



General Terms and Conditions

These General Terms apply whenever Function One Pty Ltd (FN1) supplies goods or services to a Customer. These terms are binding to FN1 and the customer after the first completed contract (eg supply of service and payment) OR signed agreement, whichever is first.

1. Definitions

In this document the following definitions apply:

Business Hours: FN1's standard hours of business - currently 9.00am – 5pm EST Monday – Friday excluding Melbourne public holidays.

Claim: any claim, demand, legal proceedings or cause of action including any claim, demand, legal proceedings or cause of action (i) based in contract, (ii) based in tort, (iii) under common law, or (iv) under statute, in any way relating to a Contract and includes a Claim under an indemnity in these General Terms or a Contract.

Commencement Date: of a Prescribed Agreement is the date indicated as the Commencement Date on that Prescribed Agreement.

Content: software, data, text, audio, video, images or other content owned by or licensed to the Customer.

Contract: has the meaning given to in clause 2.1.

Customer: means the person or entity who is buying the goods or Services from FN1.

Disaster: any floods or water ingress, fires, earthquakes, lightning strikes, pipe leaks, power surges/failures, any other acts of God, hacking or any other unauthorised third party access to the Customer's Content.

Force Majeure Event: any occurrence or omission as a direct or indirect result of which FN1 is prevented from or delayed in performing any of its obligations under a Contract and that is beyond the reasonable control of FN1, including forces of nature, any act of God, fire, storm, explosion, strike, lockout, industrial action or action or inaction by a government agency, or any unscheduled emergency maintenance of the Services or any fault in any telecommunications network or any acts or omissions of any supplier to FN1, contamination by malicious code of third party data, improper or wrongful denial of access to data by an authorised or unauthorised third party, theft of an access code, the destruction, modification, corruption, damage or deletion of data stored on any computer system due to a breach of data security, the physical theft of hardware, data disclosure due to a breach of data security, malicious actions of rogue employees or any other events beyond the reasonable control of FN1.

General Terms: these General Terms and Conditions.

Month: a calendar month commencing on the first day of the month.

Obsolete: Hardware – more than 5 years old and/or not under vendor support agreement. Software – operating system more than 3 generations old.

Prescribed Agreement: any written agreements entered into between the Customer and FN1 for the provision of goods and Services, such as a facility management agreement, Premium Internet Agreement, a Managed Email Protection Agreement, a Managed Back Up Agreement, a Managed Disaster Agreement and a Hosted Exchange Agreement

Project Work: moves, additions or changes to the supported environment, Services, or applications taking more than 1 (one) hour of engineering time; office relocations or major reorganizations; supply of new devices or equipment; major systems (hardware/software/network) upgrades, configurations or changes; software or application supply, licensing and 3rd party audits; software coding or development; system repairs, rebuilds or reconfigurations resulting from a pre-existing virus or malware infection; virtualization; data or electrical cabling; training; recovering and rebuilding infrastructure and data after a Disaster.

Rates: disbursements and additional labour fees charged on a time basis (including travel time) in accordance with the rates on the latest FN1 Rate Card provided by FN1 to the Customer or the agreed rates (if any) attached to a Prescribed Agreement. A copy of the current FN1 Rate Card is attached to these General Terms.

Services: means any and all services provided by FN1 to the Customer, including Standard Fee Services

Standard Fee Services: Services included in the Standard Fees under any Prescribed Agreement.

Standard Fees: any regular recurring fees for Standard Fee Services in a Prescribed Agreement.

Term: has the meaning given to it in clause 3.

Trouble Ticket: a ticket raised by FN1 or the Customer with regard to an issue to be resolved as set out in clause 7.

User: Approved designated user of the Services provided under any Prescribed Agreement and identified and approved by FN1 System Monitoring Agent.

2. Structure

2.1 These General Terms:

- (a) and any Prescribed Agreement executed by the parties; or
- (b) and any request for goods or services by the Customer which is not subject to a Prescribed Agreement but which has been accepted by FN1 in writing, constitute a contract between FN1 and the Customer relating to the supply of goods and/or Services by FN1 to the Customer (**Contract**).

2.2 If there is any inconsistency between these General Terms and a Prescribed Agreement, the Prescribed Agreement prevails to the extent of the inconsistency.

2.3 In the case of a Contract under clause 2.1(b), if there is any inconsistency between these General Terms and any term set out in FN1's written acceptance, the terms of FN1's written acceptance will prevail to the extent of the inconsistency.

2.4 **A Contract:**

- (a) supersedes and excludes all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of goods or services including, but not limited to, those relating to the performance of the goods or services; and
- (b) overrides any quotes, invoices and the Customer's terms and conditions of purchase (if any), exchanged between the parties whether or not such documents expressly provide that they override the Contract or any part of it.

2.5 Unless FN1 otherwise agrees in writing, the Contract comprises the only terms which shall apply to all goods and services supplied by FN1.

3. Term of Contract

The Term of a Contract is:

- (a) as set out in Prescribed Agreement; or
- (b) in the case of any Contract other than a Prescribed Agreement, the period of time required to conclude the work under the relevant Contract.

4. Quotations

- 4.1 Any verbal quote given by FN1 is given as a guide based on the limited information given by a Customer. A verbal quote is intended to give the Customer an estimate of the price, it is not an assurance that the product or service will be sold at that price.
- 4.2 Any written quote given by FN1 is a guarantee that the product or Services will be provided at that price. Any written quote is valid for a period of seven (7) days and subject to final availability of the product or service.
- 4.3 Any piece of advertising material stating a fixed price for a product is valid only for the period stated on the advertising material or at the date of publication and may or may not be honoured at the discretion of FN1.
Project quotations are subject to the terms of the written quotation.

5. Fees and Payment Schedule

5.1 Pricing

- (a) FN1 reserves the right to review and adjust the Standard Fees and the agreed Rates (if any) set out in a Prescribed Agreement on each anniversary of the Commencement Date of the Prescribed Agreement or CPI on 1st July each year or Subject to clause 15. If the Customer does not agree to the increase in the Standard Fee and the agreed Rates, the Customer may object in writing within 30 days by providing written notice. If the customer objects, then FN1 has right to meet mutual agreement within 30 Days. If FN1 and customer do not agree the previous Prescribed Agreement remains or FN1 as right to cancel the Prescribed Agreement with 30 Days' notice
- (b) Prices for Services provided by FN1 will vary depending on the issue and the time of the Service.
- (c) Unless otherwise agreed by the parties in writing such as in a Prescribed Agreement, all Services provided by FN1 to the Customer are provided on a time-charge basis (including travel time) in accordance with the Rates on the latest FN1 Rate Card provided by FN1 to the Customer. This includes but is not limited to onsite and remote support, Ad-Hoc Services, and installation and maintenance of products. A copy of the current FN1 Rate Card is attached to these General Terms.
- (d) All goods supplied by FN1 are charged separately from, and in addition to, the Services.
- (e) All prices in respect of a contract are GST exclusive unless otherwise indicated. The Customer agrees to pay any applicable GST on receipt of a tax invoice from FN1.
- (f) The Standard Fees do not include:
- (i) the cost of any parts, devices or equipment, software, licenses or shipping charges of any kind required by the Customer;
 - (ii) any costs charged by a third party such as third party support services, software, licensing, renewals or upgrades;
 - (iii) any costs associated with phone systems (including IP Phones), mobile phones and devices; or
 - (iv) unless expressly stated in a Prescribed Agreement, any internet usage fees

These costs will be additional and invoiced separately.

5.2 Invoicing

Unless otherwise agreed by the parties, fees for Contracts, including Prescribed Agreements will be invoiced as follows:

- (a) FN1 will issue an invoice to the Customer on the Commencement Date, which will include:
- (i) In the case of Prescribed Agreements:
 - (A) all Standard Fees calculated on a pro rata basis up to the start of the first Month; and
 - (B) any once-off set up fees.
 - (ii) In the case of any other Contracts the Rates applicable to the Goods and/or Services provided under that Contract.
- (b) FN1 will issue invoices to the Customer for the Standard Fees or Rates applicable under clause (a) at the start of the first Month and each subsequent month.
- (c) In the case of a Prescribed Agreement, any additional fees for goods or non-included Services such as after-hours support services will be added to the Standard Fee invoices or invoiced separately. Goods and non-included Services will be charged in accordance with the Rates.

5.3 Payment

- (a) The payment terms of all invoices are within thirty (30) days of the date of the invoice.
- (b) FN1 reserves the right to suspend any and all Services if any invoice remains unpaid sixty (60) or more days after the date of the invoice. FN1 acceFN1 no liability for any loss or damage incurred by the Customer as a result of or in connection with such a cessation or suspension.
- (c) FN1 is under no obligation to provide the Customer with any documentation, passwords, keywords, network diagrams or other data disclosed to FN1 or otherwise arising in connection with a Contract to a Customer who is outside the payment terms of FN1. FN1 no liability for any loss or damage incurred by the Customer as a result and the Customer hereby releases and holds harmless FN1 from any such loss or damage.
- (d) Payment for FN1 goods or Services must be made by cash, cheque or EFT.
- (e) FN1 is under no obligation to extend credit to a Customer, but may do so at FN1's absolute discretion. FN1 may undertake a credit check of the Customer at any time and if in FN1's sole opinion the results are unsatisfactory FN1 may deny credit to a Customer or refuse to provide further credit to a Customer.
- (f) The Customer acknowledges that if the invoice issued is not disputed in writing by the Customer within 14 days from the date of issue, then the invoice is deemed due and payable by the due date noted on the invoice.
- (g) If payment of any portion of an invoice is not made within 30 days of the due date of the invoice, interest will be payable by Customer at the rate of 2 per cent per annum above the base rate set by the Reserve Bank of Australia on the overdue amount, calculated from the date the original amount was due.
- (h) Any accounts which are sent to a collection agency for collection will have all legal costs and commissions added to the claim.
- (i) All payments to be made by the Customer under a Contract are to be made in cleared funds without any deduction or set-off.

6. Services provided

- 6.1 FN1 will provide Services as set out in specific Prescribed Agreements.
- 6.2 FN1 is not obliged to provide any Services not included in the Prescribed Agreements

7. Services – processes and systems

7.1 Monitoring

- (a) All automatic, electronic monitoring Services included in a Prescribed Agreement will operate 24/7/365. Any issues or alerts uncovered by these Services will be dealt with within Business Hours as follows, and in accordance with the Service Levels set out in clause 7.2. If resolution of the issue or alert is covered by the Prescribed Agreement, FN1 will issue a Trouble Ticket notifying the Customer that FN1 will attempt to resolve the issue at no additional cost to the Customer.
- (b) If resolution of the issue or alert is not included in the Prescribed Agreement, or FN1 has not been able to resolve the issue or alert pursuant to clause 7.1(a), FN1 will notify the Customer. The Customer will have the choice to raise a Trouble Ticket itself pursuant to clause 7.2 or instruct FN1 to raise a Trouble Ticket on its behalf. In either case, the Customer acknowledges that resolution of the Trouble Ticket is subject to additional fees as per clause (c). The Customer will be liable for any additional fees incurred unless or until it cancels the Trouble Ticket via the Help Desk.
- (c) All Services listed in the Prescribed Agreement, including Help Desk Services, will be provided during Business Hours and After hours. If there is no Prescribed Agreement support can be provided but is subject to additional fees charged in accordance with the Rates. After hours' support is accessed by phoning 1300 552 364 and following the prompt.

7.2 Response

- (a) To access FN1's Help Desk Services the Customer must open a Trouble Ticket by our website or sending an email to FN1's Help Desk, (currently support@fn1.com.au) or by phoning (1300 552 364) FN1 will respond to the Customer's Trouble Tickets in accordance with the Prescribed Agreement or by agreement with client. As a guide we have the following procedures in place:

Service Levels		
Issue	Priority	Response Time
Service not available (all users and/or business mission critical function or functions unavailable)	1 (Critical)	Within 1 Business Hours
Significant degradation of service (large number of users and/or functions affected)	2 (Critical)	Within 2 Business Hours
Limited degradation of service (limited number of users and/or functions affected, business process can continue)	3 (normal)	Within 16 Business Hours or by agreement with client Next Onsite Visit
Small service degradation (business process can continue, one user affected)	4 (Low)	Within 24 Business Hours or by agreement with client Next Onsite Visit

- (b) The actual Priority (i.e. 1, 2, 3 or 4) of each Trouble Ticket will be determined by FN1 at its reasonable discretion.

- (c) If resolution of the issue or alert is not included in the Prescribed Agreements FN1 will notify the Customer, in which case the Customer acknowledges that resolution of the Trouble Ticket is subject to additional fees as per clause 5.1(c). The Customer will be liable for any additional fees incurred unless or until it cancels the Trouble Ticket via the Help Desk.

7.3 Response Time is calculated:

- (a) from the time the FN1 Help Desk:
- (i) speaks with a Customer and accepts FN1 instructions to open a Trouble Ticket; or
- (ii) receives an email from a Customer with instructions to open a Trouble Ticket; and
- (b) to the time a FN1 engineer physically starts the resolution process, including by attempting to contact the Customer by any means for further information, attempting remote solutions or travelling to the Customer's site and does not include any time not within Business Hours.
- (c) Priority 1 issues must be logged via the Help Desk telephone (1300 552 364) and FN1 staff informed directly by the Customer that the issue is a Priority 1.

7.4 Limitation

Standard Fee Services are limited to devices on which FN1 has installed, detected and made operational its System Management Agent (currently N-Able) or which it has identified, accepted and documented in writing as included in the Standard Fees.

7.5 On-site service

On-site service is provided at FN1's discretion. If the Customer requests onsite service and no problem is found or reproduced, the Customer may be charged additional fees calculated in accordance with the Rates.

7.6 Unauthorised Service

Service and repair made necessary by the alteration or modification of devices or equipment other than that authorised by FN1, including alterations, software installations or modifications of devices or equipment made by the Customer's employees or anyone other than FN1 will be subject to additional fees charged in accordance with the Rates.

7.7 Recommendations

- (a) From time to time, FN1 may make recommendations to the Customer to improve the performance or efficiency of its systems, or to prevent faults, errors, license non-compliance or other issues. In no circumstances, will FN1 be liable for any losses incurred by the Customer as a result of the Customer's failure to implement FN1's recommendations.
- (b) If the Customer's failure to implement FN1's recommendations results in recurring faults, errors or other issues FN1 may, by written notice to the Customer, exclude correction of those faults, errors or other issues from the Standard Fee Services covered by any Prescribed Agreement and charge the Customer additional fees in accordance with the Rates.

7.8 Security

The Customer is responsible for taking all steps possible to maintain appropriate security and protection of the Customer's Content.

7.9 Users

- (a) The Customer must ensure all users comply with the Customer's obligations under the relevant Contract. If the Customer becomes aware of any violation of its obligations by a user it must immediately terminate or cause to be terminated such user's access to the Services.

- (b) The Customer is responsible for providing customer service and support (if any) to users not identified by FN1's System Monitoring Agent.

7.10 Third Party Applications

- (a) In the course of providing the Services described in any Prescribed Agreement, FN1 may apply software patches and updates to maintain the Customer's operating system and security.
- (b) FN1 will ensure that any patches or updates are compatible with software supplied by FN1 (FN1 Software).
- (c) FN1 is not responsible for ensuring that patches or updates are compatible with any software (Third Party Software) other than FN1 Software. If any compatibility issue arises with Third Party Software, at the Customer's request, FN1 will liaise with the provider of the Third Party Software to attempt to resolve the issue. Any third party costs incurred by FN1 in this regard will be additional to the Standard Fees and will be invoiced separately.

8. Exclusions

- 8.1 Detailed excluded Services (if any) will be listed in any Prescribed Agreement. Unless expressly stated in any Prescribed Agreement, the Standard Fees do not include any of the following Services:
 - (a) arranging a private internet connection to the Customer's office, if required;
 - (b) provision of security protocols and software;
 - (c) provision of SSL certificates;
 - (d) Project Work;
 - (e) Services in relation to issues caused by customers; unlicensed, obsolete or out of warranty hardware or software (including anti-virus);
 - (f) Services, equipment and networks permanently located in users' homes;
 - (g) support & monitoring for non Microsoft operating platforms.
- 8.2 For the avoidance of doubt, whilst FN1 will use its best efforts to immediately determine whether a Trouble Ticket or other support service is or is not an excluded Service and inform the Customer accordingly, this may not always be possible. If upon conducting work on the Trouble Ticket or other support requested, FN1 discovers that the support required is an excluded Service, FN1 will:
 - (a) immediately inform the Customer that the support required is an excluded Service;
 - (b) cease the support work until FN1 receives confirmation from the Customer that the Customer is willing for FN1 to continue providing the excluded Service;
 - (c) be entitled to invoice the Customer the additional fees charged in accordance with the Rates for the work undertaken before FN1 determined that the support required was an excluded Service.
- 8.3 Aside from Project Work, which will be negotiated under a separate Project Work Agreement, all excluded Services will be subject to additional fees charged in accordance with the Rates.

9. Warranty

- 9.1 To the extent permitted by law, FN1 will not be responsible or liable to the Customer for any faults or defects (if any) of any third party software or equipment provided by FN1 at the Customer's specific request.

- 9.2 In the event of any damage or defect, FN1 will provide reasonable assistance to the Customer to enforce its rights under any applicable manufacturer's or supplier's warranty (if any) with regard to software or equipment provided by FN1, or, at FN1's discretion, complete repairs itself.
- 9.3 FN1 is under no obligation to assist with issues:
 - (a) caused by the customer or a third party changing the configuration of the software / operating system installed by FN1;
 - (b) in connection with equipment or software not supplied and/or installed by a FN1 technician;
 - (c) caused by the installation of equipment or software not supplied by FN1; or
 - (d) caused by installation or equipment or software by a person other than a FN1 technician.
- 9.4 If the Customer requests FN1's assistance with a warranty claim, and the software or equipment is determined not to be faulty, FN1 reserves the right to charge the Customer a labour charge in accordance with the Rates.
- 9.5 All repairs completed by FN1 are done to the satisfaction of the technician.
- 9.6 All freight costs and freight insurance arrangements are the responsibility of the Customer;
- 9.7 With regard to FN1's anti virus and anti spam Services (including email blocking Services) and filtering software, FN1 does not warrant the accuracy of the intended email blocking of any mail message, or that the Services will meet the Customer's requirements or that no email will be lost or that the Services will not give false positive or false negative results, or that all spam and viruses will be eliminated or that legitimate messages will not be occasionally quarantined as spam or as being infected with a virus. FN1 will not be liable for any loss or damage caused to the Customer due to any email being blocked by anti virus or anti spam filtering software or due to infection by unrecognised viruses.
- 9.8 The Customer warrants that it has all relevant business insurances to cover any loss or damage the Customer may incur due to FN1 being unable to supply the Services for any reason.

10. Software

- 10.1 The Customer's rights to use third party software supplied by FN1 are subject to the usage rights granted by the third party software supplier, such as Microsoft, Adobe, VMWare, etc. The Customer acknowledges that the usage rights of third party software may vary from product to product and agrees to abide by such rights. Any breach of the third party software usage rights constitutes a material breach of the Contract. The third party usage rights can be found on the relevant third parties website and will be updated from time to time.
- 10.2 FN1 will not be responsible to the Customer or any third party for any breach of any software licence in respect of software provided to FN1 by the Customer to be installed on a Customer's computer.
- 10.3 The Customer warrants that it has a valid licence in respect of such software and shall indemnify FN1 against any loss, damage, costs, harm or other expense whatsoever arising either directly or indirectly as a result of FN1 installing software at the request of the Customer.

11. Liability

- 11.1 To the extent permitted by law, FN1 excludes any term, condition or warranty that may otherwise be implied into a Contract; and any liability for loss or damage incurred as a result of or in connection with the negligence of FN1; and any liability for loss or damage incurred as a result of the failure of equipment or software; and any liability for indirect or consequential loss as well as loss of profits, revenue, business, opportunity, or anticipated

	savings, damage to hardware, corruption or damage to software, data loss or corruption, damages related to "downtime", damage to goodwill, or interruption of business services.		
11.2	FN1's liability in respect of a failure to comply with any implied term, condition or warranty or consumer guarantees under the Competition and Consumer Act 2010 that cannot lawfully be excluded but which is permitted to be limited, is limited:	11.8	If FN1 has agreed to manage or monitor a backup system under a Prescribed Agreement, FN1 will manage and monitor any backup system the Customer has in place, and report any errors, faults or other issues that come to its attention. FN1 may make recommendations with respect to the Customer's backup system. FN1 will continue to manage and monitor the backup system whether or not the Customer implements its recommendations. However, in no circumstances will FN1 be liable for any errors, faults, loss of data or losses incurred by the Customer as a result of the Customer's failure to implement FN1's recommendations.
	(a) in the case of goods, to the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost having the goods repaired;		
	(b) in the case of Services, to the supplying of the Services again, or the payment of the cost of having the Services supplied again. This is limited to 1 month of services or 1 troubled ticket.		
11.3	Other than a Claim pursuant to clause 11.2:		
	(a) FN1's liability for any Claim, liability, cost, expense, loss or damage suffered or incurred by the Customer in connection with a Contract will be limited to the price paid by the Customer for Services acquired by the Customer under that Contract (limited to 1 month).	12. Ad-Hoc Services	
	(b) FN1 shall have no liability in respect of any Claim, liability, cost, expense, loss or damage, which is not notified in writing to FN1 in reasonable detail within 1 months of the Claim arising; and	12.1	The Customer may request diagnostic, repair, installation and consultancy Services from FN1. If these Services are not covered by a Prescribed Agreement with FN1, they will be regarded as Ad-Hoc Services.
11.4	FN1 will not be liable for any damage or loss incurred by the Customer, including damage to the Customer's IT infrastructure, website, business, records, content or data, as a result of or in connection with:	12.2	FN1 will agree to provide Ad-hoc services at its discretion on a case-by-case basis.
	(a) any failure of third party products or services, whether or not obtained by FN1 on behalf of the Customer; or	12.3	Ad-hoc services will be charged on a time basis in accordance with the Rates. This includes all diagnostic time regardless of whether the FN1 technician can resolve the problem.
	(b) hacking or any other unauthorised third party access to the Customer's computer system.	12.4	In addition to labour, the Customer is liable for all third party costs incurred by FN1 in connection with the Break Fix Services, including parts and equipment, hardware and software, and third party service fees.
11.5	If the Customer gives its approval to FN1 changing the network environment, including changing or adding servers or work stations:	13. Hardware	
	(a) FN1 will ensure that any new software supplied by FN1 is compatible with the new network environment; and	13.1	The Customer may order parts and equipment, hardware and software from FN1.
	(b) in the case of software other than FN1 Software, FN1 will take all reasonable steps to confirm with the provider of that software (Third Party Vendors) that the software provided by them will be compatible with, and can be successfully migrated to, the new environment. If FN1 is not able to obtain written confirmation of compatibility from the Third Party Vendor, FN1 will seek the Customer's instructions as to whether to proceed with altering the network environment, at the Customer's risk. FN1 accepts no liability for any damage or loss incurred by the Customer if the Third Party Vendor provides insufficient or incorrect information or the software provided by them is otherwise not compatible with, or cannot be successfully migrated to, the new environment. The Customer hereby releases and holds harmless FN1 from any such liability.	13.2	FN1 will agree to provide the Products at its discretion on a case-by-case basis.
11.6	The Customer shall be responsible for insuring any goods sent to FN1 for repairs.	13.3	If installation or configuration of Products is required, this will have regarded as a Ad-Hoc service and incur additional charges.
11.7	While the utmost care is taken by FN1 with regards to Customer data, unless agreed in writing by the parties, FN1 will not be responsible for data loss. FN1 recommends full backups of all systems to ensure protection from data loss. If FN1 supplies and installs an on-site backup system for the Customer, FN1 will ensure the system is functioning to agreed specifications on the day of installation. FN1 accepts no responsibility for errors and issues that arise after installation and any resulting loss of data	14. Confidentiality	
		14.1	"Confidential Information" of a party means information which is by its nature confidential, is designated confidential by a party, or which the other party knows or ought to know is confidential, and includes information relating to:
		(a)	the party's business, technology, financial or other affairs;
		(b)	the party's personnel, customers and suppliers, including any personal or sensitive information of individuals;
		(c)	contract terms, fees, financing arrangements,
		(d)	but does not include information which is or becomes generally available in the public domain (other than through breach of an obligation of confidence), information rightfully received by a third party who did not obtain the information as a result of a breach of an obligation of confidence, information the recipient can prove was already known to it at the time of disclosure.
		14.2	Each party agrees that the recipient of any Confidential Information of the other party will not use that Confidential Information except for the purposes contemplated by this Agreement, and will not disclose the Confidential Information except to the extent required by law, or with the written consent of the other party.
		14.3	Each party must ensure its personnel keep the other party's Confidential Information confidential and do not use it other than for the purposes contained in the Contract.

15. Additions

- 15.1 Prior to the Commencement Date, Customer will allow FN1 access to deploy its Systems Management Agent on the Customers systems. The Systems Management Agent will produce a report on the current number of users and devices on the Customers Systems (Initial Site Report).
- 15.2 After the Commencement Date, the Systems Management Agent will produce regular reports on the current number of users and devices on the Customers System (Site Reports).
- 15.3 The Initial Site Report and Site Reports shall be the definitive determinant of the number of users and devices on the Customers System at any point in time.
- 15.4 If an Initial Site Report or Site Report indicates any additional users or devices over and above those listed in any Prescribed Agreement, then:
- (a) The relevant section of any Prescribed Agreement will be automatically amended to include the additional users and devices, and the Standard Fees will be automatically increased on a pro rata basis as of the date of the Initial Site Report or Site Report in question, unless otherwise agreed by the parties; and
 - (b) FN1 reserves the right to further revise the Standard Fees if the pro rata increase is insufficient in light of the additional costs and expenses FN1 will incur in connection with the additional users and devices. If the Customer does not agree to the increase in the Standard Fees section 5.1.(a) will be applied.
- 15.5 At the Customer's request and FN1's absolute discretion, the Customer may add further users or devices to any Prescribed Agreement, subject to any reasonable conditions FN1 seeks to impose, including but not limited to an adjustment to the Standard Fees.
- 15.6 Any additional installation and/or integration fees will be charged on a quoted basis.
- 15.7 A minimum period of 3 months applies to any additional users, devices or Standard Fee Services added to any Prescribed Agreement.
- 15.8 For the avoidance of doubt, FN1 reserves the right to refuse the addition of any new users, devices or Services to any Prescribed Agreement.

16. Customer Obligations

- 16.1 The Customer agrees and acknowledges that FN1 acquires services from third parties. The Customer will comply with all reasonable directions of FN1 as necessary for FN1 to comply with its obligations under any agreement with those third parties.
- 16.2 The Customers agrees during the Term of any Prescribed Agreement not to uninstall FN1's System Monitoring Agent or any other application provided by FN1 which is required to deliver the Services described in any Prescribed Agreement.

- 16.3 The Customer shall indemnify and hold harmless FN1 and any suppliers to FN1 against any loss, damage, costs, harm or other expense whatsoever arising either directly or indirectly as a result of:
- (a) a breach by the Customer of its obligations under a Contract;
 - (b) any wilful, unlawful or negligent act or omission of the Customer;
 - (c) any misuse of the Services by the Customer;
 - (d) any claims, threats or action brought against FN1 or a supplier to FN1, including without limitation for breach of copyright or other intellectual property rights, the transmission of illegal or offensive or obscene, threatening or abusive data, breach of privacy, negligent, fraudulent, criminal, illegal or other wrongful usage by the Customer or any users of the Services provided under any Prescribed Agreement, or any negligence of the Customer or any users, except to the extent that any such claims, threats or action are caused or contributed to by gross negligence of FN1;
 - (e) any claims brought by users against FN1 or a supplier to FN1 in respect of the performance or non-performance of the Services provided under any Prescribed Agreement, except to the extent that any such claims are caused or contributed to by gross negligence of FN1;
- 16.4 FN1 shall not be liable for any loss or damage suffered by any Customers approved or unapproved users of the Services provided under any Prescribed Agreement including loss or damage to any Customer or user equipment, IT infrastructure, business, website, records, Content or data directly or indirectly connected to the Services provided under any Prescribed Agreement except to the extent that any such loss or damage is caused or contributed to by FN1 gross negligence.
- 16.5 The Customer must provide adequate access to their site for the purpose of providing support. The Customer also must provide a reliable internet connection for remote access to their machines, and must allow FN1 to load any necessary management software on their systems. If FN1 is required to provide on-site rather than remote support due to a failure of the internet connection, these Services will be subject to additional fees charged in accordance with the Rates.
- 16.6 The Customer must not interfere or block FN1's monitoring.
- 16.7 The Customer must specify a technical contact within the Customer, who will be the first point of contact for any technical communications between the parties.

17. Suspension and Termination

- 17.1 The Customer may terminate a Contract if FN1
- (a) is in breach of any material term or condition of that Contract and fails to cure such breach within ninety (90) days of its receipt of a written notice from the Customer requiring it to do so (Cure Period); or
 - (b) breaches any material term or condition of that Contract which is not capable of being cured within the Cure Period.
- 17.2 FN1 may terminate specific Contracts or all Contracts at its absolute discretion on ninety (90) days written notice. Client may terminate the agreement on one hundred and eighty (180) days' notice only under the terms of independent assessed and proven financial distress, third party backup commitments must be paid out in full.
- 17.3 FN1 may suspend or terminate any specific Contract or all Contracts immediately by written notice if:
- (a) a supplier of services or products to FN1 suspends, cancels, terminates or does not renew its supply of products or services to FN1 (through no fault of FN1), and as a result, impairs or prevents FN1 from delivering the Services, provided by FN1. FN1 must use its best endeavours to prevent any such suspension, cancellation, termination or non-renewal;

- (b) FN1 has any reason to believe the Customer or any approved or unapproved users have employed the Services described by any Prescribed Agreement to engage in any activities of an illegal or offensive manner;
- (c) FN1 has reason to believe the Customer's use of the Services provided under any Prescribed Agreement poses a security risk to the systems of any third party, or may adversely impact the systems or Content of any other FN1 customer, or may subject FN1 or any affiliates to liability;
- (d) FN1 has reason to believe the Customer's Content infringes the rights of a third party or otherwise violates any laws or a material term of a Contract;
- (e) Any step is taken by the Customer to enter into a scheme of arrangement with its creditors; a receiver, manager, liquidator, administrator or like person is appointed over the Customer; the Customer ceases to carry on business; the debts of the Customer are suspended generally; or the Customer is deemed insolvent for the purposes of any provision of the Corporations Act 2001 (Cth) or corresponding applicable laws; or
- (f) the Customer:
 - (i) is in breach of any material term or condition of the Contract or a Prescribed Agreement and fails to cure such breach within thirty (30) days of its receipt of a written notice from the Customer requiring it to do so (Cure Period); or
 - (ii) breaches any material term or condition of a Contract or a Prescribed Agreement which is not capable of being remedied within the Cure Period.

18. Consequences of Termination

- 18.1 On termination or expiration of a Contract for any reason the Customer must pay FN1:
- (a) all amounts that are due and owing up to the termination date;
 - (b) all Standard Fees up to the end of the then current term of any Prescribed Agreements terminated;
 - (c) any invoices issued by FN1 for work-in-progress;
 - (d) any invoices for goods or Services obtained for or provided to the Customer up to the termination date;
 - (e) for any agreed disbursements incurred by FN1 on the Customer's behalf up to the termination date.
- 18.2 On expiration or termination of a Contract for any reason, at FN1's discretion (such discretion to be not unreasonable) and subject to full cooperation of the Customer, FN1 may:
- (a) assist the Customer in the orderly termination of Standard Fee Services, including timely transfer of the Standard Fee Services and all Content, to another designated provider; and/or
 - (b) provide the Customer with a copy of all Content in a readable format, subject to the Customer providing FN1 with a suitable storage device with sufficient capacity to store the Content.
- 18.3 The Customer agrees to pay all FN1's costs of rendering the assistance in clause 18.2 in accordance with the Rates. The Customer must make such request within 7 days of expiration or termination of the relevant Prescribed Agreement. If FN1 does not receive a request within 7 days it is under no obligation to assist or preserve the Customer's Content.
- 18.4 Subject to clause 18.2 and except where otherwise agreed in writing between the parties or otherwise set out in a Prescribed Agreement, FN1 takes no responsibility for and is under no obligation to conserve any Content, or for the quality or

completeness of any Content conserved, on termination or expiration of a Contract.

19. Amendments

Except where stated above, a variation of a term of a Contract (including these General Terms) will be of no force or effect unless it is in writing and signed by each of the parties.

20. Force Majeure

- 20.1 FN1 will not be liable for any delay or failure to perform its obligations pursuant to any Prescribed Agreement if such delay is due to a Force Majeure Event.
- 20.2 If a delay or failure of FN1 to perform its obligations is caused or anticipated due to a Force Majeure Event, the performance of FN1's obligations will be suspended.
- 20.3 If a delay or failure by FN1 to perform its obligations due to a Force Majeure Event exceeds thirty days, FN1 may immediately terminate any Prescribed Agreement on written notice.

21. Maintenance and Outages

- 21.1 FN1 will use its best endeavours to attend to all service calls within the time frame agreed upon. FN1 reserves the right to extend the agreed time in the event of circumstances outside FN1's control.
- 21.2 In order to provide maintenance and other Services, FN1 may need to schedule an outage of Customer's systems or networks. At the Customer's request, FN1 will make every attempt to schedule the outage outside of the Customer's normal business hours.
- 21.3 FN1 will provide the Customer with 48 hours notice of any scheduled outage.
- 21.4 Repairs onsite are limited by the availability of parts.
- 21.5 FN1 reserves the right to take the Customer's equipment offline to complete any repairs. Equipment taken to the FN1 workshop for repairs is subject to time delay. As soon as the repairs are completed the equipment will be returned to the Customer.

22. General

- 22.1 The Customer must not assign, transfer or novate its rights and obligations under a Contract to any third party without the prior written consent of FN1, which will not be unreasonably withheld. FN1 may assign, transfer or novate its rights and obligations under a Contract to any third party on notice to the Customer without the Customer's consent.
- 22.2 FN1 may subcontract any of its obligations under a Contract to any person without the Customer's consent.
- 22.3 A Prescribed Agreement may be executed in counterparts. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document.
- 22.4 Each Contract shall be governed by the laws of the State of Victoria.
- 22.5 The Customer agrees that while FN1 is providing goods or Services to the Customer, and for a period of 12 months after FN1 last provided goods or Services to the Customer, the Customer must not:
- (a) approach or solicit any employee of FN1 for the purpose of recruiting that person;
 - (b) hire any employee of FN1;
 - (c) approach (either solely or jointly with any other person and in any capacity whatsoever) any person whom the Customer is aware is or was a customer of FN1 in the previous

12 months for the purpose of persuading that person to cease doing business with FN1 or reduce the amount of business that person would normally do with FN1.

- (d) The Customer agrees to pay FN1 the sum of \$50,000 + GST as a non refundable employment placement fee to cover any losses or damage FN1 may suffer as a result of the Customer's breach of any or all of clauses 22.5 (a), (b) .

22.6 Nothing in a Contract transfers ownership in, or otherwise grants any rights in any intellectual property of FN1. Unless otherwise agreed, FN1 retains all intellectual property rights in any material (including any plans, proposals, reports, cost estimates, system designs) provided to or prepared on behalf of the Customer, and these may not be copied, used or disclosed by the Customer without FN1's prior written consent.

CUSTOMER

Function One Pty Ltd

Company

Function One Pty Ltd

ABN

ABN 37 367 624 598

Signatory name

Signatory name

Signatory position

Signatory position

Authorised signature

Authorised signature

Date

Date

Attachment 1