

Lodestone Solutions Pty Ltd

FULL Standard Terms and Conditions

Supply of Services

Standard Terms and Conditions for Supply of Services

1. Purpose

- 1.1. This document comprises the standard terms and conditions pursuant to which Lodestone Solutions Pty Ltd ABN 41 120 504 805 (“Lodestone”) agrees to supply its clients with its services (Standard Terms and Conditions) and incorporates terms that may be included in a Lodestone invoice (“Invoice”), Scope of Works and or a Licence Agreement (Licence).
- 1.2. The Client may accept these Standard Terms and Conditions by instructing Lodestone to provide the Services and or entering into a Licence Agreement.
- 1.3. This version of the Standard Terms and Conditions is applicable to all services supplied dated from 8 March 2018.

2. Definitions

- 2.1. “Client” means the party who engages Lodestone to provide the Services pursuant to these Standard Terms and Conditions;
- 2.2. “Confidential Information” means information regardless of how it is communicated including:
 - (a) the pricing of any services performed or to be performed under these Standard Terms and Conditions;
 - (b) trade secrets and or know-how;
 - (c) technical data and or specifications, commercial information, data and or ideas belonging to the person who has communicated the information (or someone with whom it has a business relationship) or relating to its/their business or affairs, the release of which could either be damaging to any of them or be advantageous to its/their rivals or to others; and
 - (d) any other information which a reasonable person would consider to be confidential having regard to the context in which the information was communicated to the receiving party, the circumstances surrounding the disclosure and the industry standards at the time of the disclosure;
- 2.3. “Fees” means, unless otherwise agreed, all Lodestone fees including but not limited to the fees set out in the Fee Schedule in force from time to time and with effect from the date of publication on our website;
- 2.4. “Fee Schedule” means the fee schedule to these Standard Terms and Conditions setting out the standard professional rates applicable from time to time;
- 2.5. “Intellectual Property” means all intellectual property of Lodestone including but not limited to computer systems and code developed by Lodestone, its related entities, partners, employees, staff or contractors, computer systems for which Lodestone acts as a reseller or agent, documents and information and training manuals produced by Lodestone, subject matter expertise and advice provided by Lodestone in the course of or in connection with providing the Services, copyright, trademarks (registered and unregistered);
- 2.6. “IPR” means all intellectual property rights arising by virtue of or in relation to copyright, database rights, patents, trade-marks (registered or unregistered), applications for any of the foregoing, trade secrets and know-how and any other similar rights in any country;
- 2.7. “Invoice” means an invoice for the purchase of Lodestone the Services and incorporates these Standard Terms and Conditions.

- 2.8. "Minimum Period" means 36 months from the date of these Standard Terms and Conditions;
- 2.9. "Module" means a part of the overall project that is typically set out prior to or during the course of Lodestone providing the Services pursuant to these Standard Terms and Conditions and partitions the project into identifiable, distinct and separate modules that are not necessarily contingent upon each other module and which are invoiced independently upon delivery.
- 2.10. "Scope of Works" means the settled scope of works setting out the work to be completed by Lodestone and agreed by the Client prior to the commencement of works and the provision of the Services. In circumstances where Lodestone's interpretation of the Scope of Works is inconsistent with the Client's interpretation, Lodestone's interpretation shall prevail and be deemed to be the correct interpretation;
- 2.11. "Services" means the IT and software services and or resulting products and or any other product Lodestone provides to the Client pursuant to these Standard Terms and Conditions and the Scope of Works including but not limited to, business consulting, business outsourced services, information technology consulting, project management, project assurance, software development, software systems support and related services;
- 2.12. "Term" means the period commencing from the date the Client provide instructions to Lodestone to provide the Services until the earlier of the expiration of the Minimum Period or until these Standard Terms and Conditions are terminated in accordance with clause 10;
- 2.13. "Lodestone" means Lodestone Solutions Pty Ltd ABN 41 120 504 805.

3. Interpretation

- 3.1. The clause headings in these Standard Terms and Conditions are for ease of reference only and are not intended to influence its meaning;
- 3.2. Any phrase that starts with 'including', 'in particular', 'for example', 'e.g.', 'such as' or any similar expression is just giving examples and is not a complete list and is not intended in any way to limit the term to the examples specified;
- 3.3. Where there is any discrepancy between terms contained in these Standard Terms and Conditions, the Licence or the Invoice, the terms shall prevail to the extent of any inconsistency in the following order of priority: Invoice, followed by the Licence terms and finally these Terms and Conditions.

4. Lodestone Services

- 4.1. Lodestone agrees to provide the Services pursuant to these Standard Terms and Conditions on a best endeavours basis and consistent with the Scope of Works.
- 4.2. Where the Client request variations to the Scope of Works, and Lodestone agrees at its sole discretion to provide additional Services to implement the variations, we reserve the right to charge the Client additional Fees at the professional standard rates specified in the Fee Schedule.
- 4.3. Lodestone shall:
- (a) provide personnel who have the required skill and expertise to provide the Services;
 - (b) provide the Services in a professional manner and conform to the standards generally observed in the industry for similar services;

- (c) provide the Services at such locations as the Client may reasonably require within the Sydney metropolitan area.

5. Confidential Information

- 5.1. The Client agrees to maintain the confidentiality of Confidential Information and shall not use or disclose the Confidential Information without obtaining the prior written consent of Lodestone unless such disclosure is compelled by law.
- 5.2. Lodestone may disclose the Client's Confidential Information to its group companies and to those of its officers, staff and professional advisors for the purpose of fulfilling its obligations under these Standard Terms and Conditions.
- 5.3. Clauses 5.1 - 5.3 survive termination or the expiration of these Standard Terms and Conditions until such time as the Confidential Information has lost its necessary quality of confidence other than as a result of a breach of clauses 5.1, 5.2 or 5.3, or a disclosure made by a third party in breach of any other obligation of confidence.

6. Client obligations

6.1. The Client agrees to:

- (a) observe all requirements and obligations imposed upon the Client under these Standard Terms and Conditions, by any Invoice the Licence or Scope of Works;
- (b) ensure that the Client's staff co-operate fully with Lodestone staff;
- (c) supply Lodestone staff with information and documents that they reasonably request within an acceptable timeframe that will not cause delay in the provision of the Services;
- (d) make available to such office and administrative facilities as are reasonably necessary for the proper performance of the Services while Lodestone are working at the Client's premises;
- (e) ensure that Lodestone staff are made aware of all health and safety, security and similar regulations applicable at such premises;
- (f) ensure that adequate security and virus checking procedures are in place in relation to any computer facilities which Lodestone personnel are provided access to;
- (g) arrange the timely and competent input of third parties where, in Lodestone's reasonable opinion, this is required in order to assist the resolution of a problem affecting the provision of the Services;
- (h) obtain all third party consents, licences and rights required in order to allow Lodestone to perform the Services;
- (i) at all times remain responsible for system administration, security, back-ups of data and information, restoration and recovery actions and must maintain adequate disaster recovery procedures (including but not limited to manual operations);
- (j) comply with all applicable Australian Privacy Principles and do all things necessary and required to protect private information as defined under the *Privacy Act 1988*;

- (k) assume liability for any failure or omission on the Client's part to perform the Client's obligations under these Standard Terms and Conditions and agree that Lodestone is not be responsible for any delay, cost increase or other consequences arising from that failure or omission;
- (l) ensure all appropriate insurances are in place including but not limited to public liability covering Lodestone staff when they attend the Client's site(s) for any matter(s) in relation to the business between the parties.

7. Fees and Expenses

- 7.1. The Client agrees to pay the Fees specified on the Invoice and invoiced monthly unless specified otherwise. Lodestone's professional standard rates quoted are for work at Lodestone offices or at the Client's site only. Work at other locations will be subject to reasonable travel expenses.
- 7.2. Payment of Fee, Invoices and expenses are due 7 days following the date of the Invoice. If the Client dispute the amount payable on the Invoice, the Client must inform Lodestone in writing no later than 5 days of the date of the Invoice and pay Lodestone any undisputed portion within the standard 7 day period. Lodestone will review the dispute and respond within 7 days.
- 7.3. The prices quoted on the Invoice are exclusive of GST and expressly stated in Australian Dollars unless otherwise indicated on the Invoice.

8. Human Resources Restraint

- 8.1. During the Term of these Standard Terms and Conditions and for an additional period of thirty six months beyond the Term, the Client agrees the Client will not directly or indirectly seek to employ or otherwise engage or commission the services of any Lodestone representatives, staff, employees or subcontractors; or those of our partner organisations or our suppliers.
- 8.2. Any waiver of this prohibition will only be effective if it is made in writing and signed by a Lodestone authorised representative and once the Client pays to Lodestone an amount equal to 12 months' basic salary for the relevant member of staff, or where the staff member is a subcontractor, 180 times the subcontract day-rate Lodestone paid them at the time the waver is granted, or were paying when they left the employment of Lodestone within the previous 6 months. The Client agrees this to be a genuine pre-estimate of the loss Lodestone would suffer in these circumstances.

9. Limitation of Liability

- 9.1. To the full extent permitted by law, Lodestone excludes all liability, and will not be liable, in respect of loss of data, interruption of business or any consequential, indirect or incidental damages or losses including but not limited to loss of profits, loss from business administration services or any other ancillary services.
- 9.2. To the full extent permitted by law, Lodestone excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in these Standard Terms and Conditions.
- 9.3. To the full extent permitted by law, Lodestone excludes all liability, and will not be liable for any loss or damage resulting from any delay in the delivery of the Services, however and for what any reason that delay occurs.
- 9.4. Lodestone's total aggregate liability for all claims relating to these Standard Terms and Conditions, howsoever arising (whether for negligence, breach of contract, or any case whatsoever) is limited to the Fee payable for the Module of work related to the claim and does not include any Fee otherwise payable for Services performed and provided for work that does not form part of any claim.

9.5. Where clause 9.4 is not enforceable, in the alternative, Lodestone's total aggregate liability for all claims relating to these Standard Terms and Conditions, howsoever arising (whether for negligence, breach of contract, or any case whatsoever) is limited to the Fee payable for Services performed pursuant to these Standard Terms and Conditions.

9.6. These Standard Terms and Conditions are to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions or obligations. If such legislation applies, to the extent possible, Lodestone limits its liability in respect of any claim to, at Lodestone's option:

(a) in the case of goods:

9.6.a.1. the replacement of the goods or the supply of equivalent goods;

9.6.a.2. the repair of the goods;

9.6.a.3. the payment of the cost of replacing the goods or of acquiring equivalent goods; or

9.6.a.4. the payment of having the goods repaired, and

(b) in the case of the Services:

(a) the supply of the services again; or

(b) the payment of the cost of having the services supplied again.

9.7. Lodestone shall not be liable for any Force Majeure event.

10. Termination

10.1. Either party may terminate these Standard Terms and Conditions by giving 30 days written notice to the other party.

10.2. Where the Client cancel or terminate these Standard Terms and Conditions pursuant to clause 10.1, the Client agrees to pay 80% of all fees that would have otherwise been payable had the Client not terminated or the balance of all outstanding Invoices for Services provided up to and including the day of termination, whichever is the greater amount which shall become immediately due and payable. The parties agree this termination fee is a fair representation of the costs and expenses Lodestone will incur, including but not limited to, lost time, resources and opportunity.

10.3. In the event Lodestone provides the Services, but the Client are of the view the works are not acceptable, the Client must detail in writing the inconsistencies with the Scope of Works up to the requisite stage of delivery. If the parties are not able to agree to remedy any actual inconsistencies up to the requisite stage of delivery within 14 days of such notice, Lodestone at its sole discretion may terminate the Services and the Client agrees to pay all outstanding invoices for work completed up to and including the date of termination.

10.4. Lodestone reserves the right to terminate the provision of Services at any time with immediate effect by giving the Client written notice if:

(a) the Client have committed a material breach of these Standard Terms and Conditions and, in the case of a breach which is capable of remedy, the Client fail to remedy that breach within 14 days of Lodestone's written request; or

- (b) an order is made or a resolution is passed for the Client's winding-up or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in respect of the Client; or
- (c) an order is made for the appointment of an administrator to manage the Client's affairs, business and property or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Client or notice of intention to appoint an administrator is given by the Client or the Client's directors or by a qualifying floating charge holder; or
- (d) a receiver is appointed of any of the Client's assets or undertaking or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager in respect of the Client or if any other person takes possession of or sells the Client's assets; or
- (e) the Client makes any arrangement or composition with the Client's creditors or make an application to a court of competent jurisdiction for the protection of the Client's creditors in any way; or
- (f) the Client ceases to trade.

10.5. Lodestone may terminate these Standard Terms and Conditions where the Client fails to pay any outstanding Invoices within 7 days of their due date and the Client does not remedy such failure within 10 days of notice of such non-payment.

10.6. Upon termination of these Standard Terms and Conditions, the Client agrees to pay all outstanding fees and invoices which become due and payable immediately.

10.7. Any terms of these Standard Terms and Conditions which are expressly or by implication intended to come into force or continue in effect on or after termination shall come into force or continue in effect as intended.

11. IPR

11.1. All Intellectual Property created by Lodestone in the course of providing Services to the Client under these Standard Terms and Conditions, including but not limited to improvements, variations and modifications, shall belong to Lodestone.

11.2. Lodestone retains the ownership and title in all Intellectual Property that results from the provision of the Services and such IPR shall not pass to the Client unless agreed in writing and signed by all parties and forms part or all of the Scope of Works and all outstanding Fees and Invoices are settled in full.

12. Acceptance

12.1. All Services and or other deliverables generated by Lodestone under these Standard Terms and Conditions shall be deemed to be complete and accepted by the Client upon delivery.

12.2. Payment of any and all outstanding fees and Invoices become due and payable upon delivery of the Services.

13. IPR Indemnity

13.1. The Client will not become the owner of any intellectual property which arises in connection with Lodestone providing the Services and or performing its obligations under these Standard Terms and Conditions, unless Lodestone grants such right in writing.

14. Warranties

- 14.1. Lodestone do not warrant that the provision of the Services consistent with the Scope of Works will deliver any specific product, service or outcome unless specified in the Scope of Works and then only to the extent specified.
- 14.2. Lodestone do not warrant that the provision of the Services will result in goods and services that operate error free, uninterrupted or otherwise fail as a result of a third party's interruption or service failure.
- 14.3. Lodestone do not warrant that it's Services will result in a product that is fit for the Client's particular purposes or will meet the Client's specific, unique or individual requirements, unless otherwise specified in the Scope of Works.
- 14.4. Within 10 days of the date of delivery of the Services, the Client agrees to comprehensively test the Services to ensure the operation is consistent with the Scope of Works and notify Lodestone any inconsistency in accordance with clause 14.5. Where the Client fails to conduct and record such testing in accordance with this clause, the Client agrees Lodestone is not liable for the inconsistency notwithstanding such inconsistency may not comply with the Scope of Works. The Client acknowledges early notice of inconsistency is of the essence.
- 14.5. In the event the Client makes a complaint within 10 days following delivery of the Services, Lodestone's sole obligation shall be to remedy the defect where and only where such defect is inconsistent with the Scope of Works. The remedy will take the form of eliminating such defect by an agreed date or demonstrating how to avoid the effects of the defect in a reasonable manner. The Client must provide Lodestone with all reasonable assistance and support in locating the defect and its cause by ensuring, among other things, the co-operation of the Client's staff, providing remote access to applications and the platform on which it functions and, providing as detailed a description of the defect. If Lodestone should fail to remedy the defect by that agreed date, any claim for any damages is governed by clause 9 and all other rights are excluded to the full extent permitted under the law.
- 14.6. Where Lodestone have carried out work in response to a complaint about the work but, upon investigation, the subject matter of the claim is not related to the Services provided pursuant to these Standard Terms and Conditions, the Client agrees to pay Lodestone for that investigative work and any restorative work pursuant to Lodestone's standard professional services rates contained in the Fee Schedule and reimburse at cost any travel and subsistence expenses incurred by Lodestone.
- 14.7. Lodestone warrants that Lodestone will provide the Services pursuant to these Standard Terms and Conditions with reasonable skill and care.
- 14.8. Lodestone makes no warranty or guarantee as to the ongoing availability of the Services. However should the Services become unavailable, we will seek to resume such availability on a best endeavours basis only. Lodestone does not accept any liability or obligation in respect to the Services availability. It is the Client's responsibility to maintain all necessary system and data backup adequate for the Client's requirements having regard to the possibility that Lodestone does not accept liability for the ongoing availability of the Services.

15. Indemnity

- 15.1. The Client agrees to fully indemnify and keep Lodestone fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including but not limited to legal fees) whatsoever incurred by Lodestone arising from any of the following:
 - (a) any data the Client provides to Lodestone in the course of Lodestone providing the Services that may become compromised under any circumstances whatsoever, including but not limited to confidential information protected under the *Privacy Act 1988*;
 - (b) the Client's material breach of these Standard Terms and Conditions;
 - (c) the Client's negligence;

- (d) the Client's use or misuse of any hosting environment;
- (e) the Client's infringing (whether or not knowingly) third party rights (including without limitation a third party's Intellectual Property Rights).

15.2. Lodestone agree to:

- (a) promptly notify the Client after Lodestone becomes aware of any claim,
- (b) not unreasonably delay notification that may materially prejudices the Client's rights;
- (c) give the Client authority to defend or settle the suit or claim; and
- (d) give the Client all information and cooperation that the Client may reasonably request concerning the suit or claim.

15.3. Lodestone provides the Client with the Services on an "as is" basis and will not be liable to the Client in Contract or tort or otherwise for any:

- (a) loss of profit, data, business contracts, revenues or anticipated savings, or
- (b) loss resulting from any claim made by any third party, or
- (c) special, indirect or consequential loss or damage of any nature whatsoever.

16. Liabilities Regarding the Environment

16.1. Lodestone shall have no liability to the Client for any loss arising from any material, data or instructions supplied whether digitally or otherwise by the Client or on the Client's behalf which is incomplete, inaccurate, illegible, out of sequence or in the wrong form or arising from late arrival or non-arrival or any other fault by the Client or on the Client's behalf.

16.2. Lodestone are not responsible for any delay, malfunction, non performance and/or other degradation of performance of the environment caused by or resulting from any alteration, modification and/or amendments due to changes and specifications requested or implemented by the Client.

16.3. Lodestone will not be liable to the Client in contract or tort for any:

- (a) loss of profit, data, business contracts, revenues or anticipated savings, or
- (b) loss resulting from any claim made by any third party, or
- (c) special, indirect or consequential loss or damage of any nature whatsoever.

17. Complaints Procedure

17.1. The Client agrees to notify Lodestone within 5 days of becoming aware of any matter of complaint in writing detailing the complaint ("Complaint"). Upon receipt of the Complaint, Lodestone will review the matter and use its best endeavours to resolve the Complaint with reference to these Standard Terms and Conditions or as otherwise agreed by the parties in writing.

17.2. Where the Complaint cannot be resolved within 14 days of the date of the Complaint, Lodestone shall request a meeting to be attended by the parties with a view to engaging in discussions to resolve.

17.3. Where the parties fail to meet resolution within 14 days of the meeting, the parties may agree to appoint a mediator to facilitate discussions within 7 days from the meeting. Where the parties fail to agree on the appointment of a mediator within the 7 days, either party may apply to the Law Society of New South Wales to appoint a mediator to proceed over discussions.

17.4. Where the parties fail to resolve the complaint at mediation, the parties may seek alternative remedies available to them at law.

17.5. Nothing in this clause 17 precludes the rights of the parties to obtain interlocutory relief.

18. General

18.1. These Standard Terms and Conditions and the Invoice(s) represent the entire agreement and understanding between the parties relating to the provision of the Services and replaces any previous agreement or understanding.

18.2. Subject to clause 18.1, the Client acknowledges that in entering into these Standard Terms and Conditions the Client have not relied on any representation or statement (written or oral) made by any person other than those actually set out on the Invoice, Scope of Work and in these Standard Terms and Conditions. The Client further acknowledges that, in respect of the representations and statements contained in this agreement, the Client's remedy shall be limited to breach of the terms of these Standard Terms and Conditions.

18.3. Lodestone reserves the right to amend these Standard Terms and Conditions at any time and upon publication on their website, the amendments will become immediately effective.

18.4. Without diminishing the effect of clause 18.3, no variation of these Standard Terms and Conditions shall be valid unless it is in writing and clearly states that it is intended to vary these Standard Terms and Conditions and is signed by authorised representatives of both parties.

18.5. A failure to exercise or a delay in exercising any right or remedy provided by these Standard Terms and Conditions or by law shall not amount to a waiver of that right or remedy. If any effective waiver is made, however, that waiver shall not amount to a waiver in respect of any other breach.

18.6. If any term of these Standard Terms and Conditions is or becomes invalid or unenforceable, that invalidity or unenforceability shall not affect the other terms of these Standard Terms and Conditions which shall remain in full force and effect.

18.7. If any term of these Standard Terms and Conditions is or becomes invalid or unenforceable but would be valid or enforceable if some part of it were deleted, the term in question shall apply with such modification as may be necessary to make it valid or enforceable.

18.8. No delay, failure or default in performing any obligation under these Standard Terms and Conditions shall amount to a breach if such breach arises from causes beyond the reasonable control of the person whose performance is affected. Notwithstanding anything in this provision, the Client will remain liable to pay all outstanding fees.

18.9. A notice issued pursuant to these Standard Terms and Conditions must be in writing and sent to the party's registered office. Any notice must be delivered personally or sent by registered pre-paid recorded delivery post. A notice will be deemed to have been served, at the time of delivery if delivered personally, or two days after posting if sent by registered pre-paid recorded delivery post.

18.10. The parties may not transfer or hold in trust any rights or obligations under these Standard Terms and Conditions without obtaining the prior written approval of the other party.

18.11. These Standard Terms and Conditions shall be governed by and interpreted in accordance with New South Wales Australian law and that the courts of New South Wales, Australia shall have jurisdiction in relation to any claim or matter arising under or in connection with these Standard Terms and Conditions or the legal relationship established between the Client and Lodestone by these Standard Terms and Conditions.

Fee Schedule

Standard professional rates as published at 8 March 2018

Resource		Hourly Rate*	
Senior Consultant Senior Developer Solution Architect Project Director		\$275.00	
Consultant Developer Project Manager		\$172.50	
Junior Consultant Tester		\$125.00	

*Rates are exclusive of GST