



**CyberBiz Services Agreement**

**Schedule SERVICES**

MONTHLY PLANS	Small Biz 'S'	Medium Biz 'M'	Large Biz 'L'	Extra-Large Biz 'XL'
MONTHLY PLAN COST (INC GST)	\$199 PER MONTH	\$299 PER MONTH	\$399 PER MONTH	\$599 PER MONTH
INSTALLATION COST (INC GST)	<b>\$599</b> INCL. HARDWARE AND SELF-INSTALLATION			
NO. CONCURRENT NETWORK USERS	up to 5 users	up to 10 users	up to 25 users	up to 50 users
INTERNET CONNECTIVITY	up to 50Mbps	up to 50Mbps	up to 100Mbps	up to 100Mbps
TOTAL MINIMUM COST OF CONTRACT	\$5,375	\$7,775	\$10,175	\$14,975
MINIMUM CONTRACT TERM	24 months	24 months	24 months	24 months
EARLY TERMINATION CHARGE TO RESELLER	\$149.25 x number of months remaining on minimum contract term	\$224.25 x number of months remaining on minimum contract term	\$299.25 x number of months remaining on minimum contract term	\$449 x number of months remaining on minimum contract term
<b>PRODUCT FEATURES</b>				
NEXT GENERATION FIREWALL	✓	✓	✓	✓
ONLINE SUPPORT	9am - 5pm online support	9am - 5pm online support	9am - 5pm online support	8am - 8pm online support
ONLINE SUPPORT REQUESTS	2 x online support requests per month	4 x online support requests per month	6 x online support requests per month	8 x online support requests per month
PHONE SUPPORT	X	X	X	✓
24X7 ACCESS TO SUPPORT	X	X	X	X
24X7 CRITICAL INCIDENT RESPONSE	X	X	X	X
TESSERENT 24X7 SECURITY MONITORING	✓	✓	✓	✓
ANTI-SPAM	✓	✓	✓	✓
ANTI-MALWARE	✓	✓	✓	✓
E-MAIL FILTERING	✓	✓	✓	✓
SITE-TO-SITE VPN	✓	✓	✓	✓
NETWORK SECURITY REPORT	✓	✓	✓	✓
ADVANCED INTRUSION DETECTION	X	✓	✓	✓
WEBSITE FILTERING (RESTRICT WEBSITE ACCESS, FACEBOOK, YOUTUBE ETC)	Single website restriction policy	Website restrictions for up to 4 different groups	Website restrictions for up to 6 different groups	Website restrictions for up to 8 different groups
REMOTE ACCESS	✓	✓	✓	✓
ACTIVE DIRECTORY INTEGRATION	X	✓	✓	✓
HARDWARE WARRANTY REPLACEMENT DISPATCH NEXT BUSINESS DAY	✓	✓	✓	✓

TECHNICAL CONSULTING AT SET-UP	15 mins technical consulting included at set-up	30 mins technical consulting included at set-up	45 mins technical consulting included at set-up	60 mins technical consulting included at set-up
NETWORK ACTIVITY AND LOG RETENTION	1 month network activity and log retention	2 months network activity and log retention	3 months network activity and log retention	4 months network activity and log retention
<b>ADDITIONAL SITES</b>				
MONTHLY END USER PLAN COST (INC GST)	\$199 PER MONTH	\$249 PER MONTH	\$299 PER MONTH	\$499 PER MONTH
INSTALLATION COST	\$599 INCL. HARDWARE AND SELF-INSTALLATION			
<b>SECURITY CULTURE</b>				
CYBER SAVVY WORKSHOP - 1HR	From \$550			
CYBER SAFETY E-LEARNING PORTAL INCLUDING AD HOC EMPLOYEE COMPLIANCE CHECK	\$65 Per Employee 12 month access			

A support request means a 15min block of support provided by Tesseract.  
Additional out-of-hours support calls \$399 each.  
Monday to Friday, standard business days, excluding weekends and public holidays.  
Additional support requests \$99 each.

## 1 Introduction

- 1.1 These terms and conditions (**Conditions**) govern your use of the Cyberbiz Services and form a binding contract between you, as a user of the Cyberbiz Services in respect of the Plan you choose and Tesseract Australia Pty. Ltd. (ABN 28 101 692 513) (**Tesseract**).
- 1.2 By ordering the Cyberbiz Services, you agree that you have read and understood these Conditions and agree to be bound by them.
- 1.3 We may change any term of these Conditions at any time and will give you 21 days' written notice of any such change.
- 1.4 Questions? You can contact us at [cyberbiz@tesseract.com](mailto:cyberbiz@tesseract.com). If you're looking for a definition, check the Dictionary at the end of these Conditions.

## 2 Services

- 2.1 Your plan (**Plan**) is for Cyberbiz Managed Security Services as set out in the Schedule.
- 2.2 You agree to adhere to the number of concurrent network users and internet connectivity bandwidth allowances as allowed for in your selected Plan. If your usage exceeds your selected Plan, you agree to move up to the Plan that meets your usage requirements and pay the monthly fee for that Plan.

## 3 Online Support Portal

- 3.1 At the commencement of your Plan, you are required to set up an Online Support Portal account that can be accessed via <https://support.cyberbiz.com.au> (the "**Online Support Portal**").

- 3.2 You will be asked to provide your email address, password and other information when you create your Online Support Portal account.
- 3.3 The Online Support Portal is how you make support requests in accordance with clause 12.
- 3.4 You are responsible for keeping your password secure and confidential and you must take all reasonable precautions to prevent it being used by someone else. If you know or suspect that your password has been compromised, or you suspect or become aware of any other breach of security, you must tell us immediately and ensure that your password is changed as soon as possible.
- 3.5 If we believe that there has been, or is likely to be, a breach of security of your password, we may require that your password be changed and/or suspend or restrict your use of all or any part of the Cyberbiz Services.

## 4 Minimum Contract Term

- 4.1 Your Plan has a minimum term of 24 months (**Minimum Contract Term**).
- 4.2 After the Minimum Contract Term there is no fixed or minimum term but you need to provide us with 30 days' notice via the Online Support Portal if you wish to cancel.
- 4.3 If you or Tesseract haven't cancelled the Plan after the expiration of the Minimum Contract Term, Tesseract will continue to provide the Cyberbiz Services to you and you must continue to pay the Service Fee.



4.4 Tesseract may cancel a Plan after the expiration of the Minimum Contract Term on 30 days' written notice.

## 5 Early Termination Charges

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If you cancel your Plan before the Minimum Contract Term has ended, you must pay Tesseract an early termination charge. The early termination charge decreases by equal instalments each month that you remain on your Plan. The maximum early termination charge at the start of your Plan is set out in the Schedule.

## 6 Prices

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- 6.1 The monthly Service Fee for each Plan is set out in the Schedule and varies depending on the Plan you choose. The prices for your Plan include GST where applicable.
- 6.2 You must purchase the hardware that you will need to install on your premises to use the Cyberbiz Services (a self-install kit will be included with your Hardware) (**Hardware**). The Hardware is \$599 (**Upfront Hardware Cost**).
- 6.3 If you'd like a technician to come out and install your Hardware an additional fee will be quoted (based on your individual circumstances) by Tesseract or its Partner for a professional installation (**Professional Installation Fee**).
- 6.4 A minimum delivery fee of \$29.95 may apply if you have your Hardware or self-install kit delivered.

## 7 Changes to Costs

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- 7.1 If one of our suppliers raises its prices in the future, this may result in the cost of Tesseract's fees or services increasing. We will let you know before this happens.
- 7.2 If, prior to any Service Start Date, Tesseract becomes aware of any Additional Costs associated with the provision of any Cyberbiz Service:
- (a) Tesseract will notify you of the anticipated Additional Costs; and
  - (b) you will have the option to either accept the revised pricing or cancel the Plan without penalty.
- 7.3 If Tesseract doesn't receive a response from you within 7 days of receiving notice from Tesseract of the Additional Costs, Tesseract may terminate the Plan by written notice to you without penalty or liability to you.

## 8 Payments

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- 8.1 You must pay to Tesseract a Service Fee for each month that you subscribe to the Cyberbiz Services via a valid credit card/direct debit facility.

8.2 You must pay the Service Fee on a monthly basis and in advance of the month in which you receive the Cyberbiz Services.

8.3 You must pay your first Service Fee, Upfront Hardware Cost and any Professional Installation Fee (if applicable) from the credit card or the direct debit details you provide when you initially sign up to your Plan.

8.4 Your first month of the Plan starts 14 calendar days from the date of Hardware dispatch from Tesseract (**Service Start Date**). It is your responsibility to complete the on-site self-installation or arrange a professional installation prior to this date.

8.5 At the end of each calendar month, Tesseract will automatically deduct your Service Fee from the credit card or direct debit details you have assigned to your Online Account Portal (if the Online Account Portal is unavailable Tesseract will let you know an alternative way to make payments). This process will continue for each month during the Minimum Contract Term and after the Minimum Contract Term (unless you tell Tesseract that you want to cancel the Cyberbiz Service as set out in clause 4). Tesseract will send you an invoice via e-mail or provide you with access to your invoices via the Online Account Portal.

8.6 Tesseract may alter the amount it deducts from your Online Account Portal account if your Service Fees change in accordance with these Conditions.

8.7 Should you need to change your Plan, manage your Plan, and advise Tesseract of changes to your circumstances that may impact your Cyberbiz service, you can do so by contacting Tesseract via [the Online Account Portal](#). To avoid Early Termination Charges, Plan changes must not reduce the monthly fee agreed to when you signed-up to your Plan.

## 9 Professional Installations

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9.1 If selected by you, Tesseract or its Partners will provide the one time installation of the Hardware onsite at the location notified by you during Business Hours.

9.2 Prior to Tesseract or its Partner arriving on site you must undertake a full back up of all of your existing data. Tesseract or its Partner will have no liability for any loss, back up or recovery of any data, programs, or for loss of use of any systems.

9.3 You are responsible for making the work environment safe and giving Tesseract technicians access to your premises (don't forget to tell your landlord if consent is required).

9.4 Don't forget to have all items necessary for installation available to the technician and located in the immediate area where the installation is to take place and make sure the systems and related



equipment are easily accessible by Tesseract technicians without the need to move furniture etc.

- 9.5 You agree to assist Tesseract technicians and do any other thing reasonably required by Tesseract or its Partners to install the Hardware.
- 9.6 If you are not at your premises when our technicians arrive, Tesseract technicians will need to schedule another appointment and Tesseract may charge you a Missed Appointment Fee.
- 9.7 You must comply with your obligations of this clause 9 because Tesseract and its Partners will not be liable for any of your loss associated with your failure to comply with these obligations.

## **10 Service Outages**

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- 10.1 Tesseract relies on a number of Third Party Providers to provide you the Cyberbiz Services, including, without limitation, providers of Network Services.
- 10.2 As you know, the performance of Network Services is variable and depends on a range of factors Tesseract cannot control.
- 10.3 Tesseract will not be liable for any downtime or unavailability of any Network Services where that downtime or unavailability is due to the act or omission of any Third Party Provider, including any telecommunications carrier or carriage service provider.
- 10.4 Tesseract or its Third Party Providers may have to schedule Planned Outages, which may interrupt the delivery of the Cyberbiz Services.
- 10.5 If a Planned Outage is required Tesseract will let you know before the Planned Outage occurs (if it is an emergency work Tesseract may not be able to give you as much notice as Tesseract would like) and Tesseract will try to schedule these outside of Business Hours.

## **11 Your end-users**

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You agree that:

- 11.1 any act or omission by your End Users is deemed to be an act or omission of you; and
- 11.2 you must ensure that that your End Users do not do, or omit to do, anything that would cause you to breach the terms of these Conditions.

## **12 Support Services**

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- 12.1 If you are having any problems and your Plan includes support services, lodge an on-line support request system at the Online Support Portal. If the Online Support Portal is unavailable Tesseract will let you know an alternative way to contact Tesseract for assistance.

12.2 Subject to this clause 12, once a Support Request has been accepted by Tesseract, Tesseract will provide up to 15 minutes of support.

12.3 If a Tesseract technician needs to attend your premises to assist with your request, Tesseract may charge you for any related travel, out-of-pocket, and other expenses.

12.4 Tesseract may not be able to assist you with queries that do not specifically relate to the Cyberbiz Services or that relate to performance issues of the Cyberbiz Services where those services are delivered on some or all of your equipment. Tesseract will let you know if it can assist but may invoice you for this assistance at its then-current consulting hourly rates as notified to you before proceeding.

12.5 Don't tell Tesseract or its technicians your credentials to access the Online Support Portal or Online Account Portal as Tesseract will not be liable as a result of the unauthorised use of those credentials.

12.6 Tesseract may refuse any Support Request if it determines that request to be:

- (a) detrimental to you in any way (in this case Tesseract may also ask you for more information);
- (b) illegal, improper, or malicious;
- (c) outside the acceptable scope of support to be reasonably provided for a Plan; or
- (d) detrimental in any way to Tesseract, Tesseract's Personnel, or to any of Tesseract's suppliers or customers.

12.7 You agree that Tesseract's Personnel may use their discretion in respect of the priority in which they respond to Support Requests.

12.8 If you request support outside of the Coverage Hours you must pay Tesseract for this assistance at the Out Of Hours Rate (which also applies to travel time, if required) plus reasonable out-of-pocket expenses.

12.9 If you exceed your Support Entitlement, then you must pay for this additional support at the Excess Support Rate.

## **13 Denial of service**

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In the event that Tesseract, or any of Tesseract's Partners or other customers, is adversely affected by network traffic on Tesseract's network that is deemed by Tesseract (acting reasonably) to be malicious or illegal in nature, then:

- 13.1 Tesseract may take any reasonable steps to mitigate this traffic, even if those steps cause a degradation or suspension of a Cyberbiz Service; and



13.2 you agree that you shall not be entitled to make any claim against Tesseract as a result of any actions it may take under this clause 13.

#### **14 Risk from viruses, malware, and hacking**

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14.1 Tesseract warrants that it will use due skill and care to ensure that the Cyberbiz Services are delivered in a way likely to minimise the risks associated with computer viruses, malware, and hacking of your computer systems.

14.2 Notwithstanding clause 14.1, you agree that computer viruses and malware might, in spite of the adoption of Tesseract's services, enter your computer systems, and that external hackers or your own staff or contractors or other third party providers might breach your computer systems. Accordingly, you agree that:

- (a) notwithstanding anything to the contrary in clause 16, Tesseract shall not be liable for any loss of any kind in connection with (i) any computer virus or malware; or any data or security breach by an external hacker, or by any party engaged directly or indirectly by you;
- (b) you are solely responsible for the backup and recovery of their own data and systems; and
- (c) the presence of a computer virus or malware on your computer systems, or the suspicion or detection of a computer security breach of your computer systems, does not constitute (i) a breach by Tesseract of these Conditions, or (ii) grounds for claiming a failure of a Cyberbiz Service.

#### **15 Reliance on third party services**

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15.1 You understand that the provision of Third Party Services requires reliance on persons over which Tesseract has limited or no control, accordingly, you release Tesseract from all claims in respect of the Third Party Services.

15.2 You acknowledge and agree that your sole remedy against Tesseract in respect of any failure, defect or error in OEM Software provided by Third Party Providers is to request software support from Tesseract in relation to the same, and that Tesseract will liaise with the relevant Third Party Provider and use its best endeavours to obtain a fix to the relevant failure, defect or error.

15.3 You must indemnify and keep Tesseract indemnified for any loss associated with interruption to, or a failure of, a Third Party Provider to provide any Third Party Service or any part thereof.

15.4 You understand that Tesseract has contractual obligations to Third Party Providers and that Tesseract may incur liability to a Third Party Provider if (i) you breach these Conditions, (ii) you breach a

requirement of a Third Party Provider that has been made known to you or that you ought reasonably to have known, or (iii) if you commit a wrongful act.

15.5 You agree to comply with all reasonable requirements and conditions that may be imposed by a Third Party Provider from time to time.

15.6 You must indemnify Tesseract and keep Tesseract indemnified against any loss or liability that Tesseract is liable to pay a Third Party Provider to the extent that loss or liability arises from the matters identified in clause 15.4.

#### **16 Liability**

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16.1 To the maximum extent permitted by law, the total liability of Tesseract to you under these Conditions, in respect of any and all breaches of these Conditions, or any negligence in relation to the Plan, is limited, in aggregate, to the Total Minimum Cost.

16.2 The liability of a party to the other party will be reduced to the extent that such liability, expense, loss, damage or cost was caused or contributed to by any breach of these Conditions or a Plan by the other party or any negligent, unlawful or wilful wrongful act or omission by the other party or its Personnel.

16.3 Neither party is liable to the other party for any consequential or special loss or damage, including without limitation loss of profits, economic or financial loss, loss of goodwill, or loss of data, even if such loss or damage was reasonably foreseeable or the other party informed the first-mentioned party of the possibility of such loss.

16.4 Your purchase of any goods and services under these Conditions may be subject to certain consumer laws which may include, without limitation the Australian Consumer Law ("ACL").

16.5 If the ACL applies, it gives you rights that cannot be excluded and the goods and services supplied hereunder come with guarantees that cannot be excluded under the ACL. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the relevant goods and services repaired or replaced if the goods or services fail to be of acceptable quality and the failure does not amount to a major failure.

16.6 Nothing in these Conditions is to be read or applied as to exclude, restrict or modify any guarantee or other right or remedy in the ACL or other law which cannot by law be excluded, restricted or modified.

16.7 Where the *Competition and Consumer Act 2010 (Cth)* applies, then Tesseract's maximum liability for any breach of an implied term or warranty shall be limited, at the option of Tesseract:



- (a) in the case of services, to the resupply of the services or the repayment of the cost of the resupply of the services; and
- (b) in the case of goods, any or more of the following - to the replacement of the goods or the supply of equivalent goods; the repair of the goods; the repayment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the costs of having the goods repaired.

16.8 Nothing in these Conditions or a Plan shall be construed as limiting or excluding a party's liability to the other party for the death or personal injury resulting from the negligence of that party or its Personnel.

## **17 Intellectual Property**

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- 17.1 You agree that the Cyberbiz Services and all Intellectual Property therein is either owned by Tesseract or is licensed to Tesseract. Nothing in these Conditions affects the ownership of any Intellectual Property owned or licensed by you, Tesseract, or any other person.
- 17.2 You agree that no Intellectual Property Rights of any kind are assigned or transferred to you under these Conditions.
- 17.3 You must not, and shall not permit, any attempt to copy, reproduce, adapt, transmit or distribute, lease, resell, publish, sublicense, reverse engineer, disassemble, decode, decompile or defeat any security controls (including any access controls, locking, or encryption mechanisms) any Intellectual Property of Tesseract or any other person.
- 17.4 Except to the extent as required by law and as expressly set out in these Conditions, you agree that Tesseract (or its Third Party Providers) provide no warranties, expressed or implied, in respect of the Software.

## **18 Grant of licence**

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- 18.1 Tesseract grants to you a non-exclusive, non-transferrable, non-sublicensable licence to use the Software for the term of the Plan for the sole purpose of obtaining the benefit of the Cyberbiz Services (the "Licence").
- 18.2 You agree that the Licence can only be used in Australia and New Zealand.
- 18.3 Except with the prior written consent of Tesseract, the Licence cannot be used: (a) in conjunction with any medical device or system (including without limitation life support); (b) to control or secure a nuclear facility; (c) in a hazardous location; (d) as part of an aircraft navigation or control system; (e) as part of a high-risk or mission critical application; or (f) in a

manner inconsistent with any other term of these Conditions.

## **19 Data sovereignty**

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Tesseract will use its best endeavours to ensure that all of your data stored by Tesseract is stored in secure data centres physically located in Australia, unless otherwise agreed with you.

## **20 Privacy**

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You agree to Tesseract collecting, using and disclosing your personal information (including credit information and credit eligibility information) for various purposes in accordance with Tesseract's Privacy Policy (located at [www.tesseract.com](http://www.tesseract.com) as amended from time to time).

## **21 Compliance with laws**

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- 21.1 You agree to take any action reasonably required by Tesseract to ensure its compliance with any relevant laws.
- 21.2 You cannot use or permit the use by any other party of the Cyberbiz Services:
  - (a) in breach of any applicable law;
  - (b) to send bulk unsolicited e-mail (or otherwise contravene the Spam Act 2003);
  - (c) to infringe the Intellectual Property Rights of any person;
  - (d) to cause harm to or breach the legal rights of any person;
  - (e) to engage in any illegal, offensive, discriminatory, or bullying behaviour;
  - (f) to attack, probe, or test for vulnerabilities, any other person's network;
  - (g) to knowingly, recklessly, or negligently transmit any content (such as computer a virus) that is designed to or may damage or disrupt any computer network or device;
  - (h) in any way that results in, or is likely to result in, damage to any person or property; or
  - (i) in way that is likely to bring Tesseract or any of its Partners or suppliers into disrepute.
- 21.3 You indemnify Tesseract in respect of:
  - (a) any action taken by Tesseract to comply with a request made by you;
  - (b) any action taken by any person against Tesseract as a result of Tesseract's compliance with a request made by you;
  - (c) any loss suffered by Tesseract or by any person as a result of your use of any Service provided by Tesseract; or
  - (d) any breach of clauses 21.1, or 21.2.



## 22 Termination for cause

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- 22.1 Tesseract can terminate your Plan if you:
- (a) fail to comply with any material provision of these Conditions and do not rectify that breach within 5 Business Days of receiving notice of the breach from Tesseract;
  - (b) are the subject of an Insolvency Event; or
  - (c) are the subject of a Change Of Control without prior written approval from Tesseract.

## 23 Survival

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The parties agree that the obligations set out in clauses 16, 17, 18, 21 and 25.3, shall survive the termination or expiry of a Plan.

## 24 Force Majeure events

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Tesseract will be relieved of its obligations under a Plan insofar as it is prevented from performing them by forces or circumstances beyond its reasonable control ("**Force Majeure Events**"). These forces or circumstances may include (but are not limited to) acts of God, industrial disputes, major failure in electricity supply, major failure of a telecommunications provider, major failure in gas supply, major failure in water supply, war, civil strife, flood, storm, fire, unavailability of raw materials or supplies, explosion, epidemic, breakdown of plant, machinery or equipment or shortages of labour, transportation, fuel, power or plant, machinery, equipment or material.

## 25 General

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- 25.1 You cannot, without the prior written consent of Tesseract, assign, novate or transfer any of its obligations under these Conditions to any other party.
- 25.2 These Conditions constitute the entire agreement between you and Tesseract.
- 25.3 Each party acknowledges that it may receive Confidential Information of the other party and agrees to keep that Confidential Information secret, protect and preserve its confidential nature, and not use it or disclose it to any person (or allow or assist or make it possible for any person to observe or have access to it), except to the extent necessary to obtain professional advice in relation to the Cyberbiz Services, to comply with these Conditions, or as required by law.
- 25.4 These Conditions are governed by and construed in accordance with the laws of Victoria, Australia and the parties submit to the jurisdiction of the Victorian Courts and courts of appeal from them.
- 25.5 If a provision of these Conditions would, but for this clause, be unenforceable, the provision must be read down to the extent necessary to avoid the result and if the provision cannot be read down to that extent,

it must be severed without effecting the validity and enforceability of the remainder of these Conditions.

- 25.6 A party waives a right relating to these Conditions only by notice in writing to the other party that it waives that right. A single or partial exercise or waiver of a right relating to these Conditions will not prevent any other exercise of that right or any other right.
- 25.7 Nothing in these Conditions is to be treated as vesting any agency, joint venture or partnership between the parties or any relationship other than that of independent contracting parties.
- 25.8 Notices may be sent to your notified address or email address or via the Online Account Portal and are taken to be received by the recipient:
- (a) if sent by e-mail, within 1 Business Day of the date on which it is sent (provided no bounce message or other indication to the sender that it has been unable to accept delivery was received during this time);
  - (b) if sent by prepaid post to a party located in Australia, 3 Business Days after the date of posting, and outside of Australia, 7 Business Days after the date of posting; or
  - (c) if hand delivered, on delivery,
  - (d) and in all cases, a notice received after 5.00pm in the place of receipt or on a day that is not a Business Day, is taken to be received by the recipient at 9.00am on the next Business Day.
- 25.9 The parties agree that a construction of these Conditions that results in all provisions being enforceable is to be preferred to any other construction.

## 26 Dictionary

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In these Conditions, unless otherwise indicated by the context:

**"Additional Costs"** means any costs that are associated with the provision of the Cyberbiz Services including, without limitation, any on costs associated with any in-building cabling and the installation of any building lead-in ducts and cabling and the costs of a suitably working telephone line.

**"Business Day"** means any day (other than a Saturday or a Sunday) that is not a national public holiday in Melbourne, Australia.

**"Business Hours"** means the time between 9:00am and 5:00pm on a Business Day in Australia.

**"Change Of Control"** means a transaction or a series of related transactions: (i) in which one or more related parties that did not previously own or control at least a fifty percent (50%) equity interest in you obtains ownership or control of at least a fifty percent (50%) equity interest in you; (ii) in which you sell all or substantially all of your



assets; or (iii) as a result of which one or more related parties that did not previously have the right or power to exercise a controlling influence over the management or policies of you acquires such a right or power, including, without limitation, the ability to elect a majority of the your board of directors or a similar governing body.

**"Confidential Information"** means information of either party that is by its nature confidential, is designated as being confidential, or that a party knows or ought reasonably to know is confidential and includes without limitation information relating to these Conditions, the Services or Software, but does not include information that is or becomes public knowledge other than by a breach of these Conditions or any other confidentiality obligations.

**"Cyberbiz Service"** means any service that Tesseract agrees to provide (directly or indirectly) to, or perform for, your benefit under these Conditions, pursuant to a Plan.

**"End User"** means any person who makes use of the Plan Cyberbiz Services who is either your employee, sub-contractor, director, or agent, or whom otherwise uses the Cyberbiz Services with your express or implied consent, or whom you should reasonably have known is using the Cyberbiz Services.

**"Excess Support Rate"** means the amount of \$99 per additional support request between Business Hours charged by Tesseract for each Support Request in excess of the Support Entitlement allocated to a Plan. .

**"Extended Business Hours"** means 8:00am until 8:00pm on a Business Day.

**"GST"** means the goods and services tax as provided for by the GST Law.

**"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**"Hardware"** has the meaning given to it in clause 6.2.

**"Insolvency Event"** means any event where a receiver or receiver and manager is appointed over any of your property or assets, an administrator, liquidator or provisional liquidator is appointed to you, you enter into any arrangement with your creditors, you become unable to pay their debts when they are due or is otherwise insolvent, you are wound up or becomes bankrupt, or any other analogous event or circumstance occurs.

**"Intellectual Property"** means all Software, network address ranges, domain names and any other item in which Intellectual Property Rights subsist.

**"Intellectual Property Rights"** means all present, future, registered and unregistered intellectual property rights of any kind whatsoever throughout the world including all such rights which subsist in copyright, trademarks, patents, inventions, designs, circuit layouts and the right to keep Confidential Information confidential.

**"Licence"** has the meaning given in clause 18.1.

**"Minimum Contract Term"** has the meaning set out in clause 4.1.

**"Missed Appointment Fee"** is an amount chargeable by Tesseract to you pursuant to clause 9.6, which shall be \$500.00 in the case where Tesseract's or its Partner's staff were required to travel less than 50km and \$1,500.00 in all other cases.

**"Network Services"** means any service for the provision of an internet connection between your premises and the internet, or the provision of a private network between your different premises.

**"OEM"** means any other party (who is not a party to this contract) upon whom Tesseract relies in respect of any Software, or other technology or knowhow.

**"OEM Software"** means Software, or any other technology or knowhow, developed by an OEM, which is used by Tesseract.

**"Online Support Portal"** has the meaning given in clause 3.1.

**"Out Of Hours Rate"** means the rate of \$399 charged by Tesseract for a Support Request that you approve to be done outside of the Business Hours or Extended Business Hours (as applicable depending on your Plan) .

**"Partner"** means any individual, partnership, trust, agent, business, or incorporated entity that is contracted by Tesseract, or to whom Tesseract makes a commercial commitment, to deliver any products or services.

**"Personnel"** means any employees, agents and subcontractors of a party.

**"Plan"** has the meaning set out in clause 2.1.

**"Planned Outage"** means a foreseeable interruption to a Service, generally to facilitate equipment upgrades or preventative maintenance, that is, in Tesseract's or a data centre operator's reasonable opinion, required.

**"Professional Installation Fee"** has the meaning set out in clause 6.3.

**"Service Fee"** means the monthly fee for your Plan.

**"Service Start Date"** has the meaning set out in clause 8.4.

**"Service Period"** has the meaning set out in clause 8.1.

**"Software"** means any software (including without limitation OEM Software), including, but not limited to, computer code, data, and documentation, that may be provided to you in connection with any Cyberbiz Service.

**"Support Entitlement"** means the number of Support Requests per month or number of hours per month, allocated to a Plan.

**"Support Request"** means a request for support, made in accordance with clause 12, in relation to a Service.

**"Term"** means, in respect of a Plan, the period commencing on the Service Start Date and ending after the



expiration of the period specified as the "Minimum Contract Term" on your order.

"**Third Party Provider**" means a provider of a Third Party Service including without limitation an OEM.

"**Third Party Service**" means a service provided by any person (other than Tesseract) to Tesseract, the benefit of which (or any part thereof) is provided by Tesseract to you, including without limitation OEM Software.

"**Total Minimum Cost**" means the total minimum costs of your Plan for the Minimum Contract Term.

"**Upfront Hardware Costs**" has the meaning set out in clause 6.2.