

**NCC GROUP GENERAL TERMS AND CONDITIONS (AUSTRALIA)**  
for the supply of the NCC Services in Australia

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<b>Name</b>	<b>NCC Group Pty Limited</b> , trading as <b>NCC Group</b>	<b>Name</b>	<b>As per Statement of Work</b>
<b>ABN</b>	<b>83 119 804 803</b>	<b>ABN</b>	As per Statement of Work
<b>Short form name</b>	<b>NCC</b>	<b>Short form name</b>	<b>Client</b>
<b>Notice details</b>	Attention: Head of Legal APAC Address: Level 23, 45 Clarence Street SYDNEY NSW 2000 Australia Email: apaclegalteam@nccgroup.com	<b>Notice details</b>	Attention: As per Statement of Work Address: As per Statement of Work Email: As per Statement of Work

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**Background**

- A. NCC is an information assurance and data security service provider operating globally.
- B. The Client wishes to purchase some or all of the NCC Services from time to time.
- C. NCC and the Client have agreed the terms set out in the Agreement on which NCC will supply the NCC Services to the Client.

## 1 Definitions and Interpretation

In the Agreement, unless the context otherwise requires:

- (a) capitalised terms have the meanings given to those terms in Schedule 1;
- (b) the rules for the interpretation of the Agreement are set out in Schedule 1; and
- (c) headings are for ease of reference only and do not affect interpretation.

## 2 Structure of the Agreement

The Agreement comprises the following parts:

- (a) an Authorisation Form;
- (b) each Statement of Work;
- (c) any applicable Service Module;
- (d) a Personal Information Form;
- (e) clauses 1 to 31 of this document (**General Terms and Conditions**);
- (f) the other schedules to this document; and
- (g) any other documents incorporated by reference into the Agreement,

and to the extent that there is any inconsistency between any of the terms in those documents listed in paragraphs (a) to (g) above, the terms in the document listed first will govern.

## 3 Local Implementation Agreements

3.1 The Parties acknowledge and agree that the Parties may, through the execution of a Local Implementation Agreement, agree for the NCC Services to be provided in a particular jurisdiction by a Local NCC Entity, to a Local Client Entity.

3.2 The Parties acknowledge and agree that:

- (a) each such Local Implementation Agreement shall constitute a separate agreement between the Local NCC Entity and the Local Client Entity, incorporating by reference all of the provisions of the Agreement, unless otherwise agreed in such Local Implementation Agreement; and
- (b) each reference in the Agreement to:
  - (i) the Agreement, will, in a Local Implementation Agreement, be read as referring to the Local Implementation Agreement; and
  - (ii) the Client, NCC and the Parties, will, in a Local Implementation Agreement, be read as referring to the relevant Local Client Entity, the relevant Local NCC Entity and the Local Entities (respectively),
 each, as the context requires.

## 4 Term

4.1 The Agreement commences on the Commencement Date and continues for 5 years (**Initial Term**), unless terminated earlier or extended in accordance with clause 4.2 below.

4.2 Upon the expiry of the Initial Term, the Agreement will automatically renew for consecutive periods of 12 months (each, a **Renewal Term**) on the same terms (unless otherwise agreed by the Parties), unless a Party provides the other Party with at least 30 days' Notice before the end of the Initial Term or then current Renewal Term (as the case may be) that it does not wish for the Agreement to renew beyond the end of the Initial Term or then current Renewal Term (as the case may be).

4.3 The Parties acknowledge and agree that, after the Term ends:

- (a) the Parties may not agree any further Statements of Work under the Agreement;
- (b) all Statements of Work that became effective before the end of the Term (each, an **Existing Statement of Work**) will continue until their respective expiry dates, unless terminated earlier; and
- (c) the Agreement will continue for the purposes of any Existing Statements of Work until those Existing Statements of Work expire, or are terminated.

## 5 Non-exclusivity

The Parties acknowledge and agree that the Agreement does not create an exclusive supply arrangement between the Parties.

## 6 Ordering the NCC Services

### 6.1 Statements of Work

The Parties acknowledge and agree that NCC it is not obliged to supply, and the Client is not obliged to acquire, any services under the Agreement unless and until a Statement of Work has been executed for the relevant NCC Services.

### 6.2 Ordering NCC Services

The Client may request in writing from time to time, that NCC supply certain NCC Services.

### 6.3 Draft SOW

Within a reasonable time of receiving a request from the Client in accordance with clause 6.2 above, NCC will prepare a draft statement of work (**Draft SOW**), which populates all the information required by the Template Statement of Work, and provide that Draft SOW to the Client.

### 6.4 Client Acceptance

The Client acknowledges and agrees that it will be deemed to have accepted the Draft SOW upon the earlier to occur of:

- (a) the Client's written acceptance of the Draft SOW; or
- (b) an act by the Client consistent with acceptance, including issuing of a purchase order (or similar) or a request to schedule the commencement of the NCC Services,

and upon the occurrence of either of the events in paragraphs (a) or (b) above, the Parties must promptly arrange for the agreed form of the Draft SOW to be executed by their duly authorised representatives and once executed, that Draft SOW will be a Statement of Work for the purposes of, and form part of, the Agreement.

## 7 NCC Services

### 7.1 Performance of the NCC Services

NCC will:

- (a) perform the NCC Services using reasonable skill and care and in accordance with Good Industry Practice;
- (b) subject to paragraph (d) below, use reasonable endeavours to meet any Due Dates set out in the relevant Statement of Work, however, the Client acknowledges and agrees that in respect of the provision of the NCC Services generally, time will not be of the essence; and
- (c) if NCC Personnel are performing the NCC Services at a Client Site, use reasonable endeavours to ensure that such Personnel comply with the Client's reasonable Site rules, policies and procedures, as are notified to NCC by the Client in advance.

### 7.2 Provision of data by the Client

The Client acknowledges and agrees that, subject to clause 7.3 below:

- (a) NCC may, in connection with the provision of the NCC Services, require access to Client Data or the Client's systems (**Client Assets**); and
- (b) if the Client provides NCC or its Personnel with any Client Data, then NCC, subject to the applicable Laws, will have no responsibility for the protection of that Client Data and, without limiting clause 23.4(a)(ii) below, will have no liability to the Client for any loss, or unauthorised access to or disclosure of that Client Data]

### 7.3 Access to Client Assets

The Client acknowledges and agrees that:

- (a) NCC may from time to time, when agreed in a Statement of Work, request authorisation for NCC's Personnel to access the Client Assets in order to provide the NCC Services;
- (b) promptly upon NCC's request in accordance with paragraph (a) above, the Client must grant such access to the Client Assets as is reasonably necessary for NCC to provide the NCC Services;
- (c) in connection with such access, NCC will comply with any reasonable Client policies and procedures relevant to NCC's access to the Client Assets; and
- (d) NCC will not be liable for any failure to provide the NCC Services as a result of any delay in granting, or refusal to grant, access to the Client Assets by the Client.

### 7.4 Client acknowledgement

The Client acknowledges and agrees that:

- (a) nothing in the Agreement will prevent or restrict NCC from:
  - (i) providing services the same as or similar to the NCC Services to other Clients; or
  - (ii) using or sharing for any purpose, any knowledge, experience or skills gained during or arising from the performance of the NCC Services; and
  - (iii) NCC is under no obligation to provide any information in its possession that is subject to an obligation of confidence to a third party even if that information would be helpful to the Client or assist in the provision of the NCC Services;
- (b) the NCC Services reflect the state of the Client Assets as at the relevant Service Start Date;
- (c) the nature, completeness, accuracy or quality of any results, data or information provided by NCC to the Client in connection with the provision of the NCC Services (including any Deliverables), is

subject to and dependent on the Client Assets, as well as the information provided to NCC by the Client in connection with the provision of the NCC Services; and

- (d) to the extent permitted by Law, NCC does not warrant or guarantee the accuracy, completeness or quality of the NCC Services beyond the date that they were provided to the Client, nor does NCC represent, warrant or guarantee that any results, data or information provided by NCC to the Client in connection with the provision of the NCC Services (including any Deliverables) will be complete, exhaustive or accurate.

## 8 Deliverables

### 8.1 Provision of Deliverables

If a Statement of Work contemplates the provision of any Deliverables with or as part of the NCC Services, then NCC will provide such Deliverables to the Client within 28 days of the completion of the NCC Services under that Statement of Work, or within such other timeframe as may be agreed by the Parties in writing.

### 8.2 Draft Deliverables

The Client acknowledges and agrees that:

- (a) in the course of developing any Deliverables contemplated by a Statement of Work, NCC may provide draft Deliverables to the Client for comment or review;
- (b) if NCC provides such draft Deliverables to the Client, it must not rely on or use such draft Deliverables, unless and until those Deliverables have been delivered to the Client in final form; and
- (c) the NCC Group will have no responsibility or liability for the Client's reliance on, or use of, any draft Deliverables provided to the Client in accordance with paragraph (a) above.

### 8.3 Disclosure of Deliverables

The Client may disclose a Deliverable or a summary thereof (**Report**) to:

- (a) its Indirect Clients;
- (b) its insurers, financiers and professional advisors; and
- (c) any relevant Regulator, but only to the extent required by Law, (each, a **Legitimate Recipient**) provided that:
  - (d) NCC approves such disclosure (such approval not to be unreasonably withheld or delayed);
  - (e) the Client complies with any NCC requirement to redact or not disclose any part of a Report on reasonable grounds;
  - (f) the Client discloses the minimum amount of information necessary to meet the needs of the relevant Legitimate Recipient;
  - (g) such Legitimate Recipient is not a competitor of the NCC Group (as may be determined by NCC in its discretion, pursuant to paragraph (d) above); and
  - (h) the Client requires any Legitimate Recipient to:
    - (i) keep the Report confidential and not disclose the Report or any part thereof to any other person; and
    - (ii) acknowledge in writing, that the Report is for the sole benefit of the Client and accordingly NCC owes the relevant Legitimate Recipient no duty of care in respect of the Report; and
- (i) the Client acknowledges and agrees that it is liable for, and indemnifies NCC Group and its Personnel (**Those Indemnified**) from and against any Loss suffered by the NCC Group in connection with the disclosure of the Report, to a Legitimate Recipient or otherwise,

and for the avoidance of doubt, the Client acknowledges and agrees that it must not disseminate or publish the Report publicly, except in the circumstances contemplated under this clause 8.3.

## 9 Client obligations

### 9.1 Authorisation Form

The Client:

- (a) acknowledges that the NCC Services may involve functions and activities that may constitute a breach of the provisions of Part 10.7 of the *Criminal Code Act 1995* (Cth);
- (b) for the purposes of the Agreement and in order to enable the provision of the NCC Services, hereby authorises the NCC Group and its Personnel to, in connection with the provision of the NCC Services, do any act or omit to act in any way that may or would otherwise breach of the provisions of Part 10.7 of the *Criminal Code Act 1995* (Cth);
- (c) acknowledges and agrees that NCC may, with Notice to the Client, require that the Client completes and submits to NCC the Authorisation Form;
- (d) if required by NCC in accordance with paragraph (c) above or under a Statement of Work, it must, within five Business Days of NCC's

Notice, complete the Authorisation Form and completely and accurately as possible; and

- (e) unless and until the Client has returned the Authorisation Form to NCC, NCC will be under no obligation to provide the NCC Services to the Client, and will not be liable to the Client for any failure to provide such NCC Services to the Client.

### 9.2 Procurement of consents

The Client:

- (a) acknowledges that the provision by NCC of the NCC Services may involve the monitoring of Client Personnel and their activities using the Client's IT systems; and
- (b) warrants and represents that it has, as at the Commencement Date of the relevant Statement of Work, it has obtained the written consent of:
  - (i) such Personnel to the monitoring contemplated at paragraph (a) above; and
  - (ii) all relevant third parties, in order to enable the NCC Services to be provided, which third parties may include the Client's internet service provider(s) and any third-party suppliers of the Client's IT systems.

### 9.3 Data back-up

The Client:

- (a) must ensure that it backs-up the Client Data (or procure that such Client Data is backed-up) at regular intervals during the Term, including immediately before any such Client Data is provided to NCC, whether in accordance with clause 7.2 above or otherwise; and
- (b) acknowledges and agrees that, without limiting clause 23.4(a) below, NCC will have no liability to the Client for any loss of that Client Data.

### 9.4 Provision of information

The Client acknowledges and agrees that:

- (a) the provision of the NCC Services and the performance of NCC's obligations under the Agreement rely substantially on the provision by the Client from time to time of information, direction, approval, consent and guidance (**Client Input**);
- (b) it must provide all Client Input reasonably required by NCC (with Notice to the Client), promptly and without delay;
- (c) it must ensure that any information provided to NCC in connection with the Agreement is accurate, complete and reliable; and
- (d) NCC will not be responsible or liable (and excludes any such liability) for the non-provision of, or a delay in the provision of, the NCC Services to the extent that such non-provision or delay (as the case may be) was caused or contributed to by the Client's or any of its Personnel's failure to provide, or delay in providing, NCC with Client Input.

## 10 Extended Use of the NCC Services

The Client acknowledges and agrees that:

- (a) subject to paragraphs (c) and (d) below, and notwithstanding any other rights granted to the Client under the Agreement, it may use the NCC Services for the benefit of the Client Group and may allow the Client Group to make use of the NCC Services during the Service Term of the relevant Statement of Work, solely for the internal business purposes of the Client Group;
- (b) except in the circumstances set out in paragraph (c) below, it must not, and warrants and guarantees to NCC that it will not, procure or use the NCC Services for or on behalf of, or for the benefit of, a third party, or allow a third party to make use of the NCC Services;
- (c) where the Client wishes to procure the NCC Services for or on behalf of a member of the Client Group or a third party (in each case, an **Indirect Client**), or allow an Indirect Client to use the NCC Services (in each case, **Extended Use**), then, as conditions precedent to such Extended Use, the Client must:
  - (i) Notify NCC of the intended Extended Use and provide to NCC at the time of such Notification:
    - (A) any information about the relevant Indirect Client as NCC may require; and
    - (B) a written acknowledgement from the Indirect Client that it has no direct relationship with the NCC Group;
  - (ii) procure NCC's prior written consent to such Extended Use (which consent may be withheld by NCC in its discretion); and
  - (iii) Notify the Indirect Client that the disclosure of the Report to the Indirect Client in accordance with clause 8.3 above is at the Client's discretion; and
- (d) in the case of any Extended Use effected pursuant to this clause:

- (i) the Client remains responsible and liable for all acts and omissions of any Indirect Client, to the same extent as if those acts or omissions were performed (or not performed) by the Client;
- (ii) an act or omission of the Indirect Client, including any breach of the Agreement or negligence in relation to the performance or failure to perform the Agreement, may result in Loss by the NCC Group;
- (iii) NCC is not prevented from recovering Losses by the fact that the Losses were caused or contributed to by an Indirect Client, if those Losses would have been capable of being recovered by NCC against the Client had the Client caused or contributed to such Losses itself;
- (iv) if and to the extent that:
  - (A) an Indirect Client suffers Loss in connection with such Extended Use and wishes to recover that Loss; and
  - (B) such Loss would have been recoverable by the Client had the Client suffered such Loss,
 then:
  - (C) such Loss will be deemed, for the purposes of the Agreement to have been suffered by the Client; and
  - (D) the Client (and not the Indirect Client) may bring any Claim for such Loss (**Indirect Client Claim**) directly against NCC for and on behalf of such Indirect Client;
- (v) notwithstanding paragraph (vi) below, the limitations and exclusions of NCC's liability under the Agreement will apply to any Losses payable by NCC to the Client in connection with an Indirect Client Claim and any Indirect Client Claim will not give rise to any increase in any such limitation of NCC's liability under the Agreement; and
- (vi) the Client must indemnify, keep indemnified and hold harmless the Those Indemnified from and against any and all Losses suffered or incurred by Those Indemnified arising out of or in connection with any Extended Use, except in relation to any Indirect Client Claims.

## 11 NCC Personnel

### 11.1 Replacement of NCC Personnel

The Client acknowledges and agrees that while NCC will use its reasonable endeavours to ensure that the Personnel responsible for the provision of the NCC Services will be involved in the provision of the NCC Services throughout the relevant Service Term, NCC may replace any Personnel that are providing the NCC Services to the Client, if NCC deems it reasonable or necessary (in its discretion), provided that NCC will use its reasonable endeavours to replace any such Personnel with Personnel of equivalent qualification and experience.

### 11.2 Police Checks

The Client:

- (a) acknowledges that, where permitted by applicable law, NCC conducts National Police Checks in relation to relevant Personnel every calendar year; and
- (b) where permitted by applicable law, may request (acting reasonably), at any time during the Term, that NCC:
  - (i) provides the Client with a copy of the results of the most recent National Police Check conducted by NCC in relation to a member of NCC's Personnel; or
  - (ii) conducts a new National Police Check in relation to a member of NCC's Personnel and provide the Client with a copy of the results of that National Police Check,
 and if the Client so requests, NCC must, within a reasonable time of such request and at the Client's cost and expense, comply with such request.

## 12 Offshoring and Subcontracting

### 12.1 Offshoring

Without limiting clause 12.2 below:

- (a) the Client acknowledges that NCC is a global organisation that delivers the NCC Services to Clients from various locations and agrees that NCC may, with Notice to the Client or when included in a Statement of Work, provide all or part of the NCC Services:
  - (i) using one or more members of the NCC Group; and/or
  - (ii) from a location outside Australia (each, an **Approved Offshore Location**);
- (b) if NCC is delivering the NCC Services from an Approved Offshore Location, and as a result, any Client Data is disclosed, transferred, stored, handled or can be accessed from that Approved Offshore Location (**Offshore Transfer**), then NCC will ensure that no Personal Information is the subject of the Offshore Transfer unless

such Personal Information is Service Data, or the Client otherwise consents to such Personal Information forming part of the relevant Offshore Transfer; and

- (c) if NCC is delivering the NCC Services via a member of the NCC Group, then the Client acknowledges that:
  - (i) NCC will not be relieved from any liability under the Agreement due to any such arrangement;
  - (ii) remains responsible and liable for all obligations, services and functions performed by, and acts and omissions of, the relevant NCC Group member, to the same extent as if those obligations, services, functions, acts or omissions were performed (or not performed) by NCC; and
  - (iii) it must not make any Claim for Losses against the relevant NCC Group member and agrees that any Claim by the Client in relation to an NCC Group member must be brought directly against NCC.

### 12.2 Subcontracting

The Client acknowledges and agrees that NCC may, with Notice to the Client, Subcontract any of its obligations under the Agreement to any other person, provided that NCC:

- (a) will not be relieved from any liability under the Agreement due to any Subcontracting arrangement entered into pursuant to this clause; and
- (b) remains responsible and liable for all obligations, services and functions performed by, and acts and omissions of, any subcontractor, to the same extent as if those obligations, services, functions, acts or omissions were performed (or not performed) by NCC.

## 13 Non-Solicitation Restraint

13.1 During the Non-Solicitation Restraint Period, a Party must not, directly or indirectly:

- (a) engage, solicit, induce or attempt to induce, canvass, approach or accept any approach from any Personnel, with whom a Party had contact during the Term, with a view to:
  - (i) in the case of NCC Personnel: engaging that Person, whether or not for the purposes of that Person providing services to the Client the same as or similar to the NCC Services; or
  - (ii) otherwise obtaining that Person's services; or
- (b) induce, assist in inducing or assist any Personnel to cease to be employed by or engaged by the Party.

13.2 The Parties acknowledge and agree that the restraint contemplated at clause 13.1 above shall not prohibit a Party from hiring any Personnel who respond to a general advertisement or solicitation not specifically directed at a Party's Personnel, including any advertisement or solicitation through newspapers, trade publications or job sites/apps.

13.3 The Parties acknowledge and agree that:

- (a) the restraints contemplated at clause 13.1 above are, in the circumstances, reasonable and necessary to protect both Parties' legitimate commercial interests, including without limitation, its interest in protecting the Parties':
  - (i) Confidential Information;
  - (ii) relationships with Clients and Personnel; and
  - (iii) goodwill of their respective Business;
- (b) damages are not an adequate remedy for a breach of clause 13.1; and
- (c) the restrictions specified in paragraphs 13.1(a) and 13.1(b) above, each have effect as if they are separate provisions and if any of these separate provisions is determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, then this will not affect the validity or enforceability of any of the other separate provisions.

## 14 Fees, invoicing and payment

### 14.1 NCC Service pricing

The Client acknowledges and agrees that NCC may, with Notice to the Client, amend its pricing for the NCC Services at any time.

### 14.2 Invoices

The Client acknowledges and agrees that, unless otherwise specified in a Statement of Work, NCC will issue an invoice to the Client for the Fees payable by the Client under that Statement of Work on the earlier to occur of the execution of that Statement of Work or the relevant Service Start Date.

### 14.3 Purchase orders

The Client acknowledges and agrees that if:

- (a) contemplated under a Statement of Work, the Client must provide NCC with a purchase order for the NCC Services delivered under that Statement of Work;
- (b) the Client fails to provide the purchase order to NCC by the later of:
- (i) the Service Start Date; and
  - (ii) any date specified in the relevant Statement of Work,
- then:
- (iii) such failure may be (in NCC's discretion) deemed by NCC as a cancellation of the NCC Services by the Client, and NCC may, with Notice to the Client, terminate that Statement of Work;
  - (iv) if NCC does not elect to terminate the Statement of Work in accordance with paragraph (iii) above, such failure to provide the purchase order will not:
    - (A) prevent NCC from invoicing the Client for the NCC Services; or
    - (B) diminish NCC's entitlement to be paid for the performance of the NCC Services.
- 14.4 NCC Expenses**
- The Client acknowledges and agrees that, if the Client Notifies NCC that it requires NCC's assistance in providing witness evidence, documents, information or other materials relating to the NCC Services in the context of any dispute, regulatory investigation or similar involving the Client, but to which NCC is not a party, and NCC agrees to such a request (in its discretion) then:
- (a) NCC may invoice the Client for any fees, costs and expenses incurred by the NCC Group or its Personnel in connection with the provision of such assistance; and
  - (b) the Client must pay such invoice in accordance with clause 14.5.
- 14.5 Payment**
- The Client acknowledges and agrees that:
- (a) it must pay each invoice rendered by NCC in connection with the Agreement in full and cleared funds to the bank account Notified to the Client by NCC within 30 days of the date of that invoice, without any deduction, withholding, set-off, counterclaim, discount, abatement or otherwise;
  - (b) if any amount payable by the Client is not paid on or before the due date for payment, then NCC may charge the Client interest on the overdue amount, at a rate equal to the Reserve Bank of Australia's cash rate target from time to time, plus 3% (compounding daily), from the date that the relevant amount becomes payable, until such amount has been paid in full;
  - (c) its obligation to pay any invoices rendered by NCC in connection with the Agreement will not be conditional upon, or diminished or limited by, NCC's use of any particular payment processing system or process, or its agreement to additional terms; and
  - (d) if and to the extent that any particular payment processing system or process (**Payment Portal**) requires NCC to:
    - (i) incur additional costs or expenses (internal or external), then the Client must reimburse NCC for any such costs or expenses; or
    - (ii) accept additional terms and conditions beyond those stated in the Agreement (including any terms of use for the use of the Payment Portal), then the Client indemnifies Those Indemnified from and against any Losses suffered or incurred by Those Indemnified in connection with their compliance or non-compliance with such terms and conditions.
- 14.6 Invoice dispute**
- If the Client disputes the validity of, or amount specified in, any invoice, then, within 30 days of the date of invoice:
- (a) the Client must Notify NCC of the details and the nature of the dispute;
  - (b) the Client must pay the disputed invoice in accordance with clause 14.5 above, pending the resolution of the dispute;
  - (c) pending the resolution of the dispute, the Parties must continue to perform their obligations under the Agreement; and
  - (d) either Party may invoke the dispute resolution procedure set out in clause 25 to attempt to resolve the dispute.
- 15 GST**
- 15.1** In this clause 15, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to that word or expression in that Act.
- 15.2** The Parties acknowledge and agree that all consideration provided by the Client to NCC under the Agreement is exclusive of GST, unless such consideration is specifically expressed to be GST inclusive.
- 15.3** If NCC makes a taxable supply to the Client under or in connection with the Agreement, then the Client will pay NCC an additional amount equal to the GST payable on that supply (unless the consideration for the taxable supply was specified to include GST), by the later of:
- (a) the date when any consideration for the taxable supply is first paid or provided; and
  - (b) the date when NCC issues a tax invoice to the Client.
- 15.4** If an adjustment event varies the amount of GST payable by NCC under the Agreement, then:
- (a) NCC must adjust the amount payable by the Client to take account of that adjustment event and any resulting payment must be paid by NCC to the Client, or the Client to NCC (as the case may be) within 10 Business Days of NCC becoming aware of the adjustment event; and
  - (b) any payment under this clause is to be treated as an increase or decrease of the additional amount payable under clause 15.2 above.
- 15.5** Subject to an express provision in the Agreement to the contrary, any payment, reimbursement or indemnity required to be made to a Party (**Payee**) under the Agreement, which is calculated by reference to an amount paid or payable by the Payee to a third party (**Outgoing**) will be calculated by reference to that Outgoing, inclusive of GST, less the amount of any input tax credit which the Payee (or the representative member of a GST group of which the Payee is a member) is entitled to claim on that Outgoing.
- 15.6** If part of a supply is a separate supply under the GST Law, then that part is a separate supply for the purposes of this clause 15.
- 16 Withholding Tax**
- Without limiting clause 14.5(a) above, the Client must make all payments due under the Agreement without withholding or deduction of, or in respect of, any Taxes, except as required by Law, in which case, the Client must, when making such payment to NCC to which the withholding or deduction relates, pay to NCC such additional amount as will ensure that NCC receives the same total amount that it would have received if no such withholding or deduction had been made.
- 17 Anti-Bribery and Modern Slavery**
- Each Party:
- (a) must comply with all applicable Anti-Bribery Laws;
  - (b) must not, in connection with the Agreement, offer, promise, give, request, agree to receive, receive or accept any bribe, kickback or financial or other advantage, or commit any corrupt act;
  - (c) must comply with the Modern Slavery Laws; and
  - (d) must ensure that there is no modern slavery or human trafficking in its supply chains or in any part of its business.
- 18 Public Statements**
- Neither Party may make any public statement or release any information regarding:
- (a) the Agreement, its existence or any of its terms;
  - (b) the relationship between the Parties; or
  - (c) any other relationship, agreement or arrangement relating to the relationship between the Parties or the Agreement,
- in any marketing materials, announcements, public statements, and other marketing collateral and communications between that Party and any third party, without the prior written consent of the other Party.
- 19 Confidentiality**
- 19.1** The Parties acknowledge and agree that the receiving Party must keep confidential, not use or disclose, and take all steps and do all things as may be reasonably necessary, prudent or desirable in order to safeguard, the Confidential Information of the disclosing Party, other than as permitted by the Agreement.
- 19.2** The receiving Party:
- (a) may disclose Confidential Information of the disclosing Party to its Related Bodies Corporate, Personnel, professional advisors, auditors and insurers, and, where the receiving Party is:
    - (i) the Client, its Indirect Clients; and
    - (ii) NCC, any third party that supports NCC's performance of the NCC Services (including cloud service providers such as Microsoft Azure and Amazon Web Services),
 in each case, that:
    - (iii) need to know for the receiving Party to exercise any of its rights or perform any of its obligations under the Agreement (and only to the extent that they need to know); and

- (iv) are bound by an agreement with the receiving Party containing terms protecting the Confidential Information of the disclosing Party that are no less onerous than this clause; and
  - (b) must ensure that the Confidential Information of the disclosing Party is kept confidential by its Personnel.
- 19.3 The obligations in clause 19.1 above do not apply to Confidential Information that is required to be disclosed by applicable Laws, the rules of any stock exchange upon which the receiving Party's securities are listed, or any Authority, provided that the receiving Party Notifies the disclosing Party of the required disclosure and discloses the minimum amount of Confidential Information required to satisfy the relevant Laws, rules or requirements of the relevant Authority.
- 19.4 Each Party acknowledges that an award of damages or an account of profits may not adequately compensate the disclosing Party if this clause 17 is breached and without limiting its right to seek damages or any other form of relief, the disclosing Party may seek and obtain an injunction to prohibit or restrain the receiving Party from any breach or threatened breach of this clause 17.
- 19.5 The Client acknowledges and agrees that, except as otherwise required by Law, NCC is not under any obligation to retain (and may Delete) the Client's Confidential Information, Client Data or Personal Information after the termination or expiry of the Agreement.
- 19.6 If the Client intends to disclose Confidential Information to NCC that is controlled by any export controls or regulations, or that NCC would otherwise be prohibited from disclosing to persons who are not citizens or permanent residents of the country in which the disclosure is to be made, then the Client must:
- (a) Notify NCC of such intended disclosure, detailing any associated controls, regulations or restrictions in said Notice; and
  - (b) upon disclosure, mark any documents containing such Confidential Information with an obvious restrictive legend.

## 20 Privacy

### 20.1 Compliance

Each Party must (and must ensure that its Personnel) comply with all Privacy Laws.

### 20.2 NCC Policies

The Customer must, at all times, comply with the NCC Privacy Policy and the NCC Information Security Policy.

### 20.3 Use of Personal Information

NCC will only use the Personal Information supplied by the Client, or collected by NCC in connection with the Agreement, to the extent necessary to perform its obligations under the Agreement.

### 20.4 Data Incident

If NCC becomes aware or suspects that:

- (a) it or any of its Personnel) is using or disclosing, or has used or disclosed, Personal Information in contravention of this clause 20;
- (b) there has been unauthorised access to, or unauthorised disclosure of, the Client Data or Personal Information; or
- (c) Client Data or Personal Information has been lost in circumstances where unauthorised access to, or unauthorised disclosure of, that the Client Data or Personal Information may occur,

(each, a **Data Incident**) then NCC will, as soon as reasonably practicable (but in any event, within 72 hours) after it first becomes aware of such a Data Incident or begins to suspect that such Data Incident has occurred, Notify the Client of that Data Incident.

### 20.5 Data breach investigations

If NCC becomes aware or reasonably suspects that a Data Incident has occurred, then NCC will, as soon as reasonably practicable:

- (a) disclose to the Client (to the extent known or reasonably suspected) information relating to the nature and details of the Data Incident and the kinds of Personal Information affected (or suspect to be affected) by the Data Incident;
- (b) take appropriate or necessary remedial action to mitigate any potential loss or interference with any Personal Information in its custody or control;
- (c) following Notification to the Client under paragraph (a) above, complete an assessment of the Data Incident, including in consideration of the possible impacts of the Data Incident and likelihood of harm to any individuals to whom the information relates; and
- (d) provide all reasonable co-operation and assistance requested by the Client in relation to its own investigation, assessment and management of the Data Incident.

### 20.6 Data breach Notifications

The Client:

- (a) acknowledges and agrees that NCC will be solely responsible for:

- (i) determining whether a Data Incident results in a real risk of serious harm to any of the individuals to whom the Personal Information relates (in the case of a Loss of Data, on the assumption that unauthorised access to, or unauthorised disclosure of, the Personal Information were to occur); and
  - (ii) notifying any relevant Authority and affected individuals regarding the Data Incident, based on NCC's assessment made pursuant to paragraph (i) above;
- (b) must co-operate with NCC to assist it in making the determination referred to in paragraph (a) above; and
  - (c) must not disclose to any third party (including any Authority) the existence or circumstances surrounding any Data Incident without the prior written approval of NCC, except as otherwise required by Law.

## 20.7 International Transfers of Personal Information

The Parties acknowledge and agree that if, in connection with the provision of the NCC Services under a Statement of Work, the Supplier processes or is a controller of (as the terms 'processor' and 'controller' are defined in the GDPR) the Personal Information of persons in the United Kingdom or the European Union, then the terms of Schedule 2 will apply to that Statement of Work in addition to the terms of this clause 20, provided that the terms of Schedule 2 will govern to the extent of any inconsistency with this clause 20.

## 21 Intellectual Property Rights

### 21.1 No assignment

The Parties acknowledge and agree that the Agreement does not assign, and neither Party may assert ownership of, all or any part of, any Intellectual Property Rights of any person.

### 21.2 Client Intellectual Property Rights

The Client:

- (a) grants the NCC Group and its Personnel a non-exclusive, non-transferable licence to use the Client Intellectual Property Rights to the extent required for NCC and its Personnel to properly perform the NCC Services; and
- (b) must procure, and as at the Commencement Date, warrants and represents that it has procured, the grant of a licence to the NCC Group from each Indirect Client equivalent to the licence set out in paragraph (a) above.

### 21.3 Intellectual Property Rights in Deliverables

The Parties acknowledge and agree that all Intellectual Property Rights in and to any Deliverables provided to the Client in connection with a Statement of Work will be owned by the NCC Group.

### 21.4 Licence

NCC grants to the Client a non-exclusive, limited, non-transferable licence (without the right to sublicense, except in the circumstances contemplated at clause 8.3 above) to copy and use the Deliverables:

- (a) for its internal purposes;
- (b) to the extent required to receive the benefit of the NCC Services for the purpose for which they are supplied; and
- (c) otherwise, in accordance with NCC's prior written consent from time to time (such consent not to be unreasonably withheld or delayed).

### 21.5 Warranty

Each Party warrants and represents that it has, and will at all relevant times have, full authority to grant any licences granted under the Agreement.

## 22 Warranties

### 22.1 Each Party represents and warrants to the other Party that:

- (a) it has, and will at all times have, use and apply the skills, qualifications, expertise, capacity and experience necessary to carry out its obligations under the Agreement;
- (b) its signing, delivery and performance of the Agreement will not constitute:
  - (i) a violation of any judgment, order or decree;
  - (ii) a material default under any material Agreement by which it or any of its assets are bound; or
  - (iii) an event that would, with Notice or lapse of time, or both, constitute such a default; and
- (c) it has the requisite power and authority to enter into the Agreement and to carry out the obligations contemplated by the Agreement.

### 22.2 The Client warrants and represents that it has obtained the consents required pursuant to clause 9.2(b).

## 23 Liability

### 23.1 Application

The Client acknowledges and agrees that:

- (a) this clause 23 prevails over all other clauses of the Agreement and sets forth the entire liability of the NCC Group and its Personnel in connection with the Agreement, except to the extent that any Service Modules contain additional exclusions of or limitations to the NCC Group's liability; and
- (b) the limitations of the NCC Group's liability under this clause 23 have effect in relation to any liability, whether or not contemplated by the Agreement specifically, including any liability arising by reason of the invalidity or unenforceability of any terms of the Agreement.

### 23.2 Liability reduced by other Party's fault

Each Party's liability to pay Losses to the other Party is reduced to the extent the liability was caused by the other Party or any of its Personnel.

### 23.3 Duty to mitigate

If a Party suffers any Loss in connection with the Agreement for which the other Party is liable (including under an indemnity), the Party suffering the Loss must use its best efforts to mitigate its Loss.

### 23.4 Exclusion of consequential loss and limitation of liability

Subject to clauses 23.1 and , except where to do so would contravene any statute or cause any part of this clause to be void or unenforceable, NCC:

- (a) excludes any and all liability of the NCC Group to the Client Group and its Personnel (whether arising in Agreement or tort (including negligence) or under any statute) for:
  - (i) Losses or Claims arising out of or in connection with any materials and/or instructions supplied by the Client, any Indirect Client or any third party acting on behalf of the Client or any Indirect Client; and
  - (ii) any Consequential Loss; and
- (b) limits the liability of the NCC Group:
  - (i) in respect of the inadequate performance of the NCC Services, to the re-provision of the relevant NCC Services at no additional cost to the Client; or
  - (ii) for Losses suffered or incurred by the Client Group and its Personnel, to an amount equal to three times the total amount paid or payable by the Client under the relevant Statement of Work under which the relevant liability arose.

### 23.5 Exceptions

The exclusions and limitations of liability in clause 23.4 do not apply to NCC's liability:

- (a) for fraud or fraudulent misrepresentation;
- (b) for personal injury, death property damage caused by Negligence;
- (c) that cannot be limited or excluded under Law.

### 23.6 Consumer Guarantees

The Client acknowledges and agrees that:

- (a) to the extent permitted by Law, the NCC Group excludes and disclaims all guarantees, warranties, conditions, terms, undertakings and obligations, whether contained in any other document or implied or imposed by Law, custom, trade usage, course of dealing or otherwise;
- (b) nothing in the Agreement excludes, restricts or modifies any guarantee, warranty, term or condition, right or remedy implied or imposed by Law, which cannot lawfully be excluded, restricted or modified (including those implied by Australian Consumer Law) (each, a **Consumer Guarantee**); and
- (c) in relation to any breach of such Consumer Guarantees by the NCC Group, NCC Group limits:
  - (i) its liability to the Client; and
  - (ii) the Client's remedies under the Agreement,
 to the resupply of the relevant NCC Services or the payment to the Client of an amount equal to the cost of having those NCC Services re-supplied.

### 23.7 Loss recovery

The Parties acknowledge and agree that in no event may a Party recover any amount with respect to Losses suffered or incurred by that Party under the Agreement, if and to the extent that such amounts have already been recovered by a Party pursuant to a Local Implementation Agreement.

## 24 Force Majeure Event

24.1 If a Party is wholly or partially unable to perform its obligations under the Agreement because of a Force Majeure Event (**Affected Party**), then:

- (a) immediately after the Force Majeure Event arises, the Affected Party must Notify the other Party of the extent to which the Affected Party is unable to perform its obligations;
- (b) the Affected Party must use its best endeavours to mitigate the effect of the Force Majeure Event; and

- (c) provided that the Affected Party complies with paragraphs (a) and (b) above, it will be excused from performing the obligations it is prevented from performing by the Force Majeure Event, until such time as the Force Majeure Event ceases preventing that performance.

24.2 If the Affected Party remains wholly or partially unable to perform its obligations under the Agreement due to a Force Majeure Event for 15 days or more, then either Party may, in its discretion, terminate the Agreement with Notice to the other Party.

24.3 If all or part of the Agreement is terminated in accordance with clause 24.2 above, then neither Party will be liable for any Loss of the other Party suffered or incurred in connection with such termination.

## 25 Dispute Resolution

25.1 A Party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause 25.

25.2 A Party claiming that a dispute, difference or question arising in connection with the Agreement has arisen (**Dispute**) must give the other Party Notice of the details of the Dispute (**Dispute Notice**).

25.3 When a Dispute Notice is given, each Party's authorised representative (or their nominee) must meet and first attempt to resolve the Dispute.

25.4 If the authorised representatives (or their nominees) cannot resolve the Dispute within 30 days (or longer period agreed between the Parties), then the Parties must refer the Dispute for mediation by the Australian Commercial Dispute Centre Limited for resolution in accordance with the Conciliation Rules of the Australian Commercial Dispute Centre.

25.5 If the Parties cannot resolve a Dispute within 30 days of being referred to mediation under clause 25.4 above, then each Party may commence court proceedings.

25.6 If a Party breaches this clause 25 in relation to a Dispute, the other Party need not comply with this clause 25 in relation to that Dispute.

25.7 The Parties must continue to perform their respective obligations under the Agreement pending the resolution of a Dispute.

25.8 Each Party must pay its own costs of complying with this clause 25.

## 26 Termination

### 26.1 Suspension of NCC Services by NCC

The Client acknowledges and agrees that:

- (a) NCC may, with as much Notice to the Client as is reasonably practicable in the circumstances, suspend, delay or withdraw the provision of the NCC Services to the Client and any Indirect Client, if:
  - (i) NCC requires, with Notice to the Client, Client Input that NCC reasonably considers is required for the proper performance of the NCC Services; and
  - (ii) the Client fails to provide NCC with that Client Input in the time requested, or the Client Input is materially incomplete or inaccurate; and
- (b) the NCC Group will not be liable to the Client for any Loss suffered or incurred by the Client Group as a result of any suspension or withdrawal of, or delay in providing, the NCC Services effected pursuant to this clause 26.1.

### 26.2 Termination by the Client

The Client may terminate all or part of the Agreement immediately with Notice to NCC, if NCC:

- (a) breaches any term of the Agreement which is not capable of remedy;
- (b) breaches any term of the Agreement which is capable of remedy and fails to remedy the breach within 30 days of receiving Notice requiring it to do so; or
- (c) subject to any applicable statutory stay on the exercise of such rights under this clause, including under sections 415D, 434J and 451E of the Corporations Act (as applicable), NCC suffers an Insolvency Event.

### 26.3 Termination by NCC

NCC may terminate all or part of the Agreement immediately with Notice to the Client, if the Client:

- (a) breaches a condition of the Agreement;
- (b) breaches any term of the Agreement which is not capable of remedy;
- (c) without limiting paragraph (e) below, breaches any term of the Agreement which is capable of remedy and fails to remedy the breach within 30 days of receiving Notice requiring it to do so;
- (d) subject to any applicable statutory stay on the exercise of such rights under this clause, including under sections 415D, 434J and 451E of the Corporations Act (as applicable), suffers an Insolvency Event; or

- (e) has not paid an undisputed amount in accordance with clause 14.5 above, but only after NCC has given the Client a Notice specifying the failure to pay and giving the Client a further five Business Days from the date of that Notice to pay the outstanding amount.

#### 26.4 Amounts payable on termination

Except as otherwise contemplated in a Service Module or a Statement of Work, on termination of the Agreement or a Statement of Work, the Client must pay to NCC, in accordance with clause 14.5 above, any:

- (a) Fees for NCC Services provided up to and including the date of termination; and
- (b) Cancellation Fees set out in the relevant Service Module or Statement of Work,

which Fees and Cancellation Fees the Client acknowledges and agrees may be invoiced by NCC as soon as a termination Notice is provided by either Party.

#### 26.5 Termination of Local Implementation Agreements

The Parties acknowledge and agree that:

- (a) subject to paragraph (b) below, and notwithstanding anything to the contrary in a Local Implementation Agreement, termination of the Agreement will not affect the continued operation of these General Terms and Conditions, solely for the purpose of giving effect to any Local Implementation Agreement; and
- (b) if the termination of the Agreement would, in the Parties' reasonable opinion, adversely affect the benefit and purpose of the overall arrangement between the Parties to which a Local Implementation Agreement relates, then, the terminating Party may also terminate all relevant Local Implementation Agreements (with such terminations then being deemed to be effected on the same grounds as the termination of the Agreement).

### 27 Consequences of termination

#### 27.1 Consequences

If the Agreement or a part of the Agreement has been terminated or expires:

- (a) each Party must continue to keep confidential the other Party's Confidential Information in accordance with clause 17;
- (b) each Party's right to use and disclose the other Party's Confidential Information ceases other than in relation to information that that Party is required to retain or disclose in accordance with clause 17, or in order to continue performing any surviving obligations or exercising any surviving rights;
- (c) the Client must ensure that any Indirect Clients comply with paragraphs (a) and (b) above;
- (d) all licenses granted under the Agreement will expire; and
- (e) the Client must ensure that any Extended Use effected in accordance with the Agreement ceases immediately.

#### 27.2 Accrued rights and remedies, no merger

The Parties acknowledge and agree that the rights and obligations of the Parties under the Agreement do not merge on completion of any transaction contemplated by the Agreement.

#### 27.3 No prejudice of right of action or remedy

Except as expressly set out in the Agreement, any termination or expiry of the Agreement, in its entirety or as it relates to one or more discrete parts, will not prejudice any right of action or remedy which may have accrued to either Party prior to that expiry or termination.

### 28 Assignment

Neither Party may assign, transfer or novate its rights or obligations under the Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld.

### 29 Notices and communications

#### 29.1 Service of Notices

A notice, demand, consent, approval or communication under the Agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered, or sent by prepaid post or email to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.

#### 29.2 Effective on receipt

A Notice given in accordance with clause 29.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid, certified or registered post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); and
- (c) if sent by email, an hour after the time the sender's systems recorded that the email left the sender's system unless, within four Business Hours, the sender is informed (by automatic Notice or otherwise) that the email has not been received by the recipient,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

### 30 Governing Law and jurisdiction

The Agreement is governed by the Law of New South Wales, Australia and each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales, Australia and the courts having appeal from them.

### 31 General

31.1 Except as set out in the Agreement, the Parties acknowledge that:

- (a) no representations or warranties have been given or will be given by either Party or their Personnel pertaining to any matters connected with the Agreement; and
- (b) subject to clause 9.4, neither Party will have any liability to the other as a result of reliance on any information supplied by a Party in connection with this Agreement.

31.2 No amendment or variation of this Agreement shall be effective unless in writing and signed by a duly authorised representative of each Party.

31.3 The Parties acknowledge and agree that any indemnity or obligation of confidence under the Agreement is independent and survives termination of the Agreement, and any other term by its nature intended to survive termination or expiry of the Agreement survives that termination or expiry, including clauses 1, 3, 13, 14, 17, 18, 19, 20, 23, 25, 26.4, 27, 29, 30 and 31.

31.4 Each Party must pay its own costs of negotiating, preparing and executing the Agreement and any variations to the Agreement.

31.5 The Agreement may be executed in counterparts and all executed counterparts constitute one document.

31.6 The Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with their subject matter.

31.7 A term or part of a term of the Agreement that is illegal or unenforceable may be severed from the Agreement and the remaining terms or parts of the terms of the Agreement will continue in force.

31.8 The Parties acknowledge and agree that:

- (a) if a Party exercises a right and the same, or a similar, right arises at a later date, that Party is not obliged to exercise the right that arises later in the same way as it exercised the initial right;
- (b) if a Party does not exercise a right, or does not require an obligation to be performed, and the same, or a similar, right or obligation arises at a later date, then that Party is not prevented from exercising the right that arises later or requiring performance of the obligation that arises later;
- (c) a delay by a Party in exercising a right will not amount to a waiver of that right; and
- (d) a waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.



## Schedule 1 | Definitions and Interpretation

### 1. Definitions

In this Agreement, unless the context otherwise requires:

**Administrative Data** means any data, information and other materials provided to NCC by the Client that is not Service Data;

**Affected Party** has the meaning given to that term in clause 24.1;

**Australian Consumer Law** has the meaning given to that term in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

**Authorisation Form** found at <https://www.nccgroup.com/au/terms-and-conditions/> and provided to the Client by NCC, that authorises NCC to, in the course of providing the NCC Services, do any thing or omit to do any thing that may otherwise breach Part 10.7 of the *Criminal Code Act 1995* (Cth);

**Agreement** means the agreement formed by the documents specified in clause 2;

**Anti-Bribery Laws** means all Laws the aim of which is to prevent bribery and/or corruption in any jurisdiction;

**Approved Offshore Location** has the meaning given to that term in clause 12.1(a);

**Authority** means any Commonwealth, State or local government department, body or instrumentality or any other public authority, statutory body or certifying body which has relevant jurisdiction, and includes any Regulator;

**Business** means the business of the NCC Group, in respect of the sale and distribution of the NCC Services;

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales, Australia;

**Business Hours** means 9.00am to 5.00pm on a Business Day;

**Cancellation Fee** means an amount set out in a Statement of Work or Service Module, that is payable by the Client upon the termination of that Statement of Work or cancellation of a particular NCC Service (as applicable);

**Claim** means any claim, demand or proceedings arising out of any cause of action of a Party including for breach of the Agreement or under any indemnity, in tort (including negligence) and any other common law, equitable or statutory cause of action in connection with the operation of the Agreement;

**Client Asset** has the meaning given to that term in clause 7.3;

**Client Data** means any data, information and other materials provided to NCC relating to the Client or any of its operations, administration, facilities, suppliers, Clients, Personnel, strategic or marketing plans, assets and programs, and includes Administrative Data and Service Data;

**Client Group** means the Client and its Related Bodies Corporate;

**Client Input** has the meaning given to that term in clause 9.4(a);

**Commencement Date** means, for the Agreement any Statement of Work (as applicable), the date on which the Agreement or that Statement of Work (as applicable) has been duly executed by both parties;

**Confidential Information** of a Party, means all information (regardless of the form of disclosure or the medium used to store it) treated by the disclosing Party as confidential and of which the receiving Party first becomes aware either:

- (a) through disclosure by the disclosing Party to the receiving Party; or
- (b) otherwise through the receiving Party's involvement with the disclosing Party,

whether or not provided to or obtained by the receiving Party before entering into the Agreement, but excludes information that is:

- (c) in the public domain otherwise than as a result of a breach of the Agreement or another obligation of confidence;
- (d) created by the receiving Party (whether alone or jointly with any person) independently of the disclosing Party's Confidential Information (if the receiving Party has evidence in writing that the information falls within this exception); or
- (e) already known by the receiving Party independently of its involvement in the Agreement or its interaction with the disclosing Party and free of any obligation of confidence;

**Consequential Loss** means any special, indirect, consequential or punitive Losses, loss of actual or anticipated profits, revenue or savings, loss of goodwill, damage to reputation, loss of business or Agreement, loss, deletion or corruption of any Client Data, wasted expenditure, or Losses suffered in connection with the restoration and/or recovery of Client Data, suffered or incurred by a Party, whether reasonably foreseeable, not reasonably foreseeable, known, unknown or otherwise;

**Consumer Guarantee** has the meaning given to that term in clause 23.6(b);

**Corporations Act** means the *Corporations Act 2001* (Cth), as amended, replaced or superseded, from time to time;

**Data Incident** has the meaning given to that term in clause 20.4 of Schedule 2;

**Delete** means deletion, destruction or, in the context of back-ups of data, ensuring said data is not readily available or accessible (for example, by only holding it as part of an encrypted general system back-up);

**Deliverable** means:

- (a) all items specified as deliverables in a Statement of Work; and
- (b) all items supplied by, or on behalf of, NCC in the course of, or relating to, the NCC Services;

**Dispute** has the meaning given to that term in clause 25.2;

**Dispute Notice** has the meaning given to that term in clause 25.2;

**Draft SOW** has the meaning given to that term in clause 6.3;

**Due Date** means the date or time specified in the Agreement by or on which an obligation must be performed;

**Existing Statement of Work** has the meaning given to that term in clause 4.3(b);

**Extended Use** has the meaning given to that term in clause 10(c);

**Fee** means an amount payable by the Client for the NCC Services supplied under a Statement of Work, calculated in accordance with the prices for those NCC Services as set out in the relevant Statement of Work or Service Module (as the case may be);

**Force Majeure Event** means any:

- (a) fire, flood, earthquake, pandemic, epidemic or act of God;
- (b) riot, civil disorder, rebellion or revolution; or
- (c) other similar cause beyond the reasonable control of the Affected Party,

but in each case only if and to the extent that the Affected Party and its Related Bodies Corporate are without fault in causing the event, and the event, or its effect could not have been prevented by reasonable precautions including:

- (d) invoking any relevant disaster recovery plan;
- (e) appropriate workload management practices; and
- (f) any other prudent back-up or recovery procedures;

**GDPR** means the European Union General Data Protection Regulation 2016/679;

**General Terms and Conditions** has the meaning given to that term in clause 2(e);

**Good Industry Practice** means, in relation to the NCC Services, the exercise of skill, diligence, prudence and judgment as would reasonably and ordinarily be expected from an experienced provider of services the same as or similar to the NCC Services, in the same or similar circumstances and conditions as under the Agreement;

**GST** means any goods and services tax imposed by legislation enacted by the Commonwealth of Australia including a tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth;

**Indirect Client** has the meaning given to that term in clause 10(c);

**Indirect Client Claim** has the meaning given to that term in clause 10(d);

**Initial Term** has the meaning given to that term in clause 4.1;

**Insolvency Event** means:

- (a) for a person in Australia, any one or more of the following events occurring in respect of that person:
  - (i) a resolution is passed for the winding up of that person (other than for the purposes of reconstruction or amalgamation, which, in the case of a Party, is on terms which have been previously approved in writing by the other Party);
  - (ii) a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of company arrangement is appointed to all or any part of the property of that person;
  - (iii) a receiver, receiver and manager, voluntary administrator or an administrator of a deed of company arrangement, is appointed to, or a mortgagee takes possession of, all or any part of the business or assets of that person;

- (iv) that person makes any composition or arrangement or assignment with or for the benefit of its creditors;
  - (v) that person or any creditor appoints a voluntary administrator or a resolution is passed for that person to execute a deed of company arrangement;
  - (vi) that person ceases, or threatens to cease to carry on its business; or
  - (vii) that person becomes unable to pay its debts as and when they become due; or
- (b) for a person in any other jurisdiction, any event analogous or equivalent to the events described in paragraph (i) occurs in respect of that person;

**Intellectual Property Rights** means all intellectual property rights, registered or unregistered, and related rights, including the following rights:

- (a) patents, copyright, rights in circuit layouts, registered designs, trade marks, know-how, inventions and the right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) above;

**Law** means any statute, regulation, rule, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction and includes any regulatory regime or industry code of conduct;

**Legitimate Recipient** has the meaning given to that term in clause 8.3;

**Local Client Entity** means the member of the Client Group that is a Party to a Local Implementation Agreement;

**Local Entity** means either the Local Client Entity or the Local NCC Entity (as the context requires), and **Local Entities** means both of them;

**Local Implementation Agreement** means an agreement under which the Local NCC Entity will provide the NCC Services to the Local Client Entity;

**Local NCC Entity** means the member of the NCC Group that is a Party to a Local Implementation Agreement;

**Loss** means all losses, costs, damages, expenses, fines, penalties and other liabilities (including all legal and other professional expenses on a solicitor Client basis) suffered or incurred by any person, whether arising in Agreement or tort (including negligence) or under any statute or under any other cause of action, and Losses has a corresponding meaning;

**Modern Slavery Laws** means any Law or regulation which prohibits exploitation of a worker, human trafficking, slavery, servitude, forced labour, debt bondage or deceptive recruiting for labour or services, or similar types of conduct, and applicable or otherwise in force in the jurisdiction in which the Client or NCC is registered or conducts business or in which activities relevant to the Agreement are to be performed;

**NCC Group** means NCC and each of its Related Bodies Corporate;

**NCC Information Security Policy** means the information security policy of NCC provided to the Client, as may be amended from time to time;

**NCC Privacy Policy** means the privacy policy of NCC located at <https://www.nccgroup.com/au/privacy-policy/>;

**NCC Service** means services provided by NCC to the Client pursuant to a Statement of Work, as further described in a Service Module;

**Negligence** means a failure to take reasonable care or exercise reasonable skill, whether or not such a duty has been imposed on a Party, under this Agreement or otherwise;

**Non-Solicitation Restraint Period** means the period commencing on the Commencement Date and ending on the date which is:

- (a) twelve months;
- (b) nine months;
- (c) six months; or
- (d) three months,

after the expiry or termination of the Agreement (as the case may be).

**Notice** has the meaning given to that term in clause 29.1, and **Notify** and **Notification** have corresponding meanings;

**Offshore Transfer** has the meaning given to that term in clause 12.1(b);

**Outgoing** has the meaning given to that term in clause 15.5;

**Party** means, either NCC or the Client (as the context requires) and in each case, **Parties** means both of them;

**Payee** has the meaning given to that term in clause 15.5;

**Payment Portal** has the meaning given to that term in clause 14.5(d);

**Personal Information** has the meaning given to that term in the Privacy Laws;

**Personnel** of a person means:

- (a) the officers, employees, Contractors (including Subcontractors) and agents of that person or any of its Related Bodies Corporate; and

- (b) in respect of Schedule 2, any Subprocessor of a Party,

but in the case of the Client, excludes NCC and any of its Personnel, and **Person** has a corresponding meaning in the singular;

**Privacy Law** means any Law (to the extent that either Party is subject to it), which affects privacy or any Personal Information (including the collection, storage, use or processing of that Personal Information) including:

- (a) the *Privacy Act 1988* (Cth), the Australian Privacy Principles made under that Act, and any ancillary legislation, codes of conduct, recommendations or directives made pursuant to that Act;
- (b) the Privacy Laws, as that term is defined in Schedule 2; and
- (c) any other Law giving right to an actionable right of privacy;

**Regulator** means any entity or body having regulatory or supervisory authority over any part of the business or affairs of any member of the Client Group or the NCC Group (as the case may be), including, but not limited to, the Office of the Australian Information Commissioner;

**Related Body Corporate** has the meaning given to that term in section 50 of the Corporations Act;

**Renewal Term** has the meaning given to that term clause 4.2;

**Report** has the meaning given to that term in clause 8.3;

**Service Data** means any data, information and other materials provided to NCC by the Client that NCC uses to provide, or as part of the provision of, the NCC Services;

**Service Module** means the legal, technical and commercial terms that relate to specific NCC Services, found at <https://www.nccgroup.com/au/terms-and-conditions/>, as may be amended by NCC in its discretion from time to time;

**Service Start Date** for an NCC Service, means the date that is the earlier of:

- (a) the date set out in the relevant Statement of Work; and
- (b) the date on which NCC commences the provision of that NCC Service;

**Service Term** for an NCC Service means the period commencing on the Service Start Date for that NCC Service and ending on the date that the relevant Statement of Work or the Agreement expires or is terminated;

**Site** means each location specified in the relevant Statement of Work at, or to which, one or more NCC Services are to be supplied or performed;

**Statement of Work** means a document agreed in accordance with, and containing the information required in, clause 5;

**Subcontractor** means any person engaged by NCC to perform all or part of any obligations of NCC relating to the Agreement;

**Taxes** means all duties, taxes, imposts, deductions, charges and withholdings imposed with respect to any transaction contemplated under the Agreement, including:

- (a) value added, goods and services, sales, use, service, consumption or business taxes;
- (b) excise, customs duties and other like taxes, fees or surcharges (including regulatory fees and surcharges); and
- (c) any interest, penalties, charges, fees or other amounts payable on or in relation to the taxes referred to in paragraphs (a) and (b) above;

**Term** means the Initial Term and each Renewal Term; and

**Those Indemnified** has the meaning given to that term in clause 8.3(i).

## 2. Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, the Agreement, as amended from time to time in accordance with the Agreement;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Sydney, New South Wales, Australia time;
- (g) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns and substitutes;

- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- (j) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of the Agreement or any part of it.

## Schedule 2 | Privacy

### 1. Interpretation

In this Schedule:

- (a) the terms '**controller**', '**processor**', '**data exporter**', '**data importer**', '**data subject**', '**Personal Information breach**', '**processing**' and '**appropriate technical and organisational measures**' have the meanings given to those terms, or any equivalent terms, in the Privacy Laws;
- (b) **Adequacy Decision** means a determination by an Authority in accordance with Article 45 of the GDPR, including that a third country, territory, specific sector in a third country or an international organisation offers a level of protection in respect of Personal Information equivalent to the GDPR;
- (c) **Personal Information** has the meaning given to that term, or similar terms (for example, in respect of the GDPR, the term 'Personal Data') in the Privacy Laws;
- (d) **Personal Information Form** means the form set out at Annexure A to this Schedule 2 that sets out the subject matter and duration of the processing, the nature and purpose of the processing, the type of Personal Information and categories of data subject, as required by Article 28(3) of the GDPR;
- (e) **Privacy Law** means any Law (to the extent that either Party is subject to it), which affects privacy or any Personal Information (including the collection, storage, use or processing of that Personal Information) including:
  - (i) the GDPR;
  - (ii) the UK GDPR;
  - (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003;
  - (iv) any ancillary legislation, codes of conduct, recommendations or directives made pursuant to the Laws contemplated at paragraphs (i) to (iii) above; and
  - (v) any other Law giving right to an actionable right of privacy;
- (f) **Regulator** means any entity or body having regulatory or supervisory authority over any part of the business or affairs of any member of the Client Group or the NCC Group (as the case may be), including, but not limited to, an independent public authority which is established by a member state of the European Union pursuant to Article 51 of the GDPR, or any similar regulatory authority responsible for the enforcement of Privacy Laws, including the UK Information Commissioner's Office and the European Data Protection Board;
- (g) **Relevant Transfer** has the meaning given to that term in clause 3.1(a)(i);
- (h) **Restricted Transfer** means the transfer of Personal Information from:
  - (i) the Client to NCC; or
  - (ii) NCC (as processor) to a Subprocessor,
 as applicable and in each case, where such transfer would be prohibited by the Privacy Laws in the absence of the Standard Contractual Clauses or any other mechanism permitted under the applicable Laws;
- (i) **Standard Contractual Clauses** means, in respect of the:
  - (i) European Union, the 'Standard Contractual Clauses' set out in the *Commission Implementing Decision (EU) 2021/914* of 4 June 2021 on standard contractual clauses for the transfer of Personal Information to third countries pursuant to the GDPR, found at [https://eur-lex.europa.eu/eli/dec\\_impl/2021/914/oj?uri=CELEX%3A32021D0914&locale=en](https://eur-lex.europa.eu/eli/dec_impl/2021/914/oj?uri=CELEX%3A32021D0914&locale=en), as amended or replaced from time to time by a competent Authority under the relevant Privacy Laws (**EU SCCs**); or
  - (ii) United Kingdom, the:
    - (A) EU SCCs, as amended by the International Data Transfer Addendum to the EU SCCs issued by the UK Information Commissioner; or
    - (B) the UK IDTA,
 each found at <https://ico.org.uk/media/for-organisations/documents/4019538/international-data-transfer-agreement.pdf>, as amended or replaced from time to time, pursuant to Article 46 of the UK GDPR (in each case, the **UK SCCs**);
- (j) **Subprocessor** has the meaning given to that term in clause 3.2;

- (k) **UK GDPR** means the GDPR, as transposed into the national law of the United Kingdom through the operation of section 3 of the *European Union (Withdrawal) Act 2018* (UK) and as amended by the *Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019* (UK);
- (l) **UK IDTA** means the International Data Transfer Agreement issued by the UK Information Commissioner, as amended or replaced from time to time, pursuant to Article 46 of the UK GDPR; and
- (m) the Parties acknowledge and agree that the type of NCC Services delivered will determine who is the controller and who is the processor for the purposes of the relevant Statement of Work.

### 2. Application

The Parties acknowledge and agree that, where:

- (a) the Client is the controller and NCC is the processor of Personal Information in connection with a particular Statement of Work; or
  - (b) both Parties are the controller of Personal Information in connection with a particular Statement of Work,
- then clauses 4 and 4 below will apply in respect of any transfers of Personal Information effected in connection with the relevant Statement of Work.

### 3. Client as controller and NCC as processor

#### 3.1 NCC obligations

Where the Client is a controller and NCC is a processor of any Personal Information disclosed by the Client to NCC for the purposes of the Agreement then NCC will:

- (a) unless such processing is otherwise required or permitted by Law (in which case, NCC will Notify the Client of such legal requirement or permission (as the case may be) before such processing occurs, unless such Notice is prohibited by Law), process that Personal Information only in accordance with documented instructions from the Client, including with regard to transfers of Personal Information to a third country or to an international organisation, provided that, the Client acknowledges and agrees that, subject to paragraph (b) below:
  - (i) in order to deliver the NCC Services effectively and/or perform its obligations under the Agreement, NCC may, from time to time, need to transfer Personal Information into a third country or to an international organisation (in each case, a **Relevant Transfer**); and
  - (ii) its entry into the Agreement constitutes the Client's standing instruction and consent in relation to any such Relevant Transfer;
- (b) only undertake a Relevant Transfer if:
  - (i) an Adequacy Decision has been made in respect of the relevant country; or
  - (ii) NCC has entered into an agreement with the recipient of the Relevant Transfer, which ensures a level of protection for Personal Information which is equivalent to the UK GDPR;
- (c) put in place appropriate technical and organisational measures in such a manner that any processing undertaken by NCC in connection with the Agreement will comply with the Privacy Laws, including to ensure that the Personal Information is protected against accidental or unlawful loss, destruction, damage, unauthorised access, use, modification, disclosure or other misuse;
- (d) ensure that persons authorised to process the Personal Information received from the Client have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (e) provide reasonable assistance to the Client, at no additional cost, to comply with its obligations set out in the Privacy Laws, where the Privacy Laws require NCC (as the processor) to do so, taking into account the nature of processing and the information available to the NCC, including by providing reasonable assistance to the Client in relation to its obligations regarding:
  - (i) keeping Personal Information secure;
  - (ii) notifying Data Incidents to the relevant Authority;
  - (iii) notifying Data Incidents to relevant data subjects;
  - (iv) carrying out data protection impact assessments when reasonably required;

- (v) consulting the relevant Authority where a data protection impact assessment indicates there is a high risk that cannot be mitigated; and
- (vi) taking appropriate technical and organisational measures to assist the Client to respond to requests from individuals to exercise their rights under the Privacy Laws,

provided that the Client acknowledges and agrees that NCC will not be required to assist with the Client's own security, technology and related processes, in respect of which NCC Group has no insight, other than as required by the Privacy Laws;

- (f) provide the Client with all information needed to show that the obligations of Article 28 of the GDPR have been met; and
- (g) permit and contribute to the Client (or its nominee auditor) conducting audits and inspections as required by the Privacy Laws (including in respect of the scope of such audits):
  - (i) not more frequently than once a year, except as otherwise permitted by the Privacy Laws;
  - (ii) on the provision of not less than ten Business Days' Notice to NCC; and
  - (iii) during Business Hours only,

provided that the Client acknowledges and agrees that NCC will not be required to provide any assistance, or disclose any information to the Client (or its auditors) in connection with such an audit, if doing so may (in the opinion of NCC) cause the NCC Group to breach any obligation of confidentiality or privacy owed to any person, or compromise the functionality, availability, quality or security of the NCC Services or NCC's systems.

### 3.2 Subprocessors

Where the Client is a controller and NCC is a processor of any Personal Information disclosed by the Client to NCC for the purposes of the Agreement:

- (a) NCC must only allow that Personal Information to be processed by another person (**Subprocessor**) in accordance with this clause 3.2;
- (b) the Client acknowledges and agrees that its entry into the Agreement constitutes the Client's general written authorisation to:
  - (i) NCC appointing its Related Bodies Corporate, any entities identified in a Service Module or Statement of Work and any of those entities listed at <https://www.nccgroup.com/uk/terms-and-conditions/sub-processors/> as Subprocessors for the purposes of the Agreement; and
  - (ii) those Subprocessors processing the Client's Personal Information in connection with the Agreement; and
- (c) NCC will:
  - (i) ensure such processing by any Subprocessor is governed by an agreement with that Subprocessor, containing obligations no less onerous than those set out in this Schedule 2, including sufficient guarantees that the Subprocessor will implement appropriate technical and organisational measures in a manner compliant with the Privacy Laws;
  - (ii) Notify the Client of any intended changes to the subprocessing to be undertaken, and provide the Client with a chance to object to such change(s);
  - (iii) insofar as that contract involves a Restricted Transfer, ensure that the Standard Contractual Clauses are at all relevant times incorporated into the agreement between NCC and the Subprocessor;
  - (iv) remain liable to the Client for the performance of any Subprocessor's compliance with its data protection obligations; and
  - (v) Notify the Client of any intended changes concerning the addition or replacement of Subprocessors, thereby giving the Client the opportunity to object to such changes on reasonable grounds, which Notice the Parties expressly agree may be provided via any medium, including email, a public website or a web-based client portal.

### 3.3 Warranties

The Client warrants to NCC that, in order to disclose any Personal Information to NCC and to otherwise allow NCC to carry out its obligations under and incidental to the Agreement, the Client:

- (a) has all requisite authority and has obtained and will maintain (including by way of incorporating into all materials and processes through which Personal Information is captured) all necessary consents required, or otherwise has a valid lawful basis for such disclosure in accordance with the Privacy Laws, in respect of the

disclosure of Personal Information in connection with the Agreement;

- (b) will immediately notify NCC Group should any such consents be revoked, including where any data subjects exercise their right to object to the processing of their Personal Information by NCC or its Subprocessors;
- (c) has complied with, and will comply with, all of its obligations under the Privacy Laws; and
- (d) will not do, or omit to do, anything that would place NCC in breach of the Privacy Laws.

### 3.4 Personal Information Form

The:

- (a) Parties acknowledge and agree that:
  - (i) pursuant to Article 28(3) of UK GDPR, certain information in respect of the processing to be carried out by NCC in connection with the Agreement must be set out in the Agreement;
  - (ii) in order for the Parties to comply with the requirement contemplated at paragraph (a) above, the Parties must, in connection with the agreement of a relevant Statement of Work, complete and attach to that Statement of Work, the Personal Information Form; and
  - (iii) as between the Parties, nothing in a Personal Information Form will confer any right or impose any obligation on a Party; and
- (b) Client acknowledges and agrees that it must immediately Notify NCC of any changes relating to the processing of Personal Information by NCC in connection with the Agreement, by completing and returning to NCC a new copy of the Personal Information Form, which, upon acceptance by NCC, will be deemed to replace the existing Personal Information Form attached to the relevant Statement of Work.

### 3.5 Client breach

The Client acknowledges and agrees that if it:

- (a) does not complete the Personal Information Form in accordance with clause 3.4 above;
- (b) fails to comply with the requirements set out in clause 3.3(a) above; or
- (c) gives NCC the Notice contemplated at clause 3.3(b) above, then NCC may:
  - (d) proceed to deliver the NCC Services without processing any Personal Information on behalf of the Client, to the extent technically possible and commercially reasonable and in doing so, the Fees shall remain payable in full in accordance with the Agreement; or
  - (e) terminate the relevant Statement of Work or the Agreement, with Notice to the Client.

### 3.6 Retention of Personal Information

Unless otherwise required or permitted by Law (and only to the extent so required or permitted), NCC will, at the end of the relevant Service Term:

- (a) at the Client's choice, Delete or return the processed Personal Information to the Client; or
- (b) Delete existing copies of processed Client Personal Information.

## 4. Both parties a controller

### 4.1 Application

The Parties acknowledge and agree that in certain circumstances:

- (a) NCC may act as controller when processing Personal Information in connection with the Agreement, including where NCC:
  - (i) provides managed intelligence services as part of the NCC Services;
  - (ii) processes Personal Information in order to manage the relationship between the Parties and for associated purposes such as invoicing and sales/marketing; and
  - (iii) processes Personal Information contained within the Deliverables; and
- (b) the Client may act as controller when processing NCC Personal Information in connection with the Agreement, including where the Client:
  - (i) conducts a screening/vetting process where the Client has an agreed requirement for, and/or a legal basis to conduct, screening in addition to the screening NCC already conducts;

- (ii) processes Personal Information in order to manage the relationship between the Parties and for associated purposes such as invoicing and sales/marketing; and
- (iii) processes Personal Information contained within the Deliverables.

#### 4.2 Controller obligations

Each Party (in its role as a separate and independent (to the other Party) controller) must:

- (a) comply with the applicable Privacy Laws; and
- (b) without limiting the generality of paragraph (a) above, and to the extent reasonably requested by the other Party, assist the other Party in complying with the applicable requirements of the Privacy Laws, in particular, by (without limitation):
  - (i) taking into account the state of the art and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, ensure that it has in place appropriate technical and organisational measures (including relevant policies) to protect against unauthorised or unlawful processing of Personal Information and against accidental loss or destruction of, or damage to, Personal Information; and
  - (ii) provide reasonable assistance to the other Party in complying with the Privacy Laws.

## 5. Restricted Transfers

### 5.1 GDPR

The Parties acknowledge and agree that, with respect to Restricted Transfers subject to the GDPR:

- (a) the EU SCCs are hereby incorporated into this Agreement by reference;
- (b) the description of such Restricted Transfer (Annex 1 of the EU SCCs) is as set out in the Personal Information Form and/or the relevant Statement of Work (as the case may be); and
- (c) for the purposes of Modules 1 and 2 of the EU SCCs where NCC acts as a controller and/or processor (data importer):
  - (i) clause 7 of the EU SCCs and the optional language in clause 11(a) of the EU SCCs shall not apply;
  - (ii) for the purposes of clause 9 of the EU SCCs, the Parties select Option 2 (general authorization);
  - (iii) the Authority for the purposes of clause 13(a) of the EU SCCs shall be determined by the place of establishment of the data exporter;
  - (iv) the governing Law and choice of forum and jurisdiction shall be that of the Republic of Ireland and the technical

and organizational security measures set out in clauses 3.1(c), 3.1(e) and 4.2 above shall apply;

- (v) the frequency of the Restricted Transfer shall be continuous (or as otherwise specified in the Personal Information Form and/or the relevant Statement of Work), as necessary to fulfil the obligations of the Agreement, and
- (vi) retention of Personal Information by NCC will be determined by the Client, except where NCC is required by Law to retain such Personal Information.

### 5.2 UK GDPR

The Parties acknowledge and agree that, with respect to Restricted Transfers subject to the UK GDPR:

- (a) the UK SCCs are hereby incorporated into this Agreement by reference;
- (b) the description of such Restricted Transfer is as set out in the Personal Information Form and/or the relevant Statement of Work (as the case may be); and
- (c) for the purposes of Annex B of the Controller UK SCCs and Appendix 1 of the Processor UK SCCs and/or any equivalent UK IDTA:
  - (i) where NCC acts as controller (data importer) under the Controller UK SCCs:
    - (A) at clause 2(h) of the Controller SCCs, the Parties select option (iii);
    - (B) the data subjects, categories of Personal Information and the purposes of the relevant Restricted Transfer are as specified in the Personal Information Form and/or the relevant Statement of Work;
    - (C) the recipients are the recipients to whom it is necessary to disclose data to achieve the relevant purposes; and
    - (D) the contact points for data protection enquiries are the usual business contacts for each Party; and
  - (ii) where NCC acts as processor (data importer) under the Controller UK SCCs, Appendices 1 and 2 of the Processor SCCs shall be deemed to incorporate respectively, the:
    - (A) relevant data subjects;
    - (B) categories of Personal Information and processing operations set out in the Personal Information Form and/or the relevant Statement of Work; and
    - (C) organisational and technical measures described in clauses 3.1(c) and 3.1(e) above.