

NCS RESALE TERMS

This agreement sets out the terms on which NCS AU Pty Ltd (ABN 78 626 006 111) or its Group Entities (**NCS**), will provide Resold Products to Customer. These Resale Terms comprise: (1) the Product Terms; and (2) the general resale terms (**Resale Terms**). If there is any inconsistency in these terms the provision higher in the list prevails to the extent of inconsistency.

Resale Terms

R1 Resold Products

- (a) Unless otherwise prescribed in the relevant Product Terms, Customer may request Resold Products from time to time by notifying NCS. On execution of an Order, NCS will order the Resold Products using the information set out in that Order. Customer is responsible for checking the information set out in the Order and NCS is not responsible for, and has no liability to Customer for any errors or incorrect information that may be contained in the Order. Customer acknowledges that Provider may refuse an Order or part of an Order at its sole discretion.
- (b) Customer acknowledges and agrees that:
 - (i) NCS is a reseller of the Resold Products and NCS does not supply the Resold Products;
 - (ii) unless notified by NCS in writing, NCS is not acting as the Provider's agent;
 - (iii) NCS is not responsible for the provision of the Resold Products; and
 - (iv) Resold Products are provided by the relevant Provider in accordance with the relevant Provider Terms.

R2 Value-Add Services

- (a) Where an Order specifies that NCS will provide Value-Add Services, NCS will provide those services as set out in the relevant Order.
- (b) The Value-Add Services are dependent on Customer ordering Resold Products. In the event that all Subscriptions for Resold Products expire, are terminated or consumption of Resold Products under the relevant Order falls to zero, NCS may cease providing the Value-Add Services without penalty or notice at NCS' sole discretion.

R3 Customer responsibilities

- (a) Customer must:
 - (i) accept the Provider Terms prior to ordering or accepting Resold Products;
 - (ii) comply with the Provider Terms for the term of these Resale Terms; and
 - (iii) provide evidence of Customer's acceptance of the relevant Provider Terms on request by NCS.
- (b) Customer indemnifies NCS against any Loss incurred or suffered by NCS as result of Customer's breach of paragraph (a) or the relevant Provider Terms.
- (c) Customer must not assign, sublicense, resell or otherwise provide the Resold Products to any third party without NCS' prior written consent. If assignment or sublicense is permitted under this paragraph (c), Customer will be fully liable to NCS for the acts and omissions of each of its assignees and sublicensees as if they were acts or omissions of Customer.
- (d) Customer must co-operate with NCS and NCS' third-party contractors and service providers as reasonably requested to enable NCS to perform its obligations. This includes:
 - (i) providing all Inputs;
 - (ii) providing any information reasonably requested by NCS as soon as reasonably practicable; and
 - (iii) maintaining complete and accurate records and accounts with respect to the Resold Products and permitting NCS to inspect such records and accounts upon reasonable notice during regular business hours.
- (e) Customer must comply with, and take reasonable steps to ensure that all Customer Personnel comply with, all applicable Laws.

R4 Customer Data

- (a) Customer is solely responsible for all Customer Data. NCS is entitled to rely on the accuracy and completeness of the Customer Data without verification.
- (b) Customer must ensure that use of Customer Data by NCS (including by providing Customer Data to a Provider) or a Provider in accordance with these Resale Terms or the Provider Terms does not:
 - (i) infringe any Intellectual Property Rights or any other rights of any third party;
 - (ii) violate any applicable Laws (including Privacy Laws); or
 - (iii) violate any of NCS' or Provider's policies and terms governing the Customer Data.

- (c) Without limiting any of NCS' other rights or remedies, Provider (or NCS on Provider's behalf) may remove, delete or disable any Customer Data that does not comply with R4(b).

R5 Changes

- (a) Occasionally, a Provider may:
- (i) add, modify or discontinue any feature, functionality or any other part of a Resold Product (including price);
 - (ii) modify the manner in which the Provider provides the Resold Product (including by assigning the Reseller Agreement to another party or subcontracting its obligations to a third party); or
 - (iii) make changes to the Reseller Agreement or the Provider's resale program (including by termination),
- (each, a **Change**). The Provider may make Changes at its own discretion and without notice, and NCS is not responsible or liable to Customer for any such Changes.
- (b) NCS may update the Resale Terms or terminate any impacted Order to address a Change by written notice. If Customer is materially and adversely impacted by the proposed Change and Customer can substantiate this to NCS' reasonable satisfaction within 10 Business Days of receiving notice under this R5, subject to R11, Customer may terminate the impacted Subscription by written notice.
- (c) Customer acknowledges that NCS does not control the price of any Resold Product and that a Provider may change its prices at its own discretion and without notice (including the price charged to NCS). If a Provider changes the price of a Resold Product, NCS may pass on those changes to the relevant Resold Product Fees by written notice.
- (d) The Resold Products and Value-Add Services are dependent on the Inputs set out in the relevant Order. If an Input is terminated, modified, discontinued or otherwise changed, NCS may amend the Resale Terms (including the Resold Product Fees) to account for the changes to the Input by written notice.

R6 Confidentiality

R6.1 Protection of Confidential Information:

- (a) The recipient of Confidential Information (the **Recipient**) must keep the Confidential Information of the disclosing party (the **Discloser**) confidential and secure. The Recipient must protect the Discloser's Confidential Information against unauthorised access, use or disclosure.
- (b) The Recipient may only use the Discloser's Confidential Information to the extent necessary to perform its obligations and exercise its rights under this agreement.
- (c) The Recipient must not disclose the Discloser's Confidential Information except:
- (i) to its Personnel, advisors and auditors provided that the Recipient ensures that the relevant third party to whom the Confidential Information is disclosed complies with the terms of this agreement as if that person were the Recipient;
 - (ii) to the extent required by Law, provided the Recipient notifies the Discloser in advance (if possible) and discloses no more than the minimum required; or
 - (iii) with the Discloser's prior written consent.

R6.2 Disclosure to Providers: Customer acknowledges and consents to NCS disclosing Confidential Information (including the terms of this agreement and Customer Data) to the relevant Provider to the extent that NCS is required to do so under the applicable Reseller Agreement. Additional Provider-specific disclosure requirements may apply under the relevant Product Terms.

R7 Intellectual Property

R7.1 Background Material:

- (a) Each party owns all rights, including all Intellectual Property Rights, in and to its Background Materials.
- (b) Each party grants to the other party a worldwide, non-exclusive, royalty-free licence to Use that party's Background Materials (and to sublicense others to Use the Background Materials) solely to the extent directly necessary for performing each party's obligations under this agreement.
- (c) To the extent a party makes any modifications or enhancements to the Background Material of the other party, that party must assign all rights in and to such modifications or enhancements to the other party immediately from creation.

R7.2 Resold Product IP: Resold Product IP is licenced to Customer under the relevant Provider Terms. NCS has no responsibility or liability for the Resold Product IP (including any responsibility or liability for infringement Claims in respect of the Resold Product IP).

R8 Non-solicitation

- (a) Unless agreed otherwise in writing, the parties must not directly or indirectly, recruit, solicit, hire, employ or engage the Personnel of the other party for the duration of these Resale Terms and for 1 year after their expiry or termination.
- (b) The parties acknowledge the value of the Personnel, the investment each party has committed towards the training of such Personnel, and the difficulty in ascertaining the quantum of damages for breach of R8(a).

- (c) The parties agree that if either party breaches R8(a), the breaching party must pay the non-breaching party liquidated damages equal to the Non-Solicitation Damages. The parties acknowledge and agree that the Non-Solicitation Damages represent a fair and reasonable amount of compensation to the non-breaching party for the loss of its Personnel and breach of R8(a).
- (d) For clarity, this R8 does not apply to any employment, hire or engagement resulting from a response to a public advertisement.

R9 Payment

R9.1 Resold Product Fees:

- (a) Customer must make timely payment of all amounts specified in each invoice. If Customer fails to make timely payment of any Resold Product Fees, Customer acknowledges that:
 - (i) a Provider may suspend or cancel Customer's access to the Resold Product without notice, and NCS is not responsible or liable for any such suspension or cancellation; and
 - (ii) a Provider may charge interest on the outstanding Resold Product Fees. Customer is responsible for such interest and must promptly pay the amount charged in accordance with these Resale Terms.
- (b) Customer must pay all Resold Product Fees:
 - (i) to the bank account notified to Customer in writing;
 - (ii) in accordance with the Product Terms and relevant Order;
 - (iii) free and clear of any restriction, condition, set-off, deduction or withholding of any nature; and
 - (iv) with sufficient time for NCS to pass through the payment to Provider (no less than the time for payment set out in the Order).
- (c) NCS will make all commercially reasonable efforts to pass through payments to the Provider in a timely manner in accordance with the terms of the Reseller Agreement. However, NCS is not liable for any delays in passing through payments to the extent that Customer causes or contributes to the delay.
- (d) Customer indemnifies NCS against any Loss incurred or suffered by NCS in connection with Customer's breach of this R9.
- (e) Customer acknowledges and agrees that, except as required by applicable law or as expressly permitted under the relevant Provider Terms, NCS does not accept returns. Customer further acknowledges and agrees that, as a general principle, there is no right of return for any Resold Products (including software and hardware) for change of mind. All sales are final, and the Customer is responsible for ensuring the suitability of the Resold Products prior to placing an Order.

R9.2 Value-Add Services Fees:

- (a) NCS will invoice, and Customer must pay NCS the Value-Add Services Fees in accordance with this agreement.
- (b) Customer must pay all invoices within 30 days from the date of the invoice.
- (c) If Customer fails to pay an undisputed amount when due, and that amount is still outstanding 10 Business Days after Customer receives a reminder notice from NCS, NCS may charge interest at a rate equal to the Reserve Bank of Australia's current official cash rate target plus 3 percent on the unpaid amount from the date of the reminder notice until the unpaid amount is paid in full.

R9.3 Taxes:

- (a) The Resold Product Fees and any other expenses or charges set out in the Order are exclusive of GST.
- (b) If Customer is legally required to make any deduction or withholding from any amount payable in relation to these Resale Terms, then the amount payable will be increased to ensure NCS receives the full amount specified as if there were no deduction or withholding.

R10 Liability

- (a) Each party will have no liability to the other party for Consequential Loss arising out of or in connection with a Resold Product or these Resale Terms (however arising, including for negligence).
- (b) The aggregate liability of each party for all Claims by the other party arising out of or in connection with a Resold Product under these Resale Terms (whether under statute, in contract or in tort, including for negligence, or otherwise) is limited to the total Resold Product Fees paid or payable for that Resold Product during the twelve (12) months prior to the event giving rise to the cause of action..
- (c) The aggregate liability of each party for all Claims by the other party arising out of or in connection with a Value-Add Service under these Resale Terms (whether under statute, in contract or in tort, including for negligence, or otherwise) is limited to the total Value-Add Service Fees paid or payable under the relevant SOW during the twelve (12) months prior to the event giving rise to the cause of action.
- (d) Nothing in this agreement limits either party's liability for any indemnity provided by that party under these Resale Terms.
- (e) Each party's liability under this agreement (including under any indemnity) will be proportionately reduced to the extent that the other party or its Personnel caused or contributed to the relevant liability.

R11 Termination

R11.1 Termination: A party may terminate any impacted Order if:

- (a) the other party:
 - (i) suffers an Insolvency Event;
 - (ii) commits a material breach of this agreement that is capable of remedy, and fails to remedy that material breach within twenty (20) Business Days of being notified, or such other cure period agreed in the relevant Product Terms;
 - (iii) commits a material breach of this agreement that is not capable of remedy; or
- (b) it becomes unlawful for the party to perform or comply with its obligations under this agreement.

R11.2 Active Subscriptions:

- (a) Customer acknowledges that if Customer terminates an Order prior to the Order end date or relevant Subscription end date, NCS may invoice, and Customer must pay, any relevant cancellation fee and any relevant Resold Product Fees up to the Order end date or Subscription end date.
- (b) Where a Customer has an active Subscription under an Order, that Order (and these Resale Terms as they apply to that Order) will survive expiry or termination (except where Customer terminates due to NCS' material breach of these Resale Terms) until:
 - (i) the Subscription comes to an end; and
 - (ii) Customer pays any outstanding Resold Product Fees (including any unmet minimum spend commitments) and any relevant cancellation fees.

R12 Dispute Resolution

R12.1 Disputes: Except where a party seeks urgent interim relief, a party must not commence court proceedings in relation to any dispute or disagreement arising out of or relating to this agreement (**Dispute**) unless it has complied with the provisions of this R12.

R12.2 Dispute Notice: A party claiming that a Dispute has arisen must notify the other party in writing, including a description of the nature of the Dispute (**Dispute Notice**).

R12.3 Process:

- (a) Within five (5) Business Days after receipt of a Dispute Notice, each party must nominate a representative who has express authority to resolve the Dispute, and those representatives must meet to seek to resolve the Dispute by negotiation.
- (b) All aspects of the negotiation must be kept confidential, and all communications between representatives during the negotiation are made on a without prejudice basis.
- (c) If the representatives are unable to resolve the Dispute within thirty (30) Business Days after the date of the Dispute Notice, then either party may refer the Dispute to mediation. If the representatives are unable to resolve the Dispute during mediation, then either party may have recourse to litigation or other dispute resolution processes.

R13 General

R13.1 Notices: Notices must be in writing. Notices may only be sent to the party's nominated address by hand or registered post or by email. Where sent by registered post, it will be regarded as received on the third Business Day after the date of posting. Emails will be regarded as received on the same Business Day as sending.

R13.2 Force Majeure:

A party will not be liable for any failure or delay in the performance of its obligations under this agreement to the extent caused by a Force Majeure Event, provided:

- (a) that party promptly notifies the other party of the Force Majeure Event and its likely impact on the performance of its obligations under this agreement; and
- (b) that party takes all reasonable steps to avoid or minimise the impact of its affected obligations caused by the Force Majeure Event.

R13.3 Entire agreement:

- (a) Nothing in this agreement limits any liability either party may have in connection with any representations or other communications (either oral or written) made prior to or during the term of this agreement, where such liability cannot be excluded.
- (b) Subject to R13.3(a), this agreement supersedes all previous agreements, understandings, negotiations, representations and warranties about its subject matter and embodies the entire agreement between the parties about its subject matter.
- (c) The parties must not rely on any representation made by the other party or any other person, except as expressly set out in this agreement.

R13.4 Counterparts: This agreement may be executed in any number of counterparts.

R13.5 Severability: Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of the agreement or term is not affected.

R13.6 Assignment:

- (a) A party must not Transfer any of its rights or obligations under this agreement without the prior written consent of the other party (which must not be unreasonably withheld or delayed), except as set out in paragraph (b).
- (b) A party may Transfer any of its rights or obligations under this agreement without the consent of the other party where such Transfer is:
 - (i) for NCS, to a Group Entity; or
 - (ii) for Customer, to an entity that has sufficient financial capacity and is not a competitor to NCS,
 - (iii) provided that:
 - (1) the Transferring party provides prior written notice to the other party; and
 - (2) the Transfer does not change the existing Resold Product provided under this agreement.

R13.7 Survival: Any clause that is intended to survive termination of this agreement will do.

R13.8 Relationship: NCS is an independent contractor. This agreement does not form any partnership, joint venture, fiduciary, employment, agency or other relationship between the parties. Neither party has the power to bind the other.

R13.9 Amendment: Except as otherwise set out in this agreement, this agreement may only be varied by an instrument in writing signed by both parties.

R13.10 Governing Law: This agreement is governed by the Laws of New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the courts sitting in New South Wales, Australia.

R14 Interpretation and Definitions

R14.1 Interpretation: In this agreement:

- (a) references to a person includes an individual, partnership, joint venture, association, firm, government, statutory body or authority;
- (b) references to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (c) a reference to any of the words "include", "includes" and "including" are to be read as if followed by the words "without limitation";
- (d) a reference to a legislation or other Law includes delegated legislation and consolidations, amendments, re-enactments or replacements;
- (e) a reference to a document includes all amendments, supplements, replacements or novations of that document;
- (f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (g) words in the singular include the plural and vice versa, as the context requires;
- (h) headings, bold type and square brackets are for convenience only;
- (i) terms used that are defined in the GST Act have the meaning given in that Act (except that "GST" also includes a notional liability for GST);
- (j) consideration includes non-monetary consideration; and
- (k) unless expressly stated, any references to "dollars" or the symbol "\$" means the Australian dollar (AUD).

R14.2 Definitions:

Capitalised terms in this agreement have the meaning given to them in this R14.2.

- (a) **Background Material** means Material owned and created by each party that has not been created in the performance of this agreement, and includes modifications or enhancements to Background Material.
- (b) **Business Day** means any day other than a Saturday, Sunday or recognised public holiday in New South Wales, Australia.
- (c) **Change** has the meaning given in R5(a).
- (d) **Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand.
- (e) **Confidential Information** means: (a) information of a confidential nature which is disclosed to, learnt by, or which otherwise comes to the knowledge of or into the possession of, the Recipient; or (b) information designated by the Discloser as confidential. But does not include information that: (c) is or becomes generally available in the public domain, other than through any breach of confidence; (d) was already known by Recipient at the time of disclosure or is subsequently disclosed to that Recipient by someone other than the Discloser other than through any breach of confidence; or (e) has been independently developed by the Recipient without using any other Confidential Information of the other party.

- (f) **Consequential Loss** means any Loss suffered or incurred by the other party in connection with a Resold Product or these Resale Terms that does not arise naturally (that is, according to the usual course of things) from the event giving rise to the Loss. Consequential Loss includes loss of profits, opportunity, revenue, sales, goodwill, reputation, anticipated savings or business interruption (whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage). Loss suffered by NCS under the Reseller Agreement is not Consequential Loss.
- (g) **Customer** means the party specified as the Customer in the Order.
- (h) **Customer Data** means: (i) any Materials provided to NCS in connection with a Resold Product; or (ii) any Materials: (A) stored in; (B) submitted, uploaded or disclosed to; or (C) displayed or transmitted using, a Resold Product.
- (i) **Discloser** has the meaning given in R6.1(a).
- (j) **Dispute** has the meaning given in R12.1.
- (k) **Dispute Notice** has the meaning given in R12.2.
- (l) **Force Majeure Event** means fire, flood, earthquake, elements of nature or acts of God, epidemics, pandemics, wars, terrorist acts, site-specific terrorist threats, cyber-attacks and threats, riots, civil disorders, rebellions or revolutions, government orders, network communications failure or delay (including failure of any third party APIs), or any other cause beyond the reasonable control of a party.
- (m) **Group Entity** means any related bodies corporate within the meaning of the *Corporations Act 2001* (Cth).
- (n) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (o) **Input** means the inputs specified in the relevant Order.
- (p) **Insolvency Event** means one or more of the following: (a) Anything that reasonably indicates either party will become unable to pay its debts as they fall due. This includes: (i) execution or distress being levied against any income or assets of either party; (ii) a meeting of a party's creditors being called or held; (iii) a security becoming enforceable or being enforced in relation to any of a party's assets or undertakings; (iv) a step being taken to make a party bankrupt or to wind a party up; (v) the appointment to a party of a controller or administrator as defined in section 9 of the *Corporations Act 2001* (Cth); (vi) a party entering into any type of agreement, composition or arrangement with, or assignment for the benefit of, all or any class of its creditors; or (vii) a party being made subject to a deed of company arrangement; (b) A step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to a party or any of its assets; (c) A party ceasing to carry on business (or indicating that it is about to do so).
- (q) **Intellectual Property Rights** means all intellectual property rights at any time recognised by Law. This includes all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trade marks, trade secrets and know-how, registered designs, circuit layouts. It also includes all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. It does not include Moral Rights and the rights of performers.
- (r) **Law** means common law, equity, statute, regulation, proclamation, ordinance, by-law, mandatory code, direction or notice issued by an authority, writ, judgment and any award or other industrial instrument. Including any sanctions, export control, or import laws, or other regulations, orders, directives, designations, licences, or decisions relating to the trade of goods, technology, software and services which are imposed, administered or enforced from time to time by Australia, the United States, the United Kingdom, the EU, EU Member States, Switzerland, the United Nations or United Nations Security Council and also includes U.S. antiboycott laws and regulations.
- (s) **Loss** means any loss, damage, liability penalty, fine, charge, expense, outgoing, payment or cost of any nature or kind, including all legal and other professional costs on a full indemnity basis.
- (t) **Material** means data, information, documentation, reports, software, firmware, tools, diagrams, procedures, plans and other materials.
- (u) **Moral Rights** has the meaning given under the *Copyright Act 1968* (Cth).
- (v) **Non-Solicitation Damages** means, unless otherwise agreed in the relevant Order, liquidated damages that are equal to six (6) months of the solicited Personnel's remuneration as at the date of that Personnel's last day of service with the non-breaching party.
- (w) **Order** means the document setting out the Resold Products and the applicable fees which Customer agrees to procure, and NCS agree to provide using the template made available by NCS which is signed (or otherwise accepted) by both parties.
- (x) **Personnel** means any officer, director, employee, agent or subcontractor of either party.
- (y) **Privacy Laws** means the *Privacy Act 1988* (Cth) and any other legally binding requirement under Australian Law relating to the handling of personal information.
- (z) **Product Terms** are the terms specified as "Product Terms" in this agreement.
- (aa) **Provider** means any provider of a Resold Product, including any provider specified as a "Provider" in an Order. A Provider is not a subcontractor.
- (bb) **Provider Terms** are the terms between Customer and Provider that govern the provision of the Resold Products, including any terms stated to be "Provider Terms" in the Order or the Resale Terms.

- (cc) **Recipient** has the meaning given in R6.1(a).
- (dd) **Reseller Agreement** means the agreement (or agreements) between Provider and NCS which permit NCS to resell the Resold Products to the Customer.
- (ee) **Resold Product** means any product supplied by a third party and resold by NCS under these Resale Terms. Resold Products include any products or services specified as a "Resold Product" in an Order.
- (ff) **Resold Product Fees** means the fees charged for a Resold Product under an Order.
- (gg) **Resold Product IP** means the Intellectual Property Rights which subsist in the Resold Products.
- (hh) **Subscription** means the right to use a Resold Product under the relevant Provider Terms.
- (ii) **Transfer** means an assignment, novation or other transfer, and includes a change in control of either party.
- (jj) **Use** means to access, use, store, process, display, copy, communicate, modify and/or to create derivative works from.
- (kk) **Value-Add Services** means those services specified as "Value-Add Services" in the relevant Order.
- (ll) **Value-Add Services Fees** means the fees charged for a Value-Add Service under an Order.

Product Terms

A1 ClickUp Products

The Product Terms in this A1 only apply to Resold Products provided by Mango Technologies, Inc. DBA ClickUp (350 Tenth Ave, Suite 500, San Diego, CA 92101) (**ClickUp**) (**ClickUp Products**).

The Provider Terms for ClickUp Products are the publicly available terms that apply to the ClickUp Products (as at the time of the agreement, these terms are available at: <https://clickup.com/terms>).

A1.1 Subscription Term

Customer acknowledges and accepts that its Subscription to the ClickUp Products (a **ClickUp Subscription**) may be subject to a default automatic renewal unless Customer cancels the ClickUp Subscription in accordance with the ClickUp Provider Terms.

A1.2 Additional Subscriptions: Customer may order additional Subscriptions at any time. The fees for these Subscriptions will be charged on a prorated basis.

A2 Product Terms applying to monday.com Products

The Product Terms in this A2 only apply to Resold Products provided by monday.com Ltd (**monday.com**) (**monday.com Products**).

The Provider Terms for monday.com Products are the publicly available terms that apply to the monday.com Products (as at the time of the agreement, these terms are available at: <https://monday.com/legal/tos/https://clickup.com/terms>).

A2.1 Account management: monday.com may require certain changes to Customer's account from time to time. NCS will make all reasonable endeavours to notify Customer of the changes in advance. NCS is otherwise not responsible or liable to Customer for any changes made under this A2.1. Where these changes require assistance from Customer, Customer must co-operate with NCS and provide any assistance reasonably requested by NCS.

A2.2 Feedback: As between the parties, NCS owns any suggestions and/or comments with respect to the monday.com Products (**Feedback**). NCS may use the Feedback at its discretion, without limitation, and without being obliged to make any payment or give credit to Customer.

A3 Product Terms applying to PageProof Products

The Product Terms in this A3 only apply to Resold Products provided by PageProof Holdings Limited (**PageProof**) (**PageProof Products**).

The Provider Terms for PageProof Products are the publicly available terms that apply to the PageProof Products (as at the time of the agreement, these terms are available at: <https://pageproof.com/terms>).

A3.1 Customer responsibilities

Customer will notify NCS directly of any defects, issues or complaints in relation to the Resold Product.

A4 Product Terms applying to NewGen Products

The Product Terms in this A4 only apply to Resold Products provided by Newgen Software Technologies Pty Ltd (ACN 633 170 466) (**NewGen**) (**NewGen Products**).

The Provider Terms for NewGen Products are the publicly available terms that apply to the NewGen Products. At the time of the agreement, these terms are available at <https://newgensoft.com/terms-of-use/> (these terms and the location of these terms may change from time to time, Customer is responsible for locating and complying with the most recent version of these terms).

A4.1 Customer responsibilities

- (a) NCS is only authorised to sell and implement NewGen Products in Australia and New Zealand. Customer warrants that it is located in Australia or New Zealand and that NewGen Products are only being implemented in Australia and New Zealand. Customer must notify NCS immediately if Customer is no longer located in Australia or New Zealand or the implementation of NewGen Products is no longer in Australia or New Zealand.
- (b) On termination or expiry of this agreement, Customer must return any proprietary materials belonging to NewGen provided to Customer by NCS in connection with this agreement.

A4.2 Definitions

Capitalised terms in this A4 have the meaning given below. Capitalised terms that are otherwise not defined in this section have the meaning given to them in the Resale Terms.

NewGen IP means any Materials provided by NewGen or developed by NewGen in the course of providing NewGen Products.

A5 Product Terms applying to Google Products

The terms in this A5 only apply to Resold Products provided by Google (**Google Products**).

The Provider Terms for Google Products are the publicly available terms that apply to Google Products. At the time of the agreement, these terms are available at <https://cloud.google.com/product-terms> (these terms and the location of these terms may change from time to time, Customer is responsible for locating and complying with the most recent version of these terms).

A5.1 Google Subscription Term

Customer acknowledges and accepts that its Subscription to certain Google Products (a **Google Subscription**) may include a default automatic renewal. At the end of the term of the relevant Google Subscription, the Google Subscription, these Resale Terms and any terms in the Head Agreement that apply to the Google Subscription will automatically renew for the renewal term set out in the Provider Terms unless Customer cancels the Google Subscription by providing the required notice to the Provider.

A5.2 Google Products

- (a) Customer acknowledges and agrees that Google will provide the Google Products in accordance with the applicable Service Level Agreement. Where Google determines that financial credit is payable under the Service Level Agreement, NCS will apply that financial credit to Customer's next invoice. The financial credit is Customer's sole and exclusive remedy for any failure by Google to meet the Service Level Agreement.
- (b) Google may suspend Customer's access to the Google Products from time to time in accordance with the Google Provider Terms. NCS is not responsible for this suspension and will have no liability arising out of that suspension.
- (c) Any Feedback provided by Customer to NCS is owned by NCS.

A5.3 Customer responsibilities:

Customer:

- (a) is responsible for all activities that occur under Customer's accounts;
- (b) must use commercially reasonable efforts to prevent and terminate any unauthorised access to or use of the Google Product;
- (c) must notify NCS as soon as reasonably practicable if:
 - (i) Customer experiences a product issue (including product issues experienced by an end-user); or
 - (ii) Customer becomes aware of any unauthorised access to or use of the Google Product; or
 - (iii) Customer requires technical support, and
 - (iv) Customer must not contact Google directly about these matters.
- (d) must not use the Google Product to engage in High-Risk Activities;
- (e) must not order any Google Products for use outside the territory specified in the Order without NCS' prior written consent; and
- (f) must not use any Google Products to operate or enable any telecommunications service, or to place or receive calls from any public switched telephone network, including as part of an Application.

A5.4 Use of Customer Data

- (a) The Customer consents to NCS disclosing information about the Customer, which may include Confidential Information or Customer Data, to Google upon Google's request. Google will process Customer Data as described in the Google Cloud Data Processing Addendum. For the purposes of the Google Cloud Data Processing Addendum, Google is a processor, and the Customer is the controller, of any Customer Data.

- (b) The Customer consents to the use of Customer Data by NCS or Google to inform Customer about new or additional Google products.

A5.5 Fees

- (a) Customer acknowledges that Google determines the pricing of the Google Products and Customer's obligation to pay all Resold Product Fees is non-cancellable.
- (b) If Google discovers that any Resold Product Fees were not in accordance with the applicable pricing lists and the Resold Product Fees were reduced as a result, Google may charge the Customer for the discrepancy.

A5.6 Definitions

Capitalised terms in this A5 have the meaning given to them below. Capitalised terms that are otherwise not defined in this section have the meaning given to them in the Resale Terms.

- (a) **Application** means any software program that Customer creates or hosts using the Google Product.
- (b) **Feedback** means feedback or suggestions about the Google Product.
- (c) **Google Cloud Data Processing Addendum** means the then-current terms describing data processing and security obligations with respect to Customer Data, as described at <https://cloud.google.com/terms/data-processing-addendum> or any successor URL (as amended from time to time. Customer is responsible for locating and complying with the most recent version of these terms).
- (d) **Google Product** has the meaning given in A5.
- (e) **Google Subscription** has the meaning given in A5.1.
- (f) **High Risk Activities** means uses such as the operation of nuclear facilities, air traffic control or life support systems, where the failure of the Google Product could lead to death, personal injury, or environmental damage.
- (g) **Service Level Agreement** means the then-current service level agreement for the relevant Google Product at <https://cloud.google.com/terms/sla> or any successor URL (as amended from time to time. Customer is responsible for locating and complying with the most recent version of these terms).

A6 Product Terms applying to Microsoft Products

The terms in this A5 only apply to Resold Products provided by Microsoft (**Microsoft Products**).

The Provider Terms for Microsoft Products are the publicly available terms that apply to Microsoft Products. At the time of the agreement, these terms are available at [Microsoft Product Terms](#) (these terms and the location of these terms may change from time to time, Customer is responsible for locating and complying with the most recent version of these terms).

A6.1 Microsoft Subscription Term

Customer acknowledges and accepts that its subscription to certain Microsoft Products (a **Microsoft Subscription**) may include a default automatic renewal. At the end of the term of the relevant Microsoft Subscription, the Microsoft Subscription, these Resale Terms and any terms in the Head Agreement that apply to the Microsoft Subscription will automatically renew for the renewal term set out in the Provider Terms unless Customer cancels the Subscription by providing the required notice to the Provider.

A6.2 Ordering

- (a) Customer may request Microsoft Products from time to time by submitting an Order to NCS.
- (b) At a minimum, the Order must contain:
 - (i) the Customer's name;
 - (ii) the Microsoft Products being ordered;
 - (iii) the quantity of each type of Microsoft Products being ordered;
 - (iv) the length of the Subscriptions for the Microsoft Products being ordered; and
 - (v) the price of the Microsoft Products (including subtotals for each Microsoft Product and Order total and any relevant payment terms).
- (c) On acceptance of the Order by NCS, NCS will order Microsoft Products based on the information provided on the Order. Customer is responsible for all such information and NCS is not responsible for and does not take any liability for any errors or incorrect information that might be contained in the Order.
- (d) Customer acknowledges that once the Order is accepted by NCS, the Order forms a legally binding commitment by the Customer to purchase the Microsoft Products as set out in the Order.
- (e) Customer acknowledges and agrees that:
 - (i) NCS does not control the provisioning of Microsoft Products;
 - (ii) Microsoft may refuse an order or part of an order at Microsoft's sole discretion; and

- (iii) NCS is not responsible for refunds pertaining to the Microsoft Products and will not offer refunds in any circumstances.

A6.3 Customer responsibilities

- (a) Customer acknowledges that NCS may require certain administrative rights to enable provision or deprovision of certain Microsoft Products, and agrees to provide such access when requested by NCS.
- (b) Customer is responsible for all activities that occur under Customer's accounts;

A6.4 Use of Customer Data

Customer consents to the use of Customer Data by NCS or Microsoft to inform Customer about new or additional Microsoft products.

A6.5 Customer Particulars

- (a) NCS must ensure that Customer Discounts and Customer Special Offers intended for the Public Customers, as offered and directed by Microsoft, are passed through to the Public Customers.
- (b) NCS agrees to disclose all Customer Discount and Customer Special Offer information to the Public Customer.
- (c) NCS must ensure that Microsoft Products identified for a certain type of Customer are resold only to that type of Customer.

A6.6 Definitions

Capitalised terms in this A5 have the meaning given to them below. Capitalised terms that are otherwise not defined in this section have the meaning given to them in the Resale Terms.

- (a) **Customer Discount** means a reduction in the fee charged for Microsoft Products: (i) including but not limited to promotional or negotiated discounts offered by Microsoft to NCS solely for the benefit of a Customer; or (ii) made to the Microsoft Product fee prior to its inclusion on a price list specifically designated for and available only to certain type of Customers.
- (b) **Customer Special Offer** means any credits or other benefits including previews and trials offered by Microsoft to NCS for the sole benefit of a Customer.
- (c) **Public Customer** means any Customer that is either an education customer, government customer or state-owned entity as determined by Microsoft's eligibility requirements.

A7 Product Terms applying to Cohesity Products

The Product Terms in this A7 only apply to Resold Products provided by Cohesity, Inc. and its affiliate Cohesity APJ PTE. LTD (together, **Cohesity**) (**Cohesity Products**).

The Provider Terms for Cohesity Products are the end user agreement terms that apply to the Cohesity Products, as found at www.cohesity.com/agreements (the **Cohesity End User Agreement**) (these terms and the location of these terms may change from time to time, and Customer is responsible for locating and complying with the most recent version of these terms).

A7.1 Territory

Customer must not use or deploy the Cohesity Products outside of Australia without NCS' prior written consent.

A7.2 Representations and Trademarks

- (a) Customer must not make, or authorise any person to make, any representation or warranty on behalf of Cohesity regarding the Cohesity Products.
- (b) Customer must not use any Cohesity trademarks, trade names or logos without NCS' prior written consent. Any permitted use must comply with Cohesity's trademark guidelines and must not imply endorsement by Cohesity of Customer or its products or services.

A7.3 Customer Responsibilities

Customer will notify NCS immediately in writing of any claim or proceeding involving the Cohesity Products or any suspected defects in the Cohesity Products.

A8 Product Terms applying to CloudM Products

The Product Terms in this A8 only apply to Resold Products provided by Cloud Technology Solutions Ltd trading as CloudM (CloudM) (CloudM Products). CloudM Products include CloudM Migrate (Hosted), CloudM Migrate (Self-Hosted), CloudM Automate, CloudM Email Signature, CloudM Archive, Serviced Migrations, Smart Starts and any other products or services developed by CloudM and made available to Customer through NCS from time to time.

The Provider Terms for CloudM Products (as amended from time to time; Customer is responsible for locating and complying with the most recent version of these terms) are:

(a) for CloudM Migrate (Self-Hosted), [the CloudM Migrate EULA](#);

(b) for CloudM Migrate (Hosted), CloudM Automate, CloudM Archive and CloudM Email Signature, [the CloudM SaaS Subscription Agreement](#); and

(c) for Smart Starts, [the Smart Start Terms](#).

A9 Product Terms applying to Dynatrace Products

The Product Terms in this A9 only apply to Resold Products provided by Dynatrace Asia-Pacific Pty Ltd (**Dynatrace**) (**Dynatrace Products**).

The Provider Terms for Dynatrace Products are the publicly available End User Terms that apply to Dynatrace Products. At the time of the agreement, these terms are available at <https://www.dynatrace.com/company/trust-center/customers/> (these terms and the location of these terms may change from time to time, and Customer is responsible for locating and complying with the most recent version of these terms).

A9.1 Territory

Customer must not use or deploy the Dynatrace Products outside of Australia without NCS' prior written consent.

A9.2 Subscription Term

Customer acknowledges and accepts that its Subscription to certain Dynatrace Products (a **Dynatrace Subscription**) may include a default automatic renewal. At the end of the term of the relevant Dynatrace Subscription, the Dynatrace Subscription, these Resale Terms and any terms in the Head Agreement that apply to the Dynatrace Subscription will automatically renew for the renewal term set out in the Provider Terms unless Customer cancels the Subscription by providing the required notice to the Provider.

A9.3 Representations and Trademarks

(a) Customer must not make, or authorise any person to make, any representation or warranty on behalf of Dynatrace regarding the Dynatrace Products.

(b) Customer must not use any Dynatrace trademarks, trade names or logos without NCS' prior written consent. Any permitted use must comply with Dynatrace's trademark guidelines and must not imply endorsement by Dynatrace of Customer or its products or services.

A9.4 Customer Responsibilities

Customer will notify NCS immediately in writing of any claim or proceeding involving the Dynatrace Products or any suspected defects in the Dynatrace Products.

A10 Product Terms applying to Alation Products

The Product Terms in this A10 only apply to Resold Products provided by Alation, Inc. (**Alation**) (**Alation Products**).

The Provider Terms for Alation Products are the publicly available terms that apply to Alation Products. At the time of the agreement, these terms are available at <https://alation.com/tscs/msa/> (these terms and the location of these terms may change from time to time, and Customer is responsible for locating and complying with the most recent version of these terms).

A10.1 Subscription Term

Customer acknowledges and accepts that its Subscription to Alation Products (an **Alation Subscription**) will automatically renew for a further term of the same duration unless Customer or NCS provides notice of non-renewal at least 60 days prior to the end of the then-current term.

A10.2 Intellectual Property

(a) Customer must retain all proprietary, copyright and other attribution legends on all copies of Alation Products.

(b) Customer must protect the confidentiality of Alation's intellectual property rights in the Alation Products with no less than reasonable care and must not disclose Alation's intellectual property to any third party without Alation's prior written consent.

(c) As between NCS and Customer, NCS owns any suggestions and/or comments with respect to the Alation Products (**Alation Feedback**). NCS may use Alation Feedback at its discretion, without limitation, and without being obliged to make any payment or give credit to Customer.

A10.3 Customer Responsibilities

Customer will notify NCS immediately in writing of any claim or proceeding involving the Alation Products or any suspected defects in the Alation Products.

A11 Product Terms applying to Zscaler Products

The Product Terms in this A11 only apply to Resold Products provided by Zscaler, Inc. (**Zscaler**) (**Zscaler Products**).

The Provider Terms for Zscaler Products are the Zscaler End User Subscription Agreement (EUSA) as made available by Zscaler from time to time (as at the time of this agreement, these terms are available at: <https://www.zscaler.com/legal>) (these terms and

the location of these terms may change from time to time, and Customer is responsible for locating and complying with the most recent version of these terms).

A11.1 Territory

Customer must not use or deploy the Zscaler Products outside of the territory specified in the relevant Order without NCS' prior written consent.

A11.2 Representations and Trademarks

(a) Customer must not make, or authorise any person to make, any representation or warranty on behalf of Zscaler regarding the Zscaler Products.

(b) Customer must not use any Zscaler trademarks, trade names or logos without NCS' prior written consent. Any permitted use must comply with Zscaler's trademark guidelines and must not imply endorsement by Zscaler of Customer or its products or services.

A11.3 Customer Responsibilities

(a) Customer must notify NCS immediately in writing of any claim or proceeding involving the Zscaler Products or any suspected defects or security incidents affecting the Zscaler Products.

(b) Customer must not contact Zscaler directly in respect of any matters arising under these Resale Terms or the relevant Order, including for technical support, and must direct all enquiries to NCS.

A12 Product Terms applying to Arista Products

The Product Terms in this A12 only apply to Resold Products provided by Arista Networks, Inc. (**Arista**) (**Arista Products**).

The Provider Terms for Arista Products are the publicly available end user licence terms that apply to Arista Products (these terms and the location of these terms may change from time to time, and Customer is responsible for locating and complying with the most recent version of these terms).

A12.1 Territory

Customer must not distribute or deploy the Arista Products outside of the territory specified in the relevant Order without NCS' prior written consent.

A12.2 Intellectual Property

(a) Customer must not remove, alter or destroy any form of copyright notice, trademark, logo, serial number, confidentiality notice or other product identifier on any Arista Products.

(b) Customer must not copy, translate, reverse compile or disassemble any software comprised in the Arista Products.

A12.3 Customer Responsibilities

Customer will notify NCS immediately in writing of any claim or proceeding involving the Arista Products or any suspected defects in the Arista Products.

A13 Product Terms applying to CyberArk Products

The Product Terms in this A13 only apply to Resold Products provided by CyberArk Software (Singapore) Pte. Ltd. and CyberArk Software Ltd. (together, **CyberArk**) (**CyberArk Products**).

The Provider Terms for CyberArk Products are the CyberArk End User Licence Agreement (EULA) embedded in the CyberArk Products, as may be updated from time to time. Customer is responsible for locating and complying with the most recent version of these terms.

A13.1 Territory

Customer must not use or deploy the CyberArk Products outside of the territory specified in the relevant Order without NCS' prior written consent.

A13.2 Intellectual Property

(a) Customer must not remove or destroy any copyright, trademark, logo or other proprietary marking or legend placed on or contained in the CyberArk Products.

(b) Customer must not duplicate, modify, create derivative works from, lease, disassemble, decompile or otherwise reverse engineer any CyberArk Products.

A13.3 Customer Responsibilities

Customer will notify NCS immediately in writing of any claim or proceeding involving the CyberArk Products or any suspected defects in the CyberArk Products.

A14 Product Terms applying to Rubrik Products

The Product Terms in this A14 only apply to Resold Products provided by Rubrik, Inc. (**Rubrik**) (**Rubrik Products**).

The Provider Terms for Rubrik Products are the end user agreement terms that apply to the Rubrik Products (these terms and the location of these terms may change from time to time, and Customer is responsible for locating and complying with the most recent version of these terms).

A14.1 Territory

Customer must not use or deploy the Rubrik Products outside of the territory specified in the relevant Order without NCS' prior written consent.

A14.2 Intellectual Property and Trademarks

(a) Customer must not copy, modify, reverse engineer, disassemble, decompile or create derivative works from the Rubrik Products, or remove or obscure any proprietary notices on the Rubrik Products or Documentation.

(b) Customer must not make, or authorise any person to make, any representation or warranty on behalf of Rubrik regarding the Rubrik Products.

(c) Customer must not use any Rubrik trademarks, trade names or logos without NCS' prior written consent. Any permitted use must comply with Rubrik's branding guidelines and must not imply endorsement by Rubrik of Customer or its products or services.

A14.3 Customer Responsibilities

Customer will notify NCS immediately in writing of any claim or proceeding involving the Rubrik Products or any suspected defects in the Rubrik Products.

A15 Product Terms applying to Vectra AI Products

The Product Terms in this A15 only apply to Resold Products provided by Vectra AI, Inc. (**Vectra**) (**Vectra Products**).

The Provider Terms for Vectra Products are the Vectra End User Licence Agreement (EULA), as made available by Vectra from time to time (as at the time of this agreement, these terms are available at: <https://vectra.ai/assets/vectra-eula.pdf>) (these terms and the location of these terms may change from time to time, and Customer is responsible for locating and complying with the most recent version of these terms).

A15.1 Territory

Customer must not use or deploy the Vectra Products outside of the territory specified in the relevant Order without NCS' prior written consent.

A15.2 Intellectual Property and Trademarks

(a) Customer must not (and must ensure its personnel do not) remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices placed or embedded by Vectra on or in any Vectra Product.

(b) Customer must not use any Vectra trademarks, trade names or logos without NCS' prior written consent. Any permitted use must comply with Vectra's then-current trademark usage guidelines and must not imply endorsement by Vectra of Customer or its products or services.

A15.3 Customer Responsibilities

Customer will notify NCS immediately in writing of any claim or proceeding involving the Vectra Products, any suspected defects, or any known breach of or non-compliance with the Provider Terms.