



Microsoft Partner

Silver Enterprise Resource Planning
Silver Application Development

TERMS OF TRADE

Dynamic Business IT Solutions Pty Limited

ABN: 28 125 767 419

ACN: 125 767 419



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TERMS OF TRADE

WHEREAS **THE CLIENT** uses Microsoft Dynamics NAV computer software, and **DYNAMIC** is a licensed Microsoft Business Solutions Partner.

DYNAMIC will support **THE CLIENT** with its Dynamics NAV computer software under the following terms and conditions of trade.

1. DEFINITIONS

1.1 The following definitions are incorporated in this Agreement

Acceptance or **Accepted** means acknowledgement by **THE CLIENT** that the Deliverables meet the requirements of the Agreement satisfactory to **THE CLIENT** Scope of Work or the Deliverables Specification where they are specified in the Agreement Details

Agreement means this document including any schedules and annexures or any amendment thereof agreed in writing by the Parties

Agreement Details means the specifics of the Services to be provided by **DYNAMIC** along with the normal charges associated with them and as set out in Schedule 1

Application Support means resolving any Microsoft Dynamics™ NAV query relating to the correct use of the Microsoft Dynamics™ NAV application's functionality, as set out in Schedule 2

Completion Date means the date the Agreement ends, as specified in the Agreement Details

Confidential Information means information that:

- (i) is by its nature confidential;
- (ii) is marked as confidential; or
- (iii) is known to be confidential, or which a Party ought to have known was confidential,
- (iv) relates to the business interests of the disclosing party including salary and wage information, business processes, product sources, supply costs and finished product pricing information
- (v) but does not include information which:
- (vi) is or becomes public knowledge other than by breach of this Agreement, or by any other lawful means; or
- (vii) is in the possession of a Party prior to disclosure by the other Party, without any breach of an obligation of confidence; or

(viii) has been independently developed or acquired by a Party; or

(ix) is required to be released by Law;

Contract Period means the term set out in the Agreement Details and as varied in terms of clause 3

Deliverable means any design, material or other output including any drawing, shape, configuration, pattern or ornamentation in any format and on any media on which it is delivered and includes any Report, Documentation, and other Contract Material provided by **DYNAMIC** as part of the service provided or output and as specified in the Agreement Details

Deliverable Specification means the technical or descriptive specifications of functional, operational, performance or other characteristics required of a Deliverable as specified in the Agreement Details or agreed between the Parties in writing

Document includes:

- (i) any paper or other material on which there is writing
- (ii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them
- (iii) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device; and/or
- (iv) a piece of text or text and graphics stored electronically as a file for manipulation by document processing software

Documentation means the documentation to be provided may include the Microsoft Dynamics NAV standard documentation that describe the features and functions of a Service or Deliverable, in a hard copy, electronic or online format

Dynamics NAV Application Area means specific areas or grouping of functionality within Dynamics NAV, such as General Ledger, Sales, Receivables, Inventory, Payroll etc

Error means a fault, defect, failure, degradation, deficiency or malfunction that causes the relevant Deliverable not to meet the Deliverables Specification (where specified) and other requirements under the Agreement

Microsoft Dynamics™ NAV means the full ERP (Enterprise Resource Planning) suite of applications software produced by Microsoft Software, and installed by **DYNAMIC**.

Dynamics™ 365 means the full cloud ERP (Enterprise Resource Planning) suite of applications software produced by Microsoft Software, and installed by **DYNAMIC**.

Microsoft Dynamics™ NAV Application Area means specific areas or grouping of functionality within Microsoft Dynamics™ NAV, such as General Ledger, Sales, Receivables, Inventory, and Payroll etc.

Effective Date means the date on which this Agreement is signed by the Parties or if signed on separate days, on the date of the last signature

Expenses means any reasonable expense incurred by **DYNAMIC** during the execution of services

Fee means the price for the Services or Expenses (if any), as specified in the Agreement Details

Fixed Price Work means work performed at **THE CLIENT** request for which Fixed Price Quotation has been accepted by **THE CLIENT**

Force Majeure Event includes the following:

- (i) Act of God, earthquake, cyclone, fire, explosion, flood, landslide, lightning storm, tempest, drought or meteor; or
- (ii) War (declared or undeclared), invasion, act of foreign enemy, hostilities between nations, civil insurrection or militarily usurped power, terrorist action or act of sabotage;
- (iii) Act of Government or a Government Authority;
- (iv) Confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority; or
- (v) Strikes, blockades, lock out or other industrial disputes,

provided they are outside the reasonable control of **DYNAMIC** and could not have been prevented or avoided to deliver the service agreed.

Intellectual Property and Intellectual Property Rights means all intellectual property created, owned or licensed by **DYNAMIC** and in turn licensed pursuant to this Agreement. Such rights, include but are not limited to the following rights:

- (i) Copyright and trade marks (including goodwill in those marks) and domain names;
- (ii) the Microsoft Dynamics NAV computer software to be licensed to **THE CLIENT** together with any custom written applications or processes provided by **DYNAMIC** as part of the Service.

(iii) any application or right to apply for registration of any of the rights referred to in paragraph (i); and

(iv) all rights of a similar nature to any of the rights in paragraphs (i) and (ii) which may subsist in Australia or elsewhere,

Whether or not such rights are registered or capable of being registered;

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, the Commonwealth, or a local government and includes the common law and rules of equity as applicable from time to time

Material includes documents, emails, files, property & equipment including but not limited to projector, project housing, temporary power boxes, leads, lead housings, documents, firmware, software, goods, methodology, process, information or data stored by any means

On Site Work means work performed by **DYNAMIC** at **THE CLIENT** premises, which is charged on a Time & Materials basis from the time **DYNAMIC** leaves **DYNAMIC** premises and returns to **DYNAMIC** premises (includes travel time)

NAV Services means services provided that relate to specific Microsoft Dynamics™ NAV software such as: process analysis, application development & testing, documentation, training, configuration, upgrades, technical audits, code reviews, efficiency audits, feasibility studies and other Microsoft Dynamics™ NAV related services.

NAV Support means Application Support or Technical Support provided, that relates to the use of Microsoft Dynamics™ NAV software, but not including NAV Services or Professional Services

Party means **DYNAMIC**, **THE CLIENT** and any other party to this Agreement either now or in the future.

Payment Terms means the details that relate to the payment arrangements which is included in the Agreement Details

Professional Services means services other than Microsoft Dynamics™ NAV Services and Microsoft Dynamics™ NAV Support - including but not limited to: Project Management, Business Analysis, Change Management, Consulting, Documentation, Hardware and 3rd Party Software analysis, not necessarily related to Microsoft Dynamics™ NAV

Remote Work means the applications that allows **DYNAMIC** to log in to **THE CLIENT** system remotely, which is charged on a Time & Materials basis (or fixed price if prior agreement exists)

Report means a Deliverable in the form of a document as set out in the Agreement Details

Service Request means a written request for service/s including change requests by **THE CLIENT** to **DYNAMIC** and may result in fee variations based on Schedule 3

Schedule means the schedules attached to, and forming part of, this Agreement

Scope means agreed deliverables in writing or email, directly and expressly documented and agreed.

Service means any item or thing to be provided under the Agreement as described in the Agreed Services in Schedule 1 and includes the supply of Deliverables including any designs

Specifications means any of the functional and technical requirements for the Services and Deliverables as described in the Deliverable Specifications (if any) or in the Project Proposal

Subcontractor means a third party to which DYNAMIC has subcontracted the performance or supply of any Services

Time & Materials Work (T&M) means work performed on a do-and-charge basis where a where a quotation of costs is not provided

Technical Issues means resolving any technical issues or errors that may impair the current operational use of Microsoft Dynamics™ NAV application programming

Technical Support means e-mail, phone and Remote Access general support to **THE CLIENT** to assist users in the resolution of Microsoft Dynamics™ NAV technical issues

Weekend Charge Rates in relation to the doing of an action in a place means a Saturday, Sunday or public holiday in that place

Working Day in relation to the doing of an action in a place means any day other than a Saturday, Sunday or public holiday in that place

2. PRIORITY OF DOCUMENTS

2.1 If there is any inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority to the extent of any inconsistency:

- (a) the Agreement clauses;
- (b) the schedules or attachments; and
- (c) any document incorporated by express reference as part of this Agreement

2.2 If there is any inconsistency between parts of a schedule or between schedules, then **DYNAMIC** may nominate which parts or which schedules, prevail to the extent of the inconsistency.

3. CONTRACT PERIOD

- 3.1 This Agreement continues for the term set out in the Agreement Details unless terminated in accordance with this Agreement.
- 3.2 The Contract Period may be extended by **DYNAMIC** for further period(s), the contract period is automatically renewed for following year unless written notice is received by **THE CLIENT** such notice must be:
- a) be provided to **DYNAMIC** at least ten (10) days prior to the expiry of the then current Contract Period or
 - b) such other period of notice as specified in the Agreement Details before the end of the current Contract Period

4. SUBMISSION OF SERVICES AND DELIVERABLES

- 4.1 **THE CLIENT** agrees to make available to **DYNAMIC** the full scope of its intended business use and business requirements in accordance with the project plans and relevant Specification as set out in the Agreement Details

5. INVOICING AND PAYMENT TERMS

- 5.1 **DYNAMIC** will aim to invoice **THE CLIENT** on a fortnightly basis (billing cycle) where possible.
- 5.2 **DYNAMIC** payment terms are strictly 14 Days from Invoice Date and **THE CLIENT** agrees to pay all invoices including Administration Fees by the due date. Late payment will impact on Support Service Levels and should any invoice fall 14 Days overdue, an additional 10% late payment fee applies to all **DYNAMIC** services, and are subject to change.
- All services performed on weekends and/or public holidays will be charged an additional 25%.
- 5.3 10% Administration Fee p.a. is subject to payment terms and penalties, per all other invoices.
- 5.4 All expenses incurred by **DYNAMIC** during the execution of services to **THE CLIENT** will be on **THE CLIENT** account, and **THE CLIENT** agrees to pay for these expenses. E.g. Travel Time, airfares, accommodation, taxis, parking, etc.
- 5.5 It is a condition of sale that **THE CLIENT** agrees to pay any costs, including administration charges, debt collection commissions and legal fees that are incurred in collecting overdue accounts.

6. TAX

- 6.1 All rates and charges including expenses are exclusive of Goods and Services Tax, and **THE CLIENT** agrees to pay all GST charges

- 6.2 If any party:
- (a) is liable to pay GST on any supply made by it under this Agreement;
 - (b) certifies to the recipient that it has not priced the supply to include GST; and
 - (c) issues a valid Tax Invoice to the recipient for the supply,
- 6.3 then the recipient agrees to pay the supplier the GST - inclusive price for the supply within 14 days of receipt of the Tax Invoice
- 6.4 Tax Invoices and Adjustment Notes
- (a) If the supplier certifies to the recipient that the consideration for any supply is GST- inclusive, the supplier agrees to issue a valid Tax Invoice to the recipient.
 - (b) The supplier must promptly issue a valid adjustment note after finding out that the actual amount of GST payable on the supply differs from the amount paid by the recipient. Payment adjustments must then be made between the parties to reflect the actual amount of GST payable.
- 6.5 Notwithstanding any other provision of this Agreement to the contrary, this Clause will survive the termination of this Agreement.
- 6.6 "GST" and other terms used in this Clause have the definitions provided in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition Acts of the Commonwealth.

7. RIGHT TO TERMINATE

- 7.1 If **THE CLIENT** fails Payment Terms on two or more occasions, DYNAMIC may (in addition to its other remedies and after consultation with **THE CLIENT**), suspend and/or terminate all services provided immediately under clause 5 and clause 13.
- 7.2 DYNAMIC reserves the right to remove all unpaid software, modifications and/or hardware under this agreement should the account not be settled by **THE CLIENT** in 14 days following the breach. Should any product or services be suspended and/or removed in accordance to this agreement, then **THE CLIENT** agrees to pay for the associated costs of any services to be reinstated.

8. TERMINATION OF AGREEMENT – BREACH BY THE CLIENT OR DYNAMIC

- (a) If a party proposes to terminate this Agreement by reason of a breach of this Agreement by the other party **other than** a type of breach referred to in **Clause 5**, that party must:
 - (i) give to the other party reasonable notice of the breach; and

- (ii) inform the other party of what is required to be done to remedy the breach; and
 - (iii) allow the other party a reasonable time (not less than 30 days) to remedy the breach; and
 - (iv) inform the other party that it proposes to terminate this Agreement because of that breach if the breach is not remedied within a reasonable time
- (b) If the breach is remedied in accordance with the above provisions, the party cannot terminate this Agreement because of that breach.
- (c) For the avoidance of doubt, in the instance of second and subsequent late payment defaults over a 12 month period the reasonable time inferred by this clause shall be not less than 5 business days.

9. CONSEQUENCES OF EXPIRY OR TERMINATION OF AGREEMENT

9.1 If this Agreement ends or is terminated for any reason, **THE CLIENT** must immediately return to **DYNAMIC** the Intellectual Property and all hardware supplied by **DYNAMIC**.

10. VARIATION AND CHANGE CONTROL

10.1 No amendment to the Agreement will be legally binding unless it is in writing and agreed by both Parties.

11. LIMITATION OF LIABILITY

11.1 To the extent permitted by law, **DYNAMIC**'s total liability hereunder shall not exceed the total Price paid for the products or Services to which the liability relates and shall not extend to any incidental, consequential, indirect, special or contingent loss of any description, whether arising out of warranty, contract, tort or otherwise. This liability shall include claims for: (a) any missed gain or opportunity, commercial damage, loss of turnover or profits, loss of **THE CLIENT** s, loss of any opportunity, loss of anticipated savings and like financial losses; (b) damage to **THE CLIENT** 's reputation or image; (c) loss of data; and (d) costs of any regulatory fines or termination of business.

11.2 For the sake of clarity, the limitation on **DYNAMIC**'s liability only operates to the extent permitted by law, and nothing in this Agreement shall purport to exclude, restrict or modify, or have the effect of excluding, restricting or modifying, any condition or warranty implied by applicable legislation where to do so would have the effect of rendering this Agreement, or any part of it, void or otherwise unenforceable. In particular, nothing in this Agreement shall limit or exclude **DYNAMIC** liability for: (a) death or personal injury caused by its gross negligence, or the gross negligence of its employees, agents or subcontractors (as applicable); or (b) wilful misconduct, fraud or fraudulent misrepresentation.

12. MITIGATION

- 12.1 Each Party must make every effort to mitigate any loss, damage or expense that it may suffer arising out of or in connection with this Agreement or the relationship between the Parties. Further, any Party becoming aware of the prospect of risk of such loss, damage or expense shall be obliged to notify the other Party in order to permit them to also act to mitigate loss where possible.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 **THE CLIENT** agrees to follow any reasonable directive of **DYNAMIC** with regard to the use of the Intellectual Property, such as systems implementation and operational standards, provided such directive is given in the reasonable opinion of **DYNAMIC** with the intent of protecting its Intellectual Property rights.
- 13.2 The Intellectual Property is owned by and will remain the property of **DYNAMIC** (and Microsoft as appropriate or **DYNAMIC**'s other software partners) and by this Agreement **THE CLIENT** does not acquire any proprietary Rights in the Intellectual Property other than its Rights as a licensee pursuant to this Agreement and must not challenge the rights of **DYNAMIC** to the Intellectual Property. **THE CLIENT** must not:
- (a) do any act or thing that will cause the validity or distinctiveness of the Intellectual Property to be damaged, devalued or changed;
 - (b) use the Intellectual Property other than for the normal operation of **THE CLIENT**'s business;
 - (c) do, permit or suffer any matter, act or thing, which could damage the reputation of **DYNAMIC**, the Intellectual Property or any officer or employee or agent of **DYNAMIC**;
 - (d) breach copyright of Microsoft, **DYNAMIC** or any of its other software partners by lending, copying or reproducing in any manner, either in part or in whole, any part of the Intellectual Property without first obtaining **DYNAMIC**'s express written consent or except as permitted by this Agreement or as reasonably necessary to exercise its rights under this Agreement;
 - (e) attempt to or cause to register any Intellectual Property under the provisions of any law in any part of the world
 - (f) attempt to transfer, assign or give over the License other than in accordance with the terms of this Agreement
 - (g) allow other organisations or competitors to access and decipher, decrypt, reverse engineer, Intellectual Property
- 13.3 **THE CLIENT** must not during the term of this Agreement or after the expiry or termination of this Agreement, use trade marks and names which may resemble the

trade marks and names belonging to **DYNAMIC**, or damage the Intellectual Property or the reputation of **DYNAMIC** or **DYNAMIC**'s agents or staff.

13.4 Material developed for **THE CLIENT**

(a) **THE CLIENT** agrees that all Intellectual Property including systems and applications prepared for **THE CLIENT** or its employees by **DYNAMIC** during the term of this Agreement or following this agreement shall be to the exclusive benefit and ownership of **DYNAMIC**. Further, any development or revision of the Intellectual Property by **THE CLIENT** or at the request of **THE CLIENT** by **DYNAMIC** shall be the property of **DYNAMIC**.

(b) **THE CLIENT** must obtain **DYNAMIC**'s prior written approval for Intellectual Property developed for **THE CLIENT** or its employees during the term of this Agreement.

13.5 **THE CLIENT** expressly recognises the importance of the Intellectual Property to the operations and activities of **DYNAMIC** and acknowledges that **DYNAMIC** may seek, in addition to any other legal or equitable remedies available to it, injunctive or other relief against **THE CLIENT** and / or others to enforce the terms and conditions of this Agreement in any court having jurisdiction thereof, to prevent the unauthorised use of the Intellectual Property or to protect **DYNAMIC**'s intellectual property rights.

14. WARRANTY

14.1 Work performed by **DYNAMIC** is subject to a warranty provided with the work performed. For software implementation, customization, upgrade or add-ons the warranty is for the duration from the implementation until user acceptance testing is complete **or** 90 days (whichever is the earlier).

14.2 **DYNAMIC** hereby warrants that if any of its work covered by the warranty in clause 14.1 above is faulty, it will be corrected by **DYNAMIC** at its own expense, where the issue caused is determined by **DYNAMIC** to be the direct fault of **DYNAMIC**.

14.3 **THE CLIENT** agrees and accepts full responsibility once authorisation is received by **DYNAMIC** from **THE CLIENT** to Go Live with any development, implementation and functionality or other works. **THE CLIENT** accepts full responsibility for testing and acknowledges that all testing has been completed satisfactory and the work performed is accepted.

15. COMPLIANCE WITH LAWS AND POLICIES

15.1 **THE CLIENT** agrees, in carrying out this Agreement, to comply with all law as governed by the laws in the State of Queensland.

16. ACCESS TO DATA

16.1 Whenever service under this Agreement is being performed, and at all other reasonable times, **THE CLIENT** will permit **DYNAMIC** access to inspect its records,

data and/or systems in connection with performance of Services under this Agreement.

17. CONFIDENTIALITY

17.1 **DYNAMIC** acknowledges that all documents, data and information disclosed by **THE CLIENT** is Confidential Information and will only be used for the purpose of providing services to **THE CLIENT**. **DYNAMIC** will keep the Confidential Information confidential and may disclose it only to its officers and employees who have a need to know for the purposes of providing services to **THE CLIENT**. Before disclosure, **DYNAMIC** will direct that its officers and employees keep the information confidential.

17.2 **THE CLIENT** will not, without the prior written approval of **DYNAMIC**, disclose to any person or parties other than **DYNAMIC**, any Confidential Information, including that which relates to this Agreement or the Services under this Agreement. In giving written approval **DYNAMIC** may impose such terms and conditions, as it thinks fit.

17.3 The obligations under this clause will survive the expiry and termination of this Agreement.

17.4 Clause 17.1 shall not apply in the following circumstances:

(d) any disclosure required by Law;

(e) any disclosure required by any applicable stock-exchange listing rules;

(f) disclosure to solicitors, barristers or other professional advisors under a duty of confidentiality;

(g) disclosure to a banker or other financial institution of the party, to the extent required for the purpose of raising funds or maintaining compliance with credit agreements, if such banker or financial institution first gives a binding covenant to the other parties to maintain confidentiality, in form and substance satisfactory to the other parties; or

(h) disclosure to a contractor or Related Corporation of **DYNAMIC** (as that term is defined in the *Corporations Act*) where such disclosure is required to enable **DYNAMIC** to make proper performance of its obligations under this Agreement, if such Related Corporation first gives a binding covenant to the other parties to maintain confidentiality, in form and substance satisfactory to the other parties.

18. TERMINATION

18.1 **DYNAMIC** may terminate this Agreement immediately via written notice to **THE CLIENT** the event that **THE CLIENT** defaults under clause 5 and/or clause 13, and/or clause 17.

18.2 Upon terminating this Agreement, **DYNAMIC** will NOT be liable to pay compensation in any amount, in addition to any suppliers or subcontractors amounts paid or becoming due under this Agreement.

19. DISPUTE RESOLUTION

19.1 The Parties agree to take all reasonable endeavours in good faith to resolve any disputes which arise in connection with the terms of the Agreement.

19.2 A Party may give the other Party a notice of dispute (**Dispute Notice**) in connection with the terms of the Agreement. Following the giving of a Dispute Notice, the dispute must initially be referred to a representative with the appropriate authority of each of the Parties, who will use reasonable efforts to resolve the dispute within fourteen (14) Days of giving the Dispute Notice.

20. FORCE MAJEURE

20.1 If any party is prevented, hindered or delayed from performing any of its Obligations under this Agreement (other than an Obligation to pay money) by an Event of Force Majeure, then as long as that situation continues, that party shall be excused from performance of such Obligations to the extent it is so prevented, hindered or delayed, and the time for performance of such Obligation shall be extended accordingly.

20.2 A party affected by an Event of Force Majeure shall immediately notify the other parties of its occurrence and its effect or likely effect, and (subject to clause 20.3) use all reasonable endeavours to minimise the effect of the Event of Force Majeure and bring it to an end.

20.3 No party shall be obliged to settle any strike or other industrial action, dispute or disturbance of any kind except on terms wholly satisfactory to it.

21. NOTICES

21.1 Any notice, consent, approval, undertaking, acknowledgement, verification or report contemplated by this Agreement, must be given in writing.

21.2 To be valid or effective, any notice, consent or document relating to this Agreement must be:

- (a) in writing, signed by or on behalf of the person giving it; and
- (b) addressed to the person to whom it is given; and
- (c) given as follows:
 - (i) delivered at or posted by registered post to Party at the address last notified by the receiving party; or

- (ii) sent by facsimile to the Party to the facsimile number last notified by the receiving party and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iii) sent in electronic form by e-mail to Party to the e-mail address last notified by the receiving party and the server or mail service to which it is sent produces a delivery notification or receipt
- 21.3 A notice or document that complies with this Clause is regarded as given and received:
- (a) if it is delivered or sent by facsimile or in an electronic form by e-mail:
 - (i) that day, if delivered by 5 pm on a Business Day (local time in the place of receipt); or
 - (ii) the next Business Day, in any other case;
 - (b) if it is sent by mail:
 - (i) 3 Business Days after posting, if sent within Australia; or
 - (ii) 7 Business Days after posting, if sent to or from a place outside Australia.

21.4 Electronic Communication

- (a) The parties consent for the purposes of the *Electronic Transactions (Queensland) Act 2001* (Qld) to the issue or giving of information, notices and documents pertaining to this Agreement by e-mail or facsimile.
- (b) The parties consent to the signatures on the notices and documents pertaining to this Agreement being given and received by way of an electronic communication.

22. GOVERNING LAW

22.1 This Agreement is governed by the laws of the State of Queensland.

22.2 (Queensland Courts): Any action, suit or proceeding relating in any way to this Agreement may be instituted, heard and determined in a court of competent jurisdiction in Queensland.

22.3 (Submission to jurisdiction): Each party irrevocably submits to the non-exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.

22.4 (Waiver of objection): Each party irrevocably waives any objection which it may now or in the future have to the laying of venue of any action, suit or proceeding relating in any way to this Agreement brought in such court.

22.5 (Waiver of inconvenient forum claim): Each party irrevocably waives any claim that any such action, suit or proceeding brought in any such court is brought in an inconvenient forum.

23. COUNTERPARTS

23.1 Each Party may communicate its execution of this Agreement by successfully transmitting an executed copy of this Agreement by email to the other Party.

SCHEDULE 1: DYNAMIC SERVICE LEVELS AND RATES

MICROSOFT DYNAMICS™ NAV SUPPORT FOR PREMIUM PSA SUBSCRIPTION

<u>Issue Level</u>	<u>Description of Issue</u>	<u>Response to issue</u>	<u>Resolution to issue</u>
Priority 1	Extreme Issue - stops processing of business-critical processes.	Must be responded to within one hour of notification receipt of issue to DYNAMIC.	Client to be advised of resolution actions. DYNAMIC to use all reasonable endeavours to fix issue promptly. Updates to resolution progress to be submitted every two hours, or less.
Priority 2	High Level Issue – slowing processing of business-critical processes.	Must be responded to within four working hours of notification receipt of issue to DYNAMIC.	Resolution to be implemented within eight working hours unless not technically possible and Client to be advised by DYNAMIC.
Priority 3	Medium Level Issue – slowing processing of processes or causing minor inconvenience.	Must be responded to within eight working hours of notice to DYNAMIC.	Resolution to be implemented as agreed by DYNAMIC and Client

- a) Note: The times applicable hereunder are only valid during normal business hours of normal business/working days, unless by prior agreement.
- b) The premium pack subscription includes discounted rate of pre-paid support as per agreed subscription
- c) Any **CLIENT** not on a support pack subscription will not be able to receive priority support over CLIENTS with a premium support pack.

- a) Change requests, development, training, consulting are not included in premium packs unless agreed on a case by case basis
- b) Hours must be utilised within the billing month and can only roll over for the next billing month. Unused hours do not accrue
- c) Onsite Visits may include training
- d) Premium Subscription Packs are invoiced a month in advance
- e) If more hours than subscription utilised within in the billing cycle, invoices will be calculated at the next Premium Subscription Pack the following month

MICROSOFT DYNAMICS™ NAV SUPPORT STANDARD (NO AGREED SLA)

The following Issue Priorities will be followed charged at T&M (standard charge rates)

<u>Issue Level</u>	<u>Description of Issue</u>	<u>Response to issue</u>	<u>Resolution to issue</u>
Priority 1	Extreme Issue - stops processing of business-critical processes.	No agreed SLA.	Resolution to be implemented as agreed by DYNAMIC and Client.
Priority 2	High Level Issue – slowing processing of business-critical processes.	No agreed SLA.	Resolution to be implemented as agreed by DYNAMIC and Client.
Priority 3	Medium Level Issue – slowing processing of processes or causing minor inconvenience.	No agreed SLA.	Resolution to be implemented as agreed by DYNAMIC and Client.

MICROSOFT DYNAMICS™ NAV SUPPORT COMMUNICATION PROCESS

- a) Support requests are to be sent via e-mail to support@dbits.com.au. All Microsoft Dynamics™ NAV Support issues in the first instance and depending on the Issue Priority Level a telephone call to DYNAMIC staff will ensure that all details of the issue are clear and a suitable course of action determined by DYNAMIC.
- b) The subject of the e-mail must contain the Issue Priority Level (Priority 1, Priority 2, and Priority 3) and Microsoft Dynamics™ NAV Application Area Subject. The details of each email should always contain sufficient and adequate information to enable efficient replication of the issue. If sufficient information is not provided there may be instances where time frames in Microsoft Dynamics™ NAV Support Service Levels cannot be met.
- c) Error reports are to be sent via e-mail to support@dbits.com.au using the Error Reporting template. All Microsoft Dynamics™ NAV errors in the first instance and depending on the Error Priority Level a telephone call to DYNAMIC staff will ensure that all details of the error are clear and a suitable course of action determined by DYNAMIC.
- d) Single Communications Channel. It is strongly recommended, that all **THE CLIENT** communications with **DYNAMIC** be routed through a single internal escalation channel. This will prevent unnecessary requests being submitted that may otherwise have been avoided by internal resolution of issues. This escalation process is also required to assist **THE CLIENT** to determine the true priority of the issue, as opposed to the perceived priority of an issue by a particular user.

ABOUT MICROSOFT DYNAMICS™ NAV SERVICES

- a) **DYNAMIC** may perform Microsoft Dynamics™ NAV Services at **THE CLIENT** request.
- b) All requests for Microsoft Dynamics™ NAV Services are to be submitted to **DYNAMIC** by a Service Request and acceptance is at the discretion of **DYNAMIC**.
- c) The schedule of costs for Microsoft Dynamics™ NAV Services performed under this agreement may be found in STANDARD CHARGE RATES herein
- d) **DYNAMIC** may provide Microsoft Dynamics™ NAV services in the following areas if requested by **THE CLIENT** on either a Fixed Price Work or Time & Materials Work basis:
 - (i) Customisations of Microsoft Dynamics™ NAV covering the full development life-cycle (requirements gathering, analysis, design and development, testing, documentation and training).

- (ii) Microsoft Dynamics™ NAV application-specific training which may be delivered by **DYNAMIC** by classroom, Remote Access, focus group or peer (one-to-one) training sessions
- (iii) Both application-specific and business process related documentation will be provided by **DYNAMIC** by Word Documents, Movie Files or other media as agreed by both parties.
- (iv) Microsoft Dynamics™ NAV Application and Technical consulting services to assist **THE CLIENT** with long-term issues or management of the Microsoft Dynamics™ NAV system, above and beyond Microsoft Dynamics™ NAV Support services described herein.
- (v) Other Microsoft Dynamics™ NAV services include upgrades, technical audits, code reviews, efficiency audits, customisation analysis, feasibility studies and various other Microsoft Dynamics™ NAV related services.

PROFESSIONAL SERVICES

- (a) **DYNAMIC** may perform services at **THE CLIENT** 's request for Professional Services
- (b) All requests for Professional Services are to be submitted to **DYNAMIC** by a Service Request and acceptance is at the discretion of **DYNAMIC**.
- (c) The schedule of costs for Professional Services performed under this agreement may be found in STANDARD CHARGE RATES herein
- (d) **DYNAMIC** may provide a range of professional business and consulting services in the following areas;
 - (i) Project Management includes internal or/and external project management services related to both Microsoft Dynamics™ NAV and financial and IT related systems;
 - (ii) Business Analysis includes services which enable **THE CLIENT** to gain a better understanding of issues and requirements that are present within the Microsoft Dynamics™ NAV or business/other systems and processes;
 - (iii) Change Management services include services that assist **THE CLIENT** in the adoption of changes to systems and processes;
 - (iv) Consulting Services include management consulting, general consulting and Microsoft Dynamics™ NAV related consulting services;

- (v) Documentation Services are the documentation of user processes and procedures or methodologies. **DYNAMIC** is also able to advise on the implementation of role based documentation strategies;
- (vi) Hardware and 3rd Party Software Advisory Services include independent audit services, advice and strategic direction on the use of hardware, infrastructure and 3rd party software solutions to effectively facilitate the needs of **THE CLIENT**

WORK TYPES

THE CLIENT may request DYNAMIC to provide Microsoft Dynamics™ NAV and Professional Services under the following work type methods, for services other than Microsoft Dynamics™ NAV Support.

(a) Fixed Price Work

- (i) The Fixed Price Work method involves quoting for services requested and performed according to an agreed price. The Fixed Price Work method would not normally be requested for on-site consulting services, analysis or meetings (where the consultant is involved in time-based issues);
- (ii) In the event that after an initial quotation is submitted and accepted by **THE CLIENT and** a detailed analysis is required with which a full and final quotation may be submitted, **THE CLIENT** may choose not to proceed with the service and will be liable for any costs to preform that service to date. Should a final quotation after detailed analysis be accepted by **THE CLIENT** then the initial quotation will lapse and the work performed will be carried out under the final quotation;
- (iii) **THE CLIENT** otherwise agrees to pay DYNAMIC for all hours expended on quotations as Time & Materials Work;

(b) Time and Materials Work

- (i) Analysis, Documentation and Estimates of 'Requests for Services' are charged to the client on a Time and Materials basis.
- (ii) The Time and Materials Word method means work performed at **THE CLIENT** request, on a do-and-charge basis where a quotation of costs is not requested or

cannot be established. The Time and Materials Work method of services performed would normally be suggested for:

- *Services where a quantifiable quote may not be possible, or where the generation of a quote may exceed the total development time required.*
- *Preparation of Quotes or supporting documentation such as Functional Requirements documentation*
- *Smaller requests for service.*
- *Requests for service where a number of smaller unrelated modifications are grouped together.*
- *Requests for on-site consulting services, analysis or meetings*
- *On-site work*
- *Remote work*
- *Analysis, Documentation and Estimates of 'Requests for Services'*

(iii) On-site work by **DYNAMIC** performed at **THE CLIENT** premises is to be charged at a Time and Materials Work basis, and is charged from the time **DYNAMIC** leaves **DYNAMIC** premises to the time **DYNAMIC** returns to **DYNAMIC** premises.

STANDARD CHARGE RATES

Please contact us via info@dbits.com.au

- (i) NOTE: All services performed under the Standard Charge Rates will be charged in 15-minute units.
- (ii) All services performed on weekends and/or public holidays will be charged an additional 25%