

# Techability ABN 52 809 834 144

## Online Purchase Agreement Terms and Conditions

These Online Purchase Agreement Terms and Conditions (**Terms**) are the contract between you as the client (**you** or **your**) and Anita Gover as trustee for SkyHigh Future Trust trading as TechAbility ABN 52 809 834 144 (**us**, **our** or **we**).

If you purchase the Services from our Site, you:

1. consent to us providing information to you electronically; and
2. accept the offer as set out in these Terms and agree to be bound by these Terms.

Please read this document carefully and save it. If you do not agree to be bound by these Terms, you should leave the Site immediately.

Within this document the following terms have the following meaning:

**Fixed Price** means:

1. **\$0** including GST for the NDIS Software List Service;
2. **\$299** including GST for the NDIS Software Finder Service;
3. **\$649** including GST for the NDIS Software Consultation Service.

**Services** includes:

### 1. **NDIS Software List Service**

This is a downloadable PDF list of all NDIS software systems including the name of the software and the link to the software provider's website.

### 2. **NDIS Software Finder Service**

This is a questionnaire that the NDIS provider completes to provide us with information about their business processes, requirements and budget. Once the provider submits the questionnaire, their responses are analysed against our database and we create a report listing the five highest matched systems, along with some information about how to select a software solution and implement it.

### 3. **NDIS Software Consultation Service**

This service includes the NDIS Software Finder as above as well as 2 hours of online individual consultation with a TechAbility software expert.

**Site** means <https://techability.net.au/> and <https://techability.solutions/>

## **1. Services**

- 1.1 The cost for the Services is calculated on a fixed fee basis. We will invoice you for the cost in accordance with the Fixed Price.

## **2. Applicable law**

- 2.1 These terms of service are governed by the laws in force in New South Wales. You agree to submit to the exclusive jurisdiction of the courts of that jurisdiction.

## **3. Fees and other charges**

- 3.1 The cost for the Services is calculated on a fixed fee basis. We will invoice you for the cost in accordance with the Fixed Price.
- 3.2 We reserve the right to update the Fixed Price from time to time at our discretion.
- 3.3 The Fixed Price is stated on a GST inclusive basis. We will treat you as the recipient of the products and services we provide.
- 3.4 The Fixed Price includes transaction fees.
- 3.5 Upon submitting an order on our Site for the Services, you will be directed to PayPal for payment of the Service. Once payment for the Service has been completed and received via PayPal, we will email you a Tax Invoice receipt for the payment. For the NDIS Software Finder Service, we will email you a link to the questionnaire within one (1) business day of us receiving payment and the Report will be sent to you within one (1) business day of us receiving the completed questionnaire.
- 3.6 Once we have sent the NDIS Software Finder Report to you via email, you will not be entitled to a refund.

## **4. Permitted use of the Report**

- 4.1 You must not resell or provide the Report to any other person or organisation other than you.
- 4.2 You indemnify us from all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred or suffered by you or us as a direct or indirect consequence of your use of the Report.
- 4.3 We are responsible only for the terms of the Report provided to you and are not responsible for any alterations made to the Report by you.
- 4.4 We do not warrant merchantability or fitness for a particular purpose of the Report and we

disclaim all responsibility for any loss, injury, claim, liability or damage of any kind arising out of or in any way related to:

- 4.4.1 any errors in or omissions from the Report, including but not limited to technical inaccuracies and typographical errors;
- 4.4.2 your use of the Report;
- 4.4.3 your inability to use the Report;
- 4.4.4 your use of our Site or any associated third-party platforms and/or websites; or
- 4.4.5 your use of any equipment or software used in connection with the Report.

4.5 The Report is provided on an “as is, as available” basis at the time you purchase the Services. We will not provide you with any updates or amendments to the Report.

4.6 If you claim compensation, damages or contribution from us for loss or damage arising from acts or defaults (including negligence) on our part and some or all of that loss or damage was due to or contributed to by:

- 4.6.1 your own acts or defaults or by the acts or defaults of other persons for whose actions or defaults you are responsible; or
- 4.6.2 the acts or defaults of one or more other persons, not being partners, employees or agents for whose conduct we are responsible, then we will be liable only for that proportion of the loss or damage which our acts or defaults bear relative to the totality of the conduct of all persons causing or contributing to the loss or damage.

4.7 Where any law relating to proportionate liability applies to a claim against us, this clause does not seek to exclude the operation of that law but will continue to operate to the extent that its operation is consistent with that law.

## **5. Duration of our engagement**

5.1 Our engagement with you will automatically terminate when:

- 5.1.1 you download the NDIS Software List
- 5.1.2 you receive the Report (for the NDIS Software Finder Service); or
- 5.1.3 we provide you with two hours of consultation services (for the NDIS Software Consultation Service).

5.2 You may terminate our engagement by giving us written notice at any time. If you do so before the Services are delivered, you will not be entitled to any refund.

- 5.3 We may terminate our engagement:
- 5.3.1 by giving you reasonable notice;
  - 5.3.2 if any payment (including payment of a bill or money in advance) due by you to us under these Terms is not paid;
  - 5.3.3 if you do not provide timely, accurate and proper instructions;
  - 5.3.4 if you do not complete the questionnaire for the NDIS Software Finder within sixty (60) days of us sending you the questionnaire;
  - 5.3.5 if you do not complete the two hours of consultation for the NDIS Software Consultation Service within six (6) months of payment; or
  - 5.3.6 if, by continuing to act for you, we would be required to act contrary to any legal, regulatory or professional conduct obligation or similar just cause.
- 5.4 Termination by us on any of those grounds does not prejudice or otherwise affect any lien created under these Terms.

## **6. Confidentiality**

- 6.1 We will keep all confidential information received from you in the course of the work, and persons performing work for you:
- 6.1.1 will treat confidential information you give as being given only to them;
  - 6.1.2 may disclose confidential information within our business as required in order to perform the work; and
  - 6.1.3 will not disclose to you any confidential information of third parties which may be known to them or any other personnel and may otherwise be information to which you are entitled.
- 6.2 You understand and accept that our obligation to you with respect to giving you information is restricted by these provisions. Only our business's personnel working for you will have an obligation to give advice only to you. We will treat other clients' instructions to the business and their confidential information on the same basis.
- 6.3 We may transfer material to our internal databases for learning and knowledge purposes. Before doing so, we will make reasonable efforts to ensure that confidential information is neither disclosed outside the business nor otherwise used inconsistently with the obligations referred to above.
- 6.4 You agree that you have provided accurate, up to date, and complete information about yourself to us. We are not responsible for any error made as a result of such information being inaccurate.

6.5 During the duration of our engagement you agree to notify us of any changes in your information, such as critical personal information immediately once a change occurs.

## **7. Privacy**

7.1 The *Privacy Act 1988* (Cth) and other privacy legislation applies when we collect, use and disclose information or an opinion about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion (personal information). You agree that we may manage your personal information in accordance with our Privacy Policy available on our website as amended from time to time.

7.2 In particular:

7.2.1 we may collect personal information in the course of your instructions and while acting for you. This may include personal information about individuals who are employees, directors or principals of corporate clients. We ask you to assist us to make these individuals aware that our acting for you may involve collection of personal information about them;

7.2.2 we may decide that it is necessary to conduct further searches and enquiries regarding the information you have provided us or more generally concerning you or your associates for our regulatory or prudential purposes. This may entail using some or all of the collected information to obtain additional information concerning you or your associates (including personal information in respect of individuals), from various other entities including, but not limited to, government agencies, law enforcement bodies, publicly available records, public registries, court or tribunal records, ratings agencies, search agencies and regulatory and licensing bodies.

7.3 We may use personal information in the course of acting for you and we may disclose personal information to our service providers or agents and to other organisations including other parties in the matter and government agencies responsible for processing transactions, but only to the extent necessary to perform the work and in accordance with our professional obligations, or as required by law. If we do not collect such personal information or if you or others do not consent to us conducting such further searches or enquiries we may not be able to carry out your instructions.

## **8. Disclaimers**

8.1 We provide the Services to help you understand and be able to evaluate NDIS related software, but any software you implement is and remains your sole responsibility. You acknowledge and agree that we are not responsible for the software you implement, the decisions that you may make, the documents you prepare or the advice that you give arising from the implementation of the software and that the software you implement is fit for your specific circumstances and you will undertake your own research and due diligence regarding the viability and appropriateness of any software that we may recommend.

8.2 You acknowledge and agree that:

- 8.2.1 all information provided as part of the Services is provided on an “as is, as available” basis at the time you access it;
- 8.2.2 we disclaim all responsibility for any loss, injury, claim, liability or damage of any kind arising out of or in any way related to any errors in or omissions, including but not limited to technical inaccuracies and typographical errors or your use of the information provided;
- 8.2.3 we do not guarantee the accuracy, completeness or adequacy of the Services for your purposes; and
- 8.2.4 your use of the Services is at your own risk, with you agreeing to take full responsibility for your actions and any advice you give based on your purchase of the Services.

## 9. Limitation of liability

9.1 Our liability is limited by a scheme approved under Professional Standards Legislation.

9.2 We shall not be liable for any damages of any kind whatsoever (including, without limitation, loss of opportunity and lawyer’s fees), resulting from or arising in connection with your use of the Services, including damages which are:

- 9.2.1 special;
- 9.2.2 direct;
- 9.2.3 indirect;
- 9.2.4 incidental;
- 9.2.5 loss of profits, data or other intangibles;
- 9.2.6 punitive; or
- 9.2.7 consequential.

(Collectively, **Damages**)

9.3 Our total liability for loss or damage of every kind, whether arising pursuant to these Terms is limited to an amount equivalent to the sum paid by you to us for the services.

9.4 The disclaimers, liability limitations and indemnities within these Terms do not exclude rights that by law may not be excluded. Such rights include, but are not limited to, those rights under Australian Consumer Laws.

## **10. Security of your credit card**

- 10.1 Please note that credit card payments are not processed on a page controlled by us.
- 10.2 Processing takes place using PayPal, the third-party payment processor connected to our Site, and we are bound by their terms and conditions and any other relevant third payment processor that the Site uses to take your payment.
- 10.3 If you have concerns about the safety or otherwise of your card, the Site and other third payment processor terms should be read before you agree to the direct debit from your card to ensure the details are being kept safely. While we will use our reasonable commercial endeavours to ensure the safety of any details we hold, we cannot directly control the details held by third party sites and will not be liable in this regard.

## **11. Communications**

- 11.1 For any questions and notices, please contact us at:

Name: Anita Gover

Email: [info@techability.net.au](mailto:info@techability.net.au)

Last update: April 2022

- 11.2 Any communication to be served on either of the parties by the other shall be delivered by email.
- 11.3 It shall be deemed to have been delivered, if sent by email, to the address from which the receiving party has last sent email: within 24 hours if the sender has received no notice of non-receipt.
- 11.4 Neither party shall be liable for any failure or delay in performance of these Terms that is caused by circumstances beyond its reasonable control.