

General Terms

Last Updated 30 November 2018

1. Introduction

These General Terms that apply to all services delivered by Alaress.

2. Interpretation

These General Terms and each Service Agreement incorporate the dictionary terms in clause 41 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:
 - (i) these General Terms;
 - (ii) a Service Order;
 - (iii) Product Terms, which apply to the Services ordered; and
 - (iv) any Special Terms agreed 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 an applicable [Rates Schedule](#), where Charges are not specified in a Service Order.
- (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.

6. Billing Disputes

You may only dispute a Charge:

- (a) within 1 month after it is Invoiced; and
- (b) in accordance with our dispute process in clause 31.

7. Relationship

We are an independent contractor and these General Terms or any Service Agreement does 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 are 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

Subject to clause 20, 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 34, 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;
- (b) continues for any Minimum Term; and
- (c) may be terminated by either Party at the end of a Minimum Term, provided 3 months prior written notice has first been given –
unless terminated earlier under its express terms.

15. **Consents**

You must promptly obtain any third party consents necessary for us to provide Services, for example to allow us access to a data centre to install software.

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 14 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) Whilst we endeavour to avoid interruptions to Services, we do not warrant that Services will be free of errors, faults or interruptions.
- (c) We are not liable for Service faults or interruptions due to Off-Net Events.
- (d) We will use reasonable efforts to carry out Scheduled Maintenance at times chosen to minimise disruption to our customers.

19. **Service suspensions**

We may suspend a Service in whole or part:

- (a) where we reasonably believe that we must do so in order to comply with the Law;
- (b) to protect people, property or a Network;
- (c) for emergency, or (on at least 3 days' notice) Scheduled Maintenance;
- (d) if you (or anyone you allow to use a Service) breach an Acceptable Use Policy;
- (e) if you fail to pay an Invoice by its due date;

- (f) if you do not pay a security requested under clause 21, within 7 days of a request;
- (g) if you do not Cure a Default within 7 days; or
- (h) as it reasonably requires to allow investigation of any potential breach of a Service Agreement.

20. **Price variations**

We may vary our Charges:

- (a) on 30 days' notice – where any Minimum Term has expired;
- (b) during a Minimum Term – on 30 days' notice, subject to you being entitled to terminate the Service Agreement within 14 days after being given notice.

21. **Security**

We may require security (including by way of cash or bank guarantee) if you suffer an Insolvency Event, fail to pay an Invoice by its due date or following a credit review of you.

22. **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 (Cth)*;
- (d) give us all information, cooperation and assistance reasonably required for the purposes of a Service Agreement;
- (e) follow our reasonable directions in so far as they are reasonably required to enable us to comply with the terms of a Service Agreement;
- (f) maintain all permissions required 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 or your People or a breach of a Service Agreement by you;
- (k) indemnify us against any Claim by you or any person who is an employee, student, contractor or agent of yours 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; and
- (l) ensure that your People do nothing that would breach a Service Agreement if done by you.

23. **Early Termination – Us**

We may terminate a Service Agreement if:

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

We may also terminate a Service Agreement, and invoice an Early Termination Charge, if you:

- (c) request Early Termination;
- (d) fail to remedy a Default within 7 days (after receiving written notice of Default);
- (e) suffer an Insolvency Event; or
- (f) undergo a Change of Control or purport to assign interest in a Service Agreement without our written consent.

24. **Early Termination – You**

You may terminate a Service Agreement if we:

- (a) fail to remedy a Default within 28 days (after receiving written notice of Default); or
- (b) suffer an Insolvency Event.

25. **GST**

- (a) Charges are exclusive of GST unless stated otherwise.

(b) We may invoice, and you must pay, applicable GST in addition to Charges.

26. 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 26(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 all content that you create and use with the Services.

27. 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.

28. 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 pricing and the other terms of a Service Agreement.

29. Authorities

You authorise us to:

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

30. Liability

30.1 Rights and remedies for PDH goods and services

If we supply goods or services of a kind ordinarily acquired for personal, domestic or household (**PDH**) use or consumption, you may have rights under the Australian Consumer Law (**ACL**) including Consumer Guarantee Rights. Nothing in a Service Agreement limits those rights and remedies in any way.

30.2 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.

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

Subject to clauses 30.1 and 30.2:

- (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) Neither party is liable for secondary and consequential loss including loss of profits, loss of goodwill, loss of revenue, data loss, and loss of bargain.
- (d) Our liability is capped at AUD\$500,000.

31. **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.

32. **Force Majeure**

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

33. **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.

34. **Reading down**

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

35. **Commission, rebates and out of pocket expenses**

- (a) We may pay or receive commissions or rebates in connection with a Service Agreement.
- (b) You must pay (and must not set off or deduct from our fees) all bank fees incurred in making payments to us under a Service Agreement.
- (c) You must pay all out of pocket expenses that we incur in providing services to you, provided that where they exceed \$500, we will first obtain your consent.

36. **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, 22(i), 22(j), 22(k), 27, 28, 30, 31, 36, 38 and 39 survive – and otherwise the Service Agreement is at an end for all purposes.

37. Policies

- 37.1 You must always comply with our [Acceptable Use Policy](#).
- 37.2 Where we agree to provide support, then we will do so in accordance with our [Schoolbox Support Policy](#) which applies to your particular Product.
- 37.3 We may amend our policies from time to time, where we do, we will give 14 days prior notice and make the amendments visible on one or more of our websites, including www.alaress.com.au, www.schoolbox.com.au, or any subdomain of these website addresses.

38. Data

- 38.1 All data entered by you into Schoolbox or any Service of ours is confidential unless you make it available for public use.
- 38.2 You retain ownership in Your Data subject to the terms of this Agreement, in addition to our rights in clause 38.7, you grant us a perpetual, non-exclusive, worldwide, royalty-free right to use, handle, store, modify and create derivative works of Your Data, to the extent necessary to provide our services to you.
- 38.3 Subject to compliance with the *Privacy Act 1988 (Cth)* you consent to:
 - (a) us using your de-identified data for statistical, audit, compliance and marketing purposes;
 - (b) receiving promotional, marketing material or information updates from us, including by way of email delivery;
 - (c) disclosure by us of this information to our Related Entities (as defined by section 9 of the *Corporations Act 2001 (Cth)*).
- 38.4 Within 7 days of termination of a Service Agreement, we will delete all data that remains on our servers and facilities, and you release us from any claim for loss or damage for doing so.
- 38.5 It is your sole responsibility to maintain a backup of your data, unless you enter into a Service Agreement for professional services, to have us copy your data, and provide it to you.
- 38.6 Subject to clause 38.3, all data entered into Schoolbox remains your property.
- 38.7 We may retain the data used / obtained under these terms for a period of upto 7 years or such longer period as may be required by law.

39. Intellectual Property

- 39.1 All intellectual property rights in Schoolbox and our services are owned by us, or where relevant our licensors. You must not:
 - (a) do anything which may infringe, jeopardise or challenge such rights; and
 - (b) commercialise or attempt to commercialise such rights.
- 39.2 Subject to clause 38.2, we own all intellectual property (including derivative works) which arise from your use of Schoolbox, except for data you enter.
- 39.3 We own all customisations, modifications, enhancements, adaptations, and updates to Schoolbox.
- 39.4 Schoolbox and the Schoolbox logo are trademarks of Alaress Pty Ltd. Other trademarks that may appear on our website are the property of our respective licensors.
- 39.5 You must not use any trademark without the prior written consent of the relevant owner.

40. **Third Party Services**

- 40.1 In order to use our services, you may need to use services or software or third parties, we refer to this as Third Party Services.
- 40.2 If the use of Third Party Services are required:
- (a) we will either (i) specify this in your Service Order; or (i) notify you; and
 - (b) we may invoice you for those Third Party Services or ask the provider of those services to invoice you directly, and you will be required to pay.
- 40.3 Where you use Third Party Services you acknowledge and agree that:
- (a) those Third Party Services are provided subject to (i) their own terms of use and privacy policy; and (ii) any of our specific terms that address our supply or facilitation of those Third Party Services to you.
 - (b) we may be required to disclose your personal information to the provider of Third Party Services in or to facilitate the provision of those services or the services we provide;
 - (c) you release us from any Claim arising from your use of Third Party Services;
 - (d) other than anything we expressly represent to you in a Service Agreement with you, we do not make any representation or warranty about Third Party Services or their performance.

41. **Dictionary**

Change of Control means, in relation to a corporation, that without our prior written consent: (a) a relevant interest (as defined in the *Corporations Act 2001*) in more than 25% of the securities of the corporation that in normal circumstance entitle the holder to vote or participate at a meeting of the members of the corporation or to vote or participate in the election or appointment of directors of the corporation, passes to a person or persons who did not have such relevant interest at the time the Service Agreement was entered into; or (b) the ability to control or the actual control (irrespective of whether such control is exercisable on a passive or active basis and irrespective of whether such control is exercisable solely or jointly or directly or indirectly) of the management and policies of the corporation passes to a person or persons who did not have such ability or actual control at the date the Service Agreement was entered into.

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).

Confidential Information includes the terms of a contract, network designs, customer lists, contact lists, and other information which by its nature is confidential and which is not in the public domain otherwise than by a breach of this clause.

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.

Default means, a breach of these Terms or a Service Agreement for which either party has issued a Default notice outlining the breach.

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.

Early Termination means termination of a Service Agreement before the end of any Minimum Term, except where the termination is due to our breach of a Service Agreement.

Early Termination Charge means the aggregate of fees that would have been payable for the remainder of the Minimum Term.

Electronic Messaging means Email, Fax, SMS and MMS.

General Terms means this document.

Insolvency Event means in relation to a person, means 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 of 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.

Minimum Term means a minimum term specified for a Service Agreement.

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).

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.

Price List means our [Rates Schedule](#), and can be used interchangeably in these terms.

Rates Schedule means, in relation to a Service, the charges or fees applicable to that Service as notified to you by us on or prior to the formation of the applicable Service Agreement, as amended from time to time in accordance with a Service Agreement and made available online at <https://help.schoolbox.com.au/homepage/1301>.

Representative means a person who is properly authorised to represent a 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 the General 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 an Order Form, Quote or Estimate after we have accepted the order for services contained in it.

Your Data means any data, content, code, video, images or other materials of any type that you (or someone you direct) upload, submit or otherwise transmit to or through this service.

'We', 'Us' and 'Our' is a reference to Alares Pty Ltd ACN 135 115 507

'You', and 'Your' is a reference to the Customer.