

# MicroEd Computers

## Standard Terms

For the provision of Services by MicroEd Computers Pty Ltd (ACN 109 592 798) (**we/us/our/MicroEd**).

These Terms (**Terms**) in conjunction with any Services Agreement (where applicable) form the basis of our agreement with you (collectively the **Agreement**).

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### 1. Acceptance and Term

#### 1.1 Acceptance

You agree to be bound by these Terms where you:

- (a) sign and return the Services Agreement;
- (b) accept the Services Agreement by written communication;
- (c) make payment of the Service Fees or Deposit; or
- (d) continue to request (either orally or in writing) that we perform work for you after receiving the Proposal;

#### 1.2 Term

These Terms apply from the date of your acceptance in accordance with clause 1.1 and continues for the duration of the Term set out in a Services Agreement, or until the conclusion of the Services, or until Termination under clause 13.1 or 13.2.

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### 2. Proposal

- (a) Each Services Agreement shall set out the specific Services to be performed or provided by MicroEd and any other incidental services that may apply (**Proposal**).
- (b) You must tell us immediately if you disagree with anything contained in our Proposal or if you think we have misunderstood your requirements.
- (c) If there is any inconsistency between these Terms and the Proposal, the Proposal will prevail to the extent of that inconsistency.

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### 3. Variations

- (a) Either party may request variations to the Services at any time. If both parties agree to the variation in writing, then the Proposal will be deemed to be updated to reflect the change and will vary the Agreement.
- (b) We may reasonably update the Proposal upon providing you with notice where the information or expectations we have relied upon as set out in clause 4.2(b) are incorrect.

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### 4. Obligations

#### 4.1 Our obligations

- (a) We will provide the Services in:
  - (i) a professional manner with due care, skill and diligence; and
  - (ii) in accordance with these Terms and as set out in the Proposal, including completing work components in order of priority (if requested).

#### 4.2 Your obligations

- (a) To enable us to properly perform the Services in accordance with this Agreement, you must promptly provide us with all reasonable:
  - (i) information, assistance, data, resources, records, materials or access; and
  - (ii) access to Personnel within your organisation that we need to interact with.
- (b) You acknowledge that the Proposal assumes that:
  - (i) all information you provide to us will be accurate, complete, truthful and not misleading;
  - (ii) you have the required consents to disclose to us and provide access do you data; and
  - (iii) you will comply with your obligations under (a).

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### 5. Delay

- (a) Any applicable timeframes detailed in our Proposal are estimates only and you agree that we are not liable for any delays in or changes to them that are beyond our control. We will take reasonable steps to mitigate and minimise delays on our part and the impact such delays may cause.
- (b) If we become aware of any delay (or likely delay) in delivery of the Services, we will endeavour to promptly notify you of the details of the delay and provide you with revised timeframes.
- (c) If you protract our delivery of the Services through your conduct, any additional costs incurred by us in our performance of the Services will be charged at our hourly rate as specified in our Proposal.

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### 6. Fees, charges and payments

#### 6.1 Deposit

- (a) Where specified in our Proposal, we will require you to make payment of a fee before we commence the provision of our Services (**Deposit**).
- (b) The Deposit will be applied by us to Services rendered, following the issue of our invoice/s to you.

#### 6.2 Fees

- (a) Services we provide on a fixed fee basis will be provided strictly in accordance with the scope detailed in our Proposal as reasonably determined by us in our sole discretion.
- (b) Services we provide on a time basis, or work required outside of the scope set out in our Proposal, will be charged in accordance with our hourly rates as specified in our Proposal.
- (c) Subject to a varied proposal being agreed to under clause 3, any additional work or modification to the scope outlined in our Proposal that has not been specifically quoted will be charged in accordance with our hourly rates.

### 6.3 Expenses

- (a) Expenses will be paid or reimbursed (as the case may be) by you. Any Expenses due to be reimbursed will be included on our invoice to you.
- (b) We will not incur any Expenses without prior written approval from you unless such Expense is specified in the Service Agreement or required due to the nature of the agreed Services.
- (c) Where an Expense relates to a third-party product/service which is subject to a set duration or licence term, you acknowledge and agree that notwithstanding the termination of this Agreement during that, we will be entitled to full reimbursement for the Expense.
- (d) Our Fees are not inclusive of expenses for any ancillary costs required to provide the Services and these will be charged at an additional fee as advised by us from time to time.
- (e) We will submit documentation and evidence as is reasonably required by you to verify the Expenses that have been incurred.

### 6.4 Invoicing

- (a) We will invoice you for the Service Fees and Expenses in accordance with our Proposal, or at intervals in our sole discretion.
- (b) Unless otherwise specified on our invoice, our payment terms are 14-days.
- (c) Unless otherwise stipulated in the Proposal, we will commence work as outlined in our Proposal upon payment of the Service Fees or Deposit, as required.

### 6.5 Payment

- (a) You must pay us all amounts outlined in our invoice, and in accordance with these Terms, in the manner reasonably nominated without set-off, counter-claim, holding or deduction within the term specified for payment.
- (b) Subject to clause 6.6, if you fail to pay any of our fees in accordance with paragraph (a), we may charge you:
  - (i) for all costs and expenses incurred by us in recovering our outstanding fees from you; and
  - (ii) interest at a rate of 10% per annum on the overdue amount which will begin accruing on the first day that payment is overdue; and
  - (iii) immediately suspend the provision of any and all Services to you until payment is received by us.

### 6.6 Disputed fee

- (a) If you dispute the whole or any portion of the amount claimed in an invoice, you must pay the portion of the invoice which is not in dispute (in accordance with sub-clause 6.4(b)) and provide notice to us within 7 days of receipt of the invoice your reasons for dispute (**Invoice Notice**).
- (b) Upon receipt of your Invoice Notice, we will within a reasonable time provide you with evidence

substantiating the Service Fees and Expenses and addressing your reasons of dispute.

- (c) If the dispute cannot be resolved within 7 days of our substantiation under sub-clause (b), the dispute must be referred to the dispute resolution procedure in clause 10.

### 6.7 GST

- (a) Unless otherwise expressly stated in our Proposal, all amounts payable to us under this Agreement are inclusive of GST.
- (b) If GST is imposed on any supply made under or in accordance with this engagement and GST has not been accounted for in determining the consideration payable for the supply, then we may recover from you an amount on account of GST. That amount is equal to the value of the supply calculated in accordance with the *A New Tax System (Goods and services Tax) Act 1999* (Cth) multiplied by the prevailing GST rate.

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## 7. Subcontracting and Engagement of Third Parties

### 7.1 Subcontracting

- (a) MicroEd may, in its sole discretion, subcontract any part of the Services to a third party.
- (b) MicroEd remains responsible for all work carried out by any of its subcontractors.
- (c) We will use our reasonable endeavours to ensure that:
  - (i) any subcontractors we engaged are competent and professional;
  - (ii) are bound by the intellectual property and confidentiality conditions of this Agreement, or otherwise to provisions equivalent in effect;
  - (iii) have the qualifications and experience necessary to ensure full and proper performance of the duties allocated to them in accordance with this Agreement; and
  - (iv) will comply at all times with the Privacy Law.

### 7.2 Engagement of third parties

- (a) At your request, we may place you in contact with, or source, third-party contractors or suppliers relevant to aspects of the Services who can provide competitive quotes to be submitted for your approval and management.
- (b) All third-party contractors or suppliers which we source on your behalf or propose to you must be engaged by you directly.
- (c) For the avoidance of doubt:
  - (i) we are not responsible for the direct engagement with third parties or suppliers on your behalf;
  - (ii) we are not responsible for the payment of any third party fees or expenses; and
  - (iii) we are not responsible for the conduct of any third party contractors or advice produced by

those contractors who are engaged directly by you to provide services.

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## 8. Intellectual property

### 8.1 Background IP

- (a) Nothing in these Terms or any Services Agreement transfers IPR's belonging to a party that were created prior to the parties engaging MicroEd (**Background IP**).
- (b) You grant us a licence to use Background IP provided by you for the purpose of us providing the Services, including the right to use, reproduce, modify and create derivative works of the Background IP for that purpose only.
- (c) You warrant that the Background IP does not infringe the IPR's of any third party and fully indemnify us in our use of Background IP with respect to the Services and materials.
- (d) Unless otherwise specified in these Terms or any Services Agreement, you acknowledge and agree that we are not required to provide you with any Background IP or Materials (including source materials or templates and processes used by us in the delivery of the Services).
- (e) Nothing in these Terms prohibits us from using or licensing our IPR's in the Materials to third parties, including creating alterations and reproductions of new works where required for the performance of the Services.

### 8.2 Materials

Unless otherwise specified in the Proposal, in respect of the Materials:

- (a) we own all IPR's in the Materials; and
- (b) subject to your payment of all amounts owing under this Agreement, we grant you a non-exclusive, sublicensable, royalty free license to use and exploit the IPRs in the Materials strictly for the purpose of this Agreement.

### 8.3 Moral Rights

- (a) Where we have provided you with a licence to the Materials and the Materials were:
  - (i) created by us, we irrevocably and genuinely consent, as the author, to any acts or omissions of any person, including you, in connection with the relevant works after the date of the licence, which might otherwise infringe our moral rights, provided such actions are strictly in line with the purposes for which the works were created; and
  - (ii) created by a subcontractor of ours, we will use our best endeavours to obtain and provide to you irrevocably and genuinely given consents from the authors of the works in the same terms as required under sub-clause 8.3(a)(i).

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## 9. Confidentiality, privacy and data security

### 9.1 Recipient must keep Confidential Information confidential

Each party must:

- (a) keep confidential all Confidential Information;
- (b) only use Confidential Information for the purpose of providing or receiving (as the case may be) the Services; and
- (c) procure that its Personnel comply with sub-clauses (a) and (b).

### 9.2 Disclosure exceptions

The obligations in sub-clause 9.1 do not apply:

- (a) to the extent necessary to enable a party to make any disclosure required by law;
- (b) to the extent necessary to enable a party to perform its obligations under this Agreement;
- (c) where disclosure is required for any quality assurance or insurance purposes;
- (d) to the extent necessary to receive professional (legal or financial) advice;
- (e) to any disclosure agreed in writing between the parties; or
- (f) in respect of any portion of the Confidential Information which has entered the public domain other than as a result of a breach of this Agreement.

### 9.3 Privacy

We will:

- (a) comply with the *Privacy Act 1988* (Cth) and any other applicable privacy laws;
- (b) comply with the terms of our Privacy Policy, that is made available at [microedcomputers.com.au/terms](http://microedcomputers.com.au/terms) and
- (c) not do any act, engage in any practice, or omit to do any act or engage in any practice that would cause you to breach any Australian privacy law.

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## 10. Disputes

- (a) If a dispute (**Dispute**) arises between the parties, which they cannot resolve, then the party claiming that a Dispute has arisen must deliver to the other parties a notice containing particulars of the Dispute (**Dispute Notice**).
- (b) During the period of 14 business days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties to the Dispute (**Initial Period**), the parties must meet in good faith in an attempt to resolve the Dispute.
- (c) If the parties cannot resolve the Dispute within the Initial Period then unless they all agree otherwise, they must appoint a mediator to mediate the Dispute in accordance with the rules of the Resolution Institute. The parties must participate in the mediation in good faith.
- (d) The mediator must be agreed on by the parties within 10 business days after the Dispute Notice is given to the parties and if they cannot agree within that time the mediator will be nominated by the president of the Resolution Institute.
- (e) The mediation concludes when:

- (i) all the parties agree in writing on a resolution of the Dispute; or
- (ii) a party, not earlier than 20 business days after appointment of the mediator, has given 5 business days' notice to the other parties and to the mediator, terminating the mediation, and those 5 business days has expired without all the parties agreeing in writing on a resolution of the issue.

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## 11. Limitation of liability

- (a) Subject to paragraphs (b) and (d), unless otherwise required by Law, our liability for any Loss arising from any breach of the Services Agreement or any issue with the Services or Materials we have provided, in contract, tort or equity (including under the indemnity) are limited to the greater of:
  - (i) the amount paid or due to be paid under this Agreement in a six-month period for our Services (excluding Expenses); and
  - (ii) the amount paid out to us under an insurance policy we hold (less any excess).
- (b) We will not be liable for Loss you suffer as a consequence of the suspension of our Services pursuant to clause 6.5(b)(iii).
- (c) To the maximum extent permitted by Law, we will not be liable for any Loss you suffer for any loss of profit, loss of goodwill, loss of opportunity and/or special, punitive, indirect or consequential loss or damage incurred by you or any other person whether directly or indirectly related to this Agreement.
- (d) We are not liable for any loss or damage caused to you by reason of any delay, lack of supply, industrial action, fire, riot, war, embargo, civil commotion, act of God or any other event which is beyond our control.
- (e) Liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by ss 51 to 53 of the Australian Consumer Law) is limited (at our election) to us repairing or providing the Goods or Services again or the cost of having the Goods repaired/supplied or Services supplied again.

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## 12. Indemnity

### 12.1 Mutual indemnity

Each party agrees to indemnify the other against any Loss that may be incurred by us arising from or in connection with:

- (a) a material breach or default of this Agreement by a party or a person they are responsible for;
- (b) a negligent act or omission of a party or a person they are responsible for;
- (c) a failure by a party to comply with any Law; and
- (d) any Claim made against a party by any third party in connection with the information, material or documents provided to it by the other party.

### 12.2 Limitation

- (a) To the extent that any Claim or Loss occurs as a result of any negligent act or omission caused by the other

party, or the other party's failure to comply with the material obligations of this Agreement, a party's liability under clause 12.1 will be proportionately reduced.

- (b) A party who suffers Loss must use reasonable steps to mitigate its Loss. The other party will not be responsible for any Loss to the extent that the injured party could have avoided or reduced the amount of the Loss by taking reasonable steps to mitigate its Loss.

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## 13. Term and termination

### 13.1 Termination

Either party may terminate at any time by giving 45 days' written notice to the other party.

### 13.2 Termination for breach

- (a) If either party breaches these Terms or those set out in a Services Agreement and such a breach is capable of rectification, the other party must give the defaulting party written notice requesting that the breach be rectified within 5 business days (**Breach Notice**).
- (b) If a breach has not been rectified within 5 business days of the giving of a Breach Notice, the party giving the Breach Notice may terminate this Agreement immediately by notice in writing to the other.
- (c) If any party breaches a material term and the breach is not capable of rectification, the other party may terminate this engagement immediately by notice in writing to the party in breach.

### 13.3 Consequences of termination

- (a) Following termination, you must return or delete all of our Confidential Information that has been provided to you during the provision of our Services.
- (b) If the Services Agreement is terminated, you agree that:
  - (i) we may issue an invoice for any Service Fees and Expenses not yet invoiced and incurred up until the Termination Date (**Final Invoice**), at the agreed rate plus GST; and
  - (ii) we may apply any funds we are holding against any outstanding amount of the Final Invoice, subject to clause 6.6.
- (c) Following termination, we must:
  - (i) refund you the balance of any money that you have paid in advance, once we have set-off the Final Invoice; and
  - (ii) return or delete all of your Confidential Information that has been provided during the provision of our Services, except for one copy where required for quality assurance or insurance purposes.

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## 14. Notices

Any notice given under or in connection with this engagement:

- (a) must be addressed to a party's contact address as shown on the Proposal or as otherwise notified by a party to the other party from time to time;

- (b) must be:
  - (i) delivered to that party's address;
  - (ii) sent by pre-paid mail to that party's address; or
  - (iii) sent by email to that party's email address.
- (c) will be deemed to be received by the addressee:
  - (i) if delivered by hand, at the time of delivery;
  - (ii) if sent by post, on the third business day after the day on which it is posted, the first business day being the day of posting; or
  - (iii) if sent by email, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth).

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## 15. General matters

### 15.1 Interpretation

In interpreting this document:

- (a) headings are for convenience only and will not affect interpretation of these Terms;
- (b) words in the singular include the plural and words in the plural include singular, according to the requirements of the context;
- (c) a reference to legislation or other law includes delegated legislation and consolidations, amendments, re-enactments or replacements of any of them;
- (d) a reference to any of the words "include", "includes" and "including" is read as if followed by the words "without limitation"; and
- (e) terms used that are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or the Corporations Act 2001 have the meaning given in that Act, unless the context otherwise requires.

### 15.2 Relationship of parties

Nothing in these Terms gives rise to any relationship of agency, partnership, employment or otherwise between the parties.

### 15.3 Survival and essential terms

- (a) Clauses 6, 8.1, 9, 10, 11, 12, 13.3, 15.9 and 15.10 and are taken to survive on an ongoing basis.
- (b) Clauses 4, 6, 8 and 9 are essential terms of these Terms.

### 15.4 Assignment

- (a) Subject to clause 15.4(b), you cannot assign, novate or otherwise transfer any of its rights or obligations under these Terms without the prior written consent of the other party.
- (b) You agree that if we merge or amalgamate with another entity or otherwise sell or dispose of our business, we may assign or novate this Agreement, including all materials, personal information, confidential information and ideas supplied by you, to that other entity, provided that entity agrees to be bound by the stipulations in these Terms or to stipulations equivalent in effect.

### 15.5 Further assurances

Each party must promptly do all further acts and execute and deliver all further documentation reasonably requested by the other party to give effect to the contemplations of this Agreement.

### 15.6 Consents

Unless these Terms expressly state otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under these Terms. To be effective any consent under these Terms must be in writing.

### 15.7 Force majeure

A party will not be liable for any failure or delay in the performance of its obligations under the Agreement to the extent that such failure or delay:

- (a) is caused by a circumstance not within the reasonable control of the party; and
- (b) could not have been reasonably avoided, prevented or circumvented by the party.

### 15.8 Waiver

The non-exercise of or delay in exercising a right of a party will not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by written notice signed by the party to be bound by the waiver.

### 15.9 Jurisdiction

This engagement is governed by the law in force in the State of Queensland and each of us submit to the non-exclusive jurisdiction of the courts of Queensland.

### 15.10 Severability

Any provision of these Terms that is illegal, void or unenforceable will be severed without prejudice to the balance of the conditions which will remain in force.

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## 16. Acknowledgement

You acknowledge that:

- (a) you have read, understood and have agreed to be bound by these Terms and our Services Agreement (as applicable);
- (b) you have received and will retain your own copies of these Terms and our Proposal;
- (c) you have been informed by us that you should seek independent advice in relation to the Agreement prior to accepting our offer of Services; and
- (d) Any person that accepts this Agreement on your behalf, represents and warrants to us that they are duly authorised by you to accept this Agreement on your behalf and their acceptance on your behalf is effective to legally bind you to this Agreement.

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## 17. Definitions

In these Terms the following definitions apply:

**Confidential Information** means information that is by its nature confidential and:

- (a) is designated by a party as confidential;

- (b) is described in the Proposal as confidential; or
- (c) a party knows or ought to know is confidential,

but does not include information that:

- (d) is or becomes generally available in the public domain, other than through any breach of confidence;
- (e) is rightfully received from a third person other than as a result of a breach of confidence; or
- (f) has been independently developed by a party without using any Confidential Information of the other.

**Consequential Loss** means indirect economic loss, loss of income or profit, loss or damages resulting from wasted management time, damage to goodwill or business reputation, loss of contract, loss of data, liability under other agreements or to third parties, loss of opportunity or any other special, indirect, remote or punitive loss or damage.

**Copyright Act** means the *Copyright Act 1968* (Cth).

**Claim** includes, in relation to a person, a demand, claim, action, dispute or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

**IPR's** means all intellectual property rights of whatever nature including all rights conferred under statute, common law or equity, including all copyrights, patent rights, trade mark rights (including any goodwill associated with those trade mark rights), design rights and trade secrets together with any documentation relating to those rights but does not include moral rights.

**Loss** includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim) including penalties, fines and interest whether prospective or contingent and any amounts that for the time being are not ascertained or ascertainable.

**Materials** means materials created or provided by us in the course of, or as a consequence of, providing the Services and includes processes, documents (including working proofs), diagrams, graphics, plans, instructions, drawings, reports, and know-how.

**Personnel** means employees, agents and contractors.

**Proposal** means the document we have provided to you specifying in detail the nature of the Agreement between the Parties.

**Services** mean all services to be provide by us as set out in our Proposal including business computing, cloud storage, web site development and hosting, sales and repairs and other associated services as agreed.

**Service Fees** means our fees for the provision of our Services.

**Special Conditions** means the special conditions of this Agreement contained in Item 8 of Schedule 1.

**Termination Date** means the date that this Agreement is taken to be terminated in accordance with clause 13.