

## Dull Customer Agreement

### 1. Parties

- 1.1 This Customer Agreement (**agreement**) is between Dull Operations Pty Ltd ACN 655 816 569 of Level 17, 447 Collins Street, Melbourne VIC 3000 (**Dull, us, we or our**) and the entity specified in the Key Details (**Customer, you or your**).

### 2. Formation

- 2.1 By signing this agreement:
- (a) you acknowledge the terms of Dull's Privacy Policy located at <https://dull.net/privacy-policy> and agree not to do anything that would put us in breach of it; and
  - (b) you agree to be bound by the Data Processing Agreement located at <https://dull.net/data-process-agreement>
- 2.2 You acknowledge and agree that the Software may have its own Software-specific terms (including Software terms of use) that you and/or your Authorised Users may be required to accept in order to access and use the Software.
- 2.3 This agreement comprises of the following documents:
- (a) the body of this agreement;
  - (b) the Key Details;
  - (c) the Schedules;
  - (d) any Quote issued in connection with this agreement; and
  - (e) any Purchase Order issued in connection with this agreement.
- 2.4 To the extent of any inconsistency between the documents, the documents will be given precedence in the order set out above.

### 3. Term and auto renewal

- 3.1 Your Subscription and this agreement will commence on the Start Date and will continue for the Initial Term and any Renewal Terms (if applicable).
- 3.2 If the Subscription Plan selected in the Key Details is "Annual Subscription", the following auto-renewal process will apply.
- (a) We will notify you no less than 60 days prior to the end date of your Initial Term, or if applicable, Renewal Term, that your Subscription will automatically renew for a Renewal Term.

- (b) Subject to clause 3.2(a), the Initial Term will automatically renew for further 12-month periods unless you cancel your Subscription in accordance with clause 3.2(c) or the agreement is otherwise terminated in accordance with clause 19 prior to the expiry of the Initial Term (each a **Renewal Term**), subject to the Fee increase set out in clause 5.3.
  - (c) You must advise us at least 30 days prior to the end of the Initial Term, or if applicable, Renewal Term (**Cut-Off Date**) if you want to cancel your subscription and terminate this agreement (**Cancellation Request**). If your Cancellation Request is received:
    - (i) prior to the Cut-Off Date it will be effective at the end of your Initial Term or then current Renewal Term and the Software and Software Services will remain accessible by you until the end of your then current Initial Term or Renewal Term that you have already paid the Fees for; or
    - (ii) after the Cut-Off Date, your payment of the Fees for your next Payment Cycle will be processed and this agreement will be renewed for the next Renewal Term and your cancellation will take effect at the end of that Renewal Term and the Software and Software Services will remain accessible by you until the end of that Renewal Term that you have paid the Fees for.
- 3.3 If the Subscription Plan selected in the Key Details is “Free Trial”, the following auto-renewal process will apply.
- (a) The Initial Term will automatically renew for further 12-month periods unless you cancel your Subscription in accordance with clause 3.3(b) or the agreement is otherwise terminated in accordance with clause 19 prior to the expiry of the Initial Term (each a **Renewal Term**), subject to the Fee increase set out in clause 5.3.
  - (b) You must advise us at least 10 days prior to the end of your Initial Term if the proof-of-concept success criteria agreed between the parties prior to the Start Date has not been met, in which case the Initial Term will not renew for a Renewal Term and this agreement will terminate at the end of your Initial Term.
  - (c) Where the Initial Term renews for a Renewal Term, clauses 3.2(a) and 3.2(c) will apply to the Renewal Term and any subsequent Renewal Terms.

## 4. Dull Services

- 4.1 We will use all reasonable commercial efforts to provide you with access to, and use of, the Software in a timely and professional manner. Our services include access and use of the Software, Software Services, Professional Services (where you have purchased them through a Statement of Work) and other applicable services and our solutions and platforms (**Dull Services**).
- 4.2 You agree to provide us with any information reasonably necessary for the provision of the Dull Services, including, providing relevant, accurate, complete and current information and technology as necessary and appropriate.

- 4.3 You are responsible for your use of, or reliance on, any advice or recommendations provided by us in connection with the Dull Services, including but not limited to, the security and access settings that may be configured for the Software.
- 4.4 Where you have purchased Professional Services through a Statement of Work, we will use reasonable efforts to provide the Professional Services in accordance with any timeline or dates agreed to by the parties in writing (**Project Timeline**), to the extent applicable, however you acknowledge that the Project Timeline may depend on you providing us with information or completing required tasks in accordance with clause 4.2. We will not be responsible for any deficiency or delays in the performance of the Professional Services, including in accordance with the Project Timeline, to the extent that it is attributable to your delay or breach of this agreement.
- 4.5 You acknowledge that:
- (a) the Dull Services may be unavailable or include latency from time to time due to causes beyond our reasonable control; and
  - (b) the end-to-end connection between different Authorised Users of the Software is dependent on your internet connection to the Dull servers hosted in the cloud or in your data centre as well as your use of hardware and software (e.g. PC, operating system) in compliance with this agreement, all of which, are outside the scope of our Services.
- 4.6 We will provide the Dull Services in accordance with the Service Level Agreement located via your customer service portal .

## 5. Fees and payment

- 5.1 You will pay the Fee each Payment Cycle in accordance with your Payment Method set out in the Key Details and this clause 5.
- 5.2 Where we provide Professional Services to you in accordance with a Statement of Work, you will pay the Fee set out in the Statement of Work, in accordance with the invoicing and payment terms set out in clause 6.2 and/or in the Statement of Work.
- 5.3 Subject to clause 19.3:
- (a) on 28 days' notice to you, we may increase the Fees for any reason during the Term, and the increase will take effect on your next applicable Payment Cycle; and/or
  - (b) without limiting clause 5.3(a), on written notice to you, we may:
    - (i) increase the Fees each year by a percentage equal to the percentage increase in CPI for the same period and the increase will take effect on your next applicable Payment Cycle; or
    - (ii) adjust the Fees, provided both parties have agreed in writing to such adjustment and the adjustment will take effect on your next applicable Payment Cycle.

- 5.4 If you wish to raise a genuine dispute about an invoice, you must notify us at least 60 days before the due date and pay the undisputed portion by the due date.
- 5.5 If you fail to pay an undisputed invoice by the due date, we reserve the right to charge interest on overdue amounts at the rate of 1.5% per month and/or suspend your Account(s) and access to the Services until all overdue amounts are paid.
- 5.6 All amounts payable under this agreement are exclusive of GST.
- 5.7 If GST is payable in relation to a Taxable Supply, the amount payable for that Taxable Supply is the amount for that Taxable Supply specified in this agreement plus GST.
- 5.8 You acknowledge and agree that payment may be collected and processed by one of our authorised business partners.

## **6. Payment terms and process**

- 6.1 Where your Payment Method is payment by invoice, we will invoice you for the applicable Fees annually in advance, and you must pay each invoice within 30 days of the date of the invoice.
- 6.2 Where we provide Professional Services to you in accordance with a Statement of Work, we will invoice you for all applicable Fees monthly after the performed Professional Services, and you must pay each invoice within 30 days of the date of the invoice.
- 6.3 You can request a change to your selected payment method at any time, by contacting us at [hello@dull.net](mailto:hello@dull.net), or via email to your account manager. Any changes will take at least 10 Business Days to take effect.

## **7. Adding Professional Services during the Term**

You can purchase any Professional Services by contacting us at [hello@dull.net](mailto:hello@dull.net), or reaching out to your account team. At that time a Statement of Work will be issued and once executed, the Statement of Work will form part of this agreement.

## **8. Confidentiality**

- 8.1 A party will not disclose the Confidential Information of the other party to any third party, except:
  - (a) for the purposes of providing, or using, the Dull Services and fulfilling any obligations under this agreement, including in the case of Dull, to allow your Users to access Customer Data as determined or instructed by you;
  - (b) where a party is required to do so under any law, code or regulation and/or any listing rules of any stock exchange, including disclosure to any third parties in order for them to comply with the same;
  - (c) to the party's employees, subcontractors, representatives, or advisors on a need-to-know basis, provided that such persons understand and comply with the obligations imposed by this clause 8; and/or

(d) with the other party's consent.

8.2 Each party must have appropriate security measures in place that are designed to protect Confidential Information against unauthorised access, disclosure or use.

## 9. Privacy

9.1 Each party will comply with:

- (a) all applicable Privacy Laws;
- (b) the Data Processing Agreement,

in connection with the collection, use, handling, disclosure, quality, security of and access to Personal Information that the party holds.

9.2 It is your responsibility to ensure that you seek and obtain all necessary consents from and make all necessary disclosures to customers in respect of their Personal Information to enable disclosure of such information to Dull for the purpose of the provision of the Dull Services, to the extent such disclosure is permitted by any applicable laws.

9.3 You further acknowledge and agree that:

- (a) our collection and use of Personal Information under this agreement is governed by our Privacy Policy, which forms part of, and is incorporated into, this agreement and can be accessed at <https://dull.net/privacy-policy>; and
- (b) you will ensure that the purposes for which Personal Information that you disclose to us may be processed are as described in this agreement and our Privacy Policy, and, if this is not the case, that you must notify us before providing us with the relevant Personal Information and we must agree to any necessary amendments to our processing of that Personal Information before you may provide it to us.

9.4 If either party suspects that a data breach has occurred involving personal or Confidential Information held by either party:

- (a) you must cooperate fully in assisting us in determining whether there are reasonable grounds to believe that an Eligible Data Breach has occurred;
- (b) you must cooperate fully with us in taking remedial action in relation to the suspected breach to ensure that no serious harm (as that term is considered in applicable Privacy Laws) befalls an individual to whom the information disclosed in the suspected breach relates; and
- (c) you accept responsibility for complying with the notification requirements of applicable Privacy Laws for any breaches which are determined by us to have been limited in scope to systems under your control and/or the Dull Services.

- 9.5 Where we reasonably suspect that the security of integrity of the Customer Hosting has been compromised, we may, in our sole discretion, upon notice to you, block any connection between the Customer Hosting and the Dull Services, until such issue has been resolved.

## **10. Account(s) and Authorised Users**

- 10.1 You must only, and ensure that all of your Authorised Users only, use the Software in accordance with any applicable Software-specific terms, this agreement, and for the number of Licenced Units (as set out in the Key Details).
- 10.2 We will provide you with:
- (a) your Subscription access to the Software via an electronic download or via web browser; and
  - (b) the Authorised Users logins.
- 10.3 You are solely responsible for:
- (a) all acts and/or omissions of your Authorised Users;
  - (b) determining your Authorised Users and any use of the Dull Services by Authorised Users;
  - (c) ensuring you and your Authorised Users:
    - (i) comply with this agreement, all applicable laws (including Privacy Laws), all applicable Software-specific terms, and our reasonable directions;
    - (ii) have all necessary skills, licences, accreditations, and qualifications required in accordance with industry standards and applicable laws and regulations in respect of your/their professional obligations as they relate to the Dull Services (including access and use) (including any set out or required under any applicable Software-specific terms);
  - (d) all activity on the Account(s), including by you and/or or any Authorised Users and/or any unauthorised access by third parties;
  - (e) maintaining the confidentiality and security of the Account(s), including any login and password information, and notifying us immediately of any unauthorised use; and
  - (f) using all reasonable endeavours to prevent any unauthorised access to or use of the Dull Services;
  - (g) without limiting our security obligations under this agreement, protecting Customer Data, including backing-up, and ensuring the security of, the Customer Data, and taking appropriate measures to protect Customer Data from accidental, unlawful or unauthorised access, use or disclosure; and
  - (h) unless otherwise agreed, the download, installation and configuration of the Dull Services.

10.4 You will contact us immediately if you believe an unauthorised third party:

- (a) may be using or accessing the Account(s); or
- (b) if the Account(s) information, including any login or password information is lost or stolen.

10.5 You are solely responsible for:

- (a) Customer Data, including determining what Customer Data you provide to us and/or give User's access to; and
- (b) the integrity, accuracy, quality and completeness of Customer Data and the means by which you acquire Customer Data, and you acknowledge that all outputs of the Dull Services rely on this.

10.6 If the number of connector agents and/or realms, as defined in Schedule 2, used by you during the Term exceeds the number of Licenced Units set out in the Key Details or as otherwise agreed with us, we will charge you additional Fees, at a rate reasonably determined by us, for the increase in Licenced Units.

10.7 If Customer Hosting is selected in the Key Details, you are permitted to, subject to the conditions set out in the Key Details, install and host any or all of the Software on your own or a third-party server infrastructure (**Customer Hosting**). In the event you elect Customer Hosting, you must:

- (a) be solely liable for the Customer Hosting;
- (b) ensure that the server infrastructure running the Software and all third-party software components required for the performance of the Customer Hosting, including operating systems, hardware drivers and auxiliary software are updated to the most current available version; and
- (c) ensure that the server and Software are configured according to Dull's specifications and supported components, which will be provided to you, and may change over time with each release.

## 11. Updates and backups

11.1 We will provide, configure, install and maintain any and all updates, upgrades, enhancements, releases, corrections, bug fixes, patches and modifications to the Dull Services as we deem necessary (**Updates**).

11.2 We may suspend access to, or functionality on, the Dull Services from time to time to implement such Updates. We will use reasonable efforts to notify you of any Update that may interrupt the Dull Services.

11.3 You must, and must ensure that all of your Authorised Users, accept all Updates necessary for the proper function and security of the Dull Services if and when such Updates are released by us.



- 11.4 We reserve the right to undertake back-ups of the Dull Services, however, we are not obligated to do so and you are solely responsible for backing up your Customer Content.

## 12. Third Party Software

- 12.1 At our sole discretion, we may provide use of programming interfaces or other software interfaces (**API**) which may enable your or third party's applications (collectively **Third-party Software**) to communicate with the Software or the servers provided by us as part of the Software Services. We may, in our sole discretion, change or switch off APIs at any time without any obligation or liability to you. The respective provider shall be responsible for the Third-party Software.
- 12.2 The provisions of the agreement shall not apply to any such Third-party Software and we are under no obligation to test, validate or otherwise review Third-party Software, and shall have no liability for any Third-party Software or in connection with the use thereof.
- 12.3 Some features and functions of the Software and Software Services provided by us may include or depend on certain third-party components which may be subject to changes by such third parties. We are entitled to modify or limit such features and functions, provided this does not materially interfere with the substantial functions of the Dull Services.
- 12.4 You acknowledge that elements of the Software may be based on open-source software and that any such open source software provided within or contained in the Dull Services is provided "as is" and without warranty of any kind.

## 13. Acceptable Use

- 13.1 In addition to any other obligations set out throughout this agreement, or any applicable Software-specific terms, you must always, and ensure that all of your Authorised Users always, access and use all Dull Services:
- (a) solely for the purposes set out in this agreement;
  - (b) in a manner that does not attempt to circumvent the agreed commercial arrangements, including Fees, set out under this agreement;
  - (c) acting in good faith, giving consideration to the commercial intent of the parties; and
  - (d) in accordance with this acceptable use clause.
- 13.2 Your and your Authorised User's access to, and use of, any Dull Services must not violate any applicable laws, codes or regulations, including but not limited to intellectual property laws, data protection and Privacy Laws.
- 13.3 When using the Dull Services, you must only, and ensure your Authorised User's only, upload, post, host, store, communicate or display content (including Customer Content) that:
- (a) you have all consents and rights required under law and under any applicable contracts to upload, post, host, store, communicate and display (for instance, rights of ownership or a sufficiently broad licence to do so);



- (b) does not infringe the rights of any third party (including privacy, Moral Rights and Intellectual Property Rights);
- (c) is not unlawful, does not give rise to any civil or criminal liability for you or us, and does not encourage any activity that may violate any applicable law or contract;
- (d) is not fraudulent and does not constitute a fraudulent misrepresentation or promote fraudulent activity;
- (e) is not and does not contain offensive, abusive or sexually obscene content;
- (f) is not libellous, defamatory, discriminatory in respect of any individual or group, unsolicited, unwanted or harassing;
- (g) is not a mass email or other commercial message, promotion, offer, advertisement, or solicitation (also known as “spam”); and
- (h) does not contain viruses, malware, trojan horses, worms, or any other malicious or harmful program or code.

13.4 You agree that you will not, and your Authorised Users will not:

- (a) use Dull Services for any purpose other than their intended purposes;
- (b) access, use, alter or interfere with any areas of the Dull Services that you are not authorised to access;
- (c) check or test the vulnerability of any of our systems or networks or breach or circumvent any security or authentication mechanism;
- (d) copy, caches, disassemble, decompile, reverse-engineer or modify any component of the Dull Services, or use any automated means to collect information from the Dull Services;
- (e) do anything that would prejudice our rights, title or interest in and to the Dull Services;
- (f) transfer, sell, lease, distribute, or sublicense any part of the Dull Services or the content contained within or hosted on the Dull Services;
- (g) attempt to destabilise, interrupt or overload our infrastructure by placing unreasonable burdens on our resources, including by sending requests to our systems more rapidly than could be achieved by a human user;
- (h) engage in any other conduct that inhibits any other person from using or enjoying the Dull Services;
- (i) use or access the Dull Services in any manner that:
  - (i) creates a risk to the integrity of the Dull Services or the network, systems, equipment or facilities used in connection with the Dull Services;

- (ii) effects the quality of any service we provide; and
  - (iii) in an excessive manner including but not limited to excessive use or storage of data which is to be judged by us in our sole discretion;
  - (j) misuse the Dull Services by tampering with their normal operation, or trying to access them using a method or interface other than those we provide;
  - (k) transmit any viruses, malware, trojan horses, worms, or other types of malicious or harmful software or code, or links to such software or code, onto or through the Dull Services;
  - (l) impersonate another person or organisation, including any of our employees, or misrepresent your identity;
  - (m) reproduce, communicate, adapt, record, transfer, publish, perform, display, broadcast, distribute, offer or make available any of the content contained within or hosted on the Dull Services in contravention of any applicable law or in breach of any person's rights, including Intellectual Property Rights;
  - (n) remove or amend any intellectual property notices contained in or displayed on the Dull Services;
  - (o) use another person's login details for the Dull Services without their permission; or
  - (p) breach another person's privacy, for example by posting their personal information without first obtaining their consent or having another lawful ground(s) to do so.
- 13.5 You must not, and ensure your Authorised Users do not, use, conduct or attempt to conduct web scraping of any part of our websites and/or the other Dull Services, including any content contained within or hosted on the Dull Services.
- 13.6 If you or your Authorised Users fail to comply with the acceptable uses set out in this clause, we reserve the right to immediately suspend your Account(s) and/or your access to the Dull Services, without liability for us (to the extent permitted by law). We are also entitled to immediately remove any Customer Content you upload, post, host or transmit that we consider or suspect to be in breach of this clause or any of our other terms and conditions, without prior notice to you and without liability for us (to the extent permitted by law).
- 13.7 Our rights to suspend your Account(s) and to remove Customer Content does not limit any other rights or remedies that may be available to us under this agreement.

## **14. Intellectual Property and Data**

- 14.1 Nothing in this agreement transfers ownership of any Pre-Existing IP to the other party or any other person.
- 14.2 You acknowledge and agree that we own all rights (including Intellectual Property Rights), title and interests in and to:

- (a) Our Materials;
- (b) the Dull Services and Software (including any software, source and object code, algorithms, that form part of or relate to the Dull Services);
- (c) any accompanying materials or documentation, including that are created by and/or for you and/or your Authorised Users in connection with the use of any Dull Services;
- (d) any updates, variations, modifications, adaptations, developments and/or derivatives of any of the Dull Services, and/or any accompanying materials or documentation; and
- (e) Metadata and Aggregated Data, which we may use and commercialise at our absolute discretion,

but excluding Customer Content.

- 14.3 Subject to clause 14.4, we grant to you a non-transferrable, non-exclusive, revocable, non-sublicensable right and license to access and use the Dull Services solely to the extent permitted by this agreement and as is necessary to obtain the benefit of the Dull Services for the duration of the Term and in the Territory (**Licence**). Any rights not expressly granted under this agreement are reserved by Dull.
- 14.4 If the Subscription Plan selected in the Key Details is “Free Trial”, we will provide to you a free-of-charge, limited, Licence to the Dull Services for the duration of the Term and your access to the Dull Services will be limited.
- 14.5 Without limiting any rights granted to us in this agreement you acknowledge and agree that you own all right, title and interest in Customer Content and Customer Data.
- 14.6 You acknowledge and warrant the following in respect of Customer Content.
- (a) You are solely responsible for Customer Content, the integrity, accuracy and quality of Customer Content, and the means by which you acquire Customer Content.
  - (b) The Customer Content:
    - (i) is suitable and appropriate for use in connection with the Dull Services; and
    - (ii) is true, accurate, complete and current.
  - (c) You will comply with all relevant laws or regulations in respect of Customer Content.
- 14.7 Dull will not be responsible for and does not check or review Customer Content in any way. We reserve the right to remove any Customer Content that is deemed unsuitable, insulting, inflammatory, degrading, illegal or objectionable in our sole discretion or that is provided in breach of clause 13.3 or the warranties given under the terms of this agreement.
- 14.8 We are not responsible for any errors, omissions, Losses or damages of any kind resulting directly or indirectly from any inaccuracies in Customer Content or any failure by you to ensure

the integrity, completeness or accuracy of Customer Content before providing it to us or inputting it into the Dull Services.

14.9 You acknowledge and agree that we may host, transmit, maintain and store all or parts of Customer Data on servers located in multiple jurisdictions as stipulated in the Quote and Purchase Order.

14.10 You grant us:

- (a) a royalty-free, non-exclusive licence during the Term, to use Customer Content (including any Intellectual Property Rights in and to Customer Content) to the extent necessary to perform our obligations under this agreement; and
- (b) a non-exclusive, worldwide, royalty free, assignable, perpetual and irrevocable licence to copy, use and analyse non-Confidential Information and Customer Data for any purpose, for our business and for benchmarking and analytics to improve and understand the Dull Services, product usage and customer needs, provided that we will use our reasonable endeavours to ensure such output and analyses will not contain any Confidential Information, Personal Information or other information which identifies you as a customer.

## 15. Marketing

15.1 You acknowledge and agree that we may use and incorporate any ideas, suggestions, concepts, know-how or techniques contained in information received from you that directly relates to your products or business, including any suggested changes or modification to the Dull Services.

15.2 You consent to us using your company name and logo:

- (a) to describe the circumstances of your use of the Dull Services, on an ongoing and irrevocable basis, where we are required to do so under any law, code or regulation and/or any listing rules of any stock exchange (as applicable); and
- (b) as a reference for marketing or promotional purposes on our website and in other public or private communications with our existing or potential customers.

## 16. Scheduled maintenance

16.1 You acknowledge and agree that the Dull Services are provided on an 'as is' basis, service continuity is not assured and that the Dull Services (including Customer Data to the extent you are accessing it through the Dull Services) may be suspended, unavailable or have limited availability including:

- (a) for routine or emergency maintenance, provided we will use reasonable endeavours, where possible to:
  - (i) undertake such maintenance outside of normal business hours;
  - (ii) notify you in advance of any such maintenance; and

- (iii) minimise disruption to your use of the Dull Services due to such maintenance;
- (b) to permit upgrades or other development activity to take place;
- (c) due to technical malfunctions of your software, equipment or infrastructure (e.g., telecommunications connectivity, network congestion or delays);
- (d) due to a Force Majeure Event; or
- (e) if it is necessary for reasons of:
  - (i) public safety;
  - (ii) security of the Dull Services;
  - (iii) interoperability of Dull Services;
  - (iv) data protection; and/or
  - (v) any other work that is necessary for operational or technical reasons.

16.2 If you identify a defect or malfunction in the Dull Services which substantially compromises the functionality of, or your access to, the Dull Services (**Error**), you may report the Error through the customer service portal provided by us to you at [insert link]. Within a reasonable timeframe from the notification of an Error and provided you have supplied sufficient information of such Error through the customer service portal, we will use reasonable efforts to eliminate the Error by delivering patches or fixes through an Update.

## 17. Audit

17.1 We may periodically conduct an audit to:

- (a) verify that your access and use of the Software and any Software Services is in accordance with this agreement (including the number of Licenced Units); and
- (b) assess your compliance with this agreement.

17.2 You must participate in and co-operate with any audit carried out under clause 17.1 in good faith, including by providing us with such access to your systems, records, and personnel as is required for the purposes of the audit (provided that we give your reasonable written notice).

17.3 We and our authorised representatives may take copies of your records and books as are reasonably required for the purposes of carrying out the audit. Those copies will be your Confidential Information.

17.4 We may implement technical measures regarding the functionality of the Software and/or Software Services to monitor your usage patterns for security reasons, product improvement, auditing your use of the Licence and/or marketing purposes.

17.5 If an audit reveals:

- (a) use by you or your Authorised Users of the Software or any Software Services that is not in accordance with this agreement, (including the number of Licenced Units); or
- (b) any breach of this agreement by you or your Authorised Users,

you must immediately rectify your use or breach (including at our reasonable direction) and you must also pay, or reimburse us for, all costs and expenses relating to that audit (including accountancy or legal fees and/or unpaid Fees owed to us by you by way of such breach (for example, your use of the Software and Software Services in excess of the number of Licensed Units)).

17.6 Except as set out in clause 17.5, we will bear our own costs and expenses in carrying out an audit.

## 18. Export controls and sanctions

18.1 To the extent permitted by law, this clause 18 will apply.

18.2 You acknowledge that the Dull Services and related technical data (together, the **Controlled Data**) are subject to the import and export control and economic sanctions laws of Australia, the European Union, the United States (specifically the U.S. Export Administration Regulations) and any country in which the Controlled Technology is imported or re-exported.

18.3 You agree not to export, re-export, transfer or sell any Controlled Technology:

- (a) in contravention of Australian, European Union or United States laws;
- (b) to any restricted country, entity, or persons for which an export license or other governmental approval is required; or
- (c) for use in connection with chemical, biological, or nuclear weapons, or missiles, drones or space launch vehicles capable of delivering such weapons.

18.4 You represent and warrant that you:

- (a) are not a Restricted Party;
- (b) are not currently engaging in any transaction, activity or conduct that could result in a violation of applicable Sanctions; and
- (c) will not make the Controlled Technology available directly or indirectly, to, or for, the benefit of any Restricted Party.

## 19. Termination

19.1 We may terminate this agreement (either in full, or in part in respect of specific Dull Services) and/or a Statement of Work for any reason on 30 days' notice.

19.2 Either party may terminate this agreement (either in full, or in part in respect of specific Dull Services) and/or a Statement of Work on written notice if the other party:

- (a) fails to remedy a breach within 21 days' notice from the other party requesting the breach be remedied;
- (b) breaches this agreement and that breach is not capable of remedy; or
- (c) ceases to operate, becomes insolvent, enters liquidation, file for bankruptcy, makes an assignment for the benefit of creditors, appoints a receiver, or is subject to any similar action.

19.3 Subject to clause 20.3, you may terminate this agreement on written notice as follows.

- (a) If we provide you notice of a Fee increase under clause 5.3 and you do not agree to the increased Fee. If we do not receive a notice from you in accordance with this clause, and you continue to use the Dull Services, then you agree that you're deemed to have consented to the increase in the applicable Fee.
- (b) If we give you a notice under clause 25.1 and you do not agree to such proposed change to this agreement. If we do not receive a notice from you in accordance with this clause, and you continue to use the Dull Services, then you agree that you're deemed to have consented to the proposed change and the amended terms of this agreement.

19.4 We may terminate this agreement (either in full, or in part in respect of specific Dull Services) and/or a Statement of Work on written notice if Dull's relationship with a third party supplier who provides third party components, software, hosting services or other technology, products or services which Dull relies on to perform the Dull Services, terminates or expires.

## **20. Effect of termination**

20.1 Where we terminate this agreement or a Statement of Work under clause 19.1, 19.4 or you terminate this agreement and/or a Statement of Work under clause 19.2, we will refund to you a pro-rata portion of the Fees taking into account the remainder of the Initial Term (or Renewal Term) and any unperformed Dull Services as at the date of termination;.

20.2 Where we terminate this agreement and/or a Statement of Work under clause 19.2, you will not be entitled to a refund of any Fees already paid for unperformed Dull Services.

20.3 Where you terminate this agreement in accordance with clause 19.3, the termination will be effective at the end of your then current Term, however:

- (a) the relevant terms will not be changed, and the then current terms will remain applicable; and
- (b) any Fees will not increase, and your then current Fees will remain applicable.

20.4 Where this agreement is only terminated in part in respect of specific Dull Services, and/or a Statement of Work is terminated, the agreement will continue in full force and effect in respect of all other Dull Services.

20.5 On termination of this agreement by either party (in whole or in part), subject to any terms of this agreement that permits otherwise:



- (a) each party must, on request, return or securely destroy all Confidential Information in that party's control; and
  - (b) you will no longer have any right to use, copy or access (or to permit any other person to use, copy or access) any of the Dull Services (in whole or in part), or any other information or materials that we make available to you under this agreement, including our Confidential Information; and
  - (c) you must immediately pay any and all outstanding Fees owing as at the date of termination.
- 20.6 You acknowledge and agree that transferring Customer Data from your Account and/or the relevant Dull Services to yourself or to a third party you have authorised on or before expiry or termination is solely your responsibility.
- 20.7 Following the expiry or termination of this agreement, you will no longer have access to Customer Data and we reserve the right to:
- (a) retain a copy of Customer Data; and/or
  - (b) delete Customer Data within a period of 30 business days following such expiry or termination.
- 20.8 You acknowledge and agree that we, our related bodies corporate, affiliates, representatives, successors and assigns, including their applicable officers, directors, employees and agents are not liable to you for any Loss or Consequential Loss in connection with denial of access to or deletion of Customer Data in accordance with clause 20.7.
- 20.9 The exercise by either party of any remedy, including termination, will be without prejudice to any other remedies it may have under this agreement, by law, or otherwise.

## **21. Warranties**

- 21.1 Each party represents and warrants to the other that, to the best of its knowledge, each of the following statements is true, accurate and not misleading as at the date of this agreement and will be true and accurate on each day during the Term.
- (a) It has the power to enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement.
  - (b) There are no pre-existing rights or obligations which would prevent it from complying with its obligations under this agreement.
- 21.2 We further warrant and represent as follows, to the best of our knowledge:
- (a) that the Dull Services, as provided by us and used in accordance with this agreement and our instructions and policies, do not, or will not, infringe the Intellectual Property Rights of any third party and this warranty does not apply to any Customer Data, including without limitation where it is uploaded to or hosted on the Dull Services; and

- (b) We will provide the Dull Services with:
  - (i) due care and skill; and
  - (ii) in accordance with all applicable laws, codes and regulations.

21.3 You further warrant and represent as follows.

- (a) Customer Data does not, or will not, infringe the Intellectual Property Rights of any third party.
- (b) You and your Authorised Users have all rights, qualifications, authorisations, and licences in respect of the use of the Dull Services.
- (c) In using the Dull Services, you and your Authorised Users will comply with this agreement, all applicable Software-specific terms, and all applicable laws, codes and regulations (including in respect of your professional obligations) in connection with the Dull Services.
- (d) Where you collect, or handle, Personal information, which is made available to us under this agreement, including where it is input into any of our Software, that you have collected all necessary consents to do so and that you have done so in accordance with all applicable Privacy Laws.

21.4 Subject to any express warranties in this agreement but otherwise to the fullest extent permitted by law:

- (a) we exclude all warranties, conditions and representations in whatever form, relating to the Dull Services, including any warranties or representations relating to quality, accuracy, integration, merchantability, conformity with specifications, reliability, functionality, performance, fitness for use or the security and operation of the Dull Services, including that the Dull Services will produce any particular outcomes for you and/or that it will be bug or error free; and
- (b) that no advice or information, whether oral or written, obtained by you from us or through or from the Dull Services or under this agreement shall create any warranty not expressly stated in this agreement in any manner.

## 22. Indemnity

22.1 Subject to clause 23, we indemnify you against all Losses suffered or incurred by you arising out of or in connection with:

- (a) our breach of:
  - (i) clause 14 (Intellectual Property and Data) or clause 21 (Warranties); or
  - (ii) any applicable laws; and/or
- (b) any negligent or fraudulent act or omission of Dull.

22.2 You indemnify us against all Losses suffered or incurred by us arising out of or in connection with:

- (a) your breach of:
  - (i) this agreement;
  - (ii) any Software-specific terms; and/or
  - (iii) any applicable laws;
- (b) our access to Customer Content as determined or instructed by you;
- (c) Customer Content, including but not limited to any third-party claim alleging that Customer Data, or our handling or processing of Customer Content infringes rights, including privacy and/or Intellectual Property Rights of a third party;
- (d) your negligent or fraudulent acts or omissions or wilful misconduct;
- (e) the acts or omissions of any Authorised Users, contractors or suppliers engaged by the Customer; and/or
- (f) third party claims arising out of or in connection with any of the items set out in clauses 22.2(a) – 22.2(e) above.

## 23. Liability

23.1 Notwithstanding any other provision of this agreement and to the fullest extent permitted by law:

- (a) neither party is liable, whether such liability is based on breach of contract, tort (including negligence), statute or otherwise for any Consequential Loss, indirect, incidental, punitive or special Losses of any kind (including loss of profit, loss of data, loss of opportunities or business interruption);
- (b) our sole liability for loss or corruption of data is limited to restoring such data to the last useable backup, where applicable;
- (c) we are not liable for any Loss:
  - (i) arising from activity on your Account, including additional usage fees, loss of data or downtime caused by deliberate, inadvertent or unauthorised changes by any party, or Customer Hosting, or files that you or your Authorised Users upload, transmit, install or otherwise uses in connection with the Dull Services; or
  - (ii) incurred or suffered by you, your Authorised Users or any third party as a result of you and/or your Authorised Users use of the Software and/or Software Services; and
- (d) where our liability cannot be excluded in accordance with clause 23.1 our aggregate liability in connection with this agreement whether in contract, tort (including negligence),

statute or otherwise will not exceed the fees paid by you in the 3-month period preceding any claim for any Loss.

23.2 If any supply by us pursuant to this agreement comprises a supply to a 'consumer' as defined in the Consumer Law, then nothing contained in this agreement restricts or modifies guarantee, right or remedy which pursuant to the Consumer Law applies to this agreement or is conferred on you, provided that to the extent that the Consumer Law permits us to limit its liability for breach of guarantee imposed by the Consumer Law, then to the extent permitted by the Consumer Law, our liability for breach of such term or consumer guarantee is limited, at our option, to:

- (a) if the breach relates to goods, the repair of the goods; or
- (b) if the breach relates to services:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

23.3 To the extent permitted by law all express or implied guarantees, warranties, representations, or other terms and conditions relating to the agreement or its subject matter, not contained in the agreement, are excluded from the agreement;

23.4 A party's liability under this agreement will be reduced proportionately to the extent that any such Loss arose as a result of the other party's act or omission.

23.5 We are not responsible for delays, disruptions or other faults in the Dull Services caused by factors beyond our reasonable control, including but not limited to problems with the public internet or your computer systems, the acts and omissions of third parties, and/or Force Majeure Events. We are not responsible for any damage to any of your equipment or software resulting from your use of the Dull Services.

23.6 You acknowledge and agree that we do not warrant or guarantee any particular outcomes or results from the use of the Dull Services. Any such outcomes or results will not take account of your particular objectives or circumstances and are not a substitute for any professional advice. You should determine independently or, with the aid of appropriate professional advice, whether and how to proceed with the Dull Services including any output delivered by the Dull Services.

## **24. Force majeure**

24.1 If a Force Majeure Event occurs, the affected party must notify the other party and the obligations of the party will be suspended (except any obligations to make any payments under this agreement) to the extent that they are affected by the relevant Force Majeure Event until that Force Majeure Event has ceased.

24.2 Except for your payment obligations under this agreement, neither party is liable for any delay or failure to perform any of its obligations under this agreement to the extent that the delay or failure is caused or contributed by a Force Majeure Event.

## 25. Variations

25.1 You acknowledge and agree as follows.

- (a) We may vary this agreement and any Software-specific terms by giving you notice via email as follows.
  - (i) Where the variation relates to or impacts your ability to access and use the Dull Services and/or either party's warranties or liabilities under this agreement, we will provide you with 28 days' notice prior to such change taking effect.
  - (ii) All other changes will be effective from the date of notification.
- (b) Subject to clause 19.3, your continued use of the Dull Services after the relevant effective date of notification will constitute acceptance of the amended terms of this agreement and/or (if applicable) Software-specific terms.

## 26. Dispute resolution

- 26.1 Any party who claims to have a dispute against another party must issue a notice to the other party claiming a dispute has arisen, setting out the nature of the dispute and all other information relevant to the dispute (**Dispute Notice**).
- 26.2 Within 7 days after receiving the Dispute Notice, the parties must meet (or otherwise communicate) to resolve the dispute. Each party will be represented by a person having authority to agree to such resolution or methods. All aspects of the meetings will be confidential and without prejudice to the parties' rights, obligations and liabilities.
- 26.3 If the parties do not resolve the dispute within 30 days (or such longer period the parties may agree in writing) after the Dispute Notice, then either party may initiate court proceedings in relation to the dispute.
- 26.4 Despite the existence of a dispute, each party must continue to perform its obligations under the agreement unless those obligations are the subject of the dispute.

## 27. Notices

- 27.1 A notice, consent or other communication under this agreement is only effective if it is in writing, and it is received in full and legible form at the addressee's address or email address. Any notice sent via a non-email channel must also have a copy sent via email.
- 27.2 A notice is deemed to have been received:
- (a) if posted and emailed, on the third Business Day after posting;
  - (b) if delivered personally and emailed, upon delivery; or
  - (c) if sent only by email, the earlier of when the sender receives an automated message confirming delivery or within 24 hours after the message has been sent (as recorded on the device from which the sender sent the message).

## **28. Other communications**

You acknowledge and agree that we may issue you communications regarding the Dull Services, your Account or otherwise via your Account, account manager or the web portal from time to time.

## **29. General**

- 29.1 Nothing in this agreement will be taken as giving rise to a relationship of employment, agency, partnership or joint venture. Except as otherwise provided in this agreement, the parties acknowledge and agree that neither party will have any authority to bind the other party or to enter into an agreement in the name of the other party.
- 29.2 We may sub-contract the performance of any part of our obligations and/or services to any third party.
- 29.3 This agreement may not be assigned, sublicensed or otherwise transferred by you, whether by operation of law or otherwise, without our prior written consent, such consent not to be unreasonably withheld or delayed.
- 29.4 We may assign, sublicense or otherwise transfer this agreement at any time without your consent.
- 29.5 This agreement contains the entire understanding between the parties concerning the subject matter of the agreement and supersedes all prior communications.
- 29.6 The failure of either party to enforce any provisions under this agreement will not waive the right of such party thereafter to enforce any such provisions.
- 29.7 If any term or provision of this agreement is held by a court to be illegal, invalid or unenforceable under the applicable law, that term or provision will be severed from this agreement and the remaining terms and conditions will be unaffected.
- 29.8 This agreement may be executed in any number of counterparts and all counterparts taken together will constitute one document.
- 29.9 Each party agrees that this agreement may be electronically signed, and that any electronic signatures appearing on this agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
- 29.10 Any warranty, indemnity, or obligation of confidentiality in this agreement will survive termination. Any other term which by its nature is intended to survive termination of this agreement survives termination of this agreement.
- 29.11 This agreement is governed by, and construed in accordance with, the laws of Victoria, Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria.

## **30. Definitions**

- 30.1 In this Agreement, unless the context otherwise requires:

**Account(s)** means any account(s) set up by you or us through which you and your Authorised Users access and use the Dull Services.

**Advanced Component** means any Dull software other than realms and agents which may reside on customer mobile devices for facilitating additional MFA authentication, and other functions.

**Aggregated Data** means any information or data derived from or aggregated using Customer Data which has Personal Information removed from it.

**Authorised Users** means your employees, agents, contractors, service providers (including advisors and consultants), and any other persons, entities or other third parties who are authorised, enabled or instructed by you to access and use the Dull Services on your behalf, whether or not they have been supplied with a user email address and password by you, or us at your request.

**Business Day** means a day (except Saturday and Sunday or a public holiday) on which banks are open for general banking business in Victoria, Australia.

**Confidential Information** means confidential, proprietary and commercially sensitive information (irrespective of the form or the manner in which the information is disclosed, or the time of such disclosure) including information which:

- ( ) is identified as confidential or ought to have been known to be confidential;
- (a) relates to the business affairs and practices, including financial information, business opportunities, the Software, algorithms and logic, pricing, customer quotes and pricing, business plans, business processes and methodologies; and
- (b) includes both party's data and documentation which has been provided in relation to this agreement,

but does not include information, which is in, or comes into, the public domain other than by a breach of this agreement, or which is independently known to the other party as evidenced by its written record.

**Consequential Loss** means any Loss that does not arise naturally in the ordinary course of things from the event or circumstance giving rise to the Loss.

**Consumer Law** means the provisions of Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as applied under Part XI or under a law of a State or Territory of Australia, or any similar laws which may apply to this agreement.

**Controlled Data** has the meaning given to it in clause 18.2.

**Core Component** has the meaning given to it in the Product List in Schedule 2.

**Customer Content** means Customer Data and all content provided by you to Dull or input by you, your Authorised Users, agents, nominees, and contractors into the Software in order for



Dull to provide the Dull Services, including text, copy, images, data, graphics, or multimedia content.

**Customer Data** means all information, data, materials and Personal Information and other content that you provide to us and/or input into the Software.

**Customer Hosting** has the meaning given to it in clause 10.7.

**Data Processing Agreement** means the Dull data processing agreement available at <https://dull.net/data-process-agreement>

**Dull Services** has the meaning given to it in clause 4.1.

**Eligible Data Breach** means a data breach where a reasonable person would conclude that there is a likely risk of serious harm to any of the affected individuals as a result of the unauthorised access or unauthorised disclosure, as defined in Privacy Amendment (Notifiable Data Breaches) Bill 2016 amending the Privacy Act.

**Error** has the meaning given to it in clause 16.2.

**Fees** means the fees payable for the Dull Services, as set out in the Key Details and/or a Statement of Work and/or varied in accordance with this agreement.

**Force Majeure Event** means any act, event or cause including earthquakes, cyclones, floods, fires, lightening, storms or other acts of God, strikes or industrial disputes, riots, terrorist acts, civil disturbances, breakages of machinery, or industrial conditions, or arising out of any other unexpected and exceptional cause, delays in transportation and dispositions or orders of governmental authority (including public health orders), which:

- ( ) directly or indirectly results in a party being prevented from or delayed in performing any of its obligations under this agreement; and
- (a) is beyond the reasonable control of that party.

**Initial Term** means the initial term you purchase the Software and Software Services for, as set out in the Key Details.

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, confidential information, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered, registrable or patentable.

**Licence** has the meaning given to it in clause 14.3.

**Licenced Units** means the number of licenced units a Customer has under this agreement, as set out in the Key Details.

**Losses** means any judgment, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, or otherwise.

**Metadata** means all data relating to the provision and use of the Dull Services, excluding Customer Data, Aggregated Data, data captured from a Dull integrated external software system and Personal Information.

**Moral Rights** means the rights defined as “moral rights” under the *Copyright Act 1968* (Cth) and any other similar right capable of protection under laws of any applicable jurisdiction.

**Our Materials** means all content or materials (other than any deliverables) we make available to you during the Term, including software, source code, scripts, materials, reports, documents, diagrams, code, processes, methods, specifications and other works.

**Payment Cycle** means the timing of payments for Fees as set out in the Key Details.

**Payment Method** means the payment method set out in the Key Details.

**Personal Information** has the meaning given to it in applicable Privacy Laws.

**Pre-Existing IP** means any Intellectual Property Rights in any materials existing at the date of this agreement, including Intellectual Property Rights in software, hardware or documentation and materials used in our or your business.

**Privacy Law** means the *Privacy Act 1988* (Cth) and and/or any other equivalent or similar State or Territory legislation as applicable.

**Privacy Policy** means the Dull privacy policy available at <https://dull.net/privacy-policy>.

**Professional Services** means any professional services Dull provides to you in accordance with clause 7, which may include, but is not limited to customisation and development of the Dull Services, integration of the Dull Services into your system or external software, training, consulting and/or support services.

**Purchase Order** means any document issued by the Customer to Dull indicating acceptance of a Quote.

**Quote** means a quote issued by Dull to a Customer setting out the proposed Fees and details for certain Dull Services requested by the Customer.

**Renewal Term** has the meaning given to it in clauses 3.2(b) and 3.3(a).

**Restricted Party** means any party that is:

- (i) or is part of, or is owned or controlled by, a governmental authority of a Sanctioned Territory;
- (ii) designated on any sanctions list;

- (iii) located, organised, or residing in, or operating from, a Sanctioned Territory; or
- (iv) otherwise targeted under any Sanctions.

**Sanctioned Territory** means any country or other territory subject to a general export, import, financial or investment embargo under Sanctions.

**Sanctions** means economic or financial sanctions or trade embargoes or other comprehensive prohibitions against transaction activity pursuant to anti-terrorism laws or export control laws, imposed, administered, or enforced from time to time by the United States, the European Union, the United Nations, Australia, or any country where Controlled Technology is imported or re-exported.

**Software** means the software provided to you and set out in the Key Details.

**Statement of Work** means the statement of work agreed between the parties from time to time in accordance with clause 7 of this agreement and substantially in the same form as the template set out in Schedule 1.

**Subscription** means either your subscription to access and use the Software in accordance with the Subscription Plan, including your Software Services if selected in the Key Details, in accordance with this agreement.

**Subscription Plan** means the subscription plan set out in the Key Details.

**Term** means the Initial Term and each applicable Renewal Term.

**Third-party Software** has the meaning given to it in clause 12.1.

**Updates** has the meaning given to it in clause 11.1.

30.2 In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (d) references to statutes include all statutes amending, consolidating or replacing such statutes;
- (e) \$ means the lawful currency of Australia;
- (f) any reference to a party to this document includes its successors and permitted assigns; and
- (g) the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it.

## Schedule 1

### Product List

In this Product List, the terms set out in the left hand column of the table have the meaning ascribed to them in the right hand column of the table.

A **Supported Device** means an Authorised User's device or server which is used to install the Connector Agent.

Product	Feature	Feature description*
<b>Product - Core Component</b>	Connector Agent (CA)	A Connector Agent is a client software that runs on a Supported Device. It is controlled by a single Realm Manager to achieve distributed communication inside and outside of the Realm.
	Dull Launcher (DL)	A Dull Launcher is a software-based remote application launcher, that provides users remote access to a range of technology assets, with secure and centrally managed credential storage.
	Realm Manager	Realm Manager means server software that controls Connector Agents, Dull Launchers, Managed Devices and the creation of Modular Microtunnels within a Realm.
	Modular Microtunnel	A Modular Microtunnel is a point-to-point encryption capable connection between two Connector Agents or a Connector Agent and a Dull Launcher.
	Session Event Logging	Session Event Logging is the storage and retrieval of historical network connection logs (specifying what device accessed what service and when).
	Application Launch Logging	Application Launch Logging is the storage and retrieval of historical application launches made using the Dull Launcher.
	Realm (R)	A Realm is a conceptual boundary of control for a group of Connector Agents and/or Managed Devices. Only one Realm is available per Realm Manager instance.
<b>Product - Advanced Components</b>	MFA	Multi-factor Authentication for users, devices, and services
<b>Services</b>	Set-up & implementation service	We will provide you with up to 10 business hours of remote set-up and implementation support to facilitate each Customer's implementation of the Dull platform unless otherwise agreed.
	Training	We will provide you with up to 10 business hours of remote training per year on how to use the Dull platform, unless otherwise agreed.
	Email & phone support	We will provide you with email and phone support for level 3 and 4 queries arising in relation to Customer's use of the Dull platform in accordance with our Service Level Agreement (located via your customer service portal) and times of availability, as further described in the Service Level Agreement unless otherwise agreed.
	Premium Support	Additional premium support services can be agreed between the parties.

**\*Note:** The "feature descriptions" describe the "features" of the Dull products. You agree that the "feature descriptions" specified above are summaries only. Please see the specification documents which we publish from time to time for complete product feature descriptions, and such specification documents are available from us on written request.