

# terms and conditions

These terms and conditions (the "Terms") set out the basis on which Carbon Data Solutions Pty Ltd (ACN102 010 873) ("CDS") will provide the Services to You.

## 1. Services Agreement

1.1 CDS and You enter into an agreement for the provision of Services in accordance with these Terms by both signing the final page and delivering to CDS, by which with the Proposal document and these Terms, constitute a binding agreement between both parties (together the "Agreement").

1.2 To the extent that there is any inconsistency between the Proposal document and these Terms, these Terms will prevail.

1.3 Phrases and terms defined in the Proposal document have the same meaning as in these Terms and vice versa.

## 2. Services

CDS shall provide to You the Services stated in the Proposal, in accordance with the terms and conditions of this Agreement.

## 3. Fees & Expenses

3.1 You agree to pay CDS the Fees and Expenses as specified in the Proposal document.

CDS WILL SEND YOU A TAX INVOICE OUTLINING SUCH FEES AND EXPENSES PAYABLE AND SERVICES TO WHICH THEY RELATE. FROM THE DATE OF RECEIPT, YOU HAVE 30 DAYS TO DISPUTE THE QUANTUM OF THE FEES AND EXPENSES AND THE SERVICES TO WHICH THEY RELATE.

WHERE YOU DO NOT DISPUTE THE TAX INVOICE WITHIN 30 DAYS, YOU ARE DEEMED TO HAVE ACCEPTED THE TAX INVOICE AS VALID AND TO BE PAID WITHIN THE STATED TIMEFRAME.

WHERE YOU DISPUTE THE TAX INVOICE (OR PART OF THE TAX INVOICE), YOU MUST NOTIFY BOTH IN WRITING AND BY TELEPHONE TO THE MANAGING DIRECTOR OF CDS, THE REASONS FOR THE DISPUTE. YOU MAY NOT DELAY OR WITHHOLD PAYMENT OF THE DISPUTED PART OF THE INVOICE DURING THIS PERIOD AND YOU AGREE TO FOLLOW THE DISPUTE RESOLUTION PROCESS, IN GOOD FAITH, AS OUTLINED IN CLAUSE 11. YOU ALSO AGREE NOT TO DELAY OR WITHHOLD PAYMENT OF ANY PART OF THE TAX INVOICE WHICH IS NOT DISPUTED.

3.2 All Fees and Expenses in this Agreement are expressed exclusive of GST. In addition to paying the Fees and any other amounts payable under this Agreement (which are exclusive of GST), You must:

(a) pay to CDS an amount equal to any GST payable in respect of a supply by CDS; and

(b) make such payment on the date when the amount is due, subject to receipt of a tax invoice. In this Agreement the terms "GST" and "tax invoice" have the meaning given to those terms in the A New Tax System (Goods and Services) Tax 1999 (Cth).

3.3 Interest will be charged on any outstanding Fees and Expenses at a rate not exceeding 2% above the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic), from the period beginning the day after payment was due until the outstanding Fees and Expenses are paid.

## 4. Variations To Services

Any requests by You for further work or variations must be made in writing and must be accepted by CDS prior to commencing the requested further work or variations. The parties shall meet to discuss proposed further work or variation, associated Fee and Expense and also timeframe for delivery.

## 5. Reasonable Assistance

5.1 You shall make available to CDS all information, documents, resources, access to premises, persons and facilities reasonably requested by CDS and necessary to enable CDS to provide the Services efficiently, in a safe and timely manner in accordance with the timeline stated in the Proposal document. You acknowledge and agree that should You not provide such reasonable assistance, CDS may not be able to perform the services within the agreed timeline.

5.2 Where CDS provides You with part of its Services, You are required to respond reasonably promptly, in order for the remainder of the Services to be delivered in the agreed manner, or as varied by mutual consent.

5.3 Where You do not respond with feedback to enable the continuation of the Services within 30 days following the delivery by CDS of the portion of the Service and the impact is a material delay to the delivery of subsequent and or contingent services, You acknowledge and agree that CDS has the right to elect one or more of the options:

- to pause all ongoing Services to You;
- issue a tax invoice for all Services completed to date; and
- issue a notice of Dispute.

## 6. Term and Termination

### 6.1 Term

This Start Date and End Date is specified in the Proposal Document, unless varied by mutual consent of both parties.

### 6.2 Termination

a) Either party may terminate this Agreement entirely or in respect of a portion of the Services not already performed immediately upon written notice if:

(i) the other party commits a material breach of this Agreement which is incapable of being remedied; or

(ii) the other party is the subject of an event reasonably considered to be a potential insolvency event by the terminating party.

b) Upon the expiration or termination of this Agreement:

(i) CDS shall cease to provide the Services the subject of the termination notice and You shall pay for Services performed and liabilities (including Expenses) incurred prior to or as a necessary consequence of termination (unless terminated for CDS's breach); provided that if the Fee specified in the Proposal is a Fixed Fee, You shall pay a proportion of the Fee reflecting the extent to which the Services were performed and liabilities incurred; and

(ii) unless otherwise agreed in writing, each party must return all Confidential Information of the other party to that party and destroy any electronic records of such Confidential Information.

## 7. Limitation of Liability

### 7.1 Exclusion of implied conditions and warranties

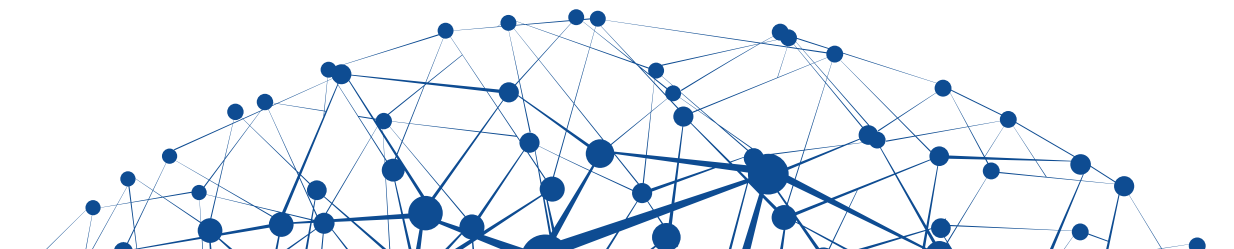
All warranties and conditions implied into this Agreement by law are expressly excluded, except to the extent that to do so would contravene a law or cause any part of this clause to be void, in which case the liability of CDS shall be limited, at CDS's option, to either supplying the Services again or the cost of having the Services supplied again, not exceeding the cost of the services provided by CDS.

### 7.2 Limitation of liability

To the extent permitted by law and subject to this Agreement, CDS shall not be liable (under statute, in contract, tort or otherwise) to You in respect of any loss, damage, injury or death howsoever caused, which may be suffered or incurred or which may arise directly or indirectly in connection with the supply of goods or services or opinions contained in written documents or oral presentations pursuant to this Agreement or to an act, failure or omission of CDS, except to the extent such loss, damage injury or death is caused by the willful misconduct, fraud or negligence of, or breach of this Agreement by CDS.

### 7.3 Exclusion of consequential loss

In no event will CDS be liable for any special, indirect, incidental or consequential loss or damages, loss of opportunity, lost revenue, lost profits, business interruption, loss of privacy or loss of data arising out of or in any way related to or connected with the provision of the Services.



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## 8. Warranties and Indemnities

(a) You agree that You are solely responsible for ensuring and warrant that You have all necessary rights to Your IPR and that the provision of Your IPR to CDS and CDS's use thereof in the provision of the Services will not infringe any third party's IPR. You agree to indemnify and hold CDS and its related entities and their officers, servants, contractors, agents, successors and assigns (collectively, the "Released Parties") harmless against any claims, actions, suits, demands, proceedings, losses, damages, charges, settlements, costs, expenses, judgments and any other liability (including reasonable legal costs and expenses) (collectively the "Claims") arising from or in connection with the use of Your IPR in the provision of the Services.

(b) You release and indemnify and agree to keep indemnified the Released Parties to the full extent permitted by law, from and against any Claim which any of the Released Parties incurs directly or indirectly in connection with or arising from the performance by CDS of its obligations under this Agreement. This indemnity will not apply to the extent a Claim results from CDS or the Released Parties' willful misconduct, fraud or negligence or breach of this Agreement by CDS.

(c) Where CDS introduces You to any third party, including companies and service providers, You agree and acknowledge that CDS does not make any warranties and representations in relation to the ability, credibility, reputation or performance of such third party or its IPR. You shall make all such enquiries, develop opinions and take actions without recourse to any representation from CDS.

## 9. Confidentiality/Publicity

Neither party may, without the prior written approval of the other party, use the other party's Confidential Information for any purpose other than the performance of its obligations or exercise of its rights under this Agreement. Neither party may, without the prior written approval of the other party, disclose to any person any information about the terms of this Agreement or the other party's Confidential Information except to its employees, officers, directors and advisers. Those obligations do not apply to information which:

(a) is, on the date of this Agreement, or becomes public knowledge other than by breach of the obligations imposed by this clause (provided that in doing so the recipient shall not disclose any such information which is not public knowledge);

(b) is lawfully in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;

(c) is legally required to be disclosed; or

(d) the receiving party can show has been independently developed or acquired by the receiving party (other than as a result of a breach of this Agreement, any other agreement or any duty of confidentiality between the parties).

## 10. Intellectual Property Rights

(a) CDS owns and shall continue to own all CDS IPR. For the sake of clarity, should You wish to modify the CDS IPR and or use it for any other purpose, You are prohibited to do so without written consent from CDS.

(b) You agree to grant CDS a royalty free, non-exclusive right to use Your IPR ONLY for the purpose of providing the Services.

## 11. Disputes

(a) During or after the termination of this Agreement the parties shall, before proceeding to arbitration in accordance with clause 11 (b), provide a written notice setting out all relevant facts and claims and requiring a response within 21 days of the notice. Should the dispute not be resolved following the notice, the parties through their Chief Executive Officers shall negotiate in good faith for a minimum period of 21 days with a view to resolving the dispute.

(b) If a dispute cannot be resolved between the parties in accordance with the preceding clause then that dispute shall be referred to the arbitration of a single Arbitrator (if the parties can agree upon the appointment of one Arbitrator) and otherwise to three Arbitrators, one to be appointed by each party and the third by the Arbitrators so appointed, in accordance with and subject to the provisions of the Commercial Arbitration Act 1984 of Victoria and both parties shall be entitled to be represented by a legal practitioner.

(c) Notwithstanding clauses 11(a) and (b), any party may bring an action:

(i) for injunctive or other similar mandatory or prohibitory relief in any court of competent jurisdiction; and

(ii) for any interlocutory or interim relief, including, without limitation, any proceedings for the detention, custody or preservation of any property, pending the results of the arbitration.

## 12. General

12.1 Any amendment to this Agreement must be in writing and signed by both parties.

12.2 You shall not assign any part or all of this Agreement without CDS's prior written consent.

12.3 This Agreement is governed by the laws of the State of Victoria, Australia and the parties agree to submit to the non-exclusive jurisdiction of the courts of that State.

12.4 Unless specified to the contrary in this Agreement, all notices given by a party under this Agreement must be given in writing to the other party at the address specified on the Proposal documents or as otherwise notified in writing to the other party from time to time. A notice may be delivered personally, by post, facsimile transmission or email and will be deemed to have been served if by hand, when delivered, if by post, 72 hours locally, 5 Business Days internationally after posting and if delivered by facsimile transmission, on the business day after transmission.

12.5 If any part of this Agreement is determined by any court or tribunal of competent jurisdiction to be wholly or partially unenforceable for any reason, such unenforceability shall not affect any other part of this Agreement.

12.6 A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

12.7 The following provisions survive termination or expiration of this Agreement: Fees and Expenses (Section 3); Term and Termination (Clause 6); Limitation of Liability (Section 7); Warranties and Indemnities (Section 8); Confidentiality (Section 9); Intellectual Property Rights (Section 10), Disputes (11); and General (Section 12).

## 13. Definitions

**CDS IPR** means all IPR (if any) subsisting in any reports, documents and other materials created by or on behalf of CDS, excluding Your IPR.

**Your IPR** means all IPR subsisting in any reports, documents and other materials You have provided to CDS in connection with the provision of the Services.

**Confidential Information** means all information which is disclosed by one party to the other under or in connection with this Agreement (whether orally or in writing, and whether or not the information is expressly stated to be confidential or marked as such) and includes the commercial terms of this Agreement and the CDS IPR and Your IPR.

**IPR** (Intellectual Property Rights) means all intellectual property rights of any nature under statute or at common law or equity including without limitation (i) patents, copyright (including moral rights), registered designs, trademarks and any rights to have confidential information kept confidential; and (ii) any application or right to apply for any of those rights.

## FEE SCHEDULE PROFESSIONAL CHARGES - PERIOD FROM 1 JULY 2017 TO 30 JUNE 2018

PROFESSIONAL STAFF	HOURLY RATES (EX GST)
Systems Analyst	\$290.00
Senior Programmer	\$190.00
Programmer	\$120.00
Designer	\$120.00