

DEVICIE SAAS AGREEMENT

GENERAL TERMS AND CONDITIONS

Thank you for visiting our Devicie SaaS Agreement - General Terms and Conditions, the most updated copy of which can always be found at <https://devicie.com/legal> (**Website**). The provisions below, together with any schedules incorporated by reference (together, the **General Terms**), will apply to all the Client's dealings with Devicie, including being incorporated in all agreements, quotations or purchase orders under which Devicie is to provide any goods or services to the Client (each an **Order Form**), including any additional terms set out in such Order Forms (provided such additional terms are recorded in writing).

1 ACCEPTANCE AND APPLICATION

- (a) The Client will be taken to have accepted the General Terms and any Order Forms (together, **this agreement**) if the Client accepts an Order Form, or if the Client orders, accepts or pays for any goods or services provided by Devicie after receiving or becoming aware of this agreement.
- (b) By agreeing to this agreement, the Client acknowledges and agrees that Devicie may amend this agreement at any time by providing 10 Business Day notice to the Client (**Notice Period**). The Client's continued use of the Solution following the Notice Period constitutes an acceptance of the updated terms and will represent the Client agreeing to be bound by this agreement as amended.
- (c) In the event of any inconsistency between the General Terms and any Order Form, the clauses of the General Terms will prevail to the extent of such inconsistency, except that any "Special Conditions" (being terms described as such in the Order Form) will replace and prevail over the General Terms to the extent of any inconsistency.

2 HOW TO READ THIS AGREEMENT

Capitalised words and phrases used in these terms and conditions have the meaning given:

- (a) to that word or phrase in an Order Form;
- (b) to that word or phrase in any schedules incorporated by reference;
- (c) by the words immediately preceding any bolded and bracketed word(s) or phrase(s); or
- (d) in the definitions in clause 24 of this agreement

3 TERM

- (a) This agreement commences on the Commencement Date.
- (b) The obligation of Devicie to provide the Solution and the Client's obligation to pay the Fees, commences on the Start Date and will continue for the Initial Term, and any Renewal Term applicable per clause 3(c), unless terminated earlier in accordance with clause 19 (**Term**).
- (c) Subject to clause 3(d), upon expiration of the Initial Term, this agreement will automatically renew on an ongoing basis for the Renewal Term.
- (d) This agreement will not automatically renew on expiry of the Initial Term or a Renewal Term (**Renewal Date**), if either party provides written notice that this agreement will not automatically renew at least 40 Business Days prior to the Renewal Date.
- (e) At least 50 Business Days prior to an applicable Renewal Date, Devicie will provide the Client with advanced written notice of the upcoming renewal and any applicable changes to the terms of this agreement in accordance with clause 9.2 (**Renewal Notice**).

4 THE SOLUTION

4.1 SCOPE OF SOLUTION

- (a) During the Term, Devicie will provide to the Client the Solution in accordance with this agreement.
- (b) Unless otherwise agreed, Devicie may, in its absolute discretion:
 - (i) not provide any part of the Solution until the Client has paid any fees or deposit payable in respect of such Services; and
 - (ii) withhold delivery of any part of or all of the Solution until the Client has paid the invoice in respect of the Solution.

4.2 HOSTED SERVICES

Devicie will store Client Materials using Microsoft Azure's third party hosting service (**Hosting Service**), subject to the following terms:

- (a) (**hosting location**) The Client acknowledges and agrees that Devicie uses storage servers to host the Solution through the Hosting Service's cloud-based services and where the service is available, we will host in Australia.
- (b) (**service quality**) While Devicie has chosen a reputable hosting provider in Microsoft Azure, Devicie does not guarantee that the Hosting Service will be free from errors or defects or that Client Materials will be accessible or available at all times.
- (c) (**security**) Devicie will use its best efforts to ensure that Client Materials are stored securely. However, Devicie do not accept responsibility or liability for any unauthorised use, destruction, loss, damage or alteration to Client Materials, including due to hacking, malware, ransomware, viruses, malicious computer code or other forms of interference.
- (d) (**backups and disaster recovery**) In the event that Client Materials are lost due to a system failure (e.g. a database or webserver crash), we will use our best efforts to ensure contingency. However, Devicie cannot guarantee that any backup will be available, or if available that such a backup will be free from errors or defects.

4.3 SUPPORT SERVICES

- (a) In consideration for the payment by the Client to Devicie of the Fees, Devicie must provide the Support Services to the Client during the Term.
- (b) Devicie will use its best endeavours to provide the Support Services in accordance with **Error! Reference source not found.**

4.4 ENHANCEMENTS

Devicie may from time to time, in its absolute discretion, install enhancements to the Solution, where such enhancements means any upgraded, improved, modified or new versions of the Solution (including any customisations made at the Client's request).

5 DEVICE LICENCE

5.1 INTEGRATION

- (a) Utilisation of the Solution is reliant on an integration of the Solution with the Client's Intune account via an Application Programming Interface (**API Integration**).
- (b) The API Integration will facilitate the functionality of the Solution in providing Devicie the required access to be able to deploy the management solution as required and perform regular checks for number of active Device Licences.
- (c) During the Term, the Client must assist in facilitating the execution and maintenance of the API Integration.

5.2 GRANTING OF LICENCE

- (a) Upon the Commencement Date, Devicie will coordinate with the Client to activate the relevant API Integration. This will trigger the activation and count of Device Licences on a

ratio of 1-to-1 with existing Intune licences assigned to users (**Number of Intune Licences**).

- (b) Device Licences remain active on an ongoing basis until the corresponding Intune licence held by the Client is terminated, or this agreement is otherwise terminated in accordance with clause 19.
- (c) The Client acknowledges and agrees that during the Term, the number of active Device Licences (**Number of Device Licences**):
 - (i) cannot be lower than the Number of Device Licences Minimum set out in an Order Form; and
 - (ii) subject to clause 5.2(c)(i), will be dependent on the Number of Intune Licences and can therefore increase or decrease from time to time.

6 DEVICIE OBLIGATIONS

6.1 CUSTOMER DATA

Devicie will:

- (a) establish, maintain, enforce and continuously improve safety and security procedures and safeguards against the unauthorised use, destruction, loss or alteration of Client Materials;
- (b) not make any undocumented, unreported or authorised configuration changes to Devicie's systems or to the information security controls that secure Client Materials, if those changes would materially decrease the protections afforded to Client Materials; and
- (c) notify and keep the Client notified at all times of Devicie's current safety and security procedures and safeguards that are made from time to time.

6.2 SECURITY BREACH

- (a) Devicie will notify the Client promptly after Devicie learns of any potential, actual or suspected loss, misappropriation or unauthorised access to, or disclosure or use of Confidential Information or other compromise of the security, confidentiality, or integrity of Confidential Information (collectively, **Security Breaches**).
- (b) Devicie will promptly investigate each potential, actual or suspected Security Breach and assist the Client and its Personnel in connection with any investigation that the Client may desire to conduct with respect to the Security Breach.
- (c) Devicie will work with the Client to limit, stop or otherwise remedy any potential, actual or suspected Security Breach.

7 CLIENT'S OBLIGATIONS

7.1 GENERAL OBLIGATIONS

During the Term, the Client must:

- (a) do all acts necessary to meet its obligations under this agreement;
- (b) provide Devicie with all documentation, information and access to the Client's IT System and Personnel as reasonably required for Devicie to provide the Solution; and
- (c) maintain the IT System and internet connection as necessary for Devicie to provide the Solution.

7.2 USE OF SOLUTION

- (a) The Client must, and must ensure that all Users, comply with this agreement at all times.
- (b) The Client must also ensure that all Users are made aware of, agree to and comply with the End User Licence Agreement prior to accessing the Solution.
- (c) The Client must not, and must not encourage or permit any User, Personnel or any third party to, without Devicie's prior written approval:

- (i) share their account information, including log in details or passwords, with any other person and that any use of an account by any person who is not the account holder is strictly prohibited;
 - (ii) use the Solution for any purpose other than for the purpose for which it was designed, including not using the Solution in a manner that is illegal or fraudulent or facilitates illegal or fraudulent activity;
 - (iii) use the Solution in a way which infringes the Intellectual Property Rights of Device or any third party;
 - (iv) make copies of the Documentation or the Solution;
 - (v) adapt, modify or tamper in any way with the Solution;
 - (vi) remove or alter any copyright, trade mark or other notice on or forming part of the Solution or Documentation;
 - (vii) create derivative works from or translate the Solution or Documentation;
 - (viii) publish or otherwise communicate the Solution or Documentation to the public, including by making it available online or sharing it with third parties;
 - (ix) sell, loan, transfer, sub-licence, hire or otherwise dispose of the Solution or Documentation to any third party, except in the course of granting a sub-licence to the Client's Personnel in the ordinary course of using the Solution;
 - (x) decompile or reverse engineer the Solution or any part of it, or otherwise attempt to derive its source code;
 - (xi) attempt to circumvent any technological protection mechanism or other security feature of the Solution; or
 - (xii) breach any applicable Laws (including any applicable privacy laws) in using the Solution.
- (d) The Client acknowledges and agrees:
- (i) that Device will have no liability for any act of a User for damage, loss or expense suffered by the Client or a User in connection with the use of the Solution and will indemnify Device for any such damage, loss or expense; and
 - (ii) to notify Device without delay whenever it becomes aware of any case of a breach of this clause 7 or otherwise any illegal or unauthorised use of the Solution.

8 IT SYSTEM INTEGRATION

- (a) The Client acknowledges and agrees that issues can arise when data is uploaded to software, when data is transferred between different software programs, and when different software programs are integrated together. Device cannot guarantee that integration processes between the Solution and the IT System will be free from errors, defects or delay.
- (b) The Client agrees that Device will not be liable for the functionality of the IT System, including any third party software, or for the functionality of the Solution if the Client integrates it with third party software, or changes or augments the Solution, including by making additions or changes to the Solution.
- (c) If the Client adds third party software or software code to the Solution, integrates the Solution with third party software, or make any other changes to the Solution (**Client Solution Changes**), then:
 - (i) the Client acknowledges and agrees that Client Solution Changes can have adverse effects on the Solution;
 - (ii) the Client indemnifies Device in relation to any loss or damage that arises in connection with the Client Solution Changes;
 - (iii) Device will not be liable for any failure in the Solution, to the extent such failure is caused or contributed to by a User Software Change;

- (iv) Devicie may require the Client to change or remove Client Solution Changes or allow Devicie to change or remove the Client Solution Changes, at Devicie's discretion, and if Devicie does so, the Client must act promptly;
- (v) Devicie may suspend the Client's access to the Solution until the Client has changed or removed Client Solution Changes; and/or
- (vi) Devicie may change or remove any Client Solution Changes, in its absolute discretion. Devicie will not be liable for loss of data or any other loss or damage the Client may suffer in relation to Devicie's amendment to, or removal of, any User Software Change.

9 CHANGES OR ADDITIONS TO THE KEY DETAILS

9.1 CHANGES DURING TERM

- (a) Where there are any changes or additions to an Order Form (including changes to the Solution but excluding changes to the Number of Device Licences) which alter the scope set out in an Order Form (whether at the Client's request or Devicie's suggestion) (**Changes**), the Client must pay a 'change in scope fee', in an amount reasonably determined by Devicie (**Change Fee**).
- (b) Devicie may also determine any other terms relating to the Change Fee, including the timing for which the Client will be invoiced for the Change Fee (**Change Fee Terms**).
- (c) Devicie will only be required to perform Changes, if:
 - (i) both parties agree in writing for Devicie to perform the Changes; and
 - (ii) the Client confirms in writing that they accept the relevant Change Fee and the Change Fee Terms.
- (d) Unless otherwise agreed in writing, the Change Fee will be charged in accordance with the Price List.
- (e) The same standards, warranties, and indemnities apply to the Changes as apply to the original Order Form.
- (f) For the avoidance of doubt, any change to an Order Form that is reasonably considered by Devicie to be a change in the scope of an Order Form, will be considered a Change.

9.2 CHANGES AT RENEWAL

- (a) Devicie may, from time to time, advise the Client by way of the Renewal Notice of any applicable changes to the terms of this agreement after a Renewal Date.
- (b) Such modification may be made for various reasons, including to account for changes to the Consumer Price Index as most recently published by the Australian Bureau of Statistics at the time, changes in the genuine costs incurred by Devicie to supply the Solution or modifications for the Client's benefit in receiving a discounted Device Licence Fee.
- (c) In the event the Client does not agree to the modification or does not otherwise wish to renew this agreement, the Client must give Devicie written notice within 10 Business Days of receiving the Renewal Notice (**Non-Renewal Notice**).
- (d) Upon Devicie receiving a Non-Renewal Notice, unless otherwise agreed in writing by the parties, this agreement will expire at the end of the then current Initial or Renewal Term.
- (e) In the event that the Client accepts the Renewal Notice in writing or does not otherwise respond within 10 Business Days of receiving the Renewal Notice, the Client will be deemed to have accepted the modification and this agreement will renew in accordance with clause 3(c).

10 THIRD PARTY TERMS AND CONDITIONS

The Client acknowledges and agrees that:

- (a) the Solution is reliant on third party providers and platforms, including Intune (**Third Party Services**);

- (b) use of the Solution is subject to the terms and conditions of such Third Party Services (**Third Party Terms**); and
- (c) Devicie will not be liable for any loss or damage suffered by the Client or its Users in connection with such Third Party Services and/or Terms.

11 PAYMENT

11.1 FEES

- (a) The Client must pay the Fees in the amounts, at the times and following the method set out in an Order Form and this agreement.
- (b) To the maximum extent permitted by law, any Fees paid in accordance with this agreement are non-refundable.

11.2 IMPLEMENTATION FEE

Where applicable, any Implementation Fee are payable in advance of receiving the Solution and prior to the Start Date.

11.3 SUBSCRIPTION FEES

- (a) Where an Order Form sets out the Payment Term as “Monthly Billing”, during the Term:
 - (i) this clause 11.3(a) shall apply and clause 11.3(b) does not apply;
 - (ii) the Device Licence Fee payable by the Client is in accordance with the Number of Device Licences; and
 - (iii) at the end of every calendar month:
 - (A) Devicie will determine the then current Number of Device Licences and calculate the applicable Device Licence Fee payable by the Client; and
 - (B) the Client must pay the applicable Device Licence Fee and Application Fees.
- (b) Where an Order Form sets out the Payment Term as “Upfront Payment”, during the Term:
 - (i) this clause 11.3(b) shall apply and clause 11.3(a) does not apply;
 - (ii) the Device Licence Fee and Application Fees shall be payable by the Client in advance of receiving the Solution and prior to the Start Date and any applicable Renewal Dates; and
 - (iii) **(Monthly True-up)** the Client acknowledges and agrees, during the Term:
 - (A) where the Number of Device Licences exceeds the Number of Device Licences Minimum, the Client must pay the Additional Device Licence Fee per additional Licence; and
 - (B) at the end of every calendar month, Devicie will determine the then current Number of Device Licences and calculate the applicable Additional Device Licence Fee payable by the Client for the upcoming month.

11.4 TIME FOR PAYMENT

Unless otherwise agreed in an Order Form, if Devicie issues an invoice to the Client, payment must be made:

- (a) by the time(s) specified on such invoice; or
- (b) if no time is specified, within 30 days of receiving an invoice from Devicie for amounts payable.

11.5 TAXES

- (a) Unless otherwise indicated, all amounts stated in this agreement are exclusive of all taxes (including any goods and services tax), levies, excises, duties and imposts payable in connection with this agreement whether in Australia or the jurisdiction in which the Client is located (**Taxes**).
- (b) If any Taxes are or become payable on a supply made under or in connection with this agreement, an additional amount is payable by the Client equal to the amount of Taxes payable on the relevant supply as calculated by Devicie, and subject to Devicie providing a tax invoice.

11.6 CARD SURCHARGES

Devicie reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

11.7 LATE PAYMENT

If the Client does not pay the Fees:

- (a) on or before the date it is due, Devicie may immediately cease providing the Solution;
- (b) within 60 after the date it is due, without limiting any of Devicie's other rights under these terms, interest will begin to accrue at a rate of 5% per annum, on each amount outstanding, accruing daily and compounding monthly, from the due date for payment to the date on which payment is received by Devicie, which the Client must pay Devicie;
- (c) within 90 days after the date it is due, Devicie may seek to recover the amount due by referring the matter to a collection agency; and
- (d) the Client must reimburse Devicie for any costs it incurs, including any legal costs, in recovering the amount due or enforcing any of its rights under this agreement.

12 INTELLECTUAL PROPERTY

12.1 CLIENT CONTENT

- (a) The Client grants to Devicie (and its Personnel) a non-exclusive, royalty free, non-transferable, worldwide and irrevocable licence to use the Client Materials to the extent reasonably required to provide the Solution.
- (b) The Client:
 - (i) warrants that Devicie's use of Client Materials as contemplated by an Order Form will not infringe any third-party Intellectual Property Rights; and
 - (ii) indemnifies Devicie from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of such infringement.

12.2 COMPANY IP

- (a) Unless otherwise expressly agreed in an Order Form, the Client will not under these terms or any Order Form acquire Intellectual Property Rights in any Devicie IP or Developed IP. Any Developed IP will be solely and exclusively owned by Devicie.
- (b) Devicie grants to the Client a non-exclusive, royalty free, non-transferable, worldwide and revocable licence to use Devicie IP and any Developed IP to the extent required for the Client to use, enjoy the benefit of or exploit the Solution.

12.3 DEFINITIONS

For the purposes of this clause 12:

- (a) **"Developed IP"** means any materials produced by Devicie in the course of providing the Solution including documentation, reports, data, designs, concepts, know-how, information, advice, opinions, emails, notes whether in draft or final form, in writing, provided orally, either alone or in conjunction with the Client or others, and any Intellectual Property Rights attaching to those materials.

- (b) “Devicie IP” means all materials owned or licensed by Devicie that is not Developed IP and any Intellectual Property Rights attaching to those materials.

13 CONFIDENTIALITY AND RESTRAINT

13.1 CONFIDENTIAL INFORMATION

The parties will not, during or after the Term, disclose Confidential Information directly or indirectly to any third party except:

- (a) with the other party's prior written consent;
- (b) as required by Law; or
- (c) to their Personnel on a need to know basis for the purposes of performing its obligations under this agreement (**Additional Disclosees**).

13.2 USE

A party may only use the Confidential Information of the other party for the purposes of exercising its rights or performing its obligations under this agreement.

13.3 RETURN

On termination of this agreement, both parties must promptly return or destroy all Confidential Information in its possession or control.

13.4 ADDITIONAL DISCLOSEES

Each party will ensure that Additional Disclosees keep the Confidential Information confidential on the terms provided in this clause 13. Each party will, when requested by the other party, arrange for an Additional Disclosee to execute a document in a form reasonably required by the other party to protect Confidential Information.

13.5 RESTRAINT

For the duration of this agreement, the Client must not employ or engage (or be knowingly involved in another employing or engaging) any officers or employees of Devicie with which the Client had contact during the course of an Order Form.

13.6 BREACH

If either party becomes aware of a suspected or actual breach of this clause 13 by that party or an Additional Disclosee, that party will immediately notify the other party and take reasonable steps required to prevent, stop or mitigate the suspected or actual breach.

14 PRIVACY

The Client agrees to Devicie handling all Personal Information it collects, uses and discloses in connection with this agreement in accordance with its Privacy Policy (located at <https://devicie.com/privacy-policy/>), which is incorporated into this agreement by reference.

15 WARRANTIES

15.1 CORRECTION OF DEFECTS

- (a) Devicie will correct any errors, bugs or defects in the Solution which arise during the Term and which are notified to Devicie by the Client unless the errors, bugs or defects:
 - (i) result from the interaction of the Solution with any other solution or any computer hardware or services not approved in writing by Devicie;
 - (ii) result from any misuse of the Solution; or
 - (iii) result from the use of the Solution by the Client other than in accordance with this agreement or the Documentation.

- (b) The Client agrees to provide Devicie and its Personnel reasonable access to the Solution to assist Devicie in correcting any defects in the Solution.

15.2 EXCLUSION OF OTHER WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in this agreement are excluded.
- (b) To the extent Devicie provides the Solution to, or performs any services for, the Client under this agreement (**Deliverables**), the Deliverables are provided on an “as is” basis and Devicie makes no warranty that the Deliverables will:
 - (i) be free or substantially free of errors, bugs, defects or viruses; or
 - (ii) operate without any significant downtime or other interruption.

15.3 NON-EXCLUDABLE TERMS

- (a) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Client may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.
- (b) Where any law implies a condition, warranty or guarantee into this agreement which may not lawfully be excluded by Devicie, then to the maximum extent permitted by applicable law, Devicie’s liability for breach of that non-excludable condition, warranty or guarantee will, at Devicie’s option, be limited to:
 - (i) in the case of goods, their replacement or the supply of equivalent goods or their repair; and
 - (ii) in the case of services, the supply of the services again, or the payment of the cost of having them supplied again.

16 LIMITATION OF LIABILITY

- (a) (**Limitation of liability**) To the maximum extent permitted by applicable law, Devicie limits all liability in aggregate of all claims to the Client (and any third parties who encounter the services or goods through the Client’s business) for loss or damage of any kind, however arising whether in contract, tort (including negligence), statute, equity, indemnity or otherwise, arising from or relating in any way to this agreement or any goods or services provided by Devicie to the total Fees paid to Devicie by the Client in the 3 months preceding the date of the first event giving rise to the relevant loss or damage (or, where there are multiple events, the date of the first such event).
- (b) (**Indemnity**) Both parties (**Indemnifying Party**) indemnify the other party and its Personnel in respect of all liability for any claim(s) by any person (including any third party who encounter the services or goods through the Client’s business) arising from the Indemnifying Party’s or their Personnel’s:
 - (i) breach of any term of this agreement; or
 - (ii) negligent, wilful, fraudulent or criminal act or omission.
- (c) (**Consequential loss**) To the maximum extent permitted by law, under no circumstances will either party be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue arising under or in connection with this agreement or any goods or services provided by Devicie (except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth)).

17 INSURANCE

- (a) Devicie warrants that:
 - (i) it will, during the Term, have and maintain:

- (A) public liability insurance of \$20,000,000 for and one claim or loss and in the annual aggregate;
 - (B) professional indemnity insurance of \$2,000,000 for any one claim or loss and in the annual aggregate; and
 - (C) cyber insurance of : \$1,000,000 for any one claim or loss and in the annual aggregate,
- (together, the **Insurance**); and
- (ii) the Insurance will be taken out with a reputable insurer to cover Devicie's obligations under this agreement.
- (b) Where requested by the Client, Devicie will provide written evidence of the currency of the Insurance.

18 MODERN SLAVERY

- (a) Both parties must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in performing their respective obligations under this agreement.
- (b) If at any time either party becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of its obligations under this agreement the relevant party must as soon as reasonably practicable take all reasonable action to address or remove these practices, including, where relevant, by addressing any practices of other entities in its supply chains.

19 TERMINATION

19.1 TERMINATION FOR CONVENIENCE

- (a) At least 120 days after the Commencement Date, either party may terminate this agreement for convenience at any time by providing 40 Business Days written notice to the other party (**Termination Notice**).
- (b) Where a Termination Notice is provided:
 - (i) the Client must pay Devicie the Fees on a pro-rata basis for the delivery of the Solution for 40 Business Days after the Termination Notice is provided; and
 - (ii) this agreement terminates 40 Business Days after Devicie is provided the Termination Notice (**Termination Date**).
- (c) Where the Client provides the Termination Notice, any upfront Fees paid by the Client are non-refundable.
- (d) Where Devicie provides the Termination Notice, Devicie will refund to the Client any Fees paid by the Client for goods or services not provided as at the Termination Date.

19.2 TERMINATION FOR CAUSE

- (a) Either party (**Non-Defaulting Party**) may terminate this agreement immediately by written notice to the other party (**Defaulting Party**) if the Defaulting Party, or its Users, are in breach of this agreement and either:
 - (i) fails to remedy such breach within 14 days of receiving notice from the Non-Defaulting Party requiring it to remedy such breach; or
 - (ii) that breach is not capable of remedy.
- (b) Where the Client terminates this agreement under this clause 19.2, Devicie will refund any Fees paid by the Client for goods and services not provided as at the date of termination.

19.3 GENERAL EFFECT OF TERMINATION

Upon termination of this agreement:

- (a) the Client must pay all remaining Fees due under this agreement, including any Fees due in accordance with clause **Error! Reference source not found.** or 19.1;
- (b) all Device Licences granted under this agreement are terminated;
- (c) the Client and its Users will no longer have access to the Solution or any Client Materials Device will not be responsible to the Client or its Users for, and expressly disclaim any liability for, any cost, loss, damages or expenses arising out of the Client or its Users no longer being able to access the Solution or Client Materials as a result of termination;
- (d) the Client must maintain the API Integration for 10 Business Days after termination to allow for Device to remove the Solution and its Materials from the IT System;
- (e) each party must return all property of other parties to those respective parties;
- (f) each party must immediately return to each other party, or (if requested by that party) destroy, any documents in its possession or control containing Confidential Information of the other party; and
- (g) no rights, liabilities or remedies of any party will be invalidated by the termination.

19.4 ACCRUED RIGHTS AND LIABILITIES

The expiration or termination of this agreement will not prejudice any accrued rights or liabilities of either party, nor excuse either party from a breach of this agreement occurring prior to expiration or termination of this agreement.

19.5 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this agreement will survive and be enforceable after such termination or expiry.

20 DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory injunction, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

21 NOTICES

- (a) A notice or other communication to a party under this agreement must be:
 - (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in this agreement, or if no email address is specified in this agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this agreement, in which case the notice will be taken to be given on the next occurring business day in that state or territory; or
 - (ii) when replied to by the other party,
 whichever is earlier.

22 FORCE MAJEURE

- (a) If a party (**Affected Party**) becomes unable, wholly or in part, to carry out an obligation under this agreement (other than an obligation to pay money) due to a Force Majeure Event, the Affected Party must give to the other party prompt written notice of:
 - (i) reasonable details of the Force Majeure Event; and
 - (ii) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.
- (b) Subject to compliance with clause 22(a) the relevant obligation will be suspended during the Force Majeure Event to the extent that it is affected by the Force Majeure Event.
- (c) The Affected Party must use its best endeavours to overcome or remove the Force Majeure Event as quickly as possible.
- (d) For the purposes of this agreement, a 'Force Majeure Event' means any:
 - (i) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
 - (ii) strikes or other industrial action outside of the control of the Affected Party;
 - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic, pandemic; or
 - (iv) any decision of a government authority in relation to COVID-19, or any threat of COVID-19 beyond the reasonable control of the Affected Party, to the extent it affects the Affected Party's ability to perform its obligations.

23 GENERAL

23.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in New South Wales, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

23.2 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

23.3 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

23.4 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

23.5 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

23.6 COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

23.7 COSTS

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

23.8 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

23.9 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to “person” or “you” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word “includes” and similar words in any form is not a word of limitation;
- (j) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- (k) **(currency)** a reference to \$, or “dollar”, is to Australian currency, unless otherwise agreed in writing.

24 DEFINITIONS

In this agreement, capitalised terms have the meaning given to them in an Order Form, and the following phrases have the meaning set out below.

Term	Definition
Business Day	Has the meaning given in the Order Form.
Change Fee	Has the meaning given in clause 9.1(a).
Commencement Date	The date the last party to sign the Order Form signs the Order Form.
Confidential Information	Information of or provided by a party that is by its nature is confidential information, is designated by that party as confidential, or that the other party knows or ought to know is confidential, but does not include information which is or becomes, without a breach of confidentiality, public knowledge.
Client Materials	Files, documents, data or any other Materials, which are uploaded or inserted to the Solution, or otherwise provided to Devicie, by the Client or

Term	Definition
	its User, including any Intellectual Property Rights attaching to those Materials.
Dependencies	The “Dependencies”, if any, set out in the Order Form.
Device Licence	A licence to the Solution for a particular device granted in accordance with clause 5.2.
Device Licence Fee	The amount payable by the Client for a Device Licence as set out in an Order Form.
Documentation	All manuals, help files and other documents supplied by Devicie to the Client relating to the Solution, whether in electronic or hardcopy form.
End User Licence Agreement	Means the end user licence agreement relating to the Solution which can be found at https://devicie.com/eula .
Fees	Any and all fees payable by the Client to Devicie, including any Device Licence Fees, Implementation Fee, Application Fees, Change Fee and/or Additional User Fees.
Intellectual Property Rights	All copyright, trade mark, design, patent, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this agreement both in Australia and throughout the world.
Intune	The Microsoft Corporation cloud-based mobile device management (MDM) and mobile application management (MAM) service.
IT System	Means the Client’s hardware, software, data communications lines, servers, network and telecommunications equipment and internet-related information technology infrastructure, including computers, laptops and phones.
Laws	Any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction(s) where a party performs its respective obligations under this agreement or the Solution is made or received and includes any industry codes of conduct.
Material	Tangible and intangible information, documents, reports, formulas, specifications, inventions, data and other materials in any media whatsoever.
Modern Slavery	Has the same meaning as it has in the <i>Modern Slavery Act 2018</i> (Cth).
Number of Device Licences	Has the meaning given in clause 5.2(c).
Number of Device Licences Minimum	The minimum Number of Device Licences as set out in an Order Form.
Order Form	Has the meaning given at the beginning of this Devicie SaaS Agreement - General Terms and Conditions.
Payment Method	The method of payment set out in an Order Form.
Payment Term	The option relating to the payment term as set out in an Order Form.
Personal Information	Information or an opinion about an identified individual, or an individual who is reasonably identifiable: <ul style="list-style-type: none"> (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not.

Term	Definition
Personnel	In relation to a party, its representatives, employees, secondees, agents and subcontractors, including employees and contractors of subcontractors.
Price List	The table of fees payable for certain components of the Solution as set out in the Order Form.
Renewal Date	Has the meaning given in clause 3(c)
Solution	The goods and services to be provided to the Client by Devicie as set out in an Order Form.
Success Criteria	The "Success Criteria", if any, set out in the Order Form.
User	The Client, it's Personnel and any other third party who is a user of the Solution who has been granted access by the Client.