Standard Terms and Conditions of Supply
1. Application of these terms

1.1 Unless the quotation and the purchase order issued in respect of the quotation specify that they are subject to a separate contract signed by the parties, these terms and conditions apply to the quotation and any purchase order issued in respect of it.

2. Supply of goods, services and software

2.1 NTT Australia Pty Ltd (ACN 65 003 371 239) ("NTT") agrees to supply goods ("Products") and/or services ("Services") to the Client on these standard terms and conditions ("Terms").

3. Support and maintenance services

3.1 If the quotation includes hardware maintenance and support services to be performed by NTT, the supply of the services will be on NTT’s Uptime® terms and conditions which are available at the following URL: https://www.dimensiondata.com/-/media/dd/corporate/regions/australia/pdfs/uptimeterm.pdf?la=en under the heading "Support" or available upon request from NTT.

3.2 If the quotation is for support services to be supplied by a third party, the supply of those services will be on the third party’s terms and conditions which are as published by the third party or available upon request from NTT.

3.3 Acceptance of the quotation constitutes acceptance of those terms and conditions for any quoted hardware maintenance services, unless a written contract is signed by the parties.

4. Staff augmentation (labour hire) services

4.1 If the quotation includes a quotation for labour hire services, the supply of those services will be on NTT’s Staff Augmentation terms and conditions which are available at the following URL: https://www.dimensiondata.com/-/media/dd/corporate/regions/australia/pdfs/staff-augmentation.pdf?la=en

4.2 Acceptance of the quotation constitutes acceptance of those terms and conditions for any quoted staff augmentation services, unless a written contract is signed by the parties.

5. Purchase orders

5.1 Any amendments to purchase orders for Products or Services must be approved by NTT in writing to be effective. Only these Terms (and not other terms and conditions which may be attached to or incorporated in a purchase order) form part of the agreement between the parties. Acceptance of a purchase order by NTT will not be acceptance of any such terms or conditions.

6. Taxes and GST

6.1 Although the quoted price might exclude GST, the total amount payable to NTT includes taxes, duties and government charges imposed or levied in Australia in connection with the supply of the Products and Services. The Client is liable for any new or varied taxes, duties or charges imposed subsequent to NTT’s quotation or proposal or in respect of the supply of the Products and Services.

6.2 The client must pay any GST payable in connection with the supply and NTT will issue a valid tax invoice where GST is to be recovered.

7. Payment

7.1 Products will be invoiced on delivery to:
   (a) the nominated delivery address, unless 7.1(b) or 7.1(c) applies; or
   (b) NTT’s staging facilities where Services are to be performed on the Products; or
   (c) NTT’s storage warehouse where NTT is to store the Products in accordance with the Client’s instructions, before shipment to the Client’s designated delivery address.

7.2 Services will be invoiced at the end of each month and on completion or as otherwise prescribed in the documents describing the Services to be supplied.

7.3 Payment terms are strictly 30 days from the date of invoice. Any discount which NTT may have granted to Client is forfeited by Client if payment is not made to NTT by the due date. Payment of undisputed amounts must not be withheld pending the settlement of any claims or disputes.

8. Price adjustments

8.1 Prices quoted are valid for 30 days from the date of the quotation unless otherwise specified in the quotation. If Products or Services are purchased by NTT in a foreign currency (or if the price for them is subject to adjustment in accordance with exchange rate movements), NTT may adjust the price of those Products or Services after receipt of an order to take account of any change in the exchange rate (as quoted by the ANZ Bank) which occurs between the quotation date and the date of acceptance of the quotation.
9. Interest

9.1 Any amount not paid on the due date for payment will carry interest from that date until payment is made in full at the rate being 2 percentage points above the overdraft rate charged on overdraft accounts over $100,000 by the Commonwealth Bank of Australia from time to time.

10. Warranty

10.1 NTT makes no warranty in relation to the Products or Services other than as contained in these Terms or as prescribed by a law which cannot be excluded or in the case of Products, as provided by the Products’ respective manufacturers as made known to the Client in the documents supplied by NTT or the manufacturer or as otherwise published or made known to the Client.

10.2 Defects in Products will be rectified in accordance with the manufacturer’s warranty.

10.3 Defects in Services reported to NTT within 30 days of delivery of the Service will be rectified by NTT at no charge to the Client.

10.4 NTT will not provide claimed warranty services for defects or deficiencies in Products or Services which are caused by:

(a) external causes including natural disaster, fire, accident, neglect, misuse, vandalism, water, lightning, power surge or spike;
(b) the use of a Product for other than its intended purpose;
(c) the use with or connection of a Product to items not approved by NTT;
(d) the performance of maintenance or attempted repair by persons other than NTT or as authorised by NTT;
(e) changes made to the deliverables created by performance of the Services or to the operating environment;
(f) the relocation of Products by the Client; or
(g) configuration or reconfiguration by the Client of the Products or other equipment with which the Products interface.

11. Delivery

11.1 NTT will use its reasonable endeavours to deliver Products or Services to the Client by the date agreed but will not be liable for any delays in delivery caused by matters beyond its control. Freight charges incurred by NTT in delivering Products to the Client will be invoiced to the Client at cost unless quoted otherwise.

12. Acceptance

12.1 Unless the Client gives NTT written notice of any aspect of a deliverable which is alleged by the Client to be otherwise than in accordance with these Terms or any applicable specifications, within 7 days of the date of delivery of that deliverable, the Client is deemed to have accepted that deliverable on delivery. If the Client puts a deliverable to commercial use, it is deemed to have accepted that deliverable on the first day of such use, whether or not a notice of the kind contemplated by this clause is given to NTT as required.

13. Returns

13.1 Products can only be returned if the return is authorised by both the relevant third party supplier and NTT. The Products must be returned in the same condition as delivered by NTT and NTT reserves the right to charge the Client for any costs or losses incurred by NTT if Products which are not faulty are returned.

14. Risk

14.1 Risk of loss, theft, damage, deterioration or destruction of Products passes to the Client upon the earlier of:

(a) delivery to the Client;
(b) the taking of possession by the Client; and
(c) delivery to any carrier contracted to the Client for delivery to the Client.

15. Title

15.1 Until the Products have been paid for in full, they remain the property of NTT. If the Client fails to pay any moneys to NTT when due, NTT may immediately without notice or demand enter upon the Client’s premises and take possession of the Products. This right is without prejudice to any other rights that NTT may have. Title in software products does not pass to the Client.

16. Client’s authority and acknowledgements (Security Testing Services)

16.1 In this clause 16, “Security Testing Services” means controlled electronic probing of hardware and software in the form of either a vulnerability assessment or an ethical penetration test.

16.2 If NTT is supplying Security Testing Services, the Client authorises NTT to:

(a) provide the Security Testing Services;
(b) do all things necessary to provide the Security Testing Services and to discharge its obligations; and
access data or software on the relevant system, where required to properly perform the Security Testing Services.

16.3 The Client acknowledges that, in providing the Security Testing Services, NTT might:
(a) circumvent access controls or access protected data;
(b) inadvertently modify, alter, corrupt, erase or destroy data or software stored on or accessible through the system; or
(c) interfere with, disrupt, interrupt or obstruct the relevant system or the Client’s business or operations; and
(d) for the avoidance of any doubt, the Client authorises NTT to do all such acts consistent with the Statement of Work in relation to the provision of the Security Testing Services.

16.4 The Client acknowledges that the security of the relevant system is and will remain the responsibility of the Client.

16.5 The Client acknowledges that the information contained in any security-related report supplied by NTT is sensitive and confidential information and that it should be kept secure at all times.

16.6 If the consent, approval or authority of a person other than the Client is required in order for NTT to provide the Security Testing Services lawfully and without infringing the rights of any person, the Client warrants that it will obtain that consent, approval or authority before NTT commences to provide that part of the Security Services for which the consent, approval or authority is required.

17. Confidentiality

17.1 NTT and the Client agree that they will keep at all times as strictly confidential any confidential information that is disclosed or provided by one party to the other. In this clause, “confidential information” means information in any form but does not include personal information (as that term is defined under the Privacy Act 1988), information that is already in the public domain at the time that it is disclosed or information that becomes part of the public domain otherwise than as a result of an unauthorised disclosure by NTT or the Client. The obligations under this clause 17 will expire 5 years from the date of this agreement.

18. Privacy

18.1 NTT must:
(a) ensure that personal information (as that term is defined under the Privacy Act 1988 (Cth)) received from the Client ("Relevant Personal Information") is collected, used, stored, disclosed or handled by NTT in accordance with the Privacy Act and any other applicable law;
(b) promptly notify the Client of:
(i) any complaint about the privacy of Relevant Personal Information received by NTT;
(ii) any request for access to Relevant Personal Information received by NTT;
(iii) any actual or suspected unauthorised access or disclosure of Relevant Personal Information, or other breach, of the Privacy Act and include details of the Personal Information affected;
(c) comply with all reasonable directions of the Client in connection with any complaint or request referred to in clauses 18.1(b)(i) and 18.1(b)(ii) or any complaint or request received by the Client in connection with any Relevant Personal Information that is collected, used, stored, disclosed or handled by NTT or any unauthorised access or disclosure or breach referred to in clause 18.1(b)(iii);
(d) not, unless otherwise required by law, make any disclosure, or provide any third party access to, any Relevant Personal Information other than in the performance of this agreement or at the written direction of the Client;
(e) promptly take any steps that are necessary to contain and/or rectify any of the matters referred to in clause 18.1(b) and the consequences of such matters;
(f) not, unless otherwise required by law, notify any third party of any of the matters referred to in clause 18.1(b) without the Client’s written consent;
(g) ensure that any Relevant Personal Information it accesses, processes, stores, uses or discloses to third parties is only transferred or disclosed outside Australia in the performance of this agreement or at the written direction of the Client; and
(h) ensure that any subcontract entered into for the purpose of fulfilling its obligations under this agreement contains provisions to ensure that the subcontractor has the same awareness and obligations as NTT has under this clause 18.

18.2 The Client will comply with all reasonable directions of NTT in connection with any complaint or request referred to in clauses 18.1(b)(i) and 18.1(b)(ii), any complaint or request received by either party in connection with any Relevant Personal Information that is collected, used, stored, disclosed or handled by NTT, or any unauthorised access or disclosure or breach referred to in clause 18.1(b)(iii);
18.3 NTT will, upon demand by the Client, return to the Client (or if required by the Client, destroy) Relevant Personal Information that has been received by, or is in the possession of, NTT as at the date on which the demand is made.

18.4 Nothing in clause 18.2 obliges NTT to return or destroy any document or information incorporated into or annexed to anything which must be retained for compliance purposes, contained in systems, archives or backups which cannot be practicably deleted or information which must be retained as required by law, any accounting standard or the rules of any stock exchange or for sound corporate governance purposes.

19. Intellectual property

19.1 The Client acknowledges that, unless otherwise agreed in writing, all intellectual property rights attaching to the Products or arising out of the provision of Services are and will remain the property of NTT (or its supplier, where such rights are owned by that supplier). Software will be licensed to the Client on the terms of the relevant licence agreement provided with the Product or as otherwise agreed between NTT and the Client in writing. Any rights to be conferred on Client will only commence on payment of all charges payable in connection with those rights.

20. Termination

20.1 If the Client:
   (a) makes default in any payment or breaches any of these Terms;
   (b) becomes unable to pay its debts as and when they fall due; or
   (c) commits an act of bankruptcy or, being a company, enters into liquidation or provisional liquidation whether compulsory or voluntary or compounds with its creditors generally or has a receiver or receiver manager or administrator appointed over all or part of its assets or passes a resolution for winding-up or a petition is presented for its winding-up,
   (d) NTT may without prejudice to any of its rights or remedies under these Terms or otherwise by notice to the Client:
      (i) suspend further supply and require payment in advance for future supply;
      (ii) recover possession of any Product for which payment has not been made;
      (iii) terminate all or any purchase orders for Products or Services which have been accepted by NTT;
      (iv) claim immediate payment of all moneys due by the Client in respect of all Products and/or Services which will then be immediately due and payable notwithstanding the due date or dates for payment or any terms agreed by NTT; and/or
      (v) continue to enforce its rights and recover from the Client such payments and any other amounts owing as and when they fall due.

21. No representations

21.1 The Client acknowledges that NTT has not made any warranty or representation, express or implied, in relation to the Products or the Services, including whether they are suitable for a particular purpose (whether such purpose was made known to NTT or not), unless provided in writing.

22. No implied terms

22.1 To the fullest extent permitted by law, the parties agree to exclude any terms which would otherwise be implied into these Terms by any statute. If a condition or warranty is implied into this Agreement by a law which cannot be excluded, NTT’s liability is limited (at NTT’s option) to:
   (a) the replacement or repair of the goods or the payment of the cost of having the goods replaced or repaired, in the case of supply of goods; or
   (b) the supply of the services again or the payment of the cost of having the services supplied again, in the case of supply of services.

22.2 If clause 102 of the Australian Consumer Law (under the Competition and Consumer Act 2010 (Cth) applies to NTT’s goods and/or services:
   (a) they come with guarantees that cannot be excluded under the Australian Consumer Law;
   (b) for major failures in a service, the Client is entitled:
      (i) to cancel its service contract with NTT; and
      (ii) to a refund for the unused portion, or to compensation for its reduced value;
   (c) for major failures with goods the Client is also entitled to choose a refund or replacement;
   (d) if a failure in the goods or a service does not amount to a major failure, the Client is entitled to have the failure rectified in a reasonable time and if this is not done the Client is entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion; and
   (e) the Client is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.
23. Limitation of liability

23.1 To the extent permitted by law, all express or implied warranties, representations, statements, terms and conditions relating to NTT or the provision of Products and/or Services under these Terms, not expressly set out in these Terms, are excluded from the agreement between the parties.

23.2 NTT’s aggregate liability for all claims under or in connection with this agreement, whether arising from breach of contract, negligence or any other tort, breach of warranty, under an indemnity, applicable laws, in equity or otherwise is limited to:
   (a) an amount equal to the total amount paid to NTT under a quotation; or
   (b) for support or maintenance Services, the total amount paid in the 12 months preceding the last claim under this agreement.

23.3 Nothing in clause 23.2 operates to limit NTT’s liability for:
   (a) claims for death;
   (b) personal injury;
   (c) claims of fraud or fraudulent misrepresentation; or
   (d) breach of clause 17 of this agreement.

23.4 NTT has no liability to the Client for any incidental, indirect, special or consequential loss or damage, or for loss of or corruption of data, loss of use, revenues, profits, goodwill, bargain, opportunities or anticipated savings, whether arising from breach of contract, negligence or any other tort, in equity or under an indemnity, warranty or otherwise, whether or not NTT was aware of the possibility of such loss or damage.

24. Variation

24.1 Any variation to these Terms must be in writing. Variations to any of the Services agreed to be supplied will be charged by NTT at its then current rates for those additional services, unless otherwise agreed in writing.

25. Force majeure

25.1 NTT will not be in breach of this agreement, nor liable for any failure or delay in performance of any obligations under this agreement (and the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control, including but not limited to:
   (a) acts of god, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
   (b) fire, explosion or accidental damage;
   (c) adverse weather conditions;
   (d) non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause);
   (e) interruption or failure in communications networks and facilities, (including the internet) and interruption or failure of utility service, including but not limited to electric power, gas or water; or
   (f) mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law).

26. General

26.1 Notices must be in writing and sent by mail, hand delivery or transmitted by facsimile to the address or facsimile number of the receiving party and are deemed delivered, in the case of:
   (a) hand delivery, on delivery;
   (b) posting, three days after dispatch; and
   (c) facsimile, on completion of complete and legible transmission.

26.2 No leniency, indulgence or extension of time granted by NTT to the Client will prejudice any of NTT’s rights in any way or constitute a waiver of any of NTT’s rights. If any of these Terms are for any reason declared to be or become unenforceable, invalid or illegal, the remaining Terms will remain in full force and effect. These Terms are governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

26.3 These Terms, the applicable quotation and the purchase order constitute the entire agreement between the parties on the subject matter and supersede any previous understanding or agreement on that subject matter.