. You agree to us giving such access to the extent that we are required to do so by Applicable Law.

#### **PUBLICITY**

Neither party may make public statements or press releases about this Agreement, any Subscription Agreement or their relationship without the other party's written consent. We can use your name and logo in our customer lists and marketing with your written consent.

#### **LIABILITY**

Our liability to you for any non-compliance with a statutory guarantee, or loss or claim arising out of or in connection with the supply of goods or services under this Agreement or any applicable Subscription Agreement, or any breach by us of this Agreement or any applicable Subscription Agreement however arising (whether for breach of this Agreement or a Subscription Agreement, by way of indemnity, tort (including negligence), statute, custom, law or on any other

basis), is limited to: (a) the resupply of the Services; or (b) the cost of re-supplying the Service, and in any event will be limited to the fullest extent permitted by Applicable Law.

#### **WHERE THE AUSTRALIAN CONSUMER LAW APPLIES**

- Additional charges for secure shredding
- Scanning of additional documents without prior approval for additional labour costs
- Ongoing scanning of new documentation unless additional project and costs are agreed

#### **WHEN WE WILL NOT BE LIABLE TO YOU**

We will not be liable to you for any error, problem or defect arising from or in connection with: your or your Users' access or use of the Services in a manner not authorised by us in writing, including access or use with any hardware, software or other services not authorised by us in writing; enhancements, adaptations, translations or modifications of the Services not made by us faults, malfunction or defect in any Third Party Material; or telecommunications or power failure or fault, or defective network or Internet connection. We will not be liable to you to the extent that a failure to deliver the Services or meet a Service Level was caused or contributed to by: you, your Third Party providers, Personnel or Users; a breach of obligations under this Agreement or any applicable Subscription Agreement by you or your Third Party providers, Personnel or Users; or any of the circumstances set out in clause 25(a)-(d)

#### **MUTUAL LIABILITY CAP**

In no event will either party's aggregate cumulative liability (whether in contract, tort, negligence, statute or otherwise, including by way of any indemnity) arising under or in connection with this Agreement and all Subscription Agreement, exceed average monthly fees paid by you to us under all then-current Subscription Agreements, multiplied by twelve (12).

#### **MUTUAL EXCLUSION OF LIABILITY FOR CONSEQUENTIAL LOSS**

Except in accordance with clauses 22, 23, 24, in no event will either party be liable for any indirect loss (not being a loss which arises naturally as a result of a breach of this Agreement or any applicable Agreement or other event giving rise to the relevant claim) or any loss which is consequential, special, punitive, exemplary or incidental, and includes loss of reputation, loss of goodwill, lost profits, lost revenue, loss of or damage to data, loss of use (including loss of use by Third Parties), any failure to realise anticipated savings and loss of opportunities, wasted staff costs, or costs of procurement or substitution of goods and/or services.

#### **PROPORTIONATE LIABILITY**

Each party's liability under the Agreement or any applicable Subscription Agreement (including under any indemnity) is reduced proportionately to the extent that such liability is caused or contributed to by the breach of this Agreement or the applicable Subscription Agreement or the wrongful, unlawful or negligent act or omission of the other party or its Personnel.

#### **MUTUAL DUTY TO MITIGATE LOSS**

Each party must use all reasonable endeavours to mitigate its losses. This Agreement is fully assignable by Techtonic IT. Immediately upon assignment the assignee's name, address and contact information shall be provided to the other party. This Agreement shall be fully binding and enforceable as against all permitted assignees and successors in interest.



## TERMINATION & DISPUTE RESOLUTION

**Termination: Termination by Client:** Client may terminate this Agreement with or without cause after the first 12 months of the Agreement have passed. Payment of a Termination Fee equal to the amount of the monthly Managed Services fee agreed to in this Agreement and ii.) payment of all past and currently due amounts together with late fees and costs unless client has valid reason to withhold payment on incomplete tasks, work orders or faulty equipment and provided, Techtonic IT was notified in a service ticket within 10 days of the original occurrence of any incomplete tasks, work orders and/or faulty equipment which it itemized with sufficient detail to identify the problem. That amount may be withheld until the incomplete tasks, work orders or equipment issues are resolved. Techtonic IT shall be given a reasonable opportunity to correct any problems. Any such election shall be made in writing by Notice of Termination and is to be accompanied by the Termination Fee and all other amounts due. **Termination by Techtonic IT:** Upon giving notice to Client of default and the default is not cured within ten (10) business days of receipt of written notice from Techtonic IT or for failure of Client to pay for service or products at the time of ordering or within 30 days of billing. Failure of Techtonic IT to require payment at the time provided shall not be construed as a waiver of the right to do so. Any of the following which remains un-dismissed for a period of sixty (60) days: If Client files protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver is commenced by a third party against Client. Failure of Client to comply with its obligations in this Agreement after written notice by Techtonic IT of the non-compliance and failure to correct the problem or acknowledge the problem and commitment to take corrective action in the future.

In the event of default or early termination or in the event the parties do not renew at the end of the term of this Agreement: Client shall be responsible for transferring services to a system administered by Client or others on its behalf and for paying any costs of transferring and/or setting up services off of the system maintained by Techtonic IT. If Client does not provide for any transfer of services, they shall be terminated within 30 days of the Notice of Termination or Notice of Default. Client assumes all responsibility for its services and Techtonic IT has no responsibility to retain backups. In the event prior to the end of the 30 days, client obtains its own services then it shall notify Techtonic IT so it's services can be terminated. In the event of default or termination under any circumstances Client agrees it will provide access to Techtonic IT technicians to remove antivirus licenses and monitoring tools. The consequence of and failure to provide this access shall be that Client shall continue to be responsible for 50% of the amount of the monthly Managed Services payment until access is allowed and the licenses and tools removed. In the event of termination by either party, Client is responsible for the full amount of all payments for services provided and products ordered. If either party terminates the relationship of managed service provider and client or if Client defaults then the parties agree to work cooperatively to transfer the client's data and network information as directed by the client to another service provider or to the client. The client will pay the cost of transfer which will include hourly charges of technicians to accomplish the transfer and any services maintained by Techtonic IT containing Client data. Client must designate a vendor to handle its email, services and any other services provided by Techtonic IT.

Client must establish an account for transfer of the services and any other services within 30 days of notice of termination or default, or within 30 days of termination of this SLA. Techtonic IT has no responsibility for services, email or other services beyond 30 days following termination or default under this Agreement unless otherwise agreed in writing by both parties. In the event of termination of services for any reason by either party, upon written request by Client Techtonic IT will provide up to 60 days support to allow Client to make a transition provided Client pays all amounts then due and pays the fee for the additional 60 days in advance. **Dispute Resolution:** All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration unless they are of an amount which can be handled within the small claims court of the jurisdiction of the Techtonic IT. The parties agree they waive the right to bring a lawsuit based on such claims or disputes other than in small claims court. Before commencing any arbitration proceedings the aggrieved party must first present the claim or dispute in writing to the other party. The parties shall have 30 days to resolve the claim or dispute. If not resolved then the aggrieved party may commence arbitration proceedings. This Agreement does not create any rights in any third parties. Programs must be installed by an Techtonic IT technician or software technical support with an Techtonic IT technician assisting. Techtonic IT shall not be responsible for maintenance of or for repair of errors or malfunctions occasioned by any installation, modification or enhancement to the Programs made by Client or by anyone other than Techtonic IT unless Techtonic IT has



agreed. Corrections of unauthorized modifications shall be at the rate of \$195 + GST per hour and may be grounds for immediate termination by Tectonic IT of this Managed Services Agreement.