

NNTTF TERMS & CONDITIONS

The National Networked TeleTest Facility for Integrated Systems
Edith Cowan University, 270 Joondalup Drive, Joondalup WA 6027, Australia



1. DEFINITIONS:

“**Acceptance**” means written acceptance by the Supplier of an Order.

“**Booked Period**” is the period for provision of the Services booked by the Customer using the scheduler procedure on the Website.

“**Confidential Information**” means all information relating to the Supplier, the Customer or the NNTTF which, in respect of the Supplier or the Customer, is regarded by that party as confidential or, in respect of the NNTTF, is regarded by the Supplier as confidential, including information relating to inventions, technology, Intellectual Property Rights, processes, trade secrets, know-how and other information of a commercially sensitive nature and includes the terms of the Service Contract, technical or financial information relating to the relevant party or the NNTTF (as applicable), budgets and information relating to the activities and operations of the relevant party or the NNTTF (as applicable), but does not include information which, at the time of the first disclosure to or observation by the relevant person, was already in the lawful possession of that person in written form; is in or comes into the public domain otherwise than by disclosure in breach of the Service Contract; or becomes available to the relevant person from any other source provided it was not acquired directly or indirectly from a party.

“**Customer**” is the person, company or institution to whom the Services are provided as specified in the Order.

“**Customer Intellectual Property Rights**” means all Intellectual Property Rights in and arising out of the DUT, including all Intellectual Property Rights in Improvements to or arising out of the DUT.

“**DUT**” is the “device under test” provided by the Customer to the Supplier.

“**ECU**” means the Joondalup campus of Edith Cowan University located at 270 Joondalup Drive, Joondalup, Western Australia.

“**Griffith University**” means the Nathan campus of Griffith University located in Brisbane, Queensland.

“**GST**” has the meaning ascribed to that term by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**Improvements**” means all developments, discoveries, improvements, modifications, enhancements and inventions.

“**Intellectual Property Rights**” means any and all registered and unregistered, current and future industrial and intellectual property rights throughout the world including without limitation the right to have the Confidential Information kept confidential, copyright, trade secrets, performance rights, inventions, patents, patent applications, rights arising in connection with an inventor’s involvement in a claim forming part of a patent application or grant, trade marks, designs, know-how and circuit layout rights and all processes, methodologies, formulae, technical information, data, materials, developments, discoveries, drawings, specifications and test results.

“**La Trobe University**” means The La Trobe University R&D Park, Melbourne, Victoria.

“**Loadboard Design Kit**” means the instructions for preparation of a Loadboard/DUT Card accessible on the Website.

“**Loadboard/DUT Card**” is the interface assembly ensuring signal transmission from the test head of the NNTTF tester to the DUT supplied by Customer.

“**Location**” means the location at which the Services are to be delivered to the Customer as specified in the Order.

“**Nodes**” means each of UWA, Griffith University, University of Sydney, The University of Adelaide, La Trobe University and Victoria University of Technology.

“**NNTTF**” is the “National Networked TeleTest Facility for Integrated Systems”, being a virtual testing centre with a central facility located at ECU and satellite nodes located at each of the other Nodes.

“**Order**” means a written order from the Customer to the Supplier for the Services on the terms specified in the Service Contract.

“**Quotation**” means the Supplier’s most recent written quotation for the supply of the Services.

“**Quotation Period**” means the 30 day period following the date of the Customer’s receipt of the relevant Quotation or such other date as may be notified by the Supplier to the Customer.

“**Service Contract**” means the agreement between the Customer and the Supplier for the supply of the Services which is constituted by the Quotation, the Order, the Acceptance and these Terms and Conditions.

“**Service Fee**” means the service fee payable for the Services, calculated at the rate specified in the Order.

“**Services**” means providing the Customer with assisted access to the Software at the Location for the purposes of testing the DUT, and includes all incidental services and goods provided to the Customer in connection with these services.

“**Software**” means the control software of the NNTTF tester.

“**Supplier**” means the supplier specified in the Order being ECU or one of the Nodes.

“**Supplier Intellectual Property Rights**” means all Intellectual Property Rights and Improvements relating to, connected with or incorporating all or a material part of the NNTTF, the Software or the Services other than the Customer Intellectual Property Rights but excludes all Customer Intellectual Property Rights.

“**Terms and Conditions**” means these terms and conditions.

“**Test Program**” means the sequence of instructions that a tester would follow to conduct testing.

“**The University of Adelaide**” means The University of Adelaide located at North Terrace, Adelaide, South Australia.

“**The University of Sydney**” means The University of Sydney located in Sydney in New South Wales.

“**UWA**” means the University of Western Australia located at 35 Stirling Highway, Crawley, Western Australia.

“**Victoria University of Technology**” means The Victoria University of Technology located at Ballarat Road, Footscray, Melbourne, Victoria.

“**Website**” means the NNTTF website at <http://teletest.org.au>

2. **QUOTATIONS.** The Quotation is valid for the Quotation Period unless withdrawn or varied by the Supplier by notice to the Customer, and the Customer may provide the Supplier with an Order in respect of that Quotation during the Quotation Period.
3. **ORDER.** Orders must be submitted to the Supplier by fax to the number +61 (08) 6304 5302. Submission of an Order to the Supplier constitutes an offer by the Customer to be supplied with the Services during the Booked Period on the terms of the Service Contract. The Supplier is under no obligation to supply the Services to the Customer unless and until the Supplier has issued the Customer with an Acceptance in respect of the relevant Order. These Terms and Conditions shall prevail over all conditions of the Quotation and the Order to the extent of any inconsistency.
4. **INTERFACING MATERIAL.** To facilitate the provision of the Services by the Supplier, the Customer must either purchase a Loadboard/DUT Card from the Supplier at the price specified in the Quotation, or provide its own Loadboard/DUT Card to the Supplier. If the Customer elects to provide its own Loadboard/DUT Card, the Customer must ensure it is assembled and produced in accordance with the Loadboard Design Kit.

5. **DEVICE SUPPLY.** The Customer must also supply the Supplier with at least one DUT in respect of which the Services are to be carried out. The Customer provides a DUT to the Supplier at its own risk, and the Supplier is not responsible for any loss of or damage to the DUT. The DUT must be packaged in accordance with the Loadboard Design Kit.
6. **TEST PROGRAM DOWNLOAD.** The Customer is responsible for ensuring that the Test Program is suitable and fit for the provision of the Services. The Supplier is not liable for the loss or corruption of any data during its transfer on the tester or during the provision of the Services.
7. **BOOKED PERIOD.** The Supplier agrees to supply the Services to the Customer during the Booked Period. If the Customer requires the Services to be provided for a period exceeding the Booked Period ("**Additional Period**"), the Supplier may agree to provide the Services for the additional period in its discretion.
8. **SERVICE FEE.** The Customer must pay the Service Fee in respect of the provision of the Services. The Service Fee is payable in respect of the Booked Period, irrespective of whether the Customer actually requires the Services to be provided throughout the Booked Period, unless the Customer has reduced or cancelled on at least 2 business days notice to the Supplier. If the Customer is provided with the Services for any Additional Period, the Service Fee is also payable in respect of the Additional Period.
9. **ADDITIONAL SERVICES.** If the Customer requests the Supplier to provide the Customer with services other than the Services ("**Additional Services**"), the Supplier may refuse to provide any or all of the Additional Services in its absolute discretion. If the Supplier does agree to provide the Customer with any Additional Services, such services will be provided on such terms and conditions as are agreed between the Supplier and the Customer in writing (or, in the absence of such agreement, on these Terms and Conditions with necessary modification). Without limiting the foregoing, the Supplier and the Customer must agree the fee payable for the provision of the Additional Services which is to be calculated by reference to the time, materials and other costs involved in providing the Additional Services.
10. **OTHER COSTS.** All material and other work contributed by third parties in performing the Supplier's obligations under the Service Contract will be charged by the Supplier to the Customer.
11. **PAYMENT.** The Customer must pay the Supplier the Service Fee, and any other amount owed by the Customer to the Supplier, within 30 days of the date upon which the Supplier issues the Customer with an invoice for the relevant amount. The Customer agrees to reimburse the Supplier for any debt collection expenses it incurs in enforcing payment of any overdue amounts, and the Supplier may issue the Customer with an invoice for such expenses which is payable within 7 days of the date of the invoice. If any or part of an invoiced amount is outstanding, the Supplier may, in addition to any other actions the Supplier may take to enforce payment, charge the Customer interest on the outstanding amount at the rate of 1.5% per month, calculated and compounded daily from the date the amounts were due until payment is received by the Supplier. Payment of the Service Fee must be made in full without any deduction for any and all present and future taxes, imposts, withholdings, duties, fees, levies or other similar charges whatsoever which may be imposed on the Supplier or the Customer.
12. **SUSPENSION OF PAYMENTS.** The Customer is not entitled for any reason whatsoever to withhold payment of any amount otherwise owing to the Supplier under the Service Contract.
13. **SUSPENSION OF SERVICES.** If the Customer fails to pay any amount in accordance with clause 10, without affecting any other rights The Supplier has under the Service Contract, at law or in equity, the Supplier may refuse to provide the Customer with any further Services until all outstanding amounts are paid in full.
14. **EQUIPMENT.** The Supplier undertakes to take all reasonable steps to ensure that the equipment comprising the NNTTF which is located at the Location is maintained in good working order.
15. **CONFIDENTIALITY.** For the period commencing upon the Supplier's receipt of the Order up to and including the date which is 12 months after the completion of the Services, the Supplier must not disclose any of the Customer's Confidential Information and the Customer must not disclose any of the Supplier's Confidential Information or the Confidential Information relating to the NNTTF, nor may either party use such Confidential Information otherwise than as is necessary for the performance of the Services. This obligation of confidentiality does not extend to any information which is required to be disclosed by law.
16. **INTELLECTUAL PROPERTY.** Unless otherwise stated in the Service Contract or agreed to in writing by the Supplier and the Customer, all Supplier Intellectual Property Rights vest in the Supplier and the Customer has no right or license to manufacture, use or sell any products, or provide any services or use any processes which infringe upon any of the Supplier Intellectual Property Rights. Any Customer Intellectual Property remains the property of the Customer. Both parties must furnish to the other party all records and documents, execute all documents and take all action, at the other party's expense, as is necessary to give effect to this clause.
17. **PUBLICATION.** The Supplier agrees to ensure that where the Supplier's students or staff, either alone or in collaboration with the Customer, are involved in research and development activities conducted pursuant to or in connection with the Service Contract and/or in respect of Customer Intellectual Property Rights, for a period of 12 months from the expiry or termination of the provision of the Services, no article or material containing or referring to the methodology used, results achieved or conclusions reached in carrying out the research activities is to be published or disseminated by the relevant student(s) or staff member(s) in a way which might adversely affect the Customer's right to protect or commercially exploit the Customer Intellectual Property Rights.
18. **LIABILITY AND WARRANTY.** To the maximum extent permitted by law:
 - (a) all terms and warranties expressed or implied by any legislation, the common law, equity, trade custom or usage or otherwise in relation to the provision of the Services (and any related goods and materials) are expressly excluded;
 - (b) the Supplier is not liable in any way for any direct, indirect or consequential loss or loss of profit or damage arising out of or in connection with the Services including without limitation loss or damage caused by:
 - (i) the Supplier's negligence; or
 - (ii) any fundamental breach of the Service Contract.

To the extent that any legislation or law implies in the Service Contract any term or warranty or prohibits provisions in a contract excluding or modifying the application of, exercise of or liability under, that term or warranty, the liability of the Supplier for breach of that term or warranty is limited, at the discretion of the Supplier, to any one or more of the following:

 - (c) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired; and

- (d) if the breach relates to services:
- (i) the re-supply of the services; or
 - (ii) the payment of the cost of having the services supplied again by a third party.

19. **CUSTOMER INDEMNITY.** The Customer releases and indemnifies the Supplier from and against all liabilities, claims, loss or damage arising out of or connected with an act or omission (negligent, unlawful, in breach of the Service Contract or otherwise) of the Customer, its agents, employees or contractors.
20. **TERMINATION.** The Service Contract can be terminated by either the Supplier or the Customer upon providing notice of such termination to the other party if the other party:
- (a) fails to make any payment pursuant to the Service Contract and fails to remedy this default within 7 days of receiving notice from the other party to do so;
 - (b) commits or allows to be committed any breach or non-observance of any of the other obligations on its part to be performed and/or observed under the Service Contract, and fails to remedy or to take effective action to remedy that breach or non-observance, so far as reasonably practical, within 30 days of receiving notice from the other party to do so; or
 - (c) threatens or resolves to become or is in jeopardy of becoming an insolvent person, subject to any form of insolvency administration or ceases or threatens to cease conducting its business in the normal manner.

Termination of the Service Contract does not affect or prejudice any rights of the parties which have accrued prior to the termination. A party's exercise of its rights under this clause does not affect or limit that party's ability to exercise any other rights under the Service Contract, at law or in equity.

21. **GST.** If GST is imposed on any supply made under the Service Contract, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply. Such amount must be paid in addition to and at the same time as payment for the taxable supply is required to be made under the Service Contract. If a GST-inclusive price is charged or varied under the Service Contract, the supplier must provide the recipient of the supply with a valid tax invoice or adjustment note at or before the time of payment or variation. If the amount of GST paid or payable by the supplier on any supply made under the Service Contract differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires. In this clause, the expressions "adjustment note", "consideration", "GST", "supply", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the GST Act.
22. **NOTICES.** A notice or other communication ("**Notice**") connected with the Service Contract has no legal effect unless it is in writing and sent by post, postage prepaid, to the address of the addressee set out in the Service Contract or subsequently notified; sent by facsimile to the facsimile number of the addressee; or otherwise delivered at the address of the addressee set out in the Service Contract or subsequently notified. A Notice will be treated as given and received:
- (a) if sent by post, on the 5th business day after posting;
 - (b) if sent by facsimile, on the next business day (provided that at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent); or
 - (c) if otherwise delivered, upon delivery.
23. **FORCE MAJEURE.** Neither the Supplier nor the Customer shall be liable for a delay or failure to perform under the Service Contract if such delay or failure is caused directly or indirectly by force majeure. For the purpose of this clause, force majeure means any act, omission or circumstance over which the party pleading force majeure could not reasonably have exercised control and includes without limitation an act of God, outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority, industrial dispute or governmental restraint. However, a failure to comply with an obligation to make a payment under the Service Contract will not be excused by reason of force majeure.
24. **LIMITATION OF ACTIONS.** No action, regardless of form or basis, arising out of transactions related to the Service Contract or the Services performed or to be performed may be brought by either party more than 6 months after the cause of action has accrued except that an action for non-payment may be brought within 6 months after the date of last payment.

25. GENERAL.

Governing Law

The Service Contract is governed by, and shall be construed and interpreted in accordance with, the laws in force in the State in which the Location is situated, and the parties submit to the non-exclusive jurisdiction of the courts of that State.

Waiver

A waiver by the Supplier of a breach of any provision of the Service Contract shall only be effective if in writing and shall not constitute a waiver of any other breach of that provision or any other provision.

Severance

If any provision of the Service Contract is determined to be void by any court then that determination shall not affect the other provisions of the Service Contract which shall otherwise remain in full force and effect.

Variation

An amendment or variation to the Service Contract is not effective unless it is in writing and signed by the Supplier and the Customer.

Entire Agreement

The Service Contract contains the entire agreement and understanding between the Customer and the Supplier on everything connected with the subject matter of the Service Contract and supersedes and merges any prior agreement or understanding on anything connected with that subject matter.

Relationship of Parties

Nothing in the Service Contract creates a relationship of partnership, employment, joint venture or agency between the Customer and the Supplier.