

AAF Cloud Services Terms and Conditions

These terms and conditions set out the basis on which AAF will provide the Subscriber access to and use of the Cloud Services. Subject to clause 19, these terms and conditions operate in addition to the Federation Rules.

These terms and conditions also set out the terms and conditions on which AAF will provide support, maintenance and other similar services to the Subscriber in relation to the AAF Platform.

By accepting these terms or accessing the Cloud Services, the Subscriber agrees to be bound by and comply with the terms and conditions.

8 February 2018

Contents

| | |
|---|---|
| 1. Cloud Services | 3 |
| 2. Availability Targets | 3 |
| 3. AAF’s general obligations | 3 |
| 4. Updates | 4 |
| 5. Hosting | 4 |
| 6. Subscriber obligations | 4 |
| 7. Fees | 4 |
| 8. Term | 4 |
| 9. Termination and suspension | 5 |
| 10. Indemnity | 5 |
| 11. Confidentiality | 5 |
| 12. Data protection and Privacy | 6 |
| 13. Third Party Applications | 6 |
| 14. Subcontracting | 6 |
| 15. Intellectual Property | 6 |
| 16. Exclusion and limitation of liability | 6 |
| 17. GST | 7 |
| 18. Dispute resolution | 7 |
| 19. Inconsistency | 7 |
| 20. General | 8 |
| 21. Definitions | 8 |

1. Cloud Services

1.1 Services

During the Term, AAF will:

- (a) provide the Subscriber and its End Users with access to and use of the AAF Platform;
- (b) host the AAF Platform and the Subscriber Data for the Subscriber in accordance with clause 5;
- (c) provide Updates and Releases to the Subscriber in accordance with clause 4; and
- (d) provide the Subscriber such other services as agreed between AAF and the Subscriber from time to time

in accordance with these terms and conditions.

2. Availability Targets

- (a) In providing the Cloud Services, AAF will endeavour to meet AAF's published Availability Targets which may be revised from time to time.
- (b) The Subscriber acknowledges that AAF's ability to meet the Availability Targets is reliant on things outside of AAF's control including the performance of:
 - (i) third parties such as Infrastructure Providers; and
 - (ii) the Subscriber's own infrastructure.
- (c) Without limiting any of its other obligations, the Subscriber must do all things necessary to properly configure and maintain its own infrastructure on which the Cloud Services rely at all times during the Term.
- (d) Without limiting any other provision of these terms and conditions, AAF will not be responsible for any failure to comply with the Availability Targets where that failure is outside AAF's reasonable control.
- (e) AAF will use reasonable commercial endeavours to correct a failure to comply with the Availability Targets as quickly as possible and to ensure the failure does not re-occur.

3. AAF's general obligations

In providing the Cloud Services to the Subscriber, AAF will:

- (a) act efficiently, honestly and fairly;
- (b) comply with applicable laws;
- (c) not modify, adapt, translate or copy all or any part of the Subscriber Data other than for the purpose of providing the Cloud Services to the Subscriber; and
- (d) take reasonable steps to ensure that any AAF Personnel involved in the provision of the Cloud Services are appropriately trained and qualified and comply with AAF's policies and procedures.

4. Updates

AAF will deploy any Updates and Releases for the Cloud Services at no additional cost to the Subscriber as soon as reasonably practicable after the Update or Release is available in accordance with AAF's usual change management process. AAF will typically give Subscribers reasonable advance notice commensurate with the significance of the update.

5. Hosting

AAF will host the AAF Platform and the Subscriber Data on the Infrastructure during the Term.

6. Subscriber obligations

- (a) The Subscriber may only access and use the Cloud Services for the Approved Purposes.
- (b) The Subscriber is responsible for ensuring its End Users comply with these terms and conditions and for maintaining the confidentiality of the passwords associated with any account the Subscriber or its End Users may use to access the Cloud Services.
- (c) Without limitation, the Subscriber must not:
 - (i) use or access the Cloud Services to provide services to third parties without prior written consent from AAF (which will not be unreasonably withheld by AAF);
 - (ii) reverse-engineer, decompile, disassemble or modify the Cloud Services or any part thereof;
 - (iii) circumvent any technology used by AAF, its licensors or any third party to protect the Cloud Services;
 - (iv) remove or alter any copyright, trade mark or other intellectual property notices contained on or provided through the Cloud Services; or
 - (v) create any derivative works based on the Cloud Services without prior written consent from AAF.

7. Fees

In return for the provision of the Cloud Services by AAF, the Subscriber will pay AAF the Fees in accordance with the Payment Terms.

8. Term

The agreement between AAF and the Subscriber which incorporates these terms and conditions commences on the Effective Date and will continue until terminated in accordance with clause 9.

9. Termination and suspension

9.1 Ceasing to participate in Federation

This agreement will end immediately if the Subscriber's participation in the Federation ends for any reason.

9.2 Infrastructure Provider

AAF may by written notice to the Subscriber terminate or suspend this agreement immediately if AAF's relationship with any Infrastructure Provider ends for any reason.

9.3 With cause

Without limiting anything else contained in these terms and conditions and the Federation Rules, AAF may, by written notice to the Subscriber, terminate or suspend the provision of the Cloud Services under these terms and conditions with immediate effect if:

- (a) the Subscriber fails to comply with any written notice issued by AAF requiring the Subscriber to remedy a breach, non-observance or non-performance of the Subscriber's obligations under this agreement or the Federation Rules within seven Working Days of receiving that notice;
- (b) the Subscriber commits a breach of this agreement which is incapable of remedy; or
- (c) an Insolvency Event occurs in respect of the Subscriber.

9.4 Consequences of termination

Following termination of this agreement:

- (a) each party is released from its obligations to further perform this agreement;
- (b) each party retains its accrued rights and obligations;
- (c) the Subscriber must immediately pay to AAF any Fees accrued but unpaid as at the date of termination;
- (d) the Subscriber will not be eligible for a partial refund of Fees for any unused period of the Term.

10. Indemnity

The Subscriber indemnifies AAF against any cost, loss or damage suffered or incurred by AAF in connection with any breach of these terms and conditions by the Subscriber or the Subscriber's negligence. This indemnity is in addition to any indemnity in the Federation Rules. This clause survives termination.

11. Confidentiality

Each party agrees to treat as confidential the Confidential Information of the other party and to treat that Confidential Information with the same care as it treats its own Confidential Information. This clause survives termination.

12. Data protection and Privacy

Section 10 of the Federation Rules describes AAF's and the Subscriber's data protection and privacy obligations.

13. Third Party Applications

The Subscriber acknowledges that AAF may use certain Third Party Applications to provide the Cloud Services to the Subscriber and AAF is not responsible for any failure to provide the Cloud Services which is caused or contributed to by any failure of the Third Party Application. If required by AAF, the Subscriber must comply with such terms and conditions notified by AAF from time to time as govern the use of Third Party Applications, in addition to these terms and conditions.

14. Subcontracting

AAF may subcontract any of its obligations under these terms and conditions, including the provision of the Services, without the prior written consent of the Subscriber. AAF will continue to be responsible for providing the Cloud Services in accordance with these terms and conditions notwithstanding any such subcontracting.

15. Intellectual Property

15.1 AAF Intellectual Property

The Subscriber acknowledges that nothing in these terms and conditions grants the Subscriber any ownership of the Intellectual Property of AAF.

15.2 Subscriber Intellectual Property

AAF acknowledges that the Subscriber will retain ownership of its Intellectual Property in respect of the Subscriber Data or any other data, information or material supplied to AAF by the Subscriber and nothing in these terms and conditions grants AAF any ownership of such Intellectual Property. The Subscriber grants AAF a non-exclusive, revocable licence to reproduce and otherwise exploit Subscriber Data for the sole purpose of providing the Services to the Subscriber.

16. Exclusion and limitation of liability

16.1 Exclusion of warranties

To the fullest extent permitted by law, AAF expressly excludes all conditions, warranties, guarantees and terms which may be implied by statute, custom or general law and are capable of being excluded, except any implied warranty, guarantee, condition or term that would cause this clause 16.1 to be void or would cause a statutory provision to be contravened if excluded.

16.2 Liability

Where any condition, warranty, guarantee, term is implied by any statutory provision and that statutory provision prevents or prohibits the exclusion or modification of the condition,

warranty, guarantee or term, AAF's liability for breach of any condition, warranty, guarantee or term is limited, at AAF's option to the following:

- (a) the supply of the services; or
- (b) the payment of the cost of having the services supplied again.

16.3 Limitation of liability

Subject to clauses 16.1 and 16.2:

- (a) AAF's liability to the Subscriber in connection with the supply of the Cloud Services whether in contract, tort (including negligence) or otherwise will not exceed the Fees paid by the Subscriber to AAF for Cloud Services during the 12 months immediately preceding the event giving rise to the liability; and
- (b) AAF will not be liable to the Subscriber for any Consequential Loss.

17. GST

17.1 Interpretation

Words and expressions used in this clause 17 which are defined in the GST Act have the same meanings given to them in the GST Act.

17.2 Consideration does not include GST

The consideration for any supply made under or in connection with these terms and conditions does not include an amount for GST, unless it is expressly stated in these terms and conditions to be inclusive of GST.

17.3 Recovery of GST

If GST is or becomes payable on any supply made under or in connection with these terms and conditions (not being a supply for which the consideration is expressly stated in these terms and conditions to be inclusive of GST), the party required to provide the consideration for the supply must pay, in addition to and at the same time as the consideration is provided, an amount equal to the amount of GST on the supply.

17.4 Tax invoice

A party is not obliged under these terms and conditions to pay an amount for GST on a taxable supply until the party making the taxable supply provides a tax invoice for the supply.

18. Dispute resolution

Any disputes arising between the parties will be dealt with in accordance with section 16 of the Federation Rules.

19. Inconsistency

In the event of an inconsistency between any provision in the Federation Rules and any provision in these terms and conditions, the relevant provision in the Federation Rules will prevail to the extent of the inconsistency.

20. General

20.1 Governing law

These terms and conditions will be construed and interpreted in accordance with the laws of the state of New South Wales, Australia and each party submits to the non-exclusive jurisdiction of the courts of that jurisdiction.

20.2 Entire agreement

These terms and conditions, and the Federation Rules, constitute the entire agreement between the parties with respect to their subject matter and supersede all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties or their respective officers, employees or agents.

20.3 Changes to terms and conditions

AAF may amend these terms and conditions from time to time and any such amendments will be binding on the Subscriber from the time stated in the amendment. AAF will make the latest version of these terms and conditions available on the AAF website (www.aaf.edu.au). AAF will also communicate amendments in writing to the Subscriber. By continuing to use the Cloud Services, the Subscriber agrees to be bound by and comply with any such amendments.

20.4 Waiver

No failure to exercise or delay in exercising any right given by or under these terms and conditions constitutes a waiver and the party may still exercise that right in the future.

20.5 Severability

If any provision of these terms and conditions is invalid or not enforceable in accordance with its terms in any jurisdiction, it is to be read down, if possible, so as to be valid and enforceable and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions or affecting the validity or enforceability of that provision in any other jurisdiction.

21. Definitions

In these terms and conditions, unless the context otherwise requires:

AAF means Australian Access Federation Inc ABN 13 155 355 685.

AAF Personnel means an employee, officer, agent or contractor of AAF.

AAF Platform means AAF's cloud based platform, comprising systems and services, as implemented for the Subscriber by AAF. This includes all developments, customisations or modifications to the AAF Platform supplied by AAF under these terms and conditions or any other relevant agreement between AAF and the Subscriber.

Approved Purpose means the purpose of gaining access to the AAF Platform in accordance with these terms and conditions and the Federation Rules or any other purposes published on the AAF website, or otherwise agreed in writing with the Subscriber, from time to time.

Availability Target means the percentage monthly availability target for the AAF Platform, as calculated in accordance with the rules published on the AAF website, or otherwise agreed in writing with the Subscriber, from time to time.

Cloud Services means the services referred to in clause 1.1.

Confidential information means all information, directly or indirectly disclosed by a party (**Disclosing Party**) to the other party (**Receiving Party**) under or in connection with these terms and conditions which:

- (a) is Personal Information;
- (b) is designated by the Disclosing Party as confidential; or
- (c) the Receiving Party knows or ought to know is confidential, including all information about a party, its employees, students, agents and including also engineering, programming and other technical or commercial information and know-how, information concerning Intellectual Property rights of the Disclosing Party, internal management information and financial information but does not include:
 - (i) information which was previously disclosed by the Disclosing Party on a non-confidential basis;
 - (ii) information which is or becomes publicly available other than through a breach by the Receiving Party of its obligations under this Agreement or any other agreement;
 - (iii) information which is acquired by the Receiving Party from a third party which is not, to the Receiving Party's knowledge, under an obligation of confidence to the Disclosing Party; and
 - (iv) information which is brought into existence or obtained independently by the Receiving Party without access to the Disclosing Party's confidential information.

Consequential Loss means any direct and indirect loss of profits, loss of revenue, loss of opportunity, loss of reputation, loss of actual or anticipated savings, loss of production, loss of goodwill and any indirect or consequential or loss or damage.

Effective Date means the earlier of the date the Subscriber accepts these terms and conditions and the date the Subscriber begins to use any use of the Cloud Services.

End Users means any person a Subscriber permits to access and use its services and resources and includes End Users within the meaning of the Federation Rules.

Federation has the same meaning as given in the Federation Rules.

Federation Rules means the document titled 'Federation Rules' that sets out the rules and obligations that the AAF's subscribers are required to comply with as a condition of their subscription to AAF, as amended or replaced from time to time by AAF.

Fees means the fees published on the AAF website, or otherwise agreed between AAF and the Subscriber, from time to time.

GST has the meaning given by the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Infrastructure means the servers, data centres or other hardware or infrastructure used by or on behalf of AAF in connection with the operation of the Cloud Services or any other aspect of the provision of the Cloud Services including those provided by Infrastructure Providers.

Infrastructure Provider means any third party with which AAF enters into an agreement to deliver a component of a Cloud Service from time to time.

Insolvency Event means a liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or the occurrence of any event that has a substantially similar effect to any of the above events.

Intellectual Property means all present and future copyright, rights to inventions including patents and patent applications, modifications or improvements to the same, registered and unregistered trademarks, registered and unregistered designs, rights to trade secrets and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Payment Terms means the payment terms published on the AAF website which apply to the Cloud Services, or which are otherwise agreed between AAF and the Subscriber, from time to time.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Release means any modification, enhancement, or addition to, or new version or replacement of, the AAF Platform which is released by or on behalf of AAF (which may include new features, functions, technology or architecture updates).

Subscriber means an organisation or institution which is a subscriber (within the meaning of the Federation Rules) to which AAF agrees to provide the Cloud Services.

Subscriber Data means:

- (a) all data or information provided or made available to AAF by the Subscriber so AAF can provide the Cloud Services;
- (b) all data or information of or relating to the Subscriber or the End Users that is processed by or accessible to AAF in respect of or as a result of the provision of the Cloud Services; and
- (c) all information of or relating to the Subscriber or the End Users that is transmitted, received, stored, processed, generated, compiled or modified by AAF through use, or in connection with the provision, of the Cloud Services to the Subscriber.

Term has the meaning given in clause 8.

Third Party Application means any product, service, system, application or material that is owned or operated by a party other than AAF or the Subscriber, and that is used by AAF to provide the Cloud Services to the Subscriber or is included in the Cloud Services by AAF and includes any open source software or material.

Update means any update, upgrade, patch, bug fix or other development for the Cloud Services.

Working Day has the same meaning as given in the Federation Rules.