

## ***Summary of Terms and Conditions Supply of Goods and Services by 'Techtivate'***

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*Authorised by  
R Herbage - Director*

*This document outlines principal Terms and Conditions<sup>1</sup> related to the supply of any services and/or goods provided by Techtivate under an agreement to another party.*

## Definitions

Within this document:

- a) **"Agreement"** refers to any form of agreement to provide goods or services whether in **written form** such as a contracted services document, a formal quotation and acceptance or by **verbal consent** subsequently confirmed in email confirmation
- b) **"Client"** means the individual or business customer requesting or receiving the services and / or goods from "Techtivate"
- c) **"Techtivate"** means Techtivate Pty Ltd ABN 70 647 377 660 including all employees, officers and Technical providers utilised by Techtivate to provide the service or goods
- d) **"Services"** means any form of support services that Techtivate provide to the Client including **on-site** and **remote** services
- e) **"Goods"** means all products and other goods (including software) supplied by Techtivate to the client.
- f) **"On-site"** means provision of services at the clients place of business, residence or such other locations as may be nominated by the client
- g) **"Remote"** services means provision of support services by Techtivate from a location other than the clients premises. Such support would include but not necessarily be restricted to such as Telephone, Email, Electronic links and written communications
- h) **"Support Options"** means the various modes of support that Techtivate can provide and the terms and conditions contained in this document apply to all of these support options.<sup>1</sup>

## Support Options

Techtivate offers extensive support services to clients and these will generally be provided in one (1) or more of the following service categories

1. Providing support on a **need by need basis** at an agreed cost rate and response time structure *as and when a problem or requirement occurs* OR
2. Under a **structured support program** which ensures that to the extent possible IT and related technical issues are not allowed to emerge, that systems and equipment are supported and maintained and importantly, that *Techtivate essentially becomes the clients default IT resource* with a good understanding of their business needs in the electronics, communications and visual field OR
3. **Under a case by case agreement structure** – This will generally apply to areas where Techtivate becomes a procurer of equipment, related systems and/or software related items on behalf of the client. This may also be an appropriate approach to any special project requirements, regular, periodic system maintenance agreements and other ongoing client needs

Whichever option category applies, Techtivate will provide a written quotation or estimate detailing the service to be offered, the costs of the service and, any *other specific Terms and Conditions* that attend to the proposed works

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<sup>1</sup> There may be further specific Terms and Conditions related to particular modes of support and/or contract service agreements with individual clients and/or, related to special request support services or products. In such cases, "Techtivate" will confirm such additional conditions in writing to the "Client" as part of their quotation. Acceptance of the quotation will be deemed to have also been an acceptance of these conditions

### ***Delivery of service support***

*Delivery of service support* can be one or a combination of:

1. **Onsite** where support requires attendance at the clients site or a location nominated by the client
2. **Remote support** where the support activity can be accomplished by electronic interface and/or verbal assistance<sup>2</sup>

### ***Service reporting***

Dependent upon the exact nature of any Service Support agreement, specific service reports will be provided by Techtivate which would include but not necessarily be restricted to

- Hours spent & Work performed
- Outcomes against objective set
- Any recommendations or risk areas identified as part of the service

Service reports can be tailored to be signed off by an authorized company representative after each job but by default the service report will be for information only

### ***Typical services provided***

Example of services regularly provided by Techtivate include but are not necessarily restricted to such as:

- Remote IT Support and Troubleshooting
- Onsite IT Support
- Email Security, Troubleshooting and Maintenance
- Internet Virus protection and audit and creation of restricted access portals
- IT system Update, Maintenance and system management
- Hardware/Related Equipment/Software supply and commissioning
- Consumables sourcing and supply
- Specific Training and Mentoring of key company IT personnel roles
- Special Project activity as/when specified
- Creation, storage and maintenance of data on behalf of the client

## **Hours of Business**

Techtivate hours of business are:

### ***For On Site Service***

**Standard hours** Monday to Friday 7.30am to 4.00pm

**Premium Support** service however is offered outside of these hours by special arrangement. Surcharge will apply

**A surcharge** applies for on-site support on Saturdays, Sundays and Public Holidays, and is additional to the base *On Site service fee*. Surcharge fee is \$40.00 per booking

### ***Remote support:***

Standard cover Monday to Friday: 7am to 8pm

Saturdays and Sundays 7.30am – 3pm. No surcharge applies to remote support

**Premium Remote Support** service however is offered outside of these hours by special arrangement. Surcharge will apply

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<sup>2</sup> Remote support may be dictated by the extent of external access Techtivate is permitted or authorised to have to the company IT and Data systems

**Public Holidays:**

Techtivate does not provide service in the following public holiday periods

**Christmas day and Good Friday**

Techtivate however **may make special provision by prior arrangements to accommodate Client particular needs** and, to respond to *emergency service calls*. A *surcharge rate* will apply in such cases and will be confirmed to the client prior to assigning resources..

## Geographic coverage

- (a) Techtivate currently *focuses its On Site service support within the State of Western Australia* and regularly works with clients in the greater Perth Metropolitan areas and near Rural suburbs
- (b) *On site service* provision can however be provided anywhere within the State by special prior arrangement and specific quotation
- (c) *Remote support* is offered regardless of location <sup>3</sup>

## Warranties and obligations

**Client Authority to act**

- (a) In the case of Individual clients, the person seeking services from Techtivate must be at least 18 years of age and show that they have the appropriate authority to seek the services they are asking for
- (b) In the case of Corporate or company clients, the client representative must have the authority to act on behalf of the client and to seek and approve services and warrant that they have full authority to enter into an agreement with Techtivate
- (c) Acceptance of quotations by, and instructions from Individuals or Company representatives, that Techtivate should provide the services is deemed to warrant that the relevant authority is held to do so
- (d) Techtivate may require the client to signed an authority to proceed form a copy of which will also be provided to the client

**Privacy:**

Techtivate is committed to providing quality services to their clients

Techtivate Privacy policy document<sup>4</sup> outlines the primary elements of Techtivate Corporate policy in respect to our ongoing obligations to clients in the way we manage clients Personal and business Information. This policy adopts the Australian Privacy Principles (APPs)<sup>5</sup> and governs the manner in which we collect, use, disclose, store, secure and dispose of your Personal Information.

To undertake, various support tasks or roles requested by a client, Techtivate necessarily may be provided or become aware of information considered by the client to be of a proprietary nature.

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<sup>3</sup> Subject to there being telephone , email and internet or Intranet services at the client location

<sup>4</sup> Refer Overview of Techtivate Privacy Policy document December 2021

<sup>5</sup> Australian Privacy Principles (APPs) as defined in the Privacy Act 1988 (Cth) (the Privacy Act). . A copy of the Australian Privacy Principles may be obtained from the website of The Office of the Australian Information Commissioner at [www.aaic.gov.au](http://www.aaic.gov.au)

All information and/or knowledge gained shall not be disclosed to or discussed with other parties without the express permission of an authorised officer of the client<sup>6</sup>. Nor shall such information or knowledge be in anyway used except for the purpose of conducting the agreed roles and/or task requested by the client

#### ***Access to Infrastructure, hardware and software***

- (a) For services in a private residence, a person of at least 18 years of age must be present when the Techtivate technician is providing on-site services and be able to verify that they have authority to approve access to necessary infrastructure sufficient for Techtivate to provide the requested services.
- (b) For services in a company, the company representative must have the authority in respect to computer<sup>7</sup> and or network access to provide authority to the Techtivate technician sufficient to provide the requested services
- (c) The client, in authorising Techtivate to provide services which involve hardware or software, expressly warrants that the client is the owner or authorised licensee of all software, data, and hardware which Techtivate is being requested to access, and that provisions of such services by Techtivate does not violate any third party rights.
- (d) The client warrants that they assume sole responsibility for approving the services and that any third party claim is expressly the clients responsibility.
- (e) The client agrees to provide access to the areas of their premises necessary to provide services in a safe working environment and working space; that electrical power and internet access (where applicable) is available
- (f) If the services involve the installation, removal or modification of software, Techtivate may require appropriate access to the operating systems which may require access to installation disks and product key product key for this software.
- (g) It may not always be possible to fully resolve all problems On site. Should it be Techtivate view that we need to take client hardware to our offices or to third party premises for diagnosis and repair we will first discuss this with the client and gain permission to do so.
- (h) Techtivate will exercise due care while client equipment is in our possession of your equipment to ensure that no loss or damage occurs. In the unlikely event of loss or damage occurring, Techtivate liability is limited only to replacement of the equipment with one of similar value , age and quality.

#### ***Protection of data***

- (a) It is strongly recommended that the client back up all software, data and files existing on computers and back up storage devices prior to works commencing – If the client prefers, the Techtivate technician can be asked to also provide this service<sup>8</sup>.
- (b) The client is responsible for ensuring their data, software and media is backed-up prior to Techtivate providing any services. Techtivate is not responsible at any time for any data loss, alteration or corruption of any such data, software or media.
- (c) Whilst Techtivate technicians are experienced specialists in the field of IT support, there can always be a remote possibility that Data Loss can occur depending on the nature of the issue being addressed. In the unlikely event that this eventuates, if the client has backed up data prior to work commencing, Techtivate will be pleased to work with the client in the recovery process
- (d) Particularly in respect to hardware requiring repair or replacement, the repair can result in the loss of any user-generated data and it is emphasised again that the client is strongly advised to ensure that a copy has been made of any data saved on the hardware item.
- (e) The client agrees that Techtivate are not liable for any loss or damage that results from clients failure to follow Techtivate instructions, recommendations or advice.

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<sup>6</sup> This commitment is contingent upon there being no obligation under prevailing laws for Techtivate to respond to or communicate with any relevant authority – should such a requirement arise Techtivate is responsible to comply accordingly.

<sup>7</sup> A prime example of an area where ambiguity might exist is if Techtivates client is a person who has been provided a computer by their employers seeking to have work done on that computer even though they may not own it

<sup>8</sup> It is generally a good idea to advise of this requirement in advance as certain backs up can take fairly lengthy periods and it may be necessary for Techtivate to schedule a separate pre visit to do this

## Supply of Goods and Services

Techtivate goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. Notwithstanding this acknowledgement, the clients agrees that, to the extent permitted by law (including the Australian Consumer Law), Techtivate will not be liable to the client (whether in contract, negligence or otherwise) for any:

- i. interruption of business;
- ii. loss of revenue, profits or business reputation;
- iii. delays or service disruptions (other than our same day guarantee);
- iv. loss, alteration or corruption of data, software or media;
- v. viruses or system failures; or
- vi. events beyond our reasonable control.

Techtivate are also not liable to the extent that any loss:

- i. Is caused by the client, through their negligence or breach of contract
- ii. From client failure to follow Techtivate advice or reasonable directions

On occasions it may be necessary for Techtivate to take client equipment to the Techtivate offices for further problem solving work, analyses and/or commissioning activities. Before this occurs, the client is advised and requested to back up all information contained upon the equipment and retain this securely until the equipment is returned. The Techtivate technician will assist in this process if required discuss the proposed activities with the client and seek their concurrence<sup>9</sup>

Whilst Techtivate ensure appropriate safeguards are in place, in the unlikely event that the client equipment is damaged, lost or stolen, Techtivate liability will be limited to replacement of the item of equipment with one of similar specification. No liability will be accepted for loss of contents and data contained within the equipment beyond Techtivate using the clients back up files to repopulate the replacement equipment at no service fee charge to the client

Approval by the client for Techtivate to remove equipment to another location is deemed as understanding and acceptance of the above Liability conditions

### Services

To the extent permitted by law (including the Australian Consumer Law), Techtivate liability to the client (whether arising in contract, negligence or otherwise) is limited to

- i. Supplying of the services again; OR
- ii. Refunding fees paid by the client relating to the nominated default by Techtivate but only to the extent of the total fees received by Techtivate for the service activity to date OR
- iii. Payment to the client of the cost of having the services supplied again by another party but only to the extent of the total fees paid by the client to Techtivate for the service activity to date.

The above limitations, however, will not apply to any liability by Techtivate for death, personal injury or tangible property damage directly caused by our gross negligence.

### Goods

Techtivate may, as part of their service support to a client, *upgrade repair, maintain or replace* items of Hardware, Software and related accessories. This is usually specifically structured requirements by the client and will therefore most often be subject to detailed quotation and agreement terms. These will be mutually developed and signed off by both parties

A number of terms and conditions are however generally common to all 'supply of goods' arrangements and these would include, but not necessarily be limited to, such as:

- a) New Hardware and software sourced and provided to a client by Techtivate on the understanding that:

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<sup>9</sup> It may also represent an economic saving for the client as the rate of charging for the duration of the period that work is conducted at Techtivate premises will revert to 'Remote' rates

- i. *Equipment and software warranties* are limited to those provided by the manufacturer<sup>10</sup> of those goods. The warranty agreement shall be between the client and the manufacturer.<sup>11</sup>
- ii. *Equipment and software ownership* is passed to the client upon full payment of invoices related to the equipment, software and payment of invoices related to Techtivate services in coordinating the purchase and, undertaking the installation and commissioning activities
- iii. *Warranty responsibility for installation issues* of equipment is given by Techtivate and is limited to the services invoice value originally charged to the client
- iv. *Payment terms for supply of equipment*, will generally be in advance or on installation depending upon the manufacturers terms of business, and will be specified at the time of quotation
- b) *Payment terms for Techtivate services* related to equipment and/or software support will be in accord with terms and conditions business and/or any specific quoted terms

#### ***Set up and commissioning of equipment and software***

Techtivate can provide service supports to acquire, install, commission equipment and software and, to train client staff in the use of a diversity of equipment and software systems. These may include but are not necessarily limited to\_

- a) Computer equipment including Laptop, desktop, Tablets and network alternatives
- b) Printers, scanners and ancillary equipment as standalone and network based
- c) WiFi network systems including modems and range enhancing equipment
- d) A diverse range of domestic smart technology equipment
- e) Software installation and upgrades including systems operating software, Virus protection and special purpose program software

Techtivate will provide a detailed scope of works at the time of quotation to the client which outlines the extent of the activity which will be provided.

## **Rates, Payment terms and completion dates**

### ***Rates***

The chargeable rate will reflect:

- Whether the support is ***On-site*** or ***Remote*** activity content.
- Whether Support is sought on a ***casual hour basis*** or a ***full day at a time***
- Whether support is ***part of a Broad support package*** which includes pre-agreed time inputs within the overall package cost
- Whether the support is a ***component of a specifically quoted activity***
- Whether providing ***support requires travel to locations other than the (company name) nominated place of business***
- Whether the activity is the ***provision of Hardware or other support equipment and/or software***

Generally rates will be outlined and *be based on a standard hourly charge or a ratio thereof* according to the nature of the activity as outlined above.

Should a client however wish to explore the option of an ***Annual Service Support agreement at least for the first year***, "Techtivate" will be happy to discuss this further. Were this to emerge as the preferred option it is probable that the cost

<sup>10</sup> In the context of equipment and software, manufacturer refers to the manufacturer of the equipment or such other agent authorised by the manufacturer to provide warranty cover on their behalf

<sup>11</sup> Once the ownership of the goods has passed to the client, Techtivate has no responsibility for warranty claims – notwithstanding this, Techtivate as part of the support services they provide, will be happy to assist clients in their communication with manufacturers should it become necessary to seek redress under the terms of any warranty

arrangements would be in the form of *an agreed annual fee* payable as monthly retainers with provision for *additional support* not covered in the 'package' to be *chargeable at a pre-agreed discounted hourly rate*

#### **Payment terms**

Payment terms vary according to the service mode being provided and for provision of Hardwares and Softwares. These will be individual outlined to the clients prior to the acceptance of the quoted works

##### Key corporate clients:

- All prices quoted EXCLUSIVE of GST which will be added to invoice
- Payment timings from date of invoice Net **14 days**
- Payments by Electronic transfer to 'Techtivate' nominated bank account

##### Individual clients:

- All prices quoted EXCLUSIVE of GST
- Payment – **on completion of works**
- Payments by Credit Card or Electronic transfer to 'Techtivate' nominated bank account
- Pre-payment required for hardware

#### **Minimum requirements On site service provision:**

Provision of On Site attendance is based upon a *minimum charge of one (1) hour* with subsequent charges of fifteen (15) minute blocks

**Service area is 30km from Techtivate's office (6027). For clients outside of the 30km radius a travel fee on 72c per KM will be charged**

Once the client issue has been assessed, the Techtivate technician will make an assessment of the potential time that will be required and advise the client before undertaking further works.

For on-site services, subject to the nature of the issue, if Techtivate is unable to identify a solution to the issue<sup>12</sup>, it is possible that no charge will be levied for the on-site service call.

In the event that a client cancels a pre-booked or emergency call out by Techtivate, and provides less than twelve (12) hours' notice, Techtivate reserves the right to charge a cancellation of a minimum of one (1) hour.

#### **Completion dates**

Initial timeframes for completion of tasks can only be *estimates* given the nature of the issue being confronted but Techtivate will use its experience and best endeavours to provide a satisfactory conclusion to the task assigned

Techtivate will communicate regularly and closely with clients on the progress of the works being undertaken and commits to ensure that any substantial increase on the anticipated solution is discussed with the client before remedial activity is committed to

In respect to the provision of hardware, other equipment accessories and software products to be sourced from third parties, Techtivate may not necessarily be able to fully control the response time from these organisations. If extraordinary delays are assessed to be likely, Techtivate will discuss implications and other possible solutions with their client

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<sup>12</sup> In the event that Techtivate identifies actions which will address the issues but the client chooses NOT to follow or implement these recommendations, it will be deemed that Techtivate has successfully fulfilled their responsibility for the site attendance



## Governing legislation

### *Force Majeure*

Techtivate will not be liable for non-performance or delays caused by external events beyond our reasonable control ("Force Majeure"). Force Majeure events shall include, without limitation, acts of war, terrorism, cyber-attacks, civil commotion, epidemic or pandemic, natural disasters, blockades, embargoes, strikes and lockouts, any other acts of god or act of any government or governmental agency.

### *Governing Law*

Service agreements between Techtivate and clients are governed by the laws of Western Australia.

### *Notices, Feedback and Information*

Techtivate will provide any notices or other communications to clients via the email address provided to Techtivate by the client.

Techtivate welcomes any feedback that clients may provide and, unless advised to the contrary, we may share any written feedback clients provide to us

### *General terms*

**Assignment** – Any Agreement between Techtivate and a client can only be modified and cannot be transferred to other parties except by express written mutual consent.

**Waiver** – A failure or delay in exercising any right, power or remedy does not operate as a waiver.

**Severability** – If any part of these terms becomes defunct or unenforceable, it will be removed from the Techtivate Terms and Conditions but the remaining terms will continue in full force and effect.

**Survival** – Any provision of this Agreement which is by its nature a continuing obligation will survive termination of this Agreement.<sup>13</sup>

### *Indemnities*

The client agrees to indemnify Techtivate<sup>14</sup>, and hold Techtivate harmless from any loss, damage, costs (including reasonable legal costs), or expense which arise from

- a) A client breach of any Agreement, including but not limited to non-payment of any fees or charges
- b) infringement by the client of third party rights ,
- c) Techtivate reliance on any warranty, authorisation or consent advised by the client in connection with services provided by Techtivate
- d) Any negligent, wrongful, illegal or fraudulent act or omission by the client,

In the event of acknowledgement by Techtivate of a default by Techtivate in the satisfactory completion of service provision under any agreement with a client

- a) Techtivate liability shall be limited to the sum of fees paid to Techtivate by the client.
- b) No liability will be accepted by Techtivate for claims of consequential loss by the client
- c) Techtivate does however agree to indemnify the client from any loss, damage or expense arising from any negligent, wrongful, illegal or fraudulent act or omission by Techtivate ,

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<sup>13</sup> An example of this may be commitments to confidentiality in respect to the clients business information

<sup>14</sup> Techtivate in this context means Techtivate the company, its directors, technicians, Techtivate related entities, Techtivate employees, contractors and agents,

**Termination and changes to terms of agreements**

**Termination**

Either party may *terminate an Agreement* immediately on written notice to the other if:

- a) The other party breaches a term of this agreement which is not capable of remedy;
- b) Where the breach is capable of remedy, but the other party fails to remedy the breach within 10 days of written notice of the breach.

Techtivate may suspend the services to the client if there is a reasonable belief it is necessary due to

- a) Breach of an Agreement by the client (including suspending services where you fail to pay fees when due), OR
- b) In order to prevent any damage to or misuse of our services or systems OR
- c) Where Techtivate forms the reasonable that the client activity is in breach of any Civil or Criminal Legislation.

**Changes to Terms**

Agreements between Techtivate and clients shall at all times be bound by the general terms and conditions published by Techtivate on their website and any further specific conditions identified and attached to the individual client agreement.

Changes to the specific terms of an agreement between Techtivate and a client may occur by mutual written consent .

Changes to general terms and conditions can occur from time to time provided that Techtivate has published the new Terms and conditions on the Techtivate website and, given individual clients notice of such changes:

**Changes to policies and procedures**

Techtivate reserves the right to change policies and procedures which may in turn impact any agreements in place with clients where it is reasonably required to do so to comply with any requirements in law or to address other significant events occurring in the community

Techtivate will publish any changes made on its website and, advise individual clients in writing of such changes where a specific service agreement is in existence



**Richard Herbage**  
**Director**  
1 January 2022



*"Innovate, Motivate & Activate your Technology"*