

# GENERAL TERMS AND CONDITIONS

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## GENERAL

### 1. DEFINITIONS AND INTERPRETATION

In these Conditions, the Rate Schedule and every Quote, Order, Plan contract, or other arrangement in connection with the supply of Goods or Services by **WYOIT** the following words have the following meanings:

**"Business Hours"** means **Monday to Friday from 8:00AM to 5:00PM MST excluding Public Holidays**

**"After Hours"** means from **Monday to Friday from 5:00PM to 8:00AM MST including Public Holidays**

**"Client", "You" or "Your"** means a person who seeks or obtains a quote for, or who orders, Goods or Services from Us, and includes both a person whose name is on the Order or on an email attached to which is an order, a person who places an order, and a person on whose behalf an Order is placed or on whose behalf it appears and order is placed, and in any case each of their heirs, successors and assigns;

**"Conditions"** means these terms and conditions;

**"Goods"** means any goods and/or services sourced by Us or provided by Us in connection with any such goods and/or services including computer hardware and Software and any goods or services provided in connection with any of those things;

**"Order"** means any order requested by You to Us for Goods or Services in any form;

**"Quote"** means a quote provided to You by Us;

**"Period"** means a particular number of half-days, days, weeks, fortnights, months, or any other period, as may be agreed between Us and the You as the period during which some Services will be provided;

**"Plan"** means any arrangement between Us and You (whether alone or in conjunction with any other person) for Services (including unlimited support) and/or the provision of Goods provided by Us under an arrangement in connection with Work agreed to be done or progressed for or on behalf of You or any other person at Your request, including as set out in a Plan Schedule;

**“Plan Schedule”** means the key terms applicable to Plans as set, and as may be varied by Us, from time to time in its absolute discretion without notice to You;

**“Public Holidays”** means any day which is a public holiday throughout Wyoming, other than a bank holiday;

**“Rates”** means the hourly rates and other charges for Services (including any call-out fees and any Return/Cancellation Fees) set out in the Rates Schedule, a Plan, Plan Schedule, Quote, contract or arrangement entered into by Us and You or in these Conditions, and includes any monies payable to Us on a quantum meruit basis for any work it has done;

**“Rate Schedule”** means the schedule of rates, charges and conditions for the services of Ours as set, and as may be varied, by Us from time to time in its absolute discretion without notice to You;

**“Reasonable Assistance Limits”** has the meaning set out in clause 17.2;

**“Return/Cancellation Fee”** means a fee charged pursuant to clause 12.5 as set by Us from time to time;

**“Service request”** means a request for service such as adds, moves, changes and technical assistance;

**“Services”** means the provision of any services by Us including Work, advice and recommendations;

**“Software”** includes software and any installation, update, associated software and any services provided in connection with any of these things;

**“Us”, “Our” or “We”** means **WYOIT** and its heirs, successors and assigns;

**“Work”** means anything We may do, provide, customize, produce or acquire, whether or not in connection with, or for the purposes of, You or Your use or benefit, and includes testing, troubleshooting, installation and configuration of new equipment or software, consulting, scoping, planning, documenting and quoting for complex items.

In these Conditions, the Rate Schedule and every Quote, Order, Plan, contract, or other arrangement in connection with the supply of Goods or Services by Us, unless the contrary intention appears:

Words denoting the **singular** number only **shall include the plural** number and vice versa;

Reference to **any gender shall include every other gender**;

Reference to **Statute or Regulation shall include any amendment** currently in force at the relevant time and any Statute or Regulation enacted or passed in substitution therefore;

**Headings** and words put in **bold** are for convenience of reference only and **do not affect the interpretation or construction** of these Conditions;

All references to dollars (\$) are to **USD**

A reference to time is to **Mountain Standard Time**

A reference to an **individual or person includes a corporation**, partnership, joint venture, association, authority, trust, state or government and vice versa;

A reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to these Conditions;

A recital, schedule, annexure or description of the parties forms part of these Conditions;

A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;

Where an expression is defined, **another part of speech or grammatical form of that expression has a corresponding meaning**;

A reference to **"includes"** means **includes without limitation**;

A reference to **"will"** imports a condition not a warranty; and

A reference to **bankruptcy or winding up** includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration, being subject to administration and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction and to the procedures, circumstances and events which constitute any of those conditions or matters.

## 2. APPLICATIONS OF THESE CONDITIONS

Unless otherwise agreed by Us in writing, these Conditions are deemed incorporated in and are applicable to (and to the extent of any inconsistency will prevail over) the terms of every Quote, Order, Plan, contract, or other arrangement in connection with the supply of Goods and/or Services by Us to You.

The invalidity or enforceability of any one or more of the provisions of this Agreement will not invalidate, or render unenforceable, the remaining provisions of this Agreement.

## 3. COMMITMENT TERM

- 3.1 The minimum term that You acquire the service for is outlined in Our Quote to You, beginning from the first of the next month after the date of signing or approving the Quote.
- 3.2 After the expiry of the Committed Term, an extension of the Term will automatically commence for the same period as the original Committed Term and will continue indefinitely, unless earlier terminated by you as specified in Clause 4.

## 4. TERMINATION

- 4.1 This Agreement may be terminated by You upon thirty (30) days written notice provided to Us informing Us of the termination of this Agreement if We:
- 4.1.1 Fail to fulfill, in any material respect, our obligations under this Agreement and do not cure such failure within thirty (30) days of receipt of such written notice.
  - 4.1.2 Breach any material term or condition of this Agreement and fail to remedy such breach within thirty (30) days of receipt of such written notice.
  - 4.1.3 Terminate or suspend our business operations, unless it is succeeded by a permitted assignee under this Agreement.
- 4.2 This Agreement may be terminated by Us upon thirty (30) days written notice to you.
- 4.3 If either party terminates this Agreement, we will assist you in the orderly termination of services, including timely transfer of the services to another designated provider. You agree to pay us for rendering such assistance at our normal rates as outlined in our current Rate Schedule.
- 4.4 Should You wish to terminate this Agreement before the end of the commitment term for any reason except those set forth above, You agree to pay all of the remaining payments up until the end of the commitment term, which payments must be made before the end of the effective date of termination of this Agreement.
- 4.5 Regardless of the reason that this Agreement is terminated, whether by You or by Us, and whether for cause or not for cause, You agree to pay for any outstanding Goods or Services which have been ordered and which We are in the process of being completed. Such payment shall be made before the end of the effective date of termination of this Agreement.

## 5. REPRESENTATIONS

- 5.1 You acknowledge that no employee or agent of Ours has any right to make any representation, warranty or promise in relation to the supply of Goods or Services other than subject to and as may be contained in the Conditions.

## 6. NOTICES

- 6.1 Any notices given under the Conditions shall be in writing and sent by e-mail to the last notified e-mail address of Yours.

## 7. GOVERNING LAW AND JURY TRIAL WAIVER

- 7.1 The Conditions shall be governed by and construed in accordance with the laws of Wyoming, without regard to its conflict of laws principles. The parties submit to the exclusive jurisdiction of the Courts of Laramie County Wyoming.
- 7.2 TO THE EXTENT PERMITTED BY LAW, THE PARTIES HERETO HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND THE OBLIGATIONS HEREUNDER. THE PARTIES EACH REPRESENT TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

## 8. ASSIGNMENT

- 8.1 You may not assign Your rights and obligations under this Agreement without Our prior written consent.

## GOODS AND SERVICES

### 9. PRICING AND RATES

- 9.1 Rates exclude Tax: All rates and amounts charged or quoted for Goods and/or Services by Us are exclusive of Tax and any other applicable taxes or government charges (unless otherwise stated in writing by Us).
- 9.2 Rates Schedule: You must pay for Goods and Services at the Rates set out in any applicable Plan and the Rate Schedule as applicable from time to time during the provision of the Goods and/or Services.
- 9.3 Adjusting Rates: We will periodically review and adjust our Rates to reflect changes in the market, industry, and economic conditions. This Rate review and adjustment will be conducted no more frequently than bi-yearly.
- 9.4 Call-out fees: You acknowledge that call-out fees may be charged in addition to the Rates at Our absolute discretion and that the amount of the call-out fee will depend upon where the Services are provided.
- 9.5 Return/Cancellation Fee: Where We arrange a return or refund on behalf of You, or where an Order is cancelled by You after acceptance by Us, We may charge You a Return/Cancellation fee to cover the administration costs to Us in processing the return or refund, or in processing the Order, the cancellation and any refund. We may deduct the Return/Cancellation fee from out of any moneys otherwise due to be refunded to You by Us.
- 9.6 Expenses: You must pay any out of pocket expenses incurred by Us in providing the Services to You in addition to the Rates, charges and call-out fees, upon written demand. Such expenses will include travel costs, flights, rental car, fuel, insurance, taxi fares, accommodation and related meal allowance, tolls and car

parking expenses. Where appropriate, We will obtain prior written Authorization from You before such expenses are incurred.

- 9.7 Separate charges for Goods and Services: We may in Our absolute discretion charge for Goods separately from Services or may charge for Goods and Services together.
- 9.8 Calculation of increments: Where a charge is calculated based on increments of time, e.g. 1 hour or 30 minutes, We will charge the applicable rate for the whole increment of time even if work is done during part of, but not for the whole of, that increment of time.
- 9.9 Change in underlying costs: Where the costs of any underlying Goods that are provided to you as part of the Services increase beyond what was originally included in any cost proposal to you, You agree that We may adjust any such costs or our Rates as the same are impacted by such increase in costs.
- 9.10 Pre-Paid Blocks of Service: Where You agree to buy Pre-Paid Blocks of Service during a Period, payment must be made in advance for the Pre-Paid Blocks of Service at the rate applicable pursuant to the Rates Schedule for all Services. Each such rate being less any discount agreed in writing between Us and You in respect of the Pre-Paid Blocks of Service. Services included in a Pre-Paid Block of Service rate during the Period:
- 9.10.1 are calculated in accordance with the applicable minimum time periods and **increments** set out in the Rates Schedule; and
- 9.10.2 **are only provided by Us during the applicable Period.**  
Where Services are provided for a specified Period:
- 9.10.2.1 the Services remaining unused for that Period cannot be rolled over into any subsequent Period; and
- 9.10.2.2 We are not liable to refund, re-imburse, pay damages or otherwise compensate or indemnify You in respect of those unused Services.

## 10. SERVICES AND PLANS

- 10.1 Service and Plan Variations: Currently, We offer the Services and Plans referred to in the Rates Schedule and any Plan Schedule. We may withdraw the provision of, or vary the scope or terms of, or add to or change, the Services without notice to You, from time to time in Our absolute discretion.
- 10.2 Copies on Request: We will provide You with a copy of the current Rates Schedule upon request. Plan Schedules are tailored for particular Plans and are available to Clients participating in the Plan.

## 11. CONTRACTING

11.1 We may subcontract any or all of the Services to be performed, but shall retain prime responsibility for the Services under these terms.

## 12. DELIVERY, TITLE AND RISK

12.1 Delivery liability: We will use best efforts to despatch Goods by the due date; however, You agree that We do not have any liability or responsibility for circumstances beyond Our Control as set forth in the Force Majeure clause stated below.

12.2 Availability to accept delivery: You must be available to accept the Goods at the delivery address you provided Us during Business Hours, unless otherwise arranged.

12.3 Passing of Risk: Delivery is deemed to take place when the Goods are delivered to the address you provided Us, whereupon risks of loss, breakage and all damage and all other risks pass to You. Nothing in this clause 15.3 will affect title to the Goods.

12.4 Retention of Title: Until We receive full payment in cleared funds for any moneys due to Us by You on any account or for any reason:

12.4.1 title to, and property in, Goods supplied to You remain vested in Us and does not pass to You;

12.4.2 You must hold those Goods as fiduciary bailee and agent for Us and must not sell them;

12.4.3 You must keep those Goods separate from other goods and maintain the Goods and their labelling and packaging intact;

12.4.4 Where You sell the goods in breach of these Conditions, You are required to hold the proceeds of any sale of those Goods in trust for Us in a separate account (however any failure to do so will not affect Your obligation to deal with the proceeds as trustee and remit them to Us);

12.4.5 We may, without prior notice, enter into any premises where We suspect those Goods may be, take possession of those Goods and sever and remove those Goods (notwithstanding that they may have been attached to other goods not the property of Ours) and for this purpose, You hereby irrevocably authorize and direct Us (and Our employees and agents) to enter into such premises as its duly Authorized agent and You hereby indemnify and hold Us harmless from and against any costs, claims, allegations, demands, damages or expenses or any other acts or omissions arising from or in connection with, such entry, repossession or removal.



12.4.6 You irrevocably appoint Us as Your attorney in fact to do anything We consider necessary in order to enter such premises and repossess the Goods as contemplated by this clause 15.5.

## 13. RETURNS AND CLAIMS FOR GOODS AND SERVICES

- 13.1 General Returns Policy: Notwithstanding anything in these Conditions, You acknowledge that We supply Goods subject to all applicable conditions, including returns and claims policies, of any relevant manufacturer or supplier. You will accept Goods subject always to these Conditions and the terms of such conditions and will indemnify and hold Us harmless in respect of any further or other obligation or any failure or default on the part of that manufacturer or supplier.
- 13.2 Customized Goods not returnable: Where Goods have some element of customization for You, are supplied pursuant to an Order for Goods that is in the opinion of Ours special or unusual, the Goods are obtained from overseas, the Goods are obtained from a supplier who is no longer trading, or the Goods are otherwise not readily returnable by Us to the manufacturer or supplier or any related services may not be cancelled, You may not return the Goods to Us or cancel the related services.
- 13.3 Duty to inspect: You will inspect all Goods immediately upon their delivery. Within 7 days of such delivery You may give written notice to Us of any matter or thing, by reason of which You might wish to return the Goods, ask for a refund, or make a claim. If no such notice is given on time, You will accept the Goods without any such return, refund or claim.
- 13.4 Return Condition: Where You are entitled to return Goods under these Conditions, You must return the Goods in their original condition and unopened, provided always that where, upon opening the packaging it becomes apparent that the Goods are different to what is described on the packaging or that the Goods are faulty, the Goods may be returned.
- 13.5 Return costs: You will pay all costs and expenses incurred by Us in arranging the return of the Goods to a manufacturer or supplier and/or the cancellation of any related services unless that manufacturer or supplier pays such costs.
- 13.6 Consequences of use, installation, customization or sale: You will indemnify and hold Us harmless in respect of all allegations and claims in respect of Goods once such Goods have been used, installed, customized or re-sold by You (without prejudice to the recourse of such a customer to the manufacturer of the Goods).

## 14. COMPUTER UTILITY, FUNCTIONALITY AND FITNESS FOR PURPOSE

- 14.1 Service limitations given the science of computing: You acknowledge that a reasonable incident of the Services may involve trial and error and that it is a science applied often in novel or unknown circumstances and involving experiment. In particular, You acknowledge that the Services may involve tests, troubleshooting, advice and recommendations that may prove incorrect or inappropriate, particularly in an attempt to cure a problem You are having. While We will make what We consider (in Our absolute discretion) to be all reasonable endeavours to provide appropriate tests, troubleshooting, sound advice and good recommendations in order to assist You, You agree that we are not responsible and have no liability for Our efforts that ultimately prove unsuccessful in the provision of our Services to You.
- 14.2 Reasonable Assistance Limits: We are only obliged to provide what We consider, in Our absolute discretion, to be reasonable assistance in the circumstances (including with the installation and customisation of new software or hardware for You or any other Work) under any Plan and You will pay for additional work at the Rates unless otherwise agreed. Without limiting Our discretion to determine what reasonable assistance is, normally, reasonable assistance is limited to work done during Business Hours over a period of time not exceeding any period that We have allowed or allows for the Work or has estimated or estimates the Work will take, whether or not notice of the time allowed or estimated is given by Us to You.
- 14.3 Recommendations, suitability, functionality and fitness for purpose: The parties acknowledge that:
- 14.3.1 We may recommend that You purchase Goods provided by third parties from time to time;
  - 14.3.2 Recommendations may be made in situations where You have made known to Us the purpose for which the Goods will be used or some function sought to be fulfilled;
  - 14.3.3 You acknowledge that We have no control over many factors involved with the suitability, function or fitness for purpose of Goods in an existing or new computer environment, e.g.
    - 14.3.3.1 the compatibility or ability of the Goods to fit into or perform to expectations in the receiving computer/internet environment; or
    - 14.3.3.2 the behavior of third-party supplier, e.g. in relation to support;

- 14.3.4 You acknowledge that for a whole number of reasons outside of Our control, the Goods may fail to meet Your expectations, may not turn out to be fit for all or any of the purposes sought, may not be suitable or may not function properly in all or any respects;
- 14.3.5 You acknowledge that the Services provided by Us may involve the very task of seeking to customize Goods so they may be fit for particular purposes and that customization may be a very substantial project in itself;
- 14.3.6 Accordingly, You will accept the sole responsibility for, and indemnify and hold Us harmless in respect of:
- 14.3.6.1 decisions as to whether or not to follow recommendations by Us;
  - 14.3.6.2 decisions as to whether or not to purchase or customize Goods or obtain Services for that or any other purpose; and
  - 14.3.6.3 any failure or defect in suitability, function or fitness for purpose of any Goods and/or Services, including a responsibility to obtain Your own independent advice or second opinion from a suitably qualified person;
- 14.3.7 Where We provide Services with a view to achieving Your purposes, suitability, function or fitness for purpose (whether expressed, agreed or otherwise), You must pay for those Services on time without any set-off or counter-claim, whether or not We are able to achieve any of such purposes, suitability, function or fitness for purpose, provided always that We have acted in good faith and have made what We consider, in Our absolute discretion, to have made all reasonable endeavours to achieve those outcomes.
- 14.4 **Testing Procedures:** You will follow Our instructions with regard to testing or troubleshooting any problems and that if those do not resolve the outstanding problems, We will, subject to these Conditions, allocate such resources as We consider reasonable in the circumstances towards their resolution.

## 15. FORCE MAJEURE

- 15.1 **Force Majeure:** If We are unable to supply any Goods or Services due to circumstances beyond Our reasonable control, We may cancel the Order (even if the Order has already been accepted) or cease to provide the Services by written notice to You, in which case You agree that We have no liability for any delay or failure to deliver the Goods or Services.
- 15.2 We will not be liable for any breach of contract due to any matter or thing beyond Our control, including failures by third parties to supply goods, services or transport, stoppages, transport breakdown, fire, flood, earthquake, acts of

God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident.

## 16. PRODUCT SPECIFICATIONS

- 16.1 **Alterations to Specifications:** We make every effort to supply the Goods in accordance with the Order however We may supply alternate Goods subject to minor variations in actual dimensions and specifications where these are changed by the manufacturer of the Goods after the Order date and before delivery.
- 16.2 **Substitute Goods:** If We cannot supply the Goods ordered by You, We may supply alternate Goods of equal or superior quality provided however that You will not pay a higher price than the price Quoted or otherwise agreed for the Goods ordered.

## 17. WARRANTIES

- 17.1 **Reliance on Manufacturer's Warranty:** You will rely on the warranties provided by the manufacturer of Goods supplied by Us (where applicable) and will deal direct with such manufacturer rather than Us for all claims covered by such warranties.
- 17.2 **No claim for manufacturer's default:** You indemnify and hold Us harmless in respect of the performance or otherwise, by any manufacturer of Goods supplied to You by Us, of any of the obligations of such manufacturer in respect of such Goods. This includes any damages or moneys due to You arising under, or in connection with, any breach by the manufacturer of any the manufacturer's warranties in respect of the Goods.

## 18. LIABILITY

- 18.1 **Exclusion:** Except as specifically set out herein and so far as may be permitted by law, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly disclaimed and excluded.
- 18.2 **Limit on consequential damage:** You agree that We do not have any liability or responsibility for, and you further agree to indemnify and hold Us harmless from, any allegation, claim, as to any indirect or consequential losses or expenses suffered by You or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to You or any third party.
- 18.3 **Limitation on liability generally:** You agree that We do not have any liability or responsibility for, and You further agree to indemnify and hold Us harmless

from, any allegation, claim, loss, or damage incurred by You or a third party where:

- 18.3.1 There is a failure in supply or non-availability of Goods or Services provided to You for any Work for any reason which is beyond Our control;
  - 18.3.2 There is a loss of program or data suffered by You or a third party arising directly or indirectly from a cause or occurrence beyond Our control;
  - 18.3.3 the act or omission of Ours is caused by the provision of inaccurate, incomplete or incorrect information by You, or
- 18.4 **Limitation options:** To the extent that any principle of law, statute, or court holding, implies a condition or warranty that cannot be excluded but can be limited, clause 21.5 does not apply to that liability and Our liability for any breach of that condition or warranty is limited to Our doing any one or more of the following (at its election):
- 18.4.1 replacing the Goods or supplying equivalent Goods, Services or Work;
  - 18.4.2 repairing the Goods or the Work;
  - 18.4.3 paying the cost of replacing the Goods or the Work or acquiring equivalent Goods, Services or Work; or
  - 18.4.4 paying the cost of having the Goods or the Work repaired.
- 18.5 **Laws still apply:** Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of the Goods or Services which cannot be excluded, restricted or modified.
- 18.6 **Severance:** If any provision contained in the Conditions is unlawful, invalid or unenforceable, those provisions may be severed without prejudice to the validity and enforceability of the remaining provisions of the Conditions.

## 19. ERRORS AND OMISSIONS

- 19.1 We make every effort to ensure that all prices and descriptions quoted are correct and accurate. In the case of an error or omission, We may rescind the affected contract by written notice to You, notwithstanding that We have already accepted Your Order and/or received payment from You. Our liability in that event will be limited to the return of any money You have paid in respect of the Order.

## OUR RESPONSIBILITIES

### 20. PRIVACY STATEMENTS AND YOUR RIGHTS

- 20.1 We are collecting Your personal information for the fulfilment of Quotes, Orders and the provision of Goods or Services to you and We may retain and use it for any such purposes ("Authorized Purposes").
- 20.2 You are required to provide your personal information to Us for Authorized Purposes.
- 20.3 We may disclose Your personal information to other persons for the purposes of the fulfilment of Quotes, Orders and Work for you or in order to provide Goods or Services to You, to verify the information You provide, for inquiries about Goods or Services that may be suitable for your purposes, or to confirm Your requirements, to anyone proposing to supply Goods or Services to You, or to acquire Goods or Services on Your behalf, or in respect of enquiries relating to any of the foregoing.
- 20.4 Otherwise We will not disclose Your personal information without Your consent unless Authorized by law.
- 20.5 Your personal information will be held by Us at Our Principal Place of Business and You can contact Us to request to access or correct it.
- 20.6 We rely on You to submit correct information and details where requested. You accept that You may incur additional expenses if you submit incorrect information.

### 21. OUR WEBSITE

- 21.1 We make no representations or warranties in relation to information available on Our website, including without limitation:
  - 21.1.1 that the information on Our website is complete or correct;
  - 21.1.2 that Our website will be continuously available or free from any delay in operation or transmission, virus, communications failure, internet access difficulties or malfunction in hardware or software; and that We endorse any internet site linked to Our website or any third party products or services referred to on Our website.

### 22. INSURANCE COVERAGE

- 22.1 We will maintain at Our own expense, commercial general liability insurance for personal injury and property damage for a general aggregate of \$5,000,000. At Your request We will provide You with certificates, including renewal certificates evidencing such coverage within thirty (30) days of

commencing this Agreement, at every renewal and at other times as may be reasonably requested by You.

## YOUR RESPONSIBILITIES

### 23. LODGING OF SERVICE REQUESTS

- 23.1 In order for Us to provide You with the agreed Service, You agree to follow Our process for lodging of Service Requests as outlined in Appendix A.

### 24. ACCESS TO SYSTEMS, SITES AND PEOPLE

- 24.1 In order to provide You with the agreed Service, You agree to give Us access to various items of Yours including but not limited to, equipment, people and sites as and when required.
- 24.2 You agree to allow Us to install software on Your Equipment that allows Our technicians to access Your systems at any time to allow us to provide Services. This software allows Us to view system statuses, send monitoring information, see users' desktops and control Your PC's. This may require that devices are left on overnight or weekends.

### 25. THIRD PARTY AUTHORIZATIONS

- 25.1 At times We may need to contact Your third party providers on Your behalf, such as Your internet provider. Some of these providers may require Your Authorization for Us to deal on Your behalf. It is Your responsibility to ensure that We are able to deal freely with these providers.

### 26. PAYMENT, LATE PAYMENT AND DEFAULT

- 26.1 **Payment due date:** All invoices issued to You are due and payable to Us within the terms stated on the invoice (unless otherwise agreed in writing). by cash, cheque, credit card or direct deposit in accordance with these Terms and Conditions and in the way set out in the Invoice.
- 26.2 **7 days late:** Where You fail to pay an invoice within seven (7) days of the due date, We may, in Our absolute discretion and without prior notice, suspend or discontinue the supply of Goods and/or Services to You.
- 26.3 **Recoveries:** All legal and other costs and expenses incurred in connection with the recovery of late payments will be added to the amount due by You to Us and will be recoverable from You, in addition to the original invoice cost. If You default in payment of any invoice on time, monies which would have become due by You at a later date shall be immediately due and payable without any further notice to You. Collectively, all of these monies are referred to in these Conditions as a "Sum Due".

- 26.4 **Interest:** If payment of any Sum Due is not made on time, We will charge interest daily on the Sum Due at the rate of 1.5% per month (18% per annum), calculated and charged daily on and from the due date until the Sum Due is paid in full.
- 26.5 **Application of funds:** All payments of the Sum Due made by You to Us will be applied as follows:
- 26.5.1 first in or towards payment of any costs (including legal costs), charges, expenses or outgoings paid by Us in relation to any dishonored check fees, collection costs or any other action taken by Us for the recovery of any amounts owing by You to Us;
  - 26.5.2 secondly, in or towards payment of any interest due or payable hereunder, and
  - 26.5.3 thirdly, in or towards payment of Your debts to Us in order from the longest standing due to the most recently incurred.
- 26.6 **Security:** We may require You to provide security over Your property (including the Goods or any other property of Yours) as collateral to be held as security for any Sum Due or as a condition precedent to the continuation of supply of Goods or Services by Us to You.
- 26.7 **Payment arrangements:** In the event that a repayment arrangement is made in relation to any Sum Due and the supply of Goods or Services is resumed, but then a repayment due under that arrangement is not made on time, We may, in Our absolute discretion and without prior notice, again suspend or discontinue the supply of Goods or Services to You.
- 26.8 **Attorneys' Fees and Costs.** The prevailing party in any litigation, arbitration, or other contested matter shall be entitled to recover from the non-prevailing party all costs, fees and out-of-pocket expenses incurred by the prevailing party in connection with the delivery, administration, defense or enforcement of this Agreement, including reasonable attorneys' fees and all other reasonably incurred costs and fees incurred before or after commencement of litigation or at trial, on appeal or in any other proceeding.
- 26.9 **Other remedies:** We may exercise any of Our rights and remedies including taking legal action against You for the recovery of any moneys due to Us, notwithstanding it may have exercised other rights under these Conditions.

## 27. NON-SOLICITATION OF CLIENTS AND EMPLOYEES

- 27.1 You agree that employees are one of Our most valuable assets, policy and professional ethics require that Our employees not seek employment with, or be offered employment by You during the course of engagement and for a



period of two (2) years thereafter (or the maximum amount permissible by a Court).

- 27.2 You agree that Our damages resulting from breach of this clause 30.1 would be impracticable and that it would be extremely difficult for Us to ascertain the actual amount of damages. Therefore in the event You violate this provision, You agree to immediately pay Us 100% of the employee's total annual salary, as liquidated damages and We shall have the option to terminate this Agreement without further notice or liability to You. The amount of liquidated damages reflected herein is not intended as a penalty and is reasonably calculated based upon the projected costs We would incur to identify, recruit, hire and train suitable replacements for such personnel.

## 28. SOFTWARE

- 28.1 All Software licenses are the responsibility of You and not that of Us. It is Your responsibility and obligation to store all licences for all Software used, so that that they can be reproduced if and when required. This includes all Software installed by Us.
- 28.2 You indemnify and hold Us harmless against any claim, allegation, loss, damage or expense arising directly or indirectly from:
- 28.2.1 any unauthorized Software use by You;
  - 28.2.2 any breach of any Software licence in respect of Software provided to Us by You to be installed on one of Your computers;
  - 28.2.3 Us installing Software where You are not Authorized to use the Software; and
  - 28.2.4 any problem, defect or malfunction associated with any Software (or related services) supplied by third parties.
- 28.3 All copyright in custom software remains the sole property of Ours unless alternate arrangements are made as part of a separate software agreement.

## 29. COPYRIGHT AND CONFIDENTIALITY

- 29.1 **Warranty and breach:** You warrant that any confidential or copyright information or intellectual property (of any kind and in any form held) or provided by You to Us belongs to You. In the event of any breach of this warranty, You will pay all sums due to Us as If such warranty had not been breached (and regardless of any non-performance of any obligation by Us on account of or in connection with the breach of such warranty). You indemnify and hold Us harmless in respect of any allegations, claims, loss, costs or expenses in connection with such breach of warranty by You.

- 29.2 **Retention of title:** All copyright and other intellectual property rights in any Work created, commissioned or acquired by Us in the course of the supply of Services by Us to You will be the exclusive property of Ours unless otherwise agreed in writing by Us and You.
- 29.3 **Confidential Information:** We acknowledge that in the course of providing Services to You, We may learn from You certain non-public personal and otherwise confidential information relating to You, including Your customers, consumers or employees. We shall regard any and all information We receive which in any way relates or pertains to You, including Your customers, consumers or employees as confidential.
- 29.4 You also acknowledge that all information and services, consulting techniques, proposals, and documents disclosed by Us or which comes to Our attention during the course of business and provided under this Agreement constitute valuable assets of, and confidential and/or proprietary information to Us.

As such, both parties shall take all commercially reasonable steps to not disclose, reveal, copy, sell, transfer, assign, or distribute any part or parts of such information in any form, to any person or entity, or permit any of its employees, agents, or representatives to do so for any purpose except unless permitted in writing by the disclosing party or as required by applicable law.

# APPENDIX A

## SERVICE REQUEST LODGEMENT PROCESS

When you contact us to lodge a service request only the methods below must be used:

**Email:** [support@wyoit.com](mailto:support@wyoit.com)

**Phone:** 307-400-6002

**Web Portal:** [www.wyoit.com/support](http://www.wyoit.com/support)

Include a short description of the problem and any screenshots of errors to assist in the resolution of the issue.

If the issue is being lodged by either phone or external email you must include your name, company and return contact details.

Service requests must not be lodged directly with technicians, as this detracts them from resolving the current issue.

## SERVICE REQUESTS OUTSIDE OF OUR BUSINESS HOURS

Service Requests that must be addressed outside of business hours must be lodged by phone (charges apply for after hours work). If not, the Service Request will be viewed on Our next Business Day.