



Terms and Conditions of Sale

1.1. Scope

- 1.1.1. To the extent that the Customer and AC3 have not otherwise separately agreed and executed a security or credit agreement (which only covers the supply of products), services agreement or a master services agreement, these terms and conditions of sale ("TCS") will govern the sale or provision of information technology products and/or services ("products and services") to the Customer by AC3. The term "products" in this TCS has the same meaning as the term "Goods" defined in the Personal Property Securities Act 2009 (Cth).
- 1.1.2. The Customer's submission of a purchase order in response to an AC3 quote, Statement of Work or AC3 Service Description ("Scope of Work"), and receipt and acceptance by AC3 of that purchase order, forms a contract between the parties which incorporates this TCS.
- 1.1.3. In this TCS, the Customer means the person, body, firm or company to whom AC3 agrees to supply the products and services to as identified on the AC3 quote or Scope of Work, and AC3 means the Australian Centre for Advanced Computing & Communication Pty Ltd ABN 27 095 046 923. This TCS binds the Customer and its successors and assigns.
- 1.1.4. All purchase orders must reference the AC3 quote number or Scope of Work and specifically identify the products and services. AC3 will not place any order for products and services with any third party supplier until such time as AC3 receives and accepts the Customer's purchase order.
- 1.1.5. AC3 is not bound by any terms and conditions pre-printed on, referred to or incorporated by reference in purchase orders or other communication between the parties relating to such orders for products and services. Unless expressly agreed otherwise with AC3, the Customer agrees that products and services purchased are exclusively for the Customer's own use and will not be for re-sale. If the Customer is purchasing products and services for re-sale purposes, the Customer must inform AC3 in writing and must comply with any additional terms as notified by AC3 in writing.

1.2. Pricing

- 1.2.1. Pricing and description of goods are valid for 30 days unless otherwise specified in the

quote. AC3 reserves the right to amend, withdraw and re-issue a quote due to circumstances beyond AC3's control such as variations in exchange rates or licencing costs affecting the quoted products or services.

- 1.2.2. Except as set out at clause 1.2.1, all prices quoted are quoted as a fixed price. Charges for variable services may change from month to month based on actual usage or consumption.

1.3. Invoicing, Payments and Taxes

- 1.3.1. The Customer will be responsible for the full payment of any taxes, duties, fees, charges, expenses and costs ("Charges") associated with the purchase of products and services from AC3. Unless otherwise indicated, charges are exclusive of all federal and state taxes and GST.
- 1.3.2. All payments must be made in AUD unless otherwise agreed in writing with AC3.
- 1.3.3. The Customer must make payment together with reimbursement of any taxes including GST that relate to the provision of the products and services as invoiced by AC3 within 14 days from the date of issue of a valid tax invoice or in accordance with the otherwise agreed payment terms.
- 1.3.4. The Charges for services will be the AC3 current Charges for such services or the price as set out in the relevant AC3 quote or Scope of Work relating to such services. If the Customer requests for services to be performed outside contracted hours or beyond the normal coverage for the particular service, the Customer agrees that additional Charges may apply. The Customer agrees to reimburse AC3 for all actual, reasonable, documented out-of-pocket expenses, including travel expenses incurred by AC3.
- 1.3.5. For the provision of Services, invoicing will be on the following basis unless expressly agreed otherwise with AC3 in writing or in the Scope of Works:
 - a) for monthly recurring services (managed and/or 'as-a-service') invoiced in arrears of each service period;
 - b) one-off services (e.g. professional and consultancy services) will be invoiced in arrears or based on milestone completion. AC3 may require that the

- first milestone payment be made in advance;
- c) fixed term services (e.g. licensing) will be invoiced in advance.
- 1.3.6. On-time payment of each undisputed invoice is an essential term of this TCS. Taxes and/or duties imposed on the sale of products and services purchased will appear as separate items on the relevant invoice (if any). If such sale to the Customer is exempt from taxes and/or duties, the Customer must produce the required documentation to support the exemption.
- 1.3.7. The parties acknowledge that words in this clause have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth), unless expressly stated otherwise. If GST is imposed on any supply made by one party (the Supplier) to the other party (the Recipient) and the consideration payable for the supply under any other clause of this TCS is expressed to be exclusive of GST, the Supplier may recover from the Recipient an additional amount calculated by multiplying the value of the GST exclusive consideration by the prevailing GST rate.
- 1.3.8. For invoices not paid within 14 days of the date of invoice or as per other agreed payment terms, AC3 reserves the right to charge the Customer interest at the rate of 2% above the base commercial floating rate for the National Australia Bank in Sydney. In addition, AC3 may, without waiving any other rights or remedies available to it, withhold the shipment of ordered products and may seek collection from the Customer of any unpaid amounts, including reasonable legal fees and costs of storage, collection or additional freight.
- 1.3.9. If the Customer disputes all or part of the Charges specified in any invoice:
- the Customer must give written notice to AC3 of the dispute within 10 days of receipt of the relevant invoice which identifies the particular Charges disputed and the reasons for disputing those Charges;
 - the Customer must pay to AC3 by the due date Charges for all items in the relevant invoice which are not in dispute;
 - each party will negotiate in good faith to resolve any disputed item within 10 days of notice of the dispute; and
 - if part or all of any Charge disputed is found to be correctly payable, AC3 may, at its discretion, treat the amount as an overdue payment, unless the Customer can show that it had a valid

reason to believe that it had caused to dispute the amount.

1.4. Risk, Title and PPSA

- 1.4.1. When requested, AC3 will provide estimated ship dates for products ordered. Where AC3 makes the arrangement to deliver products to the Customer, risk in the products transfer to the Customer upon delivery of the product. While AC3 will exercise all reasonable care, AC3 will not be liable for any delays in delivery of the product to the Customer.
- 1.4.2. Title in the product will remain with AC3 until AC3 has received payment in full. Until such time as title to the products pass to the Customer, AC3 shall have absolute authority to repossess and/or dispose of any product.
- 1.4.3. The following interpretations and definitions apply to the PPSA provisions set out in this TCS:
- Amendment demand means a demand that a registration of a Security Interest be registered in accordance with the PPSA 2009,
 - Lease Agreement means each agreement between the Customer as lessee and a leasing company as lessor for the lease of the Goods supplied by AC3
 - PPSA 2009 means the Personal Property Securities Act 2009 (Cth)
 - PPS Regulations means the Personal Property Securities Regulations 2010 (Cth)
 - Privacy Act means the Privacy Act 1988 (Cth)
 - The following terms have the same definitions as set out in the PPSA 2009:
 - Accession
 - Account
 - Collateral
 - Commingled goods
 - Financing Change Statement
 - Financing Statement
 - Goods
 - Inventory and Control
 - Proceeds
 - Processed goods
 - Purchase Money Security Interest (PMSI)
 - Security Interest
 - For the purpose of this TCS, Goods and Product have the same meaning
- 1.4.4. Notwithstanding anything contained herein, the parties agree that for the purposes of the PPSA 2009, in respect of the Goods supplied by AC3 to the Customer, title to which has not passed to the Customer (and which represents AC3's Security Interest), this TCS shall constitute a security agreement to

secure payment of the purchase price to AC3 and all the Customer's outstanding debts and obligations to AC3 from time to time until all such debts and obligations are discharged.

1.4.5. The Customer acknowledges that:

- a) AC3 will have a Security Interest and will be registering a PMSI in the Goods that are supplied by AC3 to the Customer under this TCS from time to time, title to which has not passed to the Customer, and AC3's Security Interest extends to the Proceeds (including any Accounts) and Accessions;
- b) If the Customer commingles the Goods, title to which has not passed to the Customer, with other property, AC3 retains a Security Interest in any Commingled or Processed Goods;
- c) If the Goods purchased by the Customer is deemed 'Inventory' for the purposes of the PPSA, then the Customer agree that the Customer will:
 - (a) specifically identify and appropriate the Inventory that AC3 are taking a Security Interest in; and
 - (b) not physically transfer or remove the specifically appropriated Inventory without previously obtaining the specific and express authority of AC3 to do so; and
 - (c) at all times comply with the requirements at (a) and (b) above.
- d) If any amounts that are due and payable under this TCS remain unpaid for a period of ninety (90) days, AC3 will notify the Customer in writing and request that the Customer pay such amounts to AC3 in full within two (2) weeks of the date of the notice, failing which, the Customer authorises AC3 or its agent to enter the Customer's premises as invitee to recover the Goods or any Processed or Commingled Goods including the Goods supplied by AC3,
- e) If the Customer become insolvent, bankrupt or a liquidator or an administrator is appointed in respect of the Customer's business, the Customer authorises AC3 or its agent to enter the Customer's premises as invitee to recover the Goods or any Processed or Commingled Goods including the Goods supplied by AC3

1.4.6. The Customer agrees:

- a) That the Goods supplied under this TCS are not intended, and will not be used, for personal, household or domestic use;
- b) To execute and deliver any documents and to provide all relevant information to AC3 to ensure that AC3 has a Security Interest in the Customer's personal property and/or any documentation required to ensure that AC3 has a first ranking priority in the Collateral under the PPSA 2009 to the extent that such priority is required by AC3 to enforce its rights under this TCS;
- c) That if the Customer breach the terms of this TCS, AC3 may take whatever action necessary to ensure that it has a first ranking priority in the Collateral to the extent that such priority is required by AC3 to enforce its rights under this TCS, and the Customer agrees to indemnify AC3 for any costs it incurs in doing this.
- d) That any rights conferred by these terms that are in addition to those provided by Chapter 4 of the PPSA continue to apply.
- e) Not to remove the Goods that may be subject to AC3's Security Interest from Australia without AC3's prior written consent.

1.4.7. The Customer must:

- a) Obtain and provide to AC3, within two (2) weeks of AC3's written request, copies of all documents granting Security Interest(s) over the Goods subject to same that have been registered, perfected or under the control of a third party.
- b) Pay any costs incurred by AC3 in the amendment or discharge of any Financing Statement or Financing Change Statement.
- c) Obtain AC3's written consent prior to filing, lodging or serving a Financing Change Statement or an Amendment Demand.

1.4.8. The Customer agrees to waive the Customer's right to do any of the following in respect of any Security Interest held by AC3 under this TCS and in respect of the Goods, title to which has not passed to the Customer:

- a) Request a statement of account if there is no disposal of the Goods (s132(4));
- b) Apply for an order postponing the removal of an Accession or determining the amount payable to AC3 for the retention of an Accession (s97);
- c) Receive a verification statement or notice (s157(3)(b));

- d) Receive a notice from AC3 under ss 118(1)(b)(i), 121(4), 123(2) 129(2) (b), 134, s135 of the PPSA 2009; and
- e) Object to AC3's proposal to seize or purchase the Goods (ss125 (1) and 129(2)(b)).
- f) Receive a verification statement or notice (s157(3)(b));
- g) Receive a notice from AC3 under ss 118(1)(b)(i), 121(4), 123(2) 129(2) (b), 134, s135 of the PPSA 2009; and
- h) Object to AC3's proposal to seize or purchase the Goods (ss125 (1) and 129(2)(b))

1.5. Data Back-up

- 1.5.1. Unless otherwise expressly agreed between the parties, the Customer is fully responsible for making and maintaining any back-up copies and archive copies of all files, data and software during the provision of any Services by AC3. This separate backup system or procedure must be entirely independent of the Services provided by AC3.
- 1.5.2. To the fullest extent permitted by law, and unless otherwise agreed, AC3 will not be liable for any lost or corrupted files, data or software.
- 1.5.3. Where agreed with the Customer in a Scope of Work, AC3 may assist the Customer with backup, retention, recovery, or similar services. Where AC3 is required to assist with the reconstruction or recovery of the Customer's lost or altered files, data, or software, in lost or altered files, data, or software, in accordance with 1.5.3, AC3 may require the Customer to provide the last available back-up of files, data and software.

1.6. Third Party Products and Services

- 1.6.1. Third party products and services means any hardware, software or services, procured by AC3 for and on behalf of the Customer from third party manufacturers, distributors, vendors and suppliers ("third party provider").
- 1.6.2. AC3 must provide to the Customer a description of the available warranty for third party products and services where requested by the Customer in writing. Any warranty provided on third party products and services is provided by the third party provider. Warranty periods for third party products and services begin on the date as determined by the third party provider unless otherwise expressly agreed in writing. To the fullest extent permitted by law, AC3 provides no express or implied warranties with respect to such third party products and services.

- 1.6.3. The Customer agrees that AC3 cannot be held responsible for any revision or engineering changes in any third party products and services. Except as expressly agreed to in writing in the Scope of Work between the Customer and AC3, third party products and services shall be subject to the terms and conditions of the third party provider. AC3 does not take responsibility for such third party products and services or any third party warranties or for any effect AC3 Services may have on those warranties.

- 1.6.4. All software procured or distributed by AC3 (together with the products, services or as standalone licences) will:

- a) be subject to the terms of the software licensing agreement governing the software;
- b) be subject to the warranties, if any, provided by the software publisher or manufacturer; and
- c) have license agreements that may be packaged with the Software, may be separately provided to the Customer for signature or may require on-screen acceptance by the Customer.
- d) Customer agrees that it and all of its end-users of the Software are bound by, and will abide by, all such software licensing agreements.

1.7. Liability

- 1.7.1. Where permitted by law, terms implied by statute or the common law are excluded from this TCS. Where the law prescribes a remedy or liability for breach of a statutory guarantee or warranty for the supply of products or services, AC3's liability is limited to the prescribed remedy or liability. Without limiting the foregoing, if a supply under this TCS is a supply of products or services to a consumer within the meaning of the Australian Consumer Law ("ACL"), nothing in this TCS excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the ACL, provided that, to the extent the ACL permits AC3 to limit its liability, then AC3's liability will be limited to (provided it is fair and reasonable to do so):
 - a) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
 - b) in the case of products or 'Goods', the cost of replacing the products, supplying equivalent products or having the products repaired.

- 1.7.2. Neither party shall be liable for any incidental, indirect, special or consequential damages or for loss of profit or anticipated savings, loss or corruption of data, loss of business or goodwill, even if a party has been advised of the possibility. This limitation of liability applies to all products and services the Customer purchases under this TCS. For third party products, AC3 acts as a reseller, AC3 will pass through or assign to the Customer any warranties received from the original manufacturer or the software publishers and is not in any way liable for defect resolution of third party products.
- 1.7.3. To the fullest extent permitted by law, the total aggregate liability of each party for breach of the TCS, negligence or other tort or any other legal theory is limited in the aggregate to:
- a) for professional or consultancy Services, an amount equal to the Charges in respect of the professional or consultancy Services (as applicable); and
 - b) for monthly recurring services, an amount equal to the Charges paid or payable by the Customer to AC3 under TCS during the twelve (12) month period immediately preceding the claim.
- 1.7.4. The limitation in this clause does not apply to liability for:
- a) bodily injury or death for which that party is legally liable ;
 - b) infringement of third party intellectual property rights;
 - c) breach of confidentiality or privacy; or
 - d) the Customer's obligation to pay for the products or services.
- 1.7.5. Without limiting any other provision of this TCS, to the fullest extent permitted by law, AC3 will not be liable for any failure to perform any of its obligations under this TCS to the extent that such failure arises directly or indirectly out of or in connection with (a) any matter which is outside AC3's control; (b) any act or omission by or on behalf of the Customer including, but not limited to, any delays caused or contributed to by Customer; or (c) any incorrect or incomplete information provided by the Customer.

1.8. Cancellations, Returns and Refunds

- 1.8.1. Unless otherwise agreed with AC3 in writing (such consent not to be unreasonably withheld), all orders for products and services, once accepted by AC3 cannot be cancelled by the Customer. AC3 may accept cancellation of an order for products (including software) where the product is a standard off the shelf product or the

distributor or supplier has not processed the order or started manufacturing the product.

- 1.8.2. Returns and refunds of purchased products will be made in accordance with the relevant supplier's or distributor's policy (which AC3 can provide to the Customer on the Customer's written request).
- 1.8.3. Where AC3 agrees that products may be returned, return of such products will only be accepted on the basis that the Customer's agrees to pay the applicable re-stocking fee and the products:
- a) haven't been used and are otherwise in 'as new' condition;
 - b) are in original packaging;
 - c) are returned within 7 days of delivery or such other period as agreed with AC3; and
 - d) satisfy all other reasonable requirements as stipulated by AC3.

1.9. Customer's Obligations

- 1.9.1. The Customer must at all times comply with its obligations and responsibilities as set out in this TCS and the Scope of Work. The Customer acknowledges and agrees that:
- a) it is solely responsible for the availability and integrity of any information or material (including software) it provides to AC3;
 - b) it maintains the Customer IT environment, any part thereof and each of its components in accordance with best practise, specifications and instructions, if any, of the relevant vendor and/or manufacturer;
 - c) AC3 has no liability whatsoever in relation to the accuracy or completeness of any material or information provided by the Customer;
 - d) it has obtained all necessary rights, consents and authority to collect, process, store and transmit, or cause to be transmitted, any Customer data through the services; and
 - e) it will defend AC3 and its subcontractors, their respective officers and employees (each an Indemnified Party) against any Claim arising out of or related to (a) the use, transfer, storage or provision of any Customer data in the use of the services and
 - f) the Customer's or its users' breach of this TCS; and; indemnify and hold harmless the Indemnified Party and from any final award of damages or settlement, and reasonable legal costs, in connection with such claim.

The indemnity provisions set out in this clause survives expiration or termination of



the TCS.

1.10. Services

- 1.10.1. Services performed by AC3 shall be performed with due skill and care, in accordance with the agreed Scope of Work and will be warranted for the period as set out in the Scope of Work.
- 1.10.2. In the event of a conflict between the terms of this TCS and a Scope of Work, the terms of the Scope of Work will prevail but only to the extent of any inconsistency.
- 1.10.3. AC3 retains the right to subcontract services under this TCS. AC3 will be entitled to rely upon any routine instructions, authorizations, approvals or other information ("directions") provided to AC3 by the Customer's representative or by any other Customer personnel identified by the Customer as having authority to provide such directions.

1.11. Access to Customer Facilities

- 1.11.1. Where the Customer purchases services, the Customer agrees to provide AC3's employees, contractors and agents with reasonable access to the relevant Customer locations, the Customer IT environment (which includes, personnel, facilities, systems, equipment, hardware, software, network and information) and all other Customer material reasonably necessary for the purpose of enabling AC3 to provide services.
- 1.11.2. The Customer must ensure that the Customer IT environment is at all times clean, safe, free of computer viruses, installed in accordance with the relevant manufacturer's recommendations and otherwise in accordance with AC3's reasonable directions.
- 1.11.3. The Customer acknowledges that the physical security of the Customer's IT environment and the Customer location is the sole responsibility of the Customer. AC3 must ensure that it complies with all lawful directions and relevant policies (e.g. occupational health and safety) of the Customer at the Customer locations.

1.12. Intellectual Property

- 1.12.1. AC3 acknowledges that the intellectual property rights in any information or material made available by the Customer to AC3 remains the exclusive property of the Customer and where relevant, the Customer grants AC3 rights to use that intellectual property to the extent necessary for AC3 to provide services.
- 1.12.2. Subject to clause 1.12.1, AC3 is and remains the owner of all intellectual property rights in the services. The Customer acquires only the

limited right to access and use the services during the agreed term for provision of services.

1.13. Confidential Information and Privacy

- 1.13.1. Each party will (subject to the provisions of this clause 1.13) keep the confidential information of the other party confidential and will not disclose it or make it available directly or indirectly to any third party; use the confidential information of the other party solely for the purpose of performing its obligations under this TCS; only disclose the confidential information of the other party to its officers, employees, professional advisers and permitted subcontractors on a need-to-know basis for the purposes of complying with its obligations set out in this TCS (and only to the extent that it is needed), and that have undertaken to maintain the confidentiality of the confidential information, and if required by a party, execute an appropriate confidentiality undertaking in favour of that other party; and immediately notify the other party of any actual or potential breach of confidentiality, disclosure or unauthorised use of the other party's confidential information; and take all steps to prevent or stop a suspected or actual breach of this clause.
- 1.13.2. Upon demand or upon termination or expiry of this TCS, each party must, upon request of the other party:
 - a) deliver to the other party all of the other party's confidential information in its possession or control, which is capable of being so delivered; and
 - b) to the extent lawful and practicable delete, erase, or otherwise destroy any of the other party's confidential information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control, which is not capable of delivery to the other party.
- 1.13.3. All disclosures and use of personal information made pursuant to this TCS will be subject to the terms of the provisions set out below.
- 1.13.4. AC3 agrees to maintain the confidentiality of and protect Personal Information (as that term is defined in the Privacy Act 1988 (Cth) (the "Privacy Act") and maintain information security policies and procedures for the protection of Personal Information in accordance with the Privacy Act and other applicable State and Territory privacy legislation and all applicable regulations related thereto.
- 1.13.5. AC3 must at all times comply with the Privacy Act 1988 and relevant privacy codes applicable to Personal Information collected



through this TCS. AC3's privacy policy is available on AC3's website.

1.13.6. The Customer consents to AC3 utilising the information provided by the Customer to AC3 in connection with this TCS for the purposes of the PPSA 2009 and the Privacy Act 1988. With respect to credit assessments, the Customer agree that in accordance with the Privacy Act any personal information provided to AC3 about the Customer (or the relevant individual named in the credit application) and permitted to be kept on a credit information file may be disclosed by AC3 to a credit reporting agency for the following purposes:

- a) To obtain a credit report; and
- b) To permit the credit reporting agency to create or maintain a credit information file containing information about the Customer or that person;
- c) And AC3 may in turn obtain from a credit reporting agency, a credit report for the purposes of assessing the Customer's application for commercial credit and collecting overdue payments relating to moneys owed to AC3.

1.13.7. The personal information used or disclosed to a credit reporting agency will be limited to information such as identity particulars about the Customer or that individual such as name, gender, date of birth, guarantor details such as consent by the individual to act as guarantor, payments that are considerably overdue and/or where debt collection has commenced, advising that payments are no longer overdue or that the credit facility has been discharged, cheques that have been dishonoured or information that, in the reasonable opinion of AC3 should be disclosed such as fraud.

1.13.8. The Customer also agrees that AC3 may use and disclose any credit reports received from a credit reporting agency or relevant information from those credit reports to:

- a) Guarantors in connection with any AC3 credit applications;
- b) AC3's insurers for the purposes of assessing whether to provide AC3 with relevant insurances;
- c) Other credit providers named in the credit report or other persons that conduct a business and offer credit in a manner similar to AC3 for the purposes of assessing the Customer's application for credit, notifying other credit providers of a default, enquiring the status of current credit facilities and assessing credit worthiness;
- d) And, that the information exchanged can include other information about credit worthiness, history or capacity or other

information permitted to be used and disclosed under the Privacy Act. AC3 may obtain a banker's opinion if required.

1.13.9. For the purposes of the EU GDPR, the Customer shall be "Data Controller" of its data at all times. The Customer is responsible for managing its data and any access to its data. AC3 does not monitor what data the Customer enters into, stores or processes on AC3 systems. The Parties acknowledge that the nature of the AC3 Services to be provided pursuant to this TCS is not intended to grant AC3 direct access to the Customer's "Personally Identifiable Information". For the purposes of this provision, "Personally Identifiable Information" or "PII" means information which can be used to distinguish or trace an individual's identity-either alone or when combined with other personal or identifying information which is linked or linkable to a specific individual. In the event AC3 has access to PII (with the exception of business contact information of the Customer and its representatives); such access will likely be incidental. To the extent AC3 has incidental access to Customer PII, AC3 agrees to use or disclose PII only: (a) in furtherance of or in connection with performing the Services pursuant to this TCS and the relevant Services Description or Statement of Work; (b) pursuant to a lawful court order, service of process, or otherwise required or permitted by law; (c) as directed or instructed by Customer; or (d) with prior informed consent of the data subject about whom the PII pertains.

This clause 1.13 survives expiration or termination of the TCS.

1.14. Termination

1.14.1. In addition to any other rights of termination under this TCS or at law, either party may immediately terminate this TCS at any time by notice in writing if:

- a) the other party commits a material breach of this TCS which it fails to remedy within 14 days of written notice of the breach or which is incapable of remedy; or
- b) the other party becomes insolvent, of which that party must notify the other immediately.

1.14.2. The Customer may, where it purchases products and services pursuant to a Scope of Work:

- a) and unless a different duration is agreed in the Scope of Work, terminate the Scope of Work for convenience by providing AC3 with not less than 90 days' prior written notice and where relevant to that Scope of

- Work, pay the termination charges calculated in accordance with clause 1.14.5 below; or
- b) terminate the Scope of Work or this TCS if AC3 continuously and materially fails to provide the service to the Customer, which in the Customer's reasonable opinion leads to a material disadvantage to the Customer's business and AC3 has failed to remedy that breach.
- 1.14.3. AC3 may terminate this TCS at any time if it decides to change its business direction or strategy to the effect that it no longer wishes to invest in the resources required to deliver the services, provided it gives the Customer 30 days' written notice of the same.
- 1.14.4. If the Customer terminates a Scope of Work for convenience or AC3 terminates the Scope of Work or the TCS because of a material breach or default by the Customer (and such material breach or default was not remedied by the Customer within the timeframe as agreed or was incapable of remedy), the Customer is liable for and must immediately pay AC3 for all Charges incurred up to the date of termination together with the termination charges calculated in accordance with the methodology set out at clause 1.14.5.
- 1.14.5. In addition to complying with the notice requirements as set out in the relevant Scope of Work, the early termination charges associated with the termination of services pursuant to a Scope of Work will, unless otherwise agreed, be calculated as follows:
- a) fixed term Charges for fixed term products which have been purchased specifically for the Customer and which have fixed costs associated (e.g. network, security, compute, cross connects) will require 100% payout of the remaining contracted value for the respective service;
- b) commodity services (e.g. Software as a Service) will require 0% payout (however where services have been used for part of the month, the Customer will be required to pay for the full month); and
- c) managed services (which will be identified as a managed service in the scope of work) will require a payout which will be reduced year on year as follows: year 1 = 50%, year 2 = 40%, year 3 = 30%, year 4 = 20%, year 5 = 10%. These represent percentages of the remaining contracted value for the respective service; and
- d) the full payment of the up-front professional and installation services (if such payment has not already been made by the Customer)

Services terminate on the termination of this TCS.

1.15. General

- 1.15.1.1.15.1 This TCS may only varied with AC3's prior written consent.
- 1.15.2. This TCS is governed by the laws in force in the State of New South Wales Australia, and each party submits to the non-exclusive jurisdiction of the Courts of that State and the Commonwealth of Australia.
- 1.15.3. Neither party may enter into any contract or agreement or incur any contractual obligation on behalf of the other party or of any of that other party's related entities; or use that other party's name or any of its trade marks (whether registered or unregistered) or any name that forms part of such name or trade mark, except with the prior written authorisation of the other party.
- 1.15.4. The following sections of this TCS shall survive any termination or expiration of this TCS and shall continue to bind the parties and their permitted successors and assigns: ordering and delivery of products, invoicing, payment and taxes, risk, title and delivery, representations and warranties, termination charges, indemnities, limitation of liability, confidential information and privacy.
- 1.15.5. Neither party shall be liable to the other party for any failure to perform any of its obligations under this TCS during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, fire, flood, war, embargo, strike, riot or the intervention of any governmental authority (a "Force Majeure"). The delayed party must promptly provide the other party with written notice of the Force Majeure event. The delayed party's time for performance will be excused for the duration of the Force Majeure event, however of the event lasts longer than thirty (30) Days, the other party may immediately terminate this TCS by giving written notice to the delayed party.
- 1.15.6. To give notice under this TCS to AC3, the Customer will send a copy to the Australian Centre for Advanced Computing & Communication Pty Ltd ABN 27 095 046 923 ("AC3") addressed "For Attention of the CEO".

1.16. Australian Consumer Law rights

- 1.16.1. Without in anyway limiting the terms as set out in this TCS but subject to clause 1.16.2, where the ACL applies to:



- a) AC3 services, such services come with guarantees that cannot be excluded under the ACL. For major failures with the service, the Customer is entitled to cancel its service contract with AC3 and to a refund for the unused portion, or to compensation for its reduced value. The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure the Customer is entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel its contract and obtain a refund for the unused portion of the contract; and
 - b) AC3 products or goods (other than third party products and goods which will also be subject to such ACL warranties), such products or goods come with guarantees that cannot be excluded under the ACL. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 1.16.2. AC3 cannot limit its obligations or restrict the Customer's rights under the ACL unless the product or service purchased is not of a kind ordinarily acquired for personal, domestic or household use, in which case AC3 can limit the Customer's remedy by excluding refunds. AC3 will in those circumstances (where it is fair and reasonable to do so), supply the services again or pay the cost of having the services supplied again.