

Subcontract (NTRO as Subcontractor)

(Client)

National Transport Research Organisation (NTRO)

Date:

[Note: By signing this Agreement, you confirm that you have represented to NTRO:

(a) you:

- (i) are not an individual whose acquisition of goods or services from NTRO is wholly or predominantly for personal, domestic or household use or consumption;
- (ii) employ 100 persons or more; and
- (iii) had a turnover, in the last income year, of \$AUD10,000,000 or more as those expressions are used in section 23 *Australian Consumer Law*; and

(b) this Agreement is not a “*Consumer Contract*” nor a “*small Business Contract*” within the meaning of that legislation.]



Adelaide	Level 5, 100 King William Street, Adelaide SA 5000	+61 8 8235 3300
Brisbane	21 McLachlan Street, Fortitude Valley QLD 4006	+61 7 3260 3500
Canberra	73 Northbourne Avenue, Canberra ACT 2601	+61 3 9881 1555
Melbourne	80A Turner Street, Port Melbourne VIC 3207	+61 3 9881 1555
Perth	Suite 4B, Level 2, 1 Hood Street, Subiaco WA 6008	+61 8 9227 3000
Sydney	53 Balfour Street, Chippendale NSW 2008	+61 2 9282 4444

ntro.org.au | ABN 68 004 620 651

TC-721-4-0-6
Issue Date: 21/03/2024

Contents

1.	Definitions and Interpretation	4
1.1	Defined Terms	4
1.2	Interpretation	7
2.	Engagement and Term	8
2.1	Engagement	8
2.2	Purchase Orders	8
2.3	Term of engagement	8
3.	Obligations	8
3.1	NTRO's Obligations	8
3.2	The Client's obligations	9
3.3	Personnel	9
3.4	NTRO's representative	10
3.5	Discrepancies in information	10
3.6	Delay	10
3.7	Alterations to approved documents	10
3.8	Co-operation by others with NTRO	10
3.9	Obtain all necessary approvals	10
3.10	Defective Services	11
3.11	Parties Trade Marks	11
3.12	Services from others	11
4.	Variation	11
4.1	Instructions	11
4.2	Consequences of variation or proposed variation	11
4.3	Variation implemented	11
4.4	Variations due to Change in Law	11
5.	Assignment and subcontracting	12
5.1	Assignment	12
5.2	Subcontracting	12
6.	Fee	12
6.1	Client to pay the Fee	12
6.2	Payment of Fees	12
6.3	Invoices	12
6.4	Time and place for payment	12
6.5	Set off	13
7.	Intellectual Property and Data	13
7.1	NTRO Background Intellectual Property	13
7.2	Licence to use NTRO Materials Intellectual Property	13
7.3	Services relating to Data	13
7.4	Licence of Client Data	13
7.5	Ownership and licensing of NTRO Project Data	13
8.	NTRO's liability	13
8.1	Scope of Liability	13

8.2	Exclusions and Caps.....	14
8.3	Indemnity to NTRO for the Services	14
8.4	Indemnity.....	14
8.5	Reliance on advice.....	14
9.	Insurance	15
9.1	Insurance required	15
10.	Expiry and Termination	15
10.1	Expiry	15
10.2	Termination by the Client	15
10.3	Termination by NTRO	16
10.4	Payment to NTRO on Termination.....	16
11.	Dispute Resolution.....	16
11.1	Procedure for resolving disputes.....	16
11.2	Continue to perform.....	16
12.	Notices and Administration	16
13.	Confidentiality	17
14.	Head Contract.....	17
14.1	Head Contract and this Agreement.....	17
15.	<i>Modern Slavery Act 2018 (Cth) (MSA)</i>.....	17
15.1	Compliance with MSA	17
16.	Work Health & Safety and Environment	17
16.1	Compliance with WHS and Environmental Laws	17
17.	General	17
17.1	GST	17
17.2	Relationship of the Parties	18
17.3	Governing law and jurisdiction	18
17.4	Entire agreement.....	18
17.5	Severability	18
17.6	Changes to this Agreement.....	18
17.7	Further assurances	18
17.8	Costs	19
17.9	Counterparts.....	19
17.10	Survival.....	19
17.11	No waiver	19
17.12	No application of Unfair Contract Terms Legislation.....	19

Subcontract (NTRO as Subcontractor)

This agreement is made on the date in Schedule 1.

Between

ARRB Group Ltd (A.B.N. 68 004 620 651) trading as the National Transport Research Organisation (**NTRO**) of 80A Turner Street, Port Melbourne, VIC 3207.

AND the entity named in Schedule 1 (**Client**)

together the **Parties**, and each a **Party**

Background

- A. The Client has entered into the Head Contract and requires the Services to be provided by NTRO as subcontractor to assist the Client to meet its obligations under the Head Contract.
- B. NTRO has agreed to provide the Services to the Client on the terms set out in this Agreement.

The Parties agree as follows:

1. Definitions and Interpretation

1.1 Defined Terms

In this Agreement, unless the contrary intention appears:

'Agreement' means this Subcontract entered into between the Parties;

'NTRO Background Intellectual Property' means all NTRO Intellectual Property, owned by NTRO or licenced to NTRO by a third party, that NTRO uses to develop the Materials for the Client or for the Principal and includes all Moral Rights of NTRO Personnel which come into existence whilst that person is engaged in the provision of the Services, the production of the Materials or in relation to the subject matter of this Agreement;

'NTRO Collected Data' means Data, other than Client Data, collected by NTRO for the purpose of enabling NTRO to provide the Services and Data collected by NTRO for other purposes;

'NTRO Materials Intellectual Property' means all Intellectual Property in the Materials provided by NTRO to the Client or to the Principal but does not include Moral Rights of NTRO Personnel which come into existence whilst that person is engaged in the provision of the Services, the production of the Materials or in relation to the subject matter of this Agreement;

'NTRO Processed Data' means any Data reviewed and processed by NTRO for the purpose of enabling NTRO to provide the Services and Data reviewed and processed by NTRO for other purposes;

'NTRO Project Data' means NTRO Collected Data and NTRO Processed Data;

'Business Day' means a day other than:

- (a) a Saturday, Sunday or public holiday in the State in which the Services are to be provided; or
- (b) 27, 28, 29, 30 or 31 December.

‘Change in Codes or Standards’ means a change in the Codes and Standards which apply to the provision of the Services by NTRO, which takes effect after the Commencement Date and compliance with which:

- (a) has an effect on NTRO providing the Services; and
- (b) results in an increase in NTRO's costs of carrying out the Services or a delay to NTRO completing any of the Services in accordance with this Agreement or a Purchase Order

but does not include any such change in the Codes and Standards which was published or of which public notice had been given as at the Commencement Date and is in the same form as the change in the Codes and Standards eventuating after the Commencement Date;

‘Change in Law’ means a Change in Statutory Requirement or Change in Codes or Standards;

‘Change in Statutory Requirement’ means:

- (a) a change in an existing Statutory Requirement; or
- (b) a new Statutory Requirement

which takes effect after the Commencement Date and compliance with which:

- (c) has an effect on NTRO providing the Services; and
- (d) results in an increase in NTRO's costs of carrying out the Services or a delay to NTRO completing any of the Services in accordance with this Agreement or a Purchase Order

but does not include any such change in the Statutory Requirement which was published or of which public notice had been given as at the Commencement Date and is in the same form as the change in the Statutory Requirement eventuating after the Commencement Date;

‘Claim’ means a claim, demand, liability, action or proceeding of any nature, whether actual or threatened under, arising out of, or in any way in connection with this Agreement or the provision of the Services or otherwise arising at Law in respect of the subject matter of this Agreement;

‘Client Data’ means Data, which is not publicly available and which is owned by the Client and provided by the Client to NTRO to assist or to enable NTRO to provide the Services;

‘Commencement Date’ means the date set out in Schedule 1, or if no date appears means the date of execution of this Agreement by the Parties;

‘Confidential Information’ means all information and materials disclosed, provided or otherwise made accessible to a Party or to the Principal in the course of NTRO performing the Services or in connection with this Agreement or a Purchase Order, whether before, on, or after execution of this Agreement, including, but not limited to, the policies, services, processes, procedures, methods, formulations, facilities, products, plans, affairs, transactions, organisations, business connections and clients of a Party or its Related Bodies Corporate but excludes information that the recipient Party can prove:

- (a) was in the public domain at the date of this Agreement;
- (b) subsequent to the date of this Agreement, became part of the public domain other than as a result of disclosure by the recipient Party or its Personnel); or
- (c) was already in the possession of the recipient Party at the time of disclosure.

‘Data’ includes all information, text, drawings, statistics, analysis, materials and other data embodied in any form and conveyed in any medium;

‘Fee’ means the amount payable for the Services as set out in Schedule 1;

‘Head Contract’ means the agreement between the Client and a Principal that includes the Services to be provided under this Agreement;

‘Indirect or Consequential Loss’ includes any loss of opportunity, profit, anticipated profit, business, business opportunities or revenue or any failure to realise anticipated savings;

'Intellectual Property' means all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including copyright, future copyright and analogous rights, inventions (including patents and innovation patents), registered and unregistered trademarks or name, registered and registrable designs, confidential information, trade secrets, technical data and know how, circuit layout rights, and all other protected rights of intellectual property defined in Article 2 of the *Convention Establishing the World Intellectual Property Organisation dated 14 July 1967* (as amended from time to time), including any application or right to apply for registration of any of these rights;

'Insolvency Event' means:

- (a) one Party informs the other Party in writing, or its creditors generally, that the Party is insolvent or is unable to proceed with its obligations under this Agreement for financial reasons;
- (b) in relation to an individual, the individual (being a Party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual, or the individual is made bankrupt;
- (c) execution is levied against a Party by a creditor, debenture holders or trustees or under a floating charge; or
- (d) in relation to a corporation any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the corporation enters a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement) or composition with creditors;
 - (iii) a "controller" (as defined in section 9 of the Corporations Act 2001 (Cth)), manager, trustee, administrator or similar officer is appointed to the corporation or any asset of the corporation;
 - (iv) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, liquidator or provisional liquidator to be appointed to the corporation;
 - (v) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (vi) an application is made to a court for the sequestration or winding up a corporation and not stayed, withdrawn, dismissed or discontinued within 15 Business Days;
 - (vii) a sequestration order or winding up order is made in respect of the corporation;
 - (viii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a Party under administration or a deed of company arrangement resolves that the corporation be wound up;
 - (ix) a mortgagee of any property of the corporation takes possession of that property; or
 - (x) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

'Law' means:

- (a) the common law of and all statutes of the Commonwealth and the State or Territory in which the Services are to be provided; and
- (b) all regulations, orders, rules, subordinate legislation, approvals, codes, standards and requirements of organisations enforceable under those Statutes;

'Loss' means all any liability, cost, expense, loss, personal injury (including illness), death or damage, amounts payable on a Claim, suit, charge, diminution in value, action, statutory or equitable compensation, demand, expense, legal costs and disbursements;

'Materials' means the deliverables to be supplied by NTRO to the Client or to the Principal as part of the Services under this Agreement or a Purchase Order;

'Materials IP Licence Period' means the period from the Commencement Date set out in Schedule 1;

'Moral Rights' means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute, that exist, or that may come to exist, anywhere in the world;

'Personnel' means:

- (a) employees, agents, consultants, suppliers and subcontractors of a person; and
- (b) employees, agents, consultants, suppliers and subcontractors of those subcontractors.

'Principal' means the Client's Principal under the Head Contract;

'Professional Standards Scheme' means a scheme limiting liability which is approved under professional standards legislation in an Australian jurisdiction;

'Purchase Order' means a work order or purchaser order issued by the Client to NTRO in accordance with clause 2.2;

'Purpose' means the purpose set out in Schedule 1;

'Regulatory Body' means any Federal or State Minister of the Crown, government or quasi government administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or statutory authority;

'Related Body Corporate' has the meaning given in section 9 of the *Corporations Act 2001* (Cth);

'Schedule' means a schedule to this Agreement;

'Services' means the subcontract services to be provided by NTRO to the Client or to the Principal, more particularly described in Schedule 1;

'Term' means the term of this Agreement set out in Schedule 1;

1.2 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a party, clause, schedule or annexure is to a Party, clause, schedule or annexure to this Agreement;
- (d) a reference to a person includes a company, partnership, joint venture, association, corporation, government, governmental or local authority or agency or owners corporation;
- (e) a reference to any statute, regulation, ordinance or by-law includes a variation to, consolidation of, replacement to and delegated legislation under that statute, and a reference to a statute includes regulations, proclamations, ordinances and by-laws issued in relation to the subject matter of that statute;
- (f) a reference to a day is a calendar day;
- (g) a reference to a Party in any document, or to the Principal in this Agreement, includes that Party's executors, administrators, successors and permitted assigns;
- (h) a reference to an agreement or contract (other than this Agreement) includes any undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;

- (i) no provision of this Agreement will be construed adversely to a Party solely on the grounds that the Party was responsible for the preparation of this Agreement or that provision;
- (j) a reference to a document or agreement, including to this Agreement, but not including to the Head Contract, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (k) the meaning of general words is not limited by the word “including”;
- (l) a reference to currency, \$, AUD or A\$ is a reference to the currency of the Commonwealth of Australia; and
- (m) if there is any inconsistency between any schedule of this Agreement and the terms of this Agreement, then the terms of the schedule take precedence over the terms of this Agreement to the extent of the inconsistency.

2. Engagement and Term

2.1 Engagement

The Client engages NTRO as the Client’s subcontractor to perform the Services in accordance with the terms and conditions of this Agreement.

2.2 Purchase Orders

- (a) The Client may request NTRO perform a part or all of the Services by issuing a Purchase Order for specified Services;
- (b) Each Purchase Order must specify those of the Services to be subject to the Purchase Order and the Fee for those Services;
- (c) If NTRO agrees to the Fee and the Services specified in a Purchase Order, NTRO will supply the Services specified in the Purchase Order for the Fee specified in the Purchase Order but otherwise in accordance with this Agreement and not on the terms of the Purchase Order;
- (d) Each time a Purchase Order is agreed by the Parties, a separate contract for the supply of the Services specified in the Purchase Order is formed between the Parties, comprising the Services and Fee specified in the Purchase Order and all the terms and conditions of this Agreement which, the Parties have agreed, are hereby incorporated into and form part of each Purchase Order.

2.3 Term of engagement

- (a) NTRO is engaged by the Client for the Term unless this Agreement is terminated earlier.
- (b) The Parties may extend the Term of this Agreement by written agreement prior to the expiry of the Term;
- (c) If, after the expiry of the Term (or the Term as extended), NTRO continues to perform the Services, and the Client accepts receipt of the Services, the provisions of this Agreement will continue to apply to the Parties until terminated in accordance with the provisions of this Agreement.

3. Obligations

3.1 NTRO’s Obligations

Subject to the Client complying with all of its obligations to NTRO, under this Agreement and at Law, NTRO must:

- (a) perform and provide the Services from the date of this Agreement on the terms set out in this Agreement;

- (b) perform the Services to the standard of care and skill to be expected of a subcontractor who is engaged in the capacity in which NTRO is engaged and who possesses the knowledge, skill and experience of a subcontractor qualified to act in that capacity;
- (c) ensure that the Services are performed, and all materials and data requested by the Client pursuant to this Agreement and each Purchase Order are prepared:
 - (i) competently and professionally; and
 - (ii) in accordance with the terms of this Agreement;
- (d) ensure that the Services are fit for the Purpose expressed in this Agreement;
- (e) perform the Services in compliance with, all Laws relevant or applicable to the Services or this Agreement;
- (f) keep adequate records of work performed under this Agreement;
- (g) employ Personnel with appropriate qualifications and experience to carry out the Services and adequately and properly manage and direct those Personnel;
- (h) manage industrial relations relating to its Personnel, arising out of the performance of the Services, including negotiations, and meet all fees and costs relating to industrial matters, including payment for site-specific allowances;
- (i) except as may otherwise be agreed, supply everything necessary for the proper performance of NTRO's obligations under this Agreement;
- (j) notify the Client in writing in advance if NTRO considers that additional work which constitutes a Variation is required and obtain the Client's approval in writing prior to commencing the additional work in accordance with clause 4; and
- (k) ensure that the Services, and any deliverables associated with the Services, are free from any material defects or material deficiencies and materially comply with all relevant Laws;
- (l) when on the Client's or the Principal's premises, and when using the Client's or the Principal's facilities, comply with all reasonable directions, procedures and policies which have been provided to NTRO in writing before the Commencement Date relating to occupational health, safety and security requirements for those premises and facilities.

3.2 The Client's obligations

The Client must, in addition to its other obligations to NTRO under this Agreement and by Law,:

- (a) prior to NTRO providing the Services, obtain all necessary approvals, required by this Agreement and by Law, to enable NTRO to provide the Services;
- (b) provide NTRO with all necessary access to all premises or sites of the Client and its other subcontractors, and of the Principal and its other contractors, as NTRO advises the Client is necessary for NTRO to provide the Services;
- (c) give or cause to be given to NTRO timely directions, instructions and decisions sufficient to define the Services required and to enable NTRO to perform its obligations under this Agreement and each Purchase Order;
- (d) not interfere with or compromise NTRO's performance of the Services;
- (e) appoint the person nominated as the Client's Representative to act as the Client's representative with full authority to bind the Client in respect of all matters arising in connection with the Services, the Purchase Order and this Agreement; and
- (f) notify NTRO in writing of any change to the Client's Representative before the change takes effect.

3.3 Personnel

- (a) NTRO must ensure that all its Personnel:

- (i) are appropriately qualified, competent, and experienced in the provision of the type of services required under this Agreement;
 - (ii) do not intentionally represent that they are employees of the Client or the Principal; and
 - (iii) hold and maintain all necessary licences, approvals and authorisations required to perform the Services.
- (b) NTRO must ensure that the persons nominated as Key Personnel are engaged by NTRO to undertake the role agreed or suitable alternate Personnel are provided in their place.

3.4 NTRO's representative

- (a) NTRO must appoint the person nominated as NTRO's Representative to act as NTRO's representative with full authority to bind NTRO in respect of all matters arising in connection with the Services, the Purchase Order and this Agreement; and
- (b) NTRO must notify the Client in writing of any change to NTRO's Representative before the change takes effect.

3.5 Discrepancies in information

If NTRO considers that information, documents and other particulars made available to it are inadequate or contain mistakes, inaccuracies or discrepancies or there is any omission, NTRO may give written notice as soon as practicable to the Client detailing the errors or ambiguities.

3.6 Delay

- (a) NTRO may, after becoming aware of a matter which is likely to change the scope or timing of the Services, give written notice to the Client detailing the circumstances and extent or likely extent of the change or delay.
- (b) NTRO will receive an extension of time for completion of the Services caused by all circumstances beyond its control (including limits on supply of materials, the consequences of war or compliance with any Laws related to contagion).

3.7 Alterations to approved documents

NTRO must not make any substantial or material alteration to, addition to or omission from any plans, drawings, layouts, designs, specifications or other material previously approved by, or submitted to, the Client, without advising the Client of the alteration, addition or omission.

3.8 Co-operation by others with NTRO

- (a) The Client must ensure that all the Client's, the Principal's, and all third party Personnel and contractors engaged in relation to the site upon which the Services are to be provided by NTRO, liaise, co-operate and confer with NTRO as necessary to enable NTRO to provide the Services.
- (b) The Client must carefully co-ordinate and integrate the Services with the services or works performed and provided by the Client's and all third party Personnel and contractors engaged in relation to the site upon which the Services are to be provided by NTRO.

3.9 Obtain all necessary approvals

The Client must obtain all necessary approvals, authorities, licences and permits which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the Services.

3.10 Defective Services

In the event that the Client considers there to be:

- (a) any material defect, departure, error, omission, non-compliance, failure or omission in the Services;
- (b) any material defect or fault in any parts or materials or documents supplied by NTRO; and
- (c) any failure of the Services to substantially comply with the requirements of this Agreement (**Defective Service**) the Client must:
 - (d) notify NTRO of the details of the Defective Service;
 - (e) allow NTRO 30 Business Days to take action necessary to rectify that Defective Service before the Client takes any action to enforce this agreement or seeks to recover any Loss in respect of the Defective Service; and
 - (f) if NTRO rectifies the Defective Service within that period, not take any action to enforce this agreement nor seek to recover any Loss.

3.11 Parties Trade Marks

A Party must not use the other Party's trade marks or other identifications without the other's prior written consent.

3.12 Services from others

NTRO may, obtain advice, services or assistance from others in connection with the Services, and will be reimbursed those costs by the Client.

4. Variation

4.1 Instructions

The Client may, (on the recommendation of NTRO or otherwise), instruct NTRO in writing to vary the Services (Variation), only on the basis set out in this clause.

4.2 Consequences of variation or proposed variation

- (a) When instructing a Variation, the Client must request NTRO to provide a written estimate of the time and cost of the proposed Variation.
- (b) Within 10 Business Days of the request, NTRO must provide the Client a written estimate of the time and cost effects of the Variation.

4.3 Variation implemented

NTRO must carry out the Variation only when the Client has:

- (a) received NTRO's written estimate;
- (b) agreed in writing with NTRO the scope of the Services to be provided under the Variation and the price for the Services to be provided under the Variation; and
- (c) given written approval for NTRO to proceed with the Services under the Variation.

4.4 Variations due to Change in Law

If a Change in Law occurs the Parties will be deemed to have agreed a Variation pursuant to clause 4.3 for a price reasonably determined by NTRO.

5. Assignment and subcontracting

5.1 Assignment

- (a) Subject to clause 5.1(b), neither Party may assign any part of this Agreement (including a Purchase Order) or any interests, rights and obligations under this Agreement (including a Purchase Order) without the prior written consent of the other Party.
- (b) A Party may assign or novate its rights and/or obligations under this Agreement or a Purchase Order to a Related Body Corporate of that Party without the other Party's consent but must provide notice to the other Party of the assignment.

5.2 Subcontracting

- (a) NTRO may subcontract any of the Services without the prior written approval of the Client.
- (b) The subcontracting of any of the Services will not relieve NTRO from any liability or obligations under this Agreement.
- (c) NTRO must:
 - (i) co-ordinate the work of all its subcontractors;
 - (ii) provide and direct all necessary personnel to administer, supervise, inspect, co-ordinate and control its subcontractors; and
 - (iii) at all times co-ordinate the Services and ensure execution and completion of the work is carried out by its subcontractors in a proper and workmanlike manner according to the relevant requirements of the Agreement.

6. Fee

6.1 Client to pay the Fee

The Client must pay NTRO the Fee in accordance with this clause 6.

6.2 Payment of Fees

The Client must pay NTRO the Fee as set out in Schedule 1 and any applicable Purchase Order.

6.3 Invoices

- (a) NTRO must submit invoices for the performance of the Services performed in accordance with the Purchase Order or, if no provision is made in the Purchase Order, in accordance with these provisions;
- (b) NTRO must submit invoices on a monthly basis for the Fees payable for the Services in that month;
- (c) If the Fee is described as a payment per month or is calculated on a monthly basis, the amount invoiced must correspond with the relevant monthly Fee.
- (d) If the Fee is described as a total annual value or is calculated on an annual basis, the amount invoiced on a monthly basis must be equal to one-twelfth of the relevant annual Fee.
- (e) The invoice must be sent to the Client at its address specified in this Agreement or as most recently notified to NTRO.

6.4 Time and place for payment

Each invoice submitted by NTRO in accordance with this Agreement and the applicable Purchase Order will be paid by the Client within 20 Business days of the date of the invoice.

6.5 **Set off**

The Client must not deduct from amounts otherwise payable to NTRO any amount due from NTRO to the Client or any claim to money which the Client may have against NTRO (whether for damages or otherwise) in connection with the Services, including as provision against any incomplete or defective Services.

7. **Intellectual Property and Data**

7.1 **NTRO Background Intellectual Property**

- (a) All rights to all NTRO Background Intellectual Property are retained by NTRO.
- (b) No licence is granted by NTRO to the Client to use any NTRO Background Intellectual Property relevant to the use of, or embodied in, the Materials.
- (c) The Client is not permitted to use, reproduce and modify any NTRO Background Intellectual Property.

7.2 **Licence to use NTRO Materials Intellectual Property**

- (a) Subject to clause 7.2(b), NTRO owns all NTRO Materials Intellectual Property.
- (b) NTRO grants to the Client, upon the delivery of each of the Materials by NTRO to the Client, for the Materials IP Licence Period, a non-exclusive, irrevocable, royalty-free licence to use the NTRO Materials Intellectual Property solely in conjunction with the Client's use of the Materials for the Purpose. Except in the case of a transfer by the Client to the Principal, the licence is non-transferable.
- (c) The Client is not otherwise permitted to use, reproduce or modify any NTRO Materials Intellectual Property.

7.3 **Services relating to Data**

The Services may include Services to be provided by NTRO which require the use by NTRO of:

- (a) NTRO Project Data; and
- (b) Client Data.

7.4 **Licence of Client Data**

The Client grants to NTRO, upon the delivery by the Client of Client Data to NTRO, a non-exclusive, irrevocable, perpetual, royalty-free licence to use the Client Data in conjunction with the provision of the Services.

7.5 **Ownership and licensing of NTRO Project Data**

- (a) NTRO owns all NTRO Project Data upon its collection or creation.
- (b) No licence is granted by NTRO to the Client to use any NTRO Project Data relevant to the use of, or embodied in, the Materials other than to the extent contemplated by clause 7.2(b).

8. **NTRO's liability**

8.1 **Scope of Liability**

Subject to the further exclusions and limitations expressed below and in clause 8.2, NTRO's liability to the Client, whether arising under contract, tort (including negligence) or otherwise at law or in equity, is limited to liability to the Client for a loss or liability that the Client suffers, resulting directly from:

- (a) personal injury;
- (b) death; or
- (c) property damage

to the Client or to the Client's Personnel or third parties who reasonably foreseeably suffer a loss which is caused by:

- (d) a failure of NTRO to substantially comply with NTRO's obligations under this Agreement;
- (e) fraud or other wilful tortious act by NTRO; or
- (f) infringement by NTRO of the Client's Intellectual Property.

8.2 Exclusions and Caps

To the fullest extent permitted by Law, NTRO's liability to the Client in respect of any Losses incurred by the Client or by any other person, whether arising under indemnity, as a result of breach of the Agreement or otherwise and whether directly or indirectly resulting from or contributed to by NTRO's or any other person's acts or omissions:

- (a) excludes all Indirect or Consequential Loss of the Client or any other person;
- (b) is reduced to the extent that the loss suffered is a direct or indirect consequence of the act or omission of the Client or any other person;
- (c) will not, in the aggregate, exceed the amount which is the least of:
 - (i) any amount recovered by NTRO from insurance in respect of the relevant liability; and
 - (ii) an amount equal to the total net amount paid to NTRO by the Client under this Agreement; or
 - (iii) \$1,000,000 (inclusive of GST); and
 - (iv) the amount to which NTRO's liability is limited under a Professional Standards Scheme; and
- (d) is recoverable only in respect of a claim by the Client on NTRO made during the Term or a period of 12 months after the end of the Term.

8.3 Indemnity to NTRO for the Services

The Client hereby indemnifies NTRO against all Claims and Losses incurred by NTRO in any way relating to Losses by any person other than the Client in respect of the provision of the Services by NTRO to the Client or to another person at the direction of the Client.

8.4 Indemnity

The indemnity in this clause is a continuing obligation separate and independent from the other obligations of the Client and survives termination of this Agreement. It is not necessary for NTRO to incur expenses or make payments before enforcing a right of indemnity under this Agreement.

8.5 Reliance on advice

In the event the Services include the provision of advice or information by NTRO:

- (a) NTRO makes no representation, other than to the Client, as to the accuracy of the advice and information;
- (b) the advice and information may be relied upon only by the Client and must not, unless NTRO has expressly authorised in writing, be relied upon by any other person; and
- (c) to the extent that information provided to NTRO by the Client, by the Principal or by another person on behalf of the Client or the Principal, is incomplete or inaccurate, so that the advice and information provided by NTRO as part of the Services is inaccurate, NTRO will not be liable for that inaccuracy.

9. Insurance

9.1 Insurance required

- (a) Before commencing the Services, NTRO must purchase and maintain insurance with a reputable insurer in respect of the following:
 - (i) General Public and Products Liability insurance covering legal liability to pay for personal injury and property damage arising out of or in connection with the performance of the Services by NTRO with a limit of cover not less than the amounts stated in Schedule 1;
 - (ii) Workers Compensation insurance in accordance with the requirements of applicable Laws in respect of NTRO's liability for any loss or claim by any person employed or otherwise engaged by it in or about the performance of the Services; and
 - (iii) Professional Indemnity insurance covering liability for any act, error or omission arising out of or in connection with the performance of the Services with a limit of cover not less than the amounts stated in Schedule 1;
- (b) NTRO must provide to the Client certificates of currency in respect of the insurance required by this clause 9 within 10 Business Days of a request by the Client.
- (c) All insurances required by this clause 9 must be maintained in force by NTRO for the duration of this Agreement.
- (d) For the purpose of clause 9.1(a), the Client agrees that an insurer with a Standard and Poor's rating of at least A minus (or equivalent from another rating agency) is acceptable.

10. Expiry and Termination

10.1 Expiry

Unless terminated earlier, this Agreement terminates on expiry of the Term.

10.2 Termination by the Client

If:

- (a) NTRO commits a material breach of this Agreement or a Purchase Order:
 - (i) that is a material breach;
 - (ii) that is a repeated breach of the same term; and
 - (iii) NTRO does not remedy that breach within the period specified in a written notice from the Client (acting reasonably) requiring NTRO to remedy the breach;
- (b) NTRO, on more than three occasions, fails to or refuses to comply with, or ignores, a lawful direction of the Client which has a material effect on the performance of the Services; or
- (c) an Insolvency Event occurs in relation to NTRO,

the Client may terminate this Agreement and any applicable Purchase Order by giving notice in writing to NTRO of the termination, which notice will be effective 10 Business Days after the date of service unless otherwise stated in the notice.

10.3 Termination by NTRO

If the Client fails to make a payment which it is obliged to make under this Agreement and does not remedy that failure within 10 Business Days of receiving notice from NTRO requiring it to do so, or if an Insolvency Event occurs in relation to the Client or the Principal, NTRO may, by notice in writing to the Client, either terminate this Agreement or suspend all or any part of the Services. If NTRO suspends all or any part of the Services, it must resume the Services as soon as reasonably practicable once the payment has been made.

10.4 Payment to NTRO on Termination

If either Party terminates this Agreement or any Purchase Order under this clause 10, the Client must pay NTRO in full for performance of the Services up to the date of termination as well as all other amounts due to NTRO in accordance with this Agreement or a Purchase Order.

11. Dispute Resolution

11.1 Procedure for resolving disputes

- (a) Subject to clause 11.1(b) the Parties to this Agreement must not commence court proceedings or arbitration relating to a dispute arising under this Agreement, except where a Party seeks urgent relief from a court, unless the Parties have first each complied with the provisions of this clause 11.
- (b) Where a Party to this Agreement fails to comply with this clause 11, the other Party need not comply before referring the dispute to an arbitrator or commencing court proceedings relating to the dispute.
- (c) A Party to this Agreement claiming that a dispute (**Claimant**) has arisen under this Agreement will give notice to the other Party (**Defendant**) stating the matters in dispute and naming as the Claimant's representative a person with authority to negotiate and to settle the dispute (**Dispute Notice**).
- (d) Within 10 Business Days of receiving the Dispute Notice, the Defendant will give the Claimant notice stating the Defendant's response to the matters in dispute and naming as the Defendant's representative a person with authority to negotiate and to settle the dispute (**Reply Notice**).
- (e) Within 5 Business Days of the service of the Reply Notice the Party's named representatives will meet to seek to resolve the dispute. The terms of any settlement will be recorded in writing signed by both representatives.
- (f) If the dispute is not resolved within 10 Business Days of the service of the Reply Notice (or within such further period as the representatives may agree in writing is appropriate), the Parties will proceed to mediate in accordance with the Institute of Arbitrators & Mediators Australian Mediation Rules.
- (g) If the matter is not resolved through mediation, within 40 Business Days of the Reply Notice, either Party may take such action as it sees fit.

11.2 Continue to perform

Notwithstanding the existence of a dispute, each Party must continue to perform its obligations under this Agreement.

12. Notices and Administration

All notices under this Agreement required to be given must be delivered by hand or sent by certified mail to the address of the Party set out in this Agreement, or the most recent address notified in writing by one Party to the other.

13. Confidentiality

Subject to the express provisions of any Confidentiality Agreement entered into between the Parties, each Party will keep confidential the other Party's Confidential Information.

14. Head Contract

14.1 Head Contract and this Agreement

- (a) The Parties acknowledge and agree that the Client has entered into the Head Contract with the Principal;
- (b) Neither the terms of the Head Contract nor any amendment to the terms of the Head Contract will bind NTRO without its express written agreement; and
- (c) In the event that NTRO agrees to the terms of the Head Contract being incorporated into this Agreement, the terms of the Head Contract are subordinate to the terms of this Agreement or the Work Order to the extent of any inconsistency.

15. Modern Slavery Act 2018 (Cth) (MSA)

15.1 Compliance with MSA

- (a) NTRO warrants that:
 - (i) it has not been convicted of an offence under nor is it subject to an investigation under the *Modern Slavery Act 2018 (Cth) (MSA)*; and
 - (ii) it will not cause the Client to breach the MSA.
- (b) NTRO will comply with reasonable requests by the Client to provide assistance and information and will allow the Client to interview NTRO's Personnel where necessary to enable the Client to comply with its obligations arising under the MSA;

16. Work Health & Safety and Environment

16.1 Compliance with WHS and Environmental Laws

Each Party must comply with, and must ensure that all its Personnel comply with:

- (a) all applicable Laws relating to work health and safety; and
 - (b) all applicable Laws relating to the environment and contamination;
- in relation to the provision of the Services and the site on which the Services are to be provided.

17. General

17.1 GST

- (a) Words or expressions used in this clause 17.1 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act)* have the same meaning in this clause.
- (b) Any consideration to be paid or provided for a supply made under or in connection with this Agreement unless specifically described in this Agreement as "*GST inclusive*" does not include an amount on account of the tax payable on taxable supplies under the GST Act (**GST**).
- (c) Despite any other provision in this Agreement, if a Party (**Supplier**) makes a supply on which GST is imposed, under or in connection with this Agreement:

- (i) the consideration payable or to be provided for that supply under this Agreement (GST exclusive consideration) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied the prevailing rate of GST; and
 - (ii) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- (d) The Recipient need not make any payment for taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.
- (e) Any payment or amount to be made under this Agreement which is calculated as a percentage of any other amount or revenue stream, must be calculated as a percentage of that other amount or revenue stream net of GST.

17.2 Relationship of the Parties

NTRO is an independent contractor of the Client and NTRO:

- (a) will, in no circumstance by virtue of this Agreement or otherwise, be deemed to be a partner, employee, legal representative or agent of the Client or the Principal; and
- (b) has no right or authority to assume or create, in writing or otherwise, any obligation of any kind expressed or implied or give any release, discharge or waiver in the name of or on behalf of the Client or the Principal or to otherwise act or purport to act in any capacity whatsoever on the Client's or the Principal's behalf.

17.3 Governing law and jurisdiction

- (a) This Agreement is governed by the law applicable in the State of Victoria.
- (b) Each Party irrevocably and unconditionally submits to the jurisdiction of the courts of the State of Victoria.

17.4 Entire agreement

This Agreement constitutes the entire agreement between the Parties as to its subject matter and in relation to that subject matter, supersedes any prior understanding or agreement between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party, other than as set in this Agreement or a Purchase Order.

17.5 Severability

If any provision of this Agreement is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, it is to be severed so that the validity and enforceability of the remaining provisions are not affected.

17.6 Changes to this Agreement

Modifications and amendments to this Agreement or a Purchase Order must be in writing signed by each of the Parties.

17.7 Further assurances

Each Party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to the other Party) required by any Law to give effect to this Agreement.

17.8 **Costs**

Each Party must bear its own costs for the preparation and execution of this Agreement.

17.9 **Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

17.10 **Survival**

The rights and obligations contained in this Agreement that are expressed in terms that infer survival beyond the termination of this Agreement, will continue to bind the parties notwithstanding the termination or expiry of this Agreement.

17.11 **No waiver**

The failure of a Party to enforce any of the provisions of this Agreement or the granting at any time of any other indulgence is not to be construed as a waiver of that provision or of the right of such Party to enforce that or any other provision at a later date.

17.12 **No application of Unfair Contract Terms Legislation**

You, the Client, represent and warrant to NTRO:

- (a) you:
 - (i) are not an individual whose acquisition of goods or services from NTRO is wholly or predominantly for personal, domestic or household use or consumption;
 - (ii) employ 100 persons or more; and
 - (iii) had a turnover, in your last income year, of \$AUD10,000,000 or more as those expressions are used in section 23 of the *Australian Consumer Law*, and
- (b) this Agreement is not a "*Consumer Contract*" nor a "*Small Business Contract*" within the meaning of that legislation.

Schedule 1

1.	Date	
2.	Client	
3.	Commencement Date	
4.	Services	
5.	Purpose	
6.	Term	
7.	Fee	
8.	Key Personnel	
9.	Parties Representatives	
10.	Materials IP Licence Period	
11.	Subcontractor Insurance limits <ul style="list-style-type: none">• General Public and Products Liability• Professional Indemnity	

[Note: Refer to the Coversheet of this Agreement.]

You must not sign this Agreement if this Agreement would be a “Consumer Contract” or a “Small Business Contract” within the meaning of section 23 of the Australian Consumer Law.]

EXECUTED for and on behalf of **ARRB Group Ltd** (A.B.N. 68 004 620 651) by a duly authorised officer of ARRB:

EXECUTED for and on behalf of the Client by a duly authorised officer of the Client:

Signature

Signature

Print Name

Print Name

Office held

Office held

in the presence of:

in the presence of:

Signature of Witness

Signature of Witness

Print Name

Print Name