

GENERAL TERMS AND CONDITIONS

Between:

Open Query Pty Ltd ABN 34 165 589 999 (Open Query); and

The person identified as the Customer in the Contract Details below (Customer).

CONTRACT DETAILS			
Customer Details:			
Name:			
ACN or Registration No.:			
Address:			
Administrative contact:		Email:	
Phone:	()	Fax:	()
Billing contact:		Email:	
Phone:	()	Fax:	()
Technical contact:		Email:	
Phone:	()	Fax:	()
Commencement Date:			
Initial Term:	1 year		
Services	Initial Review, optionally followed by Proactive Remote Service Subscription (h/m)		
Payment Terms	As set out in the relevant Service Description for each Service. Where no payment terms are set out there, payment must be made within 14 days of the date of Open Query's invoice. Open Query may invoice ongoing Fees [quarterly, six-monthly or annually] in advance, as agreed.		
Time and Materials Rates	At the execution of this agreement, Open Query's base time and materials rates are as follows: \$200 per hour remote (ad-hoc), exclusive of GST		

Executed as an agreement on (date):

Signed on behalf of Open Query

Signed on behalf of Customer

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this agreement, unless the context requires otherwise, the following capitalised terms have the following meanings:
- (a) Confidential Information of a party means all information (including all data) of that party which is disclosed by that party and is marked as confidential or would reasonably be considered to be confidential and, except as otherwise agreed in writing, includes such information disclosed prior to the execution of this agreement;
 - (b) Contract Details means the table at the front of this agreement as updated by agreement in writing between the parties from time to time;
 - (c) Fees in respect of a Service means the fees set out in the Contract Details 3.2 or Service Description for that Service;
 - (d) Payment Terms for a Service means the terms set out under that heading in the relevant Service Description;
 - (e) Service Description in respect of a Service means the document of that name most recently published by Open Query from time to time in respect of that Service;
 - (f) time and materials rates at a given date means the time and materials rates most recently published by Open Query prior to that date or as notified in writing by Open Query to Customer.
- 1.2 In this agreement, unless the context requires otherwise:
- (a) the term “this agreement” includes the then-current Service Description for each Service supplied under this agreement;
 - (b) the following terms have the meanings given to them in the Contract Details: Commencement Date; Services; Term;
 - (c) to the extent of any inconsistency a Service Description takes precedence over the body of this agreement and over any schedule attached to or referred to in the Service Description;
 - (d) all references to time and dates are references to the time, or date in Brisbane, Australia; and
 - (e) the use of a term indicating a gender or genders includes all genders.
- 1.3 No provision of this agreement may be construed against a party because that party drafted that term.
- ### 2. Provision of Services, Licensing and Customer Assistance
- 2.1 Open Query must supply to Customer each of the Services set out in the Contract Details in accordance with the terms of this agreement. Each party must comply with the obligations on that party set out in the Service Description for each Service.
- 2.2 Open Query may suspend the performance of any or all of its obligations under this agreement by notice to Customer during any period in which the Customer has failed to pay any amount due to Open Query under this agreement. Where an obligation of Open Query under this agreement is dependent upon Customer providing information or assistance or performing an obligation under this agreement, that obligation of Open Query is automatically suspended until the Customer has provided that information or assistance or performed that obligation and any other obligations of Open Query under this agreement are extended by a reasonable period as a result of Customer's delay.
- 2.3 The Customer must provide all assistance as is reasonably necessary for Open Query to carry out its obligations under this agreement. The assistance the Customer is required to provide under this clause 2.3 includes, but is not limited to:
- (a) prompt physical access to any property of the Customer or of Customer's third party contractors or agents on which relevant software or hardware is, or is to be, located (including in transit to a final installation point);
 - (b) prompt remote and physical access to hardware and software the subject of the services including remote access over the Internet; and
 - (c) provision of all access codes, user names and passwords known by Customer necessary to access, administer or use any of the software or equipment to be administered or configured by Open Query under this agreement.
- 2.4 Except where expressly stated to the contrary in a relevant Service Description:
- (a) Open Query gives no licence over anything provided by Open Query under this agreement. In particular, software licensed under an open source licence is generally licensed directly by the copyright owners of the relevant work;
 - (b) Open Query has no responsibility for arranging licences for any software or hardware provided by Open Query under this agreement;
 - (c) Open Query has no responsibility for determining the scope or effect of any licences acquired by Customer under this agreement.
- ### 3. Fees, Invoicing and GST
- Open Query may invoice Customer the Fees for each Service in accordance with the Payment Terms and, where no relevant time is set out in the Payment Terms, Open Query may invoice the Customer for ongoing fees quarterly in advance and other fees in arrears. Open Query will provide Customer with a tax invoice in respect of all GST charged.
- Except where the parties agree in writing to the contrary, or where the context requires otherwise:
- (a) all amounts quoted by Open Query are exclusive of GST and all other taxes and duties;
 - (b) Open Query may, in addition to the Fees, add to each invoice GST on the value of the invoice at the prevailing rate of GST;
 - (c) where no price or other method of calculation of Fees has been agreed in writing, Open Query may invoice the Customer for work performed at Open Query's then current time and materials rates; and
 - (d) to the extent permitted by law, and except in the event of a total failure by Open Query to provide the relevant good or service in breach of this agreement, all payments made under this agreement are non-refundable.
- 3.3 Customer must pay each of Open Query's invoices in full in accordance with the Payment Terms and, where no time is set out in the Payment Terms, within 14 days of the date of the invoice. Payment is regarded as received when the funds are available in an Open Query account.
- 3.4 Where Open Query incurs expenses or disbursements in the course of carrying out its obligations under this agreement Open Query may pass through those expenses or disbursements to the Customer. Open Query may include an expense as a line item on an invoice it issues subsequent to incurring the expense.
- 3.5 Where Customer disputes any invoice, Customer must pay the full amount of the invoice and, if the dispute is resolved in Customer's favour, Open Query will credit the relevant amount to Customer.
- 3.6 Open Query may vary the Fees by notice in writing to Customer at any time during the term of the agreement. The Fees become effective as set out in that notice or, if it is silent on the issue, 7 days after the Customer receives that notice.
- ### 4. Confidentiality and Privacy
- 4.1 Each party must keep the Confidential Information of the other party confidential and must not disclose that information to any third party without the written consent of the other party. Each party must use the Confidential Information of the other party only for the purpose of complying with its obligations under this agreement.
- 4.2 A party's obligations of confidentiality in this agreement do not apply to information which:
- (a) is or becomes generally known other than through a breach of this agreement;
 - (b) that party can prove was developed independently by that party without reference to the Confidential Information of the other party;
 - (c) is rightfully received by that party from a third party without an obligation of confidentiality;
 - (d) that party can prove was known to that party prior to the disclosure of the information by the other party.
- 4.3 If the parties have executed a separate confidentiality or non disclosure agreement, then, except to the extent of inconsistency (in which case the terms of this agreement take priority), the obligations in this agreement are in addition to and run in parallel with the obligations in that agreement.
- ### 5. Warranties and Liability
- 5.1 Except where Open Query expressly agrees in writing to the contrary (including in a Service Description), Open Query has played no part in Customer's choice of, or decision to implement, any software under this agreement. The Customer represents and warrants that it has evaluated the appropriateness of all software to be installed by Open

- Query under this agreement. Open Query has no liability to Customer for any failure of any part of the software supplied to Customer under this agreement or under the broader relationship between Open Query and Customer including: failures of the software to perform in the manner expected, anticipated or understood by Customer; failures by the software to interoperate with any other software or device; and failures of the software to comply with any documentation relating to the software (including documentation produced or provided by Open Query). Where Open Query acquires and/or installs software for Customer (for example, by installation from a package repository) Open Query does so on Customer's behalf as Customer's agent.
- 5.2 To the extent permitted by law, Open Query excludes all warranties, guarantees and conditions that would otherwise be implied into this agreement by law. Where Open Query is not able to exclude such a warranty, guarantee or condition, Open Query limits, to the extent permitted by law, its 6.6 liability for a breach of that warranty, guarantee or condition to one or more of the following at its option:
- in the case of goods, any one or more of the following:
 - 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;
 - the payment of the cost of having the goods repaired; and
 - in the case of services:
 - the supplying of the services again; or
 - the payment of the cost of having the services supplied again.
- 5.3 Where Open Query staff (including contractors) are on site at the Customer's premises, the Customer must ensure that those staff have a safe working environment. Open Query will ensure that, while on Customer's premises, such staff comply with Customer's reasonable security and other human resources policies notified in writing to Open Query.
- 5.4 Open Query has no liability to any person arising under or in relation to this agreement (whether in tort, contract, equity or otherwise) for any loss in the nature of consequential or economic loss. In particular, Open Query has no liability to any person for any: lost profits; loss of savings, income or revenue; revenue not meeting targets or certain levels; uptime or availability of Internet connectivity or of the ability of third parties to access a website, loss of opportunity; or loss of or corruption of data. The exclusions in this clause 5.4 apply even in respect of loss or damage that was foreseeable or about which either or both of the parties were aware was likely to arise.
- 5.5 Customer must ensure it has adequate back ups of all data to which Open Query will have access in the course of the engagement. Customer must ensure that it is able to restore such backups in the event of any data becoming corrupted. Open Query has no liability for any loss resulting from any damage to data arising out of or which occurs as a result of the relationship between Open Query and Customer. Open Query does not warrant that all data in Customer's existing or legacy systems can be imported into any new system provided by Open Query.
- 5.6 The total aggregate liability of Open Query for all loss or damage in respect of all claims arising out of or in relation to this agreement or out of or in relation to the relationships contemplated by this agreement whether arising in tort (including negligence), contract, equity or otherwise is limited to the total of all Fees received by Open Query under this agreement in the first twelve months following the Commencement Date.
- ## 6. Term And Termination
- 6.1 This agreement commences on the Commencement Date and continues for a period of time equal to the Term. Where the parties agree to add additional Services subsequent to the Commencement Date the parties will agree a date for the commencement of those Services. The terms of this agreement apply to the provision of those Services, and the parties' obligations in respect of those Services commence from that date.
- 6.2 Where the agreement is not terminated under clause 6.3 prior to the end of the then current term, the agreement is extended and remains in force from the then end of the term for a further period equal to the Term. Any number of extensions under this clause 6.2 may occur.
- 6.3 Either party may give notice terminating the agreement at the end of the then current term on 30 days' prior written notice. Where a party gives such a notice and the notice period expires prior to the end of the then current term of the agreement, then the agreement will not be extended under clause 6.2 and will come to an end at end of the then current term. Otherwise, the term of the agreement is extended under clause 6.2, with the termination effective as at the end of that extended term.
- 6.4 Subject to clause 6.5, a party may terminate this agreement immediately by written notice where:
- the other party commits a breach of a term of this agreement (including any Service Description), other than an insubstantial breach and other than a failure to pay money, and that breach is not remedied within 14 days of written notice of that breach from the first party; or
 - the other party becomes insolvent or unable to pay its debts when they fall due; or
 - the other party fails to pay (in full and in cleared funds) money due under this agreement by the time that payment is due.
- 6.5 Each Service may be terminated independently of each other Service and of this agreement as a whole. Where a breach relates only to a Service Description, a party may only terminate this agreement in respect of the Service to which that Service Description relates. Each party must cease use of and return to the other party the other party's Confidential Information within 14 days of the termination or expiry of this agreement. A party may destroy the other party's Confidential Information instead of returning it under this clause 6.6 if the other party gives its prior written permission to that destruction. Each party must ensure that, after the expiry of the 14 day period referred to in this clause 6.6 it retains none of the other party's Confidential Information.
- 6.7 Upon termination of this agreement:
- the Customer is not entitled to any refund of any amounts paid in advance;
 - all outstanding invoices become due and payable immediately;
 - Open Query may invoice the Customer for all work accrued but not billed as at the date of termination. Such an invoice is payable within 7 days of the date of the invoice;
 - Open Query may enter onto Customer's premises to recover any Equipment owned by Open Query, including each item of Equipment intended to be sold to Customer but, as at the date of termination, not paid for in full by Customer.
- 6.8 Each clause which by its nature and the circumstances ought to survive the termination of this agreement survives. The following clauses also survive the termination or expiry of this agreement: 4, 5, 6, 7, 8, 9.
- ## 7. No Poaching
- 7.1 The Customer must not, during the term of this agreement and for each of the following periods following the termination or expiry of this agreement, employ, or solicit the employment of, any employee or contractor of Open Query or otherwise enter into an agreement for the provision of service directly or indirectly by such a person to the Customer, without the prior written permission of Open Query:
- 6 months;
 - 12 months;
 - 18 months.
- 7.2 Each of the restrictions in clause 7.1(a), (b) and (c) is a separate and independent obligation on Customer and if any of them is held to be illegal or unenforceable it is severed from the contract and does not affect the application or effectiveness of the others. If the Customer breaches this clause 7 in relation to a person, Open Query may invoice the Customer for, and the Customer must, within 30 days of the date of the invoice, pay Open Query by way of liquidated damages an amount equal to one year's salary (at the rate most recently paid by Open Query) of that person (if an employee) or the total of all amounts paid by Open Query to that person in the preceding 12 months (if a contractor).
- ## 8. Dispute Resolution
- 8.1 Subject to clause 8.2, prior to commencing any action in any court or any action in any other form of judicial or quasi-judicial forum the parties must comply with the requirements of this clause 8.
- 8.2 Nothing in this clause 8 prevents either party seeking urgent interlocutory relief from a court in relation to any breach or potential breach of an obligation of confidentiality or in relation to any other matter of urgency.
- 8.3 Where there is a dispute between the parties in respect of a matter the subject of this agreement, each party must cause a senior representative with authority to settle the dispute to be available and to meet with the other party's senior representative with a view to resolving the dispute. Where a dispute remains unresolved for a period of 20 days each party is released from the requirements of clause 8.1 in relation to that dispute.
- 8.4 The discussions between the parties under this clause 8 are made on a

- “without prejudice” basis; and cannot be tendered or referred to in evidence in any judicial or quasi judicial proceedings without the consent of the party making the relevant statement.
9. General
- 9.1 Except as set out in this agreement to the contrary, nothing in this agreement: 9.7
- (a) gives either party the ability to act or incur liability on behalf of the other party; or
- (b) creates a relationship of joint ventures, principal and agent or employee and employer between the parties.
- 9.2 Except where expressly set out to the contrary, nothing in this agreement grants the Customer any rights over any intellectual property rights (including copyright, patents, and rights to the registration of such rights) held by Open Query at any time during the term of this agreement. Where such intellectual property rights arise as a result of the performance of this agreement by or on behalf of Open Query, those rights vest on creation in Open Query.
- 9.3 This agreement cannot be varied except in writing signed by both parties.
- 9.4 A waiver of rights under this agreement can only occur in writing signed by the party granting the waiver. Except to the extent set out in the waiver, a waiver is only effective in relation to the specific facts and rights set out in it and does not operate to waive any other rights or to waive the same rights in respect of different facts or circumstances.
- 9.5 Where a part of this agreement is held by a court to be illegal or otherwise unenforceable, and the unenforceability of that part does not substantially alter the character of the bargain that would have been in existence between the parties had that part been enforceable, that part is severed and the balance of this agreement will continue unaffected.
- 9.6 This contract is governed by the laws in force in the State of Queensland, Australia. Each party submits to the non-exclusive jurisdiction of the courts of that State.
- 9.7 Except to the extent the context requires otherwise, where an act, right or obligation under this agreement is subject to the consent of a party, it may grant or withhold that consent in its sole discretion and is not required to provide a reason for that grant or withholding.
- 9.8 Notices under this agreement must be given in writing. Notices under this agreement may be given to the address of the party listed at the front of this agreement, or, where another address is notified by that party in accordance with this agreement, the address most recently notified by that party.
- 9.9 Open Query's obligations under this agreement are suspended to the extent it is unable to comply with them as a result of a cause beyond the reasonable control of Open Query. Open Query will promptly notify the Customer upon such an event occurring. The actions of telecommunications and other utilities, hosting providers and other subcontractors to Open Query are outside the reasonable control of Open Query for the purposes of this agreement.
- 9.10 This agreement sets out the whole of the agreement between the parties in relation to its subject matter. It supersedes all prior negotiations and correspondence. In particular none of the following are of any effect unless agreed in writing by the parties in accordance with clause 9.3: annotations on any cheques or accompanying any other transfer of money; any terms on purchase or order documents; or any other correspondence between the parties.