

## Professional Services Terms and Conditions

Nothing in the Agreement is intended to limit any rights the Client may have that may not be excluded by law.

### 1 Definitions and Interpretation

**Acceptance** means the Client's acceptance of the Service or Deliverable;

**Acceptance Certificate** means a certificate of acceptance signed by the Client to indicate Acceptance of the Deliverable;

**Acceptance Criteria** means the criteria for Acceptance of a Deliverable set out in the Service Schedule;

**Acceptance Period** has the meaning given to it in clause 6;

**Acceptance Testing** means the process for verifying that the Deliverable meets the Acceptance Criteria;

**Agreement** means these Terms and Conditions, a Service Schedule and Order Form executed by both parties;

**Australian Consumer Law** means the *Competition and Consumer Act 2010* (Cth);

**Business Hours/Business Day** means from 9:00 am - 5:30 pm, Monday through Friday, excluding public holidays in the State where the Professional Services are to be performed. This includes a one hour lunch break, totalling 7.5 hours in a Business Day;

**Charges** means the fees and charges payable by the Client for the Professional Services, excluding expenses and taxes;

**Client** means the entity acquiring Professional Services from NTT under an Agreement;

**Confidential Information** means this Agreement and any information disclosed by the Disclosing Party (as defined in clause 9), whether before or after the date of this Agreement, directly or indirectly by any means, which is designated as confidential by the Disclosing Party, or by its nature is confidential, regarding the Disclosing Party's:

- (a) business and operations, including but not limited to its product information, technology and Intellectual Property Rights, its employees, contractors, clients, distributors and other persons with whom it does business;
- (b) in respect of NTT, technical architecture, designs and data, software code, ideas, concepts, methodologies, know-how, client lists, price lists, financial projections, business plans, marketing materials, or financial arrangements of NTT; the processes involved in providing the Professional Services, and any login details and passwords allocated to allow the Client or an end user to access the Professional Services; and
- (c) in respect of the Client, the Client's data.

**Deliverable** means any material that is required to be provided to the Client as a result of the performance of the Professional Services;

**Dispute Period** means the period for settling a dispute, as set out in clause 12(n);

**Effective Date** means the date the parties enter into the Agreement, as set out in clause 2;

**Engagement** means the scope of the Professional Services and Deliverables defined in the Service Schedule;

**Intellectual Property Rights** means all intellectual property rights including copyright, trademarks, service marks, patents, designs, semiconductor, circuit layout rights, or other proprietary rights, or any similar rights protected by statute, from time to time existing in Australia or elsewhere whether or not such rights are registered or capable of being registered, whether created before, on or after the Effective Date;

**NTT** means NTT Com ICT Solutions (Australia) Pty Ltd, ABN 61 059 040 998;

**Order Form** means an order for Professional Services specified in the Service Schedule;

**Out Of Hours** means hours outside of Business Hours / Business Days;

**Personal Information** has the meaning given to it in the *Privacy Act 1988* (Cth);

**Privacy Laws** means the *Privacy Act 1988* (Cth) ("**Privacy Act**") and all other applicable legislation relating to the handling of Personal Information;

**Professional Services** or **Services** means consulting, integration, or technical Services, as further described in a Service Schedule for the provision of Professional Services;

**Project Manager** means an individual appointed by a party to serve as that party's primary representative for the Engagement;

**Related Body Corporate** has the meaning given to it by the *Corporations Act 2001* (Cth);

**Report** means a Deliverable in the form of a document that is identified as a Report in the Service Schedule;

**Service Schedule** means the document describing the scope of the Professional Services;

**Software** means machine-readable instructions and data (and copies thereof) including middleware and firmware and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures provided or made available to the Client under an Agreement. Software may include commercial “off the shelf” software and open source software;

**Specification** means the specification for a Deliverable described in the Service Schedule; and

**Terms and Conditions** means these terms and conditions.

The words “includes”, “including”, or “similar” are not words of limitation. Headings are for convenience and do not affect interpretation. No provision of these Terms and Conditions will be construed adversely to a party solely on the basis that the party was responsible for the preparation of that provision.

## 2 Agreement

- (a) The Agreement is formed when both parties have signed the Service Schedule and Order Form.
- (b) NTT may withdraw any Service Schedule, proposal or quotation prior to an Agreement being formed under clause 2(a).

## 3 Project Managers

Each Project Manager will:

- (a) have overall responsibility for managing and coordinating the performance of the party it represents in a prompt and professional manner; and
- (b) be reasonably available to meet with the other party’s Project Manager at regular intervals to review progress and resolve any issues relating to the Engagement.

## 4 Services

- (a) NTT will provide the Professional Services described in the Service Schedule for the Charges, expenses and taxes set out in the Order Form.
- (b) NTT may engage subcontractors to perform all or part of the Professional Services in which case NTT remains responsible for the performance of those Professional Services in accordance with the Service Schedule.
- (c) In addition to any Client responsibilities set out in the Service Schedule, the Client must, at its own expense and in a timely manner:
  - (i) provide NTT with sufficient and safe access (including remote access where required) to the Client’s location (including equipment, systems, information, personnel and resources), as reasonably required by NTT to perform the Professional Services. Where the Professional Services are performed at the Client’s premises, office space and facilities are to be provided to NTT’s personnel commensurate with those provided to the Client’s own personnel of similar standing;
  - (ii) provide NTT with access to any third party software, operating systems and hardware on which they are run, as well as direct access to the third party’s maintenance services (including help desk support) as required;
  - (iii) provide NTT with complete and accurate information, together with prompt decisions to facilitate NTT performing the Professional Services;
  - (iv) ensure that where there are multiple stakeholders within the Client’s organisation who have an interest in the Engagement, the Client’s Project Manager is authorised to represent the views of all the Client’s stakeholders, has obtained those views prior to providing information or instructions to NTT, and provides information or instructions that are deemed to constitute the single authorised position of the Client;
  - (v) make available appropriately trained personnel who are capable of answering NTT’s questions;
  - (vi) maintain an adequate data recovery system in order to facilitate the efficient restoration of data. The Client is responsible for taking effective back-ups of data, and for ensuring that it has duplicate copies of all data that is provided to NTT; and
  - (vii) comply with all laws which are relevant to the Client performing its obligations under this Agreement. The Client is solely responsible for ensuring it uses any Deliverable in accordance with all applicable laws.

## 5 Changes

Changes to the Service Schedule are subject to NTT’s change management process. The NTT Project Manager will manage formal and ad-hoc change requests arising throughout the Engagement, which will be agreed with the Client prior to each change being implemented.

## 6 Acceptance

### Acceptance of Deliverables provided during Fixed Price Services

Where Professional Services are provided on a fixed price basis (as specified in the Services Schedule), the following provisions apply to Acceptance of the Deliverable(s), unless otherwise mutually agreed:

- (a) NTT will notify the Client when a Deliverable is ready for Acceptance Testing. The Client must use suitably skilled resource to conduct Acceptance Testing using the Acceptance Criteria set out in the Service Schedule (or as otherwise agreed). The Acceptance Testing must be completed within five Business Days (or such other period agreed in writing) of the date that NTT notified the Client that the Deliverable was ready for Acceptance Testing (Acceptance Period).
- (b) The Deliverable(s) are Accepted on the earlier of the following events occurring:
  - (i) the Client having signed the Acceptance Certificate; or
  - (ii) the Client having failed to provide written notification of rejection of the Deliverable(s) to NTT by the expiry of the Acceptance Period; or
  - (iii) the Client commencing using the Deliverable(s).
- (c) Where the Client notifies NTT in writing that the Deliverable does not satisfy the Acceptance Criteria and provides a written description of the reasons for rejection in reasonable detail prior to expiry of the Acceptance Period, NTT will rectify the Deliverable within a reasonable period and the process set out in this clause will be repeated.
- (d) Where the Deliverable is a Report, the Client must request any clarification of, or changes to, the Report in writing within two Business Days of expiry of the Acceptance Period.
- (e) NTT may charge the Client on a time and materials basis where the Deliverable requires re-work because:
  - (i) the information provided by the Client and upon which NTT has relied has changed since commencement of the Engagement; or
  - (ii) the Client has changed the Specification of the Deliverable; or
  - (iii) the Client has requested changes to format, layout or semantics of a Report, which NTT, in its discretion, considers to be unreasonable.
- (f) NTT is not obliged to make any change to a Report, which in its reasonable opinion is unwarranted or which expresses a conclusion or opinion that NTT does not hold.

### Acceptance of Time and Materials Services

Where Professional Services are provided on a time and materials basis (as specified in the Services Schedule), the following provisions apply to Acceptance of the Service or Deliverable:

- (a) Except for timesheets or expenses which are disputed in good faith by the Client, the Client must promptly sign NTT's personnel timesheets and expense claim forms to signify the Client's agreement that the Professional Services were performed during the times specified in the timesheets and that the expenses will be paid by the Client when invoiced. Where the Client disputes any timesheet or expense, the Client must promptly provide the NTT Project Manager with written details of the issue and any other details reasonably requested by NTT. Should the timesheet or expense remain disputed, the parties will manage the dispute in accordance with the dispute resolution provisions of these Terms and Conditions.
- (b) The Client must pay for all work performed and expenses incurred by NTT to establish that a Deliverable meets the Specifications.

## 7 Charges and Payment

- (a) **Charges.** The Client will pay to NTT the Charges (including any instalments of the Charges) and related taxes as specified in the Order Form. In addition, the Client will reimburse NTT for any expenses incurred by NTT in connection with the performance of the Professional Services, including travel time and travel-related expenses, in accordance with NTT's then current expenses policy, unless otherwise stated in the Order Form.
- (b) **Invoices.** Unless stated otherwise in the Order Form NTT will issue the Client a tax invoice for the Charges (including any instalment), expenses and related taxes as follows:
  - (i) for Professional Services provided on a time and materials basis, promptly following the end of the month in which the Professional Services were performed;
  - (ii) for fixed price Professional Services, promptly after the relevant milestone or other data for payment was reached, as set out in the Service Schedule or Order Form.

- (c) **Payment in advance.** If the Order Form states that payment is due in advance, NTT will provide the Client with a tax invoice for the advance payment and the Client must pay the tax invoice prior to the start of the Engagement or within 30 days of the date of invoice, whichever is the sooner. Any obligation to make payment in advance is irrevocable and non-cancellable. Unless otherwise mutually agreed in writing, any payment in advance must be used to acquire Professional Services at the time and materials rates specified in the Order Form and such Professional Services must be performed within six months of the Effective Date. No refund will apply to any portion of pre-paid amounts which remain unused at the end of the six month period. Pre-payments do not include expenses, which will be charged separately.
- (d) **Payment.** The Client must pay the Charges, expenses and related taxes on the tax invoice within 30 days (or such other period stated in the Order Form) on the date of the tax invoice without any set off or deduction.
- (e) **Late Payment.** If the Client fails to pay an undisputed tax invoice when due, NTT may, in addition to its other remedies, charge interest (accruing daily) on the overdue sum at the rate of 2% per annum above the Westpac Banking Corporation business overdraft rate or the maximum permitted by law from the date the payment was due until payment of the overdue sum, together with all reasonable costs incurred by NTT in recovering the overdue amount, provided NTT gives the Client reasonable notice of its intent to do so.
- (f) **Start Delay.** The Engagement commencement date must be within 45 days of the Effective Date, unless otherwise stated in the Service Schedule. Unless the delay is caused by NTT, in the event the Engagement does not commence by the day specified in the preceding sentence, NTT may charge the Client an additional fee on a time and materials basis plus any expenses incurred by NTT in connection with the delay.
- (g) **Unplanned Interruptions.** NTT agrees to provide the Professional Services on the basis that the Engagement is a continuous or scheduled service. If there is any unplanned interruption in continuity of the Engagement for any reason, and/or if the Client requires work to be rescheduled and NTT agrees to such rescheduling, NTT may charge the Client the amount that reflects the changes to the time (at the time and materials rates in the Order Form) or expense associated with stopping and restarting or rescheduling the Engagement. The Client acknowledges and agrees that NTT may reallocate personnel or resources to other engagements if there is a delay in commencement or interruption to the Engagement caused by the Client. In such case NTT may in its sole discretion vary the Engagement timetable including completion of Deliverables and will notify the Client of amendments to the timetable accordingly, prior to commencing or resuming the Engagement.
- (h) **Client Responsibilities.** The Client agrees to pay an additional Charge on a time and materials basis plus any expenses incurred by NTT in connection with any failure or delay by the Client to promptly perform its responsibilities under this Agreement on time and in full.

## 8 Intellectual Property Rights

- (a) Nothing in this Agreement affects a party's Intellectual Property Rights, which exist prior to the Effective Date ("**Pre Existing IP**").
- (b) Each party grants to the other party a non-exclusive, royalty free licence to use its Pre-Existing IP only to the extent necessary for the purpose of performing its obligations or exercising its rights under this Agreement. This licence is only granted for the term of the Agreement and will immediately come to an end upon termination or expiry of the Agreement for any reason.
- (c) NTT owns the Intellectual Property Rights in the Professional Services, or where NTT uses any Intellectual Rights belonging to a third party, NTT has a licence to do so.
- (d) Ownership of all Intellectual Property Rights created or developed under this Agreement or otherwise in the course of providing the Professional Services ("**Developed IP**") vests in NTT from its creation, unless otherwise agreed in the Order Form. To the extent that any Developed IP is created by the Client or its Related Bodies Corporate, the Client must ensure that the relevant third party absolutely and unconditionally assigns all of its right, title and interest in the Developed IP to NTT. NTT will own all right, title and interest in any ideas, concepts, know-how or techniques developed under this Agreement.
- (e) Subject to the payment of all Charges, expenses and taxes, and subject to clause 8(f), NTT grants the Client a non-exclusive, non-transferrable right and licence to use, copy, adapt, translate, display, perform or transmit any Deliverable for its own internal business purposes solely in the country in which the Client does business, at no additional cost. The Client is not granted any right of ownership in any Deliverable, nor is it granted any right to transfer, sublicense or provide access to the Deliverable to any third party, copy, adapt, translate, make derivative works from, commercialise, communicate to the public or otherwise deal with that Deliverable.
- (f) Where a Deliverable includes any Intellectual Property Rights that are owned by a third party, then those Intellectual Property Rights are licensed to the Client on the basis of the licence set out in the Service Schedule, or if no licence is set out in the Service Schedule, they are provided to the Client under a non-exclusive, non-transferrable licence to use those Intellectual Property Rights as part of the Deliverable for the Client's own internal business purposes solely in the country in which the Client does business.

- (g) Each party hereby agrees not to infringe the Intellectual Property Rights of the other party, and except as expressly authorised under these Terms and Conditions, neither party may use, copy, adapt, translate or otherwise exploit the Intellectual Property Rights of the other party.
- (h) Where the Professional Services include installation, development, implementation or customisation of any third party software programs, the Client is responsible for acquiring a licence for those third party software programs directly from the third party owner or its authorised distributor. If the Client wishes NTT to acquire such third party software programs and NTT agrees to do so, such acquisition will be subject to a separate agreement.
- (i) Nothing in these Terms and Conditions affects the Intellectual Property Rights in any open source software. Intellectual Property Rights in all open source software is subject to the terms of the open source software licence under which it is provided.

## 9 Confidentiality and Privacy

### Confidentiality

- (a) The party receiving the Confidential Information ("**Receiving Party**") from the party disclosing the Confidential Information ("**Disclosing Party**"):
  - (i) must protect Confidential Information against loss or unauthorised disclosure with the same degree of care that it uses to protect its own proprietary and confidential information but in no event less than a reasonable standard of care;
  - (ii) must not use Confidential Information for a purpose other than the performance of its obligations under this Agreement;
  - (iii) may disclose Confidential Information to any of its directors, officers, employees, professional advisors and contractors or those of its Related Bodies Corporate (each a "**Recipient**") solely to the extent that disclosure is strictly necessary for the purposes of an Agreement, provided that the Receiving Party ensures that each Recipient complies with the Receiving Party's obligations of confidentiality, and indemnifies the Disclosing Party for all loss and damage incurred as a result of a Recipient's breach of the confidentiality obligations under this Agreement;
  - (iv) must not otherwise disclose Confidential Information to a third party without the Disclosing Party's prior written consent or as otherwise permitted under this clause 9;
  - (v) must notify the Disclosing Party immediately upon the Receiving Party becoming aware of a suspected or actual unauthorised disclosure of the Confidential Information and must comply with any reasonable direction issued by the Disclosing Party in relation to the Confidential Information; and
  - (vi) must return, delete or destroy (at the Disclosing Party's option) Confidential Information on the Disclosing Party's request or otherwise when such information is no longer required for the purposes of this Agreement, provided that the Receiving Party may retain a copy of the Confidential Information where required by law.
- (b) Obligations of confidentiality do not apply to Confidential Information which:
  - (i) is or becomes publicly available other than through a breach of confidentiality;
  - (ii) was independently developed by the Receiving Party without access to the Confidential Information;
  - (iii) was obtained from a source other than the Disclosing Party without obligation of confidentiality;
  - (iv) is required to be disclosed by law or regulation, or the rules of any stock exchange provided that the Receiving Party (a) discloses only the minimum amount of Confidential Information required to satisfy the law or rules; and (b) gives the Disclosing Party written notice prior to such disclosure as soon as practicable (to the extent permitted by law).
- (c) The parties acknowledge that a breach of this clause 9 may cause irreparable damage for which monetary damages may be an inadequate remedy. The Disclosing Party may therefore seek injunctive relief against such a breach or threatened breach, in addition to pursuing any remedy at law or in equity.
- (d) Obligations of confidentiality survive termination or expiry of this Agreement.

### Privacy

- (a) Each party must:
  - (i) comply with the Privacy Laws in relation to any Personal Information that is collected, used or disclosed under this Agreement, and, where a party is not bound to comply with the Privacy Act, that party must comply with the Privacy Act as if it was bound to do so; and
  - (ii) use or disclose Personal Information only for the purposes of performing its obligations under this Agreement;
- (b) Where the Client provides Personal Information to NTT under this Agreement, the Client warrants that such Personal Information has been collected, and disclosures have been made, in accordance with all Privacy Laws, including by making those persons from whom the Personal Information was collected (including end users) aware of the matters required by the Privacy Laws in relation to the disclosure to, and use by, NTT of that Personal Information. The Client acknowledges and agrees that NTT may collect and manage Personal

Information as contemplated by, and in accordance with, NTT's privacy policy published on NTT's website (<https://hello.global.ntt/en-us/legal/privacy-statement>) and updated from time to time; ("Privacy Policy"), including by disclosing Personal Information to entities located outside Australia, such as its Related Bodies Corporate and subcontractors.

- (c) The Client must ensure that any person who receives Professional Services from NTT pursuant to this Agreement, or whose information is disclosed to NTT in connection with this Agreement, consents to NTT using and disclosing their Personal Information in accordance with the Privacy Policy.
- (d) The Client indemnifies NTT from and against any loss, liability, fines, damages, costs and expenses incurred by NTT, its Related Bodies Corporate and its subcontractors arising out of, or in connection with, any breach of this clause 9 by the Client.

## 10 Limitation of Liability

- (a) To the extent permitted by applicable law, conditions, warranties, guarantees, rights, remedies, liabilities and other terms implied by statute, custom or the common law are excluded from this Agreement.
- (b) Where the applicable law prescribes a remedy or liability for breach of a statutory guarantee or warranty for the supply of Services or Products, NTT's liability is limited to the prescribed remedy or liability.
- (c) Without limiting clause 10 (b), if a supply under this Agreement is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth), nothing in this Agreement excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law, provided that, to the extent that the Australian Consumer Law permits NTT to limit its liability, then NTT's liability will be limited to:
  - (i) in the case of Services, the cost of supplying the Services again or payment of the cost of having the Services supplied again; and
  - (ii) in the case of Goods, the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired, or payment of the cost of replacing the Goods, supplying equivalent Goods or having the Goods repaired.
- (d) Subject to clause 10(e), nothing in this Agreement operates to exclude or restrict a party's liability for:
  - (i) death or personal injury (including sickness) for which that party is legally liable;
  - (ii) breach of confidentiality or privacy; or
  - (iii) fraud or fraudulent misrepresentation.
- (e) In no circumstances will NTT be liable for loss of revenue; loss of profits or anticipated savings; loss of business or goodwill; loss or corruption of data; or for any indirect, special or consequential loss or damage, however caused, even if the Client was advised of or aware of the possibility for such liability.
- (f) Subject to clause 10(g), the aggregate liability of NTT in contract, tort, breach of statute, or other legal theory arising out of or in relation to the provision of Professional Services under this Agreement, is limited in aggregate to an amount equal to the Charges in respect of the Professional Services.
- (g) The aggregate liability of NTT in contract, tort, breach of statute, or other legal theory for damage to real property and/or tangible personal property arising out of or in relation to the provision of Professional Services under this Agreement, is limited in aggregate to an amount equal to the greater of:
  - (i) the Charges in respect of the Professional Services; and
  - (ii) \$5 million.

## 11 Termination

- (a) **Termination for convenience.** For Professional Services performed on a time and materials basis, either party may terminate the Agreement for convenience upon thirty (30) days prior written notice to the other party, unless otherwise stated in the Service Schedule. Refunds of any unused portions of pre-paid amounts will be provided only if NTT terminates the Agreement under this clause 11(a).
- (b) **Termination for cause.** NTT may immediately terminate or suspend its performance under this Agreement if any undisputed invoices remain unpaid for more than 60 days from the date of the invoice. Either party may immediately terminate this Agreement if the other party is in breach of the Agreement and has not remedied the breach within 30 days of written notice from the other specifying the breach.
- (c) **Bankruptcy.** If either party ceases to carry on business, becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is subject of involuntary bankruptcy, has an administrator, receiver or receiver and manager appointed, or has its assets assigned, the other party may terminate this Agreement immediately by giving the other written notice.

- (d) **Effect of Termination.** Upon termination of this Agreement:
- (i) the Client must immediately pay any outstanding Charges, expenses or other amounts due;
  - (ii) each party remains liable to the other party for any liability that has been incurred by that party prior to termination of the Agreement.

Where NTT terminates the Agreement for the Client's failure to pay or for the Client's breach of the licence granted to the Client for use of the Deliverable, the Client's licence for the Deliverable terminates automatically and immediately. In such case the Client must, at NTT's option, immediately destroy or return the affected Deliverable(s) and all partial and complete copies thereof to NTT, and where NTT advises destruction is necessary, provide satisfactory evidence thereof to NTT.

## 12 General

- (a) **Precedence.** Unless otherwise agreed in the Order Form, in the event of any conflict between the documents comprising this Agreement, the conflict will be resolved in the following order of precedence:
- (i) the Order Form, including any special conditions (provided however that no special condition in an Order Form will be taken to override these Terms and Conditions unless the provision being overridden is expressly and specifically identified);
  - (ii) the Service Schedule;
  - (iii) these Terms and Conditions.
- (b) **Authorisation to Install Software.** During the course of providing Professional Services, NTT may be required to install copies of third party Software. As part of the installation process, NTT may be asked to accept licence terms accompanying such Software (collectively "**Shrink-Wrap Terms**") on behalf of the Client. Shrink-Wrap Terms may be in electronic format, embedded in the Software, or contained within the Software documentation. The Client hereby acknowledges and agrees that it is the Client's responsibility to review Shrink-Wrap Terms at the time of installation, and the Client hereby authorises NTT to accept all Shrink-Wrap Terms at any time without modification or qualification on its behalf.
- (c) **Non-solicitation.** During the period of this Agreement and for one (1) year after its expiry or termination, the Client agrees not to employ, engage, induce or entice away (whether directly or indirectly) any person who, during the previous 12 months, has been employed or engaged by NTT or its subcontractors to perform the Professional Services. The foregoing does not prohibit the Client from recruiting a person through a recruitment agency (except if the agency targets employees or subcontractors of NTT) or in a response to a newspaper, web page or other public employment advertisement.
- (d) **Publicity.** Neither party will publicise nor disclose to any third party without the consent of the other party either the price or any other part of this Agreement, nor the fact of its existence and execution, except as may be necessary to comply with that party's obligations stated in this Agreement. Notwithstanding the foregoing, NTT may use the Client's name and identification of this Engagement in marketing materials.
- (e) **Internal Use.** Professional Services acquired by the Client under this Agreement are solely for the Client's own internal use and not for resale without NTT's prior written consent.
- (f) **Force Majeure.** Neither party will be liable for performance delays or for non-performance due to causes beyond its reasonable control, however, this provision does not apply to the Client's payment obligations.
- (g) **Assignment.** The Client may not assign, novate or otherwise transfer all or any part of its rights or obligations under this Agreement without prior written consent from NTT. Any such attempted assignment, novation or transfer will be null and void.
- (h) **Notices.** All notices must be given in writing, must be signed by a person duly authorised to provide such notice and will be considered effective upon receipt.
- (i) **Entire Agreement.** To the extent permitted by law this Agreement constitutes the entire agreement and understanding between the parties with respect to its subject matter and supersedes any prior negotiations, agreement, understanding or arrangement between the parties whether oral or in writing. For the avoidance of doubt, any terms issued by the Client (including pre-printed terms and conditions of the Client's purchase order, if any) which conflict with the terms of this Agreement, are null and void and are expressly excluded.
- (j) **Counterparts.** This Agreement may be executed in any number of counterparts by the parties, each of when executed will be deemed to be an original and all of which taken together will constitute one and the same instrument.
- (k) **Variation.** This Agreement may not be varied, or added to, unless by written agreement signed by authorised representatives of both parties.
- (l) **Waiver.** No waiver of any breach, or failure to enforce any provision, of the Agreement at any time by either party shall in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of the Agreement.

- (m) **Independent Contractor.** NTT is an independent contractor. No partnership, agency or joint venture is created between the parties, nor does either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other, except where otherwise specified in this Agreement and/or otherwise expressly agreed in writing. Each party is free to enter into similar agreements with others to develop, acquire, or provide competitive products and services.
- (n) **Disputes.** The parties must act reasonably and in good faith to resolve any dispute within 10 Business Days (“**Dispute Period**”) of one party notifying the other in writing that a dispute has arisen. If the dispute remains unresolved upon expiry of the Dispute Period, the parties must escalate the dispute to their respective Chief Executive Officers and if, after a further 10 Business Days the dispute is still not resolved, the parties may commence legal proceedings. Neither party may commence legal proceedings (other than for urgent interlocutory relief) in relation to any dispute unless the dispute resolution procedures set out in this clause have been followed. Both parties must continue to perform their obligations under the Agreement despite the existence of a dispute, unless the dispute relates to non-payment.
- (o) **Severability.** If any term or condition of this Agreement is invalid or unenforceable, the remaining Terms and Conditions remain in full force and effect.
- (p) **Survival.** Clauses 8, 9, 10 and 12(p) (and any other provisions which by their nature are intended to survive termination or expiry) will survive termination or expiry of this Agreement for any reason.
- (q) **Jurisdiction.** The laws in force in New South Wales, Australia govern this Agreement, and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia, and any courts competent to hear appeals from those courts.