

NGIS Australia Pty Ltd ("NGIS") will provide the Client with the Services set out in the Project Brief. Only those Services described will be provided by NGIS and any amendments, add-ons, variations, schedule changes or the like must be agreed to in writing by NGIS.

This document sets out the terms and conditions ("Terms") under which NGIS provides the Services to the Client. By making any payment, using or continuing to use the Services, the Client agrees to be bound by these Terms.

The Client hereby agrees with NGIS that in consideration of NGIS agreeing to provide the agreed Services the Terms contained herein shall apply:

Sole Agreement:

1. Sole Agreement:
 - a. These Terms shall form the sole terms and conditions of the agreement between the Client and NGIS and supersedes all other written and or verbal conditions, agreements, communications, and representations between the Parties in regard to the Project Brief, unless expressly amended or agreed in writing by NGIS.
 - b. The Client acknowledges that to the extent that NGIS has made any representation, written or otherwise, that Client has been provided sufficient opportunity to independently verify the accuracy of that representation.

Client Responsibility:

2. The Client shall as soon as practicable:
 - a. Make available to NGIS all information, documents and particulars relating to the Client's requirements or which might reasonably be regarded as being relevant to NGIS for the purpose of providing the Services;
 - b. Make arrangements to enable NGIS to safely enter upon any land or premises necessary to enable NGIS to provide the Services;
 - c. Obtain all approvals, authorities, licenses and permits which may be required for the lawful implementation and provision of the Services;
 - d. Appoint a person to act as its representative and give written notice to NGIS of the person appointed, which person shall be deemed to have authority to act on behalf of the Client for all purposes in connection with this agreement; and
 - e. If the Client becomes aware of any matter which may affect the scope or timing of the Services, give written notice of the matter to NGIS.

NGIS Responsibility:

3. NGIS will:
 - a. Provide the Services with reasonable care and will exercise professional judgement free from any known conflict of interest;
 - b. Act in the Client's best interests but will not do anything which is unethical or unlawful;
 - c. Not provide any tax, stamp duty or financial advice and Client will be responsible for obtaining its own specialist advice in these and other areas;
 - d. Be entitled to treat all information received from Client as reliable, and NGIS will not be obliged to verify any information provided to NGIS by Client;
 - e. Provide the Services for the Client alone and will not regard any other person or organisation (including any of Client's investors, shareholders, directors, officers, employees, agents or advisers) as its client in relation to the Services.

Fees and Terms of Payment:

4. Except where otherwise agreed in writing with NGIS, the Fee for the Services provided by NGIS shall:
 - a. If applicable, be calculated by reference to the applicable hourly charge rate for the person undertaking the Services as specified in the Project Brief, the working day is considered to be 7.5 hours; and or
 - b. For Product, if applicable, the amount stated in the Project Brief; and or

c. The Fees as stated in the Project Brief.

5. Unless otherwise agreed in writing, all pricing and or quotes provided in a Project Brief or other means is valid for 30 days, except that NGIS reserves the right to re-quote, cancel and or amend any pricing within a Project Brief, due to changes, if applicable, in: Product; foreign exchange rate; reseller discount certification; pricing offers from NGIS's vendors; or if errors or omissions are found in the Project Brief.
6. Any estimate, quote or statement of range of the cost of Services specified by NGIS will not limit the charges that may be charged by NGIS unless NGIS has in writing agreed to fix or limit charges by reference to an estimate, quote or range of cost, signed by a director or department manager of NGIS.
7. In addition to charges for the Services the Client must pay:
 - a. All disbursements incurred by NGIS (plus an administration charge of 10% of the aggregate of all disbursements), including without limiting the generality of the foregoing travel, telephone, facsimile, courier, postage, accommodation, copying, application fees and sub contractor fees, without supporting documents being furnished; and
 - b. Motor vehicle travelling expenses at the rate per business kilometre for travel of less than 5,000 km per annum applicable from time to time pursuant to the Income Tax Assessment Act 1936 as amended; and
 - c. In relation to Fees which have not been settled in full, NGIS's costs to obtain payment for such unpaid Fees, inter alia, debt collection and legal fees.
8. NGIS reserves the right to adjust the rates in the Schedule of Charging Rates at 1 January and 1 July in each year by an amount not less than the changes in the Consumer Price Index (All Groups) Perth in the preceding six months.
9. Tax invoices:
 - a. May be issued by NGIS on a monthly basis and must be paid within 30 days of the date of invoice;
 - b. Shall be deemed correct and conclusive (including in amount) unless disputed in writing within 30 days of the date of the invoice; and
 - c. Must be paid in full by the due date notwithstanding any counterclaim or set-off the Client may claim to have against NGIS; and
 - d. That are not paid in full and on time will attract interest at the latest annual general interest charge rate as levied by the Australian Tax Office plus a margin of 5%.

Confidentiality:

10. Confidentiality:
 - a. Each party agrees not to disclose any Confidential Information received or obtained from the other party as a result of NGIS performing the Services.
 - b. Each party can disclose Confidential Information if and to the extent:
 - i. required by law or for the purposes of any judicial proceedings; or
 - ii. required by any recognised stock exchange or regulatory or governmental body; or
 - iii. the information is disclosed on a confidential basis to professional advisers or bankers; or
 - iv. the information is disclosed to a director, officer, employee or agent of the party whose function requires him or her to have the information; or
 - v. the information has come into the public domain otherwise than through the fault of the disclosing party; or
 - vi. the other party has agreed to the disclosure in writing,

provided a party intending to disclose information under any of paragraphs 10.b.(i) – 10.b.(iv) consults, (where practical), with the other party first. If a party makes any disclosure under any

of paragraphs 10.b.(i) – 10.b.(iv) it must first, if practical to do so, inform the other party of the disclosure.

Intellectual Property:

11. Client agrees that:
 - a. Except for third party items in which NGIS holds limited or no rights thereto, NGIS owns all title, ownership and proprietary and intellectual property rights, including copyright, trade marks and rights to seek registered designs, patents and other registered property rights, in relation to all Documents prepared or provided by NGIS in connection with providing the Services or to the Client and the Client shall not publish nor make copies or reproductions of any Document unless prior approval in writing is given by NGIS; and
 - b. NGIS may use technical information gathered or produced by it in connection with providing the Services, including information concerning configuration, installation or deployment of software, for NGIS's technical development, product development, marketing and support purposes; and
 - c. Notwithstanding anything to the contrary, if the Services contain any Product, that such Product may be subject to its own terms and conditions or the like and the Client warrants and indemnifies NGIS against any breach of these terms and conditions and or RTC's by Client Extended as defined in clause 26.j.ii.
12. Subject to clause 11, the Client shall:
 - a. provided all payments due to NGIS from Client have been made, have a limited, perpetual, non-transferable, non-sublicensable, royalty free licence to use Documents referred to in clause 11 for the purposes for which the Services were provided; and
 - b. not use Documents referred to in clause 11 for capital raising purposes without NGIS's written permission.

Non Solicitation:

13. Non-Solicitation:
 - a. The Client agrees that NGIS has made significant investments to recruit, retain and train its staff. To protect this investment, the Client agrees not to, either directly or indirectly via a related body corporate (as defined in the Corporations Act 2001) or third party, employ, approach, solicit, engage or direct for purposes of employment or contracting services of any kind or type, any of NGIS's staff or contractors during the term of this agreement and for a period of 12 months thereafter.
 - b. In the event that the Client does not comply with clause 13.a., the Client agrees to immediately pay to NGIS a placement fee of:
 - i. in the case of an NGIS staff member, 150% of the staff member's total annual remuneration package from NGIS (including all superannuation, fees and on-costs); or
 - ii. in the case of an NGIS contractor, 150% of the average of the following two amounts: (1) the total payments made to or in respect of the contractor over the previous 12 months by NGIS, and (2) the expected total payments to be made to or in respect of the contractor over the subsequent 12 months by NGIS if the contractor had continued to work with NGIS for those 12 months, in both cases as certified by NGIS's accountant and including all fees and on-costs.
 - c. The Client agrees and acknowledges that the foregoing is a reasonable measure of damages that NGIS will incur as a result of the Client not complying with clause 13.a.

Termination:

14. The Client may terminate this agreement at any time by written notice but without affecting the liability of the Client to pay for all Fees and Services provided, incurred and or ordered by NGIS up to and including the date of termination and, if applicable, any reasonable and direct loss or damage suffered by NGIS in consequence of the termination.
15. NGIS may suspend performance of the Services or terminate this agreement at any time if:
 - a. NGIS issues a notice of default to the Client pursuant to clause 23; or

- b. the Client does not give necessary instructions and information within a reasonable time of requests to do so; or
- c. NGIS decides that continuing to provide Services may breach professional ethics rules of conduct; or
- d. the Client being a company goes into liquidation or has a receiver or manager or administrator appointed; or
- e. the Client being a person is declared bankrupt or becomes subject to Part X of the Bankruptcy Act.

Liability:

16. The maximum liability of NGIS to the Client arising out of the provision or non-provision of the Services by NGIS or arising out of this agreement or any other act or omission by NGIS pursuant to common law or equity or any statute, shall be the amount agreed in writing between the Client and NGIS, or AUD\$100,000.00, whichever is the lesser amount.
17. NGIS shall have no liability whatsoever at common law or equity or any statute:
 - a. in relation to provision of the Services;
 - b. arising from any act or omission by NGIS relating directly or indirectly to the Services;
 - c. in the event that any transaction contemplated by the Client does not proceed;
 - d. for a failure or delay in the provision of the Services if such failure arises from circumstances beyond NGIS's control;except to the extent caused by the gross negligence or fraudulent act or omission or breaches of this agreement by NGIS, (which are not due to the Client's negligence, omissions, acts or breaches of the agreement), subject always to the exclusions contained in clause 21.
18. Time Limit:
 - a. NGIS shall be deemed to have been discharged absolutely from all liability arising from the Services or arising from any act or omission of NGIS relating directly or indirectly to the Services pursuant to common law or equity or by any statute, at the expiration of one year from the completion of the Services or the occurrence of the act or omission from which the liability arises;
 - b. After that date the Client and any persons or entities claiming through or under the Client shall not be entitled to commence any action, proceeding or claim whatsoever against NGIS or any employee or agent of NGIS in respect of the Services or acts or omissions;
 - c. The date of completion of the Services will be the date of the last invoice issued by NGIS for the Services.
19. The Client shall indemnify and hold NGIS harmless from all liability in relation to provision of the Services or arising from any act or omission by NGIS relating directly or indirectly to the Services pursuant to common law, equity or any statute except to the extent caused by the gross negligence or fraudulent act or omission or breaches of this agreement by NGIS, (which are not due to the Client's negligence, omissions, acts or breaches of the agreement), subject always to the exclusion in clause 21.
20. NGIS shall not have any liability in relation to:
 - a. The Product; and
 - b. To work performed by any third party except where the third party is engaged or employed by NGIS, (as evidenced in writing), and subject to that exception, the Client shall indemnify and hold NGIS harmless against all liability in respect of or in connection with the Product and or work provided by any third party.

Warranties:

21. Warranties
 - a. To the maximum extent permitted by law, the Services are provided without:
 - i. any warranties or terms of any kind, either express or implied, including warranties of title, non-infringement, merchantability or of fitness for any particular purpose; and
 - ii. any warranties as to accuracy, completeness or currentness.
 - b. Any warranty which is implied by law, statute or otherwise is to the fullest extent permitted by law excluded.

- c. The Client represents and warrants to NGIS that any instruction received by NGIS, (whether written, oral or by e-mail), from anyone who NGIS reasonably believes to be a director or officer of the Client or a person authorised to give instructions on behalf of the Client, is given by a person who is duly authorised to give such instructions.
 - d. The Client warrants and acknowledges that any Product supplied as part of the Services is not fault tolerant and is not designed or intended for use in life saving, life critical emergency response, insurance underwriting or with critical health and safety or online control equipment in hazardous environments that require failsafe performance.
22. The Client expressly acknowledges and warrants that any work undertaken by NGIS and or its contractors that is under the direct supervision of the Client, that NGIS has no liability to the Client in any way for the Services.

Dispute Resolution:

23. Dispute Resolution:
- a. If either party is in breach of this agreement then the party alleging the breach shall serve a default notice on the other party setting out the full particulars of the alleged breach and the acts required to rectify the breach.
 - b. Within 21 days of service of a default notice either party may by serving a notice elect to have a dispute resolved by arbitration.
 - c. If a party serves a notice electing to resolve a dispute by arbitration,;
 - i. it shall be resolved in accordance with the provisions of the Commercial Arbitration Act 1985 and the Rules for the Conduct of Commercial Arbitrations for the time being of the Institute of Arbitrators and Mediators Australia;
 - ii. either party shall be entitled to be represented by a legal practitioner;
 - iii. arbitration will be held in Western Australia unless otherwise agreed;
 - iv. the arbitrator is that as nominated by the Institute of Arbitrators and Mediators Australia, if available, their Western Australian branch; and
 - v. the determination of the appointed arbitrator shall be final and binding upon the Parties and the arbitrator shall be deemed to be acting as an expert.

Enforcement:

24. Any omission by NGIS to enforce any of the provisions of this agreement shall not operate as a waiver by NGIS and will not prejudice the rights of NGIS to enforce any of the provisions.

GST and Taxes:

25. GST and Taxes:
- a. In this clause:
 - i. "GST", "supply", "taxable supply" and "tax invoice" have the same meaning as in A New Tax System (Goods and Services Tax) Act 1999; and
 - ii. a reference to payment being made or received includes a reference to consideration other than money being given or received.
 - b. Any and all Fees stated in this agreement are exclusive of any charge levied by any government authority at the local government/council/shire level, or State/Municipal level, or Commonwealth/Federal level, which charge includes but is not limited to: GST; procurement/management/tendering fees; penalties and interest; duties; levies; rates; withholding tax; other applicable taxes; or any other government charge; collectively "Taxes". Taxes specifically excludes NGIS's income tax.
 - c. On presentation of a tax invoice or invoice, as the case may be, for the Services, the Client expressly agrees to pay NGIS for:
 - i. GST levied on taxable supplies; and
 - ii. All other applicable Taxes levied on the Services.

Definitions:

26. Reference in this agreement to:
- a. Clause deleted;
 - b. Clause deleted;
 - c. "Client" means the client as named in the Project Brief;

- d. "Confidential Information" means all trade secrets and all financial, marketing and technical information and know-how, including information regarding technology and processes, which is confidential or of a sensitive nature, but excludes any information which is in the public domain;
- e. "Documents" means drawings, reports, software, hardware, Product, specifications, bills of quantities, calculations, documents and materials (in any form or media);
- f. "Fee" means the consideration due, monetary or otherwise, and if monetary, in the currency noted in the Project Brief, which if not stated, is in Australian Dollars and the Fee includes inter alia: charges; rates; licensing fees; costs; reimbursements; royalties; interest; penalties; renewals; maintenance; foreign exchange adjustments; and amounts due for the provision, availability, use or procurement of Product;
- g. "liability" means any claim, expense, demand, action, suit, proceeding, loss or damage of any kind or character (including without limitation legal costs and special, direct, indirect, punitive or consequential damages);
- h. "Party" means the Client or NGIS, as the case may be, and "Parties" means both NGIS and Client.
- i. "Project Brief" means the document to which these Terms are attached and or referenced to, and such Project Brief may include inter alia: quote; estimate; response to tender; agreed statement of work; expression of interest or the like; ROM i.e. rough order of magnitude.
- j. "Product" includes all software and or hardware noted in the Project Brief, but unless otherwise stated in the Project Brief, the Fee for Product and or the provision or use of Product pursuant to the Project Brief and Services carried out by NGIS:
 - i. Excludes: installation; maintenance; configuration, delivery to Client location; and
 - ii. Is subject to the rights, terms and conditions or the like, ("RTC"), which may apply to such Product, and which Client warrants and expressly agrees to abide by, irrespective of whether such applicable RTC's have been provided to Client, and Client further indemnifies NGIS to the fullest extent permitted in law to breaches of such RTC by Client and its: employees; directors; officers; agents; advisors; contractors; subsidiaries; parent or sister organisations; related parties, including body corporates; partners; assigns or the like, (collectively "Client Extended"), which may apply to such Product; and
 - iii. The Client and or Client Extended expressly agrees in relation to any third party Product, that any rights, recourse or remedies which might be sought therein by the aforementioned, is solely against the relevant third party and that NGIS will have no liability to the Client and or Client Extended in regards to or otherwise in connection with the third party Product, other than for non-provision by NGIS, to the extent such provision was NGIS's responsibility and within its reasonable control.
 - iv. Is subject to foreign currency adjustment, normally United States of America Dollars (USD) to Australian Dollars (AUD).

The intention is that this clause 26.j is not to be read down to remove any inconsistencies which may exist in these Terms, the Project Brief, and or any other document to which the Services relate, rather, the other conflicting clause(s) are to be consistent with this clause.

- k. "Services" means the work to be carried out as described in the Project Brief, including Product.
- l. "Terms" means the terms and conditions contained in this document and being the latest version of such document.

Interpretation:

27. Reference in this agreement to:
- a. the singular shall be deemed to include the plural and reference to the masculine shall be deemed to include the feminine;
 - b. any party to this agreement shall mean and include the party and the successor, administrator, personal representative, transferees and assigns of the party; and
 - c. headings are for convenience only and do not affect the interpretation or meaning of these Terms.

Notice:

28. A notice to be served under this agreement shall be deemed to have been duly served if it is in writing and is sent to the address appearing in the Project Brief for each party by certified mail, facsimile or personal delivery.

Assignment:

29. Neither party may assign, transfer or sub-let any obligation under this agreement without the written consent of the other.

Relationship:

30. Nothing in this agreement shall constitute or create the relationship of partnership, employment, agency or joint venture between NGIS and the Client.

Enforceability:

31. If any provisions or part provisions of this agreement are invalid, unenforceable or illegal then it shall be deemed deleted from this agreement and the remaining provisions and part provisions continue to apply with full force and effect.

Entire Agreement:

32. These terms and conditions constitute the entire agreement between the Client and NGIS and apply to all work undertaken by NGIS for the Client pursuant to the Project Brief.

Law and Jurisdiction:

33. This agreement is governed by the laws in force in Western Australia and under the jurisdiction of the courts of Western Australia.

Force Majeure:

34. Force Majeure:
- a. NGIS will not be liable in damages or otherwise for any failure to provide the Services which is caused, whether wholly or partially, by an event beyond its reasonable control, including, but not limited to: act of God; force majeure; war; fire; explosion; acts of terrorism; rioting; burglary; theft; civil disturbances; restrictions by governments, (local, municipal, State or Federal), or other competent authority; general economic trends; strikes, industrial action or lockouts, (whether at the Client's premises or not); accidents either at the Client's premises or when in transit to or from those Premises; failure by subcontractors and the late arrival of Product, inventory or other material; and weather, (collectively "Force Majeure").
 - b. If a Force Majeure event occurs and NGIS is liable for Fees in relation to the Services, Client expressly agrees to pay NGIS these Fees even if the Service is incomplete.

Personal Property Securities Act:

35. The Client acknowledges and agrees that:
- a. These Terms give rise to a security interest and constitute a security agreement for the purposes of the Personal Property Securities Act 2010; and
 - b. The security interest is taken in all goods previously supplied by NGIS to Client, if any, and all goods that will be supplied in the future by NGIS to Client during the continuance of the Parties; relationship.
36. The Client undertakes to:
- a. Sign any further documents and/or provide any further information, such information to be complete, accurate and up to date in all respects, which NGIS may reasonably require to register a financing statement on the Personal Property Securities Register;
 - b. Reimburse NGIS for all expenses incurred in registering a financing statement or financing charge statement on the personal Property Security Register; and
 - c. Give NGIS not less than 14 days' prior written notice of any proposed change in the Client's name and/or any other change in the Client's details.
37. Client waives any rights to receive notice of any verification statement issued under the Personal Properties Securities Act.

Risk and Title:

38. Risk and title in any Services provided by NGIS or pursuant to the Project Brief, only passes to the Client upon full payment by the Client to NGIS for the relevant Services.
39. The Client acknowledges and expressly agrees:
- a. It has no claim to any title until full payment for the Services has been made to NGIS; and
 - b. That for certain Services, title may never pass to Client due to third party rights which may exist.

Miscellaneous:

40. This agreement may only be varied in writing signed by both Parties.
41. If applicable, unless otherwise specified in writing in the Project Brief, the persons to provide the Services shall be determined by NGIS at its sole discretion.
42. If in providing the Services circumstances arise which require skills outside the field of practice of NGIS then NGIS may, after obtaining Client approval, which will not be unreasonably withheld, engage a subcontractor to provide the relevant skills.
43. NGIS may at any time vary the Terms by: publishing the varied Terms on the NGIS website; and or providing notice as described in these Terms; and or to the Client email address noted in the Project Brief. By continuing to use the Services, Client acknowledges and agrees to full acceptance of the varied Terms.