

Axion SD General Terms ('Terms')

1. Introduction

We will provide Services to you, and you must pay for them, on the terms of this document¹.

2. Interpretation

These Terms and each Service Agreement incorporate the dictionary terms in clause 39 of this document.

3. Service Agreements

- (a) Unless we agree to a different engagement process, a Service Agreement is formed if we accept a Service Order from you.
- (b) A Service Agreement is made up of (a) these Terms; and (b) a Service Order; and (c) any Special Terms we may agree to in writing.

4. Counterparts and exchange

The Parties may optionally enter into a Service Agreement by signing separate copies and exchanging them by post, in person, by fax or email.

5. Charges and payment

- (a) You must pay all Charges applicable to Services.
- (b) Charges apply as specified or referenced in a Service Order, whether they are omitted then the Charges outlined in our Rates Schedule apply.
- (c) You must pay each Invoice without set off or deduction by its due date.
- (d) Overdue amounts incur Interest at the Default Rate, compounding monthly.
- (e) Where you prepay Charges, subject to law, such prepayments are not refundable.

6. Billing Disputes

You may only dispute a Charge:

- (a) within 1 month after it is Invoiced; and
- (b) in accordance with our billing dispute process.

7. Relationship

We are an independent contractor and these Terms do not create a partnership, joint venture or agency. No party may enter any agreement or make any representation on behalf of another.

8. Entire Agreement

The documents that make up a Service Agreement in clause 3 is the entire agreement of the Parties with respect to its subject matter and supersedes and excludes all previous agreements, understandings, commitments, representations and warranties, whether written or verbal.

9. Variation

A Service Agreement may only be varied by writing executed by both Parties.

10. Assignment

- (a) You may not assign your interest in a Service Agreement without our written consent.
- (b) We may assign our interest in a Service Agreement on notice to you.

11. No waiver

A Party that delays exercise of or partially exercises a right does not waive it.

12. Notices

- (a) We may send notices to you by Electronic Messaging.
- (b) Otherwise, any notice or consent to be given under a Service Agreement must be in writing addressed to the relevant Party at its Contact Address.

13. Governing law and courts

Subject to clause 33, a Service Agreement is subject to and must be interpreted under the law of the exclusive jurisdiction of the State of Victoria, Australia and the Parties irrevocably submit to the courts of the State of Victoria.

14. Term of Service Agreements

A Service Agreement:

- (a) starts on its Service Commencement Date; and
- (b) may be terminated in writing by either Party on one months' notice. You must pay off any remaining term on your Service Order if you request to terminate or downgrade your Service.

15. Consents

You must promptly obtain any third party consents necessary for us to provide Services.

16. Representatives

- (a) Each Party authorises its Representative to do anything with respect to a Service Agreement that the Party itself could do, and authorises the other Party to deal with its Representative as its fully authorised, non-exclusive agent.
- (b) A Party is deemed to know anything that its Representative knows.
- (c) A Party may replace its Representative by notice to the other.

17. Service commencement

We will commence delivery of a Service on or within a reasonable time after the last of:

- (a) the date specified in a Service Agreement;
- (b) the expiry of 7 days from the date of a Service Agreement;

and you must then accept the Service.

18. Service Standards

- (a) We will provide Services with due care and skill and in accordance with an applicable Service Agreement and Law.
- (b) We do not warrant that Services will be free of faults or interruptions.
- (c) We are not liable for Service faults or interruptions due to Off-Net Events.
- (d) We will use reasonable efforts not to carry out Scheduled Maintenance outside Business Hours.

¹ This is standard, and plain English.

19. Service suspensions

We may suspend a Service in whole or part:

- (a) if we reasonably believe we must do so to comply with Law;
- (b) to protect people, property or a Network;
- (c) for emergency or (on at least 3 days' notice) Scheduled Maintenance;
- (d) if you breach an Acceptable Use Policy;
- (e) if you fail to pay an Invoice by its due date;
- (f) if you do not Cure a Default within 7 days; or
- (g) as we reasonably require to allow investigation of any potential breach of a Service Agreement.
- (h) if you exceed your limits as specified in a Service Agreement.

20. Variation of Service Agreement

If a Party agrees in writing to a Change Request by the other Party, a Service Agreement is deemed to be amended accordingly from the date of agreement.

21. Price variations

We may vary our Charges on 30 days notice.

22. Replacement Service and Downgrades

22.1 On 14 days' notice, we may replace a Service with a substantially equivalent Service for which Charges are no higher. An upgrade or variation to our existing Service is not a replacement service – we will endeavour to notify you in advance of any upgrade or variation to a Service.

22.2 Where you downgrade a Service you may suffer data loss, loss of content, and account functionality – we recommend that you backup all content and review functionality before choosing to downgrade.

23. Customer's other obligations

You must:

- (a) comply with the terms of a Service Agreement;
- (b) not allow a Service to be used in a way that is contrary to Law or is a nuisance;
- (c) comply with all Laws including the *Privacy Act 1988*;
- (d) give us all information, cooperation and assistance reasonably required for the purposes of a Service Agreement;
- (e) follow our reasonable directions;
- (f) maintain all permissions you require for the use of a Service;
- (g) comply with any Acceptable Use Policy issued by us;
- (h) respond to our requests and communications promptly;
- (i) not solicit any employee or contractor of ours to become an employee or contractor of yours;
- (j) indemnify us against Loss arising in connection with a negligent or wrongful act by you (including a breach of clause 23(m)) or your People or a breach of a Service Agreement by you;
- (k) indemnify us against any Claim by any person in connection with a Service (including infringement of IP Rights) except to the extent the Claim arises from a negligent or wrongful act by us or our People or a breach of a Service Agreement by us;

- (l) ensure that your People do nothing that would breach a Service Agreement if done by you; and
- (m) ensure that you maintain the security and confidentiality of account login and password details.

24. Termination – Supplier

We may terminate a Service Agreement if:

- (a) it ceases to be feasible to provide a Service;
- (b) we are required to do so by Law or an Authority.

We may also terminate a Service Agreement, if you:

- (c) fail to Cure a Default within 7 days;
- (d) suffer an Insolvency Event.

25. Termination – Customer

You may terminate a Service Agreement if we:

- (a) fails to Cure a Default within 10 days; or
- (b) suffer an Insolvency Event.

26. Effect of Termination

26.1 Where a Service is terminated either by you or us, then all data and content will be automatically deleted from your account, and cannot be recovered.

26.2 Any fees incurred or rights accrued, which arise prior to termination, remain.

27. GST

- (a) Charges are exclusive of GST unless stated otherwise.
- (b) We may invoice, and you must pay, applicable GST in addition to Charges.

28. IP Rights

- (a) Except to the extent of any licence expressly granted to you, you obtain no interest in our IP Rights under a Service Agreement.
- (b) Subject to clause 28(c), we own all IP Rights relating to a Service, including knowhow and improvements developed in the course of a Service Agreement.
- (c) You retain all ownership in course materials and content that you create and use with the Service.

29. No representations

You:

- (a) warrant that, in entering a Service Agreement, you have not relied on any information, representation or promise that is not either expressly set out in the Service Agreement or is implied by Law; and
- (b) indemnify us against a breach of that warranty.

30. Confidentiality

Each party must keep the other's Confidential Information confidential except for disclosures:

- (a) to its staff, contractors and professional advisers to the extent they reasonably need to know it;
- (b) authorised by a Service Agreement; or
- (c) required by Law –

provided that a disclosing Party takes all reasonable steps to ensure that the disclosee maintains the confidentiality of the disclosed information. To avoid any doubt, Confidential Information includes our processes, methodology and the other terms of a Service Agreement.

31. Customer Authorities

You authorise us:

- (a) to make any disclosure of information about you required by an Authority or by Law;
- (b) to deal with Personal Information (that is not Credit Information) about you in accordance with our Privacy Policy;
- (c) to deal with Credit Rating Information about you in accordance with our credit policy;
- (d) to do any act on your behalf reasonably required to provision a Service for you.

32. Liability

32.1 Rights and remedies for non-PDH goods costing no more than \$40,000

If we supply goods or services not of a kind ordinarily acquired for PDH use or consumption and costing no more than \$40,000:

- (a) in relation to those goods, our liability for failure to comply with a Consumer Guarantee (other than certain guarantees about ownership and undisturbed use) is limited to:
 - (i) replacing the goods or supplying equivalent ones;
 - (ii) repairing the goods;
 - (iii) paying the cost of replacing the goods or of acquiring equivalent ones; or
 - (iv) paying the cost of having the goods repaired; and
- (b) in relation to those services, our liability for failure to comply with a consumer guarantee is limited to:
 - (i) supplying the services again; or
 - (ii) paying the cost of having the services supplied again.

32.2 Service Levels, exclusion of implied terms and limitation of liability

Subject to clause 32.1:

- (a) Where a Service Level applies to a Service, your rights and remedies in connection with a failure to meet a Service Level Target or any breach of the relevant Service Agreement are limited to Service Level Rebates (if any) in the SLA.

Otherwise:

- (b) Any representation, warranty, condition or undertaking that would be implied in a Service Agreement by legislation, common law, equity, trade, custom or usage or otherwise is excluded to the fullest extent permitted by law.
- (c) We are never liable to you for, and you release us from any Claim for, any Loss.

33. Disputes

- (a) Each Party must appoint a senior officer to negotiate resolution of any dispute.
- (b) If negotiations are not successful within 14 days, the dispute may be referred to mediation before an independent mediator – the costs of which must be borne in equal shares by the Parties.

- (c) Despite anything else, a Party may seek urgent interlocutory relief from a court.
- (d) The parties must perform the Service Agreement despite a dispute.

34. Force Majeure

We are excused from our obligations under the Service Agreement to the extent that Force Majeure prevents or hinders it.

35. Agents

We may delegate our roles and responsibilities to an agent or subcontractor but are liable for their performance as if there was no delegation.

36. Reading down

A term that is invalid, illegal or unenforceable shall be read down, to the point of severance if necessary.

37. Commission and rebates

We may pay or receive commissions or rebates in connection with a Service Agreement.

38. Obligations after termination of Service Agreement

When a Service Agreement ends for any reason:

- (a) we may Invoice Charges not previously Invoiced;
- (b) you must pay all Invoices by their due date/s;
- (c) you must within 7 days return any of our property that you hold;
- (d) accrued rights and obligations survive;
- (e) Surviving Clauses including clauses 5, 6, 13, 23(i), 23(j), 23(k), 30, 32 and 38 survive –

and otherwise the Service Agreement is at an end for all purposes.

39. Dictionary

ACL means Australian Consumer Law.

Business Hours means 9am to 5pm, Monday to Friday, excluding gazetted public holidays in the State of Victoria.

Charges means any charge or fee applicable to Services (exclusive of any Taxes or withholdings except where otherwise stated).

Claim means any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim).

Contact Address means, in relation to a party, the postal or business address, fax number, email address or other address or identifier most recently notified as the party's address for communications (being as notified in a Service Agreement, until further notice.)

Customer means the person so specified in a Service Agreement, also referred to as 'you' and 'your'.

Default means, in relation to a Default, that the default is remedied in all material respects after we give you written notice that outlines the Default.

Default Rate means a rate, which is 2% higher than the penalty rate fixed under s3 of the *Penalty Interest Rate Act 1983 (Vic)* from time to time.

Details means the section of an Service Order or a Service Agreement with that title.

Electronic Messaging means Email and Fax.

Axion SD means Axion SD Pty Ltd ABN 68 153 003 368, also referred to as 'us', 'we' and 'our'

Insolvency Event means in relation to a person, the happening of any one or more of the following events: (a) the person being unable to pay their debts as and when they fall due; (b) a receiver, receiver and manager, administrator, liquidator, trustee for creditors or trustee in bankruptcy or analogous person being appointed over the person's undertaking or assets or any of them; (c) if the person is a natural person, an application and filing for bankruptcy being made in respect of the person; or (d) if the person is a corporation – (i) an application for winding up or other process seeking orders which, if granted, would render the person an externally-administered body corporate being filed and not being withdrawn within 20 Business Days; (ii) the person being or becoming the subject or an order, or a resolution being passed, for the person's winding up or dissolution; or (iii) the person entering into, or resolving to enter into, a deed of company arrangement, or an arrangement, composition or compromise with, or assignment for the benefit, of its creditors generally or any class of creditors, or proceedings being commenced to sanction such a deed of company arrangement, or arrangement, composition or compromise, other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.

Invoice means a statement of Charges that have accrued and/or are payable in advance.

IP Rights means all industrial and intellectual property rights of any kind which may subsist in Australia or anywhere else in the world, including without limitation: (a) patents, copyright, rights in circuit layouts, designs, trademarks (including goodwill in those marks) and domain names; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) of this definition; and (c) all rights of a similar nature to any of the rights in paragraphs (a) or (b) of this definition – whether or not such rights are registered or capable of being registered; and (d) Future IP Rights.

Loss means loss or damage suffered by a person and arising in connection with or out of a Service Agreement or any supply made under them (whether pleaded in contract, tort, breach of statutory duty or on any other basis, and whether arising from acts or omissions, and whether or not loss or damage the risk of which another person was or should have been aware), including but not limited to Consequential Loss and an obligation to contribute to or indemnify against loss or damage suffered by a third party.

Terms means these General Terms.

Off-Net Events means any event or circumstance that occurs outside our Network, or involving infrastructure owned or operated by any of our suppliers or other third parties (including you).

PDH means personal, domestic or household.

People means, in relation to a Party, the Party's management, employees, contractors and agents and, in relation to you, anyone who uses or accesses a Service on your account.

Quotation Acceptance means a quote that we accept which is also known as a Service Order.

Rates Schedule means, our standard list of charges published, which we may provide to you by email, in paper form or on our website.

Representative means an authorised representative of a party, who has authority to deal with the other party.

Scheduled Maintenance means maintenance, upgrade, adjustment or repair of Equipment, Software, a Network or anything else used to deliver a Service in accordance with our planned maintenance program as updated from time to time.

Service means a service provided by us to you, and as detailed in, a Service Agreement.

Service Agreement means an agreement as defined under clause 3 of these Terms.

Service Commencement Date means the date when we make a service available for use, or such later date as may be specified in a Service Agreement.

Service Order means your written request for Services and includes an online request.