

Table of Contents

Scope of Service	2
1. Definitions and Interpretations	2
Service Summary	5
2. General Obligations	5
Client Take-on	6
3. Provision of Information	6
4. Secure Remote Connection to the Client Site	6
5. Uptime Monitoring - Hardware Failure Monitoring	7
6. Remote Alerts Options Establishment (Option)	7
7. Asset Database Establishment (Option)	8
8. Service Commencement	8
Maintenance Services	9
9. Incident Management	9
10. Uptime Monitoring - Hardware Failure Monitoring (Option)	10
11. Uptime Monitoring - Configuration File Archiving (Option)	12
12. Uptime Monitoring - Remote Alerts (Option)	13
13. Service Levels	13
14. Parts to Site	16
15. Engineer to Site	16
16. Subscription Services (Option)	17
17. Services Portal (Option)	17
Support Services	18
18. Asset Database (Option)	18
19. Licence Renewal Reminders (Option)	19
20. Configuration MACDs (Option)	19
21. Consultant on Call (Option)	21
22. Site Based Services	21
23. Service Level Management (Option)	23
General Provisions	24
24. Client's General Obligations	24
25. End-of-Life Configuration Items	24
26. Modification of Configuration Items	25
27. Exclusions	25
Terms of Service	26
28. Definitions	26
29. Term	26
30. Services	27
31. Service Charges and Payment Terms	27
32. Taxes	27
33. Insurance	28
34. Warranties	28
35. The Client's Obligations	28
36. Subcontractors	29
37. Confidentiality	29
38. Limitations on liability	29
39. Termination	30
40. Soliciting Employees or Contractors	30
41. General Conditions	30

Scope of Service

1. Definitions and Interpretations

1.1 For the purposes of this Agreement, unless the context requires otherwise:

“Additional Charge” means a charge payable by the Client to Nxt IT Solutions for the supply of any goods or services other than the Service, made at Nxt IT Solutions then current standard prices and rates unless otherwise agreed in writing between the parties.

“Agreement” means this document, the relevant Record(s) of Entitlement and agreed variations of them.

“Agreement Details” means the details set out in the section of this Agreement so named.

“Business Continuity Level” means the level of service required by the Client to ensure business continuity which may include Remote Support, Ship, Remediate, Reconfigure or Restore activities as specified in the Record of Entitlement for the applicable Configuration Item.

“Business Day” means a day other than a Saturday, Sunday or a public holiday in the state or territory in which the Service is to be supplied.

“Business Hours” means 09:00 to 17:00 local time on a Business Day.

“Client” means the party specified as such in the Agreement Details.

“Commencement Date” means the date specified in the Agreement Details for the commencement of the Initial Term.

“Commitment Level” means either the Response Commitment or the Result Commitment as the context requires.

“Confidential Information” means any confidential business and financial information of a party including, without limitation, information concerning the business operations and methods of a party or technical information acquired either directly or indirectly by the other party but excludes information which is or becomes publicly known through no wrongful act of the receiving party and for the removal of doubt includes this Scope(s) of Service.

“Configuration Item” means any item of hardware or software listed in the Record of Entitlement unless identified as a Spare.

“Configuration MACD” (move, add, change, delete) means a move of, addition to, change of, removal of, or deletion of a Configuration Item or a part thereof performed by Nxt IT Solutions upon receipt of a request from the Client.

“Consultant on Call” means the consultation service that provides technical support to the Client in relation to a Configuration Item as described in clause 21 by telephone.

“Nxt IT Solutions” means Nxt Technologies Pty Ltd Tas Nxt IT Solutions ABN 13 168 887 367.

“Nxt IT Solutions Management System” means the system used by Nxt IT Solutions in connection with the supply of the Service.

“End User” means an employee of the Client.

“End-of-Life” means the relevant Configuration Item is no longer manufactured or supported, as determined by Nxt IT Solutions, based on any end-of-life or end-of-service announcements made by the manufacturer.

“Escalation Manager” means a Nxt IT Solutions nominated individual responsible for managing escalations of Incidents and Requests.

“Event” means a condition or situation detected by the Nxt IT Solutions Management System which indicates that something has happened in relation to a Configuration Item.

“Good Operating Condition” means the state in which a Configuration Item functions in accordance with the manufacturer’s specifications and successfully completes all usual diagnostic tests performed by Nxt IT Solutions.

“Governing Law State” means the state or territory specified as such in the Agreement Details.

“GST” means the goods and services tax as defined in “A New Tax System (Goods and Services Tax) Act 1999”.

“Incident” means the occurrence of an Event in a Configuration Item that prevents it from being in Good Operating Condition.

“Incident Diagnosis” means the performance of an investigation (not remediation) by Nxt IT Solutions into the possible causes of an Incident.

“Incident Record” means a record in Nxt IT Solutions’ Management System generated by the Client or Nxt IT Solutions that records and tracks a request related to an Incident.

“Initial Diagnosis” means the performance of an investigation by the Client into the possible causes of an Incident (including for example, power failure, reconfiguration or failure of a connected device or system).

“Initial Term” means the period specified as such in the Agreement Details.

“Management System” means the system used by Nxt IT Solutions to record information relating to the supply of the Service.

“Minor Feature Release” means a software release that provides minor additional functionality or refinements to the existing functionality of the relevant software, e.g. moving from version 2.1 to version 2.2.

“Part” means a component used to resolve an Incident on a Configuration Item.

“Patch” means a maintenance software release issued by the manufacturer to correct an error in its software.

“Permanent Resolution” means the action taken to resolve the root cause of an Incident or problem.

“Reconfigure” means to apply a backup configuration to a Configuration Item in order to return it to Good Operating Condition.

“Record of Entitlement” means the document issued by Nxt IT Solutions from time to time which sets out details of the Configuration Items, Service Calendar, Service Levels, Service Charges, options and other relevant details.

“Remediate” means to either repair or replace a faulty component of a Configuration Item to resolve an Incident as described in clauses 13.7 to 13.9.

“Remote Alert Notification” means the manufacturer’s remote call home alerts generated by Configuration Items.

“Remote Support” means use of telephone, email or a VPN to facilitate the resolution of an Incident or Request as described in clause 13.3.

“Request” means a request relating to the supply of the Service or the modification of the Service.

“Request Record” means a record in Nxt IT Solutions’ management system generated by the Client or by Nxt IT Solutions that records and tracks a Request.

“Response Commitment” means the time specified in the Record of Entitlement within which Nxt IT Solutions must commence or initiate the supply of the service in accordance with the Business Continuity Level and Service Calendar, measured from the time at which an Incident is logged for the applicable Configuration Item.

“Restore” means to restore a Configuration Item to Good Operating Condition or to apply a Workaround.

“Result Commitment” means the time specified in the Record of Entitlement within which Nxt IT Solutions must complete the supply of the service in accordance with the Business Continuity Level and Service Calendar, measured from the time at which an Incident is logged for the applicable Configuration Item.

“Security Technology Category” means the group of Configuration Item that are used to protect the Client’s information systems from unauthorised access, use, disclosure, disruption, modification, perusal, inspection, recording or destruction, with the ultimate goal of maintaining the confidentiality, integrity and availability of information.

“Service” means the service described in this Agreement.

“Service Administration MACD” means a request from the client to make changes to the Configuration Item information in the Record of Entitlement and in the Nxt IT Solutions Management System.

“Service Calendar” means the hours and days specified in the Record of Entitlement during which the Service for the applicable Configuration Item is available.

“Service Charges” means the charges for the Service set out in the Agreement Details, an invoice issued by Nxt IT Solutions and/or as detailed in the Record of Entitlement.

“Service Desk” means the Nxt IT Solutions technical support group that acts as a single point of contact between Nxt IT Solutions and the Client to manage all Incidents, Requests, communications and escalations with the Client.

“Service Element” means an element of the Service as listed in the table contained in clause 2.3.

“Service Level” means the combination of Service Calendar, Business Continuity Level and Response Commitment or Result Commitment as specified in the Record of Entitlement and described in clause 13.

“Service Unit” means a pre-paid unit of value that is used to pay for *Configuration MACDs* and *Consultant on Call* services the number and value of which is specified in the Record of Entitlement.

“Services Portal” means the internet portal created and configured by Nxt IT Solutions for access by the Client’s designated staff.

“Set-Up Fee” means the fee (if any) described as such in the Agreement Details, payable on the Commencement Date.

“Ship” means to send a replacement Part to a Site after initial Remote Support as described in clauses 13.4 to 13.5.

“Site” means the premises specified in the Record of Entitlement at which a Configuration Item is located.

“Software” means software listed in the Record of Entitlement or which forms an integral part of a Configuration Item but does not include any software installed on the hardware by the Client unless it is listed in the Record of Entitlement.

“Spares” means components or units owned by the Client which may be used by Nxt IT Solutions for the resolution of Incidents.

“Term” means the Initial Term and any extension of it.

“Update” means Patches, Minor Feature Releases, security profile updates and Upgrades as the context requires.

“Upgrade” means software releases that make major changes to the applicable Software e.g. moving from version 2.0 to version 3.0.

“VPN” means a virtual private network and provides a secure communications mechanism for data and other information transmitted between two end points.

“Workaround” means a set of actions that reduce or eliminate the effect of an Incident or problem for which a Permanent Resolution is not yet available.

Service Summary

2. General Obligations

Nxt IT Solutions’ obligations

- 2.1 Nxt IT Solutions must provide the package of Service Elements which are specified in the Record of Entitlement.
- 2.2 The Service Elements listed in the table in clause 2.3 are described in further detail in clauses 9 to 23 inclusive.
- 2.3 Table of Service Elements:

Clause Reference	Service Elements
Maintenance Services	
9	Incident Management
	Service Desk
	Resolution of Incidents
	Escalation Management
	Secure Remote Connection to the Client Site
10	Uptime Monitoring - Hardware Failure Monitoring
	Availability Monitoring and SNMP Trap Event Monitoring
11	Uptime Monitoring - Configuration File Archiving
	Backup of Configuration Files on Service Portal
12	Uptime Monitoring - Remote Alerts
	Proactive Incident Management for High Priority Alerts
13	Service Levels
14	Parts to Site
	Parts Dispatch and Collection of Replaced Component
15	Engineer to Site
	Engineer Dispatched to Client Site
16	Subscription Services
	Patches and Minor Feature Releases
	Upgrades
	Patches and Minor Feature Releases and Upgrades
	Security Profile Updates
17	Services Portal
	On-line self service Incident and Request Logging
	Configuration MACD Recording
	On-line Access to Incident and Request Reports
Clause Reference	Service Elements
	On-line Access to Asset Database Reports
Support Services	

18	Asset Database (Cisco devices only)
	Asset discovery and inventory
	Asset database reporting
	Asset database maintenance
19	License Renewal Reminders
	Notification to Client of Upcoming License Renewals
20	Configuration MACDs
	Normal and Urgent Configuration MACDs
	Management of Service Units
	Quarterly Service Unit Usage Report
21	Consultant on Call
	Telephone Based Consultation
22	Site Based Services
	Engineer Situated at a Site
	Spares Situated at a Site
23	Assessments
	Discovery, Analysis and Recommendation Tasks
24	Service Level Management
	Service Management Reports
	Service Management Reviews
	Awareness Training
	Mobile Service Centre Application
24	Standard Service Desk Integration

2.4 Additional manufacturer specific clauses may apply.

2.5 In the event of a conflict between a manufacturer specific clause and this document, the manufacturer specific clause will prevail.

Client Take-on

3. Provision of Information

The Client's obligations

- 3.1 The Client must:
- promptly complete and provide documents reasonably required for the establishment of the Service; and
 - provide Nxt IT Solutions with documentation that describes the Configuration Item installation and usage in terms of architecture, interfaces, modules, design, build, business function and call flows.

4. Secure Remote Connection to the Client Site

4.1 The secure remote connection to the Client site described in this clause 4 only applies if the Client selects the following optional Service Elements:

- Trap Event Notification; and/or
- Asset Database.

Site to Site VPN Connection

- 4.2 Compliance with the service levels will always be subject to the availability and bandwidth of the VPN internet connection.

Nxt IT Solutions' obligations

- 4.3 Nxt IT Solutions must conduct a requirement gathering exercise with the Client and determine and document the most suitable connectivity design. The approach and timeframes and costs for connectivity for implementation are also determined and agreed at this stage.
- 4.4 To establish a Site to Site VPN Connection, Nxt IT Solutions must provide an engineer with required skills to install a fully configured VPN device at the Client's Site. The provisioning lead time for the Site to Site VPN Connection is 14 Business Days.

The Client's obligations

- 4.5 To establish a Site to Site VPN Connection, the Client must:
- provide Nxt IT Solutions with information required for the *Client Connectivity Design* document;
 - have access to the Internet at its Site;
 - allocate a public IP address for the VPN device that Nxt IT Solutions provides preconfigured and resides on the Site for the duration of the Service;
 - provide adequate rack space and power for the VPN device;
 - ensure adequate firewall rules are in place to allow Nxt IT Solutions access to the Configuration Items as outlined in the *Client Connectivity Design* document
- 4.6 The Client must protect the Nxt IT Solutions owned VPN device from loss or damage and return it to Nxt IT Solutions at the end of the Term.
- 4.7 If requested by the Client, the Client's own VPN device can be used however, the Client must provide Nxt IT Solutions with the device hardware specifications so that Nxt IT Solutions can assess and approve its suitability. The Client must also agree to make configuration changes to the Client's own VPN device as recommended by Nxt IT Solutions.
- 4.8 If the Client has a security policy or support process that it expects Nxt IT Solutions to adhere to, then Nxt IT Solutions reserves the right to review the policy or process and:
- if Nxt IT Solutions is able to comply with it, Nxt IT Solutions may make an Additional Charge; or
 - if not, Nxt IT Solutions will not be required to adhere to the policy or process.

5. Uptime Monitoring - Hardware Failure Monitoring

Nxt IT Solutions' obligations

- 5.1 Nxt IT Solutions must configure the Nxt IT Solutions Management System to provide the *Hardware Failure Monitoring* Service Element on the Configuration Items.

The Client's obligations

- 5.2 The Client must enable and configure SMNP trap Events to be sent to the Nxt IT Solutions Management System based on instructions provided by Nxt IT Solutions.

Exclusion

- 5.3 Nxt IT Solutions is not responsible for any failure of the Configuration Items or the Client's systems to support *Hardware Failure Monitoring*. If such a failure occurs and Nxt IT Solutions does not receive any SNMP trap Events and/or ICMP/SNMP polling, no action will be taken by Nxt IT Solutions.

6. Remote Alerts Options Establishment (Option)

Nxt IT Solutions' obligations

- 6.1 Nxt IT Solutions must:

- a. provide the Client with guidelines on the configuration requirements; and
- b. if requested, assist with the configuration of the Remote Alert agent with the Nxt IT Solutions helpdesk email address on new or existing Configuration Items at an Additional Charge.

The Client's obligations

6.2 The Client must:

- a. provide Nxt IT Solutions with additional administration or supervisor access rights for the purpose of Incident Diagnosis for the duration of the Service;
- b. configure Configuration Items:
 - i. to send Remote Alert Notifications to the Nxt IT Solutions helpdesk email address; and
 - ii. to have security settings that facilitate administration or supervisor access from the helpdesk; and
- c. configure its SMTP mail gateways or equivalent to forward Remote Alert Notifications.

6.3 If the Client fails to correctly configure its Configuration Items and Nxt IT Solutions receives excessive Remote Alert Notifications, Nxt IT Solutions may disable the feature or render an Additional Charge.

Exclusion

6.4 Nxt IT Solutions is not responsible for any failure of the Configuration Items or the Client's associated systems (e.g. mail gateway) to send Remote Alert Notifications. If such a failure occurs and Nxt IT Solutions does not receive any Remote Alert Notifications, no action will be taken by Nxt IT Solutions.

7. Asset Database Establishment (Option)

Nxt IT Solutions' obligations

7.1 Nxt IT Solutions must install and configure an asset database collector in the Nxt IT Solutions Management System to perform an automated discovery of the Client's devices that are enabled with the correct SNMP community strings.

The Client's obligations

7.2 The Client must provide Nxt IT Solutions with:

- a. specific IP addresses or one or more ranges of IP addresses; and
- b. access information required including SNMP community strings and administrator logins and passwords.

7.3 If an existing VPN link is established between Nxt IT Solutions and the Client, this link will be utilised to deliver the *Asset Database* service element. If no such link is in place, the establishment of a new VPN link will be required.

8. Service Commencement

Nxt IT Solutions' obligations

8.1 Nxt IT Solutions will commence supply of the Service upon:

- a. receipt from the Client of a purchase order which covers the Service Charges for the Initial Term and any Set-up Fees, as set out in the Agreement Details;
- b. receipt from the Client of all required documents or forms;
- c. any required service establishment activities being completed; and
- d. the detailed version of the Record of Entitlement being issued.

Maintenance Services

9. Incident Management

Service Desk

- 9.1 The Service Desk provides the Client with a single point of contact at the closest Nxt IT Solutions HelpDesk Centre.

The Client's obligations

- 9.2 The Client must:
- perform any necessary preliminary checks to verify the need for assistance before logging an Incident or Request;
 - use the *Services Portal* or call the Service Desk to log an Incident or Request and provide as much background information about it as possible;
 - log Incidents and Requests in accordance with the Service Desk procedures notified to the Client;
 - raise a high priority Incident or Request by telephone only;
 - advise Nxt IT Solutions of any change management procedures that must be followed; and
 - report any unsatisfactory operation of the Service to Nxt IT Solutions in a timely manner.

Nxt IT Solutions' obligations

- 9.3 Nxt IT Solutions must receive reports of Incidents and Requests 24 hours a day, seven days a week, regardless of the Business Continuity Level.

- 9.4 During the Service Calendar, Nxt IT Solutions must:
- consult with the Client to confirm the impact and urgency of the Incident or Request which will result in the allocation of a default priority to the Incident Record or Request Record;
 - create Incident Records and Request Records in the Nxt IT Solutions Management System and coordinate the response to them in accordance with the relevant Business Continuity Levels;
 - allocate a unique reference number for tracking and follow-up of the Incident Record or Request Record;
 - contact the Client to make the necessary arrangements if access to a Site is required to address the Incident Record or Request Record; and
 - keep the Client updated on the status of the Incident Record or Request Record.

Resolution of Incidents

The Client's obligations

- 9.5 The Client must:
- perform an Initial Diagnosis before reporting an Incident;
 - ensure that an Incident Record is raised by a competent member of staff when engaging Nxt IT Solutions for telephone support and to assist Nxt IT Solutions with Incident Diagnosis, level 1 technical support and provide error messages and log files; and
 - provide Nxt IT Solutions' support engineers with access to a Site, during the Service Calendar.

Nxt IT Solutions' obligations

- 9.6 Upon notification of an Incident or receipt of a Request from the Client or upon receipt of a Remote Alert Notification from a Configuration Item, Nxt IT Solutions must initiate the *Incident Management* process and:
- if required, the Service Desk will route the details of the Incident or Request to an engineer to assist with further diagnosis;
 - allocate an engineer to determine the cause of the Incident and recommend a course of action to resolve it based on the information provided, together with information gathered through a secure remote connection (if available); and
 - if required, escalate the Incident or Request to the relevant management and/or technical specialist for resolution, in line with the Business Continuity Levels.

Escalation Management

The Client's obligations

- 9.7 If the Client wishes to escalate an Incident, or Request, the Client may telephone the Service Desk (quoting the reference number) and ask to speak to the Escalation Manager at any time.

Nxt IT Solutions' obligations

- 9.8 If an Incident or Request is escalated, Nxt IT Solutions must assign an Escalation Manager who is responsible for:
- monitoring escalated matters through to resolution;
 - maintaining an action plan for each escalation;
 - making any decisions appropriate to the resolution of the matter;
 - managing escalation meetings and/or phone conferences (as appropriate) between the Client, Nxt IT Solutions and third parties;
 - regularly communicating the relevant status of escalated matters to the Client;
 - regularly updating and seeking the advice and support of Nxt IT Solutions management; and
 - for the duration of an escalation, ensuring that all appropriate personnel are available to support the agreed action plan.
- 9.9 Nxt IT Solutions may downgrade an escalated Incident or Request if:
- the Incident or Request is being managed to a scheduled timeframe; or
 - the Incident has been resolved and is in the process of being tested.
- 9.10 If a Commitment Level for an Incident is not met, Nxt IT Solutions will normally notify the Client within one Business Day.

Secure Remote Connection to the Client Site

Nxt IT Solutions' obligations

- 9.11 If Nxt IT Solutions is of the view that an Incident can be resolved remotely, Nxt IT Solutions will:
- connect to the Configuration Item via a secure VPN; and
 - ensure that security risk management processes are adhered to.

The Client's obligations

- 9.12 If requested by Nxt IT Solutions, the Client must provide remote electronic access to or any documentation in connection to a Configuration Item for the purpose of Incident Diagnosis or the implementation of a Workaround or Permanent Resolution. Until the Client supplies the requested remote access or documentation, Nxt IT Solutions will have no liability for any delays in the provision of the Service.

10. Uptime Monitoring - Hardware Failure Monitoring (Option)

- 10.1 This clause 10 only applies if the Client has selected the *Hardware Failure Monitoring* option.

- 10.2 The *Hardware Failure Monitoring* option requires a secure remote connection to the Client Site as described in clause 4.
- 10.3 The *Hardware Failure Monitoring* option is available for a maximum of 1,000 Configuration Items.

Availability Monitoring

Nxt IT Solutions' obligations

- 10.4 Nxt IT Solutions must:
 - a. monitor Configuration Items via a secure remote connection between the Nxt IT and the Configuration Items;
 - b. use ICMP and SNMP polling for the availability (up/down) status of the Configuration Items; and
 - c. receive notification of Events from Configuration Items for a change of the availability status.

SNMP Trap Event Monitoring

Nxt IT Solutions' obligations

- 10.5 Nxt IT Solutions must:
 - a. receive SNMP trap Event notifications triggered by hardware component failures defined within the table below; and
 - b. receive SNMP trap Event notifications via a secure remote connection between the Nxt IT Solutions and the Configuration Items.

Hardware Component	Event
Power on self-test failures	
Chassis	<ul style="list-style-type: none"> • Chassis temperature critical • Chassis failure
Power supply	<ul style="list-style-type: none"> • Power supply temperature critical • Power supply failure • Power supply redundancy lost
Fan	<ul style="list-style-type: none"> • Fan failure • Fan redundancy lost
CPU	<ul style="list-style-type: none"> • CPU temperature critical • CPU failure
Memory	<ul style="list-style-type: none"> • Memory usage high • Memory failure

Event Correlation

Nxt IT Solutions' obligations

- 10.6 Nxt IT Solutions must:
 - a. using the Nxt IT Solutions Management System, groups related Events into a single root cause with parent/child relationships;
 - b. display details of the Events on the Service Portal; and
 - c. create Incident Records for the availability and SNMP trap Events.

Client Notification

Nxt IT Solutions' obligations

- 10.7 Nxt IT Solutions must:
 - a. notify up to two nominated Client contacts of Incidents and their status via telephone;
 - b. send an email to a nominated email address and/or an SMS to a nominated mobile number as a written record of the notification;
 - c. notify the Client within a 24x7 Service Calendar; and

- d. action Incidents according the Service Calendar and Business Continuity Level assigned to the Configuration Item as described in Incident Management clause 9.

Out of Scope Incidents

The Client's obligations

10.8 The Client must:

- a. resolve Incidents that are outside the scope of the Service, e.g. Configuration Items that have gone down due to a general power failure, air-conditioning problem or other environmental factor controlled by the Client; and
- b. notify Nxt IT Solutions upon resolution of out of scope Incidents.

Scheduled Outage Notifications

Nxt IT Solutions' obligations

10.9 Nxt IT Solutions must record Client network outage details in the Nxt IT Solutions Management System to ensure that it does not raise Incidents for the outage and that it appropriately schedules changes around the outage windows.

The Client's obligations

10.10 The Client must:

- a. notify Nxt IT Solutions of outages scheduled to occur on its network by raising a Service Request or using the online form on the Service Portal; and
- b. if the change window is scheduled for less than four hours in advance, notify Nxt IT Solutions by telephone.

Event Baseline

Nxt IT Solutions' obligations

10.11 Nxt IT Solutions must perform an Event baseline review after the Service has been active for four weeks to highlight Configuration Items that are experiencing Events consistently in an unusually frequent manner due to previously unresolved problems.

The Client's obligations

10.12 The Client must rectify the problems identified as causing the Events identified in clause 10.11. Failure to do so may lead to Nxt IT Solutions removing the Configuration Item from the *Hardware Failure Monitoring* Service Element. The Client can, if desired, engage Nxt IT Solutions to perform the work required to address these deficiencies or problems at an Additional Charge.

11. Uptime Monitoring - Configuration File Archiving (Option)

11.1 This clause 11 only applies if the Client has selected the *Configuration File Archiving* option.

11.2 The *Configuration File Archiving* option requires a secure remote connection to the Client Site as described in clause 4.

11.3 The *Configuration File Archiving* option is available for a maximum of 1,000 Configuration Items.

Nxt IT Solutions' obligations

11.4 Nxt IT Solutions must

- a. keep backup copies of all Configuration Item configuration files, where possible (this feature is Configuration Item and manufacturer dependent);
- b. automatically detect saved edits to the configuration files as well as save the old and new configurations;
- c. store up to the last three different configuration files;
- d. make configuration files available on the Service Portal; and

- e. when advised of a change that impacts on the successful retrieval of configuration files, manage the tasks required to continue the availability of this Service Element.

The Client's obligations

- 11.5 The Client must notify Nxt IT Solutions of all changes to configuration files that will affect Configuration Items and the configuration file backup, including changes to the credentials, via a Service Request, no less than two Business Days prior to implementing the change.

12. Uptime Monitoring - Remote Alerts (Option)

- 12.1 Clauses 11 only apply if the Client has selected the *Remote Alerts* option.
- 12.2 The *Remote Alerts* option only applies to Configuration Items which are capable of supporting the manufacturer's remote call home feature.
- 12.3 The *Remote Alerts* option is available for up to a maximum of 1,000 Configuration Items.

Nxt IT Solutions' obligations

- 12.4 Nxt IT Solutions must:
 - a. upon receipt of a Remote Alert Notification from a Configuration Item, assign a suitably qualified engineer to proactively log an Incident and proceed to perform Incident Diagnosis;
 - b. perform Incident Diagnosis on the Remote Alert Notifications that have the priority levels of "critical" and above as defined and activated by the various hardware platforms and as set up in the Configuration Item; and
 - c. respond to all Incidents that are within the scope of Service as part of the Incident management process and according to the Service Level and Service Calendar assigned to the Configuration Item involved.
- 12.5 Nxt IT Solutions may change the priority levels defined in clause 12.4b to align to the manufacturer's changed priority levels and to reduce excessive alerts dependent on the hardware platform.

The Client's obligation

- 12.6 The Client is responsible for the resolution of Incidents resulting from Remote Alert Notifications that are outside the scope of the Service.

13. Service Levels

Nxt IT Solutions' obligations

- 13.1 Nxt IT Solutions must perform the applicable Service Elements listed in the following table to meet the corresponding Business Continuity Level and Commitment Level.

Business Continuity Level and Commitment Level					
Service Elements	Remote Support (Response ONLY)	Ship (Response or Result)	Remediate (Response or Result)	Reconfigure (Response or Result)	Restore (Response or Result)
Incident Management	✓	✓	✓	✓	✓
Parts to Site	✗	✓	✓	✓	✓
Engineer to Site (hardware remediation)	✗	✗	✓	✓	✓
Business Continuity Level and Commitment Level					
Service Elements	Remote Support (Response ONLY)	Ship (Response or Result)	Remediate (Response or Result)	Reconfigure (Response or Result)	Restore (Response or Result)

Engineer to Site (software configuration reload)	x	x	x	✓	✓
Engineer to Site (device restoration)	x	x	x	x	✓

13.2 The Business Continuity Levels are cumulative. All Incident Records will be addressed firstly by the Remote Support. If Remote Support does not resolve the Incident, the next relevant Business Continuity Level will apply if the Configuration Item is covered by that Business Continuity Level as described in clauses 13.3 to 13.12 inclusive.

Remote Support

- 13.3 The **Remote Support** Business Continuity Level:
- a. is available with a Response Commitment only (indicating the time within which an engineer will have commenced the Remote Support session);
 - b. provides for an engineer giving support through any combination of telephone, email or secure connection to the Configuration Item; and
 - c. may include the supply of an Update to the Client.

Ship

- 13.4 The **Ship** Business Continuity Level:
- a. provides for the delivery of a replacement Part to the Site if necessary; and
 - b. is available with either a Response Commitment or a Result Commitment (indicating either the time within which the shipment process of the Parts to the Site will commence from the Nxt IT Solutions warehouse (the Response Commitment) or the time within which it will arrive at the Site (the Result Commitment) if necessary for (the resolution of the Incident).

13.5 Nxt IT Solutions' obligations relating to despatching Parts are specified under the *Parts to Site* Service Element as described in clause 14.

- 13.6 Nxt IT Solutions may make Updates available for the relevant Configuration Item, to the Client:
- a. by email containing an attachment of the release or a URL link to where the files and release notes can be downloaded; or
 - b. on CD, if the size of the release requires it; provided the Client is entitled to them under its licence agreement or under clause 16.

Remediate

- 13.7 The **Remediate** Business Continuity Level:
- a. means that to the extent necessary to return the Configuration Item to Good Operating Condition:
 - i. the faulty component of a Configuration Item will be repaired or replaced; or
 - ii. if Nxt IT Solutions so decides, a Configuration Item will be replaced.
 - b. is available with either a Response Commitment or a Result Commitment (indicating either the time within which an engineer will arrive at the Site to commence the remediation (the Response Commitment) or alternatively the time within which these actions will be completed (the Result Commitment) to return the Configuration Item to Good Operating Condition and replicate its factory settings, for the resolution of an Incident);
 - c. where an on-Site attendance is not required and where a secure remote connection has been set up to the Client's IT environment, the Commitment indicates the time within which the engineer will have commenced or completed the remediation remotely); and
 - d. does not include any reconfiguration and restoration as described in clauses 13.10 to 13.12 inclusive.

Nxt IT Solutions's obligations

- 13.8 Nxt IT Solutions's obligations relating to an engineer attending the Site are specified under the *Engineer to Site* Service Element in clause 15.
- 13.9 As a Workaround, Nxt IT Solutions may replace a faulty Configuration Item or component with a functional equivalent rather than an exact replacement at Nxt IT Solutions's discretion. For the Remediate and Reconfigure Business Continuity Levels, Nxt IT Solutions will ensure that the Configuration Item is appropriately configured, should the back-up configuration not be compliant with the functional equivalent.

Reconfigure

- 13.10 The **Reconfigure** Business Continuity Level:
- to the extent necessary, provides for the reconfiguration of the Configuration Item by the re-installation of the Software to return it to Good Operating Condition and then loading a backup configuration;
 - is available with either a Response Commitment or a Result Commitment (indicating either the time within which an engineer will arrive on Site to commence the loading of the backup configuration (Response Commitment) or the time within which these actions will be completed (the Result Commitment) if necessary for the resolution of the Incident);
 - if an on Site response is not required and where a secure remote connection exists, the Commitment indicates the time within which the engineer will have commenced or completed these actions remotely); and
 - does not include any restoration as contemplated by clause 13.12.

The Client's obligations

- 13.11 The Client must keep backup copies of the latest software and the configuration files for Configuration Items and to provide these to Nxt IT Solutions (where applicable and if requested). Any work required by Nxt IT Solutions as a result of the Client failing to provide the backup configuration files will be at an Additional Charge.

Restore

- 13.12 The **Restore** Business Continuity Level:
- to the extent necessary, provides for Nxt IT Solutions to Restore the faulty Configuration Item by the re-installation of Software or the installation of an Update, if necessary;
 - the loading of a backup configuration, if necessary, and any additional Workarounds or Permanent Resolutions will be effected in order to restore the functionality associated with the Configuration Item or Software;
 - is available with either a Response Commitment or a Result Commitment (indicating either the time within which the engineer will arrive on Site to commence restoration (Response Commitment) or the time within which the engineer will have completed all actions required to Restore the functionality (Result Commitment), alternatively, where an on Site response is not required and where a secure remote connection has been set up to the Client's IT environment, the Commitment indicates the time within which the engineer will have commenced or completed these actions remotely if necessary for the resolution of the Incident); and
 - provides for the Configuration Item being returned to performing the function that it performed prior to the Incident.

The Client's obligations

- 13.13 The Client must maintain the Software at the current major version and immediately preceding major version. Nxt IT Solutions is not required to supply services for older versions of the Software unless requested by the Client at an Additional Charge.

14. Parts to Site

Nxt IT Solutions' obligations

- 14.1 If a **Ship, Remediate, Reconfigure or Restore** Business Continuity Level applies to the Configuration Item and there is an Incident relating to that Configuration Item which requires Parts to be shipped to the Site, Nxt IT Solutions must at its cost:
- a. dispatch the required Parts to the Site in accordance with the applicable Service Level;
 - b. arrange for the collection of any replaced components from the Site within an agreed timeframe; and
 - c. if necessary, implement a Workaround by replacing a faulty component or Configuration Item on a temporary basis while the Incident associated with it is being resolved.

- 14.2 Where a next Business Day Commitment Level applies, and the identification of hardware failure is confirmed before 15:00 on a Business Day, Nxt IT Solutions will dispatch Parts to Site before the end of the next Business Day.

The Client's obligations

- 14.3 The Client must within 5 Business Days or within an agreed timeframe:
- a. make any temporary component or Part provided as a Workaround under clause 14.1c available for collection by Nxt IT Solutions; and
 - b. from receipt of a replacement Part, package up and return the faulty Part to Nxt IT Solutions or the relevant manufacturer, as directed by Nxt IT Solutions.
- 14.4 If a **Ship** Business Continuity Level applies to the Configuration Item:
- a. Nxt IT Solutions has no obligations other than those set out in clause 13; and
 - b. if requested by the Client, Nxt IT Solutions will perform tasks associated with the Remediate, Reconfigure or Restore Business Continuity Levels at an Additional Charge.
- 14.5 Title in:
- a. a replacement Part passes to the Client only after:
 - i. installation of the Part; and
 - ii. return of the faulty component to Nxt IT Solutions;
 - b. any Part purchased by the Client passes to the Client upon payment for that Part in full and risk in such additional Part passes to the Client on delivery;
 - c. a replaced component passes to Nxt IT Solutions:
 - i. on removal by Nxt IT Solutions; or
 - ii. where the Client removes the component and returns it to Nxt IT Solutions, on receipt of the component by Nxt IT Solutions; and
 - d. a component which has been installed at a Site temporarily does not pass to the Client.
- 14.6 Specifications for Parts supplied by Nxt IT Solutions are subject to change without notice, provided that supplied Parts must have at least the same performance and functionality as the replaced components.

15. Engineer to Site

Nxt IT Solutions' obligations

- 15.1 If a **Remediate, Reconfigure or Restore** Business Continuity Level applies to a Configuration Item and there is an Incident relating to that Configuration Item that cannot be resolved remotely, Nxt IT Solutions must send an engineer to the Site to Remediate, Reconfigure or Restore the Configuration Item in accordance with the applicable Business Continuity Level.

The Client's obligations

- 15.2 If a **Remediate** or **Reconfigure** Business Continuity Level applies to the Configuration Item, the Client must perform any tasks associated with the **Restore** Business Continuity Level or may request Nxt IT Solutions to do so at an Additional Charge.
- 15.3 If a **Remediate** Business Continuity Level applies to the Configuration Item, the Client must perform any tasks associated with the **Reconfigure** or **Restore** Business Continuity Levels or may request Nxt IT Solutions to do so at an Additional Charge.

16. Subscription Services (Option)

- 16.1 This clause 16 only applies if the Client has purchased the *Subscription Services* option which only applies to a Configuration Item that is Software.
- 16.2 The only available Business Continuity Level for this option is Remote Support.

Nxt IT Solutions' obligations

- 16.3 Nxt IT Solutions must:
- procure the right to obtain the relevant Updates from the manufacturer and make the Updates available to the Client upon receipt of a Request; and
 - if the manufacturer allows Nxt IT Solutions to do so, provide the Client with the manufacturer's support access information.
- 16.4 If requested by the Client, Nxt IT Solutions will install any Updates either as a Configuration MACD using Service Units as provided in clause 20 or at an Additional Charge.

Subscription Services Options

- 16.5 Within the *Subscription Services* Option, the Client may choose from the following (subject to availability from the manufacturer):
- the *Patches and Minor Feature Releases* option, Nxt IT Solutions must provide the Client with the latest Patches and Minor Feature Releases for the Configuration Items on request;
 - the *Upgrades* option, Nxt IT Solutions must provide the Client with the latest Upgrades for the Configuration Items on request;
 - the *Patches and Minor Feature Releases and Upgrades* option, Nxt IT Solutions must provide the Client with the latest Patches, Minor Feature Releases and Upgrades for the Configuration Items on request; or
 - the *Security Profile Updates* option, Nxt IT Solutions must provide the Client with the latest signature files for the Configuration Items on request.

The Client's obligations

- 16.6 The Client is responsible for the installation of any software Updates or signature files provided under this clause 16.

Exclusions

- 16.7 The Service does not include:
- setting up Configuration Items to receive alerts and Updates from the manufacturer automatically; and
 - notifying the Client of the availability or suitability of Updates.

17. Services Portal (Option)

Nxt IT Solutions' obligations

- 17.1 This clause 17 only applies if the Client has purchased the *Services Portal* option.
- 17.2 Nxt IT Solutions must:

- a. provide the Client with access to a *Services Portal*, accessible via the Internet, which provides an ability to generate reports (including standard *Asset Database Reports*), generate Incident Records and Request Records and view Configuration Item details;
- b. add and delete End User accounts from the *Services Portal* within two Business Days of receipt of a Request to do so; and
- c. provide an introductory video demonstration of the *Services Portal* for any End User issued with a login (as advised by the Client for End User access).

The Client's obligations

- 17.3 If an End User with access to the *Services Portal* leaves his or her employment, the Client must instruct Nxt IT Solutions to remove or disable the relevant logins to the *Services Portal* without delay. Nxt IT Solutions will remove or disable such logins without unreasonable delay and, provided it does so, shall not be liable for any loss, expense or damage suffered by the Client in connection with or arising from the failure to act on a request under this clause.

Support Services

18. Asset Database (Option)

- 18.1 This clause 18 only applies if the Client has selected the *Asset Database* option.
- 18.2 The *Asset Database Reporting* is limited to 1,000 devices.
- 18.3 The *Asset Database* option will discover devices; however, no additional information will be provided other than the IP address.

Asset discovery and inventory Nxt IT Solutions' obligations

- 18.4 Nxt IT Solutions must:
- a. using an automated asset database collector in the Nxt IT Solutions Management System, access the Client's network to discover devices based on:
 - i. specific IP addresses provided by the Client; or
 - ii. one or more ranges of IP addresses provided by the Client.
 - b. compile an inventory of discovered devices;
 - c. mask sensitive configuration information, then encrypt all information in the inventory and send it to Nxt IT for correlation with security alert field notices and End-of-Life announcements (including end-of-sale and end-of-support notices);
 - d. upload the data to the *Services Portal* so that the Client can access the following:
 - i. device name/ID;
 - ii. hostname;
 - iii. IP address;
 - iv. serial number;
 - v. vocation of device; and
 - vi. hardware and software product codes; and

The Client's authorities

- 18.5 The Client hereby authorises Nxt IT Solutions to:
- a. run the asset database collector on the Client's network in whole or in part;
 - b. collect and collate the data produced by the discovery; and
 - c. encrypt and send the data to Nxt IT Solutions.
- 18.6 All information collected by Nxt IT Solutions will be treated as the Client's Confidential Information.

Asset Database Reporting

Nxt IT Solutions' obligations

- 18.7 Nxt IT Solutions must make *Asset Database Reports* available on the Services Portal for review and download that include:
- Device details as defined in section 18.4d above;
 - Device End-of-Life (including end-of-sale and end-of-support) dates;
 - Device security alerts relevant to the Configuration Items; and
 - IP address and other accessible information devices where the Client has agreed to an automated discovery of devices.

Asset database maintenance

Nxt IT Solutions' obligations

- 18.8 Nxt IT Solutions must:
- perform an automated discovery of devices for the purpose of populating the asset database every six months or at a frequency agreed with the Client;
 - oversee operation and management of the asset database collector and the generation of reports; and
 - maintain the configuration of the collector in the Nxt IT Solutions Management System based on notification of required updates from the Client.

The Client's obligations

- 18.9 The Client must:
- advise Nxt IT Solutions of any changes to the IP address ranges used for the discovery and inventory; and
 - notify Nxt IT Solutions of updates to required access information including SNMP community strings and administrator logins and passwords.

19. Licence Renewal Reminders (Option)

- 19.1 This clause 18 only applies if the Client has purchased the *License Renewal Reminders* option.

Nxt IT Solutions' obligations

- 19.2 Nxt IT Solutions must send an email reminder to the Client at least 30 days prior to any renewable "right-of-use" license being due for renewal.

The Client's obligations

- 19.3 The Client must:
- procure and activate the licence using the information provided by Nxt IT Solutions, or the Client can request that licence activation be performed as Configuration MACDs; and
 - provide the initial information required to set up the Client's licence renewal calendar, unless it is agreed that Nxt IT Solutions will gather the information as part of the *Assessment Service Element*.

Exclusion

- 19.4 The *License Renewal Reminders* Service Element does not include the implementation or administration of licence management software in the Client's IT environment.

20. Configuration MACDs (Option)

- 20.1 This clause 20 only applies if the Client has purchased the *Configuration MACDs* option.

Performance of Configuration MACDs

- 20.2 A task will only be a Configuration MACD if the task:
- is pre-approved by the Client;

- b. relates directly to a Configuration Item;
- c. is not associated with resolving an Incident;
- d. does not require any scoping or project management;
- e. is a single task and will not take more than 4 hours for one engineer to perform; and
- f. is a multiple task and will not take more than 16 hours for one engineer to perform.

20.3 The standard Service Calendar for Configuration MACDs is “Business Hours”.

20.4 If the performance of any Configuration MACD could lead to instability in the Client’s IT infrastructure, Nxt IT Solutions can request that the Client perform precautionary or preliminary work prior to implementation of the relevant Configuration MACD task.

20.5 If requested by the Client, Nxt IT Solutions will perform any precautionary or preliminary work on the Client’s behalf at an Additional Charge.

20.6 Configuration MACD tasks that are expected to take longer than 16 hours or those that do not meet the definition of a Configuration MACD in clause 20.2 will be scoped and charged as a separate engagement.

20.7 Service Units expire 12 months from date of purchase.

Nxt IT Solutions’ obligations

20.8 Nxt IT Solutions must:

- a. perform the Configuration MACD in accordance with this Agreement;
- b. charge the Client for the Configuration MACD using Service Units the number of which will be:
 - i. dependent on the complexity of the activity, time of execution, engineering skills level, technology and urgency;
 - ii. generally, in accordance with the Service Unit calculator provided to the Client during service establishment; and
 - iii. discussed with the Client at the time the Request is logged; and
- c. endeavour to commence:
 - i. a normal Configuration MACD within 2 Business Days if the requested task can be performed remotely;
 - ii. a normal Configuration MACD within 5 Business Days if the requested task requires an engineer to attend the Site;
 - iii. an urgent Configuration MACD within 4 Business Hours if the requested task can be performed remotely; and
 - iv. an urgent Configuration MACD within 2 Business Days if the requested task requires an engineer to attend the Site.

20.9 If the Client requests that a Configuration MACD be performed out of Business Hours, then the target commencement times specified in clause 20.8c will not apply.

20.10 Nxt IT Solutions must also provide the Client with a quarterly report that states available Service Units and usage history and notify the Client if the balance of available Service Units drops below an agreed threshold.

The Client’s obligations

20.11 The Client must:

- a. log urgent Configuration MACDs with the Service Desk by telephone only;
- b. advise Nxt IT Solutions of the nominated Client contacts with the authority to request Configuration MACDs;
- c. pay for any Service Units in advance;
- d. assess and accept all risks associated with a proposed Configuration MACD;

- e. perform any precautionary or preliminary work prior to implementation of the relevant Configuration MACD task;
- f. pre-approve all Configuration MACD tasks;
- g. advise Nxt IT Solutions of the urgency level of any Configuration MACD tasks;
- h. accept that limitations caused by third party manufacturers may affect any Configuration MACD task commencement and delivery times; and
- i. arrange freight and insurance, as well as other internal Client change management controls and approvals, if required.

Exclusions

- 20.12 The *Configuration MACDs* option described in this clause 20 is not available for the Security Technology Category or the Customer Interactive Solutions Technology Category.
- 20.13 Nxt IT Solutions has no responsibility for any risks associated with the performance of Configuration MACDs.
- 20.14 The Configuration MACD Service Element cannot be used for the installation of a new product that is of a different type to those already on the Record of Entitlement.
- 20.15 Where a requested Configuration MACD will result in a change to the Service Level of a Configuration Item (e.g. a Configuration MACD that requires a Configuration Item be moved to a remote Site where Nxt IT Solutions cannot offer the currently Service Level), the task will be performed at an Additional Charge.

21. Consultant on Call (Option)

- 21.1 This clause 21 only applies if the Client has purchased the *Consultant on Call* option.
- 21.2 The Service Calendar for the *Consultant on Call* option is Business Hours.
- 21.3 Nxt IT Solutions must:
 - a. allow the Client to request a consultation by telephone with an engineer for advice and support on non-Incident related issues; and
 - b. charge the Client for the consultation using Service Units the number of which will be:
 - i. dependent on the complexity of the activity, time of execution, engineering skills level, technology and urgency;
 - ii. generally, in accordance with the Service Unit calculator provided to the Client during service establishment; and
 - iii. discussed with the Client at the time the Request is logged.
- 21.4 Requests for consultation with an engineer are not subject to Service Levels and are scheduled and responded to on a best effort's basis.
- 21.5 Nxt IT Solutions may limit an engineer's consultation with the Client to 2 hours in duration. Consultations that are expected to exceed 2 hours in duration will be quoted and scoped at an Additional Charge.
- 21.6 The *Consultant on Call* option described in this clause 21 is not available for the Security Technology Category or the Customer Interactive Solutions Technology Category.

22. Site Based Services

Engineer Situated at a Site (Option)

- 22.1 This clause 22 only applies if the Client has purchased the *Engineer Situated at a Site* option.
- 22.2 The Service Calendar for the *Engineer Situated at a Site* option is 09:00 to 17:00 on Business Days (with standard Nxt IT Solutions meal breaks).
- 22.3 The minimum period for the *Engineer Situated at a Site* option is 12 months.

Nxt IT Solutions' obligations

- 22.4 If the Client chooses the *Engineer Situated at a Site* option, Nxt IT Solutions must supply an engineer to attend at an agreed Site to perform Incident Diagnosis and execute tasks required to resolve Incidents. The engineer will perform a range of pre-determined tasks, as agreed between Nxt IT Solutions and the Client. Pre-determined tasks to be performed by the engineer will have secondary priority to the diagnosis and resolution of Incidents. Work performed outside of Service Calendar will be at an Additional Charge.
- 22.5 Nxt IT Solutions may, in consultation with the Client, replace the engineer to:
- ensure skills refresh;
 - support retention of staff;
 - increase the available knowledge of the Client's IT environment through a greater number of people;
 - accommodate engineers' annual leave requirements; and
 - allow engineering staff to gain greater experience in the market to bring the latest knowledge and best practices back in to the Client.
- 22.6 The Client may on reasonable grounds, by written notice to Nxt IT Solutions request that Nxt IT Solutions replace the engineer.
- 22.7 If Nxt IT Solutions receives a notice from the Client under clause 22.6, it must endeavour to replace the person concerned with another suitably qualified person without undue delay.

The Client obligations

- 22.8 The Client must:
- give the engineer access to the Site during the Service Calendar for purpose of providing the Service;
 - provide suitable workstation facilities on the Site as may be reasonably required by the engineer, including, but not limited to desk, telephone, internet access and VPN access; and
 - provide a safe working environment for the engineer.
- 22.9 The Client acknowledges that the engineer is required, from time to time, to attend Nxt IT Solutions' offices for the purposes of management meetings, team building and business updates. Nxt IT Solutions and the Client will agree in advance on a suitable time for these meetings and arrange for the supply of a suitable temporary replacement engineer.

Exclusion

- 22.10 Actions taken by the engineer that are at the express direction of the Client but have not been agreed with Nxt IT Solutions will, for the purposes of this Agreement, be regarded as having been performed by the Client.

Spares Situated at a Site (Option)

- 22.11 Clauses 22.11 to 22.17 only apply if the Client has purchased the *Spares Situated at a Site* option.
- 22.12 The *Spares Situated at a Site* option is only available in conjunction with the *Engineer Situated at a Site* option.
- 22.13 Nxt IT Solutions must:
- advise the Client of the number and type of Spares to be purchased by the Client and stored at the Site based on the types and frequency of expected Incidents;
 - if requested by the Client, keep records of the usage of the Spares situated at the Site; and
 - specify the pre-determined tasks related to Spares management to be performed by the engineer provided under clauses 22.1 to 22.10 inclusive.
- 22.14 The Client must:
- purchase the recommended number and type of Spares, to be stored at a Site;

- b. facilitate the performance of the pre-determined tasks related to Spares management to be performed by the engineer provided under clauses 22.1 to 22.10 inclusive;
- c. provide and manage the facilities used for the storage of the Spares;
- d. allow Nxt IT Solutions to use the Spares to perform the Services if necessary to meet a Service Level; and
- e. maintain the recommended number and types of Spares.

22.15 Nxt IT Solutions may use a Spare for either of the following purposes:

- a. the permanent replacement of a Configuration Item; or
- b. as a Workaround.

22.16 If Nxt IT Solutions uses a Spare as a permanent replacement it will ship a replacement for the Spare to the Client as soon as may be practicable. If Nxt IT Solutions uses a Spare as a Workaround, it will replace that Spare with a permanent replacement and return the Spare to the Client.

Exclusion

22.17 If the Client fails to perform its obligations under clause 22.13c, Nxt IT Solutions will have no liability for its failure to comply with the Service Levels applicable to the affected Configuration Items.

23. Service Level Management (Option)

23.1 This clause 23 only applies if the Client has purchased the *Service Level Management* option.

Service Management Reports and Service Management Reviews

Nxt IT Solutions' obligations

23.2 Nxt IT Solutions must, at the frequency set out in the Record of Entitlement:

- a. provide *Service Management Reports* to the Client that contain detailed information regarding the supply of the Service that covers such things as:
 - i. summary and detailed Incident and Requests;
 - ii. Service Level performance;
 - iii. updated Configuration Item information provided by the Client;
 - iv. assessments performed (if procured);
 - v. Configuration Items that are no longer supported by the vendor (End-of-Life reporting);
 - vi. Service Unit usage (if *Configuration MACD/Consultant on Call* procured);
 - vii. *Licence Renewal Reminders* reporting (if procured); and
 - viii. recommendations based on information contained in the report; and
- b. schedule and attend *Service Management Review* meetings with the Client.

Awareness Training

Nxt IT Solutions' obligations

23.3 Nxt IT Solutions must provide an introductory video demonstration of the Service Portal for any end user issued with a login (as advised by the Client for end user access)..

Mobile Service Centre Application

Nxt IT Solutions' obligations

23.4 Nxt IT Solutions must:

- a. make a *Mobile Service Centre Application* available to the Client:
 - i. for smartphones and tablets running Android version 2.3 Gingerbread or above and Apple iOS version 4.x or above;

- ii. that uses the Client's Service Portal user accounts; and iii. that provides the following information on Configuration Items:
 - A. indices that provide a summary view of the Client's operational status;
 - B. service level performance dashboards;
 - C. a view of contracts due to expire (or have expired); and
 - D. a view of Incidents logged; and
- b. make a *Mobile Service Centre Application* user guide available to the Client; and
- c. respond to *Mobile Service Centre Application* queries and bugs.

General Provisions

24. Client's General Obligations

- 24.1 The Client must:
- a. keep an up to date copy of configuration files or other relevant information for all Configuration Items and provide a copy to Nxt IT Solutions when requested;
 - b. keep an up-to-date copy of any Software and provide a copy to Nxt IT Solutions when requested;
 - c. provide Nxt IT Solutions with access to the Site and the Configuration Items where and when needed in relation to an Incident or Request; and
 - d. advise Nxt IT Solutions of changes to any of the Client's nominated escalation contacts within 48 hours of such changes.
- 24.2 As part of its Service improvement process, Nxt IT Solutions may conduct client satisfaction surveys with Client contacts upon resolution of an Incident or other issue as Nxt IT Solutions considers necessary.
- 24.3 If requested, the Client must provide Nxt IT Solutions with reasonable evidence that the Client has adequate, published guidelines and procedures for Occupation Health and Safety purposes in respect of each Site, and that the Client has satisfactory public liability insurance cover.

25. End-of-Life Configuration Items

- 25.1 If Nxt IT Solutions is, in its reasonable opinion, unable to continue to provide effective Service on an End-of-Life Configuration Item, Nxt IT Solutions may, by giving the Client at least 90 days' prior written notice, remove the End-of-Life Configuration Item from the operation of this Agreement. Upon removal, Nxt IT Solutions must make a pro rata adjustment in respect of the Service Charges and the parties must amend this Agreement accordingly.
- 25.2 If no equivalent replacement Parts are available, Nxt IT Solutions will, if requested by the Client make reasonable commercial endeavours to temporarily replace a faulty End-of-Life Configuration Item with an upgraded or alternative product (which may be new or used) as a Workaround.
- 25.3 If Nxt IT Solutions has installed a temporary replacement product for a faulty End-of-Life Configuration Item in accordance with clause 25.2, the Client must, within 10 Business Days after the temporary replacement product is installed, notify Nxt IT Solutions whether it wishes to purchase a new replacement product. If the Client does not notify Nxt IT Solutions within that time or decides not to purchase a new replacement product, Nxt IT Solutions may withdraw the Service for the relevant End-of-Life Configuration Item, remove its details from this Agreement and, after giving the Client 14 days' notice, retrieve the temporary replacement product from the Site. Nxt IT Solutions may make an Additional Charge for engineering services that Nxt IT Solutions performs to remove the temporary replacement product from the Site.
- 25.4 If the Client notifies Nxt IT Solutions within the time required by clause 25.3 that it wishes to purchase a new replacement product, Nxt IT Solutions will, at a time agreed between the parties,

remove the temporary replacement product and replace it permanently with the new replacement product.

25.5 The Client's purchase of any new replacement Configuration Item, as required by clause 25.3, must be effected pursuant to a separate order between the parties.

25.6 Until the temporary replacement Configuration Item is returned to Nxt IT Solutions, the risk of loss, destruction or damage to it is with the Client. Title in the temporary replacement ways remains with Nxt IT Solutions.

26. Modification of Configuration Items

26.1 Nxt IT Solutions may make modifications to any Configuration Item as it reasonably determines for the purpose of improving or maintaining its serviceability or reliability. Nxt IT Solutions must inform and obtain approval from the Client of such a proposed modification prior to commencing any work and ensure that modifications are of the same or improved specifications as the existing Configuration Item. If the Client refuses to permit the modification, Nxt IT Solutions may remove the Configuration Item from the operation of this Agreement and if removed, Nxt IT Solutions must make an appropriate pro rata adjustment of the Service Charges and the Record of Entitlement.

27. Exclusions

27.1 Nxt IT Solutions is not obliged, without the payment of an Additional Charge, to supply any software, Parts or services to rectify a problem, fault or Incident arising from, or repair or replace a Configuration Item which fails or develops an error due to:

- a. external causes including natural disaster, fire, accident, neglect, misuse, vandalism, water, lightning, power failure, power surge or power spike;
- b. use of the Configuration Item for other than its intended purpose or contrary to its specifications;
- c. performance of maintenance or attempted repair of the Configuration Item by persons other than Nxt IT Solutions or as authorised by Nxt IT Solutions;
- d. use with or connection of the Configuration Item to items not maintained or approved by Nxt IT Solutions;
- e. relocation of the Configuration Item by the Client;
- f. insufficient capacity of the Configuration Item caused by the Client's relevant system; or
- g. Configuration Items not maintained according to clause 13.13.

27.2 The Service does not include:

- a. repair or replacement of any Configuration Item that fails due to a design defect, the existence of which was not known to Nxt IT Solutions at the date coverage for that Configuration Item commences under this Agreement;
- b. repair or replacement of accessories, attachments or any other devices (including Configuration Item components) not listed in the Record of Entitlement;
- c. repairs or replacements necessitated by unauthorised changes, modifications or alterations of or to any Configuration Item;
- d. provision of optional accessories or consumable supplies;
- e. installation and configuration of Minor Feature Releases, Updates, Patches or other software releases other than for the purpose of the implementation of Workaround or Permanent Resolution on a Configuration Item which is covered by the Restore Business Continuity Level;
- f. services to detect or to rectify any fault connected with the inability of any Configuration Item to correctly deal with a date;
- g. preventative maintenance;

- h. support, diagnosis, repair or replacement of device cables, cable assemblies, or cabling reticulation systems;
 - i. freight and/or taxes associated with field notices or product recalls issued by the manufacturer of a Configuration Item;
 - j. repair or replacement of Configuration Items while being used for testing of the Configuration Items; or
 - k. configuration or reconfiguration of Configuration Item which are in Good Operating Condition.
- 27.3 Nxt IT Solutions may, if requested by the Client, perform any of the services set out in clause 27.2 for an Additional Charge.

Terms of Service

28. Definitions

28.1 For the purposes of this Agreement, unless the context requires otherwise:

“Commencement Date” means the date identified as such in the Agreement Details.

“Confidential Information” means any confidential business and financial information of a party including, without limitation, information concerning the business operations and methods of a party or technical information acquired either directly or indirectly by the other party but excludes information which is or becomes publicly known through no wrongful act of the receiving party and for the removal of doubt it includes the Scope(s) of Service.

“Governing Law State” means the state or territory specified as such in the Agreement Details.

“GST” means the goods and services tax as defined in “A New Tax System (Goods and Services Tax) Act 1999”.

“Initial Term” means the first term of the Agreement, being the period specified as such in the Agreement Details.

“Next Business Day” means the same time on the next Business Day as the Client logged the relevant Incident Request, Change Request or Service Request on a Business Day.

“Service Charges” means the charges for the Services set out in the Agreement Details, an invoice issued by Nxt IT Solutions and/or as detailed in the Record of Entitlement.

“Set-Up Fee” means the fee (if any) described as such in the Agreement Details, payable on the Commencement Date.

“Term” means the Initial Term and any extension of it.

29. Term

- 29.1 The Initial Term of this Agreement commences on the Commencement Date and continues for the Initial Term specified in the Agreement Details.
- 29.2 After the Initial Term (or any renewed Term), this Agreement continues for a further Term of 12 months, unless either party gives the other party written notice not to renew this Agreement at least 90 days prior to the end of the Initial Term (or the renewed Term), as the case may be.
- 29.3 The Service Charges payable for a renewed Term must be the same amount as was payable immediately before expiry of the prior Term, unless varied pursuant to clause 31.4.

30. Services

30.1 During the Term Nxt IT Solutions must supply the Services to the Client and the Client must pay the Service Charges and any Additional Charges.

31. Service Charges and Payment Terms

Invoices

31.1 Nxt IT Solutions will issue invoices for the Service Charges as otherwise defined in the Agreement Details and must send each invoice to the address specified in the Agreement Details or as the Client may otherwise specify in writing. If applicable the invoice for the Set-Up Fee will be rendered at the commencement of the Term. Where agreed changes are made to the Record of Entitlement, Nxt IT Solutions must invoice the Service Charges for the adjustment's pro rata to the end of the then current Term. If the Client disputes an invoice in part, it may defer payment of only that disputed part pending resolution of the dispute.

31.2 Nxt IT Solutions must issue invoices for any Additional Charges when it has done the relevant work, supplied the goods or incurred the expenses.

Payment Terms

31.3 The Client must pay the Service Charges, any applicable Set-Up Fees and any Additional Charges within 30 days after the date on which Nxt IT Solutions' invoice is rendered.

Variation of the Service Charges

31.4 Nxt IT Solutions may, by giving at least 30 days" written notice of the variation to the Client, vary the Service Charges:

- a. at any time after the Initial Term expires;
- b. at the end of a renewed term; or
- c. at any time after the first 12 months of the Term, if the Initial Term exceeds 12 months and Nxt IT Solutions has, with the Client's consent sub-contracted the Services to a third party which has supplied its services for a price expressed in a currency other than Australian dollars, but d. not more than once in a 12-month period.

31.5 If the Client and Nxt IT Solutions fail to agree on the varied Service Charges within 30 days of Nxt IT Solutions' notice, either party may terminate this Agreement by giving 30 days written notice to the other party.

Failure to pay

31.6 If the Client fails to pay any amounts payable to Nxt IT Solutions by the due date, Nxt IT Solutions may, on 7 days" written notice, suspend supply of all or any part of the Service until the Client pays all such overdue amounts.

Special charges

31.7 If access to or replacement of a Configuration Item by Nxt IT Solutions requires specialised equipment and/or additional resources to comply with legal or occupational health and safety requirements, the Client will incur an Additional Charge.

32. Taxes

32.1 The Service Charges are exclusive of taxes, duties and charges imposed or levied in Australia in connection with the supply of the Services, and GST. The Client is liable for any new or altered taxes, duties or charges imposed after the Commencement Date in respect of the supply of the Services.

32.2 If GST applies to any supply made under or in connection with this Agreement, Nxt IT Solutions must issue a valid tax invoice to the Client and the Client must pay the GST at the same time as the invoice for the Service Charges or the Additional Charge.

33. Insurance

33.1 During the Term, Nxt IT Solutions must:

- a. comply with all workers' compensation or similar legislation in respect of its employees and shall obtain and maintain all insurances under and pay all amounts required by that legislation;
- b. effect and maintain at its own expense:
 - i. a public liability insurance policy, until 3 months following the expiration of the Term, for not less than \$10 million for each claim;
 - ii. a professional indemnity insurance policy, which covers the carrying out of the Services under this Agreement for an amount of not less than \$10 million for each claim and in the aggregate, and Nxt IT Solutions must ensure that every subcontractor has professional indemnity insurance for each and every claim; and
 - iii. upon request from the Client provide evidence of each insurance specified in this clause 33.

34. Warranties

34.1 Nxt IT Solutions warrants that it will provide the Services in a proper and professional manner and will ensure that the Services are performed by personnel who are suitably qualified to perform the Services.

34.2 The Client warrants that it has the appropriate licenses, rights and/or title to the Configuration Items that are the subject of this Agreement.

35. The Client's Obligations

35.1 The Client must:

- a. provide Nxt IT Solutions with reasonable assistance and information to assist it to provide the Services;
- b. supply all communications interfaces Nxt IT Solutions requires to enable provision of the Services, except those that Nxt IT Solutions keeps on its own premises or installs at a Site for use in providing the Services;
- c. ensure that Nxt IT Solutions' information and materials in the custody of the Client for the purposes of this Agreement are protected at all times from unauthorised access or use by a third party and from misuse, damage or destruction by any person;
- d. give Nxt IT Solutions access to a Site when required for the purpose of providing the Services;
- e. if requested, provide secure facilities at a Site for Nxt IT Solutions to store tools, Parts and other items necessary for it to perform its obligations under this Agreement;
- f. keep such records relating to use and performance of the Configuration Items which are the subject of the Services as Nxt IT Solutions may reasonably request and ensure that Nxt IT Solutions' personnel have access to such records at all reasonable times;
- g. comply with the Client's obligations set out in this Agreement; and
- h. carry out and maintain restorable backup copies of all relevant software licensed by the Client, whether operating systems, discrete applications or configurations and where Nxt IT Solutions requires them to supply the Services, make the same available to Nxt IT Solutions upon request.

35.2 If the Client fails to promptly comply with any of the Client's obligations set out in this Agreement, Nxt IT Solutions may, in its absolute discretion, suspend performance of any or all of the Services affected as a result of the Client's failure or refusal until the Client has complied with its obligations.

36. Subcontractors

36.1 Nxt IT Solutions may subcontract parts of the Services to such persons as it, in its discretion, considers necessary to enable it to fulfil its obligations under this Agreement.

37. Confidentiality

37.1 Neither party is permitted, without the prior written consent of the supplying party, to disclose or communicate to any third party or to their employees, servants, agents, contractors or consultants any Confidential Information or use any Confidential Information for any purpose except for the purpose for which such Confidential Information was supplied or for the proper performance of this Agreement.

37.2 Each party agrees that the documents attached to or incorporated in this Agreement by reference are confidential and must not be disclosed to any person (other than a party's legal or financial advisors or as required by law) without the prior written consent of the other party.

37.3 The operation of this clause 37 survives the expiry or earlier termination of this Agreement.

38. Limitations on liability

38.1 Other than in respect of its liability for death, personal injury, damage to tangible property, claims for breach of third party intellectual rights or breach of privacy laws, Nxt IT Solutions' aggregate liability, whether arising from breach of contract, negligence or any other tort, breach of warranty under and indemnity or statute, in equity or otherwise is limited to an amount equal to the annual Service Charges paid by the Client at the date such liability is proven to have arisen.

38.2 If Nxt IT Solutions admits a liability to the Client for a claim for a breach of this Agreement and the Client has elected not to, (or has no right to) terminate this Agreement on the grounds of the breach, Nxt IT Solutions may, at its option, elect to apply the whole or part of any amount agreed to be paid to the Client as the result of such breach as a credit to future Service Charges payable by the Client.

38.3 Nxt IT Solutions 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 Nxt IT Solutions was aware of the possibility of such loss or damage.

38.4 To the fullest extent permitted by law, the parties agree to exclude all express or implied warranties, representations, statements, terms and conditions relating to Nxt IT Solutions

or the provision of the Services under these terms, not expressly set out in these terms, are excluded from the agreement between the parties.

38.5 Notwithstanding the other provisions of this clause 38, Nxt IT Solutions' liability for a breach of a condition or warranty implied into the Agreement by the *Competition and Consumer Act 2010 (Cth)* (other than by Schedule 2 section 51 of the Act or where any limitation is otherwise prohibited) is limited, at Nxt IT Solutions' option:

- a. if the breach relates to goods: to the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods (or of acquiring equivalent goods); or to the payment of the cost of having the goods repaired; and
- b. if the breach relates to services: to the payment of the cost of having the services supplied again or the supply of the services again.

38.6 Nxt IT Solutions will not be liable for any failure or delay in providing the Services where such failure or delay is the direct or indirect result of any action by or the failure of the Client to comply with this Agreement.

39. Termination

- 39.1 If a party breaches any provision of this Agreement, the other party may:
- suspend provision of the Services or payment of any amounts otherwise due (as the case may be) until the breach is remedied by the party in breach; and
 - terminate this Agreement, if the party in breach remains in breach of any such provision after receiving at least 30 days" notice in writing from the other party identifying the breach and requesting its remedy.
- 39.2 Either party may terminate this Agreement immediately if the other party:
- enters into any arrangement between itself and its (or any class of its) creditors;
 - ceases to be able to pay its debts as they become due;
 - ceases to carry on business;
 - has a mortgagee enter into possession or disposes of the whole or any part of its assets or business;
 - enters into liquidation or any form of insolvency administration; or
 - 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.
- 39.3 If Nxt IT Solutions terminates this Agreement, the Client must immediately pay to Nxt IT Solutions the total of all amounts then due to Nxt IT Solutions pursuant to this Agreement.
- 39.4 If Nxt IT Solutions terminates this Agreement on any of the grounds set out in clauses 39.1 or 39.2 the Client is not entitled to a refund or adjustment of any applicable Set-Up Fee or of any Service Charges paid to Nxt IT Solutions.
- 39.5 If the Client terminates this Agreement on any of the grounds set out in clauses 39.1 or 39.2, the Client is entitled to a pro-rata refund of any part of the Service Charges it has paid for Services to be supplied after the date of termination.
- 39.6 Termination of this Agreement (for whatever cause) does not affect any right or cause of action which has accrued to the party which terminates this Agreement at or prior to the date of termination.

40. Soliciting Employees or Contractors

- 40.1 During the term of this Agreement and for 6 months after termination by either party of this Agreement, a party must not employ or solicit for employment any person who is an employee of or contractor to the other party who was involved during the most recent 6-month period of this Agreement in the matters covered by this Agreement.
- 40.2 This clause does not apply where:
- a person responds to an advertisement for employment by a party; or
 - the employment is agreed to by the parties.
- 40.3 Each party acknowledges that the restriction specified in this clause 40 is in the circumstances reasonable and necessary to protect each party's legitimate interests.

41. General Conditions

Other terms

- 41.1 Terms or conditions attached to or forming a part of a purchase order that the Client issues do not form part of this Agreement.

Governing law

41.2 This Agreement is governed by the laws of the Governing Law State.

Prior agreements

41.3 This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to its subject matter.

Variations

41.4 No variation of this Agreement is binding upon the parties unless made in writing signed by an authorised representative of each of the parties, unless provided otherwise in this Agreement. Nxt IT Solutions' written acceptance of a written request (including a request made by e-mail) by the Client for a variation to the Record of Entitlement is binding on both parties. Following an agreed variation, Nxt IT Solutions must issue a revised Record of Entitlement.

Notices

41.5 Notices to or by a party delivered in person are deemed to be given by the sender and received by the addressee when delivered to the addressee: if by post, 3 Business Days from and including the date of postage; or if by facsimile, when successfully transmitted to the addressee provided that if transmission is on a day which is not a Business Day or is after 5.00 PM (addressee's time), on the next Business Day.

Illegality

41.6 Any provision or the application of any provision of this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

Waiver

41.7 A waiver of a breach of this Agreement or of any right, power, authority, discretion or remedy arising upon a breach of or default under this Agreement must be in writing and signed by the party granting the waiver.

Assignment

41.8 A party may only assign this Agreement and any rights under this Agreement with the prior written consent of the other party.

Nxt IT Solutions Management System

41.9 Due to changes in technology and Nxt IT Solutions' desire to maintain the highest possible quality of the Services, it may be necessary to make adjustments or add enhancements to the Nxt IT Solutions Management System during the Term. Nxt IT Solutions will provide advance notice of any such changes, if possible. If the standard scope of the Services is necessarily improved or extended as a result of the enhancements, they will be offered to the Client for the remainder of the then current Term at no additional cost, provided that Nxt IT Solutions will expect that no claim is made for a reduction in the Service Charges for minor reductions in scope as a result of the enhancements.

Force majeure

41.10 Neither party is liable to the other for the consequences of any delays or failures of its performance which are caused by any event beyond its reasonable control, including without limitation acts of God, fire, flood, accident, terrorism, strike, labour problems and riots.