



# Standard Terms and Conditions of Trade

ENTERPRISE SECURITY ENTERPRISE SOLUTIONS

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## 1. Definition of Terms

The terms used in this Head Agreement are defined in Section 11; *Terms and Definitions*.

## 2. Commercial

- 1) Commercial documents are defined as being either a Proposal, Statement of Work (SoW) or a Quote.
- 2) A Fixed Price client engagement is based on a fixed scope as defined in the Commercial document.
- 3) Effort is based on Time & Materials (T&M), unless otherwise agreed.
- 4) Standard Business Hours are defined as being Monday to Friday from 08:00 – 17:00 WA standard time (excluding weekend and public holidays).
- 5) Out of Business Hours engagements may be requested by the Client under the following conditions:
  - i. Requires client approval.
  - ii. Standby Out of Business Hours refers to the immediate availability of a nominated resource for Client service during a nominated timeframe.
  - iii. The Client may elect to cancel Standby Out of Business Hours at any time by issuing an email to ES2 Operations Team (operations@es2.com.au) with the subject title being: "Notice of Cancellation: Out of Hours Service". Notification within 24 hours of the planned Out of Hours work.
- 6) Ad-Hoc Work conducted outside of Standard Business Hours will be calculated at the "Out of Hours" rate and requires client approval. Out of Hours rate is calculated at one and a half times (1.5) the standard daily resource rate with a minimum charge of 2 hours.
- 7) All travel, accommodation and related expenses require Client approval and will be on-charged to the Client at cost.
- 8) Quotes providing Services, Hardware, Software, Licences and Maintenance pricing are valid for 14 days from the date of issue unless otherwise agreed.
- 9) Payment terms are 14 days unless otherwise agreed, except for Training payments which must to be received 14 days prior to the start date for the Training.
- 10) ES2 rates may be subject to Consumer Price Index (CPI) increases from the 1st of January each year. In the event of an increase, ES2 will inform the relevant parties in writing 1 month prior to the increase being applied.
- 11) Invoicing schedule is monthly for T&M engagements and based on Activity, Milestone or Deliverable completion for Fixed Price engagements.
  - i. Deliverables will be invoiced on delivery and not post review cycle, if any.
- 12) Penetration Testing will be invoiced in full upon the delivery of the report.
  - i. A re-Test will be performed if requested within 1 month of the report delivery at no cost; and
  - ii. A re-Test is restricted to 4 hours of effort.
- 13) Retainers will be valid for the period of the contract only and can only be extended at the discretion of ES2.

- 14) Pre-Paid Incident Response Service engagements may be adopted by the client under the following conditions:
  - i. On-Boarding will be charged at the fixed fee of \$2,000.
  - ii. Onsite response will be charged at the standardised rate of \$1,300 (as part of the \$10K Pre-Paid option) or \$1,200 (as part of the \$20K Pre-Paid option) per day with a minimum response charge of 4 hours per day (combined resources).
  - iii. Offsite response engagement engagements follow the same charge rate but with a minimum response charge of 2 hours per day (combined resources).
  - iv. All unused balance at the end of the one year anniversary can be rolled over to the next year or used for any other projects,
- 15) Ad-Hoc Incident Response Service engagements will be charged at the standard rate of \$1,400 per day with a minimum charge of 8 hours per day (combined resources).
  - i. Onsite Response will be charged at the standardised rate of \$1,400 per day with a minimum of 8 hours per day (combined resources).
  - ii. Offsite Response engagement will be charged at the standardised rate of \$1,400 per day with a minimum of 8 hours per day (combined resources).
  - iii. Any following days will be charged at the pro-rata rate of \$1,400 with a minimum of 4 hours per day (combined resources).

### 3. Project Delivery

- 16) Resources and start dates proposed are subject to change prior to receipt of an official order (Purchase Order or Signed Commercial document).
- 17) All work will be performed at the Client location unless otherwise agreed. Any Offsite work will be performed at ES2 premises unless otherwise informed by ES2.
- 18) The timeline for any engagement is indicative and assumes no delays. In the event that cancelation, delays or postponement, occur prior to the engagement start, caused by non-ES2 parties, ES2 may apply a charge and cannot guarantee project resource availability outside the agreed dates. Cancelation, Delays or Postponement within 24 hours of the planned work will incur a charge of \$2,000.
- 19) Any variations to Commercial will be managed through a formal Change Request process.
- 20) All deliverables will receive one peer review cycle before finalisation. Additional reviews may be provided at an additional cost unless otherwise agreed.
- 21) If included in Commercial, the ES2 Project Manager, will be responsible for the scope, delivery, resources, risks and financial management of the engagement.
- 22) Confirmation of deliverables will be assumed after 5 working days of the delivery date.
- 23) Acceptance of deliverables will be assumed if after 5 days from the date of delivery no response is received.
- 24) All documentation will be provided using ES2 standard templates unless otherwise agreed.
- 25) ES2 warrants that engagements set forth in each commercial will be performed in a timely, professional manner with suitably qualified personnel, in accordance with prevailing industry standards.

## 4. Client Responsibility

- 26) It is incumbent upon the Client to designate a Single Point of Contact who will act as the Client Project Manager.
- 27) The Client will ensure that ES2 personnel are sufficiently aware of its policies and procedures to the extent necessary as deemed to the satisfaction of the Client.
- 28) Security access levels available to ES2 parties will be identified and advised to ES2 by the Client prior to the start of the engagement.
- 29) The Client is responsible for the quality and timely delivery of Client activities and deliverables.
- 30) The Client remains responsible for ensuring all required, non-ES2 parties attend meetings or workshops.
- 31) The Client will make available any relevant information in a timely manner as requested by ES2 personnel and ensure that such information is complete and accurate.
- 32) The Client will provide a suitable work environment including phone reception and suitable Internet access, and where necessary, access to a suitable desktop computer and systems as relevant to the engagement.

## 5. Termination

- 33) Either party may terminate this Head Agreement for convenience on thirty (30) days written notice to the other party. Under no circumstances shall a party be entitled to any compensation as a result of the other party's election to terminate this Head Agreement pursuant to this clause. Termination of this Head Agreement pursuant to this clause does not have the effect of terminating any Individual Contracts. Individual Contracts will remain in force in accordance with its terms.
- 34) Either party may terminate this Head Agreement or any Individual Contract immediately where the other party:
  - i. commits a material breach of this Head Agreement or an Individual Contract which is not capable of being remedied; or
  - ii. fails to remedy a material breach of this Head Agreement or an Individual Contract which is capable of remedy within thirty (30) days of receipt of a written notice specifying such breach.
- 35) Subject to clause 37, if this Head Agreement is terminated under clause 33, then any Individual Contract agreed under this Head Agreement will automatically terminate on termination of this Head Agreement.
- 36) On termination of this Head Agreement or an Individual Contract:
  - i. the accrued rights and remedies of each Party remain unaffected.
  - ii. ES2 will deliver a Tax Invoice to the Client in respect of any delivered Hardware, Software, Licences and Maintenance that ES2 has not invoiced the Client at the date of termination of the relevant Individual Contract.
  - iii. ES2 will deliver a Tax Invoice to the Client in respect of any delivered Services that ES2 has not invoiced the Client at the date of termination of the relevant Individual Contract. Unless set out in an Individual Contract, such Services will be calculated by ES2 in accordance with its then prevailing agreed rate.

- iv. Each party shall at the other party's option, either destroy or return to the other party any of its Confidential Information, including any copies thereof in its possession or control.
- v. In respect of a termination effected by ES2, parties are to discuss ownership of the IP in any work product arising out of the performance of the services, and licensing for that work product.

## 6. Liability

- 37) ES2 shall not be liable for any failure to provide the Service or to perform any obligation under this Head Agreement where such inability is caused by force majeure. If ES2 is unable to provide the Services due to a force majeure event (such as the provision of an operational network) by a third party supplier, ES2 will reasonably endeavour to procure the necessary services from an alternative third party to supply required services.
- 38) ES2 has no liability if:
- i. the allegation of infringement is a result of a modification of the engagement not performed or approved by ES2;
  - ii. the Hardware, Software, Licences and Maintenance is not being used in accordance with the vendor documentation;
  - iii. the allegation of infringement is a result of use with any non-ES2 supplied third party product; Intellectual Property, Confidentiality and Client Data
- 39) Each party shall retain all rights to the Confidential Information of that party owned prior to the entry into this Head Agreement. If any Confidential Information of a party is used by the non-owning party under or in connection with this Head Agreement, such utilisation shall not transfer, or imply the transfer, of ownership of said Confidential Information to the non-owning party. Parties must discuss and agree in writing the ownership of the IP in any work product arising out of the performance of the Services, and licensing arrangements for that Work Product.
- 40) The Confidential Information of each party is valuable to it. Each party must keep the Confidential Information of the other party secret and confidential. A recipient of Confidential Information may only use the Confidential Information of the discloser for the purposes of performing its obligations under this Head Agreement. A recipient must: (i) not disclose Confidential Information of the discloser to any person except if permitted by this Head Agreement; and (ii) not permit or assist any person to make any unauthorised use of the discloser's Confidential Information. A recipient may disclose Confidential Information of the discloser to: (i) the client but only strictly on a "need to know basis"; or (ii) to any other person with the discloser's prior written consent (such consent to be given or withheld in the disclosing party's absolute discretion). Before doing so, the recipient must ensure that those persons are aware of the confidential nature of the Confidential Information and are bound by confidentiality obligations consistent with this Head Agreement. A recipient may disclose Confidential Information of the discloser to the extent required by law or regulations or any stock exchange having authority. However, the recipient must give the discloser reasonable notice of any proposed disclosure (if permitted by law) to enable the discloser to seek a protective order or other remedy to prevent or limit the disclosure. Each party acknowledges that any breach of this clause 39 may result in damage to the other party for which monetary damages may not provide sufficient relief. Each party is entitled to enforce its rights under this clause by specific performance or other injunctive proceedings.
- 41) Client Data remains the property of Client at all times. ES2 gains no right or interest in Client Data. Further, and except as required by law, ES2 must: (i) not use Client Data for

any purpose other than directly for the performance of its obligations under this Head Agreement; (ii) not, and must ensure that ES2 personnel do not, sell, commercially exploit, mine, analyse, let for hire, assign rights in or otherwise dispose of any Client Data; (iii) not make any Client Data available to a third party other than an approved subcontractor and then only as is necessary for the approved subcontractor to perform; and (iv) not remove or transfer Client Data to any non-Client premises or systems without obtaining the prior approval of the Client.

- 42) Subject to clause 42 a recipient's obligations in respect of all Confidential Information received under or in connection with this Head Agreement commences on from the date of this Head Agreement and continues until the date which is two (2) years after the date this Head Agreement expires or is terminated, except to the extent that the discloser specifically releases the recipient by written notice.
- 43) The rights and obligations of a recipient continue beyond the [two (2)] year period under clause 42) where the discloser is bound by a contract with a third party to keep the Confidential Information confidential for a longer or indefinite period of time.
- 44) Termination of this Head Agreement shall not affect any accrued rights or remedies to which a discloser is entitled.

## 7. Limitation of Liability

- 45) To the fullest extent permitted by law, except for IP infringement claims, breach of confidentiality, personal injury or death or the loss/damage to property of the Clients; fraud and willful misconduct caused by negligence or wilful default of ES2, ES2's liability to the Client for any damage, loss or liability for any cause whatsoever, regardless of the form of action will be limited to the total amount of fees paid by the Client (as set out below) under or in any way connected with this Head Agreement, any Individual Contract or the provision of the Services:
  - i. where the Services under the applicable Individual Contract are provided within a 12-month period, the fees paid by the Client to ES2 under the applicable Individual Contract; or
  - ii. where the Services under the applicable Individual Contract is provided on an annual basis or over a period greater than 12 months, the fees paid by the Client to ES2 under the applicable Individual Contract in a 12-month period.
- 46) During the term of an engagement and for six (6) months thereafter each party agrees not to hire, or engage as an independent contractor, or directly or indirectly solicit, induct, hire or employ any employee or contractor of the other, or a former employee or contractor, who has performed services under an engagement with the Client.
- 47) Nothing shall preclude or limit ES2 from providing consulting services and/or developing software or materials for itself or other clients, irrespective of the possible similarity thereof to materials which might be delivered to the Client, including without limitation screen formats, structure, sequence and organisation.

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## 8. Legislation and Regulations

The following laws and regulations apply to engagements carried out in the stated jurisdictions or concerning the specified subject matter:

- The Privacy Act 1998 (Australia) and amendments
  - Australian Privacy Principles
- Information Privacy Act 2014 (Australian Capital Territory)
- Information Act 2002 (Northern Territory)
- Privacy and Personal Information Protection Act 1998 (New South Wales)
- Information Privacy Act 2009 (Queensland)
- Personal Information Protection Act 2004 (Tasmania)
- Privacy and Data Protection Act 2014 (Victoria).
- The Freedom of Information Act 1992 (Western Australia)
- EU General Data Protection Regulations (EU Citizen Data)
- Cybercrime Act 2001 (Australia)
- Payment Card Industry Data Security Standard (PCI DSS)
- Copyright Act 1968 (Australia)
- Corporations Act 2001 (Australia)
- Australian Securities and Investments Commission Act 2001 (Australia)

## 9. General Conditions

### **Waiver**

Any waiver by a party of any term, condition or obligation in this Head Agreement express or implied shall not operate as a waiver or a continuing or recurring breach of the same or any other term, condition or obligation.

### **Entire Agreement**

This Head Agreement embodies the entire agreement and understanding between the parties with respect to all matters referred to in it.

No variation of this Head Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

### **Governing Law**

This Head Agreement is governed by the laws in force in Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia and any courts competent to hear appeals from those courts.

### **Severability**

The provisions of this Head Agreement are and shall be construed to be divisible and severable to the effect that if any provision hereof shall at any time be found or declared invalid, void, voidable or unenforceable the remaining provisions shall remain valid and enforceable.

### **Further cooperation**

Each party must do anything (including executing a document) the party reasonably requires in writing to give full effect to this Head Agreement

### **Relationship of the parties**

This Head Agreement does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the parties.

No party is liable for an act or omission of another party, except to the extent set out in this Head Agreement.

### **Execution of separate documents**

This Head Agreement is properly executed if each party executes this Head Agreement or an identical document. In the former case, this Head Agreement takes effect when the last party executes this Head Agreement. In the latter case, this Head Agreement takes effect when the last of the identical documents is executed.

Evidence of execution of this Head Agreement by a party may be shown by email or a PDF copy of the executed Head Agreement.

### **No merger**

The provisions of this Head Agreement do not merge with any action performed or document executed by any party for the performance of this Head Agreement.

### **Assignment**

Except as expressly permitted by this Head Agreement a party must not assign any of its rights and obligations under this Head Agreement without the prior written consent of the other parties. That consent may be given or withheld at a party's absolute discretion.



### Third party rights

A person who is not a party to this Head Agreement does not have any rights under or in connection with it.

### Exclusion of contrary legislation

To the full extent permitted by law, any legislation that adversely affects a right, remedy or obligation of a party, under or relating to this Head Agreement is excluded.

### Costs

Except as otherwise agreed by the parties in writing, each party must pay its own costs in relation to preparing, negotiating and executing this Head Agreement and any document related to this Head Agreement.

### Survival

Subject to Section 7; Intellectual Property, Confidentiality and Client Data, the obligations in this Head Agreement survive the termination or purported termination of this Head Agreement.

## 10. Terms and Definitions

Term	Definition
<b>Ad-Hoc</b>	Unplanned services supplied on-demand or as required and as directed by the Client during the course of an engagement.
<b>Business Day</b>	means a day other than a Saturday, Sunday or public holiday in Western Australia.
<b>Change Request</b>	A change request is a document containing a call for an adjustment of a system, process or agreement. A change request is declarative, i.e. it states what needs to be accomplished, but leaves out how the change should be carried out.
<b>Client</b>	The customer of ES2 where ES2 either provides a service and/or provides products to.
<b>Client Data</b>	All data and information relating to the Client and its operations, facilities, customers, clients, personnel, assets and programs in whatever form that information may exist and whether entered into, stored in, generated by or processed as part of an engagement and any other data relating to the engagement, including the Client's Confidential Information.
<b>Commercial</b>	Commercial refers to a Commercial document; Statement of Work, Proposal, Quote, etc. The Commercial lays out the approach, methodology, terms and fees for an engagement.
<b>Confidential Information</b>	The term <b>Confidential Information</b> includes: <ol style="list-style-type: none"> <li>i. all business or technical information of a discloser, whether it is received, accessed or viewed by a recipient in writing, visually, electronically or orally;</li> <li>ii. without limitation, Client Data, data, technical information, marketing and business plans, databases, specifications, formulations, tooling, prototypes, sketches, models, drawings, specifications, procurement requirements, engineering information, samples, computer software (source and object codes), forecasts, identity of or details about actual or potential customers or projects, techniques, inventions, discoveries, know-how and trade secrets; and</li> <li>iii. all such business or technical information of any third party that is in the possession of a discloser.</li> </ol>

<b>CPI</b>	The Consumer Price Index is a measure that examines the weighted average of prices of consumer goods and services. CPI is calculated by taking price changes for each item in a predetermined group basket and averaging them.
<b>Deliverable/s</b>	As defined in the commercial document; Deliverables are the output of an engagement, specified as “deliverables” or the “outcome” in a commercial document. Deliverables may take the form of reports, documents, findings, etc, but may equally be the satisfactory conclusion of services as directed by the Client.
<b>Effort</b>	Commercial term; an estimate of labour expressed in terms of time or “man-hours” (or man-days) to achieve an outcome or produce a deliverable.
<b>Fixed Price</b>	A <b>Fixed Price</b> client engagement refers to a fee which will not vary and is based on a fixed scope as defined in the commercial.
<b>Goods</b>	Refers to physical products and or items. Examples; IT hardware components, racks, servers, RAM, telephony, etc.
<b>Head Agreement</b>	These terms and conditions of trade.
<b>Individual Contract</b>	Any further agreement between ES2 and the Client in respect of a specific engagement which is subject to and forms part of this Head Agreement.
<b>IP (Intellectual Property)</b>	All industrial and intellectual property rights of any kind including but not limited to copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semiconductor or circuit layout rights, trade, business, domain or company names, rights in Confidential Information, know how or other proprietary rights (whether or not any of these are registered and including any application for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.
<b>Liability</b>	All losses, liabilities, fines, penalties, damages, claims and interest, and all related costs and expenses (including any and all legal costs (on a full indemnity basis), and costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.
<b>License/s</b>	A license is a document that provides legally binding guidelines for the use and distribution of software. ... Software licenses typically are either proprietary, free or open source, the distinguishing feature being the terms under which users may redistribute or copy the software for future development or use. May also be applied to Hardware, when there is a software component.
<b>Services</b>	Refers to skilled effort provided by ES2 and applied on behalf of a Client to provide an outcome or deliverable. Examples include development of documentation, findings, analysis, installations of hardware or goods, fault-finding, designs, etc.
<b>Signed Commercial</b>	An executed (mutually agreed) commercial document (Statement or Work, Proposal, Quote, etc) between ES2 and the Client.
<b>Standard Business Hours</b>	Means ES2’s standard trading hours which are from 8.00 am to 5.00 pm every Business Day (WA)
<b>Standard Daily Resource Rate</b>	The “Standard Daily Resource Rate” is the daily fee per 8-hour period as specified in the Statement of Work (Proposal or other commercial agreement).
<b>Standby Out of Hours</b>	A reduced hourly rate applied to a resource to make them exclusively available to a Client, should they be required. A form or labour reservation to be activated should certain conditions arise.

<b>Tax Invoice</b>	A tax invoice that complies with <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .
<b>Time &amp; Materials</b>	Time & Materials refers to an approach to fees based on a “pay as required” model and is usually presented in a commercial with an upper limit. The approach being to achieve the commercial goal while remaining under the specified budget, by using only resources required to achieve the goal.
<b>In this Head Agreement, unless the context otherwise requires:</b>	<ul style="list-style-type: none"> <li>i. Headings to clauses are for convenience only and shall not affect the interpretation of this Head Agreement.</li> <li>ii. A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.</li> <li>iii. The expression “Head Agreement” includes the agreement, arrangement, understanding or transaction recorded in this Head Agreement.</li> <li>iv. References to a party to this Head Agreement include that party’s executors, administrators, substitutes, successors and permitted assigns.</li> <li>v. A reference to a group of people is a reference to all of them collectively and to each of them individually.</li> <li>vi. Any reference to a person includes a corporation.</li> <li>vii. Any reference to an Annexure, clause or Schedule is a reference to an annexure to, clause of, or schedule to, this Head Agreement and any reference to this Head Agreement includes this Head Agreement as amended, its schedules and any annexure.</li> <li>viii. Words and phrases defined in the Introduction or elsewhere in this Head Agreement shall have the meaning therein given to them.</li> <li>ix. Any reference to “\$” is to the lawful currency for the time being of the Commonwealth of Australia.</li> <li>x. Any reference to a statute includes all subordinate legislation made thereunder and any amendment, consolidation, replacement or re-enactment thereof.</li> <li>xi. Where any obligation of this Head Agreement falls to be performed on a day other than a Business Day, this Head Agreement shall be construed as requiring that obligation to be performed on the next Business Day.</li> <li>xii. Where any time period is required to be calculated from a specified date, that date shall be included in the calculation.</li> <li>xiii. Words importing the singular are deemed to include the plural and vice versa</li> <li>xiv. Words denoting any gender include all other genders.</li> <li>xv. References to time are to time in Perth, Western Australia.</li> <li>xvi. A covenant or agreement made by, or for the benefit of, two or more persons binds, and is enforceable against, or may be exercised by (as the case may be), those persons jointly and each of them severally.</li> <li>xvii. A reference to a thing includes the whole or part of that thing.</li> </ul>



## 11. Inquiries

Direct inquiries about this policy to:

Managing Director  
ES2  
Perth Business Centre  
Level 27,  
44 St. George's Terrace.  
Perth WA 6000

ABN: 57 163 419 136

Phone: +61 488 701 591  
Email: [fred@es2.com.au](mailto:fred@es2.com.au)  
Website: [www.es2.com.au](http://www.es2.com.au)

**End**