



Membership Terms and Conditions

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Introduction:

- A** AUSCERT is in the business of providing cybersecurity services.
- B** The Member wishes to engage AUSCERT to provide the Services on the terms set out in this agreement.
- C** AUSCERT agrees to be engaged by the Member and to provide the Services to the member on the terms set out in this agreement.

It is agreed:**1. Definitions and interpretation****1.1 Definitions**

In this agreement, unless the context clearly indicates otherwise:

Address for Service means the address of each party appearing in clause 12.2 or any new address notified by any party to all other parties as its new Address for Service;

AUSCERT is a registered business name of The University of Queensland ABN 63 942 912 684 (“UQ”). References to AUSCERT are references to UQ, and this document refers to AUSCERT and UQ interchangeably.

AUSCERT Email means the email address membership@auscert.org.au;

AUSCERT Materials means any material provided or made available to the Member by AUSCERT in connection with the Services or this agreement;

AUSCERT Website means the website www.auscert.org.au;

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business in Brisbane, Queensland, and concludes at 5 pm on that day;

Business Units means departments within the Member’s organisation;

Commencement Date has the meaning given to it in clause 2(c);

Confidential Information means the terms of this agreement and includes all information exchanged between the parties to this agreement, whether in writing, electronically or orally but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party;

Consequential Loss means any Loss that is suffered or incurred by a party as a result of a fact, matter or circumstance which does not arise naturally (that is, according to the usual course of things) from the fact, matter or circumstance giving rise to the Loss and expressly includes loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of equipment (other than cost of repair), loss of opportunity or expectation loss even if any of that Loss arises naturally (according to the usual course of things) from the fact, matter or circumstance giving rise to the Loss and any penalties imposed by a Government Agency;

Corporations Act means the *Corporations Act 2001* (Cth);

Fees means the price corresponding to the Member’s membership tier size as listed on the AUSCERT Website and as amended from time to time;

GST means any form of goods and services tax payable under the GST Law;

GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Intellectual Property Rights means all intellectual property rights including, without limitation, copyright, trademarks, designs, patents, semiconductors or circuit layout rights, trade, or other propriety rights, or any rights to registration of such rights existing in Australia, or elsewhere, whether or not such rights are registered or capable of being registered;

Law means the law in force as at the date of this agreement in the Commonwealth of Australia (including in each State and Territory and local government area);

Member means the entity specified as such on the membership application form;

Membership Application Form means the membership application form submitted by the Member requesting the provision of Services by AUSCERT;

Member Network means the collection of network systems, including hardware, software and any devices, which are used by the Member in conducting its business;

Network Users means all personnel using a computer system connected to the Member Network, and includes all personnel that use a computer system connected to any network of a Related Entity of the Member, where that Related Entity is listed on the Member Application Form;

Notice has the meaning given to that term in clause 12.1;

Related Entities has the meaning given in section 9 of the Corporations Act;

Services means the services specified on the AUSCERT Website (as amended from time to time);

Term means a period of 1 year from the Commencement Date; and

Third Party Material means any material in which a third party owns the Intellectual Property Rights and which is provided to the Member by AUSCERT in connection with the Services.

1.2 Interpretation

In this agreement, unless the context clearly indicates otherwise:

- (a) reference to a person includes any other entity recognized by law and vice versa;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes every gender;
- (d) clause headings are for reference purposes only;
- (e) reference to a party to includes that party's executors, administrators, successors (including any entity resulting from a permitted amalgamation), permitted assigns and substitutes; and
- (f) reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it.

1.3 Construction

Neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Engagement and Term

- (a) The Membership Application Form must be submitted by the Member to the AUSCERT Email.
- (b) Notice confirming receipt of the Membership Application Form by AUSCERT does not constitute acceptance by AUSCERT.
- (c) This agreement commences on the date (**Commencement Date**) the membership account is activated by AUSCERT (following completion and execution of the Membership Application Form by the Member) and continues for the Term (subject to earlier termination).
- (d) Provided AUSCERT sends the Member a renewal notice (**Renewal Notice**) at least 6 weeks prior to the end of the then current Term, this agreement automatically renews for further periods of 1 year, unless either party terminates it by notice in writing to the other party at least 10 Business Days prior to the end of the then current Term.

3. The Services

- (a) AUSCERT will provide the Member with the Services on the terms of this agreement during the Term.
- (b) Where specific Business Units of the Member are listed on the Membership Application Form, AUSCERT will only provide the Services to those Business Units, and the Member will not permit use by any other Business Units, or by any third party.
- (c) Where Related Entities are listed on the Membership Application Form, AUSCERT will also provide the Services to those Related Entities, and the Member will not permit use by any other Related Entities, or by any third party.
- (d) For the avoidance of doubt, this agreement is non-exclusive and AUSCERT may provide services to other persons, which are the same or similar to the Services.

4. Variation of Services

4.1 Variation of Services by AUSCERT

- (a) Subject to clause 4.1(b), AUSCERT may, at its discretion, vary the Services from time to time by publishing the revised Services on the AUSCERT Website
- (b) Where the variation involves a material reduction of the Services, AUSCERT will notify the Member. If the Member does not accept a variation made by AUSCERT, then within 10 Business Days of being notified of the variation, the Member may terminate this agreement by giving notice to AUSCERT.
- (c) If the Member fails to notify AUSCERT in accordance with clause 4.1(b), the Member will be taken to have accepted the variation to the Services.
- (d) If the Member wishes to change the Services in relation to the Business Units or Related Entities of the Member that receive the Services after the Commencement Date, it is at AUSCERT's sole discretion:
 - (i) whether to accept the changes; and
 - (ii) if AUSCERT accepts the Member's request, the increase in Fees that will result from the change to the Services.

5. Licence to use AUSCERT materials

- (a) Subject to this agreement, AUSCERT grants the Member a limited, non-exclusive, non-transferable licence (without the right to sublicense) to use the AUSCERT Materials during the Term for the purpose of the Member's business and operations.
- (b) The Member is responsible for ensuring any of its personnel accessing the AUSCERT material:
 - (i) do not on-sell the Services or the AUSCERT Materials; and
 - (ii) do not permit or enable any third party to access to the AUSCERT Materials or the Services.

6. Member obligations

The Member will:

- (a) regularly update details of its contact details, domains and IP addresses on AUSCERT's member portal;
- (b) promptly provide AUSCERT with directions, instructions or information which are reasonably requested by AUSCERT; and
- (c) immediately notify AUSCERT of any material change to the Member's details (or a Related Entity's details if that Related Entity is included in the Membership Application Form), occurrence or event that may materially impact the provision of the Services.

7. Member acknowledgements

The Member acknowledges and agrees that:

- (a) AUSCERT is not responsible for any failure or delay in performing the Services to the extent resulting from the Member not complying with clause 6;
- (b) the Services are provided on an "as is" basis and AUSCERT does not warrant that the Services will be fault or error free; and
- (c) the Services are intended as an ancillary component of the Member's cybersecurity strategy, and will not be relied upon as a sole approach.

8. Confidentiality

- (a) A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) A party will not be in breach of clause 8(a) in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- (c) Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this agreement, do not make public or disclose the other party's Confidential Information.
- (d) This clause will survive the termination of this agreement.

9. Logo

- (a) Without AUSCERT's prior written consent, the Member must not use the AUSCERT or any other University of Queensland logo, name or trade mark in any public statement or external publication or media or for any promotional or other marketing purposes.
- (b) AUSCERT will not publish the Member's name or logo in relation to the Services without obtaining prior consent from the Member.

10. Fees and Payment

10.1 Fees

- (a) The Fees for the Services are set out on the AUSCERT Website, or in a quote provided by AUSCERT.
- (b) AUSCERT will invoice the Member annually in advance.
- (c) AUSCERT may, at its sole discretion, increase the Fees for the Services which will take effect at the start of the next Term.
- (d) If AUSCERT increases the Fees in accordance with clause 10.1(c), AUSCERT will notify the Member in the Renewal Notice and the Member may elect to not renew the Agreement in accordance with clause 2(d).
- (e) If AUSCERT becomes aware of additional Network Users outside of those accounted for in the Membership Application Form, AUSCERT may in its absolute discretion increase the Fees to reflect the appropriate membership level as listed on the AUSCERT Website.

10.2 Payment terms

- (a) All invoices are due 30 days after the invoice date.
- (b) If the Member fails to pay the Fees when they are due, AUSCERT may suspend the Services immediately until the Member pays the overdue Fees in full.

11. Liability and Indemnity

11.1 Liability

- (a) To the extent permitted by law, AUSCERT, its officers, employees, agents or contractors, are not liable for Consequential Loss even if AUSCERT, its officers, employees, agents or contractors are aware of the possibility of those Consequential Loss.
- (b) All statutory conditions or warranties that would otherwise be implied into this Agreement under applicable Law, are excluded to the fullest extent permitted by Law.
- (c) AUSCERT will have no liability to the Member in respect of any failure, delay, cessation or error of the Services or any of its operations or processes:
 - (i) due to any act, omission, event or non-event that is beyond AUSCERT's reasonable control; or
 - (ii) where the failure, delay, cessation or error of the Services was contributed to by the Member.
- (d) The aggregate liability of AUSCERT for loss suffered or incurred by the Member arising out of or in connection with this Agreement (whether under statute, in contract or in tort,

including for negligence, or on any other basis in law or equity) is limited to the total of the Fee paid during the 12 months prior to the claim arising.

12. Notices

12.1 Notices

Any notice, demand, consent, approval, request or other communication to be given under this agreement (**Notice**) must be in writing and, unless this agreement provides otherwise, in English.

12.2 Address for service

The Address for Service of each party is:

AUSCERT

Name: AUSCERT
Email Address: membership@auscert.org.au
Address: The University of Queensland, St Lucia QLD 4072

Member

As specified on the Membership Application Form.

12.3 Service of Notices

- (a) A Notice must be given at the recipient's Address for Service by being:
- (i) hand delivered;
 - (ii) sent by email;
 - (iii) sent by prepaid mail within Australia; or
 - (iv) sent by prepaid Express Post International (or overseas equivalent) airmail if the sender and the recipient are in different countries.
- (b) A Notice is given if:
- (i) hand delivered, on the date of delivery;
 - (ii) sent by email and the sending party's electronic equipment reports that the email has been sent:
 - (A) before 5 pm on a Business Day, on that day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice;
 - (iii) sent by prepaid mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iv) sent by prepaid Express Post International (or overseas equivalent) airmail between countries, on the date that is 10 Business Days after the date of posting.

13. General provisions

13.1 Assignment and subcontracting

- (a) AUSCERT may assign, novate or otherwise transfer any of its rights or obligations under this agreement to a third party without notice to, or the prior consent of, the Member, but if AUSCERT requires, the Member will sign any documents to give effect to an assignment, novation or transfer by UQ under this clause.
- (b) The Member must not transfer or assign its rights under this agreement without AUSCERT's prior written consent (which may be given or withheld in UQ's absolute discretion).
- (c) AUSCERT may subcontract whole or any part of the Services at any time but will remain responsible for the performance of the Services.

13.2 Entire agreement

This agreement constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

13.3 Waivers and modifications

The waiver, amendment or modification of this agreement or any right hereunder shall not be effective unless made in writing and signed by an authorised representative of both parties.

13.4 Governing law and jurisdiction

This agreement will be governed by the laws of Queensland, Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State.

13.5 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

13.6 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument. Delivery of this agreement by email constitutes an effective mode of delivery.