

Customer Agreement

This customer agreement is between 3 Crowns Technologies Pty Ltd (3CT) and the company specified in an order for products (customer). If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.

A legally binding agreement will be formed between 3CT and the customer upon 3CT's acceptance of an order placed by the customer.

1. Scope of this agreement

This agreement governs any purchase of Products by a Customer. This agreement incorporates these terms and conditions, the terms of each Order, any applicable SOW, any applicable Service Level Schedule and any other referenced documents, policies and attachments.

This agreement is a separate agreement from the agreement that 3CT has with its resellers, which can be found at https://www.3ctech.com.au/wp-content/uploads/2020/03/3CT_05-ResellerAgreement_21.10.19.pdf

2. Term

This agreement continues for the Term, unless terminated earlier in accordance with the provisions of this agreement.

3. Orders and Fulfillment

- (a) The Customer will submit an order to 3CT. 3CT will notify the Customer if an order is accepted, in which case such order will be deemed to be an approved Order and form part of this agreement.
- (b) Upon receipt and acceptance of a valid Order, 3CT will make available to the Customer the Products specified in an Order on and subject to the terms and conditions of the Order and this agreement.
- (c) If the Products include hardware 3CT will use commercially reasonable efforts to ship the hardware within the period of time notified to the Customer after acceptance of an Order, inventory permitting, to the address of the Customer specified in the Order. Any installation of hardware Products will be as specified in the Order. The Customer will pay all freight, insurance, and other shipping expenses. Title and risk pass upon delivery, unless the hardware is leased to the Customer, in which case:
 - (1) The hardware is leased for the duration specified in an Order;

- (2) 3CT retains ownership of the hardware at all times and the Customer possesses and uses the hardware as a licensee only and is not entitled to any security interest in the hardware; and
- (3) The Customer must not do anything inconsistent with 3CT's ownership of the hardware, including but not limited to attempting to sell, lease, sub-lease, dispose or encumber the hardware.
- (d) The Customer may be required to perform certain functions associated with the activation, support and management of Products. Those functions may be performed through a portal or site nominated by 3CT or other processes or tools nominated by 3CT and notified to the Customer.
- (e) 3CT may make non-3CT products available to the Customer in connection with Products, including third party software, data, services or other products. 3CT assumes no responsibility or liability for a non-3CT product. 3CT may change prices for non-3CT products and may add or remove non-3CT products at any time.
- (f) If there is inconsistency between the terms of an Order and the terms of this agreement the terms of this agreement will prevail.

4. Professional Services

- (a) If 3CT agrees to provide Professional Services, 3CT will prepare a SOW. If agreed upon and executed, each SOW will form part of this agreement.
- (b) Unless stated otherwise in an applicable SOW, any estimates of time provided in connection with deliverables or Professional Services, are good faith projections, but are not guarantees. If 3CT provides Professional Services on a "time and materials" basis, 3CT will charge the Customer at 3CT's standard rates then in effect. If 3CT provides Professional Services on a "fixed fee" basis, such fixed fee will cover only the specific deliverables and expenses specified in the SOW as included within the fixed fee.
- (c) 3CT will be entitled to pre-payment or reimbursement from the Customer for all documented, reasonable, out-of-pocket expenses incurred in connection with the provision of Professional Services. Such expenses will be included in 3CT's invoices.
- (d) Unless otherwise specified in a SOW, all Statements of Work may be terminated in accordance with clause 15 of this agreement.

5. Use of the Products

- (a) Except as otherwise stated in this agreement or an Order, the Customer will have the non-exclusive, limited right to use the Products during the Term (unless this agreement is terminated earlier in accordance with its terms) solely for the Purpose.
- (b) The Customer may allow its End Users to use the Products for the Purpose. Use of the Products by End Users is subject to the terms and conditions of 3CT's end user license agreement (EULA) available at https://www.3ctech.com.au/wp-content/uploads/2020/03/3CT_05-EndUserLicenceAgreement_25.9.19.pdf or otherwise provided by 3CT. The Customer acknowledges that the EULA may contain provisions which require End Users to comply with licence terms from third party licensors where third party licensor products are incorporated into or form part of the Products. The Customer must provide a copy of the EULA to End Users and obtain the consent of End Users to the EULA. The Customer must immediately notify 3CT of any known or suspected breach of the EULA or other unauthorised use of the Products and assist 3CT in the enforcement of the terms of the EULA.
- (c) The Customer is responsible for the compliance of its End Users with this agreement and each Order.
- (d) The Customer must use the Products and Professional Services in a manner which complies with all laws, including Telecommunications Laws.

- (e) 3CT may update the Products from time to time, provided such updates will not materially reduce the level of performance, functionality, security or availability of the Products during the Term, including to reflect changes in laws, regulations, technology, industry practices and availability of non-3CT products.
- (f) The Customer must not, and must not allow any End User or third party to: (a) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from, any portion of the Software; (b) sell, sublicense, rent, lease, distribute, market, or commercialise the Software, except as expressly permitted in this agreement; (c) directly or indirectly circumvent or violate the technical restrictions of the Software; (d) remove any identification, proprietary, copyright or other notices in the Software; or (e) modify or create a derivative work of any portion of the Software.
- (g) The Customer must not, and must not allow any End User or third party to: (a) use the Products to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk email, junk mail or spam; infringe property rights; or otherwise violate applicable laws or regulations or codes of conduct; or (b) perform or disclose any benchmarking or availability or performance or other testing of the Products.
- (h) The Customer acknowledges that 3CT may be required to disclose information to Government regulators and/or agencies to comply with Telecommunications Laws. In such a case, 3CT will use reasonable endeavours to advise the Customer of the information provided to the enforcement agency, where permitted by law.

6. Customer obligations

- (a) The Customer must:
 - (1) follow all directions of 3CT in respect of the Products;
 - (2) provide 3CT with reasonable and timely access to the Customer's facilities, premises, information, equipment, personnel, network and Customer Data to enable 3CT to supply, deliver and implement the Products;
 - (3) promptly notify 3CT of any complaint or claim arising out of the use of the Products.
- (b) The Customer must comply with any reasonable requirements which 3CT may notify to it from time to time, including in relation to Product use restrictions, upgrades or enhancements.
- (c) The Customer acknowledges that:
 - (1) unless specified in an Order, the Products do not include any required network and computer hardware and resources, operating systems or backup facilities necessary to use the Products; and
 - (2) Products supplied by 3CT from third party licensors may have particular terms and conditions of use and the Customer must comply with any such terms and conditions notified to it from time to time, including without limitation the Milestone end user licence agreement found at: https://milestonedownload.blob.core.windows.net/files/XProtect%202018%20R3/EULA/Milestone%20EULA_en-US.pdf and the Real World Technology Solutions acceptable use policy found at: <https://rwts.com.au/legal/aup/>; and the General Terms for Telstra Corporate Customers <https://www.telstra.com.au/content/dam/tcom/personal/consumer-advice/pdf/business-a-full/bg-general.pdf>.
- (d) 3CT will provide those support services which the Customer has selected in an approved Order or as may be specified in a SOW. 3CT has no obligation to provide support services unless the Customer has elected to receive such support services.

7. Fees, taxes and payment

- (a) 3CT will charge the Fees to the Customer in accordance with an Order or SOW.
- (b) 3CT will provide the Customer with a tax invoice setting out the Fees payable by the Customer to 3CT and the Fees will be payable on the terms set out in the invoice. If payment terms are not set out in an invoice, payment must be made within 10 Business Days of the date of invoice.
- (c) The Customer acknowledges that 3CT may require pre-payment for some Products and Professional Services. Pre-paid Fees are non-refundable.
- (d) The Customer acknowledges that 3CT may conduct a review of the Fees and that 3CT may vary the Fees in its sole discretion, including if any of 3CT's third party licensors vary their fees from time to time.
- (e) If 3CT performs additional work not specified in an Order or SOW, then 3CT may charge for such work at its standard rates.
- (f) If the Customer fails to make any payments by the due date, 3CT may, without waiving any other right or remedy it may possess:
 - (1) hold all pending Orders, suspend further delivery or Customer access to Products, or suspend provision of Professional Services until 3CT receives all payments due under this agreement; or
 - (2) charge interest on the past due amount from the first day the amount is past due until the amount is paid in full at an interest rate of 5% per annum.
- (g) The Customer may not withhold payment or take deductions from any invoice amount (by offset, counterclaim, or otherwise) unless 3CT issues a credit.

8. Intellectual Property

- (a) Unless specified otherwise in an Order or SOW, the Customer acknowledges that:
 - (1) 3CT owns or holds the Intellectual Property Rights in and to the Products and the Materials;
 - (2) the Customer's only rights in respect of the Products and the Materials are those rights expressly conferred on it under this agreement and the Customer has no proprietary right, title or interest in the Products or the Materials; and
 - (3) nothing in this agreement transfers to the Customer any Intellectual Property Rights the Products or the Materials.
- (b) 3CT grants to the Customer for the Term a non-exclusive, revocable, non-transferable and non-sublicensable licence to access and use the Software and the Materials solely for the Purpose, in the manner set out in this agreement and the applicable Order. Unless a perpetual licence is specified in an Order or SOW, this licence will automatically expire upon the termination of this agreement and the Customer must cease use of the Software and the Materials on the expiry or termination of this agreement.
- (c) The Customer must only use 3CT's Intellectual Property (including trade marks) in the form which it is directed by 3CT to be used. The Customer must not:
 - (1) make any modifications to the Products or the Materials unless it has obtained the prior written consent of 3CT;
 - (2) alter, remove or tamper with any trade mark, or other means of identification used on or in relation to the Products or Materials;

- (3) use in relation to the Products or Materials any trade mark, or other means of identification other than the 3CT trade mark without obtaining the prior written consent of 3CT;
 - (4) do, or authorise the doing of any thing which may adversely affect or jeopardise the distinctiveness, goodwill, value, validity or ownership of 3CT's trade marks; or
 - (5) use in the Territory any trade marks or trade names so resembling any trade mark or trade names of 3CT as to be likely to cause confusion or deception.
- (d) The Customer must, at the expense of 3CT, take all such steps as 3CT may reasonably require to assist 3CT in maintaining the validity and enforceability of the Intellectual Property during the Term of this agreement. The Customer must promptly notify 3CT of any actual or suspected infringement or violation of any Intellectual Property Rights held by 3CT, and the Customer will at the request of 3CT do all such things as may be reasonably required to assist 3CT in taking or resisting any proceedings in relation to any such infringement or claim.

9. Confidentiality

Each party must at all times during the continuance of this agreement and after its termination:

- (1) keep confidential all Confidential Information;
- (2) not disclose any Confidential Information to any other person;
- (3) not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of this agreement; and
- (4) not make any copies of, record in any way or part with possession of any document containing or recording any Confidential Information,

other than any disclosure:

- (5) to its professional advisors;
- (6) required by law;
- (7) of Confidential Information that is, through no fault of the disclosing party, already public knowledge.

10. Privacy and Data

- (a) The Customer must comply with all privacy and data security laws which apply in the Territory. The Customer must follow the reasonable directions of 3CT in relation to the disclosure of any personal information and all other privacy protocols required by 3CT.
- (b) The Customer consents to, and warrants that all End Users have consented to, providing personal information to 3CT to permit the processing of any Customer Data by 3CT and its service providers as contemplated by this agreement. 3CT may collect, use, transfer, disclose, and otherwise process Customer Data for the purposes associated with facilitating the supply of the Products.
- (c) The Customer must immediately notify 3CT if it knows of or suspects unauthorised use, copying or disclosure of Customer Data.
- (d) 3CT uses market standard security practices to protect Customer Data it collects from unauthorised access or use. However, 3CT cannot guarantee that security practices will be error-free, that transmissions of Customer Data will always be secure or that unauthorised third parties will never gain access to Customer Data.

- (e) 3CT will retain and store relevant Customer Data and records in accordance with Telecommunications Laws.

11. Acknowledgements

- (a) The Customer acknowledges that:
 - (1) unless specified in an Order, the Products do not include any required network and computer hardware and resources, operating systems or backup facilities necessary to use the Products;
 - (2) the Products may contain third party software and Customers and End Users may be required to agree to the terms of any third party licence and any an end user licence agreement from a third party licensor to enable use of the Products; and
 - (3) the Customer may be required to have operating requirements to use the Products.

The Customer is solely responsible and liable for ensuring that the Customer operating systems and subscriptions are compatible with the Products.

12. Warranties, indemnity and liability

- (a) To the maximum extent permitted by law 3CT excludes all implied warranties and conditions, such as implied warranties of merchantability, non-infringement, and fitness for a particular purpose, and 3CT makes no warranty:
 - (1) in respect of the Products, and the Products are provided "as is" and "as available" and without warranty;
 - (2) that any use of the Products will be uninterrupted or error-free or that the Products will be secure or free from harmful code;
 - (3) that the Products will be compatible with any hardware, system, operating environment, software or data not supplied by 3CT; or
 - (4) that the Products will meet the Customer's business requirements, or cause the Customer to achieve any business results or commercial performance.
- (b) 3CT will not be liable to the Customer for any form of loss or damage whatsoever arising from: any discrepancy, fault or malfunction of any third party telecommunications system, software, system or computer server or any other technology based Products; or any interruption, error or loss of functionality caused by an update or improvement or enhancement made by 3CT; or any delay by the Customer in providing any information, instructions, access, approvals or material that 3CT may request from time to time in order to provide the Products.
- (c) In no event will 3CT, its affiliates and related entities, its servants, employees and agents, be liable to the Customer for any consequential, indirect, incidental, or special loss even if such loss was in the contemplation of the parties at the date of this agreement as a probable result of a breach of this agreement, and including any loss of profits, loss or revenue, loss of production, loss of media, business interruption, loss of contract, loss of opportunity, loss of or unauthorised access to information, loss of reputation, loss of goodwill, loss of data, the cost of engaging an alternative service provider and similar loss.
- (d) Nothing in this agreement will be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Australian Consumer Law) and which by law cannot be excluded, restricted or modified. To the extent the law permits it to, 3CT limits its liability to, at the election of 3CT in its sole discretion:

- (1) for services - the supply of the services again or the payment of the cost of having the services supplied again; and
 - (2) for goods – the repair, replacement or refund for those goods.
- (e) The total aggregate liability of 3CT, its affiliates and related entities, and their employees or agents, for any loss or damage suffered by the Customer for any reason, will not exceed the actual dollar amount paid by the Customer for the particular Product which is alleged to have caused such loss or damage during the six month period immediately preceding the alleged incident.
- (f) The Customer indemnifies 3CT against any liability, loss or damage or expense (including legal expenses) arising from or in connection with:
- (1) the Customer's use of the Products; and
 - (2) any breach by the Customer of this agreement.

13. No Assignment

The Customer must not, assign, transfer, encumber, subcontract or otherwise deal with its rights and obligations under this agreement.

14. Force Majeure

If 3CT is unable to perform its obligations under this agreement due to reasons beyond its control including strike, civil unrest, war, act of god, sickness, death, disability, accident, storm, flood, failure of third party service provider (including Internet Service Providers), failure or fluctuation in any electrical power supply, failure of air conditioning or humidity control, electromagnetic interference, communications or equipment failure, the change or introduction of any law or regulation (including the Telecommunications Laws) or terrorism, then this agreement shall be suspended for the affected period and during that period 3CT will be relieved of its obligations to perform under the agreement and in such circumstances the Customer will not have any claim against 3CT.

15. Termination

- (a) A party will be entitled to terminate this agreement or a SOW immediately upon delivery to the other party of a written notice of termination if:
 - (1) there is a breach of a material term of this agreement or SOW which, if being a breach capable of remedy, is not remedied within 20 Business Days of the defaulting party receiving notice from the other party; or
 - (2) the other party suffers an Insolvency Event (subject to any stay on termination imposed by law).
- (b) 3CT may terminate this agreement or a SOW without giving any reason by giving the Customer 30 days written notice.
- (c) 3CT may terminate this agreement or a SOW if the Customer fails to make any payments due to 3CT within 20 Business Days after the date of the applicable invoice issued by 3CT.
- (d) Upon termination of a SOW:
 - (1) If 3CT has terminated for convenience under clause 15(b) or the Customer has terminated the SOW, 3CT will issue a final invoice for all amounts owing to 3CT, including for all Products and Professional Services provided or performed prior to termination (whether complete or partially completed) pursuant to the SOW, which must be paid by the Customer within 10 Business Days after the date of invoice;

- (2) If 3CT has terminated an SOW under clause 15(a) or 15(c), 3CT may issue a final invoice for all amounts owing to 3CT including the balance of fees for the entire term of such SOW even if products or services have not been provided, and the Customer acknowledges that such amount will become immediately due and payable and must be paid within 10 Business Days after the date of invoice;
 - (3) the Customer must cease access to any applicable Products, including any administration logins;
 - (4) 3CT will cease providing any Professional Services;
 - (5) subject to this clause, the rights of each party which accrued prior to termination or out of the events causing such termination are not extinguished or otherwise affected, including damages or other remedies to which a party may be entitled; and
 - (6) this agreement will continue in respect of any other Orders or SOWs then current (unless this agreement is terminated in accordance with this clause 15).
- (e) Upon the termination of this agreement for any reason:
- (1) the Customer must cease access to any applicable Products, including any administration logins;
 - (2) 3CT will cease providing any Professional Services;
 - (3) the Customer must return all Confidential Information of 3CT and Materials in its possession or control to 3CT;
 - (4) If 3CT has terminated for convenience under clause 15(b) or the Customer has terminated this agreement, 3CT will issue a final invoice for all amounts owing to 3CT, including for all Products and Professional Services provided or performed prior to termination (whether complete or partially completed) pursuant to all Orders and SOWs, which must be paid by the Customer within 10 Business Days after the date of invoice;
 - (5) If 3CT has terminated this agreement under clause 15(a) or 15(c), 3CT may issue a final invoice for all amounts owing to 3CT including the balance of fees for the entire term of all applicable SOWs and Orders placed prior to termination, even if products or services have not been provided, and the Customer acknowledges that such amounts will become immediately due and payable and must be paid within 10 Business Days after the date of invoice;
 - (6) subject to this clause, the rights of each party which accrued prior to termination or out of the events causing such termination are not extinguished or otherwise affected, including damages or other remedies to which a party may be entitled; and
 - (7) the provisions of this agreement which by their nature survive termination will survive termination.

16. General

- (a) Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or joint venture or employer and employee between the parties.
- (b) This Agreement contains the entire agreement and supersedes all previous agreements and understandings between the parties with respect to its subject matter, and may not be modified except by an instrument in writing signed by the duly authorised representatives.
- (c) A notice or other communication in connection with this agreement shall be given to the recipient party by post or email to that party at the address specified in an Order.

- (d) Any waiver of rights under this Agreement must be made in writing. The waiver by either party of any breach of this Agreement shall not entitle the other party to repeat or continue any such breach nor operate as a waiver of any subsequent breach whether of the like nature or not.
- (e) If any provision of this agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this agreement shall continue to be valid as to the other provisions of this agreement and the remainder of the affected provision.
- (f) This agreement will be governed by and construed in accordance with the laws in force in New South Wales, Australia and the parties submit to the jurisdiction of the Courts of New South Wales, Australia.

17. Definitions

- (a) In this Agreement unless the context requires otherwise:
 - (1) **Business Day** means any day (except Saturday & Sunday) on which trading banks in New South Wales are generally open for business.
 - (2) **Confidential Information** means the terms of this agreement, the Materials, the underlying elements and components of the Products, know how, trade secrets and any information or materials disclosed to or otherwise acquired from either party during the course of or as a result of its performance of its obligations under this agreement, including, but not limited to, information or data relating to technology, products, services, business plans, marketing plans (whether orally or in writing, and whether or not such information is expressly stated to be confidential or marked as such).
 - (3) **Customer Data** means any data, content, code or other materials of any type of the Customer (or its End Users) that is transmitted to 3CT, including personal information.
 - (4) **End User** means any individual user of the Products, whether such individual is engaged or employed by the Customer or is otherwise authorised by the Customer to use the Products.
 - (5) **Fees** means the fees payable by the Customer to 3CT for the provision of the Products and the Professional Services, as applicable.
 - (6) **Insolvency Event** means any of the following:
 - (a) a resolution is passed, or an order is made to or an order is made by, a court of competent jurisdiction, for the winding up of a party (except pursuant to an internal reconstruction);
 - (b) an administrator, a receiver or a manager is appointed to any or all of the assets or undertakings of a party;
 - (c) a party makes an arrangement for the benefit of or enters into a scheme of arrangement or composition with its creditors; or
 - (d) a party enters into any form of insolvency analogous to the above.
 - (7) **Intellectual Property Rights** means any and all right, title and interest, including, but not limited to copyright, moral rights, patents, trade marks (registered or unregistered, registered designs, trade secrets, goodwill, confidential information, all rights in and to the Materials and the Products and all other materials developed and/or produced, and the rights to receive royalties, fees or any other entitlements arising out of all properties developed, produced, sold and distributed and any other intellectual property which is now or later held by or registered in the name of 3CT, or in or of which 3CT owns, or now or later has the benefit, has an interest or is entitled to use, in or to the Products, that subsist anywhere in the world.

- (8) **Materials** means any and all items used or produced, by or on behalf of 3CT, relating to the sale, presentation, creation, and the marketing, advertising, promoting the sale, of the Products, including (without limitation) posters, editorial features, advertisements, brochures, handbooks, slides, instructional material and any other communications whether in printed or electronic form.
- (9) **Order** means any order for Products which is accepted by 3CT.
- (10) **Products** means the products and services specified in an Order, including any hardware, physical devices and Software.
- (11) **Professional Services** means any development, customisation, consulting, management, integration, installation or other services specified in a SOW.
- (12) **Purpose** means Customer's internal business operations and excludes distribution, wholesale or resale.
- (13) **Service Level Schedule** means any document provided by 3CT to the Customer which specifies service levels for the provision of the Products.
- (14) **Software** means any software included in an Order, including any generally available updates to such software, but excluding open source software components.
- (15) **SOW** means a scope of work for professional services provided by 3CT to the Customer.
- (16) **Telecommunications Laws** means the *Telecommunications Act 1997 (Cth)*, the *Telecommunications (Interception and Access) Act 1979*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, and associated determinations, codes and standards, as applicable.
- (17) **Term** means the period specified in an Order.
- (18) **Territory** means Australia.