

INCITE Terms and Conditions

Nexus Point Solutions Pty Ltd
ABN 11 094 296 429

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In **this agreement**, unless the context clearly indicates otherwise:

Address for Service means the address of each party appearing in this agreement or any new address notified by any party to all other parties as its new Address for Service.

Archive Mode means when a Project remains on INCITE in read-only form for the purposes of Data storage.

Authorised Representative means the person or persons nominated in writing as such by each party and any person nominated in writing to that role by any of the persons in Item 3 of Schedule 1.

Available means accessible and usable by INCITE Customers.

Availability in a month means the number of hours for which the Services are Available in that month expressed as a percentage and calculated in accordance with the following formula:

$$\frac{(\text{All hours in a month} - \text{Excusable Downtime}) \times 100}{\text{All hours in a month}}$$

Business Day means any day between Monday to Friday (inclusive) excluding public holidays in New South Wales.

Claim means any claim, demand or proceeding arising out of any cause of action (including breach of contract, tort (including negligence) and any other common law, equitable or statutory cause of action).

Commencement Date for a Project is the date set out in Item 6 of the Project Request Service Schedule.

Confidential Information means:

- (a) all information, material and technology disclosed or provided in any form by any party (**Disclosing Party**) to any other party (**Recipient**) in connection with the subject matter of this agreement; and
- (b) without limiting paragraph (a):
 - (i) information relating to the Personnel, policies or business strategies of Nexus;
 - (ii) information relating to the terms upon which the Services are provided under a Project Service Request Schedule agreed to by the parties in accordance with this Agreement; and
 - (iii) all Data, including Intellectual Property disclosed via INCITE in any form by any INCITE Customer and any INCITE Project Collaborators.

Consequential Loss means: any form of consequential or indirect loss or damage; any loss of profits, loss of revenue, loss of anticipated savings, pure economic loss, loss of opportunity or expectation loss; any loss or corruption of data; and any special, punitive or exemplary loss or damage.

Data means information which may or may not include Intellectual Property entered onto or into INCITE by a person other than Nexus, which may be the INCITE Customer or an INCITE Project Collaborator.

Documentation means any documentation provided by Nexus to the INCITE Customer in relation to INCITE.

Equipment means any equipment (including cabling) owned or leased by Nexus which is used by Nexus to connect the Network or provide INCITE.

Excusable Downtime in a month means the number of hours in a month during which the Services are not Available as a result of Scheduled Down Time or as a result of circumstances beyond INCITE's reasonable control, including emergency third party network unavailability, malfunction, upgrades, preventative or remedial maintenance activities, Force Majeure Events, unavailability of or interruption or delay in telecommunications or third party services, failure of power used for the provision of the Services, hacks or attacks from outside parties or individuals, failure or error of any INCITE monitoring or measurement system, the Customer's acts or omissions, including any negligence, wilful misconduct, or use of the Services in breach of this agreement by the Customer or others authorised by the Customer.

Fees means the fees payable by the INCITE Customer as set out in Item 5 of the Project Request Service Schedule for the provision of a Service or for keeping a Service in Archive Mode.

Force Majeure Event means a circumstance beyond the reasonable control of the parties which results in a Party being unable to observe or perform an obligation under this agreement, including disruptions to utility services (such as power and water), internet and telecommunications network outages, internet denial of service attacks and other similar acts of third parties, acts of God, lightning strikes, storms, floods, earthquakes or any natural disasters, explosions, war, invasion, rebellion, sabotage, epidemic and labour disputes.

GST means has the meaning given to it in the *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

INCITE means the online trading electronic exchange operated by Nexus at the URL www.INCITE.com.au and includes where the context requires or permits, the Services.

INCITE Customer Content means the content on INCITE which is owned by the INCITE Customer.

INCITE Project Collaborator means any person who has entered into an 'INCITE Project

Collaboration Agreement' with Nexus in order to participate in a Project on INCITE but who is not the INCITE Customer.

INCITE Project Collaboration Protocol (D & IP) means the INCITE Project Collaboration Protocol for Protection of Data and Intellectual Property, (the current version of which is set out in Attachment 1) as amended from time to time by Nexus posting updates to the URL www.INCITE.com.au.

INCITE Security Service Description means the document relating to the security procedures of Nexus in relation to INCITE, (the current version of which is set out in Attachment 2).

INCITE Service Desk means the help desk which INCITE Customers can access 24 hours a day, 7 days a week in accordance with clause 3.1.

INCITE Service Desk Representative means the person who answers and logs calls made to the INCITE Service Desk.

Intellectual Property means any intellectual and industrial property rights throughout the world, including copyright (including future copyright and rights in the nature of or analogous to copyright), domain names, inventions (including patents), trade marks, service marks, designs, and circuit layouts whether or not now existing and whether or not registered or registrable and includes any right to apply for the registration of such rights and includes all renewals and extensions and any other Intellectual Property Rights as defined in Article 2 of the World Intellectual Property Organisation Convention of 1967, but excludes non-assignable moral rights.

Know How means the knowledge, techniques and methodologies developed and acquired by the Personnel of Nexus in respect of the Software and its configuration as a result of work performed for the INCITE Customer and other customers which access INCITE and any Documentation embodying such knowledge, techniques and methodologies.

Law means any applicable statute, regulation, by-law, ordinance, or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, Commonwealth or local government, and any applicable industry codes of conduct.

Liability means any liability or obligation (whether actual, contingent or prospective), including for any Loss, irrespective of when the acts, events or things giving rise to the liability occurred (and **Liable** is to be construed accordingly).

Loss means any loss, cost, damage and expense (including legal costs and expenses of any nature or description).

Network means any network used by Nexus to supply INCITE.

Nexus' Privacy Policy means the policy Nexus follows in relation to the use of Personal Information it collects or is provided with by a third party as set out at www.incite.com.au.

Personal Information has the meaning ascribed to it in the *Privacy Act 1988* (Cth).

Personnel of a person, means the officers, employees, agents and contractors of that person.

Project means the subject of a completed Project Service Request Schedule, and nominated by the INCITE Customer in its Request for Services, for which the INCITE Customer requires the Service(s).

Project Service Request Schedule means Schedule 2 to this agreement.

Related Company of a party, means a related body corporate of that party (as that term is defined in the *Corporations Act 2001* (Cth)).

Request for Services means the registration completed by the INCITE Customer online at INCITE when ordering Service(s) in respect of a Project.

Scheduled Down Time means the time set out in Item 11 of the Project Service Request Schedule for a Project.

Service means any of the service(s) set out in Item 2 of Schedule 1 which are nominated by the INCITE Customer at Item 3 of the Project Service Request Schedule for a Project.

Service Level means the Service Level in respect of a Service as set out in the Item 9 of the Project Request Service Schedule.

Service Level Rebate means the rebate (if any) set out in Item 12 of the Project Request Service Schedule.

Service Period, for a Service, means the period specified in Item 7 of the Project Request Service Schedule for that Service.

Service Period Extension means the period set out in Item 8 of the Project Request Schedule during which this agreement continues after the initial Service Period in Item 7 of the Project Request Schedule.

Service Problem means excluding Excusable Downtime, when a Service is not Available or is degraded such that an INCITE Customer cannot properly access or use it as intended and specified in this agreement.

Service Request means a request by an INCITE Customer for alterations or additions to a Service.

Severity Level of a Service Problem means the severity designation assigned by an INCITE Services Help Desk Representative to a Service Problem and which will be one of those in Item 10 of the relevant Project Service Request Schedule and the designation will be selected using the following criteria:

- (a) **Severity Level 1** - INCITE is not Available and no acceptable bypass or

alternative is available, and the outage is attributable to the Software;

- (b) **Severity Level 2** – the Software relating to a particular Service is not Available and no acceptable bypass or alternative is available, and the outage is attributable to the Software;
- (c) **Severity Level 3** – the Software is degraded with some operational impact, but is Available and no acceptable bypass or alternative is available, and the outage is attributable to the Software;
- (d) **Severity Level 4** – there is no operational impact on the Software or there is a readily available alternative.

Software means the software specified in Item 4 of the Project Request Service Schedule as software to be utilised by Nexus in order to supply the relevant Service to the INCITE Customer.

Special Conditions means any additional terms to this agreement relevant to a Service and detailed in the Project Service Request Schedule.

Specifications for Software means the functional and operational specifications for that Software, as set out in Item 4 of the Project Request Service Schedule.

Term means the Service Period commencing on the Commencement Date and ending:

- (a) if only one Service has been requested, when the Service Period for that Service expires;
- (b) if more than one Service has been requested, when the last Service Period for those Services expires; or
- (c) when this agreement is terminated in accordance with its terms.

Ticket Number means the unique number designated to each call relating to a Service Problem or a Service Request logged by an INCITE Services Help Desk Representative and which can be used to identify and track progress in relation to Service Problems or Service Requests.

Trade Marks means all trade marks owned by Nexus or any of its Related Companies.

1.2 Interpretation

In this agreement unless the context clearly indicates otherwise:

- (a) a reference to **this agreement** or another document means this agreement or that other document and any document which varies, supplements, replaces, assigns or novates this agreement or that other document;

- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to a **clause** is a reference to a clause in this agreement and a reference to an **item** in relation to the Project Request Service Schedule is a reference to an item of the Project Request Service Schedule;
- (e) **clause headings** and **the table of contents** are inserted for convenience only and do not form part of this agreement;
- (f) the **introduction** and **schedules** form part of this agreement;
- (g) the **introduction** accurately sets out the circumstances in which the parties have entered into this agreement;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) where an **INCITE Customer** is a **company**, a reference to an INCITE Customer includes a reference to the INCITE Customer's Personnel;
- (l) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement;
- (m) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (n) a reference to a **breach of warranty** includes that warranty not being complete, true or accurate;
- (o) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (p) **including** and **includes** are not words of limitation;
- (q) the words **at any time** mean at any time and from time to time;

- (r) a reference to a time is to that time in New South Wales;
- (s) a word that is derived from a defined word has a corresponding meaning;
- (t) **monetary amounts** are expressed in Australian dollars;
- (u) the singular includes the plural and vice-versa;
- (v) words importing one gender include all other genders;
- (w) a reference to a thing includes each part of that thing; and
- (x) neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 NATURE OF CONTRACT

2.1 Master Contract

- (a) This agreement will be binding on the parties when a copy, duly signed by the INCITE Customer, is received by Nexus. Nexus will notify the INCITE Customer by e mail to confirm receipt of this signed agreement for information purposes only.
- (b) This agreement governs the provision by Nexus to the INCITE Customer of Services in respect of any Project.
- (c) In the event there is any inconsistency between any of the terms of this agreement, priority will be accorded to the terms as follows:
 - (i) clause 13 (Liability) of this agreement;
 - (ii) in relation to a Service, the Project Request Service Schedule, including any Special Conditions;
 - (iii) the remaining provisions of this agreement.

2.2 Project Specific Contract Variations

- (a) Whenever the INCITE Customer completes online a Request for Services in respect of a named project, that amounts to an offer to Nexus to include the project as a Project governed by this agreement.
- (b) Nexus and the INCITE Customer may agree in writing to Special Conditions in respect of the Project referred to in a Request for Services, which are variations to this agreement and only apply to the nominated Project.
- (c) The nominated project will become a Project governed by this agreement, including any Special Conditions agreed by the parties, when the last of the parties sign by an Authorised Representative a completed Request for Services in paper form in respect of the nominated project.

3 SERVICES AND SERVICE LEVEL REBATES

3.1 Services

- (a) Nexus will provide the Services to the INCITE Customer during the Term.
- (b) Nexus will provide an INCITE Service Desk which INCITE Customers can contact using either the telephone number or email address provided on www.incite.com.au in regards to Service Problems and Service Requests, 24 hours a day, 7 days a week. All calls received by an INCITE Service Desk Representative are logged pursuant to the procedure set out in Schedule 3.
- (c) Nexus is only required to rectify Service Problems which satisfy the Severity Levels set out in Item 10 of the Project Service Request Schedule.

3.2 Service Level Rebates

- (a) Subject to clauses 10 and 15, Nexus will use its reasonable endeavours to ensure that each Service meets each applicable Service Level set out in Item 9 of the Project Request Service Schedule.
- (b) If the failure by Nexus to meet an applicable Service Level is due solely to an act or omission of Nexus, the INCITE Customer may be entitled to a Service Level Rebate.
- (c) Nexus will periodically monitor the Service Levels internally.
- (d) To claim a Service Level Rebate, the INCITE Customer must notify Nexus in writing within 7 days of the failure by Nexus to meet the Service Level.
- (e) Nexus will issue a Service Level Rebate where the INCITE Customer has followed the procedure under clause 3.2(d) and if the failure to meet the Service Level is confirmed by Nexus' monitoring under clause 3.2(c). Such Service Level Rebates will be equal to a percentage of the monthly Fees for the Services as specified in Item 12 of the Project Request Service Schedule to be credited at the end of the following month in which the Service Level Rebate is claimed.
- (f) To the extent permitted by law, the entitlement to a Service Level Rebate, under clause 3.2(b) and whether or not claimed by the INCITE Customer, is the INCITE Customer's sole remedy in relation to Nexus' failure to meet the Service Level for the Services.

4 INTELLECTUAL PROPERTY AND DATA

4.1 No Use

Neither party may copy or use the trade marks (in the case of the INCITE Customer, including the Trade Marks), or other Intellectual Property of the other party, except in accordance with this clause 4.

4.2 Trade marks

The trade marks, logos, trade names and service marks on or in relation to INCITE (excluding the INCITE Customer's marks) are owned by Nexus, its Related Companies or licensors. The INCITE Customer must not copy or use those trade marks, logos, trade names and service marks without the prior written consent of Nexus.

4.3 Nexus' Intellectual Property

The INCITE Customer acknowledges that other than as set out in this clause 4, Nexus does not grant the INCITE Customer any rights in relation to:

- (a) any Intellectual Property of Nexus; or
- (b) the Trade Marks.

4.4 INCITE Customer's Marks

The INCITE Customer grants to Nexus a royalty free, non-exclusive, irrevocable, worldwide licence, in perpetuity, to use, reproduce and distribute any of the INCITE Customer's trade marks, logos, trade names and service marks solely in connection with and for the purposes of providing the Services.

4.5 Indemnity

The INCITE Customer indemnifies Nexus against all liabilities, losses, damages, costs and expenses suffered or incurred by Nexus, its Related Companies or any of their Personnel in connection with a claim that use of the INCITE Customer's Data, content and other information and materials, trade marks, logos, trade names and service marks by Nexus in accordance with this agreement infringes the Intellectual Property of any person.

4.6 Protection of INCITE Customer's Intellectual Property and Data

Nexus will endeavour to follow the procedures set out in Attachment 1 in order to protect the Intellectual Property and Data of the INCITE Customer.

4.7 Know How

The INCITE Customer agrees that Know How acquired or developed by Personnel of Nexus is exclusively owned and controlled by Nexus and may be used by the Personnel of Nexus without restriction, even in circumstances where the Know How was acquired or developed in the course of or as a consequence of providing Services to the INCITE Customer.

5 INCITE SECURITY AND PRIVACY

Nexus will implement the security systems as set out in Attachment 2 – INCITE Security Service Description.

6 ARCHIVE MODE

- (a) An INCITE Customer can chose to put a Project into Archive Mode pursuant to the procedures set out in Attachment 1 - INCITE Project Collaboration Protocol (D & IP).
- (b) Fees continue to be due when a Project is put into Archive Mode at the rates and times set out in Item 5 of the Project Request Service Schedule. In the event that the Fees for keeping a Project in Archive Mode are not received by Nexus at the times specified in Item 5 of Project Request Service Schedule, the entire Project will be removed from INCITE within 30 days of a missed payment.

7 FEES AND PAYMENT

The INCITE Customer agrees that Know How acquired or developed by Personnel of Nexus is exclusively owned and controlled by Nexus and may be used by the Personnel of Nexus without restriction, even in circumstances where the Know How was acquired or developed in the course of or as a consequence of providing Services to the INCITE Customer.

7.1 Fees

Unless otherwise agreed by both parties, the Fees for the Services are determined in accordance with Nexus' standard published rates as set out in Schedule 4. In any event the Fees for the Services will be set out in Item 5 of the Project Request Service Schedule. Nexus will invoice the INCITE Customer for the Fees:

- (a) in the amounts specified in Item 5 of Project Request Service Schedule, less any Service Level Rebates (if any) applicable to those amounts; and
- (b) at the times specified in Item 5 of Project Request Service Schedule.

7.2 Payment of Invoices

The INCITE Customer must pay each invoice from Nexus in full within 30 days after the date of issue of a duly rendered invoice from Nexus.

7.3 Non-payment

If the INCITE Customer does not pay an invoice by the due date, Nexus may charge interest on the unpaid amount at the rate of 2% above the current 'ANZ Reference Interest Rate' as published in the Australian Financial Review or any other nationally published newspaper if the Australian Financial Review ceases to be published.

7.4 No set-off

The INCITE Customer may not set off any amounts that it claims are payable to it by Nexus against any amounts payable by it to Nexus under this agreement.

7.5 Fee Increase during Service Period Extension

Nexus retains the right to vary or change the Fees during the Service Period Extension and shall give the INCITE Customer 14 days written notice of any such variations or changes.

8 GST

8.1 Exclusive of GST

Except as otherwise provided by this clause 8, all consideration payable under this agreement in relation to any supply is exclusive of GST.

8.2 Recipient must pay

If GST is payable in respect of any supply made by a supplier under this agreement, subject to clause 8.3 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

8.3 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 8.2.

8.4 GST Act

In this clause 8 words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as their definition in that Act.

9 INCITE CUSTOMER OBLIGATIONS

- (a) The INCITE Customer must comply with any operational procedures (including any security procedures) related to the use and access of INCITE and must only use the Services for its own purposes and unless Nexus' written consent is obtained in advance, the INCITE Customer shall not provide access to the Services to any other person. Insofar as another person desires access to INCITE in respect of a Project they must become an INCITE Project Collaborator.
- (b) The INCITE Customer must not use, or attempt to use, the Services:
 - (i) in any way which violates or infringes any duty or obligation in contract, tort (including negligence), or otherwise to any third person;
 - (ii) in connection with the commission of an offence against any Law, including fraud any dealing with material which infringes the Intellectual Property of any person;
 - (iii) to communicate or transmit material which is defamatory, obscene, offensive, upsetting, abusive, indecent, menacing or unwanted;
 - (iv) in any way which interferes with, damages or impairs the operation of INCITE, the Network or any Equipment, or any equipment or facilities associated with these things; or
 - (v) in any way which may injure or kill any person.

- (c) Nexus may ask the INCITE Customer to stop doing or permitting any of the things in clause 9(b) and the INCITE Customer must immediately comply with any such request.
- (d) The INCITE Customer must indemnify and hold harmless Nexus and keep Nexus indemnified, in respect of any Liability arising, directly or indirectly, from a failure by the INCITE Customer to observe its obligations under this clause 9.

10 SERVICE SUSPENSION

- (a) Nexus may suspend or limit access to INCITE or the supply of any Service where:
 - (i) there is an emergency or Nexus is required to repair, maintain or service any part of the Network or Equipment (or an interconnected supplier needs to undertake this work on its network);
 - (ii) the INCITE Customer breaches clauses 7 or 9;
 - (iii) Nexus is required to comply with an order, instruction or request of government, regulator, emergency services organisation or other competent authority;
 - (iv) problems are experienced interconnecting the Network with any network of another supplier; or
 - (v) Nexus is otherwise entitled to do so under this agreement or at law.
- (b) Nexus will try to give the INCITE Customer reasonable notice before suspending or limiting access to INCITE or the supply of Services under clause 10(a).

11 CONSEQUENCES OF SUSPENSION

Despite any other provision of this agreement, Nexus will not be Liable to the INCITE Customer, or any third party claiming through the INCITE Customer for any Claim made, in connection with Nexus suspending or limiting access to INCITE or the supply of any Service (or failing to do so) in accordance with clause 10.

12 CONFIDENTIALITY

12.1 No disclosure

- (a) Subject to clauses 12.2, 12.4 and 12.5, the Recipient:
 - (i) must not, use the Disclosing Party's Confidential Information other than for the purposes of this agreement, without the Disclosing Party's prior written consent; and
 - (ii) must not disclose the Disclosing Party's Confidential Information to any person other than the Recipient's Personnel who have a need to know, but only to the extent such Personnel have a need to know.

- (b) The Recipient must immediately return all Documentation and other materials containing the Disclosing Party's Confidential Information to the Disclosing Party when:
 - (i) it is no longer required for the purposes of this agreement; or
 - (ii) requested to do so by the Disclosing Party (unless to do so would prevent the Recipient exercising its rights or performing its obligations under this agreement).
- (c) Neither party shall disclose the terms of any schedule of this agreement without the prior written consent of the other party.

12.2 Application

Clause 12.1 does not apply to Confidential Information that is:

- (a) in the public domain, other than as a result of a breach of this agreement or any obligation of confidence owed by any person to the Disclosing Party;
- (b) lawfully known to the Recipient at the time of disclosure by the Disclosing Party and is not subject to any obligations of confidentiality;
- (c) lawfully disclosed to the Recipient by a third party without any obligations of confidentiality to the Disclosing Party; or
- (d) replicated by development independently carried out by or for the Recipient by a member of its Personnel without access to or knowledge of the Confidential Information.

12.3 Survival

This clause 12 shall remain in full force and effect even if this agreement or the Project Request Service Schedule is terminated or expires.

12.4 Permitted disclosure

This clause 12 does not prevent either party disclosing or publicising Confidential Information where required by law, a governmental agency or the rules of any relevant stock exchange to do so or disclosing Confidential Information to its advisers and auditors on a confidential basis.

12.5 Disclosure by Nexus

This clause 12 does not prevent Nexus from disclosing Confidential Information to its Related Companies or any Personnel of any of those Related Companies for the purposes of providing the Services.

12.6 Acknowledgement by the INCITE Customer

The INCITE Customer acknowledges that Nexus will not be in breach of clause 12.1 if Confidential Information is disclosed to a third party as a result of the INCITE Customer providing the third party with access to a Project.

13 LIABILITY

13.1 Limitation of Nexus' liability

Except where to do so would contravene any law or cause any part of this clause 13.1 to be void or unenforceable and subject to clause 13.2, Nexus:

- (a) excludes all representations, warranties, terms and conditions of any kind whatsoever implied into this agreement (whether implied by common law, statute or otherwise) and the application or availability of any statutory rights (including any implied representations, warranties, terms or conditions or any statutory guarantees that any goods or services supplied under this agreement are of satisfactory quality or fit for their purpose); and
- (b) excludes Liability to the INCITE Customer and any third party:
 - (i) in connection with the supply, failure to supply or the use of goods or services it buys or sells through INCITE;
 - (ii) except in relation to liability for personal injury, in respect of any Loss or Consequential Loss which may be suffered or incurred or which may arise directly or indirectly in respect of a failure or omission on the part of Nexus to comply with its obligations under this agreement; and
 - (iii) for any Consequential Loss arising from a Claim made under or in connection with this agreement or the provision or failure of a Service;
- (c) limits its aggregate Liability to the INCITE Customer in relation to all Claims arising out of or in connection with this agreement to the Fees paid to Nexus in the calendar year in which the Liability arises, calculated, as applicable, from the Commencement Date or the anniversary of that date immediately prior to the Liability arising.

13.2 CCA

- (a) Nothing in this agreement is intended to exclude, restrict or modify any rights that the INCITE Customer may have under the *Competition and Consumer Act 2010* (Cth) (the CCA) or any other applicable legislation which may not be excluded, restricted or modified by agreement.
- (b) If the CCA or any other applicable legislation provides the INCITE Customer with any non-excludable statutory rights (including any implied representations, warranties, terms or conditions or any statutory guarantees) in respect of any goods or services supplied under this agreement, then the exclusions of and limitations on Nexus' liability in this agreement do not apply in respect of such non-excludable statutory rights, however, where Nexus' liability with respect to such non-excludable statutory rights may be restricted or modified, then, without prejudice to any non-excludable statutory rights that the INCITE Customer may have which may not be restricted or modified by agreement, Nexus' liability is limited to:

- (i) in the case of a supply of goods, Nexus doing any one or more of the following (at its election): replacing the goods or supplying equivalent goods; repairing the goods; paying the cost of replacing the goods or of acquiring equivalent goods; or, paying the cost of having the goods repaired; and
- (ii) in the case of a supply of services, Nexus doing either or both of the following (at its election): supplying the services again; or, paying the cost of having the services supplied again.

13.3 Unavailability of the Services

Nexus excludes its Liability in the event that the Services are unavailable to the Customer due to downtime attributable to an emergency, third party network unavailability, malfunction, upgrades or preventative or remedial maintenance activities in respect of INCITE or the Network.

13.4 Apportionment

Subject to the limitations and exclusions of Liability in this clause 13, each party's Liability under this agreement will be reduced proportionately to the extent that any act or omission of the other party, its Related Companies or its Personnel caused or contributed to the Liability.

13.5 Obligation to mitigate

The INCITE Customer must promptly mitigate any Loss likely to be or actually sustained, incurred or suffered by the INCITE Customer under or in connection with this agreement.

13.6 Priority

This clause 13 prevails over all other clauses in this agreement.

13.7 Risk

Any content and other information materials downloaded by the INCITE Customer is downloaded at the INCITE Customer's risk. The dealings between the INCITE Customer and any third party using or having access to INCITE are solely between the INCITE Customer and that third party. Nexus is Liable for any Loss the INCITE Customer suffers as a result of any dealing with any such third party.

13.8 Indemnity

The INCITE Customer must indemnify and hold harmless Nexus and keep Nexus indemnified, against any Liability suffered or incurred by Nexus, which arises from or is connected with:

- (a) the INCITE Customer's breach of this agreement;
- (b) any wilful, unlawful or negligent act or omission of the Customer;
- (c) any Claim against Nexus or any Nexus supplier by any third party, other than the INCITE Customer, in connection with Nexus' supply to the INCITE Customer, of any Service, any ancillary service, any service or communication which

uses or relies on INCITE or any ancillary service or the INCITE Customer's use of INCITE or such services; or

- (d) any damage which the INCITE Customer or its Personnel cause to the Network, Equipment or any Nexus property.

14 TERM AND TERMINATION

14.1 Term

- (a) This agreement will continue for the Service Period as specified in Item 7 of the Project Request Service Schedule.
- (b) The Term will automatically extend for the Service Period Extension specified in Item 8 of the Project Request Service Schedule without a break in continuity subject to the parties rights of termination. The Service Period Extension may apply for consecutive periods or for only one period, as specified in Item 8 of the Project Request Service Schedule
- (c) A party may give the other party 30 days written notice before the expiry of the Term to refuse the Service Period Extension.

14.2 Either party may terminate

A party may terminate this agreement immediately, by giving written notice to the other party:

- (a) if the other party breaches any material provision of this agreement that is capable of being remedied and fails to remedy the breach within 30 days after receiving notice requiring it to do so;
- (b) if any event referred to in clauses 14.6(a) to 14.6(g) happens to the other party;
- (c) if, for any reason Nexus ceases to operate INCITE; or
- (d) in accordance with the Project Request Service Schedule.

A termination notice may relate only to a nominated Project or Projects and or nominated Services not generally if the party with the right to terminate chooses a limited termination.

14.3 Additional Situations in which Nexus may terminate

Nexus may terminate this agreement immediately, by giving written notice to the INCITE Customer:

- (a) If the INCITE Customer, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
- (b) If the INCITE Customer, being a natural person, dies.

14.4 Termination on Notice

Either party may terminate all or any part of this agreement (which may mean only in respect of certain Projects or Services) by giving the other party 30 days notice in writing of its intention to terminate.

14.5 Termination Notice

A notice given by a party to the other party terminating, or purporting to terminate, this agreement must specify:

- (a) the basis of the termination, including if there has been a breach of this agreement, full details of the breach; and
- (b) if there has been a breach of this agreement that is capable of being remedied, the intention of the party giving the notice to terminate if that breach is not remedied.

14.6 Notification Events

Each party must notify the other party immediately if:

- (a) it disposes of the whole or any part of its assets, operations or business other than in the normal course of business;
- (b) any step is taken to enter into any arrangement between it and its creditors;
- (c) it ceases to be able to pay its debts as they become due;
- (d) it ceases to carry on business;
- (e) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of its assets or business; or
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of its assets or business.
- (g) a Force Majeure event causes it to be unable to perform its obligations under this agreement for more than seven (7) days.

14.7 Consequences of Termination or Expiration

On termination or expiration of this agreement:

- (a) the INCITE Customer must cease to use the Services and cease to provide services using the Services;
- (b) the INCITE Customer must return to Nexus all copies of software, the Documentation and any Confidential Information in its possession or control;

- (c) the INCITE Customer must pay all amounts that are owing, to Nexus under this agreement as at the date of termination or expiration;
- (d) accrued rights and remedies of the parties will not be affected;
- (e) the following clauses continue to apply:
 - (i) this clause 14.7 (Consequences of Termination or Expiration);
 - (ii) clause 7 (Fees and Payment);
 - (iii) clause 12 (Confidentiality);
 - (iv) clause 13 (Liability);
 - (v) clause 19 (General); and
 - (vi) subject to the INCITE Customer paying to Nexus all outstanding amounts payable to Nexus, Nexus must allow the INCITE Customer 30 days to obtain access to INCITE to retrieve its INCITE Customer Content.

The consequences described in paragraph (a) and (b) may be limited to a Project or Projects if the termination is not a general termination but is limited in this manner.

15 FORCE MAJEURE EVENTS

- (a) Neither party is liable for any failure to fulfil any term or obligation in this agreement (other than an obligation to pay money) if such fulfilment is delayed, prevented, restricted or interfered with for any reason due to a Force Majeure Event.
- (b) If failure of a party is caused or anticipated due to a Force Majeure Event, the performances of that party's obligations will be suspended.
- (c) The party unable to perform its obligations must:
 - (i) promptly notify the other party in writing of any Force Majeure Event; and
 - (ii) use its best efforts to resume performance in accordance with this agreement as soon as possible.
- (d) If a failure by a party to perform its obligations due to Force Majeure exceeds 60 days, the non-affected party may terminate this agreement immediately on providing notice in writing to the other party.

16 PERSONAL INFORMATION

- (a) The INCITE Customer authorises Nexus to collect, use, store and disclose Personal Information about the INCITE Customer and its Personnel that the INCITE Customer has provided to Nexus for the primary purpose of the supply or proposed supply to the INCITE Customer of the Service.
- (b) The INCITE Customer authorises Nexus to collect, use, store and disclose

Personal Information about the INCITE Customer and its Personnel that the INCITE Customer has provided to Nexus for related (or secondary) purposes, including billing and account management, business planning and development of Services.

- (c) Nexus may disclose Personal Information about the INCITE Customer and its Personnel for the primary purpose or any related purpose, of providing the Services under this agreement, to:
 - (i) any corporation related to Nexus;
 - (ii) Nexus' agents and contractors;
 - (iii) suppliers who need access to the Personal Information to provide Nexus with services, enabling Nexus to supply the INCITE Customer with the Service; and
 - (iv) joint venture partners of Nexus.
- (d) The INCITE Customer warrants that it has obtained the consent from each member of its Personnel for the collection, storage, use and disclosure of their Personal Information by Nexus (and any third party who may subsequently receive the Personal Information) in accordance with this clause 16 and Nexus' Privacy Policy.

17 NEXUS' RIGHTS

Nexus may, at any time, and in its absolute discretion, intercept the Services or the data being transmitted over those Services, for the purposes of complying with its obligations at law.

18 DISPUTE RESOLUTION

18.1 Informal Resolution of Dispute over Fee Rates

- (a) Before a party (**Notifying Party**) seeks any external dispute resolution in relation to a Support Fee or Services Rates, it must follow the escalation procedure set out in paragraph (b).
- (b) The escalation procedure is as follows:
 - (i) the Notifying Party must notify the other party (**Responding Party**) in writing advising of:
 - (A) its reasons for its dissatisfaction (**Issue**);
 - (B) its available dates to meet and discuss the Issue; and
 - (C) the representative it has authorised (**Authorised Representative**) to discuss the Issue with the Responding Party (**Notice**).
 - (ii) Within 7 days of receiving the Notice, the Responding Party must notify the Notifying Party, in writing, advising of:
 - (A) its available dates to meet and discuss the Issue; and
 - (B) its Authorised Representative.

- (iii) the Authorised Representatives must meet and discuss the Issue;
- (iv) if the Authorised Representatives cannot resolve the Issue within 7 days of meeting to discuss the Issue, each Authorised Representative must notify the respective parties' Chief Operating Officer (or his or her nominee); and
- (v) each party's Chief Operating Officer must meet within 7 days of being notified and attempt to resolve the Issue within 7 days of this meeting.

18.2 Continuation of obligations

Despite the existence of an Issue between the parties, the INCITE Customer must otherwise comply with its obligations under this agreement.

18.3 Interlocutory Proceedings

Nothing in this clause 18 prevents a party from commencing proceedings for interlocutory relief.

18.4 Survive Termination

This clause 18 will survive termination of this agreement.

19 GENERAL

19.1 Entire agreement

This agreement constitutes the entire agreement between the parties in respect of its subject matter and supersedes any prior agreement, representation or understanding whether in writing or otherwise.

19.2 Variations

This agreement may only be varied by agreement between the parties in writing.

19.3 Sub-contracting

The INCITE Customer must not sub-contract the performance of any of its obligations under this agreement, without first having obtained Nexus' written consent (which will not be unreasonably withheld). Nexus may sub-contract all or any part of its obligations under this agreement.

19.4 Assignment

Nexus may assign the benefits of all or any of its rights under this agreement without the prior written consent of the INCITE Customer. The INCITE Customer may not assign any of its rights under this agreement without the prior written consent of Nexus (which may be given or withheld, with or without conditions, in Nexus' absolute discretion).

19.5 Novation

The INCITE Customer consents to the novation of this agreement at any time during the Term by replacing Nexus with a third party. Any such novation will be effective from the date Nexus gives notice to the INCITE Customer. If requested by Nexus, the INCITE Customer will execute a deed of novation in a form reasonably required by Nexus.

Nexus may consent to the novation of this agreement by the INCITE Customer subject to such conditions as it chooses to impose.

19.6 Waiver

A party waives its rights under this agreement only if it does so expressly in writing. Any such waiver does not constitute a waiver of any subsequent right.

19.7 Public Statement

The INCITE Customer may not make any public statement about this agreement unless it has first obtained written consent from Nexus.

19.8 Severability

If any provision of this agreement is held invalid, unenforceable or illegal for any reason, this agreement shall remain in full force apart from such provisions which shall be deemed deleted.

19.9 Nexus' rights

Any express statement of the right of Nexus under this agreement is without prejudice to any other right of Nexus expressly stated in this agreement or existing at law.

19.10 Survival of agreement

- (a) Subject to any provision to the contrary, this agreement is binding upon the party's successors, trustees, permitted assigns or receivers, but not any other persons.
- (b) The covenants, conditions and provisions of this agreement are capable of having effect after the expiration of this agreement shall remain in full force and effect following the expiration of this agreement.

19.11 Notices

- (a) A party notifying or giving notice under this agreement must give notice:
 - (i) in writing;
 - (ii) addressed to provided Address for Service; and
 - (iii) either left at, sent by prepaid post or faxed to that address.
- (b) A notice given in accordance with this clause 19.11 is received:
 - (i) if left at the recipient's address, on the date of delivery;
 - (ii) if sent by prepaid post, 2 days after the date of posting; and

- (iii) if sent by facsimile, the date of receipt of transmission if received prior to 5pm on any Business Day, otherwise the notice is deemed to be received on the following Business Day.

19.12 Variation to Address for Service

Each party must advise the other in writing of any variation of its Address for Service.

19.13 Relationship of parties

Nothing in this agreement or any circumstances associated with it or its performance give rise to any relationship of agency, partnership or employer and employee between Nexus and the INCITE Customer or between the INCITE Customer and any Personnel of Nexus.

19.14 Applicable law

This agreement is governed by the laws applicable in the State of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State.

Privacy Policy

Last updated: 21 February 2012

Introduction and your agreement to this Privacy Policy

This Website is operated by Nexus Point Solutions Pty Ltd ("**NPS**") (ACN 094 296 429).

This privacy policy ("**Privacy Policy**") is deemed to be incorporated into this Website's Terms and Conditions ("**Terms and Conditions**"), which are available on this Website and which you should read together with this Privacy Policy. The provisions of the Terms and Conditions apply as if set out in full in this Privacy Policy.

The Terms and Conditions, including this Privacy Policy, govern your access to and use of this Website and the collection, use and disclosure of personal information (ie information or opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion) (the "**Personal Information**") by NPS. By accessing or using this Website you are deemed to agree to the Terms and Conditions, including this Privacy Policy. If you do not agree to the Terms and Conditions or this Privacy Policy, you must immediately exit and not access or use this Website.

Capitalised terms used but not defined in this Privacy Policy have the meaning given to them in the Terms and Conditions. Users of this Website are referred to collectively in this Privacy Policy as "**Users**".

Collection of Personal Information

NPS only collects Personal Information to the extent necessary for one or more of NPS' functions or activities.

Personal Information collected by NPS may include: (i) user registration information provided by Users to NPS (which may include, without limitation, a User's: login user name and password; email address; name; title; date of birth; address; postcode; country of residence and telephone numbers); (ii) any Personal Information Users volunteer while using this Website; and (iii) Personal Information about Users from other sources, such as public records or bodies or private organisations.

To make use of some or all of the functionality of the Website, Users may need to register with NPS. If you do not provide any requested Personal Information to NPS, NPS may not be able to provide you with access to and use of this Website, the Website Material, or any of NPS' services provided through the Website.

Cookies

NPS may place a "cookie" (a small text file) on any computer you use to access this Website, which, among other things, assists NPS in providing you with an easy-to-use Website. When you revisit this Website, the cookie will enable NPS to recognise you as a previous User. More information on cookies can generally be found in the "help" (or similar) section of your computer's internet web browser.

Use of Personal Information

NPS may use (and you are deemed to consent to NPS using) your Personal Information:

- (i) for the purposes for which it is collected and for any related purposes, including:
 - (a) to provide this Website, the Website Material and any services provided through the Website to you;
 - (b) to manage NPS' relationship with you; and
 - (c) to obtain professional, financial, technical, administrative or other advice and services in connection with the operation of NPS' business;
- (ii) for direct marketing, including to provide you with information about:
 - (a) this Website, the Website Materials and any services provided through the Website; and
 - (b) NPS' other products and services;
- (iii) to provide you with information about products and services available from its affiliated entities;
- (iv) to provide you with information about products and services available from unrelated third party entities;
- (v) to investigate, prevent or take action regarding any breach or suspected breach by you of the Terms and Conditions or any law or the rights of any person; and
- (vi) as required or authorised by or under law, and for any other purpose to which you subsequently consent from time to time.

Disclosure of Personal Information

NPS may disclose (and you are deemed to consent to NPS disclosing) your Personal Information:

- (i) for the purposes for which it is collected and for any related purposes, including:
 - (a) to any person where necessary or desirable in connection with the provision of this Website, the Website Materials and any services provided through the Website to you;
 - (b) to any person where necessary or desirable in connection with the management of NPS' relationship with you; and (c) to NPS' external advisors, service providers, subcontractors and suppliers, so that they can provide professional, financial, technical, administrative or other advice and services in connection with the operation of NPS' business;
- (ii) to its affiliated entities for the purpose of such affiliated entities contacting you about their products and services;

- (iii) to unrelated third party entities for the purpose of such entities contacting you about their products and services;
- (iv) to any person who acquires or expresses an interest in acquiring all or any part of NPS' business;
- (v) to any person where necessary or desirable in connection with NPS investigating, preventing or taking action regarding any breach or suspected breach by you of the Terms and Conditions or any law or the rights of any person; and
- (vi) to any person as required or authorised by or under law, and to any other person to whom you subsequently consent from time to time.

Trans-border data flows

NPS may transfer (and you are deemed to consent to NPS transferring) your Personal Information outside of Australia.

Data quality

NPS takes reasonable steps to make sure that the Personal Information that NPS collects, uses or discloses is accurate, complete and up to date.

Security

NPS takes reasonable steps to protect the Personal Information that NPS holds from misuse and loss and from unauthorised access, modification or disclosure. NPS takes reasonable steps to destroy or permanently de-identify any Personal Information that is no longer needed for any purpose.

Access to and correction of your Personal Information

You may (free of charge) request that NPS confirm whether it holds any Personal Information about you and, where applicable, request that NPS provide you with a copy of your Personal Information. Where NPS agrees to provide you with a copy of your Personal Information, the provision of such Personal Information is subject to the payment of a \$20 administrative charge by you. NPS will require adequate proof of your identity before disclosing any Personal Information to you.

If you are able to establish that your Personal Information is not accurate, complete or up to date, NPS will take reasonable steps to correct such Personal Information so that it is accurate, complete and up to date. If you and NPS are unable to agree about whether your Personal Information is accurate, complete and up to date and you request that NPS associate with your Personal Information a statement claiming that such Personal Information is not accurate, complete or up to date, NPS will take reasonable steps to do so.

NPS may refuse to provide you with a copy of or to correct your Personal Information in certain circumstances, but will provide you with reasons for its refusal to do so.

Contacting NPS

All correspondence to NPS, including any queries you may have regarding your use of this Website or this Privacy Policy, should be sent to info@incite.com.

Privacy and Security

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Overview

Introduction

This document sets out the provisions within the INCITE Project Collaboration system (INCITE) and the procedures that Nexus Point Solutions (Nexus) will follow in order to protect the Data and Intellectual Property of the Registered Companies in a Project using INCITE.

Basic Intention

The basic intention of the system is that Registered Companies can collaborate on the INCITE platform in a secure environment provided by a neutral party, and maintain control of their Data and Intellectual Property.

Management of Members

Introduction

This section describes how Nexus and the INCITE Customer will manage the registration and de-registration of Members. The management of those Members and their registration is therefore fundamental to protecting the rights of registered companies.

Registration

Registration on INCITE requires a number of steps:

- registration of the company on INCITE
- registration of the individual on INCITE
- registration of the individual as a Member of a Project.

Company Registration

A company registers on INCITE directly with Nexus through www.INCITE.com.au. Only Nexus can process or approve such a registration. Once approved, the company become a Registered Company.

Individual Registration

Only the Company Administrator of a Registered Company can register company staff on INCITE. However, once company staff are registered on INCITE, Any Project Administrator can register them as a Member on a Project.

Training

Generally, Company Administrators will only register Members when they have received approved introductory training.

Authorisation for Creation or Deletion

Company Administrators and Project Administrators will only register Members if they have received authorisation from the Nominated INCITE Contact for the Registered Company of the proposed Member.

Company Administrators and Project Administrators will only de-register (de-activate) Members if they receive notice from the Nominated INCITE Contact for the Registered Company of the Member in question.

Company Administrators and Project Administrators of Registered Companies other than INCITE Customer will only register Members of their own company and only with the approval of the Company Administrator of the INCITE Customer. Company Administrators of companies other than the INCITE Customer will only deregister Members of their own company.

Termination

In the case of the termination of an employee of any of the Registered Companies, the Registered Company in question must immediately inform the INCITE Customer's Company Administrator so that appropriate action can be taken.

Default

The exception to the above rules for de-registering Members of other Registered Companies is the case where a Registered Company defaults on any agreement associated with the use of INCITE on the Project, such as failure to pay any due fees, for the use of INCITE.

In the case of a default and failure to resolve the issue, the INCITE Customer will give sufficient warning of the intention to terminate the defaulting Registered Company's access to INCITE so that the defaulting Registered Company has the opportunity to download or archive all its Data and Intellectual Property from the Project.

Control of Data

Introduction

This section outlines the way INCITE provides all Registered Companies in a Project with the means to fully control who has access to correspondence, Documents and files that they create or receive on INCITE.

Sending and Receiving

The fundamental principle behind INCITE is that Members only see messages and Documents that they create and send, or that have been deliberately sent or copied to them. There is an exception to this called the Access Filter.

Administrators

A Company Administrator or Project Administrator can choose to view all Documents that are visible to any Member that is registered under their company. No Company Administrator or Project Administrator can view Documents that are visible to a Member of any company other than their own.

Access Filters

An Access Filter is a means by which Members can provide other Members of Registered Companies that they nominate with access to Documents that they have created or received, irrespective of whether those Members were selected recipients of those Documents.

Only Members with access to particular Documents, or those that can act on their behalf (Administrators of their own companies) can create Access Filters on those Documents. It is not possible for a Member or Administrator of another Registered Company to gain access to those Documents in this or any other way.

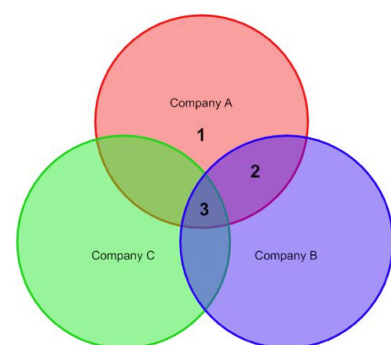
Other Restrictions

Other restrictions can be built into the configuration of the Project in INCITE or the Document types within that Project. Examples are:

- Imposing rules that define which Registered Companies can or cannot communicate (send or receive) with each other.
- Restricting which Members or Registered Companies can create or send particular Document types.
- Defining workflows to control the distribution of the associated Document.

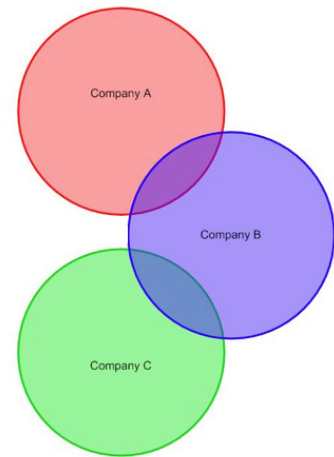
Visibility of Communicated Documents

- A communication between members in Registered Company A will reside in area 1, and will only be visible to those in Registered Company A who sent or received the communication or who have been granted access to that communication through an Access Filter.
- If a Member in Registered Company A communicates with one or more Members in Registered Company B, that communication will reside in area 2 and will be visible to Members in either Registered Company who sent or received the communication or who have been granted access to that communication.
- If a member in Registered Company A includes members in Registered Company B and Registered Company C as recipients of a communication, that communication will reside in area 3 and will be visible to Members in all 3 companies who sent or received the communication or who have been granted access to that communication.



Restricting Communication

If a member in Registered Company A includes members in Registered Company B and Registered Company C as recipients of a communication, that communication will reside in area 3 and will be visible to Members in all 3 companies who sent or received the communication or who have been granted access to that communication.



Conclusion

The ability to choose who receives Documents, the tight rules governing the creation of Access Filters, and the ability to set restrictions at a Project or Document level give Registered Companies complete control over their Data and Intellectual Property.

Archiving

Introduction

This section outlines the way in which Registered Companies can download and archive their Data. It describes the methods and options available, and the process that Nexus will follow to ensure that Registered Companies can archive their Data in an appropriate form.

Downloading

At any time, a Registered Company can download the messages and files that it has created or to which it has access on to their own computer system. The messages and files are downloaded as PDF files with meaningful filenames and a folder structure that represents their date, type and location.

Archive to Disk

If preferred, a Registered Company can request Nexus to create a structured archive copy of their messages and files on disk (CD or DVD). Nexus charge for this service.

Archive Mode

A Project on INCITE can be put into an Archive Mode. In this mode the Project remains available online, but can only be accessed by a small number of Nominated Members from each Registered Company. The project data is read-only in archive mode – nothing can be created, sent, received or deleted. The Nominated Members from each Registered Company can search, read and download only.

Shut-down Mode

A Project on INCITE can be put into a Shut-down Mode. The Project is not accessible in Shut-down Mode but a copy of the full Project Data is maintained and backed up by Nexus. If one or more of the Registered Companies on that Project needs to access that Data a later date, they can request Nexus to make the Project live. Nexus will then check the authenticity of the request, inform the other Registered Companies that for the Project of the request, and load the Project to the live environment within 7 days of the request.

Nexus will charge for the storage of the Project in Shut-down Mode and for making the Project live on request. Registered Companies wishing to participate in this method of archiving will need to come to an agreement with the INCITE Customer.

Change of Project Phase

To ensure that all Registered Companies on a Project have the opportunity to archive their Data in the form they prefer, the INCITE Customer will give those Registered Companies at least 1 month's notice before the INCITE Customer changes the INCITE Project to a different status.

The sequence that an INCITE Customer should follow for using and archiving an INCITE Project is as follows:

- Once the main phase of the Project is complete, the INCITE Customer will significantly reduce the Member on the Project. Each Registered Company that continues to be registered will select one or more Nominated Members that will stay active. The Project will remain live.
- Once the activity in the Project has ceased, after finalisation of accounts and the end of the defects liability period, the INCITE Customer will put the Project into Archive Mode. Each Registered Company will select one or two Nominated Members to remain registered. The project will be live but read-only.
- When the likelihood of the need to reference Data on the Project has diminished the Project will be put into Shut down Mode and a copy of the Project maintained with Nexus.

Conclusion

Nexus INCITE Customer and the INCITE Customer will provide Registered Companies on an INCITE Project with long-term access to Data they create, share and receive, either through INCITE itself or by downloading the messages and files from INCITE in a structured and readable format.

Security

Introduction

This section describes the general security provided on INCITE to protect the Data from external intrusion, unauthorised access or hardware or software failure.

More detail of the security on INCITE is included in papers from Nexus entitled "INCITE Security Service Description". These are available from Nexus on request.

Data Centres

All the Data on INCITE is maintained at our data centre in Sydney and Melbourne. Nexus Point Solutions provide 99.99% redundancy on all critical systems.

Internet Transactions

All transactions on the Internet are secured using Secure Socket Layer (SSL) with 256 bit encryption. This is the same level of security as provided for on-line banking and other bank transactions.

Member Identification and Authentication

Access to INCITE and from there to an INCITE Project is by a registered name and password. A new Member must first be registered on INCITE and then the specific INCITE Projects to which they require access.

A Member's ID must be unique and at least five characters long. A Member's password must be at least 8 characters long and must contain at least one character from each of the following classes of character:

- Uppercase letter of the alphabet
- Lowercase letter of the alphabet
- Numeral.

For example PQrs9876.

Glossary

Access Filter

An Access Filter is a means by which Members can provide other Members of Registered Companies that they nominate with access to Documents that they have created or received, irrespective of whether those Members were selected recipients of those Documents.

Administrator

A collective term used to describe Company Administrators and Project Administrators.

Archive Mode

In this mode the Project remains available online, but can only be accessed by a small number of Nominated Members from each Registered Company. The project data is read-only in archive mode – nothing can be created, sent, received or deleted. The Nominated Members from each Registered Company can search, read and download only.

Company Administrator

A Company Administrator is a person authorised by a Registered Company to have extended capabilities within INCITE and INCITE Projects for administration, configuration and support. They have the capacity to delete Projects. A Company Administrator can only be registered by Nexus

Data

This is any information which may or may not include Intellectual Property entered into INCITE by a person other than Nexus which may be a Member of an INCITE Customer or any other Registered Company to a Project.

INCITE

A technology platform developed by Nexus for the building and construction industry, with support from the industry, which allows online project collaboration, communications and

collaborative work flows for effective management of Projects involving Registered Companies in all stages of a Project from development phase to tender, construction and facility management.

INCITE Customer

This means the customer that is launches a Project on INCITE and is responsible for paying the Fees for the use of INCITE for a Project.

INCITE Project

The specific project registered and configured on INCITE.

INCITE Project Collaboration

INCITE Project Collaboration, the Project Collaboration and correspondence management application which forms part of the Nexus Point Solutions INCITE technology platform.

Intellectual Property

This means any intellectual and industrial property rights throughout the world including rights in respect of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, domain names, inventions (including patents), trade marks, service marks, designs, and circuit layouts whether or not now existing and whether or not registered or registrable and includes any right to apply for the registration of such rights and includes all renewals and extensions and any other Intellectual Property Rights as defined in Article 2 of the World Intellectual Property Organisation Convention of 1967.

Member

A Member is a person registered on the Project. When we use this term on we specifically refer to an internal Member who is registered by name and company on INCITE and the Project in question, and can enter and use the system. Note that there are external Members that are persons that are not registered Members of INCITE and cannot access INCITE or the Project. An External Member can receive messages from INCITE as e-mails or faxes, and can send e-mails or faxes into the system from an external system.

Message

A message is the basic communication in INCITE. It can be sent on its own, with a file attached, or as the cover note to a formal INCITE Document.

Nexus

Nexus Point Solutions, the owner, developer and operator of INCITE.

Nominated INCITE Contact

Persons selected by a Registered Company to provide authorisation for registration or de-registration of Members.

Nominated Member

Members selected by Registered Companies to have access to a Project in Archive Mode.

Project

A specific project registered and configured on INCITE.

Project Administrator

A Project Administrator is a special classification of Member that has extended capabilities within an INCITE Project for administration, configuration and support. A Project Administrator can only be registered by a Company Administrator.

Registered Company

Companies registered on INCITE and includes the INCITE Customer.

Shut Down Mode

In this mode the Project is not accessible but a copy of the full Project Data is maintained and backed up by Nexus.