



*Your IT and Backup Specialists...Ensuring your peace of mind...*

## IT and Backup Schedule Terms and Conditions

These terms and conditions are for the provision of Internet or Cloud based services (the "Service") and are incorporated by reference into the Quote to create **IGD Computer Solutions Pty Ltd** trading as **The Vault Corporation** ("The IGD Group") IT and Backup Services Agreement (the "Agreement"). The Agreement commences on the date it is executed by Customer, which occurs after execution by **The IGD Group** receiving the accepted order form ("Effective Date").

### 1) Definitions and Interpretations

#### 1.1. Defined terms.

##### In this Agreement:

**Acceptable Use Policy** means the acceptable use policy provided by THE IGD GROUP to Customer from time to time and is available at <https://igd.com.au/terms-and-conditions.html>.

**Additional Services** means services agreed to be provided to Customer by THE IGD GROUP pursuant to an Additional Services Addendum.

**Additional Services Addendum** means a document with that title executed by THE IGD GROUP and Customer.

**Agreement** means Customer Terms, the Service Order Form, any Additional Services Addendum and any schedule or annexure to this document.

**Basic Support Services** means the services set out in clause 6.

**Billing Start date** means the date the services provided by The IGD Group have been commissioned/activated the Service by The IGD Group or its suppliers to the Customer.

**Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

**Cancellation Fee** means the Minimum Fees minus all Fees actually paid by Customer monthly (or annually in advance) during the Initial Term prior to termination (where termination of this Agreement occurs during the Initial Term) or during the Renewal Term prior to termination (where termination of this Agreement occurs during the Renewal Term).

**Carrier** has the same meaning as under the Telecommunications Act.

**Carriage Service Provider** has the same meaning as under the Telecommunications Act.

**Confidential Information** means any information relating to the business or financial affairs of a party or any trade secret, technical knowledge, concepts, ideas, designs, programs, processes, procedures, innovations, databases, customer lists or information, sales plans or marketing plans, research, software, records, intellectual property or other information concerning a party.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Consequential Loss** means:

- (a) any loss, not arising naturally, that is according to the usual course of things, from the relevant breach act or omission, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties, at the time they entered this agreement, as the probable result of the relevant breach;
- (b) and includes loss of profit or revenue, loss of anticipated savings, loss of chance, loss of opportunity and loss of reputation.

**Contractor** means any contractor, sub-contractor, agent or nominee engaged or arranged by THE IGD GROUP to supply the Service.

**Customer** means the party defined in the Service Order Form.

**Customer's Authorised Personnel** means the employees of the Customer agreed between the Customer and THE IGD GROUP from time to time.

**Customer Provided Equipment (CPE)** means any equipment not supplied by THE IGD GROUP.

**Customer Network** means Network, equipment, facilities or cabling controlled by the Customer.

**Direct Debit Request Form** means the form requesting direct debit or credit card payments as prescribed by THE IGD GROUP from time to time.

**Dispute** means a dispute arising out of or relating to this Agreement including without limitation a dispute as to breach or termination of this Agreement or as to any claim in tort, in equity or pursuant to any law.

**Equipment** means the equipment, such as routers and splitters, identified in the Service Order Form (other than any equipment identified therein as being sold to Customer) and the equipment and cabling, if any, referred to in clause 10.1.

**Fees** means the amounts payable by Customer for the Service as specified in the Quote or in additional Work Orders or the Service Order form as changed under this Agreement and may include third party charges.

**THE IGD GROUP Network** means the Network, equipment, facilities and cabling used by THE IGD GROUP to supply the Service

**Initial Term** means the term set out in the Service Order Form and if no term is specified, then 24 months from the Effective Date or Billing Start Date whichever is the later.

**Insolvent** means being an insolvent under administration, or insolvent (each as defined in the Corporations Act) or having a controller (as defined in the Corporations Act) appointed, or being in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, subject to any arrangement, assignment or composition, protected from creditors under any statute, dissolved (other than to carry out a reconstruction while solvent) or being otherwise unable to pay debts when they fall due, or having something with the same or a similar effect happen under the laws of any jurisdiction.

**Intellectual Property Rights** means all vested contingent and future intellectual property rights including but not limited to goodwill, reputation, rights in confidential information, copyright, trademarks, logos, service marks, devices, plans, models, diagrams, specifications, source and object code materials, data and processes, design rights, patents, know how, trade secrets, inventions, get up, database rights (whether registered or unregistered) or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.

**Minimum Fees** means the Minimum Fees, if any, set forth on the Service Order Form against the particular Service.

**Network** means a system or series of systems that carries or is capable of carrying communications (including data).

**New Service** means any service other than the Service offered from the outset of this Agreement by THE IGD GROUP pursuant to this Agreement.

**Personal information** means information or opinion about Customer from which Customer's identity is apparent or can reasonably be ascertained and includes name, address, service number, personal or commercial credit rating or credit information.

**Personnel** includes directors, officers, employees, agents and contractors.

**Premises** means the Premises for the location of the Service.

**Privacy Policy** means the privacy policy of THE IGD GROUP as provided to Customer from time to time or made available at <https://iqd.com.au/privacy-policy/>

**Regulator** means any government or statutory body or authority including but not limited to the Australian Communications & Media Authority, the Australian Competition and Consumer Commission, the Australian Communications Industry Forum Limited and the Telecommunications Industry Ombudsman.

**Renewal Term** means the period of 12 months commencing on: (a) the expiration of the Initial Term; or (b) where the Agreement has automatically renewed pursuant to clause 3.3, the expiration of the then-current term.

**Security** means the security that THE IGD GROUP may request.

**Service** means the service requested by Customer as indicated in a Service Order Form and includes the Basic Support Services and Additional Services (if any).

**Service Order Form** means the order form for Services or New Services in the form prescribed by THE IGD GROUP and signed by Customer.

**Subsequent Legislation** means after the Operative Date.

- (a) amendments to or repeals of any statute, ordinance, code, law or service provider rule;
- (b) a directive of a regulatory body; and
- (c) registration or determination of a new industry standard or industry code;

**Supplier** means a provider of telecommunications or Internet services and may include a Carrier or a Carriage Service Provider but excludes THE IGD GROUP.

**Supplier Network** means any Network, equipment, facilities or cabling controlled by a telecommunications supplier other than THE IGD GROUP.

**Term** means the Initial Term set forth in the Service Order Form and a Renewal Term or any continuation thereof pursuant to clauses 3.3 or 3.4.

**Work Order** means an order describing work that is required as part of the Services or the provisioning of the Services.

## 1.2. Interpretations

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The singular includes the plural and conversely.
- (c) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- (d) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (e) If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly. An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly. A party which is a trustee is bound both personally and in its capacity as a trustee.

## 2) THE SERVICE

- 2.1. THE IGD GROUP provides The Service as outlined in the Service Order or Service Details section of the Agreement
- 2.2. The hardware/software provided as part of The Service stay the property of THE IGD GROUP at all times unless otherwise stated on the Agreement, The Customer has limited access to some sections. Refer to points in section 4.2
- 2.3. Unless otherwise stated on The Service, all orders are for a minimum of 1 Month.
- 2.4. The following equipment are known as Customer Premise Equipment ("CPE"):
  - (a) *The Local Vault*
  - (b) *The equipment required to connect The Local Vault to The Vault Network*

## 3) TERM

- 3.1. This Agreement commences on the date THE IGD GROUP begins supplying the Service or Customer accesses the Service.
- 3.2. This Agreement commences pursuant to clause 3.1 and, subject to earlier termination pursuant to this Agreement, continues until the end of the Initial Term.
- 3.3. Subject to earlier termination pursuant to this Agreement, this Agreement automatically renews for the Renewal Term at the end of the Initial Term and any subsequent Renewal Term UNLESS either party gives not less than 20 Business Days' prior written notice of termination.
- 3.4. If a notice under clause 3.3 is given but Customer continues to use the Service, then this Agreement continues until either party gives to the other 20 Business Days written notice to terminate.

## 4) THE LOCAL VAULT

- 4.1. The Local Vault's that are supplied and installed The IGD Group in The Customer's Premise is used for the storing Customers backup images.
- 4.2. These Local Vaults are ONLY accessible by The Customer via:
  - (a) *Network File Share ("NFS") from within The Customer Network and only to access The Customer backup Images.*
  - (b) *ShadowProtect to perform backups to The Local Vaults and/or to access the backup images.*
  - (c) *ImageManager to check backup images.*
- 4.3. This Service Schedule will apply to the first and any subsequent Service Orders for any components executed by The Customer and THE IGD GROUP.
- 4.4. The backup images are the property of The Customer, THE IGD GROUP will delete all images when a written request has been received from The Customer located in The Remote Vault.
- 4.5. The backup images will be deleted from The Remote Vault after termination of the agreement or when requested in writing by The Customer.
- 4.6. THE IGD GROUP requires full access to The Local Vault and any other equipment that THE IGD GROUP may have placed at The Customer's premises. This access should be provided at a timeframe convenient to all parties of this Agreement.
- 4.7. THE IGD GROUP requires 24x7 remote access to The Local Vault (excludes The Starter Vault) and other equipment provided by THE IGD GROUP. Access is required via The Customers Network.
- 4.8. The Customer must ensure that The Local Vault(s) are:
  - (a) *Safe and secure location on Site*
  - (b) *The air is conditioned and dust free.*
  - (c) *Clutter free*
  - (d) *Connected to a UPS Power supply*

## 5) THE REMOTE VAULT

- 5.1. Access to The Remote Vault is restricted to THE IGD GROUP ONLY.
- 5.2. The Replication occurs over the customer own Internet Service
  - (a) *Any additional ISP charges that the Customer may incur due to additional uploads is solely the Customers responsibility.*
  - (b) *Access to The Remote Vault will be restricted by the Customers External Static IP Address.*
  - (c) *THE IGD GROUP must be informed of any changes to the Customers ISP or External IP Address.*
- 5.3. The backup images are the property of The Customer.
- 5.4. The backup images will be deleted from The Remote Vault after termination of this agreement or when requested in writing by The Customer.

## 6) PAYMENT

- 6.1. All payments must be made by the due date of the Invoice.
- 6.2. Charges are recurring from the first day of The Service for the balance of that month calculated on a daily basis and then from the first day of the month thereafter.

- 6.3. THE IGD GROUP will **suspend** access to The Service if payment is not received **within 3 days of the due date**.
- 6.4. Any discounts given will be removed from the invoice and due if payment is not made by the due date.
- 6.5. Payments will be allocated to the oldest invoice first.
- 6.6. THE IGD GROUP reserves the right to invoice the Customer for the remainder of the term if any payment is not made on the due date.
- 6.7. 14 days after this suspension, THE IGD GROUP will terminate this Agreement. Refer to section **TERMINATION AND EXPIRY for the Termination Clause**

**7) TERM AND COMMENCEMENT**

- 7.1. The Commencement of The Service will occur on the date of the signed Agreement or Service Order
- 7.2. The Service is provided for a term not less than 12months or as stated on the Agreement
- 7.3. Should The Customer wish to not renew their contract at the completion of the Term, written notice must be made no more than 90 days and no less than 30 days before the expiry of this agreement.
- 7.4. If no written notice is received with this period, then The Service is automatically renewed for another 12months or the period as stated on the Agreement.

**8) SERVICE LEVELS AGREEMENT AND REBATES**

- 8.1. THE IGD GROUP provides software and services to perform backups and managed services of The Customers servers/workstations.
- 8.2. THE IGD GROUP will provide The Customer with a Service Level Rebate provided The Customer reported the fault (in accordance with Section 11) and opened a valid trouble ticket. The rebate provided is listed in the following table:

**Table 5 - Rebates**

The Service not available	<1 days	2 days	3 days	5 days	>5 days
% Of Monthly Charge Rebated	0%	5%	10%	15%	20%

- 8.3. A Service rebate is not redeemable in any form other than a credit to The Customer's account and in any month is capped at 20% of the Monthly Service Charge for the effected Service.
- 8.4. A Service Rebate Claim (SRC) must be submitted in writing within 7 Business Days from the date on which the fault was restored. THE IGD GROUP will not be required to consider any claims submitted after 7 Business Days.
- 8.5. Once a claim is received, THE IGD GROUP will review the event and calculate the Service rebate (if applicable) and credit to The Customer's account any such Service Rebate.
- 8.6. The Customer will not be entitled to claim a rebate if THE IGD GROUP determines the fault was due to or to the extent caused directly or indirectly by:
  - (a) Act or omission of The Customer
  - (b) Failure of The Customer's equipment
  - (c) Failure of services supplied by The Customer to THE IGD GROUP CPE
  - (d) Scheduled Maintenance
  - (e) You have claimed a Service rebate related to this availability under a different Service Schedule
  - (f) Permitted suspension by THE IGD GROUP of the service for account events, including non-payment
  - (g) Was the result of a "force majeure" event
- 8.7. Service Claims must be submitted via email to accounts@igd.com.au
- 8.8. The Service Level Rebates contained herein shall be The Customer's sole remedy for any downtime in The Service.

**9) SCHEDULED MAINTENANCE**

**Table 6 - Scheduled Maintenance Notice Periods**

Category	Notice Period	Duration	Period
Consultative	As Agreed by Parties	As Agreed by Parties	As Agreed by Parties
Planned Major	10 Business Days	< 3 hours	1am – 5am (AEST)
Planned Minor	5 Business Days	< 60 mins	1am – 5am (AEST)
Unplanned Minor	24 Hours	< 15 min	1am – 5am (AEST)
Emergency	-	< 15 min	Anytime

**10) ILLEGAL USAGE**

- 10.1. The Customer warrants that it will not use, or attempt to use, The Service:
  - (a) to break any law or to infringe another person's rights;
  - (b) to expose THE IGD GROUP or its suppliers to liability;
  - (c) to store, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted; or
  - (d) in any way which damages, interferes with or Interrupts the Service The Vault Network or a Supplier Network.

**11) TERMINATION AND EXPIRY**

- 11.1. The Customer may terminate this Agreement during the Term if THE IGD GROUP is in material breach of its obligations herein or is unable to provide the Services due to a Force Majeure Event, for a period of more than 15 working days.
- 11.2. Without limiting the generality of any other clause in this Agreement, THE IGD GROUP may terminate this Agreement immediately by notice during the Term if:
  - (a) The Customer is in breach of any term of this Agreement and such breach is not remedied within 30 days of The Customer being notified of the breach;
  - (b) The Customer or its End Users remain in breach of the acceptable use policies or other policies of THE IGD GROUP provided by THE IGD GROUP from time to time after 5 days notification of such breach (provided that any such breach that is deemed to be illegal activity or likely in the reasonable opinion of THE IGD GROUP to cause injury to any other person will not be subject to 5 days notification);
  - (c) The Customer suffers or threatens to suffer an Insolvency Event or without consent from THE IGD GROUP has a change in more than 50% of its shareholding;

- (d) *The Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;*
- (e) *The Customer, being a natural person, dies;*
- (f) *The Customer fails to obtain or renew or are in breach (as the case may be) of any law, regulation, licence, permit or directive of any competent authority relevant to its use of the Products and/or Services;*
- (g) *The Customer ceases or threatens to cease conducting business;*
- (h) *if a supplier of Services or Products to THE IGD GROUP suspends, cancels, terminates or does not renew its supply of Products or Services to THE IGD GROUP (through no fault of THE IGD GROUP), and as a result, impairs or prevents THE IGD GROUP from delivering the Products or Services;*
- (i) *Any permit, licence or consent required for the provision of the Products or Services cannot reasonably be obtained by THE IGD GROUP; or*
- (j) *A Force Majeure Event occurs for more than 30 days.*

11.3. If notice is given to The Customer pursuant to subclause 2, THE IGD GROUP may, in addition to terminating the Agreement:

- (a) *Retain any moneys paid;*
- (b) *retain all or a portion of the security bond to cover any unpaid debt;*
- (c) *charge a reasonable sum for work performed in respect of which work no sum has been previously charged;*
- (d) *be regarded as discharged from any further obligations under this Agreement;*
- (e) *be entitled to payment of all and any monies owing by The Customer to THE IGD GROUP under this Agreement within 7 days;*
- (f) *be entitled to the return of any Products or Services or Confidential Information or materials of THE IGD GROUP in the possession of The Customer within 7 days;*
- (g) *repossess and/or resell any Products in respect of which The Customer has not paid THE IGD GROUP in full (and gain access to The Customer's premises for this purpose); and*
- (h) *Pursue any additional or alternative remedies provided by law or equity.*

11.4. In addition to the remedies specified in subclause 3, and without limitation to any other rights and remedies of THE IGD GROUP, if:

- (a) This Agreement is terminated during the Term by The Customer (other than in accordance with subclause 1); or
- (b) this Agreement is terminated by THE IGD GROUP as a result of the matters specified in subclause 2(a)-(f),

11.5. The Customer acknowledges that THE IGD GROUP shall obtain capacity to provide the Products and Services based on the agreed Service Orders, which may include obtaining capacity from third parties. The Customer further acknowledges that THE IGD GROUP will suffer loss and damage which it will hold The Customer accountable for and which The Customer will be liable for if The Customer wishes to vary or cancel the capacity specified in the Service Order during the Term.

11.6. The Customer also, with notice from THE IGD GROUP, agrees and acknowledges to indemnify THE IGD GROUP in respect of any relevant and reasonable third party charges payable by THE IGD GROUP under any third party contract as a result of any cancellation, variation or special or once-off charges resulting from the variation or termination or re-initiation of Services or Products of The Customer or its End Users other than in accordance with subclause 3.

## 12) **FORCED MAJEURE**

12.1. THE IGD GROUP will not be liable for any delay or failure to perform its obligations pursuant to this Agreement if such delay is due to a Force Majeure Event.

12.2. If a delay or failure of THE IGD GROUP to perform its obligations is caused to a Force Majeure Event, the performance of THE IGD GROUP' obligations will be suspended.

12.3. If a delay or failure by THE IGD GROUP to perform its obligations due to a Force Majeure Event exceeds thirty (30) Days, THE IGD GROUP may immediately terminate the Agreement on providing notice in writing to the other Party without liability and the provisions of clause 16.3 shall apply.

## 13) **FAILURE TO ENFORCE NOT TO AFFECT VALIDITY**

13.1. The failure of THE IGD GROUP or The Customer at any time to enforce any of the provisions of this Agreement or any rights in respect hereto or to exercise any election herein provided will not be a waiver of those provisions, rights or elections or affect the validity of this Agreement.

## 14) **DISPUTES**

14.1. Any dispute arising in connection with this Agreement which cannot be settled by negotiation between the Parties or their representatives will be submitted to arbitration in accordance with the Conduct of Commercial Arbitrations for the time being of the Institute of Arbitrators and Mediators Australia (or such other equivalent rules in force by that organisation). During such arbitration, both Parties may be legally represented.

14.2. Prior to referring a matter to arbitration pursuant to subclause 19.1, the Parties will:

- (a) *in good faith, attempt to resolve the dispute within five (5) Business Days (or such other period as is agreed between the Parties); and*
- (b) *in good faith explore the prospect of mediation.*

14.3. Nothing in this clause 19 shall prevent any Party from seeking injunctive relief from a Court at any time.

## 15) **SEVERANCE**

15.1. If any part of this Agreement is legally unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.