

AUSCERT MEMBERSHIP AND SERVICES TERMS

REVISION VERSION : February 2018

ABOUT AUSCERT

- A. AusCERT has a long history of providing information security services to its members. For more information about AusCERT and our services please go to our website www.auscert.org.au.
- B. AusCERT is a business unit and trading name of the University of Queensland (ABN 63 942 912 684).

THE PARTIES AGREE THAT:

1. AGREEMENT AND TERM

- 1.1 By completing and delivering a Service Schedule to AusCERT, You are accepting, and agreeing to be bound by, the Agreement if and when it commences in accordance with and subject to clauses 2.4, 2.5 and 2.6.
- 1.2 Each person signing and delivering a Service Schedule on behalf of the identified Member warrants to AusCERT that they have the necessary authority from the identified Member to do so.
- 1.3 The Agreement will commence on the date a Service Schedule is first added as determined in accordance with and subject to clauses 2.4, 2.5 and 2.6, and will continue in effect until terminated in accordance with its terms ("Term").
- 1.4 These AusCERT Membership and Services Terms apply to all Services and AusCERT Materials supplied under or in connection with each Service Schedule, including a Membership Services Schedule. The terms set out in a Service Schedule and each applicable Service Description and AusCERT Policy also apply to the Services supplied under that Service Schedule.
- 1.5 Each Service Schedule will continue for its Schedule Term.
- 1.6 Subject to any Special Conditions specified in the relevant Service Schedule, upon expiry of the then current Schedule Term for a Service Schedule the Schedule Term will automatically be extended for a further 12 months unless either party has notified the other party at least 20 Business Days prior to such expiry that they do not wish to extend the Schedule Term (in which case the relevant Service Schedule will terminate upon expiry of its then current Schedule Term).
- 1.7 If extended, the terms of the Agreement will continue to apply to the relevant Service Schedule during the extended Schedule Term. The Schedule Term may be extended in accordance with clause 1.6 any number of times. Clause 14.4 sets out further details in relation to the effect of termination of a Service Schedule.

2. THE SERVICES

- 2.1 The Service Descriptions set out the detail of what is provided as part of each Service.
- 2.2 AusCERT may offer new Services from time to time by publishing a new Service Description on the AusCERT Website which may be added to an existing Service Schedule (subject to your payment of the relevant fees and satisfaction of any other conditions specified in the Service Description) or a new Service Schedule, as specified in the Service Description or new Service Schedule.
- 2.3 AusCERT will provide the Services on and subject to the terms and conditions of the Agreement. The Services to be provided to You by AusCERT under the Agreement are as specified in the Service Schedules which have been added to the Agreement, and in any Service Descriptions applicable to those Service Schedules. A Service Schedule does not form part of the Agreement until it has been added in accordance with and subject to clauses 2.4, 2.5 and 2.6.
- 2.4 Subject to clause 2.6, a Service Schedule submitted by You to AusCERT to the email address membership@auscert.org.au will be added to the Agreement (and will, accordingly, commence) on the earlier of the date AusCERT first provides Services pursuant to it and the date which is five (5) Business Days after it is submitted, unless agreed otherwise between the parties in writing or the Service Schedule is rejected by AusCERT in accordance with clause 2.5. A Service Schedule may only be submitted by delivering it by email to the email address in this clause and it will not be effective if delivered by other means unless signed by both parties. A Service Schedule is only 'submitted' by You if and when an AusCERT staff member notifies You by email that AusCERT has received the Service Schedule you have delivered to membership@auscert.org.au (unless AusCERT provides Services pursuant to a Service Schedule delivered to it, in which case it is deemed to have been submitted even if AusCERT did not notify You of receipt). Such notice confirming receipt is not an acceptance of the Service Schedule, it simply determines the date on which a Service Schedule has actually been submitted for the purposes of this clause and clause 2.5. AusCERT may thereafter reject the Service Schedule in accordance with clause 2.5. To avoid doubt, AusCERT making enquiries (such as seeking additional information), and engaging in activities preliminary to providing Services, in relation to a Service Schedule received from You is not to be taken as AusCERT providing Services for the purposes of this clause.

- 2.5 Other than where a Service Schedule has been executed by both parties or AusCERT has started providing services, AusCERT may in its complete discretion reject any Service Schedule submitted by You by providing written notice (for example, by reply email) to You within five (5) Business Days after it was submitted. A rejection notice sent by AusCERT to the email address used to submit the Service Schedule is deemed sent when it leaves AusCERT's email system and is an effective rejection of the Service Schedule whether or not the email is actually received by the Member's (or the addressee's) email system or the addressee, even if AusCERT is notified of this. If rejected, the Service Schedule is not added to the Agreement and if it would have been the first Service Schedule added (if not rejected) then no Agreement is formed.
- 2.6 Where a Service Schedule contains Special Conditions or Included Business Units are nominated in accordance with clause 7.2, it will only be added to the Agreement (and come into effect) when the schedule has been signed by both parties and signed duplicates or counterparts have been exchanged by the parties (which may be done by email).
- 2.7 You agree that due to the nature of some of the Services AusCERT provides, including the Membership Services, and the electronic delivery of those Services, You consent to AusCERT sending You electronic communications without any unsubscribe facility and you warrant Your Personnel, Related Entities and their Personnel have also consented. If any such consent is revoked, or AusCERT becomes aware of a breach of such warranty, we may at any time thereafter suspend or cease to provide some or all Services (to some or all persons) or terminate the Agreement at any time by notice to You unless an appropriate consent is provided.
- 2.8 Where the Services as set out in a Service Schedule and the relevant Service Description involve You or a Related Entity (including through Personnel) implementing configuration settings in an AusCERT provided interface or on Your Network, You remain responsible for ensuring that those configuration settings are implemented correctly.
- 2.9 Where the Services as set out in a Service Schedule and the relevant Service Description involve AusCERT connecting to Your Network for the purposes of network scanning, monitoring, investigations, auditing or systems installation and configuration, You will provide AusCERT with appropriate and timely access to Your Network, whether onsite or through a remote connection.
- 2.10 You agree that where, as part of the performance of the Services under a Service Schedule, AusCERT makes any modifications to Your Network, or accesses information on or through Your Network, including as part of activities related to network scanning, monitoring, investigations, auditing or systems installation and configuration, these actions are authorised by You and You warrant they are also authorised by Your Personnel, Related Entities and their Personnel.
- 2.11 If at any point in time, and for any reason, You no longer wish for AusCERT to be able to connect to Your Network, You must revoke that access and notify AusCERT.
- 2.12 AusCERT is not responsible for any failure or delay in performing the Services if You have not provided, and notified AusCERT of, appropriate access to Your Network under clause 2.9, or you have revoked access to Your Network under clause 2.11 or AusCERT cannot access Your Network for any other reason.
- 2.13 During the Term, AusCERT may provide Additional Services at Your request, subject to the payment of Additional Fees, and either Your written acceptance of a written quote provided by AusCERT which will be governed by the terms of the Agreement (which may include a separate Service Schedule issued under the Agreement, as AusCERT considers appropriate).
- 2.14 For clarity, AusCERT is not providing an exclusive service to You and reserves the right to supply services to any other person regardless of whether those services are the same or similar to the Services and whether or not the other person is, or could be, a competitor of Yours.

3. MEMBER INFORMATION SCHEDULE

- 3.1 During the Term You may update the information provided in the Member Information Schedule by submitting an updated Member Information Schedule containing the updated details. Subject to clause 3.2 and the administration time required to process the updated information, the updated Member Information Schedule will come into effect when submitted. A Member Information Schedule may only be submitted by email to the email address in clause 2.4 and will not be effective if submitted by other means unless signed by both parties. The schedule is only 'submitted' if and when it is actually received by an AusCERT staff member using AusCERT's email system for the email address specified in clause 2.4.
- 3.2 Where an updated Member Information Schedule submitted in accordance with clause 3.1 includes new Related Entities or new Included Business Units:
- (a) in respect of the new Related Entities and new Included Business Units the updated Member Information Schedule will come into effect 5 Business Days after it is submitted, unless rejected pursuant to paragraph (b) or unless agreed otherwise between the parties; and
 - (b) AusCERT may in its complete discretion reject any new Related Entities or new Included Business Units by providing notice in writing to You within 5 Business Days after you submitted the updated schedule, in which case the entire schedule is rejected and does not form part of the Agreement and must be resubmitted with appropriate changes.

To avoid doubt, if contact details or details of Related Entities or new Included Business Units in a Membership Services Schedule are updated from time to time by submission of a Member Information Schedule under and in accordance with clause 3 then the Membership Services Schedule is deemed amended accordingly (subject to any rejection or contrary written agreement pursuant to this clause 3.2).

- 3.3 Where You have nominated Related Entities under the Agreement AusCERT may, in its complete discretion, require each Related Entity to complete, sign and submit a Member Information Schedule in relation to its own organisation. For clarity, the 'Scope of Membership' section of the Member Information Schedule is not relevant in a Member Information Schedule submitted by a Related Entity under this clause 3.3 and any information entered in that section will be null and void.
- 3.4 If AusCERT requires (for example, by notice to You or the Related Entity) a Related Entity to submit a Member Information Schedule pursuant to clause 3.3 then without limiting its rights AusCERT is not obligated to provide any Services, and may without notice or liability suspend any Services being provided, to or for such Related Entity until AusCERT has received a Member Information Schedule from the Related Entity duly completed to AusCERT's satisfaction.
- 3.5 If You have not, or any relevant Related Entity has not, submitted a Member Information Schedule, or if AusCERT reasonably suspects the information in a Member Information Schedule submitted by You or any Related Entity is or has become incorrect, false or misleading, then AusCERT may without notice or liability delay commencement of, or suspend, any or all of the Services until AusCERT has received a Member Information Schedule from You and/or the relevant Related Entities duly completed to AusCERT's satisfaction.

4. VARIATION OF SERVICES AND TERMS

- 4.1 AusCERT may in its discretion vary (including replace) Service Descriptions, AusCERT Policies and AusCERT Materials from time to time. AusCERT will notify You of variations to the Service Descriptions and AusCERT Policies by publication of the varied description or policy on the AusCERT website. The variation will take effect on the date published or such later date as AusCERT may notify in relation to publication of the variation. AusCERT is not required to notify you of such variations to AusCERT Materials and they will take effect when made or at any later time specified by AusCERT.
- 4.2 AusCERT may also vary any of the other terms that make up the Agreement from time to time in circumstances where clause 4.1 does not apply, by providing You with notice in writing (which may be by email or other means). The variation will take effect on the date specified in the notice.
- 4.3 If You do not accept any variation made pursuant to clauses 4.1 or 4.2 then You must, within 14 days of being notified of the variation, terminate the Agreement or the relevant Service Schedule/s by giving AusCERT 14 days' notice in writing. If you do not terminate you are deemed to have accepted the variation from the date it takes effect. Where You terminate the Agreement or a Service Schedule under this clause, if You request then AusCERT will pay You a pro rata refund of any annual Service Fees already paid to AusCERT in respect of any days remaining in the relevant annual period following the date of termination.

5. LICENCE TO USE AUSCERT MATERIALS

- 5.1 Subject to clauses 5.2, 5.3 and clause 7.2 and provided You are not in breach of the Agreement, AusCERT grants You and all Related Entities, a non-exclusive, revocable licence to use, copy and disclose, the AusCERT Materials, for Your and each Related Entities' internal use for the purpose of managing Your Network or having Your Network managed. Subject to clause 6.4, these rights may be exercised by You and each Related Entity, and to the extent necessary to fulfil any contract with You or a Related Entity, by Your or a Related Entity's third party contractors.
- 5.2 The licence granted in clause 5.1 does not apply to any Material in which AusCERT does not own the Intellectual Property Rights, including External Security Bulletins as described in the Service Description – Membership Services. Where AusCERT supplies such AusCERT Materials to You as part of the Services, AusCERT will identify the original source of that Material. Your rights to use that Material will be governed by the terms of use that accompany, or are referred to in, the original version of that third party Material, and will be subject to applicable AusCERT Policies.
- 5.3 Where AusCERT Material is provided in connection with Services supplied pursuant to a particular Service Schedule, the licence under clause 5.1 for that AusCERT Material ceases when that Service Schedule is terminated or expires.

6. MEMBER RESPONSIBILITIES

- 6.1 You must, or You must arrange for a third party acting on your behalf to, pay all Fees for or related to the Services. For clarity, notwithstanding any arrangement you have in place with a third party in relation to the payment of Fees due under the Agreement, You remain responsible for ensuring that payment of those Fees is made to AusCERT
- 6.2 You must and must ensure Your Personnel, Related Entities and their Personnel:
- (a) provide all information and assistance AusCERT may reasonably require to facilitate the delivery of the Services to You and Related Entities, including notifying AusCERT of any changes to the information set out in the Member Information Schedule;
 - (b) establish, maintain and keep up-to-date, email aliases or mail lists as required by AusCERT for distribution of AusCERT Materials by AusCERT;

- (c) comply with, and use reasonable endeavours to ensure Your Personnel, each Related Entity and their Personnel, and any other person who gains access to the Services and AusCERT Materials through You, Your Personnel, a Related Entity or their Personnel, are aware of and comply with the Agreement (including any AusCERT Policies) as if they were You;
 - (d) immediately notify AusCERT of any occurrence or event that may impact upon the provision of the Services;
 - (e) where applicable to the relevant Service, provide AusCERT with all physical and virtual access to Your and each Related Entity's sites, premises, equipment and Member Information reasonably necessary to enable the provision of the Services in accordance with the Agreement; and
 - (f) ensure that the Services are used: (i) only by You and the Included Business Units and Related Entities specified in the Membership Services Schedule (including any updated Member Information Schedule but excluding Related Entities and Included Business Units rejected by AusCERT pursuant to clause 3.2) and, if and to the extent permitted under the Agreement, Your or a Related Entity's Personnel; and (ii) only for the purposes for which they were intended; and (iii) only in accordance with the terms of the Agreement.
- 6.3 You must not, and must ensure that Your Personnel, Related Entities and their Personnel and any person accessing the AusCERT Material through any of the foregoing do not:
- (a) on-sell the Services or AusCERT Materials;
 - (b) use, copy, distribute, reproduce, alter, modify, create derivative works from, or publicly display any AusCERT Materials other than as expressly permitted under clause 5;
 - (c) permit or enable any third party to access, use, copy, distribute, reproduce, alter, modify, create derivative works from, or publicly display the AusCERT Materials or the Services other than as permitted under clause 5.1 and clause 6.4; or
 - (d) breach or cause any person to breach any law of the Commonwealth of Australia or any State or Territory of Australia in or in connection with the provision or use of the Services or the AusCERT Materials provided under the Agreement.
- 6.4 You may provide, and You may authorise Related Entities to provide, access to the AusCERT Materials and the Services to a third party contracted to provide outsourced services to You or a Related Entity, where:
- (a) that third party requires access to the AusCERT Materials and Services for the purposes of performing their contract with You or a Related Entity;
 - (b) that third party has accepted that use of any AusCERT Materials and Services is subject to the terms and conditions of the Agreement; and
 - (c) use of the AusCERT Materials and Services by that third party is limited to the provision of services by that third party to You or a Related Entity.
- 6.5 Subject to clause 10.4, You agree that AusCERT will not be responsible for any delay or failure in the performance of the Services or supply of the AusCERT Materials or Services to the extent that the delay or failure was contributed to by You or Your Personnel or any Related Entity or their Personnel (including Your or their failure to comply with the Agreement).

7. RELATED ENTITIES

- 7.1 The parties agree that You are receiving the Services and being given access to the AusCERT Materials under the Agreement for use by You and each Related Entity (if any) as nominated in the Membership Services Schedule or, subject to clause 3.2, an updated Member Information Schedule.
- 7.2 Where You have notified AusCERT, and AusCERT in its complete discretion has agreed, that the Services and AusCERT Materials will only be used for the benefit of a subset of Your organisation and the Fees have been determined accordingly, You must clearly specify those subsets as the Included Business Units in the Member Information Schedule and ensure that the Services and AusCERT Materials are not used by, or for the benefit of, any other part of Your organisation.
- 7.3 You must and must ensure Your relevant Related Entities immediately notify AusCERT as soon as the Included Business Units, Related Entities, supported domains, or supported IP addresses change from what had previously been notified to AusCERT in the Membership Services Schedule and the Member Information Schedule. Such notification must be in the form of an updated Member Information Schedule submitted to AusCERT in accordance with clause 3.1.
- 7.4 You may provide access to the Services and AusCERT Materials only to Related Entities, provided that each Related Entity agrees to use the Services and AusCERT Materials subject to and in accordance with the terms and conditions of the Agreement and provided that, subject to clause 7.2, You accurately report the total number of Network Users of Your organisation and all Related Entities combined.
- 7.5 If AusCERT becomes aware of additional Network Users AusCERT may in its absolute discretion increase the Membership Services Fees payable by You to the appropriate membership level as published on the AusCERT Website and updated from time to time. AusCERT will use reasonable endeavours to consult with You before implementing any

changes to the Fees under this clause. You must pay any additional amounts AusCERT invoices to account for the higher usage of the Services in the relevant Schedule Term than has been paid for.

8. PROTECTION OF INFORMATION

- 8.1 Each party will exercise all reasonable endeavours to keep Confidential Information disclosed by the other party under the Agreement confidential, and only use that Confidential Information for the purposes set out in the Agreement.
- 8.2 You must, and must ensure Your Personnel, Related Entities and their Personnel, treat the AusCERT Materials as Confidential Information in accordance with relevant AusCERT Policies, except where that Material is publicly available (e.g. on the AusCERT web site) other than due to a breach of this Agreement or other obligation of confidence.
- 8.3 Member Information and Member Data supplied to AusCERT will be treated as Confidential Information and only be disclosed:
- (a) to AusCERT Personnel and Your Personnel or a Related Entity's Personnel, who require access to that information for the purpose of delivering the Services or administering the Agreement;
 - (b) to relevant law enforcement agencies where AusCERT reasonably considers such disclosure to be necessary to effectively address a security related incident or a crime affecting You or a Related Entity or any other person. AusCERT will seek consent from You or the relevant Related Entity before making any such disclosure, unless the nature and extent of the security related incident requires otherwise;
 - (c) to Third Party Providers in accordance with clause 8.4; and
 - (d) without limiting the preceding paragraphs, in accordance with the AusCERT Privacy Policy and the AusCERT Confidentiality Policy published on the AusCERT Website.
- 8.4 You agree that as part of administering the Agreement and providing the Services to You, AusCERT may utilise services provided by Third Party Providers. This may include externally hosted services and applications, and may involve the disclosure of Confidential Information and Personal Information to those Third Party Providers, and the transfer of such information outside of Australia. You warrant Your Personnel, Related Entities and their Personnel also consent to this.
- 8.5 AusCERT may only make a disclosure or transfer of Confidential Information or Personal Information under clause 8.4 where:
- (a) the disclosure or transfer is directly associated with the administration of the Agreement or the delivery of the Services;
 - (b) the Third Party Provider is under an obligation to protect the Confidential Information and Personal Information; and
 - (c) AusCERT is satisfied on reasonable grounds that the Third Party Provider complies with appropriate security standards.
- 8.6 You warrant that at all times:
- (a) You are the owner of any Member Information and Member Data which You supply to AusCERT or, in respect of such information and data relating to Your Personnel or Related Entities or their Personnel, You have appropriate licences, consents or agreements in place which have the effect of:
 - I. authorising You to receive and use information belonging to or concerning the Related Entities or their associated IP addresses or domains, including such information received from AusCERT;
 - II. authorising AusCERT and its Third Party Providers to obtain, use, disclose and otherwise deal with information belonging to or concerning such Personnel or Related Entities or their associated IP addresses and domains, as contemplated by the Agreement, without AusCERT having to obtain any further permission, consent or licence from, or make any payment to, any person; and
 - III. authorising AusCERT and its Third Party Providers to deal with any Personal Information contained in the Member Information or Member Data, as contemplated by the Agreement and without AusCERT having to obtain any further permission, consent or licence from, or make any payment to, any person; and
 - (b) in respect of the use of Member Information and Member Data, they can be used and the Services can be performed without breach of any third party Intellectual Property Rights or Moral Rights (as defined in the Copyright Act 1968 (Cth)).
- 8.7 Without limiting clause 8.4, You warrant at all times that You and each Related Entity will only supply AusCERT with information that can be used to identify or communicate with systems (including IP addresses, Domain Names and mobile phone numbers), and will only use the Services to configure such systems, that are owned by, or under the legitimate control of, You or a Related Entity.
- 8.8 You hereby grant to AusCERT a royalty free, non-exclusive, irrevocable licence to exercise such Intellectual Property Rights in the Member Information and Member Data as is reasonably necessary for the purpose of performing the

Services under the Agreement, managing AusCERT's affairs and complying with any laws (including after the Agreement has ended).

- 8.9 Subject to clause 8.10, each party may use and disclose to its professional and legal advisors (who may also use it), Confidential Information of the other party to the extent necessary to enable the party to obtain advice in relation to rights, powers, obligations and liabilities under or in connection with the Agreement, or to make, defend or settle claims under or in connection with the Agreement.
- 8.10 Despite any other provision of the Agreement to the contrary, You must, and You must ensure all Related Entities, Personnel and any other persons who gain access to the AusCERT Materials or the Services through You or Your Personnel or a Related Entity or their Personnel, keep AusCERT's Confidential Information confidential and use it only for the purposes of this Agreement and comply with any written instructions of AusCERT from time to time (including in the form of an AusCERT Policy or email or other notice) with respect to restrictions on the use or disclosure of particular Services or AusCERT Materials or the protection or destruction of AusCERT Materials or Confidential Information, except to the extent compliance with such written instructions would be unlawful in a particular instance. Such instructions may include a requirement to comply with information handling protocols.
- 8.11 The parties acknowledge that the Agreement will not affect or vary the ownership of the Member Information or the Member Data. AusCERT may also retain and use copies of Member Information and Member Data for its internal record keeping purposes, managing its affairs and for compliance with any law.
- 8.12 Despite any other provisions, a party may disclose the other party's Confidential Information to the extent it is compelled to by law.

9. FEES

- 9.1 The Fees for the Services provided under a particular Service Schedule are as set out in that Service Schedule (and if any Fees are not specified, or are incorrectly set out, in the Membership Services Schedule added to the Agreement then the applicable Fees are those AusCERT specifies in its invoice based on the total number of Network Users and AusCERT's then current rates as specified by AusCERT). If fees in the AusCERT Membership Price Schedule change during the Schedule Term for Your Membership Services Schedule, that change only takes effect for the start of the next Schedule Term.
- 9.2 Unless otherwise agreed in writing by the parties and subject to clause 7.2 and clause 7.5, the Service Fees for the Membership Services will be determined on the basis of the total combined number of Your and all Related Entities' Network Users as specified in the Membership Services Schedule.
- 9.3 Unless specified otherwise in this document or the relevant Service Schedule:
- (a) all Service Fees are payable and shall be invoiced annually in advance;
 - (b) all Additional Fees are payable and shall be invoiced in advance of the performance of the relevant Additional Services; and
 - (c) You, or a third party acting on Your behalf, must pay AusCERT the amount identified in an invoice within 30 days from the invoice date or such earlier due date specified in the invoice.
- 9.4 In respect of each Service Schedule, the Service Fees will be fixed, or in the case of consumption based charges the unit charge will be fixed, for the Schedule Term, subject to clause 9.5.
- 9.5 The applicable Fees for any Services may be increased for the start of any new Schedule Term as specified by AusCERT on the AusCERT Website. For the Membership Services, the applicable Fees at the start of a new Schedule Term are the Fees set out in the then current AusCERT Membership Price Schedule (and if the Fees have not changed since commencement of the previous Schedule Term or there is no current AusCERT Membership Price Schedule, then AusCERT may increase the Fees for the Membership Services by the higher of 5% or an amount up to the percentage increase in the all groups weighted average of eight capital cities Consumer Price Index ("CPI") (if any) over the twelve month period ending on the quarter prior to the quarter in which the adjustment is made, as published on the Australian Bureau of Statistics web site).
- 9.6 All amounts referred to in the Agreement are expressed exclusive of GST unless otherwise stated.

10. NO WARRANTY

- 10.1 AusCERT will perform the Services with reasonable care and skill and in accordance with the terms of the Agreement (including the Service Schedules, Service Descriptions and AusCERT Policies).
- 10.2 Subject to clause 10.4, to the full extent permitted by law, all warranties and guarantees (whether legislative or otherwise) which by law would or might otherwise be implied into the Agreement, or otherwise made applicable to the subject matter of the Agreement, are excluded from the Agreement. AusCERT does not warrant that the Services will be continuous or that the Services and the AusCERT Materials will be fault or error free.
- 10.3 Subject to clause 10.4 and without limiting clause 10.2, You acknowledge and agree, and warrant Your Personnel, Related Entities and their Personnel acknowledge and agree, that:

- (a) AusCERT Materials are provided for general information only, and are not intended to be professional advice provided to a particular Member or Related Entity, on a particular matter;
- (b) AusCERT takes no responsibility for the consequences of applying or following the information or recommendations set out in the AusCERT Materials;
- (c) a decision to take any action related to the AusCERT Materials will be based on Your or Your Related Entities' (or Your or their Personnel's) own assessments and judgments. You and each Related Entity should consider the appropriateness of any information or recommendation for your respective organisations and individual systems, in conjunction with Your and the Related Entities' local policies and procedures; and
- (d) AusCERT Materials may include content supplied by third parties and the views or recommendations of those third parties are not necessarily the views of AusCERT and You and Your Related Entities (and Your and their Personnel) will make Your (and their) own assessments and judgments of that third party Material.

10.4 Nothing in the Agreement will exclude, restrict or modify any guarantee, condition, warranty or liability which may at any time be imposed or implied by the *Competition and Consumer Act 2010* (Cth) ("the CC Act") or any other law, to the extent it cannot by law be so excluded, restricted or modified.

11. LIMITATION OF LIABILITY

11.1 Subject to clause 10.4, clause 11.6 and clause 12.1, neither party will be liable to the other party (or any person claiming through that other party) in connection with the Agreement or the provision of the Services or the AusCERT Materials, under any legal theory (including under contract, tort including negligence, under statute or otherwise), for any Loss that:

- (a) constitutes consequential loss, indirect loss or special, punitive or incidental damages;
- (b) is or arises from or in connection with a loss of use of Your Network (including any Related Party's), loss of reputation, loss of bargain, loss of opportunity, loss of profit, loss of revenue, loss of production, loss of anticipated savings or loss of business opportunities; or
- (c) arises from or in connection with deletion, failure to store, mis-delivery, untimely delivery, corruption or loss of, electronically stored data or other information,

even if that Loss was reasonably foreseeable by that party or that party had been advised of the possibility of that Loss arising.

11.2 Subject to clause 10.4, to the full extent permitted by law, AusCERT will not be in breach of the Agreement as a result of any failure of or to provide, or any interruption in, the Services:

- (a) resulting from or in connection with an event or circumstances of Force Majeure;
- (b) to the extent the Services (or any of them) cannot reasonably be provided as a result of any works (including repair and maintenance) being carried out at Your, or a Related Entity's, premises or in respect of Your Network; or
- (c) if reasonably required to prevent fraud or to comply with a law or any notice, order or requirement of a competent authority.

11.3 Notwithstanding clause 11.4, and to the extent permitted by law (subject to clause 10.4 and clause 11.6), AusCERT's liability for breach of any guarantee implied or imposed by the CC Act is limited (and to the extent not prohibited by law, at AusCERT's choice):

- (a) as regards goods – to replacing the goods, supplying equivalent goods, repairing the goods, or paying the cost of replacing or repairing the goods or acquiring equivalent goods; or
- (b) as regards services – to the re-supply of the relevant services or paying the cost of having the relevant services supplied again.

11.4 Subject to clause 10.4, clause 11.3, clause 11.6 and clause 12.1, each party's liability to the other (or any person claiming through that other party) in respect of any occurrence giving rise to a liability under any legal theory (including in contract, tort including negligence, under statute or otherwise) in connection with the Services or the Agreement shall, except in relation to liability for:

- (a) personal injury (including sickness and death) caused by a negligent act or omission of a party, or an act or omission intended to cause death or personal injury by that party; or
- (b) for loss of, or damage to, tangible property caused by a negligent act or omission of a party, or an act or omission intended to cause loss by that party,

be limited to an aggregate liability cap being the lesser of:

- (c) the aggregate amount paid and payable by You to AusCERT during the calendar year in which the liability first arose or, if no amounts were paid or payable in that calendar year, then during the calendar year in which Fees were last paid or payable prior to the liability arising; and
- (d) \$50,000.

- 11.5 For the avoidance of doubt, and subject to clause 10.4, liability arises as referred to in clause 11.4 when the act or omission giving rise to the liability occurs, not when any claim is made by a party under the Agreement in connection with that liability, and “**occurrence**” means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause.
- 11.6 If any applicable legislation prohibits the exclusion or limitation of liability by a party in the manner contemplated by clause 10 or this clause 11 with respect to particular Loss, then the exclusion or limitation applies to that Loss only in the manner, and to the maximum extent, permitted under that legislation (if any).

12. MEMBER LIABILITY

- 12.1 Notwithstanding clause 11.1 and clause 11.4 and subject to clause 12.3, in addition to any other obligations under the Agreement, You must ensure that AusCERT does not suffer any Loss to the extent that such Loss arises from or in connection with:
- (a) any acts or omissions of Your Personnel or the Personnel of your Related Entities, or any Misuse or attempted Misuse of the Services or the AusCERT Materials by You (including Your Personnel), a Related Entity (including their Personnel) or any other third party who gains access to the AusCERT Materials through You or Your Personnel or a Related Entity or their Personnel;
 - (b) any Claim by a third party (including Your Personnel or a Related Entity or their Personnel) against AusCERT arising from or in connection with any act or omission of, or the receipt or use (including Misuse) of the Services by, You or Your Personnel or a Related Entity or their Personnel; or
 - (c) any alleged or actual infringement of a third party’s Intellectual Property Rights where such claim relates in whole or in part to Member Information or Member Data which You, or a Related Entity, or Your or their Personnel have supplied for use by AusCERT under the Agreement.
- 12.2 For the purposes of clause 12.1 “**Misuse**” means any incorrect, improper or unlawful use of the Services or the AusCERT Materials which includes, though is not limited to, use that is contrary to the Agreement (including any Service Schedule or AusCERT Policy) or any applicable third party terms of use.
- 12.3 Notwithstanding any other term of the Agreement, Your liability under clause 12.1 will be reduced to the extent that the relevant Loss is the direct result of a breach of the Agreement, or a negligent act or omission, by AusCERT.

13. SUSPENSION OF THE SERVICES

- 13.1 AusCERT may, in its absolute discretion, suspend some or all of Services without liability, if :
- (a) the Fees are not paid to AusCERT when due (suspension will be subject to prior consultation with You where reasonably practical);
 - (b) You or a Related Entity breach a term of the Agreement; or
 - (c) You or a Related Entity commits an actual or potential breach of an AusCERT Policy.
- 13.2 AusCERT may also suspend some or all of the affected Services, immediately without prior notice or liability, if it reasonably suspects or wishes to limit or prevent fraud, the commission of an offence against any law, or interference or harm to any infrastructure or the AusCERT network or if it considers it is necessary as a result of or in relation to an event or circumstances of Force Majeure.
- 13.3 AusCERT will use its best endeavours to restore any suspended Services without delay once AusCERT is notified that the cause of the suspension has been cured.
- 13.4 Subject to 10.4, AusCERT will have no liability to You or any Related Entity or any other person in relation to the suspension of the Services in accordance with this clause 13.

14. TERMINATION

- 14.1 AusCERT may terminate the Agreement and may terminate any Service Schedule placed under the Agreement, by notice in writing to You if:
- (a) You breach any provision of the Agreement (including if due to any Related Entities or Personnel) and fail to remedy the breach within 5 Business Days (or, if agreed by AusCERT, a longer period) after receiving a notice from AusCERT identifying the breach and requiring You to remedy the breach;
 - (b) You or a Related Entity breach a State or Commonwealth law, or any other applicable law, in the use of the Services;
 - (c) an event or circumstances of Force Majeure, affecting either AusCERT or an AusCERT licensor or AusCERT supplier, adversely affects the ability of AusCERT to perform obligations under the Agreement continuously for a period of at least 20 Business Days; or

- (d) a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator or administrator or other like person is appointed to Your organisation.
- 14.2 Either party may, at any time and without cause or liability:
- (a) terminate the Agreement; or
 - (b) terminate a Service Schedule,
- by not less than three (3) months' written notice to the other party.
- 14.3 You agree all Fees are paid annually in advance for the full annual period and are non-refundable except to the extent a Service Schedule expressly provides to the contrary or except where AusCERT terminates under clause 14.2. If AusCERT terminates under clause 14.2 then, if You request, AusCERT will pay You a pro rata refund of any annual Service Fees already paid to AusCERT in respect of any days remaining in the relevant annual period following the date of termination and this will be AusCERT's sole liability to You for and in connection with such termination.
- 14.4 For the avoidance of doubt (except as expressly stated in any Special Conditions to the contrary):
- (a) where the Agreement is terminated, this includes the Member Information Schedule and all Service Schedules in effect;
 - (b) where a party terminates a Service Schedule and it is the only Service Schedule under which Services are being provided at that time, then the entire Agreement terminates;
 - (c) where a party terminates a Service Schedule and there is more than one Service Schedule in effect at that time under which Services are being provided, then (except for the terminated Service Schedule/s) the Agreement continues in relation to the remaining Service Schedule/s; and
 - (d) where a party terminates the Membership Services Schedule, then the entire Agreement also terminates (including all other Service Schedules in effect).
- 14.5 Each party shall use all reasonable endeavours to mitigate loss and damage it (and, in the case of a Member, any Related Entities) may suffer or incur as a consequence of a suspension under clause 13 or termination under this clause 14.
- 14.6 On termination or expiry of:
- (a) a Service Schedule – You must cease use of and not thereafter use, and must ensure all Related Entities (and Your and their Personnel) cease use of and do not thereafter use, AusCERT's Confidential Information or the Services provided under that Service Schedule or any AusCERT Materials provided in relation to those Services;
 - (b) the Agreement – You must cease use of and not thereafter use, and must ensure all Related Entities (and Your and their Personnel) cease use of and do not thereafter use, AusCERT's Confidential Information or any Services or AusCERT Materials provided under the Agreement; and
 - (c) the Agreement or any Service Schedule – all amounts payable under the Agreement (in the case of termination of the entire Agreement), or payable in relation to the Service Schedule (in the case of termination of just the Service Schedule), at that time but not then due (for example, amounts invoiced but not yet due or to be invoiced for Services provided prior to termination) become immediately due and payable and must be promptly paid by You.

15. LOGO

- 15.1 You must not without AusCERT's prior written consent use the AusCERT or any other University of Queensland logo, name or trade mark in any public statement or external publication or media or for any promotional or other marketing purposes.
- 15.2 You agree to allow AusCERT to use Your name, logo and trade mark in external publications relating to AusCERT unless specified otherwise in the Membership Services Schedule.

16. GENERAL

- 16.1 Each party enters the Agreement as independent contractor. Nothing in the Agreement creates any other relationship between the parties, including any relationship of partnership, agency, trust or joint venture. Nothing in the Agreement shall constitute or deem an employee of one party to be an employee or the responsibility of the other party.
- 16.2 You remain responsible for the acts and omissions of Your Personnel, any Related Entities and their Personnel in connection with the Services or the Agreement (whether lawful or otherwise), and You are deemed to breach the Agreement where any act or omission of Your Personnel, any Related Entity or their Personnel would breach the Agreement if that person was You.
- 16.3 The parties agree that the Agreement comprises the entire agreement between AusCERT and You in respect of the provision of the Services and supersedes all prior representations, arrangements and understandings in relation to the

subject matter of the Agreement. For clarity, You agree that Your entry into the Agreement will terminate any prior agreement in place between You and AusCERT in relation to the supply by AusCERT of similar services.

- 16.4 To the extent of any ambiguity or other inconsistency between any one or more of the following, then the following will prevail in descending order of precedence:
- (a) Special Conditions in the Membership Services Schedule;
 - (b) Special Conditions in any other Service Schedule referred to in paragraph (g) of this clause;
 - (c) these AusCERT Membership and Services Terms;
 - (d) the AusCERT Membership Price Schedule;
 - (e) the Membership Services Schedule (except for its Special Conditions, if any);
 - (f) the applicable Service Description(s) for the Membership Services Schedule;
 - (g) any Service Schedules (except for their Special Conditions, if any, and the Membership Services Schedule) which have been added to the Agreement as contemplated in clauses 2.4, 2.5 and 2.6;
 - (h) all applicable Service Descriptions for Service Schedules referred to in paragraph (g) of this clause;
 - (i) all AusCERT Policies applicable to these AusCERT Membership and Services Terms or any Services; and
 - (j) the Member Information Schedule.
- 16.5 Except as set out to the contrary in these AusCERT Membership and Services Terms or any Special Conditions, the Agreement may only be varied by written agreement between the parties.
- 16.6 AusCERT may subcontract the whole or any part of the Services at any time, however AusCERT will remain responsible for the performance of the Services under the Agreement.
- 16.7 AusCERT may assign its rights, or novate its rights and obligations, under the Agreement to a third party ("**Assignee**"), subject only to AusCERT giving 20 Business Days prior written notice to You and the Assignee assuming all rights and obligations of AusCERT under the Agreement. For clarity, the Assignee shall not amend any aspect of the Agreement, including the Fees payable, except as allowed under the Agreement.
- 16.8 You must not assign Your rights, or novate Your rights and obligations, in whole or in part, under or in connection with the Agreement without obtaining the prior written consent of AusCERT.
- 16.9 If and when AusCERT requests, You agree to take all reasonable steps and execute all documentation reasonably necessary to give effect to clause 16.7.
- 16.10 The parties acknowledge and agree that information relating to the Agreement is potentially subject to disclosure to third parties under the *Right to Information Act 2009 (QLD)* and any such disclosure will not constitute a breach of any obligation under or in connection with the Agreement.
- 16.11 The parties acknowledge and agree that any information transferred between them that contains Personal Information as defined in the *Information Privacy Act 2009 (QLD)* must only be dealt with in accordance with the requirements of that Act and any other State or Commonwealth laws relating to privacy which apply from time to time and which the parties are required by law to comply with.
- 16.12 Notices must be in writing and may be delivered by prepaid postage, by hand or by email to a party's address for notices, in the case of the Member as specified in the Membership Services Schedule (or such other addresses as notified by the Member from time to time, including in any updated Member Information Schedule), and in the case of AusCERT as specified below:
- Email address: membership@auscert.org.au
- Postal Address: AusCERT
University of Queensland
St Lucia QLD 4072 Australia
- 16.13 A notice under the Agreement takes effect from the time it is received, unless a later time is specified in it. Notices will be deemed to be received (subject to proof to the contrary):
- (a) three Business Days after deposit in the mail with postage prepaid;
 - (b) immediately upon delivery by hand; and
 - (c) immediately upon receipt of an email by the recipient's email system.
- If as a consequence of a notice being received time starts to run in relation to something a party must or must not do in relation to the notice then, if the notice is received or deemed received after 5:00pm on a Business Day, the notice will be deemed to be received at 9:00am on the next Business Day.

- 16.14 If the whole or any part of a provision of the Agreement is void, unenforceable or illegal in any jurisdiction it is to be read down so as not to be and if it cannot be so read down then it is deemed severed. The remainder of the Agreement has full force and effect and the validity or enforceability of that provision is not affected in any other jurisdiction. This clause has no effect if the effect of such reading down or severance fundamentally alters the nature of the Agreement or is contrary to public policy.
- 16.15 No rights under the Agreement shall be deemed to be waived except where the waiver is in writing and is signed by each party. A waiver by a party shall not prejudice its rights in respect of any subsequent breach of the Agreement by the other party. Any failure by either party to enforce any clause of the Agreement or any forbearance, delay or indulgence granted by either party to the other will not be construed as a waiver of any rights under the Agreement.
- 16.16 Termination or expiry of the Agreement for any reason does not affect any rights, obligations or remedies of the parties which accrued prior to such termination or expiry or which by their nature survive termination or expiry. Without limiting the foregoing, clauses 8, 10, 11, 12, 14.3, 14.5, 14.6, 15, 16 (including this clause 16.16) and clauses 17, 18 and 19 survive the termination or expiry of any Service Schedule and this Agreement.
- 16.17 Each party must bear its own legal and other costs and expenses relating directly or indirectly to the negotiation and preparation of the Agreement.
- 16.18 The Agreement is governed by and will be construed in accordance with the laws of the State of Queensland, Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of Queensland and any federal and appeal courts.
- 16.19 Without limiting the parties' ability to enter an agreement via means other than signature, including by the electronic acceptance of terms, any document that requires execution, or may be executed, under the Agreement ("**Agreement Document**") may be signed in counterparts which together shall constitute the Agreement Document. Each counterpart, when executed and delivered, shall constitute an original of the Agreement Document, and all the counterparts shall together constitute the same Agreement Document. In the event that any signed counterpart is delivered intact and in legible form by facsimile transmission or by e-mail, such signed counterpart shall create a valid and binding obligation as if it were the original.

17. DEFINITIONS

"Additional Fees"	means the fees and charges for Additional Services payable by the Member under the Agreement in such amounts as agreed or, absent agreement prior to performance, in such amounts as specified by AusCERT.
"Additional Services"	means services, other than the Services set out in the Service Schedules, which the Member may request AusCERT to perform from time to time in accordance with clause 2.13.
"Agreement"	means the agreement between AusCERT and the Member comprising the following: <ul style="list-style-type: none"> (a) these AusCERT Membership and Services Terms; (b) Service Schedules (including the Membership Services Schedule) which have been added to the agreement as contemplated in clauses 2.4, 2.5 and 2.6; (c) Service Descriptions applicable to Service Schedules referred to in paragraph (b); (d) AusCERT Policies; and (e) the Member Information Schedule (including as updated subject to and in accordance with clause 3).
"AusCERT"	means The University of Queensland (ABN 63 942 912 684) a statutory body established pursuant to the <i>University of Queensland Act 1998</i> (Qld), trading as AusCERT.
"AusCERT Materials"	means Material provided by AusCERT in connection with the Services or the Agreement to You, Your Personnel or any Related Entity or their Personnel. To avoid doubt, Material 'provided' by AusCERT to such persons includes AusCERT making it available to such persons, including via websites, email, SMS, data feeds and other means.
"AusCERT Membership and Services Terms"	means this document.
"AusCERT Membership Price Schedule"	means a document identified as such in the form published (including as updated) by AusCERT from time to time via the AusCERT Website, which sets out fees for Membership Services.
"AusCERT Policy"	means a policy related to the Services that is published by AusCERT from time to time via the AusCERT Website. For clarity, there may be more than one AusCERT Policy that applies to a given Service.
"AusCERT Website"	means the website in the form accessible from time to time from www.auscert.org.au or any replacement website address as notified to You in writing by AusCERT from time to time.

"Business Day"	means a day on which banks are open for general business banking in the Brisbane central business district (not being a Saturday, Sunday or public holiday in that place) and, in relation to any obligation of AusCERT, excluding the days between 25 December in a given year and 1 January in the following year.
"Confidential Information"	<p>means information that:</p> <ol style="list-style-type: none"> is by its nature confidential; is designated as confidential prior to disclosure; the other party knows or ought to know is confidential; or contains an information handling label that indicates disclosure is restricted. <p>Confidential Information of a party ("Disclosing Party") does not include information that:</p> <ol style="list-style-type: none"> is or becomes part of the public domain otherwise than by breach of the Agreement or other obligation of confidence; the other party can show, to the reasonable satisfaction of the Disclosing Party, was known to the other party prior to disclosure to it by the Disclosing Party; or the other party can show, to the reasonable satisfaction of the Disclosing Party, was subsequently developed or obtained by the other party without knowledge of, reference to or reliance upon the Disclosing Party's Confidential Information and without a breach of confidentiality by any person. <p>The disclosure of Confidential Information by a Disclosing Party includes a person gaining access to the Disclosing Party's Confidential Information with or without the knowledge of the Disclosing Party.</p>
"Claim"	means any claim, demand, allegation or proceeding of any kind.
"Fees"	means the Service Fees and Additional Fees payable by the Member, or a third party on the Member's behalf, to AusCERT for the Services under the Agreement.
"Force Majeure"	<p>means any event, cause or circumstances which is not reasonably within the control of the party affected, including but not limited to:</p> <ol style="list-style-type: none"> any act of nature, fire, flood, storm, explosion, sabotage, riot, act of war, whether declared or not, or cable cut; any strike, lockout, work stoppage, or other industrial action; any failure or delay or other act or omission of a third party (including third party suppliers); any change to the law (including changes to, or new, legislation or other laws); or legislative or governmental restraint, expropriation, prohibitions, restrictions, or delays in the granting of approvals, consents, permits, licenses or authorities.
"Included Business Units"	means the parts of Your organisation that are specified as such in the Membership Services Schedule, as updated from time to time in accordance with the terms of the Agreement.
"Intellectual Property Rights"	includes copyright, trademarks, designs, patents, semiconductors or circuit layout rights, trade, or other propriety rights, or any rights to registration of such rights existing in Australia, or elsewhere, or protected by statute from time to time, whether created before or after the commencement of the Agreement.
"Loss"	means any loss, damage, cost, expense or liability, whether direct or indirect.
"Material"	means any or all data, documentation, communications or other information (including in electronic form) including but not limited to URL feeds, email and other alerts, newsletters, security archives, security advisories or updates, monitoring reports, educational courses, briefings and papers.
"Member" / "You"	means the legal entity identified as the 'Member' in the Membership Services Schedule.
"Member Data"	means data transmitted or received over a network by the Member or a Related Entity or stored in a computer owned by, or under the legitimate control of, the Member or a Related Entity, and includes any documentation, reports, files and electronic communications.
"Member Information"	means information (including data, documentation and electronic files) obtained by AusCERT from You, a Related Entity or Your or a Related Entity's Personnel in connection with the Agreement or Services (such as the information recorded on the Member Information Schedule). This includes information about the IP addresses and domains being monitored by AusCERT as part of the Services and the names, telephone numbers and email addresses of Member contacts.
"Member Information Schedule"	means a schedule entitled as such in the form issued or made available by AusCERT from time to time for the purposes of the Agreement for completion and submission to AusCERT, including that schedule as updated from time to time in accordance with clause 3.1.

“Member’s Network” / “Your Network”	means the collection of networked systems (hardware, software and devices) which are used by or on behalf of You or a Related Entity for the purposes of transacting Your or a Related Entity’s business.
“Membership Services”	means the services described in the Service Description entitled “Service Description – Membership Services” published on the AusCERT Website.
“Membership Services Schedule”	means a schedule entitled as such and in the form issued or made available by AusCERT from time to time for the purposes of the Agreement and which is duly completed by You and signed and submitted to AusCERT by You or Your authorised representative, specifying details of Your membership, including the legal entity entering into the Agreement as the Member, the number of Network Users, applicable membership Fees and, if applicable, any Special Conditions. To avoid doubt, this includes the schedule’s details as updated from time to time subject to and in accordance with clause 3.
“Network Users”	Subject to clause 7.2 and unless otherwise agreed in writing by the parties in the Membership Services Schedule, means all individuals that use a computer system connected to Your Network. Where you have specified Related Entities, Network Users will also include all individuals that use a computer system connected to any Related Entity’s network.
“Personnel”	In respect of a party or other entity, means the officers, employees, agents, advisors and contractors (including subcontractors) of that party or entity.
“Related Entities”	means the entities identified as such in the Membership Services Schedule submitted to AusCERT, including as updated from time to time in accordance with the terms of the Agreement.
“Schedule Term”	means, in respect of a particular Service Schedule, the period over which AusCERT will provide the Services under that Service Schedule, such period being as specified in that Service Schedule and any extension thereof under clause 1.6 (and if the Service Schedule does not expressly state the term over which AusCERT will provide the Services, then the first Schedule Term is a period of 12 months starting from the day the Service Schedule was first added to the Agreement as contemplated in clauses 2.4, 2.5 and 2.6).
“Services”	means the services supplied by AusCERT to You under the Agreement, as specified in the Service Schedule(s) and as described in the relevant Service Descriptions.
“Service Description”	means a document in the form published by AusCERT from time to time via the AusCERT Website (which may include an AusCERT webpage or other electronic document) which is referred to in a Service Schedule and which describes the service(s) applicable to the Service Schedule.
“Service Fees”	means the consideration for the Services payable by the Member under the Agreement, as specified in the Service Schedules.
“Service Schedule”	means a document (including a Membership Services Schedule) in the form issued by AusCERT from time to time which is identified as being a service schedule (or services schedule) for the purposes of the Agreement and which (among other things) specifies the Services to be provided by AusCERT, Fees payable by the Member (if any) and any Special Conditions (if any) relation to those Services. To avoid doubt, this includes any such service/s schedule completed and signed by or on behalf of a Member, submitted to AusCERT and which has been added to the Agreement as contemplated in clauses 2.4, 2.5 and 2.6.
“Special Conditions”	means additional terms set out in the ‘Special Conditions’ section of a Service Schedule that has been signed by both AusCERT and the Member.
“Third Party Providers”	means a third party that provides (including through other third parties) an application or other product or service used by AusCERT for or in connection with the Services or the Agreement.
“Term”	has the meaning given in clause 1.3.

18. INTERPRETATION

In the Agreement, unless the context otherwise requires:

- (a) a word denoting the singular includes the plural and vice versa;
- (b) a word denoting an individual or person includes an individual, a body corporate, partnership, trust, unincorporated body, firm, authority, statutory body, government body and other entities recognised by law;
- (c) where a party comprises two or more persons, an agreement or obligation to be performed or observed by that party binds those persons jointly and severally and a reference to that party includes a reference to any one or more of those persons;
- (d) a reference to a party or person includes that party or person’s executors, administrators, substitutes, successors and permitted assigns;
- (e) a reference to a statutory body or authority includes reconstructed or replacement bodies or authorities with substantially the same functions relevant to the subject matter of the Agreement;

- (f) a word denoting one gender includes all genders;
- (g) a reference to a Member Information Schedule, a Service Schedule, a Service Description or an AusCERT Policy, includes any annexures or other attachments (if any) to those documents;
- (h) a reference to a clause or section in a document comprising the Agreement is a reference to a clause or section of that document unless another document is specified;
- (i) a reference to the Agreement or a document is a reference to the Agreement or that document (and, where applicable, any of its provisions) as varied, novated, supplemented or replaced from time to time;
- (j) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (k) an agreement, representation, indemnity or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (l) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;
- (m) the words 'includes', 'such as' and 'for example' (and their other grammatical forms) are not to be read as words of limitation;
- (n) headings are for convenience of reference only and do not affect interpretation; and
- (o) if any day appointed or specified by the Agreement for the payment of any money or the doing of any act, matter or thing falls on a day which is not a Business Day, the day so appointed or specified shall be deemed to be the next day which is a Business Day.

19. GST

19.1 Consideration GST exclusive

Unless expressly stated otherwise in the Agreement, all amounts payable or consideration to be provided under it are exclusive of GST.

19.2 Payment of GST

If GST is payable on any supply made under the Agreement, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:

- (a) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note;
- (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and
- (c) this clause 19.2 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.

19.3 Reimbursements

If a party is required under the Agreement to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

19.4 Calculation of payments

If an amount payable under the Agreement is to be calculated by reference to:

- (a) the price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
- (b) the price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.

19.5 Interpretation

For the purposes of this clause 19:

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 19;
- (b) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.