



## **SERVICE LEVEL AGREEMENT**

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**DATAQUEST PTY LTD (ABN 73 607 655 746)**

**and**

**All DataQuest / DataQuest Digital Customers**

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**BACKGROUND**

- A. DataQuest is a supplier of information technology managed and support services.
- B. The Client wishes to procure the services of DataQuest.
- C. The Parties have agreed that DataQuest will supply the services to the Client.
- D. The Client agrees to comply with this Agreement when requesting Support Services from DataQuest.

**OPERATIVE PARTS****1. DEFINITIONS AND INTERPRETATION**

1.1 Unless otherwise defined herein or the context otherwise requires, capitalised terms used in this Agreement will have the meanings given to them in the Terms and Conditions. In this Agreement:

**"After Hours"** means hours which are outside the Business Hours;

**"Client Environment"** means the computing environment of the Client including all hardware, software, IT and telecommunications services and systems;

**"Business Day"** means a day which is not a Saturday, Sunday, public or bank holiday in New South Wales;

**"Business Hours"** means the time of 8am to 5pm on a Business Day;

**"Change of Control"** means a change in:

- (a) control of the composition of the board of directors of a corporation;
- (b) control of more than half the voting rights attaching to shares in a corporation;
- (c) control of more than half the issued shares of a corporation (excluding any share which carries no right to participate beyond a specified amount in the distribution of either profit or capital);  
or
- (d) control as defined in the *Corporations Act 2001* (Cth);

**"Claim"** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise;

**"Commencement Date"** is set out in the Proposal or Schedule 1;

**"Consequential Loss"** means any loss of actual or anticipated profits, loss of revenue, loss of opportunity or customer, loss of goodwill and loss of reputation;

**"Data"** means all of the information, documents and other data provided by Client or their Personnel to DataQuest or otherwise accessed by DataQuest in providing the Support Services;

**"End Date"** is set out in the Proposal or Schedule 1;

**"Equipment"** means any equipment used or supplied by a Party to enable the supply of Support Services;

**"Escalation Procedure"** means the DataQuest procedure applied, subject to each Escalation Level, to resolve each Support Request;

**"Excluded Item"** is set out in Item 2 Schedule 1;

**"Excluded Item Rate"** means the price per hour payable by the Client for DataQuest services which are not included in the Services at the date of this Agreement;

**"Escalation Level"** has the meaning set out in Schedule 3;

**"Force Majeure"** includes, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders of acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates;

**"Insolvency Event"** means any of the following events or any analogous event in which a Party:

- (a) disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- (b) ceases, or threatens to cease, carrying on business;

- (a) is unable to pay its debts as they fall due;
- (b) makes or commences negotiations with a view to making, a general re-scheduling of its indebtedness, a general assignment, scheme of arrangement or composition with its creditors;
- (c) takes any corporate action or any steps are taken or legal proceedings are started for:
  - (i) its winding-up, dissolution, liquidation, or re-organisation, other than to reconstruct or amalgamate while solvent on terms approved by the other party (which approval will not be unreasonably withheld); or
  - (ii) the appointment of a controller, receiver, administrator, official manager, trustee or similar officer of it or of any of its revenues and assets; or
- (d) seeks protection or is granted protection from its creditors, under any applicable legislation.

“**Loss**” means loss, damage, liability, charge, expense, outgoing, or cost, (including all legal and other professional costs on a full indemnity basis) of any nature or kind;

“**Maintenance**” means activities by DataQuest to provide normal software operation for the Developed Software or as required for the Support Services through updates, bug patches, fixes, work-around or such maintenance services as set out in the Proposal.

“**Onsite Support**” means Support Services provided DataQuest Personnel at the Site;

“**Personnel**” means in relation to a Party, any employee(s), contractor(s), officer(s) and agent(s) of that Party;

“**Related Body Corporate**” has the meaning given to that term in section 50 of the *Corporations Act 2001* (Cth);

“**Remote Support**” means Support Services provided by DataQuest via remote access to the Client Environment;

“**Resolution Targets**” is set out in Schedule 4;

“**Severity Level**” means the severity of the problem identified in a Support Services Request and is determined by the following criteria:

- (e) **High:** major feature or function failure in the Client’s production system resulting in in a major disruption of work and a workaround is not achievable within an acceptable period;
- (f) **Medium:** minor feature or function failure in the Client’s production system resulting in minor impact of work and an acceptable workaround can be deployed; and
- (g) **Low:** minor problems which produces a situation in which the Client’s production system is usable but there is some limited effect on functionality or general information, documentation and enhancement requests;

“**Site**” means the Client’s premises and facilities located at as set out in the Proposal or Schedule 1;

“**Support Hours**” has the meaning referred to in Schedule 2;

“**Support Request**” has the meaning referred to in clause 4.1(a);

“**Support Request Status**” means the status of the Support Services determined by the following criteria:

- (a) **New:** Client Personnel has successfully submitted and DataQuest has received the Support Request. The Support Request is assigned to, or pending assignment to, a DataQuest Personnel and DataQuest has not yet provided the Client Personnel with a response;
- (b) **In Process:** DataQuest Personnel is in contact with a Client Personnel regarding the Support Request and is pursuing a resolution in accordance with the Escalation Procedure;
- (c) **Pending:** DataQuest is not actively working to resolve the Support Request for reasons including but not limited to: (i) DataQuest is waiting for the Client Personnel to provide

additional information; or (ii) DataQuest will resolve the Support Request pending resolution of problems to the Developed Software; and

- (d) **Closed:** Where: (i) DataQuest and the Client Personnel submitting the Support Request agree that a satisfactory resolution has been provided; (ii) the problem is not a result of any defect in the Developed Software or a fault with which DataQuest can assist with; (iii) DataQuest Personnel has made reasonable number of attempts to contact the Client Personnel and the Client Personnel has not responded to such contact; or (iv) DataQuest reasonably determines that a response to an electronic Support Request (such as a Support Request submitted online or via email) contains sufficient information to address the Support Request; and

**“Support Services”** is set out in Item 1 Schedule 1.

## 1.2 Interpretation:

In this Agreement, unless expressed to the contrary:

- (a) words in the singular include the plural and vice versa;
- (b) headings are for convenience and do not affect the interpretation of this Agreement;
- (c) any gender includes the other gender;
- (d) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Agreement;
- (e) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (f) a reference to any legislation includes subordinate legislation and all amendments, consolidations or replacements from time to time;
- (g) if a word or phrase is defined in this Agreement then any other grammatical form of the word or phrase shall have a corresponding meaning;
- (h) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity;
- (i) “includes” and similar words mean includes without limitation;
- (j) no clause of this Agreement shall be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (k) a reference to a Party includes the Party’s legal personal representatives, successors, assigns and persons substituted by novation;
- (l) a reference to this or any other agreement includes the agreement, all schedules and annexures as novated, amended or replaced and despite any change in the identity of the parties;
- (m) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (n) a reference to time is to local time in New South Wales; and
- (o) a reference to “\$” or “dollars” refers to the currency of Australia from time to time.

## 2. PRIORITY OF DOCUMENTS

2.1 If there is any inconsistency between this Agreement, the Proposal, Terms and Conditions and any other document provided by either Party in connection with this Agreement, the following order of priority will apply:

- (a) the Proposal;
- (b) this Agreement; and
- (c) any other documents exchanged between the Parties.

## 3. SUPPORT SERVICES

3.1 DataQuest agrees to perform the Support Services including Maintenance as requested by the Client with due care and skill and in accordance with general industry standards during the period starting from the Commencement Date until the End Date.

- 3.2 DataQuest reserve the right to refuse any request in relation to the Support Services that it deems inappropriate, unreasonable or illegal.
- 3.3 The Parties agree that DataQuest will supply the Support Services to the Client on a non-exclusive basis.
- 3.4 DataQuest reserves the right to engage subcontractors to perform the Support Services on its behalf.

#### **4. SERVICE LEVELS**

- 4.1 During the Term, DataQuest will provide the Support Services in accordance with the Support Hours set out in Schedule 2 provided that:
- (a) the Client provides DataQuest with notice for applicable Support Services (**Support Request**) in accordance with DataQuest's Support Request procedure as set out in clause 5; and
  - (b) where required, the Client assists with investigating and ascertaining the cause of the fault and provides to DataQuest all necessary information relevant to the fault (including but not limited to what the Client has done in relation to the fault).

#### **5. SUPPORT REQUESTS PROCEDURE**

- 5.1 Unless otherwise agreed between the Parties, DataQuest will provide the client with a telephone number, email address and hyperlink to its website for the Client to use when requesting Support Services.
- 5.2 Each Support Request must:
- (a) set out in sufficient detail the type of Support Services requested and includes, where possible, specific example of the Service required;
  - (b) notify DataQuest of any specific assistance required; and
  - (c) identify the Client Personnel responsible for the Support Request.
- 5.3 Upon receipt of a Support Request, DataQuest will:
- (a) assign a Support Request Status and unique number to each Support Request received;
  - (b) specify the Severity Level of each Support Request; and
  - (c) update the Support Request Status for each Support Request within a reasonable period as required.
- 5.4 If DataQuest receives a Support Request outside of Support Hours, the Client agrees the timeframe for Response Targets will commence at the start of the Business Hours on the next Business Day.
- 5.5 DataQuest will follow the Escalation Procedure when responding to a Support Request in accordance with the Resolution Targets corresponding to the Severity Level.
- 5.6 DataQuest reserves the right to, at its discretion, change the Severity Level and the Escalation Level applicable to a Support Request. This change may be determined internally and without notice to the Client due to factors including but not limited to: (a) the Support Request relates to a critical system issue; (b) the complexity of the problem; or (c) DataQuest is unable to resolve a Support Request or provide a resolution within a reasonable period of time.
- 5.7 Upon completing the Support Services as required to close each Support Request and unless otherwise agreed between the Parties, DataQuest will, where applicable, document the response and incorporate the solution or workaround into the Developed Software's documentation.
- #### **6. ACCESS TO SITE, CLIENT ENVIRONMENT AND RELOCATION**
- 6.1 Subject to the terms of this clause, the Client will provide DataQuest with access to the Site and physical and remote access to the Client Environment to the extent reasonably required by DataQuest to perform the Support Services and its obligations under this Agreement.
- 6.2 DataQuest will access and use the Site and the Client Environment only when reasonably necessary to perform the Support Services during the Support Hours and in accordance with the Severity Level.

- 6.3 The Client must ensure its Site is a safe working environment to perform the Services.
- 6.4 The Client is responsible for providing any Equipment required for performance of the Services including desk space and phone for Onsite Services unless otherwise agreed by the Parties.
- 6.5 The Parties agree that any request by the Client to receive the Services at a location different from the Site will be considered a Variation and Variation Fee may apply. If DataQuest rejects the Variation, DataQuest may terminate this Agreement by providing written notice of 60 Business Days.

## 7. OUT OF SCOPE SERVICES

- 7.1 Any time incurred by DataQuest following a request by the Client: (a) for an Excluded Item; or (b) to diagnose or repair any error, default or malfunction that arises out of or in connection with any equipment, facilities, networks or systems not supplied by DataQuest or not forming part of the Support Services as determined by DataQuest, (collectively **Out of Scope Service Request**) will be billed to the Client in accordance with the Excluded Item Rate.
- 7.2 Any expenses incurred in conjunction with an Out of Scope Service Request will be charged to the Client on the basis of the actual costs incurred by DataQuest.
- 7.3 DataQuest is not required to provide any element of the Support Services After Hours unless otherwise agreed between the Parties and the Client pays the applicable Fees for such Services.
- 7.4 If the Client requires any element of the Support Services After Hours, the Parties agree that:
- (a) the Client relationship manager as referred to in clause 8.1 will communicate the After Hours Request to the DataQuest relationship manager via telephone, email or otherwise (**After Hours Request**);
  - (b) any agreement by DataQuest to perform the After Hours Request will be communicated via telephone, email or otherwise; and
  - (c) the After Hours Request will be provided at the Excluded Item Rate.

## 8. COMMUNICATION

- 8.1 Each Party will appoint and maintain at all times a relationship manager who will be responsible for the day to day management of this Agreement.
- 8.2 The details of each Party's relationship manager as at the date of this Agreement are set at the start of this Agreement. A Party may change its relationship manager, or the contact details for that Party's relationship manager by giving notice to the other Party.
- 8.3 The Parties' respective relationship managers will meet from time to time to ensure the appropriate and efficient management of this Agreement.

## 9. PAYMENT

- 9.1 All Fees associated for the Support Services will be managed in accordance with Schedule 1.
- 9.2 If there is a Variation including a request for an Excluded Item, DataQuest will include the Variation Fees due and payable for the Variation performed in any tax invoice subsequent to the performance of any Variation.
- 9.3 If the Fees are to be paid by way of tax invoice, the Client will pay that invoice in accordance with its terms without any set off or delay.

## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 A Party's ownership of, or any right, title or interest in, any Intellectual Property Rights in an item which exists prior to the Commencement Date (**Pre-Existing Material**) will not be altered, transferred or assigned by virtue of this Agreement.
- 10.2 The Client grants to DataQuest a non-exclusive, royalty free, non-transferable and revocable licence to use any of the Client's Intellectual Property Rights including any Pre-Existing Material as reasonably required for DataQuest to provide the Support Services to the Client.

**11. DATA**

11.1 The Client agrees that DataQuest shall not be responsible for the integrity or existence of any Data on the Client's network or any individual computer of the Client. The Client agrees to indemnify and hold DataQuest harmless for the corruption or loss of any Data of the Client, or any Related Body Corporate, whether or not caused by the negligent or intentional conduct of DataQuest

11.2 In the event of termination of this Agreement the parties agree that:

- (a) any request by the Client with respect to Data not included in the Support Services will be an Out of Scope Request;
- (b) if accepted by DataQuest, any Out of Scope Request with respect to Data will be charged at the Excluded Item Rate.

**12. CLIENT RESPONSIBILITIES**

12.1 The Client must, at the Client's own expense:

- (a) provide all reasonable assistance and cooperation to DataQuest in order to enable DataQuest to supply the Support Services in an efficient and timely manner;
- (b) where the Support Services include Onsite Support Coverage, permit DataQuest's Personnel to have:
  - (i) reasonable access to the Site including parking on the Site or bear the reasonable costs for travel to and from the Site including any delay in accessing the Site and such delay is not attributable to DataQuest;
  - (ii) appropriate desk, office space and desk phone; and
  - (iii) internet access via a wireless or wired network.
- (c) permit DataQuest's Personnel to have reasonable access to the Client Environment for the purposes of supplying the Support Services including but not limited to:
  - (i) an active directory user account with local admin privileges;
  - (ii) VPN access and relevant system access;
- (d) ensure that DataQuest has full and unhindered access to any items of Equipment relevant to the Support Services during Business Hours or at such other times as agreed between the Parties;
- (e) make any changes to its current systems, software and hardware that may be required to support the delivery and operation of any Support Services; and
- (f) ensure that any Equipment is protected from power surges and is located in a suitable physical environment for the operation of the Equipment.

12.2 The Client is responsible for all use of the Support Services and must ensure that no person uses the Support Services:

- (a) to break any law or infringe any person's rights;
- (b) to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
- (c) in any way that damages, interferes with or interrupts the supply of the Support Services.

12.3 DataQuest does not make any warranty or representation as to the ability of the facilities or services of any other suppliers.

12.4 DataQuest is not liable for any failure in, fault with or degradation of the Support Services if that failure, fault or degradation is attributable to or caused by any failure of the facilities or services of any third parties.

**13. WARRANTIES**

13.1 Each Party warrants that:



- (a) it has the right, power, authority and entitlement to execute this Agreement and perform its obligations under this Agreement;
- (b) in entering into and performing its obligations under this Agreement it has not, and will not, be in breach of any relevant law or any obligation owed to another person;
- (c) there is no current, pending or threatened litigation, arbitration, investigation, inquiry or proceeding in which it is involved and that will or may have an adverse effect on its ability to comply with this Agreement; and
- (d) it has all necessary licences, approvals, permits and consents to enter into and perform its obligations under this Agreement.

13.2 DataQuest warrants that:

- (a) it and its Personnel has the requisite skill, ability and expertise to provide the Support Services; and
- (b) the provision of the Support Services will not infringe any Intellectual Property Rights of, or constitute a breach of any agreement with, any other person.

13.3 DataQuest excludes all express and implied conditions and warranties in relation to any goods and/or services except those conditions or warranties that cannot be excluded by law and DataQuest's liability under any such conditions or warranties is limited to, at DataQuest's option:

- (a) refunding the cost of the services;
- (b) resupplying the services; or
- (c) arranging to repair the outcome of the services.

**14. LIABILITY AND INDEMNITIES**

14.1 DataQuest's liability for any Loss or Claim in relation to any Support Services, will be limited the amount of the Fees paid by the Client to DataQuest in respect of the relevant Support Services.

14.2 Client Indemnities

The Client indemnifies and holds DataQuest and DataQuest's Personnel harmless in respect of any Losses or Claims suffered in connection with:

- (a) a fault or defect in any item of the Client's Equipment;
- (b) any breach of law by the Client or any breach of law arising out of any breach of this Agreement by the Client;
- (c) any negligent or fraudulent act or omission of the Client or the Client's Personnel;
- (d) any claim by any third party arising out of a breach of DataQuest of this Agreement;
- (e) any loss or corruption of, or alternation or damage to, the Client Data as a result of an act or omission of the Client or any of its Personnel;
- (f) DataQuest's failure to achieve a service level as a result of any act or omission of the Client or any of its Personnel; and
- (g) any death or injury to persons and any Loss and Claims to the real or personal property of the Client or a third party, caused or contributed by an act or omission of the Client.

14.3 In no event will a Party be liable to the other for any Consequential Loss or any other consequential, indirect, special, incidental or punitive damages, regardless of the form of action, whether in contract, tort, strict product liability or otherwise, even if advised of the possibility of such damages and even if the damages were foreseeable.

14.4 Each Party will hold the other harmless of any claims by third parties, including all costs, expenses and legal fees incurred therein, arising out of or in conjunction with performance under or breach of this Agreement.

**15. TERM AND TERMINATION**

- 15.1 This Agreement will commence on the date of signed Agreement and continue until the End Date unless terminated earlier in accordance with the terms of this Agreement.
- 15.2 The Client may terminate a service Agreement by giving at least 60 Business Days' notice to DataQuest if DataQuest is in breach (other than a trivial breach causing no material harm) of any provision of this Agreement and, where the breach is capable of remedy, DataQuest has failed to remedy the breach within a reasonable period of receipt of written notice from the Client describing the breach and calling for it to be remedied.
- 15.3 DataQuest may terminate this Agreement by giving at least 20 Business Days' notice to the Client if the Client is in breach (other than a trivial breach causing no material harm) of any provision of this Agreement and, where the breach is capable of remedy, the Client has failed to remedy the breach within a reasonable period (no more than 5 Business Days in the case of failure to pay money when due) of receipt of written notice from DataQuest describing the breach and calling for it to be remedied.
- 15.4 DataQuest may terminate this Agreement immediately by giving written notice if a Change of Control or an Insolvency Event occurs in relation to the Client.

**16. EVENTS FOLLOWING TERMINATION**

- 16.1 Upon termination of this Agreement, DataQuest will:
- (a) immediately stop performing the Support Services;
  - (b) immediately stop placing orders for supplies or services required in connection with the performance of the Support Services;
  - (c) immediately deliver to the Client all work in progress; and
  - (d) immediately return to the Client all property, including Confidential Information and Intellectual Property, in its possession that belongs to the Client.
- 16.2 Upon termination of this Agreement, the Client will:
- (a) immediately return to DataQuest all property, including Confidential Information and Intellectual Property, in its possession that belongs to DataQuest; and
  - (b) immediately pay DataQuest the Fees for all Support Services completed, any fees due and payable for Excluded Items incurred prior to termination, and any other amounts owing under this Agreement.
- 16.3 The expiry or termination of this Agreement for any reason will be without prejudice to any rights or liabilities which have accrued prior to the date of expiry or termination.
- 16.4 The provisions of clauses 9, 10, 14, 16 and 16.4 will survive the expiry or termination of this Agreement.
- 17. INSURANCE**
- 17.1 Each Party will effect and maintain:
- (a) public liability insurance in the amount of no less than \$10 million; and
  - (b) workers compensation insurance in accordance with all Laws.
- 17.2 Each Party will provide to the other party a certificate of currency for each insurance policy referred to in clause 17.1 on request.

**SCHEDULE 1 - SUPPORT HOURS**

The Support Hours for the Support Services DataQuest provides to the Client are set out in the Proposal and will vary subject to your payment of DataQuest's Service and Fees and the relevant Escalation Level.

Subject to the agreement, if the Client purchases the:

- 1) Standard Support Plan as set out in the Proposal, the Support Hours for the Escalation Procedure during Business Hours on each Business Day.
- 2) Enhanced Support Plan, Level 1 Support Services is available 24 hours a day, 7 days per week. Level 2 and Level 3 Support Services are available during Business Hours on each Business Day.

**SCHEDULE 2 – RESOLUTION TARGETS**

Subject to the Client’s purchase and payment of DataQuest Fees, DataQuest will use reasonable efforts to meet the resolution targets in accordance with the matrix set out below:

| <b>Severity Level</b> | <b>Standard Target Response</b> | <b>Enhanced Plan Target Response</b> | <b>Target Resolution</b> |
|-----------------------|---------------------------------|--------------------------------------|--------------------------|
| <b>High</b>           | 0-2 hour                        | 0-30 mins                            | Within 2 Business Days   |
| <b>Medium</b>         | 4-8 hours                       | 2-4 hours                            | Within 5 Business Days   |
| <b>Low</b>            | 5 Business Days                 | 5 Business Days                      | Within 10 Business Days  |