

Terms and Conditions for Services Provided

1. DI Management Services Pty Limited (“**we, us, our and ourselves**”) agrees to carry out work for you (“**you, your and yourself**”) on an hourly basis. You agree to pay the service charge at the specified rate, net of all taxes, duties, withholdings, and other charges of a like nature.
2. By paying a service charge or by using the software we provide to you, you agree to accept these terms and conditions.

Source code

3. If we create software for you under this agreement, you are entitled to receive a copy of the source code once all service charges owing to us for the work have been paid in full.

Background technology

4. We may use our own existing background technology in providing you with the software. “**Background Technology**” is defined as software we provide from our existing set of software utilities that is not customised original work created specifically to your specifications but is provided as background to the original functionality you specify. The rights in all Background Technology we provide to you remain exclusively with us at all times. On full payment of all service charges owing to us, you are hereby granted a non-exclusive licence to use such Background Technology in your own applications at no extra charge, but you cannot distribute such Background Technology separately to any third party under any circumstances except as part of the software we have provided to you, nor can you grant to any third party any rights other than those granted to you in relation to our Background Technology. We reserve the right to provide Background Technology in compiled executable form only.

Liability and Warranty

5. All software is provided “as is” without warranties as to performance or merchantability or any other warranties whether expressed or implied. Because of the various hardware and software environments into which software may be put, no warranty of fitness for a particular purpose is offered. Good data processing procedure dictates that any software be thoroughly tested with non-critical data before relying on it. You must assume the entire risk of using the software. Our liability will be limited exclusively to replacement or refund of the service charge related to the software in question.
6. In no event shall we be liable for any damages in connection with or arising out of the use of the Software by any person whatsoever, including incidental, indirect, special or consequential damages, or any damages related to loss of use, revenue or profits, even if we have been advised of the possibility of such damages. You expressly agree to such a waiver.

Estimates and payments in advance

7. If we quote you a number of hours to carry out your work, it is an **estimate** of the time we expect the work to take unless explicitly noted otherwise in writing. The final number of hours and the corresponding service fee you owe us will depend on the actual number of hours we work for you. Any service charge paid before the work commences is a payment in advance for work to be carried out and is not an implicit acceptance of a fixed price. Payments made in advance are not refundable unless we fail to deliver in a reasonable time the work we originally agreed at the time of the quote.

Fixed price offers

8. If we explicitly offer to carry out work on a fixed price basis (a “**Fixed Price Offer**”), we will do whatever work we agreed at the time we made the offer - no more, no less.
9. When we provide you with software that works according to the specification provided at the time of making the Fixed Price Offer and that software runs with the test data provided by you at the time we made the offer, you owe us the agreed fee.
10. You agree that any changes you request to the software after we have made a Fixed Price Offer are outside the scope of the original offer and are subject to an additional fee based on the extra hours worked to provide these changes at the specified hourly rate. This includes changes required to adapt the software to cope with extra test data provided by you after the time of the original offer.

Software functionality

11. If our software does not work according to the specification and test data you provided to us at the time before we made the offer, we will fix the problem and provide you with a new, corrected version at no charge, or, at our option, refund the fee charged for providing the feature that does not work. Not working means actually failing to carry out the task which the program is specified to do under conditions that are reasonable to expect for normal use by a typical user.

Interpretation of specification

12. If the specification of the software provided by you prior to us making an offer is silent, unclear or ambiguous on how to handle a specific requirement, we will make a judgement on what is required and will include this in the final product delivered to you. Unless it can be shown that we have not provided a reasonable interpretation of what is required, you agree to accept our judgement of what is required. Likewise, in the absence of test data being provided to us prior to making a quote or fixed price offer, we shall make a judgement on what is required and you agree to accept our judgement.

Free features

13. Features in software we provide for no charge (“**Free Features**”) have no support whatsoever and you agree that we have no obligations to you in relation to such Free Features.

Governing law

14. These terms and conditions shall be governed and interpreted by the laws of the State of New South Wales, Australia, without regard to your choice of legal jurisdiction and you expressly agree that the venue for resolution of disputes, if any, arising out of this licence or the performance of the Software, shall be in New South Wales.