



SFOA
(STANDARD FORM OF AGREEMENT)
ENACTED BY COMPLETION OF
BAAF
(BUSINESS ACCOUNT ACTIVATION FORM)



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RECITALS

- A. This Standard Form of Agreement (SFOA), enacted by completion of Business Account Activation Form (BAAF) together detail the standard terms and conditions of trade for the supply of goods and services by Mach Technology Group Pty Ltd (Mach) and the pricing of our goods and services is based on the conditions and obligations detailed herein.
- B. Specifications for all goods delivered and services performed by Mach are in accordance with the associated Service Catalogue product collateral, technical specifications, pricing and term.

1. Quality Management System

1.1. ISO9001 Certification

Mach is committed to a culture of continuous improvement, innovation and quality management. As evidence of this commitment Mach will maintain its ISO9001 Quality Management System certification in accordance with international best practice and external audits. The scope of Mach's certification covers: "*Provision of ICT consulting services, systems integration, managed services, application design, development and hosting, internet solutions, retail sales, servicing and repairs.*"

1.2. Measurement and Monitoring Tools

Mach will utilise automated measurement and monitoring tools and procedures required to accurately and promptly measure and report Mach's performance of the Services against the applicable Service Levels, which are appropriate and adequate given Mach's role as an experienced and capable ICT outsourcing vendor.

1.3. Maintenance of Mach systems and technology

Mach or its subcontractor(s) may conduct maintenance on its systems and technology, in a manner in its absolute discretion, in order to maintain to a high-quality level of service consistent with its ISO9001 certification. This explicitly gives Mach the right to perform (without Customer knowledge or consent) maintenance on systems in a prudent and timely fashion, which may increase risk or actually cause interruption to normal Services. Customer agrees that Mach needs to be able to take such action to assure its quality controls and security mechanisms. Mach will use its best endeavours to advise Customer or post notices to <http://status.mach.com.au/> where such maintenance is materially required, with reasonable in-advance notice when practical. Mach Technology will determine in its absolute discretion from time to time the data centre location(s) from which your Service is provided. Mach Technology reserves the right to migrate your Services between facilities. We will use reasonable endeavours to minimise downtime and you will have no claim against Mach for downtime in supply of the Services caused via activity per this clause.

1.4. Escalation & Dispute Resolution

Mach encourages its Customers to raise any issues in a timely fashion so that they may be dealt with to both parties satisfaction as early as possible and at the lowest level possible. In the event an issue remains unresolved the ISO9001 Quality Management System has an escalation procedure that the parties will follow as a formal Dispute Resolution methodology.

2. Services Supply

Mach will supply professional and technical Services in accordance with the Proposal. The scope may be varied at any time by the Customer with reference to Service Catalogue Product goods and services "line-items", thereby providing a flexible and known-charging mechanism for adequately assuring the service quality of the Customers ICT environment.

2.1. Supply of Goods & Services

2.1.1 Mach will, with effect from the Commencement Date, supply the Services detailed for the benefit of the Customer for the relevant Charges as detailed. To avoid doubt, included as beneficiaries of the Services are those independent contractors to the Customer or any other specified Third Party.

2.1.2 To avoid doubt, the Parties expressly acknowledge:

- i. from the Commencement Date, Annuity Services will be supplied and Customer may acquire Additional Services at any time by agreement (by enacting reference to Service Catalogue or as otherwise agreed);
- ii. any activities which fall outside the scope of the Annuity Services as detailed at the time of request, may be acquired by Customer in accordance with this Agreement.

3. Service Catalogue & Products

3.1. Mach will continually develop, innovate and amend its various Products as included and varied from time to time in its Service Catalogue. We call this our "innovation promise" and to allow us the flexibility required to rollout when we deem appropriate, the particulars of a Product may be varied at any time by Mach.

3.2. Typically, this means that our Customers are routinely gaining increased functionality, performance or quality for no increase in charges. However, if a product change has a material technical limitation or cost increase on the Customer's use and benefit of the Product, Mach will either:

- i. Continue to deliver the superseded product for no longer than 90 days; or
- ii. Apply a credit so that the change is cost-neutral for the period equivalent to 90 days.

3.3. In addition, unless explicitly excluded or achieved via alternative algorithm by agreement, prices will increase by CPI on an annual basis (using the most recent published CPI value at time of change).

4. Service Level Agreement (SLA)

4.1. Standard SLA

As detailed online at <http://sla.mach.com.au/>

4.2. Premium SLA

Customer may wish to apply a Premium SLA undertaking to a specific service from time to time and shall do so via negotiation with Mach and subject to an acceptable technical design (e.g. so that single points of failure do not exist) a 'Premium SLA Form' will be completed for this purpose and will then form part of this Agreement.

5. Location of Equipment & Monitoring Realm

The Customer has an ICT environment that has its realm spanning equipment it owns and operates &/or equipment owned and operated via 3rd Party or Parties. For Mach to adequately assure the operation of the agreed scope of the customer ICT realm, it may require – in addition to the capabilities and coverage inherent and possible from Mach data centres – the installation of Mach Monitoring software within the Customer &/or 3rd Party ICT environments.

5.1. Customer Owned Equipment

Customer will facilitate the installation of Monitoring platform software on agreed technology equipment that the Customer owns and operates, in support of Mach providing the Monitoring system coverage required for the solution.

5.2. Mach Owned Equipment

Mach may deploy by agreement, technology equipment that is wholly owned and managed by Mach, in support of Mach providing the Monitoring system coverage required for the solution.

5.3. 3rd Party Owned Equipment

For technology equipment that provides the Customer with capabilities it utilises in support of its business, but the technology equipment is owned or operated by 3rd Parties, the Customer will assist and facilitate Mach achieving a monitoring configuration suitable to adequately assure its function to the Customer. This assistance may include insisting upon the installation of "read-only monitoring agent software" in 3rd party supplier contracts.

6. Material & Technical Specifications

6.1. Provision during the Term

During the Term, Customer will provide Mach with access to all relevant Customer material (including necessary technical specifications), or arrange permitted access in respect of any relevant Third Party material, to enable Mach to supply the Services without interruption.

6.2. Return of Material

At the earlier of the expiry or termination of this Agreement, Mach will return any and all Customer material and Third Party material in its possession or control to Customer and/or carry out destruction of any remaining such Material as reasonably directed by Customer. To avoid doubt, all Customer owned data will be returned only upon receipt of payment of final disengagement Invoice.

7. Reliance upon Telecommunications

Mach is not a Telecommunications Carrier and therefore many of the Mach Products/Services are dependent on the quality and uptime of third party telecommunications voice and data services for correct end-end operation. Customer expressly acknowledges this external dependency and will not hold Mach responsible or liable for the impact of such issues arising. Mach provides a value-added service in our technical and project management of Telecommunications Carriers/services (including for provisioning/design and issue resolution) and to avoid doubt, Customer acknowledges that Mach provides this Service on a professional (not free) basis.

8. Customer Responsibilities

In addition to Customer's responsibilities as expressly set forth elsewhere in this Agreement, Customer will be responsible throughout the Term for the following:

- i. Timely supply of all relevant information to Mach necessary to enable Mach to perform its obligations under this Agreement;
- ii. Appointment of a Customer representative to be the principal point of contact for obtaining such decisions, information, approvals and acceptances (or refusals and non-acceptances);
- iii. The making available to Mach, as reasonably requested by Mach, applicable management decisions, information, approvals and acceptances (or refusals and non-acceptances and the reasons for such refusals or non-acceptances); and
- iv. Prompt intervention as necessary between Mach and any Third Party to enable Mach to supply the Services without interruption, at Mach's request and in consultation with Mach.

9. Charges & Invoicing

9.1. General

9.1.1 The Customer shall pay the Charges for Services as presented on a correctly rendered tax invoice supplied by Mach (delivered by email) to the nominated representative, on or prior to the due date indicated on the Invoice.

9.1.2 If Customer disputes any invoice, or any part of an invoice:

- i. Customer shall be liable to pay the undisputed part of that invoice prior to the due date;
- ii. Customer shall be entitled to withhold the disputed part of the invoice until that dispute is resolved; and
- iii. Following Mach's investigations and determination (in its reasonable opinion) whether the disputed service line item is a valid claim, Mach will issue corresponding credit note.

9.1.3 Where Customer does not pay an Invoice within payment terms (i.e. due by date) and also does not advise Mach of the reason for non payment within 14 days of receipt of the Invoice, Customer will be deemed to have accepted the Fees by the Invoice due date.

9.2. Late Payment Fees

A 5% late payment fee will be applied to the net outstanding balance owing by the Customer at the end of each month.

9.3. Goods and Services Tax

9.3.1 If any supply made under this Agreement is subject to GST, Customer must pay Mach the Charge plus an additional amount equal to the GST payable.

9.3.2 Customer must pay an amount payable under this clause no later than the date the Charge is due, but Customer need not make any payment until Mach has given Customer a GST tax invoice in relation to that payment.

9.3.3 Mach warrants that the amounts referred to in any GST tax invoice given by it to Customer will correctly reflect the GST payable on the relevant supply and the invoice itself will comply with all requirements for a tax invoice under any law or regulation.

10. Safeguarding of Data and Confidentiality

10.1. Safeguarding Customer Data

10.1.1 Mach will establish and maintain reasonable safeguards against the destruction, loss, or alteration of Customer Data in the possession of Mach which are no less rigorous than the most rigorous of the following in each relevant matter:

- i. The safeguards maintained by Mach for its own information or for any other client of a similar nature to Customer in Australia; and
- ii. The requirements (if any) of any Regulator or Government.

10.1.2 Without limiting the generality of the foregoing, Mach will comply with all relevant components of Customer's Information Security Policy and Customer's Privacy Policy, if any, as disclosed to Mach at the Commencement Date. Any changes to those which have a material impact on the cost of providing the relevant Service after the Commencement Date will be dealt with through a variation to the Charges.

10.1.3 Mach acknowledges that it has no right, title or interest in Customer Data.

10.2. Confidentiality

Mach and Customer each acknowledge that they may be furnished with, receive, or otherwise have access to information of or concerning the other Party which such Party considers to be Confidential Information. The terms and conditions of this Agreement will be deemed Confidential Information.

10.3. Obligations

10.3.1 Each Party's Confidential Information will remain the property of that Party except as expressly provided otherwise by the other provisions of this Agreement. Customer and Mach will each use at least the same degree of care, but in any event no less than a reasonable degree of care, to prevent disclosing to third parties the Confidential Information of the other, as it employs to avoid unauthorised disclosure, publication or dissemination of its own information of a similar nature, and Mach will, in addition, use no less a degree of care than given to other similar customers, provided that the Parties may disclose such information to entities performing activities connected with the supply of Services, where:

- i. involvement of such entity is authorised under this Agreement;
- ii. such disclosure is necessary or otherwise naturally occurs in that entity's scope of responsibility;
- iii. the entity agrees in writing to assume the obligations described in this clause; and
- iv. the Party disclosing the relevant information to its entity indemnifies the other Party for all Losses arising out of the unauthorised disclosure of such information.

10.3.2 Any disclosure to such entity as contemplated in clause 10.3.1 above will be under the terms and conditions as provided herein.

10.3.3 As requested by Customer during the Term and upon expiration or any termination of this Agreement and completion of Mach's obligations under this Agreement, Mach will return or destroy, as Customer may direct, all material in any medium that contains, refers to, or relates to Customer Confidential Information, and retain no copies.

10.3.4 Both Parties will take all reasonable steps to ensure that its personnel comply with these confidentiality provisions. Mach will ensure all subcontractors agree to similar confidentiality obligations.

10.3.5 In the event of any disclosure or loss of, or inability to account for, any Confidential Information of the furnishing Party, the receiving Party will notify the furnishing Party promptly upon becoming aware thereof.

10.3.6 This clause will not apply to any particular information which Mach or Customer can demonstrate:

- i. was, at the time of disclosure to it, in the public domain;
- ii. after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving Party;
- iii. was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further use or disclosure; or
- iv. was independently developed by the receiving Party without reference to Confidential Information of the furnishing Party.

10.3.7 In addition, a Party will not be considered to have breached its obligations by disclosing Confidential Information of the other Party as required to satisfy any legal requirement of a competent Government body or Regulator provided that, immediately upon receiving any such request and to the extent that it may legally do so, such Party advises the other Party promptly and prior to making such disclosure in order that the other Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

10.4. Loss of Confidential Information

In the event of any disclosure or loss of, or inability to account for, any Confidential Information of the furnishing Party, the receiving Party will promptly, at its own expense:

- i. notify the furnishing Party in writing;

- ii. take such actions as may be necessary or reasonably requested by the furnishing Party to minimise the violation; and
- iii. cooperate in all reasonable respects with the furnishing Party to minimise the violation and any damage resulting therefrom.

10.5. No Implied Rights

Nothing contained in this clause will be construed as obliging a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party except to the extent expressly required to properly perform this Agreement.

10.6. Compliance with Privacy Law

Mach will perform its obligations under this Agreement in compliance with all aspects of the *Privacy Act 1988 (Clth.)*, and any associated regulations or codes of conduct (together "**Privacy Law**") applicable to the provision of the Services and/or Customer's business. However, Customer acknowledges that Mach will not be liable for a breach of any Privacy Law to the extent that such breach by Mach is the direct result of Customer's instructions. To the extent that Customer changes its Privacy policies and does not inform Mach of such changes, then Mach will not be liable under this clause to the extent that it acts in breach of those Privacy policies as a result of the changes.

11. Intellectual Property

11.1. Software

11.1.1 Mach retains all right, title and interest in and to, or all licensee rights in and to all software and materials it uses, deploys and develops unless explicitly agreed otherwise as Customer supplied or owned software.

11.1.2 As of the Commencement Date, Mach is granted, to the extent permitted by relevant software licences and/or third party providers of the software, a non-exclusive irrevocable license during the Term to use, copy, maintain, modify, enhance and create derivative works of software for the sole purpose of providing the Services pursuant to this Agreement and the right to sub-licence any subcontractor third parties to do any of the foregoing. Where Customer requires any Service to be performed using software other than the Customer software licensed under this paragraph, it will notify Mach of such change.

11.2. Rights in Software and Materials

11.2.1 Mach will ensure that all software and materials, developed by Mach as part of the Services, whether developed solely or jointly by Mach, its subcontractors or third parties (developed materials) will, subject to clause 11.2.3 below, be owned and able to be used by Mach.

11.2.2 For those developed materials developed by Mach specifically for Customer in the course of supplying Additional Contract Services (i.e. for the express purpose of Customer purchasing developed intellectual property), unless otherwise agreed, Mach hereby assigns or grants to Customer effective on final payment for the Additional Contract Services, the entire copyright and all other rights of a like nature throughout the world in such developed material (and, where relevant, will do all acts and things reasonably necessary to procure the same from any third party) and Mach will have the following licence rights back from Customer in perpetuity:

- i. an irrevocable, non-exclusive, worldwide, licence to use, execute, reproduce, display, perform and distribute such software and materials internally within Mach for the sole benefit of and exclusive use to provide the Services to Customer and the Customer Group; and
- ii. the right to sub-licence third parties to do any of the foregoing under (i).

11.2.3 The Parties agrees that certain materials will not fall into the category of developed materials and, to avoid doubt, Mach is not required to assign to Customer the copyright in:

- i. Modifications made to software which incorporate any Mach owned software (or its Related Bodies Corporate); or
- ii. Any materials owned or developed by Mach outside of this Agreement but directly used by Mach for the supply of the Services during the term, being materials critical to the successful supply by Mach of the Services (including any materials or software associated with the provision of Subscription Services).

11.2.4 In respect of the modifications and materials described in 11.2.3 above, Mach retains all right, title and interest in the modifications and materials and no grant of licence is made to Customer beyond the Term unless agreed prior to Termination.

11.3. Residual Knowledge

11.3.1 Nothing contained in this Agreement will restrict either Party from the use of any ideas, concepts, know-how, methodologies, processes, technologies, algorithms or techniques relating to the Services which either Party, individually or jointly, develops or discloses under this Agreement, provided that in doing so such Party does not breach any obligation of confidentiality or infringe the intellectual property rights of the other Party or third parties who have licensed or provided materials to the other Party.

11.3.2 Except for the license rights contained here, neither this Agreement nor any disclosure made hereunder grants any license to either Party under any patents or copyrights of the other Party.

12. Warranties

12.1. Work Standards

Mach warrants and agrees that:

- i. Throughout the Term, the Services will be rendered with promptness and diligence and due care and skill and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services.
- ii. Throughout the Term, Mach will use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Services.
- iii. Throughout the Term, all components and Equipment supplied or used in the course of the provision of the Services by Mach shall be used and maintained in accordance with their manufacturers' technical specifications.

12.2. Reliance upon Information

12.2.1 Mach warrants that:

- i. It is not aware as at the Commencement Date of any matters, within its reasonable control, which might or will adversely affect its ability to perform its contractual obligations under this Agreement.
- ii. Information it has provided to Customer in writing concerning Mach as it relates to Mach's ability to perform the Services, is accurate and not misleading, including by omission;

12.2.2 Customer warrants that the information it has provided to Mach, as it relates to Mach's ability to perform the Services, is accurate and not misleading, including by omission. For avoidance of doubt, this clause is to ensure that the Charges are payable regardless of any negative impact arising from inadequate information.

12.3. Non-Infringement

Each Party warrants that throughout the Term it will perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any patent, copyright, trade mark, trade secret or other proprietary rights of any third party.

12.4. Authorisation

Each Party represents and warrants to the other that:

- i. it has the requisite corporate power and authority to enter into this Agreement and to carry out all the transactions contemplated by this Agreement; and
- ii. the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorised by the requisite corporate action on the part of such Party.

12.5. Disclaimer

12.5.1 Mach does not warrant the accuracy of any advice, report, data or other product delivered to Customer which is produced with or from data and/or software provided by Customer to the extent that any inaccuracy is the result of the data or software provided by Customer. The foregoing disclaimer does not apply in respect of Customer data which is current and available to Mach and supersedes earlier Customer data.

12.5.2 Subject to the obligations of Mach contained in this Agreement to always provide the Services to the Service Levels, Mach does not assure uninterrupted or error-free operation of the Equipment and/or the software.

13. Insurance, Loss, Indemnities & Liability

13.1. Insurance

13.1.1 Mach will during the Term have and maintain in force the following insurance coverages:

- i. Worker's Compensation Insurance.
- ii. Public Liability Insurance, at not less than AU\$10 million; and
- iii. Professional Indemnity Insurance, at not less than AU\$3 million.

13.1.2 Upon request by Customer, Mach will cause its brokers to issue certificates of insurance evidencing that the coverages required under this Agreement are maintained in force and that not less than 30 days written notice will be given to Customer prior to any material modification, cancellation or non-renewal of the policies.

13.2. Risk of Loss

Customer is responsible for insuring and replacing if damaged or stolen any Equipment owned or leased by Mach and located on Customer (or agreed 3rd Party) Sites and Customer Data.

13.3. Indemnity by Mach

Mach agrees to indemnify, defend and hold harmless Customer from any and all direct Losses arising from, in connection with, or based on allegations of, any of the following:

- i. Any claim against Customer arising out of or based on the death or bodily injury of any person or loss, destruction, or damage of any real or personal tangible property caused by the conduct of Mach.
- ii. Any claim against Customer arising out of or based on any claim or action or allegation that any materials or software used by Mach to provide the Services (other than materials or software provided at any time directly or indirectly to Mach by Customer) infringes the intellectual property rights of any third party.
- iii. Any claim against Customer arising out of or based on any claim or action or allegation that Mach has breached an obligation of confidence owed to Customer.
- iv. Any fraud of any Mach employee, contractor, or agent in connection with this Agreement.

13.4. Indemnity by Customer

Customer agrees to indemnify, defend and hold harmless Mach from any and all direct Losses arising from, in connection with, or based on allegations of, any of the following:

- i. Any claim against Mach arising out of or based on the death or bodily injury of any person or loss, destruction, or damage of any real or personal tangible property caused by the conduct of Customer.
- ii. Any claim against Mach arising out of or based on any claim or action or allegation that any materials or software used by Mach to provide the Services and provided at any time directly or indirectly to Mach by Customer infringes the intellectual property rights of any third party.
- iii. Any fraud of any Customer employee, contractor, or agent in connection with this Agreement.

13.5. Conduct Relating to Indemnities

The obligation of a Party to indemnify the other Party under this Agreement is subject to the following in all instances:

- i. Promptly after receipt by a Party of notice of the commencement (or threatened commencement) of any action or proceeding involving a claim for which that Party will seek indemnification from the other Party, the first mentioned Party (the "**Indemnified Party**") will notify the other Party (the "**Indemnifying Party**") in writing that it is obliged to provide indemnification.
- ii. The Indemnifying Party has sole control over the defence and settlement of the claim except that any settlement by the Indemnifying Party which involves a non-monetary remedy will not be entered into without the consent of the Indemnified Party and will include an unconditional release.
- iii. The Indemnified Party will co-operate in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial and defence and any appeal which arises therefrom. The Indemnified Party may participate in the investigation and defence of such claim and employ its own legal support at its own cost and expense to assist in the handling of the claim. The Indemnifying Party will obtain the consent (which will not be unreasonably withheld) of the Indemnified Party to any settlement involving equitable relief.

- iv. Using all reasonable endeavours to mitigate any Losses in respect of which the relevant indemnity is given.

13.6. Liability Restrictions

13.6.1 In respect of the Services, events giving rise to liability arising during the Term, the Parties are agreed that their respective liability to one another shall be limited in aggregate to a sum not exceeding three times the Charges paid or AUD \$100,000 – whichever is the higher – whether the liability arises in contract, tort (including breach of warranty, negligence and strict liability in tort) or pursuant to statute or otherwise arising out of or in any way related to this Agreement, (“Default”) and whether or not there are multiple incidents of liability. To avoid doubt the figure represents the maximum exposure of the Parties to one another for liability arising out of or connected to this Agreement during the Term. General legal rules and construction concerning damages and liability will apply in determining whether or not the aggregate limit is reached.

13.6.2 Without limiting clause 13.6.1, in no event will Mach’s liability include any amount for consequential loss or damage including loss of profits, loss of revenue, loss of data or any special, speculative, indirect or contingent losses.

13.6.3 The parties expressly agree that the limitation of liability set out in clause 13.6 is reasonable in view of the nature of the Services and/or materials to be supplied pursuant to this Agreement.

13.6.4 Each Party will have a general duty to mitigate any loss suffered by that Party.

13.6.5 To the extent of any contributory fault, Mach will not be liable for any damages to the extent caused by Customer’s failure to perform its responsibilities, nor will Customer be liable for any damages to the extent caused by Mach’s failure to perform its responsibilities as set forth in this Agreement.

13.6.6 The parties expressly agree that the limitation regime set out in clause 13.6 is reasonable in view of the nature of the Services and/or materials to be supplied pursuant to this Agreement

13.7. Force Majeure

Failure or delay in the performance by any Party of any obligation under this Agreement will be deemed not to be a breach of this Agreement if:

- i. any one of the Force Majeure Events occurs, and due to such Force Majeure Event any relevant Service Levels are not available; and
- ii. the Party immediately notifies the other Party in writing as soon as the failure or delay is anticipated, of the failure or delay and its expected duration.

14. Termination

14.1. Termination

At any time during the Term, either party may terminate this Agreement in writing in accordance with the notice periods and the applicable early termination payments.

14.2. Effect of Termination

14.2.1 Where this Agreement is terminated, all Additional Services will continue in accordance with their terms, unless the termination notice expressly terminates any or all of those Additional Services.

14.2.2 Where those Additional Services continue (under clause 14.2.1 above), the terms and conditions of this Agreement will continue in respect of those Additional Services.

14.2.3 The activity required by Mach to “remove and return” ICT systems to their pre-Mach/un-provisioned state, i.e. including supporting change to the post-Mach arrangements, de-provisioning of servers/storage/networking/etc and removal of monitoring software and Customer configuration in the Mach Monitoring Platform and Mach Service Management System, will be conducted as a final Additional Task.

14.3. Termination Payments & Charges

14.3.1 If the Term has not expired, the following termination charges will apply:

- i. Year 1: mandatory six-month notice period (whether worked or paid out), plus an additional three months (paid out).
- ii. Year 2: mandatory six-month notice period (whether worked or paid out), plus an additional two months (paid out).

- iii. Year 3 and beyond: mandatory two-month notice period (whether worked or paid out), plus an additional one-month (paid out).

14.3.2 Individually subscribed product services may be varied "on demand" in accordance with the specifications of each respective subscription service (typically with 30 days' notice to vary) per Mach's on-demand business model. However, this feature is not to be misconstrued as a way to materially reduce the scope and quantum of monthly charges applicable through this Agreement. Therefore, the following materiality test criteria will determine the impact on variation(s) in scope:

- i. The sum of all charges over the previous 12 months (or pro-rata if the Agreement is less than 12 months into operation) divided by 12, will give a benchmark monthly charge value for the purpose of calculation per clause 0 above.

14.3.3 Additionally, any telecommunications or other third-party services or licences that Mach has subcontracted and form part of the scope of services provided will be paid out per their respective subscription charge for the full remaining term.

14.3.4 Also, the Customer is to pay for the disengagement Task per clause 14.2.3 above.

14.3.5 Mach will raise a single invoice for the above with payment causing the disengagement Task to commence. Any subsequent agreed variations will be via final invoice in arrears.

15. General

15.1. Compliance with Laws and Regulations

15.1.1 Each Party will perform its obligations in a manner that complies with the applicable federal, state and local laws, regulations, prudential standards, ordinances and codes (including identify and procuring required permits, certificates, approvals and inspections). If a charge of non-compliance by either Party with any such laws, regulations, prudential standards, ordinances, or codes occurs, the Party charged with such non-compliance will promptly notify the other Party of such charges in writing.

15.1.2 Neither Party's execution, delivery, and performance of this Agreement will constitute a violation of any judgment, order, or decree; a material default under any material contract by which it or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default.

15.2. Implied Terms

15.2.1 Subject to clause 15.2.2, any condition or warranty which would otherwise be implied in this Agreement is hereby excluded.

15.2.2 Where legislation implies in this Agreement any condition or warranty and that legislation avoids or prohibits exclusion of or modification of such implied conditions or warranties, then such conditions and warranties are deemed included however each Party's liability for breach of such implied conditions or warranty is limited as follows:

- i. If the breach relates to goods:
 - A. Replacement of goods or supply of equivalent goods;
 - B. Repair of such goods;
 - C. Payment of the cost of replacing the goods or acquiring equivalents; or
 - D. Payment of the cost of repair.
- ii. If the breach relates to services:
 - A. Supplying the services again; or
 - B. Paying the cost of having the services supplied again

and the abovementioned remedies shall be made available by the breaching Party to the non-breaching Party at the non-breaching Party's reasonable discretion.

15.3. Relationship of Parties

Mach, in furnishing the Services hereunder, is acting as an independent contractor, and Mach has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Mach under this Agreement. Mach is not an agent of Customer and has no authority to represent Customer as to any matters, except as expressly authorised in this Agreement and in any written authorisation issued pursuant to this Agreement. The arrangements proposed hereunder do not constitute a partnership or joint venture.

15.4. Consents and Approval

Except where expressly provided as being in the discretion of a Party, where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement, such action will not be unreasonably delayed or withheld. An approval or consent given in writing by a Party under this Agreement will not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor will it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

15.5. Notices

15.5.1 Unless expressly provided for elsewhere in this Agreement, all notices, requests, consents and other documents authorised or required to be given by or under this Agreement will be given in writing and either personally served or sent by email addressed as follows:

Mach
To: Managing Director
Address: 9 Creswell Street, Newstead QLD 4005
Email: Andrew.curtin@mach.com.au
Copy to: General Counsel (via hard-copy postal mail at above address)

Customer
To: refer covering Business Account Activation Form (BAAF)
Address: refer covering Business Account Activation Form (BAAF)
Email: refer covering Business Account Activation Form (BAAF)
Copy to: General Counsel (via hard-copy postal mail at above address)

- i. And in accordance with agreed notification and escalation procedures set out in any management documentation.

15.6. Counterparts

This Agreement may be signed in any number of counterparts and all such counterparts taken together will be deemed to constitute one and the same document.

15.7. Legal Costs

Each Party will bear its own legal costs in relation to this Agreement.

15.8. Severability

If any provision of this Agreement will be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby, and such provision will be deemed to be restated to reflect the original intentions of the Parties as nearly as possible in accordance with applicable laws.

15.9. Good Faith

A reference to "good faith" in this agreement means that the applicable Party must not act unconscionably, use misleading or deceptive conduct nor any element of duress (including economic duress or threat of enforcing legal rights). Good faith means that the Parties must act honestly towards each other, providing where relevant honest and objective appraisals of any facts or circumstances. Good faith also means that a Party must act considerately and genuinely towards the other Party, meeting with and openly discussing issues where relevant, and giving due and proper consideration to the views and needs of the other Party as against their own views and needs, all in a professional and responsible manner. To avoid doubt, good faith does not mean a Party needs to act contrary to its own interests.

15.10. Limitation Periods

15.10.1 Notwithstanding any other provision in this Agreement but subject to clause 15.10.2, the Parties expressly agree that the time within which any action may be brought arising out of this Agreement is limited to three months from the date the cause of action arose or the date upon which the cause of action was or should reasonably have been discovered.

15.10.2 The exception to the limitation period in clause 15.10.1 relates to an action relating to personal injury or death arising out of or in connection with this Agreement, in relation to which the statutory limits will apply.

15.10.3 The parties expressly agree that the limitation regime set out in clause 15.10 is reasonable in view of the nature of the Services and/or materials to be supplied pursuant to this Agreement

15.11. Order of Precedence

In the event of a conflict between the terms and conditions of the individual documents which constitute this Agreement the following order of precedence will apply:

- i. Business Account Activation Form (and any Additional Agreement where additional contractual terms may be agreed via a supplementary Enterprise Agreement or other form of signed agreement (e.g. government panel based contracts) which may expressly depart from aspects of this Agreement);
- ii. The main body of this SFOA;
- iii. Variations (Change Request, Service Catalogue Product orders, etc) for Additional &/or Annuity Services as agreed from time to time; and
- iv. Proposal or other documentation as indicated on the Business Account Activation Form.

15.12. Entire Agreement

This Agreement, including any documentation referred/attached to in the covering Business Account Activation Form, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to the subject matter contained in this Agreement.

15.13. Governing law

This Agreement and all discrete contracts arising out of the supply of Additional Contract Services, wherever such activities are carried out, will be governed by and construed in accordance with the laws of Queensland and the Parties agree to submit to the non-exclusive jurisdiction of the Courts in Queensland.

DEFINITIONS & INTERPRETATION

Definitions

Additional (Resolver/Contract) Services means those Services requested and/or authorised by Customer (in the form of a Ticket, Change Request, Variation or Proposal) and performed by Mach, which are not Annuity Services, and which are priced and invoiced separately from the monthly fixed charge for Annuity Contract Services.

Agreement means the clauses of this document, as amended from time to time pursuant to the processes outlined herein.

Annuity (Subscription/Contract) Services means those Services which attract a fixed monthly or subscription charge.

Business Day means 9.00am to 5.00pm Monday to Friday, local time, excluding all national public holidays.

Change means an alteration sought by Customer or Mach that alters, affects or may impact on Annuity Services (e.g. Monitoring additional Hosts).

Charge means the fee payable for the Goods &/or Services performed by Mach and payable pursuant to this Agreement.

Commencement Date means the date the Business Account Activation Form is executed, or the first day Mach delivers a Good or Service to the Customer, whichever is the earlier.

Confidential Information means all confidential information, in any form, furnished or made available directly or indirectly by one Party to the other whether or not marked confidential, restricted, proprietary, or with a similar designation and which information has commercial value in the business of the Party and is not in the public domain.

Customer (or Client) means, Customer, and any Related Body Corporate of Customer, any entity having control of Customer and any other entity under the same control as Customer.

Customer Data means all information, whether or not Customer Confidential Information, entered or stored in software, Equipment or other media by or on behalf of Customer and information derived from such information, including information stored in or processed through the Equipment or software.

Customer Personnel means those employees, officers, and agents of Customer.

Disaster means an event that has or is likely to materially impede Mach's ability to achieve the Service Levels within a 48 hour period.

Exclusions means any items the Parties formally agree are outside the scope of the Services. To avoid doubt, unless an item, condition, service or activity is explicitly detailed as being in scope of an Annuity Service or other Fixed Price deliverable it will be deemed to be excluded.

Force Majeure Event means a failure to act or delay in action of a Party caused directly or indirectly by fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, strikes, power cuts, telecommunications cuts, lockouts or labour difficulties (other than each Party's own personnel) or other similar cause beyond the reasonable control of such Party.

GST means a Tax on goods and services, or a value-added Tax.

Host means a Server, Website, Database, Switch, Router, UPS, Cloud SaaS, Application, etc as uniquely identified for Monitoring in Mach's Enterprise Monitoring Platform (a Host is key unit of measure for calculating the Charges).

Incident means an event that is not part of the standard and usual operation of the ICT environment, with Mach detecting its occurrence through the use of automated monitoring systems.

ITIL means the IT Infrastructure Library as published by the UK Office of Government Commerce from time to time.

Losses will mean all losses, liabilities, damages and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties).

Monitoring means the function performed by Mach's Enterprise Monitoring Platform and associated 'agent' and 'proxy' and 'node' software that operates from Mach data centres (and is extended through read-only software installation within Customer &/or 3rd Party ICT environments), via the Internet &/or private networks, whereby service availability and performance data is collected and when not meeting pre-set 'triggers' will automatically alert the respective Incident for analysis and action.

Parties means Customer and Mach, and **Party** means any one of them.

Proposal means the documentation referred to in the covering Business Account Activation Form that details the specific Customer solution and Charges.

Related Bodies Corporate has the meaning given in section 9 of the Corporations Act 2001, as amended from time to time.

Resolution means, in response to a call to the Service Desk communicating any request, query, Incident or Problem, restoration of service by nominated party (as appropriate to agreed scope).

Resolver Group means, in respect of Resolution, the persons, firm or entity responsible for achieving Resolution.

Services in this Agreement means the following:

- A. The services, functions and responsibilities described in this Agreement and set out in relevant Service Catalogue product collateral or proposal documentation; and
- B. Any agreed change or variation to the Services made in accordance with this Agreement.

Service Catalogue means those standardised and productised Service items (including scope and pricing) as detailed in the relevant 'flyer' as published by Mach from time to time, for example (but not limited to):

- A. Premium Support Services
- B. Cloud Data Centre Facilities
- C. Managed Servers (Data Centre & Onsite)
- D. Managed Storage Capacity (High-Performance, Bulk & SAN)
- E. Managed Enterprise Backup (Data Centre, Onsite & Other Clouds)
- F. Managed Network Devices & Security (Data Centre & Onsite)
- G. Managed Internet and WAN Telecommunications (Data Centre & Onsite)
- H. Managed Monitoring & Alert Service
- I. Managed Mach365 Email & Licencing
- J. Managed Dedicated Hosted Exchange with Legal Archive
- K. Managed Business-Pro Email
- L. Managed Desktop, BYOD + Protection Service
- M. Managed Telephony (IP-PBX, Handsets & Telco Phone Lines)
- N. Managed UCaaS
- O. Managed Procurement & IMAC
- P. Pen Testing
- Q. T&M Rate Card (Consulting/Professional/Resolver Group Services)

Service Desk means the single point of contact, by telephone, email and world wide web, where Mach carries out Triage.

Service Level means the levels of availability and performance in relation to the Services, as set out at clause 3.3.

Service Management System means the technology platform that Mach utilises to process Customer requests and facilitate Incidents, each in the form of a Ticket.

Sites means, as the context requires, the physical Customer offices, 3rd party Data Centres, online 3rd party Cloud Services and any other location relevant to the nature of ICT services in scope.

Subscription Services mean those services commonly associated with Mach Data Centre based, or installed Onsite, online solutions (whether delivered from one or a combination of multiple Mach Data Centre &/or Client facilities) and may be categorised such as:

- A. Software as a Service (SaaS) e.g. turnkey capability;
- B. Platform as a Service (PaaS) e.g. web application servers and database systems;
- C. Infrastructure as a Service (IaaS) e.g. virtual servers, dedicated hardware servers, network storage, firewall and security appliances; and/or
- D. Any other product or service term used by Mach to represent this type of Service.

Tax includes any tax, withholding tax, charge, rate, duty or impost imposed by any authority, but does not include any income or capital gains tax.

Term as specified on the Business Account Activation Form.

Third (3rd) Party Provider means any vendor of information technology and/or telecommunications and related services to Customer, other than Mach, including Public/Private Cloud Services providers, licensors of software or manufacturers or suppliers of Equipment.

Third Party Provider Contracts means those agreements pursuant to which a Third Party Provider is furnishing or providing services to Customer.

Third Party Provider Contractual Entitlement Management means the mapping and reporting on compliance of actual Monitored service performance against the relevant entitlements due to the Customer. E.g. Mach providing the Customer on a monthly basis evidence that will allow a service credit, refund or similar entitlement to be claimed when Third Party Provider services suffer Incidents or outages.

Ticket means a record in Mach's Service Management System and records Monitoring notifications/alerts and email communications with the Customer. Also used for tracking Customer approval to perform Additional Resolver Services.

Transition means all those activities particularised and identified as services to be completed by the parties during the initial phase between signature of this Agreement and the completion of go live / cutover.

Transition Phase means the period from the Commencement Date during which Transition is to be achieved.

Triage means the 1st contact assessment of Incidents by the Service Desk, prior to confirming appropriate to notify as relevant for Resolution.

Work-Around means a temporary form of Resolution that is other than the final form of Resolution.

Interpretation

In this Agreement unless the context indicates a contrary intention:

- i. words importing the singular include the plural and vice versa, and words denoting a given gender include all other genders;
- ii. the expression "person" includes an individual, the estate of an individual, a body politic, a corporation and a statutory or other authority or association (incorporated or unincorporated);
- iii. headings and underlining are for convenience only and do not affect interpretation;
- iv. references to parties, clauses, sub-clauses, schedules, exhibits or annexures are references to parties, clauses, sub-clauses, schedules, exhibits and annexures to or of this Agreement and a reference to this Agreement includes any schedule, exhibit and annexure;
- v. references to this Agreement, or any other deed, agreement, instrument or document will be deemed to include references to this Agreement, or such other deed, agreement, instrument or document as amended, novated, supplemented, or replaced from time to time;
- vi. a reference to an agreement includes a representation, undertaking, deed, agreement or legally enforceable order or arrangement or understanding whether or not in writing;
- vii. a reference to a document includes any written agreement and any certificate or note or other document of any kind;

- viii. references to any person or to any party to this Agreement include that person's or party's executors, administrators, successors and permitted assigns;
- ix. where any word or phrase is given a defined meaning any other part of speech or grammatical form in respect of such word or phrase has corresponding meaning;
- x. where the day on or by which any sum is payable hereunder or any act, matter or thing is to be done is a day other than a Business Day, such sum will be paid and such act, matter or thing will be done on the immediately succeeding Business Day;
- xi. the meaning of general words is not limited by specific examples introduced by "including", "for example", or similar expressions; and
- xii. reference to any legislation or to any clause or provision of any legislation include any statutory modification or re-enactment or any statutory provision substituted therefore and all ordinances, by-laws, prudential standards, industry guidelines issued by regulators, regulations and other statutory documents issued thereunder.