

1. Our contract with you

- 1.1. These Product Terms apply to the services ('CLOUD Services') provided by the Company ('us', 'we' or 'our') to the Client ('you' or 'your') under Brennan IT Order Form.
- 1.2. These Product Terms, together with:
 - 1.2.1. the Brennan IT Order Form referencing these Product Terms; and
 - 1.2.2. our Master Terms at <http://www.brennanit.com.au/msa/> form the contract between us and you for the provision of CLOUD Services.
- 1.3. Any undefined capitalised terms used in these Product Terms have the same meaning as defined in the Master Terms.

2. Cloud Services

- 2.1. We will provide the CLOUD Services:
 - 2.1.1. in respect of the services identified in these Product Terms and as specified in the Brennan IT Order Form;
 - 2.1.2. to meet or exceed the Service Levels.

3. Term and renewal

- 3.1. We will provide the Cloud Services:
 - 3.1.1. from the commencement date specified in the Brennan IT Order Form;
 - 3.1.2. for the duration of the term specified in the Brennan IT Order Form.
- 3.2. Before the end of the term, the parties may agree to extend the duration of the CLOUD Services on the same terms and conditions.
- 3.3. Your Service Contract may be terminated or suspended in accordance with the Master Terms.

4. Cloud Services

Our services include:

- 4.1. virtual computers
- 4.2. data storage / backup services
- 4.3. accessory services – which you access over the internet
- 4.4. Service provider licensing

5. Ordering Services

- 5.1. You may only order services using our Brennan IT Order Form or through our on-line portal, unless we agree otherwise in writing.
- 5.2. An order may be for an upgrade to an existing service.
- 5.3. We are not obliged to accept any order.

6. Commencement of Service

If we accept an order:

- 6.1. We will attempt to provision service in accordance with our target service levels for this service.
- 6.2. Your service period starts as soon as it is provisioned.

7. Your account

- 7.1. We will maintain records of services provided to you and charges for them. It is called your 'account'.
- 7.2. Our records are taken to be correct unless they are proven to be in error.

8. Fees

- 8.1. You agree to a minimum spend commitment for the term of this Agreement where the Monthly Service Fee for any month will not reduce to less than 75% of the Monthly Service Fee at the Commencement Date.

- 8.2. Brennan will invoice at no less than 75% Monthly Service Fee at the Commencement Date for the term of this agreement.
- 8.3. You agree to payment of any services created by you, or by automation requested by you, through our portal service.

9. Invoicing

- 9.1. We will invoice charges for a service monthly in advance based on the specifications you order.
- 9.2. We will invoice charges for additional usage in arrears.
- 9.3. We may deliver an invoice by post, fax, electronic delivery, or any other reasonable way.

10. Security payment

- 10.1. We may require you to provide us with:
 - 10.1.1. recourse to a standing credit card or direct debit arrangement for our charges;
 - 10.1.2. a security deposit or advance future against charges
 - 10.1.3. some other assurance of payment – and continued service is then conditional in you doing so.

11. Account and password security

- 11.1. You must keep your account details and any associated passwords secure and confidential.
- 11.2. We are entitled to assume that anyone who accesses your account or service using your password does so by your authority.

12. Virtual computer security

- 12.1. The only security we provide for a virtual computer is that which is expressly advertised as part of the service.
- 12.2. You are solely responsible for:
 - 12.2.1. determining whether that security is sufficient for your purposes.
 - 12.2.2. implementing any other security measures you deem appropriate.

13. No ownership

We provide you with services only, and you obtain no ownership of or interest in:

- 13.1. our physical or virtual hardware;
- 13.2. any software we install (unless that software is supplied by you, or you have purchased such software from us) on our physical or virtual hardware (including, without limitation, operating system);
- 13.3. any virtual computer or data storage you access as part of the services and you acknowledge that each virtual computer remains our exclusive property and cannot be downloaded or transferred to any other service provider.

14. No third party beneficiaries

- 14.1. There shall be no third party beneficiaries to these terms.
- 14.2. You indemnify us against any claim by a person that they are a third party beneficiary.

15. IP addresses

- 15.1. We may allocate one or more addresses to you on a temporary basis in connection with a service.
- 15.2. We may change IP addresses on reasonable notice to you.
- 15.3. You obtain no ongoing rights in relation to any IP address.

16. How we provide our services

- 16.1. We will solely determine how to operate our systems and provide our services, including which operating systems we allow you to use.
- 16.2. We may subcontract or outsource any function as we see fit.

17. Third party software licences

- 17.1. You must comply with the licence terms of all software installed on a virtual computer.
- 17.2. You must not do anything that causes us to breach a software licence.

- 17.3. You indemnify us against any loss, damage, claim, liability or demand we incur, or against any third party claim brought against us, due to your breach of a third party license.
- 17.4. You agree that during the term of your Service Contract, your fees may be adjusted due to any price changed by a third party license providers, after we have provided 30 days written notice of this change to you.
- 17.5. You agree to be bound by the terms of use of any third party software as provided to you by us.
- 17.6. You agree to allow reasonable access to your systems in order to audit software licences provided by us to you under service provider agreements.

18. Information you supply us

You warrant that all information you supply to us in connection with your use of our services:

- 18.1. is true and complete in all material respects
- 18.2. will be kept up to date if it changes.

19. Compliance with laws

In using our services, you must comply with all applicable laws and regulations and, without limitation:

- 19.1. You must ensure that all software you install on a virtual computer is lawful, properly licensed and used in accordance with all laws and the licence.
- 19.2. You must not use a service (or allow it to be used) to create, store, host, serve or transmit any:
 - 19.2.1. illegal content
 - 19.2.2. spam
 - 19.2.3. material that infringes copyright
 - 19.2.4. defamatory material
 - 19.2.5. virus, malware or other malicious code.
- 19.3. You must not use a service (or allow it to be used) in connection with or in furtherance of any fraudulent scheme or purpose.
- 19.4. You indemnify us against any breach of clause 19.2.

20. Rules

- 20.1. We may make and amend rules about the use of our services.
- 20.2. Any rules will not be a de facto variation of the rest of these terms.
- 20.3. You must comply with the rules.
- 20.4. These rules will not adversely impact your business.

21. Law enforcement

- 21.1. You authorise us to provide any information or comply with any request in relation to your or your account that is requested by any government, court or law enforcement agency.
- 21.2. We are not obliged to verify or validate the identity or authority of any such government, court or law enforcement agency if it appears to us, acting in good faith, to be legitimate.

22. Excluded liability

Subject to the terms of our Master Terms and to the extent permitted by law:

- 22.1. We exclude all implied conditions and warranties of any kind including but not limited to warranties of merchantability and fitness for a particular purpose, whether such conditions or warranties are implied by custom, common law, statute or otherwise.
- 22.2. To the fullest extent allowed by law we disclaim and you release us from and indemnify us against all liability to you and any third party under or in relation to or arising out of these terms or any services we provide (or fail to provide) to you whether such liability is direct or indirect, arises by virtue of act or omission, is in the nature of consequential loss or loss of profits, is tortious, contractual, statutory or otherwise in nature, arises or is incurred as principal or agent or vicariously or as bailee, is a primary liability, arises by way of an obligation to indemnify or to contribute, was or was not foreseeable, was or was not of a kind or amount that we were on notice of, or arises from accident or any other cause.

23. Backup

- 23.1. Where you order backup services:
 - 23.1.1. You must identify and select the data you would like to backup and advise us in writing ('target data');
 - 23.1.2. We will only backup target data and nothing else;
 - 23.1.3. We will only provide services during business days in Sydney, Australia, and only undertake 1 backup per business day at any time of the day we choose.
- 23.2. You warrant that the target data is:
 - 23.2.1. lawful; and
 - 23.2.2. not held in contravention of any agreement, Court order or any third party's intellectual property rights.

24. Data recovery

- 24.1. The decision to restore any data is entirely your own. We do not advise you on that.
- 24.2. You acknowledge that each data backup may overwrite any earlier back up.
- 24.3. You hold us harmless against any loss or harm that you or anyone else may suffer as a result of restoring data including because data you restore is out of date or overwrites newer data on your computer/s, or if the data which we have is not capable of restoration.
- 24.4. After your service is terminated, we are not responsible for storing or retaining the contents of a virtual computer or data storage.
- 24.5. It is solely your responsibility to copy and download any data you require before your service terminates.

25. Intellectual property rights

- 25.1. In relation to any IP works you create, modify, store, copy or transmit using our services, you warrant to us that you have all necessary legal right and authority to so create, modify, store, copy or transmit the IP works.
- 25.2. You indemnify us against any breach of the above warranty and against any claim by a third party that it has been breached.
- 25.3. If a third party claims that (or we have reason to believe that) there may be a breach of the above warranty, we are not obliged to provide any services until the issue is resolved to our reasonable satisfaction.
- 25.4. No intellectual property ownership rights transfer from you to us, or us to you, as a result of these terms or our services.

26. Termination of service

In addition to any other right of termination we have, we may terminate any service immediately where:

- 26.1. we reasonably believe that there is excessive or unusual use of a service
- 26.2. we reasonably believe that you are jeopardising the operation or quality of our systems or the services we supply to other customers;
- 26.3. we reasonably believe that you are using the service to infringe any third party's intellectual property rights.

27. Dictionary

In these terms:

The expression:	Means:
Accessory services	Any service we agree to provide, other than a Virtual Computer or Data Storage
Data storage	Storage of data on our systems
Force majeure event	An event or circumstance beyond our reasonable control
IP works	Works of any kind in which intellectual property rights subsist
Service	As per clause 4
Service period	From the provisioning of a service until its termination
Virtual computer	The right to use a virtual computer during your service period



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