

## CLOUDRENT SAAS TERMS OF USE

The CloudRent SaaS and Services set out in the online offer, quote, proposal, invoice, purchase order or other similar document which by reference incorporates these standard terms and conditions or to which these standard terms and conditions are attached ("**Quote**"), are subject to these Standard Terms and Conditions.

### 1 Definitions

In this Agreement:

**"Agreement"** means this Agreement, which is comprised of these Standard Terms and Conditions and the relevant Quote.

**"Business Day"** means a normal working day representing 8 hours within the applicable time zone of the Customer, that is not a Saturday, Sunday, or a public holiday in the capital city of the Customer's state or territory (as identified in the address in the Quote).

**"CloudRent"** means CloudRent Pty Ltd, and Australian proprietary limited company of 601, 16 Seventh Ave, Palm Beach, Qld, 4221.

**"CloudRent Material"** means any Material created in the course of performing the Services, or provided by or to which access is given by CloudRent to the Customer for the purposes of this Agreement including the Software but excludes the Customer Data.

**"Confidential Information"** of a party means the terms of this Agreement and any information:

- relating to the business and affairs of that party;
- relating to the customers, clients, employees, sub-contractors or other persons doing business with that party;
- which is by its nature confidential;
- which is designated as confidential by that party;
- which the other party knows is confidential; or
- which would reasonably be expected to be treated as confidential

and includes all trade secrets, knowhow, financial information, business dealings and other commercially valuable information of that party, and in the case of CloudRent, includes CloudRent Material and the Fees, and in the case of the Customer, includes the Customer Material.

**"Consequential Loss"** means: loss of revenue; loss of goodwill; loss of reputation; consequential loss; loss of profits; indirect loss; loss of bargain; special loss; loss of actual or anticipated savings; wasted expenditure and lost opportunities, including opportunities to enter into arrangements with third parties.

**"Customer"** means the person or entity listed on the Quote as the Customer.

**"Customer Data"** means any data provided by the Customer to CloudRent or input by Customer into the Services.

**"Customer Material"** means the Customer Data and any Material provided by or to which access is given by the Customer to CloudRent for the purposes of this Agreement.

**"Customer Support Guide"** means the CloudRent customer support guide attached to these Standard Terms and Conditions, as updated by CloudRent from time to time.

**"Documentation"** means any training material (final version) provided by CloudRent to the Customer in connection with the Software, whether in paper or electronic format.

**"Fees"** means the fees specified in the Quote.

**"Force Majeure Event"** means any occurrence or omission outside a party's reasonable control including:

- a physical natural disaster including fire, flood, lightning or earthquake;
- war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
- epidemic, pandemic or quarantine restriction;
- any act of terrorism or terrorism related event;
- confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
- law taking effect after the date of this Agreement;
- disruption or unavailability of the internet;
- strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors;
- failure of a utility service provider to CloudRent; and
- a delay or other impact resulting from a Force Majeure Event affecting the other party.

**"Material"** means any material including documents, equipment, reports, technical information, studies, plans, charts, drawings, software, schemas calculations, tables, schedules and data stored by any means.

**"Permitted Users"** means the permitted administrative account users of the Customer specified in the relevant Quote.

**"Plan"** means the pricing plan purchased by Customer as set out in the Quote, which includes, without limitation, the Fees for the plan and Use Restrictions.

**"Services"** means all services as specified in the relevant Quote.

**"Software"** means the software specified in the Quote, being the generally available release of the Software product as at the date of purchase, and any patches, bug fixes, modifications and subsequent versions provided to the Customer by CloudRent under this Agreement.

**"Software as a Service"** or **"SaaS"** means the provision of access to the functionality of the Software made available by CloudRent to the Customer via the CloudRent SaaS platform, as specified in the relevant Quote.

**"Resolution Institute"** means the Resolution Institute Pty Ltd ACN 008 651 232, and any successor organisation.

**"Rollover Period"** means any extension or rollover period specified in the Quote or any other extension to the Term mutually agreed in writing between the parties.

**"Term"** means the term contemplated by clause 6.1.

**"Use Restrictions"** means the limitations on the Customer's rights to use the Software and/or access the SaaS based on the Plan purchased by the Customer, including the limits on Permitted Users, territory, location, branches/offices, remote/mobile users or other metrics specified in the relevant Quote.

### 2 Provision of Services

- Subject to the Customer paying the Fees, CloudRent agrees to provide the SaaS and/or provide the Services (as applicable) to the Customer for the duration of the Term, as set out in the Quote and these Standard Terms and Conditions.
- The Customer may purchase additional Software or SaaS, an increase in the scope of the Use Restrictions or additional Services on a time and materials basis, by agreeing to a subsequent Quote with CloudRent, from time to time during the Term. Upon the signing of the Quote by both parties it will become a valid and binding for the provision of Services under this Agreement.

### 3 Software as a Service Terms

#### 3.1 Access to SaaS

- Subject to the Customer's compliance with the Use Restrictions and payment of Fees, CloudRent grants the Customer a non-exclusive, non-transferable right to access and use the Software as a Service during the Term, subject to the Use Restrictions and solely for the internal business purposes of the Customer.
- The access right is personal to the Customer, and the Customer may not attempt to transfer the right to any third party, including a Related Body Corporate (as defined by section 9 of the *Corporations Act 2001* (Cth)).
- The Customer must ensure that its Permitted Users comply with the requirements of this Agreement, not sell or rent the use of, or results of the use of the SaaS to anyone outside its business, and not attempt to mortgage, charge or otherwise encumber the SaaS, or use the SaaS as either surety or collateral.

- The Customer is responsible for obtaining and maintaining the hardware, software, telecommunications, systems and internet access reasonably necessary to receive and use the SaaS. The Customer acknowledges and agrees that it may not be able to access the SaaS and the SaaS may not function as intended if it does not comply with this clause.

#### 3.2 Support and Maintenance

- CloudRent will provide support and maintenance in accordance with the Customer Support Guide.
- CloudRent's obligations to provide support and maintenance to Customer under this Agreement is conditional upon Customer paying all applicable Fees and will cease upon termination of this Agreement in accordance with its terms.

#### 3.3 Training

CloudRent does not provide training for the use of the Software or SaaS, unless specified in the Quote or otherwise provided by this Agreement and subject to Customer entering into an agreement with CloudRent for the provision of such training services.

#### 3.4 Warranties

- CloudRent warrants that:
  - the SaaS will function materially in accordance with its specifications during the Term from the date it goes live in a production environment;
  - the Services will be performed with due care and diligence; and
  - it will comply with the Privacy Act as it relates to it providing the SaaS.
- Subject to the above warranty, CloudRent makes no representation and gives no warranty that the SaaS will be free from errors and defects, meet any specific requirement or be fit for any purpose not set out in the Specifications.
- The Customer warrants that the Customer has all necessary consents required under the Privacy Act to provide CloudRent with any personal information which forms part of the Customer Data or the Customer Material.

### 4 Additional Implementation or consulting services

- Unless specified otherwise in the Quote, any implementation and consulting services relating to the SaaS in the Quote will be subject to CloudRent's standard consulting terms and conditions which are available upon request, on a time and materials basis at CloudRent's then current standard rates, payable monthly in arrears.
- All Services will be provided remotely, unless otherwise agreed in writing.
- The Customer agrees to cooperate with CloudRent and provide CloudRent with information and assistance reasonably necessary to enable CloudRent to provide its Services, including promptly reviewing documents provided by CloudRent and responding to requests for information adequate and appropriately qualified personnel available to perform its responsibilities.
- For the avoidance of doubt, the Services do not include integration with any 3rd party system not already specified in the Quote.

### 5 Fees and Invoicing

- The SaaS will be provided on a subscription basis for the Term, and the initial Fees are payable within 14 days of the effective date of the Quote (as applicable), and either monthly or annually in advance thereafter (as applicable), and as set out in the Quote.
- Unless otherwise specified, any ongoing monthly/annual (as appropriate) Fees will be payable in advance and increased each year on the anniversary date by the percentage change in the consumer price index.
- Unless otherwise specified, payment terms are 14 days from date of invoice and Fees are exclusive of GST.
- If the Customer's access or use of SaaS exceeds the Use Restrictions specified in the Quote at any time, the Customer will be required to pay additional fees. In such circumstances, CloudRent will send an invoice to the Customer for the increase in fees and the Customer will be obliged to pay the invoice in accordance with this Agreement.
- Without limiting any other remedy CloudRent may have under the Agreement or at law, CloudRent may suspend the provision of all Services if the Customer fails to pay the Fees in accordance with this clause 5 and the unpaid Fees are more than 30 days overdue, and CloudRent has issued a further payment reminder notice.
- The Customer must pay all taxes, duties, government charges and other taxes of a similar nature (including any related fines, penalties and interest) imposed or levied in Australia or overseas in connection with the Customer's performance of this Agreement.
- Pricing in the Quote is the confidential information of CloudRent intended for Customer's internal use only. The Customer must not communicate or share the contents of the Quote to any third party in any form which may assist any third party in being able to derive CloudRent's pricing.

### 6 Term and Termination

#### 6.1 Term

- This Agreement commences on the Commencement Date and continues for the initial period or term specified in the Quote, and each Rollover Period, unless terminated earlier in accordance with this clause 6 ("**Term**").
- Each Quote may contain additional cancellation or termination rights for Customers for agreed promotional offers, and the Customer will be entitled to terminate the Agreement prior to the end of the Term in accordance with those terms and conditions. However, where there may be an inconsistency or conflict between the terms of the Quote and the terms of this Agreement, the terms of this Agreement will prevail.
- Each party may terminate this Agreement at the end of the initial Term or subsequent Rollover Period, by giving at least 3 months' notice to the other party prior to the end of the initial Term or Rollover Period, in which case this Agreement will terminate on expiration of the initial Term or the then current Rollover Period, as the case may be.
- Support and maintenance services will be provided for twelve (12) months and will automatically renew annually for the agreed period for the provision of support and maintenance. CloudRent reserves the right to suspend provision of the support and maintenance services in the event of non-payment. The Customer's obligation to pay the monthly/annual (as appropriate) SaaS fees will continue unless the Customer gives six (6) months' notice in writing that it does not wish to continue using the support and maintenance services.

#### 6.2 Termination for breach

If a party commits a material breach of this Agreement and fails to remedy that breach within thirty days of receiving notice from the other party requiring it to do so or a party ceases to carry on business or any winding up proceedings are commenced in relation to a party, then the other party may terminate this Agreement by notice to that party, in which case this Agreement will terminate immediately.

#### 6.3 Consequences of Termination

Upon termination or expiry of the Term for any reason, the Customer must: immediately pay any outstanding fees, expenses and other amounts owed to CloudRent under this Agreement, and all remaining subscription fee instalments over the Term detailed on the Quote; and promptly proceed to permanently delete the Software from any device on which it is installed and cease all use or exploitation of any intellectual property or confidential information of CloudRent relating to the Software and SaaS; and deliver up or destroy (at CloudRent's option) all copies of the Documentation that are in the possession of Customer.

### 7 Intellectual property

#### 7.1 CloudRent Material

The Customer agrees that all intellectual property rights:

- in the Software, Software as a Service, Services, and CloudRent Material; and
- otherwise created by CloudRent in the course of performing the Services,

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are retained by CloudRent, and other than the access right granted under clause 3.1, nothing in this Agreement grants the Customer any right, title or interest in the Software, Software as a Service, or CloudRent Material, or any other intellectual property rights of CloudRent.

### 7.2 Modifications

CloudRent retains all intellectual property rights in modifications to the Software, Services and SaaS, regardless of whether those modifications are made on the suggestion of the Customer, or if the Customer paid Fees for those modifications. If CloudRent implements a change to the Software, Services or SaaS suggested by the Customer, the Customer assigns all intellectual property rights in that modification to CloudRent.

### 7.3 Customer Material

Customer Material and Customer Data remains the property of the Customer.

## 8 Privacy and Confidential Information

- (a) Customer and CloudRent agree to comply with the Privacy Act under this Agreement.
- (b) Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this Agreement, any Confidential Information of the other party provided to or obtained by that party prior to or after entry into this Agreement.
- (c) A party may disclose Confidential Information if required to do so by applicable law, or under compulsion of law by a court or government agency or by any regulator or by the rules of any relevant stock exchange, provided that the disclosing party:
  - (i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
  - (ii) before disclosing any information, gives a reasonable amount of notice to the other party and takes all reasonable steps (whether required by the other party or not) to maintain such Confidential Information in confidence.
- (d) Clause 8(a) does not apply to Confidential Information:
  - (i) that is in the public domain other than as a result of a breach of this Agreement or other obligation of confidence; or
  - (ii) that is already known by, or rightfully received, or independently developed, by the recipient of that Confidential Information free of any obligation of confidence.
- (e) Each party may use Confidential Information of the other party and disclose Confidential Information of the other party to its directors, agents, professional advisors, employees, contractors and permitted sub-contractors in each case solely for the exercise of rights or the performance of obligations under this Agreement and provided such information is disclosed subject to confidentiality obligations no less onerous than this Agreement. The recipient party will remain liable for any breach of these confidentiality obligations by any party it discloses to in accordance with this clause.

## 9 Limitation of liability

- (a) Subject to 9(c), the aggregate maximum liability of each party under or in connection with this Agreement (whether in contract, tort (including negligence) or statute is limited to the Fees paid or payable by Customer to CloudRent under this Agreement in the 12 months prior to the initial claim.
- (b) Neither party is liable for any Consequential Loss arising out of or in connection with this Agreement.
- (c) Nothing in this Agreement operates to limit or exclude:
  - (i) liability that cannot by law be limited or excluded;
  - (ii) liability of a party for breach of the other's intellectual property rights; and
  - (iii) liability for breach of confidentiality (clause 8 (b)); and
  - (iv) any applicable rights conferred by applicable Australian Consumer Law, subject to clause 9(d).
- (d) If CloudRent is liable to Customer in relation to a failure to comply with a guarantee that applies under the CGA or Division 1 of Part 3-2 of the Australian Consumer Law (as set out in schedule 2 to the Competition and Consumer Act 2010 (Cth)), that cannot be excluded, the CloudRent's total liability to Customer for that failure is limited to, at the option of the CloudRent:
  - (i) in the case of services, the resupply of the services or the payment of the cost of resupply; and

- (ii) in the case of goods, the replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired.

## 10 Force majeure

Other than the Customer's obligation to pay Fees, a party will not be:

- (i) in breach of this Agreement as a result of; or
- (ii) liable for, any failure or delay in the performance of that party's obligations under this Agreement to the extent that such failure or delay is caused by a Force Majeure Event.

## 11 Dispute Resolution

- (a) The parties agree that if a dispute arises out of or in connection with this Agreement ("Dispute"), the party raising the Dispute must notify the other party ("Dispute Notice").
- (b) A representative from each party will first meet to try and resolve the Dispute by negotiation within 14 days of receipt of the Dispute Notice.
- (c) If the parties do not resolve the Dispute by negotiation within 14 days, then a senior executive of each party will meet and attempt to resolve the Dispute within a further 30 days.
- (d) If the Dispute has not been resolved within 60 days of the Dispute Notice, then the parties may agree to refer the Dispute to mediation by an accredited mediator they agree on (and absent agreement by a mediator appointed by the Chair of the Resolution Institute). The Resolution Institute Mediation Rules shall apply to the mediation.
- (e) If a Dispute is not resolved under the process in clauses 11(a) to (d), the Dispute must be:
  - (i) submitted to arbitration in accordance with, and subject to, the UNCITRAL Arbitration Rules;
  - (ii) administered by the Resolution Institute; and
  - (iii) conducted by 1 arbitrator, in the English language in Brisbane, Australia.
- (f) An award made under clause 11(e) is final and binding on the parties and may be entered into by any court of competent jurisdiction.
- (g) Nothing in this clause 16 prevents a party from applying to a court of competent jurisdiction for injunctive or other urgent interlocutory relief.

## 12 Applicable Law

- (a) This Agreement is governed and construed in accordance with the laws of Queensland, Australia.
- (b) Subject to clause 11, each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts (exclusively for the purposes contemplated by clauses 11(f) and 11(g)).

## 13 General

- (a) Any capitalised terms not defined above have the meaning given to them in the relevant Quote.
- (b) This Agreement operates to the exclusion of any other terms and conditions, including any specified in a purchase order or similar document submitted by the Customer in relation to the provision of the software and/or services as described in the relevant purchase order.
- (c) The Agreement represents the parties' entire agreement, and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing, relating to its subject matter.
- (d) In the event of any inconsistency or conflict between the documents constituting the Agreement, the documents shall rank in the following order of priority (with document (i) being the highest in priority, etc.): (i) the Standard Terms and Conditions; (ii) the Quote; and (iii) other documents attached or specifically incorporated into the Agreement.
- (e) Expiry or termination of this Agreement for any reason does not affect the rights and obligations of either party arising prior to termination. Clauses 5, 6, 7, 8, 9, 11 and 12 survive the termination or expiry of this Agreement for any reason.

## CloudRent - Customer Support Guide

The following standard support and maintenance services are included in the SaaS:

### CloudRent's provision of:

Security patches; Critical bug fixes; New features & enhancements; Access to CloudRent's Support team for technical troubleshooting.

### Access to the following support services:

- (a) Online Support Tool – Service Desk. Customer will be assigned login credentials to lodge and review service requests. These will be attended to during Support Business Hours;
- (b) Email – all support submissions are to be made by emails sent to [support@cloudrent.me](mailto:support@cloudrent.me) and will be attended to during Support Business Hours; and
- (c) Phone – calls to the CloudRent's support team will be attended to during Support Business Hours.

\***Support Business Hours** means between 8:00am and 5:00pm AEDT on Business Days.

CloudRent will use its commercial reasonable efforts to respond to, as described below, reported and reproducible errors in the Software. CloudRent utilises the following four (4) severity levels to categorise reported problems:

#### SEVERITY 1 - CRITICAL BUSINESS IMPACT

Error: The impact of the reported deficiency is such that the customer is unable to either use the Software or reasonably continue work using the Software.

Response time: Upon making contact with a member of staff at CloudRent, CloudRent will commence work on resolving the deficiency within one (1) hour of notification and will engage staff during business hours until an acceptable resolution is achieved.

#### SEVERITY 2 - SIGNIFICANT BUSINESS IMPACT

Error: Important features of the Software are not working properly and there are no acceptable, alternative solutions. While other areas of the Software are not impacted, the reported deficiency has created a significant, negative impact on the Customer's productivity or service level.

Response time: Upon making contact with a member of staff at CloudRent, CloudRent will commence work on resolving the deficiency within two (2) hours of notification and will engage staff during business hours until an acceptable resolution is achieved.

#### SEVERITY 3 - SOME BUSINESS IMPACT

Error: Important features of the Software are unavailable, but an alternative solution is available or non-essential features of the Software are unavailable with no alternative solution. The customer impact, regardless of Software usage, is minimal loss of operational functionality or implementation resources.

Response time: Upon making contact with a member of staff at CloudRent, CloudRent will commence work on resolving the deficiency within one (1) business day of notification and will engage staff during business hours until an acceptable resolution is achieved.

#### SEVERITY 4 - MINIMAL BUSINESS IMPACT

Error: Customer submits a Software information request, software enhancement or documentation clarification which has no operational impact. The implementation or use of the Software by the Customer is continuing and there is no negative impact on productivity.

Response time: Upon making contact with a member of staff at CloudRent, CloudRent will provide an initial response regarding the request within one (1) business week.

### Cooperation

Customer agrees, on request, to provide promptly to CloudRent any information available to assist CloudRent in identifying a technical error (such as any error diagnostic messages) when providing support and maintenance services.

### Exclusions

CloudRent's Support and Maintenance does not include the rectification of errors, defects or problems caused or contributed to by: default or negligence of Customer's improper or unauthorised use of the Software or SaaS; any modifications or alterations of the Software or SaaS, other than as approved by CloudRent; or causes external to the Software or SaaS, such as, but not limited to, power failure, electric power surges or a Force Majeure Event; any failure by Customer to download and install Updates made available on the CloudRent Website; any failure by Customer to comply with the Documentation; any failure by Customer to comply with any reasonable guidelines or instructions provided by CloudRent; any fault, defect, omission or error in any data, software or equipment not supplied by CloudRent; any failure arising out of any network (including the internet) or communications; or use of the Software or SaaS with any software or equipment not approved or recommended by CloudRent; or in a manner or for a purpose in breach of this Agreement or not reasonably contemplated by this Agreement. CloudRent reserves the right to charge Customer additional fees (at its then current rates) for the rectification of any errors, defects or problems caused or contributed to by any of the reasons listed above.