



FAMILY ZONE

STANDARD TERMS FOR EDUCATION CUSTOMERS

11 INTRODUCTION

1.1 Agreement

(a) These are our standard terms and conditions (“Standard Terms”) for providing our Products to non-consumer customers. Our Standard Terms must be read in conjunction with:

- (i) Your Order;
- (ii) Our Terms of Service;
- (iii) Our Privacy Policy; and
- (iv) Product Descriptions associated with the Products you use;

all of which together form your agreement with us (the “Agreement”).

- (b) In some instances, we may agree in writing to specific additional terms and conditions with you (“Specific Terms”). In such cases the Specific Terms also form part of this Agreement.
- (c) To the extent of any inconsistency in the Agreement, our terms apply in this order: Specific Terms, then Your Order, then Terms of Service; then our Standard Terms and then Product Descriptions.

1.2 Resellers

(a) If you have ordered Products through a Reseller then this Agreement is between you and them and where this agreement refers to us, this should be read as the Reseller.

12 TERMS OF SERVICE

2.1 Terms of Service

- (a) Subject to your Order and acceptance of the terms of this Agreement, we will supply you with Products.
- (b) Unless otherwise agreed in writing, you acknowledge and agree that the Products are provided in accordance with our Terms of Service, as may be modified from time to time.
- (c) You acknowledge and agree that our Terms of Service:
 - (i) include important obligations on us and you;
 - (ii) have been made available to you and you have read, understood and agreed to them;
 - (iii) impose obligations on you where our Agreement expires or terminates and accordingly survive expiration or termination of our Agreement; and
 - (iv) may be subject to Service Changes from time to time at our sole discretion.
- (d) Where we make a Service Change we agree to:
 - (i) Make such Service Changes effective 30 days after posting notice of the change; and
 - (ii) Where a Service Change is in our sole opinion materially detrimental to you then (a) we will provide you with 30 days’ notice of the Service Changes; (b) we will offer you a right to terminate this Agreement without penalty; and (c) to do so you must provide us within written notice of termination within 30 days of receipt of notification of the Service Changes; and
 - (iii) Whilst we will endeavor to, we make no promise to make available prior versions of our Terms of Service on our website.

2.2 Hardware

- (a) We may sell you Hardware or provide you with Hardware for trial, demonstration or for use within our Services (described as “Bundled Hardware”). We retain ownership of Hardware until it is fully paid for.
- (b) We sell Hardware subject to our TERMS OF SALE OF HARDWARE and supply Bundled Hardware subject to our TERMS OF SUPPLY OF BUNDLED HARDWARE (as set out in our TERMS OF SERVICE).

2.3 Subcontractors

(a) You acknowledge that subject to this Agreement we may use Subcontractors to fulfil certain of our obligations under this Agreement.

2.4 Primary Responsibility

(a) You acknowledge that you are the registered user of the Products and you are responsible for any use or misuse of them, even if the misuse was committed by an unrelated or related third party.

2.5 Compliance

(a) In connection with this Agreement, you agree that you will:

- (i) not use the Products for any unlawful purpose;
- (ii) not take any action that may be construed as being an infringement of any our Intellectual Property Rights or Third Party Intellectual Property Rights;
- (iii) not take any action that impacts on another person's lawful activities; and
- (iv) comply with all applicable federal, state and local laws and regulations, including but not limited to consumer and privacy laws.

13 TERM & TERMINATION

3.1 Term

- (a) This Agreement commences on the Date of your first Order with us and continues until the end of the Contracted Term. If no Contracted Term is stated on the Order then this Agreement continues from the Commencement Date on a month to month basis until terminated in accordance with Clause 3.2.
- (b) Following the end of a Contracted Term:
 - (i) This Agreement continues on a month to month basis; and
 - (ii) Either party may terminate this Agreement by 30 days' notice in writing to the other Party.

3.2 Termination

- (a) This Agreement may be immediately terminated where a Party suffers an Insolvency Event.
- (b) We may terminate this Agreement in the event of a Force Majeure Event.
- (c) If a Party fails to comply with, or breaches, any material obligation under this Agreement and such Party fails to remedy such breach (if the breach is capable of remedy) or comply with its obligations within 14 Days of the non-defaulting party's notice to the defaulting party detailing the defaulting Party's breach or default as the case may be, then this Agreement automatically terminates on the date which is the earlier of:
 - (i) the date the non-defaulting party gives the notice if the breach or default is not capable of being remedied;
 - (ii) the expiration of the 14 Day notice period if the breach or default is not adequately remedied.

3.3 Obligations Continue

- (a) Notwithstanding termination or expiration of this Agreement, your obligations under this Agreement will continue in full force and effect until:
 - (i) You have fully paid for or returned in good working order any Bundled Hardware supplied to you (as determined solely by us acting reasonably); and
 - (ii) All amounts due to us under this Agreement have been paid in full.

Nothing in this clause 3.3 impacts clause 3.5 below.

3.4 Service Suspension

- (a) If we reasonably believe you are in breach of any term of this Agreement, or that our systems may be exposed to potential damage or misuse, or in the event of a Force Majeure Event, we may suspend your access to Services. This right does not affect or limit any other rights we have under this Agreement.
- (b) Notwithstanding anything to the contrary in this Agreement, in the event of a Regulatory Impediment either party shall have the right to suspend performance under this Agreement, to the extent reasonably necessary.

3.5 Effects of Termination

- (a) Any Fees owing at the date of termination shall be due immediately. Any subsequent charges from us will be due immediately upon receipt of an invoice.
- (b) Any Fees that have been paid to us at the date of termination shall be deemed to have been fully utilized – no refunds are applicable;
- (c) Any licences or rights granted to you by us will automatically terminate and we shall cease providing you with Family Zone Products;
- (d) You must immediately cease using the Family Zone Services, Bundled Hardware and Family Zone Marks; and
- (e) You must return or destroy all Documentation, items containing Family Zone Marks and any Confidential Information of ours in your possession.

3.6 Survival

- (a) the obligations set out in clauses 3.3 (Obligations Continue) and 3.5 (Effects of Termination) and this clause 3.6 survive termination or expiration of this Agreement.

14 COMMERCIAL TERMS

4.1 Fees

- (a) You agree to pay us applicable Fees for the Products we supply to you under your Order.
- (b) Fees will be as set out in your Order. Your Order may include a Contracted Term.
- (c) We may from time to time modify our Fees. These modifications will not apply during a Contracted Term. In the event our Fees increase, we will give you at least 30 days written notice of the new Fees.

- (d) If you have ordered Third Party Products through us then unless otherwise specified in your Order, you will be responsible for paying the cost of any price increases which we pass on to you. We will use our best efforts to provide you with prior notice.

4.2 Invoicing and payment

- (a) Unless otherwise specified in your Order:

- (i) Service-related Fees are due from the date the relevant Service is made available to you;
- (ii) Hardware-related Fees are due from the date of delivery of the items to you;
- (iii) Invoices will be issued in your local currency;
- (iv) Invoices are due 30 days from invoice date;
- (v) You have no right of offset against any of our invoices;
- (vi) We have a right to offset across any account you have with us;
- (vii) Failure to pay invoices when due constitutes sufficient cause for us to immediately suspend performance;
- (viii) Invoices not paid by the due date will bear interest at the rate of 1.5% per month, or the greatest amount permitted by law, whichever is less, from its due date until paid;
- (ix) We are entitled to recover from you on a full indemnity basis all costs and expenses (including attorneys' fees and expenses) associated with collection of any amounts due or otherwise payable by you to us;
- (x) You must make payments to us free of any withholding tax, and of any currency control or other restrictions; and
- (xi) Payment is not deemed to have been made until it has been cleared by our bank.

4.3 Costs

- (a) We may pass on, and you will be responsible for paying the cost of, any increase in the cost of Services, or the installation or provision of the Services where such increase is caused by any:
- (i) act, omission or delay by you or any modification requested by you after the commencement of this Agreement; or
 - (ii) material fact not discoverable at the date of this Agreement.

15 PRIVACY

5.1 Communications

- (a) You consent to receive communications from us for purposes reasonably related to this Agreement. If you subscribe to news services from us, you will receive regular emails from us. We will continue to communicate with you by posting news and notices on our website and by sending you emails.
- (b) You also agree that all notices, disclosures, agreements and other communications we provide to you electronically meet any legal requirement that such communications be in writing.

5.2 End User Information

- (a) Each Party shall comply with applicable privacy laws.

5.3 Survival

- (a) This clause 5 survives termination or expiration of this Agreement.

16 DISCLAIMER & INDEMNITY

6.1 No Warranty

EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT THE PRODUCTS ARE PROVIDED "AS IS." WE HEREBY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY OF ANY KIND THAT THE PRODUCTS, OR ANY OTHER GOODS, SERVICES, TECHNOLOGIES, INFORMATION, OR MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET YOUR OR OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES, INFORMATION, OR MATERIALS EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL OPEN SOURCE COMPONENTS AND OTHER THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN SOURCE COMPONENTS OR OTHER THIRD-PARTY MATERIALS. In addition, we have made no representation or statement and give no condition, warranty or guarantee about the dates for delivery or release of any Products.

1.1 Limitation of Liability

- (a) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU AGREE THAT IN NO EVENT SHALL WE, OUR AFFILIATES, OR ANY OF OUR DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, BE LIABLE TO YOU OR ANY THIRD PARTY (INCLUDING STUDENT OR PARENT OR OTHER CUSTODIAN) UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY LOSS OF USE, PROFITS, DATA, BUSINESS, REVENUE, GOODWILL OR REPUTATION OR FOR SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, ENHANCED, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (IN EACH CASE EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY THEREOF), RESULTING FROM: (a) THE USE OR THE

INABILITY TO USE THE PRODUCTS, (b) UNAUTHORIZED ACCESS TO OR ALTERNATION OF CUSTOMER DATA, OR (c) ANY OTHER MATTER RELATING TO THIS AGREEMENT. IN NO EVENT SHALL OUR AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTY (INCLUDING STUDENT OR PARENT OR OTHER CUSTODIAN) UNDER THIS AGREEMENT FROM ANY OR ALL CLAIMS OR CAUSES EXCEED THE AMOUNT OF THE AGGREGATE FEES RECEIVED BY US FROM YOU FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE OCCURRENCE OF THE LAST EVENT GIVING RISE TO LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY IN THE AGGREGATE AND WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. IN ADDITION, WE TAKE NO RESPONSIBILITY NOR ACCEPT ANY LIABILITY FOR THE PERFORMANCE OF THIRD PARTIES IN RELATION TO THE PRODUCTS.

1.2 **Release**

YOU HEREBY RELEASE AND FOREVER DISCHARGE US, OUR AFFILIATES, ANY OF OUR DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS FROM ALL ACTIONS, CAUSES OF ACTION, INJURIES, CLAIMS, DAMAGES, COSTS OR EXPENSES OF ANY KIND GROWING OUT OF OR RELATED TO YOUR OR THE AUTHORIZED END USER(S)' USE OF THE PRODUCTS. YOU UNDERSTAND THAT THIS IS A FULL AND COMPLETE RELEASE TO THE MAXIMUM EXTENT ALLOWED BY LAW OF ALL CLAIMS AND DAMAGES WHICH YOU OR THE AUTHORIZED END USER(S) MAY HAVE AS A RESULT OF USE OF THE PRODUCTS, REGARDLESS OF THE SPECIFIC CAUSE THEREOF.

1.1 **Third Party Indemnity**

- (a) You agree, at your own expense, to indemnify, defend and hold us harmless from and against any and all Claims brought against us, our affiliates, directors, officers, agents and employees by a Third Party:
- (i) arising in connection with this Agreement (except to the extent such a Third Party claim arises as a direct result of our breach of this Agreement);
 - (ii) arising in connection with your breach of this Agreement; or
 - (iii) arising in connection with your unlawful conduct.

1.2 **Third Party Supplier Indemnity**

- (a) If you have been supplied Products of a Third Party (through us or directly from that Third Party) then you agree to comply with that Third Party's terms and conditions relating to supply, service or product and you agree to indemnify, defend and hold us harmless against all loss, costs or damage suffered or incurred by us as a result of your failure to comply with such terms and conditions.

1.3 **Bundled Hardware Indemnity**

- (a) Where we supply you with Bundled Hardware you agree to indemnify, defend and hold us harmless us against all damage, loss, costs or theft ("Loss") of the relevant items and against any increased costs we incur as a result of such Loss.

1.4 **Survival**

- (a) This clause 6 survives termination or expiration of this Agreement.

32 INTELLECTUAL PROPERTY

2.1 **Intellectual Property Rights**

- (a) All Intellectual Property Rights that are comprised or otherwise, used or embodied in or in connection with Products remain our sole property (or that of a Third Party). You agree that you will not make any claim of ownership to or concerning our Intellectual Property Rights, or Third Party Intellectual Property Rights, or any development or improvement made to the Products during the course of this Agreement.
- (b) You agree to use your best efforts to ensure no party can access the Products in any way which may facilitate the analysis, copying, reverse engineering of the operating system or copying of any music, video or message files. We reserve the right to claim compensatory or other relief for breach of this term.
- (c) You agree that other than as provided in this Agreement or as otherwise agreed in writing by us, you will not change, add to or modify any Products, related software or configuration.

2.2 **Family Zone Marks**

- (a) Subject to this Agreement we grant you a non-exclusive, non-transferable, royalty-free, limited license to use the Family Zone Marks for the sole purpose of fulfilling obligations under this Agreement.
- (b) You agree to only use Family Zone Marks in the format provided by us without alteration or adjustment (unless agreed by us in writing);
- (c) You agree to take reasonable steps to ensure no one alters, adjusts or otherwise interferes with any identification marks, labels, logos or notice on the Products, including the Family Zone Marks;
- (d) Upon termination or expiration of this Agreement, the licence provided in this clause 7 will automatically terminate and you must immediately cease all use of the Family Zone Marks and return (to us) or destroy any items containing them.

2.3 **Your Intellectual Property Rights**

- (a) To enable us to provide the Products, we may need to utilize your Intellectual Property Rights including your name, trademarks, logos, copyright, software, documentation, emails, messages, comments & postings and other materials made available by you to Us for agreed purposes ("Your Intellectual Property Rights"). During the term of this Agreement, and in connection with this Agreement only, you grant to us a non-exclusive, non-transferable, royalty-free right to use and reproduce Your Intellectual Property Rights.

- (b) Upon termination or expiration of this Agreement, we will immediately cease all use of Your Intellectual Property Rights and return (to you) or destroy any items containing them.

2.4 Third Party Intellectual Property

- (a) To enable us to provide the Products, you may need to utilize some Third Party Intellectual Property Rights, including Third Party names, trademarks, logos, copyrights, software, documentation, and other materials (“Third Party Intellectual Property”). During the term of this Agreement, and in connection with this Agreement only, you agree to obtain written consent of and comply with relevant Third Party’s directions with respect to the use of Third Party Intellectual Property.
- (b) Upon termination or expiration of this Agreement, you will immediately cease all use of Third Party Intellectual Property and return (to the Third Party) or destroy any items containing them.

2.5 Customer Data

- (a) Ownership of data associated with your use of our Products is subject to our Privacy Policy. You acknowledge having read, understood and accepted.

2.6 Survival

- (a) This clause 7 survives termination or expiration of this Agreement.

33 CONFIDENTIALITY

3.1 Confidentiality

- (a) In connection with this Agreement only, the Parties agree that a Recipient of Confidential Information:
 - (i) will not disclose Confidential Information to any party other than Associated Parties who need to know it and who have agreed in writing to keep it confidential;
 - (ii) may only use Confidential Information to exercise rights and fulfil obligations under this Agreement, while using reasonable care to protect confidentiality; and
 - (iii) notwithstanding the foregoing, may disclose Confidential Information where required by law after giving reasonable notice to Discloser, to the extent allowed by applicable law.

3.2 Publicity

- (a) Other than where required to disclose information under operation of law, by a court order, or by a governmental agency with jurisdiction, neither party will publish or release any public relations materials or make any public announcement relating to this Agreement or the other party without the other party’s prior written consent. Each party agrees to exercise good faith dealing in respect of any such requests.

3.3 Survival

- (a) This clause 8 survives termination or expiration of this Agreement.

34 GENERAL

- (a) **Further acts:** Each Party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Party) required by law or reasonably requested by the other Party to give effect to this Agreement.
- (b) **Force majeure:** Neither Party will be liable to the other for any breach of, or failure to perform, any of its obligations under this Agreement where such breach or failure is caused by a Force Majeure Event.
- (c) **Notices:** All notices relating to this Agreement must be in writing and sent to a Party at the address set out in the Order or such other address as either Party may specify in writing from time to time in accordance with this clause. Notices shall be sent by and deemed given as follows:

Method notice	Deemed delivery
Personal delivery	On personal delivery
Electronic mail	Upon acknowledgment of facsimile or electronic mail transmission
Registered mail (with proof of delivery)	On receipt of proof of delivery

- (d) **Amendments:** This Agreement may only be modified by a document signed by or on behalf of each of the Parties.
- (e) **Assignment:** You may not assign or transfer all or any of your rights, benefits or obligations under this Agreement without our prior written consent, the granting of which shall be at our sole discretion. We may at any time assign or otherwise transfer to any party all or any part of our rights, benefits or obligations under this Agreement and in that event the assignee or transferee will have the same rights against you as it would have had if it had been an original party to this Agreement. You acknowledge that we may disclose Confidential Information to (subject to us entering into a confidentiality agreement with) a potential assignee or to any person who may otherwise enter into a contractual relationship with us related to this Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties’ successors and permitted assigns.
- (f) **Severability of provisions:** If any provision of this Agreement is held to be ineffective, illegal, void or unenforceable for any reason, such decision will not effect the validity or enforceability of any or all of the remaining portions thereof.
- (g) **Waiver:** Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Agreement by any Party will not in any way preclude, or operate as a waiver of, any

exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Agreement. Any waiver or consent given by any Party under this Agreement will only be effective and binding on that Party if it is given or confirmed in writing by that Party. No waiver of a breach of any term of this Agreement will operate as a waiver of another breach of that term or of a breach of any other term of this Agreement.

- (h) **Remedies:** No failure or delay on the part of us in exercising any right or remedy under this Agreement will operate as a waiver of such right or remedy nor will any single or partial exercise, or the exercise of any other right or remedy. All rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- (i) **Entire Agreement:** This Agreement, and any other Specific Terms provided relating to Service or Authorized End User Family Zone Services is the entire Agreement between us with respect to the subject matter hereof and supersedes all prior agreements, proposals, and understandings, whether written or oral, between the parties with respect to such subject matter. You further agree that you have not relied on any other statement document or promise made by a third party introducing you to us, whether before or after this Agreement is executed. You acknowledge that we may pay a commission to that introducing third party.
- (j) **Counterparts; Electronic Signatures:** This Agreement may be executed in any number of counterparts. All counterparts will be taken to constitute one and the same instrument. This Agreement may also be executed and delivered by facsimile signature, PDF or any electronic signature complying with the U.S. federal E-SIGN Act of 2000 (e.g., www.docusign.com).
- (k) **Governing law and jurisdiction:** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter is governed by and will be construed according to the laws set out below, subject to the location of your registered office:

Registered office	Applicable governing laws
USA	The laws of the Commonwealth of Virginia (without regard to its conflict of laws principles). Any controversy, dispute or claim arising out of or related to this Agreement shall be resolved exclusively in the state court in and for Fairfax County, Virginia or in the federal court in the United States District Court for the Eastern District of Virginia and no other court shall have any jurisdiction in respect of such controversies, disputes or claims, and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the aforementioned courts.
New Zealand	The laws of New Zealand.
In all other circumstances	The laws of Western Australia, Australia.

Each of the Parties hereby consents to process being served by any Party to this Agreement in any suit, action or proceeding by the delivery of a copy thereof in accordance with this Agreement.

Western Australia. The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia to settle any disputes and claims which may arise out of, or in connection with, this Agreement.

- (a) **Survival:** This clause 9 survives termination or expiration of this Agreement.

52 INTERPRETATION

2.1 Terms:

In this Agreement and our Terms of Service:

- (a) **Agreement** means this agreement, schedules and any other terms and conditions incorporated into this Agreement.
- (b) **API's** means application programming interfaces provided by us for the Products as described in our Terms of Service.
- (c) **Associated Parties** means in relation to a party to this Agreement, third party organizations, sales agents, suppliers and customers, distributors, employees and/or device manufacturers or software vendors that service, supply or are delegated to, for the purposes of the relevant party performing its obligations under this Agreement.
- (d) **Bundled Hardware** means Hardware we provide Customers in accordance with our Special Terms: Bundled Hardware (as set out in our Terms of Service).
- (e) **Business Hours** means 8:30 a.m. to 5:00 p.m. Monday to Friday (excluding weekends and any applicable public or federal holidays in your Location unless otherwise specified on your Order).
- (f) **Business Day** means on a day and during the time, that banks are open for business in your Location, unless otherwise specified on your Order.
- (g) **Change of Control** means the sale of all, or substantially all, the assets of a party; any merger, consolidation or acquisition of a party with, by or into another corporation, entity or person; or any change in the ownership of more than fifty percent (50%) of the voting capital stock of a party in one or more related transactions.
- (h) **Claim** means any claim, demand, action, proceeding, judgment, settlement or award, whether at law, under statute, in equity or otherwise, for losses, damages, liabilities, deficiencies, penalties, fines, injunctions, debt, restitution or any other remedy and any costs, charges, expenses or payment.
- (i) **Commencement Date** means the date of this Agreement as described in clause 3.1;
- (j) **Confidential Information** means information disclosed by one party (**Discloser**) to the other party (**Recipient**) under this Agreement that is marked as confidential or would normally under the circumstances be considered confidential information of the disclosing party. Confidential Information does not include information that the Recipient already knew, that becomes public through no fault of the Recipient, that was independently developed by the Recipient, or that was rightfully given to the Recipient by another party.
- (k) **Consulting** means cyber safety, security and technology consulting services provide by us.

- (l) **Consumer** means a Customer that is an individual person that is not using or intending to use the Products as part of a commercial business or enterprise and is capable at law of entering a contract.
- (m) **Contracted Term** means an agreed minimum time period for this Agreement, as set out in an Order.
- (n) **Components** or **Parts** means any component part or complete unit of Products or Equipment;
- (o) **Customer, you** and **your** means the person(s) or legal entity named on the Order. If there is more than one, and/or it means each of you separately and all of you jointly and severally.
- (p) **Customer Data** means any data captured by us from you or your End Users in the operation of the Products and includes, without limitation, registration information, usage information, information about computing devices and networks and software running on them, geo-location information, system logs, diagnostic data, messages and submitted comments, information, ideas, concepts, reviews, documents and materials.
- (q) **Customer Support** means Product deployment, configuration and help desk services as described in our Terms of Service.
- (r) **Customer Terms** means our Customer Terms and Privacy Policy published from time to time at <https://www.familyzone.com/legal>.
- (s) **Damage** means any damage that is not caused by reasonable wear and tear and includes, but is not limited to, damage caused by liquid, electricity, impact or use outside normal operating conditions.
- (t) **Documentation** means any documentation provided by us in relation to the Products and includes, without limitation, user guides, procedures, training manuals, videos, tutorials, brochures and manuals.
- (u) **End User** means a user of a Product we provide to you.
- (v) **Excluded Event** means:
 - (i) a breach of this Agreement by you;
 - (ii) a Force Majeure Event;
 - (iii) any act or omissions of a Third Party which affects the function or performance of the Products;
 - (iv) a negligent, fraudulent or wilful act or omission of you or your personnel or an End User; or
 - (v) a failure of any of your or an end user's Customer's equipment.
- (w) **Family Zone, we", our** or **us** means Family Zone Cyber Safety Limited ABN 33 167 509 177 or other Family Zone entity specified on your Order and includes our assignees, successors and any subcontractor engaged by, us to provide the Products.
- (x) **Fees** means any fees and charges payable to us by you under this Agreement.
- (y) **Force Majeure Event** means any event that is beyond the reasonable control of a party and which prevents a party from performing, or delays the performance of, any of its obligations under this Agreement (except for any obligations to make payments to the other party) including, without limitation:
 - (i) acts of God;
 - (ii) flood, fire, storm, earthquake or explosion or other natural disaster;
 - (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest;
 - (iv) actions, embargoes or blockades in effect on or after the date of this Agreement;
 - (v) national or regional emergency;
 - (vi) strikes, labor stoppages or slowdowns or other industrial disturbances;
 - (vii) epidemics, quarantines, radiation or radioactive contamination;
 - (viii) action or inaction by any governmental authority;
 - (ix) government order or law; or
 - (x) a breakdown of plant, machinery or equipment, telecommunications failure or shortages of labor, transportation, fuel, power or plant, machinery, equipment or material (including short supply from the regular source or regular supplier.
- (z) **Family Zone Marks** means any and all rights in Marks whatsoever owned by Family Zone (or an affiliate of Family Zone), whether registered or not.
- (aa) **Hardware** means computing equipment and associated software and accessories and includes any substituted equipment, components and accessories.
- (bb) **Improvements** means any modification or enhancement to the Products, which in Family Zone's sole opinion, in anyway whatsoever improves them.
- (cc) **Infringement** means a Claim relating to infringement of Intellectual Property Rights.
- (dd) **Insolvency Event** means, in relation to a Party, where that Party is:
 - (i) is generally unable to pay, or fails to pay, its debts as and when they become due;
 - (ii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law;
 - (iii) makes or seeks to make a general assignment for the benefit of its creditors; or
 - (iv) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business.
- (ee) **Intellectual Property Rights** means all rights, titles and interests wherever subsisting throughout the world and whether registered or not (including any applications, renewals, extensions, restorations or re-instatements), held by a party, in and to copyright works, logos, designs, inventions, software, code (compiled or otherwise) circuit layouts, trade secrets, patents, trademarks, service marks and business names, and including any rights of a related nature.
- (ff) **Legislative Obligations** means provisions of consumer trade practices statutes, rules and regulations which may be applicable to

our supply of Products to you and which may imply certain non-excludable warranties or conditions or mandate certain statutory guarantees.

- (gg) **Location** means the place the Products & Family Zone Services have been located and/or where our Software has been installed.
- (hh) **Managed Services** means the outsourced management, monitoring and configuration of Products as described in our Terms of Service.
- (ii) **Marks** means trademarks, logos and service marks, wherever subsisting throughout the world and whether registered or not (including any applications, renewals, extensions, restorations or re-instatements).
- (jj) **Patches** means temporary software programming, sub-routines or work arounds produced after the Commencement Date to overcome errors or to improve the performance or operation of the Products without significantly altering the performance characteristics or adding additional functionality.
- (kk) **Party** means a party to this Agreement.
- (ll) **Personally Identifiable Information** means information that can be used on its own or with other information to identify, contact, or locate a single person, or to identify an individual in context.
- (mm) **Products** means the Family Zone owned and developed and/or Third Party cyber safety and security products and services that we provide Customers, either directly or through Resellers, and includes without limitation Services, Hardware, Software, Consulting, API's, Support and Documentation.
- (nn) **Product Description** means our description of certain features of our Products, as set out on our website and changed by us from time to time.
- (oo) **Product Support** means the Product maintenance and escalated customer support as described in our Terms of Service.
- (pp) **Regulatory Impediment** means where a government, regulatory authority or controlling body of any country or territory in which the Family Zone Products Applications are distributed or made available, imposes any law, restriction or regulation that makes it illegal to distribute or make available the Family Zone Products, or any portion of them, into any country or territory, or if any such law, restriction or regulation places a substantial economic burden on Family Zone.
- (qq) **Reseller** means a party appointed by us to resell the Products & Family Zone Services to Customers.
- (rr) **Services** means cyber safety and security technology and related services as described in our Terms of Service and includes any substituted Services.
- (ss) **Service Changes** means changes to our Terms of Service.
- (tt) **Support** means Customer Support, Managed Services and Product Support that we or our Resellers may supply Customers as described and in accordance with our Terms of Service.
- (uu) **Service Level** has the meaning set out in our Terms of Service.
- (vv) **Software** means an executable program and/or application associated with the Products.
- (ww) **Sold Hardware** means Hardware we sell to Customers in accordance with our Special Terms: Terms of Trade (as set out in our Terms of Service).
- (xx) **Subcontractor** means a Third Party appointed to perform tasks contemplated by this Agreement by a Party to this Agreement.
- (yy) **Supported Releases** means unless otherwise agreed in writing, the current production versions of Family Zone developed Software and prior release(s) in the preceding 12 months.
- (zz) **Supported Platforms** means the Hardware and software platforms (including relating to the OEM licenses) on which Family Zone permits installation of Family Zone developed Software.
- (aaa) **Terms of Service** means our specific terms and conditions related to our supply of Products as set out on our website, described as Terms of Service & Supply, and updated from time to time.
- (bbb) **Third Party** means any organization or individual or company who is not a Party to this Agreement but is involved in the delivery of Products to you.
- (ccc) **Term** means the term of this Agreement from the Commencement Date until it expires or is terminated.

2.2 Interpretation

- (a) In this Agreement, unless the context otherwise requires:
 - (i) headings and emphasis are for convenience only and do not affect the interpretation of this Agreement;
 - (ii) words importing the singular include the plural and vice versa;
 - (iii) words importing gender include every gender;
 - (iv) a reference to a thing includes part of that thing;
 - (v) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
 - (vi) terms of inclusion are to be interpreted without limitation;
 - (vii) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
 - (viii) a reference to a law or regulation shall include any applicable amendments
 - (ix) a reference to a document includes every permitted amendment, modification or supplement to, or replacement or novation of, that document;
 - (x) a reference to a party to this Agreement or to any other document referred to in this Agreement includes that party's successors and permitted assigns;
 - (xi) an expression importing a natural person includes any company, partnership, joint venture, association, corporation, or

- other corporate entity and any government agency;
- (xii) a reference to a clause, party, annex, exhibit or schedule is a reference to a clause of, a party, annex, exhibit or schedule to this Agreement and a reference to this Agreement includes any annex, exhibit or schedule;
 - (xiii) where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the preceding Business Day; and
 - (xiv) no principle of construction or rule of law that provides that an inconsistency or ambiguity in this Agreement will be construed against the drafter of this Agreement will have any application to the terms and conditions of this Agreement.