

## 3rdmill Standard Form of Agreement

Version: 1.2

Last updated: 17/05/2016

### 1. About this Agreement

- A. The 3rdmill Form of Agreement (the “Agreement”) sets out the terms and conditions which apply to all Products and Services provided to Customers by 3rdmill.
- B. The parties to this Agreement are:
  - i. “3rdmill”; 3rdmill Pty Ltd ABN 74 081 126 436 of Suite 23, Level 4, 924 Pacific Highway, Gordon, NSW, 2072; and
  - ii. “The Customer”; anyone who receives services from 3rdmill.
- C. The Customer, in signing a Service Agreement or equivalent document with 3rdmill, accepts the Terms and Conditions within this Agreement.
- D. The full Customer Contract therefore consists of;
  - i. The specific terms and conditions outlined in Service Agreements or equivalent documents provided by 3rdmill;
  - ii. The Standard Form of Agreement (this document); and
  - iii. The Rate Card and associated price lists which 3rdmill may issue from time to time.
- E. To the extent of any inconsistency between the terms of this Agreement and the Service Agreement, the terms of the Service Agreement will prevail.
- F. This Agreement applies to all services provided by 3rdmill from May 2016, unless an existing contract already stands in which case:
  - i. The existing contract will hold until termination or expiry;
  - ii. After which, this Agreement will apply.

### 2. Provision of Services

#### General Obligations

- A. The Customer will receive Services from 3rdmill, and 3rdmill will provide the Services to the Customer, on a non-exclusive basis.
- B. 3rdmill must supply the Services outlined in the Customer Contract:
  - i. in accordance with:
    - all applicable laws and regulations;
    - any of the Customer’s policies and procedures as notified to 3rdmill in writing from time to time;
  - ii. to a professional standard with due skill and care; and
  - iii. using appropriately skilled and qualified Personnel.
- A. 3rdmill is not obligated to support a Service in any way that is not specified in the Customer Contract, including but not limited to:
  - i. Onsite support;
  - ii. Support outside of our standard Business Hours;
  - iii. Software or hardware support;
  - iv. Meeting Service Level Availability targets; and
  - v. Monitoring, upgrading or patching systems related to the provision of the Services
- B. If a Customer Contract includes service guarantees outside of this document, then 3rdmill will provide support in accordance with it.

#### **Data**

- C. Unless a Customer Contract specifies that 3rdmill will backup the Customer’s data, the Customer is solely responsible for ensuring they have a complete, working backup.
- D. 3rdmill is not required to store any data for any Services which are not active, and 3rdmill is not responsible for any loss or damage that arises from this.

#### **Ad Hoc services**

- E. The Customer may from time to time request that 3rdmill provide ad hoc Services and, if 3rdmill agrees to provide them, 3rdmill will provide them in accordance with

the terms of this Agreement on a time and materials basis at the applicable Rate Card.

### 3. Customer responsibilities

- A. The Customer agrees to undertake the following throughout the duration of the Customer Contract:
- i. Give advance warning to 3rdmill of planned business changes that affect the provision of the Services;
  - ii. Provide 3rdmill with all reasonable assistance and access to the Customer's premises, personnel, facilities, systems and information as 3rdmill reasonably requests to allow 3rdmill to comply with its obligations under the Customer Contract;
  - iii. Provide a safe working environment for representatives of 3rdmill that attend the Customer's office for work purposes;
  - iv. Provide 3rdmill with copies of policies and procedures which it requires 3rdmill to comply with;
  - v. Maintain the confidentiality of 3rdmill proprietary processes and intellectual property;
  - vi. Make reasonable efforts to maintain the security of passwords and other security information; and
  - vii. Pay invoices within 3rdmill payment terms outlined in Section 10.
- B. The Customer is solely responsible for:
- i. Compliance of their Content with all relevant 3rdmill policies and the law and any claims relating to this Content; and
  - ii. The provision of permits, license or consent required to use the Services.
- C. The Customer must not:
- i. Damage or otherwise interfere with Services provided by 3rdmill;
  - ii. Do anything unlawful with the Services; or
  - iii. Share a Service with any third party without the written consent of 3rdmill.

- D. A breach by the Customer of any of the responsibilities listed in this clause is considered a breach of the Customer Contract.

## 4. Pricing

- A. Costs associated with the provisions of Services are outlined in the Service Agreement or equivalent documentation provided by 3rdmill to the Customer.
- B. 3rdmill reserve the right to update the prices from time to time.
- C. The price changes will only apply upon written notification to the Customer.
- D. If the Customer Contact states that the charges for the contract will be fixed for a certain period, or until a certain date, changes made during that period, or before that date, do not take effect until the end of that period, or until that date.

## 5. Supply of goods

- A. Invoices will be issued for hardware and software as items are received from 3rdmill.
- B. Freight charges are entirely payable by the Customer.
- C. 3rdmill will invoice in advance for all third party technology purchases when the total exceeds \$10,000. If financing, 3rdmill will provide a pro-forma invoice and proceed with the sourcing of equipment at the time the funds are made available.
- D. In supplying goods to Customers:
  - i. 3rdmill retain the title and ownership of the goods until it is paid for in full; and
  - ii. Risk or loss of damage passes to the Customer when delivered to Customer premises.
- E. The Customer must not on-sell, transfer, rent, loan or otherwise assign all or part of the goods without the written consent of 3rdmill.

## 6. Third Party Services

- A. If the Customer uses third party Services not distributed or approved by 3rdmill:
  - i. The Customer is solely responsible for ensuring the suitability and compatibility of the third party Services; and

- ii. 3rdmill bears no liability for any loss or damage caused by the third party services.
- B. For third party services used or approved by 3rdmill in the provision of the Services:
- i. The third party services are subject to the specific terms and conditions of the third party provider;
  - ii. 3rdmill will make all reasonable efforts to support the third party services to the extent required to deliver the Services; and
  - iii. 3rdmill bears no liability for any loss or damage caused by approved third party services, where the cause of the loss or damage could not reasonably have been prevented by 3rdmill.

## 7. Service Availability

- A. 3rdmill strive to achieve 99% service availability for all hosted systems but will not be liable for any downtime incurred by the Customer unless otherwise stated in the Service Agreement.
- B. A Service is 'Unavailable' if there is an outage that results other than from:
- i. A failure or malfunction in relation to equipment, any computer software or power supply at the premises of the Customer;
  - ii. Failure or malfunction of an Internet connection forming part of the Service (whether at the Customer or 3rdmill site);
  - iii. An act or an omission by the Customer or an agent of the Customer ;
  - iv. Reasonable downtime required for installation of urgent hot-fix patches;
  - v. The occurrence of a Force Majeure event;
  - vi. Scheduled Maintenance;
  - vii. A requirement, direction, or any other order, issued by a government, statutory or other relevant authority with jurisdiction over the Services;
  - viii. Unauthorised or illegal access by any party to any part of the system providing the Services, including hacking, cracking, virus dissemination and denial of service attacks; or
  - ix. A failure or malfunction in relation to the Customer's equipment or computer software located at the premises of 3rdmill, unless caused by 3rdmill.

- C. Where service outages are experienced for reasons outlined in Clause B, 3rdmill will not be liable for any claim in respect of such outage. Notwithstanding this 3rdmill shall give practical assistance to the Customer, as is reasonably requested to assist the restoration of the service.

## 8. Maintenance

- A. 3rdmill will perform the Scheduled Maintenance to the 3rdmill Equipment from time to time.
- B. 3rdmill and third parties from time to time, will perform all Basic Maintenance and Detailed Maintenance.
- C. Unscheduled Basic Maintenance or Detailed Maintenance may need to be performed due to data corruption or equipment failure. If any such unscheduled maintenance affects the Customer, 3rdmill will make best effort to notify the Customer in advance.

## 9. Temporary Suspension

- A. 3rdmill reserve the right to suspend access to any or all of the Services immediately upon notice if it is determined:
  - i. The Customer's use of the Services poses a security risk to 3rdmill, any third party, the Services of another 3rdmill customer, or may be fraudulent;
  - ii. The Customer is in breach of the Customer Contract, including if the Customer is delinquent on payment obligations for more than 7 days; or
  - iii. The Customer has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.
- B. If 3rdmill suspends the Customer's right to access or use any portion or all of the Services:
  - i. The Customer remains responsible for all fees and charges incurred through the date of suspension;
  - ii. The Customer remains responsible for any accrued fees and charges for any Services, as well as applicable data storage fees and charges;
  - iii. 3rdmill will not erase any of the Customer's Content as a result of the suspension, except as specified elsewhere in the Customer Contract.

## 10. Payment

### **Obligation to pay Charges**

- A. Subject to this clause, the Customer will pay 3rdmill the charges set out in the Service Agreement for the Services provided.

### **Invoicing**

- B. 3rdmill must provide a correctly rendered invoice to the Customer in accordance with a Service Agreement or, if none is specified, within 10 business days of the end of the month in which payment is due in accordance with the relevant Service Agreement.

### **Invoice requirements**

- C. An invoice is correctly rendered if:
- i. The amount claimed in the invoice is due for payment;
  - ii. The amount specified in the invoice is correctly calculated in accordance with the relevant Service Agreement;
  - iii. Where the relevant Service Agreement specifies particular payment milestones, the relevant payment milestone has been met;
  - iv. The invoice is a tax invoice within the meaning of the GST Act; and
  - v. The invoice identifies the Services and the period to which the invoice relates.

### **Due date for payment**

- D. The Customer must pay any correctly rendered and undisputed invoice for Charges within 7 after the date of the invoice.

### **Disputed payments**

- E. The Customer may withhold payment of any Service Fees that the Customer disputes until the dispute has been resolved.

### **Services provided on a time and materials basis**

- F. If a Service Agreement states that the Services will be provided on a time and materials basis, the rates set out in the Rate Card will apply.

## 11. Taxes

### Charges exclusive of taxes

- A. Except to the extent expressly provided otherwise in a Service Agreement, the Charges exclude all taxes (including value added tax), duties (including stamp duty), charges, fees and other imposts of whatever kind (including any fine or penalty imposed in connection with them) that may be levied, assessed, charged or collected in connection with the Customer Contract.

### GST

- B. Amounts payable under or in connection with the Customer Contract have been calculated without regard to GST. Accordingly:
- i. If the whole or any part of any such amount is the consideration for a taxable supply for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the first mentioned amount multiplied by the rate of GST;
  - ii. Any reference to a cost or expense in the Customer Contract excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an input tax credit; and
  - iii. The payee will provide to the payer a tax invoice at the time of payment.
- C. Terms used in Clause B have the meanings given to them in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## 12. Intellectual Property Rights

### Pre-existing Intellectual Property Rights

- A. All Intellectual Property Rights belonging to a party before signing the Customer Contract (Pre-Existing IP) will be retained by that party.

### Assignment to the Customer

- B. Subject this Clause A, 3rdmill assigns to Customer all right, title and interest (including copyright) in the Intellectual Property Rights subsisting in or relating to the Materials as and when they are created.

### Licence to the Customer



- C. 3rdmill grants to the Customer a royalty-free, non-exclusive, non-transferable, sub-licensable licence to use 3rdmill's Pre-Existing IP incorporated into the Materials for the purpose of the Customer using and sub-licensing the Materials.

#### **Licence to 3rdmill**

- D. The Customer grants 3rdmill a non-exclusive, non-transferable, royalty-free licence to use the Customer's Pre-Existing IP for the sole purpose of performing the Services and complying with its obligations under this Agreement and the Service Agreement for the Term.

#### **Infringement**

- E. If there is any claim or allegation of infringement of the intellectual property rights or any other rights of a third party arising out of the use of the Materials by the Customer (Claim), 3rdmill will defend, indemnify and hold harmless the Customer against the claim.

## 13. Confidentiality, publicity and privacy

#### **Confidentiality**

- A. A party (Recipient) may not disclose, divulge or release any Confidential Information of the other party (Discloser) to any third party without the prior written consent of the Discloser, nor will the Recipient use any Confidential Information of the Discloser for any purpose other than exercising a right or fulfilling an obligation under the Customer Contract.
- B. The Recipient may disclose the Confidential Information of the Discloser to the Recipient's Personnel solely for the purposes of performing the Services under the Customer Contract. The Discloser may, at any time, require the Recipient to arrange for their Personnel to enter into a written confidentiality undertaking in a form reasonably required by Discloser.

#### **Privacy**

- C. 3rdmill must comply at all times with all applicable privacy legislation and the Customer's reasonable directions in relation to the protection of personal information.
- D. Without limiting Clause C, in relation to any Personal Information disclosed the party must:
  - i. Not collect, disclose, store, transfer or handle the information except in accordance with the Privacy Act;

- ii. Take all reasonable steps to ensure that the information is protected from misuse or loss, and from unauthorised access, modification or disclosure;
  - iii. Take all reasonable steps to destroy or permanently de-identify information that is no longer needed for the purposes of the Customer Contract;
  - iv. Co-operate with any reasonable request or direction the Customer makes which relates to the protection of the information or the exercise of the functions of the Privacy Commissioner under the Privacy Act;
  - v. Ensure that access to the information is limited to those of its Personnel who are required to access that information for the purposes of the Customer Contract; and
  - vi. Comply with any reasonable direction of the Customer in relation to a complaint concerning privacy received by either party.
- E. Without limiting Clause C and D, 3rdmill may opt to use the Customer's Personal Information for promotional and marketing purposes until such time as the Customer requests to opt out of receiving such information.

## 14. Termination

### Termination for insolvency

- A. A party may terminate the Customer Contract with immediate effect by giving notice to the other party if:
- i. The other becomes subject to any form of insolvency administration;
  - ii. The other disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
  - iii. The other ceases to carry on business;
  - iv. The other ceases to be able to pay its debts as they become due;
  - v. Any step is taken by a mortgagee to take possession or dispose of the whole or part of the other party's assets, operations or business;
  - vi. Any step is taken to enter into any arrangement between the other party and its creditors; or
  - vii. Any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other

like person of the whole or part of the other party's assets, operations or business.

#### **Termination for breach**

- B. The Customer may terminate the Customer Contract with immediate effect by giving notice to 3rdmill if 3rdmill breaches any provision of the Customer Contract and fails to remedy the breach within 30 days after receiving notice requiring it to do so.

#### **Termination no prejudice to remedies**

- C. Termination of the Customer Contract does not affect any accrued rights or remedies of either party.

#### **Customer termination for convenience**

- D. The Customer may terminate the Customer Contract without cause provided:
  - i. The minimum term of the Customer Contract has expired; and
  - ii. 3rdmill has been provided no less than 30 days' notice in writing.

#### **Minimum term**

- E. A Customer Contract with a minimum term cannot be cancelled during the minimum term except in the specific circumstances outlined in Clause A above.
- F. A Customer Contract cancelled prior to the end of the minimum term must be paid in full, and may be subject to administration fees of up to 10% of the Customer Contract value.
- G. Upon expiry of the minimum term, the Customer may cancel as per Clause D.

## **15. Effect of Termination**

- A. On expiry or termination of a Service Agreement for any reason:
  - i. 3rdmill must return to the Customer all of the Customer's Confidential Information in 3rdmill's possession or, if requested by the Customer, destroy or erase all copies of that Confidential Information, except that 3rdmill may retain a copy of that information for its archival purposes;
  - ii. the Customer must return to 3rdmill all of 3rdmill's Confidential Information and other materials provided to it by 3rdmill or, if requested by 3rdmill, destroy or erase all copies of them; and

- B. On expiry or termination of a Service Agreement by 3rdmill, the Customer must pay 3rdmill for all Services rendered up to the date of termination (on a pro rata basis in respect of any Services that are partially completed) within 7 days of the date of termination.
- C. Expiry or termination of a Service Agreement for any reason, does not affect in any manner the validity of any other Service Agreement.

## 16. Force Majeure

- A. The obligations of a party under the Customer Contract are suspended during the period and to the extent that such party is prevented or hindered from complying by causes or circumstances:
  - i. Beyond its reasonable control not due to its own fault or negligence;
  - ii. Which are not reasonably foreseeable; and
  - iii. Which the party is by the exercise of reasonable diligence, unable to prevent, including:
    - iv. Act of God;
    - v. Strike, lock-out or other labour difficulty outside the reasonable control of a party;
    - vi. Act of public enemy, war (whether declared or undeclared), blockade, revolution, riot, insurrection, malicious damage, civil commotion;
    - vii. Lightning, landslide, cyclone, storm, drought, flood, fire, earthquake, explosion, tidal wave, epidemic;
    - viii. Order of any court or authority, restraint, restriction, requirements, prevention, frustration or hindrance by or of any person, government or competent authority;
    - ix. Embargo, unavailability or shortage (not caused by an act or omission by 3rdmill) of essential equipment, chemicals or other materials, goods, labour or services, lack of transportation or communication not due to an act or omission of 3rdmill, breakage of facilities or machinery not due to an act or omission of 3rdmill, electricity supply failure that extends beyond seven consecutive days; and
    - x. Any shutdown, interruption to or corruption of the Internet outside the reasonable control of a party.

- B. Each party must promptly provide notice to the other party of the occurrence or cessation of any Force Majeure event.

## 17. Indemnity and liability

### Warranty

- A. 3rdmill warrants that:
  - i. It has the right to enter into the Customer Contract and perform the Services;
  - ii. It holds all licences, permits, consents and authorisations required under any law in relation to the provision of the Services; and
  - iii. The Services will be performed with due care and skill in a proper, workmanlike and professional manner
- B. To the extent permitted by law, 3rdmill:
  - i. Does not warrant the Services will be provided without fault or disruption;
  - ii. Does not provide a service level guarantee or any guaranteed service level unless the Customer Contract states otherwise; and
  - iii. Does not provide a warranty for hardware provided under a Customer Contract, but where possible will assign the benefit of any Manufacturer's Warranty to the Customer.
- C. Except for any express warranties in the Service Agreement, to the extent permitted by law 3rdmill disclaim all express and implied warranties in relation to the Services or the Customer Contract.

### Liability

- D. In the case of any breach of a Customer Contract, or any negligence for which 3rdmill is responsible, or a breach of a condition or warranty that legislation prohibits from excluding, 3rdmill's liability will not exceed:
  - i. If the breach or negligence is related to goods -
    - Replacement of any goods involved or the supply of equivalent goods;
    - The repair of such goods;
    - The payment of the equivalent dollar value of the replacement.

- ii. If the breach or negligence is related to services –
  - Supply the services again; and
  - The payment of the cost (for the period of the breach) of having the services supplied again.
  - 3rdmill under no circumstances is liable for any indirect, secondary or consequential loss or loss of income that the Customer or anyone else may suffer.
- iii. Where the Service Agreement or equivalent documents differ from this Agreement, the Liability and Warranties stated in the Service Agreement will prevail.

### **Indemnity**

- E. The Customer agrees to indemnify 3rdmill, its representatives and employees from any claim or demand, including solicitors' fees, arising out of the Customer's negligent use of the Service, including any violation of the Customer Contract by the Customer or any other person using the Customer's account.
- F. The Customer shall indemnify 3rdmill for all losses, damages, liabilities, and all reasonable expenses and costs incurred by 3rdmill as a result of any third party claim, action, suit, or proceeding.

## **18. Disputes**

### **Restriction on litigation**

- A. A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause.

### **Notification**

- B. A party claiming that a dispute, difference or question arising out of this Agreement or any Service Agreement (Dispute) has arisen must notify the other party giving details of the Dispute (Notification).

### **Parties to attempt to resolve**

- C. Within 7 days (or any longer period agreed between the parties) after a Notification is given, a representative of 3rdmill (3rdmill Representative) and a representative of the Customer (Customer Representative) must personally or through a nominee use reasonable efforts to resolve the Dispute through negotiation.

### **Escalation to CEOs**

- D. If the 3rdmill Representative and the Customer Representative cannot resolve the Dispute within 14 days after the Notification is given (or any longer period agreed between the parties), the 3rdmill Representative and the Customer Representative must immediately refer the Dispute to the Chief Executive Officers of each party or their nominated representatives.

### **Arbitration**

- E. If the Chief Executive Officers of each party or their nominees are unable to resolve the Dispute within 28 days after it is referred to them, 3rdmill may nominate an arbitrator.
- F. If the Customer does not agree with 3rdmill's choice of arbitrator, or if 3rdmill does not appoint an arbitrator within 14 days, then the Customer may apply to the President or Chairman of the New South Wales Chapter of the Institute of Arbitrators & Mediators Australia to appoint an Arbitrator. The Customer will be responsible for payment of any nomination fee.
- G. Any dispute submitted for arbitration pursuant to the Customer Contract shall be submitted in accordance with, and subject to, the IAMA Arbitration Rules.
- H. Unless the arbitrator determines otherwise, the costs, other than the costs of the arbitrator, of the arbitration must be paid by the party against which the arbitration award is made.

### **Parties not relieved from obligations under agreement**

- I. The parties must continue to perform their respective obligations under the Customer Contract pending the resolution of a Dispute.

### **Costs**

- J. Each party must bear its own costs of complying with this clause. The parties must equally pay the costs of any arbitrator under this clause.

## 19. Miscellaneous

### Amendment

- A. 3rdmill may update this document from time to time. The most recent copy of this Agreement will be available at the following URL: <http://www.3rdmill.com.au/SFOA>
- B. Changes to this Agreement will take affect when this copy is updated online

### Assignment

- C. A party must not assign or otherwise deal with the Customer Contract, or any rights under the Customer Contract, without the prior written consent of the other.

### Consents

- D. Except as expressly stated otherwise in the Customer Cormac, a party may conditionally or unconditionally give or withhold any consent or approval to be given under the Customer Contract and is not obliged to give its reasons for doing so.

### Governing law and jurisdiction

- E. The Customer Contract is governed by the law applicable in the State of New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and the courts of appeal from them.

### Entire Agreement

- F. This Agreement and the Service Agreements signed by the Customer;
  - i. constitute the entire Customer Contract between the parties as to its subject matter; and
  - ii. in relation to that subject matter, supersede any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

### Further steps

- G. Each party must promptly do whatever the other party reasonably requires of it to give effect to the Customer Contract and to perform its obligations under it.

### Notice

- H. A notice to be given by a party to another party under the Customer Contract must be:



- i. In writing;
- ii. Directed to the recipient's address;
- iii. Left out or sent by pre-paid registered post, hand delivered, or sent by facsimile to that address,

and will be deemed to be duly given:

- iv. In the case of hand delivery, on the day of delivery;
- v. Three days after the date of posting by pre-paid registered post; or
- vi. If sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight business hours after that transmission, the recipient informs the sender that it has not received the entire notice,

as the case may be.

#### **Relationship of the parties**

- I. The Customer Contract does not create a relationship of employment, agency or partnership between the parties.

#### **Severability**

- J. All or part of any provision of the Customer Contract that is illegal or unenforceable may be severed from the Customer Contract and the remaining provisions of the Customer Contract will continue in force.

#### **Waiver**

- K. The failure of a party at any time to require performance of any obligation under the Customer Contract is not a waiver of that party's right:
  - i. to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
  - ii. at any other time to require performance of that or any other obligation under the Customer Contract.

## 20. Definitions

### Defined terms

In this Agreement, unless the contrary intention appears:

- A. “Basic Maintenance” means the tasks which are performed on the Server equipment which generally require less than 15 minutes to perform.
- B. “Business Hours” refers to 3rdmill’s standard operating hours of 8:00am to 5:30pm AEST, Monday to Friday excluding Public Holidays and Weekends
- C. “Charges” means the charges payable by the Customer as outlined in the Service Agreement
- D. “Confidential Information” means all confidential, non-public or proprietary information exchanged between the parties before, on or after the date of the Customer Contract relating to the business, technology or other affairs of the provider of the information including information regarding the property and services of the provider, trade secrets and know-how but excludes information:
  - i. Which is in or becomes part of the public domain other than through breach of the Customer Contract or an obligation of confidence owed to the provider;
  - ii. Which a party can prove by contemporaneous written documentation was already known to it at the time of disclosure by the disclosing party (other than if such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
  - iii. Which the disclosing party acquires from a third party entitled to disclose it.
- E. “Content” means software (including machine images), data, text, audio, video, images or other content.
- F. “Customer Contract” refers to any Service Agreements or equivalent documents provided by 3rdmill in conjunction with this Agreement, as outlined in Section 1
- G. “Detailed Maintenance” refers to all tasks which are not covered by Basic Maintenance and excludes any installation and commissioning tasks which are expressly covered in any other agreements.
- H. “Force Majeure” refers to an event or circumstance beyond our reasonable control as defined in Section 16.

- I. “Intellectual Property Rights” means all intellectual property rights at any time recognised by law, including:
  - i. patents, copyright, circuit layout rights, designs, trade marks and business names, whether registered or not, but not including Moral Rights; and
  - ii. any application or right to apply for registration of any of the rights referred to in paragraph (i) above.
- J. “Losses” means all liabilities, losses, damages, costs and expenses (including all legal costs determined on a full indemnity basis) whether incurred or awarded against a party, disbursements and costs of investigation, litigation, settlement, judgment, interest, fines and penalties.
- K. “Materials” means any materials which the Supplier creates in performing the Services.
- L. “Moral Rights” means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed.
- M. “Personnel” means officers, employees, agents, partners, representatives, professional advisors or subcontractors (including employees of sub-contractors).
- N. “Product(s)” means any goods, equipment or Materials provided by 3rdmill under this Agreement.
- O. “Rate Card” refers to the hourly charges for Services provided by 3rdmill on a time and materials basis, issued to Customers and updated from time to time
- P. “Scheduled Maintenance” means Maintenance which needs to be performed on 3rdmill’s servers/equipment and which may affect connectivity from the Customer site to the Internet, which is to be performed by 3rdmill under the Customer Contract.
- Q. “Service Levels” means the service levels identified in the Service Agreement
- R. “Services” means the services to be provided by 3rdmill under the Customer Contract
- S. “Service Agreement” means any quote, proposal or equivalent document provided to the Customer by 3rdmill and accepted by the Customer, outlining the Services to be delivered

### **Interpretations**

- A. In this Agreement, unless the contrary intention appears:

- i. The singular includes the plural and vice versa;
- ii. Another grammatical form of a defined word or expression has a corresponding meaning;
- iii. A reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- iv. A reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity; and
- v. A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.