



Statement of Work (SOW) Terms and Conditions

1 Definitions

“**Agreement**” means the agreement comprising the Statement of Work and these standard terms and conditions.

“**Business Day**” means a day of the week which is not a Saturday, Sunday or public holiday in the State in which the Products and/or Services are to be delivered.

“**Business Hours**” means 8:30AM to 5:30PM on Business Days.

“**Hardware**” means equipment specified in the Statement of Work.

“**Location**” means the location for installing the Products as set out in the Statement of Work or the Project Management Plan where applicable.

“**Products**” means the Hardware and the Software collectively.

“**Project Management Plan**” means the documentation listing elements of the plan for delivering and implementing the Products and Services.

“**Purchase Order**” means an official authorised purchase order issued to NTT by the Client.

“**Services**” means the services to be supplied by NTT as specified in the Statement of Work.

“**Software**” means any computer programs supplied under the Statement of Work, and may be NTT Software, developed software or third party software.

“**Specifications**” means the descriptions, plans, drawings, data, design, information or specifications relating to the Products and Services which are either attached to this Statement of Work or incorporated by reference.

“**Statement of Work**” means the document describing the Products and Services and which incorporates these Terms.

2 Supply

- 2.1 NTT Australia Pty Ltd (ABN 65 003 371 239) (“**NTT**”) agrees to supply the goods and software (“**Products**”) and the services (“**Services**”) described in the Statement of Work to the Client on these terms and conditions (“**Terms**”).

3 Purchase Orders

- 3.1 Purchase Orders for Products or Services described in the Statement of Work constitute acceptance by the Client of the Agreement. Only these Terms (not other terms and conditions which may be attached to or incorporated in a Purchase Order) form part of the Agreement between the parties. NTT’s acceptance of a Purchase Order will not be taken as acceptance of any such terms or conditions.

4 Precedence

- 4.1 In the event of any inconsistency between the following documents which may comprise the Agreement, they must be construed with the documents appearing earlier in the following list taking precedence over those appearing later:
- (a) the Statement of Work;
 - (b) these standard terms and conditions of supply; then
 - (c) the Project Management Plan.

5 Prices and Payment

- 5.1 Payment terms are strictly 30 days from the date of invoice.
- 5.2 Products will be invoiced on delivery. Services will be invoiced at the end of each month and on completion or as otherwise prescribed in the Statement of Work.
- 5.3 Prices quoted are valid for 30 days from the date of the quotation unless otherwise specified in the quotation.
- 5.4 Quoted prices based on a stated exchange rate will be adjusted on invoicing to take account of any exchange rate fluctuations. Adjustments will be based on the exchange rate quoted by the ANZ Bank at the close of business on the day before the date of invoice. Any discount which NTT may have granted to the Client is forfeited if payment is not made to NTT by the due date. Payment must not be withheld pending the settlement of any claims or disputes.

6 Time and Materials Charges

- 6.1 This clause 6 applies when the charges are based on the time taken to perform the services plus the cost of associated Products and materials

Timesheets

- 6.2 NTT will deliver timesheets to the Client on Mondays (or Tuesday if the Monday is a public holiday) for the preceding week’s Services, itemising the hours worked per day by the resource(s). If the Client does not agree with the timesheets, it must give NTT written notice of the dispute any of the particulars in the timesheets before 5:00PM on the following Friday, failing which the timesheets(s) will be deemed to be approved.

- 6.3 In the event of a dispute the Client must specify the disputed items and reason for the dispute. NTT will then work with the Client in good faith to resolve the dispute. If the parties are unable to resolve the dispute and agree to the original or an amended timesheet within seven (7) days then either party shall have the right to suspend this agreement until such time that the dispute is resolved under clause 27.

Charges

- 6.4 Subject to clause 6.5, NTT will only charge the Client for effective hours worked by NTT personnel, which means hours actually engaged in performing the Services and (unless otherwise agreed) excludes meal breaks, travel time to the Client's (or its nominee's) premises, holiday and other leave entitlements and NTT will not invoice the Client for additional hours worked unless NTT has received a written request from the Client to undertake work for those additional hours.
- 6.5 If the Services are performed outside a metropolitan area, or if travel is required by the Client as part of the Services, the Client must pay the reasonable travel and accommodation costs incurred by NTT in the supply of the Services.

Purchase Orders and Billing

- 6.6 The Client must raise a PO for the engagement. At the end of each agreed billing cycle of a fortnight or a month ("Billing Period") NTT will invoice the Client against the PO for the engagement as per the approved timesheets. NTT will track the expenditure against the PO and the Client must do the same. Where the engagement will exceed the balance of the PO then the Client must issue a new (or amended) PO to cover the charges for the balance of the engagement. NTT must not perform Services to exceed the approved budget as per the PO.

7 Taxes and GST

- 7.1 The amount payable to NTT is inclusive of taxes, duties and government charges imposed or levied in Australia in connection with the supply of the Products and Services other than GST. The Client is liable for any GST and any new or varied taxes, duties or charges imposed subsequent to NTT's quotation or proposal in respect of the supply of the Products and Services. NTT will issue a valid tax invoice where GST is to be recovered.

8 Interest

- 8.1 Any amount not paid by the due date for payment will carry interest from that date until payment is made in full at the rate being 2 percentage points above the overdraft rate charged on overdraft accounts over \$100,000 by the Commonwealth Bank of Australia from time to time.

9 Warranty

- 9.1 NTT makes no warranty in relation to the Products or Services other than as contained in these Terms or as prescribed by a law which cannot be excluded or in the case of Products, as provided by the Products' respective manufacturers as made known to the Client, as provided in the documents supplied by NTT or by the manufacturer or as otherwise published or made known to the Client. Defects in Services reported to NTT within 30 days of delivery of the Service will be rectified by NTT at no charge to the Client. NTT will not provide claimed warranty services for defects or deficiencies in Products or Services which are caused by:
- (a) external causes including natural disaster, fire, accident, neglect, misuse, vandalism, water, lightning, power surge or spike;
 - (b) the use of a Product for other than its intended purpose;
 - (c) the use with or connection of a Product to items not approved by NTT;
 - (d) the performance of maintenance or attempted repair by persons other than NTT or as authorised by NTT;
 - (e) changes made to the deliverables created by performance of the Services or to the operating environment;
 - (f) the relocation of Products by the Client; or
 - (g) any configuration or reconfiguration by the Client of the Products or other equipment with which the Products interface.

10 Delivery

- 10.1 NTT must use its reasonable endeavours to deliver Products or supply Services to the Client by the date agreed but is not liable for any delays or failure in delivery or supply caused by matters beyond its control. Freight charges incurred by NTT in delivering Products to the Client will be invoiced to the Client at cost unless quoted otherwise.

11 Compliance with Laws

- 11.1 The Client must ensure that the Specifications set out in the Statement of Work relating to the Products and Services, and the use of the Products and Services, satisfies all of the Client's legal and regulatory obligations and any other Client compliance requirements including, without limitation, compliance by the Client with any statute, regulation, corporate governance matters and internal company policies. Nothing in the Agreement requires NTT to ensure, recommend or facilitate the Client's compliance with any matter referred to in this

clause, except to the extent prescribed in the Statement of Work and the Client acknowledges that it has obtained its own advice on such compliance matters.

12 Acceptance

- 12.1 Unless the Client gives NTT written notice of any aspect of a deliverable which is alleged by the Client to be otherwise than in accordance with these Terms or any applicable Specifications within seven days of the date of delivery of that deliverable, the Client is deemed to have accepted that deliverable on delivery. Where the Client puts a deliverable to commercial use, it is deemed to have accepted that deliverable on the first day of such use, whether or not a notice of the kind contemplated by this clause is given to NTT as required.

13 Acceptance Testing (general)

- 13.1 In this clause, clauses 14, 15 and 16, "Errors" means:
- (a) defects in the system which cause it not to operate in conformity with the relevant acceptance tests; or
 - (b) defects in the documentation which renders it inaccurate, erroneous or otherwise unreliable;
 - (c) but does not include defects or errors in or caused by:
 - (i) any installation or infrastructure on the Location not carried out or provided by NTT;
 - (ii) the Client supplied items (not being adjustments or modifications to Client supplied items carried out by NTT as part of the Services); or
 - (iii) the provision of any other goods, facilities or services by the Client or by any third party.
- 13.2 All acceptance tests must be undertaken, in the absence of agreement to the contrary, between the hours of 9.00 AM and 5.00 PM on such Business Days as may be nominated by the Client. If testing is required to be carried out outside those hours, NTT is entitled to an additional charge in accordance with the rates set out in the Statement of Work.
- 13.3 At any time prior to completion of any acceptance tests, NTT may at its expense substitute such other Hardware or Software meeting or exceeding the Specifications.
- 13.4 Where an acceptance test fails as the result of the failure or unsuitability of a Product used in the system which Product has been specified by the Client, (as opposed to recommended by NTT), the acceptance test is deemed to have been passed, notwithstanding such failure.
- 13.5 Upon the completion and passing of the acceptance tests for each Location, and no later than two Business Days thereafter or following commencement of commercial use at a Location (whichever first occurs), the Client must issue to NTT certification thereof, and the date of such certificate is the "Location Acceptance Date" in respect of that Location.
- 13.6 Immediately upon the completion of acceptance tests, the Client must either:
- (a) provide NTT with written certification of the passing of those acceptance tests and the results obtained, or
 - (b) provide a statement of points of failure with the relevant acceptance tests (the "Statement of Errors") to be corrected prior to the Client 's acceptance of that phase.
- 13.7 In determining whether any acceptance tests have been passed for the purposes of the Agreement:
- (a) minor Errors set out in the Statement of Errors; and
 - (b) the failure of any part of the system to pass any acceptance test after it has been accepted for day to day use by the Client after installation, may be disregarded, provided that NTT corrects all such items referred to in (a) and 13.7(b) above within twenty five (25) Business Days after conducting such acceptance tests and demonstrates to the responsible officer that such Errors have been corrected.
- 13.8 Upon the completion and passing of all the acceptance tests for all Locations, and no later than ten Business Days thereafter or following commencement of commercial use at the last Location (whichever first occurs), the Client must issue to NTT certification thereof, and the date of such certificate is the "Final Acceptance Date".

14 Performance of acceptance tests by the Client

- 14.1 This clause 14 only applies if it is agreed that the Client is to conduct the acceptance tests. If NTT is to conduct the tests, clauses 15 and 16 apply.
- 14.2 NTT must notify the Client in writing when a phase of the system is ready for commencement of acceptance tests. The Client must commence all acceptance tests on or before the dates for commencement set out in the Project Management Plan and carry them out in accordance with NTT's test plan which has been provided by NTT for that phase.
- 14.3 The Client must permit employees of NTT to attend and observe the results of the conducting of the acceptance tests. Immediately upon the completion of acceptance tests, the Client must either:
- (a) provide NTT with written certification of the passing of those acceptance tests and the results obtained, or
 - (b) provide a Statement of Errors to be corrected prior to the Client 's acceptance of that phase.

15 Performance of Acceptance Tests by NTT

- 15.1 This clause 15 only applies if it is agreed that NTT is to conduct the acceptance tests. If the Client is to conduct the tests, clause 14 and 16 apply.
- 15.2 NTT must notify the Client in writing when a phase of the system is ready for commencement of acceptance tests. NTT must commence all acceptance tests on or before the dates for commencement set out in the Statement of Work and carry them out in accordance with NTT's test plan which has been provided by NTT for that phase.
- 15.3 If the Statement of Work so provides, NTT will integrate the Products into the Client's environment. NTT will ensure that the Products are correctly installed and that they are operational. NTT is not responsible for validation of the features and functionality of any Product.
- 15.4 NTT must permit employees of the Client to attend and observe the results of the conduct of the acceptance tests. Immediately upon the completion of the acceptance tests, NTT must give the Client a notice of completion of the tests.
- 15.5 Within five days of completion of the tests, the Client must either:
- (a) provide NTT with written acceptance of the passing of those acceptance tests, or
 - (b) provide a Statement of Errors to be corrected prior to the Client's acceptance of that phase.

16 Acceptance

- 16.1 NTT must correct the Errors set out in a Statement of Errors (if any) within ten Business Days after receipt of a Statement of Errors, or such other time agreed between the Client and NTT, and re-deliver the corrected items to the Client. The Client must promptly (but in any event not more than two Business Days after such redelivery) carry out such of the acceptance tests as it considers necessary to retest such phase under test and immediately after completing such tests provide NTT with written notice of the completion of the acceptance tests and the results obtained.
- 16.2 The procedure set out in this clause 16 must be repeated until:
- (a) the acceptance tests are passed and, the Client gives written notice of acceptance of the phase or item;
 - (b) the phase or item is deemed to be accepted; or
 - (c) the Client terminates the Agreement pursuant to clause 16.3.
- 16.3 If:
- (a) any phase fails to meet the relevant acceptance tests after the third conducting of acceptance tests provided such failure occurred after the due date for completion of such phase or item under the Project Management Plan), or
 - (b) if acceptance tests due to be commenced in respect of any phase or item of the Services have not commenced by the time provided for completion of such phase in the Statement of Work as a result of the Services in respect of such phase or item not being completed by the dates or within the times set out in the project plan, the Client may refer the matter to dispute resolution in accordance with clause 27.
- 16.4 For the purposes of clause 16.3, anytime for completion of a phase or item is deemed to have been extended by the period of any delay by the Client in such commencement of the relevant acceptance tests for that or any preceding phase or item beyond a period of seven days after NTT notifies the Client in writing that it is ready for acceptance in accordance with clause 14.2.
- 16.5 For the purposes of the acceptance process, acceptance by the Client of any phase or deliverable must not be withheld on the basis of trivial, inconsequential or insignificant defects or departures. NTT must rectify all such defects or departures before the later of:
- (a) final acceptance of all deliverables; and
 - (b) the end of the relevant warranty period.
- 16.6 Notwithstanding any other provision of the Agreement, the Client is deemed to have accepted any Product comprising the system upon the earlier of:
- (a) the use of that Product for any purpose other than testing;
 - (b) where NTT is the testing party, fourteen days from service by NTT of a notice pursuant to clause 15.2, unless the Client had served a notice pursuant to clause 15.5(b);
 - (c) where the Client is the testing party, fourteen days from service by NTT of a notice pursuant to clause 14.2, unless the Client had served a notice pursuant to clause 14.3(b).

17 Variations

- 17.1 Client may request in writing that NTT performs:
- (a) additional work that is required under the Agreement; or
 - (b) work different from or inconsistent with the Statement of Work;

- (c) and any such request will constitute a "Proposed Variation".
- 17.2 Within a reasonable period of receiving a Proposed Variation from the Client, NTT will notify the Client of:
- (a) the cost of the Proposed Variation, calculated either on a time and materials basis or on a fixed price basis;
 - (b) the delay (if any) to the delivery of Products or Services under the Agreement which will result from the Proposed Variation; and
 - (c) the required amendments to the scope of work in the Statement of Work and/or the Project Management Plan (if any) if the Proposed Variation is agreed between the parties.
- 17.3 If NTT recommends a variation, it will submit a copy of the Proposed Variation to the Client together with a statement of the matters in clause 17.2.
- 17.4 If the Client submits a proposal or request which does not expressly constitute a Proposed Variation but which NTT considers to be a Proposed Variation, NTT must within fourteen days of receiving the proposal notify the Client that it considers the proposal to be a Proposed Variation and whether or not NTT agrees to such Proposed Variation, together with a statement of matters in clause 17.2.
- 17.5 If both parties agree to a Proposed Variation in writing (including the matters under 17.2), the scope of work will incorporate the Proposed Variation on the agreed terms from the date of the written agreement and the price will be adjusted to reflect the price of the Proposed Variation.
- 17.6 If the parties do not agree to a Proposed Variation in accordance with this clause:
- (a) NTT must meet its obligations in accordance with the Agreement (unless NTT requires an extension of time because of the time spent preparing a Proposed Variation); and
 - (b) no adjustment to the price will be made except that, if the Proposed Variation was submitted by the Client, the Client must pay NTT the reasonable costs of preparing the Proposed Variation and any associated documentation where the time involved was greater than 8 person hours.
- 17.7 If the preparation of an estimate, quote or proposal for a variation engages NTT personnel in more than 8 hours labour for one person, the time expended on preparation must be chargeable to the Client at the Rates.
- 17.8 NTT must not vary the work under the Agreement except as directed by the Client and only if the variation is within the general scope of the Agreement.

18 Risk and Insurance

- 18.1 Risk of loss, theft, damage, deterioration or destruction of Products passes to the Client upon the earlier of:
- (a) delivery to the Client;
 - (b) the taking of possession by the Client; and
 - (c) the delivery to any carrier contracted to the Client for delivery to the Client.

19 Title

- 19.1 Until the Products have been paid for in full, they remain the property of NTT. If the Client fails to pay any amount to NTT when due, NTT may immediately without notice or demand, enter upon the Client's premises and take possession of the Products. This right is without prejudice to any other rights that NTT may have.

20 Client's Obligations

- 20.1 In addition to the matters set out in clause 22, the Client must perform the obligations, supply the items and make available the things set out in the Statement of Work which are specified to be obligations and responsibilities of the Client.

21 Access to Locations

- 21.1 Subject to clause 21.2, NTT must be allowed reasonable access to each Location during Business Hours for the purpose of meeting its obligations under the Agreement.
- 21.2 NTT must use reasonable endeavours to confirm the dates upon which access is required and the arrangements for such access prior to entering such Location.
- 21.3 NTT must be allowed access to any particular Location for the purpose of the Agreement outside the Client's normal Business Hours only upon receiving the prior consent of the Client.
- 21.4 The Client must prepare the Location prior to delivery and in particular must:
- (a) ensure the supply of adequate electric current;
 - (b) ensure the installation of adequate electrical and mechanical fittings not supplied by NTT;
 - (c) comply with the obligations of the Client set out in the Statement of Work and/or the Project Management Plan;
 - (d) provide appropriate environmental conditions; and
 - (e) provide a safe work environment for NTT's personnel.

22 The Client's authority and acknowledgements (Security Testing Services)

- 22.1 In this clause 22, "Security Testing Services" means controlled electronic probing of hardware and software in the form of either a vulnerability assessment or an ethical penetration test.
- 22.2 If NTT is supplying Security Testing Services, the Client authorises NTT to:
- (a) provide the Security Testing Services;
 - (b) do all things necessary to provide the Security Testing Services and to discharge its obligations; and
 - (c) access data or software on the relevant system, where required to properly perform the Security Testing Services.
- 22.3 The Client acknowledges that, in providing the Security Testing Services, NTT might:
- (a) circumvent access controls or access protected data;
 - (b) inadvertently modify, alter, corrupt, erase or destroy data or software stored on or accessible through the system; or
 - (c) interfere with, disrupt, interrupt or obstruct the relevant system or the Client's business or operations; and
 - (d) for the avoidance of any doubt, the Client authorises NTT to do all such acts consistent with the Statement of Work in relation to the provision of the Security Testing Services.
- 22.4 The Client acknowledges that the security of the relevant system is and will remain the responsibility of the Client.
- 22.5 The Client acknowledges that the information contained in any security-related report supplied by NTT is sensitive and confidential information and that it should be kept secure at all times.
- 22.6 If the consent, approval or authority of a person other than the Client is required in order for NTT to provide the Security Testing Services law fully and without infringing the rights of any person, the Client warrants that it will obtain that consent, approval or authority before NTT commences to provide that part of the Security Services for which the consent, approval or authority is required.

23 Delays

- 23.1 The parties will at all times promptly inform each other of any circumstance whereby, in the relevant party's opinion, the performance of an obligation of either of them is likely to be delayed, and the extent or nature of such delay. If such a delay occurs the escalation procedure detailed in this clause 23 must be followed.
- 23.2 If NTT believes at any time that it is unlikely to be able to provide the Client with all or any of the deliverables by the relevant due date for that deliverable, NTT must promptly notify the Client in writing of that belief.
- 23.3 NTT's notice must contain:
- (a) the reasons for the anticipated delay;
 - (b) an estimate of the additional time that NTT believes it will need to meet its obligations under the Agreement; and
 - (c) details of what NTT:
 - (i) intends to do to minimise the delay; and
 - (ii) recommends be done by the Client to minimise the delay.
- 23.4 Such notification will not relieve either party from any of its obligations under the Agreement.
- 23.5 Subject to clause 23.6, if NTT is likely to fail or fails to provide all or any of the deliverables by the relevant due date NTT will promptly:
- (a) commit such commercially reasonable additional resources at no additional cost to the Client (including suitably qualified and experienced personnel) in order to:
 - (i) accelerate work to ensure provision of the late deliverable as soon as is reasonably possible and in any event on or before the due date for any subsequent deliverables; and
 - (ii) reasonably ensure the provision of all subsequent deliverables on time; and
 - (b) use its best commercial endeavours to require any third party supplier of any of the deliverables, whose fault or delay in delivery has caused or contributed to the delay, to:
 - (i) allocate a suitably qualified technical person to assist in overcoming the delay until the delay has been overcome;
 - (ii) allocate a manager of sufficient seniority to supervise the implementation of the remedy for the delay by the third party supplier and to report to the Client on the progress thereof; and
 - (iii) implement any other procedures for the minimisation of delay as may be set out in the Project Management Plan.
- 23.6 To the extent that the delay has been caused by an act or omission of or breach of the Agreement by the Client or an act or omission of its contractors, NTT shall be entitled to:

- (a) an extension of time for performance of the Agreement
- (b) make a Charge for the Services supplied pursuant to this clause 23; and
- (c) render an invoice for all Products and Services supplied to date if the delay is expected to affect the project schedule by more than fourteen days.

23.7 If NTT is unable to perform part of the Services as scheduled due to delay or failure by the Client to perform an obligation which is a pre-condition to NTT's capacity to perform such Services then, for such period that any NTT employee is prevented from such performance, NTT may invoice the Client at NTT's hourly rate for the affected employee(s), provided that NTT must use its best endeavours to allocate the employee(s) to other chargeable services.

24 Confidentiality

24.1 NTT and the Client agree that they will keep at all times as strictly confidential any confidential information that is disclosed or provided by one party to the other. In this clause, "**confidential information**" means information in any form but does not include personal information (as that term is defined under the Privacy Act 1988), information that is already in the public domain at the time that it is disclosed or information that becomes part of the public domain otherwise than as a result of an unauthorised disclosure by NTT or the Client. The obligations under this clause will expire 5 years from the date of this Agreement.

25 Privacy

25.1 NTT must:

- (a) ensure that personal information (as that term is defined under the Privacy Act 1988 (Cth)) received from the Client ("Relevant Personal Information") is collected, used, stored, disclosed or handled by NTT in accordance with the Privacy Act and any other applicable law;
- (b) promptly notify the Client of:
 - (i) any complaint about the privacy of Relevant Personal Information received by NTT;
 - (ii) any request for access to Relevant Personal Information received by NTT;
 - (iii) any actual or suspected unauthorised access or disclosure of Relevant Personal Information, or other breach, or suspected breach, of the Privacy Act and include details of the Personal Information affected;
- (c) comply with all reasonable directions of the Client in connection with any complaint or request referred to in clauses 25.1(b)(i) and 25.1(b)(ii) or any complaint or request received by the Client in connection with any Relevant Personal Information that is collected, used, stored, disclosed or handled by NTT or any unauthorised access or disclosure or breach referred to in clause 25.1(b) (iii);
- (d) not, unless otherwise required by law, make any disclosure, or provide any third party access to, any Relevant Personal Information other than in the performance of this agreement or at the written direction of the Client;
- (e) promptly take any steps that are necessary to contain and/or rectify any of the matters referred to in clause 25.1(b) and the consequences of such matters;
- (f) not, unless otherwise required by law, notify any third party of any of the matters referred to in clause 25.1(b) without the Client's written consent;
- (g) ensure that any Relevant Personal Information it accesses, processes, stores, uses or discloses to third parties is only transferred or disclosed outside Australia in the performance of this agreement or at the written direction of the Client; and
- (h) ensure that any subcontract entered into for the purpose of fulfilling its obligations under this agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as NTT has under this clause 25.

25.2 The Client will comply with all reasonable directions of NTT in connection with any complaint or request referred to in clauses 25.1(b)(i) and 25.1(b)(ii), any complaint or request received by either party in connection with any Relevant Personal Information that is collected, used, stored, disclosed or handled by NTT, or any unauthorised access or disclosure or breach referred to in clause 25.1(b)(iii);

25.3 NTT will, upon demand by the Client, return to the Client (or if required by the Client, destroy) Relevant Personal Information that has been received by, or is in the possession of, NTT as at the date on which the demand is made.

25.4 Nothing in clause 25.2 obliges NTT to return or destroy any document or information incorporated into or annexed to anything which must be retained for compliance purposes, contained in systems, archives or backups which cannot be practicably deleted or information which must be retained as required by law, any accounting standard or the rules of any stock exchange or for sound corporate governance purposes.

26 Intellectual Property

26.1 The Client acknowledges that, unless otherwise agreed in writing, all intellectual property rights in or attaching to the Products or arising out of the provision of Services are and will remain the property of NTT (or its supplier, where such rights are owned by that supplier). Software will be licensed to the Client on the terms of the relevant licence agreement provided with the Product or as published by the Software manufacturer or as otherwise agreed in writing. Any rights to be conferred on the Client will only commence on payment of all charges payable in connection with those rights.

27 Dispute Resolution

- 27.1 Each of the parties shall use their reasonable endeavours to co-operatively resolve a dispute.
- 27.2 If a dispute arises, the dispute shall be referred to NTT's project manager and the Client's representative for resolution.
- 27.3 If the dispute is not resolved by NTT's project manager and the Client's representative within five Business Days of such a referral in accordance with clause 27.2, the dispute shall be referred to a panel ("Panel") for resolution. Each party shall nominate a representative for the Panel within five Business Days of the referral to the Panel in accordance with this clause 27.3.
- 27.4 If the dispute is not resolved by the Panel within ten Business Days of such referral, the Panel shall within three Business Days refer the dispute for resolution to a panel comprising the CEO of each party (or his or her nominee) and the members of the Panel ("Executive Panel"). If the dispute is not resolved by the Executive Panel within ten Business Days of such referral, clause 28 shall apply.
- 27.5 The Panel and the Executive Panel shall determine their own procedures for the resolution of the dispute.
- 27.6 Decisions of the Panel or the Executive Panel may only be made by unanimous agreement of the members of the Panel or the Executive Panel, as the case may be.
- 27.7 Any decision of the Panel or the Executive Panel shall be binding on the parties.
- 27.8 Neither party shall commence legal proceedings unless the parties have undertaken the process set out in clauses 27.2, 27.3 and 27.4, and those processes have failed to resolve the dispute.
- 27.9 Prior to the resolution of a dispute, the parties shall continue to perform their respective obligations to the extent that those obligations are not the subject matter of the dispute.
- 27.10 Nothing in this clause shall prevent a party from choosing to perform an obligation which is the subject matter of the dispute.
- 27.11 Nothing in this clause prevents either party from seeking urgent injunctive relief against the other party.

28 Mediation

- 28.1 The parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre ("**ACDC**") before having recourse to arbitration or litigation.
- 28.2 The mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation which is operating at the time the matter is referred to ACDC.
- 28.3 The ACDC Mediation Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- 28.4 The terms of the ACDC Mediation Guidelines are hereby deemed incorporated into the Agreement.
- 28.5 This clause shall survive termination of the Agreement.

29 Termination

- 29.1 If either party ("the defaulting party"):
- (a) makes default in any payment or breaches any of these Terms and fails to rectify the breach within 30 days of written notice to do so from the other party ("the non-defaulting party");
 - (b) becomes unable to pay its debts as and when they fall due; or
 - (c) commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up, NTT may without prejudice to any of its rights or remedies under these Terms or otherwise by notice to the Client:
 - (d) suspend further supply and require payment in advance for future supply;
 - (e) recover possession of any Product for which payment has not been made;
 - (f) terminate all or any Purchase Orders for Products or Services which have been accepted by NTT;
 - (g) claim immediate payment of all amounts due by the Client in respect of all Products and/or Services notwithstanding the due date or dates for payment or any terms agreed by NTT; and/or

(h) continue to enforce its rights and recover from the Client such payments and any other amounts owing as and when they fall due.

29.2 If the Agreement is terminated for NTT's failure to remedy a material breach, in addition to any other termination rights provided under the Agreement the Client:

- (a) may retain all Products provided under the Agreement if payment for them is complete;
- (b) remains liable to pay for any Services supplied before the date of termination, provided payment for such Services is not under dispute by the Client in good faith; and
- (c) may pursue any additional or alternative remedies provided by law .

30 No Representations

30.1 The Client acknowledges that NTT has not made any warranty or representation, express or implied, in relation to the Products or the Services, including whether they are suitable for a particular purpose (whether such purpose was made known to NTT or not), unless provided in writing.

31 No Implied Terms

31.1 To the fullest extent permitted by law, the parties agree to exclude any terms which would otherwise be implied into these Terms by any statute.

31.2 If a condition or warranty is implied into this Agreement by a law which cannot be excluded, NTT's liability is limited (at NTT's option) to:

- (a) the replacement or repair of the goods or the payment of the cost of having the goods replaced or repaired, in the case of supply of goods; or
- (b) the supply of the services again or the payment of the cost of having the services supplied again, in the case of supply of services.

31.3 If clause 102 of the Australian Consumer Law (under the Competition and Consumer Act 2010 (Cth) applies to NTT's goods and/or services:

- (a) they come with guarantees that cannot be excluded under the Australian Consumer Law;
- (b) for major failures in a service, the Client is entitled:
 - (i) to cancel its service contract with NTT; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value;
- (c) for major failures with goods the Client is also entitled to choose a refund or replacement;
- (d) if a failure in the goods or a service does not amount to a major failure, the Client is entitled to have the failure rectified in a reasonable time and if this is not done the Client is entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion; and
- (e) the Client is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

32 Limitation of Liability

32.1 To the extent permitted by law, all express or implied warranties, representations, statements, terms and conditions relating to NTT or the provision of Products and/or Services under these Terms, not expressly set out in these Terms, are excluded from the Agreement between the parties.

32.2 NTT's aggregate liability for all claims under or in connection with this agreement, whether arising from breach of contract, negligence or any other tort, breach of warranty, under an indemnity, applicable laws, in equity or otherwise is limited to an amount equal to the total amount paid to NTT under the relevant Statement of Work.

32.3 Nothing in clause 31.2 operates to limit NTT's liability for:

- (a) claims for death;
- (b) personal injury;
- (c) claims of fraud or fraudulent misrepresentation; or
- (d) breach of clause 24 of this agreement.

32.4 NTT has no liability to the Client for any incidental, indirect, special or consequential loss or damage, or for loss of or corruption of data, loss of use, revenues, profits, goodwill, bargain, opportunities or anticipated savings, whether arising from breach of contract, negligence or any other tort, in equity or under an indemnity, warranty or otherwise, whether or not NTT was aware of the possibility of such loss or damage.

33 Employees

33.1 During the term of the Agreement and for 6 months after termination by either party of the Agreement, a party must not intentionally solicit for employment or employ any person who is an employee of the other party who was involved in the matters covered by the Agreement.

33.2 This clause does not apply where:

- (a) a person responds to an advertisement for employment by a party; or
- (b) the employment is agreed to by the party who is the employer or was the former employer.

33.3 Each party acknowledges that the restriction specified in this clause 33 is in the circumstances reasonable and necessary to protect each party's legitimate interests.

33.4 The parties agree that:

- (a) a party may be restrained by an injunction or similar remedy for any conduct or threatened conduct which is or will be a breach this clause 33; and
- (b) a party who employs an employee of the other in breach of these Terms must pay the sum of \$50,000 as liquidated damages to the other party for the loss suffered by the party as a result of the breach, which amount the parties acknowledge to be a genuine pre-estimate of the loss so suffered and not a penalty.

33.5 Exercise by a party of rights pursuant to clause 33.4 shall be in lieu of any other right of action or remedy which has accrued or may accrue as the result of a failure to comply with this clause.

34 Variation

34.1 Any variation to these Terms must be agreed in writing. Variations to any of the Services agreed to be supplied will be charged by NTT at its then current rates for those additional services, unless otherwise agreed in writing.

35 General

35.1 Notices must be in writing and sent by mail, hand delivery or transmitted by facsimile to the address or facsimile number of the receiving party and are deemed delivered, in the case of:

- (a) hand delivery, on delivery;
- (b) posting, three days after dispatch; and
- (c) facsimile, on completion of complete and legible transmission.

35.2 No leniency, indulgence or extension of time granted by NTT to the Client will prejudice any of NTT's rights in anyway or constitute a waiver of any of NTT's rights.

35.3 If any of these Terms are for any reason declared to be or become unenforceable, invalid or illegal, the remaining Terms will remain in full force and effect.

35.4 These Terms are governed by the law s of the State or Territory of Australia in which this Agreement is executed and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that state.

35.5 The Statement of Work and these Terms constitute the entire agreement between the parties on the subject matter and supersede any previous understanding or agreement on that subject matter.