Viatek Technology Pty Ltd ("Viatek") – Master Terms & Conditions for the Sale and/or Supply of all Products and Services.

Background

a) Viatek provides a range of services and products to its customers.
b) Viatek will use reasonable efforts to provide those services and products to its customers.
c) These Master Terms and Conditions sets out the terms and conditions under which Viatek provides these services and products.
d) Viatek reserves the right to vary these terms and conditions from time to time in its discretion and upon notice to Customer, and thereafter these terms and conditions as varied shall apply between the parties in relation to the Agreement.
e) If the Customer has also received a Services Agreement and/or associated Annexes or Schedule(s) from Viatek in relation to the Agreement, then the terms and conditions of that documentation take precedence over these Master Terms and Conditions, but only to the extent of any inconsistency.

Definitions

Agreement means the Proposal and these Master Terms and Conditions and any related Annexes or Schedule(s). Agreement is interchangeable with the word **Contract.**
Associate has the meaning given to the term "associate" in the Corporations Act 2001 (Cth).
Customer means the customer or client named or defined in the Schedules.
Consequential Loss means.
a) loss of profits, loss of revenue, loss of data, loss of or damage to reputation, loss of or damage to goodwill, loss of business opportunities (including opportunities to enter into or complete arrangements with third parties), loss of management time, damage to credit rating, or loss of business; and
b) any loss, not arising naturally (that is according to the usual course of things), from the relevant breach, whether or not such loss is reasonably supposed to have been in the contemplation of both parties at the time they made this Agreement, as the probable result of the relevant breach.
Contract Change Request means a description of the changes to services offered by Viatek and the accompanying price changes agreed upon by both parties.
CPI means the Consumer Price Index (All Groups Index for the Weighted Average Eight Capital Cities) as published from time to time by the Australian Bureau of Statistics for any Quarter, and if that Index is discontinued or modified, an alternative equivalent index provided by the Australian Bureau of Statistics. If no equivalent alternative index is available, then either Viatek or the Customer may request the Institute of Actuaries of Australia to provide an alternative index that is equivalent to the CPI and that alternative Index shall be deemed to be the CPI for the purposes of this Agreement.
Customer: means the party/ies to this Agreement which, in exchange for good consideration, is to receive Goods and/or Services from Viatek as the other party to this Agreement, and all of whom collectively may be referred to as Parties or individually as a Party.
Customer's customer means a designated or directed party of the Customer who may receive Goods and or Services from Viatek which the Customer authorises and for which the Customer is responsible.
Cyber-attack includes cyber-attacks, attempted, threatened or actual unauthorised access to or changes to Environments, attempted, threatened or actual damage to, loss of or encryption of Environments and/or data stored on, accessible through, or contained within Environments, the operation of malicious software within or in relation to an Environment (including ransomware and software viruses) and any malicious or intentional activity by a third party (including hackers) or third-party systems (including hardware and/or software) that affects, interrupts, compromises or damages an Environment or the Customer's access to or use thereof.
Cyber-security measures mean security, IT security and cyber-security measures designed to increase and/or improve the security of an Environment, improve the cyber-security risk profile in relation to an Environment, and/or mitigate or reduce the risk of or protect against, Cyber-attack.
Environment includes IT environments, networks, systems, applications, equipment, operating systems, devices (including computers, software, and firmware installed on devices) and IT infrastructure.
Force Majeure Event means an event including, but not limited to, acts of God, war, civil commotion, riot, blockade or embargo, fire, explosion, breakdown, union dispute, earthquake, epidemic, flood, windstorm, lack or failure of courses of supply, passage of any law, order, proclamation, regulation, ordinance, demand, requisition or requirement or any other act of any government authority beyond the reasonable control of a Party, whether or not foreseeable, which renders performance of relevant obligations impossible.
Hardware means and is the tangible component of the Products made available or supplied to the Customer under the Agreement, excluding Software and media.
Infrastructure means Windows Servers.
Loss means liability, loss, damage, cost, and expense of any nature and includes Consequential Loss.
Products means, individually or collectively as appropriate, Hardware, Software, documentation, supplies, accessories, and other commodities related to any of the foregoing to be provided by Viatek to the Customer under the terms and conditions of the Agreement and as expressly listed in the Quote.
Quote means the detailed document provided to the Customer outlining products and services to be supplied by Viatek and includes associated or ancillary charges and fees to the Customer's account. Quote is interchangeable with the word **Proposal.**
Related Entity has the meaning given to the term "related entity" in the Corporations Act 2001 (Cth).
Services means the delivery of skills, knowledge, or advice by Viatek or an authorised third party to Customer pursuant to, under or in connection with the Agreement and may include installation, engineering, training, consulting or technical support, and any other services to be performed by Viatek or its delegates.
Schedules means any document provided by Viatek to and agreed by the Customer specifying the scope of Services to be provided under and for the purposes of the Agreement, the period such Services will be provided and other relevant terms or otherwise applying to or related to the Agreement.
Site means the Customer's premises or designated location where the Products and/or Services may or are to be delivered and/or installed as required under the Agreement.
Software is the object code version of the computer programs provided as a component of any Product, including any Product that consists entirely of object code computer programs.

1 Payment and Pricing

1.1 Fees or Prices
The customer agrees to pay Viatek when the fees or prices are due as defined in the Quote and otherwise as set out in or relating to the Agreement.

1.2 Variations

Unless specified to the contrary in a schedule, pricing for Services will be reviewed annually on each anniversary of the Agreement Commencement Date and the services pricing may at the discretion of Viatek (and time not being of the essence) be increased to reflect the amount of any increases estimated by Viatek in good faith in the costs incurred by Viatek in supplying or delivering the products or services or any part thereof to the Customer including (without limitation) (1) changes in manufacturer's prices, rates of exchange, landing charges or port dues or the costs of carriage, insurance and handling, or (2) or any further amounts to reflect any increase in Viatek's costs of supplying or delivering the products or services to the Customer under the Agreement as a direct result of any changes in laws in relation to the imposition or collection of any tax, revenue, levy, duty, impost (including GST, but not including income tax), and/or otherwise reflecting movements in consumer price indexation. Any changes to services pricing will be notified in writing by Viatek to the Customer by way of updated schedule(s). Such changes will be effective thirty (30) days from the date of issue.

1.3 Invoice Payment Terms

The Customer must pay each Viatek invoice in accordance with the payment terms set out in the schedule(s). If payment terms are not set out, invoices will have 14-day full payment terms.

1.4 No Withholdings and/or Deductions

The Customer is not entitled to make any withholding or deduction of any kind from nor claim any right of set-off against any payments due to Viatek unless Viatek has issued a credit note to the Customer or otherwise agreed previously in writing. Where a lesser amount is paid, it will be treated as a payment on account and deemed without prejudice to Viatek's right to recover the balance or pursue any other remedy available to Viatek.

1.5 Interest on Overdue Amounts

Interest will, at the discretion of Viatek and without any need for prior demand therefor, accrue on all overdue amounts at the rate of one per cent (1%) per month (twelve per cent (12%) per annum) from the due date for payment and until all overdue amounts are paid in full.

2 Taxes

2.1 Payment

The Customer agrees to pay any taxes, including taxes and levies arising out of changes in the law, however, and whenever designated (excluding taxes on Viatek's net income).

2.2 Reimbursement

Notwithstanding any other provision of the Agreement, if either party is required to reimburse or indemnify the other party for any cost, expenses or other amounts, the amount to be reimbursed or indemnified must be reduced by any part which is recoverable as an input tax credit by the party which incurred it (or representative member of that party's GST group).

2.3 Tax invoices

Each party must ensure that each invoice it presents to the other party under the Agreement in respect of any GST Amount is a valid tax invoice. A party to whom a GST Amount is owed must include that GST Amount on the same invoice as the consideration for the supply to which it relates. The party receiving that invoice must pay the GST Amount no later than the date on which the rest of the invoice is due to be paid.

2.4 Adjustments:

If at any time an adjustment is to be made with the relevant taxing authority in respect of an amount paid on account of GST as a result of any supply made (or deemed to be made) by a party in connection with the Agreement:

a) A corresponding adjustment must be made between that party and the other party to this Agreement.
b) The party entitled or required to make the adjustment must deliver an adjustment note to the other party within 28 days of becoming aware of the entitlement or requirement to make an adjustment, and
c) any payment required to give effect to the adjustment must be made within 30 days of the adjustment note being delivered to the recipient party.

2.5 Instalments for no monetary consideration

If a party making a supply is not entitled to invoice the other party for all or part of the monetary consideration in respect of that supply until after the liability to pay GST in respect of the supply arises (or if no monetary consideration is due in respect of that supply):

a) the party making the supply may present its invoice for the GST Amount in respect of the supply at any time, provided it is no earlier than 40 days before the liability to pay the GST arises; and
b) the party receiving the invoice must pay the GST Amount no later than 30 days after it receives the invoice.

2.6 Terms Used

Terms defined in the GST Act have the same meaning when used in this section, including "supply", "consideration", "tax invoice", "adjustment note", "taxable supply", and "GST group".

3 Suspension of Services

Notwithstanding any other part of the Agreement, where any fees are outstanding and overdue from the Customer, Viatek shall be entitled to suspend all or any part of the Services until such time as full payment of all overdue amounts are received by Viatek.

4 Title and Risk of Product

Title in any products, goods, accessories, or materials supplied or delivered to the Customer in or in relation to the Products or Services (excluding any intellectual property rights therein) shall not pass to the Customer unless and until Viatek has received full payment for them. The Customer assumes risk in and for products or goods from the time of delivery to the Customer's premises or the Customer's nominated address or delivery otherwise as the Customer directs.

5 Warranties and Disclaimers

Except as implied by statute and subject to the provisions of the Agreement, Viatek, its officers and employees, subsidiaries and their affiliates, sub-contractors and suppliers make no warranties to the customer express or implied and specifically disclaim any warranties of merchantability or fitness for a particular purpose.

Viatek warrants that the Services to be provided under the Agreement will be provided by Viatek in an efficient and professional manner and by suitably trained, qualified, and experienced personnel.

Without limiting clause 5 but notwithstanding clause 5, and unless otherwise explicitly set out in the Agreement, the Services exclude the provision by Viatek of, and the Customer agrees that Viatek has no duty or obligation under the Agreement or at law to provide advice, consultation, knowledge, skill and services to the Customer in relation to the security of the Customer's Environment including the existence, availability, suitability, applicability, industry standard or best practice, fitness for purpose, implementation, or maintenance of Cyber-security measures in relation to, and protection from Cyber-attack on, the Customer's Environment, notwithstanding that Viatek may from time to time inform or make recommendations or suggestions to the Customer about particular Cyber-security measures.
The Customer acknowledges and accepts that the security of the Customer's Environment is important, the Customer's Environment may be insecure without active implementation and maintenance of Cyber-security measures in the Customer's Environment, and the Customer ought to investigate, implement and maintain appropriate Cyber-security measures in line with industry standard and best practice to protect and/or secure the Customer's Environment, including protection of the Customer's Environment against Cyber-attack.
The Customer acknowledges that Viatek has advised the Customer of, and the Customer understands and represents and warrants to Viatek that the Customer understands, the importance of security of the Customer's Environment and the need for Cyber-security measures in the Customer's Environment, and the risks and potential consequences if the Customer does not implement and maintain appropriate Cyber-security measures in line with industry standard and best practice.

The Customer acknowledges and accepts that Viatek does not make, and expressly excludes, any warranty, representation, promise or guarantee that the Services or the Customer's Environment will be secure, or free of or protected from Cyber-attack, irrespective of whether or not and, if so, to what extent, the Customer implements and maintains Cyber-security measures or Viatek implements and maintains Cyber-security measures in the Customer's Environment (whether as part of the Services or otherwise).

6 Customer Responsibilities

6.1 Customer responsibility for the Services

a) The Customer must reasonably cooperate with Viatek to allow Viatek to provide the Services to the Customer.

b) The Customer must:

i) Ensure that, for each Service, it meets and continues to meet during the term of the Agreement any pre-requisite or condition for the supply of that Service specified in the Standard Service Terms for that Service;

ii) obtain any necessary permits, licences and authorisations required for installation and use of equipment (whether supplied by the Customer or Viatek) in connection with the Services; and

iii) provide Viatek with all information that it reasonably requires to provide the Services (including, without limitation, any information to perform service qualification for any Services and to comply with all reasonable directions to enable Viatek to confirm Customer compliance with this clause.

c) The Customer is responsible for understanding how to access, use and operate the Services. Viatek may, for an additional charge, train the Customer on how to access, use and operate the Services.

d) The Customer is responsible for all charges and other obligations relating to the Services (whether or not the Customer has authorised the use of the Services) and must pay Viatek for any use of any Services that it provides to the Customer by the due date set out on the invoice issued to the Customer.

e) The Customer is liable for all charges relating to any use of any Services Viatek provides to the Customer if the Customer allows another person to occupy the Premises or use the Services. For the avoidance of doubt, one of the circumstances where the Customer will be deemed to have allowed another person to use the Services is if the Customer does not install appropriate security measures, including, without limitation, implementing password protection and other safeguards to prevent unauthorised use of the Services and, as a consequence, an unauthorised person uses the Services.

f) The Customer is also liable for all charges relating to any use of any Services provided by Viatek to the Customer by any other person, whether or not the Customer authorised the particular use of the Services by the other person, resulting from a virus, trojan, worm or other malicious computer code, denial of service attack, hacking incident (including a SIM, PABX, IP PBX or SIP gateway device hack) or other means of exploiting a weakness in Customer network, equipment or security measures.

g) If the Customer vacates the Premises and does not either disconnect any Services Vaitej Technology provides to the Customer at those Premises or transfers legal responsibility for those Services to the new occupant of those Premises with Viatek's prior agreement (which may be given, withheld or be given subject to conditions at its discretion), the Customer will be liable for any use of the Services by the new occupant or other third parties. The Customer must pay Viatek for using the Services even after the Customer has vacated the Premises if the Customer did not arrange for the Services to be discontinued or does not give Viatek sufficient prior notice to discontinue the Services before the Customer vacates the Premises. Vacating Premises will not affect this agreement, and the Agreement remains in effect until a Contract Change Request has been processed and approved by Viatek or Agreement termination has been actioned as per the relevant clause in each applicable schedule(s).

6.2 Customer use of the Services

a) In using the Services, the Customer must:

I. Comply with all laws, all directions by a regulator and all reasonable directions given by Viatek from time to time;

II. Ensure that all Customer equipment used or to be used with Viatek's Network and each Service:

- is compatible with Viatek's Network and the Service;
- complies with all industry codes and standards (including, without limitation, any technical standards issued by any Regulatory Authority or by Viatek in connection with the equipment);
- is installed, stored or otherwise located in the Premises with adequate and suitable space, power supply and a dust-free environment free of excess humidity; and
- complies with any other requirements specified in the Standard Service Terms for the Service;

III. comply with all operational and user manuals and specifications provided by Viatek to the Customer in respect of each Service; and

IV. comply with Viatek's Acceptable Use Policies as applicable and any other restrictions relating to the use of each Service in the Standard Service Terms for that Service.

b) If Viatek provides a default password (and/or other security safeguard such as a default PIN) as part of a Service that the Customer is required to enter in order to access, use and/or operate the Service, it is the Customer's responsibility to change the password

(and/or other security safeguard). Viatek will not be liable in any way if a third party enters the default password (and/or other security safeguards) and is able to access, use and/or operate the Service.

c) If a Service involves access by the Customer to data (whether Customer data or a third party's data), the Customer is responsible for that access, including setting appropriate passwords to enable the Customer to access the data.

d) The Customer must not use, configure, reconfigure or rectify any defect or faults in any Service or attempt to use, configure, reconfigure or rectify any defect or faults in any Service:
   I. In any way which breaches any law or regulation;
   II. in any way which infringes another person's rights or exposes us or any of our Suppliers to liability, or does anything which could bring Viatek or any of its Suppliers into disrepute;
   III. in any way which damages, interferes with or interrupts the Service or Viatek's Network used to supply the Service;
   IV. in any way which makes it unsafe or which may damage any property or injure or kill any person; or
   V. to transmit, receive, publish or communicate material that is illegal, defamatory, offensive, abusive, indecent, menacing, threatening, harassing or unsolicited, and the Customer must not procure, assist or allow any person to do any of the above.

e) Viatek may at any time restrict or prevent the right of any third party providing or using services through Viatek's Network.

f) The Customer must take all reasonable steps, actions and precautions to stop internal and external threats and malicious software from attacking or being present on or adversely affecting Viatek's Network, including, without limitation, ensuring that all equipment used by the Customer in connection with the Services (other than a Supplier Network) is protected by industry-standard anti-virus and anti-malware software from a reputable supplier and that this software is kept up to date and receiving security and signature updates or has such software effectively applied to it at least weekly.

6.3 Access to Premises

a) Viatek may require access to the Premises to provide Services to the Customer. The Customer agrees to provide Viatek with safe and prompt access to the Premises and Customer Personnel, equipment, data, information and sources of power, light and ventilation for the purposes of:
   I. commissioning a Service;
   II. installing any equipment for a Service the Customer has requested;
   III. inspecting, testing, maintaining, modifying, repairing or replacing any equipment for a Service the Customer has requested;
   IV. recovering any equipment which Viatek owns after a Service it has provided to the Customer is cancelled; and
   V. performing Viatek's other obligations to the Customer in the Agreement.

b) If the Customer does not own all of the Premises, the Customer must obtain each owner's permission for Viatek to access the Premises for the purposes specified in paragraph (a) above, and that consent must be irrevocable and not lapse while the Agreement is active. The Customer must indemnify and keep Viatek indemnified from and against any claim, action or demand that the owner of the Premises may make against Viatek relating to it entering the Premises for the purposes specified in paragraph (a) in reliance on any representation made by the Customer that the Customer has obtained that permission. Viatek is not required to first make payment in relation to any such claim before the Customer is liable to pay or indemnify Viatek in respect of such claim under the indemnity contained in this clause.

6.4 Reselling of Services

The Customer must not resell or otherwise re-supply any Service to any person unless the Customer obtains Votek Technology's prior written consent, such consent to be given or withheld at Viatek's sole discretion.

6.5 Power supply and third-party infrastructure

a) Viatek's supply of Services to the Customer may rely on electricity supply. The Customer acknowledges and agrees that arranging and paying for any electricity supply at the Premises necessary to facilitate the supply of Services to the Customer is the Customer's sole responsibility, and failure of or interruption to, any Service due to an irregular or interrupted or non-existent electricity supply does not constitute a breach of the Agreement by Viatek.

b) Viatek's supply of Services to the Customer may also rely on the following:
   I. Supplier Networks;
   II. Equipment, infrastructure and services provided by a third party, whether or not that third party has an agreement or understanding with the Customer, including, without limitation, a third party who provides Carriage Services;
   III. Customer infrastructure; and
   IV. Customer equipment (Third Party Facilities).

c) Without limiting any other clause of the Agreement, the Customer acknowledges and agrees that:
   I. The effective delivery of a Service may be reliant on the effective provision and operation of one or more Third Party Facilities. Vitek Technology will not be able to provide the Customer with the Service if there is a delay in the provision of, or there is a defect or failure in, one or more Third Party Facilities;
   II. The effective delivery of a Service may be reliant on one or more third parties providing Viatek with equipment or service. Vitek Technology will not be required or liable in respect of providing the Customer with the Service if one or more third-party delays in providing, or does not provide, Vitek Technology with the equipment or service required to provide a service to the Customer;
   III. Due to reasons beyond Viatek's reasonable control, a defect or failure in one or more Third Party Facilities may cause a delay, failure or interruption to a Service (including, without limitation, the failure of the Customer to receive an electronic communication such as a voicemail message or e-mail);
   IV. Viatek will not be responsible in any way for any loss (including Consequential Loss) the Customer may incur or suffer as a result of any defect, failure or delay referred to in this clause; and
   V. The occurrence of any defect, failure, or delay referred to in this clause does not constitute a breach of the Agreement by Viatek.

d) If the Customer requires Viatek to undertake any remedial work to repair a Service as a result of any defect, failure or delay referred to in this section, Viatek may charge the Customer an additional charge at the time it undertakes that remedial work, and if it does so, the Customer must pay such additional charge on demand. An additional charge will be payable by the Customer even if, when Viatek first commences that work, the Customer or Viatek considers that Viatek caused the failure or interruption but it is subsequently discovered by Viatek, in good faith, that any defect caused the failure or interruption, failure or delay referred to in this section.

6.6 End users

The Customer must use all reasonable endeavours to ensure that all end-users of each Service comply with this clause as if any reference to "the Customer" was a reference to each "end-user".

7 Indemnities and Limitations of Liability

7.1 Indemnity:
Subject to clause 7.2, each party (Indemnifying Party) indemnifies and must keep indemnified the other party (Indemnified Party) from and against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against the Indemnified Party or which the Indemnified Party may pay, sustain or incur to the extent caused by any one or more of the following:
a) any breach or non-performance of this Agreement by the Indemnifying Party; and
b) any wrongful or negligent act or omission of the Indemnifying Party or any of its employees, agents or contractors.

7.2 Limitations of Liability:
Notwithstanding any other provision of this Agreement:
a) neither party shall have any liability to the other in contract, tort (including negligence) or otherwise for any Consequential Loss; and
b) Viatek's maximum liability to the Customer in contract, tort (including negligence) or otherwise under or in relation to this Agreement is limited to the total fees paid to Viatek by the Customer under this Agreement in the 12-month period prior to the claim arising.

7.3 Aggregate and Carve-Outs:
The limitations in clause 7.2 apply to all causes of action in the aggregate, including but not limited to breach of contract, breach of warranty, negligence, strict liability, misrepresentation, and other torts, but subject to any limitations imposed by applicable law, will not limit or exclude:
a) Liability for death or personal injury resulting from negligence; or
b) Liability for fraud.

7.4 Cybersecurity Release:
The Customer releases and discharges Viatek from any and all:
a) Loss suffered or incurred by the Customer arising out of or in connection with an insecurity in or Cyber-attack on the Customer's Environment:
    i caused or contributed to by the Customer or the Customer's employees, servants, officers, contractors, agents, customers, clients, invitees, users of the Services or an Associate or Related Entity of any of the foregoing;
    ii caused or contributed to by:
        • the Customer's failure to implement or maintain, or the absence of, appropriate Cyber-security measures in line with industry standard and best practice in the Customer's Environment; or
        • a failure of, or defect in, the Services;
    iii. where the Loss, insecurity or Cyber-attack could have or would have been reduced, mitigated, limited, or prevented by appropriate Cyber-security measures in line with industry standard and best practice in the Customer's Environment; and
    iv. howsoever arising from any cause; and
b) claims the Customer may have against Viatek, and liability Viatek may have to the Customer, under this Agreement or at law arising out of or in connection with an insecurity in or Cyber-attack on the Customer's Environment.

7.5 Cybersecurity Liability Reduction
Without limiting clause 7.4, any liability Viatek may have to the Customer under this Agreement for any Loss suffered or incurred by the Customer arising out of or in connection with an insecurity in and/or Cyber-attack on the Customer's Environment shall be reduced to the extent that the Loss:
a) was caused or contributed to by the Customer or the Customer's employees, servants, officers, contractors, agents, customers, clients, invitees, users of the Services or an Associate or Related Entity of any of the foregoing entities;
b) was caused or contributed to by the Customer's failure to implement or maintain, or the absence of, appropriate Cyber-security measures in line with industry standard and best practice in the Customer's Environment;
c) could have or would have been reduced, mitigated, limited or prevented by appropriate Cyber-security measures in line with industry standard and/or best practice in relation to the Customer's Environment.

For the purposes of clauses 7.4 and 7.5, it shall be presumed that any Loss, insecurity and/or Cyber-attack would have been reduced, mitigated, limited or prevented by appropriate Cyber-security measures in line with industry standard and best practice in the Customer's Environment, and the Customer shall have the burden of proving otherwise and that any Cyber-security measure is not appropriate nor in line with industry standard and best practice.

8 Termination

The Agreement and the associated Schedules may be terminated as a whole. Alternatively, individual Schedules may be terminated independently, and such termination will not terminate or otherwise affect the remainder of the Agreement. Either party may terminate this Agreement by giving 30 days written notice to the other party only if:
a) The other party commits a Material Breach of this Agreement; or
b) The other party makes an assignment for the benefit of creditors, suffers, or permits the appointment of a receiver to that party's business or assets, becomes subject to any proceedings under bankruptcy or insolvency law, whether domestic or foreign, or that party is wound up or liquidated voluntarily (other than for the purposes of solvent reconstruction).

A party will commit a Material Breach of this Agreement if:
a) That party has breached any of its obligations as set under this Agreement; and
b) the other party has given notice in writing to that party requiring them to remedy the breach within 10 business days or any longer period which is specified in the notice; and
c) having received a notice pursuant to this clause, that party fails to remedy the breach in full and within the period specified in the notice.

Effect of Termination:
a) Upon notice given by either party, all outstanding balances owed to Viatek will become immediately due and payable irrespective of terms outlined in this or other schedules;
b) Viatek will prepare final invoices in a reasonable timeframe;
c) neither party is taken to have waived any other remedy to which it is entitled;
d) If Viatek requires additional effort to complete termination or offboarding that is outside of the scope of the Services set out in the Schedules, these amounts will be invoiced to the Customer and must be paid in full before offboarding/termination work commences;
e) If the Customer terminates the Agreement, and if Viatek has entered into any 3rd party supply arrangements for the provision of Services to the Customer, any termination fees associated with those Services will be due and payable by the Customer. Amounts will be invoiced to the Customer after notification of termination has been given, and any amounts invoiced will be paid immediately to Viatek;

f) If the Customer fails to pay any of the fees or charges due to Viatek without limiting any other remedies available to Viatek, Viatek may defer the performance of all Services (whether or not relevant to those fees), or suspend the customer's access to all Services, until the outstanding fees or charges have been paid.

g) Any termination of the Agreement and or schedules requested or purported to be effected by the customer that does not comply with clause 8 will be of no force or effect and without limitation and at the election of Viatek may be accepted by Viatek as repudiation of the Agreement by the Customer and/or result in the customer being liable for and charged for fees and charges otherwise payable or which would have been payable and paid for and during the remaining term of the contract at the full monthly rate.

9 Force Majeure

Neither Party shall have liability to the other party for and to the extent of any Force Majeure.

Except for the payment obligations of the Customer, neither party will be responsible or liable in any way for the failure or delay in the performance of its obligations due to any Force Majeure Event. If a cause relied on by a party hereunder ceases to exist, the party will perform or resume the performance of its obligations, and the time for performance will be extended by a period equal to the duration of the Force Majeure Event. If a Force Majeure Event persists for a period of more than 60 days, Viatek will be entitled to terminate this Agreement on written notice to the Customer.

10 Subcontracting

Viatek may subcontract any or all of the Services to be performed under the Agreement, but shall retain prime responsibility for the Services. Viatek will inform the Customer as soon as reasonably practicable upon subcontracting out any Service.

11 Dispute Resolution

11.1 Any dispute, controversy or claim between the Parties arising from or related to the Agreement other than any claim or demand for the payment of any monies by Viatek in relation to the Agreement (Dispute) must be dealt with in accordance with this clause 11 before the Parties commence court proceedings in relation to the Dispute.

11.2 Informal Dispute Resolution

a) A party claiming that a Dispute has arisen must notify the other Party, at which time the Parties must refer the matter for discussion to their respective company executives, where relevant.
b) The parties' nominated executives must negotiate in good faith in an effort to resolve the Dispute.
c) If the parties' nominated executives determine in good faith that resolution through continued discussions by such representatives does not appear likely, or the Dispute remains unresolved 21 days after the date of notification, then the matter must be referred to the respective CEO's (or equivalent) to negotiate a resolution of the Dispute.
d) During the course of negotiations, all reasonable requests made by one Party to the other for non-privileged information reasonably related to the Dispute must be honoured in the order that each of the Parties may be fully advised of the other's position.
e) Unless otherwise agreed, all proposals and information exchanged during the informal proceedings described in this clause are exchanged on a confidential and without prejudice basis.

11.3 Mediation

a) Notwithstanding clause 11.2, if a Dispute remains unresolved 45 days after the date on which it was first notified, then the Parties agree that the Dispute will be immediately referred to mediation using an expert under the then-current rules for mediation used by the Australian Commercial Disputes Centre in Sydney, Australia. Unless otherwise agreed by the Parties, the mediation will take place in Sydney, Australia.
b) If the Parties cannot agree upon a mediator, then the Parties agree to accept the appointment of a mediator nominated by the then President of the Australian Institute of Arbitrators and Mediators upon request by either party.
c) The Parties will share equally in the costs for the mediation.

11.4 Continued Performance

The Parties must continue performing their respective obligations and responsibilities under this Agreement while any Dispute is being resolved in accordance with this clause 11, unless and until such obligations are terminated or expire in accordance with the provisions of this Agreement or otherwise as agreed by the Parties.

11.5 Termination and Urgent Relief

This clause 11 will not affect or preclude either party's rights to terminate this Agreement or to seek any interlocutory or other urgent relief, or Viatek's rights to pursue payments of any monies payable by the Customer under or in relation to the Agreement.

11.6 Time Limit

Actions on Disputes between the Parties must be brought in accordance with this clause 11 within two (2) years after the cause of action arises.

12 Privileged Access, Customer Access to Viatek Tools

a) The Customer acknowledges and agrees that upon the Customer's request, Viatek may provide them with privileged access to Viatek's own environment for the purpose of managing the Customer's IT infrastructure.
b) The Customer acknowledges and accepts that privileged access comes with additional risk and responsibility. Therefore, the Customer must take all necessary measures to ensure the security and confidentiality of any credentials or access provided to the Customer.
c) The Customer is responsible and liable for all risk regarding all activities and actions taken in connection with such privileged access, whether authorised or not, intentional, accidental or otherwise.
d) The Customer agrees that Viatek will not be held liable for any damages or losses resulting from or in connection with the Customer's use of privileged access, including but not limited to any unauthorised access, data breaches, and malicious activities.
e) The Customer shall indemnify and hold Viatek harmless from and against any and all claims, damages, liabilities, costs, and expenses (including legal fees incurred by Viatek) arising from or related to the client's use of privileged access.
f) Without limitation to the above indemnity, Viatek reserves the right to charge the Customer and the Customer shall bear or reimburse Viatek for any repair or remediation costs or expenses incurred or required as a result of the Customer's use of privileged access, including any damage or disruption caused to Viatek's infrastructure, network, or other Viatek customers.
g) Viatek reserves the right to revoke or suspend the Customer's privileged access at any time and for any reason without prior notice.
h) Viatek may also, at its discretion and upon the Customer's request, provide access to certain Viatek tools for the purpose of managing the Customer's IT infrastructure.
i) The Customer acknowledges and agrees that the use of Viatek tools is at its own risk and that Viatek does not provide any warranties or service level agreements (SLAs) for access or use of these tools.
j) The Customer will be responsible and liable for all risk regarding all activities and actions taken in connection with such use of Viatek tools, whether authorised or not, intentional, accidental or otherwise.

k) The Customer agrees Viatek will not be held liable for any damages or losses resulting from or in connection with the Customer's use of Viatek tools, including but not limited to any unauthorised access, data breaches, and malicious activities.
l) The Customer shall indemnify and hold Viatek harmless from and against any and all claims, damages, liabilities, costs, and expenses (including legal fees incurred by Viatek) arising from or related to the Customer's use of Viatek tools.
m) The Customer acknowledges and agrees that any repair or remediation costs or expenses arising in connection with any issues or incidents caused by or in relation to the Customer's access or use of Viatek tools, including but not limited to damage to Viatek's infrastructure, network, or other Customers, will be chargeable to the Customer and payable or reimbursable by the Customer to Viatek.
n) Viatek reserves the right to revoke or suspend the Customer's access to Viatek tools at any time and for any reason without prior notice.

13 BYOD Devices

a) The Customer acknowledges and agrees that Viatek does not provide support to or assume responsibility or risk for any devices not issued by the Customer or otherwise outside the scope of the Agreement, including without limitation any devices brought to or connected to Customer infrastructure or systems or used at the Customer's premises by the Customer's employees, contractors, invitees or any other third-party personnel ("BYOD devices"). The Agreement does not cover BYOD devices, and anything that the Customer may need to be supported or serviced in that respect is out of scope and will be subject to separate agreement at the discretion of Viatek and charges or fees issued by Viatek and as agreed to by the Customer under any such separate agreement.
b) The Customer acknowledges and accepts that BYOD devices may pose a significant security risk to the Customer's network and systems, and Viatek does not and will not warrant or guarantee the security of such BYOD devices. The Customer agrees to assume all risks associated with the use of BYOD devices.
c) In the event of a cyber breach, Viatek shall not be liable for any loss, damage, or liability whatsoever arising from or in connection with the use of BYOD devices, regardless of the cause of the breach or the extent of the damage, loss or liability caused.
d) Viatek shall not be liable for any loss of data or unauthorised access to data caused by or arising from or connected with the use of BYOD devices, regardless of the cause or extent of the loss, damage or liability caused.
e) The Customer shall ensure at all times and from time to time that any BYOD devices used on or connected at the Customer's premises comply with all applicable laws, regulations, and industry standards, including those related to data protection and privacy.
f) The Customer shall indemnify and hold Viatek harmless from and against any loss, damage, or liability arising from or in connection with the use of BYOD devices on or otherwise connected to the Customer's premises, infrastructure, or systems.

14 General Waiver

a) Any supplement, modification or waiver of any provision of the Agreement must be in writing and signed by an authorised representative of both parties. Any failure by either party to enforce at any time, for any period, or any obligation of or under this Agreement will not be a waiver of that obligation or the right at any subsequent time to enforce that obligation.
b) If either party fails to enforce any right or remedy available under the Agreement, that failure shall not be construed as a waiver of any right of remedy with respect to any other breach or failure by the other party.
c) If any portion of this Agreement is found to be invalid or unenforceable, the parties agree that the remaining portions shall remain in effect. The parties further agree that in the event such an invalid or unenforceable portion is an essential part of this Agreement, they will immediately begin negotiations for a replacement.

14.1 Headings
The section headings in the Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of the Agreement.

14.2 Governing Law & Jurisdiction
The Agreement shall be construed in accordance with and governed by the non-exclusive laws in force in the state of New South Wales, Australia and any competent court of jurisdiction on appeal thereto.

14.3 Complete Understanding
The Agreement and all annexes and schedules incorporated by reference, or as varied in accordance with the terms of the Agreement, constitutes the whole of the agreement and understanding between the parties with respect to the subject matter hereof and representations and agreements not expressly contained herein or incorporated by reference shall not be binding upon either party as conditions, warranties or otherwise.

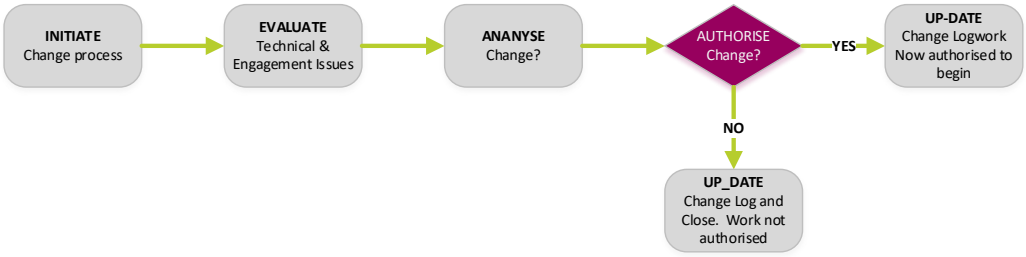
14.4 Warranty Limitation
All conditions, warranties and representations on the part of Viatek, whether express or implied, statutory or otherwise, whether collateral or antecedent hereto or otherwise, with the exception of the express warranty set out in this Agreement, are expressly excluded to the fullest extent permitted by law.

14.5 Variations
Subject to the other express provisions of the Agreement, all Moves, Adds, Changes or Deletes (MACDs) to the Agreement shall be in writing and shall be signed by both parties.

14.6 Change Management Requests & Changes to Scope:
The general change process will be implemented as follows. Either Viatek or the Customer may initiate a change in writing. The change will be evaluated, and any impact will be identified. The price, scope, and schedule impact (if any) will be analysed and documented. The change impact will then be processed for Customer authorisation or closure.

14.7 The Contract Change Request form will include a description of the change, the reason for the change, and the initiator of the change, as well as its impact on scope, price, quality, schedule, resources, and risks. All changes must be mutually agreed by the parties in writing. Once approved, changes to the initial project will be implemented as described.

14.8 If Viatek and the Customer are unable to resolve the disposition of change order, the scope of work will remain as defined in the Agreement.



14.9 Notices

a) A notice, approval, consent, or other communication in connection with this Agreement must be in writing and sent by mail, e-mail or facsimile to the other party or parties at the address shown on the front page of this Agreement, or if the addressee notifies another address, then to that address. Alternate recipients for notices may be defined in the Schedules.

b) A notice, approval, consent, or other communication takes effect from the time it is received unless a later time is specified in it.

c) A letter or facsimile is taken to be received:

i. in the case of a posted letter, on the third (3rd) day after posting if posted within Australia and on the seventh (7th) day if posted to or from a place outside Australia, and

ii. in the case of e-mail, on production of an e-mail in, the senders sent items with no return or failed to send message.

iii. In the case of a facsimile, the production of a transmission report by the machine from which the facsimile was sent indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

14.10 Assignment

Viatek may assign any of its rights or novate any of its rights or obligations under the Agreement upon written notice to the Customer by either Viatek or the assignee. The Customer shall not assign any of its rights under the Agreement except with the prior written consent of Viatek at its discretion.

14.11 Survival

The parties agree and acknowledge that the terms of the Agreement, which would survive termination or expiry of this Agreement, will survive.

14.12 Interpretation

In the Agreement, unless the context requires another meaning, a reference to:

a) the singular includes the plural and vice versa;

b) to a party means a party to this Agreement;

c) to a person (including a party) includes an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency; and the person's successors, permitted assigns, substitutes, executors and administrators;

d) to a document means all additions, variations or substitutions of that document, and to a law includes a reference to any legislation, treaty, judgment, rule of common law or equity or rule of any applicable stock exchange, as amended, consolidated, supplemented or replaced.

e) Headings are for convenience only and do not affect interpretation. References to days are calendar days; references to months are calendar months.

15 Relationship and Solicitation

15.1 Independent Contractor

Viatek will at all times be an independent contractor, and neither Viatek nor any Viatek personnel or any contractor of Viatek will be or will be deemed to be an employee or agent of the Customer.

15.2 Non-Solicitation

During the term of the Agreement and for a period of 12 months thereafter, the Customer will not solicit, directly or indirectly, for employment or otherwise for the provision of any personal services, any Viatek employee who is or was involved in the performance of the Agreement or any Services, without the prior written consent of Viatek in its discretion.

16 Insurance

16.1 Viatek will maintain Public Liability insurance to the value of twenty million dollars ($20,000,000), Professional Indemnity insurance to the value of ten million dollars ($10,000,000) and workers' compensation insurance over any workers or deemed workers for the term of the agreement or any extended term. If the Customer asks for proof of the insurance policies being in place, then Viatek will give the Customer copies of the relevant certificates of currency.

17 Confidential Information

17.1 The information contained in the Agreement and the Schedules and otherwise which may be exchanged or supplied between the parties in relation to the Agreement is confidential and shall be held by each party in confidence and may not be disclosed by either party to any person (other than a related body corporate, or a party's legal and financial advisors) without the consent of the other party unless required by law or in connection with legal proceedings related to the Agreement or if such information becomes generally and publicly available otherwise than as a result of a breach of this clause by a party.

18 Personal Information

18.1 Viatek's collection, use, disclosure, and storage of any Customer Personal Information is governed by Viatek's Privacy Policy as published from time to time and the Privacy Act.

18.2 Customers must comply with all of its obligations under the Privacy Act. If Customer is small business operator or enterprise under the Privacy Act, Customer must elect to be treated as an organisation under section 6EA of the Privacy Act during the term of the Agreement and otherwise comply with the obligations under the Privacy Act as if it is an organisation under the Privacy Act.

19 Intellectual Property

19.1 Viatek is and shall be the exclusive owner of and retain all rights, title interest into all copyrights, trademarks, patents, trade secrets and any other intellectual proprietary rights in all materials, data, information or software developed or provided by Viatek pursuant to or in relation to this Agreement or the Services and in all know-how, methodologies, equipment or processes developed or used by Viatek to provide the Services ('Viatek Property'). During the currency of the Agreement, Viatek grants a non-assignable, non-exclusive licence to the Customer to have the benefit of and use of the Viatek Property strictly and only as necessary for the purposes of the Services and otherwise on the terms and conditions of the Agreement.

20 Microsoft Products

20.1 Where the services include Microsoft products, subscriptions, licences, or online services, the Customer acknowledges that those services are subject to Microsoft's applicable customer terms, including the Microsoft Customer Agreement, Microsoft Product Terms, and other applicable Microsoft service terms. The Customer agrees to review, accept, and comply with those Microsoft terms where required by Microsoft. Viatek may be unable to provision, renew, vary, transfer, or manage Microsoft services until the required Microsoft agreement acceptance has been completed and recorded

21 Priority of Documents

21.1 The documents comprising the Agreement will be read, interpreted, and construed in the following order of precedence:

a) Any Quote or Proposal provided by Viatek
b) The associated Annexes or Schedules
c) These Master Terms and Conditions
d) any other document provided by or identified by Viatek as part of the Agreement.