

1 Agreements for the supply of products and services

- 1.1 These Terms of Service (**Terms of Service**) apply to Ordered Products and Services supplied by Nexon Group companies (each, a **Company**), where these Terms of Service are expressly incorporated into contracts entered into by a Company with a customer of the Company (each, a **Customer**). Each such contract is referred to in these Terms of Service as an **Agreement**.
- 1.2 An Agreement is entered into by you and the Company each time you submit an Order to us. Each Agreement comprises of:
 - (a) these Terms of Service;
 - (b) the applicable Service Schedule/s; and
 - (c) the applicable Order(s) (including any addendums or annexures attached to an Order by the Company).
- 1.3 To the extent of any inconsistency between any of the documents listed in subclauses 1.2(a) to 1.2(c), the document listed first shall prevail, except where an Order expressly specifies otherwise.
- 1.4 Unless expressly specified otherwise in a Quotation or Proposal, a Quotation or Proposal for goods is only open for acceptance for a period of fourteen (14) days from the date thereof and a Quotation or Proposal for services is only open for acceptance for a period of thirty (30) days from the date thereof. We have no obligation to supply any products or services under an Agreement other than as expressly required by the applicable Order.
- 1.5 We may modify these Terms of Service and any Service Schedule at any time and from time to time. The modified versions will only apply to Agreements that we subsequently enter into with you. We will provide you with a copy of the modified versions or upload them to our website at www.nexon.com.au. It is your responsibility to ensure that you have read and understood them.

2 Term

- 2.1 Each Agreement will commence on the commencement date specified in the Order, or if the Order does not specify a commencement date, the Agreement will commence on the date we receive the Order.
- 2.2 If a contract term, initial term or minimum period is specified in an Order (each, a Minimum Period), upon expiry of the **Minimum Period**, the Agreement will:
 - (a) automatically extend for periods in accordance with the terms and conditions of the Order; or
 - (b) where the Order does not include terms and conditions governing extensions of the Agreement, the Agreement will automatically extend on a month to month basis (each such period, a **Renewal Period**), until and unless either party notifies the other party in writing that it wishes to terminate the Agreement at least thirty (30) days prior to the expiry of the Minimum Period or the then current Renewal Period (as applicable) (time being of the essence), in which case if such notice is provided, the Agreement will terminate at the end of the Minimum Period or the then current Renewal Period (as applicable).
- 2.3 If there is no Minimum Period, the Agreement will continue from the Commencement Date until the Ordered Products and Services have been delivered and thereafter until either party terminates the Agreement on thirty (30) days' prior written notice to the other party.

3 Supply of Ordered Products and Services

- 3.1 We will supply, and/or procure the supply of, each product and/or service specified in an Order (respectively, each an **Ordered Product** or **Ordered Service** and collectively, **Ordered Products and Services**) to you, materially in accordance with any Specifications.
- 3.2 You must provide all necessary:
 - (a) cooperation, permissions, authorisations, assistance and consents (including all relevant End User and other consents and authorisations); and
 - (b) access to such information (including account logins), Your Equipment, Personnel, End Users, servers, networks, data, content, facilities, documentation, records, resources, records, equipment and premises,

as reasonably required by us to supply and/or procure the supply of Ordered Products and Services to you. Where required by us, you must also arrange safe and timely access to Your Premises for our Personnel and Third Party Providers to provision, install, supply, deliver, support and maintain applicable Ordered Products and Services. Support and maintenance are not within the scope of an Agreement unless the applicable Order clearly states that they will be provided.

3.3 Except to the extent that we are unable to exclude such liability under Applicable Law, we are not liable for any of the following matters (**Excluded Services**) except to the extent that an Order expressly provides for our provision of Excluded Services:

- (a) the content, security or communications that you receive, access or rely upon when using Ordered Products and Services;
- (b) ensuring that any data sent or received over any Ordered Products and Services is sent or received correctly;
- (c) loss of data or for delays, non-deliveries or mis-deliveries of data;
- (d) the installation of electrical wiring, removal of doors, widening of entrances or any other structural work of any description at Your Premises;
- (e) ensuring that Your Equipment is compatible or interoperable with Ordered Products and Services; and/or
- (f) all and any acts and omissions of your Personnel and End Users,

3.4 With respect to any proposed installation, provisioning, ready for service, commencement, supply or start dates specified in an Order:

- (a) time is not of the essence and such dates are estimates only;
- (b) where we are unable to install or provision, or arrange for the installation or supply, of any Ordered Products or commence supplying, or arrange for the supplying of, Ordered Services, by any agreed or estimated installation, provisioning, ready for service or commencement or start date specified in an Order for any reason, you are not required to pay any Fees for the relevant Ordered Products and Services until one of the following occur:
 - (i) the Ordered Products are installed or provisioned; or
 - (ii) we (or a Third Party Provider) confirm that the Ordered Services are available to you; and
- (c) in respect of any delays in the installation or supply of any Ordered Products or the installation or provisioning of any Ordered Services:
 - (i) we may terminate the part of the relevant Agreement that applies to the delayed Ordered Products or Ordered Services, by written notice to you, without liability, prior to the relevant installation, supply or provisioning being completed, except where the delay is caused by a matter within our control or a Third Party Provider; and
 - (ii) you may terminate the part of the relevant Agreement that applies to the delayed Ordered Products or Ordered Services prior to the relevant installation, supply or provisioning being completed, by written notice to us, and obtain a refund from us in respect of any Fees paid for such Ordered Products and Services, except where the delay is caused by a matter within your control,

but only if the Ordered Products are not installed or supplied, or if we do not provision the Ordered Services (as applicable) within sixty (60) days after the agreed or estimated installation, supply or provisioning date (as applicable) specified in the relevant Order (as may be extended by mutual agreement) for any reason.

3.5 Unless stated otherwise in a Service Schedule or Order, except where contrary to applicable law, the express provisions of clause 3.4(c) are the sole rights and remedies available to you and us in respect of any delays in the installation or supply of any Ordered Products or the installation, supply or provisioning of any Ordered Services.

4 Performance and availability of Ordered Products and Services

4.1 We warrant that Ordered Products and Services will perform materially in accordance with the Specifications.

4.2 We do not warrant that Ordered Products and Services will be:

- (a) uninterrupted or error-free, free from fault or external intrusion; or
- (b) suitable for or will meet your requirements,

unless such warranties are expressly set out in an Order or Service Schedule or cannot be excluded from the relevant Agreement under Applicable Law.

4.3 If there are Service Levels specified in an Order or Service Schedule, we will use our best endeavours to ensure that the applicable Ordered Services comply with those Service Levels.

4.4 We may vary Ordered Services at any time or from time to time, provided that the variation does not have any adverse effect on the Ordered Services. We will not otherwise vary Ordered Services without your consent.

5 Your Equipment and Our Equipment

- 5.1 An Agreement does not transfer or assign title to Your Equipment to us.
- 5.2 An Agreement does not transfer or assign title to Our Equipment to you, unless an Order expressly provides otherwise.
- 5.3 You must not, except as authorised in writing by us, grant or permit the grant or existence of any Security Interest in Our Equipment.
- 5.4 You must promptly notify us if any of Your Equipment in our possession or control becomes subject to any Security Interest or Purchase Money Security Interest (as defined under the PPSA). You must indemnify us from and against all and any loss and damage incurred by us caused by any such Security Interest, the repossession of Your Equipment and any other action taken by any person in respect of Your Equipment that is a secured party.

6 Your Data

- 6.1 Data in any form entered into, uploaded into or generated from Ordered Products and Services (**Your Data**) is, as between you and us, owned by you and an Agreement does not transfer any IPR in Your Data to us.
- 6.2 We will comply with all applicable data protection and privacy laws in respect of Your Data and not use Your Data other than to:
 - (a) perform our obligations under a relevant Agreement; and
 - (b) comply with our legal obligations.
- 6.3 You must ensure that:
 - (a) your End Users are fully entitled (and where applicable, licensed) to disclose to us all of Your Data that is entered into Your Equipment and Ordered Products and Services;
 - (b) all Personal Information in Your Data is accurate, up-to-date and complete;
 - (c) the collection, use, disclosure and processing of Your Data by us, our Personnel and Third Party Providers for the purposes of an Agreement does not, and will not, breach any Applicable Law or any person's rights; and
 - (d) you will handle all notifiable data breach obligations under Applicable Law in respect of Your Data, including in respect of any End User's Personal Information that is jointly held by you and us.
- 6.4 Your Data may be hosted on infrastructure owned by us or our Third Party Providers on hardware or infrastructure located in or outside Australia, except to the extent specified otherwise in an Order. You consent to our disclosure of Your Data to our Personnel, including those located outside of Australia (**Offshore Personnel**), for the purposes of supplying Ordered Services to you, provided that we will only disclose Your Data to Offshore Personnel where an Order expressly specifies that Offshore Personnel will be involved in the supply of Ordered Services. In any event, we will only provide Offshore Personnel with access to Your Data to the extent necessary to supply the Ordered Services and where any of our Offshore Personnel are unable or unavailable to perform Ordered Services, we may engage any of our other Personnel to perform the Ordered Services.
- 6.5 Data loss and corruption is unpredictable and can occur from time to time. Except to the extent that we expressly agree in an Order to backup any of Your Data or have obligations in respect of Your Data pursuant to Data Protection Laws, you are solely responsible for Your Data, including in respect of data loss or corruption.

7 Intellectual Property Rights

- 7.1 As between you and us, we own all IPR in:
 - (a) all of our Background IP in any Ordered Services (including any software, Source Code, Object Code, databases, database structures and Documentation that are incorporated into or supplied in connection with the Ordered Services);
 - (b) all Ordered Products and Ordered Services;
 - (c) all techniques, processes and methods we develop and/or have developed to deliver Ordered Services;
 - (d) all Developed IP; and

- (e) all Output (except to the extent that it comprises Your Data) made available in or via Ordered Products and Services, (collectively, **Our IPR**).
- 7.2 As between you and us, you own all IPR in:
 - (a) your Background IP; and
 - (b) Your Data,
 (collectively, **Your IPR**).
- 7.3 Nothing in an Agreement results in the assignment or transfer of:
 - (a) Our IPR to you; or
 - (b) Your IPR to us.
- 7.4 You hereby grant to us a non-exclusive, royalty-free, non-transferable, worldwide, non-assignable licence to use Your IPR as necessary during the Term:
 - (a) to perform our obligations under the relevant Agreement; and
 - (b) to comply with our legal obligations.
- 7.5 If you provide us with written confirmation that you approve our use of your name and logo to market our business, the licence granted by you in clause 7.4 includes a grant of rights to us to display your name and logo and indicate by text, pictures or otherwise that you or your related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)) are our customer(s), on our website or in any marketing material or in any social media and other forms of advertising.
- 7.6 Subject to clause 7.7, we hereby grant to you a non-exclusive, non-transferable, non-assignable licence to use Our IPR that we supply to you under an Agreement, for the Term, but only in the form that we provide it to you and only as necessary for you to receive the benefit of the Ordered Products and Services supplied by us under the relevant Agreement.
- 7.7 Clause 7.6 does not apply in respect of any software to be provided by us under an Agreement (whether as an Ordered Product or an Ordered Service) (**Ordered Software**). We hereby grant to you a non-exclusive, non-transferrable, royalty-free, worldwide licence (which for the avoidance of doubt, is sub-licensable only to the persons expressly authorised to use the Ordered Software pursuant to the relevant Order (**Authorised Service Recipients**)) to access and operate the Ordered Software for the Term in accordance with the Agreement. You must not, and must procure that each Authorised Service Recipient and that each of your related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)) do not, copy, sell, lease, alter, modify, adapt, translate, decompile, disassemble or reverse engineer Ordered Software or attempt to do any such thing.
- 7.8 Each party must not represent that it owns any of the other party's IPR.
- 7.9 Each party must not directly or indirectly do anything that would or might invalidate, jeopardise, limit, interfere with or put in dispute, the other party's IPR and must not do or authorise the commission of any act that would or might invalidate or be inconsistent with the other party's (or its licensors') ownership of its IPR.
- 7.10 You hereby assign to us all IPR in all suggestions or requests for new features, that you and/or your employees may disclose to us (each, **an Improvement Suggestion**). Each Improvement Suggestion becomes our sole and exclusive property. This assignment is effective when you or your employees disclose the Improvement Suggestion to us including under section 197 of the *Copyright Act 1968* (Cth) and in equity. You must procure from your employees an irrevocable and freely given written consent from each of them to the infringement of any Moral Rights that they may have in any such Improvement Suggestions by us and by any third parties who we authorise.
- 7.11 Any licence granted by you to us, or by us to you, under an Agreement is irrevocable during the Term.

8 Confidentiality

- 8.1 Each party may receive information from the other party (**disclosing party**) during the Term that is marked as confidential or is deemed confidential by Applicable Law (**Confidential Information**).

- 8.2 The party who receives Confidential Information from the disclosing party (**receiving party**) may not, at any time without the disclosing party's prior written consent, use and/or disclose any Confidential Information, other than to exercise its rights and perform its obligations under an Agreement or to comply with Applicable Law.
- 8.3 Where we are required to do so under any contract with any supplier, we may disclose your Confidential Information to the supplier, where the supplier provides us with services that we use to provide any Ordered Services.
- 8.4 Confidential Information excludes information:
 - (a) that is independently developed, obtained or known by the receiving party, without breaching any obligation of confidence to the disclosing party;
 - (b) that the receiving party can prove was already known to it at the time it received the information from the disclosing party;
 - (c) that is in the public domain, except where due to a breach of an Agreement or any breach of any obligation of confidence or Applicable Law; or
 - (d) that the receiving party must disclose under the rules of any stock exchange on which it or its holding company is listed.

9 Acceptable Use

- 9.1 You must ensure that any person who accesses and/or uses any Ordered Services (each, an **End User**):
 - (a) complies with all applicable Documentation, Applicable Law, our directions and policies (including any security policy) in the course of such access and/or use;
 - (b) does not infringe or permit any person to infringe any of our, or our licensors', IPR;
 - (c) provides us with access to Your Data, Personnel, Your Equipment and/or any cooperation or assistance as necessary for us to carry out our duties under any relevant Agreement;
 - (d) does not provide their passwords or other access credentials to any other person;
 - (e) immediately notifies us of any unauthorised or suspected unauthorised use or disclosure of any access credentials for Ordered Services; and
 - (f) uses reasonable and appropriate security measures and precautions when using any Ordered Services.
- 9.2 You must:
 - (a) except in respect of internet connections provided or provisioned by us to or for you, ensure that you maintain a reliable internet connection for us to connect to Your Equipment, Personnel, End Users, servers, networks, data, content, facilities, documentation, records, resources, records, equipment and premises, where required by us to provide any Ordered Services;
 - (b) ensure that your premises are suitable and maintained in a manner suitable for the use of any Ordered Products and Services;
 - (c) maintain all building cabling (existing and new) at Your Premises in accordance with all Australian industry standards and guidelines necessary for any Ordered Products and Services to operate; and
 - (d) not do anything that interferes with or prevents the proper functioning of any Ordered Services.
- 9.3 The availability of any Ordered Services will be subject to any bandwidth limitations, internet and network downtime and congestion, database size limitations, throughput limitations and other technical and non-technical limitations or restrictions as set out in the Specifications and/or Documentation.
- 9.4 Unless otherwise expressly specified in an Agreement, you must not, and must not permit any person to, use any Ordered Services:
 - (a) to copy, alter, modify, tamper with, create derivative works from, reproduce, resell, transfer to a third party, reverse assemble, reverse engineer, reverse compile or enhance any Ordered Services or any trade marks, any patent or copyright notices, or any confidentiality legend, notice or other means of identification, used on or in relation to any Ordered Services;
 - (b) in any manner that breaches Applicable Law or violates all or any legal rights of any person in any jurisdiction (including any person's privacy, such as by way of identity theft or "phishing");
 - (c) to license, sublicense, resell, assign, novate, transfer, distribute, or provide others with access to, any Ordered Services;
 - (d) to store, transmit, distribute or introduce malicious programs into our systems, network or servers (e.g., viruses, worms, trojan horses, e-mail bombs);
 - (e) to make fraudulent or misleading offers of goods or services;

- (f) to carry out security breaches or disruptions of network communication (security breaches include accessing data of which you are not an intended recipient, logging into a server or account that you are not expressly authorised to access, corrupting any data, network sniffing, pinged floods, packet spoofing, denial of service and forged routing information for malicious purposes);
- (g) to execute any form of network monitoring which will intercept data not intended for you; or
- (h) to circumvent user authentication or security of any of our hosts, networks or accounts or those of our customers or Third Party Providers, (collectively, **our Acceptable Use Policy**).

10 Fees

- 10.1 You must pay the Fees to us in accordance with the Payment Terms and any applicable Service Schedule or Order.
- 10.2 Except as expressly specified otherwise in the Payment Terms, all invoices issued by us must be paid within thirty (30) days from the date of the invoice.
- 10.3 The Fees are exclusive of all taxes such as GST and you agree to pay all such taxes to us, in respect of any supply (as that term is defined in the GST Law) made for the purposes of the relevant Agreement. You must pay all such taxes at the same time as the Fees in accordance with the Payment Terms.
- 10.4 Without limiting any other rights or remedies available to us or you, we may suspend our obligations under an Agreement and your access to Ordered Services if you fail to pay the Fees in accordance with the Payment Terms.
- 10.5 If you fail to make any payment due to us under an Agreement in accordance with the Payment Terms then, without limiting our rights and remedies, you shall pay interest on the overdue amount at the Cash Rate Target that has then most recently been stipulated by the Reserve Bank of Australia as at the date of our tax invoice for the applicable Fees, plus 6%. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment, and you shall pay the interest together with the overdue amount upon demand by us. You must indemnify us from and against all and any legal costs and disbursements (on a full indemnity basis) that we incur in connection with the proceedings set out in this clause 10.5.
- 10.6 We may increase the Fees payable under each Agreement no more than once per annum during the Term by prior written notice to you to reflect any percentage increase in the Consumer Price Index (All groups weighted average of 8 capital cities) for the preceding 12 months or by 5%, whichever is greater. In addition, notwithstanding any other provision of an Agreement, in the event the Order includes Third Party Provider products or services for which we are a reseller and the Third Party Provider varies any charges for such products or services during the Term of the Agreement (**Subscription Charge Variation**), we may increase the Fees payable by you under the Agreement (**Increased Charges**). Any Subscription Charge Variation as notified by us must be paid by you in addition to any other fees and/or charges as set out in the Order whether on a time and material basis, a fixed price basis or a combination of both. In the absence of manifest error, a claim by us for Increased Charges is sufficient evidence of the amount to which we are entitled.
- 10.7 All amounts due under an Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by Applicable Law).

11 Liability

- 11.1 Ordered Products and Services and any Output does not constitute financial, legal or other advice. You must obtain all appropriate professional, financial, legal and other advice as applicable before relying on any Output. You must not represent (either expressly or impliedly) that any Output is our advice.
- 11.2 A party is not liable for any failure to perform an Agreement caused by the other party or its Personnel.
- 11.3 Except to the extent such loss cannot be excluded from an Agreement under non-excludable Applicable Law, neither party is liable to the other party for any loss of profits, loss of business opportunity, loss of revenue (other than caused by your failure to pay the Fees or ETFs under clause 14.6) or loss of savings, or for any other consequential or indirect loss or damage, whether arising in contract, tort (including negligence) or otherwise, and whether the loss or damage is foreseeable or not.
- 11.4 Except to the extent such loss cannot be excluded from an Agreement under non-excludable Applicable Law or specified otherwise in an Order, a party (in this clause 11.4, the **first party**)'s aggregate liability whether in contract, tort (including negligence), breach of statutory duty or otherwise for all loss and damage that the other party may incur due to one or more breaches by the first party, that is not otherwise excluded by the terms and conditions of the Agreement, is, except as otherwise specified in the applicable Order, capped at an amount equivalent to the lower of:

- (a) \$1,000,000; or
- (b) the quantum of the Fees paid or payable under the Agreement during the twelve-month period prior to the last breach.

11.5 Where liability for breach of any guarantees under the ACL or similar state or territory law can be limited, our liability arising from any breach of those guarantees (if any) is limited, at our option:

- (a) with respect to the supply of goods, to the replacement or repair of the goods or the cost of resupply or replacement of the goods; and/or
- (b) with respect to services, to the supply of the services again or the cost of re-supplying the services again.

11.6 Other than any non-excludable guarantees (if any) implied into an Agreement under the ACL or similar state or territory law, all conditions, warranties and guarantees that would be implied in any Agreement are hereby excluded from the Agreement

12 Force Majeure Event

12.1 A party is not liable for any failure to perform its obligations under an Agreement if such failure was caused by a Force Majeure Event. If a Force Majeure Event that prevents a party from performing any of its obligations under an Agreement continues for forty-five (45) consecutive days, either party may terminate the Agreement by prior written notice to the other party while the Force Majeure Event continues.

13 Insurance

13.1 We will, at our own cost and expense, obtain and maintain during the term of each Agreement and for three (3) years thereafter, the following insurances for all and any claims arising in connection with the performance of the Agreement:

- (a) workers compensation insurance covering liability for our employees;
- (b) public liability insurance in the sum of twenty million dollars (\$20,000,000) in respect of each claim;
- (c) products liability insurance in the sum of twenty million dollars (\$20,000,000) in respect of each claim and in the aggregate;
- (d) professional indemnity insurance in the sum of twenty million dollars (\$20,000,000) in respect of each claim; and
- (e) cyber liability and privacy protection insurance in the amount of at least five million dollars (\$5,000,000).

14 Termination

14.1 A party may terminate an Agreement by written notice to the other party if the other party (the **defaulting party**) commits a breach of the Agreement:

- (a) that is not remediable; or
- (b) that is remediable and the defaulting party fails to remedy the breach within fourteen (14) days of receiving written notice from the other party requiring the defaulting party to remedy the breach.

14.2 A party (in this clause 14.2, the **first party**) may terminate an Agreement if:

- (a) the other party undergoes a Change of Control without the first party's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) other than in connection with a merger, acquisition or sale of the other party's business or assets to a solvent third party;
- (b) the other party breaches, challenges or disputes the validity of any of the first party's IPR; or
- (c) the other party purports to assign any of its rights or novate any of its obligations under an Agreement without the first party's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

14.3 We may terminate an Agreement if a Third Party Provider ceases to provide hardware, software, products or services that we require to comply with our obligations to supply the Ordered Products or Ordered Services to you under that Agreement.

14.4 Either party may terminate an Agreement by written notice to the other party if the other party suffers an Insolvency Event, except where such termination would contravene the *Corporations Act 2001* (Cth).

- 14.5 If an Agreement is terminated for any reason, each party shall, at the other party's option, promptly return or destroy all copies of the other party's Confidential Information in its possession or control to the other party.
- 14.6 If an Agreement is terminated prior to the expiry of the Minimum Period or any then current Renewal Period (other than due to our breach, where you terminate the Agreement under clauses 3.4(c) or 14.4 or where the Agreement is terminated by either party under clause 12), you will pay any early termination fees specified in the Order, any applicable Service Schedules or as a default, as specified in this clause 14.6 (collectively, the **ETFs**). If ETFs are not otherwise specified, the ETFs will be calculated in accordance the formula specified in this clause:
- ETFs = sum of all recurring Fees in the month of termination x the number of months remaining in the relevant Term (i.e. Minimum Period or Renewal Period, whichever is applicable)
- By entering into an Agreement, you acknowledge that the ETFs are a reasonable estimate of the loss that we will suffer due to an early termination of the Agreement. If ETFs are payable, we will issue a tax invoice to you in respect of the ETFs and you will pay that invoice within thirty (30) days.
- 14.7 Upon termination of an Agreement, we will have no further obligation to supply Ordered Products and/or Ordered Services under the Agreement and any rights or obligations that, by their nature, survive termination shall so survive, including any provision dealing with confidentiality, IPR, liability, dispute resolution and jurisdiction.
- 14.8 Termination of an Agreement does not affect any accrued rights of either party.

15 Notices

- 15.1 All notices required or permitted to be made under an Agreement shall be in writing and shall be deemed delivered if:
- (a) delivered in person;
 - (b) sent by post to the recipient's postal addresses identified in the relevant Order; or
 - (c) sent by email to the recipient's email addresses identified in the relevant Order.
- 15.2 Notice given under subclause 15.1(a) shall be effective upon delivery.
- 15.3 Notice given under subclause 15.1(b) shall be effective six (6) Business Days after posting if posted domestically in Australia, or twenty (20) Business Days after posting to or from any other country.
- 15.4 Notice given under subclause 15.1(c) shall be effective on the day on which it is transmitted if the sender receives a read or delivery receipt confirming delivery or receipt of the email, unless a delivery failure email is received, or otherwise when a reply to the email is received.
- 15.5 Any party may change its address for notice hereunder by giving written notice to the other party in accordance with this clause 15.

16 Dispute Resolution

- 16.1 Before court or arbitration proceedings other than for urgent interlocutory or equitable relief may be commenced by either party to this Agreement against the other party, the following steps must be taken to attempt to resolve any dispute that arises out of or in connection with this Agreement (including any dispute as to the validity, breach or termination of this Agreement, or as to any claim in tort, in equity or pursuant to any statute):
- 16.2 Notice (the notice of dispute) must be given in writing by the party claiming that a dispute has arisen to the other party specifying the nature of the dispute.
- 16.3 Upon receipt of the notice of dispute, senior representatives of the parties must meet in person, by telephone, via video conference or by other agreed means and attempt to resolve the dispute.
- 16.4 If within ten (10) Business Days of receipt of the notice of dispute, the dispute is not resolved, then the parties shall refer the dispute to the Resolution Institute, (ACN 008 651 232); email: infoaus@resolution.institute; telephone: (61-2) 9251 3366) for facilitation of a mediation in accordance with Resolution Institute's Mediation Rules.
- 16.5 The parties must co-operate with Resolution Institute as facilitator.

- 16.6 If within ten (10) Business Days after referral of the dispute to Resolution Institute the parties have not agreed upon the mediator or other relevant particular, the mediator and any other relevant particular will be determined in accordance with Resolution Institute's Mediation Rules.
- 16.7 Nothing in this clause 16 shall prevent any party from seeking urgent interlocutory or equitable relief in connection with any Agreement.
- 16.8 Each party will bear its own costs in respect of complying with clauses 16.1 - 16.6.

17 Non-Solicitation

- 17.1 Neither party (in this clause 17.1, the **first party**) may, without the prior written consent of the other party, engage, employ, induce or cause a third party to induce any of the other party's employees engaged in the performance of an Agreement to enter into a contract for service or a contract of employment with the first party.
- 17.2 Clause 17.1 will only apply during the Term and for the period of six months from:
 - (a) the expiry of the Term; or
 - (b) the effective date of termination (if the Agreement is terminated prior to the expiry of the Term).
- 17.3 Employment or engagement of any employee of the other party by the first party following the employee's submission of a job application in response to a general advertisement placed on a jobs website or in a newspaper advertisement will not constitute a breach by the first party of clause 17.1.
- 17.4 The parties agree that the restrictions in this clause 17 are necessary to protect the legitimate interests of each party.

18 General

- 18.1 A party may not assign its rights or novate its obligations under an Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned or delayed).
- 18.2 If any provision of an Agreement is deemed invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain enforceable.
- 18.3 The relationship between you and us is non-exclusive and nothing in an Agreement will:
 - (a) prevent us from supplying any goods or services to any third party in our absolute discretion; or
 - (b) prevent you from engaging any third party to provide you with any goods or services in your absolute discretion,
 unless the relevant Order specifies otherwise.
- 18.4 We are an independent contractor and nothing contained in an Agreement creates any relationship of partnership, employment, joint venture or agency between you and us.
- 18.5 Each Agreement is the entire agreement between you and us about its subject matter and supersedes all other proposals, arrangements, representations or agreements between you and us about its subject matter. Without limiting the foregoing provisions of this clause 18.5, any terms of trade, purchase order terms or other terms and conditions that you issue to us (whether before or after the Agreement is entered into) are not binding and do not form part of the Agreement.
- 18.6 An Agreement may be amended only by a written document signed by you and us and a provision of or a right under an Agreement may not be waived or varied except in writing signed by you and us.
- 18.7 Each Agreement is governed by the laws in force in New South Wales. You and we submit to the exclusive jurisdiction of the courts located in New South Wales and the courts of appeal from them in relation to any proceedings and disputes concerning an Agreement.

19 Definitions and Interpretation

- 19.1 In these Terms of Service, words in bold font in parentheses have the meanings given to them therein. In addition, the following words have the following meanings:

ACL means schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Applicable Law means any legislation, rule of the general law, including common law and equity, judicial order or consent or requisition from, by or with any governmental agency, including Data Protection Laws, in any applicable jurisdiction.

Background IP means, in connection with a party, its (or its licensor's) IPR created prior to or independently of an Agreement.

Business Day means any day from Monday to Friday excluding public holidays in New South Wales.

Business Hours means 9:00am – 5:00pm on Business Days.

Change of Control means a change in the beneficial ownership of more than 50% of: (a) the issued share capital of a company; or (b) the legal power to direct or cause the direction of the general management of the company.

Commencement Date means the date from which the Agreement will commence in accordance with clause 2.1.

Data Protection Laws means all applicable data protection and privacy laws in any applicable jurisdiction, including the *Privacy Act 1988* (Cth).

Developed IP means all IPR developed by us in the course of us supplying Ordered Products and/or Services to you pursuant to an Agreement, including any adaptations, modifications or enhancements of or to our Background IP.

Documentation means any user manuals, notes, technical instructions and documentation provided by us in respect of the Ordered Products and Services.

End User has the meaning given to it in clause 9.1.

Fees or **Charges** means any fees and charges specified in an Order or Service Schedule.

Force Majeure Event means war, industrial action, government action, natural disaster, flood, labour disturbance, pandemic or other circumstances beyond a party's reasonable control.

GST and **GST Law** have the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)).

Insolvency Event means, in respect of a party: (a) the party ceases to carry on business, is unable to pay its debts as and when they fall due, or is deemed to be insolvent or bankrupt; (b) a receiver or a liquidator or provisional liquidator or an administrator is appointed to the party, or an application (including voluntary application filed by that party) is lodged or an order is made or a resolution is passed for the winding up (whether voluntary or compulsory) or reduction of capital of that party; (c) where the party is a partnership, the partnership is dissolved or an application is made for its dissolution; (d) the party suspends payment of its debts to the other party or a third party, or the party takes the benefit of any law for the relief of insolvent debtors; or (e) anything analogous or having a substantially similar effect to any of the events described in (a) through (d) above occurs under the law of any applicable jurisdiction.

IPR means all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under Article 2 of the Convention Establishing the World Intellectual Property Organisation, and all rights to enforce any of the foregoing rights.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Nexon Group means Nexon Asia Pacific Pty. Ltd. ABN 70 095 335 023 and its Related Bodies Corporate (as that term is defined in the *Corporations Act 2001* (Cth)).

Object Code means Source Code in compiled or binary form.

Order means a document entitled "*Order*", "*Proposal*", "*Quotation*", "*Statement of Work*" issued by us to you that you confirm to us you accept (either by signing it and returning it to us, or by otherwise indicating your acceptance of it including by paying any deposit or other amount specified in the document). Upon such confirmation, you will be deemed to have provided the Order to us.

Ordered Product has the meaning given in clause 3.1.

Ordered Service has the meaning given in clause 3.1.

Our Equipment means any equipment, systems, software, networks, servers, hardware, cabling, ports, switches or other ancillary equipment or tools owned or operated by us.

Output means any reports and other output generated by any Ordered Services.

Payment Terms means payment terms set out in an applicable Order.

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

Personnel means a party’s employees, agents, officers and subcontractors. We are not your Personnel and you are not our Personnel for the purposes of this definition.

PPSA means *Personal Property Securities Act 2009* (Cth) as amended from time to time and any regulations thereunder.

Provisioning in respect of any Ordered Service, means setup, installing and/or making the Ordered Service available for use by End Users and “**provision**” has a corresponding meaning.

Security Interest has the meaning given to it in the PPSA.

Service Schedule means a document with that title that we supply to you.

Source Code means human readable computer code.

Specifications means the technical, functional and non-functional specifications for Ordered Products and Services as set out in, referred to from, or attached by us to, an Order or Service Schedule.

Term means the term of an Agreement determined pursuant to clause 2.

Third Party Provider means any of our third party suppliers, vendors, subcontractors or providers who provide any goods or services that we rely on, supply or resupply as part of Ordered Products and Services.

We, our and **us**, means, in respect of any Agreement, the Nexon Group company that has entered into the relevant Agreement with you, as specified in the Order.

You and **your** means, in respect of any Agreement, a Customer that has entered into the relevant Agreement with us, as specified in the Order.

Your Equipment means any systems, software, networks, servers, equipment, hardware, cabling, ports, switches and/or other ancillary equipment or tools owned or operated by you or on your behalf, other than Our Equipment. For the avoidance of doubt, Our Equipment is not Your Equipment.

Your Premises means any premises owned, controlled or occupied by you specified in an Order.

19.2 Unless the context requires otherwise:

- (a) a reference to “a party” means you or us (as the context dictates) and a reference to “the parties” means you and us;
- (b) headings and underlinings are for convenience only and do not affect the construction of an Agreement;
- (c) a provision of an Agreement will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision, or because the party’s legal representative prepared the provision;
- (d) currency or “\$” refers to Australian dollars;
- (e) a reference to a statute or regulation includes amendments thereto;
- (f) a reference to time is to time in New South Wales;
- (g) a reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity;
- (h) the words “such as”, “including”, “particularly” and similar expressions are not words of limitation and shall be interpreted as if the words “but not limited to” immediately followed them in each case; and
- (i) a reference to the singular includes the plural and vice versa.