Noggin Software Terms v2.07

Software product and hosting terms

1. Software subscription services
   - 1.1. Noggin's software licensing model is subscription based, also known as 'cloud' or 'software-as-a-service' (SAAS). You subscribe to one or more instances of the Software hosted by Noggin, on a monthly or annual fee basis.
   - 1.2. These services are offered in packages that inclusive of hosting, storage, maintenance, new versions, and additional supporting services such as data, communications and geospatial information services as outlined in your Order Form.
   - 1.3. Excess fees may apply if usage exceeds the limits set out in the Order Form
   - 1.4. Customer acknowledges that the software is a Commercial Off The Shelf (COTS) product and can be used one provisioned and is ready to use without further configuration. As such the subscription will commence from the stipulated start date in the incorporated Noggin Order Form.
   - 1.5. Noggin provides a service called "the Library" as part of its Noggin software. The Library allows Noggin and its customers to share forms, workflows and other configuration items. If you consent to Noggin adding your configuration items, or generic and de-identified versions of your configuration items, or other materials to the Noggin library, you agree that Noggin and other Noggin customers may use, copy, adapt or modify those items free from any claims to intellectual property.
2. Software products and functionality
   - 2.1. Noggin software product functionality is listed from the noggin.io website
   - 2.2. Noggin represents and warrants that the Software, as delivered, will be free from material defects.The Customer's with respect to a confirmed software defect shall be for Noggin to undertake reasonable commercial efforts to repair or replace the Software in order to correct it in accordance with the agreed service levels.
3. Users and license and permitted use
   - 3.1. "Named Users" have unique, individual login credentials to the Noggin products and services
   - 3.2. The Order Form may specify different types of Named Users (for example 'Lite Users') and the services or functionality that those users are licensed to use.
   - 3.3. Noggin grants a license to the Customer for the number of Named Users specified in the Order Form to have access to the Software, and to use the functionality in the Software according to the type of user specified in the Order Form.
   - 3.4. For those Named Users, Noggin grants to the Customer a non-exclusive, world-wide, royalty-free license to use the Software. The license granted is for use only, and not for reproduction, adaptation, modification, development, enhancement or distribution
4. Trial, Beta and Evaluation Licenses
   - 4.1. From time to time Noggin may invite you to try, at no charge, our products or services that are not generally available to our customers on a trial, beta or evaluation basis
   - 4.2. Noggin provides you with such licenses at its discretion and you may accept or decline any such trial at your discretion.
   - 4.3. Any such services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import.
   - 4.4. Beta Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. Beta services are not considered "services" hereunder and are provided "as is" with no express or implied warranty We may discontinue Beta Services at any time
   - 4.5. Suspension and Termination of Free Beta Services. We may suspend, limit, or terminate the Free Beta Services for any reason at any time without notice. We may terminate your subscription to the Free Services due to your inactivity.
5. Product Roadmap and Information
   - 5.1. Noggin may at its own discretion provide a product roadmap giving a guide as to when future functionality may be provided in its products. This information is provided as a guide only and is subject to change.
   - 5.2. The Customer acknowledges that the Software and additional services referenced in the Order Form are being purchased separately from any of our other products or services. Payment obligations for any products or services are not contingent on the purchase or use of any of our other products (and for clarity, any purchases of Software and Services are separate and not contingent on each other, even if listed on the same Order Form).
   - 5.3. The Customer agrees that its purchases are not contingent on the delivery of any future functionality or features (including future availability of any Software beyond the current Subscription Term), or dependent on any oral or written public comments we make regarding future functionality or features.
   - 5.4. Noggin may communicate to customer and its users about product updates via email as well as provide this information in the Noggin help/knowledge base, along with release notes.
6. Upgrade process
   - 6.1. From time to time Noggin may deploy changes to the Software that the customer is subscribed to, to implement new features, maintain or improve system performance or security, or correct defects. There are no additional fees for new versions provided the Customer has paid and/or continues to pay the software subscription fees.

6.2. Noggin will publish the details of the functionality features in the software upgrade as well as detailing any changes to existing functionality.
6.3. Any enhancements or modifications to the software service will not adversely affect the functionality, compatibility, or performance of the software service
6.4. The software service will operate so that the Customer Data can be migrated in reasonable and commonly used formats
6.5. Without limiting any other terms herein contained, Noggin reserves the right in our sole discretion to add, change, discontinue or otherwise modify features of the Services at any time, providing they do not impact the material functionality that is being used by the Customer.

7. Upgrades to application packages
7.1. The Customer has the ability to purchase different solution and industry packages of configuration data, on top of your core software service
7.2. The Customer may upgrade the Services at any time via a request in writing (a revised or new Order Form).

8. Protection of your data
8.1. Without limiting the above, we shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of your Data.
8.2. We shall not (a) modify your Data unless otherwise required in order to provide the Services, (b) disclose your Data except as compelled by law in accordance or as expressly permitted in writing by you, or (c) access your Data except to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters.
8.3. You consent to Noggin accessing anonymized data about how our services are used by you, for the purpose of usage data, for monitoring and optimizing our services.

9. Removal and Deletion of your Data.
9.1. If you become aware that any portion of your Data or user activity violates this Agreement, you shall take all necessary action to prevent such activity and remove such Data from the Services.
9.2. To the extent we become aware that your Data, in our reasonable discretion, is in violation of this Agreement or any applicable law, we may immediately block access to the Services, suspend or terminate your use of the Services, delete or remove such Data from the Services, or take any other action We deem appropriate.
9.3. We reserve the right to terminate or suspend your use of the Services if the continued provision of Services would violate law or otherwise harm Noggin's overall service
9.4. We also reserve the right to cooperate with legal authorities and third parties in the investigation of alleged wrongdoing. We will endeavour to provide notice to you prior to suspension or termination of your use of the Services, but may immediately suspend or terminate them in instances where your continued use of the Services would have a material adverse effect on Us.

10. Data and transactions
10.1. Current limits on data storage, geospatial transactions, communications and any excess fees are defined in the Order Form
10.2. Once the Customer's account with Noggin has been terminated for any reason (including voluntary closure) or in the case of a free trial, is inactive for a period of 60 days or longer, Noggin may delete all of the Customer's Data from any storage media. This data includes, but is not limited to, that contained in backup tapes, mail boxes and web space. Noggin will notify the customer before doing this to give it the opportunity to take a back up of the data first.

11. Service Credits – Application Availability
11.1. If indicated on your Order Form, Noggin will provide to the Customer service credits related to its targets for the availability of the service for production instances, as described in these terms
11.2. In the event that Noggin fails to achieve the Availability Service Level for a Service solely supported by Noggin, and for reasons solely within Noggin's control, then Noggin shall provide You with Service Credits.
11.3. Service Credits for failure to meet the Availability Service Level shall be calculated as a percentage of the monthly associated service subscription fee according to the table below.

Service Availability	Service Credit
99.90% +	Nil
99.50%	5%
99.00%	10%
98.50%	15%
98.00% or less	20%

11.4. To receive a Service Credit, you must submit a claim by emailing support@noggin.io. To be eligible, the credit request must be received by us by the end of the second Billing Period after which the incident occurred and must include:
11.4.1. The dates and times of each unavailability incident that you are claiming; and
11.4.2. The address of your site that was unavailable.

12. Hosting of application
12.1. Noggin will host the application as part of its standard SAAS offering.
12.2. The application hosting will be delivered via AWS (Amazon Web Services) standard hosting offering zones, in the customer's designated country/region, as described at https://aws.amazon.com/about-aws/global-infrastructure/

13. Performance
13.1. You acknowledge that the performance of the Noggin application can be influenced by many factors including the amount of data in the system, the complexity of any integrations and third party software, and the configuration of the software itself including the size of forms, complexity of analytics, queries and workflows.
13.2. You acknowledge that Noggin's software can be configured by You or by other parties at your direction, via the application user interface, to meet

Your specific needs regarding the data model, forms, dashboards, analytics and workflows. Such configurations are outside of Noggin's control and may include complex data or business logic operations. As such it is not possible for Noggin to warrant any specific performance of the loading or response times for configured forms, dashboards, charts, tables, analytics/queries, or workflows unless stipulated in the order form as part of a formal performance testing plan delivered under consulting services.

13.3. This Performance Warranty is subject to the following exclusions. Except as may be expressly agreed in writing by Noggin, Noggin's Performance Warranty does not apply to:

13.3.1. Defects, problems, or failures caused by the Customer's non-performance of its obligations

13.3.2. Defects, problems, or failures caused by an event of force majeure.

13.4. Operational limist are contained in the software application via the learn knowledge base – click on learn in the application and then https://learn.noggin.io/content/tech_stuff/service_limits.htm

14. Third party Incorporated Software

14.1. Subject to the other clauses in section 35 (Third party Incorporated Software, no purchase of third-party products or services is required to use the Services except a supported computing device, operating system, web browser and Internet connection.

14.2. The Noggin application may contain Open Source Software. All use of the Open Source Software is subject to and governed by the respective licences, which are either contained in the 3rd party software programs or available at: http://www.fsf.org/licensing/licenses/
A statement on Noggin's open source policy and use can be found in the Noggin 2.0 Architecture Whitepaper (section 12)

14.3. Mapping/Geospatial. Where the Software includes map viewing functionality, the Customer agrees to use, provide, and make available to End Users the Software only in accordance with the Terms of Service set forth at the following URLs as applicable, or such URL as may be updated by:

14.3.1. Google Maps - https://www.google.com/help/terms_maps/

14.3.2. ESRI http://www.esri.com/legal/licensing/termsofuse

14.3.3. Mapbox https://www.mapbox.com/legal/tos/

14.4. Communications. The Noggin application provides the ability to send communication either via email, SMS, Voice, Text to Voice and Push notifications either through an integration to a communications partner or as part of the Noggin application service. The performance and delivery of messaging may vary from provider to provider and the way in which communications workflows are configured within the application Any expected performance guides will be contained in the Noggin Operational Standards..

14.5. Service levels for message delivery
Delivery times cannot be guaranteed as they depend on a number of factors including the addressee of the message being outside of the operator's coverage area, the addressee's handset being switched off, SIM card memory overload, the performance of telecommunications providers and networks, radio-telephone interference caused by atmospheric conditions, and interferences in wave propagations. However as a general guide:

14.5.1. Average SMS delivery time is under 20 seconds of SMS messages are delivered to the handset within 60 seconds (handset must be available i.e. turned on and within range)

14.5.2. Inbound messages typically take between 30 and 60 seconds to process

14.5.3. If a message cannot be delivered within the message validity period (typically 48 hours), starting from the scheduled delivery time, the message gateway system will no longer attempt to deliver that message.

14.6. The Customer accepts liability for any messages that have been dispatched by the gateway under the Customer's account(s), regardless of whether an attempt to cancel has been made, or the operator of that account has the Client's authorisation to send messages.

14.7. Acquisition of Third-Party Products and Services. We may offer Third-Party Applications for sale under Purchase Orders. Any other acquisition by Customer of third-party products or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between Customer and any third-party provider, is solely between Customer and the applicable third-party provider. We do not warrant or support third-party products or services, whether or not they are designated by Us as "certified" or otherwise, except as specified in the Purchase Order.

14.8. Third-Party Applications and Customer Data.
If Customer install or enable Third-Party Applications for use with Services, Customer acknowledge that We may allow providers of those Third-Party Applications to access Customer Data as required for the interoperation of such Third-Party Applications with the Services. We shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third-Party Application providers. The Services shall allow Customer to restrict such access by restricting Users from installing or enabling such Third-Party Applications for use with the Services.Security Testing

15. Security Testing

15.1. Noggin can provide customer with its regular commissioned third party penetration testing reports if requested.

15.2. A security test, or penetration test by the customer, to the Noggin application or hosting infrastructure,

may only be done with Noggin's express permission

15.3. Noggin leverages Amazon Web Services (AWS) to host the platform and therefore it essential for the customer and/or Third-party conducting the assessment to comply with AWS Customer Support Policy for Penetration Testing. "Prohibited Activities" above should be explicitly out of the scope of the test: https://aws.amazon.com/security/penetration-testing/.

15.4. If permission is granted for such a security test:

15.4.1. There should be no destructive tests of any form

15.4.2. There should be no test on the neighbouring IPs.

15.4.3. The schedule and the test plan should be confirmed in advance

15.4.4. The penetration test should be approved by the client/tenant.

15.4.5. The 3rd Party should nominate a point of contact for the duration of the tests
Test results should be shared with Noggin.

15.4.6. If any vulnerabilities are found, Noggin will be given 10 working days to formally respond to these, and provide any remediation if required.

16. Data Sovereignty

16.1. Application data in the Noggin software will be stored in the region as indicated on the order form or statement of work, in accordance with the customer's direction on data sovereignty.

16.2. In the course of administering services, Noggin uses a number of business software systems hosted by their suppliers. The systems Noggin use for delivering our services are well known, secure, international cloud based systems such as Project, CRM, Support, Communications and Enterprise document management and email that are typically hosted in the United States of America (USA).

16.3. Customers' representatives involved in managing the service (e.g. support and admin staff) will have their contact details recorded in these systems for purposes such as logging service tickets, or email correspondence. Noggin can provide a list of these providers on request.

17. Discounts

17.1. Discounts may be offered for upfront payment for longer subscription terms, or apply across bundling for different products and solutions at the sole discretion of Noggin.

18. Noggin system access

18.1. Noggin staff may require access to systems in order to support the systems. Customer will not unreasonably withhold permission for Noggin access if required and Noggin will operate in accordance with Customer policies and procedures as required by the Customer.

Support Terms

19. How Noggin will provide support

19.1. Noggin will provide Support through online help content and email communications with our help desk

19.2. Noggin will also provide Support via telephone and access to our online support system.

19.3. Contact details for Support Requests are as specified in your Order Form. You acknowledge that Noggin is not responsible for a Support Request if it is provided via any other means.

19.4. You agree to specify your personnel who are authorised by You to request support from Noggin, and the identity of your authorised system administrator(s). Noggin will not provide Support to someone who is not specified as authorised by You.

19.5. Noggin may provide compliances requests and security or other governance reporting as part of support as agreed by the Customer.

20. What Noggin will not provide in relation to support.
As part of our Support, Noggin will not:

20.1. provide services related to any other systems or services that are not provided by Noggin. This includes your network connection or environment, desktop or device hardware or operating system, internet browser, or any other third-party application or system.

20.2. perform configuration of your system that require more than 1 day of effort. These should be raised with your customer success manager as a request for professional services.

20.3. perform data migration work

20.4. conduct testing of your configuration or system

20.5. provide formal training or develop training materials

20.6. consult, analyse or provide advice regarding your business processes

20.7. provide project or change management services

21. When Noggin will provide support

Noggin will provide support during its business hours, which are:

- North America – 08:30 – 17:30 Mon-Fri (Pacific Standard Time)
- United Kingdom – 08:30 – 17:30 Mon-Fri (GMT)
- Asia-Pacific – 07:00 – 19:00 Mon-Fri (Australian Eastern Standard Time - Sydney)

If indicated on your Order Form, Noggin will also provide a fault reporting and Incident response service 24 hours per day, 7 days per week.

22. How much support Noggin will provide

22.1. Each Billing Period, Noggin will provide Support up to the total amount of Support Hours.

22.2. Noggin creates and updates records in its online support system, each time you request Support and in the course of providing Support to You. In that system we will also record the time our personnel spend providing Support to You. You agree that these records will determine how much Support time Noggin has provided each Billing Period.

22.3. Noggin will provide a report to you upon request detailing how much of your Support Hours have been used, and for which requests. We will also provide warnings as your Support Hours reaches its total in any given Billing Period.

23. Excess Support Hours

23.1. You may purchase additional Support Hours in advance at any time. If additional Support Hours are purchased by You we will increase the Support Hours by that amount, effective immediately.

23.2. If your Billing Policy for Support Hours is set by You to pre-paid, Noggin will not provide additional Support beyond the total Support Hours in any given Billing Period.
23.3. If your Billing Policy for Support Hours is set by You to post-paid, Noggin may provide additional Support beyond the total Support Hours in any given Billing Period. You agree that Noggin may charge fees for additional Support in excess of your Support Hours, at the rate indicated in the Order Form. Excess Support Hours will be invoiced in the month following the month in which the Support Hours amount was exceeded.

24. Prioritisation of Support requests
24.1. Noggin will assign a Priority to each request for Support based on Urgency and Impact, in line with industry best practices and the ITIL standard.
24.2. There are four levels of Priority categorisations that may be assigned to Support Requests. These are detailed below with descriptions, along with the contact methods You are required to utilise for each priority.

Priority	Description	Contact Method
1	A complete system failure or outage. Most or all users unable to access the service or many of its key functionalities, or there are immediate business critical impacts (e.g. financial loss, health/life risks, legal/compliance impacts, negative impact to your reputation or customers). No workaround is available.	Telephone
2	A critical part of system functionality is unstable or unusable. Many users are affected. A workaround may or may not be available.	Telephone
3	An intermittent issue, or the issue has a workaround, or the issue has minimal impact to your business operations, or cannot be replicated under normal circumstances.	Noggin Support Portal or Email
4	Minor cosmetic defects, or a Service Request, request for information, administrative task, feature requests, sales enquiry, or a question.	Noggin Support Portal or Email

25. Service Levels

Noggin has the following benchmarks for the levels of support service that we provide:

- 100% of Priority 1 Incidents responded to within the target
- 100% of Priority 1 Incidents resolved within the target
- 95% of Priority 2 Incidents responded to within the target
- 90% of Priority 2 Incidents resolved within the target
- 90% of Priority 3 Incidents responded to within the target
- 90% of Priority 3 Incidents resolved within the target

Priority	Acknowledgement	Response Target	Resolution Target
1	15 minutes **	45 minutes	6 hours
2		2 hours	2 business days
3		1 business day	5 business days
4		2 business days	10 business days

** Via automated email alert (where a Priority 1 has been reported on the phone, this will be captured as a new Support Request during (or immediately after) the phone conversation, resulting in an email acknowledgement.

Noggin Master Services Agreement (only) v2.07b

Definitions
For the purposes of this Agreement:

Acceptance Period means as per specification in order form or SOW
Acceptance Request means a request in writing from Noggin to the Client, to accept a Deliverable
Acceptance Test Period means 10 working days, unless specified otherwise in the Order Form or SOW
Acknowledgement means a communication by Noggin to the Client acknowledging a request and that it is being investigated.
Acknowledgement Time means the maximum time from receipt of a logged issue.
Billing Period means the period of time that you have agreed to be charged fees for Noggin services as indicated on your Order Form (monthly or annually).
Billing Policy means a setting in your Noggin service that You control, that indicates whether you will be required to purchase additional services in advance, or whether you authorise Noggin to invoice you for additional services in arrears.
Customer (also referred to as **Customer** or **You**) means the entity specified as the client in the Order Form who is the party making this agreement with Noggin.
Client Data means any and all Content as defined below or otherwise collected by Noggin or the Services pursuant to this Agreement including, but not limited to: (a) Confidential Information of Client; (b) Information provided by Client to Noggin specifically for the purposes of the Services; (c) Personal information, or any other information, on or about a customer or prospective customer of Client;
Confidential Information of a person or body means all the confidential information disclosed by that person or body to another person for the purposes of this Agreement; or of that person or body of which the other person becomes aware as a result of this Agreement and includes (without limitation) information relating to: Client Data; the technology and design of a product or service; including trade secrets and confidential know-how; trading and financial details and any other information of commercial value; the personnel, policies, processes or strategies; the terms and fees upon which a product or service has been supplied to the Client, but excludes any information which is public knowledge (otherwise than as a result of a breach of confidentiality by the other party).
Copyright has the meaning prescribed under federal status in the jurisdiction of contract under this agreement.
CPI means the Consumer Price Index in the jurisdiction of this agreement
Defect means a fault or error which prevents a system or product from functioning as described in the Product Functionality, Order Form or Statement of Work, or causes a loss of specified functionality or service.
Deliverables means the documents, designs, configurations,
Document Review Period means 5 business days following delivery of a draft document, unless specified otherwise in the Order Form or SOW.
Force Majeure means fire, flood, meteorological event, strike, industrial action, war, civil disturbance, Act of God, or any other event outside the reasonable control of a party that causes the delay or failure by that party to perform its obligations under this Agreement;
GST means any applicable goods or services tax imposed in the jurisdiction of this agreement, together with any related interest, penalties, fines or other charges.
Impact means a measure of the effect of an Incident or Problem on business processes. Impact is often based on how Service Levels will be affected, or how many users are affected.
Incident means a type of Support Request that is an issue that has resulted in a process or operating error or service degradation, or has resulted a function, module or service being rendered unstable, inaccessible or unusable.
Instance means a single copy of the Software for use with a single Network Address, or group of Network Addresses which when accessed generate the same output regardless of which Network Address within the group is used.
Malicious Code means any "virus", "worm", "Trojan Horse", "trapdoor", "software switch", "time bomb", "slicing routine", "corruptive code", "logic bomb", "disabling code", "disabling routine" or "expiration dates" as these words are generally understood from time to time within the technology industry and any equivalent or similar corruptive mechanisms contained in software. but excluding passwords, software keys, trial period software and like features that are security features or intended elements of software used to prevent unauthorised access and use.
Noggin (also referred to as **We** or **Us**) means the Noggin entity that this agreement is with, as specified in the Order Form. In the USA or Canada this is Noggin IT Inc (USA), in Australia and the Asia-Pacific this is Noggin Pty Ltd (Australia), in New Zealand this is Noggin IT Limited (NZ), in the UK, Europe and the Middle East this is Noggin IT Limited (Ireland).
Permanent Fix means a permanent resolution to a problem.
Personnel of a party means employees, officers, project managers, agents, contractors and subcontractors of that party.
Priority means the priority of a Support Request based on its Impact and Urgency, used to identify required times for actions to be taken.
Privacy Laws means any legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to personal information, which the parties agree in writing will apply to this Agreement, based upon the jurisdiction that governs this agreement
Resolution Plan means a plan of action to resolve an issue or problem.
Response means a communication by Noggin to the Client in relation to a specific issue or request, which includes either a Temporary Fix, a Permanent Fix or a Resolution Plan
Response Time means the maximum time from acknowledgement of a logged issue.
Service Request means a type of Support Request that is repeatable, simple to execute, can be documented, is low cost and/or low risk, requires no more than one business days' worth of effort to deliver, and is accepted as a part of business-as-usual activities. For example a simple configuration change, or an answer to a question.
Services means the SaaS or consulting services that Noggin provides to you as specified in your Order Form and/or Statement of Work.
Software as a Service (SaaS) means a model of software deployment whereby Noggin licenses the software

application to the Client for use as a service on demand and the Client pays an ongoing subscription fee for use of this service.
Software means any program, library, code, and/or documentation developed by or on behalf of Noggin and any addition, modification, upgrade or change to the Software provided by Noggin that replaces and/or supplements the original Product, unless such upgrades are accompanied by a separate license, in which case the terms of that license will apply.
Standard Hours means Noggin's standard business hours which are

- North America – 08:30 – 17:30 Mon-Fri (Pacific Standard Time)
- United Kingdom – 08:30 – 17:30 Mon-Fri (GMT)
- Asia-Pacific – 07:00 – 19:00 Mon-Fri (AEST)

Subscription Fee means the amount you pay for the Subscription Service.
Subscription Service means all of our safety and security applications, tools and platforms that you have subscribed to by an Order Form or that we otherwise make available to you, and are developed, operated, and maintained by us, accessible via http://nogginapp.io or another designated URL, and any ancillary products and services, that we provide to you.
Subscription Term means the initial term for the subscription to the applicable Subscription Service, as specified on your Order Form(s), and each subsequent renewal term (if any). For Free Services, the Subscription Term will be the period during which you have an account to access the Free Services.
Support Hours means the total number of hours of Support in each Billing Period that is indicated on your Order Form.
Support means to provide advice, assistance and guidance regarding how to use and configure Noggin's products.
Support Request means a request for assistance by You that may include a report of an Incident or a Service Request.
Temporary Fix means a temporary solution to a defect to overcome the immediate problem.
Urgency means a measure of business criticality of an Incident where there is an effect upon business deadlines. The urgency reflects the time available for repair or avoidance before the impact is felt by the business. Together with impact it is the major means of assigning a priority for dealing with Incidents.

General Terms of Service

1. Background:
   1.1. Parties
      1.1.1. Noggin provides software subscription and consulting services
      1.1.2. These terms of service relate to engagement with a particular Noggin Entity - Noggin IT INC - United States (EIN 46-3172610), Noggin Pty Ltd - Australia (ABN: 87116457080), Noggin IT Limited – Ireland (Company Registration No: 557187), Noggin IT Limited - New Zealand (NZBN: 9429046070180)– variously known as "Noggin" or "We".Your terms of service will relate to the entity linked to your jurisdiction of sign up.
2. Use
   2.1. Your use of the proprietary Noggin Software service offered at noggin.io and related websites ("The service") is subject to these terms of service. In order to use the service, you must agree to be bound by these terms of service. By using the Subscription Service or receiving the Consulting Services, you are agreeing to these terms.
   2.2. The Noggin Privacy Policy (available at https://www.noggin.io/privacy) is incorporated herein by reference. This Agreement governs your use of the Service however accessed, including via an Internet browser, smartphone, tablet, or other mobile device.
   2.3. If you are signing up for the Service on behalf of a Customer, you warrant that you are duly authorized to represent the entity and accept the terms of this Agreement on behalf of such entity, and any references to "you" in this Agreement refer to such entity and all of its employees, consultants and agents. You are responsible for all activity on the Service that occurs under your account.
3. Scope
   3.1. These terms govern Noggin's provision of software product ("subscription services") and consulting services "Consulting Services") to the Customer, subject to one or more ordering documents (called an "Order Form") describing the Services, each of which incorporates these terms by reference.
   3.2. The Order Form may be contained electronically within the customer account section of the subscription services application or as a electronic or printed document.
   3.3. The services that Noggin may provide in the Order Form include software subscription, software development, consulting services, software design, interface design, documentation, technical support, hosting and/or maintenance, or communications as requested by the Customer. The services may be delivered by Noggin or a third party, if the Customer accepts.
   3.4. The Order Form ("Order Form") must be signed by the customer and Noggin, either digitally or in writing.
   3.5. The parties may add Order Forms from time to time during the duration of the engagement. These Order Forms will also be governed by the terms contained in this head agreement.
   3.6. Additional Features. The customer may subscribe to additional features of the Subscription Service by placing an additional Order or activating the additional features from within the customer portal in the subscription services application.
   3.7. The combination of the Order Form and Noggin terms of service shall be known as "The Agreement"
4. Your Responsibilities as they relate to use of our products
   4.1. You shall (i) be responsible for Users' compliance with this Agreement, (ii) be and remain solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, (iv) be responsible for maintaining the security of the User names and passwords of Your Users using the

Service and notify Us promptly of any other breach of security known or suspected by You, (v) use the Services only in accordance with applicable laws and government regulations, and (vi) be responsible for all activity under Your Account, including the activity of other Users who have been added to Your Account by You or by another User of the Account

4.2. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights (including any materials which are illegal, obscene, indecent, defamatory, incites racial or ethnic hatred, violates the rights of others, harms or threatens the safety of Users or others or may otherwise constitute a breach of any applicable law), (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

5. Entire Terms
   5.1. These terms, together with the Order Forms, embodies the entire understanding of the parties and supersedes all previous terms or contemporaneous communications, whether oral or written; proposals, representations and warranties relating thereto.
6. Assignment.
   6.1. You will not assign or transfer this Agreement, including any assignment or transfer by reason of merger, reorganization, sale of all or substantially all of your assets, change of control or operation of law, without our prior written consent, which will not be unreasonably withheld. We may assign this Agreement to any affiliate or in the event of merger, reorganization, sale of all or substantially all of our assets, change of control or operation of law.
7. No Third Party Beneficiaries.
   7.1. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
8. Inconsistencies
   8.1. If there is any inconsistency between any of the provisions of this Agreement and the provisions of any of the Incorporated Terms and Conditions, the provisions of this Agreement govern to the extent of the inconsistency, unless explicitly agreed in an incorporated customer agreement
9. Severability.
   9.1. If any part of this Agreement or an Order Form is determined to be invalid or unenforceable by applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement will continue in effect.
10. Waiver.
   10.1. No waiver of this Agreement will be valid unless made in writing and signed by both parties. The waiver of a breach of any term hereof will in no way be construed as a waiver of any other term or breach hereof.
11. Consulting Services.
   11.1. You may purchase Consulting Services by placing an Order with Noggin. Unless Noggin otherwise agree, the Consulting Services we provide will be governed by the Consulting party terms and will be delivered in English. Fees for these Consulting Services are in addition to your Subscription Fee.
   11.2. If you purchase Consulting Services that recur, they will be considered part of your subscription and will renew in accordance with your subscription.
12. Duty of Confidentiality
   12.1. Each party to these Terms shall keep the terms of this Agreement confidential and hold in strict confidence all Confidential Information of the other party that it learns or is provided with and use such Confidential Information only for the purposes of this Agreement.
   12.2. Upon termination of this Agreement for any reason, or upon the request of the other party, a party shall promptly deliver to the other party all Confidential Information of the other party.
   12.3. Neither party to this agreement will make press nor other announcements nor releases relating to this Agreement without the other party's written consent.
   12.4. If an administrative body or a court under proceedings asks for such information, the parties shall contact each other in order to limit together possible adverse effects of such disclosure;
   12.5. Each party shall return to the other all Confidential Information of the other in written or tangible form or in any other media on the termination of this Agreement.
   12.6. The terms of this clause shall survive the expiry or earlier termination of this Agreement and any agreed renewal of this Agreement.
   12.7. Exceptions. The duty of confidentiality referred to in this Agreement will not extend to such of the Confidential Information as;
      12.7.1. was known to the party receiving the Confidential Information, prior to the date of this Agreement;
      12.7.2. was in the public domain, but not known to the party receiving the Confidential Information, prior to the date of this Agreement;
      12.7.3. comes into the public domain subsequent to the date of this Agreement otherwise than a result of a breach of this Agreement;
13. Intellectual Property
   13.1. Each party maintains its pre-existing intellectual property going into the agreement
   13.2. The Client retains copyright over any Content it inputs into the Noggin software. All ownership and Intellectual Property Rights in all Client Data remains vested in the Client.

13.3. Noggin retains the intellectual property of any solutions, libraries or processes that it provides as part of its software

13.4. Any bespoke configuration, process provided by Noggin for the customer as part of consulting services remains the property of the customer.

13.5. The Client will not for any purpose, re-use, reproduce, redistribute, duplicate, copy, sell, trade or resell the Services, any Noggin Intellectual Property Rights or any Software developed or applicable under this Agreement without consulting, informing, or paying any license fees or royalties to Noggin or the relevant licensor.

14. Termination

14.1. This terms shall be terminated where:

14.1.1. A party to this Agreement becomes insolvent or bankrupt;

14.1.2. A party to the Agreement undertakes activities or conducts itself in such a manner as to harm the reputation, standing and image of another party in a material manner;

14.1.3. A party to the Agreement behaves unethically, unprofessionally or dishonestly in a material manner;

14.1.4. Customer's nominated payment method is refused or dishonored repeatedly

14.1.5. A party to this Agreement commits a material breach of this Agreement and does not seek to rectify the breach within 30 days of being notified in writing of the breach by the other party, then the other party shall be entitled to terminate this agreement immediately;

14.1.6. All outstanding fees and charges become payable immediately on giving of such notice and in no circumstances will Customer be entitled to any refund of payments made under this Agreement; s

14.1.7. Noggin for whatever reason ceases to provide the Services specified herein

14.2. Effects of Termination. Upon any expiration or termination of this Agreement, your license to the Software terminates (even if no expiration date is specified in your Order) and you must cease using and delete (or at our request, return) all Software and Confidential Information or other materials of Noggin in your possession, including on any third-party systems operated on your behalf. You will certify such deletion upon our request.

14.3. If this Agreement is terminated by you in accordance (Termination for Cause), Noggin will refund you any prepaid Software fees covering the remainder of the then-current License Term after the effective date of termination. If this Agreement is terminated by Noggin in accordance with clauses 15.1.2, 15.1.3, 15.1.4 or 15.1.5 (Termination for Cause), you will pay any unpaid fees covering the remainder of the then-current License Term after the effective date of termination. In no event will termination relieve you of its obligation to pay any fees payable to Noggin for the period prior to the effective date of termination. Except where an exclusive remedy may be specified in this Agreement, the exercise by either party of any remedy, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

15. Limitation of Liability

15.1. Both parties shall only be liable for direct loss or damage arising out of gross negligence or wilful misconduct.

15.2. In no event will either party's liability arising out of or related to this agreement exceed fees paid by licensee to Noggin pursuant to this agreement.

15.3. In no event will either party have any liability for any indirect, incidental, special, or consequential damages, however caused and on any theory of liability, whether for breach of contract, tort (including negligence) or otherwise, arising out of or related to this agreement, including but not limited to loss of anticipated profits or loss or interruption of use of any files, data or equipment, even if advised of the possibility of such damages. These limitations will apply notwithstanding any failure of essential purpose of any limited remedy. The parties agree that the foregoing limitations represent a reasonable allocation of risk under this agreement.

16. Indemnification

16.1. Each party ("Indemnifying Party") will indemnify, defend and hold the other party ("Indemnified Party") harmless from any claim, action, suit or proceeding made or brought against the Indemnified Party arising out of or related to the Indemnifying Party's breach of any term of this Agreement.

17. Force Majeure

17.1. Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.

18. Compliance with Laws

18.1. We will comply with relevant. state and federal laws in our provision of the Subscription Service, the Consulting Services and our processing of Customer Data. We reserve the right at all times to disclose any information as necessary to satisfy any law, regulation, legal process or governmental request.

18.2. You will comply with all laws in your use of the Subscription Service and Consulting Services, including any applicable export laws.

18.3. You must comply with all laws related to the recording of phone calls and ensure all proper consent to record is obtained prior to making any such recording.

18.4. In performing its obligations in connection with this Agreement, both parties will ensure that they comply with all relevant Modern Slavery and anti Bribery laws and related obligations;

19. Notices.

19.1. Notice will be sent to the contact address registered for the Noggin subscription account, and will be deemed delivered as of the date of actual receipt

19.2. Notices from Customer to Noggin can be delivered by the in application webform

20. Dispute resolution

20.1. General

20.1.1. Any Dispute which arises must be dealt with in accordance with this clause. The parties must continue to perform their obligations under this agreement despite the existence of any Dispute

20.1.2. Nothing in this clause 20 prejudices either party's right to commence legal proceedings to seek urgent injunctive or urgent declaratory relief in respect of a Dispute.

20.2. Negotiation

20.2.1. If a Dispute arises then either party may, by written notice to the other party, refer the Dispute to senior representatives of the parties for resolution. The notice must expressly state that it is a notice under this clause 28.2 and set out reasonable particulars of the Dispute.

20.2.2. The parties must ensure that their senior representatives confer with each other in person, by phone or video conference within 10 Business Days after a Dispute is referred to them (or such later date as the parties agree in writing) and, acting in good faith, seek to resolve the Dispute. Each party must ensure that its senior representative has authority to resolve the Dispute.

20.3. Litigation

20.3.1. If a Dispute is not wholly resolved within 20 Business Days after the Dispute is referred to the parties' senior representatives under this clause (or such later date as the parties agree in writing), either party may commence legal proceedings to resolve the Dispute.

20.3.2. A party must not commence legal proceedings in relation to a Dispute unless the Dispute has been referred to their senior representatives under clause 20.6 and the party has complied with the procedure for resolving the Dispute under clause 20 (to the extent possible).

Noggin Implementation/Consulting Services Terms v2.07

SECTION A – TYPES OF IMPLEMENTATATION AND CONSULTING SERVICES

1.1. Noggin will provide consulting Services on either a Fixed-Price or Time-and-Materials (T&M) basis, if indicated on the your Order Form.
1.2. Noggin will provide the Services at the rates and prices indicated on the Order Form.

2. T&M Engagements

Where the Order Form indicates that services will be provided on a T&M basis:

2.1. The Order Form will specify the maximum amount of hours of Services that Noggin may provide.
2.2. Noggin has no obligation to provide any Services beyond the maximum amount of hours in the order form.
2.3. Noggin may not provide Services which exceed the maximum amount of hours without written authorisation from You in the form of a new or amended Order Form.
2.4. You shall not be liable to pay for any Services that exceed the maximum amount indicated on the authorised Order Form, or the cumulative total of maximum hours on multiple authorised Order Forms.
2.5. Noggin will maintain records in its online consulting management system regarding the time our personnel spend providing Services to You. These records will determine how much time Noggin has provided under a T&M engagement.
2.6. Noggin will provide a report to you each week detailing how much time used, and for which activities.
2.7. Noggin will invoice You each month for the total hours of Services provided in the prior month.
2.8. You acknowledge that Services provided by Noggin under a T&M engagement are performed under the direction of You or your agents or personnel, and that Noggin has no obligation to provide any specific deliverables beyond the availability of Noggin's personnel to provide the time ordered.
2.9. The Order Form will specify and Expiry Period for each amount of hours that you purchase.
2.10. The Expiry Period will commence upon receipt of an authorised Order Form.
2.11. At the end of the Expiry Period, any remaining hours will be forfeited. Noggin may elect to provide Services entirely at our discretion after the end of the Expiry Period.

T&M engagements may be cancelled by written request from the Client at any time, however all fees for T&M Services are non-refundable.

3. Fixed-Price Engagements

Where the Order Form indicates that Services will be provided on a Fixed-Price basis:

3.1. The Order Form will specify and incorporate a Statement of Work (SOW) that provides further detail and will define the price, Services, Deliverables, acceptance criteria, scope of work, payment milestones and other assumptions regarding the engagement.
3.2. The SOW will specify the price that you agree to pay and the Deliverables that you agree that Noggin will provide for that price.
3.3. Noggin has no obligation to provide any Deliverables that are not specified in the Order Form or SOW.
3.4. In order to define the scope of the Services and Deliverables in sufficient detail to fix the price, Noggin may be required to make a number of assumptions about the extent and nature of the Deliverables, Noggin's Services, and other aspects of the implementation or solution. These may include, but are not limited to, the methods and extent of collaboration with You, the extent of configuration necessary to produce the Deliverables, or approach to system integrations.
3.5. Noggin will document these assumptions in the SOW. You acknowledge that these assumptions are material to the scope of the Deliverables and the fixed price that Noggin provides.
3.6. You agree to provide the Client resources and other dependencies specified in the Order Form or SOW, and that Noggin's price is based upon these assumptions. Variations to the Client resources or dependencies may result in delays or other costs to Noggin for which Noggin may be entitled to a Change Request.
3.7. If at any time You require changes to the scope of the Deliverables (including the assumptions), Noggin will assess the impact of the change and may raise a Change Request to cover any of its additional costs or Services required to implement the changes.

4. Delays

The following clauses apply to Fixed-Price Engagements only:

4.1. Noggin and the Client will establish an agreed baseline schedule in the project's Inception phase. Noggin will allocate project resources in accordance with the established schedule.
4.2. Where there is a delay or extension to the baseline schedule caused by the Customer or otherwise outside of Noggin's control:
4.2.1. Both parties will work collaboratively together to minimise the costs or impact of any delays, where practical.
4.2.2. A delay or extension that exceeds in duration 10% of the overall project duration, may incur material costs to Noggin and entitle Noggin to raise a Change Request, to be dealt with under clause 7.
4.2.3. In the event of a delay or extension as defined in 4.2.2 above, Noggin will endeavour to redeploy its resources to minimise its costs where possible and practical.
4.2.4. For longer delays, where practical and at Noggin's discretion, Noggin may fully redeploy its resources in between a defined ramp-down and ramp-up period.

4.2.5. For resources that Noggin is unable to redeploy, Noggin will calculate its costs for a Change Request based on 80% of the price for those resources at the applicable rates in the Order Form for the duration of the delay, or the duration of the ramp-down and ramp-up periods should they be defined in accordance with 4.2.4.

5. Acceptance

The following clauses apply to Fixed-Price Engagements only:

5.1. The Order Form and SOW will specify which Deliverables are subject to Acceptance Testing, and what the Acceptance Criteria are for each Deliverable.

5.2. Where Acceptance Testing applies to a Deliverable:

5.2.1. Noggin will provide the Deliverable,

5.2.2. The Client will conduct Acceptance Testing during the Acceptance Testing Period,

5.2.3. Noggin will issue an Acceptance Request at the end of the Acceptance Testing Period or at the completion of Acceptance Testing, whichever comes first.

5.3. Where Acceptance Testing does not apply to a Deliverable, Noggin will issue an Acceptance Request in writing upon delivery.

5.4. The client must accept or reject the Deliverable within the Acceptance Period, by issuing an Acceptance or Rejection Notice in writing.

5.5. The Acceptance Period or Acceptance Testing Period may be extended via mutual agreement between the Client and Noggin.

5.6. The Client will not withhold or delay acceptance unreasonably or where it can be demonstrated that the Acceptance Criteria have been met.

5.7. The deliverable is deemed Accepted where:

5.7.1. The Client has provided an Acceptance Notice during the Acceptance Period

5.7.2. The Client waives their right to accept the deliverable for any reason

5.7.3. An Acceptance or Rejection Notice has not been provided and 2 business days have passed after the end of the Acceptance Period.

5.7.4. 2 business days following delivery, where the SOW specifies that Acceptance does not apply to a Deliverable

5.7.5. When the Client makes the Deliverable available for use in its production or 'live' environment.

5.8. If the client rejects the deliverable, the Rejection Notice will include the reasons for the rejection, which Acceptance Criteria have not been met, and a related list of issues where relevant.

5.8.1. Noggin will respond to the rejection notice within 5 business days.

5.8.2. The response will include either rectification of the reasons for rejection, or a remediation plan to rectify the issues, or a combination.

5.8.3. The Client may elect to perform additional Acceptance Testing to confirm the resolution of the rejection reasons or issues, in which case a new Acceptance Test Period and Acceptance Period will apply.

5.9. During the Acceptance Period, the Client may issue a Conditional Acceptance notice where the Deliverable is deemed accepted subject to Noggin providing a plan to rectify any outstanding issues.

6. Document Deliverables

6.1. Deliverables that are documents ("Documents") are not subject to Acceptance Testing or Criteria, unless specified otherwise in the Order Form or SOW.

6.2. All Documents will be provided in standard Noggin formats, unless specified otherwise in the Order Form or SOW.

6.3. Noggin will provide an initial draft of each Document for the Client to review and provide feedback on, prior to finalising the Document.

6.4. The Client will provide one round of consolidated feedback to Noggin for each document, within the Document Review Period.

6.5. Noggin may then make further changes or additions to the Document in order to address or incorporate the Client's feedback, before submitting a final document for acceptance.

7. Change Requests

7.1. The Client will, by giving written notice to Noggin, be entitled to request changes to the Services or Deliverables under this Agreement as part of a formal Draft Change Request.

7.2. The Draft Change Request must contain sufficient detail for Noggin to assess the impact of the change, including on the scope, price and schedule.

7.3. Upon receipt of a Draft Change Request, Noggin will, with 10 business days, respond to the Client describing the impact upon and/or adjustments required to the Services, Deliverables, Price or schedule in order to fulfil the Change Request.

7.4. If Noggin, acting reasonably, assesses that there is more than 1 day's work involved in the evaluation of the Draft Change Request, then prior to commencing work on evaluating the Change Request Noggin may request that the customer pays for the work involved to estimate the requested change. The Client is under no obligation to accept this request.

7.5. Upon receipt of a Change Request from Noggin, the Client may then either approve or reject the Change Request by providing written notice.

7.6. Where the Client approves a Change Request the Order Form and/or SOW will be considered amended to incorporate the changes.

7.7. Noggin will not commence any work related to a Change Request until the Change Request is signed by both parties.

7.8. Unless otherwise stipulated, a Change Request will be valid for 14 days.

7.9. If there is any dispute over a Change Request this will be dealt with through the procedures for managing project issues in Section B, or the dispute resolution procedures under this agreement.

8. Warranties

8.1. Configuration. Noggin will provide a 90 day warranty on any software configuration or Integration services Deliverables that it has provided, commencing from when the Deliverable is made available for use in a Client's production system.

8.2. Noggin's warranty on configuration Deliverables is voided if the Client or its agents or personnel modify the Deliverable in any way.

8.3. Noggin warranty on integration Deliverables does not apply to any defects or faults caused by changes to, or issues in, other Client or third party systems.

8.4. The Client acknowledges that:

8.4.1. The performance of Noggin software Services can be influenced by many factors including the amount of data in the system, the complexity of any integrations and third party software, and the configuration of the software itself including the size of forms, complexity of analytics, queries and workflows.

8.4.2. Configuration of Noggin's software performed by Noggin under this agreement is performed at the direction of the Client, in accordance with the Client's requirements and designs, to meet the Customer's specific needs regarding the data model, forms, dashboards, analytics and workflows. As such, the design of these configurations are not under Noggin's control and may include complex data or business logic operations.

8.5. For the reasons described in 8.4, it is not possible for Noggin to warrant any specific performance of the loading or response times for configured forms, dashboards, charts, tables, analytics, or workflows, whether performed by the Client or by Noggin on behalf of the Client.

8.6. Client do performance testing as part of the scope of work, but this is not a warranty of performance.

9. Subcontracting

9.1. These clauses regarding sub-contracting only apply to any consulting Services that Noggin provides under an Order Form or SOW. For clarity, they do not apply to the development, operation or maintenance of Noggin's SAAS products.

9.2. Noggin must not subcontract or otherwise arrange for another party to perform any part of the Services without the prior written approval of the Client. The Client will not unreasonably delay or withhold such approval.

9.3. Where Noggin subcontracts part of the Services, Noggin will be liable to the Client for the acts, errors and omissions of its Subcontractors, their employees and agents as if they were the acts, errors or omissions of the Contractor.

9.4. Noggin must only enter into subcontracts that provide that the Subcontractor will procure from each person involved in the performance of the services under the Subcontract, an unconditional, irrevocable written consent to Noggin and any person claiming through Noggin doing anything that would otherwise infringe any of their Moral Rights in the product of work performed by such person for the purpose of the subcontract.

SECTION B – GOVERNANCE AND METHODOLOGY

10. Project methodology and governance

10.1. The methodology that will be used for managing the project is specified in the SOW.

10.2. Unless specified otherwise in the Order Form or SOW, Noggin's standard methodology, documentation templates, reporting and other procedures will apply.

10.3. Both parties will respect each other's working environment policies: security, use of ICT, workplace health and safety – as reasonably instructed and required.

10.4. Both parties will appoint a Project Lead who is the primary and operational contact person for all matters related to the project. The Project Leads will meet routinely (no less frequently than fortnightly), as specified in the SOW, in order to coordinate project activities, status and issues.

10.5. Both parties will appoint a Senior Contact who will provide oversight of the project.

10.5.1. In the case of Noggin this will be a senior manager from our Solution Delivery or Customer Success areas.

10.5.2. In the case of the Client this will be a senior manager from the business area that will ultimately use and gain the benefits from the solution (i.e. not a temporary project or ICT/procurement manager).

10.5.3. The Senior Contacts will meet regularly (no less frequently than monthly) to coordinate, supervise and communicate openly regarding progress, issues and other matters relevant to the success of the engagement.

10.6. Both parties will appoint an Executive Contact who is authorised to act on behalf of their organisation with respect to this agreement, and who is appropriate for handling and resolving any issues that cannot be resolved by the Project Leads or Senior Contacts. The Executive Contacts will meet as required to address escalated issues, provide direction, or resolve any potential disputes in good faith.

10.7. In order to effectively resolve an issue or risk that has emerged during the engagement, either party may request a meeting at the Senior Contact or Executive Contact level at any time. Such requests are not to be unreasonably denied.

11. Location and data sovereignty

11.1. All Consulting Services are performed away from the customer site, unless both parties otherwise agree and this is specified in the Order Form or SOW.

11.2. Noggin utilises third-party software-as-a-service ('cloud') providers for a range of our internal systems. Many of these are global providers based in the USA and other countries, including but not limited to: Google for email and calendar services, Box for file storage, and Atlassian and Clarizen for project management and knowledge sharing. You agree that in the routine operation of Noggin's business, correspondence, information and documents that you provide to our consulting personnel may be transmitted or stored in these cloud services.

12. Issues and escalation

12.1. Where required under the methodology as specified in the SOW, Noggin's project manager will maintain a list of issues to be addressed throughout the project, including actions required, in progress or completed in order to resolve those issues.

12.2. The Client will report any issues or concerns promptly to the Noggin project manager, so that they can be registered and tracked and agreed resolution actions applied.

12.3. Where the Client or Noggin considers that an issue will not be resolved satisfactorily by the Noggin project team, the parties agree to first meet at the

Senior Contact level to discuss and resolve the issue.

12.4. Where the Client or Noggin considers that an issue will not be resolved satisfactorily by the Senior Contacts, the parties agree to meet without prejudice at the Executive Contact level to discuss and resolve the issue.

12.5. Both parties agree to first pursue the resolution of issues, disputes, alleged breaches or conflicts in accordance with these clauses 13.2, 13.3 and 13.4 before enacting the dispute resolution procedures under this agreement or any other legal remedy.

13. Audit

13.1. The Client has a right to audit Noggin's processes regarding its delivery of consulting Services, including the recording of time and activities or invoicing related to a T&M engagement, no more frequently than annually.

13.2. The Client may request an audit by providing at least 14 days' written notice, including the scope of the audit, objectives and terms of reference.

13.3. The Client will bear any costs arising from the performance of the audit.

13.4. If Noggin personnel are required to respond to any audit, where there is no breach or related issues found, then you agree that Noggin will provide a quote and charge you for our time spent.

14. Expenses

14.1. Out of pocket expenses and reimbursements

14.1.1. For Consulting Services performed on-site, you agree to reimburse Noggin for our reasonable costs for all travel expenses incurred in order to provide the Consulting Services, including air, road or rail travel, per diems, meals, and any reasonable out of pocket expenses related to the delivery of the service at your site.

14.1.2. If you are government agency, we will do so in accordance with the travel guidance provided by your relevant government services agreement as it pertains to travel allowances

14.1.3. Any invoices or other requests for reimbursements will be due and payable within thirty (30) days of the date of the invoice**.**