

## EPM-on-DEMAND SERVICE STANDARD TERMS AND CONDITIONS

### **1 AGREEMENT**

- 1.1 This agreement shall be constituted by the EPM-on-Demand Service: Supply Order & Agreement ("SOA") to which these Standard Terms and Conditions are attached.
- 1.2 These are the terms and conditions on which we supply the Service to you.
- 1.3 These terms and conditions will apply to the Service supplied by us except to the extent that they are inconsistent with any terms expressly agreed in writing between us and you.
- 1.4 All applications for provision of the Service must be in writing or confirmed in writing.

### **2 DEFINITIONS**

- 2.1 In this Agreement the following terms shall have the following meaning unless the context otherwise requires:-
- 2.2 "The Service" provided by us and known as EPM-on-Demand is access to an on-line instance of Microsoft's Enterprise Project Management software applications.
- 2.3 "The Applications" means the software applications included in the definition of the Service (above). These include: Microsoft Project Web Application (PWA), Microsoft Project Professional, Microsoft Sharepoint and Microsoft Excel. Other Applications may be made available from time to time.
- 2.4 "The SOA" means the Service EPM-on-Demand Service: Supply Order & Agreement referred to above and comprised in this agreement.
- 2.5 "Support Service Agreement" means the document in the form available at [www.epmpartners.com.au/support](http://www.epmpartners.com.au/support).

### **3 PRICING, ESTABLISHMENT AND USAGE**

- 3.1 The price payable by you for the Service is determined in accordance with the use of the prevailing version of the EPM-on-demand Cost Calculator which may be downloaded at [www.epmpartners.com.au/on-demand](http://www.epmpartners.com.au/on-demand). Alternatively, we may prepare a quotation for you for the provision of the Service.
- 3.2 The Service must be purchased for a minimum three month term and thereafter:
- (a) on a monthly basis; or
- (b) for such extended term as may be agreed.
- 3.3 The Service is accessed via desktop browser software and an internet connection. A user's access to the service is governed by the Application purchased for that user.
- 3.4 To access the Service, you must first notify us of the number of user log-on IDs required for each Application and provide us with a signed SOA for the first three month term or such other term as may be agreed.
- 3.5 Upon receipt of the signed SOA, we will invoice you for any applicable set-up fees plus the first three months' Service fees or Service fees for other such term as may be agreed. Such invoice must be paid by you in full and in advance prior to commencement of the Service.
- 3.6 You must advise us of your users' details for log-ons (providing: name, email address and required Application) to enable us to establish users on the Service and to advise users (by email) of relevant log-on IDs and passwords.

### **4 USAGE AND PRICING SUBSEQUENT TO ESTABLISHMENT**

- 4.1 You will be invoiced in advance for any period of supply of the Service subsequent to the initial first three months, usually monthly.
- 4.2 Terms are payment of invoice in full strictly 14 days after date of invoice.
- 4.3 After the initial three month period (and thereafter, each month) you may advise us of a change to the number of user log-on IDs and/or Applications required (or terminate the entire service) in advance of the next period (the next month).
- 4.4 If we are not advised of usage changes before 6pm on last business day of month then you will be invoiced for the same user IDs and Applications for the following month.
- 4.5 If you advise us of an increase to user log-on IDs for the next month, we will create new log-on IDs, provide log-on details to users and invoice for those new user log-on IDs for the entire month (i.e. no part months allowed).
- 4.6 If you advise us of a change to the Applications required for the following month, we will modify the user log-on IDs accordingly, and invoice for those new Applications for the entire month (i.e. no part months allowed).
- 4.7 If you advise us of a decrease to user log-on IDs for the following month, you must provide information on the users IDs to be removed from the Service and we will remove such log-on IDs.
- 4.8 If you request that additional users be set-up that makes the total of users greater than the number initially advised, you will be advised that additional log-on IDs are required and you will be invoiced for the additional log-on IDs for the entire month of their initial use and until such time as you advise us that you no longer require specific user log-on IDs or wish to terminate the entire service.
- 4.9 5GB of storage and off-site backup is provided for each instance of the Service. Additional storage and off-site backup is charged for at \$20 per GB. The service is monitored and you will be invoiced for the peak data storage used in the previous month at the rate given above.
- 4.10 If you advise us of termination of the service during the month, the service will continue until the last day of the month at which time the service will be terminated.
- 4.11 In the event of termination, we will make available the last weekly data backup plus daily backups up until the last day of usage.

### **5 HOSTING NETWORK**

- 5.1 Your Service requires you to be connected to the internet. We make no warranty as to the provision of an uninterrupted connection to the public or private network, nor to its connection speed or performance.

### **6 BROWSERS AND OPERATING SYSTEMS**

- 6.1 We do not warrant that the Service will support all operating systems and browsers. The Service is based upon Microsoft Project Server 2010 and Microsoft SharePoint Server 2010 and as such requires Microsoft Internet Explorer 7.x or 8.x. Earlier versions of Internet Explorer may be

used to access the Service but will require that an additional Application ( Microsoft Remote Desktop Services) is provided by us at an additional cost, as detailed in the SOA and the EPM-on-Demand Costs Calculator.

## **7 CUSTOMER ADMINISTRATORS – APPOINTMENT AND RESPONSIBILITIES**

7.1 You must nominate and keep current a primary Customer administrator for the Service.

7.2 Your administrator must:

- (a) Advise us of changes to the details of your organisation, including the billing details for the Service;
- (b) Advise us of user ID additions and changes to user Applications;
- (c) Notify us of cancellation of the service;
- (d) Raise help desk tickets to log issues with the Service or an Application or, in conjunction with our Service Support Agreement, requests for support.

## **8 COOPERATION AND INFORMATION**

8.1 You must cooperate with us in relation to the installation, testing or making changes to your Service.

8.2 You must provide us with full and complete relevant information (including any configuration information) when you apply for the Service. You must also provide us with any additional information we ask for when we make changes to the Service.

8.3 If the information that you provide to us is inaccurate or not complete, the Service may not work properly (or at all) for you.

8.4 If you wish to change the information you provided to us, we may charge you for any additional work that is required to reflect the changed information in the Service. Charges for such additional work may be covered by our current Service Support Agreement.

8.5 We accept no liability for problems with the Service to the extent that those problems are caused by you, including where you have changed its equipment configurations, settings, introduced incompatible software or used the Service in any way that is inconsistent with our instructions.

## **9 CHANGES AND UPDATES**

9.1 We can make changes to the Service at any time (although we are not obliged to do so). Our suppliers may also make changes to the Service on our behalf.

9.2 Changes to the Service may include updates, additional functionality, supplements, add-ons, patches or bug-fixes ("Updates"). Updates may be subject to additional terms and conditions which, unless otherwise expressly set out in these Terms, we will provide to you before the Updates are installed or otherwise applied to the Service. Once installed, the Updates form part of the Service.

9.3 You agree that our suppliers may, on our behalf, automatically transmit, install and otherwise provide Updates to the Service software for the Service without further notice or need for consent.

9.4 You may experience a disruption to the Service when we make changes as a result of Updates.

9.5 If there is any change to the Service that we believe will have more than a minor detrimental impact to you then we will, where possible, but as may be limited by circumstances, give you at least 14 days notice before making the change.

## **10 RESPONSIBILITY FOR USE**

10.1 You are responsible for the use of the Service by your users (including your administrator and anyone else who accesses the Service using your log-in ID details).

## **11 ACCEPTABLE USE POLICY**

11.1 You must not use the Service or let it be used:

- (a) to commit an offence or breach any laws, standards, or codes applicable to the Service access;
- (b) to distribute Trojan horses, worms, malicious or destructive code or any instructions activating such code;
- (c) to distribute material that is defamatory, obscene or could cause offence or harm; or
- (d) in a manner that infringes any other person's intellectual property rights, confidential information or other rights.

11.2 You may only use the Service for your internal business purposes and access may be extended to external suppliers, partners and customers, and other parties where any such parties agree to abide by the terms set out in this document.

11.3 You may provide access to the Service to other parties only with our consent (which will not be unreasonably withheld). In such circumstances, you will remain responsible for the payment of the additional fees due arising from the provision of such access.

## **12 SUPPORT**

12.1 Our support team may be required to obtain information from your administrator. The support team may not be able to assist if your administrator is unavailable.

12.2 We will provide a 24 x 7 infrastructure monitoring/maintenance service.

12.3 Application support is provided under our Support Service Agreement. Application support is provided between 9am and 5pm AEST, Monday to Friday.

12.4 Your administrator should initially lodge a support request at any time on a dedicated Customer support site which is provided under our Support Service Agreement.

12.5 You must report all faults with the Service to us and provide full details of the fault, and all other information necessary to investigate the fault.

## **13 YOUR DATA**

13.1 You must follow our reasonable directions in relation to the use of the Service (including the data that is stored or hosted as part of the Service).

13.2 We will host or store your data as part of the Service.

13.3 You grant us a license to copy and store your data for the sole purpose of providing you with the Service.

13.4 You are responsible for the data supplied, created or stored by its users using the Applications. We will not be responsible for any poorly entered data or errors in the data resulting from users entering or editing data incorrectly.

## **14 BACKUP AND DISASTER RECOVERY**

14.1 We will ensure that daily backups are managed.

- 14.2 Daily backups will be saved for one week and will be over-written by the backup taken for the corresponding day in the following week.
- 14.3 A weekly backup (Sunday's daily backup) will be saved by us for 4 weeks and will be overwritten four Sundays later by that week's weekly backup.
- 14.4 Disaster Recovery will be effected by the recreation of the entire service with restored backup data, with a recovery time objective of 48 hours from time of failure being reported to us.

## 15 GENERAL PRIVACY TERMS

- 15.1 We may collect personal information from you and your users when you register for the Service or you purchase or use any Application. Any data so collected will be treated as confidential and will not be shared, divulged or copied except as required to provide the Service, and back-up or disaster recovery services.
- 15.2 You agree to us using and disclosing your information for any purpose which we reasonably consider is necessary to provide the Service to you. We will not otherwise disclose such information except as may be required by law.
- 15.3 You agree to us providing your personal information to any of our suppliers (or their suppliers) who are responsible for providing services on our behalf.

## 16 SECURITY

- 16.1 We will keep the Service secure so that your data and infrastructure are not visible to third parties.
- 16.2 We will protect our equipment against intrusions, viruses, Trojan horses, worms, time bombs, or other similar harmful software which may affect your Service access, but we do not guarantee protection, nor accept any liability in relation thereto.
- 16.3 The security of your information is important to us and we will take all reasonable steps to ensure the security of the Service or any information or data you send, receive or store using the Service.
- 16.4 You must take steps to prevent unauthorised access to your Service access including by not disclosing user names and passwords that we provide (except as required for the provision of the Service).

## 17 SUSPENSION OR CANCELLATION OF THE SERVICE

- 17.1 If you breach any of the terms and conditions of this Agreement including but not restricted to you becoming aware that you are not eligible for the Service, or failing to comply with our payment terms, we can suspend your access to the Service during the period before we cancel the Service because you are in breach of these terms. If we suspend the Service access in this way, you must continue to pay all our charges for your service during the period of suspension.
- 17.2 If we cancel your Service solely due to the acts or omissions of one of our suppliers (and not because you are in breach of these Terms or for any other reason), we will take reasonable steps to appropriately offset the effect of the cancellation on you (for example, by providing a credit or rebate to you or migrating you to a reasonably comparable alternative service for the remainder of your fixed length contract).

## 18 YOUR RIGHT TO CANCEL YOUR SERVICE

- 18.1 You can cancel subscriptions to the Service at any time after the minimum three (3) month period unless you have contracted for the Service for an extended term agreed with us. If you wish to cancel the Service you must provide us with notice via email. If you cancel the Service part way through a billing cycle, you may continue to use the Service, and we will charge you for the Service, until the end of the billing cycle. The billing cycle will be the initial minimum three month term, and thereafter:
  - (a) any extended term agreed with us; or
  - (b) monthly.

## 19 CUSTOMER SOFTWARE USE REQUIREMENTS AND LICENSING

- 19.1 You acknowledge and agree that you have read the document entitled "Microsoft/Volume Licensing End User License Terms" available at [www.epmpartners.com.au/on-demand](http://www.epmpartners.com.au/on-demand) and further agree to strictly and fully comply with and observe those terms viz a viz Microsoft Corporation mutatis mutandis and on the basis that any reference therein to "Customer" means us and "you" means you.

## 20 THIRD PARTY CLAIMS

- 20.1 You indemnify us against all loss as a result of a third party claim (against us or any party we rely on to provide the Service to you) that relates to your data (including hosted content) or use of the Service by your users (including anyone who accesses the Service using your login details).

## 21 WARRANTIES, EXCLUSIONS AND DISCLAIMER

- 21.1 To the extent permitted by any applicable law or statute, we warrant that the Service we provide will be of a professional and satisfactory standard.
- 21.2 We do not warrant that your access to the Service will be uninterrupted, secure or error free or that it will meet your requirements. There may be times when the Service is down or disrupted;
- 21.3 We will not be liable for any interruptions or disruptions in any way;
- 21.4 We make no representations about the suitability, reliability, availability, timeliness, lack of viruses (or other harmful components), accuracy and/or ownership of the information, software, products, services and related graphics contained within or generated by the Service.
- 21.5 To the extent that our liability cannot be excluded by law, warranties are limited to claims notified in writing during the time the Service is provided, or within one month of the termination or cessation of the provision of the Service.
- 21.6 Our maximum liability to you for claims in respect of the supply of the Service will be:
  - (a) Supplying the Service again; or
  - (b) Refunding the price of the Service.
- 21.7 We will not be liable to you except as expressly stated in these Terms and Conditions for any loss or harm which might be suffered or incurred by you or by any person claiming through you regardless of any degree of fault.
- 21.8 In particular, we will not be liable for any indirect, exemplary or punitive damages, claims for economic loss or claims for reduction in the value of any asset.

## 22 NON ASSIGNMENT

22.1 You may not assign the benefit of any agreement with us without our consent which will not be unreasonably withheld.

**23 DISPUTE RESOLUTION**

23.1 In the event of there being any dispute relating to or arising out of this document including its construction, effect, the rights and obligations of the parties, the performance, breach, rescission or termination of the document, the entitlement of either party to damages or compensation and the amount of that entitlement (called "Dispute") the Dispute shall be determined by arbitration.

23.2 A party may give notice to the other party affected by the Dispute of the existence of a Dispute and unless the Dispute is settled within seven (7) business days after the other party has received notice of the Dispute, the Dispute will be referred to arbitration.

23.3 The arbitrator will be the nominee of the Australian Commercial Disputes Centre.

23.4 The arbitration shall be conducted in accordance with the rules for the Conduct of Commercial Arbitrations of the Institute of Arbitrators Australia and subject to those Rules in accordance with the provisions of the Commercial Arbitration Act of New South Wales.

**24 GOVERNING LAW**

24.1 The rights, liabilities and obligations of the Parties in relation to these terms and conditions and any agreement between them shall be governed by the laws of the State of New South Wales.

24.2 You submit to the exclusive jurisdiction of the Courts of New South Wales to deal with all matters arising out of or related to these terms and conditions and any agreement between the Parties.

**25 NOTICES**

25.1 Any document or notice which is required to be served or delivered by one party on or to another party pursuant to or in connection herewith may be served or delivered:

- (a) by any act of the methods authorised by Section 170 of the Conveyancing Act, or any other relevant legislation, or
- (b) by facsimile transmission to the facsimile number detailed in the SOA or any changed facsimile number notified in writing, or
- (c) by the service through the Document Exchange of a party or a party's solicitor, or
- (d) by service by any of the methods permitted by this Agreement on the solicitor for the other party last known to be acting for the other party, or
- (e) to the physical address or email address referred to in the SOA or any changed email address notified in writing

25.2 Service by facsimile transmission shall be deemed to have been made at the time that the facsimile transmission was made. Service by facsimile transmission received after 17.00 hours on any day shall be deemed to have been effected on the next normal business day in the recipient's jurisdiction. Service by facsimile transmission shall not be deemed effective if the sender's machine indicates that a complete transmission has not been effected or if the recipient notifies the sender promptly after receipt of a partial transmission that the transmission has not been completed.

**26 MISCELLANEOUS**

26.1 You warrant that you have satisfied yourself as to the suitability of the Services provided by us for your purposes.

26.2 Notwithstanding that any of these Terms and Conditions or any aspect of them is found to be void, voidable or unenforceable for any reason, the remainder of these Terms and Conditions will remain in full force and effect.

26.3 You acknowledge and agree that all intellectual property rights in any service, design, concept, copyright, specifications, methods of work and other material prepared or provided to you remains our exclusive property.