

Licensing Terms and Conditions

NTT grants the Licensee a right to use NTT's Intellectual Property, subject to these terms and conditions. Use of the Intellectual Property constitutes acceptance of the Agreement.

1 Definitions

1.1 In this document:

"Agreement" means the agreement between NTT and Licensee to use the Licensed IP as detailed in these terms and conditions and specified in the License Certificate which together constitute a license of use.

"Designated Equipment" means the equipment specified in the Licence Details.

"Documentation" means any systems guides and other printed materials referred to in the Licence Details which may include design, specifications, implementation or operations documentation which is provided to assist or supplement the understanding or application of the Licensed IP.

"Entitlement" means the constraint or extent of the permissible use of the license being granted and defined in clause 5;

"Force Majeure" means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under the Agreement. Such circumstances shall include but shall not be limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, revolution and strikes.

"Intellectual Property" means software, source code, technology, documentation, patents, copyright, registered and unregistered designs, know-how, trade secrets, other proprietary rights, and any right to apply for registration of any such rights.

"Intellectual Property Rights" means copyright, trade mark, design, patent, semiconductor, circuit layout rights and any other recognised rights protecting intellectual property;

"Licence Certificate" means the document of that name issued by NTT which sets out the relevant details of any license rights for the Licenced IP provided to the Licensee to which these terms apply.

"Licence Details" means the relevant section of the Licence Certificate.

"Licensed IP" means the intellectual property specified in the Licence Details;

"Licensee" means the entity specified as such on the Licence Certificate.

"Open Source Material" means any Intellectual Property included in the Licensed IP which is subject to open source licensing;

"Party" means either NTT or the Licensee as the context dictates;

"Territory" means the geographic region designated in the Licence Details in which the Licensed IP may be used; and

"Warranty Period" is the period stated in the Licence Details and if no period stated then there is no applicable warranty period.

2 Interpretation

2.1 In the Agreement, unless the contrary intention appears:

- (a) the clause headings are for ease of reference only and shall not be relevant to interpretation;
- (b) words in the singular number include the plural and vice versa;
- (c) words importing a gender include any other gender;
- (d) a reference to a person includes bodies corporate and unincorporated associations and partnerships; and

- (e) monetary references are references to Australian currency.

3 Period of Licence

- 3.1 Subject to payment of any charges, NTT grants the Licensee a non-exclusive, non-transferable license to use the Licensed IP for the period stated in the Entitlement.
- 3.2 If details need to be changed on the License Certificate, NTT will reissue it to the Licensee with updated Licence Details. Upon any reissue, the License Certificate and any rights granted by it which are being replaced, are automatically terminated.

4 Licence Conditions

- 4.1 The Licensed IP may only be used pursuant to the terms of the Agreement.
- 4.2 To the extent permissible under applicable law, the Licensee must not:
 - (a) decompile, disassemble, or reverse engineer the Licensed IP;
 - (b) alter, modify or create any derivative works based on the Licensed IP or Documentation; or
 - (c) use, copy, sell, sublicense, lease, rent, lend, assign, convey or otherwise transfer the Licensed IP or Documentation except as expressly authorised by the Agreement or without NTT's express written permission.
- 4.3 The Licensee must protect the Licensed IP from any unauthorised use and must not enable, activate, or cause, permit or allow others to permit or encourage any third party to engage in any of the actions listed in 4.2 above.
- 4.4 NTT may conduct an audit of the Licensee's premises, equipment, documentation, systems, information and any related information to ensure compliance with the Agreement.
- 4.5 If Designated Equipment is specified in the Licence Details, the Licensed IP must not be used on equipment other than that Designated Equipment provided that (at the sole risk of the Licensee) it may be used on alternative equipment if only:
 - (a) the Designated Equipment is temporarily inoperable due to malfunction, maintenance or change of installation site; or
 - (b) NTT has otherwise given its written consent to such alternate use.
- 4.6 NTT shall not be obliged to support the Licensed IP, whether by providing advice, training, error-correction, modifications, new versions or enhancements or otherwise.
- 4.7 There is no transfer of title or ownership to the Licensee of the Licensed IP, the Documentation, any modifications or new versions of the Licensed IP. The Licensee acknowledges that in the event of a suspected, alleged or actual breach of Intellectual Property Rights by the Licensee, NTT may upon notification revoke, terminate or modify any rights granted under the Agreement without any liability.
- 4.8 The Licensed IP is confidential and the Licensee must not disclose the Licensed IP or associated Documentation to a third party without NTT's written permission.
- 4.9 The Licensee is responsible for obtaining and maintaining any relevant or required third party software or licensing that are required for the Licensed IP to operate.
- 4.10 In addition to any other remedies available to NTT, any breach of this clause 4 will allow NTT to immediately terminate all rights granted to the Licensee and entitle NTT to seek equitable remedies against the Licensee.

5 Entitlements

- 5.1 This table lists and defines the Entitlements that may be specified in the Licence Details:

Entitlement	Type	Description
Quantity Qualifier	Enabled	The number of times the Licensed IP can be enabled, deployed, configured or provisioned so that it is in an operational state ready for use.
	Concurrent	The number of instances of the Licensed IP or configuration that may be simultaneously in use
Quantity Unit (with Quantity Qualifier above)	Seat	A physical workstation where the Licensed IP is used
	User	A person that uses the Licensed IP.
	Device	A device which uses the Licensed IP or on which it is installed or configured for use.
	Session	An active interaction with server-based Licensed IP.

	Server	Licensed IP runs as a service allowing clients to remotely connect.
	Tenant	An instance of the Licensed IP which is tailored for a defined group of users (tenant).
Quantity Unit (without Quantity Qualifier)	Application	A named application that may use the Licensed IP.
	Site	A named physical environment at which the licensed IP may be used.
	Enterprise	The named organisation who may use the Licensed IP.
Purpose	Production	The Licensed IP may be used for commercial benefit.
	Business Continuity	The Licensed IP may only be used to provide additional production capacity during normal operation.
	Lab	The Licensed IP can only be used in a test environment.
	Demonstration	The Licensed IP can be used only for presentation, sales or training purposes.
	Evaluation	The Licensed IP may be used only for the specified period of time to determine whether the Licensed IP is suitable for the Licensee's needs.
Period	Start/End	The defined period of time during which the Licensed IP may be used.
	Dependent	The License rights granted are only valid if the specified dependency in the Licence Details is met.
	Perpetual	The Licensed IP may be used without a time limit.
Dependency	None	There is no dependency.
	Specified	A specified condition in the Licence Details that must be met.

5.2 Where a specific Entitlement has multiple quantity conditions, all conditions must be met.

6 Copying

6.1 Subject to clause 6.2, the Licensee must not copy or reproduce the Licensed IP in excess of the Entitlement in the Licence Details without NTT's prior written consent.

6.2 The Licensee may make backups of the Licensed IP as occurs during normal commercial backup operations provided any such use does not exceed the Entitlement. The Licensee must acknowledge any such copies as the property of NTT. The terms of the Agreement, with the necessary modifications, apply to any copies.

6.3 The Licensee must ensure that any copy of the Licensed IP made pursuant to the Agreement bears notice of NTT's ownership of copyright and notice stipulating that the Licensed IP contains information confidential to NTT. The Licensee must comply with NTT's directions as to the form or content of such notices.

7 Modifications

7.1 The Licensee must not modify, alter, merge all or any part of the Licensed IP creating apparent or actual derivative works without NTT's written permission.

7.2 If the Licensed IP is modified or altered by NTT for the Licensee, or by the Licensee with NTT's permission pursuant to clause 7.1:

- (a) the costs associated with the modifications or alterations or the costs arising out of the investigation of the effects of proposed modifications or alterations will be borne solely by the Licensee; and
- (b) the Licensee will indemnify NTT against all loss or liability which may be incurred by NTT as a result of such modifications.

7.3 The Licensed IP and any modification or alteration remains NTT's property in all respects, whether modified by the Licensee, NTT or a third party and whether or not authorised pursuant to the Agreement. The Licensee hereby agrees that all legally recognised intellectual rights pass to NTT pursuant to this clause 7.3. Specifically, the Licensee must if requested, assign to NTT all Intellectual Property Rights arising out of any modifications to the Licensed IP and execute such documents and perform such other acts as are necessary in order to give effect to this clause 7.3.

7.4 If the Licensee provides suggestions for changes or improvements, or other feedback to NTT in relation to the Licensed IP, NTT may use them for any purpose without obligation of any kind, except that NTT will not disclose the source of the suggestions without the Licensee's consent.

8 Security

- 8.1 The Licensee is solely responsible for the use, supervision, management and legal compliance in relation to the use and control of the Licensed IP and Documentation.
- 8.2 The Licensee must keep accurate records of its use of, and compliance with the Agreement, and permit NTT or its nominated representative to inspect such records to verify the Licensee's compliance with the Agreement.

9 Warranty

- 9.1 For the duration of the Warranty Period, NTT warrants that the Licensed IP will operate in substantial conformity with the Documentation in all material respects.
- 9.2 If at any time during the Warranty Period the Licensee believes there is a defect in the Licensed IP such that the Licensed IP does not substantially comply with or cannot be used in accordance with the specifications, the Licensee must notify NTT.
- 9.3 NTT must investigate the perceived defect notified pursuant to clause 9.2 and upon the verification of the existence of the defect, must rectify such defect without additional charge to the Licensee.
- 9.4 If investigation of a defect reported pursuant to clause 9.2 reveals that no defect exists, the Licensee will be liable for all costs of the investigation and NTT may make an additional charge in respect of such investigation.
- 9.5 NTT is not liable under this clause 9 to the extent that a defect is caused by the Licensee or a third party, implementing the Licensed IP in an environment, failing to maintain the operating environment or otherwise using the Licensed IP not in accordance with the License Certificate, Documentation or with NTT's directions.
- 9.6 NTT is not liable for any failure of the Licensee to verify that the Licensed IP would be fit for any purpose or would comply with any relevant laws or regulations in the intended country of use.

10 Indemnity

- 10.1 Subject to clauses 10.2, 10.3 and 10.4, NTT must indemnify the Licensee against liability under any final judgment in proceedings brought by a third party against the Licensee which determine that the Licensee's use of the Licensed IP constitutes an infringement (in Australia) of any third party's Intellectual Property Rights in the Licensed IP.
- 10.2 NTT will not indemnify the Licensee as provided in clause 11.1 unless the Licensee:
- notifies NTT in writing as soon as practicable of any infringement, suspected infringement or alleged infringement;
 - gives NTT the option to conduct the defence of such a claim, including negotiations for settlement or compromise prior to the institution of legal proceedings;
 - provides NTT with reasonable assistance in conducting the defence of such a claim;
 - permits NTT to modify, alter or substitute the infringing part of the Licensed IP at its own expense in order to avoid continuing infringement, or authorises NTT to procure for the Licensee the authority to continue the use and possession of the infringing Licensed IP; and
 - stops using the Licensed IP after NTT notifies the Licensee to do so due to such a claim.
- 10.3 NTT will not indemnify the Licensee to the extent that an infringement, suspected infringement or alleged infringement arises from:
- use of the Licensed IP in combination by any means and in any form with products other than those set out in the Licence Details or as otherwise specifically approved by NTT;
 - use of the Licensed IP in a manner or for a purpose not reasonably contemplated or not authorised by NTT;
 - modification or alteration of the Licensed IP without the prior written consent of NTT; or
 - a failure of the Licensee to stop using the Licensed IP after NTT has provided notification to do so.
- 10.4 The Licensee must indemnify NTT against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party alleging such infringement if:
- the claim arises from any event specified in clause 10.3; or
 - NTT's ability of to defend the claim has been prejudiced by the failure of the Licensee to comply with any requirements of clause 10.2.

- 10.5 NTT will have no liability under this clause 10 if the Licensee fails to install or apply any new release or version provided free of charge by NTT or which would have removed the infringement and a claim is made after this time.
- 10.6 The Licensee must indemnify NTT for all damages, loss, expenses or costs, including attorneys' fees and costs of suit, incurred by NTT as a result of non-compliance with its obligations contained in the Agreement.

11 Liability

- 11.1 NTT is under no liability to the Licensee in respect of any loss of profit, data loss, indirect loss or damage or any consequential loss or damage which may be suffered or incurred or which may arise pursuant to the Agreement or NTT's failure or omission to comply with its obligations under the Agreement, whether claimed in contract, indemnity, negligence or other tort or under statute.
- 11.2 NTT's aggregate liability, whether arising from breach of contract, negligence or any other tort, in equity, indemnity or otherwise and whether or not NTT was advised of the possibility of such loss or damage, for claims in relation to the agreement is limited to an amount of \$1,000, provided that this limitation will not apply to a liability of NTT for death, personal injury or damage to tangible property.

12 Licensee's Warranty

- 12.1 Subject to clause 12.2, the Licensee warrants that it has not relied on any representation made by NTT which has not been stated expressly in the Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by NTT.
- 12.2 The Licensee acknowledges that to the extent NTT has made any representation which is not otherwise expressly stated in the Agreement, the Licensee has independently verified the accuracy of that representation.

13 Termination

- 13.1 The Agreement is effective until terminated. The Licensee's rights under the Agreement will terminate automatically or otherwise cease to be effective without notice from NTT if:
- (a) the Licensee fails to comply with any term(s) of the Agreement;
 - (b) the Licence Certificate is reissued by NTT pursuant to clause 3.2;
 - (c) the End Date passes; or
 - (d) any specified Dependency is no longer met or has expired.
- 13.2 Upon the termination of the Agreement, the Licensee must cease all use of the Licensed IP and destroy all copies, full or partial, of the Licensed IP. Clauses 7, 8, 9, 10, 11 and 14 of the Agreement shall survive any such termination.
- 13.3 Either party may terminate the Agreement immediately if the other party:
- (a) enters into any arrangement between itself and its or any class of its creditors;
 - (b) ceases to be able to, or fails to, pay its debts as they become due;
 - (c) ceases to carry on business;
 - (d) has a mortgagee enter into possession or disposes of the whole or any part of its assets or business;
 - (e) enters into liquidation (whether provisional or final, or voluntary or pursuant to a court order) or any form of insolvency administration; or
 - (f) has a receiver, a receiver and manager, a trustee in bankruptcy, an administrator, a liquidator, a provisional liquidator or other like person appointed to the whole or any part of its assets or business.

14 Governing Law

- 14.1 The Agreement will be governed by and construed according to the laws in force in the State of New South Wales and the parties submit to the non-exclusive jurisdiction of courts of New South Wales.

15 Notices

- 15.1 Notices under the Agreement shall be delivered by hand, by pre-paid mail, email or by facsimile to the addresses or numbers specified in this Licence Details.
- 15.2 Notice will be deemed given:
- (a) in the case of hand delivery, upon delivery;

- (b) in the case of posting, three days after dispatch;
- (c) in the case of email, upon receipt by the receiving mail server; and
- (d) in the case of facsimile, upon completion of complete and legible transmission.

16 Variation of the Agreement

16.1 The Agreement shall not be varied or amended except by writing signed by or on behalf of each Party.

17 Execution

17.1 The Agreement is deemed to be executed and accepted by the respective parties upon the use, or the payment of any fees for the use of the Licensed IP by the Licensee.

18 Entire Agreement

18.1 This Agreement constitutes the entire agreement between the parties on the subject matter and supersedes any previous understanding or agreement on that subject matter.